JOURNAL OF PUBLIC ADMINISTRATION, FINANCE AND LAW

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PUBLIC ADMINISTRATION

ASPECTS REGARDING IMPLICATIONS OF ASSOCIATIVE STRUCTURES FOR LOCAL DEVELOPMENT IN PROMOTING AND STRENGTHENING OF MULTILEVEL GOVERNANCE

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Abstract: *The need for the development of local communities in terms of economic and social policy-making requires finding answers institutional and public policy context in which the company is located. More and more the focus is on partnership and cooperation between the various actors of public life, on the involvement of private capital in local investment, on the establishment of companies to boost the joint venture or the establishment of local action groups to train both local public administration, the local economic environment, local non-governmental entities and other persons concerned in the design, implementation and completion of local development projects financed from European funds. The projects for local communities will receive support from the increasingly pronounced from the European Union, having regard to the fact that through the development of local communities will strengthen the European project.*
Keywords:*local communities, economic and local development, partnership, associative structures, local investments, European funds*

Acknowledgement*: This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resourses Development 2007-2013*

1. INTRODUCTION

The association with the purpose of achieving certain objectives of general interest or carrying out activities or projects represents a tendency that we can find in European politics and that was designed both in law and practice of public administration, in general, and the local public administration in particular. The desire for development of each local community (Apostolache, M.C. 2014) can be satisfied provided there are sufficient financial resources. The financial resources are those which provide full local autonomy, as local autonomy without financial resources lacks content.

The need to find financial resources for the economic and social development of local communities determines local decision-makers to rely on partnerships and collaborations with various actors from public life, hoping thereby to engage private capital in local investments and boost the setting up of joint ventures and local action groups.

Therewith, by collaborating with entities such as nongovernmental organizations, local administrations aim at the transfer of some tasks related to providing social services to the nongovernmental sector, which contributes both financially, and also in terms of managerial

experience in running these social services. The idea of partnership is heavily encouraged by the European bodies through the policies they promote, as well as through various political and legal documents. For example, on the absorption of European funds, the European Commission concludes a partnership agreement with the Member States. For the period 2014-2020, Romania has available European funds worth approximately 43 billion euros, of which over 22 billion euro target the cohesion policy. The Partnership Agreement of the European Commission with Romania for the period 2014-2020 includes five structural and investment funds, namely: the European Regional Development Fund (ERDF), the Cohesion Fund (CF), and the European Social Fund (ESF), the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF). This agreement as seen from the summary of the European Commission, 2014 has the following priorities:

- To promote competitiveness and local development in order to enhance the sustainability of economic operators and improve regional attractiveness;
- To develop human capital by increasing the employment rate of the labor force and the number of graduates in tertiary education, while providing solutions to serious social challenges and combating poverty, particularly in marginalized or disadvantaged communities or in rural areas;
- To develop the physical infrastructure, both in the ICT sector and in the transport sector in order to increase the accessibility in the regions of Romania and their attractiveness to investors;
- To encourage the sustainable and efficient use of natural resources by promoting energy efficiency, a low carbon economy, environmental protection and climate change adaptation;
- To consolidate a modern and professional public administration through a systemic reform oriented towards solving structural governance errors.

The Partnership is also included in various political documents, such as the Charter for Multilevel Governance in Europe, which was adopted by resolution by the Committee of the Regions of Europe, and which stresses, in its preamble, the need for a collaborative partnership to achieve a stronger economic, social and territorial cohesion in Europe.

Assuming that no level of government can successfully meet the challenges it faces, the document states that cooperation through joint projects is required to address these challenges. According to the Committee of the Regions, 2014 multi-level governance means *"the coordinated action of the European Union, of the Member States and of the regional and local authorities, based on the principles of subsidiarity and proportionality and on the partnership resulted in a functional and institutionalized cooperation that aims to develop and implement EU policies".* Given that European policies pursue the meeting of the strategic objective comprised in the document on Europe's growth "Europe 2020", namely an economy that is smart, sustainable and favourable to inclusion, the projects developed in each Member State must circumscribe to this strategic objective. Because financial possibilities of the various social actors (public or private, national or local) are limited, cooperation based on partnership ensures the implementation of various development projects, with the merit that it brings a touch of creativity and innovation to public action (Apostolache M.A., 2014).

In Romania, the partnership is a tool increasingly more often used by the authorities of local public administration to attract European funds, to achieve certain common public goals or to manage social needs.

2. LOCAL ACTION GROUP (LAG)

One of the modern forms of association of different local entities is the Local Action Group. Local Action Groups (LAG-s) are founded and work with financial support from the European Union, and also from national authorities. As shown in the literature (Apostolache M.C., 2013), the LAG represents a form of public-private partnership, consisting of the reunion of public local authorities, economic agents, nongovernmental organizations, or other subjects of the civil society from a micro-region. Through this form of association, European and national financial resources can be locally attracted for local development. Placing the local development objective under the responsibility of the community represents the declared intention of the Strategy 2020, and this may become concrete through the creation of new jobs, the redevelopment of villages, the protection of the cultural heritage and landscape, but also through the maintenance and improvement of local public services, such as schools, medical facilities, recreational facilities, cultural centers etc. Each Local Action Group assumes the implementation of a local development strategy, thereby ensuring the coherence and predictability of local action.

The development strategy ensures: the analysis of the current context of the local community; the setting of development goals and measures to reach them; the establishment of projects leading to local development and of funds that can be accessed for these projects; the encouragement of the development and discovery of untapped potential in the community; the stimulation of the community's participation and the consolidation of the feeling of social involvement (Apostolache M.C., 2013).

If in the financial exercise 2007-2013 the focus was particularly on the establishment of such associative structures, the financial exercise 2014-2020 seeks to develop these partnerships and support the initiatives of the members of these local action groups, embodied in local development projects. These associative structures function as management authorities placed close to the citizen, putting into practice the European principle of subsidiarity. The beneficiaries of the European and national financial support managed by LAG can be:

- from the public sector: administrative-territorial units as defined in national legislation in force or their associations and government institutions or their associations that own or manage investment objects;
- from the private sector: companies, freelancers, medical offices, NGOs and religious institutions as defined in national legislation in force, natural or legal persons or their associations that own or manage investment objects, as well as producers or groups of producers.

Gaining experience in attracting and managing European funds by local authorities has led to an increase in the number of these associative structures. For example, in Prahova County three local action groups are organized and operate, in which the private component is dominant, a characteristic feature of all such associative structures.

The 3 LAG-s at the level of Prahova County are the "Colinele Prahovei" LAG, the "Valea Cricovului" LAG and the "Treimea Colinelor" LAG (Apostolache M.C., 2013).

Each of these LAG-s aims at reaching objectives of local interest by conceiving, submitting and carrying out development projects by public and private partners involved. The "Colinele Prahovei" LAG seeks to ensure for the inhabitants within its territory quality living conditions and a clean surrounding environment by appropriate public services and the development of the technical, social, cultural and educational infrastructure, in order to make it compatible with European standards. Moreover, the emphasis is placed on the economic dimension, especially on tourism, seeking that the area become renowned for tourism, fact which can be achieved by the exploitation of natural and cultural resources, and also an area attractive for investments both in agriculture and in services, commerce and small industry sector.

The "Colinele Prahovei" LAG seeks to implement and finance a number of 38 projects with a total value of 3.413.722 euros, of which the nonrefundable funding will be of 2.848.250 euros, as result of the Local Development Strategy changed of Local Action Group "Colinele Prahovei", 2013.

To conclude, we can state that all these public-private associative structures constituted at territorial level mean to implement certain infrastructure projects and projects that aim at the development of the local economic environment and of the public services offered to citizens. If correctly structured and managed (Lambru & Vameşu, 2010) public-private partnerships can bring positive, efficient results and solutions to the problems of society.

3. INTERCOMMUNITY DEVELOPMENT ASSOCIATION (IDA)

Another form of cooperation and partnership that we encounter at the level of local public administration is represented by the intercommunity development association. Such modern associative structures are regulated by Law no. 215/2001 of the local public administration that stipulates, in art. 11 para.1 that *"two or more administrative-territorial units, within the limits of the competences of their deliberative and executive authorities, have the right to cooperate and associate, under legal conditions, forming intercommunity development associations, with legal personality, of private law and public utility".*

The purpose of constituting these associative structures is according to the article 11 para. 2 of Law no. 215/2001 of local public administration, republished, that of joint implementation of development projects of local or regional interest, or of joint provision of public services.

The financing of intercommunity development associations is mainly done through contributions from local budgets of the member administrative-territorial units, but also from other sources. The management of these intercommunity development associations is ensured by a board of directors formed by representatives of the component administrative-territorial units, designated by the local or county council, at the mayor's proposal, respectively at the proposal of the president of the county council, as well as at the proposal of the local or country councilors.

Such an example of public-public partnership is the *Intercommunity Development Association "Ploieşti-Prahova Growth Pole".* This associative structure of public utility is composed of: Prahova County represented by Prahova County Council, and the localities Ploieşti, Băicoi, Boldeşti-Scăieni, Plopeni, Ariceştii Rahtivani, Bărcăneşti, Berceni, Blejoi, Brazi, Bucov, Păuleşti, Târgşorul Vechi, Valea Călugărească. The Intercommunity Development Association "Ploieşti-Prahova Growth Pole" has as general objective the cooperation between the administrative-territorial units from its composition, with the aim of their sustainable

economic development, modernization of public infrastructure, environmental protection, improvement of services offered to citizens. Besides this general objective, according to the Association of Intercommunity Development Status *"Ploieşti-Prahova Growth Pole"*, this seeks to meet other specific objectives such as: to support the socio-economic development of the area "Ploieşti-Prahova Growth Pole", to improve the infrastructure from the administrative-territorial units that create the association, to support the development of small and medium enterprises, to protect and develop the cultural heritage, to develop tourism in the area etc.

The first project planned and implemented by this associative structure is "The Growth of the Traffic Capacity by Creating Road Links between DN1 and DN1B (making the belt county road DJ236), in the northern part of Ploieşti city", financed by the priority axis "Supporting the sustainable development of the cities – growth urban poles", a component of the Regional Operational Program 2007-2013. This represents an example of a project that benefits from European funding that is meant, as shown, to develop the transport infrastructure and to facilitate the entry/exit in/from Ploieşti City from/towards the localities in the north of Prahova County.

It can be observed that for the Intercommunity Development Association as well partners either seek to implement some infrastructure projects, or to support the economic environment in the area or the development of the cultural heritage. For the Local Action Group, the form of partnership was of public-private type; in the case of the Intercommunity Development Association we have a public-public partnership.

4. THE COOPERATION BETWEEN LOCAL ADMINISTRATION AND NGOS IN THE SOCIAL DOMAIN

Cooperation and partnership are solutions that local public administration relies on when it seeks to solve certain social problems because current social problems surpass the capacity of a single social actor to efficiently solve them (Dima, 2013). Through the process of decentralization a large part of the social tasks of the state has moved to the authorities of local public administration, which has generated an immense pressure on local budgets. Wanting to surpass the financial difficulties caused by the economic crisis and continuing to provide quality social services to the population, local authorities have turned their attention to the nongovernmental sector. Thus appeared the associations between local administration and nongovernmental organizations (associations and foundations), with the purpose of managing social services under better conditions. Associations and foundations have become active partners of the local public authorities in order to provide services of public interest.

According to the article 4 of the Government Ordinance no.26/2000 on associations and foundations, the association represents *"a legal entity of three or more persons, who, on the basis of an agreement, put together and without the right to restitute the material contribution, knowledge and their contribution to the work in order to conduct activities in the general interest of a community or, according to case, their private patrimonial interest"*. Also, according to the article 15 par.1 of the Ordinance nr.26/2000, the foundation represents *"a legal entity of one or more persons, who, on the basis of a legal act inter vivos or upon death, constitutes a patrimony, permanently and irrevocably, to achieve a goal of general interest or, according to case, of communities".*

At European level there are countries which heavily rely on the public sector, most of them opting, though, for the association of the public sector with the private one. The public-private partnership in the social domain has known an evolution through time, the initial characteristic being that of the partnership "on paper" in order to access nonrefundable funding. Currently, as both public authorities and the private sector have gained experience, and as these partnerships have been encouraged by European policies and by national regulations (Dima, 2013), there can be seen a real involvement on behalf of the local and central public authorities in the support of social services through their co-financing on the basis of a partnership agreement or by granting subventions under the Law no.34/1998.

Outsourcing a social service to a private supplier of an NGO type or the management of that service represents one of the solutions chosen by many local administrations to enable them to reduce costs, to bring more creativity in managing social services and to ensure the continuity of that social service. Basically, the administration ensures the sustainability of the respective social service, while the NGO brings innovation, expertise, creativity and flexibility. As nongovernmental structures, they do not distribute the profit to members, but the profit is reinvested in the social work carried out, fact which ensures a continuous increase in the quality of these services, as compared to the economic agents who aim primarily for profit. Also, these associative structures are more flexible than organizations from the public sector, being able to respond better to European requirements regarding the provision of social services focusing on flexibility, adaptability, openness to community and a high degree of professionalism.

The association of local authorities with nongovernmental organizations is regulated primarily by Law no.215/2001 of the local public administration in art.36 paragraph 7, letter a) and art.91, paragraph 6, letter a). Thus, according to art.36 paragraph 7 a), the local council shall decide, under the law, the cooperation and association with Romanian or foreign legal entities to finance joint actions, works, services or projects of local public interest. At the same time, the county council is empowered under Art.91 paragraph 6 a) to decide, under the law, the cooperation or association with Romanian or foreign legal entities, including partners from the civil society, to finance and carry out joint actions, works, services or projects of county public interest.

One of the first public-private partnerships concluded in Romania in the provision of social services domain was the agreement between the local administration in the city of Timişoara and the Foundation "For You". Through this partnership, social services are provided in the field of intellectual disability for 177 beneficiaries and their families, the local administration funding the cost of services, while the private partner is the one making investments, ensuring management, financing personnel training, managing to attract, in this respect, prestigious specialists abroad.

Another example of partnership between the local public administration and the nongovernmental sector is between Iaşi County Council and the Foundation "Close to You" Romania which seeks to implement the project "The Voice of the NGO for the community!" This project, according to Decision of County Council of Iasi on approving this partnership, aims at achieving three objectives, namely:

- to increase the visibility and capacity of at least 70 NGOs from the North-East Region, bringing to the attention of public authorities the problem of under-funding of social services and the weak decentralization of these services;

- to identify specific social needs and transpose them into multi-annual priorities and objectives of support and funding by local and county authorities in the North East Region;
- to strengthen the institutional and operational capacity of at least 70 NGOs in the social services domain in the region, in order to increase their efficiency in managing community resources and to ensure the visibility and sustainability of the programs implemented.

Whatever its purpose, the association between local administration and nongovernmental entities relieves the administration of some tasks, reduces public spending, brings more dynamism and creativity in the provision of public services and, why not, more experience in management and draws new financial resources. The partnership of local administration with nongovernmental organizations is successfully applied in the case of social services as an incentive for social development and, also, as a cooperation tool for local development.

5. CONCLUSIONS

The presentation clearly states that the partnership represents a viable alternative for the implementation of local development projects, one that focuses on cooperation, consensus and participation.

Social development and economic development are key dimensions of local development, and solution of cooperation and of public-public or public-private partnership helps to strengthen these two dimensions of local development.

When lacking financial resources for development, local communities, through their representatives, must seek innovative solutions such as cooperation and partnership. Local action groups, intercommunity development associations and the local administration partnership with the nongovernmental sector for the provision of social services are expressions of concern for finding alternatives for local development. At the same time, by way they are founded and operated, these associative structures lead to the strengthening of the links between various local actors and stimulate local public life.

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BOOK REVIEW

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Cayer, N.J, Baker, D.L., Weschler, L.F. 2010. *Public administration. Social change and adaptive management*. Third Edition, Birkdale Publishers, San Diego, ISBN13:978-0972441957, ISBN10: 0972441956

Subject and explaining the central concept:

The answers to the public administration problems cannot only appear from one direction. Public administration needs a distributed management, because the solutions to the problems they are facing come from many directions. The administration should learn from experience. The adaptive management is learning by doing.

In the specialized literature, specifically in natural resource management, "adaptive management" term was developed in the mid 1970s. The adaptive management has been used for several areas; therefore its definition is closely related to the field in which it was applied. For example, for forest land managers it may indicate "the development of predictive tools that can be used for the management of a specific location". In socio-political context, policymakers tend to perceive the adaptive management as a process that allows a person to see the overall impact of policies and thus, emphasizes the need to develop large models (Halbert, C. 1993, p. 268).
Adaptive management has emerged in response to highly fragmented institutional arrangements, full of gaps, overlaps and inconsistencies, so that the ecosystem health does not appear clearly as an objective within a confused group of discrete regulatory objectives (Kärkkäinen, BC 2003 , p. 946). For this reason, the adaptive management is considered to be deeply different from the regulatory approaches established in resource and environmental areas.

What's new in this text and how it solves the theoretical dilemmas imposed by other authors?

The authors try to make a picture of the whole public administration system: context, actors, activities and niche issues. In the first two chapters, the authors analyze the public

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administration and the services provided to direct beneficiaries, but also the American political context compared with the general "administration". The third chapter deals with the bureaucracy: as an ideal, rational form of organization for accomplishing any goal is contrasted with the reality of bureaucratic behavior. In the fourth chapter, it analyzes the theories of organizations, are used to illustrate problems in organizational behavior. In chapter 5, it looks for ways bureaucracies use planning, budgeting, and evaluation to facilitate administration. In the last two chapters, it tackles the management and public organizations issues in the light of new theories and theoretical trends. All these chapters are presented in an adaptive approach.

The development environment of the public administration activity was compared with the life in the swamp, because of the uncertainties they are facing. In the swamp, the legs are uncertain, the direction is unclear, the land is constantly in motion, and the alligators are hungry (Cayer, NJ, Baker, DL, Weschler, LF 2010, p.1). Alligators, metaphorically called, are represented by the political, economic, institutional, technological and social issues that affect the government activities.

In such a changing and unstable world in environment, to be efficient and to respond to problems, the public administration must rely on the adaptive management, because its actions are not static, but adjusted according to the combination of new social and economic information, in order to improve the management, learning from previous problems.

Both the needs of public services beneficiaries and budget limits imposed by reducing the size of the administration may affect the partial or complet service delivery. To avoid this to happen, public sector administrators must find a way to adapt, to find ways to form and structure a new management model.

In this case, we can talk about the management effectiveness and an adapted management style. Each leader adapts his style according to the structure and situations in which they operate, which is the adaptive management. By using the adaptive management, managers try to anticipate external events, to take advantage of them, to predict and to counteract negative events. While doing this, they try to adapt the internal practices and their organization behavior to overcome the inertia and to enhance the organizational capacity to absorb adverse shocks (Cayer, NJ, Baker, DL, Weschler, LF 2010, p. 190).

To survive the unpredictable environment, public administration and managers must be inventive, innovative, flexible and adaptable. In this situation, planning, resource allocation and human resource management are based more on intuitive and contingent approaches, on the application of adaptive management, rather than on traditional public administration theory.

Public administrators will continue to change as new concerns face citizens and other actors in the political system. Public Administrators conduct their activities through organizations, and the public and elected representatives expect results from those organizations. In order to produce results, public agencies need resources and processes to assist them (Cayer, N.J, Baker, D.L., Weschler, L.F. 2010, p. 136).

Although the 7 chapters address different issues, they meet in a single point: Social Change. And public organizations are complex social systems with well-defined and rooted procedures, processes and patterns of interpersonal relationships. Minor changes that require only small adjustments are easily assimilated. The social foundation of the public administration, such as organizational and structural arrangements, generates both direct and indirect effects, and changes in this framework have high propagation implications.

The adaptive management is an approach that helps the public administration to make progresses in the face of challenges.

As a critique of the adaptive management promoted by our authors, we identified its application risk, given that its does not involve a standardized model, adapting being entirely pragmatic, unconscious and sometimes not well thought out.

The purpose of the book is to indicate the approaches, the steps that must be followed by public administrators under public administration values, maximizing their chances of success and minimizing a risks. Therefore, the book Public Administration. Social change and adaptive management is a practical book, applying in our times.

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LEGISLATIVE STUDY ON THE GOVERNMENT REGULATION ON SOME ECONOMIC RECOVERY MEASURES

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Abstract: *This paper addresses the most significant elements related to the direct enactment by the executive authority – following the most difficult moments of the financial crisis (2009-2010) – of some key measures in determining the economic recovery/growth. Special attention is given to the problem of growth strengthening and sustainable competitiveness of small and medium enterprises, as well as to the issue of stimulating the set up and development of micro enterprises by junior entrepreneurs. Considering things from the legal perspective, we also stop upon the legislative measures taken by the Government to support SME access to financial guarantees and credits. Obviously, in the context following the peak of the financial crisis, we took into consideration the regulation on stimulating the development of new jobs and the regime of state aids, as well.This latter issue includes, we believe, the most important references to State aid schemes on stimulating the investments with a major impact in the economy, the 'de minimis' aid for the investments made by small and medium-sized enterprises, and also to the issues arising from the implementation of a State aid scheme to support the investments which promote the regional development by creating jobs.*
Keywords*: Crisis, financial regulation, government, SME lending, investment, state aid/ minimis*

1. INTRODUCTION

Driven by the persistence of the effects of the financial crisis (Dornean and Işan, 2012; Maha and Mariciuc, 2009; Mursa, 2012; Oprea *et al*., 2013; Stoica and Căpraru, 2012), the Government intervened in a significant number of cases by regulations introducing measures to stimulate the economic growth, supporting small and medium-sized enterprises (SME), creating/ maintaining jobs etc. Passing over the question of how the intervention of the state / government in the economy (Adsera and Boix, 2002; Spengler, 1949; Wolfram, 2008; Chandan, 2009; Popescu, 2000; Bostan, 2014a), we focus on the most important aspects related to the regulation on the set up and development of small and medium-sized enterprises, the reasons for the set up and development of micro-enterprises by junior entrepreneurs, the promotion of the general framework that supports the access of the SME to financial guarantees and loans, the stimulation of the creation of new jobs in the period that followed the peak of the crisis (2009-2010), the state aid and the establishment of a support scheme for the investments that promote the regional development by creating jobs etc. With regard to this category of companies (Popa, 2013), we show that in a globally changing landscape characterized by continuous structural changes and enhanced competitive pressures, the role of the SME became increasingly important as providers of employment opportunities and key-actors in the prosperity of the local and regional communities.Improving access to financing for SMEs, on a competitive financial market, is a priority of the European Union (EU) as well as an essential component of the national strategy to

support the development of the business environment (Bostan, 2014b). Moreover, in Europe, the SME sector is the main motor for the increase of the competitiveness of the European and national economy; the 21 million such enterprises in the EU amounts to 99% of the internal market business, employing 90 million people (70% of the total work force) and form an particular innovative system. The SME generate most of the GDP of each country, usually between 55%-95% and introduce products and services at lower costs than larger firms, as shown in a substantiation note (SN) of a recent draft normative act (SN-GEO/draft, 2013). Not incidentally, the European Council of March 2008 encouraged the initiative "Small Business Act" – SBA for Europe (EC, 2008), which aims to further strengthen the growth and sustainable competitiveness of SME and urged its immediate adoption. Beyond that, for Romania, the persistence of the effects of the economic-financial crisis on the labor market to an appreciable intensity determined the Government to promote additional measures aimed at stimulating job creation and employment of the people looking for a job, namely the unemployed. Moreover, the motivation of the measures in question was based on (SN-GEO no.13, 2010):

• the continued effects of the economic-financial crisis on the labor market which determines the increase of the risk for the high unemployment rate to be maintained and to be transformed into long-term unemployment and inactivity;

• the recommendations of the EU, the International Labor Organization and other international and European forums to develop and implement measures to stimulate employment by helping to create jobs and maintain the concerns to reduce the incidence of unemployment;

• the priorities assumed by the Government Program and the requests of the social partners.

Against this background, according to Government Emergency Ordinance (GEO) no.117 (2006) on the national procedures in the state aid field, certain measures have been introduced by the state aid policy to attract investments and to reduce the economic and social disparities compared to the MS average. Such measures targeted the encouragement of new investments made by the foreign partners of Romania, as well as potential relocations from outside the EU area. In this regard, the Ministry of Public Finance (MPF) carried out, during 2007 and 2014 (EC, 2013), the State Aid Program for financing investment projects from the State budget (from the MPF budget - General measures) through grants. The financing agreements issued for the aid schemes reached a total value of more than 738 million € to support investment projects, which generated about 23.000 new jobs.

2. THE REGULATION OF THE FRAMEWORK OF SUSTAINABLE GROWTH AND COMPETITIVENESS OF SME; STIMULATING THE SET UP AND DEVELOPMENT OF MICRO ENTERPRISES BY YOUNG ENTREPRENEURS

In Romania (SN-GEO/Project, 2013) the SME sector represents 99.7% of the Romanian companies (491.805 entities) and generates 66% of jobs from all the enterprises and 50% of the gross value added. It is also responsible for 1/3 of the total direct exports of the country and for about 2/3 of the turnover of all enterprises. While the EU average is 42 SME per 1 000 inhabitants, our national average is 24 SME per 1 000 inhabitants. The institutional efforts to stimulate the set up and development of such companies have resulted in the adoption of several specific normative acts (Law no.346, 2004; Law no.62, 2014; GR, 2011; Government

Decision/GD no.656, 2002); GD no.1211, 2001; GEO no.23, 2009; GD no.65, 2009). Further, the European Commission (EC) recommends all Member States (MS) to give serious consideration to the transposition into the national legal framework of the SBA. The name "Act" given to this initiative underlines the political will to recognize the fundamental role played by the SME in the EU economy and to establish, for the first time, a comprehensive strategic framework for EU and the MS, using a set of 10 principles to guide the design and implementation of policies both at EU and MS level (SN-GEO/Draft, 2013; EC, 2008). These principles are (SN-GEO/Draft, 2013):

• The creation an environment in which entrepreneurs can thrive;

• To ensure that those who have gone bankrupt (non-fraudulent) actually benefit from a "second chance";

• To design the rules according to the basic idea "Think Small First";

• To make the public administrations responsive to the needs of the SME;

• To adapt the instruments of the public authorities to the needs of the SME: to facilitate the participation to public acquisitions and to ease access to state aid;

• To facilitate the access of the SME to financing;

• To support the SME to benefit more from the opportunities offered by the single market;

• To promote the improvemnt of skills within the SME and all forms of innovation;

• To support the SME to turn environmental challenges into opportunities;

• To stimulate the SME to benefit from the growth of the markets.

The need to support the small and medium enterprise sector and the business environment requires the adaptation to the Romanian realities and the implementation of the SBA principles mentioned above, by providing a comprehensive framework for the measures designed to encourage the development of such enterprises. They should seek to improve the access of the enterprises to financing by introducing new measures to support the business through the access to financing through funding strategies such as *business angels* and *private equity*, venture capital investment funds, *mezzanine* financing, strategic investors, capital market financing, the regulation of the credit mediation institution for SME in order to increase crediting, providing solutions to the SME to obtain financing from the banks, as well as the notification of the government in case of major problems. Also, the future regulation should also refer to the access of the enterprises to innovation (Law no.346, 2004; Law no.62, 2014) including measures to support the innovative enterprises through policies targeting the development of a favorable environment for the productive creativity and the research - development activities and to improve the SME access to scientific and technological information, generating added value.Obviously, the measures aiming to develop the innovative activities by offering tax incentives and to enhance the outcomes of innovation (technological incubators, innovative clusters, technology transfer) should not be overlooked.

2.1. The motivation to set up and develop micro-enterprises by junior entrepreneurs

The global financial and economic crisis is the main cause which led, during the past year, to a significant increase of the mortality rate among small and medium businesses in the world, and certainly, Romania could not represent an exception (SN-GEO no. 6, 2011). The statistics of the last period confirmed that many SME, particularly the start-ups, were affected by

the economic crisis, many companies ending their activity due to the onset of the insolvency procedures at the request of the creditors. In the current context, when a series of market failures occur, particularly in the financial market, the intervention of the state is increasingly expected to intervene in the real economy, in a vigorous and decisive manner in order to give an impulse to the recovery of the economic activity (Bostan, 2014b, 2014c). The State is also called upon to implement measures to improve the situation in the matter that young university graduates encounter great difficulties in finding a job, the lack of financial reserves preventing them from starting abusiness. Against this background, a new GEO has been developed and adopted to stimulate the set up and development of micro enterprises by young entrepreneurs (GEO no.6, 2011), which defines and limits in time the terms 'young entrepreneur', 'business debutant' and, respectively, 'micro enterprise' (GD no.96, 2011). In order to stimulate the interest of the people making their debut in business, to increase the number of entrepreneurs from the young population and the unemployed etc., a number of special facilities are provided for these micro-enterprises, as well as a number of specific obligations for a limited period of time, until the moment when, the micro enterprise reaches a level of maturity and economic-financial consolidation where it can resist without any support from the state. Thereby, the start-up micro enterprises set up by junior entrepreneurs can profit by a number of financial incentives such as (KPMG, 2011) non-refundable grants (up to 50% of the value of the project, but not more than 10.000 €) and the acquisition of guarantees for the loans contracted in order to develop the business plans, to a maximum of 80% of the value of the requested loan (but not more than 80.000 €). The entrepreneurs in the scope of the Ordinance benefit from the exemption from the payment of the contributions to the Register of Commerce and receive counseling/training from the institutions involved in the program. The Ordinance also provides financial incentives, the enterprises that qualify for this program as part of a transparent *'de minimis'* aid scheme in compliance with the Community and national regulation can, therefore, benefit from the exemption from the payment of the social security contributions (SSC) owed by the employers for up to four permanent employees, and within the limit of the gross average salary of the previous year, for each employee. The important fact is that this period is considered to be 'accumulation stage' to the public pension system (for the determination and calculation of the rights the assessment base is the monthly average gross salary for which the insured paid the SSC). The facilities are provided only as long as the company retains its micro-enterprise capacity belonging to the junior entrepreneur, a capacity it receives at the moment of the registration in the Register of Commerce. This capacity is lost by law, under certain conditions, including the following:

•On December 31st of the year in which three years from the date of registration have passed;

• When 45 working days from the due date of an overdue tax liability have passed;

• At the time of submission of the annual or biannual financial situation, if the turnover for the current year reached the RON equivalent of 500 000 €.

This law provides for such micro-enterprises an object of activity containing not more than five of the fields covered by NACE, starting from the assumption that entrepreneurs who choose this type of company (max. 5 associates) have a clear business idea in a particular field (each of the five associates having the ability to focus and coordinate the business affairs of the enterprise in a single field of activity) so that the micro-enterprise will stand bigger chances to be

profitable, to grow rapidly and to know economic and financial strength during the three years it can benefit from the mentioned facilities.

2.2. The set up of the Romanian Counter-Guarantee Fund to support the SME

According to AECM data (Association Européenne du Cautionnement Mutuel), an organization that brings together 38 members from 20 countries of the EU, Montenegro, Russia and Turkey, in all MS the counter-guarantee instrument is present alongside the guarantee instrument, consolidating the latter one and maximizing its effects. The Romanian Counter Guarantee Fund (RCF) was set up by GEO no.23 (2009). According to the establishment act, the RCF is a specialized financial institution (acting in the financial-banking field), constituted as a joint stock company administered in two-tier system. The company has a subscribed share capital of 400 million Lei, having as shareholders the Romanian State - 68% and the Romanian Post-Privatization Fund - 32%.

From a financial point of view the counter-guarantees it grants are transfer/risk-sharing tools and from the legal point of view, they are signed commitments; their main effects are the following (SN-GEO/Draft, 2014):

• The reduction the counter-guarantee fee for SME according to the share of the credit risk taken over by counter-guarantee;

• The increase of the number of SME with access to finance and the volume of finances granted to them;

• The positive aggregate effects on other economic operators with whom the counter-guaranteed SME develop business relations, as well as on employment and revenue (increased revenue from taxes, decrease of the payments made by the state to the unemployed etc.);

• The increase of the capacity to guarantee of the guarantee funds without their additional capitalization;

• The reducement of the public resources allocated to guarantee schemes.

All credit guarantee funds operating in Romania have signed counter-guarantee agreements with the RCF. The provision is granted based on these agreements and on four *minimis* aid schemes developed and implemented in accordance with the Community regulations. The counter-guarantees are granted to both SME with an operating history as well as to the newly established ones (start - ups). The RCF acts by multiplier logic, issuing counter-guarantees with a value reaching to a multiple of its equity capital, the value of the multiplier coefficient being approved to by the Minister of Economy. The mission of general economic interest entrusted by the Parliament to the RCF is to act as an instrument to mitigate the difficulties in accessing the financing faced by SME in general, and particularly, under the conditions of the financial crisis. Since the beginning of the crisis (SN-GEO/Draft, 2014) SME lending decreased both as a result of the reduced economic activity affecting the ability of these companies to repay the loans and also because of the tighter lending standards and conditions offered by the banks. The prospects show that the crediting offer addressing the SME will further decrease, and funding will be granted on more restrictive terms. Amid the continuing deterioration of the capacity of these companies to honor their debts, which will put significant pressure on the profitability and solvency of banks, the banks will increase provisioning requirements for credit risk and tightening credit conditions. The implementation of Basel III Rules, according to which the SME are associated with a maximum risk level, will create a

further limitation of their ability to access loans. The situation is difficult since it creates a vicious circle dangerous for the economy, because it depends on SME to create jobs and revenue to the state budget, and on the other hand, the state of the banks may get worse because of the difficulties of the SME business.Accordingly, one of the solutions offered by the authorities is to promote an anti-cyclical attitude in the issue of SME lending by strengthening and using with maximum efficiency the counter-guarantee instruments currently operating. Given the mentioned limitations and hazards, it became necessary the amending and supplementing of the GEO no.23 (2009) (modifying documents: GEO no.91, 2009; Law no.312, 2009; GEO no.96, 2012; Law no.71, 2013) in order to maintain and develop the capacity of the RCF and the entire system of guarantees and counter-guarantees owned by the state to help improve the access to finance for the SME. The adoption of the amendments in question is intended to ensure the continued stability of the SME sector during this difficult period of crisis and - in close connection with the main effect - to contribute to:

- the absorption of the European funds;
- maintaining employment and number of active taxpayers;
- preventing the encounter of difficulties of the viable businesses;
- avoiding the deepening of the financial block;
- thecompletion of the started investments.

The categories of beneficiaries of the counter-guarantees were completed in accordance with the applicable Community SME definition and were correlated with the categories of enterprises beneficiaries of the European support, particularly through the European Investment Fund. The regulations stipulated that counter-guarantees can also be granted by banks by the letters of bank guarantee. It also referred to the counter-guarantees issued by the public funds allocated in the administration, to the guarantees issued by state-owned guarantee funds and it introduced a requirement for the correlation of the risk and operating policies of these funds with those of the RCF. The maximum counter-guarantee percent was set at 90% for the innovative projects and those fueled by structural funds. It was clarified the purpose of the creation of the RCF, it was established the counter-guarantee as its main activity as well as the RCF prerogative to contribute to the development of the regional guarantee-funds system. The main directions of the RCF were stipulated, as well as the conditions for granting counter-guarantees by joint order of the Minister of Economy and Minister of Finance. Regarding the approval of the revenue and expenditure budget of the company, it was set to be under the competence of the general meeting of shareholders. It governed the distribution of the RCF profit according to the regulation on the joint stock companies and the reinvestment in the company of the dividend of the Romanian state, after the deduction of the tax on dividends, as well as the prohibition of the purchase by the RCF of its own shares. The provisions on state coverage of the expenses resulted from the counter-guarantee activity (conducted based on aid schemes) which are not covered by the company's revenues and the social reserves have been clarified to ensure the consistency with the legislation on state aid and the view expressed by the Competition Council. There have been stipulated provisions referring to the management of the significant risks, the cost policy referring to counter-guarantees and the prompt recovery of the value of the counter-guarantees granted to the SME which did not qualify to receive or use such grants.

2.3. Stimulating general framework to support the access of SME to guarantee and loans

Stimulating the general framework to support the access of the SME to guarantee and loans, especially in the difficult conditions induced by the current economic and financial crisis, represents a necessity to ensure the number of active enterprises operating in the market and to increase the number of jobs (SN-GEO no.92, 2013). The programs which stimulate the SME by facilitating their access to guarantee and credit, represent issues of public interest and contribute to solve several acute social problems, in addition to their powerful impact on the real economy, led to the appropriate promotion of the "*Credit Guarantee Program* for Small and Medium Sized Enterprises" by the adoption of a GEO. Through this normative act (GEO no.92, 2013), a guarantee mechanism under which the MPF is authorized to commission the National Credit Guarantee Fund for SME (FNGCIMM) to issue guarantees in the name and on behalf of the State, in the favor of the credit institutions which grant loans to the SME (defined according to Law no.346, 2004). The guarantee mechanism included in the program must comply with the European framework in the matter (EC, 2008). Specifically, the "Credit Guarantee Program for SME" is a multi-annual program meant to encourage and stimulate the development of small and medium-sized enterprises, available for a period of 36 months from the moment when the implementation rules of the mentioned GEO took their effect, which provides a line of credit, with a maximum of value of 5.000.000 Lei/SME over a maximum period of 24 months and the guarantee of the loan by the State in proportion of maximum 50% of the funding, except interest, fees and bank charges. The program aims to support the access of SME to obtaining loans to finance their working capital, with the possibility of extension for a maximum period of 12 months in order to reimburse the credit line. The funds drawn from the credit line may be used only to finance the working capital, prohibiting the refinancing of other ongoing loans contracted by the beneficiary. Given the experience of the credit institutions in providing similar credit facilities, it was included among the eligibility criteria, the obligation of the SME to submit to the financing credit institution collateral guarantees for at least 50% of the amount of the loan. Since the warranty covers a maximum of 50%, it was stipulated the obligation of the beneficiary of the program to constitute, according to the Civil Code (Law no.287, 2009), in favor of the Romanian state, represented by the MPF, a movable mortgage on credit balances of all accounts opened at the financing credit institution, valid until the extinction of the debts owed by the beneficiary under the contract of guarantee, within the limits of the contracted credit line. In order to optimize the recovery procedure of the debts resulted from the execution of the guarantees, it is required for the directors, shareholders or associates of the beneficiaries of the program, holding at least 50% of the equity of the beneficiary - as well as for the entrepreneur - physical person who organizes an economic activity, as guarantor, to guarantee by at least one personal commitment, for the claims resulting from the payment of the guarantees granted by FNGCIMM on behalf and for the State by renunciation to the benefit of discussion and division. The security contracts are enforceable titles and have the value of authentic documents. To cover risks arising from the grant of the guarantees within the program, and to annually fund the capital, the Risk Fund for SME is set up, with the following sources:

a) the risk premium charged to the beneficiaries of the Guarantee Program for small and medium-sized enterprises and to the beneficiaries of the *Mihail Kogălniceanu* Program for SME (GEO no.60, 2011);

b) the sums recovered by the National Agency for Fiscal Administration (NAFA) on account of the execution value of the guarantees paid by the MPF;

c) the fiscal accesory obligations at the level of those estimated for the delayed payment of the fiscal obligations, applied to the claims resulting from the payment of the guarantees within the programs and recovered by the NAFA;

d) the interest discount on the availabilities of the risk fund in the programs;

e) where the available risk fund does not cover the value of the collateral execution, it is supplied from the state budget through annual budgetary allocations for the period 2013 - 2018 from the budget of the MPF - General Actions.

The manner of management of the risk fund, as well as the registration in the State Treasury accounting is established by the order of the Minister of Public Finance and the Minister Delegate for the Budget (Order of the MPF no.2595, 2011). The sums resulting from the execution of the state guarantees granted by the FNGCIMM, through the Program, on behalf and on account of the State shall be paid to the financer by the MPF from the risk fund, based on documents submitted by the FNGCIMM and is recovered from the beneficiary of the program.

3. THE IMPLEMENTATION OF MEASURES TO STIMULATE THE CREATION OF NEW JOBS

The regulation on the stimulation of job creation and employment of the people searching for job/unemployed has resulted in an Emergency Ordinance (GEO no.13, 2010).

It provides that the employers, who hire from the unemployed in 2010, benefit over a period of 6 months, by the exemption from the payment of the social security contributions related to the hired unemployed, owed by the employers according to the law. The conditions that must be met by the employers in order to qualify were to hire, regardless of the type of contract, unemployed people on newly created jobs and to keep them active for at least 12 months from the date of the employment. To ensure an effective implementation of the measure, the employers benefited from this feature only if they employed people from the unemployed registered at the agencies for employment for at least three months before the hiring decision and who had no employment relationship with those employers during the 12 months preceding their employment. In order to ensure an adequate level of protection for the workers employed under the mentioned GEO, the period during which employers were exempted from paying the social security contributions (SSC – social security contribution, unemployment insurance contribution, thecontributionforinsuranceagainstaccidentsatwork, the contribution to the guarantee fund for payment of salary claims, the contribution for health social insurance, including the contribution for holidays and health insurance benefits) is considered to be accumulation period without the payments of the contributions by the employer. Looking back, these facilities granted to the employers contributed to a higher demand for work force and the orientation of the additional request to the registered unemployed. The easier access of the unemployed to jobs contributed to the decrease of the pressure on the social security budget and to the improvement of the capacity of the unemployed to occupy and to maintain a job, thus also fulfilling the objective of promoting occupational mobility in the labor market.

4. THE LEGAL REGIME APPLICABLE TO STATE AID

According to article 3 paragraphs (3) of the GEO no.117 (2006) on the national procedures regarding the State aid, "Granting aid measures requires the public authorities to develop state aid schemes or individual state aid, which should provide at least the following elements: objective, method of granting the state aid and the amount of funds allocated for this purpose ...". The MPF, as the main provider of state aid in Romania, targets the efficient and transparent allocation of the budgetary resources through the state aid policy for investments and the decrease of the economic and social disparities compared to the average of the MS. Under the transitional provisions of the Community guidelines on regional state aid for the period 2014 - 2020 (EC, 2013) the validity period of the regional state aid schemes run by the MPF has been extended until 30/06/2014. The purpose of those schemes:

• the development and modernization of SME;
• the support of the large-scale investment projects with important effects on the economy, oriented towards peak sectors that cause a significant technology transfer;
• the regional development through investments using new technologies and creating jobs;
• to promote the expansion and diversification of economic activities of enterprises located in the less favored regions;
• to achieve a multiplier effect in the economy, by also attracting other related investments and developing the local suppliers of products and services.

The state aid granted to these companies is reimbursed through direct contributions to the general consolidated budget and to the local budgets during the implementation of the investment and during the 5 years following the completion of the investment.

4.1. State aid schemes on stimulating the investments with a major impact in the economy

In the year 2014, in order to ensure the continuity of the support mechanisms of the investments in Romania and according to the Community Guidelines on regional state aid for the period 2014 - 2020 (EC, 2013) and to the (EU) Regulation no.651 (2014) of the Commission declaring certain categories of aid compatible with the internal market (EC, 2014), the problem of the establishment of new state aid schemes came into attention. As argument, especially as it concerned the objective to stimulate the investments with a major impact on the economy (SN-GD no.807, 2014) it was pointed out the positive impact generated by the implementation of the state aid schemes run by the MPF during 2007 - (30/06/) 2014, namely:

• the attraction and developmentof the foreign investments inRomania;
• the significant increase of the contributions of the financedenterprisesto the regional developmentby payingtaxesto the state budget;
• the developmentof the local suppliers of assets, materials and raw materialsand the strengthening of the traditionalindustriesinRomania;
• the significant contributions to theRomanian balance of trade (a largepart of the outputderived from theseinvestmentsbeing exported);
• the support of the large-scaleinvestment projectswith importanteffectsonthe economy,oriented towards peak sectorsthat canrepresent a sourcefor asignificanttechnology transfer;
• the promotion of the expansion anddiversification of economic activitiesof enterprises locatedin theless favoredregions;

• the express request of the business environment referring to theextension of theapplication ofStateaid schemes which finances assetsin parallelwith the Stateaid schemewhich financesthe creation of newjobs,according tothe Guidelines on the regional State aidfor 2014-2020(EC, 2013).

By the initiation of the normative act referring to the new scheme (GD no.807, 2014) is intended the encouragement of the active participation of the enterprises to the decrease of the economic disparities among the regions and the recovery of the Romanian economy, by stimulating the investment in high technology fixed assets in order to obtain products with a high added value, targeting both the domestic market as well as the export. In general, the support of the investments targets the development of the production capacity of the national economy, the decrease of the unemployment, as well as the increase of the contributions of the enterprises, financed from the tax payments to the general consolidated state budget and local budgets. These advantages justify the expenditures from the state budget addressed to the financial support measure. Specifically, the new State aid scheme envisages the financing in the form of non-refundable funds, within the limits of the maximum allowed intensity of the costs associated with the tangible and intangible assets corresponding to the initial investment, in compliance with the Commission Regulation (EU) declaring certain categories of aid (EC, 2014). The GD no.807, 2014 has stated that financing agreements can be issued based on the scheme until December 31st, 2020, in compliance with the State aid legislation; the State aid payments are made during the period 2015-2023, within the annual budget allocated to the scheme. The necessary condition: The State aid is granted if it has an incentive effect and contributes to the regional development and the funds are transferred after all or part of the eligible costs approved by the funding agreements have been performed. What is remarkable is that the Decision requires the development and implementation of more precise procedural rules (compared with similar legislation), aiming to describe the stages, the deadlines and the documents necessary to obtain the financing and payment of the State aid, aiming to streamline the process of analysis, granting and payment.

4.2. De minimis aid for the investments made by SME

In order to support the modernization/development of SME, at the beginning of the economic crisis (2008-2010), a major State aid scheme based on *de minimis* aid (GD no.1164, 2007) was introduced. For the 821 investment projects carried out (the scheme was declared closed at 07/06/2010) the *de minimis* aid payments reached an amount of 371.29 mil. Lei, compared to 397.17 mil. Lei (the degree of implementation - 93.5 %) in approved *de minimis* aid (SN-GD no.274, 2013). The *minimis* aid was granted in the form of non-reimbursable grants in amounts of 100% of the total eligible costs approved for funding, with the maximum ceiling of 200 000 €/beneficiary, respectively, 100 000 €/beneficiary for the enterprises operating in the field of road transport. As the MPF further aims at the efficient and transparent allocation of the budgetary resources through the State aid policy for investments and for the reduction of the economic and social disparities compared to the average of the MS, the government proves continuity on the *de minimis* aid scheme for the investments made by small and medium-sized enterprises, reconsidering the granting regime of the *de minimis* aid for the investments made by the small and medium-sized enterprises (GD no.274, 2013; GD no.453, 2013; GD no.623, 2013). It also instituted procedural rules describing the stages, deadlines and documents necessary in order to obtain the Financing and Payment Agreement for *de minimis* aid, targeting to streamline

the process of analysis, granting and payment of the *de minimis* aid. Regarding the *de minimis* aid scheme established by GD no.274 (2013), it aims to better support the SME to invest and encourage their active participation in the Romanian economic recovery by creating new jobs, also counting on a multiplier effect in terms of developing the suppliers of materials, raw materials, appliances and equipment and service providers etc. The scheme issued funding agreements during 2013-2014, with the possibility of extension. The payment of the *de minimis* aid shall be made during 2014-2016, within the limits of the annual budget allocated to the scheme, in the form of grants from the State budget through the MPF budget - General Actions and according to the European Commission Regulation no.1998/2006 on the application of Articles 87 and 88 of the Treaty (EC, 2006). The *de minimis* aid is granted to the SME in the form of non-refundable grants in amounts of 100% of the total eligible costs approved for funding, with the maximum limit of 200.000 €, equivalent in Lei and 100.000 € for the enterprises operating in the field of road transport. By the new *de minimis* aid scheme is introduced the condition to create until the completion of the investment and to maintain for a period of minimum three years from the completion of the investment (GD no.274, 2013):

• five jobs, of which at least two jobs for people who had no labor contract in the last three months, for the case of a *de minimis* aid up to 100.000 €;

• seven jobs, of which at least three jobs for people who had no labor contract in the last three months, for the case of a *de minimis* aid between 100.000 € to 200.000 €.

It was also stated that the *de minimis* aid is paid after the eligible costs approved by the funding agreements were carried out and after the on-site verification by the representatives of the MPF of the eligible expenditure made by the enterprises.

4.3. The adoption of a State aid scheme to support the investments that promote the regional development by creating jobs

As it results from what was described in the previous sections, the State aid is a tool to be used to support the business environment in order to reduce the unemployment to a level comparable to the level existent at the beginning of the economic crisis. By extending its use, the active participation of the enterprises is encouraged, in order to reduce the economic disparities between the regions and to recover the Romanian economy by investing and creating jobs (SN-GD no.332, 2014). The economic (positive) implications are related to the fact that the increase of the employment resulted in a decreased risk of poverty and social exclusion, the consumption growth and a benefit for the State budget by reducing the costs related to unemployment benefits, the increase of the social security contributions resulting from the newly-created jobs and increased revenue. These advantages have been considered by the Government for the recently developed State aid scheme referring to the support of the investments that promote the regional development by creating jobs (GD no.332, 2014). It envisages the funding in the form of non-refundable sums, within the limit of the maximum intensity, of the salary costs, to the maximum level of the gross medium salary recorded over a period of two consecutive years following the creation of at least 20 jobs determined by the implementation of an initial investment. The period of the scheme for issuing funding agreements is 07/01/2014 - 31/12/2020 (the total budget is equivalent to about 600 million €, with a possibility to supplement the funds; the maximum annual budget is 100 million €). The payments of the *de minimis* aid will be made in the period 2015-2025, within the allocated budget, in compliance with the European regulations (EC,

2008). We also observe that the rule stating that the State aid is granted if it has an incentive effect and contributes to the regional development and is paid after the partial or total accomplishment of the eligible costs approved by the funding agreements, remains valid. As with the otherlawsto which wehave referredabove,thisGD also intended toestablish aprocedural ruleaiming to describethe stages, deadlines and documentsnecessarytoobtain thefinancing agreementand paymentof the State aid,with the objective to streamline the process of analysis, granting andpayment.

The correction of the analyzed norm for reasons of harmonization with the new Community provisions on regional state aid

Following the termination on 30/06/2014 of the applicability of the (EC) Regulation no.800 (2008) declaring certain categories of aid (EC, 2008) and enactment on 01/07/2014 of the (EU) Regulation no.651 (EC, 2014), it is considered as necessary the correction of the analyzed norm, respectively, the text of the Government Decision no. 332 (2014) on the establishment of a State aid scheme for the support of the investments which promote the regional development by creating jobs (GD no.332, 2014). It was propoposed the amendament of the scheme in question in accordance with the recommendations of the Competition Council (Opinion no.7874, 2014), referring to (GD/Project, 2014):

• the update of the legal basis by replacing the (EC) Regulation no.800 (2008) with the (EU) Regulation no.651 (2014);

• the introduction of new exempted fields of activities (transport and related infrastructure, energy production and distribution sector and its infrastructure);

• the mention of the legal provision specifying the formula for calculating the state aid for large investment projects;

• the introduction of new definitions (firm in difficulty, marketing of agricultural products, primary agricultural production, agricultural products).

At the same time, it is noted that the Government has approved the opportunity to reduce the minimum number of jobs from 20 to 10, in order to facilitate the access to financing for all the entrepreneurs regardless of their size. Obviously, beyond the fact that these changes answered to the requirements of harmonization with the new Community provisions on regional state aid, they also met the requirements of the business environment, specially formulated by the representatives of the small and medium-sized enterprises, expecting, in perspective, significant economic effects.

5. CONCLUSION

As shown above, the new government measures aiming to revive the economy according to the European regulatory framework were spread over a relatively wide range. Obviously, in this paper, these measures have not been treated exhaustively; we only conducted micro-analysis/presentations from the economic-legal perspective. The important fact is that whether it is about government action on the issue of strengthening the sustainable growth and competitiveness of SME, stimulating the set up and development of micro-enterprises by junior entrepreneurs, supporting the access of the SME to guarantees/ loans or establishment of the state aid, we notice that these measures, once implemented, led to a certain economic macro-

stabilization. For instance, the budget deficit calculated according to the European methodology was reduced by 3.2% in the period 2011 - 2013, and from 5.5% in 2011 to 3% of GDP in 2012 and to 2.3% of GDP in 2013. The budget deficit for the year 2012 was 3% of GDP, thus below the average of the budget deficit for the Euro area of 3.7% of GDP and for the EU-28 of 3.9% of GDP. However, in spite of all the measures taken by the executive to the present date, the access of the SME to financing is still reduced and the capital market is underdeveloped. That is why we argue that an optimization of the regulatory environment can not be conceivable if the Government does not set among its objectives to improve the legislative framework in order to increase competitiveness, to increase the predictability of the government decisions referring to the business environment, to increase the access of the SME to financing and to diminish the bureaucracy and the level of taxation of the companies. Finally, to all this should be added, equally important legislative measures aimed at: increasing the capacity of the public administration to absorb EU funds, re-industrialization of the national economy, increasing exports etc.

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PREVENTING CORRUPTION IN PUBLIC ADMINISTRATION: OLD MEANS, NEW APPROACHES

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Abstract: *The aim of the paper is to identify corruption prevention tools and new ways of approaching them. The research question is how society coped with corruption in an era heavily marked by the media and the internet. The hypothesis that led us to the study was that new strategies of communication are necessary and based on them the civil society capacity to monitor and evaluate can be improved.The new approaches highlighted new entities, such as education, NGOs, media and internet, or new concepts, such as prevention, local strategies, audit, image and identity. Among these new entities involved in prevention, education should act as a real inner actor to change.*
Keywords*: local government, communication, audit, education, co-participation.*

1. INTRODUCTION

For over two decades, European governors have been promoting their willingness to undertake a profound transformation of national administrations, but without specifically involving the civil society. Although the issue of public administration reform in some countries has become a constant in the political discourse and every year state services are influenced by adaptive measures, the citizens are rarely involved. Currently, the ongoing reorganization is of particular interest mainly because of the European integration and the decentralization process which seems to threaten the prerogatives of state administration.

World widely, public administration is provided by a set of institutions that are typically arranged according to the state and nation requirements. The administrative apparatus is, in all countries, a complex that is intended to meet public needs. It was built gradually, especially to ensure the permanence and the independence of the politically organized society and to meet certain needs springing from the "social contract". The entire apparatus became a prodigious and complicated system linked through different types of relationships and connections between the state existing levels, from top to bottom and bottom to top, true communication and transmission channels.

If the weakening process of the national political power can be directly attributed to EU, a process that cannot be controlled nationally, the changes that are made at the local level, with repercussions on the state administration, are more likely to be controlled especially because they challenge the state administration competence, ability and the capacity to effectively intervene.

2. THE LOCAL INTERVENTIONS THROUGH EDUCATION

On the basis of the administrative organization, local communities are organised everywhere and the only difference is that they are designed differently. In addition to these communities with territorial basis, almost everywhere other public organisations, specialised authorities, national companies with limited jurisdiction are set up well.

Among these legal entities, some are purely of administrative nature; others are only related to public administration and compete to achieve the administration's goals, but having a private enterprise character. Some of them are associated with the local communities for ensuring a service or for producing public goods.

The anticorruption strategies should take into account all these forms of organisation and should develop proper actions and methods in order to fight corruption. (Gilia, 2007) One of the most important internal factors that could help the state in preventing corruption is considered education, a public service, provided locally, which can be easily adapted to the local community's anticorruption requirements.

Specific policies and strategies are necessary in order to strengthen the capacity of local communities to react to corruption and they should aim:

- to create a participatory framework by involving all local actors (private sector, professional associations, educational or research institutions, trade unions, NGOs and other groups of civil society and the media) in the decision-making process in order to reach the development of the communities to which they belong.
- to develop local networks and partnerships, which will allow an optimum use of the local potential. This result will become possible by using the participatory mechanism, as well as efficient communication and the information system.
- to develop three main types of instruments to guide and promote a realistic and responsible vision over the local development prospects: (i) a local strategy to fight corruption which should establish medium and long term objectives; (ii) an action plan with priorities and steps to follow on short and medium term for reaching the strategy goals, containing an assessment of the costs, financing sources and how to use them, and (iii) a portfolio of projects considered by the entire community as priorities for preventing and combating corruption.
- to build the institutional and administrative capacity of local authorities and civil society to prevent corruption.

3. EDUCATION AS AN INNER ACTOR IN PREVENTION

Romanian national anticorruption legislation developed over the last decade contains a comprehensive set of preventive measures to ensure a high level of integrity in public administration. Within these measures we should not forget the place and role of education in preventing corruption. Personal liability must be accompanied by effective measures enabled by regulatory framework and by national and local monitoring and evaluation (M&E) instruments. These are responsibilities that also belong to the Romanian teaching staff and remind them to get involved in the anticorruption agenda.

This phenomenon can be reduced only by a comprehensive approach: prevent, educate and combat. In this sense, "the school" should be actively involved in promoting and supporting mechanisms to fight corruption. Given the objectives of anticorruption strategies "the school", can be involved in activities such as:

- troubleshooting specific vulnerabilities of public institutions by implementing systematic preventive measures (e.g. promoting active role of members of society and platforms such as e-governance, e-administration, e-education etc.);
- strengthening the integrity and transparency by promoting anticorruption measures and professional ethical standards;
- strengthening the integrity, efficiency and transparency of local government;
- developing anticorruption component in educational curricula;
- raising awareness of the public about the destructive effect of the corruption phenomenon.

According to the national strategy, "employees' awareness of ethical rules which are governing the exercise of the civil service or public position, the legal duties, the mission and the mandate of the various public institutions; the working procedures and the sanctions are essential preconditions for institutional integrity. Also, integrity and ethics promotion in public life cannot be achieved without the contribution and active role of public service recipients. Rejection of corruption by citizens or reporting the irregularities and the abuses are considered manifestations of citizenship and respect for the rule of law. These values should be promoted and explained thoroughly starting even from school and coupled with easy access to public information. Thus, a fundamental component of the Romanian anticorruption strategy is to enhance public information on the legal obligations of institutions and civil servants, and on the ways to prevent corruption through legal and civic means" (Romanian Anticorruption National Strategy, 2012-2015).

As we mentioned before the education system should be seen as an important provider of ethical values and measures to prevent corruption. Consequently, it should be more involved in the local community and should have more responsibilities in local and national anticorruption strategies; in short it should act as a real inner actor to change.

4. COMMUNICATION AS A PREVENTION TOOL

A human being has its own image about the surrounding phenomena and processes not out of curiosity, but out of necessity, approximates these phenomena and processes necessary for life. This imperative of approaching surrounding reality becomes a social need since social groups were constituted. It is known that one of the main characteristics of human beings, taken individually or as a social group, is the possibility, based on previous experience, to form an image on future actions and how to fulfil them. (Bogatu). The more we know about objects and processes the more we can shape better images of the actions and the paths to achieve them. But the human action is not possible without a social experience gained in the proximity of the surrounding reality. Hence, the individual aspiration to know is an objective requirement, a necessity and not a chance and education should use it as a prevention measure.

The process of communication must be differentiated according to the receiver, which in our case can be an NGO which acts in preventing corruption, media or citizen (parent, student,

teacher etc.). If the first two are actors pursuing an objective, societal interest, , the latter one is more interested in satisfying a personal, subjective one. The message conveyed to achieve the prevention objective must be structured taking into account the particularities of the receiver. Civil society should not be seen only as a whole; it should be seen and perceived as a sum of organizations and individuals whose aim is to satisfy their own interests.

In the communication process, listening is as important as speaking and reading is as important as writing. Successful communication depends on the appropriateness of the content and form of expression of the message with the ability of perception and understanding of the receiver with his state of mind. Messages must be presented differently depending on the social receiver. Moreover, the message for NGOs is different from the one for media. But in order to do this the communication process should be improved and properly conceived.

The context and the environment are adjacent components that can affect the communication quality. They refer to space, time, mental state, interference noise, temperature, visual images which can cause disruption and confusion.

The communication channels, the routes on which the messages circulate, based on the degree of formalization can be: formal or official one that overlaps on the organizational relations or informal ones. An efficient communication process calls for consideration of both types of channels and also the knowledge about their functioning, their advantages and disadvantages in order to use and control them. The spread of corruption news causes a reaction in less than a day, but for sending some special news about prevention measures, the response is received after a week.

The communication means (letters, phone, fax, video and audio, teleconferencing device, computer network, TV, newspaper etc.) offers the technical support to the entire process, depending of them the message can reach the receiver and influence its actions or not. In general, human to human communication is more effective than the phone one and the phone is better than the one from a report. Even so, it is better not to use a single means of communication, e.g. confirmation of a phone discussion with a report is welcome.

In the anticorruption communication process, a very important role is also played by the language. The specific terminology, most of the time the legal one, constitutes a barrier for the receiver in perceiving the anticorruption message and that is why more attention should be paid to the construction of the message.

5. IDENTITY AND IMAGE AS DETERRING FACTORS

Psychologists, sociologists and philosophers show that we live in a world invaded by images, both in the real and imaginary level. Specialists, researchers and theorists argue that marketing communication and constant concern for creating and developing visibility, awareness and reputation have made the issue of identity and image become an important topic in reform and social processes, such as the political, administrative and even the educational one (Chiciudean and David, 2011:13).

The organization's identity plays a central role in shaping its image and many models were building based on the analysis of the interaction of these two elements. In its model Sue Westcott Alessandri suggests that in the creation process of image and reputation, a bottom-up inductive process should take place, a process that combines the organizational elements and the

collective mental one. Michael Baker and John Balmer's model comprise correction elements which determine coherence and consistency between the identity and perception elements. The model that helped us in understanding and addressing the public sector system was developed by Balmer and Gray (1999:171-176 and 2003:972-997), and reveals multiple interactions between the identity of the organization, the internal and external factors that influence the organisation and the perception of organizational realities by the target audience. All of them determine the organization image and reputation, and the types of communication chosen (Chiciudean and David, 2011:21-28).

The image of the public sector is what "most of the public perceives as being the actual situation of the public system." This representation evolves as a complex process involving information, interests, beliefs, prejudices, stereotypes, taboos. The picture is not homogeneous neither at citizens' level and nor at the group, civil society level. The image cannot be defined globally; it should be studied and defined taking into account the characteristics and activities performed. The image is given by three elements (Decaudin et al., cited in Chiciudean and David, 2011:29): the desired image (projected image), the transmitted image (converted image into messages) and perceived image (the image crystallized in the public mind after sending the message). (Chiciudean and David, 2011:29)

Given the projected image in the society, the public sector should develop mechanisms for communication with civil society, tools that will improve national and European reputation. In order to produce the expected effects communication should not be made unidirectional; it must seek involvement and empowerment of the interested factors.

As we stated before, in preventing corruption education plays a major role, a public sector reform cannot be made without considering the field in which the largest human resources are involved - the education sector. Any attempt to use the education system as a contributor to prevention measures is influenced by the quality of education. Moreover, education cannot be successful if corruption is not addressed as a factor, both internally and externally. For "school" efficiency, quality and performance, the corruption phenomenon should be also prevented from inside the system. The lack of integrity and ethics in the education system produces several effects in society as in any other system thereof. The education system effects are not currently perceived, as destructive as the one of public administration. And yet today's education influences tomorrow's societal system.

6. NEW USES OF COMMUNICATION TECHNIQUES

Before running information to the general public, the people responsible for preventing corruption should be good connoisseurs of the subject, well informed and prepared to engage beyond their organizational lines. The anticorruption communication team is the key to the success of the preventive measures. In addition, it is equally important that staff in anticorruption communication should be familiar with the format and rules of media events and media documents. Education is available in all forms, and therefore, is an area that public sector should focus on and be willing to invest for a better training of society in preventing the corruption acts. As we mentioned earlier, the tools available to professionals today are abundant. This section provides an overview of the most effective communication tools in preventing corruption acts and examples of use:

- the press conference: when making breakthrough of news which should be continuously delivered, when making claims involving individuals easy to be recognised, notable ones and when creating the need to address or respond to media questions.
- the exclusive interview one-to-one: when intending to obtain an in-depth coverage in a publication, which goes directly to the target audience, when one wants to keep the ball rolling for several days or weeks.
- the non-exclusive interviews one-on-one: when we want to have a certain person or organization you represent, or if the person is really well-trained and could help in a better description of a situation.
- the media alert: when we simply need to inform the media about an event, in the warning message should appear who, what, when and where it occurred.
- the press releases: when seeking proactive dissemination of general information about anticorruption measures; also used as a reaction or response to other breaking news.
- the media briefings: when planning to bring in media an underway initiative, can be done by organizing a breakfast with the media, in some cases, even a teleconference.
- the anchor letters: used when there is a story idea for the media, which have lasting effects and transmit sensitive information.
- the editorial review: when one needs to send a laborious picture on a very important aspect; it is recommended to be published in simple words, written as opinions, but since they are very doable and difficult to be published, they should not be used too often unless they are a pertinent analysis.

The internet also provides an outlet for disseminating information via multiple non-conventional methods. Developing an interactive website is no longer an option but a requirement to pay for all public information to its convenient time and place. Nowadays, both young and middle-aged people, using Wi-Fi cafes and book stores with free internet, make the website an indispensable part of any communication effort. It serves as a two-way communication tool that not only conveys information but also gets feedback from its users. In addition, numerous blogs and chat rooms are increasingly used as communication tools.

7. THE AUDIT - AN NGOs INTERVENTION MEANS

Non-governmental organizations are the voice of civil society, of local and national communities and must compete in the prevention and fight against corruption. In addition they should co-participate with other members of the community with which can establish and develop forms of audit.

The audit can be used as a preventive measure to determine the effectiveness of a program, process, personnel qualification, and skills or as a curative treatment to limit situations that affect the public sector image. The audit should be viewed as a methodical examination, an external assessment conducted to determine whether the activities and results of the Romanian public sector are created/obtained for the purpose of preventing and combating corruption. NGOs audit is called to assess and evaluate the effectiveness of the public system in preventing and combating corruption.

The major objective of the audit is to assist public institutions in their fight against corruption. The non-governmental organization that will be involved in such an audit would

perform analyzes, appraisals, recommendations and pertinent comments on this issue. Openness and transparency of the administrative system are basic pillars for such activities, since no assessment of the public system can be achieved without analysing the resources, including accounting and financial operations, involved in this fight.
Through audit the non-governmental organizations can verify compliance with policies and strategies developed in this field, the information used and produced by the public system and can offer operational measures for preventing corruption.

The NGO which will promote the audit should not be involved in joint projects with audited institution, it should not be considered superior to the latter one and must find facts and comply with strict ethical principles. The organization of the audit will be carried out only after they informed the respective public institution. The audit activities can be promoted to support absorption of graduates in the labour market, and to find proper anticorruption measures.

8. INSTEAD OF CONCLUSIONS

The development and implementation of a communication anticorruption strategy are essential to effectively carry out anticorruption campaigns. In today's world where news travels extremely fast and the media is the main catalyst in shaping public opinion, it is essential for an organization fighting corruption to place communication in the top priority. By conducting effective communication campaigns the organization can contribute to the raise of population awareness on issues related to corruption.

A good communication strategy should inform individuals about their rights, existing laws which protect these rights and the mechanisms available to counter corruption. This may lead people to engage in the fight against corruption, especially if they become aware of how corruption negatively affects their individual lives, their families and the society in which they live.

Platform communication is imperative to include monitoring the activity. This should be done throughout the implementation of the communication strategy. Consequently, we should aim to measure the reaction of civil society, of citizens and even the press to, the message, to the tools used for its transmission. In this respect, it is necessary to allocate human, material and financial resources to monitor all media channels (even those that were not used for the direct transmission of the message), to do the content analysis of news media in anticorruption, to analyze comments, questions raised after the transmission of the message, to establish trends, perceptions that have their origin in the message sent.

Once the communication strategy is implemented a post-implementation evaluation should be realized, in order to perform a deep analysis of the issued messages, coming from employees, partner and private competitor organization.

After this stage it is preferable to make new assessments on the image notoriety of the organization and design new communication strategies. Completion of a communication strategy opens future communication strategies and in this way "the communication wheel does not stop."

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AN APROACH OF LOCAL FINANCIAL AUTONOMY AND IMPLICATION OVER SUSTAINABLE DEVELOPMENT IN THE KNOWLEDGE SOCIETY

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Abstract: *Local governments play an important role in sustainable development processes based on their administrative and financial autonomy. Policies and programs undertaken to assure sustainable development by local governments produce benefits for persistence of the knowledge society. This paper will try to highlight the implication of local financial autonomy over sustainable development of local communities in a knowledge society, based especially on local financial autonomy theory approach.*
Keywords: *financial autonomy, sustainable development, local communities, knowledge society*

Acknowledgment: *This work was cofinanced from the European Social Fund through Sectoral Operational Programme Human Resources Development 2007-2013, project number POSDRU 159/1.5/S/134197 "Performance and excellence in doctoral and postdoctoral research in Romanian economics science domain".*

1. INTRODUCTION

World historically, "sustainable development" is omnipresent, and recently it has become an ideology in connection with "knowledge society" in a fast-changing national and international market forces context. Local governments depend upon being able to respond to new market opportunities, based on idea that every society is a knowledge society (McElhinney, 2005; Casey, 2006; Bhargava, 2007). Based on their local financial autonomy, local governments needs to identify their own economic strengths and to use own resources in the implementation of a realistic local development strategy.

The paper is structured as following: Section 2 reviews the theoretical approach of the local financial autonomy; Section 3 discusses some implication over sustainable development of financial autonomy in a knowledge society; Section 3 concludes the main ideas of the theme, as final remarks.

2. THEORETICAL APPROACH OF LOCAL FINANCIAL AUTONOMY

The process of decentralization in the public sector economy - which supposes an increase in the financial independence of local authorities, separating the functions of the local

and central government in the public sector of economy, adequately distributing the financial resources for the realization of these functions - takes the shape of so-called fiscal decentralization (Davulis, Peleckis, Slavinskaitė, 2013). The level of the fiscal decentralization characterizes the degree of independence of local government, where local government is independent as much as it has financial resources to fulfill its functions (Davulis, Peleckis, Slavinskaitė, 2013), so-called local financial autonomy. Financial side of local autonomy emerges from the definition offered by the European Charter of Local Self-Government and shall result in conferring certain powers and responsibilities to local authorities. In other words, financial autonomy is realized by disposing of sufficient resources to ensure their own expenses and at the same time to achieve the decentralized powers with the help of local public finance. The local autonomy can not be implemented only under conditions in which local authorities have adequate financial resources as "the financial side is an important component of local autonomy, which exert an influence on the ability of local authorities decision" (Voinea, 2008, p.47) or "local autonomy implies the right of local authorities to dispose of financial resources, to use them and manage to fulfill the duties prescribed by law, to develop the budget, to pursue implementation of the budget called financial autonomy" (Voinea, 2008, p.45).

