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INTERCULTURAL COMMUNICATION WITHIN THE GLOBAL ECONOMY. A LOOK AT ASIA

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Abstract: *In the larger context of globalisation and internationalization, navigating business operations in a multicultural environment is no easy task. The Far East has always fascinated the West through the uniqueness of its traditions, while at the same time remaining mysterious and rather difficult to assimilate for those who have not experienced culture shock before. Therefore, this paper strives to emphasise the importance of familiarising business students with the key issues related to cultural awareness and communication, focusing on Asian cultures in contrast to the Western world since, in the light of the latest political and economic developments leading to an ever-increasing Chinese dominance, they will undoubtedly be putting that information to good use.*

Keywords: *cultural awareness, intercultural communication, globalisation, cultural differences, Asia.*

JEL Classification: *A12, A22, F23, I23, Z13.*

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Introduction

Doing business internationally is not a new concept, since people have been travelling long distances to trade with foreign partners for hundreds of years. And while intercultural communication skills may not have been something traders actively sought to improve back in the day, things have definitely changed on that front, as the modern businessperson has realised that the success of their business often depends on interacting with people from different cultures that are, more often than not, quite dissimilar to their own. Asia has always been a bit of a mystery to the rest of the world, while at the same time exerting a fascination unparalleled by other territories. For the European, and even for the American (despite the USA having been deemed as a melting pot of various cultures), visiting countries like China, Japan, South Korea or Singapore is still likely to result in culture shock, which is especially challenging when travelling on business.

Nevertheless, China in particular has always been a force to be reckoned with, both in numbers and also in economic terms, so while the Covid-19 pandemic has placed some temporary hurdles on its way to global supremacy, China and Asia as a whole are definitely attractive for foreign businesspeople. English may be the language of business nowadays, but intercultural communication is much more than just being able to speak the same language as your Asian partners. This paper aims to emphasize the specificity of Asian

cultures as opposed to the Western world, so as to identify the necessary steps to be taken by a businessperson who is interested in expanding their business abroad or simply interacting with global partners and customers alike. From the perspective of a business student, being culturally aware is a must nowadays, as it opens the door to global access to resources and business opportunities, while emphasizing the need for strong communication skills in a foreign language. Therefore, after being introduced to the key concepts of culture, cultural awareness and cultural differences, alongside the main theories describing various dimensions of culture, they benefit most from practical examples on how various cultures approach the business context, their negotiating practices and what to expect overall from a meeting with foreign participants.

Theoretical background and literature review

At this point, the distinction between cross-cultural and intercultural communication must be emphasised, as Jane Jackson points out that “cross-cultural communication research typically compares and contrasts native discourse and communication behaviours (or styles) in different cultures,” while “intercultural communication research involves an investigation of interpersonal interaction between individuals (or groups) from diverse linguistic and cultural backgrounds” (Jackson, 2014, p. 3). Moreover, “in conceptions of intercultural communication it is important to recognize the dynamic, interpersonal dimension inherent in relationship building between people from diverse backgrounds” (Jackson, 2014, p. 3). This paper will thus focus on the latter, since business students need to be made aware of the fact that “linguistic proficiency is not enough to ensure the success of the (business) interaction” (Ursu and Ciortescu, 2021, p. 157). Having explored cultural patterns in business communication by comparing Europe and Asia, the two authors conclude that “meaning is far from being encoded in language alone, but also in context, in the ways in which people position themselves in society or how they related to notions of time and space” (Ursu and Ciortescu, 2021, pp. 157-158). Therefore, teaching English at university level must include a significant intercultural communication component if it is to be effective in preparing students for the realities of doing business internationally. Grosu-Rădulescu points out that after our country became part of the EU and adopted the Bologna education system, “foreign language teachers’ roles in Romania appear to have exceeded the traditional framework of imparting knowledge strictly related to the development of linguistic abilities” (Grosu-Rădulescu, 2018, p. 12). Now, one of the teaching purposes at this level, as exemplified by David (2018) when referring to the Bucharest University of Economic Studies, is enhancing students’ intercultural awareness, with a view to “stimulating an interest in intercultural exchange” (Grosu-Rădulescu, 2018, p. 12). While teaching languages such as Chinese or Japanese to Romanian students is still an extremely rare (and often workshop-limited) occurrence, English language proficiency paired with intercultural training remains their best bet in tackling written discourse, face-to-face or online interactions with people from different cultures.

In a very broad sense, culture can be seen as “a distinctly human means of adapting to circumstances and transmitting this coping skill and knowledge to subsequent generations” (Harris, Moran and Moran, 2004, p. 4) and it can range from something as small as dress and appearance, food and feeding habits, to an entire system of values and

norms or ways of thinking, all of which leading to an altogether different approach on life. Hofstede (2001) is, of course, the one who spoke at length about the cultural dimensions lying at the basis of cultural differences, but even though his theory has received its fair share of criticism over the years, it still lies at the basis of teaching English with a view to preparing students for further studying and working across cultures in today's globalised world. This is a must, since "in only 10% of 191 nations are the people ethnically or racially homogeneous" (Harris, Moran and Moran, 2004, p. 23). And while certain individuals possess several qualities which allow them to adapt quickly and easily to new cultures, cultural intelligence, as defined by Earley and Ang (2003) is not something that comes naturally to all of us.

More recently, Erin Meyer used her experience as a cultural trainer and INSEAD professor to devise an eight-scale model, based on key areas that managers must be aware of when dealing with different cultures. The model illustrates how cultures stand on a scale, in terms of communicating, evaluating, persuading, leading, deciding, trusting, disagreeing and scheduling (Meyer, 2014, p. 32) and, based on it, the author also conducted an in-depth study of corporate culture, together with the CEO of Netflix, Reed Hastings (Hastings and Meyer, 2020). Both books provide extensive practical examples of how the corporate world needs training when dealing cultural differences, so as to be able to effectively communicate, manage teams, negotiate, hire, provide feedback etc.

Aspects of Intercultural Communication

Based on Meyer's model, below are some practical examples of cultural differences which may be pointed out to students, with reference to Asian cultures. It is essential to acknowledge, beforehand, that while several cultures from the same geographical region may share common characteristics, they must never be treated as a whole, since avoiding stereotyping and understanding the specificity of each culture in itself should lie at the basis of successful intercultural interactions. So, the following examples will point out both the similarities and the differences among various Asian cultures as well as how they stand in relation to Western cultures, and will hopefully illustrate the fact that business students need to be particularly mindful of the unconscious bias we experience in relation to so many aspects of our lives, including culture. Furthermore, Meyer points out that "when examining how people from different cultures relate to one another, what matters is not the absolute position of either culture on the scale but rather the relative position of the two cultures. It is this relative positioning that determines how people view one another" (Meyer, 2014, p. 37).

Similarly, Storti and Franklin (2016) analyse the case of an US-based global business services company outsourcing to India and emphasize three main areas (deadlines, asking questions and giving feedback) where cultural differences create significant issues in terms of effective communication. They explain that "when people communicate and cooperate in any setting, they do not simply transfer meaning, but they co-construct understanding and indeed sometimes more explicitly actually negotiate understanding" (Storti and Franklin, 2016, p. 189). Furthermore, "when people communicate across cultures, this co-construction of understanding can become particularly difficult, because people communicating draw on 1) different sets of cultural knowledge; 2) this is often unconscious to themselves but 3) sets the norm for behaviour in their own cultural setting

(and often not for behaviour in the other culture)” (Storti and Franklin, 2016, p. 189). Consequently, it is recommended that students are first of all aware of such patterns and then double-check understanding before drawing conclusions about a particular culture. Let us now take each key area in Meyer’s model and discuss the main points to be considered when teaching students about intercultural communication and cultural differences.

Communicating

Many of us assume that as long as two people speak the same language, they are able to communicate satisfactorily, and since English is the universal language of business, they rely on their general knowledge of the language to get the message across. However, conducting business in a foreign language is much more complicated than that, since it is essential that the information and meaning conveyed are in accordance with how the interlocutor receives the message, so that no misunderstandings appear, which might distort the exchange. The communicating scale from Meyer’s model stems from the distinction between low-context vs. high-context cultures (Hall, 1973). In high-context cultures, people pay more attention to body language, changes in tone and facial expressions since meanings are usually conveyed indirectly, through connotation. On the other hand, low-context cultures rely on denotation, explicitly stating what they want to communicate. Asian countries like China, India, Korea or Japan are recognised as high context, alongside countries from the Middle-East and Africa, while the USA, Germany and many European nations are low context. However, it’s the whole picture of the differences between two countries that provide one with a better understanding of the difficulties encountered when doing business with someone from a different culture. Meyer explains that while communicating and disagreeing may be done in the same way in Israel and Russia, leading and making decisions places the two cultures at opposite ends of the spectrum, which means one must acknowledge and adapt his/her approach to certain particularities in order to successfully move forward (Meyer, 2014). This being said, it is essential to note that countries and cultures within the same geographical region are not to be taken as a whole in terms of business approach. While it is common for a company to delegate one person to manage sales, for instance, in the entire region of Asia-Pacific, they may soon discover that “each of the local markets had a different ‘go-to-market’ strategy. In China, Hong Kong, Malaysia and South Korea, for example, a direct sales team sold direct to the end customer. In Indonesia, Thailand and Taiwan it was through a third party. In Australia, Singapore and New Zealand it was a combination of both” (Plaister-Ten, 2016, p. 98). Consequently, the way you communicate your own strategy to the culturally-diverse members of your sales team should take into account the different ways in which they work within their respective cultures.

Evaluating

When it comes to providing negative feedback in business, things become even more complicated, as the potential for straining relationships is greater than in general communication. Meyer (2014) points out that some cultures which are low-context and explicit on the communicating scale may be less direct when it comes to negative criticism and vice versa, which reinforces the previously-mentioned need to look at the whole picture before making assumptions about a certain culture. Also, one mustn’t forget to factor in

cultural relativity when looking at the evaluating scale. “For example, the Chinese are to the right of the world scale, but they are much more direct than the Japanese, who may take offence at their forthright feedback” (Meyer, 2014, p. 99). In countries like India, Thailand, Japan and China, it is recommended that negative feedback is not provided in front of others and that the message is blurred (even by using food or drink as a distraction). Also, Meyer explains that the message should be delivered slowly, over a period of time, to let it sink in, while the actual negative part can be left out so that the receiver infers it from the good (Meyer, 2014, pp. 116-120). In the case of how Americans versus Indians provide feedback in the above-mentioned study by Storti and Franklin (2016), the former complained that the latter did not give honest feedback, while Indians responded that the Americans didn’t listen, so they preferred to not say anything at all. These conclusions were reached by both parties based solely on their direct work interaction and self-constructed cultural stereotypes, since the parent company did not invest in cultural training before outsourcing operation to India. Thus, complaints were bound to appear and work was inevitably affected by such misunderstandings.

Persuading

A lot has been said about the art of persuasion, and while we usually associate it with making a sale, being persuasive is a quality that is very useful in other areas of business as well. Negotiations often rely on it, but so do presentations and meetings. To Meyer, persuading is about knowing when to use a principles-first or applications-first approach. The German culture is often the best example to illustrate the preference for a principles-first approach, while the American one is all about starting with the conclusions and recommendations. When it comes to Asia, however, the author recommends that we use a different lens, that of holistic versus specific thought patterns (Meyer, 2014, pp. 143-153). Essentially, this means that Asians pay more attention to backgrounds and how these affect the central figures than the Westerners, who tend to focus on individual figures separate from the environment. For the outsider, this involves taking the time to listen to a conversation about seemingly unrelated things before actually reaching the main point of discussion. This goes to show that cross-cultural communication usually takes more time than its monocultural counterpart, but in today’s world the latter is often not an option.

Leading

The issue of leadership is perhaps more complex than others discussed here, since it relies greatly on subjective elements, connected to one’s personality. This is not to say that being more egalitarian or hierarchical is not determined by one’s cultural background or skills as well, but it requires a lot more adaptation on the manager’s part in order to be a successful leader, especially in a culturally-diverse environment. Getting it wrong might lead to the complete failure of the business. Also, as Romani (2016) points out, when organisations expand internationally, leaders face not only the challenge of managing people from various countries working together, but also implementing the headquarters’ ideas of organisational culture (Romani, 2016, pp. 300-301). Many times, challenging a culture’s idea of authority, even done with the best of intentions, is not the way to go. The Chinese culture is particularly keen on maintaining the hierarchy, even though this may seem profoundly unjust to a Westerner. In fact, insisting on a Chinese subordinate to move to a first name basis may prove to be a permanent source of uneasiness for him/her, since

their culture values hierarchical relationships. Instead, perceiving this kind of deference as something completely natural rather than a sign of superiority on the foreign leader's part is more likely to lead to a less strained relationship with the Chinese subordinate.

Deciding

When it comes to decision making, it is interesting to note that the notion of hierarchy means different things in different cultures. Nancy Meyer explains that even though German organisations are very hierarchical, it is not uncommon to challenge your boss' decision and push for consensus, while in the US, which is perceived as a very egalitarian, the individual does have a lot of decision power, but he/she can easily be vetoed by the boss, making it more top-down than consensus-based (Meyer, 2014, p. 196). The Japanese culture offers another notable exception. Although it is a strongly hierarchical culture, where a lot of deference is required towards the most senior company members, who are allowed access to these positions after spending a significant amount of time in the organisation and earning their place in the hierarchy, decision making is paradoxically consensual. Basically, decisions are made from the bottom up, with people agreeing on the next move and sending their proposal to their supervisor who then makes amendments where necessary and proceeds to pass it upwards for approval and/or modification. Neither of the approaches is inherently more effective, however conflicts, misunderstandings and frustration may easily arise if one is not familiar with the culture-specific procedure.

Trusting

In business, trust is essential across all cultures. Even the most reserved businessperson, who is eager to get down to business as soon as possible and shies away from small talk and seemingly personal questions will agree that, before anything, they would like to establish whether their counterpart is trustworthy and someone they would actually want to do business with. Sometimes, people are difficult to read, especially if they come from a culture where conventions dictate that emotions do not have a place in business meetings, remaining hidden behind a perfectly-woven screen of politeness. The Japanese are particularly versed in the art of courtesy, with strict rules regarding bowing and politely smiling at encounters at any level. Shop-assistants are known to lose their jobs, for example, if they do not smile while greeting customers on the shop floor, which might be seen as excessive by foreigners, but it also gives us an idea about the level of formality they employ in business. However, both the Japanese and the Chinese value trust and creating personal connections with their business partners through out-of-the-office meals or drinks before actually getting down to business. The Chinese word describing this kind of (personal) connection is *guanxi*, and it seems to be the Far East equivalent of networking, which is nowadays considered the way to develop your business.

Meyer distinguishes two different forms of trust (cognitive and affective), which further illustrate the cultural differences between the American and Chinese cultures (Meyer, 2014, p. 223). While Americans make a clear distinction between the two (i.e., they might like a person but not trust doing business with him/her at the same time), the Chinese do not have a problem with mixing them. "One consequence is that, for a Chinese manager working with Americans, the culturally based preference to separate cognitive trust and personal trust can indicate a lack of sincerity or loyalty" (Meyer, 2014, p. 225). Conversely, the Americans might find it difficult at first to determine what their Chinese

counterparts are really thinking, behind the curtain of politeness. That is why taking the time to socialise beforehand will allow both parties to better understand each other's *modus operandi*.

Disagreeing

Disagreeing with someone in a meeting is often difficult even among colleagues that have been working together for years, let alone when there are multiple cultures involved. Losing face is going to have a negative effect on people from all cultures, but with varying levels of importance. In Asian countries such as China, Japan, Korea, Indonesia and Thailand, saving face is of utmost importance. As Meyer explains, this is a common characteristic of Confucian societies and it supersedes stating what you think is correct (Meyer, 2014, p. 263). While in confrontational cultures it is common to challenge a speaker's ideas, without any intention of attacking the person at the same time, someone from a culture where confrontation is avoided will take this personally and feel the relationship has been negatively impacted by such comments. Always reminding students to do their homework about cultural differences and to choose their words wisely whenever they find themselves in a formal/business is a way to draw their attention to the myriad of issues that may arise when it comes to cross-cultural communication.

Scheduling

The way different cultures perceive time is maybe one of the last things one worries about when preparing for a business meeting, but it may turn out that, in certain situations, arriving too early, too late and even on time for a meeting can lead to misunderstandings or even tension. Edward T. Hall's distinction between polychronic and monochronic time (Hall, 1983, pp. 44-58) is usually the starting point of explaining different people's attitudes towards scheduling versus the more flexible approach to time. In countries like Germany, Japan, the Netherlands, the US, the UK and Denmark, there is an emphasis on promptness and good organisation, with people focussing on one thing at a time and doing it well. At the other end of the spectrum, in Spain, Italy, Mexico, Saudi Arabia, India and China, time is more fluid, many things are done at once and interruptions are acceptable. It is interesting to note that Japan and China are at the opposite ends of the spectrum on this scale. According to Meyer, punctuality is the only similarity between the two cultures. While the Japanese are highly organised planners, the Chinese are very flexible and very good at getting things done because of it (Meyer, 2014, pp. 311-313). Going back to the Storti and Franklin's (2016) case study, Americans complain about Indians falling behind and not being able to meet deadlines, while the latter insist that Americans don't listen when they are told more time is needed. Clearly, the Indians being less direct obstructs communication in this case, which leads to frustration on both ends.

Conclusions

As this paper has hopefully emphasised, the topic of intercultural communication is a very complex one, both in the number of dimensions involved but also when it comes to the perspective we have on each culture. For business students studying this topic as part of their English classes, practical examples of situations involving different cultures interacting in a business context is a good starting point, while also being an excellent

opportunity to analyse the situations from multiple perspectives, including the language used, levels of formality, specialised vocabulary etc. While generalisations are inevitable, this article strives to point out that neither Asia nor the Western world should not be taken as a whole when it comes to illustrating cultural differences, as each particular culture has its own specificities and might score differently on the various scales presented above. Thus, the challenge of interacting with others is striking that balance between identifying one's personal quirks and addressing those characteristics that are culturally-conditioned in such a way that successful communication is achieved. Practice makes perfect, and educating ourselves in always trying to understand the root of one's words or behaviour (which is often embedded in their culture) before labelling them as inappropriate is key to celebrating the diversity of today's business world.

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IMPROVING EFFICIENCY OF THE HUMAN RESOURCES MANAGEMENT IN ORDER TO INCREASE THE PERFORMANCE IN THE ROMANIAN POLICE

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Abstract: *The importance and the motivation of the research about the institutions which ensure and maintain the public order and safety is given by the inherent role of this activity for the society, but also by the fact that the purpose of the research is to modernize and improve the management system in order to ensure the quality of the police service, a service which must be performed with transparency and professionalism. The general objective of the research is the analysis of the management system in police units, as MAI organizations and the identification of good practices and of ways for improving efficiency of the human resources management of the police units in order to increase the satisfaction degree of the public interest. Satisfying the public interest, and maintaining economic and social efficiency and effectiveness, means that the police activity should be oriented towards the future, by anticipating the changes from the social and economic environment and stimulating the involvement of the whole community in the activity of crime prevention and fighting. Today, in 2022 we ask whether police activity in Romania has to be modified after the western patterns or it is necessary to consider cultural attitudes and old ideologies that may influence the performance of organizational change process.*

Keywords: *Police management; Performance management; Policing, Police reform, New public management, Public administration*

JEL Classification: *O15*

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Introduction

Police performance affects people's daily lives. There are many stakeholders in police performance, but the most important are those served by the police forces: the population itself. Police authorities, as representatives of local communities, have a wide role to play in ensuring an efficient police service, effective in managing the performance of police authorities. In the context of rapid change and the evolution of society, a proper understanding of what "performance" really means is very important for police officers and staff at all levels of the police force responsible for the safety of the community. Correlations and determinants of performance are also significant to ensure that the right actions are taken to improve police performance.

Moreover, the economic, political and social changes that European countries had gone through led to a change in the study of public organizations. Since 1980, public administration organizations have taken a more business-like approach due to pressure towards traditional reform leadership style of command and control (Pollitt & Bouckaert, 2000; Sugarman, 2010). Hence performance and performance management have become central constructs in the police, as are these priority constructs in business organizations. Meanwhile, the police have changed their mission in terms of developing a greater opening and responding to citizens' needs and requirements and also needed to operate more efficiently, economically and effectively (Barton & Beynon, 2011). As a result, there has been an increased emphasis on resource use in view of budget cuts and pressure for the police to prioritise efficiency. So, resource-based visualization (Barney, 1991) becomes a useful approach to studying performance and how the needs and expectations of external stakeholders are met by police forces. Developed in the commercial context of organizations operating in competitive markets (Maijoor & van Witteloostuijn, 1996), the resource-based vision assumes that performance, no matter how defined it is, arises from within the organization. Making a connection between performance and budget generates a sense of responsibility among police officers by focusing on the results and the quality of the services that the police provide to the community.

What do we mean by police performance?

The police have a key role in society in fighting crime and ensuring the safety of the community. They are one of the most fundamental and recognized service providers in our local communities, and their responsibilities extend across a very wide range of activities. Just a few of the things we rely on the police for are:

- Prevention of crimes of all kinds, from thefts to fraud
- Catching criminals and helping to ensure they are brought to justice
- Disrupting organised criminal groups and fighting cross-border crime
- Providing assurances (e.g. through a visible police presence) and helping to reduce criminality
- Promoting public safety (e.g. by stopping dangerous drivers or managing public unrest and antisocial behaviour)

The performance of the police, in its simplest form, means only how well the police perform and deliver in the wide variety of things for which they have responsibility. "Performance" does not mean 'performance indicators' (i.e. figures and statistics), although this is a common assumption – for example, when people equate simple crime statistics with police performance. Performance indicators (defined below) only help us to examine what performance actually is, and they may not cover all areas for which the police are responsible, unless they have been specifically implemented.

What do we mean by performance management?

Performance management is the practice of using information about past and current performance and the factors that could affect future performance, to decide what actions to take to make that future performance better than it would otherwise be. It can be

useful to see performance management as a cyclical process, which involves at its most basic level:

- Prioritisation and planning
- Quantifying the expectations for the level of performance that should be seen through the delivery of the plan (i.e. granting objectives)
- Delivery monitoring, both in terms of progress towards the delivery of the plan and the actual results that are seen
- Review and learn from progress and feed them into the next cycle to inform the next set of priorities.

Successful performance management depends on:

- Performance measurement – collecting performance data and processing this information in a usable form (e.g. as performance indicators)
- Performance monitoring – examining the results of performance measurement to make judgments about the level of performance (for example, is performance getting better or worse?; is it worse or better than we expected?)

Successful performance management is based on the result of measuring and monitoring performance: decisions and actions are made as a result of the description of performance that is achieved through these two steps.

Performance management is important because it is at the heart of how resources are used. Normally, the requirements for a service (that is, the results that users want) will exceed the resources available to provide them. This means that choices must be made about what will be done, how they will be made, when they will be made, how well they will be done, what they will not be done, and when they will cease to be done. The consequence of the choices to be made is that resources can be used inefficiently, inefficiently or unfairly if an organization is not very careful. Following the principles of performance management helps an organization make better choices because decisions about resource use are based on evidence and feedback.

What is the role of police authorities in police performance?

We established the role of the police authority in performance management, the role of the police force and why it is different. This section also defines a terminology used in describing the role of the police authority. Police authorities have a role to play in the overall performance management of the force's work. Police authorities are required by law to:

- Ensure that an effective police service is maintained
- Achieve continuous improvements in police performance
- Get the opinions of locals on police issues

Therefore, police authorities are key stakeholders in managing police performance. However, the authority's role is not to repeat or replicate the performance management regime in place: the authorities do not directly manage police resources at the operational level. In recent years, many forces have made considerable progress in establishing performance management structures and processes and developing a performance-centric culture. The chief officer¹ leads the internal force performance management arrangements and, together with the rest of the command team, is essential for force performance management.

The police authority adds value to its communities by ensuring that the force works efficiently and effectively, ensuring that:

- Police resources are directed to address issues of the greatest concern or importance (i.e. priorities driven by local consultation and political imperative, as well as operational considerations) in a balanced way
- Once resources are directed to issues of interest (i.e. priorities), that they help to achieve the desired results (outputs and results) and that these results are achieved through both effective and ethical means.

How the authority fulfils these responsibilities should also add value to the force. The Authority has an active role in the management of police performance. Therefore, the general role of authority in the management of police performance is:

Planning and setting priorities and targets:

- Public consultation on police matters
- Coordination of partner agencies' contributions to police priorities
- Taking into account how the national police priorities of the Minister of the Interior applied to local forces should be

– Determination of local priorities and setting performance targets and budget

Monitor performance against the police plan and ensure that the force manages day-to-day performance so as to ensure that the objectives are achieved:

- regular review of the performance of the force in relation to its commitments
- Using performance information to ask the force questions to find out how and why that level of performance was achieved
- Using performance information and force responses to draw conclusions about the effectiveness and effectiveness of a police aspect
- Identifying and praising good performance and encouraging the sharing of good practices across the full force and with other strengths
- Asking the force to come up with solutions to improve performance in priority areas
- Monitoring external performance information and requesting support if needed
- Learning, consultation and feedback

Reporting to the public on annual achievements

– Translate learning and experience from one performance cycle to the next to inform future police priorities and planning.

There are different opinions about whether the police authorities "do" performance management. As illustrated above, although, of course, the authority is not involved in the direct management of the police force, and therefore in the management of ongoing operational performance it has a key role in performance management in the broadest sense - the general cycle of performance management at the police force level.

Planning - setting priorities performance

Effective planning and prioritisation form the foundation of the police authority's role in performance management. A police plan that sets out the priorities of local communities, in balance with all the other considerations to which the authority must give weight, is the basis of the authority that ensures the provision of a police service that meets the needs of its communities. The development of the local police plan is the statutory responsibility of the chief officer, the approval being the responsibility of the police authority, so the authorities and forces will have to work closely together at this stage of

the performance management cycle. The authority must ensure that it is satisfied with the local police plan, as prepared by the chief officer, as the rest of the performance management cycle is based on and flows from it.

Ensuring the achievement of objectives

The local police plan dedicates the objectives of authority and force to the year and sets out exactly what the force is committed to achieving with the resources it provides. The police plan is the authority's main reference point for ensuring execution against local and nationally determined priorities. However, the authorities must carefully supervise performance issues beyond the objectives in the plan, in line with the need for comprehensive performance coverage.

Learning, consultation and feedback

In order to complete the performance cycle and advance in planning for the coming year, the police authority must ensure that learning from the current year is introduced in the next planning phase. The main role of the Authority in this area of performance management is consultation, which is also part of the statutory role of the Authority. Having ensured the provision of police services to local communities, the police authorities must inform the locals about the performance of the police. Many police authorities have had difficulty raising the public profile of the authority and informing locals about the performance of the police and the role that the authority plays in it. Many police authorities rely on their consultation mechanisms and on annual reports or newsletters sent along with local council tax communications. A small number of police authorities are trying innovative ways to communicate their work to locals. However, the picture is mixed and the information provided is not always a consistent and objective assessment.

Assessment of public management reforms in EU and US police services

We presented some aspects about police organization in the USA and in some developed countries from EU, which can be taken into consideration when continuing the reform from the Romanian Police institutions. Exploring the introduction of New Public Management (NPM) techniques within the UK police service and the impact upon the role of the first line manager: the police sergeant. Evaluating a number of NPM precepts to the role of police sergeants, including a shift towards more strategic responsibilities, but with a significant intensification of work, tighter control and scrutiny through organizational performance management systems, and less daily contact with their police constables. The effect was to limit their ability to provide leadership and support for their constables, and to encourage a greater reliance upon peer group networks and on the constables they supervised. Or how Germany during the last fifteen years NPM reforms affected federal and state polices facilitated by socio-economic forces and upcoming international new public management ideas in particular. NPM reforms did not constitute a holistic model for police administration and could therefore not completely replace the traditional bureaucratic model. NPM concepts become only partially institutionalized leading to a hybrid type of traditional administrative organisational structure and culture with sedimentations of certain NPM elements.

