Banking and Business Law in the Digital Age: From Traditional Regulation to the Governance of Platforms, Crypto-Assets, and Artificial Intelligence

Associate Professor PhD. Dragos Mihail Manescu
Bucharest University of Economic Studies
Faculty of Law

ABSTRACT

(Summary in English)

The present habilitation thesis, entitled „Banking and Business Law in the Digital Age: From Traditional Regulation to the Governance of Platforms, Crypto-Assets, and Artificial Intelligence", brings together the academic, teaching, and research results I have obtained and which I submit in support of my application for the habilitation certificate in the field of Banking Law and New Technologies (Legal Sciences), within the Doctoral School of the Bucharest University of Economic Studies.

It reflects a coherent and sustained research programme, which I have endeavoured, and to a large extent believe I have managed, to organise around what I have arranged, for the sake of coherence and ease of reference, into four major thematic axes, each corresponding to academic works already published.

What I regard as the first area of research is banking and financial law, supported by the monographs „The Legal Regime of Banking Companies", „The Protection of the Consumer of Banking and Financial Services", and „ESG in Banking", by the work „The Protection of the Consumer of Banking Services. Alternative Dispute Resolution", as well as by the university course „Banking Law". In these works, I have sought to make a contribution through doctrinal analyses that examine, systematise, and develop the subject matter and, at the same time, challenge researchers and practitioners alike, whether experienced or new to the field. I first proposed the conceptualisation of banks as „undertakings of public interest" and a functional classification of banking operations. I then addressed, in an integrated manner, banking secrecy in relation to the obligations arising from the GDPR and from anti-money-laundering legislation, and I analysed unfair terms in banking contracts in the light of the case law of the Court of Justice of the European Union, with reference to the Kásler, Banco Español de Crédito, and Aziz cases. A distinct place is occupied by prudential supervision within the Single Supervisory Mechanism, as well as by the characterisation of ESG as a multi-layered legal norm: here I emphasised the pattern through which soft-law norms turn into hard law, as may be observed in the transition from the Principles for Responsible Banking towards the binding requirements set out in the CSRD and CRD VI. Closely connected to this, I also carried out a systematic mapping of the obligations incumbent on the European Central Bank and the European Banking Authority with respect to the management bodies of credit institutions in the area of ESG risk management.

The second research direction concerns blockchain technology, DeFi, and FinTech, and is illustrated by the article „Blockchain Technology, Perspectives of a New Way of Banking", published in the European Business Law Journal (1/2024), and by subsequent works. The study is among those systematic legal analyses in Romanian doctine that approach DeFi and crypto-assets from the perspective of European banking law. Starting from the distinction, viewed from a regulatory angle, between permissioned and permissionless blockchains, I compared DeFi and CeFi across seven legal dimensions and proposed the characterisation of flash loans as sui generis credit operations. I also examined the compatibility of smart contracts with European contract law and criticised the exclusion of DeFi from the scope of MiCAR, putting forward objective criteria for what „full decentralisation" would mean. Here too I identified categories of systemic risk specific to DeFi and formulated the concept of „embedded regulation", operating *ex ante*, conceived as a complement to traditional supervision, which is exercised *ex post*.

There follows, in turn, the area devoted to the protection of personal data in the age of artificial intelligence, which takes as its reference point the article „Strengthening Data Protection in a Rapidly Changing Digital Era" (Annales Universitatis Apulensis, Series

Jurisprudentia, 28/2025). Here I systematically analysed the legal basis for training artificial-intelligence models on data collected from the internet through scraping, the question of regulatory sandboxes, and, from the Garante-ChatGPT and DeepSeek cases, I drew out a number of doctrinal principles. I devoted particular attention to the EDPS Opinion of October 2025 on AI models, with an emphasis on the consequence it produces in terms of reversing the burden of proof as regards anonymisation. Examining the risk-based architecture of the EU Artificial Intelligence Act and its relationship with the GDPR, I finally proposed a methodology of my own, structured in stages, for integrated AI Act/GDPR compliance, intended for financial institutions.

Last, but not least, the fourth area of interest concerns the regulation of digital markets and rests on the legislative commentary „Considerations on the Digital Markets Act, The Way to a Fair and Open Digital Environment" (European Business Law Review, Kluwer Law International, 35(2)/2024). The undertaking starts from a critical analysis of the internal inconsistencies of Article 3 of the DMA, concerning the criteria for designating gatekeepers, for which I proposed an objective test designed to distinguish the artificial fragmentation of services from the legitimate one. I argued, de lege ferenda, for the introduction of personal civil and criminal liability of managers for non-compliance with the DMA, and I highlighted the methodological difficulties of the market investigations conducted by the Commission. The comparison between the DMA and the United Kingdom's DMCCA 2024, together with the analysis of what we generally call "the Brussels Effect" taking shape in this field, round out this line of research.

The second part of the thesis sets out the research plan for the period ahead. I have organised it around the future doctoral supervision activity that habilitation is to open up, and around the coordination of doctoral theses, but also around a number of large-scale works: a monograph devoted to crypto-assets and the law of digital finance in the European Union, a treatise on the law of digital platforms (DMA, DSA, and digital competition), and a comparative study on the protection of fundamental rights in the age of artificial intelligence.

The thesis closes with a series of conclusions in which I express my conviction that the law not only must, but also can keep pace with the digital revolution and with the transition towards sustainability, provided there is rigorous interdisciplinary research capable of bringing legal analysis closer to economic and technological expertise.