Agnes Sauviat (Pauliat, 2004) states that local financial autonomy is one of the basic conditions of a real management freedom that is not a way to manifest independence from the state, and requires to the state to guarantee a stable and enough resources that allows the local community to exercise fully and relevant the decentralized competences. In these circumstances, to support these competences at a cost, local authorities must identify their sources of income and to prepare expenditure programs. Based on these interrelations, autonomy in financial terms can be defined by combining three elements (Guengat and Uhaldeborde, 2003; Gilbert, 1999): autonomy of local expenditure, autonomy of local revenues and local budget autonomy. Local revenue autonomy implies the right and ability to determine the types of taxes, tax base, tax rate. Local expenditure autonomy implies the right and ability of local authorities to determine the nature and size of local public expenditures on public goods and services in line with demand, and the right and ability to perform expenses, manage local property. Local budget autonomy implies the right and ability of local authorities to adjust the income level of public spending severely according to the areas of competence of local authorities, based on the current generation of paying taxes, but also the next generation liable for payment of interest rate of local borrowing. Budgetary autonomy implies the right and ability of local authorities to achieve a statistically and dynamically budget over which assumes financial responsibility.

We note that such a definition would require local authorities to decide absolutely free on local revenues and expenditures reflected in the local budget, which is quite difficult to achieve given that, in practice, the central public authorities in most of countries maintain a fairly high volume of public activities and mobilize the most important sources of income. Therefore, in the spirit of local autonomy, powers and responsibilities (Filip et al, 2002) in local public funds entrusted to local authorities are limited to: development and approval of local budgets deadlines; settlement, collection and follow up of taxes under the law; follow up execution of budgets and rectified during the budget year; establishing and monitoring how public services to enhance their effectiveness for citizens; efficient management of public and private assets of administrative-territorial units; management of financial resources during budget implementation in terms of efficiency; establishing options and priorities and approve the expenditures from

local budgets; development, approval, modification and implementation of development programs in view of the administrative-territorial management as the basis of the annual local budgets; organisation of the own financial control on own management, on management of subordinate institutions and on public services.

In support of financial side of autonomy and for local finance to standardize European states, the European Charter of Local Self-Government offers several guide lines (Law no.199/1997, Art.9) on formation and management of financial resources. These recommendations are framed by some authors in the category of principles underlying the formation and administration of local financial resources, since the adoption of the Charter in tha national/internal law.

If it is just the financial side view of local autonomy, it is distinguished by the following features (Voinea, 2008, p.47):

- Ensure the right of local authorities to develop, approve and execute its own budget for each financial year;
- regulation of powers of local authorities to determine and manage their own revenues from taxes, fees, contributions under the law;
- Follow up budget execution and local budgets rectification during the budget year;
- Background and approval options and priorities to finance the costs of local budgets;
- Using the financial resources of local authorities during budget execution in terms of efficiency;
- The right of local councils to establish special fees for the operation of local public services;
- The right of local authorities to decide on loans contracted under the law.

The size of the financial side of the local autonomy is dependent on the delimitation of powers of local government in providing public services, the diversity and quality of public services, the development programs of the administrative-territorial, the level of own revenues of administrative-territorial units, by improving management expenses from local budgets. Legal and financial autonomy materializes in establishing local authorities as separate legal entities, endowed with its own budget, independent financial willpower, regulatory sovereignty in the area of financial management and prevent central government control (Labie, 2005, p.7).

Local Public Finance Law (Law no. 273/2006, Art. 16) of Romania provides financial local autonomy as a principle that the administrative-territorial units are entitled to sufficient financial resources that local government authorities can use in the exercise of the basis and within the limits prescribed by law and that local government authorities have the power to establish levels of local taxes under the law. The financial autonomy in the administrative-territorial units should be seen through the legal element, on the one hand, and in terms of economic-material element, on the other hand. The legal implies approaching financial autonomy as discretion under the legal regulated at the national level (law, ordinance, etc.) and the level of administrative-territorial unit (Local Council Decisions, Decisions by the Mayor) and an economic element material financial implies approaching practical side of autonomy expressed by local authorities ability to maintain budget balance.

The main idea underlying the financial side of local autonomy is that revenues must cover expenditure during a fiscal year. So the amount of revenues determines the possibility of making of local public expenditures and at the same time reflects the degree of autonomy in their report appearing between revenues, transfers of funds from the state to balance local budgets and loans. If the share of own revenues in total local revenue sources is higher, the administrative-territorial unit is free to spend as they wish to ensure coverage of public needs, which translates into a large financial autonomy.

In other words, measuring the financial side of local autonomy was the subject of research as a result of the approach to measure the relationship between decentralization and different macroeconomic variables. Thus, in particular, on the financial side of autonomy, a number of qualitative and quantitative indicators have been established in recent years to measure the relative position of administrative units within the perfect sovereignty teritoariale and total financial independents. Many of these indicators, however, are criticized, because not fully cover all components of autonomy.

Until around the year 2000 almost all studies have used financial statistics of the International Monetary Fund as a starting point in measuring financial decentralization. The dominant pattern used compares the local expenditures / revenues with the total expenditures / revenues at national level, or alternatively, with gross domestic product (GDP). These indicators relatively simple are in use today (eg., Eurostat), although Ebel and Yilmaz 2002, Meloche in 2004, the World Bank in 2007 showed disadvantages of these indicators such as:

- For revenue does not make a difference between different sources of local revenue. The nature and degree of local autonomy may be perceived differently depending on sources of revenue. At the same time, does not specify what percentage of transfers are allocated to general and specific objectives.
- For expenditure not distinguish between mandatory and optional expenditure. For mandatory expenditure, even if they appear as local expenditures in the decentralized local communities, local authorities are in this case only state agents who have limited powers. It also, transfers from other levels of government appear in the functional expenditure.

These deficiencies of the indicators generates an overestimation of the degree of decentralization and local financial autonomy.

Organisation for Economic Co-operation and Development (OECD) in 2001, has developed a new model for measuring revenue autonomy applied in the Member States, but did not try also a model for expenses.

3. IMPLICATION OVER SUSTAINABLE DEVELOPMENT OF FINANCIAL AUTONOMY IN A KNOWLEDGE SOCIETY

Local governments are the initiators of local sustainable development processes, because on the medium term their presence is of fundamental importance for establishing the institutions that these processes require. Local governments are the most legitimate local public authorities responsible for mobilization and participation of local actors and forming teams of leaders to ensure local sustainable development. Local sustainable development thus calls for decided action by the local public bodies, which suggest the strengthening of local autonomy. In their quality of autonomous authorities, local governments have the possibility of the enhancement of

the endogenous resources of each local area in production activities and encouraging the establishment of new local enterprises based on high quality and differentiation of products, production processes and services. Based on their financial autonomy, local government programs for sustainable development include a wide range of initiatives, as programs designed to improve the human capital of individual workers, or can be created new financing instruments to meet the needs of local micro and small enterprises. One of the main implications of local authorities based on their autonomy in sustaining the sustainable development process is the establishment of local networks among public and private actors and promoting scientific and technological development activities in order to develop production and business innovation in their local community, for facilitating the increase of the efficacy and efficiency of local development activities. Local autonomy is 'responsible' for identifying new sources of employment and income at the local level. In the power of local authorities is also the sustainable development component of environment, where local governments are responsible to search for strategic accords on environmental goods. The reliable incorporation of the three elements of sustainable development (economic, social and environment) using financial autonomy can create the premises for the development of knowledge cities. The approach of local investments for a sustainable development need longer lead times than electoral and political cycles (Alburquerque, 2004).

In this context, one of the main strategic objectives in the formulation of a local sustainable development strategy is the accent put on innovation as an objective itself and the identification of innovation needs of the local production system (also at the level of human resources) through the incorporation and development of management innovations strategy. Effective local management innovations strategy of sustainable development requires careful targeting of the limited public funds. In this context, an important place is according in whole process to local financial decisions because local policymakers must have suficiently resources for the use in the exercise of the basis and within the limits prescribed by law. Effective measure that must be taken are "increasing jobs located in the city" and diversifying the local economy. Especially, expenditures for social and cultural activities have an influence on economic development as they contribute to the maintenance, restoration anddevelopment work capacity of individuals to training and raising their qualifications, thereproduction of labor (Petrișor, 2014).

Bartik (Chapter 2) shows that on average 10% reduction in state and local business taxes increases local employment and business activity in the long-run by around 3%. Lowering the tax rate on labor and production and consequently on the income tax base causes a positive economic effect (Durdureanu, 2014). Some studies find that business tax reductions, if financed by reducing spending on local education or roads, may reduce a local economy's employment (Helms, 1985; Munnell, 1990; Bartik, 1989). In our opinion, tax differentials in urban areas have large effects, because a constant in lowering property taxes in one urban area, holding bigger the property tax rates of other urban areas, may increase the business activity in that individual community. This point of view is sustained from the perspective of an individual to buy a property, to develop a business and a business to choose a location.

What is sure in practice is that countries of a high level or old decentralization which in time have developed long-term strategies of sustainable development, succeed to have o sustainable development al local level. This idea is sustained by empirical evidences. For example, Denmark local governments have considerable autonomy to operate within overall

expenditure limits and priorities in selected areas such as social services, primary education or primary health care, without reference to or interference from central government.

The center of gravity of financial decisions moved to local budgets in the majority of the European Union countries, based on local financial autonomy and exclusive competences.

Even local taxes are one of the major conditions of fiscal decentralization, as well as extension of independence of self-government, grants and subsidies remain the main source of European local public sector revenue and in few EU countries (e.g. Malta, Romania and Bulgaria) accounted for over 70% of revenue. In Germany, the principles of taxation, and assessment procedure in particular, are controlled by statute; the major local taxes being on real estate and on industry.

Local public expenditure and local public revenue of the EU countries fluctuated around an average of approximately 12% of GDP over the period 2007-2013.

Table 1 Local public expenditure (E) and revenues (R) as % of GDP in the EU countries over the period 2007-2013

	2007		2008		2009		2010		2011		2012		2013	
Country/Year	**E**	**R**	**E**	**R**	**E**	**R**	**E**	**R**	**E**	**R**	**E**	**R**	**E**	**R**
Austria (AT)	7,4	7,5	7,6	7,7	8,2	7,9	8,2	7,8	7,8	7,8	7,9	7,9	8,0	8,0
Belgium (BE)	6,6	6,8	6,7	6,9	7,1	7,2	7,0	6,9	7,1	7,0	7,3	6,9	7,3	7,1
Bulgaria (BG)	6,6	6,5	7,3	6,9	8,6	7,7	7,0	7,0	6,7	6,7	6,8	7,1	8,4	8,8
Croatia (HR)	11,8	11,9	11,8	11,7	12,3	11,5	11,9	11,9	11,6	11,6	11,9	12,0	12,3	12,4
Cyprus (CY)	1,9	1,9	1,9	1,8	2,2	2,1	2,2	2,2	2,3	2,3	2,0	2,0	1,7	1,8
Czech Republic (CZ)	10,8	11,2	10,9	10,8	12,0	11,5	11,7	11,3	11,3	11,0	10,3	10,3	10,2	10,6
Denmark (DK)	32,4	32,1	33,3	32,9	37,3	36,6	37,2	37,0	37,2	37,2	37,9	37,8	37,5	37,5
Estonia (EE)	9,5	9,0	10,9	10,3	11,3	10,8	10,0	10,2	9,5	9,7	9,9	9,8	10,0	9,6
EU-28	11,3	11,2	11,6	11,4	12,4	12,1	12,2	11,9	11,8	11,7	11,8	11,8	11,6	11,6
Finland (FI)	19,2	19,0	20,4	20,0	22,8	22,1	22,7	22,5	22,7	22,1	23,4	22,2	23,9	23,0
France (FR)	11,3	10,9	11,5	11,0	12,2	11,9	11,9	11,8	11,8	11,7	12,0	11,8	12,2	11,8
Germany (DE)	7,3	7,7	7,4	7,8	8,1	8,0	7,9	7,7	7,8	7,8	7,6	7,8	7,8	7,9
Greece (EL)	2,7	2,6	2,9	2,8	3,3	3,3	2,9	2,7	3,1	3,3	3,2	3,6	3,4	3,8
Hungary (HU)	11,9	11,8	11,6	11,6	12,3	11,9	12,8	11,9	11,6	12,2	9,4	9,9	7,6	10,2
Ireland (IE)	7,3	7,1	7,8	7,4	7,1	7,1	6,4	6,4	5,6	5,6	5,2	5,1	4,8	4,8
Italy (IT)	14,9	14,8	15,4	15,0	16,7	16,3	16,0	15,4	15,1	14,9	15,1	15,1	15,0	15,0
Latvia (LV)	11,1	10,4	12,6	11,3	12,8	11,1	11,8	11,4	10,8	10,2	9,9	9,6	10,3	9,7
Lithuania (LT)	8,3	8,0	9,3	9,1	10,8	10,4	11,2	11,3	10,1	9,7	9,4	9,2	8,4	8,1
Luxembourg (LU)	4,7	5,0	5,1	5,5	5,8	5,7	5,4	5,5	5,2	5,5	5,1	5,7	5,2	5,4
Malta (MT)	0,6	0,6	0,5	0,5	0,6	0,7	0,6	0,6	0,7	0,7	0,8	0,8	0,8	0,8
Netherlands (NL)	15,4	15,2	15,8	15,3	17,5	16,9	17,2	16,4	16,5	16,0	16,3	15,9	15,4	15,1
Poland (PL)	13,3	13,4	14,1	14,0	14,8	13,7	15,1	13,8	14,1	13,4	13,3	13,0	13,1	12,9
Portugal (PT)	6,7	6,4	7,0	6,5	7,5	6,7	7,2	6,4	7,0	6,6	6,0	6,5	6,4	6,7
Romania (RO)	9,8	9,5	9,9	8,8	10,1	9,3	9,6	9,5	10,3	9,7	9,7	9,2	9,0	9,1
Slovakia (SK)	6,0	6,0	6,0	6,0	7,2	6,5	7,3	6,4	6,7	6,6	6,3	6,5	6,3	6,5
Slovenia (SI)	8,4	8,3	9,1	8,4	10,0	9,5	10,0	9,8	9,6	9,6	9,7	9,8	9,7	9,5
Spain (ES)	6,6	6,3	6,6	6,1	7,3	6,7	7,3	6,6	6,9	6,2	6,0	6,2	5,9	6,4
Sweden (SE)	24,0	24,1	24,8	24,7	26,3	26,0	25,1	25,3	25,3	24,9	25,5	25,4	26,0	25,8

United Kingdom (UK)	12,7	12,5	13,3	13,0	14,3	13,8	13,8	13,7	13,0	12,9	13,5	13,2	12,0	12,0

Source: computed by author using Eurostat data

Local public investment in the EU countries fluctuated around an average of approximately 2,22% of GDP over the period 2007-2013.

Regarding local budget autonomy, theory (Beer-Tóth, 2009) specifies that a weak local budget policy can seriously compromise the stability of the national economy. Against the background of economic growth, perspectives of financial stability, steady prices, low unemployment rate, the currency displays an appreciation tendency (Toderașcu, 2014).

One of the relevant elements of weaknesses is an indebtedness without limits, on inadequate structures and for covering state's unproductive expenditure, while promoting with caution and on appropriate destinations, public indebtedness can prove to be an enhancing factor for national economy's growth and development (Bilan, Roman, 2014). The indebtedness in excess may affect the economic growth rate, while budgetary expenditure on interests can affect local public authorities' ability to carry out other types of public expenditure, with negative social consequences (Bilan, Roman, 2014).

Regarding borrowings as extraordinary income and their contribution to strengthening local autonomy, we find as defining for their reflection in this direction, the prudential rules which set limits of the indicators such as public debt service, indebtedness, fiscal pressure, and macro and microeconomic other indicators that determine compliance with the convergence criteria of the Maastricht Treaty. In this context, the autonomy of local authorities to contract and manage loans is higher as these prudential rules are less restrictive and leaves local authorities to borrow "rational" in terms of efficiency by realizing the "golden rule" of budget balance that local authorities should not be in debt to cover current costs, but can borrow prudently to achieve capital expenditure. Also, to support a high degree of local autonomy, freedom to contract and guarantee loans must be accompanied by a completed specialized external control reports as a recommendation (Cigu, 2011).

4. FINAL REMARKS

In the last years is highlighted a reform process towards decentralization and emphasized the strengthening of financial autonomy, the obvious tendency to increase the share of own revenues in total revenues of local budgets, and the predominance of unconditional transfers than conditional transfers. Also note that in most countries the first level of local government (municipalities) has exclusive competence as regards rural development and urban planning (except Greece Luxembourg, Portugal), water and sewage (except Italy, the Netherlands), household waste (excluding Greece, Ireland), social services (except France), sports and leisure (except the Czech Republic, Greece, Luxembourg). We find that the majority of EU states exercising shared competences in education and health sector, which is a reflection of manifestation framework of the rule of law, where the major powers need to be addressed in a national context. On the second level of local government structures, powers are exercised in terms of health, education, culture, roads and highways, and economic development. In countries

where there are third tier of local governments, they have functions in terms of education, roads, culture and economic development. Also, we find that an area of national importance, such as defense, is a competence which implies the involvement of the central authorities, without creating an exclusive competence of local authorities in any EU country.

In this context, it is necessary to finalize the reform of local government finances in terms of local autonomy for ensuring local sustainable development. Thus, the implementation of local autonomy must be clearly delineated responsibilities of operating and financial management at every level of local administration, creation of stable local tax revenues, supported by a framework of fiscal relations transparent, efficient and compatible with the objectives of macroeconomic stability. A viable solution would be to build a local financial system that have the elasticity needed to allow permanent adaptation to the changes that will occur in terms of the economy in the coming years and the progressive reduction of restrictions on local authorities in matters of local finance management, encouraging them to rationalize the use of revenues and enhance political accountability for performance in managing their finances.

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URBAN DEVELOPMENT IN SOUTHERN COUNTIES OF ROMANIA

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Abstract: *Romania is divided in administrative terms in counties, cities (some cities have municipality status) and communes. In the southern part of Romania there are 7 counties (Mehedinti, Dolj, Olt, Teleorman, Giurgiu, Calarasi, Constanta) bounded by the Danube and the Black Sea (Constanta). These counties are very heterogeneous in terms of development, although natural conditions are very similar. There are 45 cities and municipalities, with a wide variety of numerical dispersion (-3 fewest in Giurgiu, most -12 - Constanta county). In the period September-November 2013 data from 45 cities we collected (a total of 265 indicators covering the entire socio-economic local lifetime) from official sources: the prefecture institutions, local government, the National Institute of Statistics, county employment agencies, the National Office for Trade Register). Through this paper we intend to analyze part of the data collected to identify and compare the action of local authorities and the degree of development of the seven counties in terms of urbanization and the development of local public services in the major urban settlements of each county - municipalities.*
Such analysis performed allows us to draw conclusions about the relationship between local public services, administration actions and urban development.
Keywords: urban development, public services, counties, municipalities, towns

1. SUSTAINABLE URBAN DEVELOPMENT

"The word sustainability (supporting) has its roots in Latin, subtenir meaning "to stem / retain" or "support from below". A community must be supported from the bottom-by the current and future inhabitants. People need to take care of their community."(Muscoe, M, 1995).

The first definition of sustainable development appeared in the report of the World Commission on Environment and Development entitled "Our Common Future" (Brundtland, 1987): "the development that seeks to meet the needs of the present without compromising the ability of future generations to meet their own needs". Since the Commission was chaired by the Prime Minister of Norway, Dr. Gro Harlem Brundtland, it remained known as the Brundtland Report. This concept has crystallized over time, over many decades, in in-depth international scientific debates and it got political meanings in the context of globalization. Sustainable development has become an objective of the European Union since 1997, when it was included

in the Maastricht Treaty and the 2001 during the Summit of the Goetheborg the Sustainable Development Strategy of the European Union was adopted. The Report "Our Common Future" can be considered the starting point of a global partnership constituting a political turning point for the concept of sustainable development.

Sustainability refers to the ability of the society to operate continuously in the future, without leading to resource depletion, with three major key components: environment, society and economy. The concept of sustainable development is the result of an integrated approach of policy and decision makers' factors, in which the environment protection and long-term economic growth are seen as complementary and mutually dependent. Social factors determine certain attitudes towards the environment, with consequences on affecting pressures on ecological systems. But this is neither the starting point nor the end of the conceptual development process.

Urban sustainable development also involves choosing appropriate ways of organizing cities to meet the target needs interested in urban development. It is believed that sustainable urban development has reached its finality when the business community and the citizens are satisfied with the economic-urban social environment, when the expectations of visitors and investors are met (Kotler et al., 2002). Urban sustainable development is an indispensable element in strategies for economic development of cities, contributing to setting the overall vision of the strategy. It helps cities meet several objectives (attracting new national / international companies, strengthening industrial infrastructure, tourism development etc.) while the need to maintain or decrease public spending and to face competition for attracting new investors.

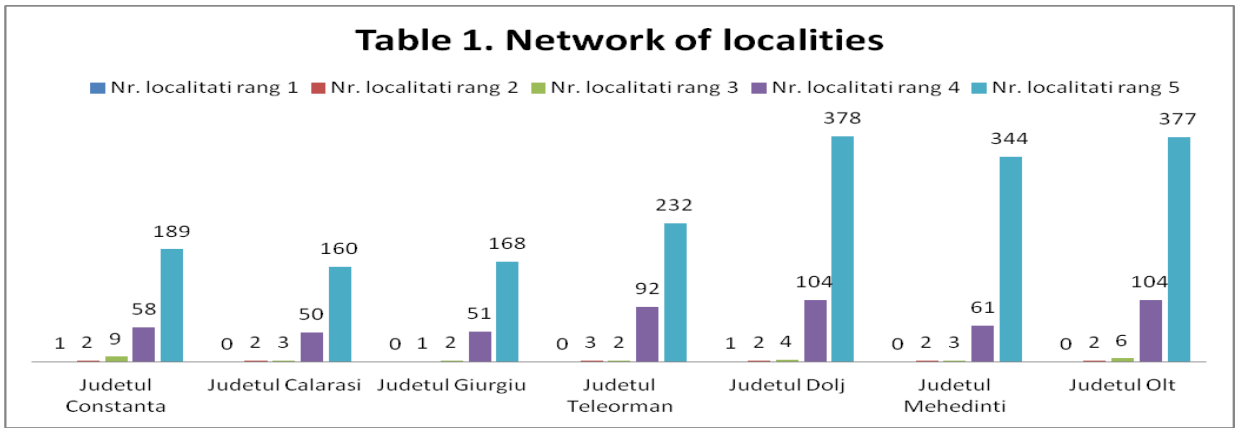
The main goal of urban sustainable development is the extraction of activities with potential beneficial effects for the community and maximizing the satisfaction of target market segments. The central thesis of urban sustainable development is that, despite internal and external forces with which they are struggling, communities have the ability to improve their relative competitive positions.

In conclusion, urban sustainable development is a process in which different purposes and strategies are interfered and reconciled of various actors and the interests are balanced.

2.ADMINISTRATIVE TERRITORIAL UNITS ANALYZED

In the Southern part of Romania there are seven counties (Mehedinti, Dolj, Olt, Teleorman, Giurgiu, Calarasi, and Constanta) that have in common the delimitation of the Danube and proximity to Bulgaria.

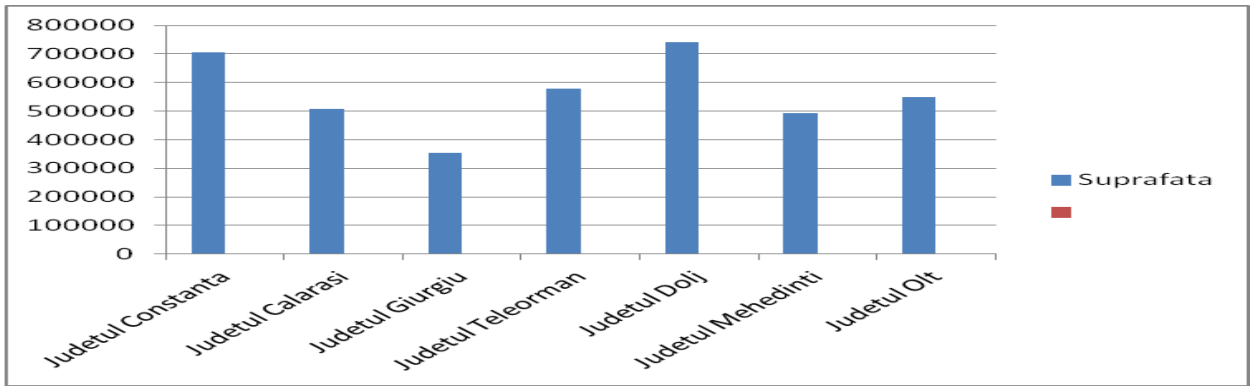
From the point of view of the network of localities, the situation is the following:



Authors: the authors

It is observed that counties in the South West have a greater number of localities, with no correlation between this indicator and the surface. Thus, Constanta County is the second in terms of area, but it has the lowest number of localities, but the largest number of cities and municipalities and the largest population.

Table 2 Counties in southeastern Romania



Authors: the authors

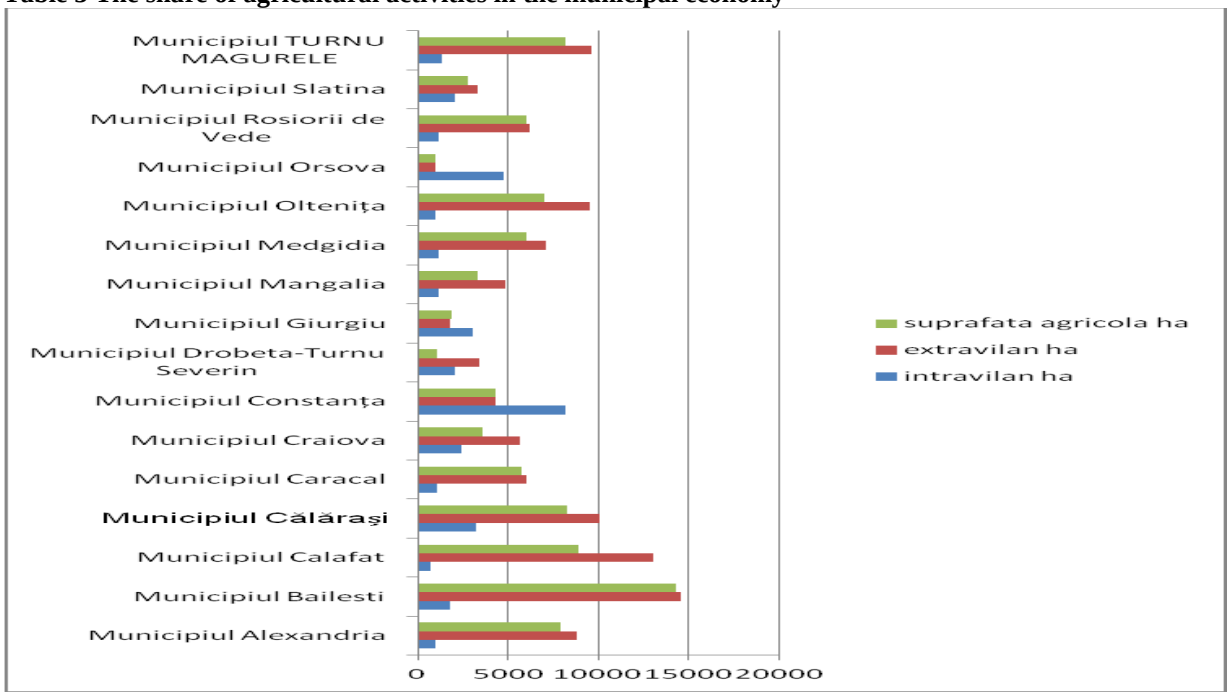
Urban settlements of the 7 counties under review are:
Mehedinti County
Drobeta-Turnu Severin
Orșova
Dolj County
Craiova
Băilești
Calafat
Olt County
Slatina
Caracal
Teleorman County
Alexandria

Roșiori de Vede
Turnu Măgurele
Giurgiu County
Giurgiu
Calarasi County
Călărași
Oltenița
Constanta County
Constanța
Medgidia
Mangalia

3. ANALYSIS OF THE AREA AND POPULATION OF THE 16 MUNICIPALITIES

Surface observation of the 16 municipalities finds evidence of large discrepancies. Bailesti is the municipality with the largest area, but most of it is used for agricultural activity. In general it is found that cities in southern Romania have an important surface dedicated to agricultural activity and extended unincorporated areas. Only Orsova (due to geographical location), Giurgiu (due to neighboring localities) and Constanta have higher urban areas than unincorporated areas. This observation leads to the conclusion that agricultural activities have an important share in the economy of the analyzed municipalities.

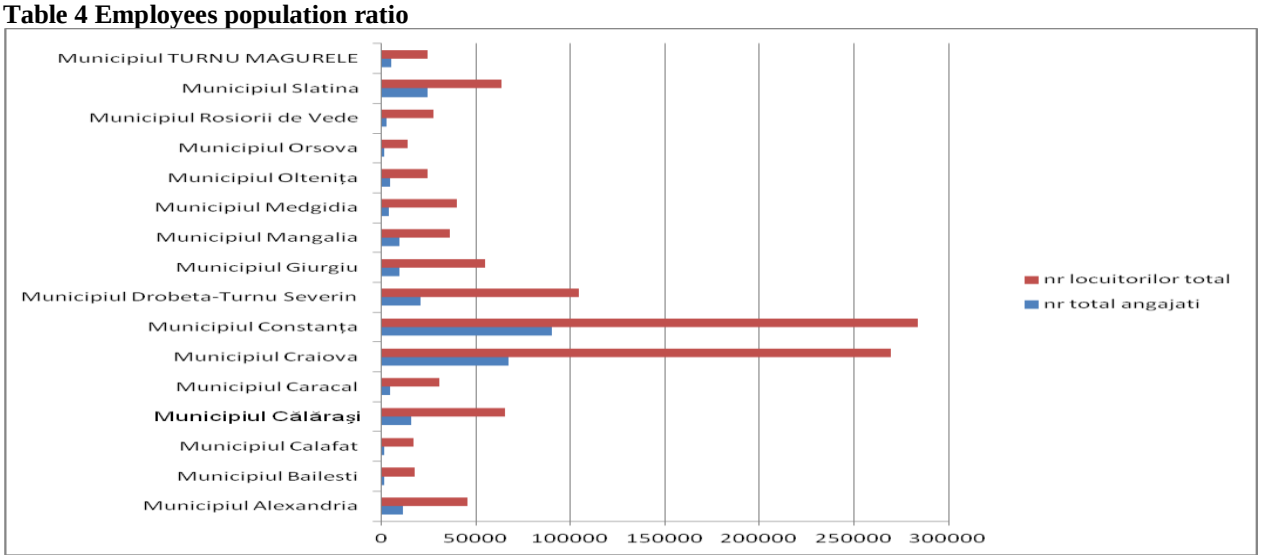
Table 3 The share of agricultural activities in the municipal economy



Authors: the authors

In terms of population, there are two major urban centers - Constanta and Craiova. Orsova has only 14,000 inhabitants. The report however notes that the total population - number of employees ratio is significantly higher in Slatina (2.56) compared to Bailesti (11.86).

Table 4 Employees population ratio

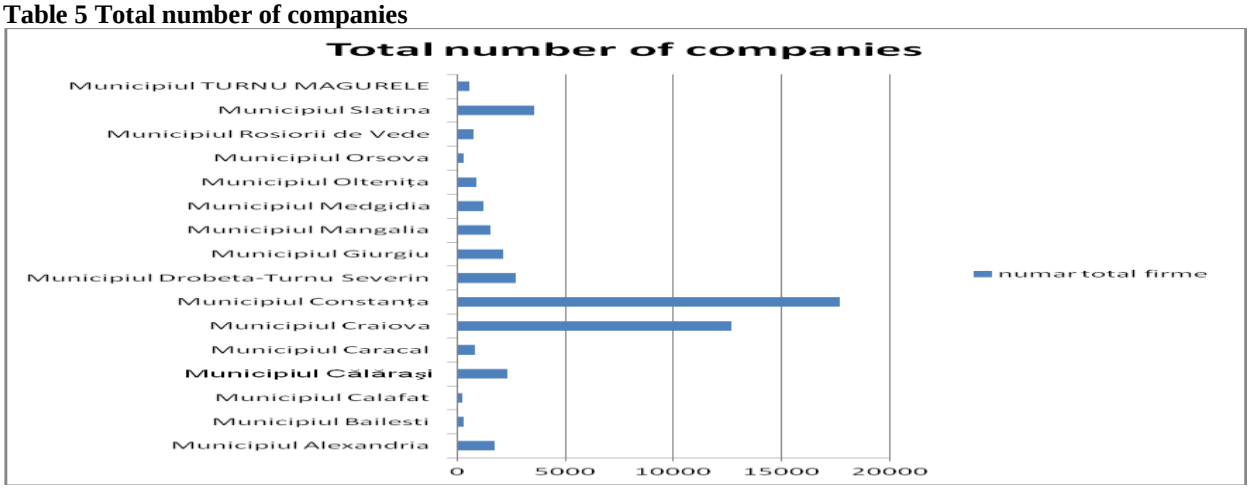


Authors: the authors

4. ECONOMIC ACTIVITY

Observing the indicator "Number of companies" leads to the conclusion that in Craiova and in Constanta there are more economic agents than in the other 14 cities combined. In Bailesti there is one company for 57 people and in Constanta there is one for 16 people.

Table 5 Total number of companies



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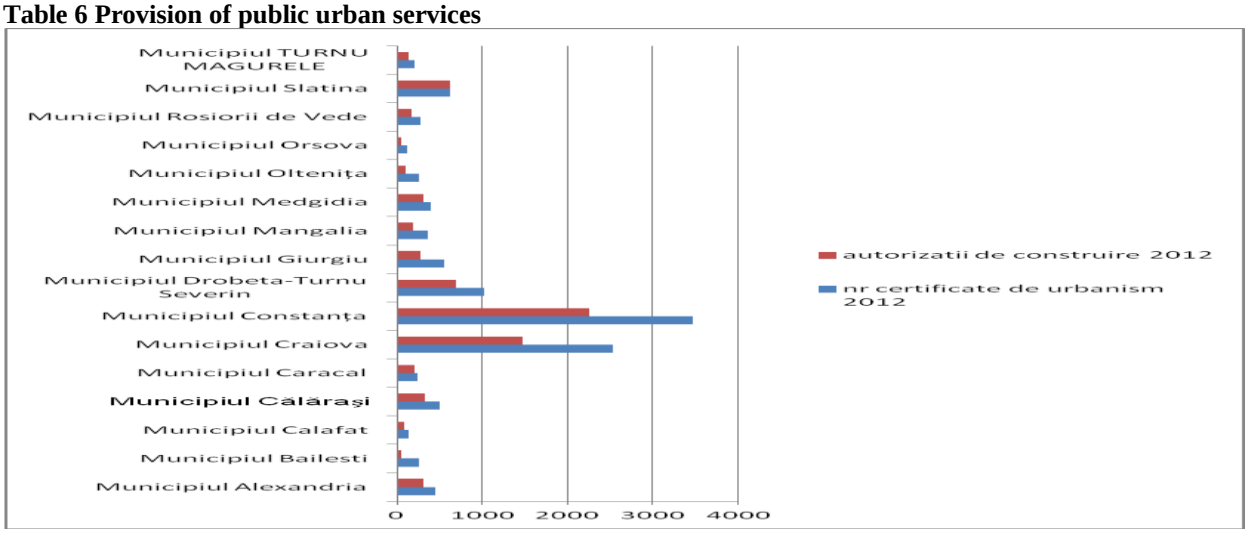
5. PUBLIC SERVICES IN THE ANALYZED MUNICIPALITIES

5.1. Urban Planning Services

Dynamics of observable building activity in the analyzed municipalities by the number of building permits issued by local authorities is directly proportional to the intensity of economic activity. Large cities are expanding even more through building activities.

Table 6 Provision of public urban services



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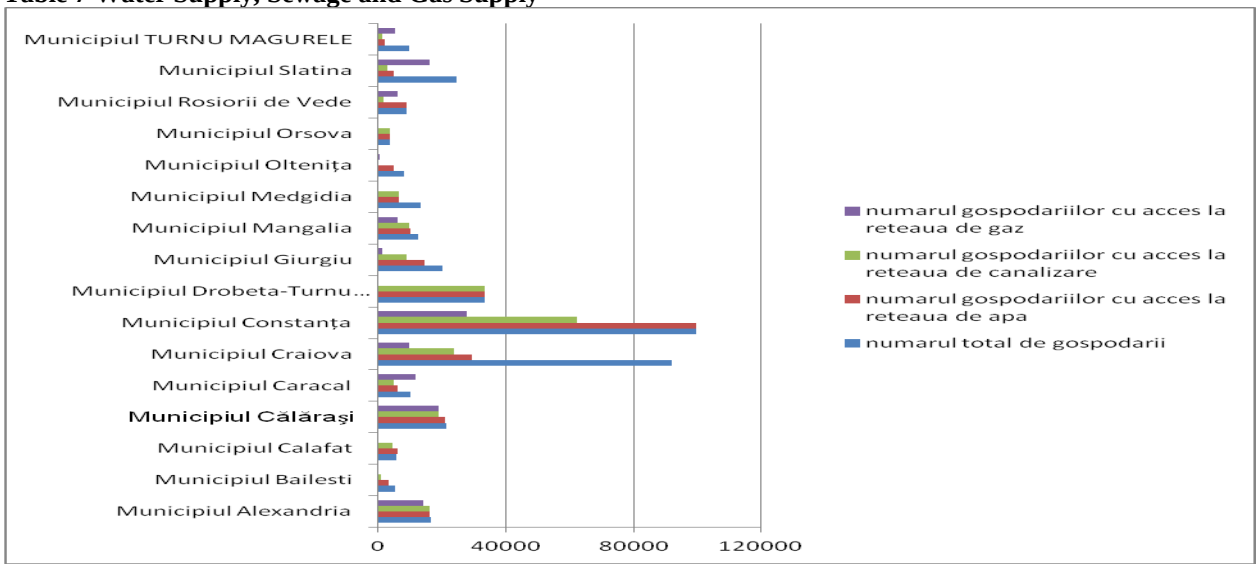
5.2. Water Supply, Sewage and Gas Supply

In all analyzed municipalities, there are water supply and sewage treatment services, but they cover only partially the city area. In Calafat and Turnu Magurele there are no local strategies for the development of these services.

In Orsova, Bailesti and Calafat there is no gas supply network.

Table 7 Water Supply, Sewage and Gas Supply

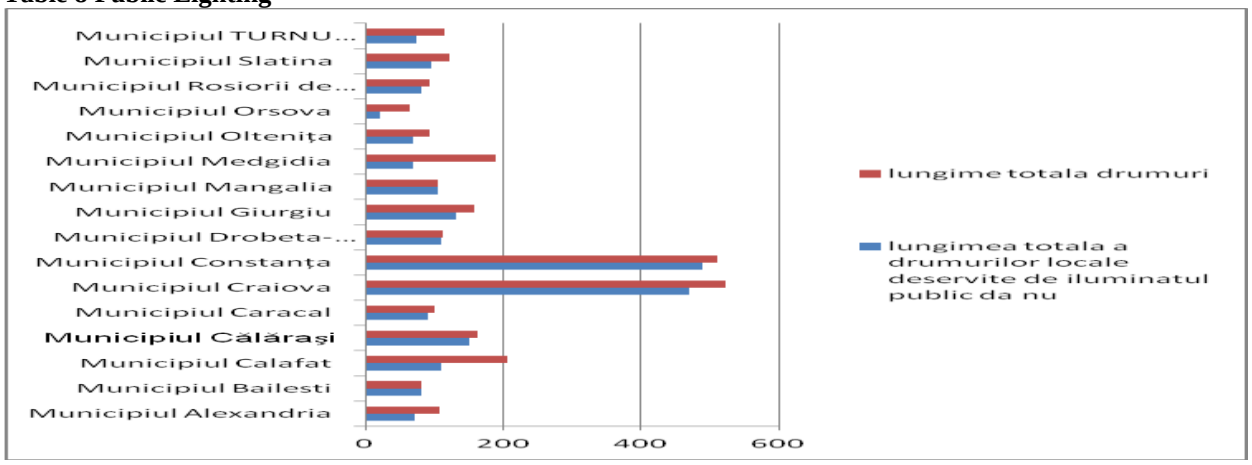


Authors: the authors

5.3. Public Lighting

Public lighting is present in all analyzed municipalities, and the service covers only partially the cities territory. In Medgidia, Calafat and Orsova public lighting covers less than half of the total length of public roads.

Table 8 Public Lighting



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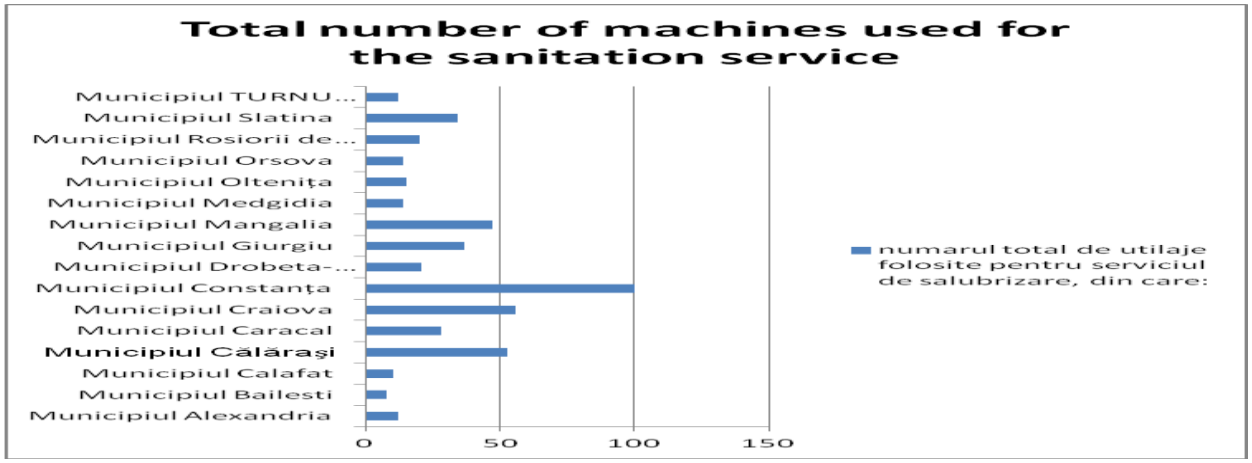
5.4. Sanitation and Emergency Services

They are the largest of the services analyzed, with general access. And in terms of the equipment used there is a balance to the population, but not with municipalities' area.

Table 9 Total number of machines used for the sanitation services



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5.5. Analyzed Strategies for Developing Public Services

	There is a strategy for developing road infrastructure	There is a development strategy for sanitation service	Existence of a performance audit for electricity service	Existence of a strategy for the development of electricity services	Existence of a strategy for development of water supply services	Existence of a strategy for development of sewage service
Alexandria Municipality	No	No	No	No	Yes	Yes
Bailesti Municipality	Yes	Yes	No	No	Yes	Yes
Calafat Municipality	No	No	No	No	No	No
Călărași Municipality	Yes	Yes	No	Yes	Yes	Yes
Caracal Municipality	Yes	Yes	No	No	Yes	Yes
Craiova Municipality	No	No	No	No	Yes	Yes
Constanța Municipality	No	Yes	Yes	Yes	Yes	Yes
Drobeta-Turnu Severin Municipality	Yes	Yes	No	Yes	Yes	Yes
Giurgiu Municipality	No	Yes	No	No	Yes	Yes
Mangalia Municipality	No	Yes	No	No	Yes	Yes
Medgidia Municipality	Yes	Yes	Yes	Yes	Yes	Yes
Oltenița Municipality	Nu	Yes	Yes	Yes	Yes	Yes
Orsova	No	Yes	No	Yes	Yes	Yes

Municipality						
Rosiorii de Vede Municipality	No	Yes	No	No	Yes	Yes
Slatina Municipality	No	No	No	No	Yes	Yes
Turnu Magurele Municipality	Yes	No	No	No	No	No

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CONCLUSIONS

The localities network in the 7 analyzed counties is disproportionate between counties in the West and the East. But it is noted that in the same development region the situation is balanced (similarities among Dolj, Mehedinti, Olt counties and among Teleorman, Giurgiu, Calarasi counties).

Large cities play the role of development centers, the the most developed counties being the ones in which localities rank 1 exist - Constanta and Dolj. Here there is the largest number of companies, employees, but also population. However there is a proportional ratio between population, number of firms and number of employees.

Municipalities in southern Romania and thus counties to which they belong have an economy based on agricultural activities but agriculture support services developed by local authorities are nonexistent. Although they have municipality status, these localities have a rather rural structure in majority.

Localities like Bailesti, Orsova, and Rosiori de Vede don't have features, services and behavior of a municipality, the analyzed indicators suggesting rather a closeness to rural settlements. Implicitly, counties including them are predominantly rural, with an economy based on agricultural activities.

There is an uneven development between urban settlements analyzed, the trend of widening disparities between developed and poor cities/counties. The dynamics of the construction or expansion of public services suggest this issue.

Urban services exist but they are unevenly distributed and accessible only to a part of the observed municipalities' population.

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[3] General agricultural census 2012
[4] Statistical data provided by the NTC, INS, county councils, municipal authorities

ADMINISTRATIVEPERFORMANCEIN THE COUNTIES AT THE ROMANIA-BULGARIA CROSS-BORDER AREA

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Therefore, even if it relies on one field and one type of privileged actions, local development cannot be the object of an isolated, unilateral policy. In other words, interventions in favor of local development cannot be defined otherwise than in a broad sense, incorporating actions traditionally targeting different fields. Since local development is, at the same time, economic, social and cultural, for its achievement it is necessary to intervene both public and private agents, from the economic and social sphere, and even some forms of their association.

The success of the local community, in the economic and administrative framework is in close correlation with its capacity of adapt to the mechanism of the regional or national market, which are in permanent change. The change process takes place in conditions given to the area, such as: geographical, historical, cultural, social, administrative factors.

In some EU countries, the large autonomy available to the local collectivities, derived from the decentralization process, favors vertical competition and same-level collectivities within the local development process.

Local development the process that implies the partnership between the local authorities, the business environment and the non-profit organizations which have as main objective to stimulate investments, which, in their turn, generate sustainable development.

Local development focuses on the existing potential of the area or of the locality and identifies the organizations that can and must contribute to the increase of the local community

potential. The actions performed during the local development process must have a positive impact on the viability of the entire locality and not only over one sector of the local economy.

Local development refers to the capacity development of a local community to stimulate economic growth, by creating new jobs, but also conditions for the capitalization on the traits and opportunities pertaining to the rapid changes occurring at the economic, social, cultural, technological level.

„The basis of any local development process is represented by the local development strategy within which the characteristics of the area must be the most important"(Matei, L, Anghelescu, S, 2009).

Strategic planning has a double mission: to mobilize the potential public and private partners at the local level and to achieve a balance between the structures composing local development. „The local development strategy is the action that views opportunities as requirement of the local community, fact which imposes the taking of measures, depending on the specific of the area:

- rehabilitation and modernization of the existing infrastructure
- expansion of investments in the infrastructure, key-factor in achieving any type of development
- development and promotion of SME's, sector which leads to rapid economic growth
- promotion of the activity of the economic branches requested by the local collectivity and which have ensured the necessary resources
- assignment of the necessary resources for the financing of the human capitals
- expansion and development tof markets
- development partnerships between the public and the private sectors
- financial support for certain public interest utilities" (Matei, L, Anghelescu, S, 2009).

The authorities participating to local development resort to the identification and capitalization of their own resources and of the resources specific to the area, but they also intervene with correction measures in case occurrence of dysfunctional ties during the development process.

Therefore, local development presupposes the existence of a normative-procedural framework, of a public-private partnership and of a viable strategy, in accordance to the population's needs.

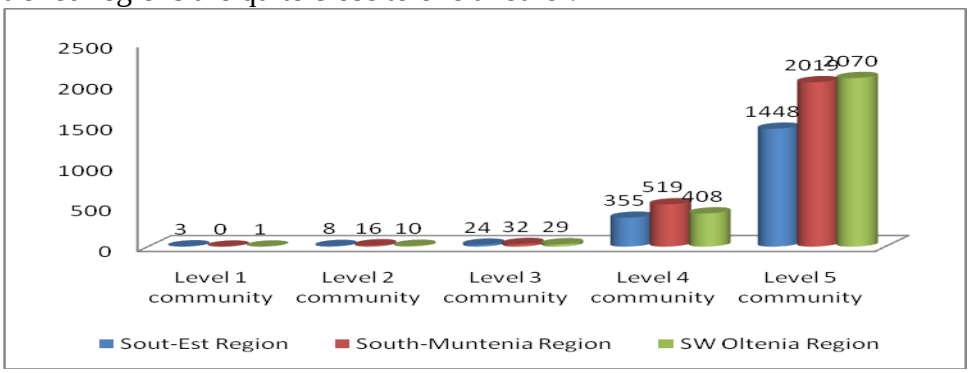
Local development diversifies and enriches the activities on a given territory by mobilizing the resources and energies existing in the area. Result of the efforts of a population, local development means the application of an economic, social and cultural development project. (Dinca Dragos, 2005)

THE DEVELOPMENT REGIONS REPRESENTED IN THE ROMANIA-BULGARIA CROSS-BORDER AREA

7 counties are part of the Romania-Bulgaria cross-border area: Constanta (SE Region), Teleorman, Giurgiu, Calarasi (South-Muntenia Region), Dolj, Mehedinti, Olt (South-West Oltenia Region).In what concerns the research methodology used, the quantitative analysis was employed, with the following indicators:

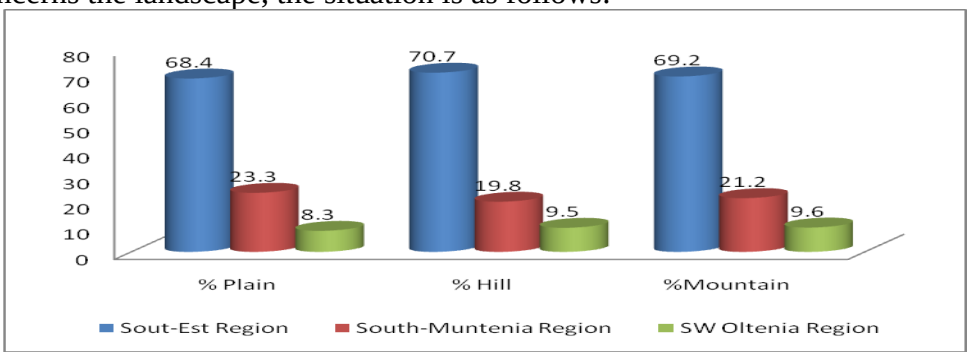
- Locality network;
- Geographic conditions;
- Programmatic documents of the local authorities;
- Local economy and the work force;
- Population;
- Water and sewerage supply;
- Gas supply;
- Public lighting;
- Cleaning;
- Emergency situation services.

From the perspective of the network of localities and the geographical conditions, the 3 above-mentioned regions are quite close to one another.



Graphic no.1 Network of localities in the 3 regions

The average height in the regions represented in the Romania-Bulgaria cross-border area is of 210 m (SE Region), 263 de m (South-Muntenia Region) and 241 m (SW Oltenia Region). In what concerns the landscape, the situation is as follows:



Graphic no.2 The landscape in the 3 regions

Other indicators also reveal great similarities between the 3 development regions:
(Data sources: National Agency for Meteorology and the Regional Development Plans)

Table 1 Analysis of certain geographical factors, as well as of the existence of programmatic documents

	Value South-East Region	Value South-Muntenia Region	Value South-West Oltenia Region

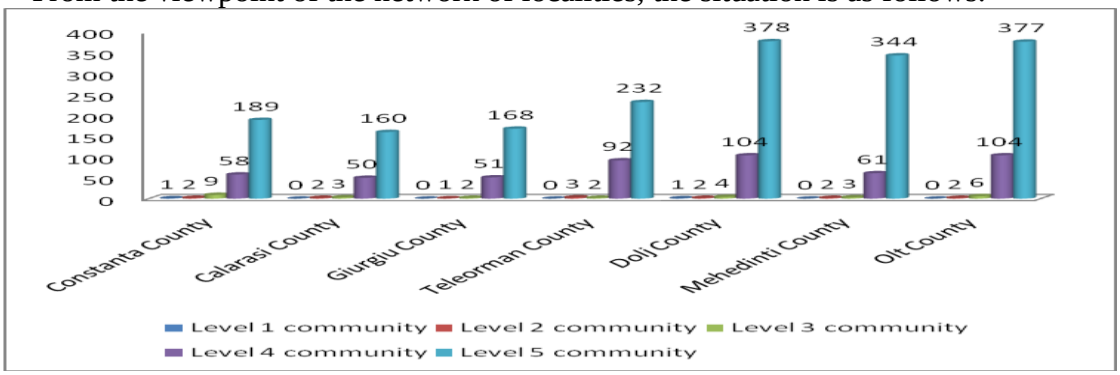
Temperatures recorded	11,2	10,4	11,3
Level of precipitations	645	823	722
Evapotranspiration recorded	912	1038	1021
Humidity level	72	69	71
Population density – no. of inhabitants/ km^2	78,45	94,1	79,8
Existence of a development strategy of the gas service (Yes/No)	NO	NO	NO
Existence of a development strategy of the public lightingservice (Yes/No)	NO	NO	NO
Existence of a development strategy of the cleaning service (Yes/No)	NO	NO	NO
Existence of a development strategy of the emergency situations service (Yes/No)	NO	NO	NO
Existence of a development strategy of the region	YES	YES	YES

COUNTIES IN THE ROMANIA-BULGARIA CROSS-BORDER AREA – STATE ASSESSMENT

In the southern part of Romania there are 7 counties (Mehedinti, Dolj, Olt, Teleorman, Giurgiu, Calarasi, and Constanta) which have as common point the bordering by theDanube and the vicinity with Bulgaria.

3.1. The locality network

From the viewpoint of the network of localities, the situation is as follows:

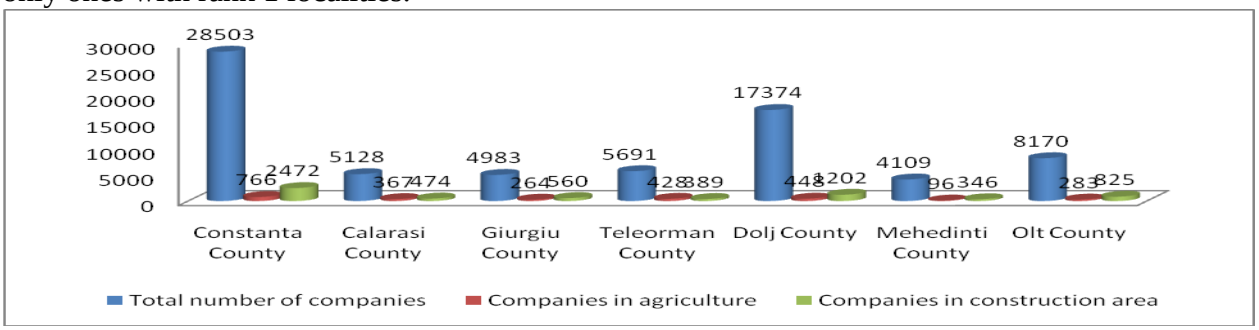


Graphic no.3 Network of localities

It is seen that the counties in the western area of the cross-border region have a higher number of localities, without a correlation between this indicator and the surface. Thus, Constanta County is the second as surface, but has the lowest number of localities, but the highest number of towns and municipalities and the most numerous population.

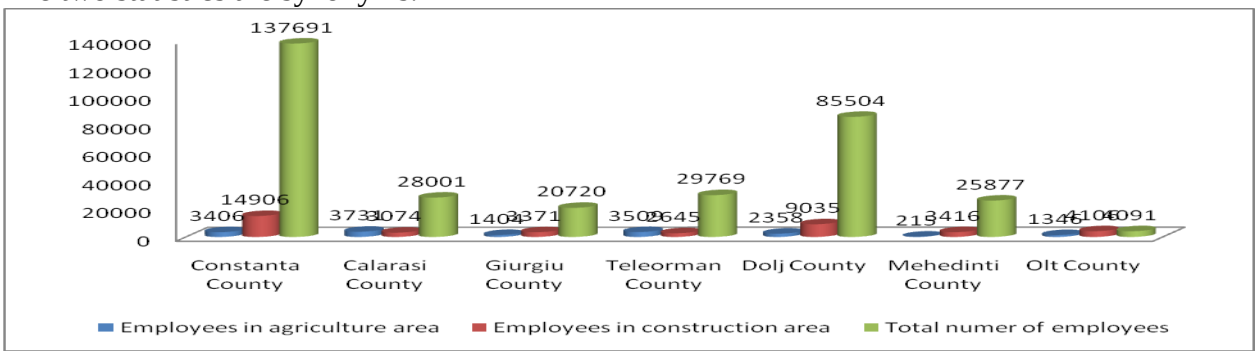
3.2. Local economy and the work force

From the perspective of the economic activity there are large discrepancies between the 7 counties: in Constanta and Dolj there are the most trading companies, and these counties are the only ones with rank 1 localities.



Graphic no.4 Trading companies

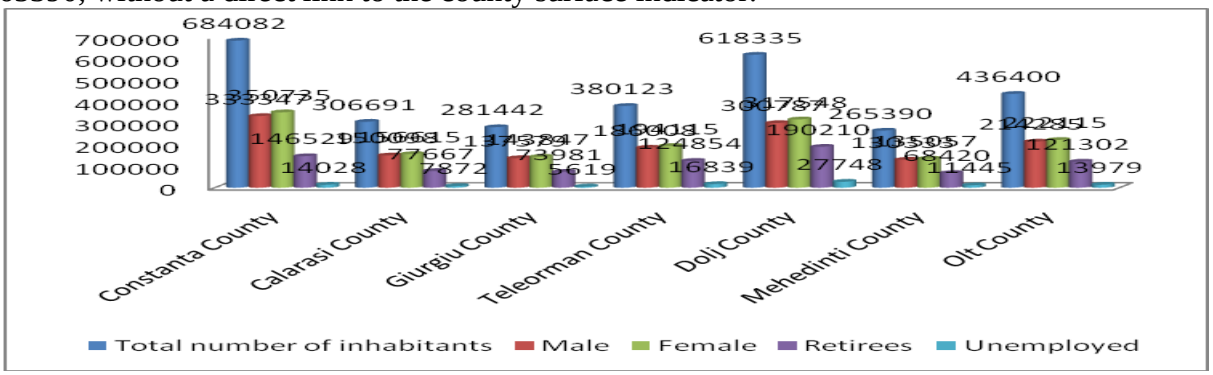
Mehedinti County is the least developed from the perspective of this indicator. There is a direct connection between the number of trading companies and the situation of employment. The two statistics are synonyms.



Graphic no.5Number of employees

1.3. Population

There are significant discrepancies with respect to the number of inhabitants in the 7 counties. Constanta has the highest number of inhabitants – 684082, and Mehedinti the lowest– 265390, without a direct link to the county surface indicator.



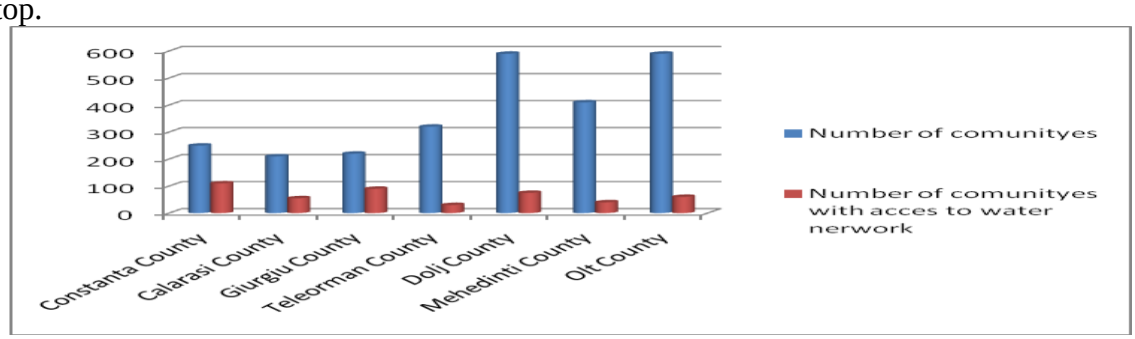
Graphic no.6 Population statistics

It is established that there is no proportional relationship between the number of inhabitants, the number of trading companies and the number of employees. As example, the population ratio between Constanta and Mehedinti is of 2.57, and the ratio of companies in the two counties is 6.93.

4. THE PUBLIC SERVICES IN THE COUNTIES OF THE ROMANIA-BULGARIA CROSS-BORDER REGION

4.1. Water supply and sewerage

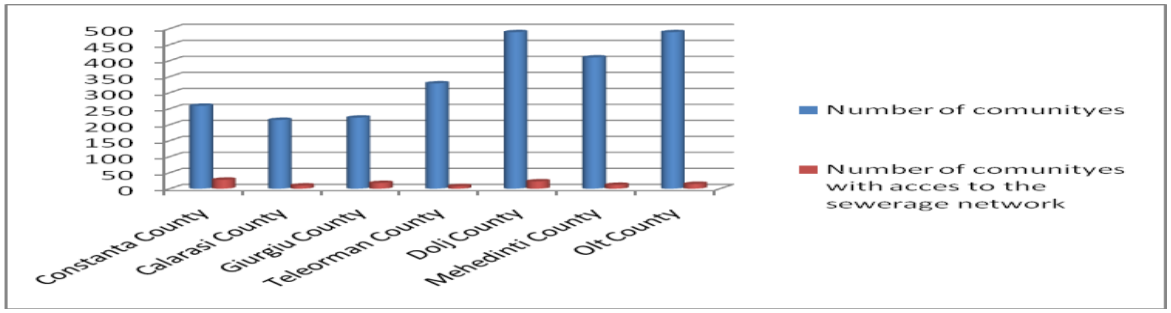
As far as water supply is concerned, Giurgiu County has the best number of localities – number of localities with access to water supply ratio. But in what concerns the total length of the water and sewerage supply networks, the counties with important economic activity are in the top.



Graphic no.7 Situation of the water supply

Table 2 Total length of the water supply network (transport and distribution) (km)

ATU name	ConstantaCounty	Calarasi County	Giurgiu County	Teleorman County	Dolj County	MehedintiCounty	Olt County
Total length of the water supply network (transport and distribution) (km)	2972.84	1143.5	1436.5	898.6	1957	867.6	1315



Graphic no.8 Situation of the sewerage services

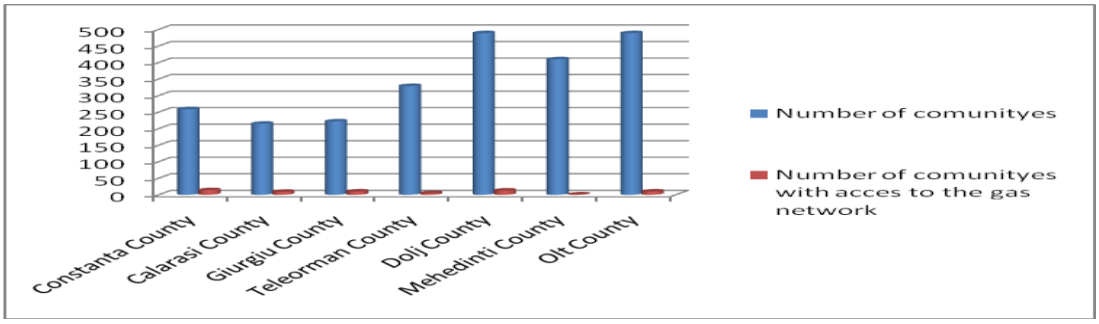
Table 3 Total length of the sewerage network (km)

ATU name	Constanta	Calarasi	Giurgiu	Teleorman	Dolj	Mehedinti	Olt

	County	County	County	County	County	County	County
Total length of the sewerage network (km)	1204.63	171.2	200.4	231	709	201	338.6

4.2. Gas supply

This service is little accessible in the 7 counties. In Mehedinti one locality has accessto gas supply. In general, the rural space has no access to such a service.



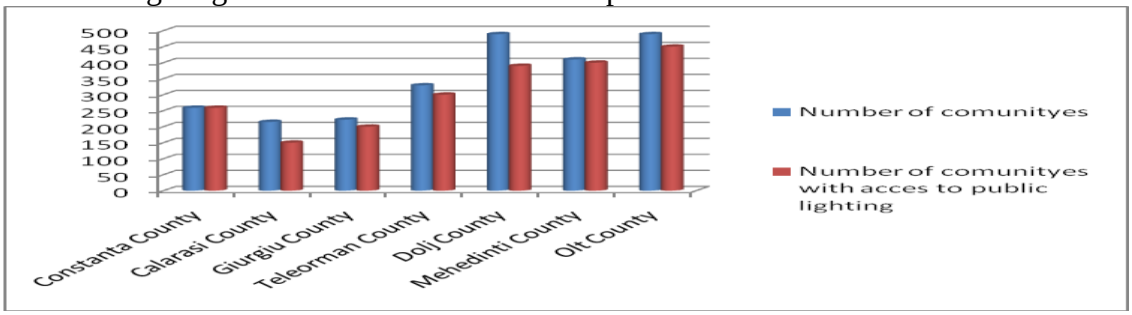
Graphic no.9 Situation of gas supply

Table 3Total length of the gas network

ATU name	Constanta County	Calarasi County	Giurgiu County	Teleorman County	Dolj County	Mehedinti County	Olt County
Total length of the gas network (km)	834.47	233.6	249	243	633.7	23.7	331.81
Existence of a development strategy for the gas supply service at the county level (Yes/No)	Yes	Yes	No	Yes	No	Yes	No

4.3. Public lighting

Public lighting is the service with the best representation at the level of the 7 counties.



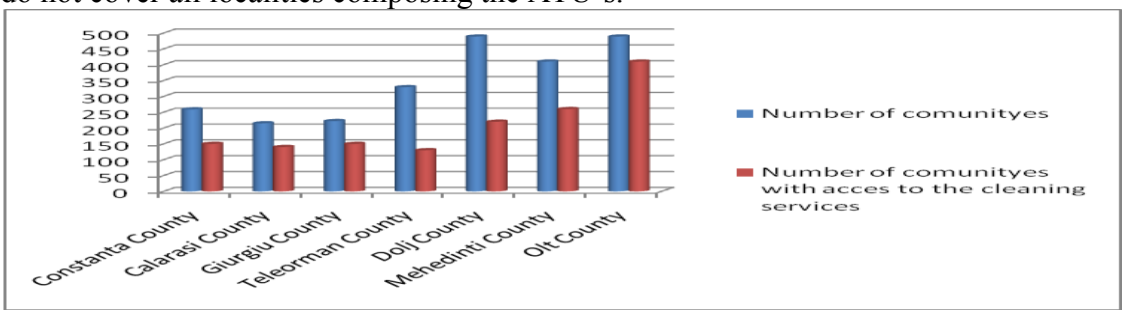
Graphic no.10 Situation of public lighting

Table 4Existence of a development the strategy of the public lighting service at the county level

ATU name	Constanta County	Calarasi County	Giurgiu County	Teleorman County	Dolj County	Mehedinti County	Olt County
Existence of a development strategy of the public lighting service at the county level (Yes/No)	No	Yes	No	Yes	No	No	No

4.4. Cleaning

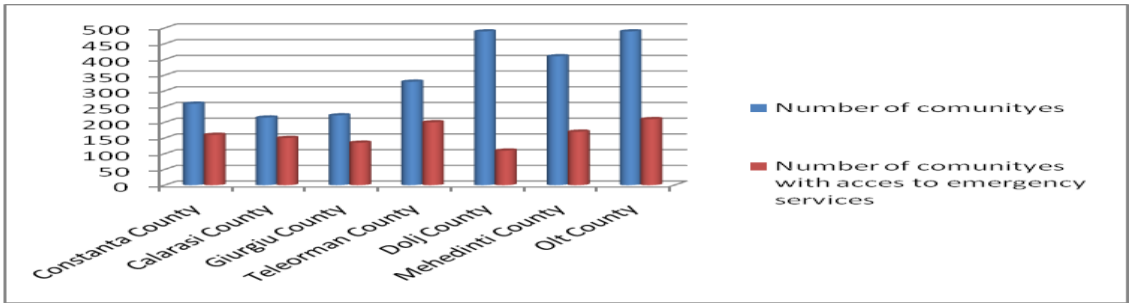
Paradoxically, the cleaning services are not organized in all localities in the countiesor they do not cover all localities composing the ATU's.



Graphic no.11 Situation of cleaning

4.5. Emergency situation services

Even though there is an obligation regarding the functioning of emergency situation services in each locality, the situation is far from satisfactory. In most cases, due to the lack of staff, the local authorities did not assign job openings to this type of services.



Graphic no.12 Situation of emergency services

CONCLUSIONS

The development regions in the cross-border area present numerous similarities from the perspective of the indicators analyzed, which leads to a possible consideration of the current development regions for the construction of administrative-territorial regions.

The network of localities in the 7 counties analyzed is disproportionate between the counties in the western part and those in the eastern part. However, we notice that within the same development region the situation is balanced (similarities between the counties Dolj, Mehedinti, Olt and between the counties Teleorman, Giurgiu, Calarasi).

The large towns play the role of development centers, the most developed counties being those where there are rank 1 locality – Constanta and Dolj.Here there are the highest number of trading companies, employees, but also population. Still, there is no proportional ratio between the number of companies and the number of employees.

There are wide discrepancies between the counties in matters of population, economic development, and access to public services.

Paradoxically, there is no direct connection between the economic activity and the quantity of public services (case of Giurgiu County).

The public services analyzed are little accessible in the 7 counties, a significant number of localities having no access to them. The nonexistence of the primary services – water supply, sewerage, gas supply, also represents an obstacle in the path of economic development.

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[6] Law no. 350/2001regarding territory planning and urbanism, published in the Official Gazette of Romania no. 373/10 July 2001;

[7] Law no. 544/2001regarding free access to public interest information published in the Official Gazette of Romania no. 663/23 October2001;

[8] Population census 2011

[9] Statistical data provided by the National Office of the Trade Register, National Institute for Statistics

BOOK REVIEW

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Lucica Matei, Cristina Sandu, Mihaela Violeta Tuca. (2014). *Social responsibility and social enterprise. An integrated approach*, LAP LAMBERT Academic Publishing, 168 pages, ISBN-10:3659591254, ISBN-13: 978-3-659-59125-9.

The book "*Social responsibility and social enterprise. An integrated approach*"addresses to professors and students, specialists and practitioners in the area of social building the local and regional communities, providing a comparative pillar in view to approach the topic of social responsibility.