Also we analyze the development of Compstat. Performance based management model, Compstat developed by Commissioner William Bratton and his top management team in the New York Police Department that changed the paradigm in policing. This important administrative innovation caused organizational change in policing. Compstat was developed based on the idea of decentralization and accountability to provide security and to reduce crime. As an administrative innovation, Compstat has spread so quickly to police departments not only across the US but also to overseas.

Management methods in public organizations. particularities in police units

Presentation of the institutions from the administration and internal affairs system, respectively the police units, as main components of the organization of the Romanian society, detailing the mission, objectives, the structural elements and the components of the management system from the Romanian Police institutions. To this purpose, we presented the evolution, the general framework, the leading principles of the units from the internal affairs system (MAI), respectively from the Romanian Police. We identify methods, techniques and instruments used in management as the good practices used in the police units in order to increase the efficiency and the effectiveness of their management. We also presented elements regarding the role and importance of organizational communication as a premise for performance management. Brief analysis of the Ministry of Administration and Internal Affairs, the upper structure of the Romanian Police and the description of the organizational system of Administration and Internal Affairs, with emphasis on public order and safety.

Proposals and recommendations for improving efficiency the management system of the police units

The analysis of the policemen's ethic code (definition, characteristics, objectives, content, principles, critics, limits) and the presentation of the arguments from the specialized literature and some personal arguments, which confirms that it can be considered a tool of improving the behavior (benefits, influences, roles). The analysis of the organizational system of the Romanian Police and the presentation of the main weaknesses / vulnerabilities within the police institutions in Romania. Analysis of the decisional and informational (managerial) subsystem within the Romanian Police and with the following: definitions, characteristics, types, tasks, requirements, dependencies, limitations, steps, rules.

Description of the most important models of the change process, focusing on: awareness of the need for change, organizational diagnosis, planning and implementing change, effects assessment and institutionalization of the change. Presenting the most relevant definitions of organized crime and highlighting key features and characteristics. Examination of the interdependence links between the spread of the organized crime on the one hand, and, on the other hand, the socio-economical and political factors, the characteristics of the judiciary system, the public and private governance efficiency, the independence and integrity of the judiciary system. The analysis of the economic and financial crisis impact on crime and organized crime.

Developing efficient and effective communication programmes in order to achieve a higher level of employee involvement, an important factor in fulfilling the specific organizational and individual objectives.

Consolidating the specific organizational culture values in the police units in order to stimulate the individual and collective behaviour.

Improving the informational system which will allow the collection, transmission and archiving of the data and the efficient communication, which will facilitate the implementation of the strategies, policies and good practices in order to achieve the organizational objectives and the specific individual objectives of the employees.

Identification of the role of knowledge in police work and presentation of the generalities regarding the knowledge management and the implementation of the knowledge management in the analysed field.

Identify the negative aspects that can influence the managerial performance within the analysed institution

Establishing the importance of certain aspects that can influence the efficiency of the managerial activity

Identifying the behavior of the most superiors, colleagues and subordinates faced with some changes in the managerial process (taking into account the managers' perceptions and opinions from the analysed institution)

Knowing the managers' opinions considering the superiors/ colleagues / subordinates about: attachment to the institution, excessive orientation towards their own interests, level of knowledge / professional skills, participatory activism, ability to take risks and responsibilities, the efficiency of communication etc.

Identifying managers' degree of satisfaction concerning: the way in which decisions are taken at the center, the way in which things work in brigade / service, managers' income, authority or working conditions.

Training managers and employees permanently in order to achieve the strategic and operational objectives at institutional level for each function and management subsystem.

Identifying the employees who resist to changes due to multiple causes

Identifying the current situation within the analysed institution as perceived by operational staff, aiming at the following levels: workplace characteristics, performance evaluation, teamwork, relationships with managerial team, ethical behavior

The analysis of managers' opinions or officers and agents regarding the possibility of obtaining positive effects.

To ensure the efficiency of the managerial subsystems we have to introduce „documents management” which is „an IT system which facilitates the circulation, stocking, the retrieval of the documents and connection to other computer systems or electronic devices which allow the correct and safe transmission of information and permanent monitoring of the decision and order stage and of the transmitted instructions.

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THE REAL ESTATE INDUSTRY IN EUROPE IN THE PRE- AND POST-PANDEMIC PERIOD

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Abstract: *Real estate represents one of the most profitable and of interest areas of investment. In 2019, the year before the pandemic, real estate represented 3.1% of Europe's GDP, and investment in new constructions or in the renovation of old ones accounted for more than 10% of all investment products in the European economy. This paper analyses the evolution of the real estate industry in the post-pandemic period, the trend being a favourable one, of growth. Real estate constitutes the basis for the proper functioning and development of the other sectors of the economy, therefore it is important to analyse the reaction of the industry in relation to an economic crisis, such as the one caused by the Covid-19 pandemic. The crisis has been the subject of debate for the past two years, as it has caused unprecedented changes in Europe's economy and, of course, in residential markets. Currently, the geopolitical situation in Europe, represented by the conflict in Ukraine and the refugee crisis, has the effect of increasing energy costs, the price of building materials and labour costs. In the given context, we reflected how the real estate market in Europe evolved in the pre- and post-pandemic period, following a series of essential indicators in the field: the evolution of constructions, real property prices, mortgage rates, rents and purchasing power of investors.*

Keywords: *real estate industry, Covid-19, crisis, Europa*

JEL Classification: *SQM1, R30, R31*

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Introduction

The Explanatory Dictionary of the Romanian Language defines the term “real estate” as “something that cannot be transported, immovable”. From a legal point of view, the term refers to land and anything that is permanently fixed on a land (buildings). Previously, “immovable” was considered synonymous with “real estate”. The distinction between the two is that real estate refers to the ownership rights over the real estate. Real estate is also defined as property that can be bought, sold, rented, or exchanged for other goods or services. More simply, real property is defined as “land and things attached thereto” (Floyd and Allen, 2002). The term defines any property that can be bought, sold, rented or exchanged for other goods or services (Graaskamp, 1981, pp. 23). Over time, the structure of housing has changed according to economic, political, demographic and technological changes.

The development of private real estate property has turned real estate into an extremely attractive field for business, which is in continuous evolution. There are five types of activities related to the real estate industry: real estate valuation – professional valuation services; brokerage - assistance to buyers and sellers in transactions; development – improvement of the land for use, by adding or replacing buildings; property management – management of a property for its owner, and relocation services – relocation of people or businesses to different countries.

In Romania, the real estate market is on an upward slope since 2003, when the appearance of mortgage loan meant not only the creation of a financing mechanism that stimulated purchases, but also, obviously, connected the local market to international financial markets, introducing the principles of the global real estate market. Over time, architectural and urban changes have been an indicator of the degree of civilization and cultural progress of mankind. At the end of the 18th century, in the context of the first Industrial Revolution, the production process began to be mechanized, allowing other industries to increase their productivity. Implicitly, the increase in the standard of living in European countries followed, which led to prosperity and the need for population migration to urban centres. Furthermore, in the first decades of the 20th century, accelerated urbanization led to the need to build collective spaces in urban areas, such as factories, hospitals, schools, but also blocks of flats. The moment coincided with the emergence of architectural functionalism, according to which buildings should be designed exclusively based on their purpose and function. This innovative concept aims to harmoniously combine the building's shape and its function, minimizing the costs of its design and construction (Craven, 2018).

Urban residential development began to slow starting with the year 1914, with the start of World War I, at which point Europe's GDP began to decline dramatically. The return of the economy to the pre-war level did not occur until a decade later (Edelstein and Edelstein, 2020). Geographically, many countries have changed their borders, and in terms of real estate, entire cities have been destroyed as a result of the war (Smith, 2021). This led to the continuation of the industrialization process, requiring the reconstruction of destroyed cities and the restoration of severely damaged infrastructure (Eichenberg, 2019). In this way, after the end of the World War I, a part of Europe enjoyed a period of relative prosperity, which ended in 1939, with the start of World War II. The bombings destroyed much of the existing real estate construction, and the war-affected population had to relocate in order to survive.

After the end of the war, most jobs and the main educational or health establishments were concentrated in the main cities of Europe. Urbanization has thus increased the demand for housing, especially in the suburbs of cities. Furthermore, the decolonization of Africa and Asia by Europe after the end of World War II also led to demand for housing for people freed from those colonies. A similar phenomenon is visible nowadays: the migration of people from small towns or the countryside to big cities, mainly for the purpose of working. For this reason, the residential market must constantly adapt, in order to integrate the arriving population into the main poles of economic development. Practically, urbanization experienced two main stages. The first stage corresponds to the industrial revolution at the end of the 18th century, when cities attracted the rural population to work, and the second is the stage of the development of European metropolises after the great destruction of the World War II.

Reaction of the real estate market to the COVID-19 pandemic

Unlike other economic crises known to mankind over time, the Covid-19 pandemic had direct visible effects in the real estate industry. Beyond the health consequences and the psychological influence that the pandemic has exerted on the population, the need to continue professional activity in a safe environment, physically isolated, in order to stop the spread of the virus, has produced unprecedented changes in the real estate market. The health crisis has been the determining factor for the changes produced in the last two years in terms of preferences, motivation and attitude of customers towards real estate. The decision to buy a dwelling is no longer influenced only by the need to have a home for the hours spent outside of work, but now it also includes the need for additional space for carrying out the professional activity.

The emergence of a crisis, which in one form or another destabilizes the real estate market, becomes an important and urgent problem for the respective market economy, and for this reason it is necessary to take measures to mitigate its harmful effects. In the case of the COVID-19 pandemic, the model and specifics of the crisis are atypical, because the phenomenon has not been encountered before in history. Thus, we are not referring to the economic or biological effects, which are visible and extremely easy to detect by specialists, but we are talking about the psycho-social effects, which are more difficult to notice and measure and which have affected the foundations of social life, primarily by limiting interaction with peers.

In this category we also include the reaction of customers to the residential real estate market in the context of the Covid-19 crisis. Probably for the first time, the active population, now forced to live for several months their whole life within the perimeter delimited by one's house, began to question the usefulness of the living space.

The mandatory isolation of the population to stop the spread of the virus meant the blocking of most economic transactions, including those on the real estate market. Later, the transactions resumed, the trends being positive and promising, in the direction of returning to the volume of sales before the onset of the crisis, in some places even exceeding it. The effects of the pandemic reflect on the urban planning needs of large cities, in the sense that most dwellings are not adapted to the new needs to work from home (De Toro et al., 2021). Working from home has led to new requirements when it comes to purchasing a dwelling, all focused on comfort and the quality of the indoor environment. The desire to improve home comfort focused on the need for thermal, acoustic and visual insulation, indoor air quality and the use of natural light. All these demands have led to the need to improve the energy performance of the dwelling. At the moment, the energy performance certificates are part of the mandatory documentation for the valuation of a real property purchased through bank credit, reflecting the energy performance class, the CO₂-equivalent emission index, the heated useful area, the heated volume. Also, valuation reports required by banks must contain an environmental section (environmental compliance and physical risks that may affect the real property).

The COVID-19 pandemic has also brought changes in terms of communication between customers and real estate agencies. The changes occurred as a result of the need to comply with the restrictions imposed by the authorities, as well as the desire of the agencies to protect their employees against the spread of the Covid-19 virus. From this point of view, various online platforms have been used for real estate viewing by customers

of real estate agencies, online communication and the use of electronic signature for sales and purchase transactions. At the same time, applications that allow customers to search for real estate offers updated in real time and platforms dedicated to filling in and sending the electronic documents needed especially in the last part of the sales and purchase process – abstract of title, ground survey, title deeds, energy performance certificate, notary opinion, etc. - have been created (Jovanović-Milenković et al., 2020).

The Covid-19 pandemic has also changed the perspective of banks as regards the management of the relationship with their clients, in this case applying for mortgage loans, eager to obtain financing in order to purchase a real property. Through measures such as postponement of loan instalments, more accessible interest rates, financial education, banks tried during the pandemic to take specific measures in the direction of social responsibility (Baicu et al., 2020). In an environment characterized by the uncertainty and insecurity caused by the Covid-19 health crisis, the real estate market recovered perhaps unexpectedly both on a European and a national level. In this study, we conducted a retrospective of the real estate market on a sample of European countries, including Romania, including the pre-pandemic (2017-2019) and post-pandemic (2020-2021) periods. In order to carry out the analysis, we used data provided at the European level by Eurostat, at the local level by the National Institute of Statistics in Romania, as well as various analyses carried out by companies and websites such as Deloitte, Colliers International, *analizeimobiliare.ro*.

The analysis carried out in this paper focuses on a number of 14 countries in the European Union (Austria, Belgium, the Czech Republic, Denmark, France, Germany, Hungary, Italy, Latvia, the Netherlands, Poland, Portugal, Spain and United Kingdom), where adds Romania, whose evolution will be analysed in terms of some indices relevant for the residential real estate market they are part of (the housing development intensity, the housing starts in the current year, the housing stock, the variation in sales prices, the variation in rental prices, the housing purchasing power of the population and the degree of indebtedness of citizens in terms of mortgage loans).

The economic situation in Europe in the period 2017-2021

In order to be able to understand the evolution of the real estate market, it is necessary to analyse the economic conditions that influence the variation in the sale and rental prices of housing, but also the degree to which the construction industry is more or less accelerated. Three years before the outbreak of the Covid-19 pandemic, in 2017, favourable external conditions led Europe's GDP to accelerate from 1.8% in 2016 to 2.6%. Thus, in 2017, the US economy grew from 1.5% to 2.3% compared to the previous year, China's remained around 7%, and Japan's economy grew by 1.5%, from to 0.9% in 2016. In 2017, the European Central Bank kept monetary policy rates at a historically low level, which led to a decrease in bank interest rates and, implicitly, to an increase in household consumption expenditure by 2.2% and an increase in investment across the European Union by 4.1%. Given the ECB's policy of keeping interest rates low, combined with the steady decline in unemployment, the real estate market was on an upward slope in 2017.

The year 2018 brought with it a decrease in the degree to which Europe's GDP increased, its growth being lower than the previous year, of only 2.6%. As usual, the decline occurred amid the international economic situation, which was also declining. Basically,

throughout 2018, China's economy slowed down from 6.9% to 6.6%, and Japan's slowed down from 1.9% to 0.8%. More prosperous was the US economy, which grew during 2018 from 2.4% to 2.9%. In 2018 also, the European Central Bank kept monetary policy rates at a historically low level, and the unemployment rate was similar to that of 2017, conditions that positively influenced the real estate market, with prices also remaining at a relatively constant level.

Starting with 2012, for six years, the Eurozone economy has been on an upward slope, ended in 2019 by the Covid-19 pandemic, which spread from China to the whole world. Europe has been one of the most affected regions, with countries such as Italy and Spain suffering the most human and economic losses due to the necessary restrictions that have been imposed. The governments of European countries reacted quickly, managing to stabilize the economic situation. Among the most popular measures taken were employment subsidies (*kurzarbeit*), which supported companies during the period when they could not operate due to government restrictions, and deferred payment of bank instalments. The real estate market is sensitive to economic conditions, especially to increasing GDP and interest rates. After the 2008 crisis, increased GDP and interest rates kept at a relatively constant level led to higher housing prices by up to 83%.

The economy of 2020 must be seen first of all from the point of view of the influence of the Covid-19 pandemic, already triggered for a year all over the world. The impact of this economic crisis is different from that of the global financial crisis of 2008-2010. This time, the most affected sectors were those directly related to people's need to socialize and travel – the HoReCa industry and tourism. Regarding the residential real estate market, both in our country and throughout Europe, the influence of the Covid-19 pandemic has basically the same causes. During the 2020 spring wave of the pandemic, countries' governments imposed restrictions to limit the transmission of the virus, so almost all non-essential workers stayed at home. The result was a decrease in consumption for certain goods and services, a situation that allowed the population to save up to 20% more compared to the pre-crisis period.

During the restrictions period, most public institutions involved in the building permit process were closed, so that a small number of projects received the necessary approvals at the time, the supply decreasing in favour of the increased demand. Despite the general uncertainty in the economy, the vast majority of residential real estate markets experienced slight growth. The need for additional space to work from home, the desire to move from an apartment to a house to have access to the outdoors, giving up city homes in favour of those located on the outskirts, are reasons that have led to an increase in the demand and prices of residential real properties. The low interest rates charged by banks in 2020 and, implicitly, the convenient rates on mortgage loans have led investors to purchase dwellings in the midst of the pandemic crisis.

In the rental market, the most important aspect to note in 2020 is the decrease in the price per square meter in the big cities. With the tourism industry severely affected by the pandemic, demand for short-term accommodation in European metropolises has dwindled to zero, leading to a drop in long-term rents. In 2020, one year after the outbreak of the Covid-19 pandemic, Europe's GDP shrank by 6.8%, a more significant drop than the one seen in the financial crisis of 2008-2009. The biggest decreases can be seen in the economies of Spain and Italy, severely affected by the Covid-19 pandemic. The decline in GDP was seen in the first two quarters of 2020, followed by a rebound in the third quarter

and a further decline in the last quarter. The service sector was more affected than the manufacturing sector. The unemployment rate also increased in 2020, from 7.6% in 2019 to 8%. Government policies to support the economy started in 2019 continued throughout 2020, through employment subsidies (*kurzarbeit*), to support companies during the period when they could not carry out their activity, due to the restrictions, and the postponement to payment of bank instalments. Against the background of all these aspects, in 2020 prices on the residential real estate market did not decrease, in fact, they experienced a slight increase.

In 2021, the euro zone economy partially recovered, with GDP growing by 5.4%, while global growth was also substantial, of 6.1%. However, the rapid economic expansion did not lead to reaching the economic level of the pre-pandemic period. The Covid-19 pandemic has disrupted supply chains, and a shortage of semiconductor chips has slowed production in the automotive system. Further, it was only a step to the increase in the prices of raw materials and building materials. The forecast of the International Monetary Fund is for the global economy to grow by 3.2% in 2022, then by 2.9% in 2023, which translates into a sharp slowdown after the 6.1% recorded in 2021. A possible recession could come from the risk that the flow of Russian gas to Europe will be stopped because of the war in Ukraine and because of the sanctions that the EU has imposed on Russia. Even if this does not happen, high energy prices will be a drag on economic growth, with Russia now providing 20% less gas than the 2021 levels. Both in 2021 and at present, supply chain issues and the energy crisis only increased inflation. According to Eurostat's preliminary estimate, the annual inflation rate in the Eurozone increased up to 8.1% in May 2022, from a level of 7.4% in April. Thus, the inflation level is four times higher than the target objective of the European Central Bank (ECB), i.e. a price increase of 2%. This is the strongest annual increase in consumer prices recorded by the Eurozone since 1997, when statistical data on the single area began to be published. Thus, inflation has become by far the biggest macroeconomic problem worldwide. Central banks around the world have been under pressure to adapt to rising inflation by raising interest rates.

As always, the real estate market is currently reacting to rising GDP and interest rates. Tight monetary policy is currently having the effect of raising mortgage rates, which could reduce demand in the residential real estate market, slowing price growth.

Evolution of the main indices in the real estate industry

Housing Completion Index (Housing Development Intensity)

The housing development intensity index defines the degree of housing development on the residential market, being calculated as the housing completions per 1,000 citizens in a given country. With 7.4 completed apartments per 1,000 citizens, i.e. a total number of approximately 498,000 dwellings, France leads the 2017 ranking. Second ranks Poland, with 4.6 apartments/1,000 citizens, and third is Belgium, with 3.9 apartment/1,000 citizens. At the opposite pole is Latvia, with approximately 1,500 apartments built in 2017, i.e. 0.8 housing spaces/1,000 citizens. The index is also weak for Spain, where in 2017 less than one apartment per 1,000 people was built. Romania is ranked in the middle of the ranking, with 53,347 housing completions, i.e. 2.72/1,000 inhabitants, thus being located between the Czech Republic and Germany.

In 2018 too, France is the country leading the list in absolute values, with 459,000 housing completions (6.86 dwellings/1,000 citizens), followed by Germany with 300,000 dwellings (3.61 housing completions/1,000 citizens). At the bottom of the ranking is Latvia again, with only 3,000 completed apartments, but nevertheless the value means a 100% increase compared to the previous year, 2017. The value of the index is also low in the case of Portugal – only 1.2 completed apartments/1,000 citizens, i.e. an absolute value of 12,300 housing spaces. As previously shown, the highest value of the housing development intensity index is achieved by France (6.86), followed by Poland (4.81) and Belgium (4.64). Poland is in the top of the most housing completions per thousand citizens for the second year in a row. In 2019, of all countries analysed, Portugal, Spain and Latvia have less than one completed apartment per 1,000 inhabitants, but this is understandable, since Portugal and Spain are among the countries with the largest housing stock anyway. Like the years 2017 and 2018 previously analysed, in 2019, France is still the one that has the highest number of housing completions, in absolute values, respectively 450,000 (6.7 dwellings/1,000 citizens). In absolute values, Germany and Poland follow in the 2019 ranking, with 293,000 and 207,500 completed apartments, respectively. Latvia is at the bottom of the ranking, with 3,300 housing completions (1.73 dwellings/1,000 citizens).

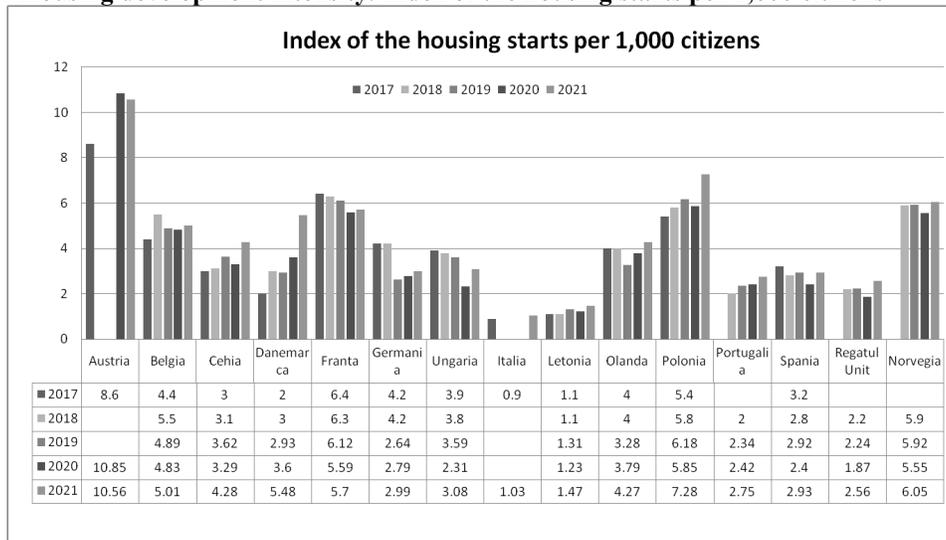
The year 2020, atypical from an economic point of view, due to the peak situation of the Covid-19 pandemic, positioned Poland at the top of the housing development intensity ranking, of all countries analysed in this paper, with 5.79 apartments/1,000 citizens. We also note values above 5 in France (5.66 apartments/1,000 inhabitants) and Belgium (5.45 apartments/1,000 inhabitants). In absolute values, France maintains its position as the European leader in housing completions, with 381,600 dwellings delivered to the residential market in 2020. The following two places in the ranking are held by Germany, with 306,376 apartments, and Poland, with 221,400 housing completions in 2020. This year too, Spain and Portugal are ranked last two, with less than two completed apartments per 1,000 citizens (1.63 and 1.68, respectively).

In 2021, the analysis of the countries in the selected sample shows that less than two apartments were completed for every 1,000 inhabitants in Latvia (1.51), Spain (1.77) and Portugal (1.83). The highest intensity of housing completions belongs to France, with 6.95 apartments/1,000 citizens, and Poland, with 6.16 apartments/1,000 citizens. In absolute values, France is also the European leader in housing completions in 2021, with 471,000 apartments completed last year. The following two places are held by Germany (310,000 dwellings) and Poland (234,700 dwellings). Unlike 2020, we note significant increases in the index in France, by 23.4%, the United Kingdom, by 18%, and Portugal, by 12.9%. In the lower part of the ranking we identify Hungary, with a decrease of -29.5%, Latvia (-8.0%), Denmark (-7.3%) and the Czech Republic (-0.7%).

Housing starts Index

Unlike the previously analysed index, which indicates the number of completed apartments, regardless of the year in which their design was started, housing starts refers to apartments for which construction began in the year in question (Graphic 1).

Figure 1 Housing development intensity. Index of the housing starts per 1,000 citizens



(Source: Own processing, after Property Index: Overview of European Residential Markets, Available at: <https://www2.deloitte.com/>)

In 2017, the first place is held by Austria, with 8.6 dwellings/1,000 citizens, followed by France and Poland, with 6.4 and 5.4 apartments/1,000 people, respectively. At the opposite end of the ranking are Italy and Latvia, with 0.9 and 1.1 apartments started/1,000 citizens, respectively. From a numerical point of view, the first place is held by France, where the construction of 429,000 apartments was started, and the last by Latvia, with 2,000 housing spaces. For 2018, the value of the index at the level of the whole of Europe is 3.8 housing starts per thousand inhabitants. The average is exceeded by the Netherlands (4.0), Denmark (4.2), Belgium (5.5), Poland (5.8) and France (6.3). As last year, the highest absolute values are recorded in France (419,000 compared to 429,200 dwellings the previous year), Germany (347,300 dwellings compared to 348,100 the previous year) and Poland (221,900 dwellings compared to 206,000 in 2017). Belgium and Denmark have experienced the largest increases, as follows: from 4.4 housing starts/1,000 citizens to 5.5 housing starts in Belgium, respectively from 11,600 housing starts to 17,400 housing starts in Denmark. The lowest intensity of the index is registered in Latvia (1.1), this country ranking last also in absolute values (2,100 housing starts).

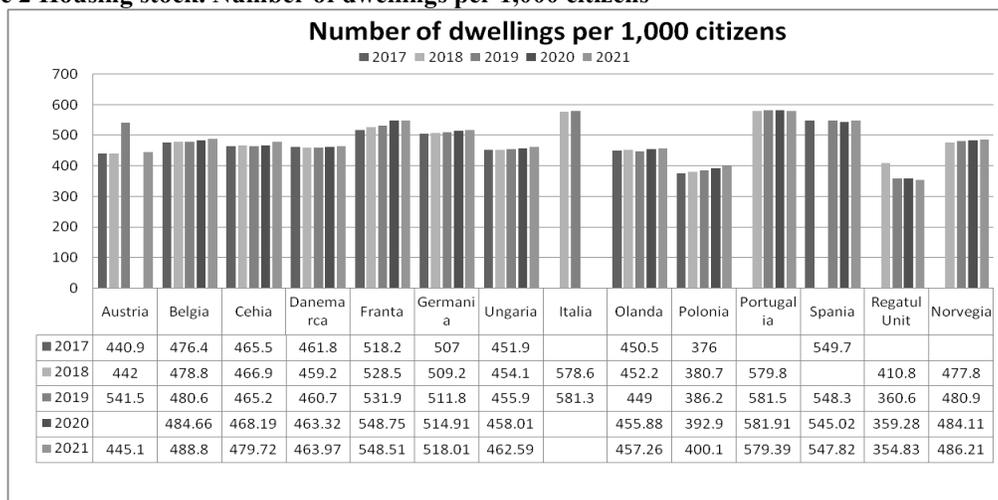
In 2019, Poland and France have an index of 6.2 and 6.1 housing starts per 1,000 citizens, respectively. Among the analysed countries, Latvia has an index of 1.3 housing starts per 1,000 citizens, which translates into 2,500 housing starts in 2019. In absolute values, the highest number of residential housing starts in 2019 is 410,300 and belongs to France, followed at quite a distance by Poland (237,300) and Germany (219,500). In fact, these countries are the only ones with more than 200,000 housing starts in 2019. In 2019, Germany lost second place held the previous year, with a 37% decrease in the number of housing starts. Double-digit decreases in the housing development intensity are also noted in the Netherlands (-18%), the United Kingdom (-10%) and Belgium (-10%). A decrease in housing construction projects started could also be noted in 2019 in Hungary, Denmark and France. In Portugal and the Czech Republic, we could note an acceleration of housing construction of 18% and 17%, respectively.

The highest number of housing units started per 1,000 citizens was registered in 2020 in Austria (10.9 dwellings/1,000 citizens), followed by Poland (5.9 dwellings/1,000 citizens) and France (5.60 dwellings/1,000 citizens). We identify the lowest intensity of new housing construction in the United Kingdom (1.87), Hungary (2.31) and Spain (2.4). In absolute values, the first three places are held by France (376,700 housing starts), Germany (232,100) and Poland (223,000). The United Kingdom, with 127,600 housing starts, ranks fourth, but a recalculation per 1,000 citizens skews this ranking due to its large population. The most important decreases in the intensity of the development of residential activity compared to the previous year are noted in Hungary (-36%), Spain (-17%) and the United Kingdom (-16%). We identified the highest number of housing starts per 1,000 citizens in 2021 in Austria (10.56 apartments/1,000 citizens), followed by Poland, with 7.28 apartments/1,000 citizens and France, with 5.70 apartments/1,000 citizens. The lowest construction activity in 2021 belongs to Italy, with 1.03 apartments/1,000 citizens, a country deeply affected by the Covid-19 pandemic. Less than two apartments per 1,000 citizens were started in 2021 in Latvia as well (1.47 apartments/1,000 citizens). Latvia holds the last place also in absolute values, in 2021 less than 3,000 dwellings being started, 2,800 to be exact, at the opposite pole being France, with 386,700 apartments started, practically over 137 times more. The following two places are held by Poland (277,400) and Germany (248,700), the only countries in the analysis with more than 200,000 housing starts to be built in 2021. Despite the fact that 2021 was affected by the crisis caused by the Covid-19 pandemic, the trend was upward, with the exception of Austria, where housing construction experienced a slight decrease of 3.80%. The most important increases in 2021, compared to the previous year, were noted in the United Kingdom (+37.1%), Hungary (+32.7%), the Czech Republic (+27.6%), Italy (+24.7%), Poland (+23.9%), Spain (+22.0%) and Belgium (+21.3%).

Housing Stock

Apart from the number of housing completions and starts in each analysed country, the size of the total housing stock is often perceived as the basic pillar of the quality of life and the level of economic development in that country (Graphic 2).

Figure 2 Housing stock. Number of dwellings per 1,000 citizens



(Source: Own processing, after Property Index: Overview of European Residential Markets, Available at: <https://www2.deloitte.com/>)

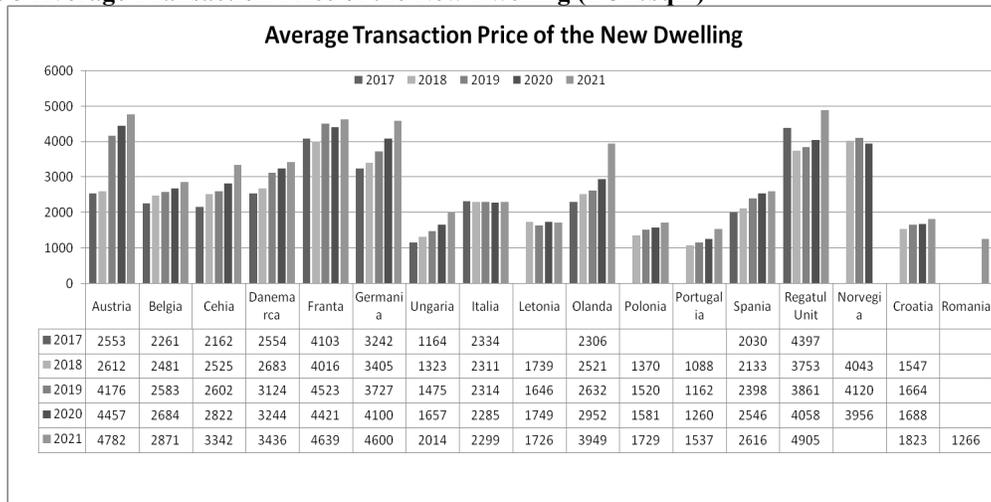
Throughout the European Union, the housing stock in 2017 was 489.4 apartments per 1,000 citizens, with France and Spain at the top of the ranking. Thus, Spain has in 2017 a number of 549.7 apartments per thousand inhabitants, and France ranks first in absolute values, with 34.8 million apartments. Despite the fact that Poland has seen a year-on-year increase in its housing stock, it ranks last in terms of this index, with 14.5 million apartments, which means 376 dwellings/1,000 citizens. Across the European Union, the housing stock in 2018 was 478 apartments per 1,000 citizens, with stocks higher than average in Germany, France, Italy and Portugal. Practically at the top of the ranking is Portugal, with approximately 580 dwellings per 1,000 citizens, closely followed by Italy, with 578 dwellings/1,000 citizens, and France, with 528 dwellings per 1,000 citizens. In 2019, we identified the largest housing stock in Portugal and Italy, with just over 581 dwellings/1,000 inhabitants, a situation much better than that of the United Kingdom, which has 361 apartments per 1,000 citizens. Poland also has less than 400 dwellings in 2019, but given its degree of real estate development, the coming years will bring an increase in the housing stock. Germany has the largest housing stock, with no less than 42.54 million dwellings, followed by France (35.67 million) and Italy (35.09 million). Countries with a housing stock of more than 10 million we also identified are Spain (25.78 million), the United Kingdom (24.35 million) and Poland (14.82 million). Less than 5 million dwellings existed in 2019 in: Hungary (4.46 million), Denmark (2.68 million), Czech Republic (4.98 million), Austria (4.82 million).

As last year, in 2020 the largest housing stock per 1,000 citizens was identified in Portugal (582), followed by Belgium (571 dwellings) and France (549 dwellings). In absolute values, Germany ranks first, with more than 42.2 million apartments in stock, followed by France with 37 million, Spain with 25.7 million, the United Kingdom with 24.2 million and Poland with 15 million. The last three places in the ranking, with less than 4.5 million dwellings, are held by Denmark (2.71), Belgium (3.98) and Hungary (4.47), countries with a dense population. In 2021, the largest housing stock is in Portugal (579 dwellings/1,000 citizens). We also identified more than 500 dwellings per 1,000 inhabitants in Spain (548 dwellings/1,000 citizens), France (549 dwellings/1,000 citizens) and Germany (518 dwellings/1,000 citizens). The lowest housing stock per 1,000 citizens is found in the United Kingdom, namely 355 apartments/1,000 inhabitants. In absolute values, Germany ranks first, with 43.11 million housing units, followed by France (37.20 million), Spain (25.97 million) and the United Kingdom (24.9 million). The smallest housing stock belongs to Denmark, with a total of 2.73 million dwellings.

Variation in Sales Prices of New Real Properties

According to the “Property Index” report for 2017, published by Deloitte, which includes the analysis of property prices in 14 European countries and 41 cities, the United Kingdom is at the top of the ranking, with an average of no less than EUR 4,397 /sqm (Graphic 3). At the opposite pole is Hungary, where a real estate transaction takes place at an average price per square meter of EUR 1,164. The biggest price increases for new apartments compared to the previous year were recorded in 2017 in Germany (by 9.6%), Poland (by 9%) and the Czech Republic (by 8.4%).

Figure 3 Average Transaction Price of the New Dwelling (EUR/sqm)



(Source: Own processing, after Property Index: Overview of European Residential Markets, Available at: <https://www2.deloitte.com/>)

The centre of London leads the capital to the top of the most expensive cities in Europe, with no less than EUR 16,512 /sqm. Compared to other cities of the country, this price is in some places even 376% higher than the national average. Neither the centre of Paris gives as good as one gets, here the price per square meter reaches EUR 10,967 /sqm. In this case, the value of a dwelling in the centre of Paris is 2.5 times higher than the national average. The third place in the list of the most expensive cities is held in 2017 by Munich, with EUR 7,500 /sqm, double compared to the national average of housing prices in Germany. It is worth noting that cities such as Milan, Barcelona, Hamburg, Frankfurt and Munich are more expensive in terms of housing prices than the capitals of Italy, Spain and Germany. The cheapest dwellings in 2017 are found in Debrecen, Hungary (EUR 1,080 /sqm), Győr, Hungary (EUR 1,142 /sqm) and Łódź, Poland (EUR 1,186 /sqm). In 2018, the leading position goes to France, with an average of EUR 4,016 /sqm, thus outranking the United Kingdom, whose price of EUR 3,753 /sqm places it second. In 2018, Portugal is at the bottom of the ranking, with an average transaction price of EUR 1,088 /sqm. From the point of view of price variation, the highest increase was recorded in the Czech Republic, with the value per square meter being 16.8% higher in 2018 compared to 2017. Considerable price increases can also be noted in Hungary (13, 7%), but also in the Netherlands (9.3%). The biggest decrease in transaction prices per square meter was evident in 2018 in the United Kingdom (14.7%), and we note insignificant reductions in France (2.1%) and Italy (1%). The highest price per square meter in 2018 was recorded in the centre of Paris, in this case EUR 12,910 /sqm. The second highest price can be identified in the centre of London, respectively EUR 11,185 /sqm. Like last year, Munich is the third most expensive city, with an average of EUR 7,800 /sqm. And in 2018, cities such as Milan, Barcelona and Munich surpassed the capitals of their countries, Rome, Madrid and Berlin, respectively. The bottom of the ranking is held, as in 2017, by Debrecen, Hungary (EUR 1,110 /sqm), Győr, Hungary (EUR 1,195 /sqm) and Łódź, Poland (EUR 1,237 /sqm). The highest price per square meter of new residential property can be noted in 2019 in France, with EUR 4,523 /sqm, followed by Austria, with EUR 4,176 /sqm. In 2020, the United Kingdom and Germany fall within the EUR 3,700-3,900

/sqm range. Latvia, Poland, Hungary and Portugal are countries whose prices in 2019 were between EUR 1,000/sqm and EUR 2,000/sqm. Three countries in the sample, France, Spain and Hungary, had price increases of around 10% compared to 2018. As in the last two years, in 2019 Paris is the leader in terms of the sales price per square meter of new housing, with EUR 12,863 /sqm, with a slight decrease of 0.4% compared to 2018. No other city from the selected countries had prices above EUR 10,000 /sqm in 2019. The EUR 7,000 /sqm threshold is exceeded by Munich in Germany (EUR 8,250 /sqm) and London in the United Kingdom (EUR 7,699 /sqm). The significant price differences between the cities suggest an increased demand, driven by population migration to these areas, poles of economic development in Europe. The lowest prices, under EUR 1,500 /sqm, we identified in Győr, Hungary (EUR 1,368 /sqm), Debrecen, Hungary (EUR 1,266 /sqm) and Łódź, Poland (EUR 1,360 /sqm). The degree of economic development of some cities at the expense of others causes the citizens of the respective countries to direct their attention to the purchase of dwellings in the respective areas. Thus, we could note large disproportions between the national average in a country and the price per square meter in some cities. For example, we identified the biggest difference in Lisbon, which exceeded the national average by 336%. We find double prices in Paris (284%), Barcelona (240%), Munich (221%), Amsterdam (202%) and Copenhagen (200%). Price levels in Manchester, Lille, Turin, Graz, Birmingham, Debrecen and Łódź were all 10-30% lower than the national average in 2019, although their importance to the economies of their countries is undeniable, they are not attractive for the population to live there.

In 2020, Austria takes the lead for the first time in the list of the most expensive square meter of residential property, with EUR 4,457 /sqm, surpassing France by only EUR 36 (EUR 4,421 /sqm). An average price of over EUR 4,000 was also recorded in Germany (EUR 4,100 /sqm) and the United Kingdom (EUR 4,058 /sqm). Like last year, the countries in the Eastern European region recorded prices between EUR 1,000-2,000 (Latvia, Hungary, Poland). The highest increase in prices for new dwellings, of 12.3%, was registered in Hungary. 2020 was on average a year of growth for the countries analysed in this paper. In 2020, Paris is again the most expensive city analysed, reaching a price of EUR 12,917 /sqm for a new dwelling, up by 0.4% compared to 2019. No other city in the study carried out exceeds in 2020 the EUR 10,000 threshold. In 2020, we identified prices over EUR 6,500 /sqm in Munich (EUR 8,700 /sqm), London (EUR 7,916 /sqm), Frankfurt (EUR 7,700 /sqm) and Copenhagen (EUR 6,708 /sqm). Cities such as Ghent in Belgium, Munich in Germany, Milan in Italy, Jūrmala in Latvia and Barcelona in Spain show that in 2020 neither it is not a rule that the highest prices on the real estate market are in the country's capital. The lowest prices, under EUR 1,500 /sqm, we identified in 2020 were in Debrecen, Hungary (EUR 1,281 /sqm), Győr, Hungary (EUR 1,296 /sqm) and Łódź, Poland (EUR 1,426 /sqm). After comparing the average national prices with the prices in the most expensive cities of the countries included in our analysis, we find that the greatest disproportion can be noted in Portugal, where Lisbon is 356.13% above the national average. Paris also exceeds the national average by 292.17%. We identify double levels compared to the national average in Copenhagen, Munich and Barcelona, all economically important cities for the states they belong to.

Any variation in prices since the outbreak of the Covid-19 pandemic is heavily ascribed to it, being a new and unprecedented matter in the modern economy. In addition, prices in the European residential real estate market were affected by the war in Ukraine,

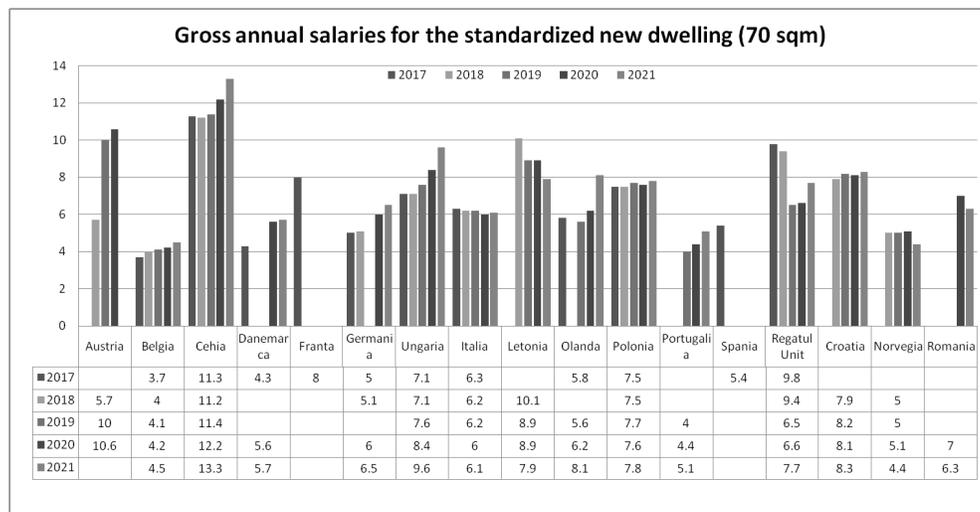
which also led to increases in the prices of energy, building materials and labour. The United Kingdom is in 2021 the most expensive country in terms of price per square meter, with EUR 4,905, alongside Austria (EUR 4,782 /sqm), France (EUR 4,639 /sqm), Germany (EUR 4,600 /sqm). Like last year, Eastern European countries recorded prices between EUR 1,500 and EUR 2,500 /sqm in 2021 (Latvia, Hungary and Poland). The most intense price growth in 2021 can be seen in Hungary, by 21.5% compared to 2020. A 20% increase in the residential real estate market in 2021 is also obvious in the United Kingdom and the Czech Republic. Overall, the year 2021 is characterized by the general increase in the price per square meter on the entire residential real estate market in Europe.

Regarding the comparison of European cities, Paris remains the leader in the category of the most expensive cities, with an average price of EUR 13,462 /sqm for a new dwelling. The threshold of EUR 10,000 was exceeded only by Munich, with an average price of EUR 10,500 /sqm. The average price level of EUR 7,500 was exceeded only in London (EUR 8,426 /sqm), Frankfurt (EUR 8,400 /sqm) and Amsterdam (EUR 7,600 /sqm). Of all the cities analysed, only Debrecen in Hungary does not reach the threshold of EUR 1,500 /sqm, the city's average being EUR 1,456 /sqm. The biggest price increases compared to 2020 are noted in Rotterdam (+27.3%), Brno (+22.4%) and Prague (+20.1%). The only city characterized by a price drop is Marseille (-6.0%) in France. The highest exceedance of the national average of a square meter of new residential property is identified in Lisbon, by 306.77%. Close to this performance is Paris, with a price 290.19% higher than the national average. Other cities with high prices, double compared to the national average, are Copenhagen, Munich and Barcelona.

Housing Purchasing Power

The affordability of a dwelling depends on the number of average annual gross salaries needed to purchase a 70 sqm housing space. In principle, the higher the salary, the shorter the time needed to save for the purchase of an apartment (Graphic 4).

Figure 4 Affordability of own housing. Gross annual salaries for the standardized new dwelling (70 sqm)



(Source: Own processing, after Property Index: Overview of European Residential Markets, Available at: <<https://www2.deloitte.com/>>)

Thus, in 2017, the most affordable dwelling can be purchased in Belgium, where a family has to save on average 3.7 years for this desired, followed by Denmark (4.3 years) and Germany (5.0 years). Relatively affordable housing in 2017, which requires 6 years of savings, can be bought in Spain and Austria. Italy, Hungary, Poland and France are countries where a household has to set aside money for 6-8 years. The United Kingdom (9.8 years) and the Czech Republic (11 years) are at the bottom of the housing affordability ranking. In 2018, a household in Portugal saves 3.8 years to buy a dwelling, thus surpassing Belgium, which requires saving for 4 years. Citizens of Germany and Austria save between 5 and 6 years in 2018, and between 6 and 8 years those of Italy, Hungary, Poland and the United Kingdom. We identify the least affordable housing in 2018 in Latvia (10.1 years) and the Czech Republic (11 years). In 2019 also, we identify the least affordable housing in the Czech Republic, as it is necessary to save 11.4 years of average annual salaries for the purchase of a standard housing. Austrians will also save for 10 years to buy a housing space. Citizens of Portugal (4 years) and Belgium (5 years) will most easily purchase a dwelling in 2019.

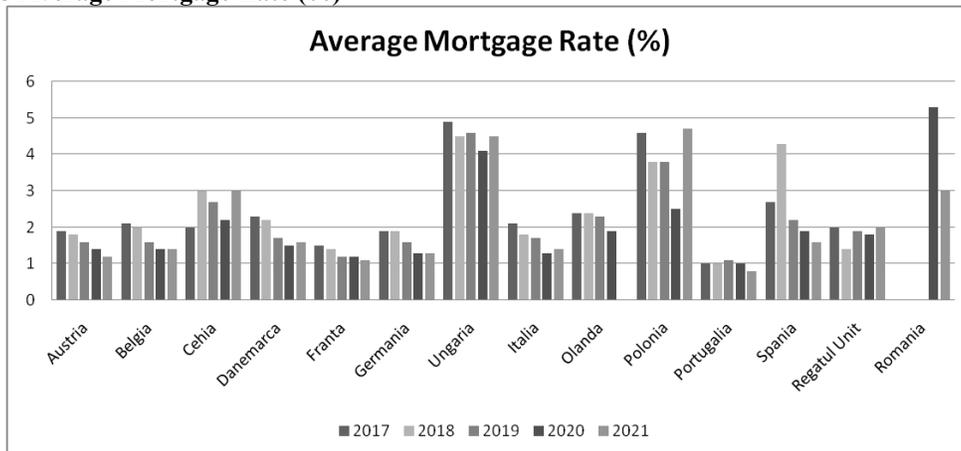
The situation in 2020 is not much different from the previous year. Czechs manage to buy a dwelling in the longest time of all countries analysed, namely in 12.2 years, which means saving another 10 average gross monthly salaries. Austria is still ranks second, with 10.6 years of savings. The third place is held by Latvia, where citizens have to save 8.9 years to purchase a residential housing space. At the opposite pole we find Belgium (4.2 years), Portugal (4.4 years) and Denmark (5.6 years).

In 2021, the Czech Republic is the least affordable country in the selected sample, with buyers needing 13.31 gross annual salaries to purchase a new dwelling. Thus, affordability decreased compared to the previous year by 1.11 gross annual salaries. Buyers in Hungary and the Netherlands need to save between 8 and 10 gross annual salaries to be able to buy their own apartment. Between 6 and 8 gross annual salaries will be saved by residents of Latvia, Poland, the United Kingdom, Germany and Italy. Our country also falls within this range, with 6.3 years of savings. In Denmark, Portugal and Belgium, in 2021 it was necessary to save between 4 and 6 gross annual salaries.

Degree of Indebtedness of the Population with Mortgage Loans

The mortgage loan market is a vital part of the residential market in every country. One of the most important indicators of the residential market is the degree of household indebtedness, that is, what percentage of mortgage debt represents the total income of households. The ability of households to take on new debt is a determinant of price growth. Practically, the higher the degree of indebtedness, the higher the housing price will be (Graphic 5 and Graphic 6).

Figure 5 Average Mortgage Rate (%)



(Source: Own processing, after Property Index: Overview of European Residential Markets, Available at: <<https://www2.deloitte.com/>>)

We will start the analysis with the year 2017, where we identified the lowest level of indebtedness among the countries included in the analysis in Hungary, where 22.4% of a household's income is represented by mortgage loans. Countries with a low indebtedness level, below 50%, are also Latvia, Italy, Poland, the Czech Republic and Austria. In 2017, the highest degree of indebtedness was identified in the Netherlands and Denmark, with over 100%. Regarding interest rates, 2017 was a favourable year, in which the European Central Bank kept them at a low level, with influences on the population's ability to purchase a dwelling. By default, increased demand results in a high price for a residential property. This aspect is more visible in developed countries. For example, in 2017 Portugal is the country where the most profitable loan could be obtained for the purchase of a dwelling, with an interest rate of only 1%. The second lowest interest rate level, 1.5%, can be identified in 2017 in France. Ranking last is Hungary, whose interest rate of 4.9% places it among the countries with the least affordable mortgage financing.

The situation analysed in 2018 is similar to that of the previous year. Among all analysed countries, the lowest level of indebtedness, of 20.0%, is identified in Hungary, and Latvia, Italy, Poland, the Czech Republic and Austria also have an indebtedness level below 50%. The Netherlands and Denmark are at the top in 2018 as well, with indebtedness ratios of over 170%. Interest rates are also not significantly different in 2018 compared to 2017. The cheapest mortgage loan identified, with an interest rate of 1%, belongs to Portugal, and in France and the United Kingdom interest rates do not go higher than 1.4%. In 2018, we identify a less accessible mortgage financing in Hungary, with an average interest rate of 4.5%, followed by Spain, with 4.3%. We identify the lowest indebtedness ratio in 2019 in Hungary (18.1%). Mainly, the countries of Central and Eastern Europe are characterized by a low level of current mortgage loans, below 50% (Poland, Czech Republic). Denmark and the Netherlands have indebtedness levels above 100%, 167% and 188% respectively. In most of the countries analysed, residential loans relative to household available income drop between 2017 and 2018. This could suggest either that household income is growing faster than the amount of debt, or that citizens have become more conservative when deciding to make the decision to purchase a real property.

2019 was a year of economic growth, which allowed some banks outside the Eurozone to increase their reference rates, with an impact on mortgage rates. Instead, the European Central Bank kept interest rates at virtual zero in 2019, introduced in 2016. Thus, banks in some countries lowered interest rates to the minimum, hoping to attract new clients. Average mortgage rates in Portugal and France are below 1.5%, almost reaching the 1% threshold in the case of the first country. Average mortgage rates rose in Hungary and Poland, exceeding 3%, especially since they are not part of the Eurozone. The interest rate in Poland is 3.8% in 2019, and 4.6% in Hungary.

Regarding the indebtedness level in 2020, the indicator is low, below 25%, in Hungary (17.2%) and Latvia (21.5%). An indebtedness level of less than 50% can be found in 2020 in Italy (32.10%), Poland (35.3%) and the Czech Republic (42.1%). The highest levels of indebtedness, over 100%, we identify in 2020 in the Netherlands (183%), Denmark (173.3%) and the United Kingdom (100.6%). Of course, the degree of indebtedness is directly related to the level of average mortgage rates. Thus, in 2020, we identify the cheapest mortgage loans, with an interest rate of less than 1.5%, in Portugal (1), France (1.2%), Germany (1.3%), Italy (1, 3%), Belgium (1.4%) and Austria (1.4%). The least affordable mortgage loan was identified in 2020 in Hungary, with an average interest rate of 4.1%, followed at a considerable distance by Latvia and Poland, each with 2.5%.

In 2021, Romania joins its neighbour, Hungary, in the category of the lowest indebtedness ratio, below 30% of the available household income. Central European countries such as Poland and the Czech Republic have kept their debt-to-GDP ratio below 50%. The highest degree of indebtedness was noted in 2021 in Denmark and the Netherlands, both exceeding the level of 170%. The densest countries in Europe, with the largest housing stock, Germany and France, have indebtedness levels of about 75%. In terms of residential mortgage rates, Poland and Hungary are at the top of the ranking, exceeding 4.0%. Poland even experienced a steep increase, if we consider that the previous year the interest rate was only 2.5%. With the exception of these two countries, average mortgage rates above 2% were noted in the United Kingdom, Latvia, Hungary, the Czech Republic and our country. The most affordable interest rates on mortgage loans were practiced in 2021 in Portugal (0.8%) and France (1.1%).

Conclusions

The purpose of this paper was to advance some data and information related to the main indicators of the residential real estate market. The data we had at our disposal allowed us to carry out a wider analysis at the level of the sample of countries selected from Europe, the information for Romania being somewhat scarce. Despite the Covid-19 pandemic, the analysed data show us that the trends of transactions carried out on the residential real estate market are positive, with the short- and medium-term scenarios being optimistic. The economic blockade since the outbreak of the pandemic, caused by the isolation imposed to slow down the spread of the virus, has led to the braking of production processes, followed by the increase in the price of raw materials and building materials. A possible recession could come from the risk that the flow of Russian gas to Europe might be stopped due to the war in Ukraine and the sanctions that the EU has imposed on Russia. Even if this does not happen, high energy prices will be a drag on economic growth, with

Russia now providing 20% less gas than the 2021 levels. Both in 2021 and at present, supply chain issues and the energy crisis only increased inflation. Central banks around the world have been under pressure to adapt to rising inflation by raising interest rates.

As always, the real estate market reacts to rising GDP and interest rates. Tight monetary policy is currently having the effect of raising mortgage rates, which could reduce demand in the residential real estate market, slowing price growth. So far, the trends of 2022 have been for the recovery of trade, manufacturing and service sectors, as well as the tourism and HoReCa industry. All these provide stability, which has positive influences on the real estate market, encouraging developers to carry out new real estate projects, despite the negative impact of the conflict in Ukraine this year and all consequences we mentioned before. So, it is obvious up to this point in the study that it was not the Covid-19 pandemic that negatively influenced the demand and supply in the real estate industry, but rather the conflict in our vicinity brought with it a dampening of the real estate boom. Furthermore, we suggest that it is appropriate to continue our research, by carrying out a quantitative and qualitative analysis on the behaviour of the factors involved in the real estate market. A quantitative research in the form of a survey would be suitable to be carried out on the market behaviour of customers, real estate agencies and developers, in order to create some projections regarding the future of the real estate industry. Also, a qualitative research using the interview technique can be carried out on the real estate developers, in order to capture their intentions for the development of the industry. In the same context, a consumer focus group can be held, both options providing information on consumer behaviour trends and developers' adaptation to new real estate market trends.