Lucica Matei (1956-2014) was Professor and Jean Monnet Chair Holder at the Faculty of Public Administration of the National University of Political Studies and Public Administration, prestigious professor researcher, appreciated in the national and international academia due to her outstanding outcomes. Her expertise was acknowledged in public management and public services, European administration, local development, public and nonprofit marketing. She published as author or editor over 22 books at Romanian or foreign publishing houses. "Social responsibility and social enterprise. An integrated approach" represents her last book. At the same time, she was author or co-author of over 100 articles focused on her areas of expertise. She was member of several editorial teams of prestigious foreign journals, as well as coordinator of thematic series: "Science of Administration and Public Management" (Economica Publishing House, Bucharest), "Jean Monnet Handbooks" (Economica Publishing House, Bucharest), "Administrative Studies and Public Management" (Shaker Verlag, Germany). Her outstanding career of professor and researcher represents an example for the young generation.

The social responsibility of public or private actors becomes increasingly an important topic revealed by the European Union strategic documents. The forms of expression are more diverse in the old or new EU Member States. However, the social enterprise represents the easiest and omnipresent tool of implementing the social responsibility. In this context, the current paper achieves an integrated approach of those two concepts and realities - social responsibility and social enterprise –focusing both on presentations of the theoretical and normative framework and on relevant comparative aspects from various European countries, including the South-Eastern European states. The book valorises the authors' expertise, acquired in the framework of the Doctoral School of Administrative Sciences in the National University of Political Studies and Public Administration in Bucharest.

The book provides an overview of a diversity of approaches on social responsibility and social enterprise, conceptualizing the specific contributions of public management and

marketing. The book is structured into five chapters, relevant to the topic, namely theSocial Economy - A world of social values and sustainable relations, Theoretical debates on Social Responsibility and Social Enterprise, Managerial and marketing approaches, Implementing Social responsibility, Mapping the good practices of Social Enterprise.

The relevant study of literature, the legislative analysis and comparative analysis on forms of organization and functioning of social enterprise in the public systems in UK, France, Italy, Romania, Bulgaria, Croatia, Serbia, aim to highlight patterns and typology of social enterprises as well as public marketing instruments.

The design concept, content and structure of the chapters support a focused research approach, in which the information is integrated into a coherent context, well-organized in accordance with the final purpose and the research program.

In the first chapter the authors, through a vast effort of analysis and synthesis, present the relevant characteristics and descriptions of the social economy and correlation with sustainable development issues.

The second chapter aims at substantiating the relevance of social responsibility for the public administration. According to the authors, the social responsibility redefines and amends the governmental agenda interacting directly with the processes of implementing New Public Management and inducing the specific objectives for the reform strategies of the public administration.

The analysis continues in the third chapter with presenting the managerial and marketing approach specific to public administration in the promotion and implementation on social responsibility and social enterprise.

The forth chapter focuses and deepens the analysis for only one instrument, namely the ISO 26 000 management standard. The authors justify this option through the fact that the mentioned instrument is suitable for the public administration and the existence of a precedent of implementing public administration of the European Union. The chapter demonstrates also the capability to offer good practices examples from the researched field of public administration from Romania.

The research in the fifth chapter presents the social enterprise models and their setting in the cross-sectors model. The authors manage to analyse and conduct the comparative study, which provides a complex research feature, innovative in the approach of the specific topic of economic, social, legal domains, having as support the public sector's theories of public management and public marketing.

The book *"Social responsibility and social enterprise. An integrated approach"* offers a concise and relevant documentation material for academia and students, specialists and practitioners from public and private spheres facing broader or more specific issues of the sustainable evolution of the public sector, overcoming the financial crisis and involving the public administration as an actor in promoting social responsibility and developing the social enterprise.

KNOWLEDGE SOCIETY DEVELOPMENT IN THE EU 28

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Abstract:*The 21st century represents the century of knowledge, where the information and knowledge have an essential role for the world states' economic-social development, as well as for modelling and affirmation of each individual.As the 'knowledge society' concept is associated to the 'technological innovation' concept, the knowledge society includes the social, cultural, economic, political and institutional transformation in the perspective of pluralistic development.The knowledge society does not represent a formula, it is an epistemic phenomenon, with a clear methodology in light to identify common problems and search common solutions worldwide.Knowledge society involves the development of the states' capacity to identify, create, process, disseminate and use information and knowledge in view of sustainable development, economic growth and improvement of competitiveness, in light to face successfully new challenges of this millennium.The paper aims to present an empirical comparative analysis of the key components of knowledge society in the 28 EU Member States.*
The research methods refer to documentary and bibliographical analysis, as well as comparative analysis.
Keywords:*knowledge society, education, innovation, ICT, competitiveness*

1. CONTEXT

Knowledge represents a phenomenon, „the greatest miracle of our universe, a matter which will not be solved soon" (Popper, 1992:32-84), a process, as well as a product of the human activity, „its most representative product" (Popper, 1992:32-84).

Knowledge, as a core feature of the society of the 21st century generates changes in all the social subsystems, including that of public administration, developing new approaches, attitudes, specific tools and methods.

[2]Scholar within the project "Doctoral and Postdoctoral Fellowships for young researchers in the fields of Political, Administrative and Communication Sciences and Sociology" POSDRU/159/1.5/S/134650, financed through the Sectoral Operational Programme for Human Resources Development 2007-2013, co-financed by the European Social Fund.
[3]Scholar within the project "Doctoral and Postdoctoral Fellowships for young researchers in the fields of Political, Administrative and Communication Sciences and Sociology" POSDRU/159/1.5/S/134650, financed through the Sectoral Operational Programme for Human Resources Development 2007-2013, co-financed by the European Social Fund.

We are living in an era of major social, economic, financial, political transformations, an era of speed and complexity, an era dominated by knowledge and competences, based on values, culture, history and traditions. The complex phenomenon of knowledge society represents an important research topic together with other actual topics such as climate change, sustainable development, and globalisation.

The scientific researches on the processes of knowledge society creation and modernisation could be defined as a promising direction of theoretical research in the field of social, administrative, economic, technical sciences as well as an important priority of the practical activities in various fields of the economic, political, social life and technological progress. The knowledge society is recognised and approached as a major topic at international, European and national level.

A knowledge society refers to the type of society required in view to compete and succeed within the dynamics of the economic and political change of the modern world. The knowledge society is characterised by the outstanding values of creativity and values expressing the generation, transmission and use of new technologies. The knowledge society aims the objectives to create, transmit and use new products in the field of economics, science and technology, arts, business, as well as the objectives to initiate, generate and implement creative ideas and innovations in all the areas of social, economic, political life. The modernisation of knowledge society is oriented towards creation of new quality of society and life style.

2. PILLARS OF KNOWLEDGE SOCIETY

The pillars of knowledge society refer to education, research and development, innovation, information and communication technology, global competitiveness.

2.1. Education

For the time being, the European Union is facing numerous and complex challenges. The effects of the economic and financial crisis are acknowledged in all EU Member States, and in this context, the education and training systems should adapt so that all the European citizens acquire knowledge, skills and competences in view to face the job challenges and requirements.

The quality of education and training represents an essential factor for an adaptable, competitive workforce and generation of smart economic growth. The education and training systems should provide quality for their programmes and the graduates should hold knowledge, competences, and skills in view to meet the labour market requirements.

„It is necessary a proactive management of the offer of competences in view to stimulate innovation and emergent dynamic sectors for the economic growth" (COM, 2012, 669 final). „The education and training systems should be modernised and should provide the necessary competences in view to respond better to the needs and requirements of the labour market" (COM, 2012, 669 final). In the context of reducing the public expenditure, in view to achieve better results, it is important to improve the efficiency of the education and training systems through structural reforms. The European Commission analysed this topic in depth in its new

initiative „Rethinking Education – Investing in skills for better socio-economic outcomes" (COM, 2012, 669 final).

The structural and organisational reforms in the educational system aim to make lifelong learning and mobility a reality, to improve the quality and efficiency of education and training, to promote equity, social cohesion and active citizenship and to enhance creativity and innovation, including entrepreneurship, at all levels of education and training.

According to the EU Report, „Education and Training Monitor", „the role of education and training in fostering sustainable growth is decisive. Member States must pursue reforms to boost both the performance and efficiency of their education systems. Well targeted education and training policies will help Europe tackle the current crisis, while laying the foundations for a more dynamic, resilient, and united Europe" (European Union, 2012).

Quality in education is vital as education and culture support the economic growth, development and social progress, providing special meaning. A sustainable society is foremost a well-educated society.

The European budget for the period 2014-2020 is ambitious as the European Commission strives for allocating investments in the field of education, research and innovation. In this respect, the new programme Erasmus+ (European Union, 2014) aims to boost skills and employability, as well as to modernise education and training systems. It will have a budget of €14.7 billion. It is a 40% increase compared to current spending levels, reflecting the EU's commitment to investing in education. Erasmus+ will provide opportunities for over 4 million Europeans to study, train, gain work experience and volunteer abroad.

Erasmus+ supports transnational partnerships among education, training, and youth institutions and organisations to foster cooperation and bridge the worlds of education and work.

The comparative analysis in the European Union Member States reflects the status of education and training based on structural indicators: expenditure on education as percentage of GDP, index on higher education and training programmes, number of graduates of higher education institutions.

The actual context for the educational systems in the EU should be highlighted: on the one hand, the impact of the economic and financial crisis on labour market, on economy and overall society, and on the other hand, the demographic evolution, with relevant impact on the labour market, some states facing the decrease of the number of pupils and students, including also Romania.

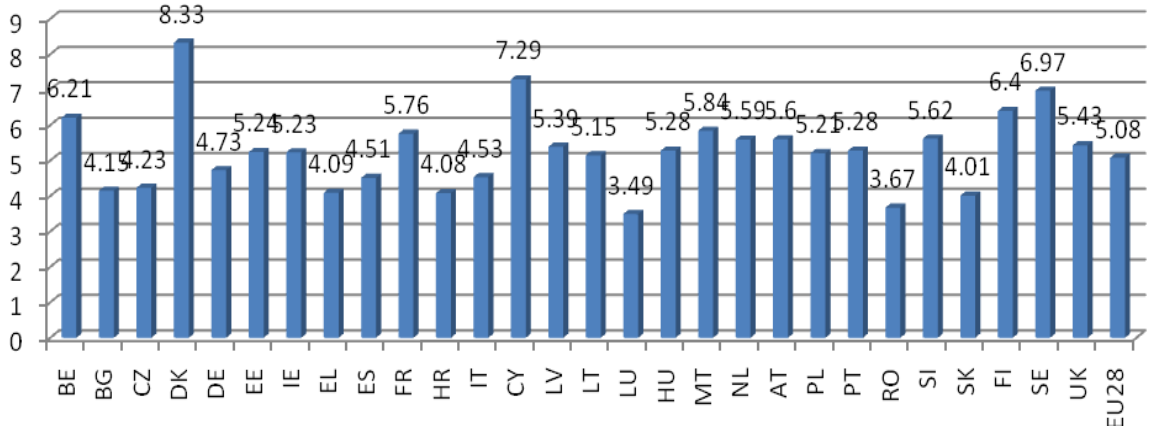
Table 1 Evolution of expenditure on education as percentage of GDP in the EU Member States during 2002-2011

Country	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Average
Belgium	6.09	6.02	5.95	5.92	5.98	6.00	6.43	6.57	6.58	6.55	6.21
Bulgaria	3.94	4.09	4.40	4.25	4.04	3.88	4.44	4.58	4.10	3.82	4.15
Czech Republic	4.15	4.32	4.20	4.08	4.42	4.05	3.92	4.36	4.25	4.51	4.23
Denmark	8.44	8.33	8.43	8.30	7.97	7.81	7.68	8.74	8.81	8.75	8.33
Germany	4.72	4.74	4.62	4.57	4.43	4.49	4.57	5.06	5.08	4.98	4.73

Estonia	5.47	5.29	4.92	4.88	4.70	4.72	5.61	6.03	5.66	5.16	5.24
Ireland	4.27	4.35	4.66	4.72	4.73	4.92	5.67	6.43	6.41	6.15	5.23
Greece	3.57	3.56	3.83	4.09	4.11	4.16	4.2	4.2	4.6	4.6	4.09
Spain	4.25	4.28	4.25	4.23	4.26	4.34	4.62	5.02	4.98	4.82	4.51
France	5.90	5.92	5.80	5.67	5.61	5.62	5.62	5.90	5.86	5.68	5.76
Croatia	3.71	3.93	3.87	3.98	4.04	4.02	4.32	4.42	4.31	4.21	4.08
Italy	4.60	4.72	4.56	4.41	4.67	4.27	4.56	4.70	4.50	4.29	4.53
Cyprus	6.60	7.37	6.77	6.95	7.02	6.95	7.45	7.98	7.92	7.87	7.29
Latvia	6.60	5.58	5.12	5.14	5.13	5.07	5.71	5.59	4.96	4.96	5.39
Lithuania	5.81	5.14	5.17	4.88	4.82	4.64	4.88	5.64	5.36	5.17	5.15
Luxembourg	3.79	3.77	3.87	3.78	3.41	3.15	3.24	3.3	3.2	3.4	3.49
Hungary	5.39	5.91	5.44	5.46	5.44	5.29	5.10	5.12	4.90	4.71	5.28
Malta	4.22	4.48	4.66	6.58	6.45	6.18	5.72	5.32	6.74	8.04	5.84
Netherlands	5.22	5.47	5.50	5.53	5.50	5.32	5.50	5.95	5.98	5.93	5.59
Austria	5.68	5.53	5.48	5.44	5.40	5.33	5.47	5.98	5.91	5.80	5.60
Poland	5.41	5.35	5.41	5.47	5.25	4.91	5.08	5.09	5.17	4.94	5.21
Portugal	5.33	5.38	5.10	5.21	5.07	5.10	4.89	5.79	5.62	5.27	5.28
Romania	3.51	3.45	3.28	3.48	3.68	4.25	4.24	4.24	3.53	3.07	3.67
Slovenia	5.76	5.80	5.74	5.73	5.72	5.15	5.20	5.69	5.68	5.68	5.62
Slovakia	4.31	4.30	4.19	3.85	3.80	3.62	3.61	4.09	4.22	4.06	4.01
Finland	6.22	6.43	6.42	6.30	6.18	5.90	6.10	6.81	6.85	6.76	6.40
Sweden	7.36	7.21	7.09	6.89	6.75	6.61	6.76	7.26	6.98	6.82	6.97
United Kingdom	5.06	5.21	5.12	5.31	5.38	5.29	5.28	5.56	6.15	5.98	5.43
EU28	5.00	5.03	4.95	4.92	4.91	4.92	5.04	5.38	5.41	5.25	5.08
EU25	5.03	5.06	4.98	4.95	4.93	4.95	5.06	5.41	5.46	5.31	5.11
EU15	5.01	5.04	4.96	4.89	4.87	4.81	4.95	5.32	5.29	5.16	5.03

Source: the authors, based on data from Eurostat

Figure 1 Average of expenditure on education as percentage of GDP in the EU Member States during 2002-2011



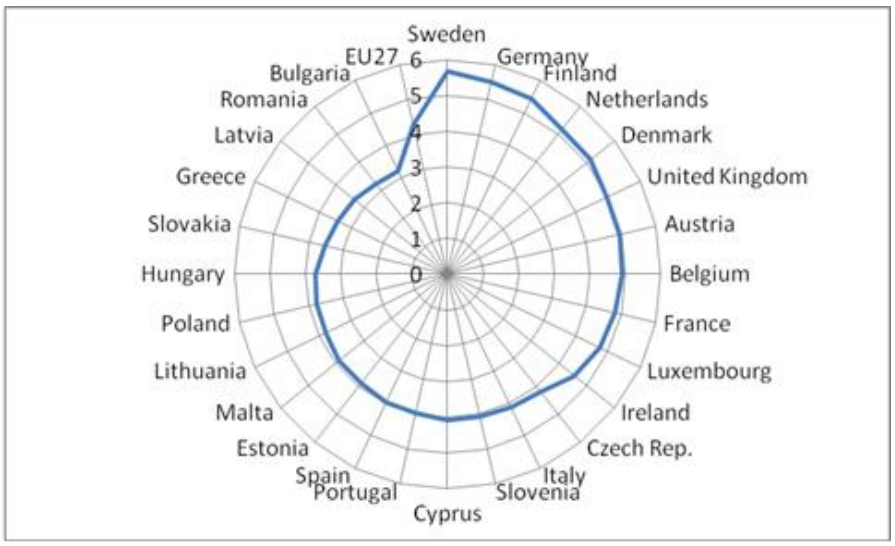
Source: the authors

During 2002-2011, the evolution of expenditure on education as percentage of GDP allocated to education was in general constant, the EU average being around the value of 5%, but this percentage does not reflect the differences between various EU Member States. While Germany, Spain, Italy, Bulgaria, Czech Republic, Romania, Greece, Slovakia allocated a value between 4% and 5%, Denmark, Sweden, Finland, Cyprus allocated almost double (7-8%). Since 2009, several European states were in recession and the effects of the economic and financial crisis have enhanced. Thus, in the context of the trend of decreasing public expenditure, most EU states increased investments in education, only Romania and Greece maintained the same level and Latvia and Malta decreased them. The motivation consists in the governments' wish to invest in the educational systems as they represent the pillar for economic growth and competitiveness as well as in the authorities' commitment on the development of competences and skills of pupils, students, trainees. In 2011 Romania ranked the last while the Nordic countries, Denmark, Sweden, and Finland held the supremacy.

The European Commission has a clear vision on governance of the European higher education institutions, based on „diversifying the financing resources, enhancing cooperation between universities and industry, making compatible the offer of qualifications with the requirements of the labour market" (Dobbins et al., 2011:665-683). „The classical governance model is replaced with a model focusing on managerialism, public accountability and quality in provision of public services" (Dobbins et al., 2011:665-683). At the same time, the increasing interest for research in higher education represents „partially a function of extending higher education during the last decades and for the time being its character and performance have implications for all the members of society" (Brenan and Teichler, 2008: 259-264).

The index for higher education and training programmes, evaluating the enrolment rate in high schools and faculties, quality of education, training programmes for teachers is presented in Figure 2.

Figure 2 Index for higher education and training programmes in the EU Member States in 2010

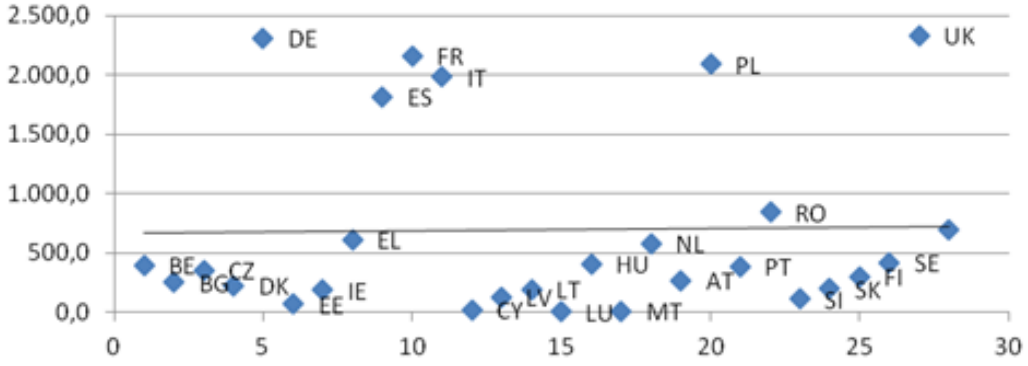


Source: the authors

Romania is ranked on 26th position with a value of 3.24%, while Sweden holds the supremacy with 5.67% and the EU average is 4.3%.

The average of the number of students (1000) in higher education institutions (ISCED 5-6, Bachelor, master, PhD studies) in all fields during 2002 – 2010 in the EU Member States is presented in Figure 3.

Figure 3 Average of the number of students (1000) in higher education institutions (ISCED 5-6) in all fields during 2002 – 2010 in the EU Member States



Source: the authors

During 2002-2010, UK, Germany, France, Poland, Italy, Spain registered an average of the number of students higher than the EU average and at the other extreme we find Malta, Cyprus, Estonia, Slovenia, Latvia, Lithuania, Slovakia.

According to the data from Eurostat, in 2010, the number of the graduates of faculties in the field of social sciences, business and law (as percentage) recorded the highest value - 36%

and among the countries exceeding this value we find Romania (60%), Latvia (54.4%) and Bulgaria (51.6%).

Within a context characterized by major social and economic changes, the role of education has been very dynamic. In some new EU Member States, the Governments have invested in education and training through the Structural Funds. The collaboration between universities and companies should embrace the form of jointly developed curricula, more pragmatical training for students, blended learning, and practice oriented courses.And the outcomes of a better educational system should reveal more qualified persons, education for everybody, low rate of school dropout, collaborative, flexible, peer-to-peer education and a better relationship with the practical world.

2.2. Research – development

The conclusions of the European Council on March 2012 reiterated for the European Research Area „the creation of a single market for research, development and innovation", which should be finalised before 2014. The European Research Area (ERA) comprises all research, development activities, programmes and policies in Europe involving a cross-national perspective.

Cooperation in the field of science and technology improves the quality of research at European level and strengthens Europe's competitiveness. The improvement of the transfer of knowledge between universities, industry and public research organizations is essential as the results of researches contribute to economic growth, support innovations and development of new products and services.

One of EU objectives in the last decade was to encourage the level of investments in view to stimulate the EU competitiveness. At the European Council in Barcelona in 2002, the EU agreed a target of at least 3% of GDP for research. Most Member States specified own objectives in their national reform programmes.

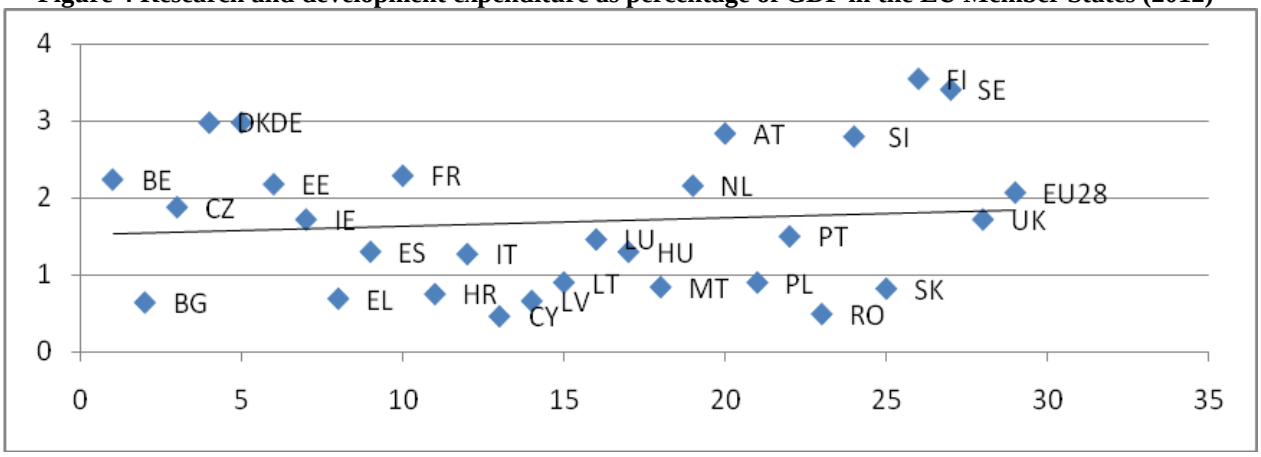
Table 2 Research and development expenditure as percentage of GDP in the EU Member States

Country	2012	TARGET 2015	Country	2012	TARGET 2015
Belgium	2.24	3	Lithuania	0.9	1.9
Bulgaria	0.64	1.5	Luxembourg	1.46	2.3
Czech Republic	1.88	:	Hungary	1.3	1.8
Denmark	2.98	3	Malta	0.84	0.67
Germany	2.98	3	Netherlands	2.16	2.5
Estonia	2.18	3	Austria	2.84	3.76
Ireland	1.72	:	Poland	0.9	1.7
Greece	0.69	0.67	Portugal	1.5	2.7
Spain	1.3	3	Romania	0.49	2
France	2.29	3	Slovenia	2.8	3
Croatia	0.75	1.4	Slovakia	0.82	1.2

Italy	1.27	1.53	Finland	3.55	4
Cyprus	0.46	0.5	Sweden	3.41	4
Latvia	0.66	1.5	United Kingdom	1.72	:
EU 28	2.07	3			

Source: based on data from Eurostat

Figure 4 Research and development expenditure as percentage of GDP in the EU Member States (2012)



Source: the authors

In 2012, in the EU, the expenditures targeted to research-development as percentage of GDP represented 2.07% of GDP, a value under the objective of 3% established by Lisbon Strategy in 2002. Taking into consideration the fact that this objective has not been attained, Europe 2020 Strategy continues to specify the same objective of 3% of GDP for research-development.

It is worth to remark the fact that the Nordic countries, Finland, Sweden exceeded this target, while Denmark, Germany, Austria, France, Sloveniawere almost around this value. In this ranking, Romania is on the 27th position. Although research in Romania is underfinanced, there are areas of activity, which by excellence bring important contributions through innovative applications in the field of science and technology. An eloquent example is the Romanian Spatial Agency. Concerning the expenditure allocated for research-development, Romania aims to reach the level of 2% of GDP for the activity of research-development-innovation (of which 1% national public funds and 1% private funds) in 2015.

Analysing the rank of the EU Member States, several categories could be emphasised:

- States which reached the national objectives: Finland (3.55%), Sweden (3.41%), Denmark (2.98%), Germany (2.98%);
- States which are going to reach the national objectives based on their progress during 2000-2012: Austria (2.84%), Slovenia (2.8%), and Italy (1.27%);
- States which should increase their growth rate: Belgium (2.24%), France (2.29%), Netherlands (2.16%), Portugal (1.5%), Estonia (2.18%), Spain (1.3%), Luxembourg (1.46%), Hungary (1.3%);
- States which should increase significantly their growth rate and should make efforts in view to exceed the EU average: Bulgaria (0.64%), Latvia (0.66%), Lithuania (0.9%), Croatia

(0.75%) Poland (0.9%), Romania (0.49%), Cyprus (0.46%), Malta (0.84%), Slovakia (0.82%), Greece (0.69%);

- States which have not specified national objective: United Kingdom (1.72%), Ireland (1.72%), Czech Republic (1.88%).

2. 3. Innovation

The innovation represents an essential driver for a sustainable economic development and an essential prerequisite for a competitive economy.

Innovation reflects a given state of knowledge, a particular institutional environment, a certain availability of skills, and a network of producers and users who can communicate their experience. The ability and willingness of the relevant actors to cooperate and to link and share ideas, knowledge and experience beyond traditional organizational borders, as well as to exchange vital resources such as staff, is essential in innovation environments. In the field literature, this process has been framed in terms of 'open innovation' (Chesbrough, 2003:113-135; Chesbrough, 2006:38-45; Von Hippel, 1976:212-239; Von Hippel, 2005:1-19; Von Hippel, 2007:1-23).

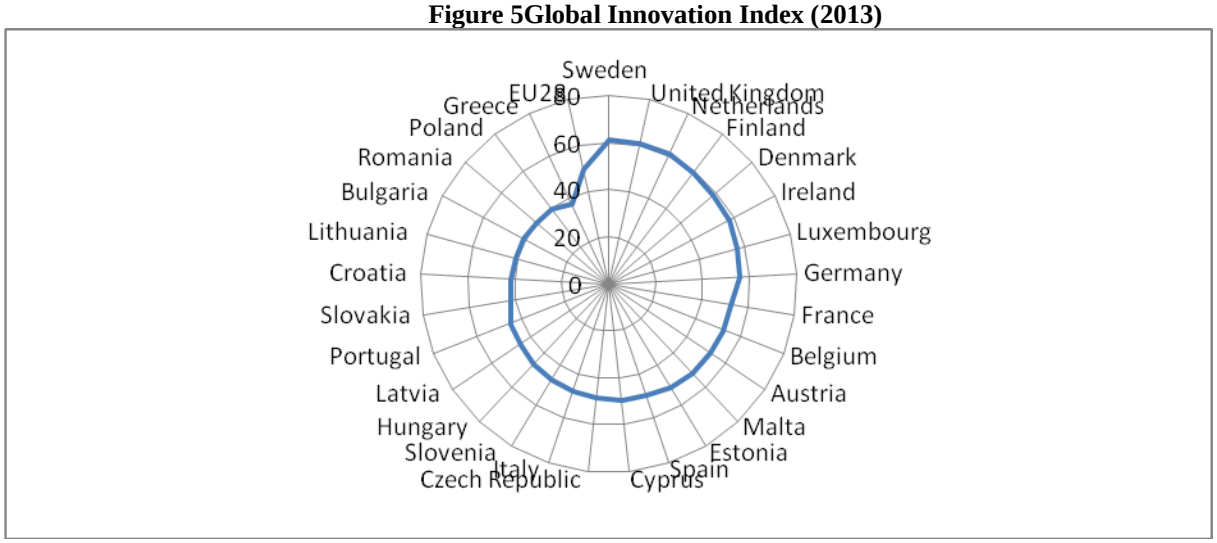
The Global Innovation Index (GII) focuses on measuring innovation at the country level, providing "interesting insights into the framework conditions needed for innovation to take place", as well as about the actual innovation performance.

Table 3 Global Innovation Index (2013)

Country	GII	Country	GII	Country	GII
Sweden	61.36	Austria	51.87	Portugal	45.1
United Kingdom	61.25	Malta	51.7	Slovakia	42.25
Netherlands	61.14	Estonia	50.6	Croatia	41.95
Finland	59.51	Spain	49.41	Lithuania	41.39
Denmark	58.34	Cyprus	49.32	Bulgaria	41.33
Ireland	57.91	Czech Republic	48.36	Romania	40.33
Luxembourg	56.57	Italy	47.85	Poland	40.12
Germany	55.83	Slovenia	47.32	Greece	37.71
France	52.83	Hungary	46.93		
Belgium	52.49	Latvia	45.24	EU28	49.86

Source: Data from the Global Innovation Index 2013

Figure 5Global Innovation Index (2013)



Source: the authors

Comparing the index of Romania (40.33) with the indices of other EU states and the EU average (49.86), we find out that Romania is on the 26th position, although it is a country with an extraordinary potential in this field, taking into account the number of patents, number of awards in various international contests or the researchers' expertise.

In Romania, the performance of innovation is under the EU average but it has a very high rate of improvement. Romania's strengths consist in outstanding inventions, relevant economic effects of inventions. The weaknesses refer to financing, support for the implementation of inventions. Unfortunately, Romania is rather in the stage of developing inventions than in the stage of their implementation.

In the knowledge society, the capacity of innovation and capacity to implement new innovations is very important for the public administration.„The public organizations should be able to incorporate information, knowledge, and resources within the innovation processes and to harmonise the needs of citizens, businesses, NGOs etc. (Bekkers et al., 2011: 3)".

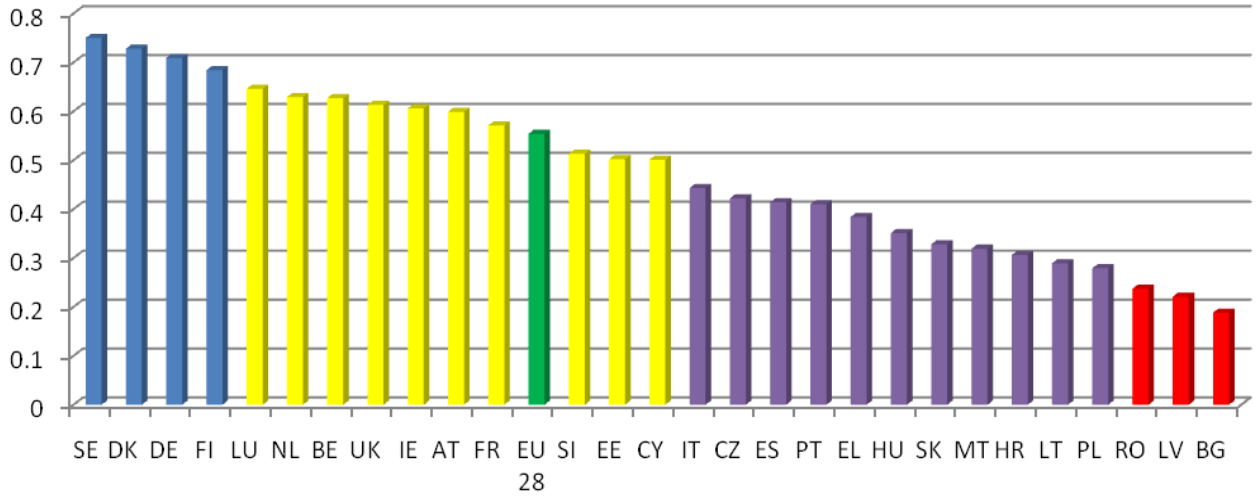
Innovation represents a prerequisite for administration's modernization. Innovation in public administration may be considered a learning process, a modality for new service development, new technology application, for changing the organisational structures as well as for implementing new managerial approaches in light to meet the citizens, businesses, society needs and requirements in facing the new challenges of knowledge society. Public sector innovation research shows that new insights stem from taking into account the ideas, insights and experiences of citizens as end-users (Davenport, 1993: 1-7; Oudshoorn and Pinch, 2003: 126-137; Alam, 2006:468-480; Von Hippel, 2007:1-23), of the middle management of public organizations (Behn, 1995:21-234; Borins, 2008; Fuglsang and Pedersen, 2011:44-60) and people who are engaged on a daily basis in rendering services to society, like police officers, teachers, doctors (Oudshoorn and Pinch, 2003: 126-137; Von Hippel, 2007: 1-23).

In light to take account of insights from various groups, the literature talks about the importance of seeing innovation as a process of co-creation (Von Hippel, 2007: 1-23; Oudshoorn and Pinch, 2003). Most innovations in public administration have an ICT component. ICT is interconnected in many practices in administration as information, communication represent vital

resources for public service provision, for implementing public policies and achieving projects and programmes. ICT innovative potential is determined by specific characteristics, for example „the ability to process big data and to communicate beyond the temporal, functional and geographic borders" (Bekkers and Homburg, 2005).

According to the Innovation Union Scoreboard 2014, which analyses eight innovation dimensions and 25 indicators for the performance of the EU innovation system, "the impact of economic crisis not as severe as expected" (European Commission, 2014).

Figure 6 Innovation performances of the EU countries in 2013



Source: European Commission, 2014

As revealed by Figure 6, Sweden holds an innovation system with the best performance in the EU, being followed by Denmark, Germany and Finland.The most innovative countries holdpowerful innovation systems, performing high at all dimensions: research and innovation, business innovation activities, innovation outputs, economic effects, thus revealing a balanced national research and innovation system.Romania, Latvia and Bulgaria are among the modest innovators in the EU.

2.4. Information and Communication Technology

Europe 2020 Strategy highlights ICT role in "overcoming the effects of the economic and social crisis and preparing the EU economy in view to face the new challenges" (Europe 2020 Strategy).

In the last decades, the relationship between technology and economy has been broadly debated, suggesting new methods and tools for evaluation. Annually we witness the continuous expansion of ICT sector at world and European level. ICT role as tool to generate income and employment, for providing access to information, e-learning, e-health, e-justice etc. is very well defined for the time being.

It is worth to note the fact that a country's economy benefits of ICT in two ways:

- as producer, the ICT sector generates economic growth, productivity and innovation;

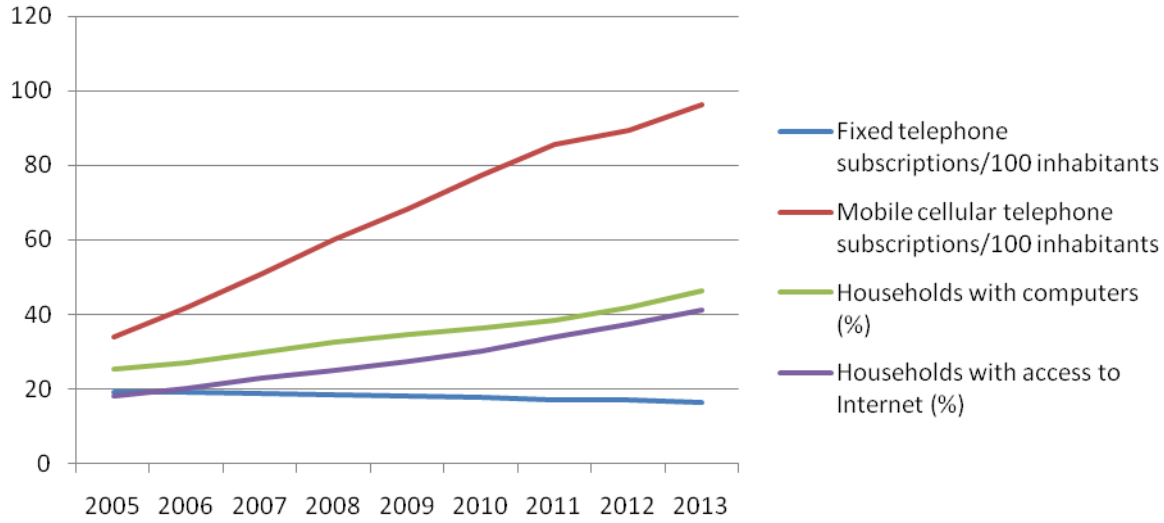
- as user, ICT enhances the efficiency of production processes and it facilitates innovation.

Thus, ICT represents a fundamental factor, with several effects on productivity, innovation, competitiveness, economic growth.

The high-speed communication networks, the new technologies and their application in the productive activities induce changes within the economic structures and contribute to increasing labour productivity. ICT use leads to the diversification of innovation activities through various channels. Overall, ICT has an essential contribution to the economic growth, leading to the improvement of welfare and living standard.

In accordance with ITU estimates, there were recorded 6.8 billion mobile-cellular subscriptions in 2013, representing the population of the planet. The availability of mobile-telephone services is close to 100 per cent of the population covered by a mobile signal and around 2.7 billion persons are using the Internet worldwide.

Figure 7 Global ICT developments, 2005-2013



Source: the authors, based on data from International Telecommunication Union, 2006-2014

Figure 7 reflects the increasing trend for mobile cellular subscriptions/100 inhabitants, whichhas reached 96% in 2013, as well as the increasing trends for households with computers and households with access to Internet.

At world level, we witness the diminishing trend for the subscriptions at fixed telephony and on the other hand the exponential increase of subscriptions at mobile cellular telephony.

The actual trend of shifting from mobile cellular telephony, as voice, sms towards the services of mobileInternet determines the increase of the tranfer of data, speed, available spectrum as well as the investments in this field.

These are promising trends for e-Government in Europe. However, when users are more satisfied with online banking than online public services, it reveals that public administrations should design the e-Government services according to the users' needs, wishes and expectations. The Digital Agenda for Europe aims to increase the use of e-Government

services to 50% of EU citizens by 2015. Almost half of EU citizens (46%) search online for a job, use the public library, pay taxes or use other e-Government services.

2.5. Competitiveness

According to the European Commission (1999), the competitiveness represents "the ability to produce goods and services which meet the test of international markets, while at the same time maintaining high and sustainable levels of income" (European Commission, 1999). Porter (2007) sustains that "the most intuitive definition of competitiveness is a country's share of world markets for its products" (Porter, 2007: 374-384).

The annual Global Competitiveness Reports of World Economic Forum accomplish an analysis concerning the factors highlighting the national competitiveness. The World Economic Forum has substantiated its competitiveness analysis on the Global Competitiveness Index (GCI), which measures the microeconomic and macroeconomic fundamental elements of national competitiveness.

GCI comprises 12 key elements: institutions, infrastructure, macroeconomic environment, health and primary education, higher education and training, goods market efficiency, labour market efficiency, financial market development, technological readiness, market size, business sophistication, innovation. They are powerfully interrelated and tend to reinforce each other, and a weakness in one area often has a negative impact on other areas. For example, a strong innovation capacity will be very difficult to achieve without a healthy, well-educated and trained workforce, which is keen to assimilate new technologies, and without sufficient financing for R&D or an efficient goods market that makes possible to undertake new innovations to market.

Table 4 Global Competitiveness Index (GCI) in the EU Member States during 2013-2014

Finland	3	5.54	Poland	42	4.46
Germany	4	5.51	Czech Republic	46	4.43
Sweden	6	5.48	Lithuania	48	4.41
Netherlands	8	5.42	Italy	49	4.41
United Kingdom	10	5.37	Portugal	51	4.40
Denmark	15	5.18	Latvia	52	4.40
Austria	16	5.15	Bulgaria	57	4.31
Belgium	17	5.13	Cyprus	58	4.30
Luxembourg	22	5.09	Slovenia	62	4.25
France	23	5.05	Hungary	63	4.25
Ireland	28	4.92	Croatia	75	4.13
Estonia	32	4.65	Romania	76	4.13
Spain	35	4.57	Slovakia	78	4.10
Malta	41	4.50	Greece	91	3.93

Source: based on Global Competitiveness Report 2013–2014

According to the Global Competitiveness Index, the EU countries are ranked from the 3rd to the 91st position, from 148 states, while the score of EU28 is 4.70.

As revealed by Table 4, the top performers are Finland, Germany, Sweden, Netherlands, UK, Denmark, acknowledging that they are the most competitive economies in the EU. At the other extreme, the weak performers are Croatia, Romania, Slovakia and Greece.It is worth to mention that Estonia is the best competitive economy among the new 13 EU states.

3. Study on Italy and Romania rank concerning knowledge society development in the European Union

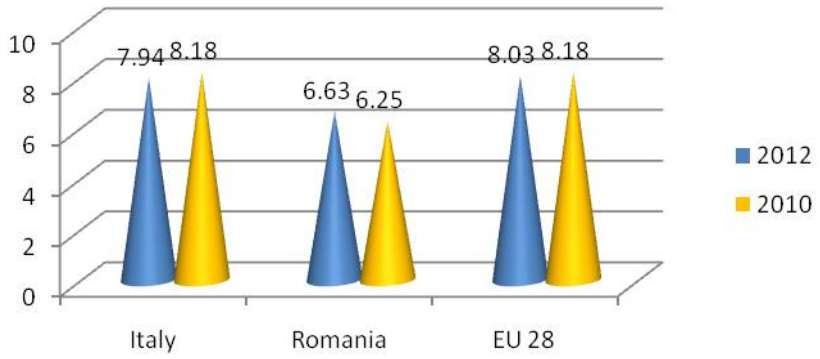
The study is based on the Knowledge Assessment Methodology, developed by the World Bank, representing an interactive benchmarking tool, created in view to provide support to various countries in identifying the challenges and opportunities in the knowledge economy (World Bank, 2012).

Table 5 Index of knowledge in the European Union

Country	2012	2010	Country	2012	2010	Country	2012	2010
Sweden	9.38	9.57	Luxembourg	8.01	8.37	Portugal	7.34	7.34
Finland	9.22	9.39	Spain	8.26	8.18	Cyprus	7.5	7.47
Denmark	9	9.49	France	8.36	8.64	Greece	7.74	7.58
Netherlands	9.22	9.39	Czech Rep.	8	7.9	Latvia	7.15	7.52
Germany	8.83	9.92	Hungary	7.93	7.88	Croatia	7.27	7.27
Ireland	8.73	8.98	Slovenia	7.91	8.17	Poland	7.2	7.38
UK	8.61	9.06	Italy	7.94	8.18	Romania	6.63	6.25
Belgium	8.68	8.77	Malta	7.48	7.18	Bulgaria	6.61	6.94
Austria	8.39	8.78	Lithuania	7.68	7.7	EU28	8.03	8.18
Estonia	8.26	8.31	Slovakia	7.46	7.37			

Source: based on data from the World Bank, Knowledge Assessment Framework

Figure 8 Index of knowledge in Italy, Romania and the European Union



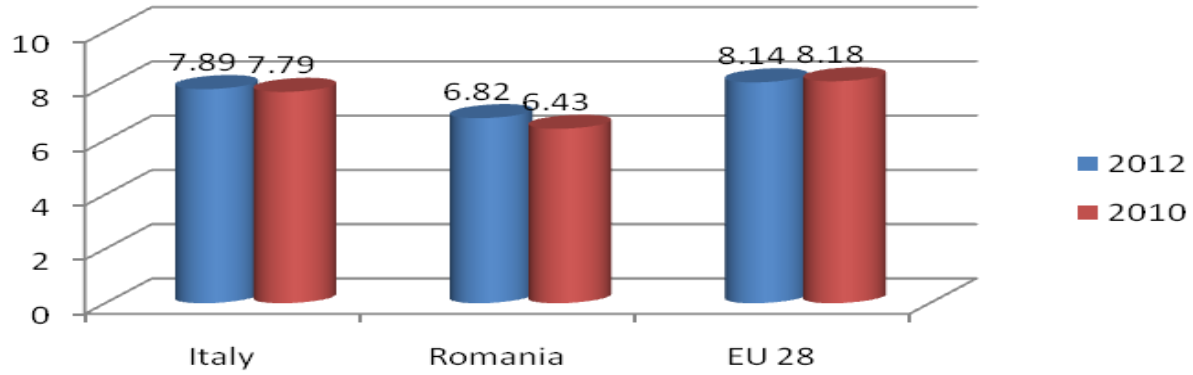
Source: the authors

Table 6 Index of knowledge economy in the European Union

Country	2012	2010	Country	2012	2010	Country	2012	2010
Sweden	9.43	9.51	Luxembourg	8.37	8.64	Portugal	7.61	7.61
Finland	9.33	9.37	Spain	8.35	8.28	Cyprus	7.56	7.5
Denmark	9.16	9.52	France	8.21	8.4	Greece	7.51	7.39
Netherlands	9.11	9.35	Czech Rep.	8.14	7.97	Latvia	7.41	7.65
Germany	8.9	8.96	Hungary	8.08	8	Poland	7.41	7.41
Ireland	8.86	9.05	Slovenia	8.01	8.15	Croatia	7.29	7.29
UK	8.76	9.1	Italy	7.89	7.79	Romania	6.82	6.43
Belgium	8.71	8.8	Malta	7.88	7.58	Bulgaria	6.8	6.99
Austria	8.61	8.91	Lithuania	7.8	7.77	EU 28	8.14	8.18
Estonia	8,4	8,42	Slovakia	7,64	7,47			

Source: on the basis of World Bank, Knowledge Assessment Framework

Figure 9 Index of knowledge economy in Italy, Romania and the European Union



Source: the authors

Unfortunately Romania ranks on the penultimate position, for both indices, suggesting the fact that efforts should be made in light to improve all the components of those indices.Italy is around the average of the EU at both indices, highlighting that Italy has made efforts in view to substantiate the knowledge society development.

CONCLUSIONS

Public administration modernization does not only imply more efficient, quicker, lower cost service provision. It involves rethinking the processes and procedures associated to governance based on using ICT and knowledge management. At the same time, it refers to applying the national strategy and action plans in view of public administration modernization in the knowledge society. Using the new IT applications and action plans for administration modernisation in the knowledge society boosts the change of public administration through valorisation of opportunities and tools, leading to important benefits for society.

Education, science, culture represent priorities in the EU, as they are the greatest assets for Europe in future. The investment in Europe's human capital is definitely the investment in a brighter European future.

In the current context, all the EU Member States should achieve structural reforms and make investments in all components of knowledge society. At the same time, they should identify and strengthen the strengths that will trigger future sustainable economic growth.

Encouraging and sustaining, the economic growth requires decisive actions in view to trigger competitiveness. It is important the ability of the European economies to create new value-added products, processes, and business models based on innovation.

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FINANCE

BEHAVIORAL EXPLANATION OF BETA VARIATION

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Abstract: *In this study, we test whether investor learning, herding, and prospect theory explain the variation of beta across different return regimes and return frequencies. Empirically, we use quantile regressions to analyze beta change on the French financial market from January 2000 to December 2010. For daily data, we find a larger estimated impact of systematic shocks on extreme quantiles of firm's returns as compared to intermediate quantiles. The beta pattern is probably symmetrically suggesting that whatever the type of shocks have similar effects. This finding can be explained by herding behavior and investor learning. These behaviors lead to beta- increasing in the extreme returns case. For monthly data, beta evolves asymmetrically across return regimes with a greater impact of the market in the lower tail of returns distribution. This finding provides strong evidence in favor of prospect theory explanation. Overall, constant beta estimated by ordinary-least squares overestimates the systematic risk of stock in normal times and underestimate the risk in extreme conditions or financial crisis.*
Keywords: *systematic risk, quantile regression, investor learning, herding, prospect theory, behavioral finance*
JEL Classifications: *G01, G12, G15.*

INTRODUCTION

The relationship risk- return is a fundamental financial relationship that affects expected rates of return on every existing asset investment. The most common pricing model proposed to describe this relation is the Capital Asset Pricing Model "CAPM", developed by Sharpe (1964), Lintner (1965) and Mossin (1966). The model proposes that high expected returns are associated with high levels of risk. Particularly, CAPM suggests that the expected return on an asset above the risk-free rate is linearly related to the non-diversifiable risk as measured by the asset's beta. Substantial empirical work has been conducted to investigate the validity of the model. The CAPM assumes that beta of a stock is constant over time, while empirical literature shows that beta may be varied with data frequency (daily, weekly or monthly) and different regimes of returns. Then, several models have been developed to incorporate the time varying beta (Ahmed et al. (2011)).

Behavioral finance introduces the investor behavior to understanding the evolution of beta over time. According to Hwang and Salmon (2004) the beta becomes biased in the presence

of herding behavior.This behavior leads investors to change their beliefs to follow the performance of the overall market more than they should in the CAPM. In other words, they ignore the equilibrium in the CAPM and try to move towards the return for each asset with the market (Ellouz S. (2011)).

Moreover, Patton and Verardo (2009) propose learning behavior as an explanation the time varying beta. They show a temporary increase of beta around quarterly announcements days. Verardo and Patton suggest that this finding can be explained by investors learning about the profitability of a given firm using information about other firms.

More recently, Savor and Wilson (2010) show that the stock market has much higher returns in the days of macroeconomic announcements. Their model is based on the dependence of stock market returns on macroeconomic variables such as expected economic growth in the long term and inflation. Intuitively, the market tends to exercise badly in the days of macroeconomic announcements which make the investment more risky.

In 1979, Kahneman and Tversky demonstrate that investors behave as if maximizing an S-shaped value function. This value function is defined on the basis of gains and losses rather than levels of wealth and it is concave (risk-averse) in the domain of gains and convex (risk-seeking) in the domain of losses, both measured relative to a reference point. More importantly, prospect theory can provide additional explanation of the asymmetric beta.Indeed, if investors are risk-seeking (risk-averse) over losses, beta is expected to be higher (lower) in negative (positive) market conditions.

This paper considers the hypothesis that investor behavior affects the beta and provides economic explanations of his variation. Particularly, we test if investor learning, herding, and prospect theory explain the variation of beta across different return regimes and return frequencies. This study adds to the existing literature by analyzing betas for different return regimes and return frequencies within a quantile regression framework. The main advantage of quantile regression over least-squares regression is its robustness to extreme observations in the dependent variable (Buchinsky, 1998; Koenker and Bassett, 1978).

The rest of the paper is organized as follows. Section 2 presents literature review. Section 3 describes the hypotheses, the methodology and the data. Section 3 presents the empirical results. Section 6 concludes the paper.

LITTERATURE REVIEW

The CAPM assumes that beta of a stock is constant over time, while empirical literature shows that beta may be changed with data frequency (daily, weekly or monthly) and may vary with investor behavior. Several studies demonstrate that the variation of stock betas can be explained by investor behavior such as investor learning, herding and loss aversion in prospect theory.

Patton and Verardo (2009) provide evidence that individual stocks betas increase significantly amount on days of quarterly earnings announcements, and revert to their average levels two to five days later. They explain this finding by investor learning, such as investors interpret the profitability of a company given by using information for other companies.

Baur and Schulze (2010) demonstrate that the beta of individual stocks varies across the entire return distribution and that the variation depends on the return frequency. Their results

show that there is a symmetric increase of beta in extreme conditions of the market for daily data and an asymmetric reaction of beta for weekly data. They explain this finding with investor learning and herding for shorter investment horizons and prospect theory for longer investment horizons.

Calvo and Mendoza (2000) develop a model in which investors preferences are characterized by an indirect expected utility function. They show that relative information costs at shock can lead to herding behavior if these costs are too expensive to prevent investors from collecting and interpreting this information. In the context of changing betas, their argument can be applied to the following situation: if a major shock affects the market and investors do not have time to collect and interpret information (or the information costs are too expensive), they follow the market which leads to higher betas in period of extreme shocks.

In the same way, Hwang and Salmon (2006) show that beta-herding increases with the market sentiment. Specifically, if market sentiment is positive (negative), stocks returns tend to increase (decrease), independently of their systematic risk, which will increase (decrease) the beta herding.Their results confirm a significant positive relationship between beta herding and market sentiment.

Boujelbène Abbes M. (2013) found that herding behavior increases volatility in financial markets during crisis period.

In 1979, Kahneman and Tversky have analyzed the decision making under risk and they proposed the prospect theory which incorporates human emotions to better describe the human decision. The S-shaped value function described by Kahneman and Tversky (1979) is concaveover gains (risk aversion for gains) and convex over losses (risk-seeking for losses) and, itis steepest in the loss domain. Based in this theory, Baur and Schulze (2010) suggest that stock's returns exhibit higher volatility in a loss regime (negative returns) as compared to gain regime (positive returns). Moreover, the cross-sectional dispersion of returns is larger in a loss regime than in a gain regime. Also, investor behavior affects a firm's beta. If investors are risk-seeking in adverse market conditions, betas will be higher than in more favorable market conditions. Empirically, Baur and Schulze (2010) show that the beta varies across different firm-specific return regimes conforming to the value function in Prospect Theory.

3 HYPOTHESES, METHODOLOGY AND DATA

3.1.Hypotheses

By considering the literature presented above, we test three major hypotheses in our empirical work:

H1: Investor learning explains the symmetric increase in the stocks- beta for the extreme daily return.

H2: Herding bias explains the symmetric increase in U-shaped beta for the extreme daily returns.

H3: Prospect theory explains the asymmetric variation in the stocks-beta under different regimes for monthly returns.

3.2. Methodology

Allen et al. (2009) suggest that the traditional OLS regression becomes less effective when it comes to analyze the extreme returns, which are often a major interest for

investors and risk managers. Based in this suggestion we use the quantile regression to test the three hypotheses described above. The estimator of the quantile regression is not affected by the observations found in the extreme quantiles. Also, the technique of quantiles provides estimates of beta for different regimes of returns which is in conformity with a fundamental proposal of prospect theory.

We estimate the following model:

$$R_{it}=a_i+ b_iR_{mt} +v_{it}, \quad (1)$$

$$Q_r(\tau \mid R_{it}) =a_i(\tau) +b_i(\tau) R_{mt} \quad (2)$$

Where, R_{it} is the return of stock i at time t; R_{mt} is the market return and $Qr\ (\tau|R_{it})$ is the τ -th conditional quantile of a stock's return R_{it}, assumed to be linearly dependent on the market return R_{mt}.

This model is estimated with the quantile regression method and can thus assess the impact of R_{mt} on different quantiles of R_{it}.This approach provides estimates of the coefficients and (pseudo-) R squares for any conditional quantile for each stock.

3.3. Data and variables

We use daily and monthly data of the *CAC40*index and all constituent stocks of this index from January 2000 until December 2010. The basic variables of this study are individual stock returns and market return. An individual stock return is defined as follows:

$$R_{it}=\frac{P_{it}-P_{it-1}+D_{it}}{P_{it-1}} \quad (3)$$

Where, P_{it} and P_{it-1} represent respectively the price of stock i at time t and $t-1$ and D_{it} : dividend of stock i at time t.

Figures 1 plots the movements of CAC40 daily returns. The Figure indicates that the CAC 40 index exhibits lower volatility in period of 2004-mid2007. This finding is confirmed to the results of Ellouz S. (2009). But, during the period from July-2007 until 2009, return index shows enhanced volatility reflecting the impact of 2007- US crisis on the French market. This finding supports the results of Jayech et al. (2011) reporting the presence of financial contagion during the subprime mortgage crisis of 2007 in French market.

Figure 1 Monthly moving of CAC40 index returns

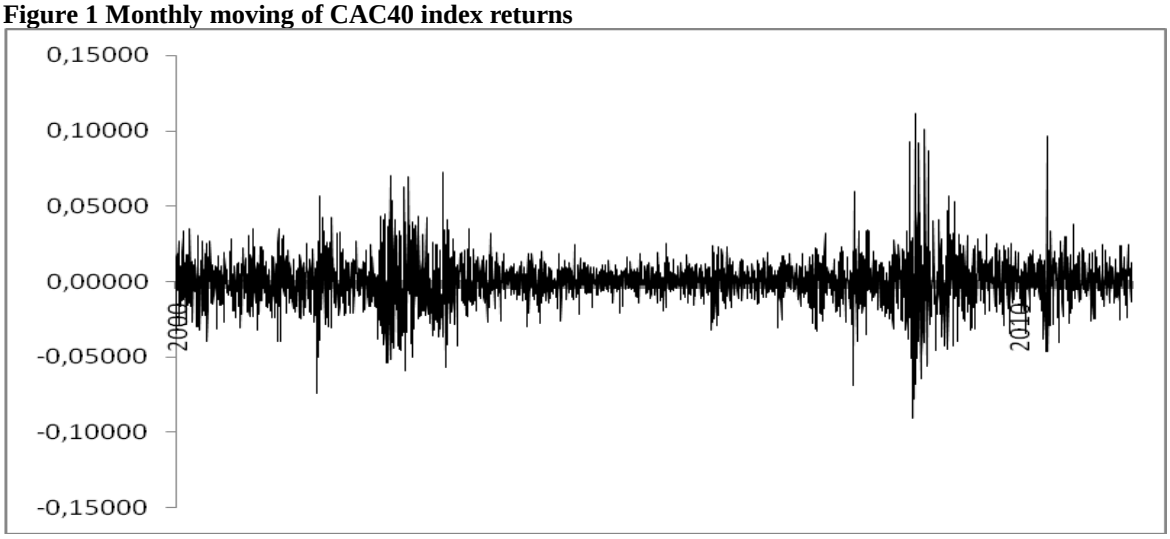


Table 1 reports some descriptive statistics of CAC40 daily returns and the 40 firms which constitute this index. This table provides information on the number of observations, mean, median, maximum, minimum, standard deviation, the skewness, the kurtosis, the Jarque-Bera test, the ADF test, and the critical value of 1%. The CAC40 index has an average positive return, but very low, with a minimum of -0.0903 and a maximum of 0.1118.

The normality test results show that the distributions of CAC 40 and all listed firms are not normal (Skewness ≠ 0 and kurtosis ≠ 3). The results of stationary test show that CAC40 return and the 40 firms' series are stationary.

Table 1 Descriptive statistics for CAC40 index and its constitutes

	CAC	*ACCOR*	*AIR LIQ*	*ALC*	*ALS*	*A M*	*AXA*	*BNP*
Obs	2902	2902	2901	2902	2902	2361	2902	2902
Mean	0,00001	0.000442	0.000399	-0.000179	9.85e-05	0.000669	0.000124	0.000351
Median	0.000204	0,0000	0.000592	0.000000	0.000000	0.000605	0.000000	0.000000
Max	0,1118	0,2248	0,1100	0,4054	0,5072	0,2844	0,2187	0,2090
Min	-0,0904	-0,1947	-0,0860	-0,1770	-0,5533	-0,3019	-0,1841	-0,1724
Std. Dev.	0.015556	0.031963	0.017291	0.035588	0.044644	0.029737	0.028921	0.024332
Skewness	0.227334	0.276980	0.147524	0.639076	0.495506	-0.004645	0.716064	0.724125
Kurtosis	8.408287	7.558571	6.772959	12.13685	31.01652	16.26973	10.72089	13.79666
Jarque-Bera	3561.756	2549.823	1731.205	10291.90	95029.33	17322.44	7456.098	14348.61
Test d'ADF	-25.07721	-25.20065	-21.53723	-24.99536	-24.91252	-23.09313	-24.20446	-18.95956
Critical value 1%	-3.961223	-3.961223	-3.961229	-3.961222	-3.961223	-3.961960	-3.961223	-3.961236
	BOUYG	*CAP G*	*CAR*	*CR AGR*	*DAN*	*E D F*	*E I N*	*EADSP*
Obs	2902	2902	2902	2404	2902	1398	2902	2902
Mean	9.30e-05	-0.000168	-0.000183	0.000151	0.000307	0.000114	0.000596	0.000344
Median	0.000000	-0.000388	-0.000520	-0.000359	0.000000	0.000277	0.000000	0.000000
Max	0,169595	0,263889	0,099495	0,263158	0,101887	0,159794	0,14167	0,134002

Min	-0,143587	-0,229656	-0,110351	-0,133663	-0,104969	-0,104782	-0,125364	-0,263179
Std. Dev.	0.024630	0.030164	0.019593	0.026272	0.016332	0.020016	0.017218	0.026318
Skewness	0.350828	0.251363	-0.003397	0.683826	0.139754	0.224226	0.617342	-0.126666
Kurtosis	7.852665	8.404112	6.399242	12.00918	7.344604	9.557033	10.21806	8.522747
Jarque-Bera	2906.919	3561.861	1397.179	8317.412	2291.819	2516.155	6484.136	3695.807
Test d'ADF	-19.78226	-24.86552	-20.94617	-81.85728	-93.74203	-59.45359	-100.8080	-93.21293
Critical value 1%	-3.961232	-3.961222	-3.961229	-3.961865	-3.961207	-3.964632	-3.961207	-3.961207
	F T	*GDF S*	*GEN*	*LAF*	*LVMH*	*MICH*	*NAT*	*OREAL*
Obs	2902	2901	2902	2902	2902	2902	2902	2902
Mean	-0.000361	0.000954	0.000273	-6.78e-05	0.000333	0.000450	0.000189	0.000193
Median	-0.000867	0.000000	0.000000	0.000000	0.000000	0.000218	0.000000	0.000000
Max	0,255014	2,969332	0,238938	0,139091	0,169014	0,165535	0,388047	0,147292
Min	-0,161966	-0,792819	-0,155556	-0,114303	-0,122644	-0,102053	-0,37193	-0,111183
Std. Dev.	0.027388	0.061853	0.026541	0.022147	0.021476	0.022802	0.028513	0.018309
Skewness	0.885233	37.47415	0.366064	0.070227	0.499674	0.213458	0.752767	0.217888
Kurtosis	12.52454	1840.787	9.978724	7.048813	8.477951	6.863854	35.85161	7.251988
Jarque-Bera	11348.19	4.09e+08	5953.767	1984.559	3749.221	1827.247	130770.8	2209.063
Test d'ADF	-85.85884	-93.18776	-86.33003	-91.05640	-91.29250	-89.95653	-88.44661	-96.78489
Critical value 1%	-3.961207	-3.961208	-3.961207	-3.961207	-3.961207	-3.961207	-3.961207	-3.961207

Table 1 Descriptive statistics for CAC40 index and its constitutes, continued

	PERN	*PEUG*	*PPR*	*PUB G*	*REN*	*SA G*	*SAN*	*SCH EL*
Obs	2902	2902	2902	2902	2902	2902	2902	2900
Mean	0.000635	0.000193	-4.87e-07	0.000295	0.000290	0.000314	0.000280	0.000394
Median	0.000000	0.000000	0.000435	0.000000	0.000000	0.000000	0.000000	0.000000
Max	0,113227	0,138259	0,179319	0,160093	0,1625	0,185921	0,146612	0,163745
Min	-0,136332	-0,141349	-0,128315	-0,120925	-0,145038	-0,225	-0,103488	-0,20398
Std. Dev.	0.019263	0.022807	0.023104	0.024048	0.026235	0.024917	0.019070	0.022716
Skewness	0.151959	0.229431	0.487618	0.332652	0.081061	0.158086	0.164712	-0.015402
Kurtosis	9.250566	6.670026	9.162710	7.380566	7.396315	11.33204	6.770633	9.464977
Jarque-Bera	4735.332	1654.097	4707.295	2373.834	2340.206	8406.482	1732.276	5050.457
Test d'ADF	-98.30721	-86.82214	-88.29981	-87.47914	-87.33705	-93.61693	-93.66517	-90.20662
Critical value 1%	-3.961207	-3.961207	-3.961207	-3.961207	-3.961207	-3.961207	-3.961207	-3.961209
	STM EL	*S E*	*TECH*	*TOTAL*	*UNIB R*	*V C S*	*V ENV*	*VINCI*	*VIV*
Obs	2902	718	2902	2901	2902	2902	1997	2902	2902
Mean	-0.000701	-2.19e-	0.000239	0.000601	0.001368	-6.91e-05	0.000661	-0.000	

	0.000242	05							0.000197
	-	-							
Median	0.000767	0.000309	0.000924	0.000580	0.000648	0.000520	0.000000	0.000000	0.000000
Max	0,170646	0,137214	0,169988	0,136376	0,119111	0,257976	0,16103	0,181284	0,224731
	-	-	-	-	-	-	-	-	
Min	0,126543	0,088538	0,191888	0,091904	0,167722	0,160698	0,411088	0,124367	-0,25523
Std. Dev.	0.027891	0.020431	0.026176	0.017781	0.017598	0.026011	0.022712	0.019916	0.025668
			-		-		-		-
Skewness	0.334631	0.567433	0.099516	0.310993	0.225891	0.403541	2.700925	0.674855	0.523853
Kurtosis	5.392802	9.449638	8.214196	8.428431	8.996500	8.954328	60.41358	11.39686	20.35003
Jarque-Bera	746.4688	1282.999	3292.253	3608.690	4372.603	4365.745	276709.2	8745.786	36531.50
	-	-	-	-	-	-	-	-	-
Test d'ADF	87.00128	45.83570	94.92434	93.14982	94.83463	94.60089	75.36478	93.15160	83.52558
Critical value	-	-	-	-	-	-	-	-	-
1%	3.961207	3.970921	3.961207	3.961208	3.961207	3.961207	3.962648	3.961207	3.961207

Note: the full names of the CAC 40 constitutes are presented in the annex.

RESULTS

This section presents the estimation results of 40 quantile regressions based estimeted for daily and monthly data (each regression yields 9 different quantile beta coefficients). Table 1 and 2 present a summary of the estimation results for several selected quantiles, respectively for daily and monthly data.The tables contain two types of coefficient estimate, the ordinary least square (OLS) coefficient and the quantile regression coefficient (QR).

4.1Daily data

Table 1 show that the average coefficient estimate for beta based on a least-squares regression model is 0,855. Indeed, the estimate of beta by Least Square provides a constant measure across time. An alternative is a time-varying beta obtained by fitting a quantile regression model. From table 2, we show the coefficient of market return is significantly positive for all quantiles.

The average estimate of beta coefficients for the quantile 10% is 0,928; it decreases to 0,903 for the quantile 50% and increases to 0,968 for the quantile 90%. Consequently, we note the presence of U-shape pattern.

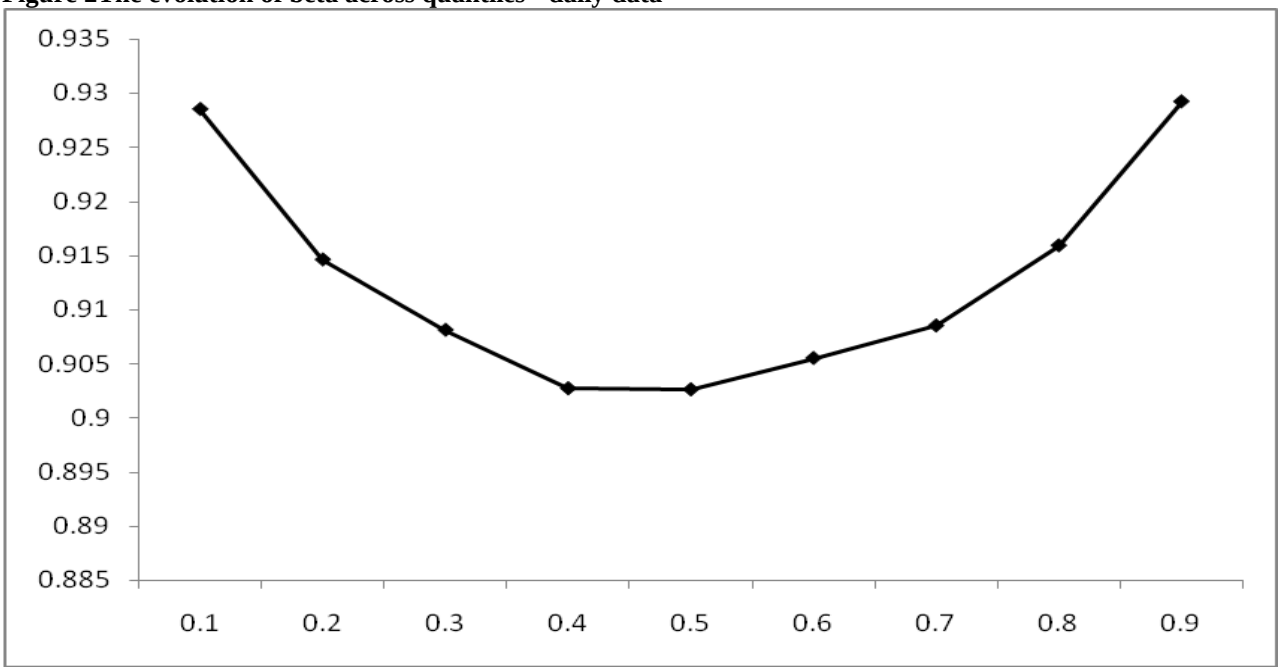
Table 2 OLS and Quantile Regression results for 40 firms, daily data

	a	*b*
OLS -Coef	0,0248 (0,7650)	0,8547 (40,8904)
EST QR (10%)	-0,0187 (-27,5589)	0,9285 (27,3882)
EST QR (20%)	-0,0109 (-26,6382)	0,9146 (31,2050)

EST QR (30%)	-0,0065 (-19,7879)	0,9081 (32,1309)
EST QR (40%)	-0,0031 (-10,5279)	0,9027 (32,0055)
EST QR (50%)	-0,0001 (-0,4261)	0,9026 (32,3510)
EST QR (60%)	0,0029 (9,5579)	0,9055 (32,4184)
EST QR (70%)	0,0065 (18,6611)	0,9085 (31,5762)
EST QR (80%)	0,0112 (25,2002)	0,9159 (29,3659)
EST QR (90%)	0,0198 (27,4880)	0,9292 (27,5874)

To better presenting the beta variation across quiantiles, we present in figure 2 the evolution of the beta coefficients for different quantiles.The graph clarifies the U-shaped pattern of the coefficients across quantiles.

Figure 2The evolution of beta across quantiles - daily data



We show that aggregate market affects differently individual stock returns depending on the the firm's return regime. Indeed, the figure indicates the larger estimated impact of the market on return-extreme quantiles as compared to intermediate quantiles. Indeed, beta increases in the tails of the distribution. This increasing is probably symmetrically suggesting that whatever the type of shocks have similar effects. This finding can be explained by herding behavior. In the event of appearance of shock on the market, the investor does not find time to interpret information; he will follow the market trend what involves, leading to an increase in

beta in the extreme return case. This result confirms our second hypothesis suggesting that herding bias explains the symmetrical increase in U-shaped beta for the extreme daily returns.
An alternative explanation for the beta variation is the investor learning. If large return surprises occur, beta increases, affecting extreme quantiles' returns. If news announcements are small or within a "normal" range, investors do not use this information for other firms and beta does not increase. The variation of betas and its U-shape pattern across quantiles support our first hypothesis suggesting that betas are regime-dependent. This finding can be explained with a theoretical model where investors learn about the profitability of other firms by using information on a given firm.