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**SUSTAINABILITY IN ORGANIZATIONS. ANALYSIS OF
SUSTAINABLE PROGRESS BASED ON EVOLUTIONARY
MILESTONES IN THE SUSTAINABILITY REPORTS OF THE
LARGEST FOOD RETAILERS IN ROMANIA**

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Abstract: *Organizational sustainability has become, at a fast pace, from a simple desideratum, an essential condition for organizations, regardless of the field in which they operate. Being necessary for the business strategy to be built on responsibility and transparency, the non-financial data and information presented constitute the structure of a sustainable reporting. Sustainability reports published by companies can also be called a “business card” that reflects performance, social and environmental impact, while also presenting a secondary marketing function that attracts new customers and investors as well as talented employees. The aim of our study was to identify which are the main strategies in support of organizational sustainability applied by the two major food retailers in Romania: Kaufland and Penny. The study shows that there is an increasing trend toward shaping the activity towards sustainable progress, which is reflected in economic growth, environmental protection and socio-economic progress.*

Keywords: *sustainable organization, sustainability report, non-financial reporting.*

JEL Classification: *M14; L81.*

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Introduction

During the last century, sustainability became a key-concept with remarkable implications in every individual’s life, in the society as a whole and, at the same time, in the life of organizations. From an etymological point of view, “sustainability” is a word with Latin origins, formed by attaching the verb “tenere” (to hold) to the particle sus (up) and represents the ability of a matter to maintain itself without external support (Costache

& Dumitraşcu, 2021). Another interesting meaning of the concept is the broad one in which it has been seen as a “future design paradigm” (Jaronen, 2013) with the ultimate goal of improving the general quality of life. In order to achieve this goal, one must align the three dimensions included: the economic one, the social one and the environmental one.

The idea of sustainability is based on a variety of concepts such as equity integration, gender equality, social tolerance, poverty reduction, conserving natural resources and building just and peaceful societies (Jaronen, 2013). The other important concept which is being used, sustainable development, was used for the first time by Gro Harlem Brundtland in the year 1987 who was, at that time, the Prime Minister of Norway and the chairman of the Environment and Development Commission. He explained the meaning of the phrase “sustainable development” in a report entitled “Our Common Future” as follows: “the development that corresponds to the needs of the present without compromising the possibility of future generations to satisfy their own needs”. We can express that the main difference between the two concepts we defined is that “sustainability represents a long-term goal, while sustainable development is defined by the multitude of processes and ways that contribute to achieving sustainability” (Klein, Watted, & Zion, 2021). The climate change happening in the last decade has brought sustainability on top of the priorities the organizations worldwide have, making the Division for Sustainable Development of the United Nations to adopt many plans and agendas on this subject of interest. One of the most important tools adopted by the United Nations is the 2030 Agenda which represents an action plan for reaching a better future and the well-being of the planet, people and of the environment. The agenda introduces a set of 17 sustainability objectives, most of them being connected to organizations. Among the most important, we can highlight objective number 12 which involves ensuring sustainable consumption and production patterns. The 9th objective is also important to our study, promoting sustainable industrialization and encouraging innovations. We should also keep in mind the 13th objective which involves taking urgent measures to combat the constant climate change.

In Romania, the “Department for Sustainable Development” and a national strategy with the general scope of supporting the sustainable development were created in 2017 in order to facilitate the implementation of the United Nations 2030 Agenda. The national strategy focuses on introducing elements of circular economy, on increasing productivity of resources, but at the same time, it focuses on supporting the Romanian companies in their attempt to adopt more sustainable practices and to integrate the practice of reporting on sustainability. Even if the companies aim to increase their profit, the environmental constraints, the direct or indirect pressure produced by consumers and the legislation adopted specially to protect de environment, push the companies towards adopting sustainable behaviors and ecological solutions (Gordean & Teodorovici, 2009). Therefore, from the effort of the companies to include the concept of sustainable development in the company’s strategy was born the important concept of “Corporate Social Responsibility”. In 1950s appeared for the first time the real interest in corporate social responsibility when corporations began to no longer be owned by single individuals, but by a multitude of shareholders. The issue that arose at that time was whether to prioritize the interests of the shareholders, or to prioritize the community in general (Camilleri, 2017).

Carroll explains that companies have a certain commitment to society and highlights their obligation to engage in “economic, legal, ethical and also philanthropic activities” (Carroll, 1979) and a definition of the notion shows that “the corporate social responsibility

is a species of the broader genre of social responsibility” (Torrecchia, 2015). Even the European Commission defines the concept and shows that, in order to be considered socially responsible, an enterprise should have a process of integrating the social, environmental and ethical rights alongside taking into consideration the concerns of their consumers, in connection with the interests of the stakeholders. Although there are a multitude of definitions of the concept of corporate social responsibility, it basically represents a method by which organizations implement mechanisms for monitoring compliance with legal standards, ethical standards and international regulations with the ultimate goal of their actions to have positive outcomes regarding the environment, the consumers, employees and also the stakeholders (Torrecchia, 2015).

Corporate Social Responsibility is linked to the bigger and wider concept of sustainability, both notions being objectives that can only be achieved through continuous development and constant adaptation to legal and social requirements. Some authors consider social responsibility a managerial strategy of sustainable development (McWilliams, Siegel, & Wright, 2006), and others came up with the idea that social responsibility is a “microeconomic translation of the concept of sustainable development” (Koleva, 2009). In order to achieve a higher standard of corporate social responsibility, it is pointed out that companies must adopt a double-sided approach: from the inside to the outside, taking into consideration how the organization affects the environment, but also from the outside to the inside, analyzing how climate and legislative changes can affect the organization (Olaru, Rizea, & Sava, 2011). Sustainability is based on a number of principles which are dictated by the three major pillars: economic, environmental and social. Among the most important sets of principles, the CERES (Coalition for Environmentally Responsible Economies) principles represent an ecological code of conduct addressed to corporations and were developed after the Exxon Valdez oil spill which took place in 1989. CERES is currently a non-profit organization committed to helping organizations implement sustainable practices (Ceres. About us). Among the CERES principles we can discover the protection of the biosphere, the sustainable use of natural resources, reducing and eliminating waste, energy conservation, risk reduction, the use of safe products and safe services, to make restorations of the environment, to keep the public well informed, and to carry out audits and reports.

Organizations all over the world, regardless of the sector in which they operate, prepare and use financial information to have a strong basis for making decisions within the company. Over time, external users of financial statements such as investors, suppliers, creditors, banks and national authorities, began to have access to a great amount of information regarding the governance and management of companies, their strategy and the operations they carry out. Even if the financial reports are extremely important, it is also important to report other information from the non-financial category. Therefore, the sustainability report completes the needs of the participants of the economic environment. According to the Global Reporting Initiative (GRI) 2013, “the sustainability report is a report prepared by a company to evaluate, disclose and answer to internal and external parties for the company’s performance in the field of environmental, social and economic aspects in achieving the objectives of sustainable development”. Elkington (People, Planet, Profit, 2008) defines the sustainability report as “the report issued by a company that contains information related to the company’s financial performance and non-financial

information, including information related to the environmental and social activities that allow the company to grow sustainably”.

In order to achieve the goal of sustainable economy worldwide, organizational sustainability assessment systems are used, the most relevant ones being: Reporting according to GRI (Global Reporting Initiative) standards; IIRC integrated reporting and ESG (Environmental, Social, Governance) Sustainability Report. In order to support companies, the international organization, a pioneer in sustainability, which has developed several series of universal and specific GRI standards, encourages and guides businesses and also governments to understand and, most important, to communicate their impact on critical sustainability issues such as: climate change, human rights and social welfare.

GRI is a non-governmental organization which was founded in 1997 in the United States of America and is recognized as a world-leader in the standardization of reports on the sustainable development of companies. The GRI standards are divided into universal standards which comprise three modules: GRI Standards 101: Foundation; GRI Standards 102: General Disclosures and GRI Standards 103: Management Approach and the standards on specific subjects: GRI 200 Economic, GRI 300 Environmental and GRI 400 Social (Courtneil, 2019). According to other authors, “reporting does not necessarily mean increased transparency, that is, in the absence of a standardized and mandatory audit, companies may report irrelevant information in order to project a desirable and transparent image, but this does not mean that companies have not successfully fulfilled their responsibility” (Ehnert, Parsa, Roper, Wagner, & MullerCamen, 2016).

According to the provisions of the Conceptual Framework for Integrated Reporting, “an integrated report is a concise communication about how the strategy, governance, performance and prospects of an organization, in the context of its external environment, lead to the creation of value in the short, medium and long term” (Oprișor, Tiron-Tudor, & Nistor, 2016). In order to obtain an integrated approach, a company must take into consideration all six types of capital: human capital, intellectual capital provided by individuals, financial, the manufactured capital, the natural one, and also the social and relational capital. Thus, integrated reporting is becoming a more detailed and useful mean of communication gaining ground and investors would not give it up now, when it contributes substantially to decision-making. Sustainability reporting is a non-financial type of reporting, ESG referring to a wide range of “environmental, social and governance” factors that can be used to assess how companies manage their performance and impact on sustainability. These factors can be assessed either from the inside out (how the company’s operations affect certain ESG issues) or from the outside in (how certain ESG issues affect the company) (Bursa de Valori București, 2022).

ESG factors are often interconnected, but one classification shows that we can divide them in environmental factors (which address the conservation of the natural world through variables such as carbon emissions, water or air pollution), social factors and governance factors (which include business ethics or responsible taxes). It is important for the sustainability reports to present both positive and negative aspects in a balanced manner. Moreover, controls must be carried out to eliminate the risk of reporting distorted or reduced information. Therefore, if sustainability reports will contain relevant information, the economy will prosper and society will become the target of sustainable businesses. Lastly, it is also recommended for organizations to respect the national and international regulations regarding the publication of non-financial information.

Research methodology

In the current article we decided to analyze the sustainability reports of two of the biggest food retailers in Romania, Kaufland Romania and Penny Romania, in order to observe what sustainability actions and strategies they adopt and how they developed on the sustainability field from 2018 to 2020. In order to realize a complex analysis of the companies, we studied the Sustainability Reports the companies provide on their websites. In our study, two levels were targeted. The first concerns theoretical research, based on a rigorous documentation that had as sources of information databases, articles, studies and specialized books. Following the documentation, we have made a synthesis of the scientific materials for the foundation of the conceptual framework of the researched theme. The second level is the analysis of the documents, in our situation, of the sustainability reports of the Kaufland and Penny organizations. The results of the analysis of the data and information were presented in text form.

The scope of our study is to analyze if the mentioned Romanian companies, Kaufland and Penny, adopted more sustainable practices over the years in order to obtain better performance. Therefore, we came up with the following hypotheses:

H1: The Romanian companies provided sustainability reports for 2018, 2019 and 2020.

H2: The companies analyzed obtain better performance due to the reporting on non-financial information.

H3: The Romanian companies analyzed reveal sufficient non-financial information included in their sustainability reports.

In order to select the companies from the total amount of Romanian companies we used the following criteria:

- the companies must be in the food retailer's category;
- the companies must be located in Romania;
- the companies must have sustainability reports according to GRI standards;
- the companies must have public sustainability reports for at least 3 consecutive years (2018, 2019, 2020).

As a result of the sampling process, we chose to analyze six sustainability reports published by Kaufland Romania and Penny Romania.

The main research method we used in this study is document analysis or content analysis (Leavy, 2017). Authors defined the qualitative data analysis as follows: "the systematic reduction of content, analyzed with special attention to the context in which it was created, to identify themes and extract meaningful interpretations of data" (Roller & Lavraks, 2015). A wide variety of texts and materials can become the focus of the study while using the content analysis, such as books, blogs, official papers or even reports, the documents we chose to analyze in this study. Content analysis generally starts with an initial immersion in the content, in order to understand the big picture (Leavy, 2017). One approach to the inductive method is the "grounded theory", a theory developed by Barney Glaser and Anselm Strauss in 1967 and it makes note of the approach by which one "collects and analyses data and develops new ideas and theories and then uses those in order to inform the next round of data collection and analysis" (Leavy, 2017). We used this method in our research in order to develop concepts and ideas directly from the data we analyzed.

The results of the sustainability reports analysis

The result of the analysis of the Kaufland Romania sustainability reports for the period 2018-2020. According to the Romania Corporate Sustainability & Transparency Index (CST INDEX), Kaufland Romania won the first place in the ranking of the most sustainable companies in Romania, obtaining 99 out of 100 points in 2020, according to the consultancy agency The Azores.

We are going to analyze the sustainability reports, focusing on key-elements such as: employees, community, environment, suppliers and produce.

The employees are extremely important to Kaufland Romania, obtaining the “Top Employer” title for the sixth time in 2020. The Top Employer certification was awarded as a result of being audited by the Top Employer Institute in Netherlands. In order to receive this certification, Kaufland Romania relies on trust, communication and also mutual respect as the main aspects of the relationship management has with the team. Another important aspect about the communication with the team consists of permanent feedback which is extremely valued in the company, having a special e-mail address for feedback. Regarding the number of employees, in 2018 Kaufland Romania had a total of 15060 out of which 31% were men and 69% women. In 2019, out of 13754 employees, 29.3% were men and 70.7% women and in 2020, out of 15321 employees, 27.5% were men and 72.5% women. Another important aspect shown in the sustainability reports regards the employees with disabilities. In 2018 Kaufland Romania had 170 (58 men and 112 women) employees with disabilities, in 2019 they had 244 (90 men and 153 women) employees with disabilities and in 2020 they reached a number of 448 (189 men and 258 women).

In order to satisfy the needs of their employees, Kaufland Romania also organizes trainings through the Personal Development department. The trainings support employees to develop high level skills like personal competencies, leadership competencies, social and also methodological competencies. In 2018, the number of training hours offered was 28,936 and in 2019 they offered 20,652 training hours. In the year 2020, the gross minimum wage of Kaufland Romania employees was 3650 RON, surpassing the national minimum wage with 60%. Besides that, they offer a multitude of benefits to their employees like flexible work schedule, sabbatical leaves, the possibility to work remotely, family and free time, gym memberships, bonuses for working on weekend days, travel allowance and access to medical services, benefits that change over the years, but remain important and of great quality, overall improving the life of employees.

Regarding the community in general, social responsibility programs have been and still are a key factor in the company’s life. In 2018, 30,5 million RON were invested in a number of 139 projects with 1,442,000 beneficiaries and in 2019, 41,9 million RON were invested in 127 projects with 2,026,000 beneficiaries. In 2020, the budget for community investments reached the amount of 34,7 million RON which were invested in 127 projects. Also, in 2020 were implemented 2 grant programs for Romanian NGOs and they have over 79 partnerships with NGOs. In 2018 was also launched the program “In stare de bine” which intended to provide funding for a number of non-governmental organizations. In 2019, the project launched two calls for granting 235,000 RON and in 2020 were offered grants between 25,000 and 50,000 RON. Another project named “Hope and Homes for Children” successfully started the construction of two houses in Iasi County in 2020.

Sustainability also represents the protection of the environment, which includes a multitude of factors such as special care to the materials used, energy and water consumption, prevention of CO₂ consumption and other such operations. One of the biggest goals set by Kaufland Romania consists of “reducing the operational greenhouse gas emissions by 80% by 2030 compared to the 2019 levels”, according to the sustainability report. In 2019 the GHG (Greenhouse gas) emissions were at a total of 169,067 tons and in 2019 was recorded a total of 172,147 tons. Compared to 2019, in 2020, there was an increase of +1.57 in the GHG emissions, but the intensity of the emissions decreased by 4,32 % compared to 2019.

Referring to the electricity consumption, in 2018 was recorded a total of 218,604 MWh, out of which 99.9% was energy from renewable sources and in 2019 was recorded a slight increase in consumption, having a total of 222,315 MWh, out of which 97.6% from renewable sources. In 2020, an electricity consumption of 227,323 was registered, out of which 97.6% from renewable sources. In 2020 were made a lot of changes to reduce the overall energy consumption, having costs of more than 8,000,000 RON. Some of these changes include the installing of LED technology in 8 stores and changing the lighting of parking lots in 21 stores.

Regarding water consumption, Kaufland Romania does not take special measures, but closely monitors the water consumption in stores and as well in the logistic centers and administrative offices, using water from the public supply system and discharges it, also, in the public sewer system. In 2018 was registered a number of 549,231 m³ of water, in 2018 a slight decrease to a number of 530,835 m³ of water and a slight increase in 2020 to 583,295 m³. Kaufland Romania is extremely careful about the materials used and the disposal of waste, being part of the REset Plastic program of the Schwarz Group. The program focuses on a “less plastic” strategy, having five guiding principles: REduce, aiming to reduce plastic on all fields, not only in packaging; REdesign, aiming to design recyclable packaging; REcycle, collecting, sorting and recycling plastic; REMove, supporting the overall removal of plastic waste from the environment and REsearch, investing in research in order to find innovative solutions. In 2018, Kaufland Romania opened in Bucharest the first retail store in Romania which implemented a plastic reduction strategy. They eliminated 90% of single-use plastic items and replaced them with 100% biodegradable or compostable materials. Also, since 2018, Kaufland Grill is equipped with 100% plastic-free materials and all consumables are made out of biodegradable materials.

Long-term, until 2025, they plan to reach 100% recyclable private label packaging, to reduce by 20% the plastic used overall and to use 25% recycled materials in their private label packaging out of plastic. In the packaging materials category, in 2018 they used 14,148,799 kg of paper, in 2019 they used in the same category 17,677,100 kg and in 2020 they used 19,353,356 kg. As for the plastic used, in 2018 they registered 9,120,738 kg, in 2019 the plastic used consisted of 9,949,979 kg and in 2020 we notice a slight increase to 10,308,449 kg.

In the category of suppliers and produce, we notice that Kaufland Romania is highly focused on using local products and services. With a number of over 20,000 products in their assortment in 2019 and over 17,500 in 2018 we found out that most of the produce comes from local suppliers. In 2020, Kaufland Romania worked with “more than 2,400 local suppliers out of a total of 2,900 suppliers”, according to the report. Kaufland also implemented a program that aims to help the Romanian farmers in 2021 when 237 small

producers and farmers will supply the stores with more than 9,000 tons of local fruit and vegetables. Kaufland Romania also has a variety of own-brands such as “100% Crescut in Romania”, “Vreau din Romania”, “K-take it veggie” and “K-free”, brands that represent local produce, vegan alternatives or lactose-free products, aiming to promoting a healthy lifestyle suitable for a wide range of dietary choices. In 2020 they reported having 43 lactose-free produce, 149 articles without gluten and 124 vegan choices.

The hard work of Kauflad Romania to become a sustainable organization is recognized by a number of awards and certifications. In 2018, 2019 and 2020, the years we took under consideration while making this article, Kaufland Romania received the first place in the CSR Index Award, being rewarded a Gold Level distinction in the “Best Practices in Romanian CSR” conference. In 2020, they also received the Gold Level Community Index the Azores for raising awareness towards gluten intolerance, for their environmental-friendly initiatives and also for helping disadvantaged environments. In 2018 a Consumer’s Choice award was received and in 2019 a QuDal Certification for having top quality product and service. In 2020 the number of awards is higher, receiving a Best Buy Award for best quality/price ratio, two Icertias Certifications “Customer’s Friend” and two QuDal Certifications for the maximum level of quality and for superior quality in the fruits and vegetables department.

Kaufland Romania constantly supports the 17 Sustainable Development Goals. Regarding the goal no. 2, Zero Hunger, Kaufland Romania helps by supporting suppliers and local produce and agriculture, they also reduce the food waste and have social initiatives (in 2020, the total of pro-bono investments exceeded 11,87 mil. RON). Regarding Goal no. 4, Quality Education, Kaufland invested in educational projects, created partnerships with the academic environment and offered employees constant learning programs. For promoting Goal no. 3, Health and Well-being, they include certified own-brand products, bio, fresh and local food. Goal no. 8, Decent work and economic growth, is strongly represented in Kaufland Romania and is also certified by the “Top Employer Certification”.

To highlight the benefits of adopting sustainable strategies and actions, Kaufland Romania thrived financially in the last years. In 2018, with a 11,051 million RON revenue, the economic value retained was 797,82 million RON. In 2019, with a revenue of 12,136 million RON, the economic value retained was 873,54 million RON and in 2020, with a 12,989 million RON revenue, the economic value retained was 915,70 million RON. What these numbers tell us is that adopting sustainable practices and always striving for being better than the year before only brought great economic performance and success.

The result of the analysis of the Penny Market Romania sustainability reports for the period 2018-2020

The sustainability strategy adopted by Penny Market consists of target objectives that have been set for the action areas related to each pillar of sustainability (economic, social and environmental). The organization presents a strategic direction aimed to developing a sustainable assortment of products and also promoting the consumption of sustainable products. At the same time, they actively contribute to the conservation of resources and protecting the environment, they take action in order to satisfy the employees and also promote health and education, as well as involving in social charitable actions.

The first area we are going to analyse is a key area of any organization, the employees. In 2018 the organization registered a 5% increase compared to 2017 regarding the number of employees, having 4,521 employees in 2018. They took part in a variety of training programs, having an average of 16 hours of training per employee. Moreover, all employees received an annual salary increase according to their performance, also having access to a wide range of promotions and discounts. In order to contribute to the prosperity of their employees, relaxation spaces were set up with the aim of extending this program to the other logistics centers. In 2019, the Penny Romania store chain increased the number of employees to 4,840, 7,3% more than in 2018. In 2019 all employees benefited from a discount on every purchase in Penny stores, based on the employee card. The cumulative value of discounts on shopping vouchers registered a value of 821,421,36 RON. Another important fact is that the increased number of employees was also reflected in financial growth, thus a turnover of 3,961,099,510 RON was reported, 14,7 % higher than in 2018. In 2019, the organization provided trainings on the following topics: GDPR regulation on data protection, compliance, anti-fraud, anti-corruption, money laundering and anti-competitive practices. A total of 1,927,25 hours of trainings were carried out, of which 336 hours with the participation of employees from the management department and 1,591,25 hours for those from the operational area.

In 2020, the number of company employees increased to 5,326, with 10% more than in 2019. Also, bonuses for performance, loyalty, seniority in the company, sales bonuses and a 50% increase in the basic salary for weekend time were granted, as well as bonuses in the context of the pandemic. The company kept the discounts and offers for their employees. The training sessions organized focused on a variety of subjects, but also on the management of the Covid-19 crisis. The number of stores increased to 276, the turnover recorded an increase of 19,44% compared to 2019, reaching a value of over 4,73 billion RON. The next area of interest we are going to analyse is represented by the community. In 2018, 300,000 euros worth of investments were made in social involvement projects for children and adults who came from disadvantaged backgrounds and 70 Penny volunteers took part in the construction of an education center that will serve 200 children from disadvantaged backgrounds. In 2018, they financially supported the organization Habitat for Humanity, giving 10,000 euro for its projects and concluded partnerships with the Romanian Football Federation and the Romanian Table Tennis Federation, thus supporting and promoting romanian sports. They also invested in students' education by offering financial scholarships worth 200 RON and the opportunity to participate in educational activities.

In 2019 Penny Romania set a budget of 120,000 euro for the construction of a community center and over 250 Penny employees volunteered on site. An investment of 10,000 euro was made to promote sports and a healthy lifestyle among store employees and customers. They also supported the Casa Lidia Foundation, offering the children in its care food worth 500 euros per month purchased from PENNY stores in Bucharest and Ilfov. Another contribution was made to children's education through the campaign "A classroom like home" renovated and redecorated a classroom in the village of Sohatu, Călărași County. The space has been completely rehabilitated and redecorated, so that the students of the preparatory class have a process of accommodation as easy as possible on their first experience on the school benches.

In 2020, donations worth 100,000 euro were made to vulnerable social groups and hospitals and medical equipment for medical centers worth 35,000 euro was purchased. They also helped NGOs in social activities regarding food donations to hospitals during the state of emergency, offering food and hygiene products to doctors worth 500 euro. Another action they took consisted in granting school scholarships and supplies for 100 students as well as opportunities to practice in stores.

Regarding the environment, one of the most important areas of interest for our study, in 2018 all workplaces had ISO50001 certificates, Penny being the first retailer in Romania to obtain this certification for the implementation of the „Energy Management System”. In 2018 they had 236 stores in the „Future Store” format, designed to be energy efficient by using modern and sustainable building materials. Also, 89% of all stores used LED technology, thus reducing energy consumption for lighting from 38% to 21%, thus a Penny Market store consumed 8% less energy per hour of operation, compared to 2017. Moreover, natural gas consumption decreased by almost 26% compared to 2017. At that time, the car fleet composed of standard Euro 6 cars to contribute to the reduction of carbon emissions and solar panels were installed on 3 of the stores. Regarding paper consumption, there was registered a decrease of 2% compared to 2017, from 3,096 tons to 3,037 tons and recycled paper was used for leaflets, so the amount of paper used for this purpose was reduced by half. In 2018 they also started projects with the aim of reducing the impact generated by the use of plastic.

By 2019, 100% LED technology was used in all stores (including the pantry area) and 100% of the logistics centers had LED lighting. All Penny stores held ISO 50001 Energy Management System certifications. In total, in 2019, they consumed 3% less energy than in 2018. The store buildings had a higher thermal efficiency in 2019, with a consumption of 373.02 kwh/m², being 6.2% more efficient than the remodeled ones, which had a consumption of 397.54 kwh/m². In 2019 they made an investment of over 2,500,000 euro in a BREEAM certified store with an outstanding score - 95.2%, thus increasing the quality of the environment inside the store, both for customers and employees. They also replaced the heating system with electric heating systems using heat pumps which led to a decrease in natural gas consumption by 25.7% compared to 2018, reaching 0.019 kWh/m²/hour of operation in 2019. In order to reduce the average fuel consumption, 355,000 euro were invested in electric car charging stations, reaching 10 fast charging stations, which delivered 130,591 kWh of energy in 6,487 hours, to 8,113 users. The fleet of cars increased by two electric cars as well, employee trips by plane from the head office were reduced by 36% and recorded a significant total decrease from 912,268 km in 2018 to 600,753 km in 2019. The amount of CO₂ emissions generated by the use of gas for heating decreased by 16% compared to 2018 and water consumption per unit decreased by 7.2% compared to 2018. Only recycled paper was used for leaflets in order to reduce the amount of normal paper used and paper consumption at the head office decreased by 28%, from 8,703 kg in 2018 to 6,263 kg in 2019. Another action they took was replacing all single-use bags for fruits and vegetables with biodegradable ones made from biopolymers and corn starch.

In 2020, 76 of the stores were remodeled, meaning that materials were used that contribute to effective thermal insulation. All stores were equipped with doors to the semi-vertical meat showcases and 113 stores with doors to the refrigerated showcases for fresh products, so energy efficiency increased by a percentage of 12% in stores equipped with

doors and windows. The 33 stores that installed solar panels produced 1,726 Mwh in 2020. Also, the Penny store in Otopeni produced 55,315 kWh of electricity from renewable solar sources, that is, 21% of the total electricity consumed, thus reducing the amount of carbon emissions by 74,549.25 kg. The program to replace heating equipment based on natural gas with more efficient electrical equipment continued and the degree of their replacement reached 91%, succeeding in reducing the amount of carbon generated by the use of gas by a percentage of 47.72% compared to 2019. Moreover, aluminum collection devices were installed in 13 stores and five tons of aluminum were collected through this system. It was also possible to recycle large amounts of materials, 12,888,793 kg of cardboard, 950,175 kg of plastic and 2,093,829 kg of wood. On the other hand, due to strict hygiene rules, water consumption increased by 4.73%.

As for providers, in 2018, to ensure the quality of the products offered to customers, the organization has partnerships concluded with 670 suppliers, 84.8% of them are local suppliers, contributing to the promotion of Romanian products and satisfying customer needs. In 2019, the Penny store chain was supplied with goods from 652 suppliers, 87.27% of them are from Romania, 2.48% higher than in 2018. At the end of 2019, 63% of the products traded were of local origin (65% for food products), the products being supplied by 569 local suppliers. In 2020, the organization collaborated with 579 local and regional partners, a fact that generates the commercialization of an increasingly large number of products manufactured in our country. The share of Romanian suppliers reached 86.03% of the company's portfolio of suppliers.

The last category we are going to analyze regards the products sold in stores. In 2018, in the top of the best-selling products in the store chain were drinks, fresh meat and sausage products, they add up to 52% of the turnover, and the exclusively Romanian ones 43%. The range of products offered to customers contains over 60 own brands through which they are committed to offering quality products locally, at the best price for customers. In 2018 they also launched 100 products based on Romanian recipes, the list of products was completed with non-food products decorated with folk motifs from all over the country. In 2019, out of the total products sold, 63% of the products are of local origin, contributing to the support of local suppliers by concluding commercial partnerships. Penny caters for customers with special dietary requirements, offering a special range of products introduced in 42 stores, including organic, lactose-free, sugar-free and gluten-free products. They also developed the BIO brand, own brand. "My BIO" aims to make sustainable nutrition easy and accessible, responding in the best possible way to all customers. "My BIO" will contain products developed locally as well as internationally. As for local development, this is only possible for fresh products (dairy, 10M organic eggs, meat, vegetables and fruits such as broccoli, carrots or onions). Also, all beef, chicken and pork products are "3 RO" certified, contributing to increasing the level of a healthy lifestyle. In 2020, the eggs that come from birds raised in batteries have been eliminated and the range of eggs is 100% of Romanian origin. The bread and bakery products are supplied only by local producers who use Romanian recipes. They introduced a number of 62 BIO products, lactose-free, sugar-free and gluten-free and the BIO range is present on different varieties of vegetables and fruit, as well as on other categories such as dairy products.

Conclusions of the analysis

The sustainable development segment is characterized by a high complexity of the implications and aspects needed to be undertaken for an exhaustive understanding of the phenomenon, especially since sustainability is in the focus of organizations regardless of the area of activity or industry. Thus, capturing all the steps taken by large organizations for a sustainable future is a challenge for researchers and stakeholders. From the analysis of the information provided for the period 2018-2020, it was found that the representatives of Kaufland Romania and Penny Market Romania are actively involved and take steps toward achieving the objectives of sustainable development, especially by focusing on environmental, social and economic factors. The actions implemented by the organizations in the years analyzed have contributed simultaneously to the protection of the environment, the generation of social welfare as well as economic growth. For its efforts, Kaufland Romania won the first place in the ranking of the most sustainable companies in Romania, obtaining 99 out of 100 points in 2020, according to the consultancy agency The Azores. In the current context, the analysis of the approaches on the sustainable progress of large food retail opens up new horizons and research directions. The sustainable development strategies addressed by Kaufland Romania and Penny Romania are of interest and influence at international and national level and can significantly support the protection of the planet, the development of trade and the increase of social welfare. In this respect, their sustainable progress represents an organizational model that includes initiatives and strategies to meet the 2030 Agenda for sustainable development in order to create a better world.

In conclusion, we must mention that the three hypotheses that represent the starting point of the study have been confirmed. Thus, the analyzed companies publicly present sustainability reports for 2018, 2019 and 2020. At the same time, the analysis of the reports shows that they have improved their performance with the adoption of an increased range of sustainable policies. Last but not least, we believe that the information the two companies have presented in the sustainability reports represents valuable and varied information that helps to a good understanding of the policies adopted.

Research ethics statement

During our research efforts, the usage of information, opinions and ideas from other authors and researchers respected the copyright and the Romanian legislation regarding copyright and other connected rights. In the present study we did not address any subjective criticism regarding the information analyzed and the opinions of other researchers. Moreover, we treated the organizations studied with respect and did not mean to address harmful opinions towards them. As a result of the document analysis method we used in our research, the conclusions of our study are consistent with the information presented in the official and public sustainability reports of the analyzed organizations.

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TIRESIAS' GIFT OF FORESIGHT: DETECTING FIRMS IN DISTRESS

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Abstract: *The 2020 pandemic has accelerated bankruptcy in economic sectors directly affected by the evolution of prices (the oil industry, transportation, entertainment, the car industry etc). Thus, the number of distressed businesses has grown. The current paper aims to answer the following legitimate questions: what are the methods to early detect distressed businesses, and what are the paths that one can use in order to warn them of imminent distress? According to the European Commission, a company is distressed if, in the absence of State intervention, it will shut down its short-term or middle-term operations. The use of a multitude of definitions for financial distress is explained through the failure to find a measure of enterprise decline. Each country uses different terms to describe insolvency. Still, a model is necessary to improve the accuracy of the prediction. Liquidity flows, profitability and the leverage effect are the most useful indicators to predict a business' insolvency, along with: assessment of accounting documents, liquidity rates, changes in legislation etc. Certain steps have been taken to elaborate some innovative methods based on data and Artificial Intelligence. In the EU, there are three warning tendencies: the extra-judiciary tendency, the mixed tendency and the non-litigious judiciary tendency.*

Keywords: *Companies in distress, insolvency, early warning*

JEL Classification: *G34 Mergers • Acquisitions • Restructuring • Corporate Governance*

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Introduction

One of the most significant effects of the 2020 pandemics was the acceleration of bankruptcies in sectors that, through the evolution of prices, seemed to be heading for failure anyway. The oil industry was one of the most notable victims, due to the new technological developments, the disruption of the industry and the shift to cleaner energy in keeping with the Paris Agreement. Other sectors that were particularly affected include transportation, entertainment, the car industry, gambling and retail commerce. Companies that rely on frequent human interactions are the most likely to be caught in a difficult scenario in the next cycle. Consequently, the investors are getting ready for higher unpaid debt rates in 2021. Pictet Asset Management predicts figures between 6% and 7% in Europe and, due to the strong impact on energy companies, between 11% and 13% in the USA (Patel, 2020). This means a growing number of distressed businesses.

This paper aims to answer the following legitimate questions: what are the methods to early detect distressed companies and what are the path to warn companies of imminent distress? From a mythological perspective, the authors are looking for the recipe of Tiresias' gift of foresight; the famous fortune-teller of Thebe, whom Odysseus visited in the land of the dead. We proceed by clarifying the concept of "distressed firm", then focus on symptoms (inferred from the tendency of the liquidities, profitability, the financial leverage effect, monetary payment default, changes in financial profit). We then continue by discussing the ways to signal imminent distress, then draw our conclusions. The data synthesized and analyzed here have been collected from bibliographical sources such as specialized journals, media articles, laws, monographies and specialized websites.

The concept of distressed enterprise

The concept of distressed enterprise plays a key role in initializing reorganization. For a debtor to initiate it, the business has to be distressed or even, in some countries, in imminent or current insolvency. We must not mistake a distressed business for an insolvent one, although differentiating between them is not an easy task. The distress suggests that there is a problem that occurred at a certain moment, while insolvency represents the final stage of persistent distress, the end result of issues unresolved over a longer period of time. "It is also natural that in case of bankruptcy, the contents (the inability to pay outstanding debts) and the moment when this event occurs should be clearly stated (Lukason & Laitinen, 2016). The difficulties could be latent and they can occur insidiously over long periods of time. A company that only faces financial difficulties is still economically viable. Given that it has no cash flows and debts have reached their maturity term and considering the company's viability, liquidation would not be in the best interest of claimants against the company: assets are more valuable if they are kept together as a functional unit than if they were to be sold in parts, since the value of the company increases if it continues its activity.

Consequently, the attitude of EU member states on business insolvency has been transforming over the past four decades. At present, the efforts of most EU states concentrate on saving viable enterprises that are distressed for various reasons: financial, economic, social, legal etc. with a view to maintaining business, keeping workplaces and recovering debts by creditors. The European Commission recommends, in (EU) Directive

2019/1023, a new approach to the matter of insolvent businesses and implementing legislation in the member states that would reflect this approach, allowing the debtor a second chance (“fresh start”). This method to tackle problems businesses struggle with is crucial to an economy that wants to be operational and supports entrepreneurs by encouraging them to take the risks of starting and running a business. But this support ought to be granted only to the honest, good-natured entrepreneur and not the irresponsible or even fraudulent ones. Member states are encouraged to “set up a framework for an effective reorganization of viable firms that are facing financial distress” and to provide “minimal standards on ... preventive reorganization frameworks”. There is no single definition of “a distressed business”, at the level of the European Commission. With reference to guidelines for government support, the European Commission, stipulates that a company is distressed when, in the absence of state intervention, it will have to discontinue short or medium-term activities, as it is unable to sustain it based on its own resources or with the funds it collects from its owner/ stockholders or creditors .

Due to its impact on economy – at micro as well as macroeconomic levels – the topic of financial distress has been widely dealt with in literature. There are a number of situations which can label a business as financially distressed. A business can be distressed, in principle and regardless of its size, if:

- a) A limited liability company, where more than half of its equity has been lost , more than a quarter of which being lost over the last 12 months;
- b) A trading company where at least some of the associates have unlimited liability over the company’s liabilities, when more than half of its own capital has been lost (highlighted in the company’s accounting documents), more than a quarter of which being lost in the past 12 months, and
- c) If it meets the national criteria for collective insolvency procedures (regardless of the type of company).

Even when none of the above conditions is met, a company can still be considered to be distressed if the usual signs of a distressed enterprise are present, such as: increased loss, decreased turnover, increased inventories, overcapacity, decreasing capital flow, increased debts, increased financial fees and decreased or lost net asset value. Other studies use different indicators to define financial deficit (Lukason & Hoffman, 2014). Some authors believe that a decrease in achievements indicates decline and they use profitability indicators (Barker & Duhaime, 1998) to measure it. Others believe that when a company’s cash flow cannot cover current financial obligations with suppliers, employees and financial authorities, this indicates the emergence of problems within the company (Wruck, 1990). In previous specialized literature, the accounting data were used to confirm financial distress, a company’s financial condition being either positive or negative. In terms of payment failure, distress emerges when the company has not managed to pay a significant amount of capital or interest to the creditor (Finch, 2009).

The distressed businesses require functional reorganization and major restructuring (Belcher, 1997) in order to revive their activity in the new economic context (under the circumstances when the company’s manager has acted good-naturedly but the external circumstances have led to distress) (Hunter, 1997). The use of a multitude of definitions for financial difficulty is explained by the fact that many of the theoretical studies fail to provide a measure that would characterize company decline. (Lukason & Hoffman, 2014) (Argenti, 1976). Some definitions are founded on the final juridical result, such as

liquidation (for Chapter 7 from Insolvency Code of the USA) or reorganization (for Chapter 11 of the same Code). But, as it has been stipulated in Chapter 11, there can be a series of stages the company passes through before its demise: financial difficulty, insolvency and bankruptcy (Wruck, 1990). Therefore, a distressed firm does not implicitly enter liquidation. The difficulty in finding a common language to define insolvency arises from the fact that each country uses different terms to describe it:

- In Germany, it means that the firm is without liquidities or the company's assets do not cover liabilities.
- In Belgium, insolvency means that the firm has stopped paying its debts, (is in staking van betaling/est en état de cessation de paiement), according to article 9 of the Belgian Law of bankruptcy of 1997.
- In Spain, Law no 25/ 28 July 2015 describes insolvency as the impossibility of the debtor (natural or legal entity, business person or consumer, with some exceptions) to pay regularly their chargeable obligations (Anon., 2020).

Early detection/ anticipating distress

Starting from an old precept that says prevention is better than cure , current insolvency legislation deals with prevention methods of insolvency in financially distressed firms. This tendency is defined as “Corporate Rescue Culture”. An important condition for a company to be successfully reorganized/ restructured is that rehabilitation measures be taken in due course, before it is too late. For this it is necessary that the distress should not take the debtor by surprise. Basically, all companies require a prophet like Tiresias, who despite his blindness could foresee the future in visions, in the songs of birds or by describing the shapes of the smoke coming from sacrificial fire. Without such fortunetelling skills, the tendency of debtors is to minimize things, and to rely on the fact that recovering will come naturally. To avoid such scenarios the world governments need to provide firms with warning strategies that “warn” debtor as well as authorities of the imminence of distress (see, for example, French and Belgian legislation). Although in the past there have been studies on distress prediction, still a model is required to improve prediction accuracy (Balcaen & Ooghe, 2006). As mentioned above, financial distress passes through several stages (Flagg, et al., 1991), including omission or reduction of dividend payments, inability to pay debts, rescheduling financial obligations, obtaining audit opinions, and bankruptcy. Reviews in specialized literature related to studies on insolvency prediction have indicated that liquidities, profitability and the leverage effect are the most useful indicators to predict firm insolvency (Dimitras, et al., 1996). A company's profile can be determined by a number of indicators that show profitability based on existing resources, e.g. liquidity rates show the ability to pay debts when they are due (Altman, 1968), but also imminent changes in legislation or expiration of contracts or administrative concessions (Castells Llavines, 2016). Also, distress in a firm can be predicted by assessing accounting documents, which can indicate a change in the company's financial profile (Belcher, 1997).

Currently there are concerns to elaborate innovative methods, based on data, which use A.I. (Artificial Intelligence) to detect companies at risk of imminent distress (Anon., 2020). For instance, by analyzing twenty financial indicators (collected in the past four years) with the help of some growth algorithms and SMOTE packaging (synthetic

technique of minority sampling), one can predict the failure of software companies (Roumani, et al., 2020). Warnings on a company's distress in the context of the new economic tendencies can also be inferred through NLP (Natural Language Processing) of data on Social Media (Gifu & Cioca, 2014). It is also notable that in specialized literature it has been claimed that the criteria to label a firm as distressed are far from objective, and they are biased, containing a certain amount of subjectivity (Platt & Platt, 2002).

Warning signs of distress

At present, in the European Union there are three tendencies when it comes to warning means: the extra-judiciary tendency (represented by Early Warning Europe) (Del Rosal, 2019), the mixed tendency (internal and judiciary, developed in France) and the non-litigious judiciary tendency (implemented by Belgium). In what follows we are going to highlight the key characteristics of the three types of mechanisms, starting with the extra-judiciary method. In December 2016, at EU level (where 200,000 firms become insolvent annually) a network-organization called Early Warning Europe was set up which cooperates to implement mechanisms for the early detection, monitoring and assistance of distressed firms, in several first member states: Poland, Spain, Italy and Greece, assisting 3,500 firms between 2017-2019. The success of this organization led other six member states to request this entity's assistance in edifying their own mechanisms of early warning and aid of distressed enterprises: Croatia, Finland, Hungary, Lithuania, Luxemburg and Slovenia (EU Comision, 2021). The mechanism set up by this organization is three-pillared: experts experienced in identifying and diagnosing enterprise distress, reputed businesspersons who voluntarily assist and advise company owners in view of company survival and their return to profit making and, optionally, lawyers specialized in insolvency, when legal measures are required (EU Comision, 2019). This mechanism is inspired by the experience of Denmark which, following extensive changes to Insolvency Law in 2006, set up, in 2007, a system for early detection and consulting of distressed enterprises, meant to assist with their reorganization outside of the judicial system, to ensure they survival (EU Comision, 2019). Other sources of inspiration were systems similar to the Danish one, to spot, consult and aid, developed by Team U (Germany) and Dyzo (Belgium) In order to facilitate restructuring with the highest success rates, countries such as France and Belgium have imagined different ways to monitor firms and warn their managers and, should no measures be taken, to notify government authorities on the distress incurred.

In France, warning takes two main paths: internal and external. Three actors, acting independently, represent the internal path: The internal audit has the main role, with the obligation and the means to inform the enterprise manager, and if the manager does not respond within 15 days, or if the auditor is not satisfied with the received response, the president of the Court of Commerce will be informed (Lienhard, 1996).

- The enterprise committee, with the legal right to control the manager's activity and also has the right to warn – however, without it being an obligation.
- Associates – by approaching the manager and by notifying the internal audit bodies.
- The external path is mainly carried out by the president of the Court of Commerce (Rohard-Messager, 2010) and by the agreed prevention group (Art. L 611-1).

When the group notices the existence of “an indication of difficulty”, their obligation is to inform the firm manager but the latter is not obliged to react positively to the resulting warning (L. 611-1 paragraph 3 from the French Commercial Code).

The Commercial Code grants special rights to the president of the Court of Commerce, extending as far as calling on the firm manager to ask for clarifications on the situation of the company (Art. L. 611-2 para 1 “managers can be called upon by the president of the Chamber of Commerce in order to take appropriate measures to remedy the situation”) and also, he or she can ask for information from any institution that could provide relevant data on the firm’s situation (Art. L 611-2 section I para 2: “the president of the Court can obtain from legal auditors and from representatives of staff, public administration, social security organizations and social workers, as well as of services responsible for centralizing bank risks and monetary default which can provide precise information on the economic and financial situation of the enterprise”) .

Chapter I of Title I of Book VI of The French Code of Commerce begins with article L 611-1 which states that “any person registered in the trade and company register or in the occupations registrar, as well as any individual entrepreneur of limited liability and any juridical entity under private law can join a prevention group that is approved by order of the state representative in the region. This group has the mission to offer its members, in full confidence, an analysis of the economic, accounting and financial data which they commit to transmitting regularly. When the group spots signs of distress, they inform the manager and they can suggest expert intervention.” (see endnote xiv) . Upon the request of a state representative, authorized administrations assist approved prevention groups which can also benefit from the support of local authorities. Approved prevention groups are authorized to conclude agreements, especially with creditors and insurance companies, that benefit their members. Also, the Bank of France can be required, in keeping with the stipulations of the agreement, to formulate opinions on the financial situation of the firms which are members of prevention groups.

Although the idea is generous and already such groups have been formed in various regions in France, by former workers in the field, now retired (e.g. firm managers, bankers etc), and their activity is confidential, a very small number of firms use it, for fear that associating the company with such an entity could raise suspicions on the financial state of the firm. Basically, identifying distress is done first of all by keeping managers constantly informed on the firm’s economic situation. Rigor in financial records and diversity in information sources to the benefit of the firm’s management also allow for the early detection of problems. Legal texts also state that a better data distribution of accounting information helps detect risks of non-payment as early on as possible and it allows managers to take the necessary decisions. Art. L 611-2 para. 2 .1 states that “if the managers of a trade company do not submit the annual accounts within the terms stipulated in the enforcable texts, the president of the Court can issue an order so that they should comply on short notice, under sanction” .

Detecting distress requires setting up a procedure to react to the difficulties that can compromise the enterprise’s continuity. This is prevention by warning managers (Favario, 2014). The purpose of these procedures is to take into account the proper measures to remedy the situation. The result, in general, consists in concluding amiable agreements, which are great, effective instruments in the service of prevention by detecting business difficulties.

An approach similar to the one in France is seen in the Belgian legislation. Article 84 paragraph (3) of Belgium's Judicial Code states that each Trade Court organizes one or several chambers of commercial investigation (depending on the size of the jurisdiction). The investigation services which rely first of all on the registry of the Trade Court, ensure the collection and codification of data, and decides on the commercial investigation per se. Commercial investigations are non-litigious procedures, the debtor can only file, at the Court of Cassation, an appeal for abuse of power, based on article 610 in the Belgian judicial Code .

Art.12 LCE establishes the role of the commercial investigation units, which assess the situation of debtors in difficulty, to ensure continuity of business operations and to protect creditors. Unlike French law, the Belgian law also includes the intention to protect creditors, which concerns the investigating judges during the examination of their cases. According to article 12 § 5 LCE the service of commercial investigation also has a mission of economic police. If, during the investigation, the debtor is found to be bankrupt, and meets the liquidation conditions stated in art.182 in the Code of Companies, the file can be sent to the royal prosecutor. Eliminating the obligation to send the file to the Court could promote a climate of trust between the instruction judge and the debtor, and allows them to establish a real collaboration to remedy the financial difficulties of the debtor.

Thus, in the liquid era of the Coronavirus pandemic, Tiresias's gift of foresight can be a priceless treasure. To tell the future of small and medium sized enterprises, people are trying to combine several prediction methods, some involving Artificial Intelligence. These systems of early detection of the enterprises' distress are used by private entities as well as by courts. For now there is a multitude of models. We need a new Odysseus to descend in the Land of the Dead to find Tiresias. We need the spark of a genius! Considering that brilliant minds and a number of working hours are being invested to this end, it is likely that soon there will be a solution ... Tiresias shall speak again!

Conclusions

The ambiguity of the terms insolvency and financial distress eliminate the possibility of a unitary definition of a distressed firm. Also, models for the early detection of distressed firms need to be discovered, that offer much more accurate results than those found so far in the specialized literature. It is likely that Artificial Intelligence will offer the support in shaping these detection models. At present, at European level, there are three warning systems of a distressed firm: the extra-judiciary model (Early Warning Europe), the mixed (internal and judiciary, developed in France) and the non-litigious judicial model (of Belgian law).

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CORPORATE GOVERNANCE DEVELOPMENT IN THE MOLDOVAN BANKING SECTOR

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Abstract: *Corporate governance is becoming increasingly important and noticeable in the banking system of the Republic of Moldova. The existing serious weaknesses in the national regulatory environment and the ineffective corporate governance in banks of the Republic of Moldova, which led to the famous bank fraud of 2014, have committed the national authorities of the Republic of Moldova to take significant steps in enhancing the corporate governance framework in the banking sector by initiating in 2015 the reform of the national banking legislation. In this context, with the entry into force on January 1, 2018 of the new banking law, the banking sector in Moldova has undergone a major transformation process by implementing a comprehensive set of provisions on corporate governance. To date the current state of corporate governance in the banking sector of the Republic of Moldova and the correlation between corporate governance in banks since 2018 and the performance of the sector have not yet been sufficiently studied. In this context, this paper proposes an analysis of current corporate governance practices and mechanisms in Moldovan banks and the correlation between the quality of corporate governance and bank performance through quantitative and qualitative indicators.*

Keywords: *corporate governance, OECD principles, Basel principles, ESG, economy, financial indicators, performance, banking sector, National Bank, Moldova, conflicts, bank performance.*

JEL classification: *G21, E 58, G34*

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Introduction

Corporate governance policies and practices have significantly evolved over the past years. New trends and insights have occurred, like the increasing orientation toward stakeholder-oriented business practices or the integration of ESG performance within the corporate governance. Specific to banks, corporate governance determines the allocation of authority and responsibilities by which the business and affairs of a bank are carried out by its board and senior management, including how they: (i) set the bank's strategy and objectives; (ii) select and oversee personnel; (iii) operate the bank's business on a day-to-day basis; (iv) protect the interests of depositors, meet shareholder obligations, and take into account the interests of other recognised stakeholders; (v) align corporate culture,

corporate activities and behaviour with the expectation that the bank will operate in a safe and sound manner, with integrity and in compliance with applicable laws and regulations; and (vi) establish control functions. [6] Indeed, banks are special in comparison to ordinary companies due to the nature of the banking business, the complexity of its organisation, the uniqueness of banks' balance sheets, the need for protection of the weakest party in the chain (i.e. the depositors). Moreover, the potential negative effects of bank failures are very damaging for the economy and society, as was demonstrated vividly by the global financial crisis of 2007-2008.

The way that banks fund their operations means that, in comparison to other companies, their corporate governance needs to provide protection to a much broader pool of stakeholders, particularly depositors who do not usually have the possibility to influence the banks' business decisions. This requires a much deeper involvement of the board in strategic issues and risk oversight, as it must fully understand the risks the bank is exposed to and be able to monitor them effectively. As a result, this requires that the balance of skills at the board level and the expertise of its members are regulated in detail and closely scrutinised by bank supervisors. There is greater emphasis and more detailed guidance on the internal control functions of the so-called "second and third line of defence". Banks are also subject to stricter disclosure requirements management, compliance and internal audit, which are becoming mandatory. [7]

Corporate governance has captured the interest of researchers, regulators, investors, the corporate sector and society throughout the world in the aftermath of corporate scandals in the 1990s and 2000s and again after the failure of a large number of mature investment banks during the global financial crisis of 2007-2008. Actually, these failures have pointed out, that a bad corporate governance could undermine not only the business sustainability of the corporation but also the proper functioning of financial and capital markets overall and lead, in turn, to the investors losing confidence, which could translate in a systemic economic crisis. That is why in the aftermath of the financial crisis international regulatory bodies took significant actions to improve the regulation framework of corporate governance, in order to force corporations to be more accountable and transparent. Corporate governance is also becoming increasingly important and noticeable in the banking system of the Republic of Moldova. It is widely acknowledged that serious weaknesses in the national regulatory environment and the ineffective corporate governance mechanisms in commercial banks of the Republic of Moldova, led to the famous bank fraud of 2014, and have committed the national authorities of the Republic of Moldova to take significant steps in enhancing the corporate governance framework in the banking sector by initiating the reform of the national banking legislation in 2015. In this context, with the entry into force on January 1, 2018 of the new banking law, the banking sector in Moldova has undergone a major transformation process by implementing a comprehensive set of provisions on corporate governance. However, aspects of the current state of corporate governance in the banking sector of the Republic of Moldova and the correlation between corporate governance practices implemented in banks since 2018 and the performance of the sector have not yet been sufficiently studied. Thus, the current paper analyses the banking sector of the Republic of Moldova and its corporate governance for the period of 2018-2021, since the new banking legislation entered into force.

Literature review and methodology

Corporate governance of companies is commonly defined as the "...the system by which companies are directed and controlled. It involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. It also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined." (Cadbury Code, 1992). [16] At the same time, according to Shleifer and Vishny (1997), "corporate governance deals with the ways in which suppliers of finance to corporation assure themselves of getting a return of their investment.". [20] Leblanc (2015) states that "corporate governance is the control of management in the best interests of the company, including accountability to shareholders who elect directors and auditors and vote. How a company is governed influences rights and relationships among organizational stakeholders, and ultimately how an organization is managed, and whether it succeeds or fails. Companies do not fail: boards do.". [20]

At the same time, Goergen and Renneboog (2006) define "corporate governance system as a combination of mechanisms which ensure that the management (the agent) runs the firm for the benefit of one or several stakeholders (principals). Such stakeholders may cover shareholders, creditors, suppliers, clients, employees and other parties with whom the firm conducts its business." [12] Moreover, according to Goergen (2012), corporate governance "deals with the conflicts of interests between the providers of finance and the managers; the shareholders and the stakeholders; different types of shareholders (mainly the large shareholder and the minority shareholders); and the prevention or mitigation of these conflicts of interests. [11]

The OECD Principles of Corporate Governance (2015), which have been taken as a benchmark by many countries and organisations to create their own corporate governance guidance and rules, state that, "Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined." [20] Implementing good bank governance is of particular significance in creating a robust and stable banking sector in support of sustained financial and private sector development, and economic growth. [8]

According to the 2015 Basel Guidelines on Corporate Governance Principles for Banks "Effective corporate governance is critical to the proper functioning of the banking sector and the economy as a whole. Banks perform a crucial role in the economy by intermediating funds from savers and depositors to activities that support enterprise and help drive economic growth. Banks' safety and soundness are key to financial stability, and the manner in which they conduct their business, therefore, is central to economic health. Governance weaknesses at banks that play a significant role in the financial system can result in the transmission of problems across the banking sector and the economy as a whole." [5]

The mentioned subject was researched also by Moldovan economists like Cociug V. (2017), Mihaila S. (2018), Pisaniuc M. (2020), Timus A. (2020), Cobzari L. (2021), Busmachi E. (2021), Ciobu S. (2020, 2021)) in their researches, publications, reports and articles regarding the concept, definitions, theories, models, principles and regulations of the corporate governance.

The methodological and informational support of the paper is based on specialized literature related to the concept, theories, models, current trends of corporate governance, the international and national corporate governance regulations, financial data related to the banking system published by the National Bank of Moldova, and information related to corporate governance published by the Moldovan banks on their official website. In order to perform the analysis of corporate governance aspects in banks there was developed a survey comprising 16 questions and interviews with representatives of licensed banks of the Republic of Moldova, conducted in February 2022. The data obtained based on the survey were compared with the data published by the banks in April 2022 in the Report on management framework, own funds and capital requirements, and capital buffers for the situation of 12.31.2022 (in accordance with the provisions of the Regulation on the requirements for publication of information by banks, approved by the Decision of the Executive Board of the National Bank of Moldova, No. 158 of 9 July 2020).