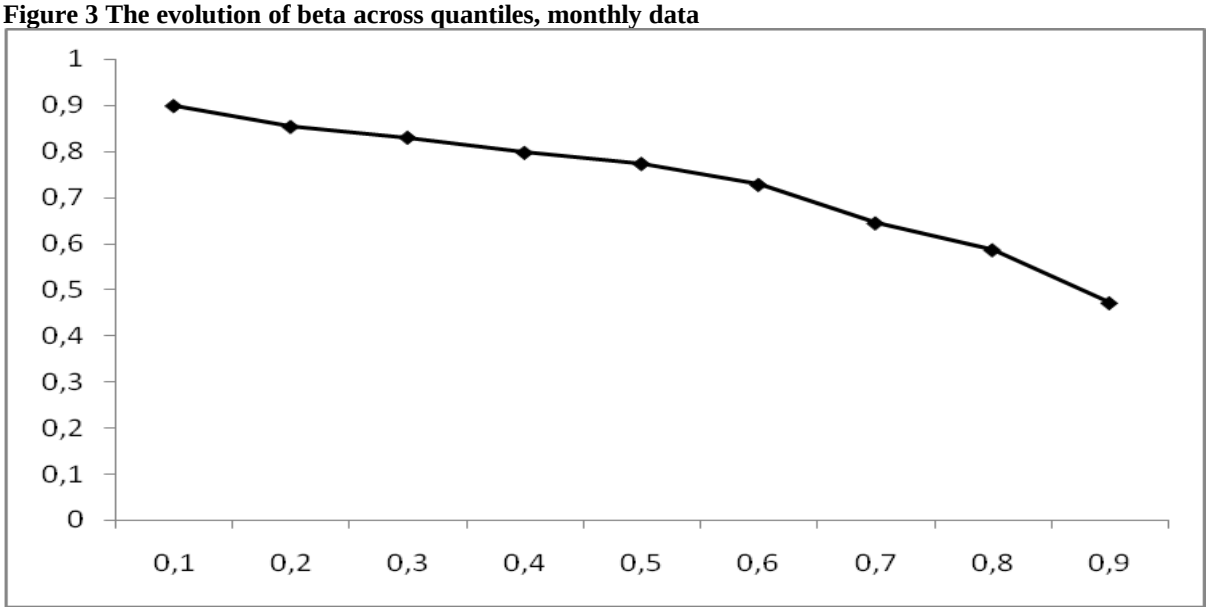
Monthly data

Table 2 presents the average of beta coefficients estimated for monthly data. The beta coefficient for the quantile 10% is 0,899, while the value of the coefficient decreases to 0,773 for the quantile 50% and it is 0,472 for the quantile 90%.Consequently, the positive impact of market returns on individual stocks' returns decreases for lower quantiles to higher quantiles. Moreover, the Least Squared beta (0.8185) overestimates the risk in lower quantiles and underestimates the risk in intermediate and higher quantiles which can affect the investor and manger decisions.

Table 3 OLS and Quantile Regression results for 40 firms, monthly data

	a	*b*
OLS- Coef	0,0085 (0,6228)	0,8185 (4,3998)
EST QR (10%)	-0,0900 (-7,0506)	0,8989 (3,5445)
EST QR (20%)	-0,0542 (-5,4807)	0,8537 (3,5430)
EST QR (30%)	-0,0315 (-3,5489)	0,8304 (3,6790)
EST QR (40%)	-0,0143 (-1,5813)	0,7975 (3,4042)
EST QR (50%)	0,0025 (0,2475)	0,7735 (3,1284)
EST QR (60%)	0,01945 (1,9005)	0,7281 (3,0595)
EST QR (70%)	0,03895 (3,5635)	0,6448 (2,7737)
EST QR (80%)	0,06335 (5,1918)	0,5865 (2,5214)
EST QR (90%)	0,1003 (6,2577)	0,4717 (2,3699)

Figure 3 The evolution of beta across quantiles, monthly data



We show an asymmetrical evolution of beta across quantiles with a higher estimated impact of shocks if the stock exhibits extreme negative returns than if the stock exhibits average or extreme positive returns. Indeed, beta is 0.899 in the quantile 10% and it is 0.472 in the quantile 90%. This asymmetrical variation of beta cannot be explained by learning investor or herding behavior since they suggest a symmetrical evolution of beta. This finding is consistent with the fundamental proposition of prospect theory which models the differential behavior of investors when faced with losses or gains. According to prospect theory investors are risk-seeking over losses and risk-averse over gains, which leads them to gamble in falling markets and prefer "no gamble" in rising markets. This behavior explains the cross-sectional dispersion asymmetry in falling and rising markets. Indeed, in a loss-regime, investors are risk-seeking and thus increase the range of possible return realizations across firms. Similarly, in a gain-regime investors are risk-averse and thus decrease the range of possible return realizations across firms.

The difference between monthly and daily results can be explained by the change of investor behavior at different investment horizons. By differentiating between gains and losses, prospect theory provides a convening explanation to monthly results. Indeed, it is reasonable to assume that investors change their behavior following an estimation of gains and losses on a monthly basis and not on a daily basis. Therefore, it is not surprising that prospect theory can explain the results for monthly return frequencies, but not for daily.

CONCLUSION

One of the most striking patterns in the financial markets is the variation of beta. In this study, we examine on the French market, the ability of behavioral finance to explain the beta change. Empirically, Investor learning, herding and prospect theory are applied to explain the variation in beta across different return regimes and return frequencies. The main contribution of this paper is the application of quantile regression to the analysis of beta change. Quantile

regression is a suitable tool to analyze variation of beta in the extreme tails of aggregate returns distribution.

For daily data, we find a strong impact of aggregate and systematic shocks depending on stocks' return regimes. The impact of systematic shocks in stock return tends to be larger extreme returns than in normal return regimes. This variation can be explained by the herding behavior suggesting that investor follows the market trend in the appearance of new information. This behavior leads to beta increasing in the extreme returns case.

In addition, the increase in beta is more robust in the good announcements than in the bad announcements. This result can be explained with investor learning. In case of larger return surprises, beta increases affecting extreme quantiles' returns. But, in case of smaller or normal return surprises, investors do not use this information for other firms and beta does not increase.

For monthly data, beta evolves asymmetrically across return regimes with a greater impact of the market in the lower tail of returns distribution than in the upper tail of returns distribution. This finding provides strong evidence in favor of prospect theory explanation. Indeed, in a loss-regime, investors are risk-seeking and thus increase the range of possible return realizations across firms. Similarly, in a gain-regime investors are risk-averse and thus decrease the range of possible return realizations across firms.

Overall, constant beta estimated by ordinary-least squares overestimates the systematic risk of stock in normal times and underestimate the risk in extreme conditions or financial crisis. This finding has fundamental implications for investors and portfolio managers.

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Appendix

CAC40 Composition	Abbreviation
ACCOR	*ACCOR*
AIR LIQUIDE	*AIR LIQ*
ALCATEL	*ALC*
ALSTOM	*ALS*
ARCELORMITTALREG	*A M*
AXA	*AXA*
BNP PARIBASACT.A	*BNP*
BOUYGUES	*BOUYG*
CAP GEMINI	*CAP G*
CARREFOUR	*CAR*
CREDIT AGRICOLE	*CR AGR*
DANONE	*DAN*
EUROPEAN AERONAUTIC DEFENCE AND SPACE COMPANY	*EADSP*
ELECTRICITE DE FRANCE	*E D F*
ESSILOR INTERNATIONAL	*E I N*
France TELECOM	*F T*
GDFSUEZ	*GDF S*
OREAL	*OREAL*
LAFARGE	*LAF*
LVMH	*LVMH*
MICHELIN	*MICH*
NATIXIS	*NAT*
PERNOD RICARD	*PERN*
PEUGEOT	*PEUG*
PPR	*PPR*
PUBLICIS GROUPE	*PUB G*
RENAULT	*REN*
SAINT GOBAIN	*SA G*
SANOFI	*SAN*
SCHNEIDER ELECTRIC	*SCH EL*
GENERALE	*GEN*

STMICRO ELECTRONICS	*STM EL*
SUEZ ENVIRONNEMENT COMPANY	*S E*
TECHNIP	*TECH*
TOTAL	*TOTAL*
UNIBAIL RODAMCO	*UNIB R*
VALLOURE CUSINE SATUBESDELOR	*V C S*
VEOLIA ENVIRONEMENT	*V ENV*
VINCI	*VINCI*
VIVENDI	*VIV*

WHAT INFLUENCE CREDIT CARD DEBTS IN YOUNG CONSUMERS IN MALAYSIA

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Abstract*: This paper examines empirically antecedents of the credit card debts in young consumers in Malaysia. We examine whether easy access to credit card, credit card related knowledge, aggressive promotion by credit card industry, low minimum payment requirement and attitude towards credit cards influence credit card debts in the younger generation. Regression model was used to meet the objectives. These findings based on a sample of 240 young credit card holders, show that the factors that affect credit card debts are credit card related knowledge, aggressive promotion by credit card industry and low minimum payment requirements. These findings also provide insights for both bank management and policy-makers to improve the bank performance in terms of credit card debts.*
Keywords: *credit car, debt, Malaysia*

1. INTRODUCTION

In modern business, credit cards serve as a payment device for millions of regular purchases as well as for many transactions that would otherwise be inconvenience, or perhaps impossible (for example, for making retail purchases by telephone or over the internet). Credit cards have also become the primary sources of unsecured open-end revolving credit, and they have replaced the installment-purchase plans that were important to the sales volumes at many retail stores in earlier decades.

In this societal changes, questions arises whether the trend is beneficial or detrimental (or somewhere in between), when the rise of plastic cards for payments and open-end credit is merely inevitable. Credit cards certainly are widely used and accepted by the public to by things with unparalleled convenience and speed, but they have also raised the concerns of whether the growth of credit cards usage has fueled an explosion in consumer debt.

In Malaysia, the Director General of Department of insolvency Malaysia, Datuk Abdul Karim Abdul Jalil mentioned that, in March of 2009 23.3 billion credit card balances remained unsettled. As reported from year 2005 to 2009 there were 3548 people declaring bankruptcy from credit card usage and half of them (1774) belong to those aged 30 and below. Although the amount of credit card debt in relation to total receivables in Malaysia is not as high compared to that in other developed country in the world and as well as some Asian economies but obviously there is a need to create awareness to keep the debts in control.

2. SCOPE

The scope of the study was to examine on the essential factors of the independent variables which contribute to the reliance on credit card debts. Thus, this study is a causal study rather than correlational in nature. Because this research attempted to agree on the essential factors leading to credit card debts, the sample of the study focused on consumers who had the means and opportunities to use of credit cards as their payment device during purchases. Moreover, this study was mainly confined to full time working adults aged below 35, who are the target customers for major financial institutions. This group also records a high percentage of purchasing power over other age groups. The research was undertaken in Klang valley in Malaysia and data for this study were composed over a period of three months.

The augmentation of credit card has been efficient over the past decade. In recent years, much information has recorded an evident increase in the total of personal economic failure fillings due to credit card debt. In the US, nearly seven out of ten young Americans aged 25 to 34 have one of more credit cards. Compared to the population as a whole, however, young adult cardholders are much more likely to be in money owing (Tamara, and Javier, 2004).

With all these evidence, one can sense that the society of credit card's indebtedness is becoming more theatrical in the modern society today.

3. THE CONCEPTUAL FRAMEWORK FOR THE STUDY

In this study, credit card debt is proposed to have influence from five main factors as shown in Figure 1. These factors are identified from an extensive review of the literature which indicates that they are relevant to credit card debt. The influencing factors on credit card considered for this are easy access to credit card, credit card related knowledge, aggressive promotion by credit industry, low minimum payment requirement and attitude towards credit cards. In the following sections, the literature on each of the components and their influence on credit card debts are discussed.

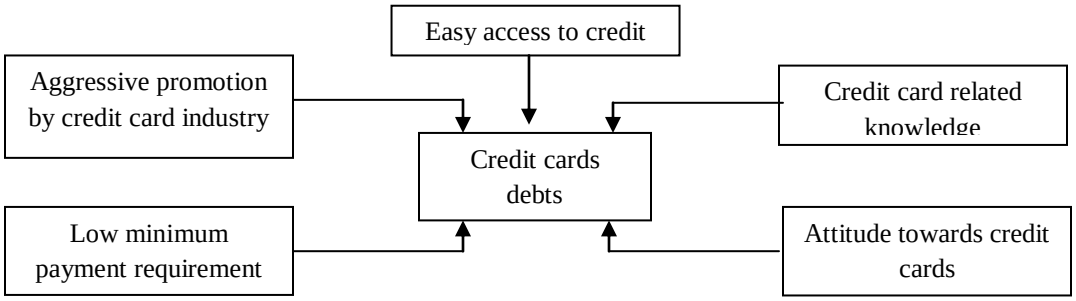

Figure 1 A Schematic diagram of the research model

The schematic diagram of the theoretical framework above is use to show the relationship between the dependent and independent variables. Essentially, the theoretical framework show above is the foundation on which the entire research is based upon.

3.1 Easy access to credit card

According to Schor (1998) easy access to credit card is one of the important causes of overspending. Indeed, several pragmatic studies also evidenced that liquidity enhances both the probability of making a purchase and the amount one is willing to pay for a given item being purchase and the amount one is willing to pay for a given item being purchased, over and above any effects due to relaxation of liquidity constraints (Shefrin & Thaler, 1998, Prelec & Simester, 2001). A series of experiments conducted by Berkowitz and Lepage (1967) may have provided insight into the impact credit cards used have on consumer debts. Berkowitz and Lepage study found that being exposed to belligerent stimulus led to aggressive behaviour. In the realm of consumer behaviour, credit cards could certainly be constructed as promoting spending by making transaction simpler or by removing the immediate need for money. In a variation of the theme, Feinberg (1986) found that card holders decided to purchase more rapidly and spend more than consumers who were exposed to the same product without the presence of credit card logo likely to purchase. Decided to purchase more rapidly and spend more than consumers who were exposed to the same product without the presence of credit card logo. By letting consumers buy things with unparalleled convenience and speed, they tend to spend more; often more than their income and what they have in bank. This condition related well with that credit card directly fueled an explosion in consumer debt (Sapsford, 2004).

Using credit card for purchasing and payment purposes is very much convenient for the consumers and also it is less expensive. Nowadays getting credit card is very easy which consumer to purchase without causing any cash flowing out from their pockets or a diminution in their bank balances; they merely need to sign their names and not even think about the payment until the end of the month. In economic sense, if they pay the credit owed totally so that no balance is carried over the credit card, the credit is actually “free” for the time between the exchange and the payment. Meanwhile the money that is supposed to be spent in cash purchase can be invested in any money market instrument and earns interest. This make the credit card purchases less expensive than cash purchases. Credit cards start to create problem when consumers pay the minimum amount due or even skip payments. Their credit balances keep

accumulating with their subsequent spending which continues to be charged on the credit cards until they reach their credit limit. In short, a credit card facilitates purchasing and creates discount purchases but it also raises debt easily as little effort is required to access fund. The argument and past evidence lead to the first hypothesis of this study which is:

Hypothesis 1: There is a significant relationship easy access to credit card and credit card debts

3.2 Credit card related knowledge

Warwich and Mansfield (2000) suggested that dwindling of credit card debt can come about through an increase in awareness and understanding in the use of credit card. However, awareness and understanding are two different things; companies listings credit card interest rate increase attentiveness of the price of credit but this does not guarantee improvement in consumer understanding. Thus, a mandatory disclosure of information itself (which leads to awareness) does not help consumer make effective credit decisions unless they understand the information provided. In a study by Lee and Horgarth (2000) reported that there is a general consent that consumers' lack of understanding is a problem in credit card market. Yet there is also empirical evidence that credit card holders have a reasonably good understanding of the interest rate and of the other main terms in their credit card accounts, including how balances is accumulate (Durkin, 2000). Based on this evidence, this study proposes its second hypothesis as follows:

Hypothesis 2: There is a significant relationship between credit card related knowledge and credit card debts.

3.3 Aggressive promotion by credit card industry

It may be more than a mere coincidence that the predicament of debt has increased with the rapid expansion in the bankcard industry (Jones, 2005). In the US, credit cards are easily accessible to college students and are marketed aggressively to the college student population (Mannix, 1999; Schembari, 2000). Credit card debt has grown more rapidly than other debt for decades; however, in the mid 1990s it increased even more rapidly. This is mainly attributable to the increased advertising efforts of banks and credit card issuers. Credit cards are so profitable that banks and lenders have becoming so eager to give more credit card to people including those who are less able to pay (Direct Selling Education Foundation, 1997).

High credit limits, low interest rates and pre-approval, these have become familiar terms to many consumers, who are increasingly bombarded with unsolicited credit card applications in the mail, in the newspaper and even from salespersons at the mall. In fact, most of the countries report highlighted that credit companies over last few years have increased their marketing and credit card expansion scheme resulting the credit business has enjoyed record profits. It is ultimately influence the consumer's personal debt (Chien & Devaney, 2001). Sirgy et al. (1998) reported that, credit card promotion through television advertising reinforces material consumption for the images of "good life". Research shows that credit companies waive some requirements such as previous credit histories, income requirement and parental co-signatures (Duffy, 1990). Nowadays credit card companies are promoting aggressively by offering

incentives like free one year charge, offer supplementary card for the applicant to encourage consumers to use their credit card (Duffy, 1990). According to Eugeni (1993) supply of huge amount of credit card may affect the quantity of credit card usage by consumers. Overall aggressive promotion and less strict credit card approval requirement by financial institution have encouraged consumers to use more credit card as their easier way of financing means. In the form of testable hypothesis, this study predicts that

Hypothesis 3: There is a significant relationship between aggressive promotion by credit card industry and credit card debts.

3.4 Low Minimum payment requirement

Since 1990s credit card companies re are competing with each other to have more customer (Tamara & Javier, 2003). To have more customer credit card companies are lowered their minimum payment requirement. Studies show that, the main competitive strategy that is documented is the reduction in the minimum payment requirement from 5 percent to only 2 to 3 percent of the balance. This result in a lower obligated payment each month, which has made it easier for consumer to carry more debt balances. Credit card companies are actually benefitting from this strategy because interest is charged on the larger credit balance as consumer who pays only the least amount will only revolve their balance over a long period of time. In short, this study uses this evidence to develop the forth hypothesis as follows:

Hypothesis 4: There is a significant relationship between low minimum payment requirement and credit card debts.

3.5 Attitude towards credit

Credit card has the change the attitude of the bank customers in all over the world (Zuckerman, 2000). According to Lea et al., (1995) and Zuckerman, (2000) it is viewed that attitudes about debt have changed dramatically during the twentieth century- from a general revolution of debt to acceptance of credit as part of a modern consumer society. Lea et al. (1995) reported the growth of the "culture of indebtedness". The new culture accepting overspending and excess buying as community debtor creates an environment that re-enforces one's beliefs, attitudes, and personal norms differently. Moreover, social norms and attitude may be tailored to reflect this dysfunction orientation. Researches also identified that attitude towards debt and towards credit have been found to be pertinent (Livingstone and Lunt, 1992).

Furthermore, studies show that belief is more influential than the knowledge about credit card practices. They are positive that attributes flow from beliefs. Danes and Hira (1990) and Chien and DeVaney (2001) found that younger consumers have more positive attitudes towards credit card use then do older consumers, because younger consumers believe that the potential to earn more money in the near future, thus they are willing to adjourn their payment. Roberts and Jones (2001) study shows that young generation have more lenient attitude towards debts. Another author Ritzer, (1995) reported that nowadays 18 to 35 years olds have grown up with a culture of debt, and use credit freely. Young generation believed that debt can be settled, as a

result they feel that certain amount of debt can be settle through proper credit management. This evidenced by the fact that credit cardholders younger than 35 are least likely to pay their bills in full each month. Accordingly, this study predicts that:

Hypothesis 5: There is a significant relationship between attitude towards credit cards and credit card debts.

5. RESEARCH DESIGN AND DATA ANALYSIS

5.1 Research design

The general aim of this research is to determine the factors that influence the credit debts of young adults in Malaysia. In this paper, we carried out a survey with 500 credit card users of age below 35 years in Malaysia in November to December 2011 to investigate their credit card debts. Survey is a widely used data collection technique in behavioral science research. The data were gathered by means of a structured questionnaire. The respondents of this study were required to hold at least one credit card with debts. The respondents do not have any credit card debt were well thought-out as an invalid respondents.

5.2 Sample and Data Collection

Data for this study was gathered by primary data collection method through consumer survey administered among credit card holders. An in-depth interview was conducted with three lecturers from one university before the final survey was conducted in order to identify the key elements to be asked in the questionnaire. A total of 500 questionnaires were distributed to credit card holders but only 240 were finally used for this study. For this study credit card holder with debts were used as the respondents because they went through the experience and therefore serve our research objective. The credit cardholders were age below 35 years and resided in Klang Valley in Malaysia. The survey was conducted in August until September 2012.

The majority of the respondents were female (56.6 percent), more than half (60.0 percent) were between the age of 21 and 25. Chinese group was the highest contributors of the total respondents (45.0 percent) and the second highest group is represented by Malays with (37.08 percent). Majority of the respondents (86.66%) fulltime permanent employees while only a small fraction which comprised of 13.34% of the respondents was hired on contractual basis. As for the personal monthly income level, majority of the respondents (61.66%) earned between RM2,000.00 to RM3,000.00 and only 2.91% earned below RM2,000.00.

5.3 Reliability and Multicollinearity

Before performing the multiple regression procedure, a factor analysis was conducted on the five variables measured using Likert scale to verify whether they could be treated as a single measure. The test was conducted using principal component analysis and varimax rotation with Kaiser Normalization. As suggested by Hair *et al.,* (1995) five factors were identified for factor analysis using the eigen value criteria that suggested extracting factors with an eigenvalue of

greater than 1.0. The method was used in this research has been widely accepted as a reliable method of factor analysis (see, Alexander & Colgate, 2000). In this survey, the Kaiser-Meyer-Olkin (KMO) measure of sampling adequacy score (0.91) was well above the recommended 0.5 level (Malhotra, 1999) suggested that the data may be factorable. Furthermore, the Bartlett's test of sphericity indicated that there was adequate correlation among the chosen variables.

To test the reliability the Cronbach's coefficient alpha values for the five variables are presented in Table 1 below. Table I shows the number of items comprising each scale: the reliability reported by Moore and Benbasat (1991) for the scale and Cronbach's alpha for scale reliability obtained for our sample. Reliability from our sample showed a reasonable level of reliability (α>0.70).

Table 1 Reliability Analysis

Variables	Coefficient Alpha
Easy access to credit card	0.793
Credit card related knowledge	0.787
Aggressive promotion by credit card industry	0.859
Low Minimum payment requirement	0.769
Attitude towards credit cards	0.712

The impact of multicollinearity is a concern when interpreting the regression result (Hair *et al.*, 1998). Highly collinear variables can distort the results substantially and thus are not generalizable. According to Bryman and Cramer (2001), the Pearson's r between each pair of independent variables should not exceed 0.80, otherwise the variables may be suspected of exhibiting multicollinearity. The output in Table 2 showed that the correlations were significant but none exceeded 0.80, which indicate that multicollinearity is not a problem in this study. Another two common measures for assessing the multicollinearity are the tolerance and variance inflation factor (VIF) values. A common cut-off threshold is a tolerance value of 0.10, which corresponds to a VIF value above 10 (Hair *et al.*, 1998). In Table 3, the tolerance values of all variables are above 0.10. Likewise the VIF value is less than 10, thus further confirming that multicollinearity problem is not a concern. The acceptable Durbin – Watson range is between 1.5 and 2.5. In this analysis Durbin – Watson value of 1.909, which is between the acceptable ranges, show that there were no auto correlation problems in the data used in this research. Thus, the measures selected for assessing independent variables in this study do not reach levels indicate of multicollinearity.

Table 2 Correlation Matrix between Independent Variables

	X1	X2	X3	X4	X5	X6
X1	1.00					
X2	.446(**)	1.00				
X3	.287(**)	.452(**)	1.00			
X4	.296(**)	.478(**)	.531(**)	1.00		
X5	.654(**)	.502(**)	.469(**)	.457(**)	1.00	

Table 3 Test of Collinearity

Variable	Tolerance	VIF
Easy access to credit card	.824	1.213
Credit card related knowledge	.702	1.424
Aggressive promotion by credit card industry	.790	1.266
Low Minimum payment requirement	.812	1.231
Attitude towards credit cards	.770	1.298

6. RESULTS AND DISCUSSION

Table 4 presents results of the multiple regression analysis used to evaluate the strength of the proposed relationship. Five hypotheses were formulated and all the variables were retained after filtering with factor analysis. The individual hypothesis was tested using a multiple regression prediction model following the guidelines established by Hair *et al.* (1998) with credit card debts as the dependent variable. The results obtained, as shown in Table 4, revealed that H2, H3, and H4 were supported as the coefficients of the respective variables were found to be positive and significant in the prediction model. The results provide support for hypotheses H2, H3, and H4 that is, the relationship between credit card related knowledge (β=.135; $p<0.05$), aggressive promotion by credit card industry (β=.187; $p<0.01$), and low minimum payment requirements on credit card debts (β=.195; $p<0.01$). The significantly positive impact of credit card related knowledge supports the earlier findings by Jacquenlyn and Mansfield (2000). This evidence suggests that more knowledge about credit card usage will decrease the possibility of credit card debts.

The study also confirmed that aggressive promotion by credit card industry has significant impact on credit card debts. The relationship is positive, suggesting the more promotion activities done by the credit card industry increase the credit card debts. The results are similar to those in the literature (Eugeni, 1993) and aggressive promotion by credit card indeed proves to be a powerful predictor for credit card found in this study. In this study, the respondents agree that aggressive promotion make them use credit cards more often in the daily purchasing habit. At the end of the day, it all comes down to the increase of their credit card debts.

Studies like Tamara and Silva (2003) generally shown that low minimum payment requirement has a positive and significant influence on the credit card debts. At present, the consumption pattern of younger consumers has changed spectacularly. They like to use credit card to replace cash, often using credit card to finance their purchases, not only to satisfy the minimum physiological needs, but to meet their urge for luxurious life style. However, all these were happening for reasons that the youth is willing to take risk of debt. The young group with inadequate income to service the due debts ultimately takes this low minimum payment opportunity, not realizing that their credit card debts continue to increase.

Table 4 Regression Results

Variables	Beta	t-value	p-value
Easy access to credit card	.089	1.410	.160
Credit card related knowledge	.135	1.982	.049
Aggressive promotion by credit card industry	.187	2.907	.004

Low Minimum payment requirement	.195	3.068	.002
Attitude towards credit cards	.105	1.615	.108

Note: Dependent variable is credit card debt

Meanwhile, the effects of easy access to credit card and attitude towards credit card that were tested by H1 and H5 which were rejected by this test. This result indicated that easy to access to credit card and attitude towards credit card would not affect credit card debts. Previous result is in contradiction with the present studies done by other researchers (e.g. David &Nicholas, 2000; Sapsford, 2004; Schor, 1998). However, the contradicting results here might be due to the fact that all credit card users in Malaysia are already familiar with availability of credit card from any banks. They do not see it as a factor that will affect credit card debts because they are very much aware that the credit existence. Finally attitude towards credit card usage has no significant effect on predicting the amount of credit card debts. This was inconsistent with findings by Lea *et al.,* (1995), Zuckerman (2000) and Chien and Devaney (2001), whereby spending pattern and attitudes toward credit card of young consumers lift up the doubt about the impact of spending on credit card debts.

7. CONCLUSION

The research was done under a theoretical framework developed based on the previous study. The multiple regression analysis shows that credit card related knowledge aggressive promotion by credit card industry, and low minimum payment requirements are significant elements affecting credit card debts by young consumers in Malaysia. The model explains 23% of the variance in credit card debts. This information is particular helpful for the policy makers in Malaysia to formulate and regulate policies that help control the surmounting credit card debts among the young consumers. Until then, bad experiences and stories of credit card debts need to be publicized to educate and put off some potential consumers from using credit cards.

Although this study provided substantive explanations for the credit card debts, it still has several limitations. It only considers five predictors variables that are influencing credit card debts. Some other factors need to be included. Contingency factors such as economic condition, competitions and rises of prices of the consumer's goods or fuel hike might have incoherent effect on credit card debts formation. This research was also conducted on the younger respondents that it cannot be fully generalized to represent the view of the entire consumers of the credit card debts. Consumer behavior is known to be influenced by their cultural factors, which are not incorporated in this study. Future studies should address this lacking.

Credit card has many potential benefits and greater economic choice for many consumers. These same benefits, however sometimes lead to financial trouble for the cardholders. Almost everyone has heard media reports or knows of someone who has struggled with credit card debts. This study of credit card debts explored the factors leading to credit card debts, and this will be useful to the consumers to understand the reasons of why certain people took a few years to get out of their repayment.

It is hoped that findings from this study will give support to the government in rejoinder to the signal of the growth young consumer in debt. To keep the amount outstanding situation from deterioration, supervisory authorities in a number of organizations should tighten credit

card lending standard and raised provisioning requirement in order to lessen the risk of deficit that caused by credit card debts which can affect financial and macroeconomics steadiness.

Lastly the findings will of course be a benefit to the potential young consumers, who are the forthcoming users of credit card, to use their credit card intelligently and stay away from getting into debts from the factors that had been revealed in this research.

Lastly the findings will of course be a benefit to the potential young consumers, who are the potential credit card users, to use their credit card intelligently and stay away from getting into debts from the factors that had been revealed in this research.

As the awareness on rise of credit card debts among young working adults, this research further suggested to the Malaysian government body shall concern about the matter in order to reduce credit card debts among young adults.

Finally, Malaysian government should tighten the rules of approving credit card since majority of the adults below age 30 indebted. Bank Negara should ask the commercial bank to take concern about the consumers' income and commitment level in order to approve credit limit. The credit limit shall set which do not exceed 2 months of the salary of the credit card applicant.

Last but not least, government should control the aggressive promotion of credit by the commercial banks. Providing benefits in the advertising of using credit card ultimately consumers will use credit card adversely.

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AN EMPIRICAL ANALYSIS OF EFFECTS OF MILITARY SPENDING ON ECONOMIC GROWTH IN NIGERIA: A BOUND TESTING APPROACH TO CO-INTEGRATION 1989-2013

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Abstract: *The study examines the effect of military expenditure on output in Nigeria both in the short-run and in the long-run period. In addition, it verified whether military expenditure is an economically non-contributive activity using ARDL bounds testing approach to co-integration. Results showed that military spending has negative and significant effect on output in the short-run but positive and significant effect in the long-run. Labour and capital have positive and significant effects both in the long-run and short-run. In addition, labour has the highest coefficient (3.0709) in the long-run. The study concludes that government should reduce its expenditure on defense and concentrate more on human capital development, since military spending contributes nothing to output in the short-run.*
Keywords: *Military spending, Human capital, ARDL, Economic Growth, Inflation*
JEL Classification: *H5 I15 C22 O4 E31*

1. INTRODUCTION

The role of government in an economy cannot be over-emphasized. Two amongst these important duties as noted by Adam Smith are to protect the society from the violence and invasion of other independent societies and; protect every member of the society from the oppression of every member of it. This established the basis for the economic need of security in countries of the world. Security of persons and property from domestic or foreign threats is essential for the operation of markets and the incentives to invest and innovate. Lack of peace and security constitute a distortion in economic activities. These results in local and foreign investors being sceptical of investing in the economy leading to a dearth in capital in-flow, government attention is shifted from more productive sectors to defence sector and a great disorder in the socio-economic structure.

War and lack of security are some of the major obstacles to development (Dunne *et.al* 2004). This perhaps, accounts for the reason why many countries of the world desire and make effort towards maintaining peace and security in and outside their territories. Peace is an important precondition for economic development in the world. In the absence of peace and

tranquillity, there is little or no incentive for people to undertake productive investments in the legal economy, as the likelihood of return on investment is minimal. Many countries of the world commit huge resources such as human, mental and even financial to bring and maintain peace and tranquillity in their country. National and international organizations have committed huge resources towards bringing and maintaining peace all over the world. The United Nation spends about $5billion naira yearly on peacekeeping all over the world (Carnahan et al, 2006). The organization budgeted US $7.84 billion for the period from July 2011 to 30 June 2012 which represents less than 0.5 per cent of global military spending (UN peacekeeping factsheet 2011).

The need for every nation of the world to install sustainable peace and security in and outside her territory conceives the chore of country's investment in military and other law enforcement agencies. Military spending is the amount of financial resources dedicated by anationor a state, to raising and maintaining armed forces. It often reflects how much an entity perceives the likelihood of threats against it, or the amount of aggression it wishes to employ. It also provides an idea of how much finances could be provided for the upcoming year. The size of a budget also reflects the nation's ability to fund military activities, with factors including the size of that economy, other financial demands on that nation and the willingness of that nation's government or people to fund such military activity. Military spending is an important issue for the international world. It is an expenditure by governments that has influence beyond the resources it takes up, especially when it leads to or facilitates conflicts (Collier 2006). At the same time most countries need some level of security to deal with internal and external threats, but these can certainly have opportunity costs as they can prevent money from being used for other purposes that might improve the pace of development (Dunne and Uye 2010).

High military expenditure is sometimes a response to active warfare. Collier (2006) argued that one of the major determinants of military expenditure in developing countries is internal rebellion. He opined that where civil war is ongoing, military expenditure is greatly elevated. Other determinants of military expenditure includes; past levels of military expenditure, geo-strategic consideration, the politics of the budgetary decision-making process, pressure from arms suppliers, beneficiaries and vested interests, financial and economic factors etc (Harris 2004; Collier 2006). Military expenditure defers from most other forms of government expenditures, it has the potential to provide an immediate benefit in the form of greater perceived security which might encourage investment spending in a country, but in itself such spending is a consumption item (Harris 2004). This corroborates the argument of Dumas (2002), who eloquently argued that military activity is an economically non-contributive activity in the modern world because it does not add to material well-being of people.

However, the effect of military expenditure on economic growth has been a critical issue in defence economics. Benoit (1978) asserted that an increase in the military expenditure can promote economic growth by increasing human capital capabilities through provision of education, through an expansion of aggregate demand, through increase security, and negatively through a crowding out of investment (Deger 1986). Furthermore, there are findings showing no relationship between military expenditure and economic growth (Galvin, 2003; Yildirim et al. (2005) and in some cases, there are mixed results (Kollias et al. (2004); Dakurah et al. (2000).

The huge financial commitment into military expenditure in Nigeria recently has been a thing of concern. Military expenditure in Nigeria has been on the increase over the last few decades. Defence expenditure for instance, as a percentage of the total Federal Government

budgetary provision was 10.13 percent in 1974 and 11.99 percent in 1975. However, it declined to about 11.21 percent in 1976 but rose again to 14.69 in 1977 (Akpa 1997). In 1988, military expenditure in Nigeria was N1.2 billion, this constitute about 0.8% of the total GDP. It increased to N15.4 billion in 1996 and later N45.4 billion in 1999. Since then, the trend of military expenditure has taken an upward drift. In 2012, it rose to about N345 billion. This upward trend provoked public outcry in the country since the country has not been fighting major war, until recently with the advent of insurgency and terrorism. It is believed that the unprecedented upward trend of military expenditure is not justifiable given the level of insecurity in the country.

The discord as per the effect of military expenditure on security and economic growth, and the rising military expenditure in Nigeria in recent time has been a major concern for researchers and policy makers. This uncertainty prompted this paper to ask if military expenditure has any effect on security and economic growth in Nigeria and determine whether military expenditure is one of the economically non-contributive activities in Nigeria economy as argued by Dumas (2002). In addition, this paper will determine whether such effect (if any) is in the long- run or short-run period. Apart from this introductory aspect, the rest of the study is organized into four sections. Section 2 presents the theoretical consideration and also review relevant literature; while section 3 presents the empirical methodology, analysis, results of findings and discussion, while section 4 concludes and presents policy implications.

2. THEORETICAL CONSIDERATION AND LITERATURE REVIEW

The issue as to if government should intervene to correct for short-run fluctuations in economic activities has been of intense debate among economists. The Classical economists oppose government intervention while the Keynesian school of thought on the other hand advocates for the use of government fiscal policies to bring about increase in economic activities whenever there are economic recessions. The Keynesians believed that the assumed self regulating mechanism in the economy fails to lead the economy back to equilibrium thereby prescribing expansionary fiscal policies to avoid long recessions. Neoclassical models are generally supply side with a focus on the trade off between 'guns and butter. While Keynesian models on the other hand, see military spending simply as one component of government spending and focus on the demand side, although when used in econometric models an aggregate production function does given them a neoclassical flavour (Dunne *et. al*. 2001).

In the view of Dunne *et. al.* (2001), when undertaking the econometric studies of the military expenditure and growth, the simple Feder-Ram has something appealing to defence economists, this is its ability to explicitly treat externality effects of the military on the non-military sector. In the work of Biswas and Ram (1986), who first modified Feder (1983, 1986)'s model of the exports-growth nexus in developing countries for a cross-country study of the link between military spending and economic growth, numerous empirical contributions to the guns-and-butter debate have employed variants of the same approach. Denger and Sen (1986) represent the Feder-Biswas-Ram externality model as a splendid empirical workhorse to investigate the impact of military expenditure on growth. The approach is generally seen to provide a formal justification for the inclusion of military expenditure as an explanatory variable in a single-equation growth regression analysis, which is based on the neoclassical theory of

growth (Mintz and Stevenson 1995), or at least fairly based on the neoclassical production-function framework (Biswas and Ram 1986).

Studies have been conducted in the developed and developing countries on the relationship between military spending and economic growth, which have given varying result by defence economist. There has been serious contestation has to if military spending has effect on economic growth. Tiwari and Shahbaz (2011) investigated the effect of defence spending on economic growth using ARDL bounds testing approach to co-integration in augumented version of Keynesian model for Indian economy. They found out that there is long run relationship between the variables, and also there is positive effect of the defence spending on economic growth (also negative impact after a threshold point). Furthermore, there study also showed that there is bidirectional causal relationship between defence spending and economic growth using variance decomposition approach.

Halicioglu (2004) conducted a study on defence spending and economic growth. This corroborates the work of Tiwari and Shahbaz (2011). He demonstrated empirically that there exists a positive long run relationship between aggregate defence spending and aggregate output in turkey. Yildirim et. al. (2011) and Pieroni (2008) argued that there is positive relationship between military expenditure and economic growth. They also stated that disarmament does indeed provide an opportunity for improved economic performance. According to Dunne (2000) however, there are still problems in moving to lower levels of military spending and policies of conversion are required at a national and international level, including assistance from the developed world. Arif and Rashid (2012), using a unit root, cointegration and exogeneity tests between military expenditure and economic growth in 14 developing countries for the period 1981-2006 considering panel data analysis. According to them, military expenditure is an exogenous variable and it influences economic growth in these countries.

Hirnissa and Baharom (2009) tested the robustness of the causal effect and long-run relationships between military expenditure and economic growth in ASEAN-5 countries from the year 1965 to 2006. They concluded that only three out of five countries analyzed exhibited long run relationship. Dunne and Uye (2008) examined the link between arms spending and economic growth for developing countries and the benefits to be gained by reducing it, concluded that reducing arms and military spending need not be costly and can contribute to, or at the very least provide the opportunity for an improved economic performance in developing countries. Also as demonstrated by Halicioglu (2004) in his study on defence expenditure and economic growth in turkey using macroeconomic theory and multivariate co-integration procedure, there exists a positive relationship between aggregate defence spending and aggregate output in turkey.

In an attempt to find if there is any relationship between military expenditure and gross domestic product in Czech Republic, Danek (2013) asserted the military expenditures explain only 46% of the changes of GDP. That is military expenditure has no meaningful effect on growth. Also, the correlation coefficient showed that there is 68% negative relationship between the variables of the military expenditure and GDP. Military spending is an expenditure by governments that has influence beyond the resources it takes up, especially when it leads to or facilitates conflicts. While countries need some level of security to deal with internal and external threats, these have opportunity costs, as they prevent resources being used for other

purposes that might improve the pace of development. These especially are important for the poorest economies (d'Agostino et. al 2010).

Also in their study on the causal relationship between military expenditure and economic growth for 68 developing countries for the period 1975-1995, Dakurah *et. al.* (2000) using granger causality testing procedures found some evidence of unidirectional causality from military expenditure to growth and from growth to military expenditure in a number of countries, as well as a feedback relationship in others. They however concluded that the lack of evidence of causal relationship between the two variables in this study and others before it might be due to violations of the basic assumptions inherent in these testing procedures. Wilkins (2004) conducted a study, using a panel data model estimation to examine the relationship between defence spending and economic growth using annual data for 85 countries over the period 1988 to 2002. The average defence burden for each of these countries is calculated and regional and global defence burdens are estimated using percentage shares of world GDP as weights. The global weighted average defence burden is found to have consistently fallen from 4.78% in 1988 to 2.95% in 2001; largely a result of the cold war ending and the arms race finishing in an earlier period. Also, The estimated empirical model explaining GDP growth as a function of defence spending, labour and capital suggests varying country specific effects for defence and, as might be expected, larger positive effects for labour and capital.

Some studies have also being conducted in Nigeria on military expenditure and economic growth. Eniola (2008) studied the relationship between the level of economic growth and defence expenditure in Nigeria between 1977 and 2006. He employed the supply model based on the production function proposed in Feder (1983) as extended by Biswas and Ram (1986). The result showed that there is a unidirectional causality running from economic growth to defence spending. In the study of the impact of security expenditure on the level of economic growth in Nigeria, Oriavwote and Eshenake (2013) used Error Correction Model and found out that the expenditure on defence has a negative impact on the level of economic growth. Though, with an indication of flawed expenditure budgeting and implementation in the defence sector, expenditure on internal security played important role in generating the desired level of economic growth in Nigeria.

In a related study, Olofin (2012) examined the relationship between the components of defence spending and poverty reduction in Nigeria between 1990 and 2010. Four models were estimated using Dynamic Ordinary Least Square (DOLS) method, two in which poverty index constructed from human development indicators serves as dependent variable and the others in which infant mortality rate serves as dependent variable. The result show that military expenditure per soldier, military participation rate, trade, population and output per capita square were positively related to poverty indicator and, military expenditure, secondary school enrolment and output per capita were negatively related to poverty level. The findings confirm the trade off between the well-being and capital intensiveness of the military in Nigeria, pointing to the vulnerability of the poor among the Nigerians.

3. MODEL SPECIFICATION, DATA DESCRIPTION AND ESTIMATION TECHNIQUE

Models for the transmission mechanism from defence expenditure to economic growth are based either in the supply or demand side of the economy. The supply side however, is based on the aggregate production function approach, while the demand side models are based on a variant of the variant of the Keynesian consumption function. For the purpose of carrying out the objective of this paper, it will employ the supply side model that uses the aggregate production function approach. The supply side model is based on the aggregate production function proposed in Feder (1983) and was extended by Biswas and Ram (1986) to include a defence expenditure variable.

Looking at a two sector economy with a defence (D) production function as

$$D = D(L_d, K_d) \quad (1)$$

and a civilian (C) production function

$$C = C(L_c, K_c, D) \quad (2)$$

where the $L_d, L_c, K_d \text{ and } K_c$ are labour and capital shares allocated to the defence and civilian sectors respectively. According to Biswas and Ram (1986), the inclusion of D in equation (2) allows for an externality effect for the defence sector to the civilian sector. This externality effect can either be in form of a positive marginal product for defence in equation (2) or as a relative factor productivity differential for labour and capital in both sectors. The aggregate labour and capital supplies are:

$$L = L_d + L_c \quad (3)$$

and

$$K = K_d + K_c \quad (4)$$

And Y is total national income or output

$$Y = M + G \quad (5)$$

Taking the total differential of (5) and dividing by Y gives

$$\frac{dY}{Y} = \frac{\partial C}{\partial L}\frac{dL}{Y} + \frac{\partial G}{\partial K}\frac{dk}{Y} + \frac{\partial C}{\partial D}\frac{dD}{Y} \quad (6)$$

Multiplying the first term on the RHs of (6) by L/L and the third by M/M becomes

$$\tilde{Y} = F_l L\frac{L}{Y} + F_k\frac{dk}{Y} + F_d D\frac{D}{Y} \quad (7)$$

Equation (7) above is the simple form of the Feder Ram model and shows how economic growth depends on labour, capital growth and defence all weighted by their relative shares in output. The partial derivatives, F are then found as estimated coefficients.

Thus the estimated equation for the study derived from the Feder-Ram model is

$$lny = \propto_0 + \propto_1 lnl + \propto_2 lnk + \propto_3 lnD + ln\pi + \varepsilon \quad (8)$$

Where y is the real GDP

l = labour force proxy by school enrolment

k = Capital stock proxy by Gross Fixed Capital Formation

D = Defence Expenditure

π = Inflation

ε = Error Term

$\propto_0$= Intecept

$\propto_1$,$\propto_2$and$\propto_3$ are parameter of estimate, where $\propto_1$,$\propto_2$, $\propto_3$> 0

The study adopts Auto-Regressive Distributed Lag (ARDL) approach for testing the existence of co-integration relationship among the variables as developed by Pesaran *et.al*. (2001). The approach has certain econometric advantages in comparison to other single cointegration procedures (Engle and Granger, 1987; Johansen, 1988; Johansen and Juselius, 1990). Firstly, endogeneity problems and inability to test hypotheses on the estimated coefficients in the long-run associated with the Engle-Granger (1987) method are avoided. Secondly, the long and short-run parameters of the model in question are estimated simultaneously. Thirdly, the econometric methodology is relieved of the burden of establishing the order of integration amongst the variables and of pretesting for unit roots. The ARDL approach to testing for the existence of a long-run relationship between the variables in levels is applicable irrespective of whether the underlying regressors are purely I(0), purely I(1), or fractionally integrated. Finally, as argued in Narayan (2005), the small sample properties of the bounds testing approach are far superior to that of multivariate cointegration (Halicioglu, 2007). The approach, therefore, modifies the Auto-Regressive Distributed Lag (ARDL) framework while overcoming the inadequacies associated with the presence of a mixture of I(0) and I(1) regressors in a Johansen-type framework. The ARDLrepresentation of equation (8) above is expressed as follows:

$$\Delta y_t = \gamma_{11} + \sum_{i=1}^{p} \gamma_{1i}\, \Delta y_{t-1} + \sum_{i=0}^{p} \gamma_{2i}\, \Delta l_{t-i} + \sum_{i=0}^{p} \gamma_{3i}\, \Delta k_{t-i} + \sum_{1=0}^{p} \gamma_{4i} \Delta D_{t-i} + \sum_{1=0}^{p} \gamma_{5i} \Delta \pi_{t-i} + \varphi_{10\, y_{t-1}} + \varphi_{11}\, l_{t-1} + \varphi_{12}\, k_{t-1} + \varphi_{13}\, D_{t-1} + \varphi_{14} \pi_{t-1} + \varepsilon_{2t} \quad (9)$$

Where ε_{2t} and Δ are the white noise term and the first difference operator, respectively. The ARDL method estimates $(p+1)^k$ number of regressions in order to obtain the optimal lag length for each variable, where p is the maximum number of lags to be used and k is the number of variables in the equation. An appropriate lag selection based on a criterion such as Akaike Information Criterion (AIC) and Schwarz Bayesian Criterion (SBC). The ARDL co-integration method is based on the F or Wald-statistics. The F-test is used for testing the existence of long run relationship among. The null hypothesis is tested by considering the Unrestricted Error Correction Model in equation (9) while excluding the lagged variables Δy_t, Δl_t, Δk_t, ΔD_t and ΔI_t based on the Wald or F-statistic. The asymptotic distribution of the F-statistic is non-standard under the null hypothesis of no co-integration relationship between the examined variables, without recourse to whether the underlying explanatory variables are purely I(0) or I(1). The null hypothesis of no co-integration (H0: $\varphi 10 = \varphi 11 = \varphi 12 = \varphi 13 = \varphi 14$) is therefore tested against the alternative hypothesis (H1: $\varphi 10 \neq \varphi 11 \neq \varphi 12 \neq \varphi 13 \neq \varphi 14$). Thus, Pesaran et al. (2001) compute two sets of critical values for a given significance level. One set assumes that all variables are

I(0) and the other set assumes they are all I(1). If the computed F-statistic exceeds the upper critical bounds value, then the H_0 is rejected. If the F-statistic is below the lower critical bounds value, it implies no co-integration. Lastly, if the F-statistic falls into the bounds then the test becomes inconclusive. Consequently, the order of integration for the underlying explanatory variables must be known before any conclusion can be drawn.
If there is evidence of co-integration among the variables, the following long-run model is estimated:

$$\Delta y_t = \gamma_1 + \sum_{i=1}^{p} \beta_{1i}\, \Delta y_{t-1} + \sum_{i=0}^{p} \delta_{1i}\, \Delta l_{t-i} + \sum_{i=0}^{p} \theta_{1i}\, \Delta k_{t-i} + \sum_{1=0}^{p} \sigma_{1i} \Delta D_{t-i} + \sum_{1=0}^{p} \varphi_{1i} \Delta \pi_{t-i} + \mu_t \quad (10)$$

The ARDL specification of the short-run dynamics can be derived by constructing an error correction modelof the form:

$$\Delta y_t = \gamma_2 + \sum_{i=1}^{p} \beta_{2i}\, \Delta y_{t-1} + \sum_{i=0}^{p} \delta_{2i}\, \Delta l_{t-i} + \sum_{i=0}^{p} \theta_{2i}\, \Delta k_{t-i} + \sum_{1=0}^{p} \sigma_{2i} \Delta D_{t-i} + \sum_{1=0}^{p} \varphi_{2i} \Delta \pi_{t-i} + \omega ECM_{t-1} + \mu_t \quad (11)$$

whereECM_t is the error correction term and is defined as:

$$ECM_t = \Delta y_t - \gamma_2 + \sum_{i=1}^{p} \beta_{2i}\, \Delta y_{t-1} + \sum_{i=0}^{p} \delta_{2i}\, \Delta l_{t-i} + \sum_{i=0}^{p} \theta_{2i}\, \Delta k_{t-i} + \sum_{1=0}^{p} \sigma_{2i} \Delta D_{t-i} + \sum_{1=0}^{p} \varphi_{2i} \Delta \pi_{t-i} \quad (12)$$

All coefficients of the short-run equation are coefficients relating to the short-run dynamics of the model's convergence to equilibrium and ω in equation (11) above represent the speed of adjustment. With the dearth of a reliable data on labour force in Nigeria, this study uses secondary school enrolment as a proxy for labour force (l). Gross fixed capital formation is used as a proxy for capital (k), inflation (π) and D will be the military expenditure. Data are sourced from Central Bank of Nigeria Statistical Bulletin, 2013 edition and the Stockholm International Peace Research Institute (SIPRI) Military Expenditure Database, 2014 edition.

4. ESTIMATION AND INTERPRETATION OF RESULTS

The test for the stationarity status of all variables to determine their order of integration is necessary before proceeding with the ARDL bounds test, although the bounds testing procedure is not predicated on prior information about the order of integration of the series under investigation. This is however expedient to ensure that the variables are not I(2) stationary so as to avoid spurious results. Inferences in the bounds testing procedure through the computed F-statistics for bounds testing are based on the assumption that the variables are level or first-differenced stationary. For this purpose, the ADF and PP methods are used to determine the stationarity of the variables and the results are presented in table 1.

Table 1 Summary of Unit Root Test

Variables	Augmented Dickey- Fuller			Philip - Perron		
	Levels	1st Difference	Remarks	Levels	1st Difference	Remarks
lnk_t	-1.326089	-8.128335*	I(1)	-1.603202	-4.236256	I(1)
lny_t	0.093418	-4.394309*	I(1)	-1.344492	-3.612199**	I(1)
$ln\pi_t$	-6.269051*	-	I(0)	-3.603202	-	I(0)
lnl_t	0.397467	-2.891347**	I(1)	0.647297	-2.921038**	I(1)
lnD_t	-2.269619	-6.253881*	I(1)	-3.357541	-6.261240*	I(1)

*/ ** represent stationary at 1and 5 percent level respectively.

The Unit root test on all variables was carried out using the Augmented Dickey-Fuller(ADF) and Philip-Perron (PP) tests with intercept only and the result was presented in Table 1. The result showed that all the variables except inflation were non-stationary at levels. That is, they were not integrated at order zero but they became stationary after first differencing. The PP unit root test results as reported in Table 1 confirmed results from ADF test.

Table 2 ARDL Bounds test for Cointegration

Model	F-Statistic	
$F(L, k, D, \pi)$	8.5050	
Critical Values	Upper Bound	Lower Bound
	K=5; n = 25	
10%	3.4397	2.1761
5%	4.2063	2.7254

Narayan (2005): Critical values for the bounds test: case III: unrestricted intercept and no trend. The critical values reported in Pesaran et al. (2001) are based on large sample sizes; thus, it cannot be used for small sample sizes. Narayan (2004 a, b) generates and reports new sets of critical values for small sample sizes.

Table 2 reports the results of the ADRL bounds cointegration tests. It shows the calculated F-statistic when the regression is normalized on the economic growth. The search for co-integrating relations has been restricted to growth variable as the dependent variable based on the fact that the study strictly utilized a growth regression model. The computed *F*-statistic (8.5050) is higher than the upper critical bound at 5% and 10% critical values as indicated in Table 2. This provided evidence to reject the null hypothesis of no co-integration at 5% and10% significance level for the growth model. It can therefore be concluded from the ARDL bounds test that there is a long-run relationship among the variables. Following the establishment of long-run co-integration relationship among the variables, the long-run and short-run dynamic parameters for the variables were obtained. The empirical results of the long-run model are presented in Table 3.

Table 3 Estimated ARDL Long-Run Coefficients. Dependent Variable: GDP ARDL(1, 0, 0, 1, 0)[a]

Regressor	Coefficient	t-statistics	P-value
lnD_t	1.5973	2.0517	0.045
lnk_t	0. 0102	2.1294	0.036
lnl_t	3.0709	3.2734	0.013
$ln\pi_t$	2.2900	1.6391	0.118

a. Selected based on Schwarz Bayesian Criterion

The estimated coefficients of the long-run relationship between military spending and economic growth produced mixed results in line with thediversity of evidence of existingliterature. The long-run ARDL estimates (1.5973) indicate positive and significant result at 5% level of significance. This result conforms to the results of studies like Tiwari and Shahbaz (2011), Halicioglu (2004), Yildirim *et. al.* (2011) and Pieroni (2008) that there exists a positive and significant long run relationship between military spending and output. Labour and Capital are two other inputs that contribute to economic growth. Their estimates (0.0102 and 3.0709) have positive and significant results at 5% level of significance. The results show that labour is the highest contributor to economic growth in Nigeria. In addition, it can be deduced that government spending in the long-run does not enhance inflation in the long run. This supports the argument of Tiwari and Shahbaz (2011) that increase in government spending would induce inflation after exceeding the threshold point.

Table 4 Error Correction Representation for the Selected ARDL Model ARDL (1,0,0,1,0)[a]

Regressors	Coefficients	t-statistic	P-value
ΔlnD_t	- 0.2202	- 2.3049	0.017
Δlnk_t	0.1497	6.2856	0.000
Δlnl_t	0.0156	3.1762	0.003
$\Delta ln\pi_t$	-0.0315	-3.2735	0.002

Ecm(-1)	-0.0137	-2.9304	0.006

[a]Selected based on Schwarz Bayesian Criterion

Table 4 gives the results of the short-run dynamic coefficients associated with the long-run relationships obtained from the ECM equation. The error correction term in the model is highly significant and correctly signed. This indicates adjustment to long-term equilibrium in the dynamic model. Bannerjee et. al. (1998) posits this as an evidence of a stable long-term relationship. The coefficient of error correction term is (0.0137). This implies that deviations from the long-term growth rate in output adjust quickly. Furthermore, as expected, military spending in the short- run has negative and significant effect at 5% level of significance on output and that this induces inflation in the short-run. The results showed that 1% increase in military spending will reduce output by 22%. This, on the other hand, will promote inflation in the economy.

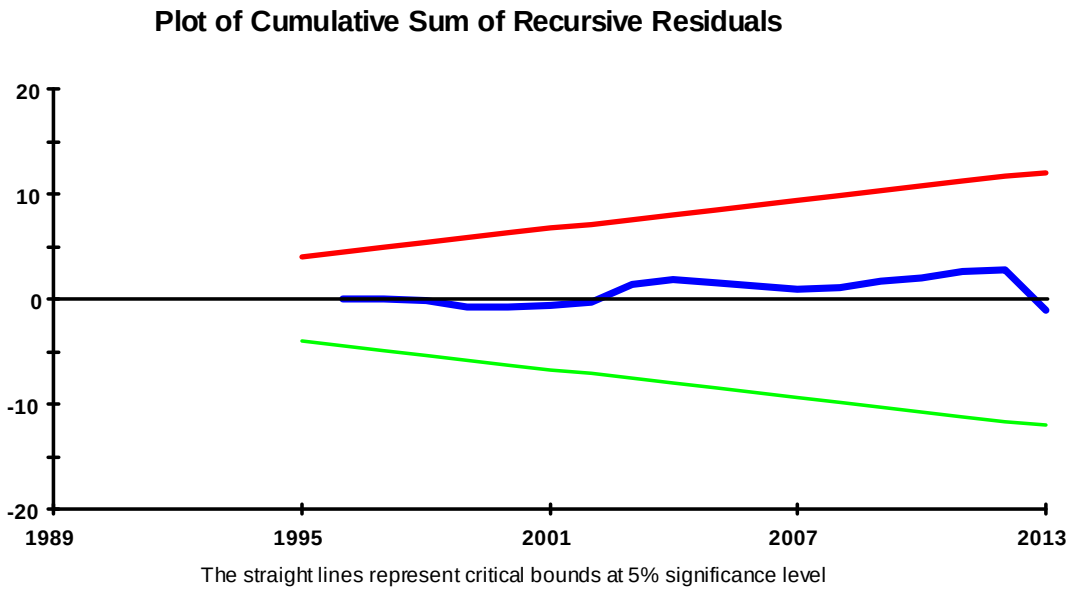
Specification problems associated with serial correlation, functional form, normality or heteroscedasticity were checked with diagnostics tests, including the test for serial correlation (LM test), heteroscedasticity (ARCH test), normality (JB (N)) and functional form. The results are presented in table 5 below.

Table 5 ARDL – VECM Model Diagnostic tests Test Statistics LM (χ)

Test Statistics	LM(χ^2)
Serial Correlation	χ^2(1) 20.3333[0.000]
Functional Form	χ^2(1) 25.8714[0.000]
Normality	χ^2(2) 0.76473[0.682]
Heteroscedasticity	χ^2(1) 1.5815[0.209]

Table 5 indicates the underlying ARDL equation passes the diagnostic tests. The stability of the long-run coefficients, along with the short run dynamics of the estimated ARDL model were confirmed with the test of CUSUM. Table 6 presents the plots of the CUSUM based on the Schwarz Bayesian criterion. As can be seen in Figure 1, the plot remains within critical bounds at 5% significance, accepting the null hypothesis that all coefficients and the ECM are stable.

Figure 1 Plot of Cumulative Sum of Recursive Residuals



5. CONCLUSION AND POLICY IMPLICATIONS

The study examines whether military expenditure is one of the economically non-contributive activities as argued by Dumas (2002) in the Nigerian context. It also investigates the effect of military spending on economic growth, both in the short-run and long-run periods, in Nigeria. The study employs Autoregressive Distributed Lag approach to Co-integration on secondary data from 1989 to 2013. Results showed that military spending has negative and significant effect on output in the short-run but positive and significant effect in the long-run. Labour and capital have positive and significant effects both in the long-run and short-run. In addition, labour has the highest coefficient (3.0709) in the long-run. Inflation has negative and significant result in the short-run but positive and non-significant result in the long-run. The outcomes of the result imply government should reduce its spending in maintaining peace and order in the country but rather increase its spending on human capital development and accumulation of capital since these are the major drivers of economic growth. The study concludes that military expenditure is an economically contributive activity as against Dumas (2002) argument. However, policy makers should encourage budgetary allocation in support of accumulation of capital and human capital development.

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PENSION REFORM AND MACROECONOMIC IMPACT: SIMULATION FOR THE CASE OF TUNISIA VIA OVERLAPPING GENERATIONS MODEL

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Abstract: *The aim of this paper is to study the macroeconomic effects of a few scenarios reforms of the pension system Tunisian who correspond respectively to the increase of the contribution rate, to the reduction of the replacement rate, and finally to the introduction of a dose of funded in our pension system. In other word, we will examine the evolution of consumption, saving, capital accumulation through a general equilibrium model of overlapping generation similar to DEGER (2011).*
Keywords:*Pay as you go system, funded pension, overlapping generations*
JEL Classification: *H55, J26*

INTRODUCTION

In Tunisia as in the majority of countries of the world, the structure of the population pyramid tend more toward the bottom during these past few years. This trend of age pyramid toward the higher age classes will worsen the financial situation of our pension system either in the public sector and the private sector. In the vision of mitigating the impacts of this demographic change, it is essential to pose of reforms affecting some parameters of our pension system.

Thus, several studies have investigated the consequences of various reforms that are parametric or structural at micro-economic or redistributive level as Harding (1996), Nelissen (1999) and Cremer et al. (2007). However, in our paper, we focus essentially on the impact of various reforms that we propose at the macroeconomic level. The major criterion chosen for the macroeconomic analysis of the impacts of reform is the effect on capital accumulation via the consequences on the behavior of savings. In fact, we propose three scenarios for reform from a general equilibrium model with overlapping generations in order to study their effects on the profile of consumption and savings of households on the one hand, on the other hand on the accumulation of capital stock by retaining the 2010 as the reference year and the projection will be projected up to 2030.

This paper is organized into four sections. The second section explains the model structure. The third section represents the calibration phase and simulation results. Finally, the analysis ends with conclusions in a fourth section.

2. THE MODEL

The model structure is similar to that of paper Deger (2011). This presented modeling considers specifically the interdependencies between decisions of households, producers and state.

The model includes a set of equations attached to household behavior, the production sector and the state represents only the pension system. The model takes place in the context of an economy closed with the assumption of exogenous labor supply.

The behavior of households

The households in the model are presumed rational and having a perfect forecast on one hand.On the other hand, the children are totally dependent on their parents since the birth up to the age of 20 years with which the individual begins to work. Thus, we choose to divide household into six age classes. These six age classes are divided into four during the working phase and two during the retirement phase. The first five age classes are composed of ten years, but the last age group includes individuals who are age 70 and older. Besides, in the model, the households did not receive the inheritance and do not leave voluntary legacies after their death.

The instantaneous preference of household is represented by the following version of the constant relative risk aversion:

$$\frac{(c^{a}_{t+a-1})^{\eta}-1}{1-\eta}(1)$$

The subscript t represents time and a = 1,2, ..., 6 is the age group of the household. The parameter η of the function represents the measure of relative aversion of risk and would be interpreted as the inverse of the intertemporal elasticity of substitution.

The utility of a representative household for the duration of life is represented as follows:

$$\sum_{a=1}^{6}\beta^{a-1}\frac{(c^{a}_{t+a-1})^{1-\eta}-1}{1-\eta}(2)$$

Thus, β represents the discount factor. According to this utility function, there is no arbitrage between consumption and leisure or work and leisure because the retirement age is exogenous, which is fixed at 60 years.

In the phase of work, each household offers a quantity of work inelastic which reported to him the salary which will be divided between consumption, savings and the payment of a levy corresponds to a contribution, which implies the budget constraint:

$$c^{a}_{t}+s^{a+1}_{t+1}\leq(1+r_{t})s^{a}_{t}+(1-\tau_{t})w_{t}(3)$$

For a = 1, ..., 4 ; s^{a}_{t} represents savings of a household for an age group at time t. The saving of the householdis seen as a basic instrument for the intertemporal redistribution of resources. The interest rate is noted r_t, w_t is the market wage rate and τ_t is the contribution rate.

During the retirement phase, sources of income for pensioners are pension benefits received from the pension system and savings accumulated during periods of work. Thus, the budget constraint during this phase is written as follows:

$$c^{a}_{t}+s^{a+1}_{t+1}\leq(1+r_{t})s^{a}_{t}+p_{t}(4)$$

Where a = 5,6 ; with p_t represents the pension benefits.

Due to the similarity of preference structures, the problem of optimizing a single household corresponds of all households despite the heterogeneity that we introduced in term of age classes. The maximization of utility function (2) under the two budget constraints (3) and (4) allows us to determine for each age class his level of consumption over time. Thus, the problem of utility maximization under both budget constraints gives the following optimality condition:

$$\frac{c_{t+1}^{a+1}}{c_t^a} = \left[\beta(1+r_{t+1})\right]^{\frac{1}{\eta}} \qquad (5)$$

This equation (5) shows us that the permanent income of an individual is divided between its consumption in the work phase and the retirement phase. This condition of optimality represents the consumption Euler which concerned the choice of consumption in consecutive time. In the case where the right part of this equation is greater than one, a profile of increasing consumption would be observed for the representative agent.

The firm

The set of firms in the model is assimilated to a representative firm that operates in a competitive context. The firm produces a single good that can be both consumed or invested as physical capital, whose price is equal to unity. This production function is Cobb-Douglas with constant returns to scale:

$$Y_t = K_t^{\alpha} L_t^{1-\alpha} \quad (6)$$

Where Y_t corresponds to the level of output at time t, K_t indicates the stock of physical capital, L_t represents the number of workers and α described the part of the capital in the production. The firm determines its demand for factors of production by solving the following program to maximize its profit:

$$\max \pi = Y_t - w_t L_t - (r_t + \delta) K_t$$

Under the technological constraint: $Y_t = K_t^{\alpha} L_t^{1-\alpha}$

The conditions of the first order for maximization are the following:

$$r_t = \alpha K_t^{\alpha-1} L_t^{1-\alpha} - \delta \quad (7)$$

$$w_t = (1-\alpha) K_t^{\alpha} L_t^{-\alpha} \qquad (8)$$

With r_t real interest rate at time t, δ the capital depreciation rate and w_t the wage rate.

The government

The government in this model is confined to its function as administrator of the pension system. This pension system is financed by taxes levied on the income of the workers. These taxes are distributed to the beneficiaries of the pension system. So, for every person belonging to the pension system, pensions are as follows:

$$p_t = rem(1-\tau_t) w_t \quad (9)$$

Thus, the pension which is received by pensioners is equivalent to the product of the replacement rate (rem) and the wage rate for the current period (w_t). For any period of time t, the budget of the pension system can be written as follows:

$$\tau_t w_t N_t = \sum_{a=5}^{6} p^a \quad (10)$$

The closure of the model

To ensure that the model is logically coherent, it must the existence of equilibrium conditions respectively on the labor market and the goods market. In fact, these equilibrium conditions ensure the closure of the model.

On the labor market, the total supply of labor at time t is equal to the labor supply of all cohorts:

$$N_t = \sum_{a=1}^{4} n_t^a \qquad (11)$$

The equilibrium on the goods market is defines as follows:

$$K_t^{\alpha} N_t^{1-\alpha} = \sum_{a=1}^{6} c_t^a + K_{t+1} + (1-\delta)K_t \qquad (12)$$

According to this equation, the production which is on the left side is absorbed by the overall consumption and investment or investment includes additions to capital stock and depreciation. In this equation, the only term not related to capital stock is consumption. But according to the budgetary constraints, we visualize that the consumption is in fact as a function of savings, which is ultimately linked to the stock of capital, and that the prices of the factors are in function of the capital stock from equations (7) and (8).

Therefore, given the inelastic labor supply, the budget constraint of the household and maximization profit of firms, the dynamics of capital is rewritten:

$$K_t = \sum_{a=1}^{6} s_t^a \quad (13)$$

3 THE CALIBRATION AND SIMULATION

3-1 The calibration parameters

The calibration of the parameters weighs in a significant way on the simulation results of the model. The values used for these parameters are either econometric estimate derived from other studies, of values acquired from international comparisons, arbitrary values which were not based on any data observations of the economy studied. In what follows, we will expose the determination of parameters relative to the utility function, the production function and the pension system.

Concerning the utility function, the discount factor is determined by the use of first-order conditions of the consumer maximization program while respecting the constraint relating to the aggregation of consumption. For the production function, the income share of capital in total income of factors α is established through the expression of the marginal productivity of factors on the one hand, on the other hand the value of the wage rate in the base year which is 2010. About the pension system, the contribution rate and the replacement rate correspond respectively to 20% and 70% be the average between the general regime of the NPSIF[4] of the public sector and the SNAE[5] of the private sector. Thus, the values of the parameters calibrated for our model are summarized in the Table 1.

[4]NPSIF : National pension and social insurance fund
[5]SNAE : Scheme for non-agricultural employees

Table 1 Model parameter values

Parameters	description	value	source
β	Discount factor	0.9	Heer and Maussner (2005)
η	The coefficient of risk aversion	2	Heer and Maussner (2005), Borsch-supan et al. (2006)
δ	The depreciation rate of capital	0.05	Tunisian Institute of Competitiveness and competition studies
α	The share of capital in production	0.228	calculation author
Rem	Replacement rate	0.7	Center of Studies and research economic and social
τ	The rate of contribution	0.2	Center of Studies and research economic and social

Simulation of various reform policies (2010-2030)

Our contribution is illustrated in the study of impacts of various reforms of the pension system on economic aggregates. For this, we consider three main parts of simulation that are performed with Matlab 2010-2030. In the first, we study the evolution of the economic variables of the model such as consumption, saving and the capital stock in case of the absence of reforms of the pension system Tunisian, this means that the contribution rate and the replacement rate correspond respectively to 20% and 70%. The second part focuses on the analysis of the effects of certain parametric reforms namely the decline of the replacement rate and the increase of the contribution rate. Finally, in the third part, we perform an extension of this model that consists to introduce a funded pillar beside the PAYG pillar. Thus, few economic contributions interested to the analysis of a mixed pension system as Brunner (1996), Samwick (1999), Sinn (2000) and Poterba (2001). They noted that the introduction of funded leads to increase the capital stock.

3-2-1 the case of unchanged legislation of the pension system

We refocus to determine, first, the profile of consumption and saving for each age class 2010-2030. We begin by the consumption which represents a variable of flow. According to our simulation results, we find that the level of consumption is in continuous increase during the six age classes. Moreover, for a representative household during its life, the consumption profile reaches its maximum at the end of life. These results found for the profile of consumption are in agreement with the theory of the life cycle since such an increase of the consumption profile is possible only if the right hand side of the equation of Euler is greater than one.