Challenges of corporate governance in the banking sector of the Republic of Moldova

Sound corporate governance practices enable the banks to cultivate a culture of integrity and ethical business practices, to effectively control risks and assure compliance, to increase the access to capital, to improve the relations between the management of the banks and its shareholders, to achieve positive performance and ensure long-term shareholder value, thus providing banks with a strong reputational and competitive advantage. The banking system in the Republic of Moldova has long suffered from serious governance weaknesses and ineffective corporate governance mechanisms, including serious weaknesses in the regulatory environment and oversight. The banking legal framework in the Republic of Moldova reflected the rules set out in the Basel I international standards, which were relatively simple and covered only the credit risk associated with the bank's business. Thus, the lack of effective corporate governance mechanisms in the banking sector have been pointed out as the main factor that contributed to the massive bank fraud of 2014. As acknowledged, in 2014, US\$1 billion disappeared from Moldova's banking system following a coordinated effort involving three banks to fraudulently provide large amounts of financing to various related entities and parties. Much of these funds were moved outside the country.[18] In its aftermath, these banks have been resolved at a public cost of 12 percent of GDP; external concessional financing has been largely frozen, international reserves fell by one-third, and monetary conditions had to be tightened significantly through increasing policy rates and mandatory reserves.[17]

The bank fraud also exposed serious weaknesses in the national regulatory environment. Enforcement actions by the supervisor were rare and, when taken, were not commensurate with the seriousness of the deficiencies. Although the dubious lending activities of three banks participating in the bank fraud were largely known, supervisory action was slow to come. That is why strengthening financial institutions governance and the banking regulatory and supervisory framework became a key priority for the national authorities in order to enhance the resilience of the banking sector and address the weaknesses that gave rise to the 2014 bank crisis. Moreover, there is increasing evidence showing that sound corporate governance is associated with better financial performance of the firm. In addition, new risks arising from the COVID-19 pandemic and Russia's

invasion of Ukraine, have highlighted the importance of having in place good corporate governance practices to face such challenges.

Since 2015 the Republic of Moldova has taken significant steps in enhancing its corporate governance framework in the banking sector by initiating a large reform of the national banking legislation. The reform has been conducted with the support of foreign development partners of the Republic of Moldova with the aim to harmonize the banking legislation with international standards, including in the context of fulfilling the commitments assumed within the Association Agreement of the Republic of Moldova with the European Union in 2014. According to these commitments, the legislation of the Republic of Moldova in the banking sector was to be harmonized with the European Union acts and the international standards related to Basel III. Consequently, in April 2016 the National Bank of Moldova approved the Strategy for implementing the Basel III standards in the Republic of Moldova by transposing the European Union's legal provisions in this regard (CRD IV/ CRR package[15]. The main two objectives of the Strategy were: (i) to develop the primary (new law) and secondary legislative framework related to banks' activity; and (ii) to develop the NBM's institutional capacity and on-site and off-site banking supervision instruments.

Thus, the new law on banks' activity entered into force as of 1 January 2018. The law extended the rights and attributions of the National Bank of Moldova in the process of assessing and supervising banks. At the same time, the law provided for the improvement of the corporate governance framework in banks and their obligation to have adequate capital in relation to the risks assumed in accordance with international standards and principles.[13] Key changes in risk management have emerged since 30 July 2018, when eight regulations entered into force to implement, at first stage, the law on the activity of banks. The new reporting framework provides for the calculation of own funds requirements based on a new methodology that reflects not only the impact of credit risk, but also market and operational risk. At the same time, with a view to preventing and mitigating macro-prudential or systemic risk, additional requirements have been set for the own funds that banks have to hold for the creation of capital buffers. Thus, in addition to the 10% minimum own funds requirement, banks are required to maintain common equity tier 1 capital essential to meet the requirements related to the capital conservation buffer (2.5%), the countercyclical capital buffer (0.0%), the systemic risk buffer (1%/3%) and, where applicable, other systemically important institutions buffer (0.25%/0.75%) (O-SII buffer).

In addition, in 2020, an important programme with the International Monetary Fund was completed, which focused on shareholder transparency in licensed banks and the implementation of higher governance standards in commercial banks and the National Bank of Moldova. [14] As a result of these reforms, starting with 2018 the new banking legislation put an increased emphasis on the corporate governance by providing for the establishment of an interaction between risk management system and a solid corporate governance in banks. Besides, commendable progress has been achieved in rehabilitating the banking sector, including by securing bank shareholder transparency via fitness and probity of bank owners, improved supervisory and regulatory frameworks, unwinding bank related-party exposures, and strengthening financial safety nets. [21]

The analysis of corporate governance in the Moldovan banking sector

Challenges of corporate governance in the banking sector, are related to the compliance of the banks with the legal framework for corporate governance and the extent to which banks follow good corporate governance practices given the importance of an effective corporate governance to the proper functioning of the banking sector. Aspects of corporate governance particular for banks are including: (i) Commitment to corporate governance; (ii) Implementing good Board practices; (iii) Role of Board’s committees; and (iv) Remuneration policy practices.

The commitment to corporate governance acknowledges that the implementation of strong governance practices in the sector is essential to have effective bank system as well as to achieve and maintain a higher level of public confidence in the banking system. In order to achieve this objective, pursuant to Article 38. Management framework of activity of the Law on the activity of banks, the banks must have a solid clear-cut governance framework that includes a clear organizational structure and according to Article 91. Scope of publishing requirements, banks must disclose the information related to the management framework of activity. According to the results related to the commitment to corporate governance mechanism (Table 1), banks are well aware of and committed to corporate governance principles, demonstrating good knowledge of the legal framework of corporate governance.

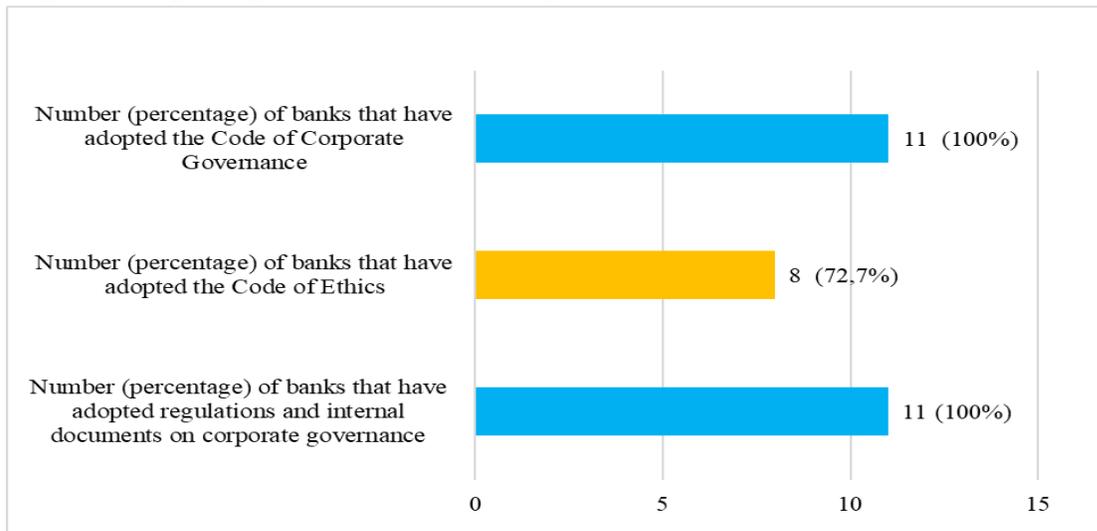
Table 1. Commitment to corporate governance of Moldovan banks

Findings of the analysis	
Commitment to corporate governance	100% of banks have adopted and published the Code of Corporate Governance, and 72.7% (8 banks) have publicly disclosed their own Code of Ethics, although in the remaining three banks, which did not publish its Code of Ethics on the website, the main principles of the code of ethics are disclosed in their Code of Corporate Governance.
	In 100% of banks, the annual report of the bank's executive body contains a chapter on corporate governance.
	In 55% (6 banks) of banks, there is a position of Corporate Secretary. In 45% (5 banks) of banks the function of Corporate Secretary is performed by an employee that combines his/her functions with other responsibilities in the bank or by the secretary of the Board.
	All surveyed banks (100%) provide training on corporate governance for members of the Board of Directors.

Source: Elaborated by the authors based on the survey conducted in February 2022

Besides, Figure 1 shows the level of formalization of internal documents required on corporate governance in accordance with legislation in the banking sector of the Republic of Moldova.

Figure 1. Corporate governance documents implemented in Moldovan banks



Source: Elaborated by the authors based on the survey conducted in February 2022

Implementing good Board practices refers to the fact that the corporate governance structure of Moldovan banks is based on the stakeholder model of corporate governance, specific to the Continental Europe, with a two-tier corporate board structure: (i) a supervisory board; and (ii) a management one. Thus, the management body of a bank shall be represented by its Board and the executive body. Given the essential role the Board plays in corporate governance and its overall and ultimate responsibility for the bank, the survey placed an emphasis on the analysis of Board practices. Undoubtedly, rules and requirements are very important for the implementation of strong governance practices in the company, but on their own they will not deliver behavioural change. The change needs to begin at the top of organisations. This makes the Board the most important element in corporate structure. The tone at the top determines the tune in the middle, as Boards are expected to drive the corporate governance agenda of their companies. As primary stewards of risk and guardians of long-term enterprise value, the Board is collectively responsible for ensuring that the necessary mechanisms for corporate governance are in place. The Board of the bank is a body that perform the supervisory and monitoring role of the management decision-making process and is responsible for the bank's overall activity and financial soundness.

According to Article 41 of the Law on the activity of banks, the main duties of the Board shall include:

- to be fully responsible for the bank's activity; to approve and oversee the implementation of strategic objectives, the risk management strategy and the bank's business management framework, including the corporate governance code; to ensure the performance standards are maintained in accordance with the bank's long-term financial interests and applicable capital requirements;
- to nominate, appoint and revoke members of the executive body, and to determine their duties;
- to exercise effective and efficient oversight of the executive body;

- to report, at least annually, to the General Meeting of Shareholders on the supervisory activity carried out;
- to scrutinize, discuss and challenge, in a constructive way, the suggestions, explanations and information provided by the members of the executive body, opposing their decisions, if required;
- to monitor and periodically evaluate the effectiveness of the business management framework, including the bank's governance principles, and to take appropriate actions to address any deficiencies;
- to approve the annual financial statements and ensure the integrity of accounting and financial reporting systems, including financial and operational controls, and the compliance with relevant legislation and standards;
- to decide on the setting up of specialized committees;
- to adopt and review, at least annually, the general principles of remuneration policy and be responsible for overseeing its implementation;
- to oversee the process of publication of information and external communication.

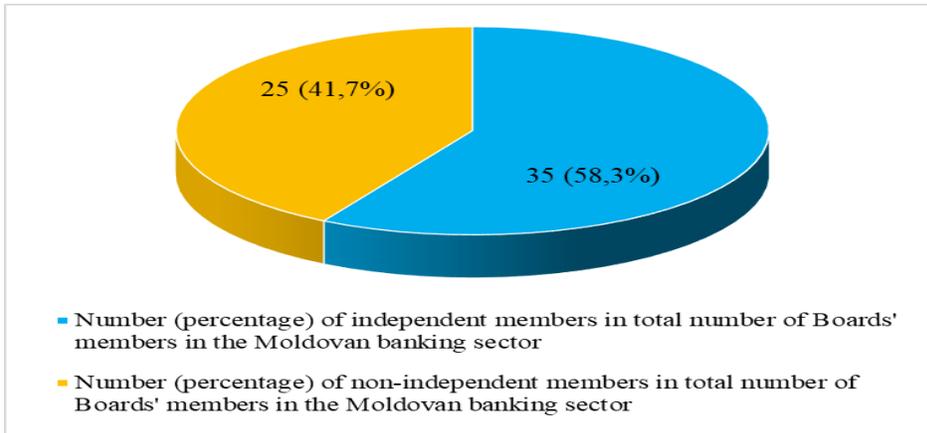
According to Article 40: Management body, of the Law on the activity of banks, the Board of the bank shall consist of an odd number of individuals, but not less than three. The members of the Board shall be elected by the General Meeting of Shareholders of the bank for up to 4 years, and may be re-elected for a new term.

Given that the presence of independent directors contributes to the good working of the board by bringing new ideas and objectivity, improves the monitoring function and reduces self-interested actions by managers, by minimizing agency costs, the Board of the banks shall be composed of a sufficient number of independent members, but not less than one-third of all members elected in the Board. Thus, based on the analysis of implementing good board practices mechanism it can be observed that all surveyed banks comply with the provisions of the legal framework regarding the Board of the bank, as follows:

- The number of members in the Boards varies from 3 to 7 people, with the lower limit (3) being defined by the law. The total number of Boards' members of Moldovan banks is 60 persons as of the end of February 2022.

In 54.5% (5 banks) of banks, the Boards consist of 5 members. In 36.4% (4 banks) of banks, the Boards consist of 7 members. The Boards in two banks (9.1%) consist of 3 members and, respectively, 4 members (in a bank under special administration of the NBM). The independent directors are well represented on the Boards in line with the requirements of the law and good international practices. According to Figure 2 the share of independent members in total number of Boards' members is 58.3%.

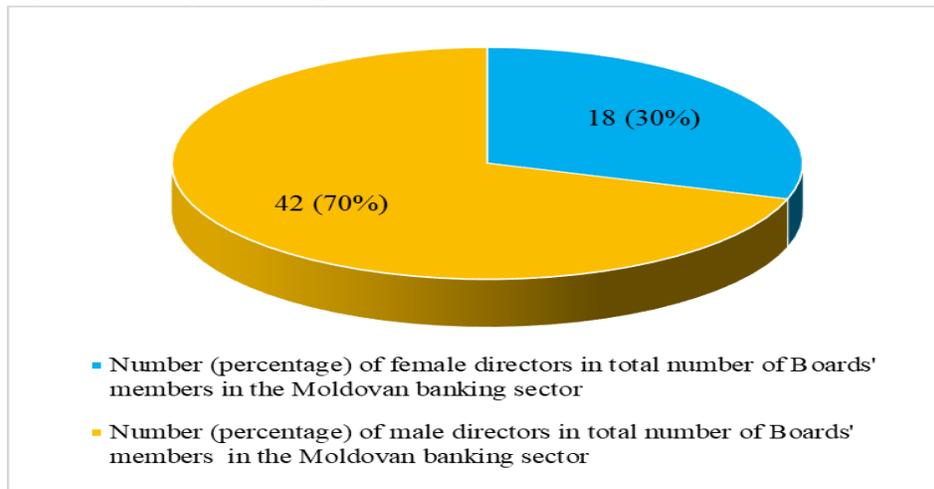
Figure 2 Board independence level in Moldovan banks



Source: Elaborated by the authors based on the survey conducted in February 2022

The percentage of independent directors on the Boards of the surveyed banks is higher than the lower limit which is one third of all members elected in the Board and ranges from 33.3% (1 bank), 40.0% (1 bank), 42.9% (3 banks), 60.0% (3 banks), 71,4% (1 bank), to 100.0% (2 banks), the weighted average of the independent directors representing 59.4% per total surveyed banks. According to Figure 4.3 the percentage of female directors on the Boards constitutes 30.0% and varies from 0% (in 2 banks), 14.3% (in 1 bank), 28.6% (in 2 banks), 33.3% (in 1 bank), 40.0% (in 2 banks), 50.0% (in 1 bank), to 60.0% (in 2 banks), the weighted average of the female directors representing 32.3% per total surveyed banks.

Figure 3 Board gender composition in Moldovan banks

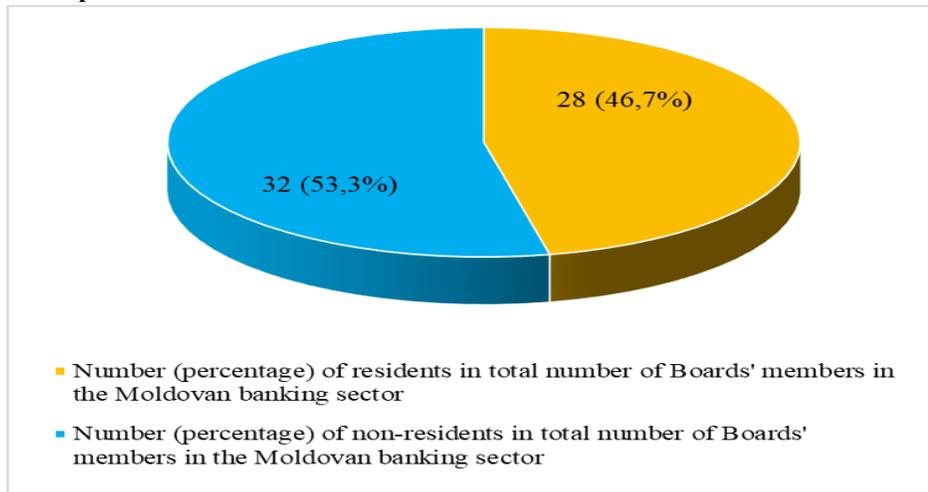


Source: Elaborated by the authors based on the survey conducted in February 2022

It is known that the foreign investors' share in Moldovan banks' capital is almost 88% of total capital. Thus, according to Figure 4.4 the percentage of non-resident directors on the Boards constitutes 53.3% and ranges from 0.0% (3 banks), 20.0% (1 bank), 57.1% (1 bank), 60.0% (1 bank), 66.7% (1 bank), 71,4% (1 bank), 80.0% (1 bank), 85.7% (1 bank)

to 100.0% (1 bank), the weighted average of the non-resident directors representing 49.2% per total surveyed banks.

Figure 4 Representation of non-residents on Boards in Moldovan banks



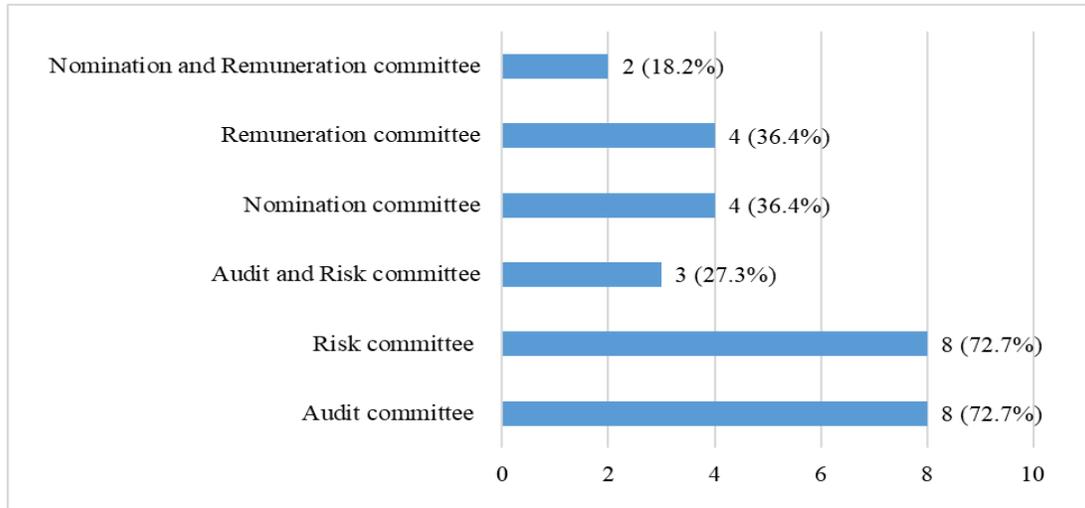
Source: Elaborated by the authors based on the survey conducted in February 2022

Role of Board's committees: According to Basel Committee corporate governance principles for banks, in order to increase efficiency and allow deeper focus in specific areas, a Board may establish certain specialised board committees, the number and nature of which will depend on many factors, including the size of the bank and its Board, the nature of the business areas of the bank, and its risk profile. However, the existence of committees shall not in any way exonerate the Board of the bank from the collective fulfilment of its duties and responsibilities. Thus, according to Article 44: Specialized committees of the Board, of the Law on the activity of banks, each bank shall have an Audit committee and a Risk committee set up by the Board of the bank. Where a bank is significant in terms of size, internal organization and nature, extent and complexity of its activities, the Board of the bank shall establish at least the following 2 committees: a) Nomination committee and b) Remuneration committee. Where a bank that is not considered significant, it may combine the risk committee and the audit committee.

Pursuant to art. 63 par. (7) of the Law on the Activity of Banks, the National Bank of Moldova identifies banks that are systemically important institutions (O-SIIs). Thus, the NBM has established the following 4 banks that are systemically important as of 31 December 2021: B.C. "Moldova-Agroindbank" S.A.; B.C. "Moldindconbank" S.A.; B.C. "Victoriabank" S.A., and B.C. "OTP Bank" S.A. Accordingly, these four banks must have a Nomination committee and the Remuneration committee set up by the Board of the bank. According to legal provisions of corporate governance, the special committees shall be formed exclusively of the members of the Board, the majority of whom shall be independent, and may not comprise less than 3 members. Committees report directly to the Board of the bank and should have a general or separate regulation for each committee, approved by the Board, regarding their role, purpose and manner of operation. The chair of the committee shall be appointed by the Board out of the elected members of the committee.

According to the results of the analysis related to the role of Board’s committees mechanism, and to Figure 5, it can be observed that banks comply with the provisions of the legal framework regarding the appointment of specialized committees of the Board. In addition, it was found that banks comply with the principle of establishing the number of specialized committees depending on the size of the bank or the systemic importance of the institution. 72.7% (8 banks) of banks have an Audit committee and a Risk committee set up by the Board of the bank. In the remaining 3 out of the 11 surveyed banks (27.3%) the Audit committee and Risk committee are combined into a single Audit and Risk Committee. 36.4% (4 banks) of banks have a Nomination committee and a Remuneration committee set up by the Board of the bank. In 2 out of the 11 surveyed banks (18.2%) the Nomination committee and the Remuneration committee are combined into a single Nomination and Remuneration committee.

Figure 5 Specialised committees under the Boards in Moldovan banks (number of banks, and percentage in total banks’ number)



Source: Elaborated by the authors based on the survey conducted in February 2022

A comparative analysis related to specialised Boards committees in Moldovan banks is presented in Table 2.

Table 2 Comparative analysis of specialized Boards committees in Moldovan banks

	Bank	No. of members of the Board	No. of Committees	Audit Committee	Risk Committee	Nomination Committee	Remuneration Committee	Audit and Risk Committee	Nomination and Remuneration Committee
1	Moldova Agroindbank	7	3						
2	Moldindconbank	7	4						
3	Victoriabank	7	4						
4	OTP Bank	5	4						

5	ProCredit Bank	5	2						
6	Eximbank	7	3						
7	FinComBank	5	2						
8	Energbank	4	2						
9	BCR Chisinau	3	1						
10	Comertbank	5	1						
11	EuroCreditBank	5	2						

Source: Elaborated by authors based on the data from the bank's websites.

Remuneration policy practices: It is acknowledged that the bank's remuneration structure should support sound corporate governance and risk management. Remuneration systems form a key component of the governance and incentive structure through which the board and senior management promote good performance, convey acceptable risk-taking behaviour and reinforce the bank's operating and risk culture. Thus, pursuant to best practices of corporate governance and according to the Regulation on Banking Activity Management Framework No.322 of December 20, 2018, the bank shall have a remuneration policy that contributes to prudent risk management and does not favour risk-taking that exceeds the level of risk acceptable to the bank. In addition, according to Article 91: Scope of publishing requirements, of the Law on the activity of banks, the bank should disclose the information related to remuneration policy of the bank. The remuneration policy of the bank for all staff shall be linked to the objectives of the business strategy and risk strategy of the bank, including the business model, corporate culture and values, the bank's long-term interests and measures preventing conflicts of interest. Changes to these objectives and measures shall be considered in the process of updating the remuneration policy.

The remuneration policy shall contain, at a minimum, the following provisions: bank's performance objectives, areas of activity and staff; performance measurement methods, including performance criteria; structure of variable remuneration, including instruments in which parts of variable remuneration are provided; ex-ante and ex-post measures to adjust variable remuneration according to the level of risk assumed. Moreover, according to Article 39. Remuneration policy, of the Law on the activity of banks, each bank is required to establish and implement remuneration policies for the members of the executive body and key personnel of the bank as well as for any other employee who receives a total remuneration in the amount equal to the remuneration received by executive officers or key personnel respecting, in a manner and approach appropriate to the size and internal organization of the bank, its nature, scale and complexity of its activities, the following principles:

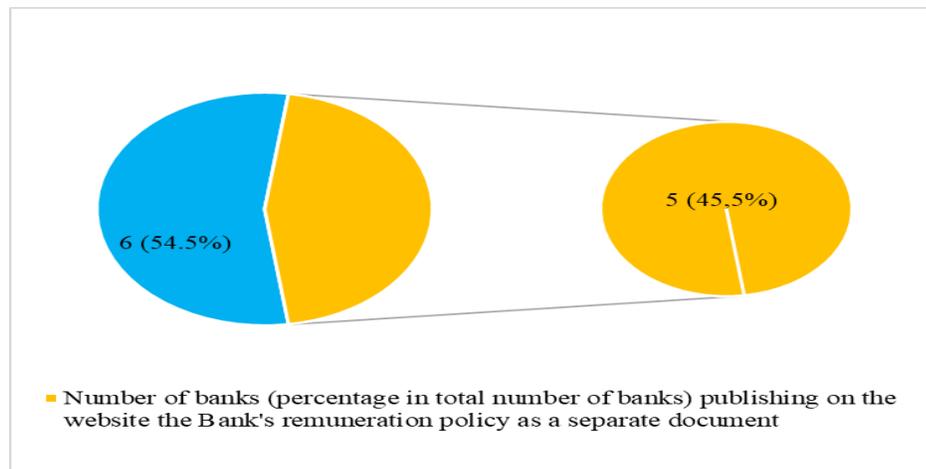
- the implementation of remuneration policy shall be subject, at least annually, to an independent and centralized internal assessment of compliance with remuneration policies and procedures adopted by the bank's Board;
- the employees with control functions must be independent from the bank's operational units they control, have the appropriate authority and be remunerated

- according to the achievement of the objectives set for them, regardless of the performance of the operational units which they control;
- the remuneration of persons responsible for the coordination of risk management and legal compliance must be supervised directly by the remuneration committee or, when the latter does not exist, by the Board of the bank;

The remuneration policy of the bank is elaborated and approved by the Board of the bank. Instead, the remuneration policy of the Board's members is adopted by the general meeting of the shareholders of the bank. According to the results of the analysis related to remuneration policies mechanism it can be concluded that banks comply with the provisions of the legal framework regarding the settlement of the remuneration policy of the bank and the disclosure of the information related to remuneration policy of the bank. 100% (11 banks) of banks have set out the Bank's remuneration policy which is disclosed within the Report on management framework, own funds and capital requirements, and capital buffers published on the Bank's official website;

As it is illustrated in Figure 6, 45,5% (5 banks) of banks have published the Bank's remuneration policy (as a separate document) on the Bank's official website.

Figure 6 Remuneration policy disclosure in Moldovan banks



Source: Elaborated by the authors based on the survey conducted in February 2022

In addition to the above findings, it was noted that in all banks the corporate governance code provides for the general principles regarding protection of shareholders' rights, clarification of the roles of the governing bodies, relations with stakeholders (employees, creditors, investors, suppliers), social responsibility policies, as well as regarding transparency and disclosure of information. Besides, according to the results of the survey, it was found that in general banks rated the legal and regulatory framework on corporate governance as sufficient and comprehensive. However, according to some responses, the current national legislation, has gaps and inconsistencies with regard to corporate governance issues and sometimes does not help to prevent and resolve corporate conflicts. Given the increased focus on ESG worldwide, we also investigated the existence of practices in integrating environmental, social and governance factors into banks' risk management processes, business strategies and investment policies, as well as into the

banking regulatory framework in the Republic of Moldova. Although, it is increased evidence of the importance of ESG as a factor associated with the development of a well-functioning market for green finance and sustainable investment, as well as the importance of ESG as a prerequisite for the banks seeking for an IPO (Initial Public Offering) perspective, the findings show that the banking legal framework do not currently provide some requirements regarding corporate ESG issues and their disclosure by the banks. However, in our view, given the aim for aligning the national banking regulation with European standards, which actually provide ESG policies for the EU banks, it could be an option for the national authorities to consider, at some stage, introducing ESG compliance requirements for Moldovan banks.