Also, we notice that the saving increases gradually from the first age to the fourth age while acceding a maximum to the fifth age. In fact, at any time period t, the household must do actually choose between present consumption and the level of saving preserved at the following period. Thus, this choice leads the household to increase the level of saving when it approaches the retirement phase. In other word, during the last period spent in work, the chosen value of the stock of saving for the next period, which will be the first period of retirement, would be the highest value of the savings over the life cycle. Consequently, the figure of saving reaches a peak during the 5th period of household life. But in the last period, the level of saving decreases. From the saving profile, the level of capital stock will correspond during the projection period 1.27.

Table 2 Consumption and saving according to age class 2010-2030

Age class	Consumption	Saving
[20-29 ans]	0.14	0.0077

[30-39 ans]	0.193	0.077
[40-49 ans]	0.233	0.122
[50-59 ans]	0.361	0.19
[60-69 ans]	0.389	0.241
70 ans et plus	0.421	0.184

3-2-2 Reduction of the replacement rate

The first scenario tends to reduce the generosity of the pension system by reducing the replacement rate of 70 per cent to 65 per cent but at a contribution rate and legal age of retirement unchanged. This implies that the available income of the pension system is identical to the original level while pension spending decrease since the pension paid to each retiree decreases.

According to the results of the simulation, the first fallout of this measure is to change the level of household consumption. Thus, a decrease of 5% of the replacement rate led to a fall of 1.55 per cent of the level of consumption for the six age classes during the period of simulation compared to the scenario of legislation unchanged of the pension system. This decrease is explained by the change in inter-temporal income. The decrease in this consumption causes the higher savings. Indeed, this behavior is predictable because the households are obliged to increase their level of savings in order to mitigate the lack of income once arrived at retirement.

Following the change of the level of the behavior of saving, the interest rate is dropped. As well, the increase in saving on the one hand, on the other hand lowering the eviction effect engenders then an increase of capital accumulation. This is verified by our simulation results since the coefficient of capital stock for this scenario corresponds to 0.0857. In other word, the decrease of 5% of the replacement rate causes an increase in the capital stock of 0.4285% during the period of simulation.

3-2-3 Increase of the contribution rate

The second reform scenario predicts that the financial effort is approved by the age classes of workers whose increased contributions led to raise the recipes of the pension system. Thus, in the context of this scenario, the contribution rate increases by 1 percentage point respectively for 2011 and 2012 to attach to the threshold of 22% from this date until the end of the projection period.

The simulation results reveal that the increase of 2% of the contribution rate produces a decrease of 0.144% of consumption. In effect, the increase of the contribution rate reduces the wage rate in a first time and subsequently the profile of consumption of individuals of first four classes of age decrease by same. Therefore, this implies a moderate rise in the profile of saving. This moderate increase of saving is transmits to the investment which corresponds to the capital stock because the latter is fully financed by the saving. Thus, the capital stock follows the same evolution described in the first scenario, but at a level less important which corresponds to 0.08%.

Introduction a dose of funded

We model the introduction of funded that would continue to finance the pension at long-term for future retirees. In other words, this third scenario is to introduce a funded pillar at a

contribution rate which corresponds to two. Thus, this scenario of reform involves the modification of the budget constraint for the work phase:

$s_{t+1}^{a+1} + c_t^a \leq (1+r)s_t^a + (1-\tau_t - \sigma)w_t$ (14)

σ represents the contribution rate for the funded pillar.

In the retirement phase, household savings to the funded pension is remunerated to a return r^c. Similarly, the budget constraint in the phase of retirement is modified:

$s_{t+1}^{a+1} + c_t^a \leq (1+r)s_t^a + p_t + (1+r^c)\sigma w n_t^a$ (15)

r^c represents the return rate of funded

Thus, the modification of the household budget constraint during the working phase and retirement phase involves even the change in the dynamics of capital which can be rewritten as follows:

$K_t = \sum_{a=1}^{6} s_t^a + \sigma w_t n_t^a$ (16)

We assume that the performance of funded pension is equivalent to the interest rate of the market. In the first place, the results of simulations show no change at the level of the variables in the model, only for voluntary saving s_t^a. The latter will diminish by an amount which corresponds to the value of the tax for the funded pension. This can be reasoned by the fact that the compulsory savings resulting from the compulsory tax of funded pensions is replaced totally to the voluntary savings. In the second place, the results of simulations indicate that this third scenario has no effect on the capital stock between 2010- 2030. This is interpreted by the fact that the sum of the two types of savings following the introduction of a dose of funded 2% is identical to the value of saving for the scenario legislation unchanged pension system. Therefore, the capital stock does not vary. Thus, this results informs that the introduction of funded in our pension system causes a neutral macroeconomic effect since our financial market has not reached the phase of development.

CONCLUSION

In this paper, we have developed a general equilibrium model with overlapping generations with presence of a PAYG pension system in Tunisia. With this modeling, we proposed three reform scenarios in order to study their effects on capital accumulation.

According to the simulation results, we found that the scenario of increase of the contribution rate generates a moderate increase in capital accumulation which is caused by the distortion. This distortion comes from the decrease of the disposable income of workers and elsewhere of their savings capacity.

Regarding the scenario of reduction in the replacement rate, the simulation results we have indicated that this is a positive effect on the saving profile of consumers. In other words, the reduction in the replacement rate allows the increase of the capital stock during the projection period 2010-2030. This increase in the capital stock is economically interpreted as anticipation of reduced pension led young age groups to increase savings and therefore to promote the growth of the capital stock.

The two reform scenarios presented above are of parametric nature, but the third scenario is of structural reform. This structural reform is the introduction of a dose of funded of which we are have assumed that the market interest rate is identical to the rate of return of funded. According to the simulation results, this scenario has a neutral impact on the capital stock because it will have substitutability between the voluntary savings and the compulsory savings through of the funded.

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BUSINESS ETHICS

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Abstract: *Through this study we seek to explore the concept of business ethics, in those aspects that we consider to be essential and concrete. We started from a few questions: Could the two concepts be compatible? If not, why not? If yes, could they be complementary? How real is the use of ethics in the profits of a business? How can be business ethics be exemplified and what principles are essential in doing business? How does the business environment react to the concept? These are some of the elements that will form the basis of this scientific study. Lately, business ethics has been becoming an increasingly popular topic. Set against the global economic crisis, the companies' credibility could become a major concern. Business ethics also becomes a challenge for training and informing employees and employers, in order to make not only economical, but also ethical decisions regarding their profits. In the study we shall also address the ethical standards required in a business world interested in fundamental values that can make the difference in 21st century business. Also, according to a study conducted by the authors, we shall address the two most important ethical values that prove to be essential to a business.*
Keywords: *Ethics, morality, fundamental human values, business, management, religion, loyalty, integrity.*

1. BUSINESS, MORALITY AND THE INFLUENCE OF RELIGION. DEFINITIONS AND DELIMITATIONS

According to the *Encyclopedia of Philosophy and Humanities* (Enciclopedia de filosofie si stiinte umane, 2004), the religious influence also contributes to the development or limitation of morality. Thus we have the "Buddhist morality", defined as the doctrine or the precepts on good coming from the teachings of Buddha. Another approach to morality is the "Confucian morality", representing "all ethical doctrines contained in Confucius' thought". Another perspective on morality is represented by the "Islamic morality", rooted in "the tradition derived from the Qur'an and the tradition of Prophet Muhammad, which formed the basis of the Islamic civilization and was submitted to systematizations and critical reflections in the medieval Arabic philosophy." The last discussed approach is the "Hebrew and Christian morality". It is "the moral thinking related to the Hebrew and Christian religious tradition, based on divine revelation, and whose main object is salvation and the covenant between God and His people, and only then it contains moral prescriptions" (Craciun, 2005).

Through its influence, religion may limit or delineate morality. In this way we can talk about business ethical particularities in Christian countries and specific behaviours in non-Christian countries. Thus religion could at the most delineate the moral profile of the individual in a Christian or non-Christian country.

2. BUSINESS ETHICS. MORAL STANDARDS

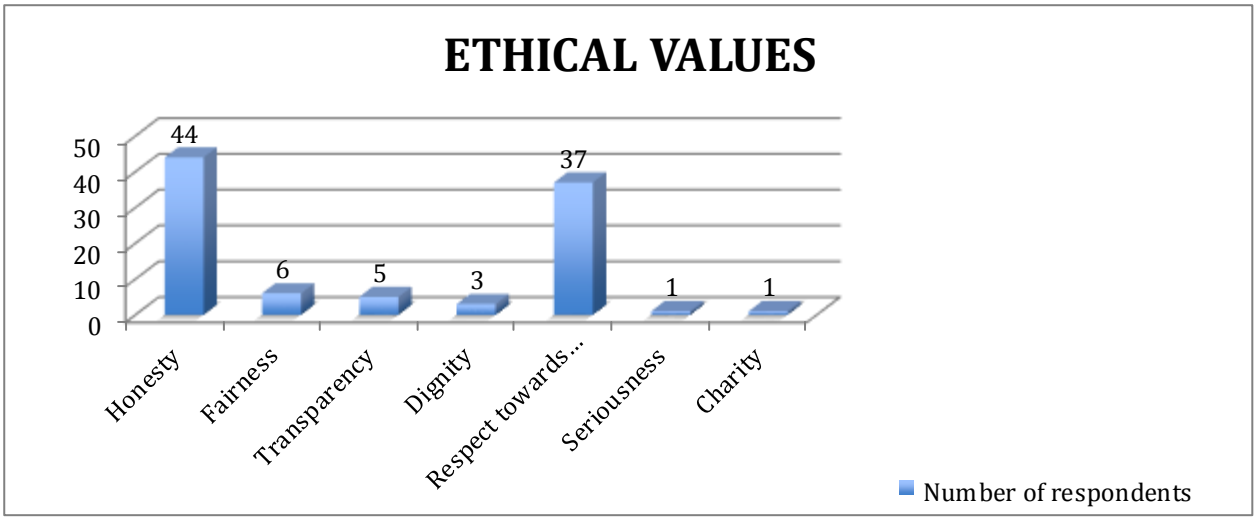
On the other hand, ethics is the subject that examines the personal moral standards of the society (Velasquez, 2006). It answers the question on how these standards can be applied in life (Cheney, 2010). But what are these moral standards? According to Manuel G. Velasquez, moral standards are standards that deal with issues that have serious consequences, consequences that could be associated with feelings of shame and fear. Behind these standards stands a good reason, they are not based on authority, and they are not reduced to a level of self-interest, nor can they be accused of partiality (Cheney, 2010). This definition is quite board and it creates multiple options for making an accurate assessment of the idea of standards. But involving the feelings of "shame" and "fear" can bring into discussion relativizing the terminology if one starts from the multitude of applications. In other words, what causes shame in an Eastern society could be values in a European society and vice versa. Culture (Dawson, 2010) is the engine that creates particular values for each region. This, however, should not lead to uniformity. I think, however, that these possible confusions create the interest in discovering different aspects of the importance of diversity, which could otherwise remain undiscovered. Far from diminishing the importance of principles, this diversity provides value and develops implementation strategies in varied conditions.

In Ronald R. Sims conception on ethics (Sims, 2002), we should clearly define the areas of fundamental human values such as privacy violation, lying, deception, sexual harassment, unequal distribution of resources, threats, authoritarianism, favouritism, conflict of interests, etc.. Defining all these areas brings to the attention of our study values worth being discussed in an economic and managerial context.

3. EVALUATION OF THE BUSINESS ETHICS STUDY

Before beginning an evaluation of the study, I would like to mention several things about it[6]. First, the study assessed the knowledge on the topic in general. Then, the interest focused on the way the Romanian manager reports to current ethics trends. The study also sought to determine whether a code of professional ethics exists, and to stimulate the creation of such a code that would regulate ethics in the company. Another goal of the study was assessing the manager's opinion on the importance of ethics and morality in two institutions, the university and the church. The first one, given its involvement in this topic through scientific research, and the second one is designated by managers to be the promoter of morality. One can notice inconsistencies in understanding certain questions and topics. I think this is due either to the manager's tendency of compressing the time for answers, either to the relatively small space for answers or to a lack of a deep understanding of the topic. It is a fact that manager's availability for answers represents a current trend of focusing on ethics and other social issues, other than profit. Based on the answers given by the interviewed Romanian managers, the illustrated situation is quite positive. The answers seem quite objective, and the issues in question seem familiar. In Figure 1 we can observe Romanian managers' trend of ethical thinking.

[6]The study was conducted by the author in 2010 on a sample of 45 Romanian managers



Graphic 1

Looking at Graphic 1, we can get an overview of how managers who participated in the study see moral and ethical values. Clearly, we can distinguish several fundamental moral values, but two of them are mentioned by almost all the respondents. The first one is shaped around the expression honesty and, in few examples, fairness. These two can be included in one moral value, integrity. In the study, this is the most valued moral value. The second moral and ethical quality valued in the study is respect. It is presented as respect towards employees and respect towards collaborators and clients. This value becomes important through the concern for others, in order to create a social balance.

4. TWO FUNDAMENTAL HUMAN VALUES, IMPORTANT IN DEVELOPING BUSINESS ETHICS

4. 1. Business loyalty

A topic that could be considered important in the broad concept of business ethics is employee's loyalty to the company. In a study conducted by Mathew A. Foust and presented in his book *Loyalty to Loyalty: Josiah Royce and the Genuine Moral Life*, he debates the issue of employees' loyalty towards the philosophy of the company where he works and towards their employer. Two dilemmas are brought into the picture. The first one is related to the ethical perspective of the duty that the employees should have towards the one who pays them and the values of the company. The question at issue is related to the limits of this loyalty. Another dilemma is related to a requirement from the employer that can be considered extremist or illegal. As an extreme example, the author gives the case of the US in September 11, 2001. The two dilemmas are brought into picture in order to delineate the need or the lack of need for loyalty. Beyond these discussions, loyalty remains an important element in running a business and particular matters should be resolved separately. Our conclusion is that loyalty becomes essential in the business process and the employee must be loyal to the company, except for extreme situations, which are illegal or can be considered unethical. The respect should also be

mutual (Mattone, 2013), both from the employee and from the employer. This way, employee's loyalty increases.

4. 2. Integrity

Another important element of business ethics is integrity. According to the study represented in Graphic 1, the interviewed managers considered honesty to be an indispensable value in business. In running a business, the primary phase of evaluating it through classical assessment methods like "good" or "bad" is long outdated. This assessment method is simply a "reactive" one, usable in a given situation. But there is a need for a type of business development that brings into picture the proactivity of the manager or employee, becoming a promoter of ethical values, not only a skilful character who manages to figure things out without being caught or without being accused of an illegal or immoral crime.

Integrity is what reflects the individual's concern for honour, for moral values. In this context, integrity becomes the opposite of hypocrisy. Hypocrisy represents a false attitude in interpersonal relations, the individual seeking to grab attention, favours, etc. (Enachescu, 2005). In the moral dimension of the individual, integrity represents transparency, authenticity.

One could ask what motivates an individual in having integrity. The danger of being caught and punished for doing something wrong? The concern for one's image if the media discovers the corruption case? What would his children or grandchildren think about that individual who lacks integrity? (Kennedy, 2005). Moral integrity, as a fundamental value of business ethics, is not about external motivation like fear of punishment or tarnishing one's image in the society and family. Integrity is an intrinsic value, a value that the individual does not develop because of an outer primitive element, but because of a culture of inner morality. It is something like "I do this because I cannot do otherwise", because it's all about a personal set of values, about education and accountability.

CONCLUSIONS

Business ethics, undeniably a current field, distinguishes itself through its importance in the beginning of the 21st century, after it started building its academic way in the capitalist countries. Ethics also materializes its importance for business through the study conducted with the participation of 45 managers. The most important ethical issues highlighted by the answers to the survey were: honesty, respect, fairness, transparency, dignity, etc. The interest of the Romanian managers in business ethics is reinforced by the positive response regarding the existence of an ethical code required for a proper management of business relationships. The profile of a businessman becomes positive, in the context on an increasingly greater interest in ethics and in accepting a goal that should have been considered imperative and urgent from a long time ago.

The two moral values discussed in this article are important in the context of an important business development endeavour and of creating a credible economy. The two elements are also important because the first one applies particularly to employees, while the second one, integrity, applies particularly to employers. The presentation and development of the two values come to balance the development of the managerial vision on business ethics. I believe that the

implementation of ethics can have a much boarder dynamic if the politicians would place greater emphasis on promoting ethical values, from personal example to major decisions taken in an institutional setting.

In conclusion, business ethics remains on an upward trend in Romania and in international business due to the influence of external factors such as competitive political and business environments in other countries, but also due to internal competition and consumers, to the general public, who becomes increasingly informed in the field of business ethics. The ethical need is required in order to create an external ethical image, and to have a functional and credible business environment. The development of business ethics as an intrinsic value remains a perspective worth imitating and developing.

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SPECULATIVE ACTIVITIES IN THE FINANCIAL MARKETS AND ITS RELATION TO THE REAL ECONOMY

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Abstract: *Nowadays, financial markets are criticized for a high proportion of speculative activities and an unsustainable game of risk. The function of speculation as a stimulus for activities in financial markets has changed radically during last decades. At present, speculation has nevermore served the real economy as a mean for more efficient market functioning. The real economy has become a victim of uncontrolled and unsustainable increase of speculative activities. The main problem of speculation concept is a leverage principle that causes layering risk and creating in the world economy systematic risk that the market is not able to bear. The specific examples are the events of the past decade, especially the global financial and economic crisis. The main aim of contribution is to discuss the questionable relation between speculative activities in the financial markets and the real economy*.
Keywords: *speculations, financial markets*
JEL Classification: G15

1. INTRODUCTION

Financial markets are nowadays criticized for a weak relation with the real economy. The world economy of this century can be described as an economy based on the dominance of the financial markets sector. Recently, during global financial crisis, we have witnessed an enormous impact of the unhealthy functioning of the financial sector. At present, functioning of global financial system is criticized for a high share of speculative financial transactions, in this contribution presented by financial derivative trading. In this contribution we would like to describe the relation between financial derivative instruments and the real economy sector represented by their underlying assets. The main aim of the article is to point out on some aspects that could prove the weak relation between current financial markets' functioning and the real economy.

2. SPECULATIVE ACTIVITIES

Many years ago, the economist John M. Keynes emphasized the negative role of excessive speculation in the economy as a serious problem "when enterprise becomes the bubble on a whirlpool of speculation". He described the unhealthy process of risky capital creation „when the capital development of a country becomes a by-product of the activities of a casino, the job is likely to be ill-done"(Keynes, 2002). Similarly, the present world economy, especially financial markets sector is facing the serious problem of unsustainable speculative activities

increase. In this paper we would like to point out on questionable relation between speculative activities in the financial markets and the real economy.

The term speculation is defined as the forming of a theory or conjecture without firm evidence or as an investment in stocks, property in the hope of gain but with the risk of loss (Oxford Dictionaries, 2014). There are at least two different views on the existence of speculation in the financial markets. Some authors emphasize the positive feature of speculation as a benefit for market functioning. According Samuelson we can consider speculation as a benefit for society if it fills its economic function that means if speculation is moving goods from the time of their surplus to the period of scarcity and thus help to improve market efficiency (Samuelson & Nordhaus, 2010, p.189). Speculation causes the moves that tend to establish definite patterns of prices over time as well as over space (Samuelson & Nordhaus, 2010, p.190). In this way many academics agree that speculation is one of the tools which help in price discovery, because its presence on market induces that all information about supply, demand and possible future fluctuations become absorbed in the price (FTI, 2011, p.23).

On the other hand, the present modern economy in recent decades has transformed its form and is increasingly dependent on the functioning or non-functioning financial sector. In this regard, growing process of risky capital creation based on speculative behaviour could cause a serious danger for financial stability on markets. Friedman refuses the generalization of argument that speculation has to be necessarily a destabilizing factor on markets and says that speculation in the market is destabilizing only in case when subjects behave in irrational way (if speculators sell when the price is low and buy when the price is high) (Friedman, 1960). The question about rational way of subject's behaviour on international financial markets still remains. The problem brake out with the introduction of derivative financial instruments.

2.1 Derivative financial instruments

For purpose of this paper we define speculation as the activity which involves making profits from the fluctuations in prices (Samuelson & Nordhaus, 2010) by purchasing during the upswing and selling during the downswing (Baumol, 1957). As a specific example of a speculative activity in the financial market we can consider trading of derivative financial instruments. International Monetary Fund provides a definition of financial derivatives as financial instruments that are linked to a specific financial instrument or indicator or commodity, and through which specific financial risks can be traded in financial markets in their own right (IMF, 2002).

Speculative trading has become more attractive because it offers the possibility of higher profits and also at the same time more dangerous because it equivalently increases the risk of loss. The introduction of new volatile financial instruments provided a great opportunity not only for the standard operators of financial markets, but also for public to become participants in speculative trading (Mitchell, 2007). Inexperienced market participants tend to underestimate the risk. Derivative financial instruments themselves are a game of risk (Chorafas, 2008, p.227). According to the OECD report, the global financial crisis was caused by a combination of risk underestimation plus innovative changes of such derivative instruments that allowed leverage to increase uncontrollably.

Leverage, which can be regarded as a fundamental principle of speculative financial transactions, provides its holder a possibility to trade with a whole range of rate risk. The level of

risk is often difficult to estimate. Moreover, leverage principle causes the illusion of increasing the perceived value of the underlying asset. We can increase the illusion of increased value of underlying assets by gradual layering of risk, thus by increasing leverage. Derivative financial instruments allow its holder to simulate any financial activity because he has the opportunity to dispose of large volumes of assets and combine different types of exposure.

At present, there is possible to identify on financial markets a trend of increasing concentration and accumulation of commercial activities associated with derivatives and their connecting to larger units. In recent years, the OECD has published several documents with a focus on global systemically important financial institutions. Systemic risk created during the crisis by global systemically important financial institutions, which unsustainable interlinked risks in the derivative market is still an alarming danger. The key importance of these important financial institutions is the fact they have huge amount of capital, which is theoretically able to absorb large shocks in financial markets and thereby avoid a system loss on the market (Wingnall & Atkinson, 2011).

3. THE RELATION OF FINANCIAL DERIVATIVES TO THE REAL ECONOMY

The second chapter of this paper will focus on the questionable relation between derivative trading in the financial markets and the real economy. The events of last decade, especially the period before the global financial and economic crisis are a specific example of an increasing trend in relation between financial sector and the real economy. We will outline the basic areas where we can describe the relation between derivative financial instruments and the real economy as a troubleshooting one.

3.1 The relationship of the derivative and its underlying

Derivatives are financial products whose value is derived and changes in response to a change in the price of an underlying (Chorafas, 2008, p.33). The underlying asset can represent for instance interest rate, currency exchange rate, commodity, security price, index or even another financial instrument. This relationship between derivative financial instrument and its underlying can be nowadays defined as very instable and predictable only in very uncertain matters. In case that the invention of derivative instruments had remained in their simplest basic forms, we would have considered the linear behaviour between derivative and its underlying. The perfect relationship between derivative and its underlying can be defined as a direct response of underlying asset's value change into a change in the price of derivative instrument.

With the gradual development of a derivative financial instruments, the financial market have become the witnesses of own derivative's environment creation. The results of this own environment with specific trade condition is a formation of current new difficult and complex forms of derivatives which have minimal relationship to its underlying. The main reasons for nonlinear relationship between derivative and its underlying are caused by derivatives market. First of all, the value of the derivative does not move mechanically in line with a given cash market. Secondly, in many cases, the derivatives market itself determines prices in the underlying (Chorafas, 2008, p.38).

Derivatives market price determination which is not based on real value of the underlying of derivative instruments is the one of the basic reasons of nonlinear behaviour of derivatives.

The others indicators which have considerable impact on derivatives price determination are for instance the value of other products on derivatives market, the risk level of derivative, the amount of potential profit, the structure and complexity of the instrument, the credibility of company and many others.

The current nonlinear behaviour of derivatives to its underlying assets can cause such kind of derivatives' development that is not easy and reliable to predict. Uncertain and unpredictable development of derivatives behaviour is a factor that contributes to the financial markets instability and thus affects the real economy.

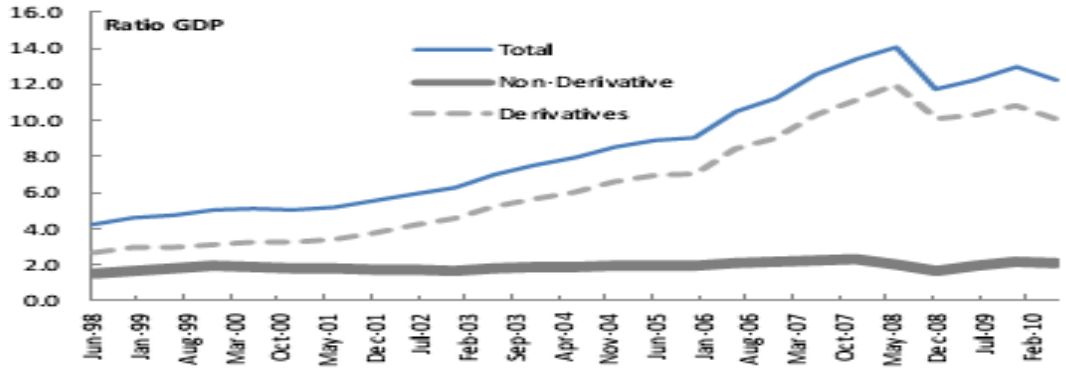
3.2. The disproportionate growth of derivatives

The particular example of decreasing dependence between derivatives and its underlying asset is the fact that derivatives have grown exponentially versus world GDP in the pre-crisis period.

Figure 1 shows a development of notional global value of derivatives as a share of global GDP and primary global financial instruments during the period 1998 - 2010. It shows that in the last decade the amount of derivatives has increased exponentially faster than the amount of primary securities (de facto their underlying assets) have increased. The total amount of underlying assets in 2010 reached a value equally high to double GDP produced in the same year. In comparison with the year 1998 it represents only a minimal increase (in 1998 this ratio was 1,5 times with global GDP) (Wingnall &Atkinson, 2011, p.3). On the other hand, there is an obvious asymmetry with comparison to an increase of derivatives business. In mentioned period the quantity of derivatives has grown radically. The notional value of derivatives in 1998 was 81 trillion dollars, which represented approximately 2,5 times the global GDP in that year. In 2010 their value rose to 605 trillion dollars, which represented around 10 times the global GDP in 2010 (Wingnall &Atkinson, 2011, p.3).

The exponential increase in global notional derivatives compared with an increase of the underlying assets shows a decreasing dependence between the value of derivative and the actual value of its underlying. The basic element of derivatives has become speculation. Financial markets, which driving force is trading of financial instruments based on speculation may not be stable in the long term.

Figure 1 Global notional derivative versus primary securities 1998-2010



Source: Wingnall & Atkinson, 2011, p.4.

4. CONCLUSIONS

The global economic and financial crisis (2008) is direct evidence that the presence and implementation of high-risk financial instruments destabilize the financial sector. High-risk financial instruments, also called toxic assets are the result of uncontrolled speculative using of leverage. The basic principle of the financial system has radically changed - the financial system has no longer served to the real economy, but the real economy has served the financial system based on speculative financial transactions.

We identified two aspects of questionable relationship between financial markets tools and the real economy. The first one is the nonlinear behavior between derivative and its underlying. A weak relationship between them, that means a decreasing dependence of derivatives and its underlying asset, is a factor that contributes to the financial markets instability and thus affects the real economy. The second aspect is the example is the exponentially higher growth of derivatives in comparison with world GDP in the pre-crisis period.

We can conclude that with respect to important role of the international financial sector in the global economy, solving the issue of speculative financial operations, particularly in international derivative markets, and their impact on the overall stability of the global economy is inevitable in further discussion.

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CONSIDERATIONS ON ASSESSMENT OF PAYMENT AND SETTLEMENT SYSTEM

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ABSTRACT: *Payment and settlement systems are financial instruments that are significant to the financial and banking system. Payment systems are a source of current information and an operative intervention tool by providing oversight use funds in the accounts of the banks. Since their implementation in the banking system structure these systems have evolved continuously in the market requirements, we are encountering major problems are mostly due to strict compliance with international standards, which ensure a high level of safety in their operation and measures by the central bank.*
KEYWORDS*: Payment systems, settlement systems, central depository, evaluation.*
JEL Clasification: *E 52, E 42*

INTRODUCTION

Assessment of payment and settlement systems is one of the central bank's activities in order to ensure financial stability and maintain public confidence in the banking system. This evaluation system is achieved through continuous monitoring and thorough Transactions achievement of these systems.

Promoting safety objectives, efficiency and effectiveness in these payment systems and settlement systems within a infrastructră reprzintă financial market, aiming at determining the degree of compliance with international standards and the implementation of new amendments necessary to remedy shortcomings identified.

Reported to specific principles of the monitoring and promotion central banks considering that the evaluation process, use international standards at the highest level, both privately owned systems and systems owned by the central bank.

RISKS AND MEASURES ASSOCIATED EVALUATION PROCESS

"Global risk management aims to analyze and manage events that may occur in the business world." (Dobrin G., 2013)

The payment systems and settlement systems operating in Romania have not encountered significant problems due to compatibility with early payment systems in the European Union both in terms of their functionality and compliance with European and international standards and paracticilor of field. However, in order to strengthen the proper functioning of the system, the National Bank of Romania started a comprehensive process of evaluation.

„Evaluation of these systems aims safe and efficient compared with standards developed by the Bank of International Settlements and the European Central Bank.

In Romania there are five payment and settlement systems operating in the central bank. There are two interbank payment systems, one for large-value payments (ReGIS) and one for retail payment and large (SENT). There is also a depository and settlement system for government securities and certificates of deposit issued by the central bank (SAFIR) and a scheme / settlement of securities traded on the stock market (RoClear) last DSClear system is implemented system compensation settlement funds and financial instruments owned and operated by SC Sibex Depository S.A.

From the architectural point of view, payment and settlement systems in our country are:

- ReGIS - (Romanian acronym for Electronic Interbank Gross Settlement) system for large-value payments (50,000 RON) or urgent, with gross settlement in real time, owned and managed by the National Bank of Romania.
- SENT - (Electronic System Net Settlement run TRANSFOND) multilateral clearing system for retail payments (under 50,000 RON) but high volume exchanged between participants during multiple daily sessions.
- SaFIR - (Financial Instruments Settlement and Registration) storage system and settlement of financial instruments owned and managed by the National Bank of Romania.
- RoClear - the clearing and settlement funds in financial instruments owned and operated by SC Central Depository S.A.
- DSClear - the clearing and settlement funds in financial instruments owned and operated by SC Sibex Depository S.A." (Cechin-Crista P., 2010)

The diagram of national payment system

In the evaluation process payment and settlement systems National Bank of Romania uses the ESCB-CESR Recommendations.

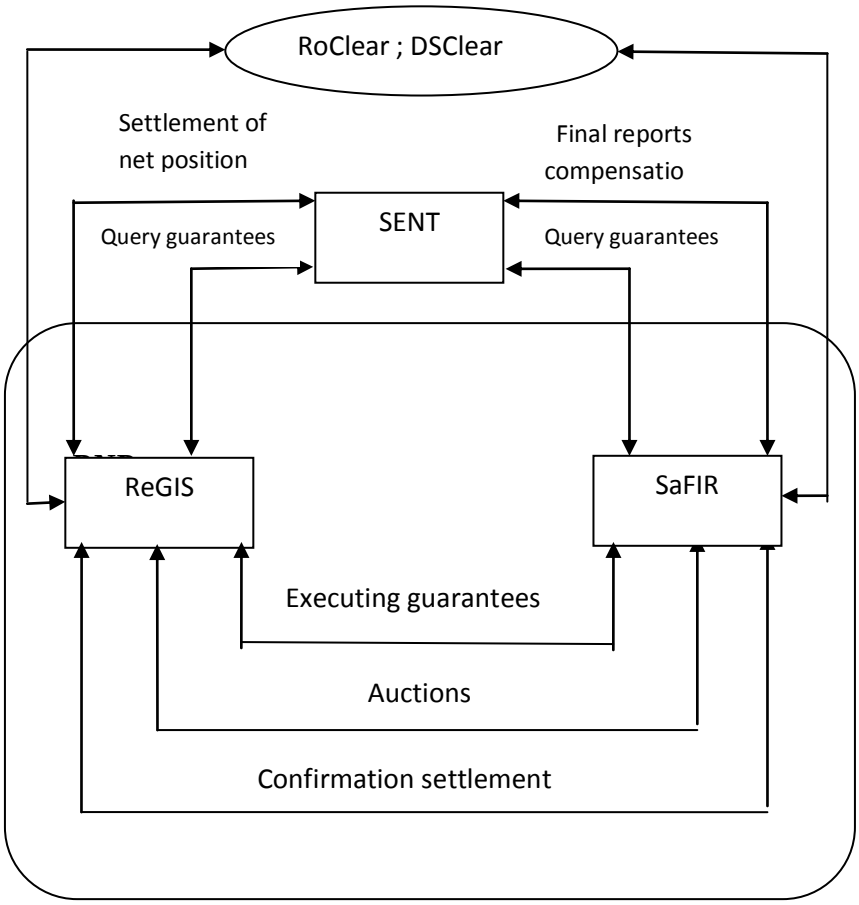
These recommendations are considered at European level as the best standards in the assessment of post-trading activity in financial markets, the ECB supports the use of these standards for evaluation by the national central banks.

So far we have completed the assessment and settlement systems RoClear DSClear the evaluation SaFIR to completion. The evaluation systems can be considered stable in terms of the maximum rate of settlement of transactions, but after some further analysis have encountered some major drawbacks which improved low will contribute to a more efficient and safer reyultând thus increasing public confidence the local capital market, better investor protection, better protection of investors and of course a better investor protection.

The evaluation systems DSClear RoClear and concluded that the risks that may occur are:

Legal risk

The legal framework covering relevant aspects of the systems evaluated the running of the clearing and settlement, and the information made available to interested parties by systems administrators, generally provides a clear picture about their operation.



However, some improvements are needed on ensuring consistency between primary legislation and secondary legislation applicable, on the one hand and rules systems evaluated, on the other hand.

As a measure to reduce this legal risk is a need for greater transparency in the contractual provisions concluded between system administrators and participants, as well as the links established with other settlement systems.

Pre-settlement risks

At settlement cycles evaluated systems and operating programs used comply with the requirements specifications. Since 2015, aims to reduce the settlement cycle and harmonization at EU level. To implement this harmonization system administrators must consider the impact acestro make changes so that implementation to be successful.

The operation used by system administrators evaluated proved to be reliable, because all transactions registration systems were settled in time, reflecting the good functioning.

Settlement risk

The central depositories in Romania besides settlement systems administration and other services provide specific financial instruments initial registration entry in the accounts and administration of securities accounts at the top level of the chain of custody. Toasters these tools used in the purview sipemelor settlement can lead to risks. This risk that may arise in the process

of settlement is actually evenivent emergence of the expenses we can produce more desirable or even losses.

„The related benefits are:

- the lower risks associated with the integrity of securities issues;
- the economies of scale by centralising the operations associated with custody and transfer, while the effi ciency gains achieved through the automation of such operations improve the speed and effi ciency of settlement;
- the shortening of the settlement cycle which reduces the replacement cost risk;
- the delivery versus payment is facilitated, thereby eliminating principal risk.„ (BNR)

Because of the special role they hold central depositories in the process of settlement of financial instruments, each central depository shall have a clear plan to ensure access to participants functions, even when that insolvency central depository. For reasons of efficiency, ie to facilitate reuse delivered assets requires permanent monitoring of net settlement mechanism in order to minimize the time between the moment when the freezing of funds and final settlement is achieved.

In addition, to ensure timely settlement in the event of incapacity of the participant's settlement with the largest net debtor position should be reconsidered specific risk management measures for net settlement systems.

It is also necessary to assess possibility of simultaneous failure of several participants in the settlement and cost analysis necessary to ensure settlement in such a situation. In addition, expanding the range of assets that can be pledged as collateral for financial participants (haircut applying appropriate sites) can reduce the opportunity cost incurred by them in the context of increasing the guarantees set up in settlement systems.

Operational risk

In terms of financial infrastructure operational risk can not be eliminated entirely. However, given the systemic importance they have, in general, financial infrastructures, their managers must:

a) establish the limit beyond which the losses they produce are intolerable and operational risk event

b) provide effective measures to ensure operational continuity, even if the adverse event scenarios are possible but unlikely.

Administrators under evaluation systems adopted measures yielded a maximum rate of availability in the operation. However, it should reconsider the risk profile of primary and secondary locations that can be used for operating systems in terms of their proximity.

Custody risk

Custody risk can occur in the system used for highlighting investors' holdings. When using the direct risk of custody system is lower because this system allows a clear identification of the financial instruments that belong to each investor, but its use is expensive. A higher risk of custody can register for indirect holding system which does not require records of all entities involved in the chain of custody.

Use of indirect holdings by central depositories in our country adeterminat our system alignment mechanisms used in Europe, this system is called especially foreign institutional investors. According to the legal framework, customers are segregated holdings of its holdings of participants so that creditors of the latter may bring claims on financial instruments belonging to

clients. Also, the use of client assets without their consent, thus avoiding recording debit balance or creating new financial instruments.

Other aspects relevant for infrastructure functioning

The complete fulfillment of the recommendations requires that the leadership of the central depository to have at least one independent member. The senior management must demonstrate greater transparency regarding training and experience.

Another important aspect for a better functioning of the system is to the replies to the questionnaire developed by CPSS-IOSCO will increase transparency on the implementation of the new standards and the transmission of information at all levels involved.

CONCLUSIONS

Obviously, contemporary economic activity knows an unprecedented development. (Dobrin G., 2014)

In the future new European regulations and applicable international settlement systems and CSDs will require a much greater rigor in this area, so ESCB-CESR Recommendations compliance in their entirety, is an objective necessity.

The proper functioning of these systems in the financial market in our country is essential in the development of domestic capital market that attracts clearly and sustainable growth of the national economy and all at once a preserving financial stability.

In the future central bank should seek to facilitate foreign investors' access to financial instruments generated by payment systems and settlement systems.

Latest statistics of NBR from 2013 regarding payment systems operating in Romania shows a normal function without major disruptions record.

NBR activity focused on oversight of payment systems, the identification of risks and vulnerabilities associated with them, aiming at constant respect for international standards and implementation of measures and recommendations for mitigating these risks.

As regards central bank settlement systems in 2013 focused on two main direct action:

- assessment from the perspective SaFIR standards referred to in the ESRB ESCB-settlement systems in the European Union financial instruments and tracking implementation by systems administrators and RoClear DSClear Following completion of measures in the assessment of these systems in 2012;
- efficient capital market in this respect aiming at promoting a dialogue with the system administrator RoClear - Central Depository SA regarding the national implementation of European standards for the processing of corporate events related to the settlement of transactions dividends.

Having a solid financial infrastructure is necessary and in the light of the need to diversify the financing structure for the corporate sector in Romania, due performance of deleveraging in the banking sector.

The steps for capital market development should aim at strengthening financial infrastructures and engaged in the trading post, given the lack of interchangeability rapid including services that these entities perform for the capital market.

As a final conclusion we can say that the main interest of the NBR is to promote and monitor the proper functioning of these systems entailing the domestic capital market development, increasing national economy and not least ensure financial stability.

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THE IMPACT OF TAXES ON THE SELF-FINANCING CAPACITY OF THE ENTERPRISE

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Abstract: *Considered only as a tax levy, tax reduces the capacity of self-financing of the enterprise, like any other tax borne by natural or legal persons. Tax incidence, generated by tax systems and practiced in one country or another or during certain periods, occur at different levels to determine the results, evaluated in terms of profit or loss, knowing that profit can become an important source of financing of the company, along with amortization of fixed assets (property), which ensures the recovery of its value transmitted in costs and selling-purchasing prices of realised products. The purpose of this paper is to highlight the impact of taxes on self-financing capacity of the company.*
Keywords: *tax, cash-flow, gross operating surplus, self-financing capacity, financial result*

Acknowledgement*: This work was supported by the European Social Fund through Sectoral Operational Programe Human Resources Development 2007 – 2013, project number POSDRU//159/1.5/S/134197, project title "Performance and Excellence in Doctoral and Postdoctoral Research in Economic Sciences Domain in Romania".*

INTRODUCTION

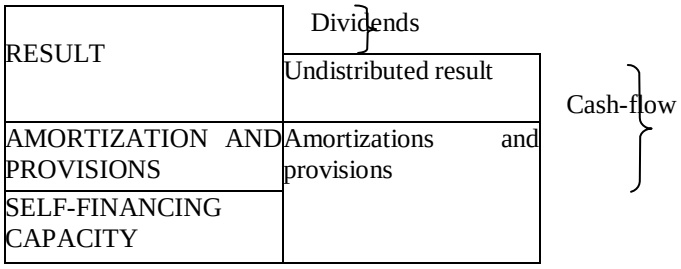
The first internal source of funding may be used as long as there is a profit, and this is a traditional wealth that can be stored within each company allowing it to self-finance its future development. But its contribution to the self-financing of the company raises a complex issue of assessment, being considered three levels of appreciating the results.

Considered at a first level of evaluation, the financial result (profit) of the exercise is a resource that the company could conserve wholly or partly, after deducing the dividends and other distributions set in results. The undistributed part of the advantage is, therefore, a source of self-financing or self-financing element sprung of the business. Nevertheless, the result provides only a partial evaluation of this capacity to finance itself that it does not only take into account the increase in net wealth (income-expenses) obtained at the end.

In the case of a second level approach for assessing the results, the concept of monetary surplus provides more conclusive information about the financing capacity of a given period. This assessment is justified in that it measures the operating surplus as gross operating surplus (EBE) or a global surplus as self-financing capacity (CAF). This surplus corresponds to an excess of revenue surplus money (likely to be paid). It appears as a potential monetary surplus, ie an additional source of funds likely to be affected by self-financing and future business development. Taking into account the levies from profits for distributed dividends allows passing

from simple self-financing capacity (CAF) to effective self-financing. The latter is obtained by subtracting from the capacity of dividends self-financing and other distributions from profit, as shown in Figure 1.

Figure no.1 The difference between cash-flow and self-financing capacity



Finally, at a third level it is released the incidence of these monetary surpluses on the financial balance, considering the contradictory effects that the activity exerts on the treasury. On the one hand, the enterprise activity involves the formation of self-financing resource scorres ponding to potential liquidity contributions. On the other hand, the same activity induces the need for additional financing weighing on the Treasury, making the need of working capital. Basically there is the following relationship between monetary surplus and liquidity of the company:

Self-financing capacity (CAF) –Variation of working capital need (ΔNFR) = Global surplus of Treasury (1)

Cash-flow – main method of establishing the company funds

Self-financing is the most common method of financing and assumes that the enterprise ensures its own development. Using as financial resources apart of the obtained profit in expired exercise and the amortization fund, the company is able to cover both the needs for replacement of fixed assets and increasing the economic activ. Self-financing involves the formation of own funds and is characterized by retaining by the business a part of the financial results obtained from their activity.

Therefore, main method of establishing the enterprise funds, self-financing requires in advance the generation of revenue to cover costs and achieve a sufficient profit, part of which is reinvested to increase fixed assets and funding cycles of operation and its influence on the proportions largely profit taxation, including depreciation of fixed assets. It is also used as a source of self-financing and some surplus cash which occur as amortization determined by the wear of fixed assets in which is immobilized a part of the share capital of the company.

Self-financing is the original and fundamental method of financing. It is the original form of financing, since it corresponds to the first historical forms of capital progress. On the other hand, it is the basic form of funding as other ways of financing (direct funding or mediation) operates normally as simple anticipation of a future self-financing. In other words, an enterprise can notaccess external funding unless it has real chance of reaching future self-financing that will allow reconstructing advances granted by third parties.

Thus, a company receiving a bank loan will have to repay it on its future financial results, so of its self-financing. Self-financing is therefore a fundamental pivot on which lies the financing of the company.

The proportions of self-financing business capital formation depends primarily on the ability of the company to produce profit, but also the owners determination of sharing a particular part or all of the net profit for accumulation at the expense of dividends and the amount of depreciation (determined by inventory value of fixed assets and depreciation calculation system used by the enterprise).

In principle, long-term financing economic activity of agents is performed both by own funds (which are included along with cash flow and capital gains) and the time commitment (bond loans, loans from specialized financial institutions, bank loans, leasing credits).

Agent's activity because it creates advantages for both shareholders and for economic agents as legal entities. Shareholders are advantaged because, capitalizing part of the profit, increases the valueof companystock, increasesthe sharesheld, thusincreasestheirwealth.Besides that, reinvested profitis exemptfromcorporation taxortaxbenefit fromdiscounts, creating greater opportunitiesfor economic operators'reinvestment.

Such fiscal treatment is clearly advantageous at the microeconomic level, as it increases economic interest in obtaining superior positive results with the discovery and mobilization of internal resources, good management of resources and choosing the most efficient structures of production and financial funds. Also, through its implications, enterprise development is contingent to its own business, what matters more for self-development of the company. It provides thus more reliable funding assumptions, an independent and stable source, given that incertain circumstances the company is facing with difficulty in collecting of the company capital in the financial market, giving it a touch of freedom of action of the company, meaning that financial autonomy gained through self-financing allows a full independence and resource management to financial institutions and banks. Implicitly, it gives the company a great deal of discretion in deciding on investment (operating assets expansion, replacement) providing useful realization of some investments and no waste of resources.

Simultaneously, such a tax system allows braking indebtedness and thus reducing financial costs, namely equity and efficiency measurement of financial return, which is the decisive factor in opening access to the capital market and attracting foreign capital.

It is significant that in the situation of some enterprises and especially those that do not have access to capital markets, self-financing is the only source of funding for a longer period. And for large companies listed on the stock exchange or not, maintaining and increasing economic potential depends to a greater extent on the reserves set aside from profits, especially when the company needs resources and shareholders can not contribute to increasing social capital.

Moreover, it is admitted that the option to increase self-financing results from a genuine instinct of preservation of the enterprise for which the main purpose of financial policy is to maintain autonomy.

However, to these many benefits, self-financing also presents disadvantages, among which may be mentioned:

- Excessive favors self-financing enterprises within their financial resources risk to develop too slowly because of insufficient financing means and, therefore, may not be competitive to competition;
- self-financing is likely to be a factor of price increases (due to the fact that it follows to achieve agreater benefit);
- the excess of self- financing of a business may discourage its associates (due to the fact that they do not receive remuneration for their efforts), making it impossible to increase social capital when it is needed;
- the worst inconvenience results, however, in that the self-financing appears to be a free resource so that the enterprise shows a certain negligence in selecting its investments (investments less profitable).

On the other hand, it is recognized that the proportionsof self-financing company also indicate its performance; the ability to effectively use the capital entrusted to investors and ensure attractive remuneration. For creditors the absolute and relative measure of self-financing certifies the repayment capacity, as well as the risk of default. Self-financing reflects the wealth retained by the company itself and is an internal resource for financing future exercise. Self-financing is determined by increase of resources derived from their own work and that will remain permanently available to finance the company's future.

In conceptual terms, self-financing knows more acceptances, in which ever proportions that can perform is also under the way in corporate tax.

In one of these meanings, net self-financing is considered part of the gross self-financing of which forms the company's own sources, more than required by the recovery on capital requirements, resulting in an increase of the assets. Netself financing ensures own financing company which is the pledge of its possibilities for future development. Net self-financing consists primarily of net income attribute able to equity, ie the profit remaining after employee participation in profits as well as remuneration of members or shareholders. Part of amortization fund that exceeds the actual depreciation of property may also constitute a resource of this type of cash-flow.

In this context, it relies on the free cash flow, which expresses the company's capacity to mobilize, together with amortization, total net profit for development.

In the financial and practical literature of some Western countries, the total self-financing (maintenance and net) plus share of profit intended for dividend payment (compensation of the shareholders or associates) is often called cash-flow. In this sense, it is also calculated the financial rate of cash flow, as the ratio of cash flow to sales. The rate allows assessing to what extent sales liberate amounts for maintaining economic and financial potential of the company, enrichment and remuneration of associates. The higher this ratio is, the greater the self financing capacity is. Cash-flow, in this sense, is also called margin and cash flow comprises net income, depreciation and some reservations so that it can be stated that represents the total funds available for reinvestment.

Dimensions of released self-financing play the role of barometer for assessing the performance of the enterprise. It indicates potential investors that the company is able to use efficient capital and entrusted to provide attractive remuneration and in the case of call credit, absolute and relative size of self-financing certifies the repayment capacity, as well as the risk of default. Monetary surplus as a result of receipts and payments, representing the ability to finance

itself, does not fully remain available for the company. Effective self-financing is the remaining amount available to the company, after the distribution of dividends and shares in employee benefits.

It is obvious that if the company does not pay dividends or distribute them in a smaller volume, it can reinvest whole or significant part of its profit, forming a basis for increased future income. Self-financing policy must be considered in reference to the profitability they emitre invested profits. It is necessary that the net return for shareholders remains the same, whether dividends, whether reinvested profits.

At the same time, we find that self-financing helps to increase the financial resources of the company, but determining the rate of return on reinvested profit, in the purposes of applying self-financing, it must be taken into account the tax incidence, ie of tax on income from dividends and reinvested profits.

We emphasize that, although funding sources that are formed in the enterprise and used immediately (fund depreciation, profit, reserve fund, etc.) appear to be "free", basically, they have a specific cost as belonging to shareholders and, if it were given to them, they could place them in exchange for remuneration.

In light of the particularities of achievement, home-financing funds of the enterprise are subject to inevitable constraints arising from the tax system applied, and in the foreground fiscal parameter affects both the profit and the depreciation in their capacity of components of self-financing.

It is also interesting the appreciation after which it can be accepted that the incidence of fiscal variable on self-financing highlights a questionable relationship, such as high taxation → high cash flow and vice versa. It relies on the idea that an oppressive tax policy incites the company to proceed with the capitalization of some profits as high as possible, finding in this destination lighter imposing conditions (fiscal incentives), which suggest a contradiction in terms.

Instead, regulations such as those relating to the reduction of the tax base of certain expenses (depreciation, loan repayments, interest payments, etc.), in order to strengthen the process can influence the distribution of dividends, rather than own financial resources growth. The distribution of dividends will depend on the tax law (company tax and personal taxation), company law and relations between shareholders and managers. Investors (shareholders) who are strongly taxed on income from dividends will votet in he general meeting of shareholders to distribute a dividend reduced in favor of reinvested profits, thus maximizing the enterprise value and the share of assets proper to each shareholder.

Consequently, the financing of home-grown resources of the enterprise and, in particular, requires an approach based on depreciation in relation to a tax variable. As asource of financing, the amounts accumulated on depreciation account do not manifest in the state of future cash payments of expenses, such as dividend distribution. In addition to these funding sources, direct tax does not exert effects, as depreciation expenses are deductible. Moreover, direct taxes represented mainly by income tax, stimulate its preference for using depreciation as a source that has the lowest specific cost of capital enterprise.

Therefore, it can be considered that investments whose anticipated returns are random are suitable to be financed primarily attributable to depreciation. This behavior is justified in practice and explained in theories by the uncertain investments that must be borne in equity from

depreciation to reduce the risk of inability to honor debts where recourse to debt, amid obtaining negative effects.

In this regard, a study on a group of French companies showed that income taxhold back growt has hampers self-financing. The study also showed that if the income tax should be abolished, free cash flow would increase by more than 33.3%, the increase being even higher for small businesses.

Consequently, at the level of economic organization, the investor shall take into account in its spending a number of parameters, such as the tax rate on dividends and added value, the tax rate on individual income within tax (global). Especially in the case small and medium enterprises, where the main shareholder is usually, also head of the company, the calculation becomes complex because it must arbitrate between cash flow and external input, taking into account the impact of direct taxes paid by others as are those on dividends, etc., including indirect taxes, primarily VAT, with the implications of operations related to deduction, collection, payment and related reimbursement.

In the light of approached perspective a major financial returns to financial analysis based on the results account that provides information on the profitability of the company at different levels of appreciation, including self-financing opportunities. Together with the interim management balances, in the analysis based on the profit and loss account is calculated also self-financing capacity indicator, expressing the company's ability to secure development in monetary terms (receipts and payments) through its own funds. In this respect, self-financing capacity (CAF) is a result of confronting global monetary surplus revenue generating revenue generating expenditure payments across our operations during a financial year. Self-financing capacity is potential cash generated by the whole activity during the financial year which remain available to the company and can be used for self-financing.

Financial potential generated by the profitable activity of the company at the end of the financial year (CAF) is intended to remunerate equity (through dividends owed) and also to finance expansion investments (part of profit allocated for their establishment and development fund) and maintenance or renewal (through depreciation) in future years.

All these make from the capacity of self-expression a high economic indicator that reflects the financial strength of a company and also is the guarantee of its security and independence.

Businesses with good self-financing capacity decrease its financial risk, being able to overcome hard ships in times of economic crisis, when access to credit is difficult due to high interest.

Determination of self-financing must consider both economic and financial variables. Economic variables are based on sales forecasts (quantity xprices) and forecasting costs (raw materials, fuel, salaries, etc.). Financial variables are considering lending policy pursued by enterprise that gives rise to financial expenses, depreciation policy that can charge different costs for some years and profit distribution policy that sizes volume that dividends distributed to shareholders, participations in profits or increasing reserve funds.

Self-financing capacity can be determined based on cascade interim management balances; After calculating value added, EBE, operational result, current result, net result, CAFP is as follows:

$$CAF_p = Rnet + A + Prov \quad (2)$$

$$CAF_r = CAF_p - R_{CAF} \quad (3)$$

where:
CAF_p = capacity of potential self-financing;
CAF_r = capacity of real self-financing;
R_{CAF}= distributions from CAF represented by dividends and shares in profits;
Rnet= net result of the exercise;
A= amortizations;
Prov= provisions

The literature highlights several opinion trends on the calculation of the CAF. In principle, the CAF is calculated from current revenue and expenditure management likely to turn immediately and forward the cash flows. Assessment of the cash flow from the outturn account can be achieved during two equivalent methods: deductive method and additional methods.

When applying the deductive method, self-financing capacity is the difference between revenues collected (corresponding to actual or future receipts) and expenses payable (corresponding to actual payments or future). This method is based on the logical definition of the cash flow of the firm, obtained by the following formula for calculation:

CAF= (Collectible revenues –Revenues from disposals) – Payable expenses (4)

This method takesas its starting point the gross surplus of exploitation that ignores the fiscal elements, as it does not into account the profit tax. At EBE is added all income likely to beearned (operational, financial and exceptional) and deducted all expenses likely to be paid.

CAF = EBE + Other earned revenues (without revenues from disposals) – Other payable expenses (5)

Therefore, deductive method, called "differentiated" or subtractive show to set up the cash flow. Based on the calculation, some authors may call it the “descending method" or the “decreasing method".

In a system based on GIS Cascada, self-financing capacity is determined according to a relation of the form:

CAF=gross surplus of exploitation+other operating income-operating expenses+financial income (a) – Financial expenses (b) + extraordinary income (c) -exceptional expenses (d) - tax (6)

where:
a) no reversals of provisions;
b) no financial calculated depreciation and provisions;

c) without revenues from the sale of assets; share part of subsidies paid on earnings for the year; reversals of exceptional provisions;
d) without net book value of the assets transferred; Exceptional calculated depreciation and provisions.

It is note worthy that retained exceptional income and expenses to determine the cash flow refers only to operations management. In contrast, income and expenses of exceptional capital operations are excluded from the calculation. Also, capital operations include investment subsidies and for income investments amounts which are not considered in calculating the cash flow because they are a simple description of accounting and, therefore, does not imply a cash flow.

Self-financing capacity shows a higher sensitivity compared to EBE, as it is influenced by depreciation, provisions and income taxes. From the calculation procedure it is noted that these items are deductible and the last one which is decreased is just the income tax. In compensation, however, one can say that the deductive method includes calculating all the elements that generate cash flows of the company. Through limitations and advantages, these two concepts (EBE and CAF) are complementary and not at all exclusive. The indicator calculated to be relevant in terms of interpretation, it is necessary to deflate or correct price index growth so as to make possible a comparison between the values recorded in dynamics.

For the purposes of some more realistic assessments, it appears to be helpful the indicator for the year ending deflation operation using the following relationship:

$$I_{pr0} = \frac{I_{pr1}}{1 + r_{i1/0}} \quad (7)$$

I_{pr1} = indicator for the year ending expressed in prices of current year;
I_{pr0} = indicator for the year ending expressed in base year prices;
$r_{i1/0}$= inflation rate during that specific year.

In turn, additional method yields the same result of CAF but has the merit to highlight the accounting items that do not generate cash flows. The logic of this method is given by taking into account all the elements that were not highlighted in the first method. In the additional process it starts from the net result for the year, so after deducting income tax, the influence of taxation being significant from the beginning. At the net result for the year are added calculated charges (depreciation and provisions) unpaid at a certain maturity and deducted income calculated (reversals of provisions). This method called "analytical" (by I.Pantea) and "upward" (by P. Brezeanu) shows the composition of the indicator elements. To the extent that CAFdoes not deal only with the current management operations, exceptional capital operations (income from the disposal of assets) will be excluded from the calculation.

CAF= net result of the year (accounting net income)+ calculated expenses-calculated revenues – revenues from disposals (8)

CONCLUSIONS

Regardless of the method of calculation envisaged, taxation of financial results has serious implicationson the behavior of accompany in economic and financial performance and in self-financing capacity, and its knowledge is indispensable to a modern financial management at the enterprise level.

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A BRIEF OVERVIEW OF THE ACTIVITY EFFICIENCY OF THE BANKING SYSTEM IN ROMANIA WITHIN A EUROPEAN CONTEXT

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Abstract: *In the last two decades, the financial system of Romania has witnessed significant changes designed to transform it from a centralized system into a competitive, economic environment adapted one, capable to be integrated into the European financial system. The banking system was during this period the Romanian financial system turntable, since the capital market failed to have an upward trend.This paper aims to analyse the banking system in Romania in terms of its activity efficiency. To achieve this goal we used a number of indicators (consecrated by the literature as being characteristic for measuring these aspects of the banking system's activity). The analysis will be carried out in comparison with the development of other European banking systems, aiming thus to establishing the place of the Romanian banking system in the European context. The period of time considered for the analysis is of over ten years, from 2000 to 2011, for the comparative analysis, and form 2000 to 2012, regarding Romania's evolution, therefore including a part of the financial crisis period. At the end of the study we will focus our conclusions on answering two sets of questions: on the one hand how the efficiency of the Romanian banking system have evolved in the last decade, taking into account the impact of the financial crisis on these developments and, on the other hand, what is the place of the Romanian banking system in the European context, through the analysed aspects.*
Keywords: *banking system, activity efficiency, net interest rate margins, overhead costs*
JEL Classification: G21

1. INTRODUCTORY REMARKS

The Romanian banking system has gone through various changes and mutations in the past two decades. Further, we will try to establish whether these transformations have led to an increased efficiency of this system. Therefore, two well-known indicators within specialised literature will be used (Beck *et al*., 2010): bank cost to income ratio and bank net interest rate margins. A dynamic analysis will be deployed, following the evolution of these two indicators in the Romanian context, covering a period of time that exceeds ten years. A comparative analysis will also be used in order to match these values with the ones registered within the European Union countries.

The values of the two indicators within the 28 countries members of EU, registered between the years 2000 and 2011 are presented in table 1. Using those data a comparative analysis will be deployed in order to identify the position occupied by the Romanian banking system within the European financial system.

Table 1 Indicators of banking system's efficiency for EU countries 2000-2011

Country Name	Bank cost to income ratio (%)	Bank net interest rate margins (%)	Country Name	Bank cost to income ratio (%)	Bank net interest rate margins (%)
Austria	62,01174	1,645974	Italy	66,38622	2,038218
Belgium	64,21792	1,28088	Latvia	56,80824	2,985337
Bulgaria	53,59534	4,957026	Lithuania	65,33001	3,011012
Croatia	56,71284	3,703205	Luxembourg	43,9333	0,769827
Cyprus	56,54715	3,486173	Malta	48,21254	2,727782
Czech Republic	54,88682	3,039419	Netherlands	64,34056	0,974803
Denmark	60,72019	1,344533	Poland	62,85691	3,718768
Estonia	51,86295	2,968307	Portugal	55,25249	1,688394
Finland	45,66101	1,046345	Romania	58,06945	6,773834
France	67,58637	0,926091	Slovak Republic	68,21041	3,165869
Germany	77,88342	1,016142	Slovenia	57,93591	3,052888
Greece	67,44612	3,052565	Spain	54,32361	1,910052
Hungary	60,38499	4,424312	Sweden	64,68967	1,286934
Ireland	22,49908	0,6051	United Kingdom	59,58846	1,736632

Source: Authors' analysis of Global Financial Development Database (http://data.worldbank.org/data-catalog/global-financial-development

Further, a distinct subchapter of this paper will be dedicated to analyse each of these two indicators.

2. THE ANALYSIS OF THE ACTIVITY EFFICIENCY INDICATORS FOR THE ROMANIAN BANKING SYSTEM

2.1 Bank cost to income ratio

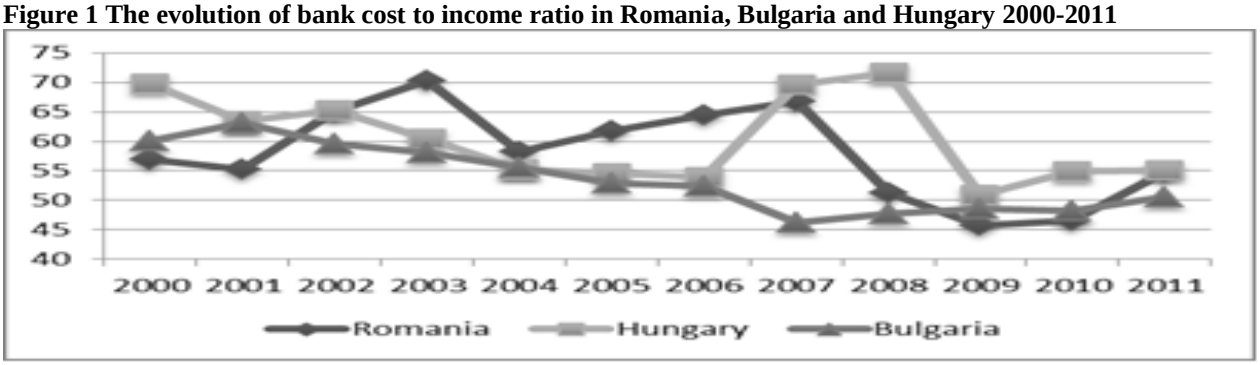
The first indicator that will be used in order to analyse the efficiency of the activity of the banking system is bank cost to income ratio. There are different opinions regarding the interpretation of this indicator, some authors considering that a smaller value proves an increased efficiency, meanwhile there others that submit the idea that such a value represents a consequence of an insufficient development of banking services (Demirguc-Kunt & Levine, 1999).

The mean value of this indicator covering the period 2000-2011 for the EU member states is presented in table 1. It can be noted that that the highest value was scored by Germany, thus we can argue that such a high value of the indicator suggest the existence of an efficient banking system, according to the first approach mentioned above. This opinion is invalidate by continuing the analysis, thus Slovakia is placed above the majority of developed countries, Hungary in front of UK and Romania registered a closer value to the one of UK.

The value registered in case of Ireland support the theory that a smaller value of this indicator proves an increased efficiency of the banking system.

Due to the fact that a lower value of the indicator can be consider as a result of superior dynamic of income in relation with the dynamic of costs and also as a results of smaller incomes and costs generated by a small scale activity, we consider that this indicator has to be analysed within the particular case of a country and this analysis has to be made in conjunction with other indicators. An analysis based only on this indicator cannot lead to a valid conclusion regarding the efficiency of the banking system.

Figure 1 The evolution of bank cost to income ratio in Romania, Bulgaria and Hungary 2000-2011



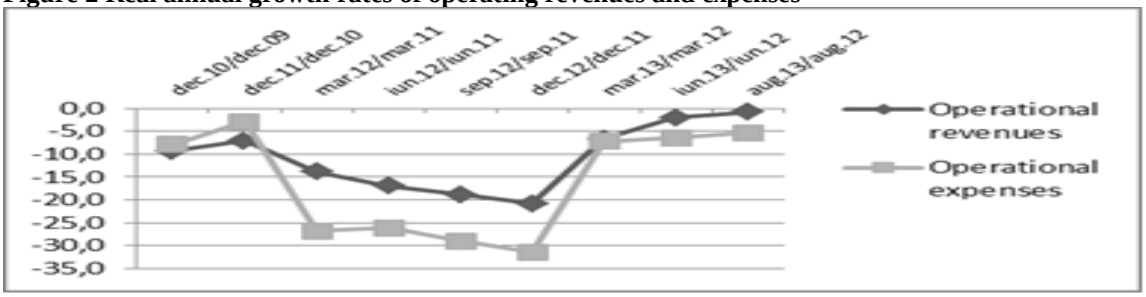
Source: Authors' analysis of Global Financial Development Database (http://data.worldbank.org/data-catalog/global-financial-development

In case of Romania, the evolution of the indicator bank cost to income ratio in the period considered, was a sinuous one (figure 1). Relative with the other two countries members of EU from the region, Hungary and Bulgaria, we can note a similar evolution and closer values of the indicator.

The indicator has reached the maximum value in 2003 and 2007, meanwhile the minimum values being reached in 2009-2010. Starting from 2011, the indicator has return to an upward trend, reaching by the end of 2013 56, 73%, a similar value to the one registered in 2000. As we previously pointed out a contextual analysis of this indicator is necessary. Thus, the high value registered in 2007 is due to an intense lending activity within the Romanian banking system, meanwhile the decrease registered in the next period of time was based on the restraining of the lending activity and also the reorganization of the banking system.

The analysis of the evolution registered by the real annual rates of operating revenues and expenses could provide an image upon the elements that affects the evolution of the indicator bank cost to income ratio (figure 2).

Figure 2 Real annual growth rates of operating revenues and expenses



Source: Authors' analysis of NBR Financial Stability Report http://bnr.ro/Regular-publications-2504.aspx

We can conclude that the decrease of the indicator bank cost to income ratio after 2009 was generated by a faster decreasing rate of incomes compared with the decreasing rate of expenses, creating, in our opinion, a false impression regarding a more efficient activity within the banking system.

2.2. Bank net interest rate margins

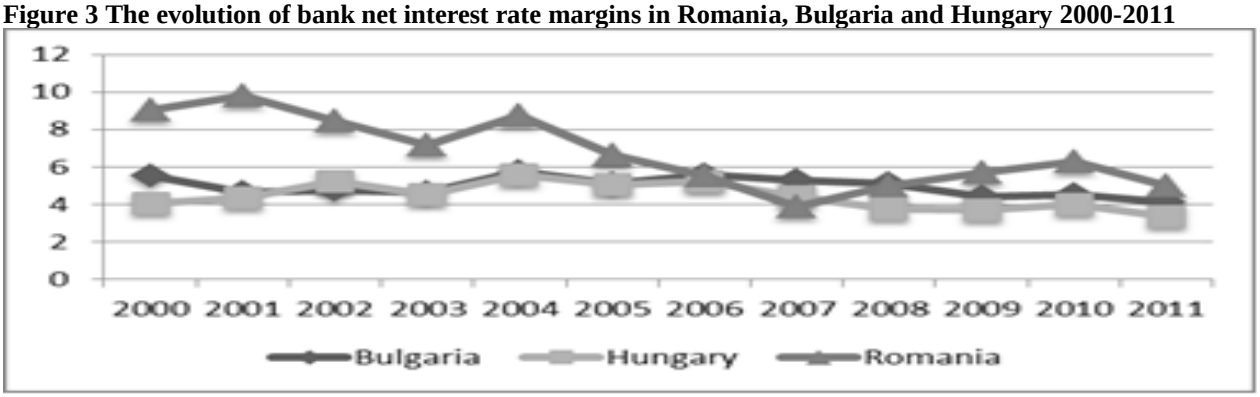
The second indicator related with the efficiency of the banking system that will be analysed is net interest rate margins. It is calculated as the accounting value of bank's net interest revenue as a share of its average interest-bearing (total earning) assets. Specialized literature states that a lower value of this indicator reflects an increased efficiency of the banking system. The mean values of this indicator for the member states of EU are presented in table 1.

Seen through this indicator, the Romanian banking system could be considered as the less efficient on in European Union. It can be also noticed the existence of direct correlation between income group and the indicator's value. Again, the most efficient banking system proves to be the one of Ireland. However, in our opinion, nor this indicator cannot be considered as an absolute measure for a banking system efficiency, due to the fact that establishment process of the interest rate used by bank is influenced by various internal or external elements.

Considering the indicator's evolution it can be noticed a decreasing of its value for Romania, in the period submitted to the analysis process, situation that indicates an increased efficiency of the banking sector's activity (figure 3).

At the beginning of the period considered the value of this indicator was far superior to the ones registered by the banking systems in Hungary and Bulgaria. At the end of period it could be noticed closer values for these three countries.

Figure 3 The evolution of bank net interest rate margins in Romania, Bulgaria and Hungary 2000-2011



Source: Authors' analysis of Global Financial Development Database http://data.worldbank.org/data-catalog/global-financial-development

An analysis of net interest rate margins used in the Romanian banking system during the financial crisis point out the attempt to improve its activity's efficiency through the reduction of the indicator's value. In the time of crisis the Romanian banking system has decreased the interest rate margins for new loans and deposits in case of its operations in domestic currency related with households, meanwhile keeping relatively constant the interest rate margins for

outstanding loans and deposits. In case of loans and deposits for household, expressed in euro, the decrease was more pronounced; the system has tried to discourage the operations expressed in foreign currency made by households. For the companies it can be noticed an increase of the net interest rate margins applied to the euro expressed operations.

By the mid 2013 the mean value of net interest rate margins for the entire banking system was 4, 45 percent points, values that proves an increase of the efficiency of banking activity. Considering this indicator, the less efficient activities are still the operations in local currency related to households; meanwhile the operations in euro related to companies are the most efficient ones.

Before we assert that the Romanian banking system is set on a path of improving efficiency, related with this indicator, it should be noted that the decreasing of its value was based on the restrained lending activity related with households and theirs clear saving trend. Even we admit the fact that the main role of a banking system is the one of financing the economic activity, we should not ignore its importance as source of finance and a saving instrument for households.

3. CONCLUSIONS

Considering its evolution Romania could be placed in the trend of the countries from the same class of development (Bulgaria and Hungary). In our opinion, Romania has a banking system crossing a development process and a rising efficiency of its activity. We also consider that the development of the Romanian banking system has to take place at the same rate with the one of the real economy, situation that never occurred in the period submitted to our analysis.

Despite the contraction of the banking activity in the past years due to the financial crisis, the Romanian banking system has maintained the same trend with the ones of the banking systems in the countries from its proximity and aims to an efficient activity.