In conclusion, the analysis of corporate governance in the Moldovan banking sector and the survey findings show that Moldovan banks are compliant with the provisions of the legal framework on corporate governance and the existing corporate governance mechanisms in Moldovan banks are in line with sound corporate governance practices. Given the favourable conclusions regarding the state of corporate governance in Moldovan banks, it is interesting to assess how new corporate governance practices implemented in banks since 2018 affected the performance of the banking sector. In this context, we assume that the presence of a sound corporate governance mechanisms, such as the level of formalization of the corporate governance principles within banks, Board size and composition, sound and effective Board practices, role of Board committees, determines the adoption of sound risk management-related corporate governance mechanisms like the presence of a risk committee, the percentage of independent directors in the risk committee, the effective procedures for risk management, and, in turn, positively affects the bank performance.

Thus banks with sound corporate governance practices are likely to show higher effectiveness and better performance, based on the evolution of key financial indicators by Moldovan banking sector during 2018-2021. In this regard, there were assessed capital adequacy indicators, such as own funds and own funds ratio, asset quality indicators like total assets, loan portfolio, nonperforming loan ratio, and main profitability indicators as are return on assets (ROA); return on equity (ROE), efficiency ratio (ER), based on the data from the official website of the National Bank of Moldova. However, before presenting the results of the analysis, the following two important impact factors on the evolution of the banking sector in 2018-2021 should be highlighted. On the one hand, with the entry into force on January 1, 2018 of the new banking law, starting with 2018, the banking sector in Moldova has undergone a major transformation process. This process involved the implementation by the banks of a comprehensive set of provisions on corporate governance, size of banks' capital and capital buffers, risk assessment and prevention framework, internal and external control of banks' operations. Besides, due to commendable progress achieved in rehabilitating the banking sector – a process which started in 2015 in the aftermath of the banking crisis, including by securing bank shareholder transparency and improved supervisory and regulatory frameworks, the market has registered the entry of several reputable foreign investors with sound corporate governance, which has contributed to stronger governance practices in the sector.

On the other hand, the evolution of the banking sector was impacted by a major shock represented by the COVID-19 pandemic. However, due to the transformation process in banks and measures adopted by the supervisory authority in order to ensure an

adequate level of banks own funds, which allows for a sound management of risks, the banking sector entered into the COVID-19 crisis with strong capitalisation and liquidity. Therefore, according to the results of key financial indicators of the Moldovan banking sector (Table 3) the recorded sound levels at the end of 2021, were considerably better than as at end-2017 and showing steady year-on-year increases over 2018-2021 period.

Table 3 Key indicators by the banking sector of the Republic of Moldova in 2017-2021

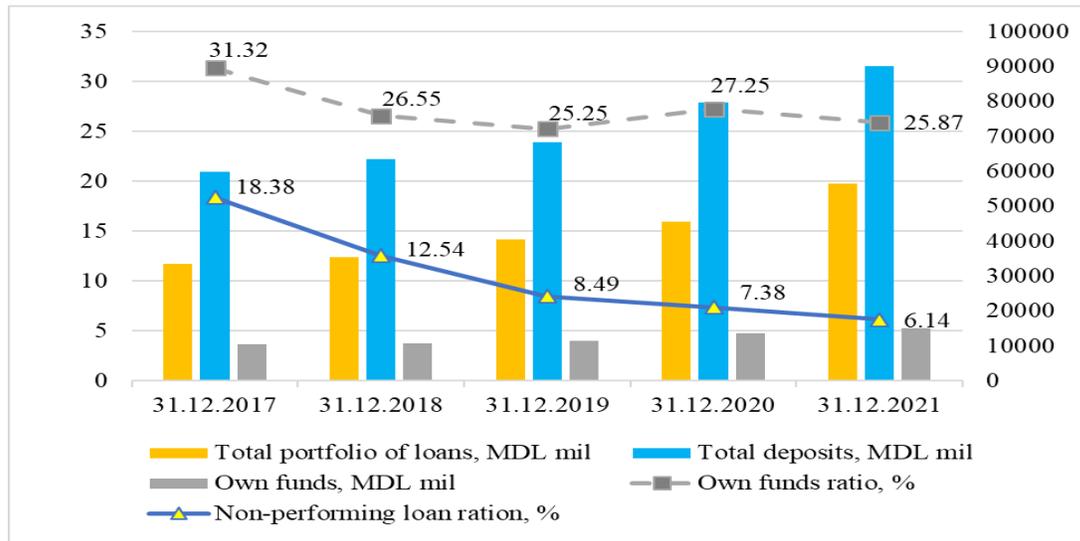
Indicators	2017	2018	2019	2020	2021
Capital adequacy					
Total own funds, MDL mil	10 586.3	10 826.2	11 500.5	13 618.1	15 158.4
Own funds ratio ($\geq 10\%$), % *	31.32	26.55	25.25	27.25	25.87
Asset quality					
Total assets, MDL mil	79 464.8	83 215.0	90 678.2	103 773.6	118 534.2
Total loan portfolio, MDL mil	33 473.3	35 452.7	40 375.5	45 643.2	56 359.2
Non-performing loan ration, %	18.38	12.54	8.49	7.38	6.14
Profitability					
Net profit, MDL mil	1528.1	1451.6	2259.9	1501.2	2306.3
ROA (Net income/Average assets), %	1.91	1.90	2.47	1.53	2.01
ROE (Net income/Average equity), %	11.42	11.60	14.63	8.89	12.35
ER (Net income/Non-interest costs), %	139.32	142.65	159.25	130.82	142.41
Liquidity					
Total deposits, MDL mil	59 896.9	63 462.5	68 357.6	79 644.7	90 081.9
Principle I - Long-term liquidity ratio (≤ 1)	0.61	0.72	0.72	0.71	0.74
Principle II - Current liquidity ratio ($\geq 20\%$)	55.46	54.64	50.65	50.62	48.54

* before 2018 - risk weighted capital adequacy ratio

Source: Elaborated by the authors based on the NBM official data available at <https://www.bnm.md/> (quote on April 4, 2022)

According to data presented in Table 4.3, the total own funds amounted to MDL 15.2 billion at end-2021, registering a 43.2% increase compared with the end of 2017. Throughout the entire period, the total own funds ratio remained at a high level, recording a value of 25.87% at the end of 2021, the indicator being observed by all banks (limit for each bank $\geq 10\%$ as well as additional requirements imposed by supervisory measures). The analysis of the evolution of total own funds ratio outlines two specific observations (Figure 4.7). First, the data show a decrease by 4.77 percentage points of this indicator to 26.55% in 2018 compared to risk weighted capital adequacy ratio in 2017 (31.32%). The decrease was mainly due to the transition of the banks to Basel III in 2018 and, respectively, to the change in the methodology for calculating own funds and the total own funds ratio, which differs from the calculation of the total regulatory capital and the sufficiency of risk-weighted capital. Practically, the calculation of the total own funds ratio takes into account not only the credit risk, but also the market and operational risk.

Figure 7 Dynamics of own funds, own funds ratio, loan portfolio, non-performing loan ratio and deposits by the banking sector of the Republic of Moldova in 2017-2021



Source: Elaborated by the authors based on the NBM official data available at <https://www.bnm.md/> (quote on April 4, 2022)

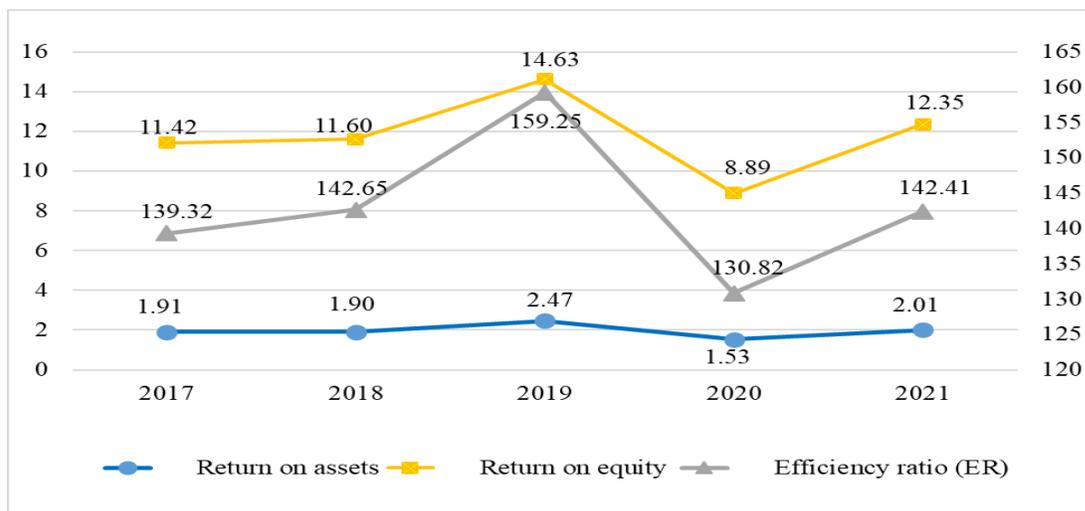
Secondly, according to the data shown, despite the economic impact of the COVID-19 pandemic in 2020, the banking sector registered an increase of the own funds ratio – by 2.0 percentage points to 27.25% at end-2020 as compared to end-2019. That was mainly favoured by early actions taken by the NBM in response to pandemic risks. For example, the NBM discouraged dividend payments and share buybacks and allowed banks to temporarily make use of capital previously held to meet the capital conservation buffer requirement. Thus, policies adopted by the central bank have undoubtedly helped to ease the challenges faced by banks’ as a result of the COVID-19 crisis. Further, the analysis shows that the relevant asset quality indicators remained at adequate levels and continued to improve throughout the entire period of 2018-2021. Thus, total assets amounted up to MDL 118.5 billion as of 31 December 2021, rising by 49.2% in the course of the analysed period. The balance of the gross loan portfolio accounted for 47.6% of the total assets or MDL 56.4 million, showing a cumulative increase by 68.4% over the period of 2018-2021. At the same time, against growing loans, the share of non-performing loans (NPL) in total loan portfolio recorded a constant downward trend over the period. Thus, at end-2021 the share of NPL accounted for 6.14%, registering a 3-times reduction as compared to the level at end-2017 (Figure 4.7). Funds raised from the local market remain the main financing source of the Moldovan banks’ assets. Specifically, the total deposits amounted to MDL 90.1 billion at end-2021, expanding by 50.4% compared with the end of 2017.

Additionally, the investigation posted improved liquidity indicators, in the context of effective measures adopted by the banks in order to fulfil new legislation requirements. Thus, according to the data shown in Table 4.2, the liquidity reserves of the banking sector constantly stayed above the minimum requirement throughout the 2018-2021 period. The value of the long-term liquidity indicator for the banking sector (principle I of liquidity, assets with a repayment term of more than two years/financial resources with a withdrawal

term of more than two years ≤ 1) was 0.7 annually in 2018-2021. The value of the current liquidity indicator by sector – principle II of liquidity (liquid assets, expressed as cash, deposits with the NBM, liquid securities, net interbank funds with maturity up to one month/total assets $\times 100\% \geq 20\%$) constantly stood above the double of regulatory requirement. Banks have also proved to be highly liquid according to the newly introduced indicator of the Liquidity Coverage Ratio (LCR). According to the Regulation on liquidity coverage requirements for banks which entered into force at 01.10.2020, banks have to meet only 70 percent of the requirement in 2021, rising to 80 percent in 2022, and 100 percent starting from 2023. In 2021 the LCR average by sector amounted to 358.5% (limit $\geq 70\%$ in 2021).

And finally, the analysis of the banking sector’s evolution over the 2018-2021 period posted a continued improvement of key profitability indicators. Thus, the net profit across the banking sector amounted up to MDL 2306.3 million in 2021, all banks reporting positive financial results at 31 December 2021. This indicator increased by 50.1% as compared to 2017. In this context, the return on assets (ROA, calculated as profit after taxes divided by total assets of a bank) and the return on equity (ROE, calculated as profit after taxes divided by total equity of a bank) stood at 2.01% respectively 12.35% at the end of 2021, above the levels of 1.91% respectively 11.42% recorded at the end of 2017 (Figure 8).

Figure 8. Dynamics of return on assets, return on capital and efficiency ratio by the banking sector of the Republic of Moldova in 2017-2021 (%)



Source: Elaborated by the authors based on the NBM official data available at <https://www.bnm.md/> (quote on April 4, 2022)

The highest levels of ROA and ROE were registered in 2019, given a high growth rate of net profit in that year (55.7%). It should be mentioned the notable fluctuation from the upward trend of the profitability indicators registered in 2020, when the banking sector’s capacity to generate profit was influenced negatively by worsening macroeconomic conditions in the COVID-19 pandemic context. Thus, despite banking sector profitability remained in positive territory throughout 2020, the financial result was

however weaker – by 33.6% than that in the year before. Practically, these returns have significantly improved during 2021, as can be seen from the Figure 4.8. The dynamics of the efficiency ratio (ER) which is used as a quick test of efficiency and reflects the non-interest costs as proportion of net income outlines the same trend as the ROA and the ROE.

Conclusions and recommendations

The analysis of corporate governance in the banking sector and the results obtained from the survey suggest that licenced banks are compliant with the provisions of the legal framework on corporate governance. The existing corporate governance mechanisms are in line with sound corporate governance practices. Banks are well aware of and committed to corporate governance principles, demonstrating good knowledge of the corporate governance regulation. Banks are implementing good Board practices. Independent directors are well represented on the Boards in line with the requirements. Though the national legislation does not provide minimum quotas for women representation on boards, the female directors are well represented on the Boards. Banks comply with the provisions regarding the appointment of specialized committees of the Board and with the provisions regarding settlement and disclosure of the remuneration policy of the bank. According to the survey in all banks, the corporate governance code provides the general principles regarding protection of shareholders' rights, clarification of the roles of the governing bodies, relations with stakeholders (employees, creditors, investors, suppliers), social responsibility policies, as well as regarding transparency and disclosure of information.

The investigation showed a positive evolution of key financial indicators in the Moldovan banking sector during the implementation by the banks of the new corporate governance framework. The banking sector has recorded positive performances, at the same time fulfilling prudential requirements and preserving the adequate levels of indicators. Banks are sufficiently capitalized proving high level of liquidity (above the minimum requirement) and profitability. Thus, the implementation of sound corporate governance practices in Moldovan banks had positively impacted the effectiveness and performance of the sector. Moreover, the banking sector has proven resilient against pressures from the COVID-19 pandemic. On the one hand, this was due to the early actions taken by the NBM in response to pandemic risks. On the other hand, the impact of the pandemic on the banking sector has been mitigated by strong governance, effective risk management and high levels of capital in banks. Thus, considering the positive evolution of the main financial indicators of the banking sector in the analysed period, the authors could conclude that the implementation of sound corporate governance practices in Moldovan banks has positively impacted the performance level of the sector. In addition, the improved quantitative and qualitative mechanisms of bank corporate governance in banks contributed to promoting a secure and stable banking sector, increasing transparency, trust and attractiveness of the domestic banking sector for investors and creditors and facilitated the development of new financial products and services, including by accelerating the digitalization.

In order to improve further the corporate governance system in the Republic of Moldova, the following recommendations are proposed:

- While the banking sector has made substantial progress in implementing sound corporate governance practices, within the context of newly emerging risks arising from

the war in Ukraine and downgraded outlook for the economy, which could represent an unprecedented challenge to corporate governance in the banking sector and a practical exercise of “tone at the top” principle for the corporate leadership in Moldovan banks, the banks should continue their efforts to improve further their internal governance and the resilience of their risk management strategy.

- Given that transparency is one of the principles for a sound and effective corporate governance, banks should continue to improve their practices related to disclosure of information, including information related to board independence, board composition, and board specialised committees. The information may include the number of independent board members, the number of non-resident board members, the number of board committees, their mandates and their composition (including members who are considered to be independent), the number of times key standing committees have met. In this context, shareholders, depositors, relevant stakeholders and market participants will obtain the necessary information for assessing the effectiveness of the board and senior management in governing the bank.

- In order to improve the quality of the management body, of the shareholders' rights, but also of the bank's corporate governance in general, the banks should improve the quality of the process of identification, selection and delegation for approval by the general meeting of shareholders of the members of the bank's board. This measure will primarily increase the rate of approval by the National Bank of Moldova of board members selected and submitted to the supervisory authority for approval. At the same time this measure will make the board and shareholders more responsible, and will increase confidence in the banks' reputation.

- Protecting the rights of shareholders, including of minority shareholders, is one of the most important principles of corporate governance. According to this principle, shareholders have the right to obtain relevant information on the corporation, which is essential in guaranteeing openness and transparency about important issues regarding company policy. In this context, in order to ensure the compliance of the bank with this principle, the banks should strengthen the role and operation of the Board and its specialised committees. With this view, the board may consider the need to contract external consultants and firms in relation to the preparation of evaluation reports regarding the bank internal governance, strategic goals, business process management, etc., in order to improve the banks performance and to present such reports at the general meetings of the shareholders.

- It is acknowledged, that the board is chiefly responsible for guiding corporate strategy, monitoring managerial performance and achieving an adequate return for shareholders. In this regard, the board must be able to exercise objective, professional and independent judgement. In order for the board to be able to meet its obligations, the chairman, should ensure that members regularly update and improve their knowledge on matters relevant to the banks' activity as well as ensure that the special knowledge and competencies of each individual member are used in the best possible manner for the benefit of the bank. Moreover, board audit committee members, who should have experience in audit practices, financial reporting and accounting, are likely to require considerable training in this field in order to effectively perform their duties. In addition, to increase value creation, within the annually performed evaluation of its activity and

composition of its members, the Board may consider the integration of new talent, while maintaining continuity.

- Considering the increased focus on ESG worldwide and increased evidence of the importance of ESG as a factor associated with the development of a well-functioning market for green finance and sustainable investment, as well as the importance of ESG as a prerequisite for the banks seeking for an IPO (Initial Public Offering) perspective, it could be an opportunity for the banks to consider integrating environmental, social and governance factors into banks' risk management processes, business strategies and investment policies.

- The long-run viability of a business depends on its strategic positioning, which includes developing the economy and community in which it operates, working with government and regulatory authorities to facilitate better regulatory regimes, or integrating environmental breakthroughs into assets to reduce costs and improve efficiency. In this context, enhancing relations with communities and regulators could further improve the corporate governance of commercial banks.

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REVOCATION OF ADMINISTRATORS' AND MANAGERS' MANDATE IN THE CORPORATE GOVERNANCE OF ROMANIAN STATE-OWNED ENTERPRISES. A LEGAL POINT OF VIEW

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Abstract: *Following the fall of the Communist regime, the economies of Eastern European states entered a difficult and long transition period towards free market economy. In Romania, in particular, former socialist state-owned enterprises have been going through a privatization process, that has often been failing and incomplete. Legislative instability has only exacerbated the economic problems. However, under pressure caused by the Romanian Government's commitments to the European Union and the International Monetary Fund, corporate legislation has been gradually modernized, by the successive amendments of the Companies Law no.31/1990, as well as the Government Emergency Ordinance no.109/2011, which introduced the concept of corporate governance of Romanian public enterprises. These regulations lay the foundations for a more transparent relationship between the state and the administration and management of these entities. This relationship is based on a mandate contract, the execution of which is often affected by trust issues between the contracting parties. Thus, the administrators and executive directors often do not comply with the objectives set by the shareholders for the enterprise, which results in their accountability, correlated with the revocation of the mandate. This termination of office involves certain juridical issues, that we shall address in our study, such as the essentially revocable nature of the mandate contract or the agent's right to damages in case of unrighteous revocation.*

Keywords: *corporate governance; state-owned enterprises; autonomous enterprises; joint-stock companies; mandate; agent; principal; contractual responsibility; liability; ad nutum revocation; intuitu personae; damages; compensation.*

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Introduction

Corporate governance has become increasingly important for developing countries, as they struggle to adapt such systems to their own corporate structures and implementation capacities. In Romania, the introduction of the principles of corporate governance in order to increase the economic performance of enterprises proved to be an absolute necessity, because, following a long and incomplete privatization process, there are many commercial enterprises belonging to the state, in which managerial control is rather a wish than a reality. Simultaneously with the legal regulation of the basic components of governance, action must also be taken to improve the business climate in the economy (Avram, 2003).

The turning point in regulating corporate governance structures for the Romanian state-owned enterprises was the Government Emergency Ordinance (GEO) no.109/2011, (subsequently amended by the Law no. 111/2016), which aimed to create the legislative and administrative premises leading to an increase in the efficiency of these economic operators.

One of the main challenges of Romanian companies, especially the ones with state-owned capital, is given by the mandate issues, that occur with the administration and management of the company. Because both parties (the principal and the agent) want to maximize their benefits, situations may arise in which the agent no longer acts in the best interest of the enterprise. In other situations, the managers, lacking the adequate training and support, just fail to meet the performance indicators agreed with the shareholders, in order to achieve the objectives of the company. According to relevant studies on this matter (Albu et al., 2013), the possible solutions that reduce these mandate issues are: proper management training, related to effective control policies, external audit, performance monitoring and diversification of the manager bonus package. Corporate governance offers a greater degree of assurance that an effective control system is implemented at the level of the entity, thus ensuring that the business is conducted efficiently and legally, in the interest of all stakeholders and shareholders.

A natural consequence of the loss of trust in the relationship between the enterprise and its management will be the revocation of the mandate given to the administration and executive management bodies. This withdrawal of trust raises certain legal issues, that we shall try to address in this article.

Execution of the mandate contract of the administrators and directors of public enterprises. The contractual liability

The GEO no.109/2011 sets the legal basis for corporate governance structures in two types of Romanian state-owned entities: (a) autonomous enterprises, established by the state or by an administrative-territorial unit and (b) national trading companies and enterprises, which are organised as joint stock companies in which either the state or an administrative-territorial unit or an autonomous enterprise or another national trading company/enterprise is the sole, majority shareholder or in which it holds control. According to art.2 par.(11), for all these types of public enterprises, the relationship between the tutelary public authority or the shareholders and the administration and management of the company is based on a mandate contract, as defined and regulated by the Romanian Civil Code and, in addition, for the national trading companies and enterprises, by the Companies Law no.31/1990, since they are mostly organised as joint stock companies. Therefore, it is important to underline the fact that the relationship between the public enterprise and the members of its administrative/management bodies will not be conducted under the provisions of the Labour Code, since an employment contract is incompatible with the corporate mandate relationship. Thus, the Companies Law no.31/1990, art.137¹ par.(3) expressly states that „during the term of office, the administrators may not conclude an employment contract with the company”, and „if the administrators were appointed from among the employees of the company, the individual employment contract is suspended for the term of the mandate”.

The autonomous enterprises are organised as a one-tier system, with a Board of Administrators governing the enterprise. The parties to the mandate contract are the tutelary public authority (as the principal), and the members of the Board of Administrators (as the agents). The management responsibilities may be delegated by the Board to one or more directors, who will ensure the executive management of the enterprise. In this case, the executive directors themselves will conclude mandate contracts with the enterprise, represented by the Board of Administrators. Therefore, in the case of autonomous enterprises, the mandate will be regulated by the special provisions of the GEO no.109/2011, as amended by the Law no.111/2016, and, in addition, by the general norms of the Civil Code (art. 2009-2038). The state-owned commercial companies may be managed in a one tier or a two tier system, as they are regulated by the Companies Law no.31/1990, as amended. In the one tier system, the General Assembly of Shareholders appoints the members of the Board of Administrators, by concluding mandate contracts with them. The Board, in turn, is compelled to delegate the management powers to one or more executive directors, who will also execute their mission according to a mandate contract. In the two tier system, the administrative responsibilities belong to the members of the Supervisory Board, who will appoint the members of the Board of Directors. Therefore, in the case of the joint stock companies, the mandate contract is formed between the company and the members of the Administrators'/Supervisory Board/the directors/members of the Board of Directors. The contract will be executed according to the GEO 109/2011, as amended by the Law no. 111/2016, as specialized norm, and, in addition, by the Civil Code regulations and the Companies Law no.31/1990, since the mandate of the administrators of these entities is assimilated to that of the directors of private companies.

The GEO no.109/2011 clearly regulates the duties of the administrators and managers of state-owned enterprises: (1) the duty of prudence and diligence, (2) the duty of loyalty and (3) the duty to give an account (to report). They are similar to those imposed by the common Companies Law no.31/1990 to the managers of private companies, and to those that the Civil Code regulates for the common agent in a mandate contract, which represents the ground law for all agents, acting in different fields of activity. According to the GEO no.109/2011, art.4, the competence to make decisions, and implicitly the responsibility for them, belong to the administrators and the directors, who will act autonomously in the execution of their mandate, the tutelary public authority and the Ministry of Public Finance not being allowed to intervene in the administration and management activity. Failure to comply with the obligations entails disciplinary, civil, contraventional and even criminal liability of the members of the administration/management bodies, as well as revocation of the mandate entrusted to them, as a natural consequence of the loss of trust.

In the case of joint-stock companies, the Companies Law, art.155, states expressly that the decision to bring an action for damages against the administrators/directors is the equivalent to the termination *de jure, ex officio* of their mandate. If the General Assembly of Shareholders decides to initiate such action against the administrators/directors, their term of office shall cease the date that decision is made and in consequence, the General Assembly (for the administrators), respectively the Board of Administrators/Supervisory Board (for the directors) will replace them immediately.

As for the autonomous enterprises, since they are not commercial companies, the provisions of the Companies Law do not apply, and the GEO no.109/2011 does not specify anything about the effects produced by the tutelary public authority's decision to introduce such action. Therefore, in order to see if bringing of an action for liability against the administrators/directors entails a cessation of their mandate as well, one must study the provisions of the Civil Code, as they have general applicability for all legal persons. The answer can be found in art.220, entitled "The responsibility of the members of the boards of a legal entity". Paragraph (4) of this article states that „if it has been decided to bring an action for damages against the administrators, their term of office shall expire and the competent management body shall replace them.” Therefore, it provides for an ad nutum revocation of all legal entities' agents, at any time and without the need to enclose the revocation on the agenda of the General Assembly of Associates.

Therefore, one of the most significant direct effects of the decision of the tutelary public authority (in the autonomous enterprises) or of the General Assembly of Shareholders (in the joint stock companies) to bring an action against the administrators/directors, consists in the termination de jure of their mandate contract. As legal doctrine has pointed out (Catană, 2012), this is the equivalent of a de facto revocation of mandate by loss of trust. The moment the competent body decides to introduce legal action against an agent of the public enterprise, they withdraw the confidence invested in the agent, which means the delegation of the power to represent and act on behalf of the enterprise no longer exists; in the absence of this power, we don't have a mandate contract. In fact, the power to bring an action for liability belongs to the same bodies that can decide to revoke the mandate.

If the liability action against the administrators/directors necessarily entails the revocation of their mandate, the reciprocal assertion is not valid; in other words, the revocation of the mandate of the enterprise's agents can be done, as we shall see, without necessarily involving culpable acts, that would be likely to attract their judicial liability. In fact, as it is the case for all mandate contracts, the provisions of the Romanian Civil Code undeniably allow for the revocation to be made discretionarily.

The juridical regime of the mandate revocation. The mandate, an essentially revocable act. The ineffectiveness of the clauses of mandate irrevocability

As we have already stated, according to the GEO no.109/2011, art.2 par.(11), the mandate relationship between the public enterprise and the members of its administrative/management bodies will be conducted under the general provisions of the Romanian Civil Code, which is ground law for all mandate contracts. The regulations of the Companies Law will also apply on the matter, in the case of the joint-stock companies.

According to the Romanian civil law (Baias et al., 2012), the legal provisions of the Civil Code addressing the revocation of the mandate cannot be derogated through the clauses of the mandate contract. Therefore, articles 2030-2032 of the Civil Code will become applicable to the revocation of the administrators'/directors' mandate in state-owned enterprises. Nevertheless, some particularities are brought by the provisions of the GEO no. 109/2011, since it represents the specific legal regulation of the mandate contract for the public enterprises' agents. They concern the special case of revocation without the right to compensation, as we shall see in our study. Therefore, we will perform an analysis

of the revocation of the mandate of the administrators and directors of public enterprises, in the light of the general provisions of the Civil Code, but also with reference to the specific particularities brought to the matter by the Companies Law regulations (for the joint-stock companies) and by the GEO no.109/2011, as amended by the Law no.111/2016. The revocation of the mandate done by the principal is included by the Civil Code among the specific causes that put an end to this type of contract (art. 2030 par. 1.a).