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INTERNAL CAUSES OF ECONOMIC DIFFICULTIES FOR THE COMPANIES

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Abstract*: The difficulties for businesses have not, necessarily, a financial component, though, regardless of origin, in the end, they become a financial expression. Most often, poor performance is partly as a source of financial problems itself, it is the consequence of economic imbalances, technical, commercial and human at the company leveloratighteningeconomic, legal, social or competitive environmentin which it evolves. Each of these factors has a different importance on the normal activity of the enterprise, which may not continue in the future unless they act meaning fully to remove difficulties. With the first signs of the worsening situation of the enterprise, there is a risk of not being able to be redressed, developing a cumulative process of damage by propagating and amplifying the difficulties, which lead to its disappearance.*
Keywords: *business failure; decision rules; liquidation*
JEL Classification: *G33; G34*

INTRODUCTION

The causes leading to the decline of a firm can be either from the outside, in the external environment of the company (Hillegeist, 2004) or from interior, within the firm (Francis & Pett, 2004; Altman, 2007). Internal decline relates to shrinking organizational resources that occurs when firms operate in environments stable or increasing (Chowdhury, 2002). Some authors have investigated the causes of difficulties only internally, considering external sources of decline, as the wrong management of potential environmental threats (Lupulescu, 2012).

Internal causes of the decline include any challenges to the proper functioning of an organization (Paul, 2005; Weitzel & Jonsson, 1989). In a general mode, internal causes of the difficulties can be classified into: poor management; mismanagement of strategic projects; improper purchases; high cost; insufficient financial control; inadequate or misdirected marketing; poor financial policy, autocratic leadership and excessive psychological behaviors (Jas & Skelcher, 2005; Probst & Raisch, 2005; Whetten, 2008).

Each case of bankruptcy for a company has its own specific causes. Yet between these seemingly individual determinants in the bankruptcy of companies may show more similarities than differences, leading to the opportunity to outline certain specific cases (McInerny, 2007; Moyer, 2004; Vance, 2009). Internal causes that lead to deterioration of the business, and ultimately to bankruptcy, can be of three types: financial, strategic issues and organizational (Ooghe& Prijcker, 2006). From another perspective, internal causes can be classified as follows:

a. Objective Causes. Here, first, can be assigned a financial and strategic reasons listed above, but others, such as issues related to the entity, lowering the quality of products / services / works provided by the entity, lowering the share of the market.
b. Subjective Causes. In this category, we fit organizational causes to which we can add others of a similar nature, such as: labor migration, malfunction of information networks, forced or voluntary absence of the manager, wrong decisions, and inadequate leadership.

These two categories of factors may exert a convergent influence on business activity, so that a firm, whose internal organization and management system are faulty, may have also reduced capacity to adapt to the conditions imposed by its external environment. But, even an individual action of one of the two categories of factors can cause vulnerabilities in the activity of an organization.

CAUSES OF INTERNAL FAILURE

Literature considers that the internal difficulties of businesses generally derive from failures or errors at the organizational level which, if correctly identified, can suggest the right solutions to facilitate recovery. These can be summarized as follows: poor management; excessive specialization; ownership; inadequate financial structure; mergers and acquisitions strategies insufficiently prepared or wrong transpose in practice; high costs of the company.

Mismanagement is the first cause of bankruptcy of enterprises. Incompetence, along with behavior and peculiarities of managers has a major role in the businesses difficulties. The company leaders can apply obsolete and conservatives strategies, based mainly on tradition and their outdated ideas, instead of a rational analysis, which ultimately lead to a decrease in performance in the company. In these cases, managers are extremely attached to strategies promoted and put into practice by them and then it is extremely difficult for them to recognize that they are outdated. The leaders of firms in difficulty maintain old strategies which now are no longer appropriate and do not want transformation, denying or minimizing the seriousness of the problems arising (D'Aveni & MacMillan, 1990).

Hesitations of managers and long periods needed to promote important decisions can generate a decline in performance and subsequently the emergence of difficulties for the company, because the opportunities are changing rapidly, and the company may find themselves in a disadvantageous position compared to competition since losing opportunities and the ability to use them to his advantage. Also, serious mistakes can be caused by decisions taken by managers' impulsive moment. Enterprises in which decision-making power is concentrated and managed extremely strong managers who are risk lovers can find themselves faced with difficult problems. If decision-making power is divided unequally, top managers do not have time to take an interest in the decisions made, relying more on intuition than on rational analysis, so it can be difficult to get to the emergence of firm (Back, 2005).

And organizations where decision power is highly concentrated, led by very potent managers with a great tendency to take risks, may face difficulties. Thus, when the power of decision is insufficiently distributed, top managers do not have time to give sufficient attention to the decisions they take, relying more on intuition than on reasoning, which can cause problems in the organization (Thain & Goldthorpe, 1990). Decisions taken by them are complex and often dangerous assumption diversification strategy by entering new markets, developing new

products and geographic expansion but by neglecting some very important issues or insufficiently prepared. Amid the increasing complexity of projects adopted leaders remain firm to implement new projects, and more complicated and risky, which ultimately determines the emergence of major difficulties for the enterprise.

Mistakes of the company management are the most frequent cause of its difficulties, the reason why almost all successful reorganizations led to the change of management. This is because the company must, by new managers, to have a new perspective for partners and shareholders again have confidence in its recovery possibilities (Vance, 2009).

Managers of investment bank Lehman Brothers used accounting tricks to hide the extreme financial situation, leading to the handling balance. The bank bankruptcy, the largest in history, became inevitable, and it produced in 2008, losses were 684 billion $. In 2003, Parmalat, the largest European food manufacturer went bankrupt, former CEO, Calisto Tanzi, was subsequently convicted for fraud 14 billion Euro. Enron leaders have inflated balance sheets to mislead investors, thus diverting 66 billion dollars; subsequently entering into bankruptcy in 2001; the company is the 5th largest bankruptcy case in US.

Excessive specialization, focus on a product or activity, considered successful, at the expense of all others, is another cause of bankruptcy. Changes in demand, on the requirements, preferences, changes, purchasing opportunities of customer, rise to vulnerable for very specialized situations, based on a small group of products. In sectors where there is a fierce competition, the situation becomes even more difficult if the company does not differentiate strongly the products before the changes in demand (Allaire & Fârşirotu, 1992). Also, some companies focus only on a single object or activity considered critical to success, failing to exclude other objectives. The adaptability of the enterprise by enhancing and expanding to a single activity, and the company cannot function properly, leading to a decline in the performance (Hall, 1992).

During 2005-2008, on the Romanian market, Volksbank recorded strong developments, starting 14th and ending up in 3rd place, by excessive specialization, namely loans with mortgage guarantees. When the housing market collapsed, the bank began the decline, having the largest volume of bad loans, valued at over 600 million Euro, the Bank recorded losses in the order of 140 million Euro.

Ownership depicts another factor which generates bankruptcy. Strategy, activity and results of an enterprise owned or partly by the state will be determined by political factors than by market conditions. Romanian state-owned companies have been faced with some serious difficulties proving viable market, so most were privatized in order to refocus on the market, customers and competition and entered in bankruptcy process. Appointment of directors in post-revolution period with severe managerial weaknesses and especially politically, has made that the state enterprises to be carried into bankruptcy (Barbulescu, 2004).

RAFO Onesti is a typical example of state-owned Romanian company, made bankrupt by a politically appointed management; it robbed that company through bogus investments, but paid exorbitant prices. Company entered into judicial reorganization in April 2004, being the largest debtor to the state budget and the other providers with over 440 million. Subsequently, under the command of foreign owners, until November 2007, the company has paid all debts to the general budget, approximately 250 million Euros. In turn, SIDEX's, largest steel factory, is another example for the situation described above. Under the successive incompetent management, who parasite sale of products by creating ''shadow'' companies, the plant came in 2001 with the loss of 300 million Euros. The year

2001 brings the privatization to ISPAT, and subsequent obtaining notable economic performance, with over 500 million annual profits.

Inadequate financial structure leads to the development of the company's vulnerability and its dependence to creditors. Insufficient financial resources to finance their activity may compel the company to turn to inadequate funding sources by assuming onerous loan conditions, with obvious difficulties with their subsequent reimbursement (Brezeanu, 2008).

The high rate of debt will occur in the future by a decline in the performance of the firm. This is due to the fact that in case of business opportunity, a company that is indebted to a lower level, has one additional debt capacity, which translates into increased security and flexibility. The financial autonomy of the enterprise, which is on a downward spiral because of their high debt and lack of own resources, can be seriously affected in the event of other factors: paying bills with delays to customers, the bankruptcy of a major customer or fluctuations in its work with serious consequences in the subsequent conduct of the business (Hillegeist, 2004). The opposite situation, applying a conservative financial policy, defined by the lack of reinvestment of profits, a high rate of dividends paid to shareholders and increased liquidity, at the expense of some investment to get a higher return in the long term, will generate into the future a reduction in company performance.

Leonardo, the largest footwear retailer on the Romanian market, developed an inappropriate financial structure, entering into insolvency in October 2008. With a turnover of over 130 million Euros, the company had debts of 100 million Euros to suppliers, banks and employees at the time of the reorganization, with payment terms more than 90 days.

The high costs of the company with main competitors generate significant commercial inconvenience, finally being able to reach even bankruptcy. Factors that cause high costs can be:

- inefficient operation of output growth to benefit from economies of scale effects
- high costs of labor
- high dependence on a few suppliers
- wrong positioning to suppliers and customers
- much diversification of products, which can produce a cost disadvantage due to the increased complexity and size, unaccompanied by adequacy of coordination and control systems
- operational inefficiency, consequence of poor management

The most important reasons for the crisis at GM were inability to promote new vehicles to match customer needs, wrong business strategies and high costs due to health care benefits for employees and pensions paid to former workers. These problems, together with the global financial crisis and recession in the economy have negatively affected revenues by GM, the company became bankrupt in 2009, the fourth in USA, worth 82 billion $. Delta Airlines problems were generated by inflated cost structure, extremely high cost of labor, reaching company bankrupt in 2005 with debts of $ 25.8 billion.

Mergers and acquisitions strategies, insufficiently prepared or wrong transposed into practice, may reflect another cause of the difficulties for businesses. In an attempt to diversify production and to obtain a bigger market shares, acquisitions and mergers play an important role

in the strategy of enterprises, found work and the growing number of such operations lately (Astebro & Winter, 2001).

However, if they are incorrectly prepared, designed and implemented, acquisitions and mergers are resounding failures. Causes of such failures are the payment of unreasonably high prices for businesses purchased the inability to integrate acquired businesses, the socio-political and cultural insurmountable differences of the firms involved.

In late 2005, Flamingo purchased the electro-retailer Flanco International for $ 37 million Euro. Due to lack of experience and professionalism, the procurement process would be extremely painful and expensive, however, barely ending in August 2009; in 2006-2008, the company recorded high losses, in the value being included and costs of the merger with Flanco. Company entertainment Time Warner and Internet giant AOL merged in 2000, realizing the largest transaction: 164 billion dollars. Partnership not proved profitable; new company in 2002 with losses of 99 billion dollars; subsequently transformed into one of the most disastrous mergers in history, and after eight years of torment, firms parted away.

Inefficient marketing and sales activities is another factor generating the business difficulties. Faced with managerial issues across firms, firms in economic difficulty present a critical situation for marketing and sales. In these areas, the problems are generally caused by the following factors (Lupulescu, 2004):

- ineffective promotion of products or services
- unfocused marketing efforts on key products and customers
- mediocre quality of products and the lack of associated services
- insufficient knowledge of customer needs and preferences
- dependence on a small number of customers
- loss of access to distribution channels

Residential ensemble Green City in Bucharest, worthing 100 million Euros, went into insolvency in 2010; the main cause has been selling at a insufficient rate of homes (only 60%) to cover costs and further work, combined with the collapse of the housing market.

Failure of major strategic projects can be a cause of difficulties for the company. Underestimation or overestimation of the background activity results, the companies can promote inappropriate investment programs. Uncontrolled growth of production capacity of an enterprise may result at branch overproduction, causing a price war and loss when each competitor tries to maximize the use of production capacity. Failure analysis of the implications of the possible entry barriers or costs to launch and market penetration by a firm for new products can lead to failures powerful (Maksimovic & Phillips, 1998).

Wanting to expand rapidly in the North American market, Vivendi Universal, went nearly bankrupt, mainly due to the multitude of acquisitions made during 2000 and 2001: American television channel NBC Universal; music distributor MP3.com; publisher Houghton Mifflin. Later, faced with the largest loss of 23.3 billion Euros, the company abandoned the previous projects, shifting company towards its traditional European market. City Mall shopping centers (Bucharest) and Tiago (Oradea) and residential Blue Tower and Residence Cortina went bankrupt when carrying out construction activities, these firms failed to even complete buildings.

CONCLUSIONS

The need to know the many facets of firms in difficulty, which have tried to present through this typology of enterprise in difficulty consists, on the one hand, in the interests of managers and business owners to continue and even provide development of their business, and on the other, in the interest of analysts to address the best way of understanding the state company or its diagnosis, and take appropriate measures to rescue and restructure the company.

Beginning with a simple predicament until the occurrence of bankruptcy, the notion of a firm in difficulty is extremely complex. Despite numerous definitions in the literature, it is worth noting, however, some essential concepts defining enterprise risk: economic failure or company, insolvency or bankruptcy technique. Regarding the causes of the difficulties for the enterprise, we believe that they can take many forms that frequently, a negative impact on performance to both internal and external forms.

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ROLE STRESSOR AS AN ANTECEDENT OF EMPLOYEES' FAMILY CONFLICT: EMPIRICAL EVIDENCE

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Abstract: *The role of stressors is recognized as a crucial human resource development and management issue where it can have an overpowering consequence on organizational and employee performance. This study was conducted to discover the relationship between role stressor and family conflict using self-report questionnaires gathered from academic staff of a public comprehensive university in Sarawak, Malaysia. The outcomes of SmartPLS path model revealed three findings: first, role ambiguity significantly correlated with family conflict. Second, role conflict significantly correlated with family conflict. Third, role overload significantly correlated with family conflict. This finding demonstrates that role stressor is recognized in employees' family conflict. The paper provides discussions, implications and conclusion.*
Keywords: *role ambiguity, role conflict, role overload, employees' family conflict*

INTRODUCTION

Extensive studies have highlighted that fast moving local and international markets haveradically changed the work climates of many organizations. This climatic change is often driven by multiple causes, especially organizational structure, leadership style and quality, the demands of tasks and roles, balancing efficiency of services with high quality standards, the increasing "24/7" mentality, structural changes and changes in business processes, and the quality of communication throughout the organization.These are some of the causes identified as playing detrimental roles on the employees' stressful level and organisational climate (Holloway, 2012; Hunt & Ivergard, 2007; Manning & Preston, 2003). In general, the ability of an employer to cope with external and internal environmental changes in order to maintain and achieve its

strategy and goals may lead to greater employee stress in the workplace (Trayambak et al., 2012).

The concept of stress was first highlighted bySelye (1987, p.17) as "the nonspecific response of the body to any demand made upon it". Stress is a broad concept and may be interpreted based on linguistic and organizational perspectives. In linguistic terms, stress is originally taken from Latin that is *stringere*, which refers to draw tight, to describe hardships and/or affliction (Cartwright & Cooper, 1997). Relying on this view, stressmay be said to exist when individual abilities do not match with their job requirements, restrictions and/or prospects. This phenomenonmay produce two major types of stress: eustress (good stress) and distress (bad stress) (Huang, 2010; Ismail et al., 2010, 2010a; Trayambak et al., 2012). Eustress is often associated with individuals who have experienced moderate and low stress levels, whereas distress is usually seen in individuals who have experienced high stress levels. Individuals who experience eustress will be able to meet job demands and this may help them to experience positive work life (e.g., satisfaction, motivation, commitment, performance and functional conflict). While, individuals who experience distress will not be able to fulfill job demands and this may cause them to decrease quality of work life (e.g., dissatisfaction, depression, unhealthy and dyfunctional conflict) (Huang, 2010; Ismail et al., 2010, 2010a; Trayambak et al., 2012).

Organizational stress is typically linked to economic consequences, health problems and their associated expenses. A report published by the National Institute for Occupational Safety and Health (1999) in the USA summarized findings from various surveys on organizational stress and found that between 26 and 40 percent of all surveyed workers experienced very stressful work. Naturally, this leads to increased economic burdens and health related problems. For example, asurveyon more than 46,000 US employees showed that health care costs were 46 % higher for workers who experienced high levels of stress (Goetzel et al., 1998). Additionally, reports showed that American corporations are coping with a hefty $200 billion annually in lost of production, truancy, and job-related casualties due to workplace stress (Sosik & Godshalk, 2000). In 2004, the American Institute of Stress projected that workplace stresscosted the nation over $300 billion in health care, and abstenteeism (Schwartz, 2004). Report from the UK also suggests that about the half of all lost days within organizations are related to workplace stress (Cooper et al., 1990).Recent report by Health and Safety Executive in the UK suggests that approximately 27 million working days were lost last year and of those 10.4 million were due to work-related stress (Newcombe, 2012).

In the recent workplace stress literature, role stressor is often viewed as a multidimensional construct and may be interpreted asrole related stress that may causes work stress(Ismail et al. 2010, 2010a; Trayambak et al., 2012). Many scholars, such as AbuAlRub (2004), Eby et al. (2005), Ismail et al. (2010a), Trayambak et al. (2012), and Yu-Fei et al.(2012) highlight that role stressor consists of three influential features: role ambiguity, role conflict and role overload. Role ambiguity is often defined as an individual who does not have clear information about his or her work objective, work scope, supervisor's expectations, and responsibilities of his or her job may lead to higher job-related tension. Role ambiguity takes place when it is indeterminate what actions should be taken to meet the expectations of the role (Matteson &Ivancevich, 2003; Wright, 2009). Role conflict, on the other handis usually defined as an employee who is unable to handle job demands; doing things he or she does not want to do, or doing things that is not considered part of his or her job which may result in various types of

conflict. The presence of role ambiguity and role conflict requires an individual to make decision and making decision under conflicting demands may frequently invoke conflict with other job or non-job demands. Role overload is frequently associated with work load beyond an individual's capability to cope with and often resulted in stressful conditions. Role overload affects employees through psychological preoccupation with a specific role (Aryee et al., 1999). This psychological preoccupation is described as high levels of perceived role overload leading to preoccupation with uncompleted tasks even while responding to the demands of another role (Aryee et al., 1999). There are two different forms of role overload as labeled byresearchers: quantitative and qualitative. Quantitative overload is often related to having too much work to do, whereas qualitative overload is often associated to a work that is too difficult for an individual to handle (Cartwright and Cooper, 1997; Eby et al., 2005; Ismail et al., 2010, 2010a; Major et al., 2002; Yu-Fei et al., 2012).

Surprisingly, extent studies in the workplace stress reveal that the level of role stressor may have a significant impact on employees' family conflict (Boles et al., 2001; Fu & Schaffer, 2001; Ismail et al., 2010, 2010a; Yu-Fei et al., 2012). From an organizational behavior perspective, family conflict persists when employees unable to handle job stress related problems (Ismail et al., 2010, 2010a; Schiem& Young, 2010). In a work life balance literature, family conflict may occur in three major forms: time-based, strain-based and behavior-based. First, time-based conflict occurs when one has to juggle with two personal demands occurring simultaneously him or her to forgo one for the other. (e.g., working overtime forces an individual to cancel a family outing). Second, strain-based conflict occurs when tension experienced in one role interferes with participation in another role (e.g., meeting a deadline for a tender prevents an individual to concentrates to family matters). Third, behavior-based conflict occurs when behavior patterns appropriate to one role are inappropriate in another (e.g., emotional restrictions at work are contrary with the openness expected by family members) (Boles et al., 2001; Ismail et al., 2010, 2010a; Schiem& Young, 2010; Yu-Fei et al., 2012).

Within a job stress model, many scholars view that role ambiguity, role conflict and role overload, and family conflict are distinct, but highly interrelated constructs. For example, high level of role stressors in the workplace may increase the interference of job problems in employees' family affairs, which in turn lead to an increased family conflict (Goldsen and Scharlach, 2001; Rhoades & Eisenberger, 2002; Yu-Fei et al., 2012).

Although the nature of this relationship is significant, little is known about the role stressor as an important predicting variable in the workplace stress research literature (Allen et al., 2000; Fu and Schaffer, 2001; Ismail et al., 2010, 2010a; Yu-Fei et al., 2012). Many scholars concur that the predicting role of role stressor is given little attention in the previous studies because they have largely described the role stressor characteristics and employed a simple association method to understand employees' general attitudes toward particular role stressors in the workplace. Consequently, these studies may not provide adequate findings that may be used as guidelines by practitioners in formulating a comprehensive coping strategy to prevent and handle employees' stresses and their negative behavior outcomes in dynamic organizations (Gallie & Russell, 2009; Major et al., 2002; Tatman et al., 2006; Yu-Fei et al., 2012). Therefore, this situation inspires the researchers to further investigate the nature of this relationship.

PURPOSE OF THE STUDY

This study is propelled by three objectives: firstly is to evaluate the relationship between role ambiguity and employees'family conflict. Secondly, to determine the relationship between role conflict and employees'family conflict. Finally, to measure the relationship between role overload and employees' family conflict.

LITERATURE REVIEW

Relationship betweenthe Interference of Role Stressors and Employees' Family Conflict

Many previous studies about the role stressor were conducted using a direct effects model based on different samples, such as 513 employees in Fortune 500 Company, United States (Majoret al., 2002), assessments forms collected by couple and family therapists (Tatman et al., 2006), married/cohabiting employees gathered through European Social Survey (Gallie&Russell, 2009), and 96 employees in higher learning institutions in Sarawak (Yu-Fei et al., 2012). Findings from these studies reported that high levels of ambiguity, conflict and overload in performing job had caused job problems interference into the ability of employees to control family conflict (Gallie& Russell, 2009; Major et al., 2002; Tatman et al., 2006; Yu-Fei et al., 2012).

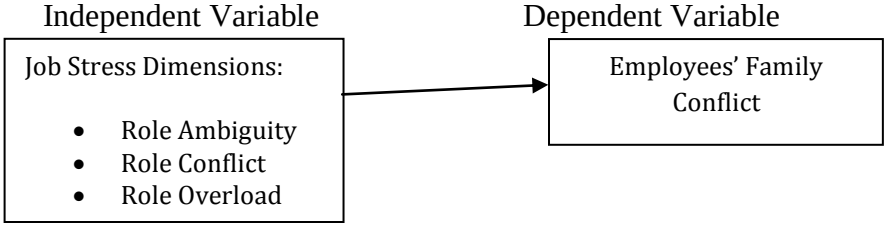
The empirical studies support the notion of Clark's (2002) work/family border theory, which posits that individuals often manage and negotiate the work and family affairs in order to attain balance. If this relationship is not balanced, it will likely increase work disturbances in individuals' family life and thus lead to increased family conflict. The preceding phenomenon is consistent with the theory of work-family balance. Greenhaus et al. (2003, p.513) have defined work-family balance as "the extent to which an individual is equally engaged in – and equally satisfied with – his or her work and family role". Greenhaus et al. (2003) regard work-family balance as a continuum where imbalance in favor of the work role lies at one end, and imbalance in favor of the family role lies at the other end, and balance lies in the middle favoring neither work nor family role.

The spirit of these theories explains that failure to balance job and family affairs may lead to enhanced employees' family conflict. Extending this theory into a role stressor model shows that role stressor tests the ability of individuals in coping with external and/or internal work challenges. For example, the inability of employees to handle high ambiguity, conflict and job overload may increase the interference of job stress problems in employees' family affairs and decrease their abilities to control family conflict (Gallie& Russell, 2009; Major et al., 2002; Tatman et al., 2006; Yu-Fei et al., 2012).

Conceptual Framework and Research Hypothesis

The reviewed literature has been used as the basis of developing a conceptual framework as illustrated in Figure 1.

Figure 1 Relationship between Job Stress and Employees' Family Conflict



Based on the framework, it can be hypothesized that:

H1: Role ambiguity is positively related to employees' family conflict
H2: Role conflict is positively related to employees' family conflict
H3: Role overload is positively related to employees' family conflict

METHODOLOGY

Research design

Employing cross-sectional research method permits the researchers to combine the role stressor literature, the expert opinion and the actual survey questionnaire as the main procedure in collecting data for this study. Using this procedure may decrease the inadequacy of single method and increase the ability to collect accurate, less bias and high quality data (Creswell, 2013; Ismail et al., 2010a; Sekaran & Bougie, 2010). This study was conducted in a public comprehensive university situated in Sarawak, Malaysia. Firstly, a set of questionnaire was drafted based on the information gathered from the workplace stress literature. Secondly, a group of experts comprising six experienced academic staff representing science and technology, social science, humanities and liberal arts faculties at the chosen university was formed. They were selected based on their work experiences of more than seven years and their familiarity with the nature of academic work culture at the university. In a facilitated group discussion, the experts verified the instrument operationalized to capture the characteristics of role stressor and employees' family conflict. Thirdly, based on the expert opinion, improvements were made to the content and format of survey questionnaire for an actual study. Finally, a back translation technique was employed to translate the content of the questionnaire from Malay to English by English and Malay experts; thus, increasing the validity and reliability of the instrument (Creswell, 2013; Sekaran & Bougie, 2010).

Measures

The survey questionnaire consists of three sections: First, role ambiguity had 3 items, role conflict had 3 items, and role overload had 3 items that were developed based on the workplace stress literature (Fu & Shaffer, 2001; Gallie & Russell, 2009; Major et al., 2002; Tatman et al., 2006; Yu-Fei et al., 2012). The elements used to measure role ambiguity were: clarity of job scope, job description, and superior's expectations. The elements used to measure role conflict were: conflicting with work ethics, organization's objectives, and supervisor's instruction. The

elements used to measure role overload were: amount of time to accomplish a job, excessive workloads, and multiple tasks. Second, family conflict had 3 items that were developed based on work to family conflict literature (Allen et al., 2000; Boles et al., 2001; Eby et al., 2005; Gallie& Russell, 2009; Matteson & Invancevich, 2003; Yu-Fei et al., 2012). The elements used to measure these constructs were: attitude at home, time with family, and time to do personal activities. All these items were measured using a 7-item scale ranging from "very strongly disagree/dissatisfied" (1) to "very strongly agree/satisfied" (7). Demographic variables were used as controlling variables because this study focused on academic staff attitudes.

Sample

Unit of analysis for this study is academic staff of the selected organization. Prior to data collection, the researchers had obtained an official approval to conduct the study from the head of the organization and also received advice from him about the procedures of conducting the survey in the organization. Based on the organization rule, and financial and duration of study constraints, the researchers distributed 200 survey questionnaires using a convenient sampling technique to academic staff in the organization. This sampling technique was chosen because the management of the organization did not supply any list of academic staff and this situation did not allow the researchers to randomly select respondents for this study. One hundred usable questionnaires were returned to the researchers, yielding 50 percent response rate. The survey questionnaires were answered by participants based on their consent and on a voluntarily basis. The number of this sample exceeds the minimum sample of 30 participants as required by probability sampling technique, showing that it may be analyzed using inferential statistics (Sekaran & Bougie, 2010).

Data analysis

The SmartPLS 2.0 was employed to assess the validity and reliability of the instrument, and thus test the research hypotheses (Ringle et al, 2005). The main advantage of using this statistical package may deliver latent variable scores, avoid small sample size problems, estimate every complex model with many latent and manifest variables, has the stringent assumptions about the distribution of variables and error terms, and handle both reflective and formative measurement models (Henseler et al., 2009). The structural model is assessed by examining the path coefficients using standardized betas (β) and t statistics. The outcomes of SmartPLS path model would recommend whether it is appropriate to test the hypothesized model because the latter will clearly show the significant relationship between independent variable and dependent variable if the value of t statistic larger than 1.96. This result indicates that independent variable acts an important predictor of dependent variable in the hypothesized model (Henseler et al., 2009). In addition, R^2 is used as an indicator of the overall predictive strength of the model. The values of R^2 are considered as follows: 0.19 (weak), 0.33 (moderate) and 0.67 (substantial) (Chin, 1998; Henseler et al., 2009).

FINDINGS

Participant Characteristics

Table 1 shows that majority respondents were male (57.0 percent), aged between 40 to 45 years old (38.0 percent), married (81.0 percent), had more than 3 dependents (54.0 percent), those who rarely brought work home (41.0 percent), and who had served from 1 to 5 years (45.0 percent).

Table 1 Participant Characteristics

Participant Characteristics	Sub-Profile	Percentage
Gender	Male	57.0
	Female	43.0
Age	< 27	24.0
	28-33	6.0
	34-39	24.0
	40-45	38.0
	> 45	8.0
Marital Status	Single	19.0
	Married	81.0
Dependents	< 2	46.0
	> 3	54.0
Bring Work to Home	Very Often	19.0
	Often	31.0
	Rare	41.0
	Never	9.0
Length of Service	1-5 years	45.0
	6-10 years	18.0
	11-15 years	23.0
	> 16 years	4.0

Validity and Reliability of the Instrument

The confirmatory factor analysis was employed to assess the psychometric properties of survey questionnaire data. Table 2 shows the results of convergent and discriminant validity analyses. All constructs had the values of AVE larger than 0.5, indicating that they met the acceptable standard of convergent validity (Henseler et al., 2009). Besides that, all constructs had the values of $\sqrt{}$ AVE in diagonal greater than the squared correlation with other constructs in off diagonal, showing that all constructs met the acceptable standard of discriminant validity (Henseler et al., 2009; Yang, 2009).

Table 2The Results of Convergent and Discriminant Validity Analyses

Variable	AVE	Role Ambiguity	Role Conflict	Role Overload	Family Conflict
Role Ambiguity	0.863	0.929			
Role Conflict	0.650	0.163	0.806		
Role Overload	0.726	-0.009	0.064	0.852	
Family Conflict	0.882	0.303	0.435	0.349	0.939

Table 3 shows the factor loadings and cross loadings for different constructs. The correlation between items and factors had higher loadings than other items in the different constructs, as well as the loadings of variables were greater than 0.7 in their own constructs in the model are considered adequate (Henseler et al., 2009). In sum, the validity of measurement model met the criteria.

Table 3The results of Factor Loadings and Cross Loadings for Different Constructs

Construct/ Item	Role Ambiguity	Role Conflict	Role Overload	Employees' Family Conflict
Role Ambiguity				
I have a very clear job scope.	0.917129	0.112298	-0.126305	0.217388
The job that I am doing now is stated in my job description.	0.970242	0.151360	0.009140	0.340373
I know my superior's expectations towards me.	0.897563	0.186105	0.068334	0.260541
Role Conflict				
I have been receiving instructions that are complying to my work ethics.	0.349786	0.809009	0.052422	0.376498
The job that I am doing is in line with the organization's objectives.	0.207882	0.858854	0.009403	0.366881
The task that I am doing is accordance to my superior instruction.	-0.232954	0.747708	0.103207	0.301501
Role Overload				
The time given for me to accomplish academic tasks and research is insufficient.	0.058169	0.082237	0.863500	0.326870
I have excessive workloads.	-0.032831	0.028819	0.886923	0.301719
Sometimes I need to execute multiple tasks simultaneously.	-0.060602	0.050720	0.804168	0.257297
Employees' Family Conflict				
I believe that my attitude at home is not affected by my attitude at work.	0.212683	0.391901	0.402764	0.932520
I have enough time to be with my family.	0.349102	0.447154	0.252901	0.948704
I have enough time to do my personal social activities.	0.289776	0.384040	0.328620	0.935873

Table 4 shows the results of reliability analysis for the instrument. The values of composite reliability and Cronbach's Alpha were greater than 0.8, indicating that the instrument used in this study hadhigh internal consistency (Henseler et al., 2009; Nunally & Benstein, 1994).

Table 4 Composite Reliability and Cronbach's Alpha

Construct	Composite Reliability	Cronbach Alpha
Role Ambiguity	0.949571	0.920587
Role Conflict	0.847641	0.730957
Role Overload	0.888247	0.811917
Family Conflict	0.957239	0.932976

Analysis of the Constructs

Table 5 shows the results of Pearson correlation analysis and descriptive statistic. The means for the variables vary from 5.1 to 5.7 signifying that the levels of role ambiguity, role conflict, role conflict, and role overload, and family conflict range from high (4) to highest level (7). The correlation coefficients for the relationship between the independent variable (i.e., role ambiguity, role conflict and role overload) and the dependent variable (i.e., family conflict) were less than 0.90, indicating the data were not affected by serious collinearity problem (Hair et al., 2006). These statistical results further confirm that the instrument has met the acceptable standards of validity and reliability analyses.

Table 5 Pearson Correlation Analysis and Descriptive Statistics

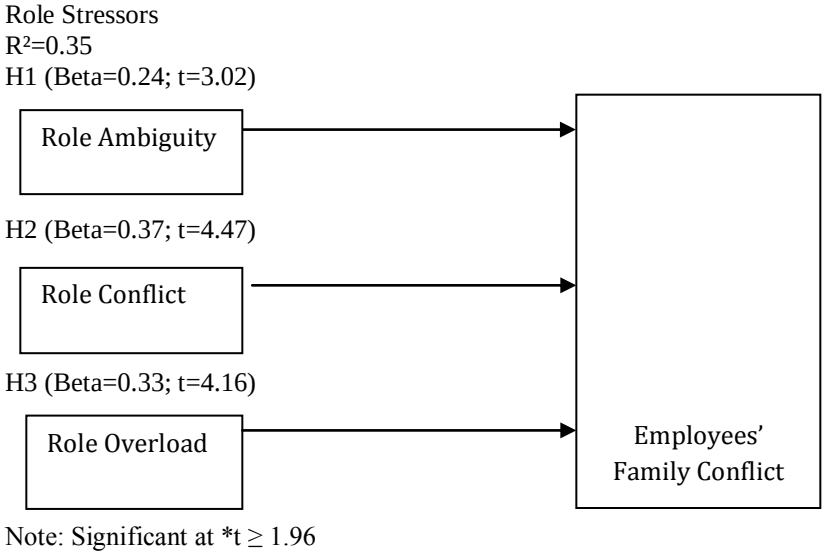
Variable	Mean	Standard Deviation	Pearson Correlation Analysis (r)			
			1	2	3	4
Role Ambiguity	5.7	0.8	1			
Role Conflict	5.5	0.8	0.13	1		
Role Overload	5.7	0.9	-0.02	0.07	1	
Family Conflict	5.1	1.1	0.29*	0.43*	0.34*	1

Note: Significant at*p<0.01
Reliability Estimation is shown in a Diagonal

Outcomes of Testing Hypotheses 1, 2 and 3

Figure 2 shows that the inclusion of role ambiguity, role conflict and role overload had explained 35 percent of variance in dependent variable. Specifically, the results of testing research hypothesis using SmartPLS path model revealed three important findings: firstly, role ambiguity significantly correlated with job-family conflict (Beta=0.24; t=3.02), therefore H1 was supported. Secondly, role conflict significantly correlated with family conflict (Beta=0.37; t=4.47), therefore H2 was supported. Thirdly, role overload significantly correlated with family conflict (Beta=0.27; t=4.16), therefore H3 was supported. In sum, the results confirm that the interference of role stressors in employees' family affairs may reduce their abilities to control family conflict.

Figure 2The Results of SmartPls path model



Note: Significant at *t ≥ 1.96

In order to determine a global fit of PLS path modeling, we carried out a global fit measure (GoF) based on Wetzel et al's (2006) guideline as follows: GoF=SQRT{MEAN (Communality of Endogenous) x MEAN (R^2)}=0.55, indicating that it exceeds the cut-off value of 0.36 for large effect sizes of R^2. This result confirms that the PLS path model has better explanatory power in comparison with the baseline values (GoF small=0.1, GoF medium=0.25, GoF large=0.36). It also provides adequate support to validate the PLS model globally (Wetzel et al., 2009).

DISCUSSION AND IMPLICATIONS

The findings of this study show that role stressor does act as an important predictor of family conflict in the studied organization. In the context of this study, management team has properly planned and administered job specifications for academic staff in order to maintain and support its organizational strategy and goals. Majority of employees perceive that the levels of their role stressors and family conflict are high. In this case, it seems that the inability of employees to manage high levels of ambiguity, conflict and overload in performing job has increased the interference of job problems in employees' family affairs and this may lead to decrease their abilities to control family conflict.

The above findings suggest three major implications: theoretical contribution, robustness of research methodology, and practical contribution. In terms of theoretical contribution, the results of this study reveal that the high levels of role ambiguity, role conflict and role overload have decreased the ability of employees to handle job problems and this may decrease their abilities to control family conflict. This result has also supported and extended studies by Major et al. (2002), Tatman et al. (2006), Gallie and Russell (2009), and Yu-Fei et al. (2012). With respect to the robustness of research methodology, the survey data of this study have exceeded

the acceptable standards of validity and reliability analyses. This situation may lead to the production of accurate and reliable research findings.

In terms of practical contributions, the findings of this study can be used as guidelines by the management to overcome negative role stressors in organizations. The possible suggestions are: firstly, the content and methods of training programs need to give more attention on helping employees in coping with physiological and psychological stresses using spiritual meditation, case studies and team building methods. Secondly, humanistic social support need to be encouraged in order to induce positive socialization practices, inculcate caring, build sense of belongingness and promote warm relation among employees. This positive behavior may help to decrease employees' physiological and psychological stresses in executing jobs. Thirdly, membership rewards, especially health insurance coverage needs to protect employees from spending a lot of money in order to get better chronic disease treatments for illnesses such as heart attack, cancer, diabetes, blood pressure and kidney problems. This health insurance may enhance employee satisfaction and commitment with career in the workplace. Fourthly, participative organizational policies and procedures need to be enhanced in order to increase employees' perceptions of justice and decrease deviant behavior in organizations. Finally, employee assistance programs need to be implemented using outsourcing and/or internal counseling unit in order to help employees obtaining proper guidance to handlework and family problems. If management seriously considers the above suggestions they may help enhance the capability of employees to appropriately plan and manage their job and family affairs.

CONCLUSION

This study tested the theoretical framework based on the role stressor research literature. The results of confirmatory factor analysis certified that the instrument used in this study met the acceptable standards of validity and reliability analyses. Hence, the outcomes of SmartPLSpath model revealed that the level of role stressordid act as an important determinant of employees' family conflict. Therefore, current research and practice within the workplace stress literature needs to incorporate role ambiguity, role conflict and role overload as critical dimensions of the jobstress domain. This study further suggests that the capability of employees to handle role stressors is important to decrease their family conflict and enhancetheir abilities to induce positive subsequent attitudinal and behavioural outcomes (e.g., quality of work life, work-life balance, satisfaction, commitment and performance). Further, these positive outcomes may lead to maintained and increased organizational competitiveness in an era of globalization.

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SOME COMMENTS ABOUT THE IMPACT OF POPULATION AGEING ON FISCAL INDICATORS

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Abstract: *This article aims to determine the impact that demographic changes have had during the 1995-2013 fiscal indicators such as the level of public expenditure, the total/social budget deficit or public debt in Romania. Population aging affects a number of categories of expenditures (social protection expenditure, the health care expenditure or long-term care), and government revenue, through many mechanisms.*
Keywords: *population ageing, public spending, fiscal indicators.*
JEL: *H2, H4, H5, H6, H7.*

Acknowledgement*: This work was supported by the European Social Fund through Sectoral Operational Programme Human Resources Development 2007–2013, project number POSDRU/159/1.5/S/142115, project title "Performance and Excellence in Doctoral and Postdoctoral Research in Economic Sciences Domain in Romania".*

INTRODUCTION

In recent years, more and more articles develop the subject of the demographic crisis that distorts the progress of developed or developing economies, or will affect long-term national budgetary balance and the sustainability of the fiscal policy of nations.

Are also known theories according to which public expenditure growth is normal, correlated with the level of economic development and economic growth (Chirila V., Chirila, C., 2011) of a country. The upward trend of public spending is a result of accepting the status of welfare state, but at the same time can be influenced by the voting system and the possibility for individuals to decide by vote (Buchanan, JM, Tullock, G) on the level of public spending at a time or another.

In addition, public expenditure found their role of macroeconomic instrument with the potential to influence the degree of development and economic growth in the Keynesian approaches (Harrod, RF, 1948 Domar, E., 1957, Petrisor, B.M., 2014).

Also, many factors (Bilan, I., Roman, A., 2014, Nuta, F., 2011) can influence the evolution of public spending, such as the involvement of the state in the provision of public services, the increase of the individuals income, demographic factor (presented as the population growth or change in population structure) price or unemployment, political orientation of the government party/coalition or perspectives on the role of the state.

THE EVOLUTION OF THE FISCAL AND AGEING INDICATORS IN ROMANIA

The fiscal cost imposed by the demographic developments is a current challenge in public finance. Expectations of dramatic demographic changes (EU, 2012) due to very low fertility rates, continuous increase in life expectancy lead to serious pressure on public spending and thus lead to serious concerns about the sustainability of public finances in the medium and long term (context in which was signed commitments between EU Member States on the long-term deficit and debt levels in "the fiscal compact".

In our analysis, we identified (based on existing economic literature) a number of age-related expenditure, which capture best the cost that ageing can bring. We analyze spending on pensions, health and long-term care. Before presenting these types of public expenditure, we will make a presentation of the main characteristics of the pension, health and long term care systems in Romania.

The pension system in Romania (Zaman, C., 2013) currently operates under Law 263/2010, which unified pension system, starting from the first pillar, public and mandatory for all (which includes old-age pension, early retirement or partial early retirement, disability or survivor's pension). The second pillar of the pension system in Romania is mandatory for all individuals 35 years and optional aged 36-45 years. The third pillar refers to voluntary private pension. In addition, there is a special pension category which includes judges, prosecutors, military, etc.

Mandatory public pension pillar covers all employees and military personnel or freelancers (self-employed person), setting a 10.5% contribution for employees, regardless of working conditions and for employers the contribution rate is (since October 2014) from 15.8 % to 25.8%, depending on the working conditions.

Mandatory private pension pillar is funded at a rate of 6% (2016) applied to the taxable income of the employee, taken from the current rate of 10.5%, before including this pillar which were transferred in full to Pillar I. Thus, based on this percentage the income of employees and investment decisions of those who manage pension funds will calculate the benefits of future retirees.

In terms of retirement age, it is differentiated by sex, so men will retire from January 2015 to 65 years, while the retirement age for women will increase gradually until January 2030 to 63 years.

Pensions are calculated based on the pension point, which in January 2014 was 790.7 RON, which will be indexed with the annual inflation rate and will be increased by 50% of the real growth of gross average wage in the previous year (Zaman, 2013).

Viewed from the perspective of sustainability, the pension system can be presented in the table below:

Table 1 Romanian indicator for pension system (2003-2013)

Indicators	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
No. of pensioners	6141.5	6069.8	5902.3	5781.6	5716.0	5691.3	5682.9	5646.8	5549.4	5321.3	5246.3
No. emploees	4333.8	4398.3	4501.2	4575	4717.2	4738.6	4367.7	4101.6	4172.1	4311.6	4328

SDR	1.42	1.38	1.31	1.26	1.21	1.20	1.30	1.38	1.33	1.23	1.21
Pension spending(%GDP)	5.2	5.4	5.3	5.2	5.5	6.5	8	8.1	7.9	7.6	7.9
Deficit of BASS	0.2	0.1	0.1	1.1	1	-0.1	-1.2	-0.7	-0.2	-0.1	0.5

Source: http://www.mmuncii.ro/j33/index.php/ro/transparenta/statistici/date-statistice , http://ec.europa.eu/eurostat/data/database

Thus, due to unbalanced system dependency ratios in which one employee in terms of financial support (at this moment) sustains 1.2 pensioners, the pension system in Romania is already under pressure of the structural weaknesses of the economy. In addition, demographic developments on the ratio of people aged 65 and older in the total population or the total active population generates new pressures that further distort the system and policy makers need to find quick solutions, at least to integrate active people work.

The medical system in Romania is based on a reformed legal framework that includes elements such as social health insurance, private health insurance, and organization of hospitals, community health care, emergency services, primary care, and public health programs, organized at central and local level, which ensures implementation of health policy options. Contributions pay monthly by employees and employers (5.5% - 5.2% employees and employers) is collected in the national health insurance fund that is managed by the National Health Insurance, gathering at his disposal and other financial resources.

Private medical services market reached 12% in 2013 in Romania. The reason for that is the fact that the demand for private healthcare is not sufficiently developed related to income level of Romanians, which are less likely to invest in private health services.

In the table below we highlight health expenditures made in the private and public sector in Romania as % of GDP in 2003-2012. As can be seen, even if the trend of health care costs in the private sector is increasing, they are not a key driver of health services.

Table 2 Expenditure on health care in Romania, by provider

Health care spending	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Private sector	0.81	1.36	1.05	1.03	0.93	0.98	1.19	1.16	1.16	1.10
Public sector	4.41	4.03	4.41	4.01	4.20	4.29	4.40	4.65	4.34	4.36

Source: Eurostat: http://appsso.eurostat.ec.europa.eu/nui/show.do

In November 2014, the Ministry of Health approved the National Health Strategy for 2014-2020 and Action Plan 2014-2020 for the implementation of the national strategy, a strategy that will introduce the following changes in the system after implementation ((http://www.ms.ro/?pag=62&id=13522&pg=1):

- Development of basic health services, accessible to all, quality and cost-effective, focusing on prevention;
- Better integration of medical care by strengthening outpatient clinical services;
- Reorganization of hospital services and ensuring the continuity of care.

The evolution of the national health insurance Fund balance is, according to budget execution reported by the Ministry of Finance as follows:

Table3 National Fund for Health Insurance in the period 2006-2013

Ani	2006	2007	2008	2009	2010	2011	2012	2013
Sold FNASS	485.4	102.5	-484.3	-651.0	-248,65		-379,4	-21.3

Source: Execution of the BCG 2006-2013, http://www.mfinante.ro/execbug.html?pagina=buletin

Thus continuing the analysis, the health insurance fund deficit continued to persist in all the years since 2009, except for 2011, when was a surplus which was compensated, according to law, with the amounts received as grants from the state budget. In this sense, sustainability issues persist due to health policy options, sometimes hesitant, sometimes contradictory and mismanagement of public resources (Zaman, C. 2013).

In addition, the clawback tax are an important discouraging on the drugs market, reducing competitiveness and volume of investments in the domestic producers of drugs in these conditions they prefer to export more drugs (Banila, 2013b). This tax is perceived as a brake on the development of companies producing generic drugs by reducing local production, delaying investment in development and even staff reduction.

It was also noted the increasing proportion of the population over 65 years in Romania, as a result of reduced fertility and mortality and, of course, the increase of the migration of younger age individuals. Have been gradually developed some specific services for this group of the population, but far, fewer than in the rest of Europe. Home care and alternative care, for example, are supplied mainly by small organizations. However, the National Health Insurance signs few of such contracts versus the needs in Romanian society, given that there is an acute lack of care in retirement homes.

The sustainability of the health sector is affected including by the method of allocation of funds in the system, the lack of transparency in public spending and the phenomenon of corruption - the health system is recognized as one of the most corrupt systems.

Long-term care in Romania refers to the care of the elderly and people with disabilities, governed by different laws. In general, the responsibility for organizing long-term care in our country belongs to local authorities, but NGOs have an important role. As institutionalized beneficiaries of the system, they shall be the beneficiaries of the community services (residential centers, day centers) and cash benefits (pensions, transfers for social assistance, disability allowances, etc.). Long-term care is coordinated by the National Council for the Elderly.

Long-term care system should be reformed in Romania, highlighted rigorous and organized so that older people who wish to benefit from such services (and the phenomenon of migration has increased the number of elderly who are in a position to live alone and waiting for the state to intervene). State institutions are not enough and occurred waiting lists, while private centers have established fees that exceed the financial possibilities of the elderly.

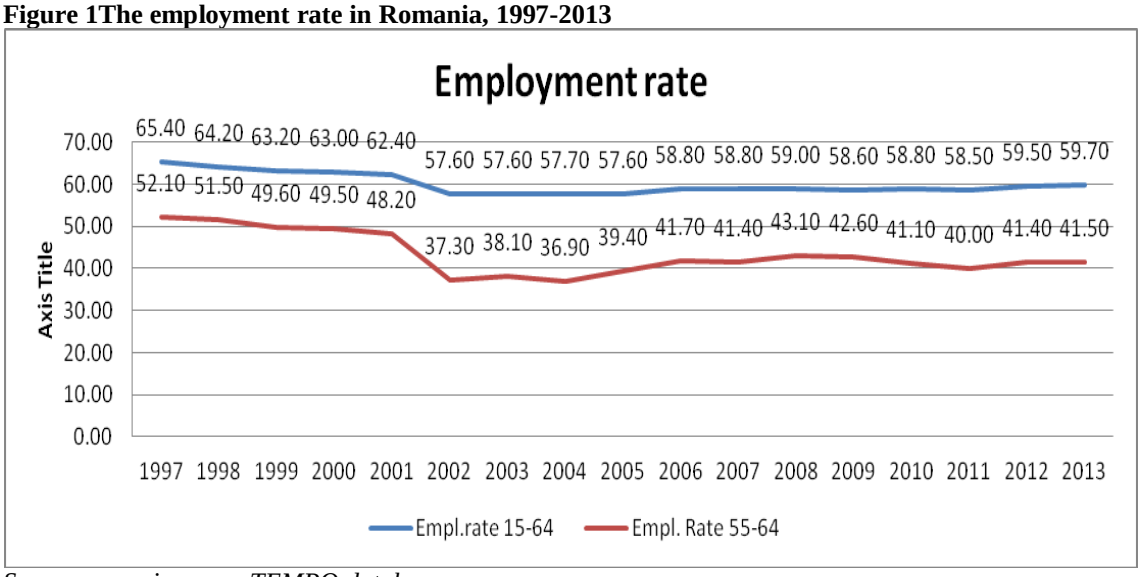
People with disabilities are better organized by state institutions and the information is more accessible, but still remains in the present the discrimination problem.

Long-term care is based mainly on passive aspects such as: medical and financial support and less actively integrate these groups of people in society, their involvement in activities that positively modify the path of life. Moreover, the number of people working in the system is not enough. These issues should be priorities for public decision-makers involved in managing the sector.

The sustainability of long-term care system is closely linked to the sustainability of the pension system and the health system while the forms of support involve beneficiaries of these two components. The phenomenon of population aging on the other hand, adds pressure on long-term care system that will require more financial resources in order to provide LTC's organization (Basil, 2012).

In addition, the analysis adds an interesting perspective, that of comparing the employment rate of the system, given the age category 15-64 years and the employment rates of the 55-64 age category. Thus, it is found that in the analyzed period, in Romania, the employment gap between system and work integration component targeting elderly people is 20 percent. That looks like it is where policymakers must intervene in the future to alleviate the pressure imposed by the aging of the population.

Figure 1The employment rate in Romania, 1997-2013



Source: www.insse.ro, TEMPO database

The increasing ageing population will affect tax revenues of governments and will increase public spending on pensions system, health care and other benefits related to age (Tosun, 2003, Elmeskov, 2004).

The most obvious channel through which demographic pressure will affect the budget balance is public spending. Consumption of public goods is more pronounced for older people, especially in regard to the mechanism of income after retirement and medical care. The health cost increases dramatically with age. Moreover, population aging will relieve the education system, since this category of the population will decrease.

Demographic pressure will affect the public revenue, due to the fact that they will be fewer young people to enter in the labor market, so that the participation rate of the labor force might know a decline. In addition, the system of taxes will be affected by these developments. In addition, it was found that while the government increases taxes to meet the needs of increasingly large in the pension and health system level, will lead to a reduction in fertility rate due to lower disposable income for individuals and families (Hock and Weil, 2012), which would enhance further the phenomenon of aging, which will cause significant changes in the

allocation of public funds. Some authors (Eiras, Niepelt, 2012 Lisenkova et al. 2012) have shown that, due to the phenomenon of aging wich obliges governments to allocate additional resources to the detriment of education or social security investments; there will be a negative impact on the growth.

Table 4 Evolution of BCG social security transfers (% of total public expenditure BCG)

Year	2006	2007	2008	2009	2010	2011	2012	2013
Transfers - social protection	27.43	28.06	28.34	33.13	33.97	33.11	32.25	31.68

Source: Own calculations based on BCG executions 2006-2013 http://www.mfinante.ro/execbug.html?pagina=buletin

In Romania, and not only, the level of the social transfers to the population is very high, which is an additional reason for concern in terms of aging, with direct impact on pension costs and health insurance. Thus, in the period 2006-2013, this budget component increased from 27% in 2006 to around 32% in 2013, so an increase of about 5 PP, calculated as a percentage of total public expenditure, according to the table above.

CONCLUSIONS

In Romania, the evolution of the proportion of the population aged 65 and over increased from 11.8 in 1995 to 16.3 in 2013. In addition, life expectancy at birth has evolved in terms of growth, from 69.46 to 74.69 years, in the same period. These are prerequisites for the concern about the sustainability of public finances of public decision makers and the evolution of fiscal indicators, especially due the fact that the ageing populations will increase from this time in the future.

The necessary actions must be directed towards modernizing the system of LTC, on ensuring sustainability of the pension and the health system and revival of economic growth that can sustain the expected impact of ageing.

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GLOBALIZATION AND THE ENVIRONMENTAL ACCOUNTING – IS KOF RELEVANT?

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Abstract: *There are evidences showing that industrial relocation related to the globalization brought environmental issues especially for the emerging economies. Our paper main objective is to determine the correlation between the globalization and the environmental quality for the specific case of Romania. We choose KOF for describing the globalization as it is the most complete indicator designed for this phenomena assessment.*
Keywords: *globalization, KOF, environment, accounting.*

INTRODUCTION

Considering the fact that theories of economic globalization states that it spreads by industrial relocation (Cordella, Grilo, 1998), and by exploitation of non-renewable natural resources (OECD, 2008), as an effect of the removal of trade barriers or restriction regarding the capital movement (Cordella, Grilo, 1998), mainly pursuing the low cost labor force and in many cases because of the low level of environmental regulations and cost (Baek, Cho, Koo, 2008; Maitra, 2003), we can affirm that the globalization brings harm to the natural environment in developing countries and especially in the developing countries.

In this context, globalization seems to have positive effects in developed countries given the fact that these economies export their highly polluting industries and so they externalize the environmental issues once the transnational corporations move their business (O'Brien, Leichenko, 2000). It is also true that large companies underlying the phenomenon have spread the culture of social and environmental responsibility, thus having potential for its protection or remediation of the damages. However, it is interesting to note that the negative impact is greater than the potential environmental benefits.

It is somehow difficult to ask from a country to give away their welfare and growth gain for a healthier environment, as it is demonstrated that the income growth is detrimental to the environment quality (Gale, Mendez, 1998).

THE APPROACH

Our main objective is to determine the correlation between the globalization and the environmental quality. We choose for describing the globalization and its spreading a composite index – KOF – which in our opinion describes best the phenomena because contains all the aspects of it (economic, social, trade, demographic, etc.). For the environmental quality we

choose the CO2 emissions. The reason for choosing CO2 emissions is that the data is easy to find and easy to compare over time.

The case of Romania is a special one because in the last two decades history in contains all the events and mutation common to the transfer from a centralist economy to an open market, even the common mistakes. It was at first less environmental regulated and so an easy target for highly polluting industries. Another essential cause for the less care for its environment was the low cost labour force and the eagerness for economic development and life standard growth.

It is though unclear if the relocation of some industrial capacities from the western more developed countries brought damage to the natural environment given the fact that many other unfriendly industrial sites closed as a result of the economic reforms. This is why after identifying the part of environmental depreciation explained by the globalization we shall investigate further implications and variables influence upon the environmental quality.

THE MODELLING

The first model describes the single correlation between KOF – as a descriptor of the globalization and independent variable – and CO2 emissions – as a descriptor of the natural environment quality and dependent variable.

Model 1: *OLS, using observations 2000-2011 (T = 12)*
Dependent variable: CO2

	Coefficient	*Std. Error*	*t-ratio*	*p-value*	
Const	72.2097	13.2016	5.4698	0.00027	***
KOF	-0.247058	0.194198	-1.2722	0.23209	

Mean dependent var	55.47917	S.D. dependent var	4.113668
Sum squared resid	160.2145	S.E. of regression	4.002680
R-squared	0.339302	Adjusted R-squared	0.123232
F(1, 10)	1.618480	P-value(F)	0.232090
Log-likelihood	-32.57690	Akaike criterion	69.15381
Schwarz criterion	70.12362	Hannan-Quinn	68.79475
Rho	0.695097	Durbin-Watson	0.599899

As it is, KOF explains only a third of the environmental modification in terms of CO2 emissions.

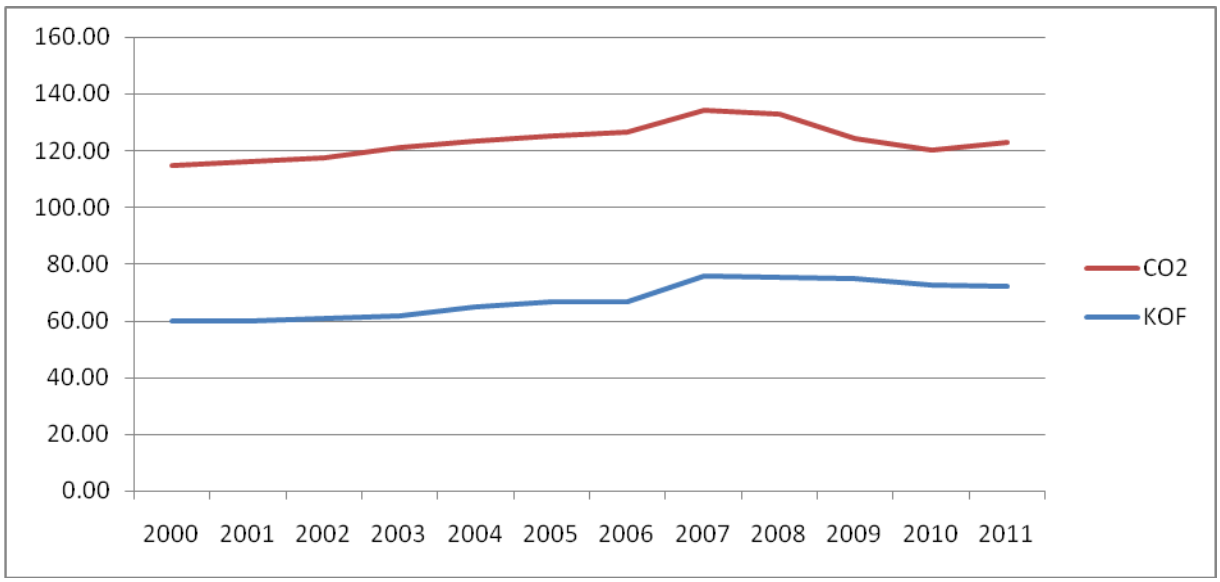

Figure 1 KOF and emissions trend 2000-2011

CONCLUSIONS

Future work will consist in including more variables in trying to explain the complex impact of modernizing the society upon the environmental health. Also we will extend the discussion from one country to a panel of similar countries. This will ensure a more confident results and better explanation of the environmental deterioration phenomena.

It is also our intention to include other elements into discussion and to determine their influence upon the environmental damage produced in the last couple of decades, such us urbanization or industrial restructuration.

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CONTINUING PROFESSIONAL DEVELOPMENT – A PREREQUISITE FOR THE DEVELOPMENT OF AN ORGANISATION IN THE CONTEXT OF THE KNOWLEDGE SOCIETY

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Motto:
Every individual's lifetime is a school from the cradle to the grave.
(Jan Amos Comenius)

Abstract: *The option for a knowledge-based society requires investment in the development of human resources so as to encourage employees to acquire new skills and accept occupational mobility. At the same time, it is important to promote work quality during recruitment and develop learning strategies and continuing professional development ones for the benefit of the many. The work shows the most important results of the analysis conducted on the topic of continuing professional development – as a sine qua non condition for the development of organizations. By using a complex methodology that included various research instruments and by investigating multiple categories of actors, we aimed at a theoretical analysis of thepolicy framework, the means to implement them and the impact categories of continuing professional development in the context of a knowledge-based society. Our approach particularly focuses on the formation experience of employees (public and private institutions) and will be further completed by the perspective of other types of beneficiaries. At the moment, the problem of human resources competitiveness is a main area of intervention on the short term against the background of Romania's efforts to counteract the effects of the world crisis.*
Keywords: *professional development, continuing education, knowledge society, organisation, public and private institutions*
JEL: F63, I25

Acknowledgements: *This work was cofinanced from the European Social Fund through Sectoral Operational Programme Human Resources Development 2007-2013, project number POSDRU/159/1.5/S/134197 „Performance and excellence in doctoral and postdoctoral research in Romanian economics science domain".*

INTRODUCTION

Instruction or professional training is essential for the success of any productivemodern organization, irrespective of the field of activity. It is widely acknowledged by all social actors that school, as main factor responsible for the achievement of systematic and continuing

education, can no longer ensure sufficient training for the individual (both at personal and professional level) during his/ her entire life. Initial training is no longer enough.

We encounter more and more often the idea of continuing professional development, a concept that does not have a tradition in the Romanian society (Neculau A, 2004). However, to tackle it at a conceptual leveland in action is natural for the individual that needs to face the greater and greater challenges of the society of knowledge; this is a societythat grows rapidly, with an unprecedented rhythm of change that needs to be understood; within it, people often face complex situations so they require training, adaptability and decisional ability.

The volume of knowledge acquired by the individual in school is no longer enough for his/ her entire life and s/he needs to acquire new skills and professional, cultural and scientific abilities in agreement with the developments of science and technology, as well as the new social requirements.

In what follows, we will present three of its major features, features that continuing professional development should consider as they led to its emergence:

-the boom of information and technology, the complexity of the phenomena of modern society which require the most varied knowledge and skills. The individual needs to acquire memorizing, assimilation and selection skills.

- Contemporary society is dynamic and under constant innovation. Thus, we speak of a so-called social dynamic that requires adaptability and no reluctance tothe new situations that occur.

- There is the need to train individuals with skills, abilities, cognitive-applicative-practical competencies capable to think, solve problems in a rhythm characterized by efficiency and effectiveness.

Permanent education which includes initial and continuing development has two main components: a general and a professional one which are strongly related between them, with the role of improving the standard of life (Dave, R.H., 1973). Moreover, as an essential condition, self-education (Gr. "autos"–oneself and Lat. "educatio" – self education) mean activity, man's desiretocontinuously develop his/ her personality, creativity and the professional and decisional ability. The desire, skills and self-education skills have to be implemented and developed in school.

Lifelong learning – attribute of the society of knowledge

We often asked ourselves whether we have a social and organisational culture that is appropriate for the implementation/ development of lifelong learning. Probably not, if we consider the fact that Romanians are the EU citizens with the lowest level of lifelong learning based on the study of European Lifelong Learning Indicators, particularly since EU allocated less than 7 billion Euros for it 2007-2013. It is very clear that the approach of lifelong learning (under all its shapes) in the Romanian society is a priority.

Lifelong learning has multiple benefits: psycho-social, educational, moral, etc. According to the legislation, this type of education aims at the development of the person and of the sustainable society to their full extent (Law of National Education no.1/2011, art.329, par.1). In other words, lifelong learning brings benefits not only to the individual, but also to the society as a whole. The idea is not new. Even sincethe antiquity, Aristotle drew attention to the fact that education needs to be one of the main concerns of law makers. In fact, the provisions of the

Memorandum on lifelong learning drafted by the European Commission in October 2000 that continues the initiative of the European Council and Lisbon to implement lifelong learning for all remind us of the need for a significant increase of the level of investment in human resources in view of valuing the most important European resource, namely its people.

Certainly, continuing education needs to consider the dynamic and ever changing interests of the individual, of the community and professional organisation. Each has its profile (needs, resources, addressability) and needs to learn to develop his/ her own potential. Development culture and change management should be adjustable to reach performance. It seems thatin times of change and instability, people are more aware of the need of continuing professional development to face new challenges and contribute to the stability of the workplace and the improvement of professional activity (Gherguț, 2007, p.165). To support our arguments, we will quote Nicolae Iorga who claimed that "an educated man is the one that constantly learns and teaches things to others" and "it is really dangerous to be satisfied with your progress".

We often deal with a clash of values seen as that "way of being or acting that a person or a group acknowledges as ideal and that makes people, groups or behaviours who have it to be considered good or respectable" (G. Ferréol, Jucquois, 2005); this is because we need guidelines, competence and performance to help us become noticed in a globalising world. We should also keep in mind that a respectful system does not only pass on values, but also purports to change attitudes, mindsets, behaviours for a better personal, social and professional life (Neculau, 2004). (Continuing) education is the key to success in this social and organisational competition. This education that interdependently comprises all aspects and dimensions of education, the resulting whole being more than the sum of its parts, that sum of influences exerted on the individual that accepts them and makes the best of them. In fact, a main feature of education is the one that only deals with the positive dimension of learning.

To reach performance in the knowledge-based society also means not to have the ambition to give up, to go further, to overpass limits and have an organisational culture with a vision towards performance and development. To support these desires, continuing development is a reality that cannot be avoided. This is a reality we wish to encounter beyond the rigour of laws, regulations, methodologies which are more or less efficient, in other words, beyond the constraints given by the obligation of doing something. Continuing professional development should be the concern of all those that respect their profession and themselves.

However, we plead for a value selection of the opportunities for continuing development according to the peculiarities of the target group, the employer's needs, the gaps (i.e. improvement and amelioration as purpose for training activities), and availability. At the level of strategies and contents, professional development should have in view the significance and reconsideration of methods, means, ends, the needs of the organisation and individual, contents included. We also speak of a reform at the level of continuing development accordingto social, political, economic, legislative changes and the need of education for all and every individual in part; this encourages suppliers to come with a wide range of options, and motivate the individual for his/ her permanent development.

Organisational culture needs to consider continuing development which may lead to increased professional performance, success and we well know that success makes in individual's level of aspiration (Sălăvăstru, 2004, p.82). The effect will show in personal performances and implicitly in the organisational ones.

Also, investments in human capital are considered as "allies" of the policies needed to ensure sustainable economic growth. They help mitigate the worst consequences of poverty: disease and malnutrition, and provides opportunities for individuals to improve their living conditions (Petrisor, MB, 2014).

Stages of continuing professional development

The internalisation of commerce, the global context of technology and, above all, the knowledge-based society increased the possibilities to gain access to information and knowledge. At the same time, their consequences showed in the change of the way work and required competencies are organized. This tendency led to higher uncertainty for all people and for an intolerable situation of exclusion for some of them.

Professional development is financed from the following sources: employees' personal funds, the budgetof unemployment insurancefor the unemployed, sponsorship, donations, external sources, taxes for people taking part in continuing development programmes.

Companies and other institutions may incur expenses with employees' professional development that are deduced from profit or income tax (Cigu E., 2014, p.87). Participation to professional development may occur at the employer's or employees' initiative. The concrete means of its establishment is agreed by and between the parties when an addendum is signed to the employment agreement.

The employer needs to ensure the participation to professional training programmes for all employees at least every two years if they have at least 21 employees and once every three years if the number is below 21.

In case the participation to courses or professional development is initiated by the employer, all participation expenses are supported by him and the employee will gain seniority in work; all incurred expenses are supported by the employer and the employee willalso be paid the salary.

The employee that benefited from a course/ professional development training whose expenses were incurred by the employer cannot terminate the employment agreement within the definite period stipulated by the addendum. In case the provision is breached, the employee will incur all his/ her costs of professional training corresponding to the period during which s/he has not worked according to his/ her employment agreement. Moreover, the employee that was fired will incur these costs for disciplinary reasons for the period set by addendum.

If the employee has the initiative to take part in professional development training with suspension, the employer will analyse the request along with the union/ the employees' representative and will reply within 15 days, informing the employee on the conditions s/he will incur with the professional training, if necessary. According to the law, the employer is not compelled to agree to the request, yet a refusal with no grounds may be qualified as an abuse that may give the employee the right to claim damages.

CONCLUSIONS

Each company may have its own options with respect to the means of investment in the human resources it has at its disposal in view of their development from a professional viewpoint

within the conditions of the legislative framework. A major influence factor in adapting the company's policy to the field of professional development is its capacity of investment which is directly related to the number of employees, the type of capital invested, the field of activity, human resources management and the personnel's availability and motivation for personal development. To identify the companies' position towards the support of employees in view of their personal development, it is necessary to account for the attention given to the evaluation of the needs for formation, the strategies of development and the prioritiesof continuing professional development of employees.Evaluating the employees'needs of professional development is a must, but this is not enough for their professional development and the increase of company productivity and competitiveness.

Training or instruction that is inadequate and misplaced does not serve anyone, it is neither good for the employer, nor to the organization. The organization decides for the most appropriate approach which, at a certain time, is to employ experienced professionals and not to invest in continuing development. But any decision taken on the strategy of continuing professional development needs to be considered to a maximum extent so that is part of a systematic and planned programmeand not left to chance.

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ON THE RELATIVE SIZE OF DIRECT AND INDIRECT TAX EVASION

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Abstract*: Modifying the standard analytical apparatuses for direct and indirect tax evasion to incorporate forward indirect tax shift in a monopolistically competitive environment, this paper maintains that indirect tax evasion would exceed for sure direct tax evasion only under consumer risk neutrality and a tax policy zeroing the tax shift. Also, in the presence of tax evasion, there cannot be optimal direct-indirect tax mix, because tax evasion is accompanied by uncertainty and hence, nonlinearities in the tax schedules that cannot be dealt with at least practically.*
Keywords*: Direct and indirect tax evasion, Forward indirect tax shift, Consumer risk neutrality*
JEL Classification*: H22, H24, H25, H26*

Direct tax evasion has been a matter of extensive investigation (see e.g. Andreoni, Erard and Feinstein 1998, and Slemrod 2007), but much less so the issue of indirect tax evasion (see e.g. Arias 2005), which explains why to my knowledge, there is only Fedeli's (1998) paper linking the two. She argues that the technical differences between direct and indirect taxation favor size-wise indirect tax evasion. Modifying the standard analytical apparatuses for direct and indirect tax evasion to incorporate forward indirect tax shift, this paper qualifies Fedeli's conclusion by noting that intuitively the presence of such shift weakens firms' and strengthens consumers' incentive to evade taxes.

Assuming identical monopolistically competitive firms, one might contemplate profit maximization with regard to consumption good in general as follows. Let q be the quantity of this good as a function of its price, p, produced under constant marginal cost, c. Let also, φ be the audit probability, α the proportion of sales reported, t the sales tax, ε the proportion of the tax which cannot be shifted forward to consumers, h the tax evasion cost, and μ the penalty in case tax evasion is detected. The expected utility (u) on profit (Π) will then be:

$$\begin{aligned} Eu(\Pi) = (1-\varphi)[pq(p) - cq(p) - \varepsilon t\alpha pq(p) - h(1-\alpha)q(p)]^b \\ + \varphi[pq(p) - cq(p) - \varepsilon t\alpha pq(p) - h(1-\alpha)q(p) \\ - \varepsilon t(1-\alpha)\mu pq(p)]^b \end{aligned}$$

where $b > 0$ captures risk aversion, neutrality, or lovingness depending on whether $b < 1, b = 1,$ or $b > 1$, respectively. Setting $dEu(\Pi)/dq(p) = 0$ and solving for t, one obtains that:

$$\varepsilon = \frac{[(1-\varphi)^{1/b} + \varphi^{1/b}]\{p - [c + h(1-\alpha)]\}}{tp\{\alpha[(1-\varphi)^{1/b} + \varphi^{1/b}] + \varphi^{1/b}\mu(1-\alpha)\}} \qquad (1)$$

This is the optimal value of ε for firms. Setting it equal to one in (1) and solving for t, one obtains the value of t that the policymaker should choose to nullify indirect tax shift to the consumer.

Let, next, the typical consumer's purchasing power, Y, be reduced by an income tax, τY, and by the amount $t(1-\varepsilon)pq(p) = t(1-\varepsilon)(1-\tau)Y$ of the indirect tax shift, given that $Y(1-\tau)$ would be available to spend on q were $\varepsilon = 1$. Firms set presumably ε so that to equalize consumer revenue loss with tax shifts gain. Now, if $x < Y$ is the income reported to the tax authority, ψ the audit probability, and ϑ the fine in case the consumer is caught cheating, the expected utility of the consumer will be:

$$Eu(Y) = (1-\psi)\{Y[1-\tau-t(1-\varepsilon)(1-\tau)] + \tau(Y-x)\}^{\beta} + \psi\{Y[1-\tau-t(1-\varepsilon)(1-\tau)] - \vartheta(Y-x)\}^{\beta}$$

where$\beta > 0$ captures risk aversion, neutrality, or lovingness depending on whether $\beta < 1, \beta = 1,$ or $\beta > 1$, respectively. Setting $dEu(Y)/dY = 0$ and solving for Y, one obtains that:

$$Y = \frac{x\{\tau[(1-\psi)\Gamma]^{1/(\beta-1)} + \vartheta(\psi\Lambda)^{1/(\beta-1)}\}}{\Gamma[(1-\psi)\Gamma]^{1/(\beta-1)} + \Lambda(\psi\Lambda)^{1/(\beta-1)}} \qquad (2)$$

where$\Gamma = [1-t(1-\varepsilon)(1-\tau)]$ and $\Lambda = [\tau+\vartheta+t(1-\varepsilon)(1-\tau)-1]$. In view of (1), (2) suggests that indirect tax evasion, $t\alpha(1-\tau)Y$, affects Y and thereby direct tax evasion, $\tau(Y-x)$, because simply $\varepsilon \neq 1$.

And, it is not clear anymore that $t\alpha(1-\tau)Y > \tau(Y-x) =>$

$$\frac{t\alpha(1-\tau)}{\tau} > \frac{Y-x}{Y} = \frac{[1-\tau-t(1-\varepsilon)(1-\tau)](\psi\Lambda)^{1/(\beta-1)} - (1-\tau)[(1-\psi)\Gamma]^{1/(\beta-1)}}{\vartheta(\psi\Lambda)^{1/(\beta-1)} + \tau[(1-\psi)\Gamma]^{1/(\beta-1)}}.$$

As a matter of fact, it is not clear even if $\varepsilon = 1$, because setting it in the last inequality and utilizing (1), the comparison would be given by the even more cumbersome relationship:

$$\frac{\alpha[(1-\varphi)^{1/b} + \varphi^{1/b}]\{p - [c + h(1-\alpha)]\}}{p\{\alpha[(1-\varphi)^{1/b} + \varphi^{1/b}] + \varphi^{1/b}\mu(1-\alpha)\}} > \frac{\tau\psi^{1/(\beta-1)}(\tau+\vartheta-1)^{1/(\beta-1)} - \tau(1-\psi)^{1/(\beta-1)}}{\vartheta\psi^{1/(\beta-1)}(\tau+\vartheta-1)^{1/(\beta-1)} + \tau(1-\psi)^{1/(\beta-1)}}.$$

What complicates the comparison is the presence of uncertainty. Fedeli's conclusion obtains with certainty only when consumer at least risk neutrality is assumed beyond $\varepsilon = 1$, because the right-hand side of the last inequality is simply zeroed in this case. It turns out that indirect tax evasion would exceed for sure direct tax evasion iff $\varepsilon = 1 and \beta = 1$.

Critical to this discussion has been the assumption about identical monopolistically competitive firms. For a monopoly and a formal or informal cartel known to the authorities, it does not make much sense to be talking about tax evasion, because the audit probability is equal to one, and because it can manipulate ε at will. The same might be said about the audit probability with regard to a few large rival firms, but ε can certainly become under these circumstances a means of rivalry. Although this rivalry does not qualify the zero indirect tax evasion case under such market regimes, it does suggest that it would matter in a monopolistically competitive or dominant firm environment. Indirect tax evasion on the part of the small firms does pay within such an environment of anonymity, because simply $\varphi \neq 1$ for them, and because the indirect tax shift becomes one more instrument through which the monopolistically competitive long-run equilibrium can emerge, or through which a dominant firm might be confronted. Finally, under perfect competition, a $\varphi \neq 1$ is still possible, but the firm that will first abide by the tax law will outperform its competitors, who will respond *ex hypothesi* by imitating it, rendering thereby meaningless a discussion about indirect tax evasion under perfect competition.

To conclude, note that no optimal direct-indirect taxation mix obtains from this discussion. In the presence of tax evasion, there cannot be such optimality, because tax evasion is accompanied by uncertainty and hence, nonlinearities in the tax schedules that cannot be dealt with practically. Boadway et al. (1994) attest to the opposite but only in the presence of income taxation evasion modeled as tax avoidance with costs, and disregarding the possibility of indirect tax evasion. They formalize thus De Marco's (1936) argument that in the face of income tax evasion, indirect taxation should supplement the direct one, because: "income which escapes, in whole or in part, direct valuation at the moment of its production is watched for and seized in the successive moments in which its possessor spends it" (p.131). But, "if indirect taxation is joined to direct taxation, with unethical agents, the equivalence in terms of government's revenues does not hold" (Fedeli 1998, p.385), because if not anything else of practical considerations.

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DEBT SUSTAINABILITY OF INDIA

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Abstract:*Poorly structured debthas been important cause of indulging economic crisis in several emerging economy. In the case of India, less attention has been paid to the level, cost and structure of India's overall public debt, both domestic and external. The present paper tries to analyse the trend and composition of India's debt situation at Central and state level. It makes an evolution of India's efforts towards achieving debt sustainability. It also tries to examine the debt sustainability through the theoretical debt sustainability criteria. Towards the end, the final section concludes.India's current public debt level can be termed sustainable. India's public debt remains sustainable given manageable interest rate cost and economic growth. The share of India's external debt is small; nearly all of the government debt is in fixed interest rate loans. Predominance of internal debt in India's total public sector debt has been a major factor in containing India's vulnerability to development. However, to the extent that internal borrowings by the public sector crowd out private sector domestic borrowings, the country's vulnerability to external developments may grow as the private sector's external debt increases.*
Keywords:*public debt, fiscal sustainability, fiscal deficit*

I. INTRODUCTION

Public debt has been one of the major causes of financial crises in several emerging markets. Poorly structured debt in terms of maturity, currency or interest rate composition and large and unfunded contingent liabilities have been important factors in indulging economic crisis in many countries. In the macroeconomic context government should seek to ensure that both the level and rate of growth in their public debt is fundamentally sustainable. In the case of India, less attention has been paid to the level, cost and structure of India's overall public debt, both domestic and external. India's traditional concerns have been with fiscal deficits (both Centre and state) and with the size and maturity of the country's external debt. In India fiscal sustainability got importance during the late 80s, with sharp fiscal deterioration both at national as well as sub-national levels. India's government debt grew first with the 1991 fiscal-balance of payments crisis, and then again after 1997-98, when fiscal deficits became 10 per cent of GDP range. To make the economic growth sustainable with macroeconomic stability, reducing public debt is a critical component. When the government borrows to finance a looser fiscal position, the greater demand for loanable funds can reduce private investment (and other interest-sensitive components of private spending) by raising interest rates. Under a floating exchange rate, higher interest rates will also tend to attract foreign capital, leading to an appreciation of the exchange rate, which will also crowd out exports.

Government of India enacted Fiscal Responsibility and Budget Management (FRBM) Act in 2003 Central on the presumption that fiscal imbalance is the key parameter adversely affecting all other macroeconomic variable. It aims at reducing debt to GDP ratio. Apart from

FRBM Act time to time the Government of India has taken fiscal initiatives to inculcate fiscal discipline or to achieve debt sustainability.

Considering the importance of debt sustainability it is essential to analyze the debt sustainability of India. The present paper consists of six sections, including the introduction. Section II makes an attempt to do an evolution of India's attempt to control public debt. Section III analyses the major trend of central and state government debt indicators Section IV explains the theoretical debt sustainability criteria. Section V makes an attempt to examine the debt sustainability of public debt at central and state level through the theoretical criteria. Section VI Towards the end, the final section concludes.

II. EVOLUTION OF INDIA'S ATTEMPT TO CONTROL PUBLIC DEBT

In India debt sustainability is not a new concept. For more than fifty years since the inception of the constitution, government debt and borrowing programmes for the central as well as the state governments in India were managed without any explicit targets or rules except for the constitutional provisions under articles 292 and 293. Apart from this the governments of India time to time have taken different fiscal incentives to inculcate fiscal discipline

Constitutional Provisions on Public Debt:

Dr. Ambedkar highlighted the importance of Parliamentary Legislation to control borrowing in Constituent Assembly debates on articles 292 and 293. He referred to the need for an "Annual Debt Act". Article 292 of the constitution of India contemplates limiting government borrowing through a parliament law. It mandates "borrowing by government of India the executive power of the union extends to borrowing upon the security of the consolidated fund of India within such limits. Under Article 266 any disbursement from the consolidated fund of India mandatorily requires parliamentary approval. Similarly article 293 provides that the legislation of a state can fix limits on borrowing by a state as well as limits on guarantee given by it.

Article 292 and 293 of the constitution covers only the Public Debt. This is forming part of consolidated fund of India, as this alone can be deemed to be "borrowing upon the consolidated fund of India". Other liabilities forming part of the Public Account such as post office saving deposits, deposits under small saving certificates and provident funds are not recorded as "borrowing upon the security of consolidated fund of India" (IMF, 2001). Constitutional provision on public debt is sufficient enough to control total liabilities of the government.

RBI Attempts towards Controlling Borrowing: During the 1980s, the volume of debt expanded considerably, particularly of short-term debt, due to the RBI's automatic accommodation of the central government, through issuing ad-hoc treasury bills. In September 1994 an agreement (without legislated sanction) was signed between the central government and the RBI to phase out the system of ad-hoc treasury bills by 1997- 98. Adhoc treasury bills facilitated automatic monetization of the budget deficit. This adhoc treasury bill was replaced with Ways and Means Advances.

Medium Term Fiscal Reform Programs (MTFRPs)

In 2000-01 the finance ministry issued guide lines to state for Medium Term Fiscal Reform Programs (MTFRPs). The MTFRP had dual aim of reducing wasteful expenditure (cutting low priority spending) and improving tax collection or improving the efficiency of the tax administration. The MTFRPs required the state to make time bound reform in four areas like, fiscal, power and public sector and budgetary. The main objective of MTFRPs were to bring the consolidated fiscal deficit to sustainable levels by 2005 and to bring down debt-GDP ratio as well as interest payment to revenue expenditure rate over the medium term.

There were certain reasons, why MTFRPS could not achieve its target. There was a design failure in prescribing a uniform 5 per cent improvement in the ratio for all state. If state start off with larger base year deficits, it was relatively easier for them to make huge improvements. In the initial years MTFRPs target were set in terms of revenue deficit as a per cent of total revenues of state and when transfer to state declined, the ratio went up. The single monitor able factor was needed to be removed. The definition of revenue deficit was not uniform for all state. The size of fund, which was promised to be given to a state, as an incentive for achieving targeted reduction in fiscal deficit was insignificant, so could not give sufficient incentive to state to restore fiscal balance (Rao and Jena, 2005). The Twelfth Finance Commission (TFC) and Thirteenth Finance Commission recognized this problem and it recommended for linking the debt write off to improvement in revenue deficit. It has a lot merit as there is a direct link to absolute in the revenue deficit. The debt relief will be available, only if state enacts appropriate legislations to bring down the revenue deficit to zero and commit to reducing the fiscal deficit in a phased manner. MTFRPs was an important development in managing state finances, as the state started thinking about fiscal matters on a medium term frame work.

Fiscal Responsibility and Budget Management Act

In 2003 the central government of India enacted FRBM Acton the argument that fiscal consolidation is an essential condition for accelerating growth and to have macro-economic stability.In terms of Fiscal Responsibility and Budget Management (FRBM) Act centre's fiscal deficit was required to be reduced to 3 per cent of GDP and revenue deficit to be eliminated by 2008-09. Under borrowing related principles, government borrowing from Reserve bank has been prohibited. It may borrow from it by Way and Means of Advances (WMA) to meet temporary excess cash disbursement over cash receipts. Under the debt related principles, a limit on debt stock has been prescribed. In India, the FRBM Act sets a limit of 50 per cent of GDP on total liabilities of the central government. The central government shall not give guarantees to an amount exceeding 0.5 per cent of GDP in any financial year, beginning with financial year 2004-05. The central government should not assume additional liabilities (excluding external debt at current exchange rate) in excess of 9 per cent of GDP for the financial year 2004-05 and in each subsequent year, the limit of 9 per cent of GDP has to be progressively reduced by at least one per cent of GDP. The FRBM Act is operationally effective because it seeks year to year ceiling rather than a medium term ceiling.

A major objective of fiscal policy rule is to reduce public debt and stabilize it at a prudent level. Borrowing may need to be constrained because of longer-term debt sustainability concerns. A fiscal rule that establishes a medium term limit on the gross debt-GDP ratio can

provide a broad gauge of fiscal decency, whereas a rule that seeks to set year to year debt ceilings is unlikely to be credible or operationally effective. Since measures of public indebtedness (especially as a proportion of GDP) are usually exposed to valuation changes and other factors beyond the control of the authorities, they are difficult to treat as an annual operational target. It is difficult to calculate true extent of the states' debt burden as states engaged in off-budget activity. The level of outstanding guarantees grew by over 40 percent between 1993 and 2000, outstripping the growth in official state level debt. Fiscal activities are also conducted off-budget through various State-owned Financial Corporations (SFCs) and utilities with adverse consequences for their financial health. These off-budget sources of fiscal activity are contingent liabilities that could result in future claims on states' budgets. There is a need to go beyond the budget in setting FPR targets. There is a need to incorporate off-budget borrowing and the power sector deficit. Some states now incur more capital expenditure financed by off-budget borrowing than they do on the budget. Since there is an extensive use of off-budget borrowing at the state level, any FPR which did not tackle this issue would be creating a huge loophole for the states to walk through. The definition of liabilities needed to include not only the total liabilities under the Consolidated Fund of the state but also all the items under the Public Account of the state.

Central Government initiatives to ease the debt burden of States

Debt Swap Scheme (2003–05) Government of India (GOI) formulated a Debt Swap Scheme realising the mounting burden of interest payments on the states, and to supplement their efforts towards fiscal management The scheme capitalized on the current low interest regime, to enable states to prepay expensive loans contracted from GOI, with low coupon bearing small savings an open market loans. The scheme covered outstanding high cost loans with interest rate of 13 per cent and above. These additional recoveries enabled the centre to repay some of its high cost debt to NSSF. The central government used the proceeds of debt swap to effect prepayment of its debt to the National Small Saving Fund (NSSF) at lower interest rate. This had the effect of bringing down centre's overall debt as well as its effective interest rate

The debt-swap scheme was only a small step in the direction of dealing with the unsustainable deficit faced by the States. It covered only 15 per cent of their total debt. Here, again, the scheme merely aimed at reducing the cost of servicing the debt, and not extinguishing it. Though there was a benefits of Debt-Swap Scheme in terms of reducing pressure on the state by way of lower interest rate but it lead to loss of revenue for centre as the high cost loan were brought to lower level (Government of India, 2005).

Debt Consolidation and Relief Facility enacted under various finance commission. Which allowed central government loans to be rescheduled at a reduced rate of interest of 7.5% and debt to be waived (subject to enactment of fiscal Responsibility legislation and adherence to revenue deficit reduction targets); and reduction of the interest rate on securities issued to the National Small Savings Fund (NSSF) during 2000–02, which carried interest rates of 10.5%–13.5%, effective from FY2008. Further, in accordance with the National Development Council's decision, the states' obligatory share in the NSSF has been reduced from 100% to 80% from 2008.

No doubt FRBM Act is an important development in managing Centre and States finances. Recently after the implementation of FRBM Act Central Government major fiscal

deficit indicators showing a declining trend. The impact of FRBM Act on debt can be checked by looking in to the trend and composition of debt indicators before and after the FRBM Act.

III.1 Central Government Debt Indicators before the Implementation of Fiscal Responsibility and Budget Management Act

The debt–to-GDP ratio of the central Governments in India has been on upward trends since the early 19970s. The rise has been particularly pronounced during the 1980s. The magnitude of debt to GDP ratio has also increased over the periods (Lahiri and Kanan, 2002). The total outstanding liabilities show an increasing trend from 55.22 per cent of GDP in 1990-91 to 63.33 per cent of GDP in 2004-05. The composition of central government debt reveals that the debt is mostly internal in nature. The proportion of government financed externally is small. While, internal liabilities showed an increasing trend during 1990-91 to 2004-05, the external liabilities showed a declining trend. In India consequently, there was an accumulation of a huge stock of debt. The growing size of liabilities eventually generated a considerable debt-service burden and rising interest payments.

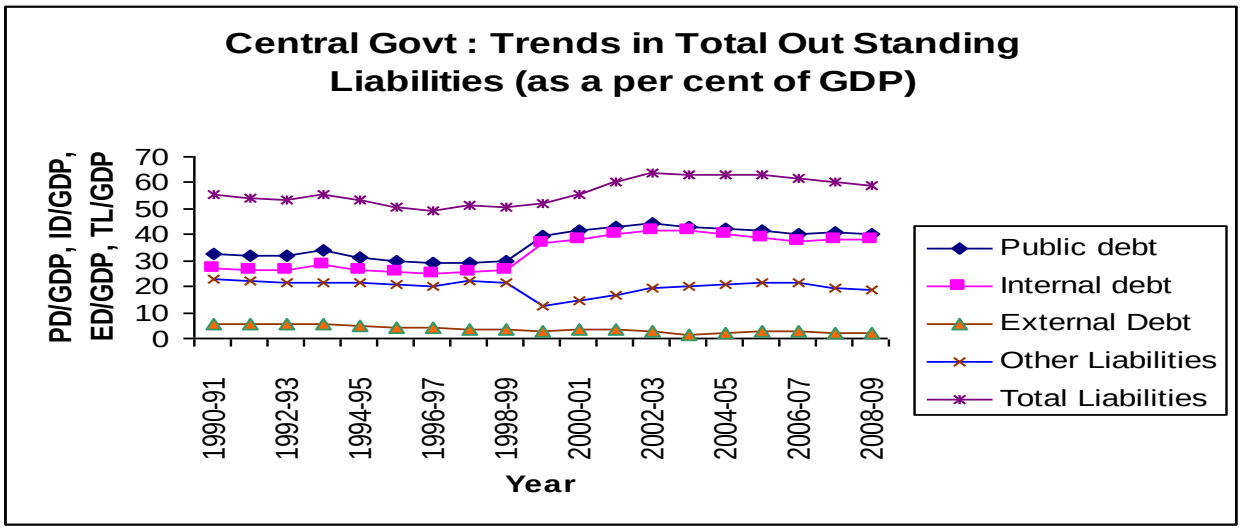
Table 1 Central Government major debt indicators (as a per cent of GDP)

Year	Public debt	Internal debt	External Debt	Other Liabilities	Total Liabilities
1990-91	32.57	27.04	5.53	22.65	55.22
1991-92	32.03	26.38	5.64	22.14	54.17
1992-93	32.07	26.46	5.62	21.33	53.41
1993-94	33.85	28.38	5.47	21.36	55.21
1994-95	31.25	26.23	5.01	21.78	53.03
1995-96	30.13	25.83	4.30	20.73	50.87
1996-97	28.92	24.99	3.93	20.09	49.01
1997-98	29.10	25.47	3.62	21.87	50.96
1998-99	29.52	26.25	3.27	21.41	50.93
1999-00	39.58	36.59	2.99	12.72	52.31
2000-01	41.37	38.23	3.14	14.22	55.58
2001-02	43.20	40.06	3.14	16.75	59.96
2002-03	44.01	41.58	2.43	19.51	63.52
2003-04	43.12	41.45	1.67	19.92	63.05
2004-05	42.45	40.51	1.93	20.88	63.33
2005-06	41.37	38.75	2.63	21.64	63.01
2006-07	39.90	37.42	2.49	21.58	61.48
2007-08	40.66	38.29	2.37	19.41	60.07
2008-09	40.14	37.85	2.29	18.79	58.93

*Source: RBI Hand book of Statistics on Indian Economy (2009) *GDP means GDP at market price.*

*Here Total liabilities comprising (i) public debt (ii) other liabilities, Public debt comprising External debt and internal liabilities debt, other liabilities include (i) National Small Saving Funds (ii) State Provident Fund (iii) Other accounts such as special deposits (iv)Reserve funds.

Chart 1 Central Government: Trends in Total outstanding Debt to GDP (as a per cent of GDP)



Central Government Debt Indicators after the Implementation of Fiscal Responsibility and Budget Management Act

The outstanding liabilities of the central government, after reaching 63.33 per cent of GDP in 2004-05, started declining consistently. This was because of the growth of nominal GDP remaining higher than interest rate. This decline occurred even though a new component had been added to internal debt in 2004-05, which is not reflected in the fiscal deficit. The Government of India introduced the Market Stabilization Scheme (MSS) in consultation with the RBI in April 2004. Under the scheme, the Government of India raises money through the issue of dated securities/treasury bills to absorb excess liquidity in the market on account of foreign inflows. The amount so raised was to be kept in a separate account with the RBI and was not meant to meet the expenditure needs of the government. Despite a sharp increase in the fiscal deficit in the years 2008-09 and 2009-10, a marginal decline in the ratio of outstanding debt to GDP is projected even in these two years. Among the components of outstanding debt, there is an increase in the share of internal debt. Because of the developments unfolding since the global crisis, the centre increased its net market borrowings sharply, from Rs. 1, 31,768 crore in 2007-08 to Rs. 2, 61,972 crore in 2008-09 and further to Rs. 3, 97,957 crore in the budget estimates for 2009-10. Following the global downturn, the Memorandum of Understanding (MoU) signed with the RBI was amended in February 2009 to allow a part of the amount in the MSS account to be transferred to the Consolidated Fund of India as part of the government's normal market borrowing programme. Following this, an amount of Rs. 12,000 crore was transferred from the MSS account to the Consolidated Fund of the centre in March 2009.

III.2 Aggregate States' Outstanding liabilities before the implementation of Fiscal Responsibility Laws

The structural weaknesses of the state finances manifested in large and persistent RD resulting in high GFD and large accumulation of debt and a concomitant increase in debt service

burden. Between 1991 and 2004, the consolidated debt-GDP ratio of states increased by 10.7 per cent to 33.2 per cent. Outstanding debt of the states comprises internal debt (mainly market borrowings, special securities issued to NSSF loans from banks and financial institutions, and WMA and OD from the Reserve Bank), loans from the centre, public accounts liabilities (including small savings, state provident funds, reserve funds and deposits and advances), and contingency fund.

The composition of outstanding liabilities of the state governments shows a sharp decline in the share of loans from the Centre with an upsurge in the share of loans from NSSF, market borrowings and loans from banks and other financial institutions. Loans from NSSF will remain the dominant component (31.2 per cent) of outstanding liabilities during 2008-09 (BE), though its share has come down since 2007. This will be followed by market borrowing at 25.0 per cent in 2008-09 (BE), which stood at 19.3 per cent in 2006-07 (Accounts).On the other hand, loans from the centre, which formed 57.4 per cent of outstanding debt in 1991 declined substantially and are budgeted to contribute only 10.8 per cent during 2008-09 (BE). The share of public accounts in total liabilities has remained in the range of 25- 30 per cent.

Table 4 Outstanding Liabilities of States' Government (as per cent of GDP)

Year	Total Liabilities	Total Internal Debt	Loan and Advances from Centre
1990-91	22.50	3.38	12.91
1991-92	22.46	3.55	12.67
1992-93	22.37	3.57	12.17
1993-94	21.71	3.57	11.68
1994-95	21.37	3.53	11.34
1995-96	21.05	3.68	10.85
1996-97	20.90	3.72	10.60
1997-98	21.86	3.88	11.04
1998-99	23.03	4.41	11.36
1999-00	26.43	6.47	11.80
2000-01	28.26	8.64	11.35
2001-02	30.31	10.93	10.95
2002-03	32.04	13.60	10.15
2003-04	33.16	17.31	7.01
2004-05	32.68	18.89	5.08
2005-06	32.56	19.48	4.38
2006-07	30.29	18.41	3.57
2007-08	28.31	17.69	3.19
2008-09	27.27	17.36	2.96

Source: Hand book of Statistics on Indian Economy, RBI, (various Issues), RBI States finances: A Study of Budget, (various Issues)

Table 5Composition of Outstanding Liabilities of State Governments

	1991	2000	2005	2006	2007	2008(RE)	2009(BE)
Total Liabilities (1 to 4)	100	100	100	100	100	100	100
1. Internal Debt	15	24.8	57.8	59.8	61.1	62.5	63.7

(i) market Loans	12.2	14.8	20.7	19.6	19.3	22.4	25
(ii) Special Securities issued by NSSF		5	27.4	31.3	33.8	32.3	31.2
(iii) Loans from Banks and FIs	2	3.4	6.6	6.2	5.8	6	6
2.Loan and Advances from Centre	57.4	45.2	15.6	13.4	11.7	11.3	10.8
3. Public Account(I to iii)	26.8	29.9	26.6	26.6	27.2	16.2	25.4
(i) Small Savings States, PF	13.2	15.8	14.2	13.8	13.6	13.8	13.5
(ii) Reserve Funds	3.7	3.9	5.1	5.4	5.6	4.6	4.3
(iii) Deposits and Advances	10	10.2	7.3	7.4	7.9	7.8	7.5
4. Contingency Fund	0.8	0.3	0.1	0.1	0.1	0.1	0.1

Source: States finances: Study of Budget, RBI, 2008-09

Aggregate States' Outstanding liabilities after the implementation of Fiscal Responsibility Laws

The Twelfth Finance Commission recommended a target of 30.8 per cent for debt-GDP ratio and 15.0 per cent for IP/RR ratio to be achieved by 2009-10. The debt relief mechanism prescribed by the TFC, incentives by adherence to rule-based fiscal regime helped to contain the magnitude of outstanding liabilities. From the peak level of 33.2 per cent at end-March 2004, the debt- GDP ratio of state governments came down to 28.3 per cent in 2007-08 (RE) and is budgeted at 27.4 per cent in 2008-09(BE).

With restrictions on borrowings by the States, the State Governments have taken recourse to off-budget borrowings, which are in the nature of contingent liabilities, which include guarantees, indemnities, etc. Although contingent liabilities do not form a part of the debt burden of the States, in the event of default by the borrowing agency, the States will be required to meet the debt service obligations. The outstanding guarantees of State Governments have shown a rising trend during the Nineties. The conventional accounting system of government finances followed in the preparation of the budgets which does not consider guarantees/contingent liabilities as debt obligations of the State Government. Since government's off-budget liabilities could pose potential threats to fiscal and financial stability of the system, adoption of appropriate accounting practices to gauge the government's true net worth is crucial

IV. THEORETICAL APPROACH ON DEBT SUSTAINABILITY CRITERIA

Debt sustainability has been assessed in terms of indicators analysis. Traditionally effort has been directed towards developing indicators to measure sustainability

Domar (1944), explained that a continuous government borrowing results in an ever rising public debt, the servicing of which will require higher and higher taxes. This would eventually destroy the whole economy and result in outright repudiation of the debt (sovereign default). A constant overall deficit to GDP ratio ensures convergence of both the debt to GDP ratio and the interest to GDP ratio to finite values. Consequently also taxes needed to service interest payments converge to a finite value as a share of GDP. Domar assumed that the indebt ness degree needs to converge to a finite value, in order to avoid further increasing of the tax

burden. Primary deficit can sustain as long as the real growth of the economy remains higher than the real interest rate.

Buiter (1985) in his paper, "A guide to public sector debts and deficits defined a sustainable fiscal policy should maintain the ratio of public sector net worth to output at its current level.

Blanchard (1990) explained two conditions for sustainability first, the ratio of debt to Gross National Product (GNP) should eventually converge back to its initial level and secondly, present discounted value of the ratio of primary surplus to Gross National Product should be equal to current level of debt to GNP.

Blanchard et al. (1990) explained debt level to be sustainable if a country's debt to GDP ratio remains stable and if the economy generates debt stabilizing primary balance to cover that debt in future.

Chouraqui, Hagemann and Sartor (1990) explained that fiscal policy is sustainable when public debt does not explode and governments are not forced to increase taxes, decrease spending, monetize fiscal deficit or repudiate public debt. They policy as one capable of keeping the ratio of public sector net worth to output at its current level. They imposed the restriction that the present value of future primary surpluses must equal the current level of public debt. They considered that at time t, government has to borrow money to finance the primary deficit (the difference between primary expenditures, and government revenues), interest payment related to previous year, and public debt from previous year. If the government runs a primary deficit, the stock of debt will grow at a rate exceeding the interest rate and, if the government runs a primary surplus, the stock of debt will grow more slowly than the interest rate.

Subsequent restatements in terms of infinite horizon constraint on the present discounted value (PDV) of debt have not changed the fundamental Domar condition for stabilization of debt as a ratio to GDP (Rajaraman et al. 2005; Rakshit 2005; Rath 2005).

According to the Domar's model for solvency of public debt,

$$D0 = -\Sigma PDt/(1+r)t \quad (1)$$

Here, $D0$ = Present stock of outstanding debt
PDt = Primary deficit for the time period t
r = interest rate on public debt
The above equation implies that for solvency, present outstanding stock of public debt must be equal to the summation of discounted primary surplus of future years expressed in terms of present value.
Primary deficit incurred in a particular year can be expressed as,

$$PDt = Dt - (1 + r)\ Dt{-}1 \quad (2)$$

To examine sustainability, the equation (2) can be expressed as

$$Dt = (1 + r)\ Dt{-}1 + PDt \quad (3)$$

Dividing both sides by Yt

$$Dt\ /Yt = [\ (1+r) / Yt]\ Dt\ -1 + (PDt/\ Yt) \quad (4)$$

$$(D/Y)t = (1+r/\ 1+g)\ (D/Y)t\text{-}1 + (PD/\ Y\ )t \quad (5)$$

Writing dt = D/Y as the debt-GSDP ratio and Pdt = PD / Y

$$dt = (1+r/\ 1+g)\ dt + pdt \quad (6)$$

Here, pdt can be assumed as pd as the ratio of primary deficit to GSDP is targeted to a constant value (Rath, 2005). Now, equation (6) can be rewritten as:

$$dt = (1+r/\ 1+g)\ dt + pd \qquad (7)$$

Equation (7) is a first order difference equation. On solving the equation, it is found,

$$dt = [d0 - (1+g/\ g-r)\ pd]\ (1+r/\ 1+g) + (1+g/\ g-r)\ pd \quad (8)$$

dt tends to(1+g /g-r) pd if and only if [(1+r)/(1+g)]t tends to zero as t tends to infinity
This is possible if

$$0 < [(1+r) / (1+g) < 1$$
$$(1+r) < (1+g)$$
$$r < g$$

Interest rate on public debt must be less than the annual growth rate of GSDP. Domar model concludes that for sustainability of public debt, the following condition must be satisfied, i.e., growth rate of public debt (k) ≤ interest rate on public debt (r) < growth rate of GSDP (g) when an economy is running by the accumulation of primary deficit. It is also necessary to determine the conditions for sustainability of public debt when the rate of interest on public debt is greater than the growth rate of GSDP. For doing this, equation (6) can also be expressed as:

$$dt = (r - g)-1 + pdt \qquad (9)$$

From the above equation, it is evident that when r >g, for the sustainability of public debt, i.e., to keep dt= dt-1 or for achieving a stable constant debt-GSDP ratio for the future, there must be targeted primary surplus to GSDP ratio. This can be derived in the following manner:
dt=(1+r/1+g)d t-1 + pdt if there is primary surplus
ps = (1+r/1+g)d-d in static sense

$$ps = (r-g/\ 1+g)\ d \qquad (10)$$

Therefore, when r > g, for an economy to achieve debt sustainability, the following conditions must be satisfied

$$ps = (r-g\ /1+g)\ debt\ /GSDP \qquad (11)$$

From equation (11), it is possible to determine amount of primary surplus required when r > g. It is also necessary to determine the amount of fiscal deficit for debt sustainability. The sustainability condition can also be derived from the concept of fiscal deficit (Rajaraman et al. 2005). Fiscal deficit is nothing but total net borrowings of the government as given in equation (12) as produced below:

$$(FiscalDeficit)t=Dt-Dt-1 \qquad (12)$$
$$Dt=Dt-1+(FD) \qquad (13)$$

Diving both side by Yt

$$Dt/Yt=Dt-1/Yt+(FD)t/Yt \qquad (14)$$
$$Dt/Yt=Dt-1/[(1+g)Yt-1\ ]+(FD)t/Yt \qquad (15)$$
$$D/Y=D/\ (1+g)=FD/Y,instaticsense \qquad (16)$$
$$D/Y[1-(1/1+g)]=D/Y(g/1+g)=d,wherefd=FD/GSDP \qquad (17)$$

It implies that for debt sustainability,

$$Debt/GSDP=[1+g)/g](FiscalDeficit/GSDP) \qquad (18)$$

The above equation gives the relationship between the fiscal deficit and debt-GSDP ratio. It tells about the amount of fiscal deficit an economy can incur with a given growth rate.

The review clarified the conceptual framework for fiscal policy and public debt sustainability. In general terms, public debt can be regarded as sustainable when the primary balance needed to at least stabilize debt under both the baseline and realistic shock scenarios is economically and politically feasible, such that the level of debt is consistent with an acceptably low rollover risk and with preserving potential growth at a satisfactory level. Conversely, if no realistic adjustment in the primary balance i.e., one that is both economically and politically feasible can bring debt to below such a level, public debt would be considered unsustainable. The higher the level of public debt, the more likely it is that fiscal policy and public debt are unsustainable. This is because other things equal a higher debt requires a higher primary surplus to sustain it. Moreover, higher debt is usually associated with lower growth and higher interest rates, thus requiring an even higher primary balance to service it.

V. DEBT SUSTAINABILITY AT CENTRE

The Domar stability condition has been defined as:

$$Y-r > 0 \quad (1)$$

$$r = (IP)\ t/\ (OD)\ t-1 \quad (2)$$

Where,

Y= Trend growth rate of GDP at current Market price

r = Average Interest Rate

IP= Interest Payment

OD = Outstanding Debt

t = Time Period

Equation (1) and (2) imply that the debt/GDP ratio (d/y) is stable if the nominal GDP growth (g) exceeds the nominal interest rate (r) on government debt. According to the Domar stability condition, larger the gap between the interest rate and growth rate the higher will be the d/y. Thus, to stabilize debt/GDP ratio (d/y), rate of interest should be lower than the output growth ($r<g$).

If the real growth rate of the economy exceeds the average real interest rate paid on government debt, the effect is to lower the ratio of debt to GDP, for a given level of the primary deficit.

In this study the Domar stability condition has been tested in respect to market related borrowings rates and administered interest rates for the centre.

Here, Debt refers to Internal Total Outstanding Liabilities including Internal and external liabilities.

GDP means GDP at current market price.

R(C) =average interest rate

R (ML) C = weighted average of market borrowing rate.

Table 2 Debt Sustainability of Central Government Internal Debt

Year	GDPGR	R	w (R)	OLGR	GPD/ GDP	NPD/ GDP	(PRBIP)/ GDP	IP/ GDP	IP/RE	IP/RR
1981-82	17.50	6.59	7.29	15.29	3.20	2.11	-0.04	1.87	20.74	21.27
1982-83	11.86	7.05	8.36	27.45	3.50	2.56	-0.03	2.06	21.01	22.59
1983-84	16.45	6.74	9.29	12.57	3.70	2.54	-0.03	2.16	21.55	24.33

1984-85	12.04	7.45	9.98	20.79	4.59	3.59	-0.03	2.40	21.57	25.46
1985-86	12.86	7.76	11.08	23.27	5.10	3.78	-0.03	2.67	22.14	26.80
1986-87	11.90	7.75	11.38	22.56	5.43	4.17	-0.03	2.94	22.63	27.95
1987-88	13.67	7.69	11.25	17.84	4.41	3.61	-0.04	3.14	24.37	30.38
1988-89	18.63	8.28	11.40	18.39	3.92	3.17	-0.04	3.36	26.39	32.75
1989-90	14.88	8.70	11.49	17.56	3.67	2.96	-0.05	3.64	27.65	33.95
1990-91	16.80	8.96	11.41	18.00	4.06	3.15	-0.04	3.77	29.24	39.12
1991-92	14.94	9.40	11.78	12.25	1.49	1.37	-0.06	4.06	32.32	40.28
1992-93	14.95	9.78	12.46	13.20	1.21	1.55	-0.06	4.13	33.52	41.92
1993-94	15.04	10.22	12.63	19.73	2.72	2.81	-0.05	4.24	33.97	48.69
1994-95	17.32	10.23	11.90	13.25	1.34	1.19	-0.06	4.34	36.08	48.37
1995-96	17.33	10.26	13.75	13.80	0.86	0.91	-0.06	4.20	35.78	45.44
1996-97	15.67	10.72	13.69	11.97	0.53	0.65	-0.06	4.31	37.42	47.10
1997-98	10.77	10.56	12.01	16.34	1.53	1.49	-0.06	4.30	36.40	49.02
1998-99	14.67	10.77	11.86	15.44	2.03	1.84	-0.05	4.45	35.98	52.10
1999-00	11.47	10.81	11.77	15.34	0.74	1.72	-0.06	4.62	36.23	49.73
2000-01	7.70	10.32	10.95	14.54	0.93	1.97	-0.05	4.72	35.75	51.56
2001-02	8.40	9.75	9.44	17.44	1.47	2.24	-0.05	4.72	35.65	53.38
2002-03	7.71	9.10	7.34	15.81	1.11	2.19	-0.05	4.80	34.78	51.03
2003-04	12.22	8.27	5.71	12.73	-0.03	1.09	-0.05	4.50	34.27	47.04
2004-05	17.70	7.51	6.11	14.37	-0.04	0.98	-0.05	3.92	33.03	41.48
2005-06	13.89	6.86	7.34	12.02	0.37	0.95	-0.05	3.59	30.19	38.21
2006-07	16.28	6.94	7.89	12.46	-0.18	0.55	-0.05	3.50	29.20	34.59
2007-08	16.13	7.02	8.12	11.89	-0.88	-0.59	-0.06	3.43	28.77	31.56
2008-09	11.96	7.05	7.69	11.40	2.59	2.82	-0.02	3.44	24.213	35.57

Source: Hand book of Statistics on Indian Economy, RBI (2009)

The movements in the average interest rates vis- a-vis nominal GDP growth reflect that the Domar stability condition has not been fulfilled for many of the years since 1980s. This is because sizable proportion of domestic debt has been contracted at administered interest at higher level. In recent year, however the rates on market related borrowing have come down and are lower than the nominal GDP growth rate. This development confirms weak sustainability.

1. According to the Domar stability condition rate of growth of GDP (Y) should be more than rate of growth of (R) [Y-R > 0]

Y= Trend growth rate of GDP at current Market price
R = Average Interest Rate
IP= Interest Payment
OD = Outstanding Debt (here Internal Debt has been consider for the study)
t = Time Period
Here R= (IP) t/ (OD) t-1

In the years 2000-01, 2001-02 and 2002-03, Y-R<0 so debt sustainability condition is not satisfied

The debt-GDP ratio will rise continuously for positive values of the primary deficit relative to GDP, if the growth rate is equal to or less than the interest rate.

2. Growth of GDP (Y) should be more than rate of growth of interest rate on government dated securities W(R) [Y-W(R) > 0].

W(R) = weighted average interest rate on central government dated securities
In the years 2000-01, 2001-02 and 2002-03Y-W(R) <0 so debt sustainability condition is not satisfied

3. Rate of growth of GDP (Y) should be more than rate of growth of debt (D) [Y-D>*0]*
In most of the years [Y-D<0*]* so debt sustainability condition is not satisfied

4. If rate of interest exceeds growth rate of the economy, even with primary balance the interest burden on the existing debt may be translated into a perpetual enlargement in debt/GDP ratio. In such a scenario adequate primary surplus is required to offset the gap between rate of interest and rate of growth of the economy and to stabilize debt/GDP ratio. Primary deficit (P) should not be rising faster than GDP (Y) [PD/*GDP* < 0] in most of the year [PD/*GDP* > 0] so debt sustainability condition is not satisfied

5. Primary revenue balance (PRB) should be in surplus and adequate enough to meet interest payments (IP) [PRB-IP/GDP> 0]. Here in most of the years [PRB-IP/GDP< 0] so, debt sustainability condition is not satisfied

6. Interest Burden defined by interest payments (IP) to GDP ratio should decline over time. Here IP/GDP is not declining in most of the year so; debt sustainability condition is not satisfied

7. Interest payment (IP) as a proportion of revenue expenditure (RE) should decline overtime. Here IP/RE is not declining in most of the year so, debt sustainability condition is not satisfied

8. Interest payment as a proportion of revenue receipts should fall over time. Here (IP/RR) is not declining in most of the year so, debt sustainability condition is not satisfied

Indeed over the fifty years cumulative primary deficit has led to an increase in the ratio of debt to GDP the potential increase was neutralised by the fact that the real growth rate was higher than the real interest rate.

Though the share of India's external debt is small; nearly all of the government debt is in fixed interest rate loans. Here an attempt has been made to examine the sustainability of internal debt of the Central Government by performing the unit root tests. Total Internal Liabilities (TIL) for the period 1980-81 to 2008-09 for which data are available. The data are obtained from the

Handbook of Statistics on Indian Economy, 2012-13 published by the RBI and Union Budget Documents. The results are presented in Table 3.

Table 3 Unit Root Test Results of Total Internal Liabilities

	ADF	PP
Level (only intercept)	2.452090	20.61461
Level (with trend and intercept)	10.82843	8.292691
TIL		
First Difference(only intercept)	2.957679	3.2811201
First difference (with trend and intercept)	-0.592959	-0.640991

Note: ADF: Augmented Dickey-Fuller, PP: Phillips-Perron; Test critical values for TIL without trend at 1% , 5% and 10% level of significance are -3.699871, -2.976263and -2.627420 and with trend at 1% , 5% and 10% level of significance are -4.339330, 3.580623 and 3.225334

The result of the unit root tests indicate that the null hypothesis of a unit root could not be rejected under ADF test at 1%, 5% and 10% at level and first difference without trend and fist difference with trend. Under PP test unit root could not be rejected under first difference with trend. Compared with Mackinnon critical value which is most suited to test for unit root in the present context, the null hypothesis of unit root can not be rejected. Since the series is found to be non stationary, it may be inferred that central Government's domestic debt position may is not sustainable going by this criteria.

VII. DEBT SUSTAINABILITY AT STATE LEVEL

According to the Domar to stabilize debt/GDP ratio (d/y), rate of interest should be lower than the output growth.

Here, R(S) =average interest rate, R(ML)S = weighted average of market borrowing rate
Y= Trend GDP growth rate.

Table 6 States' Government: Debt Sustainability

Year	GDPGR	R	W(R)	ODGR	GPD/GDP	PRB-IP/GDP	IP/GDP	IP/RE	IP/RR
1981-82	17.50	6.01	7.00	18.00	1.54	-0.02	0.84	8.43	7.80
1982-83	11.86	6.03	7.50	16.38	1.72	-0.02	0.89	8.42	8.07
1983-84	16.45	5.97	8.58	15.70	1.98	-0.02	0.88	8.25	8.17
1984-85	12.04	6.48	9.00	16.62	2.30	-0.02	0.99	8.70	8.99
1985-86	12.86	6.62	9.75	20.87	1.63	-0.02	1.05	8.97	8.80
1986-87	11.90	7.64	11.00	13.16	1.64	-0.03	1.30	10.78	10.73
1987-88	13.67	8.07	11.00	15.23	1.77	-0.02	1.37	10.86	11.13
1988-89	18.63	8.48	11.50	15.79	1.35	-0.02	1.40	11.36	11.77

1989-90	14.88	8.87	11.50	16.30	1.69	-0.02	1.47	11.93	12.71
1990-91	16.80	9.19	11.50	16.38	1.78	-0.02	1.52	12.06	13.02
1991-92	14.94	9.98	11.84	14.94	1.22	-0.02	1.67	12.70	13.59
1992-93	14.95	10.48	13.00	12.66	1.02	-0.03	1.76	13.73	14.50
1993-94	15.04	11.13	13.50	12.70	0.53	-0.03	1.83	14.51	15.05
1994-95	17.32	12.13	12.50	14.98	0.78	-0.03	1.91	15.28	16.14
1995-96	17.33	11.87	14.00	14.87	0.76	-0.03	1.83	15.26	16.24
1996-97	15.67	12.01	13.82	14.30	0.81	-0.02	1.84	15.21	16.92
1997-98	10.77	12.33	12.82	15.39	0.90	-0.03	1.95	16.17	17.86
1998-99	14.67	12.71	12.35	21.76	2.16	-0.02	2.02	16.31	20.51
1999-00	11.47	13.15	11.89	28.45	2.33	-0.02	2.29	17.34	22.00
2000-01	7.70	11.69	10.99	17.25	1.76	-0.02	2.43	17.71	21.93
2001-02	8.40	12.05	9.20	16.97	1.43	-0.03	2.70	19.88	24.70
2002-03	7.71	11.54	7.49	15.20	1.25	-0.03	2.81	20.86	25.22
2003-04	12.22	11.67	6.13	14.91	1.46	-0.04	2.92	21.58	26.00
2004-05	17.70	10.92	6.45	11.92	0.66	-0.04	2.67	21.46	23.77
2005-06	13.89	9.48	7.63	12.49	0.16	-0.04	2.28	19.18	19.49
2006-07	16.28	9.35	8.10	6.41	-0.37	-0.05	2.17	18.43	17.56
2007-08	16.13	9.41	8.25	6.69	-0.49	-0.05	2.00	17.19	16.01
2008-09	11.96	9.10	7.87	10.93	0.57	-0.04	1.84	15.10	14.82

Source: Handbook of Statistics on Indian economy, RBI (various issues)
**GDP means GDP at market price. *Here Debt refers to out standing liabilities comprising (i) internal debt (viz, open market loans, loans from banks/ financial institutions, special securities issued to NSSF, WMA/OD from RBI), (ii) loans and advances from Centre and (iii) small savings, State provident funds, (iiii) reserves funds, deposits and advances and contingency fund*

1. According to the Domar stability condition rate of growth of GDP (Y) should be more than rate of growth of (R) [Y-R > 0]
Y= Trend growth rate of GDP at current Market price
R = Average Interest Rate
IP= Interest Payment
OD = Outstanding Debt (here Outstanding Debt= Total liabilities-Reserve Fund-Deposit and Advances –Contingency Fund
t = Time Period
Here R= (IP) t/ (OD) t-1

In the years 1997 to 200, Y-R<0 so debt sustainability condition is not satisfied

2. Growth of GDP (Y) should be more than rate of growth of interest rate on government dated securities W(R) [Y-W(R) > 0].

W(R)= weighted average interest rate on state government dated securities
In the years 1997-98, 2000-01 and 2001-2002 Y-W(R) <0 so debt sustainability condition is not satisfied

3. Rate of growth of GDP (Y) should be more than rate of growth of debt (D) [Y-D>*0]*
In most of the years [Y-D<0*]* so debt sustainability condition is not satisfied
4. Primary deficit (P) should not be rising faster than GDP (Y) [PD/*GDP* < 0] in most of the year [PD/*GDP* > 0] so debt sustainability condition is not satisfied
5. Primary revenue balance (PRB) should be in surplus and adequate enough to meet interest payments (IP) [PRB-IP/GDP> 0]. Here in most of the years [PRB-IP/GDP< 0] so, debt sustainability condition is not satisfied
6. Interest Burden defined by interest payments (IP) to GDP ratio should decline over time. Here IP/GDP is not declining in most of the year so; debt sustainability condition is not satisfied
7. Interest payment (IP) as a proportion of revenue expenditure (RE) should decline overtime. Here IP/RE is not declining in most of the year so; debt sustainability condition is not satisfied
8. Interest payment as a proportion of revenue receipts should fall over time. Here (IP/RR) is not declining in most of the year so, debt sustainability condition is not satisfied.
The movements in the average interest rates vis- a-vis nominal GDP growth reflect that the Domar stability condition has not been fulfilled for many of the years since 1980s. This is because sizable proportion of domestic debt has been contracted at administered interest at higher level. In recent year, however the rates on market related borrowing have come down and are lower than the nominal GDP growth rate. These developments conforms weak sustainability.

VIII. CONCLUSION

India's current public debt level can be termed sustainable. India's public debt remains sustainable given manageable interest rate cost and economic growth.India is not very vulnerable to external sentiments in managing and sustaining its public debt. The share of India's external debt is small; nearly all of the government debt is in fixed interest rate loans. Predominance of internal debt in India's total public sector debt has been a major factor in containing India's vulnerability to development. However, to the extent that internal borrowings by the public sector crowd out private sector domestic borrowings, the country's vulnerability to external developments may grow as the private sector's external debt increases. During the 1991-2008 periods, a favorable interest growth differential facilitated the fiscal consolidation episodes in the early 1990s and mid-2000.Better tax buoyancy, a GST and a direct tax code improve efficiency and lead to revenue gain. However, a negative interest growth differential is unlikely to persist in long run as liberalization and economic development narrow the gap between the interest rate and growth. RecentlyIn 2013-14 the India's debt problem is unsustainable in light of the recently changed outlook for growth, inflation and interest rates. Negative growth shocks represent one of the major risks to the debt outlook, with shocks to real interest rate and contingent liabilities posing additional risk. Lack of proper fiscal adjustment is another principal risk to debt sustainability in India's context. Fiscal consolidation reversed due to a soaring subsidy bill, the sixth pay commission, the agricultural debt waiver and crisis-related fiscal measures. An unchanged primary balance would raise the debt ratio. While central government explicit guaranties are included in contingent liabilities, state and local government liabilities are not included. An implicit liability which arises from recapitalization of weak bank, financial institutions, and public enterprises are not included.The conventional accounting system of government finances followed in the preparation of the budgets which does not consider

guarantees/contingent liabilities as debt obligations of the State Government. Since government's off-budget liabilities could pose potential threats to fiscal and financial stability of the system, adoption of appropriate accounting practices to gauge the government's true net worth is crucial.

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COMPLIANCE WITH THE ROMANIAN CORPORATE GOVERNANCE CODE. EVIDENCES FROM THE COMPANIES LISTED ON BUCHAREST STOCK EXCHANGE

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Abstract: *The work aims to conduct a study on how corporate governance principles and recommendations are applied in Romania for companies listed on the Bucharest Stock Exchange. In the first part of the work, corporate governance principles and recommendations are presented as they appear in the statement of conformity "Comply or Explain" and Governance Code of BSE and it is subject to verification how companies listed on BSE meet these governance principles and recommendations and where no criteria is fulfilled it is given the explanation which is offered by the company's management. To verify compliance with corporate governance recommendations in Romania we selected a sample of 55 companies listed on the BSE, using public information provided by website BSE (annual reports of 2013, the Comply or Explain statement of 2013). Research methodology is based on an index of corporate governance (CG Index) on the implementation of the principles of corporate governance code by listed companies in Romania. Thus the main research tool is a corporate governance index, calculated based on the framework proposed by the authors, and the results of the study consist of scores for each item or principle CG by calculating corporate governance index (CG Index) for the 55 listed companies in Romania. The results show that the degree of compliance with the Code of Corporate Governance of BSE is achieved at a rate of 70.6%, the lowest score is based on a result of 21.1% and the highest is 92.3%*
Keywords *Corporate governance, Statement of conformity "Comply or explain", Board of Directors*

INTRODUCTION

In order to accentuate how Romanian companies comply with the corporate governance code of BSE, the declarations of conformity "Comply or Explain" of companies listed on the BSE were relatively analyzed. The principles of governance are structured in the following ten criteria of governance BSE code.

Corporate governance framework, The share and other financial instruments holders' rights, The role and duties of the Board, Composition of the Board, Appointment of Directors, Remuneration of Directors, Transparency, financial reporting, internal control and risk management, Conflicts of interests and related parties' transactions, Treatment of corporate information, Corporate social responsibility. All features identified from the analysis of statements "Comply or Explain" were statistically analyzed for 2013 in terms of compliance with the recommendations of corporate governance code of companies listed on the Bucharest Stock Exchange.

Some authors (Faure-Grimaud et. al., 2005 – UK, Scarabotti, 2009 – Italia, Lama et. al, 2009 – Spania, Kohla et al., 2011 – Germany, Hassaan, 2013 – Egipt, Vintilă & Gherghina, 2013 - Romania, Adewale, 2013, Horak & Bodiroga-Vukobrat, 2011 – Member States, Wahab et al., 2007 - Malaezia, Obodo, 2014 - Nigeria, Heracleous, 1999 – Singapore, Rapp et al., 2011 - Germany, Asthana & Dutt, 2013 – India, Nerantzidis, 2013 - Greece, Bouchez, 2007 – OECD States) have also studied compliance with corporate governance codes of the states listed above.

Based on the statistical results we have composed a score function per company, which highlights the fulfillment of their principles. The function is determined by multiplying a qualifier offered to the recommendations of the "Comply or Explain" statement depending on whether or not they are effectuated (1 - Recommendation satisfied, 0 -opposite), with the level of importance for each recommendation of the Corporate Governance Code) for each company of the 55 selected in the sample.

RESEARCH METHODOLOGY

To verify compliance with corporate governance recommendations in Romania we have selected a sample of 55 companies listed on the Bucharest Stock Exchange in 2013, using public information provided by website BSE (annual reports 2013 statement Comply or Explain 2013). All recommendations identified in analyzing the statements "Comply or explain" were statistically analyzed for 2013 in terms of whether or not the code of governance of BSE is complied.

To provide a quantitative assessment of the level of compliance with corporate governance principles we used a scoring system based on a function determined on each company. This score function allowed the transformation of declarative and qualitative data from the "Comply or Explain" declaration in numerical, quantitative data. Thus we've recoursed to the assign of a certain importance coefficient (c_i) for each criterion in the Corporate Governance Code of the 10 ones. Thus the Bucharest Stock Exchange Governance Code is divided into ten criteria, and each criterion has a coefficient of importance (but) equal to 10%. In this case the performance of all governance principles and recommendations contained in the ten criteria will lead to a score equal to 100%. Each entry is made up of 1, 2 or 3 principles which proportionally carried a weight coefficient *(ci)* which can have the following values: 10%, 5%, or 3.33%, depending on the number of principles which make up a criterion. The same mechanism is used to weight the 38 recommendations that summed them compose the corporate governance principles, as can be seen in the table below:

Table 1 Criteria for the composition of corporate governance index (CG Index)

No. Criteria	Name of Criteria	Coeff. Criteria Importance (C_i) (%)	Principle	Coeff. Importance of Principle (%)	Recommendations Included within the Principle
C1	Corporate governance framework	10	P1	10	1 2 3
C2	The share- & other financial instruments holders' rights	10	P2	5	
			P3	5	4 6 8

					9
C3	The role and duties of the Board	10	P4	5	10
			P5	5	12
C4	Composition of the Board	10	P6	3.33	
			P7	3.33	
			P8	3.33	15 16 17
C5	Appointment of Directors	10	P9	5	18
			P10	5	19 20
C6	Remuneration of Directors	10	P11	10	21 22 24
C7	Transparency, financial reporting, internal control and risk management	10	P12	5	25
			P 13	5	26 27 28 29 30 32
C8	Conflicts of interests and related parties' transactions	10	P14	3	
			P15	3	33
			P16	3	34/35
C9	Treatment of corporate information	10	P17	10	36
C10	Corporate social responsibility	10	P18	10	37/38
	TOTAL	100		100	

Also, to each "Comply or Explain" response analyzed was associated a distinct mark of conformity (α_i).Marks were awarded depending on whether or not corporate governance recommendations are complied, as reported by the 55 companies, drawn out of "Comply or Explain" statements.

Table 2 Qualificatives given to companies for composition of the corporate governance index (Index CG)

RECOMMENDATION SCORE (α_i)	IMPLICATION
0	The company does not comply with the recommendation
1	The company complies with the recommendation

Taking into account the level of importance *(c_i)* for each recommendation of the Corporate Governance Code and qualifications *(α_i)* associated with the recommendations of the "Comply or Explain" declaration, the value of score function *F (x)* was determined for each of the 55 companies. Note, that where a principle that has an associated maximum grade of 10% and consists of several recommendations which are met or not, we calculated the sum of the scores obtained on each recommendation to determine the score function on principle and to determinate the criterion score function we have added punctation for principles and we've

calculated the average in terms of number of principles included in the criterion. The value of the score function expresses the final score for each issuer as a quantitative expression of compliance with corporate governance recommendations.

Using all the information collected for each criterion of corporate governance described in *Table 1* and *Table 2*, we calculated the index, which is explained by the function *F(x)*:

$$F(x) = \sum c_i \times \alpha_i$$

where:

x = the company for which the index is calculated;

c_i = the degree of importance assigned to each recomanation (as shown in *Table 1*)

c_i = is the the rating associated with each recomandation i, based on the verification of degree of fulfillment of the sustainability recomandation ofcorporate governance - *Tabel 2*. Can take values from 0 to 1, 0 meaning the criteria form Aplly or Explain statement is not fullfiled at all and 1 meaning the criteria is completely fullfiled - *Tabel 2*;

STATISTICAL ANALYSIS AND RESEARCH RESULTS

Corporate governance of companies listed on the Bucharest Stock Exchange is the set of principles underlying the governance framework by which companies are directed and controlled. Transposed into internal legal documents, these principles determine the efficiency and effectiveness of control mechanisms adopted to protect and harmonize the interests of all participants in the activity of companies - shareholders, directors, managers, managers of various structures of the company, employees and organizations which represent their interests, customers and business partners, local and central authorities.

In Romania, the principles of corporate governance apply only to large private or public companies, due to lack of information, transparency, poor training of some managers, legislative incoherence. Bucharest Stock Exchange has issued a revised version of the Code on Corporate Governance (originally released in 2007). The Code is voluntary except listed companies which must comply or explain application or the lack of application of principles, in a statement attached to the annual reports.

Corporate governance codes alone cannot be used in preventing financial scandals. In enhancing effective governance within organisations, a culture promoting this must exist in corporations *(Adewale, 2013)*. Management must imbibe ethical financial cultures in preventing corruption and ensuring a system where internal control measures will be effective. Corporate governance and financial regulations can only function so effectively with a supportive corporate mechanism.

From the analysis followed by the principles of the companies listed on the Bucharest Stock Exchange, principles enounced in the statement Comply or Explain, the corporate governance model adopted by listed companies ensures the rights and equitable treatment of shareholders, by protecting and implementing their requirements.

Table 3 Statistics informations extracted from the statement "Comply or Explain"

No. Principle	No recomandation	Description recomandation	No. Of companies which apply	
			No.	%
P19		Is the issuer managed under a dualist system?	6	10.91
P1	R1	Has the issued drawn up the By-laws/Corporate Governance Regulations to describe the main aspects of the corporate governance?	30	54.55
		The By-laws/Corporate Governance Regulations are posted on the company website, indicating the date of the last update?	28	50.91
	R2	In The By-laws/Corporate Governance Regulations are there defined the corporate governance structures, positions, components and responsibilities of the Bord of Directors (BD) and of the executive management?	29	52.73
	R3	Does the issuer's Annual report provide for a chapter on corporate Governance?	33	60.00
		Does the issuer circulate on the company website the information related to the following aspects of their corporate governance policy: a) a description of their corporate governance structures?	38	69.09
		b) the updated articles of incorporation?	34	61.82
		c) the operation bylaws/essential aspects for each specialty?	24	43.64
		d) the "Comply or explain" Statement?	51	92.73
		e) the list of the BD members mentioning which members are independent and/or nonexecutive, of the members of the executive management and those of the specialty commissions/committees?	43	78.18
		f) a brief description of the CV for each BD member of the executive management?	36	65.45
P2		Does the issuer abide by the rights of the financial instrument holders?	55	100.00
P3	R4	Does the issuer publish in a spate part of the website the details of the General Meetings of Shareholders (GMS): a) GMS summons?	55	100.00
		b) materials/documents corresponding to the agenda as well as any information on the agenda?	55	100.00
		c) special power of attorney forms?	55	100.00
	R6	Has the drawn and proposed to GMS the procedures for the efficient and proper development of the GMS agenda?	46	83.64
	R8	Does the issuer publish in a spate part of the website the details of the shareholders' rights as well as the regulations for the attendance at GMS?	51	92.73
		Does the issuer provide the information in due time (immediately after the GMS) of all the shareholders through the separate section on their website: a) on the decisions made within GMS?	55	100.00
		b) on the detailed result of the vote?	53	96.36
		Do the issuers circulate through the special section of the website, that is easily identifiable and accessible: a) current/communicated reports?	55	100.00

		b) the financial schedule, the annual reports, the quarter and semester reports?	55	100.00
	R9	Is there within the issuer's company a special department/person dedicated to the relation with the investors?	53	96.36
P4, P5	R10	Does the BD meet at least once a trimester for the monitoring and the activity of the issuer?	53	96.36
	R12	Does the issuer have a set of rules referring to the reporting conduct and obligations of the transactions of the shares or other financial instruments issued by the company ("company assets") made on their name by the directors and other persons?	36	65.45
		If a BD member or a member of the executive management or any other person made on their interest a transaction ith the company deeds, then, the transaction is circulated through the company website, according to the corresponding Regulations?	40	72.73
P6		Does the structure of the Board of Directors of the Issuer provide a balance between the executive and nonexecutive members?	43	78.18
P7		Does the structure of the Board of Directors provide a sufficient number of independent members?	38	69.09
P8	R15	During their activity, does BD have the support of consultative commissions/committees for the examination of specific topics, chisen by BD for their counseling on these themes?	30	54.55
		Do the consultative commissions/committees forward activity reports to the BD on their specific themes?	30	54.55
	R16	For the assessment of the independence of their nonexecutive members, does the Board of Directors use the assessment criteria listed in the Recommendation 16?	39	70.91
	R17	Do the BD members permanently improve their knowledge through training/formation in corporate governance?	51	92.73
P9		Does the selection of the BD members have a procedure based on transparency ?	51	92.73
P10		Is there an Appointment Committee within the company?	19	34.55
P11	R21	Does the Board of Directors analyze t least once a year the need to register a remuneration/remuneration policy committee?	34	61.82
		Has the remuneration policy been approved by the GMS?	46	83.64
	R22	Is there a Remuneration Committee made exclusively of nonexecutive directors?	20	36.36
	R24	Is the company remuneration policy of the company provided in the Bylaws/Corporate Governance Regulations?	22	40.00
P12, P13	R25	Does the issuer circulate, in the English language, the information representing the subject of the reporting requirements: a) periodic information (providing information periodically)?	26	47.27
		b) continuous information (providing information periodically)?	29	52.73
		Does the Issuer provide and circulate the financial report according to IFRS?	49	89.09
	R26	Does the issuer promote, at least once a year, meetings with the financial analysts, brokers, rating agents and other market specialists with the view to presenting the financial elements relevant to the investment decision?	24	43.64
	R27	Is there an Audit Committee within the company?	28	50.91
	R28	Does the BD of the Audit Committee, as the case may be, examine on regular basis, the efficiency of the financial report, the internal control and the control of the risk management system passed by the company?	51	92.73
	R29	Is the Audit Committee made of nonexecutive directors and is there a	26	47.27

		sufficient number of independent directors?		
	R30	Does the Audit committee meet at least twice a year? ?	28	50.91
	R32	Does the Audit Committee recommend to BD the selection, appointment, re-appointment and replacement of the financial auditor, as well as theterms and conditions of their remuneration?	30	54.55
P14		Has the BD passed a procedure with the view to identifying and settling adequately the conflicts of interests?	33	60.00
P15	R33	Do the directors inform BD on the conflicts of interests as they occur anddo they refrain from the debates and the vote on those matters, according to the legal provisions?	53	96.36
P16	R34/ 35	Has the BD passed the specific procedures in order to provide their procedure accuracy for defining the transactions?	36	65.45
P17	R36	Has BD passed a procedure of the internal circuit and the disclosure to third parties of the documents and information referring to the issued, with emphasis on the information that can influence the price of the assets issued by them?	44	80.00
P18	R37/ 38	Does the issuer have activities regarding Social Responsibility and Company Environment?	54	98.18

Public enterprises, that function as commercial companies, may be administrated according to unitary or dualist management system, regulated by Law no. 31/1990. The vast majority of companies listed on the Bucharest Stock Exchange (82%) have adopted the unitary management system fully in line with the objectives of good corporate governance, transparency of relevant corporate information, of the protection of the interests of different groups of participants and the efficient operation of the capital market.

All 55% of listed companies have developed a Statute / Regulation of Corporate Governance (*Principle I*) to describe the main aspects of governance and for 50% of companies Statute / Regulation of corporate governance is posted on the company's website.

All BSE companies respect the rights of shareholders providing fair treatment. Shareholders are entitled to vote, attend to the general meetings (*Principle II*).The greatest asset of any capital market is the investors (*Obodo, 2014)*. Largely, where confidence in the financial market in Nigeria is lost by the investors, the ability to raise fund for economic development shall be flawed. Also the companies must respect the rights of shareholders: to receive dividends, to ask questions to the board members, to receive relevant information.For a better, effective and active communication with shareholders (*Principle III*), public companies in a dedicated section of their website present details of conducting the Company Shareholders' General Assembly (CSGA). Also in case of 96% companies there is a specialized department / person in relationships with investors.

The governance code in Sigapore critical lack of recommendations for stakeholders, opposed to the shareholders, that could discipline more companies that do not meet the level of compliance with the corporate governance code *(Heracleous, 1999)*.

Management of companies is entrusted to the Board (*Principle IV*), which is the interface between shareholders and executives. Board of Directors shall meet at least quarterly to monitor the conduct of business for all approximate companies. The Board will act in the interests of listed companies and will protect the general interests of shareholders *(Principle V*).

The analysis on listed companies shows that only 78% of them ensure a balance between executive and non-executive members (*Principle VI*), so that no person or group of persons can dominate the decision-making process of the Board. Inadequate recruitment practices of the Board' members contribute to the perpetuation of selection of members with similar profiles. According to the Combined Code of 2000 it is assumed that the optimum number of executive and non-executive members is an equal one. On the other hand we can talk about the size of listed companies, about the complexity and nature of the company's business. They may have an impact on the members report within the Board. In 2013, the board of directors, associated with companies listed on BSE, had on average 5-6 members, of whom two are executive directors, three of whom are non-executive, independents.

The structure of the Board of listed companies provides a sufficient independent members number (*Principle VII*) for 69% of them. The presence of non-executive independent members is important because they can bring a fresh perspective to the company, they are concerned with the supervision of how the executives perform their tasks, they provide information outside the company which otherwise may get harder to the executive members, they may facilitate obtaining lucrative contracts with customers, the State or credit institutions. Also a non-executive independent member can be part of the audit committee or the remuneration committee and may act to protect the shareholders' rights. *Vintilă & Gherghina (2013)* made a sample comprised all the companies listed on the Bucharest Stock Exchange on all three tiers between 2007-2011 and found that the mean percentage of independent directors is only 13.77% percent, so the recommendation out of the Guide for implementing Corporate Governance Code (2010) which states that at least a quarter of the total number of directors shall be independent is not followed. Also (*Vintilă & Gherghina, 2013: 891)* found that the mean percentage of non-executive directors (54.43%) highlights that the balance between executive and non-executive members recommended by the Bucharest Stock Exchange Corporate Governance Code (2008) is accomplished.

Only for 92% of companies listed on BSE, the Board's members continuously improve their skills through training on corporate governance (*Principle VIII*). Another statistic shows that 55% of the Boards of Directors of BSE listed companies have the support of advisory committees / commissions that are required to submit progress reports on some specific topics. Companies explain the lack of advisory committees / commissions, saying they have the support of the companies' professionals or when necessary, of external consultants selected on professional excellence criteria or they are too small and too few members for the formation of these committees.

Election of Board members is based on a transparent procedure (objective criteria regarding professional qualifications) for 93% of companies (*Principle IX*). Although only for 35 % of listed companies there is a Nomination Committee (*Principle X*), it has the responsibility of candidates nomination for the position of director of the company, respecting the following criteria:

- Applicants must have a good reputation and experience appropriate to the nature, size and complexity of the company's business;

- Candidates must have adequate theoretical and practical knowledge about the activities to be carried out, as well as experience in a management position, acquired in a company comparable in size and activity.

Companies that do not have a Nomination Committee "explain" the process of appointment of Board members to be in charge of shareholders.

The Board reviews at least once a year the need of setting up a remuneration committee / remuneration policy for directors and executives management members for 62% of the companies, but only 35% of them have in 2013 a Remuneration Committee (*Principle XI*). The Committee consists of non-executive directors, elected by the Board from among its members. For companies that do not have a Remuneration Committee, the General Assembly of Shareholders decides the remuneration of board members and of executive management. In the absence of a remuneration committee a procedure is explained to ensure maintenance of a balance between the desire to attract and maintain professional Board members and the interest of not excessive remunerate, respectively to correlate remuneration with the training and experience of directors, and trends in the field of industry. One study (*Bhardwaj & Rao, 2014)* on CNX Nifty governance practices of the 50% companies in India, focuses on two years from 2010 to 2011 and from 2011 to 2012 and shows that firms: independent directors - 88% non-executive directors - 98% Remuneration Committee - 42% , Audit Committee 100% .

Listed companies prepare and disseminate financial reporting under IFRS (*Principle XII*) at a rate of 89%. Listed companies promote 44% at least once a year, meetings with financial analysts, brokers, and other market specialists in order to ensure protection of minority shareholders against abusive actions and in the interests of significant shareholders acting either directly or indirectly. *Hassaan, 2013* provide evidence of the lack of influence of corporate governance best practices on the levels of compliance with mandatory IFRSs disclosure requirements as it is not yet part of the cultural values within the Egyptian context.