According to art.2031 par.(1) of the Civil Code, „the principal may at any given time revoke the mandate, whether it is express or tacit, regardless of the form in which the contract was concluded and even if it was declared irrevocable.” Therefore, the legislator establishes the essentially revocable character of the mandate contract. This unilateral act of will of the principal is not subject to any conditions or notice period; the revocation may be done in any form, even tacitly, by giving the proxy to carry out the same business to another agent (art. 2031 par. 2 of the Civil Code), or by the principal carrying it out himself; moreover, the revocation may be done even against the agreement of the contracting parties, in those cases in which they have declared the contract „irrevocable”, thus establishing a legal exemption from the principle of the binding force of the contract, enshrined in art. 1270 of the Civil Code. Therefore, the principal's right to terminate the contract unilaterally appears as one that can be exercised discretionarily. The revocation is *ad nutum*, which means that it can be done at any time, in any form and independently of any fault of the agent, such as breaching the contractual duties. *Ad nutum* is a Latin expression, which means that the one who entrusted a mandate to another has the right to withdraw the powers conferred on the agent, without justifying the reasons behind this decision and without giving notice, even if the mandate was concluded for an indefinite period of time and without the obligation to pay a compensation, under the condition that he did not abuse this right (Merle, 2008).

This legal regulation is based on the *intuitu personae* character of the mandate: it aims to fulfill the interests of the principal, through a person who works for him and who is appointed as a representative due to the trust that they inspire the principal, related to their ability to achieve the mission entrusted in optimal conditions; should this trust be lost, the principal may withdraw the proxy, as it was given in his sole interest.

We can find similar provisions in other European legislations, such as the British, the German or the French ones. The UK Companies Act (2006), s. 168 (1), states that „a company may by ordinary resolution at a meeting remove a director before the expiration of his period of office, notwithstanding anything in any agreement between it and him.”. The German Stock Corporations Act, s. 103, allows the General Assembly of Shareholders to remove from office the members of the Supervisory Board prior to the end of their office, with a majority of three quarters of vote (Wirth et al., 2010). In the French commercial companies law, although the members of the Board of Directors can only be revoked for „righteous reasons”, the members of the Supervisory Board may be removed from office *ad nutum*.

The legal literature has established the idea that the revocation of the mandate is based on the loss of the principal's trust in the agent, or on the assessment of the manner in which he manages the principal's affairs as being inappropriate.

In reality, the principal's right to revoke the mandate is not conditioned by the proof of any fault of the agent in the execution of the entrusted tasks. In fact, as it is legally regulated, the right of revocation may be exercised at the discretion of the principal,

regardless of the reasons that trigger the revocation. The principal will not have to justify himself to the agent in this regard. Therefore, the mandate is a revocable contract: neither can the principal be bound by a stipulation of irrevocability of the power of attorney, nor can the agent be obliged by a commitment to not give up his mission. The mandate is revocable by its very essence, keeping this character despite any stipulation to the contrary. It cannot lose this character without undergoing a mutation itself, becoming another contract; in this case, we are rather talking about a pre-contractual agreement.

In French doctrine, some authors (Planiol et al., 1932) have stated that the contracting parties have the possibility to derogate from the rule of the mandate revocability, stipulating an express irrevocability clause, which will be effective, provided that it is not excessive, thus absolutely depriving the principal of the right to revocation; for this purpose, the irrevocability will have to be limited by the parties to a given object and a limited period of time. In an attempt to explain the existence of the irrevocable mandate, doctrine and jurisprudence have developed various theories, such as that of the abuse of right, which argues that the revocation, if abusive, will not have the effect of terminating the contractual relations by the unilateral will of the principal. These theories are based on the equity principle („*jus est ars boni et equi*”). Given the principle of freedom of will of the contracting parties, it has been argued that the irrevocability of the mandate can be based on the very will of the parties, embodied in an irrevocability clause stipulated in the mandate contract.

The legislative consecration of the possible irrevocability of the mandate is found in the Anglo-Saxon-inspired legislations. For example, art.2179 of the Québec Civil Code provides that „(1) The principal may, for a fixed term or to ensure the performance of a particular obligation, renounce his right to revoke the mandate unilaterally. (2) The agent may, in the same manner, undertake not to exercise his right of renunciation. (3) Unilateral revocation or renunciation by, as the case may be, the principal or the agent, despite his undertaking, terminates the mandate.” In other words, this text of law recognizes the right of the parties to the mandate contract to stipulate an irrevocability clause, but only for a specific object and period of time, and the parties' non-compliance with it will only give the right to claim damages, as the mandate remains revocable at the mere unilateral expression of will. In these circumstances, one might wonder what role does the stipulation of this clause have, since the principal owes a compensation anyway, in case the untimely or unjustified revocation causes damages to the agent?

The possibility for the parties to stipulate such clauses of irrevocability has without a doubt been taken into account by the Romanian legislator as well, the Civil Code including explicit provisions regarding the situation of the mandate declared „irrevocable” by the parties, namely art.2031 par.(1), art.2032 par.(2). The stipulation of the irrevocability of the mandate will generate, according to the provisions of the Romanian Civil Code, the same consequences as those stipulated by the Civil Code of Québec, namely the revocation, if it takes place, produces its specific effect anyway, putting an end to the contract, but the condition of the principal who violated the agreement of the parties will be more severely assessed, he being presumed guilty of unjustified revocation, should he fail to prove that the revocation was caused by the fault of the agent himself or by a fortuitous case or force majeure (art. 2032 par. 2). Therefore, the existence of such a clause of irrevocability of the mandate does not deprive the principal of the power to revoke the mandate, only shifts the burden of proving the reasons behind the revocation from the agent

upon himself, in case the agent seeks damages for unjustified revocation. Despite the stipulation of the irrevocability clause, the agent will not be able to request the execution in kind of the commitment assumed by the principal, that is not to unilaterally terminate the contract.

In our opinion, the way the revocability of the mandate is regulated by the Romanian Civil Code, as a discretionary right of the principal that can be exercised even against the explicit will of the parties, who declared the mandate „irrevocable”, these clauses are ineffective, in other words they do not produce their specific effect, the only difference in the legal regime of the revocation being that in the presence of such a clause, the revocation against the will of the contracting parties will be presumed unjustified until proven otherwise, according to art. 2032 par. (2); thus, in order to be released from the obligation to pay damages to the agent, the principal will have to find evidence that this revocation was caused by the agent's fault, or by a fortuitous event or the force majeure. Therefore, the damages regime is more onerous for the principal, his obligation arising from the revocation without the claimant, in this case the agent, having to prove the fault of the principal, consisting in the „unjustified” or „untimely” character of the revocation, as would occur in the absence of the irrevocability clause. However, this difference in treatment is attributed by the legislator to the situation in which the principal violated the explicit will of the parties by the revocation, and it does not derive from the consent of the parties expressed in the clause; the will of the parties who agreed upon the clause was that the revocation could not be decided unilaterally; this effect obviously does not occur.

The doctrine expressed the opinion that the stipulation of an exclusivity clause in the mandate contract would be the equivalent of a clause of irrevocability of the mandate, since the principal would not be able to appoint a new agent (Quenaudon, 2002). We think that the mere stipulation of exclusivity in favour of the agent does not imply in any case that the mandate cannot be revoked, since the revocation can occur, as we have shown, in any situation, with the correlative right of the agent to be compensated by the principal in case of unjustified or untimely revocation. Again, as in the case of the irrevocability clause, in the hypothesis of the exclusivity clause, the will of the contracting parties, even if explicit, cannot derogate from the public order provision of the law establishing the principal's right to revoke the mandate „at any time” (art.2031 par.1 of the Civil Code). Art.2032 par.(1) of the Civil Code requires that the principal fulfills his obligations towards the agent and repairs any damages that would result from an unjustified or untimely revocation. Thus, in a decision (no.34/2007) of Cluj Court of Appeal it is stated that „the unilateral revocation right exists, the revocability being justified by the fact that the mandate is concluded in consideration of the qualities of the agent and it is presumed to be given in the interest of the principal. The only possibility given to the agent is to file an action for damages, in the situation when the revocation of the mandate is considered abusive or arbitrary.”

According to the Romanian legal doctrine (Baias et al., 2012), the discretionary revocation of the mandate applies to all the mandate contracts particularly regulated by law. Therefore, the administrators/directors of Romanian state-owned enterprises can only ask for damages if the revocation of their mandate was abusive or without righteous cause, but under no circumstance could they claim reinstatement to continue the terms of their office. This is because the agents ”serve at the pleasure of shareholders” (Moye, 2004). It is for this reason that the substance of a decision to revoke an administrator/director is not

subject to review by court. In other words, it is not open to the courts to invalidate the decision of revocation and order the reinstatement of the agent. Such reinstatement is specific to labour contracts, not to the mandate.

But who can decide the revocation of the administrators'/directors' mandate in Romanian state-owned enterprises? According to the GEO no. 109/2011, the decision to order the termination of the mandate belongs to the same bodies that also have the competence to appoint the representatives. Thus, in autonomous enterprises, the members of the Board of Administrators will be revoked by the tutelary public authority, whereas the decision to revoke the executive directors belongs to the Board of Administrators. In the case of joint-stock companies, the General Assembly of Shareholders will decide the revocation of the members of the Board of Administrators or the Supervisory Board; the directors/members of the Board of Directors will be revoked by the decision of the Board of Administrators/the Supervisory Board.

Regarding the revocation procedure, the GEO no. 109/2011 does not establish any specific form in which it must be implemented or a deadline in which the decision to end the mandate can be made. Therefore, the mandate may be revoked at any time, even if its duration is determined. Thus, the French Court of Cassation ruled in a case from 2003 that, “despite its predetermined term, the administrator's mandate may be revoked at any moment”, but the administrator was granted damages to cover the indemnity he was thus deprived of. As the revocation of the mandate is *ad nutum*, it must not take any special form, regardless of the form in which the mandate contract was concluded. Therefore, the revocation may result from an express agreement of the contracting parties, recorded in writing or just verbally, or it may even operate tacitly, in this case arising from any actions of the principal from which one can deduce the undeniable intention to revoke the mandate.

The legislator does not subject the express revocation of the mandate to any special formal requirement, as long as the manifestation of will is unquestionable. The Civil Code does not impose the requirement of notifying the agent about the revocation, which produces its effects, according to the more general regulation contained in art. 2036, from the day the representative knew or could have known the cause of the mandate termination, everything that the agent had previously done remaining valid (the *ex nunc* effect of the termination of the mandate). The principal's capacity to tacitly revoke the mandate is expressly enshrined by the Civil Code, art. 2031 par. (1), the legislator exemplifying, in par. (2), a case of tacit revocation: “the power of attorney given to a new agent for the same business revokes the original mandate”. Therefore, the situation in which the principal designates another agent for the same legal operation is explicitly qualified by the legislator as (tacit) revocation of the mandate (art. 2031 par. 2 of the Civil Code).

The revocation will therefore produce its specific effect, that is the termination of the contractual relations between the parties, from the moment the agent is aware of it, or could have known it, regardless of the form in which it was issued, or of the fact that the principal notified the agent about it, or the trustee became aware of it, or could have known it, in another way (as it results from the corroborated interpretation of art. 2036 and art. 2031 of the Civil Code). In order for the revocation of the mandate to become opposable to third parties, they, in turn, must be aware of it, or must have been able to know it; otherwise, if a third party, in good faith, contracts with the agent, without being able to know that he no longer has the power to conclude the act on behalf of the principal, the operation thus concluded may be opposed to the principal, if the requirements of the

existence of an apparent mandate are met. However, in the particular case of state-owned enterprises, there is no possibility that third parties may not be able to know who exactly is a member of the administration or management bodies, since both the autonomous enterprise and the joint-stock company, through the care of the chairman of the Board of Administrators/Supervisory Board, has a legal obligation to make the list of their members public, as well as the CV of each member, by publishing them on the website of the public enterprise, all throughout their term of office (art.5 par.10, art.18 par.9, art.29 par.12 and art.35 par.10 of the GEO no.109/2011).

The revocation, as any other cause of mandate termination, will produce effects only for the future, *ex nunc*. Therefore, the effects of the mandate already produced between the parties remain valid: the legal operations that the agent managed to carry out for the principal before knowing or being able to know the revocation will produce their effects between the parties, obliging the principal towards contracting third parties. Art.2036 of the Civil Code explicitly mentions the fact that “all that the agent accomplished, in the name of the principal, before knowing or being able to know the cause of the termination of mandate, is considered validly done in the execution of the mandate.” Therefore, the revocation of the mandate does not produce effects for the past, but only for the future, which means that the mandate ceases from the date of revocation, so that only from this day the agent may no longer act in the name and on behalf of the principal, while the acts previously accomplished remain valid. The proxy holder shall retain all rights deriving from the mandate until the time of revocation, including the recovery of all reasonable expenses paid for the principal, together with the related interest, as well as the cover of any losses caused by the execution of the mandate and the collection of the fee agreed by the parties.

The unrighteous revocation and the right to damages

If the revocation is considered unjustified or untimely, it will entitle the agent to receive damages, in order to repair the loss thus suffered (art.2032 par.1 of the Civil Code). Therefore, it is essential for the agent's right to compensation to establish the fair or abusive nature of the revocation, because, without denying the principal's right to revoke the mandate at any time, it still should be noted that, pursuant to art.2032 par.(1) of the Civil Code, the principal will be liable for the damages caused to the agent by unrighteous revocation. Therefore, the revocation itself does not give the agent the right to receive damages, since it is just the exercise of a legally established right of the principal; the fear of having to pay an indemnity would harm the principal's freedom to make the decision of revocation. Such an obligation to pay damages would have a deterrent effect on the discretionary revocation and would constitute a significant limitation for the imperative principle of *ad nutum* revocation. However, if the principal abused his legal right, by exercising it untimely or without a just cause, which generated damage for the agent, the latter will have the right to compensation provided that he proves this abusive nature of the revocation. If the parties declared the mandate „irrevocable”, the principal's responsibility is aggravated, the revocation being presumed by the legislator as „unjustified”, should the principal not be able to prove otherwise, meaning the agent's fault, or a fortuitous case or *force majeure*, which were at the basis of the revocation decision (art.2032 par.2 of the Civil Code).

The GEO no.109/2011 states that the members of the Board of Administrators of autonomous enterprises (art. 12 par. 3), respectively of joint-stock companies (art.30 par.8), may be revoked according to the law, under the conditions established in the mandate contract. In case the revocation occurs without just cause, the administrator is entitled to damages, in accordance with the provisions of the mandate contract. The same regime of revocation applies to the directors/members of the Board of Directors, according to art. 21 par.(3) (for autonomous enterprises), respectively art.36 par.(6) (for joint-stock companies). Therefore, although discretionary, the revocation cannot be arbitrary or abusive, therefore independent of any statutory provisions, or else it shall entitle the agent to ask for compensation damages. The GEO no. 109/2011 does not explain what revocation "without righteous cause" means, nor does the Companies Law. Although the legislator does not bring light upon this matter, jurisprudence has decided that an unjust or abusive revocation of mandate would be one that was done unexpectedly, without giving any defence opportunity or caused by subjective, personal reasons, such as vexation (Fross, 2010). However, as we have already shown, the revocation will be justified in the case of bringing an action against the administrators or directors for the damages caused to the public enterprise. In such situations, the decision of the tutelary public authority (in autonomous enterprises) or of the General Assembly of Shareholders (in joint stock companies) to bring the action against the administrators/directors, will imply the termination de jure of their mandate contract.

At the same time, the GEO no.109/2011, art.30, par.(9), states that the administrators' revocation in joint-stock companies will occur, so it will have „just cause", when, for imputable reasons, the administrators do not meet the performance indicators established in the mandate contracts; the dismissed administrators can no longer run for office for 5 years from the date of the decision in Boards of Administrators of other public enterprises. The same reasons justify the revocation of directors, according to art. 36 par. (7). In these conditions, the periodic evaluation of the administrators'/directors' activity in public enterprises has special importance, since its results determine the calculation of the variable component of their remuneration and, in case they fail to meet the performance indicators negotiated in the management plan, the revocation of their mandate, or even the decision of the tutelary public authority/of the General Assembly of Shareholders to pursue legal action against the agents, should they be guilty of fraudulent acts against the enterprise.

Who makes this evaluation of the execution of mandate?

According to the GEO no. 109/2011, art. 17, in autonomous enterprises, the administrators' evaluation will be made in an annual report of the tutelary public authority and it regards the fulfillment of the obligations, according to the mandate contract and the accomplishment of the objectives and of financial and non-financial performance indicators, approved by the authority. The tutelary public authority may be assisted by an independent expert or by a committee of independent experts to carry out this evaluation. As for the directors, art. 22 par. (5) establishes that the annual evaluation will be made by the Board of Administrators and it will cover both the execution of the mandate contract, and the management component of the administration plan. In state-owned joint-stock companies, the evaluation of the administrators' activity is done annually by the General Assembly of Shareholders, with the support of experts in such evaluations, and it concerns both the execution of the mandate contract, and of the management plan (art. 30 par. 7).

According to art. 36 par. (5), the activity of the directors/members of the Board of Directors will be evaluated annually by the Board of Administrators/Supervisory Board.

What are the criteria for evaluating the agents' activity?

The Guide for Good Practices in Corporate Governance published by the Romanian Ministry of Public Finances provides with examples of evaluation indicators for the assessment of the members of the Boards of Administrators in state-owned trading companies. This includes indicators on financial-accounting skills, or on risk management. The indicators of ethics and integrity are of particular importance, such as: (1) compliance with the Code of Ethics of the public enterprise, applicable not only to employees, but also to the Board members; (2) denunciation of conflicts of interests, as defined by the law and by the internal regulations of the public enterprise; (3) the behavior in the Board in case of a conflict of interests; (4) the obligation to respect confidential information, according to the mandate contract; (5) maintaining an excellent professional reputation.

According to the GEO no. 109/2011, art. 9 par. (1), the evaluation of the efficiency of the administrators' activity in public enterprises is done on the basis of the fulfillment of the objectives included in the management plan and of the financial and non-financial performance indicators included in the mandate contract. The 2016 Norm of Enforcement, Annex 1b, of the GEO no. 109/2011, specifies that the mandate contract of the autonomous enterprises' administrators will include as mandatory clauses, the conditions for termination of the mandate, in case of non-compliance with the financial and non-financial performance indicators included in the contract, for reasons attributable to the administrator or due to the breach of integrity criteria stipulated in the mandate, including by avoiding and not denouncing conflicts of interests or non-compliance with the Code of Ethics of the public enterprise. Considering that these performance indicators were negotiated with the tutelary public authority (in the case of autonomous enterprises), respectively with the General Assembly of Shareholders (for joint-stock companies), being included after approval as annexes to the mandate contract, one can appreciate that the administrators' failure to fulfill them represents a violation of their contractual obligations and therefore a just cause for their revocation.

The revocation compensation

The problem that most often arises in the case of mandate revocation is that of the indemnity that the revoked agent claims. Of course, this claim of the trustee will have to be assessed differently, depending on the circumstances under which the revocation was made. Thus, the Romanian Civil Code, art.2032 par.(1) confers on the agent the right to compensation for the damages suffered as a result of unjustified or untimely revocation, and the Companies Law, art.137¹ par.(4), recognizes the right of the joint-stock companies' administrators, whose mandate has been revoked without just cause, to claim damages. In the particular case of public enterprises, as we have seen, the GEO no.109/2011 also grants the administrators/directors the right to damages, should their revocation be without just cause. According to art.2032 of the Civil Code, in case of unjustified or untimely revocation, the principal will be compelled to pay the agent the remuneration (art.2032 par. 1 thesis I, related to art.2027), as well as the reparation of the damages caused as a result of the revocation itself (art.2032 par.1 thesis II). In addition, if the agent had suffered damage resulting from the acts of mandate execution, until the moment the mandate was

revoked, it would also have to be repaired by the principal (art.2032 par.1 thesis I related to art.2026).

A question arises regarding the validity of the clauses through which the mandate contract parties establish a conventional evaluation of the compensation. Such clauses perform an anticipated assessment of the loss encountered by the agent as a consequence of unjust revocation and as a consequence, they establish significant compensation to the benefit of the removed agent. In the particular case of state-owned enterprises, the GEO no.109/2011 does not consider such clauses on compensation for loss of office as prohibitive, since they are quite common in the occupational settings where the managers are recruited from, that is the private commercial companies environment. Nevertheless, as an author has pointed out (Catană, 2012), such clauses would have a deterrent effect on the discretionary power of revocation; as a consequence, the courts of justice could declare them null and void, if considered abusive, because they were materially excessive.

Such a solution is also agreed by the French doctrine and jurisprudence (see, for instance, Cass. Com. 14 Juin 2005, no.02/17719, Bulletin JOLY Sociétés 2006, no.1. p. 98), which admit that if the conventionally established compensation is a significant one, likely to affect the principal's freedom of choice related to the revocation of the mandate, it contradicts the principle of the *ad nutum* revocation of the mandate, which is an imperative one. The solution suggested by the French doctrinaires (Paisant, note on Cass. 3e civ., the 5th of Dec. 1984, cited by Y. Dagherne-Labbe, note on Cass. 1re civ., the 6th of March 2001, in *La Semaine Juridique Éd.Générale*, no. 18/2002, p. 828) is to submit the indemnity to judicial control, if it is used as a means of putting pressure on the principal. Thus, an author (Dagherne-Labbe, 2002) shows that in absence of the possibility of judicial revision of the excessive revocation compensation, the principal's right to choose the termination of the mandate remains completely illusory, taking into account the financial consequences that the exercise of the right to revocation would entail. The French jurisprudence (Cass. 3e civ., the 5th of Dec. 1984, D. 1985, jurispr., p. 544) admits the possibility of reducing these excessive indemnities. The Romanian doctrine also agrees with the idea of judicial revision of the clauses on compensation evaluation, stating that, in such a hypothesis, „the indemnity is established by the Court and it is not necessary to coincide with the compensation provided in the contract” (Deak, 1999).

The French doctrine has also expressed the view that the agent may waive in advance, by an express clause of the contract, any compensation in case of revocation of the mandate (Planiol et al., 1932). Thus, invoking decisions of the Court of Cassation, French authors have shown that, no matter how sudden the revocation is or for what specific reasons it may occur, the trustee, even if remunerated, will not be entitled to any compensation, if he had given it up by an express clause. Such a clause would be the expression of the common law on the matter, that is the absolute freedom of the parties to waive the mandate contract. However, the authors admit that such a clause allows the principal to be exonerated for his fault, which, as they point out, is not unlawful, the jurisprudence showing that the contracting parties are allowed to stipulate clauses of immunity from contractual fault.

Regarding the clause of the agent's damages waiver in case of mandate revocation by the principal, we consider that it will be legally stipulated and producing effects between the parties only within the limits of the law. The common law on the matter is art. 1355 of the Civil Code, which clearly states that „it may not be excluded or limited by conventions

or unilateral acts, the responsibility for the material damage caused to another by a deed committed with intent or gross negligence". What do the intent (guile) or gross negligence of the principal in revoking the mandate mean in the context? We appreciate that it can only be about those situations that the special regulation of the Civil Code refers to, stating that „the principal is obliged to repair the damages suffered by the agent because of the unjustified or untimely revocation" (art. 2032 par. 1). Therefore, the agent will always retain the right to claim compensation if the revocation is unjustified or untimely, which causes him damages, even if he had explicitly waived compensation by a clause prior to his revocation. Of course, nothing prevents the agent from giving up compensation once he has already been revoked.

The contractual revocation indemnity is not a penalty clause. Art. 2031 par. (1) of the Civil Code establishes the discretionary right of the principal to revoke the mandate at his own will (*ad nutum*). As a consequence, if the agent fails to prove the abusive nature of the revocation (an unjustified or untimely revocation, according to the Romanian legislator – art. 2032 par. 1 of the Civil Code), he will not be entitled to any revocation compensation. Therefore, we think that no amount will be owed by the principal as a result of the mere fact of revocation, without proof of its abusive and prejudicial nature, regardless of what the parties have established in the contract. Besides the application of the common civil law regime on administration/management revocation, the state-owned enterprises have a particularity established by the provisions of the GEO no.109/2011, namely the situations of revocation without the right to compensation.

The first situation that entails the revocation without compensation is the one in which the revised Management Plan submitted by the Board is not approved, which implies that the administrators' mandate is terminated *ex officio*.

According to the GEO no.109/2011, art.2 par. (8), the fulfillment of the obligations related to the mandate of the administrators and directors of public enterprises will be made on the basis of a Management Plan, which is a document prepared to determine the objectives of the public enterprise during the term of office, structured on two components: the administration plan, drawn up by the Board of Administrators/Supervisory Board, and the management plan, drawn up by the directors/members of the Board of Directors. It is correlated with the Letter of Expectations, by which the tutelary public authority sets the performances expected from the administration and management bodies. The Plan establishes the mission, objectives, actions, resources and financial/non-financial performance indicators for the term of the mandate, which may not exceed 4 years. The Plan, approved by the Board of Administrators/Supervisory Board, provides financial and non-financial performance indicators, to be achieved by the administrators and directors in the course of their mandate and according to which the variable component of their remuneration will be calculated. The Plan is sent to the tutelary public authority (in the case of autonomous enterprises), respectively to the General Assembly of Shareholders (for the joint-stock companies), for negotiation and approval, after which the approved performance indicators become annexes to the administrators'/directors' mandate contracts.

In the case of autonomous enterprises, art.13 par. (5) establishes that if the negotiation of the Management Plan fails in two rounds, the members of the Board of Administrators are revoked, without being entitled to claim damages. However, the result of the negotiation must be motivated and published on the webpage of the tutelary public authority, as well as that of the autonomous enterprise. Therefore, in such situation, the

administrators' mandate will be terminated ex officio and without the right to compensation and the tutelary public authority will appoint a new Board. Similarly, for the joint stock companies, art. 30 par. (5) of the GEO no. 109/2011 states that if the negotiation of the performance indicators resulting from the Management Plan fails in two rounds, the General Assembly of Shareholders revokes the members of the Board of Administrators/Supervisory Board, without being entitled to damages, and the Assembly will immediately appoint new administrators. In this case, too, the result of the negotiation must be motivated and published on the company's own website. As for the directors, the same revocation without compensation will apply in both autonomous enterprises and joint-stock companies, should the revised Management Plan not be approved by the Board of Administrators/Supervisory Board.

A second situation in which the revocation of the mandate occurs without compensation is regulated by the GEO no. 109/2011 in the case of the members of the Board of Administrators/Supervisory Board of joint-stock companies. Thus, according to art. 32, at the request of the shareholders representing, individually or together, at least 5% of the subscribed and paid-in share capital, the Board of Administrators or the Board of Directors convenes a General Meeting of Shareholders, with the purpose of electing the members of the Board of Administrators /Supervisory Board by applying the method of cumulative voting. By this method, each shareholder has the right to allocate the cumulative votes - obtained after multiplying the votes held by any shareholder, according to the participation in the share capital, with the number of the members who are about to form the Board of Administrators or, as the case may be, the Supervisory Board – to one or more persons proposed to be elected in the Board of Administrators/Supervisory Board. In exercising the cumulative vote, the shareholders may grant all the cumulative votes to a single candidate or to several candidates.

In the case of applying the cumulative voting method, the members of the Board of Administrators/Supervisory Board in office at the date of the General Meeting, will be registered on the list of candidates for the election of the Board members, together with the candidates nominated by the shareholders. Those who are not reconfirmed by a cumulative vote as members of the Board, are considered removed from office by the decision of the General Meeting. In case of the administrators' revocation by applying the method of cumulative voting, the revocation will not be considered without just cause and the company will not be obliged to pay damages. Therefore, in this case, we also deal with a revocation ex officio of the mandate, without the right to compensation.

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