The Audit Committee is composed exclusively of non-executive directors and has a sufficient number of independent directors only for 47% of companies and only 51% of companies have an audit committee (*Principle XIII*). The lack of the audit committee is explained by the fact that Board members have the necessary training or a significant management experience that allows them to analyze the general financial situation of companies and risk management processes and corporate governance, thus ensuring accuracy of financial reporting and internal control. *Asthana & Dutt, 2013* argue that compliance in the Indian Banks is: Board Meetings (57.9%) and Audit Committee of Board (100%).

For 60% of companies, the Board has adopted a procedure to identify and settle any conflict of interests (*Principle XIV*). Board members will act only in the interests of companies and will take decisions without being influenced by any vested interests that may arise in activity (*Principle XV*). For 64% of companies, the Board adopted criteria for identifying significant transactions, transparency, and impartiality, non-compete (*Principle XVI*). For 80% of companies, the Board has adopted a procedure for the internal circuit and disclosure of documents and information concerning the company, giving special importance to information that can influence the market price (*Principle XVII*). If there is no such procedure, companies have sent information to the persons included in the list of people who have access to privileged information regarding their obligations stipulated by Law no. 297/2004. Among the listed companies, 98% (2013) develop Social Responsibility and Medium activities of companies (*Principle XVIII*). In a study on India (*Imeokparia, 2013)* we find that 8% respondents strongly disagree that generally banks still observe ethical issues of governance and financial reporting and 5.1% of the respondents strongly disagree that Ethical financial reporting in banks is

essentially the responsibility of directors, which is carried out by accountants and verified by internal auditors.

That part of the code of governance in Malaysia requires auditors to institutional investors and expresses the opinion on implementation of recommendations of governance *(Wahab et al., 2007)*.

According to the information in Table 4 in which there are summarized the main obtained results, we can conclude that on average for companies listed on BSE the score obtained for compliance with corporate governance recommendations equals 70.6% average of the scores obtained per company (calculated by multiplying the mark for recommendation depending on whether or not the recommendations of the "Comply or Explain" declaration (1 or 0) to the level of importance for each recommendation of the Corporate Governance Code) for each company in the 55 selected in the sample.

Table 3 Index CG for 55 companies listed on the Bucharest Stock Exchange (%)

No. Firm	Criteria (C)																								Score Function
	C1	C2			C3			C4				C5			C6	C7			C8				C9	C10	
	Principles (P)																								
	P1	P2	P3		P4	P5		P6	P7	P8		P9	P10		P11	P12	P13		P14	P15	P16		P17	P18	$F(x)$
F1	7.9	5.0	5.0	10.0	5.0	2.5	7.5	3.3	3.3	2.2	8.9	5.0	0.5	5.5	0.5	0.0	1.7	1.7	3.3	3.3	3.3	10.0	10.0	10.0	**71.9**
F2	1.0	5.0	3.8	8.8	5.0	2.5	7.5	0.0	3.3	1.1	4.4	5.0	6.3	11.3	0.0	5.0	0.8	5.8	3.3	3.3	3.3	10.0	10.0	10.0	**68.8**
F3	10.0	5.0	5.0	10.0	5.0	0.0	5.0	3.3	3.3	3.3	10.0	5.0	3.8	8.8	0.0	0.0	0.8	0.8	3.3	3.3	0.0	6.7	10.0	10.0	**71.3**
F4	10.0	5.0	3.8	8.8	5.0	5.0	10.0	3.3	3.3	2.2	8.9	5.0	0.5	5.5	0.5	5.0	1.7	6.7	0.0	3.3	3.3	6.7	10.0	10.0	**76.9**
F5	1.9	5.0	5.0	10.0	5.0	5.0	10.0	3.3	0.0	1.1	4.4	5.0	0.0	5.0	0.0	5.0	1.7	6.7	3.3	3.3	3.3	10.0	10.0	10.0	**68.0**
F6	0.0	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	6.3	11.3	1.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	10.0	10.0	**82.3**
F7	1.4	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	3.8	8.8	0.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	10.0	10.0	**80.2**
F8	10.0	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	6.3	11.3	1.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	10.0	10.0	**92.3**
F9	9.5	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	2.8	9.4	5.0	3.8	8.8	0.5	1.7	4.2	5.8	3.3	3.3	3.3	10.0	10.0	10.0	**84.1**
F10	9.5	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	2.2	8.9	5.0	3.8	8.8	0.5	5.0	3.3	8.3	3.3	3.3	3.3	10.0	10.0	10.0	**86.0**
F11	6.2	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	6.3	11.3	1.0	1.7	2.5	4.2	3.3	3.3	3.3	10.0	10.0	10.0	**82.6**
F12	1.9	5.0	3.5	8.5	5.0	5.0	10.0	0.0	0.0	1.1	1.1	5.0	3.8	8.8	0.0	1.7	0.8	2.5	3.3	3.3	3.3	10.0	10.0	10.0	**62.8**
F13	0.5	5.0	3.8	8.8	5.0	0.0	5.0	3.3	0.0	1.1	4.4	5.0	0.5	5.5	0.0	1.7	0.0	1.7	0.0	3.3	0.0	3.3	0.0	10.0	**39.1**
F14	1.9	5.0	3.3	8.3	5.0	0.0	5.0	0.0	0.0	1.1	1.1	5.0	0.0	5.0	0.0	1.7	0.8	2.5	0.0	3.3	0.0	3.3	0.0	10.0	**37.1**
F15	1.0	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	2.2	8.9	5.0	0.5	5.5	0.0	5.0	0.8	5.8	0.0	3.3	3.3	6.7	10.0	10.0	**67.8**
F16	10.0	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	6.3	11.3	1.0	5.0	4.2	9.2	3.3	3.3	3.3	10.0	10.0	10.0	**91.4**
F17	8.1	5.0	5.0	10.0	5.0	2.5	7.5	0.0	0.0	2.2	2.2	5.0	3.8	8.8	0.0	0.0	4.2	4.2	3.3	3.3	3.3	10.0	10.0	10.0	**70.8**
F18	8.1	5.0	5.0	10.0	5.0	2.5	7.5	0.0	0.0	2.2	2.2	5.0	3.8	8.8	0.0	0.0	4.2	4.2	3.3	3.3	3.3	10.0	10.0	10.0	**70.8**
F19	10.0	5.0	5.0	10.0	5.0	2.5	7.5	0.0	0.0	1.7	1.7	5.0	0.0	5.0	0.5	1.7	3.3	5.0	3.3	3.3	0.0	6.7	0.0	10.0	**56.3**
F20	6.4	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	2.2	8.9	0.0	3.8	3.8	0.5	5.0	0.8	5.8	3.3	3.3	3.3	10.0	10.0	10.0	**75.4**
F21	9.5	5.0	5.0	10.0	5.0	2.5	7.5	0.0	3.3	3.3	6.7	5.0	3.8	8.8	0.5	1.7	4.2	5.8	3.3	3.3	3.3	10.0	10.0	10.0	**78.8**
F22	1.0	5.0	3.5	8.5	5.0	2.5	7.5	3.3	3.3	1.1	7.8	5.0	0.5	5.5	0.0	1.7	3.3	5.0	3.3	3.3	3.3	10.0	10.0	10.0	**65.2**
F23	10.0	5.0	5.0	10.0	5.0	0.0	5.0	3.3	0.0	2.2	5.6	5.0	0.5	5.5	0.0	1.7	0.8	2.5	0.0	3.3	0.0	3.3	0.0	10.0	**51.9**
F24	6.4	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	2.2	8.9	0.0	3.8	3.8	0.5	5.0	0.8	5.8	3.3	3.3	3.3	10.0	10.0	10.0	**75.4**
F25	1.4	5.0	5.0	10.0	5.0	0.0	5.0	3.3	3.3	3.3	10.0	5.0	3.8	8.8	0.0	1.7	5.0	6.7	0.0	3.3	0.0	3.3	10.0	10.0	**65.2**
F26	10.0	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	3.8	8.8	0.0	5.0	1.7	6.7	3.3	3.3	3.3	10.0	10.0	10.0	**85.5**
F27	3.3	5.0	3.8	8.8	5.0	2.5	7.5	3.3	0.0	2.2	5.6	5.0	6.3	11.3	0.5	5.0	4.2	9.2	0.0	3.3	0.0	3.3	0.0	10.0	**59.4**
F28	9.5	5.0	5.0	10.0	5.0	2.5	7.5	3.3	3.3	3.3	10.0	5.0	3.8	8.8	1.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	10.0	10.0	**86.8**

F29	10.0	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	6.3	11.3	1.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	10.0	10.0	**92.3**
F30	2.9	5.0	3.8	8.8	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	6.3	11.3	1.0	5.0	4.2	9.2	3.3	3.3	3.3	10.0	10.0	10.0	**83.0**
F31	5.7	5.0	5.0	10.0	0.0	5.0	5.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	3.3	0.0	3.3	0.0	0.0	0.0	0.0	0.0	10.0	**34.0**
F32	0.5	5.0	5.0	10.0	5.0	2.5	7.5	3.3	3.3	3.3	10.0	5.0	0.0	5.0	0.0	3.3	0.8	4.2	0.0	3.3	0.0	3.3	10.0	10.0	**60.5**
F33	2.9	5.0	3.8	8.8	5.0	2.5	7.5	0.0	0.0	2.2	2.2	5.0	0.5	5.5	0.0	0.0	0.8	0.8	0.0	3.3	0.0	3.3	10.0	10.0	**51.0**
F34	10.0	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	6.3	11.3	1.0	1.7	5.0	6.7	3.3	3.3	3.3	10.0	10.0	10.0	**88.9**
F35	0.5	5.0	5.0	10.0	5.0	5.0	10.0	3.3	0.0	2.2	5.6	5.0	0.5	5.5	0.0	5.0	0.8	5.8	0.0	3.3	3.3	6.7	10.0	10.0	**64.0**
F36	10.0	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	6.3	11.3	0.5	5.0	5.0	10.0	0.0	3.3	0.0	3.3	0.0	10.0	**75.1**
F37	10.0	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	0.5	5.5	0.5	1.7	5.0	6.7	3.3	3.3	3.3	10.0	10.0	10.0	**82.6**
F38	10.0	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	6.3	11.3	1.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	10.0	10.0	**92.3**
F39	0.5	5.0	5.0	10.0	5.0	5.0	10.0	3.3	0.0	2.2	5.6	5.0	0.5	5.5	0.0	5.0	0.8	5.8	0.0	3.3	3.3	6.7	10.0	10.0	**64.0**
F40	8.1	5.0	5.0	10.0	5.0	2.5	7.5	3.3	3.3	2.2	8.9	5.0	0.5	5.5	0.5	1.7	1.7	3.3	0.0	3.3	0.0	3.3	10.0	10.0	**67.1**
F41	9.0	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	2.2	8.9	5.0	3.8	8.8	0.5	3.3	1.7	5.0	3.3	3.3	3.3	10.0	10.0	10.0	**82.2**
F42	1.4	5.0	5.0	10.0	5.0	5.0	10.0	3.3	0.0	3.3	6.7	5.0	6.3	11.3	1.0	1.7	4.2	5.8	0.0	3.3	0.0	3.3	10.0	10.0	**69.5**
F43	10.0	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	0.0	5.0	0.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	10.0	10.0	**85.0**
F44	1.4	5.0	5.0	10.0	5.0	2.5	7.5	0.0	0.0	2.2	2.2	5.0	0.0	5.0	0.0	1.7	0.8	2.5	0.0	3.3	0.0	3.3	10.0	10.0	**52.0**
F45	2.4	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	6.3	11.3	1.0	5.0	5.0	10.0	0.0	3.3	3.3	6.7	10.0	10.0	**81.3**
F46	2.4	5.0	3.8	8.8	5.0	2.5	7.5	0.0	0.0	1.1	1.1	5.0	3.8	8.8	0.0	1.7	0.8	2.5	0.0	3.3	3.3	6.7	10.0	10.0	**57.7**
F47	0.5	5.0	5.0	10.0	5.0	0.0	5.0	3.3	3.3	0.0	6.7	5.0	0.0	5.0	0.0	0.0	0.0	0.0	0.0	3.3	0.0	3.3	0.0	0.0	**30.5**
F48	6.2	5.0	5.0	10.0	5.0	2.5	7.5	3.3	3.3	3.3	10.0	5.0	6.3	11.3	0.5	1.7	5.0	6.7	3.3	3.3	3.3	10.0	10.0	10.0	**82.1**
F49	9.0	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	6.3	11.3	0.5	5.0	5.0	10.0	0.0	3.3	0.0	3.3	10.0	10.0	**84.2**
F50	10.0	5.0	5.0	10.0	5.0	2.5	7.5	3.3	3.3	3.3	10.0	5.0	6.3	11.3	1.0	5.0	5.0	10.0	0.0	3.3	0.0	3.3	10.0	10.0	**83.1**
F51	10.0	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	3.3	10.0	5.0	6.3	11.3	1.0	5.0	3.3	8.3	3.3	3.3	3.3	10.0	10.0	10.0	**90.6**
F52	1.9	5.0	4.8	9.8	5.0	0.0	5.0	3.3	3.3	1.1	7.8	5.0	6.3	11.3	0.0	1.7	1.7	3.3	3.3	3.3	3.3	10.0	0.0	10.0	**59.1**
F53	1.0	5.0	3.5	8.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.7	0.0	1.7	0.0	0.0	0.0	0.0	0.0	10.0	**21.1**
F54	2.4	5.0	5.0	10.0	5.0	0.0	5.0	3.3	3.3	2.2	8.9	5.0	6.3	11.3	0.5	1.7	4.2	5.8	3.3	3.3	0.0	6.7	0.0	10.0	**60.6**
F55	10.0	5.0	5.0	10.0	5.0	5.0	10.0	3.3	3.3	2.2	8.9	5.0	0.5	5.5	0.0	5.0	4.2	9.2	3.3	3.3	3.3	10.0	10.0	10.0	**83.5**
Mean	5.7	5.0	4.7	9.7	4.8	3.5	8.3	2.6	2.3	2.4	7.3	4.6	3.3	8.0	0.4	3.2	2.8	6.0	2.0	3.2	2.2	7.4	8.0	9.8	**70.6**

There is no company that complies 100% (F(x) =100%) Governance recommendations and only 5 (9%) companies exceeding a score of 90%, in terms of compliance with the recommendations of the Code of Governance. Most companies 17 (31%) have a score between 80% and 90% and 12 companies have a score between 60% -70%. Analyzing the results we may affirm that 9 (16% of companies) have an average close to the average F (x), between 70% and 80%. Only 5 companies have a score below 50. The highest score (92.3%) have obtained companies C8, C29 and C38, and the lowest (21.1%) is obtained only by the company C7. Companies make the best score for *Principle 18* on the accomplishment of social responsibility activities and least respected principle is *Principle 11* (Criterion 6) regarding the remuneration of the Board members (*Recommendation 22* on the existence of a Remuneration Committee consists exclusively of non-executive members met only 36% of companies and *Recommendation 24* on presentation of the remuneration policy of the company in the Statute / Corporate Governance Regulation, condition which is satisfied only by 40% of the companies).

One study on Malaysia *(McGee, 2005)* focuses on corporate governance in Malaysia and find for Rights of Shareholders a score equal to 22, Role of Stakeholders in Corporate Governance - 16, Disclosure and Transparency – 17, The Responsibility of the Board – 22, where points were then assigned to each category based on the extent of compliance with the OECD's Principles of Corporate Governance, as follows: Observed = 5 points, Largely Observed = 4 points, Partially Observed = 3 points, Materially Not Observed = 2 points, Not Observed = 1 point. For UK *(Faure-Grimaud et al., 2005)* some authors analysed 245 UK non- financial companies, belonging to the FTSE 350 index between 31st December 1998 to 30th June 2004 the period the Combined Code was in operation. The maximum number of degree of compliance in the sample is 10288 and the authors actually find 8712 cases of compliance (resulting in an overall averge of compliance of 84.7%).

To make a comparison between the results of research on the implementation of the principles of corporate governance in listed companies in Romania, we have calculated the average of the CG Index for each economic sector:

Table 4 Average score function per economic sector

Activity sector	No. of companies	Mean of F(*x*)
Marketing	3	74.7
Construction	6	75.2
Pharmaceuticals	4	83.9
Manufacturing industry	16	69
Plastics	3	88.5
Machinery and equipment	6	53.1
Metalurgie	2	71.4
Food supply	2	82
Chemicals	3	47
Basic resources	4	67.3
Transportation and storage	2	67.5

Tourism	2	81.4
Utilities	2	83.6
Total	55	70.6

The results show that companies analyzed of the Plastics sector have managed to the highest average of the GG index wich is 88.5%, and those of the Chemical Industries sector have a minimum average for the GG Index of 47%.

In context of harmonisation with the european requirements (Directive 2006/46/EC) some Member States did not have to take any action, given a previously existing requirement to refer to a national code and to apply the comply-or-explain principle pursuant to listing rules (Denmark, Ireland and Romania) and some Member States have decided to introduce the whole system, which includes referral to the application of the code and its application pursuant to the comply-or-explain principle prescribed by law or a by-law (the Czech Republic, France, Germany, Hungary, the Netherlands, Portugal and Spain) (*Horak & Bodiroga-Vukobrat, 2011)*.

CONCLUSION

In our article ”Compliance with the Romanian Corporate Governance Code. Evidences from the companies listed on Bucharest Stock Exchange” we have checked whether or not the recommendations and principles of the Code of Corporate Governance are respected in Romania on a sample of 55 companies listed on the Bucharest Stock Exchange in 2013, by verifying compliance statements "Comply or Explain". The code is divided into articles, principles and recommendations covering a representative range of corporate governance issues: board of directors and their composition, role and responsibility, rights of shareholders, internal and external audit, transparency, conflict of interest, information regime corporate social responsibility. Minimum requirements indicate that each listed company must have a Corporate Governance Statement to describe the main aspects of governance, respect the rights of shareholders, non-executive members and independent members of the Board of Directors, three advisory committees (Nomination Committee, Remuneration Committee and Audit Committee). Not all companies follow the principles of corporate governance, considering the business operates "as it is." We noticed some major deficiencies in the implementation and appliance of modern regulations regarding corporative governance in our country. It is true that an impressive package of financial legislation was approved in 2006 as part of the impulse to bring Romania in line with EU directives, to harmonize national regulations with international ones, but companies were not aligned to the European trend. So they not complicate with the application of this recommendation, because there are and will always be the investors.

There is a tendency for companies listed on the BSE, the large ones tend to respect in range of 100% the governance principles, but the smallest ones (as size) motivate that in the future they will line with the trend, although as an observation this motivation exists in the statement of conformity on the last 3 years without major improvements. Maybe companies do not want transparent procedures through which to

ensure the correct treatment of minority shareholders and at the same time they have a weak institutional framework, which is one of the significant impediments in establishing a solid investment climate. Sometimes it is thought that as long as there are shareholders who do not rebel against the created abuse, it is not necessary to operate major changes, so things can stay as they are, because it goes their way.

After this study, we believe that the most important recommendation is that a respected legal framework of corporate governance regulation is necessary in Romania. Now corporate governance principles included only in a guide and companies select only some to comply with them. We believe that corporate governance principles should be implemented through the development of legally binding framework. It is true that even the best laws, codes, principles can suffer from poor implementation. This decreases the foreign investors' confidence in the legal system, thus diminishing confidence in companies of countries which do not respect the laws. And more importantly, is that these existing laws should be effective by strengthening legal systems, addressing corruption and adopting measures appropriate to the problem.

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LAW

PRACTICE OF EUROPEAN COURT OF JUSTICE REGARDING VAT FOR AMERICAN COMPANIES

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ARE E-BOOKS AND AUDIO BOOKS SIMILAR TO PRINTED BOOKS FOR VAT PURPOSES? K OY

K Oy,C-219/13 (2014), just decided before the European Court of Justice (ECJ), considers the highly important and timely issue of whether e-books and even audio books are the same as printed books for value-added tax (VAT) purposes. The ECJ found that, so long as the average consumer in each applicable EU country does not view them as similar, printed books can have lower VAT rates than e-books and audio books and not be in violation of EU principles of fiscal neutrality. This result remains effective even though e-books can be reduced to physical form as USB keys and audio books can be reduced to physical form as CDs and CD-ROMS.

Procedural Background

K Oy was before the ECJ on appeal from the Finnish Central Tax Board. This lower judicial body had ruled that the reduced VAT rate for printed books did not apply to non-paper-based books, such as e-books or audio books.

The ECJ had to address the issue under the first subparagraph of Article 98(2) and 6 of Annex III to Council Directive 2006/112/ECas amended under 2009/47/EC.

Relevant EU Legal Provisions

Article 96 requires national laws to have the same VAT rates for goods and services. However, Article 98(1) and (2) permit one or two reduced tax rates but only as permitted in Annex III, which included printed books, with reduced rates explicitly not applicable to electronically provided services. 4 of Council Directive 2009/47/EC updated books for technical progress. However, 6 of the same directive mentioned only books of physical means.

Relevant Finnish Legal Provisions

The normal Finnish VAT rate is 23 percent with the reduced rate of 9 percent on books. Finnish law mentions that books must be printed to get the reduced rate.

K Oy's Argument

The appellant believed different rates for physical books compared to audio books and e-books violates fiscal neutrality principles. Fiscal neutrality bars similar goods or services from having different VAT rates applied to them.

ECJ's Fiscal NeutralityTest

Determining whether goods or services are similar requires consideration from the point of view of the average consumer located in each respective EU country. Similarity means that any differences would not be significant influences on consumers' choices. Significance is judged on the grounds of comparability in each EU country.

Conclusion

Again, so long as the average consumer in the respective country does not consider the products as similar, printed books can have reduced VAT rates with regular rates applying to e-books and audio books.

Implications

1. The ECJ has advanced an essentially facts and circumstances test in the area of reduced VAT rates, meaning continuing uncertainty in seeking equitable treatment of similar goods and services.
2. The facts and circumstances test could cause more countries to reverse their decisions to have lower VAT rates on some goods and services for fear of continued litigation in this area.
3. To secure the reduced rate, lobbying now becomes more important than reliance on equal treatment under the law, the principle of fiscal neutrality.
4. Regardless of the documented legislative intent behind the amendments to the relevant VAT provisions, the plain text of the amendment regarding technical updates seemed to suggest e-books and audio books were, after 2009, to be considered as books. Thus, legislative action seems likely in the aftermath of this ruling.

ARE EXTERNALLY SOURCED SERVICES THAT US COMPANIES PROVIDING TO EU BRANCHES SUBJECT TO VAT? SKANDIA AMERICA CORP. (SKANDIA SVERIGE) V. SKATTEVERKET

Introduction

In *Skandia America Corp. (Skandia Sverige) v. Skatteverket* (the Swedish taxing authoritities), C-7/13, the European Court of Justice (ECJ) found that externally purchased services provided from US companies to their EU branches in exchange for consideration are subject to value added-tax (VAT) to the extent the branch is part of any VAT group that could be deemed to be the single taxable person. The VAT group itself would be subject to the VAT.

Procedural Grounds

The Swedish tax authorities charged VAT on Skandia America Corp.'s services to its branch located in Sweden, Skandia Sverige. The Stockholm Administrative Court stayed proceedings for Skandia America Corp. to bring this case before the ECJ for some preliminary ruling on this decision.

EU Principles

The case required consideration of Council Directive Articles 2(1)(c), 9(1), 11, 56(1), 193, and 196 2006/112/EC. Whereas Article 2(1)(c) explains that any taxable person supplying services for consideration can be subject to VAT, Article 9(1) defines the taxable person subject to this VAT as any person carrying out "economic activity." Article 11 further clarifies taxable person and permits any measures necessary to ensure evasion or avoidance.

Article 56(1) establishes the definition of where service delivery occurs. Namely, the place of supply is the location of the customer's business or "fixed establishment" where the service is provided. If such location is not identifiable, the answer then is the location of the customer's "permanent address" or typical residence.

Article 56(1)(c) mentions the relevant services in this case (consultants, engineers, lawyers, accountants, data processing, provision of information, etc.) as falling under Article 56(1)'s guidance, and Article 56(1)(k) extends this service definition to include beyond in person to "electronically" provided services, such as hosting online sites, distance maintenance of programs, and provision of computer applications.

Article 193 simply refers the reader here to Article 196 to determine the taxable person as Article 196 contains the relevant exception. This article identifies the branch receiving the services as the taxable person for fulfilling the VAT payment where the provider is outside the EU.

Relevant Facts

Skandia America Corp. purchased outsourced IT services for the entire Skandia group and operated in Sweden through Skandia Sverige, its branch. Skandia Sverige had been registered as part of this VAT group. Skandia Sverige further processed the outsourced services that were then shared with the rest of the Skandia group inside and outside the VAT group. The internal profit margin was five percent with costs allocated to Skandia America Corp. and Skandia Sverige.

Ruling Considerations

The ECJ had to test whether the branch was able to act on its own. First, it looked at whether the entity bore economic risk from its own business activities. Because, as the branch then, Skandia Sverige could not have its own capital or assets, it could not operate and bear economic risk on its own. Thus, it could not be the taxable person under Article 9.

Second, the ECJ consider the cost-sharing agreement. However, it decided the agreement to be irrelevant as the parties were related.

Finally, the ECJ relied on the initial VAT registration to sort out the matter. Skandia Sverige was part of this Skandia VAT group. Indeed, it had registered for the VAT as part of that group, so the services were considered to be supplied to the entire VAT group, not just Skandia Sverige. Therein, the transactions were taxable under VAT.

Implications

1. To begin, US companies with operations in the EU should evaluate their EU entities' initial VAT registrations to know what entities are part of the VAT group.
2. While it was not necessarily part of the decision, US companies operating in the EU should consider insourcing in each country of operation rather than outsourcing potentially to avert these VAT consequences.
3. Under the previous consideration, US companies have to increase their emphasis on balancing income tax and VAT considerations in their internal invoicing procedures. Skandia America Corp. perhaps was too emphatic on income tax minimization to the detriment of the VAT results.
4. Finally, US companies should use this opportunity to evaluate the best entry points to selling to and operating in the EU.

DIMENSIONS OF THE ASPECT OF "LEGISLATIVE AUTHORITY" OF THE EXECUTIVE BRANCH

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Abstract: *The legislative delegation, based on which the legislative powers are transferred from the Parliament to other state bodies, is an exception to the principle of the separation of powers. According to paragraph 1 of Article 115 of the Constitution, the Parliament may adopt a special law enabling the Government to issue (simple) ordinances in fields outside the scope of the organic laws. Thus, the Constitution grants that the Government - an organ of the executive power, under certain conditions, may be vested by the Parliament with attributions of the legislative function, specific to the Parliament. The prohibition of the Government to issue legislative acts in the field of organic laws only refers to the government ordinances issued under a special enabling law.Even knowing all these facts, given the ampleness of the phenomenon to which we refer in this paper, the foreign investors invoke the instability of the business laws in Romania, increased by the frequency of the emergency ordinances and lack of transparency of the local legislative process.In our case, through this paper, we limit ourselves only to covering certain dimensions of the aspect of the "legislative authority" of the Executive branch, consistent with the period following the accession of Romania to the EU, of which several years have been included in the post-crisis period.*
Keywords*: Government ordinances, emergency ordinances, separation of powers, the Constitution, the Parliament*

1. INTRODUCTION

The government of democratic countries is based on the separation of powers; the power (of the state) needs to be divided into different compartments with separate and independent powers and responsibilities. Ideas related to this aspect have existed since the antiquity (Aristotel, 1924), but their perfection was encountered in the works of Montesquieu (Deleanu, 2006; Stratan, 2008; Crăiuţu, 2013; Nedelcu, 2009). The normal formula implies the separation of these powers - legislative, judicial and executive - and also the fact that the related functions should not be held in the "same hand" (Locke, 1690; Montesquieu, 1748). By the transfer ofthesefunctionsseparately, to the parliament, government/ administrationandindependentjudges, the power of the state maintains its balance throughmutualchecks; thus defending the citizensagainstanydespoticactions of the state. Inthe case of Romania, also, the philosophical thesis underpinningtherule of law, states that the power, in order to avoid becoming a totalitarian regime, must be controlledbythepoweritself, by way of separation of powers; according tothe principleof the separation of powers, there are three powers(UCV, 2013):

- the legislative power exercised by the Parliament;

- the executive power, belonging to the government and exercised together with the president of the state at the central level and together with the local public administration bodies at the local level;

- the judicial power, belonging to the courts of law, such as First Instance Courts, Tribunals, Courts of Appeal and the High Court of Cassation and Justice.

According to Article 61 of the Romanian Constitution, the Parliament (consisting of two chambers - the Chamber of Deputies and the Senate) is the sole legislative authority of the country, which adopts constitutional laws, organic laws and ordinary laws. The executive branch consists of those governmental institutions which aim to organize the execution of the laws, as well as to put them into effect (by issuing Government Decisions - GD). Also, as an effect of the legislative delegation, functioning according to the provisions of article 115 of the Constitution, the legislative powers can be transferred to the Government by an act of will of the Parliament or by constitutional means, in exceptional cases. As for the judicial power, it is vested in the courts upholding the law. The separation of the three powers (with no hierarchy among them) does not imply their isolation (Andrew, 2009), but their interdependence and mutual control. According to this principle (Deleanu, 2003; Ionescu, 2004; Iancu, 2008; Călinoiu & Duculescu, 2008) none of the three powers prevails over the other, is subordinate to another and assumes the specific prerogatives of the others.But what we want to achieve through this paper is an "up to date" approach of the "legislative authority" aspect of the Executive / Government, by virtue of the legislative delegation mentioned above with reference to the issue of a large number of Government Ordinances and Emergency Ordinances during the recent years. We also mention here that this topic has been the subject of research of several prestigious Romanian jurists (Deaconu, 2013; Pivniceru and Tudose, 2012; Safta, 2014; Karoly, 2009; Şaramet & Toma-Bianov, 2012; Pepine, 2014), their works being considered in the development of the present approach. This comes after we have previously referred, in connection with the subject, to the legislative activity of the Government, also by way of legislative delegation, only that in those papers (Bostan, 2014a-c) we have focused solely on those normative acts issued by the Executive in the economic and financial field.

2. THE ROMANIAN GOVERNMENT AS LEGISLATIVE AUTHORITY BY VIRTUE OF LEGISLATIVE DELEGATION. RECENT TRENDS

2.1. A look from the perspective of constitutional law

According to the provisions of Article 61 of the Romanian Constitution, the Parliament is the sole legislative authority of the country. However, as an exception to the principle of separation of powers, in the case of legislative delegation, the normative act is no longer issued by the legislature, but by the executive. Therefore, the Romanian Government as a collegial body of the executive power may adopt (Mărăcineanu, 2008): simple ordinances, under a special enabling law and emergency ordinances - in case of special circumstances, which both represent primary rules with the force of a law. Similarly, both of them represent a way to initiate a law, procedurally, the law being finalized by the legislature through a form of (1) approval of the Ordinance, (2) amending

and approving it or (3) rejection. The enabling by law of the Government by the Parliament to issue ordinances, is conducted according to Article 108 and Article 115 of the Constitution, stating as compulsory the establishment of the field - with the exclusion of the field of organic laws - and the date by which ordinances can be issued. By the same law, the Parliament reserves its right to approve such ordinances, according to the legislative procedure. It is worth mentioning the fact that the enabling act in question may refer to the periods of parliamentary recess (January 1st - 31st and July 1st - August 31st) as well as to the rest of the year, whereas (Deaconu, 2013): "no laws forbid the Parliament to empower the Government to issue ordinances while the Parliament is in session".Introducing in the context described here some aspects related to the control of (un)constitutionality, we reveal, first of all, that it falls under the competence of the Constitutional Court. The control refers to the ordinances or provisions of the ordinances, to the laws approving them as well as to the laws enabling the Government to issue simple ordinances, aiming to obey the limits set by the Constitution for the adoption of these acts. An analysis conducted by specialists in the field (Şaramet & Toma-Bianov, 2012) shows that in the case of (simple) ordinances, the Constitutional Court may declare them unconstitutional if they were adopted in the field of the organic laws or constitutional laws. Also, the Constitutional Court may declare the ordinances unconstitutional, if they were adopted by the Government in the absence of the prior adoption by the Parliament of the enabling law in this case or if the law was adopted and the ordinances refer to other fields than the ones expressly stated in the enabling law. In connection with the normative acts of the Executive, from the category of emergency ordinances, "the Constitutional Court has often had to assess whether the situation or circumstances invoked by the Government to support the adoption of the emergency ordinance(s) could have been considered as extraordinary and their regulation could not have been postponed, the urgency being motivated in the contents of the ordinance(s)" (Şaramet & Thomas-Bianov, 2012). According to the same authors, the consequences of declaring unconstitutional the provisions of the ordinances or laws of approval or approval with supplements and / or amendments assume that the Parliament or, where appropriate, the Government has to bring into line the unconstitutional provisions with the provisions of the Constitution within 45 days of the publication of the decision of the Constitutional Court in the Official Gazette of Romania. During that period, the provisions found to be unconstitutional shall be suspended de jure. Obviously, according to article 147 paragraph (1) of the Constitution of Romania (2003), in case of failure to be brought into line with the constitutional text, the provisions cease their legal effects.

2.2. Trends in the law-making process based on exceptions to the principle of separation of powers

Focusing on the legislative procedure based on delegation / substitution (Legislative-Executive), which is usually used in emergency situations when the ordinary or extraordinary legislative procedure cannot be applied, we notice that it has experienced an appreciable practicability during the recent years. Some specialists (Deaconu, 2013) in the context of the debate on the revision of the Constitution argue that it is necessary to restrict the number of ordinances issued by the Government, since during the last two

decades "the Parliament has become an annex of the Government and the legislating process was conducted by the Government rather than by the Parliament. The Parliament has lost its attribute of «sole legislative authority of the country» and became the one which approves the ordinances and emergency ordinances of the Government". With the argument that the situation can be considered to be acceptable for the years 1998-2006, the pre-adhesion period to the European Union of Romania, where a number of regulations at EU level had to be absorbed into the national legislation (Morariu, 2009), the same author argues that, however, "on many occasions, the legislative activity of the Government considerably exceeded that of the Parliament, which is «the sole legislative authority of the country»", exemplifying that only during the year 2000 the Government issued 138 ordinances and 300 emergency ordinances, while the Parliament adopted only 233 laws. Analyzing the same subject, two other authors - Mona Pivniceru and Marius Tudose (2011) - show that "there has occurred a substitution of the executive power in the activity of the legislative, taking advantage of the institution of legislative delegation introduced by article 115 of the Constitution by adopting emergency ordinances without going through any form of debate previously to their coming into force, thus amplifying the legislative instability as the majority of such ordinances are modified in less than a year following their adoption". The above mentioned authors have carried out the study referring to the period 2006-2011; they have also focused on thequantitative dimension, retaining that there had been adopted a number of 2080laws,225 Government ordinances and 863Government Emergency Ordinancesand a number of 1021 normative acts which amendedprevious normative acts(448 laws, 102 Government ordinancesand471Governmentemergency ordinances); during the same period a number of 318laws have been amended. All these allow the quoted authors to assert the concept of "normative inflation". Referring to this concept, they show that "it is likely to undermine the legal system, creating instability". In addition (also representing an alarm signal), the normative inflation, "in some fields, exceeds the national legal framework". Hence, the globalization of the economy multiplies the contacts with foreign enterprises, subject to other legal systems, prompting the dissemination of legal practices beyond the national territory, which can lead to conflicts involving various applicable rights and there are few general international regulations which can be applied to solve such conflicts. Also referring to certain parameters of the legislative process in question, using as a source the statistic studies conducted by the Chamber of Deputies (Parliament of Romania, 2004 ...) we show below, in Table 1, the evolution of the number of such normative acts issued during 10 years (2004-2013).

Table 1The evolution of the number of GO / GEO issued during 2004-2013

Year	GO	GEO
2004	94	142
2005	55	209
2006	64	136
2007	47	157
2008	28	229
2009	27	111
2010	29	131

2011	30	125
2012	26	95
2013	32	113

To form a more complete picture of the regulatory activity of the Executive of Romania, during the same period of time, we present in Chart 1 the evolution of the number of decisions issued by the Government.

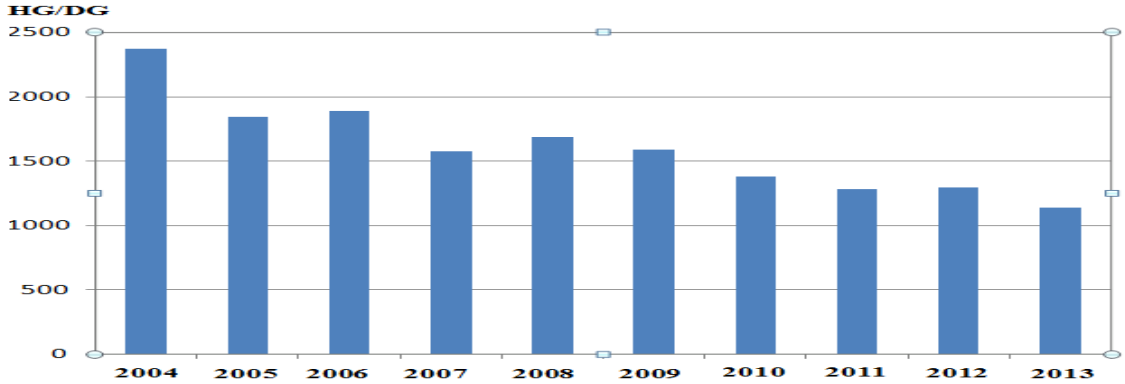

Chart 1 The evolution of the number of Government decisions issued during 2004-2013

What we want to highlight is that the data presented above show that the anti-crisis measures implemented by the Government by normative acts in its jurisdiction, did not represent by far a reason to amplify the total number of GO / EO, during the period that followed the major moment of the crisis - 2009 (Stoica & Capraru, 2012). Thus, we can notice that the annual number of GO evolved in a relatively constant manner - approx. 30 (2009-2013), the annual number of GEO was in the range of 110 / year, in contrast with the years of economical growth when the number of annual ordinances exceeded 200 (209 GEO in 2005, 229 GEO in 2008). Also, the number of Government decisions, decreased - approx. 1/3 - during the period that followed the major moment of the crisis: 1592 GD in 2009 and 1138 GD in 2013. In connection with the maintenance of the issue of Emergency ordinances to a high number (Pepine, 2014), the Venice Commission argued (2012) that "the problem is probably that the Constitution itself provides the motivation to appeal to emergency ordinances as they remain in force if the second chamber of the Parliament (the decisional chamber) does not explicitly reject the law on the correlative approval submitted by the Government. To maintain a Government emergency ordinance in force, the governmental majority of the Parliament simply has to delay the vote in both Chambers of the Parliament. Such a possibility almost encourages the abuse and may explain the high number of Government emergency ordinances issued in the past". On the other hand, the quoted author notes that in the context where an emergency ordinance can be appealed to the Constitutional Court exclusively by the Ombudsman, there should not be neglected, in the future, the solution consisting in the "ability of other institutional parties to make an appeal against an ordinance", which would lead to a decrease of the number of such normative acts. Also, "under the circumstances when the Government definitely needs

a faster regulatory procedure and as the Parliament always seems to act very slowly", the healthy solution is not represented by the adoption of a GO / GEO, but - with reference to the Constitution of France - to empower the Government with "the right to intervene more in setting the agenda of the Parliament". However, "the almost constant use of the Government emergency ordinances is not the most appropriate means" to the urgent adoption of certain regulations (Safta, 2014 - quoting from documents of the European Commission for Democracy through Law, which also retained such issues in the Opinion adopted at the 93rd Plenary Session, Venice, December 14th - 15th, 2012). So far, what is clear is that, beyond the fact that a large part of the legislative work of the Parliament is devoted to the adoption of laws of approval of the ordinances and emergency ordinances of the Government, we are dealing with the unpredictability and inscrutability of the law, as either some of the ordinances have been approved by the Parliament with great delay, or some ordinances have been rejected by the Parliament, the stable and coherent regulatory framework providing the citizens with predictable and foreseeable juridical relations seems to be a distant goal.

2.3. GO and GEO, only disadvantages?

In this section of our approach, beyond the benefits related to the efficiency of the regulatory system on which we stopped relatively broadly, we also reveal other aspects that we found to be important in the context of the addressed topic. Thus, the simple ordinances, in contrast to the emergency ordinances, form a category less appealing as they are subject to stricter rules: they can be adopted only during the parliamentary recess and only in the fields clearly defined by the MPs. Compared to the draft laws (regardless of the procedure used to pass them by the Parliament - simple, emergency or by assumption of responsibility), the emergency ordinances have two major advantages (Nicolae, 2014). The first refers to the moment of application, which occurs immediately after issuance (in other words, until the GEO gets to be debated and possibly amended in the Parliament, it produces effects, sometimes irreversible). Then, we should not overlook the fact that depending on the interests of the majority, some emergency ordinances get to be debated by the Parliament only after a long period following their issue. The second major advantage of emergency ordinances refers to the possibility of appeal to the Constitutional Court. In contrast with the bills which prior to be sent for promulgation (i.e., before coming into force) can be appealed by senators and deputies to the Constitutional Court, the emergency ordinances have a completely different regime; they may be appealed to the Constitutional Court only by the Ombudsman following their approval by the Government. If we refer to the areas in which most of the amendments occurred (at the level of July 2014: 1. the Fiscal Code - 15 GEO and 4 GO, 2. the law on Healthcare Reform - 11 GEO, 3. the law of National Education - 7 GEO, 4. the Election Code - 5 GEO, 5. the Law on Public Procurement - 4 GEO), they are, firstly, the areas of taxation, health and education, i.e. those that require stability, predictability and an extensive public debate previously to the amendment of their provisions. Strictly, referring to the amendments made to the Fiscal Code, we show that by Government emergency ordinance, the Government has introduced, for instance, the payment of social

contributions from the income obtained from rental or agricultural, forestry and fish farming activities (GEO no. 88/2013), the new excise duties on oil and the special construction tax - the so-called pole tax (GEO no. 102/2013) and established the tax relief of the reinvested profit (GEO no. 19/2014). The Fiscal Code has been amended after May 2012 by 15 emergency ordinances and 4 simple ordinances (issued during the parliamentary recess). In total, almost 370 provisions have been recalled, amended or newly adopted (Nicolae, 2014), although within the Fiscal Code, there is a provision (article 4) stating that "the Code shall be amended and supplemented only by law, promoted, as a rule, 6 months before the date of the entry into force of such law".

3. CONCLUSIONS

The almost constant use of the Government emergency ordinances is not the most adequate means to the urgent adoption of certain efficient regulations. The philosophical thesis underpinning the rule of law, states that the power, in order to avoid becoming a totalitarian one, must be controlled by the power itself, by way of separation of powers. Focusing on the legislative procedure based on delegation / substitution (Legislative-Executive), which is usually used in emergency situations when the ordinary or extraordinary legislative procedure cannot be applied, we notice that it has experienced an appreciable practicability during the recent years. In the context of the debates on the revision of the Constitution it is argued that it is necessary to restrict the number of ordinances issued by the Government, since during the last two decades "the Parliament has become an annex of the Government and the legislating process was conducted by the Government rather than by the Parliament". Taking into consideration the fact that an emergency ordinance can be appealed to the Constitutional Court exclusively by the Ombudsman, we agree upon the fact that there should not be neglected, in the future, the solution consisting in the "ability of other institutional parties to make an appeal against an ordinance", which would lead to a decrease of the number of such normative acts.In addition, this would certainty lead to the settlement of a stable and coherent regulatory framework providing the citizens with predictable and foreseeable juridical relations.

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GENERAL ASPECTS ON THE REGULATION OF CRIMINAL LIABILITY OF THE LEGAL ENTITY IN THE PRESENT ROMANIAN CRIMINAL LAW. THE REFLECTION OF THE MITIGATING AND AGGRAVATING CIRCUMSTANCES REGARDING THE CRIMINAL LIABILITY OF THE LEGAL ENTITY

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Acknowledgement: *This work was supported by POSDRU/159/1.5/S/141699strategic grant, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013*

Abstract:*This document aims at providing an overview on the institution of the legal entity's criminal liability as it is regulated in the (new) Romanian Criminal Law, by mentioning the main coordinates of this relatively new institution in the Romanian legislation. It also approaches certain problematic, controversial issues which can generate controversies in interpreting and implementing the legal provisions, making a critical analysis of the present normative stage at some points. It also aims at emphasizing and briefly commenting on the manner of reflecting of the mitigating or aggravating circumstances of punishmentregarding the criminal liabilityof the legal entity, raising objections to certain doctrinaire interpretations and formulating de lege ferenda proposals meant to clarify or improve the manner in which some legal provisions in the field are or are going to be understood in the criminal doctrine and practice.*
Keywords: *the criminal liability of the legal entity; The Criminal Law of Romania; mitigation circumstances of the legal entity's penalty; aggravating circumstances for the legal entity's penalty.*

1. REGULATORY FRAMEWORK: GENERAL ASPECTS CONCERNING THE PRESENT REGULATION OF THE LEGAL ENTITY'SCRIMINAL LIABILITY IN THE ROMANIAN CRIMINAL LAW

The Romanian criminal law has been familiar with the regulation of the institution of the legal entity'scriminal liability for a (relatively) short period of time, this issue not being established *ab initio*in the previous Criminal Law (Law no.15/1968, entered into force since January 1st1969), being only indirectly approached in the Criminal Law preceding this one ("Carol al II-lea" [Charles II] Criminal Law of 1936, entered into force in 1937), under the form of providing specific safety measures only for the legal entities (for more details, see also: Guiu, in Antoniu *et al.*, 2011: 373; Stănilă, 2012: 46;

Mitrache & Mitrache, 2014: 151). It was not until 2004 that exceptional provisions (which lacked practical implementation) to a special law – Law no.299/2004 – stipulated the first regulatory provisions to allow the criminal liability of a legal entity, but with very limited coverage (as it comes out of the name of the law creating the institution, the provisions under question were limited to the criminal liability of legal entities for counterfeiting foreign currency or other values). In 2004 as well, the legal act which should have been the new Criminal Code of Romania (Law no.301/2004, enacted and published in the Official Gazette no.575/2004, but repealed before its entry into force) provided by general regulation the institution of the legal entity'scriminal liability, according to the special criminal clause system (an express provision included in the incrimination norms was necessary for the criminal liability of the legal entity, the latter being unable to behave as active subject of the crime and be held liable under criminal law except for a certain incriminating provision being stipulated by law expressly and limitedly).

Subsequently, by Law no.278/2006, the previous Criminal Law (from 1968) was modified – among other things – by (also) including a general regulation about the institution of the criminal liability of the legal entity, complying with the system of general liability according to which, as a rule, the legal entity may be held responsible under criminal law for any act described within the criminal law, without any special express provision in this respect. These provisions (little implemented initially, limited to a reduced number of concrete causes) were in force until February 1st 2014 when a new general criminal law was implemented: the new Criminal Code of Romania (Law no.286/2009).

The new regulatory frame has perpetuated the final tendency of the former regulation concerning the criminal liability of the legal entity, meaning that the institution finds its express regulation (as an institution generally regulated within the basic criminal law) within the new Code (Title VI from the general part, art.135-151), being made according to the system of general liability, as well as direct liability. So, as concerns general liability, at least theoretically, the moral (collective) entities with legal entity may be held responsible under the criminal law – according to the present Romanian legislation – for any alleged fact that was committed (the model of absolute incriminating similarity) if there is evidence that it was committed for achieving one's object of activity, in the interest or in the name of the legal entity. It has been rightly noted that there are certain incriminations incompatiblewith their being committed by thelegal entity (*e.g.*: rape, incest, bigamy, desertion, etc); yet, this incompatibility is to be kept (at least theoretically) only in relation with the perpetration of those deeds by the legal entity from the author's position, but not from the instigator's or accomplice's position. (Streteanu & Chiriţă, 2007: 397; Paşca, 2011: 147; Stănilă, 2012: 163-171; Hotca, in: Pascu *et al.*, 2014: 687; Mitrache & Mitrache, 2014: 153)

As concerns the direct liability, it is inferred from the text formulation, art. 135 par. 3 of the Criminal Code, according to which: "The criminal liability of the legal entity does not exclude the criminal liability of the natural person that has contributed to the perpetration of the same deed"; *per a contrario*, although it is possible to hold responsible under the criminal law both the legal entity and the natural person who

committed the deed within the legal entity's object, in its interest or in its name, this is not a prerequisite for holding the legal entity responsible under the criminal law, but just a hypothesis that does not exclude itself. Consequently, the legal entity is liable on its own behalf, even separately from the natural person, for the crime committed when achievingits object of activity or in itsinterest or name, (only) if we establish the existence of these circumstances related to the crime concerning the connection between the collective, moral entity and the individual – natural person – who actually committed the crime. (Streteanu & Chiriţă, 2007: 398-401; Guiu, in: Antoniu *et al.*, 2011: 388, 389; Paşca, 2011: 148-150; Hotca, in: Pascu *et al.*, 2014: 687-691; Răduleţu, in: Toader *et al.*, 2014: 235; Lefterache, in: Bodoroncea *et al.*, 2014: 302-304; Mitrache & Mitrache, 2014: 154, 155; Streteanu & Niţu, 2014: 274; the doctrine also included the opinion that the statement according to which the Romanian legislator chose the direct responsibility of the legal entity "has no legal basis", but this point of view is in a minority position, also contested by the same source in which it was formulated – see: Guiu, in: Antoniu *et al.*, 2011: 378, 388).

The category of legal entities exempt from the possibility of being held responsible under criminal law has been limited (better said, it was seen in context) through the present regulation as, by February 1st 2014 there was nocriminal liability of the state, the public authorities and (none of) the public institutions which were carrying out an activity that could not be the object of activity of the private domain (whether the crime had been committed or not by the latter while carrying out that activity outside the private field of activity). Yet, according to the provisions in the present article 135 of the Criminal Code, the criminal immunity(the lacking of criminal capacity) is a benefit for– apart from the state and the public authorities (a notion whose scope is stipulated in art.240 of Law no.187/2012,for implementing the new Criminal Code, as being limited only to those authorities expressly mentioned in Title III of the Romanian Constitution and in art.140 and 142 herein, namely: The Parliament; the Institution of the Romanian President (not the person of the President itself, but the Presidency as institution, regadless who ocupies the office at a certain point in time); the Government; the specialized central public administration and the local public administration; the judicial authority; the Court of Auditors; The Constitutional Court of Romania) – only those public institutions carrying out activities which cannot be the object of the private domain, and only (the latter) if the deed (of course, we consider only the hypothesis of committing incriminating deeds) was committed in relation with that field of activity, inaccessible for theprivate field. Or – as it has been mentioned in the specialised literature – namely, if the legal entity, a public institution, carries out several types of activities, of which only one (some) cannot be the object of the private domain, and the incriminating deed would be carried out within the scope of an activity as inherent part of a differentdomain than this one (these ones), found in the scope of domains where that public institution can function, itscriminal liability shall not be removed. (Guiu, in Antoniu *et al.*, 2011: 386-388; Paşca, 2011: 144-147; Stănilă, 2012: 83, 84; Hotca, in: Pascu *et al.*, 2014: 684-686; Vlăşceanu & Barbu, 2014: 302, 303; Răduleţu, in: Toader *et al.*, 2014: 235, 236; Mitrache & Mitrache, 2014: 152, 153)

As concerns the criminal penalties applied to a legal entity which took on criminal liability, the Romanian legislator provided the fine as single main penalty, setting up a number of specific additional penalties (different from those provided for the natural person), regulated according to a heterogeneous range, varying from an intensity usually higher than that of the main penalty (we consider here the additional penalty of the legal entity's dissolution) and reaching extremely reduced stages of severity (the case of the complementary penalty of making the convictionpublic by posting it or diseminating it thru the media). According to provisions in art.136 par.3 of the Criminal Code, these additional penalties applied to the offender – legal entity (in descending order of their gravity) are: dissolution; suspension of activities or of an activity (from 3 months to 3 years); closing down certain working points (from 3 months to 3 years); prohibition to participate to procedures of public procurement (from 1 to 3 years); placing under judicial supervision (from 1 to 3 years); display (from 1 to 3 months) or publication of the conviction penalty (maximum 10 times published in the newspaper or broadcasted on TV or radio or 3 months of publication through other audio-visual media at the most). Although, as a rule, their regime of establishment and implementation is optional, the legislator also provided a mandatory regime, either when there are special express provisions in this respect or – just for some of them (dissolution, adjournment of activity) – in the case of non-execution in bad faith, under certain circumstances, of some of the other additional penalties that had been applied. Although these additional penalties are incidental, as a rule, in relation with any legal entity who has acted as active subject of a crime, the law also establishes some exceptions; thus, the public institutions, political parties, trade unions, associations of employers, religious organisations or national minority organisations (legally created) only additional penalties can be imposed, such as closing down working points, being prohibited to take part in procedures of public procurement and display or publication of the conviction (of which the first two only if they are compatible with each of the two types of legal entities); the legal entities working in the mass media field can only be imposed the additional penalties of being prohibited to take part in procedures of public procurement and to display or publish the conviction.

As concerns the main penalty, under the form of a fine (the money that the legal entity is going to pay to the state as an effect of committing the crime), it is regulated, like in the case of the offender – natural person, according to a new system for the Romanian legislator, namely the system of day-fine, which has the advantage of allowing for a double coordinate at the level of the judicial individualisation of penalty. Therefore, according to provision in art.137 par.3 of the Criminal Code, the number of the day-fine shall be established taking into account the general criteria of penalty individualisation provided in art.74 of the Criminal Code, the same, both for the natural person and for the legal entity(within the limits of their compatibility with the legal entity). Without any doubt, in individualising the number of day-fine applied to the legal entity for committing the crime, the objective criterion of the severity of the offence shall be found in relation with (according to art.74 par.1 let.a)-c) of the Criminal Code): the circumstances and manner of committing the crime, the means used, the state of danger created for the value protected by the criminal law, the type and severity of the result or of other crime

consequences. We consider questionable the way in which we can set out the criterion of judicially individualising the penalty for the legal entity, through subjective aspects related to how dangerous the offender is, some aspects included in the provisions of art.74 par.1 let.d)-g) of the Criminal Code being (where appropriate, obviously or realistically) incompatible with the condition of the legal entity; it refers to: the reason for committing the crime, the purpose (here the discussion can mention those points talking about the degree of reality in the projection of the subjective side – *mens rea* – on the type of legal entity); the offender's criminal record (this personal issue is considered perfectly compatible with the offender's point of view – as legal entity); the conduct after committing the crime and during the criminal proceedings (in fact, this criterion would be compatible with the offender's hypothesis – as legal entity); the level of education, age, health, family and social status (we consider the criterion incompatible with the situation of the offender's position – legal entity).

In terms of measuring the value of each day-fine, the legislator expressly sets down a main individualisation criterion taking into account the position of the legal entity. Thus, if art.61 par.3 of the Criminal Code sets out that the amount for a day-fine is established in Court taking into account the material situation of the natural person (and his legal obligations towards the dependants), art.137 par.3 of the Criminal Code provides that the amount of a day-fine is established by considering the turnover in the case of the profit legal entities, and depending on the value of the total assets in the case of the non-profit legal entities (to which the criterion of complying with the other obligations of the legal entity is being added).

The amount of the penalty shall be obtained by multiplying the two results of the individualisation operation as such: the number of the day-fine, namely the value of each day-fine. In fact, this does not regulate only the procedure of the judicial individualisation of the penalty, but also the legal individualisation, as the criminal fine penalty applied to the legal entity is a relatively determined one, which consequently overlaps the imperative to be included within certain minimum and maximum limits, both general and special, stipulated by the legislator. Or, the present Romanian criminal law has not directly stated (neither concerning the limits of fines applied to offenders – natural persons nor in the case of the limits of fines applied to offenders – legal entities) the amount of these limits, but has stated them indirectly, providing the minimum number, namely the maximum possible number of the day-fine, as well as the least possible amount, i.e. the highest allowed amount that can represent the value of a day-fine. This is in relation with the general limits of the fine penalty, as well as in determining the special limits. Thus, by appealing to this procedure, the legislator sets indirectly the general limits (impossibly to be exceeded, irrespective of the number of mitigating or aggravating circumstances considered in any particular test case – according to the fundamental principle of criminal law sanction lawfulness art.2 par.3 of the Criminal Code) of the fine penalty applied to the legal entity; in conformity with art.137 par.2 of the Criminal Code, the minimum number of day-fine for the legal entity is 30, and the maximum one is 600; the minimum amount of a day-fine for the legal entity is 100 and the maximum amount is 5000 lei. It comes out that the general minimum of day-fine in the case of offenders – legal entities is 3000 lei and the general maximum is 3,000,000 lei, these limits being

different from the incidental ones in the case of the criminal fine applied to offenders – natural persons (300 lei to 200,000 lei – values that were inferred starting from the regulation in art.61 par.2 of the Criminal Code, where the number of day-fine for the natural person ranges from 30 to 400, and the amount of one day can be established between 10 and 500 lei).

This gap between the general limits of the fine penalty in force for the legal entities and the natural persons is mainly based on two reasons: the necessity to compensate, by the amount, the fact that this is thesole main sanction for the legal entities, so the inexistence of alternatives to it (unlike the case of the natural person); the management (in principle) of increased financial resources by the legal entity, unlike the natural person, imposes the necessity of setting higher fine amounts in order to keep the balance between the punitive and the intimidating effect of a penalty on the entity suffering from the application of penalty (in this respect, see also: Guiu, in Antoniu *et al.*, 2011: 393-397; Vlăşceanu & Barbu, 2014: 308).

The law acts similarly when indicating the special limits of the incidental fine penalty for the legal entities, with the specification that in this last case the system includes an additional variable, sending to certain legal limits of penalties provided by law (as penalties applied to offenders – natural persons) within the incrimination rules; depending on the category to which they belong, there are relevant types of special limits of the fine penalty for the legal entity (art.137 par.4 of the Criminal Code). We should note that, in establishing the special limits, the legislator shows only the minimum and maximum number of the day-fine, it being the changed coordinate of the calculation by comparison with the operation establishing the general limits of the criminal fine. As concerns the other coordinate, the limits of values for the amount of each day-fine, they are the general ones (namely, for the legal entity: between 100 and 5000 lei / day-fine). Starting from this conclusion, it is inferred that in the case of producing the effect of mitigating or aggravating circumstances, the modification of the penalty special limits for the legal entity's fine (reduction or increase) takes place only in relation with the incidental number of day-fine, without raising the question of changing the limits (the minimum or maximum value) of the amount to be established for every day-fine.

In view of these aspects, we can consider that the special limits provided by law for the fine penalty, which would be incidental if the offender were a legal entity, are as follows: from 6,000 lei to 900,000 lei (between 60 and 180 day-fine), when the prescribed punishment in the indictment rule (therefore for the crime, if it was committed by a natural person) would be just the fine (art. 137 par. 4 let. a); from 12,000 lei to 1,200,000 lei (between 120 and 240 day-fine) when the prescribed punishment in the indictment rule would be 5 years of imprisonment at the most – namely, less or equal to 5 years – either as single punishment or as an alternative to the fine penalty (art. 137 par. 4 let. b); from 18,000 lei to 1,500,000 de lei (between 180 and 300 day-fine) when the prescribed punishment in the indictment rule would be 10 years of imprisonment at the most - namely, less or equal to 10 years (art.137 par.4 let. c); from 24,000 lei to 2,100,000 lei (between 240 and 420 day-fine) when the prescribed punishment in the indictment rule would be 20 years of imprisonment at most - namely, less or equal to 20 years (art.137 par.4 let.d); from 36,000 lei to 2,550,000 lei (between 360 and 510 day-

fine) when the prescribed punishment in the indictment rule would be more than 20 years of imprisonment (so, by excluding an equal value to that of 20 years) or life imprisonment – any of them as sole or alternative sanctions (art.137 par.4 let.e) (in this respect, see also: Vlăşceanu & Barbu, 2014: 309, 310).

We should also mention that the decision to integrate the legal penalty within the indictment rule referred to in art.137 par.4 of the Criminal Code, as set under a certain limit indicated by law, equal or superior to it, is made only by observing (if there is no other express legal provision, which is not the case here) the maximum value of the repression expressed in abstract, namely by relating to the maximum penalty value provided by law as reference benchmark (for a sole sanction) and by relating to the maximum of the more serious type of penalty from those stipulated by law for alternative penalties (of the same category – in this case, main sanction). In fact, this procedure has been consistently similar to the operations of deciding the category to which the prescribed penalty being referred to belongs and in the context of other general criminal institutions (such as re-offences in the case of the natural person – art.41 of the Criminal Code – or establishing hypotheses when the double incrimination condition is or is not required in order to make possible the implementation of the Romanian criminal law, in itsapplication by space criterion, in accordance with the principle of personality –art.9 of the Criminal Code – etc.). Moreover, in conformity with the provisions in art.187 of the Criminal Code, by referring to "penalty provided by law we understand the penalty provided in the draft law which incriminates the act as being done without taking into consideration the circumstances of reducing or increasing the penalty".

2. THE REFLECTION OF THE MITIGATING AND AGGRAVATING CIRCUMSTANCES ON THE CRIMINAL LIABILITY OF THE LEGAL ENTITY

The Romanian criminal legislation in force includes several provisions (general or special) referring to – directly or indirectly – the relation between the institution of the legal entity'scriminal liability and what we can generally call: the set of circumstances having a mitigating or an aggravating effect on the penalty.

In accordance with art.137 par.5 of the Criminal Code, as concerns the determination of the main fine penalty for the offender – legal entity, it is provided that acknowledging the circumstance that the offender, by committing the crime, aimed at obtaining patrimonial benefit, opens the possibility of aggravation of the legal entity's criminal liability, by increasing the special limits of the legally established penalty by one third. Thus, a general cause of optional penalty aggravation is established, as the law does not necessarily indicate aggravation, only giving the Court the opportunity to increase the penalty limits under that circumstance. On the other hand, the fraction of the applied addition is fixed, the court lacking the possibility to exceed it or to get an amount under reduced limits than the legal ones: one third (the only exception shall be indicated throughout the exposure). In other words, the court shall give effect to the aggravation circumstance and shall apply the penalty within the corresponding limits, increased exactly by one third of their own value, or shall not give effect to the aggravation circumstance and shall apply the real penalty within the unchanged special limits of the

law – *tertium non datur*. We must note that the addition aims at the two special penalty limits, the maximum and the minimum, not just the superior limit. As we have already shown previously, the addition shall aim only at the minimum and maximum number of the applied day-fine, without affecting the minimum and maximum values of the amount for each day-fine.

If this aggravating circumstance is to be used, the law suggests complementing the usual criteria of judicially individualising the penalty, disposing that (at the end of the text in art.137 par.5 of the Criminal Code) "when establishing the fine, we shall take into account the value of the obtained or desired patrimonial benefit", hence we conclude that in order to retain and use this aggravating circumstance it is not necessary that the patrimonial benefit, sought after by the legal entity by committing the crime, should have been obtained in fact, it is enough to determine that it has been something integrated into the dimension of the crime subjective side. Given that, as a rule, the specificity of the crime categories displaying at the highest level the ability to involve the criminal manifestation of a legal entity, we believe that this aggravating circumstance shall usually check, within the judicial practice, the necessary conditions for its limitation. However, we think that the formulation to which the legislator appealed – namely: "when by the committed crime the legal entity wanted to get a patrimonial benefit" – can limit the effect of this aggravating circumstance only if the crimes have been committed on purpose (possibly of those committed by praeter intentionem, if desiring the material benefit implied committing the *primum delictum* –in itself illicit from the criminal point of view –set at the base of the committed deed) by the legal entity. We should whatsoever exclude the situations where, even in search for a patrimonial benefit, the legal entity would commit non-intentional crimes, as we could state by these hypotheses that only by committing the *deed* (lawful in itself or at least not unlawful from the criminal point of view), the legal entity wanted to get a patrimonial benefit, which was not desired by committing the "crime", meaning that the legal entity knew the unlawful nature of the deed, from the criminal point of view, which was committed in view of getting the desired patrimonial benefit.

The legal provision to which we refer here also includes the express mention that the indicated increase in the limits of the fine penalty applied to the legal entity shall not exceed the general maximum of the penalty under question. Although pertinent and exact, we appreciate the provision as redundant, because not only the concept of "general limits" of a certain type of penalty imposes accepting the fact that the values thus determined will not be exceeded (unlike those featuring the special limits of penalty)but, furthermore, the legislator of the present Criminal Code expressly provided this natural rule at the beginning of the regulation, within the fundamental principle of sanction legality, disposing, in accordance with art.2 par.3, that "no penalty can be established and applied outside its general limits". Consequently, even without the express emphasis within art.137 par.5, by the (possible) increase by one third of the special limits of the legal entity fine penalty, on the grounds that the offender aimed at getting a patrimonial benefit by committing the crime, it would not have been possible to accept exceeding the general maximum for that category of penalty. In the event that, by increasing the special penalty maximum by a third, the mathematical calculus would lead to an amount over the

value of the penalty general maximum, the increase shall not be in fact by one third, but less (the only exception from the fixed character of the addition under question), being clearly limited up to the amount of the general maximum value of the punishment.

As concerns the aggravation of the criminal liability of the legal entity, the legislator introduces a distinct regulation of re-offence in art.146 of the Criminal Code, when the active subject was the legal entity, compared with the offender's similar hypothesis –natural person. Apart from other peculiarities relating to the circumstances and types of re-offence (for example, while the re-offence in the case of the natural person is relative, the Romanian law in force has established absolute re-offencefor the legal entity), it can be seen that the legislator has appealed to a different regulation for the legal entity in comparison with the natural person, as concerns the sanction of the post-conviction unserved re-offence. Thus, if in case of post-conviction served re-offence, the special limits of the legal penalty are increased by half, irrespective of the type of active subject of the crime – natural or legal entity – in case of post-conviction unserved re-offence (commited until the first penalty has been executed) the sanction rules are different. The penalty for the new crime is not aggravated in the case of the natural person, making appeal to the arithmetical addition, by adding it to the penalty (or the rest of the penalty to be served) definitively applied for the first crime part of the re-offence. However, in the case of the legal entity, irrespective of the type of re-offence, the penalty for the new crime is established within the special limits, increased by half, of the legal penalty for that crime; as a result, the penalty established as such is added to that standing for the first crime part of the re-offence (or to what is left of it for serving) if this first penalty has not been served or considered as served. Apart from any reserve or possible debate, we can state that, in the case of the legal entity, the re-offence condition, under any form, is a real general cause of (compulsory) aggravation of the penalty. The previous observations are still valid: the increase refers only to the number of day-fine, not to the limits of the amount for each day-fine; the aggravation affects both special limits of the penalty, the minimum and the maximum; after the increase, it is natural (and redundant the special express provision referring to) to limit the aggravating effect to the general maximum of the type of penalty (such mention is missing from art.43 par.5 of the Criminal Code,relating to the increase by half of the special penalty limits in case of post-imprisonment re-offence committed by the natural person, this express mention in art.146 par.2 of the Criminal Code being a case of miscorrelation in relation with the aggravation of the penalty in case of re-offence for the legal entity), this case being the only exception possible form the rule of compulsory aggravation by half of the special maximum of penalty provided by law in case of re-offence of the legal entity.

It should be noted, as criticism to the distinct regulation of re-offence in the case of the legal entity, the fact under this form (able to lead to controversy and to non-unitary position of the doctrine and judicial practice) that the express provision concerning the natural person (art.43 par.2 of the Criminal Code) is not appliedas concerns the situation of the legal entity who would commit multiple crimes under post-conviction re-offence, yet nothing against this idea is stipulated for that hypothesis. We are talking about the way in which the contemporary Romanian legislator understood to regulate expressly, (only) for the natural person, the situation in which, after a final conviction complying

with the conditions of the first part of the re-offence, several competing actions would be committed before or after being served or considering the applied punishment as being served, of which at least one would meet the conditions of the second part of the re-offence. In this case, according to the legal text previously indicated, the present Criminal Code has adopted a solution considered to (for reasons which go beyond this topic) digress from a natural way of solving such multiple crimes (which would have meant giving priority during sanction to re-offence or intermediate multiple crimes, depending on the crimes which do not comply with the conditions of the second part of the re-offence), namely: the multiple crimes have been sanctioned first, consequently the penalty for competing crimes was to be additional to the penalty applied definitively before committing the competing crimes (or to what is left for execution). The specific character of this solution, in relation with the (opposed) natural way someone would have acted, except for another express legal provision in this respect, allows us to state that the provision under question is strictly exceptional as concerns its interpretation and application, which cannot be applied to any other situation, except for those to which it expressly relates. For example, even under re-offence of the natural person, when the multiple crimes are committed after having executed the first punishment, but before rehabilitating the former convict, if the re-offence conditions are met (which will be a post-imprisonment re-offence), the lack of a provision similar to that at par.2 in art.43 of the Criminal Codemakes us state that the re-offence condition will be solved first, followed by the sentencing regime for the multiple crimes (see: Michinici & Dunea, in: Toader *et al.*, 2014: 112, 113). Or, in the absence of any provision similar to that in art. 43 par. 2 of the Criminal Codein regulating the re-offence committed by a legal entity (to which we add a reason concerning the different partial system of sentencing this type of re-offence when the legal entity is active subject of multiple crimes), we are entitled to think that in this case too, it is natural to apply the common way of solving such combination of multiple types of crimes (the re-offence having priority, followed by the multiple crimes), unlike (difficult to explain from the point of view of coherence and symmetry expected from the new criminal legislator) the similar hypothesis in which a natural person would be. The doctrine has already retained the possibility of controversy in this respect, where an express legislative intervention would be necessary (Mitrache & Mitrache, 2014: 355, 356).

Following the regulation, art.147 of the Criminal Codeis expressly dedicated to issues on mitigating and aggravating the criminal liability of the legal entity, as its marginal name shows it. This legal text expressly refers to the hypothesis in which the legal entity would be active subject of multiple crimes or included in multiple intermediate crimes or of crimes to which other aggravating or mitigating circumstances of criminal liability would be incident. The lack of express reference to the situation of the legal entity under re-offence (cause for aggravating the penalty) can be explained through the separate provisions included in the preceding article (art.146), as previously emphasized. Consequently, we can establish that the text in art.147 of the Criminal Coderefers to the possibility of a legal entity under one of the following general causes for mitigating or aggravating the punishment: the atempted crime; the crime has been committed and mitigating circumstances have been retained; multiple crimes have been

committed either all at once or in turns; the crime has been recurrent; the crime has been committed and aggravating circumstances have been retained (also see: Hotca, in: Pascu *et al.*, 2014: 724). Furthermore, we consider thet the text also includes the special situations of mitigating or aggravating circumstance (formulated in the special part of the Criminal Code or in other special incriminating provisions, set outside the Code), such as the special circumstances of reducing or increasing the penalty whose provisions are effective on the criminal liability of the natural and legal entities to an equal degree, to the extent that the express conditions provided by law are checked for compliance.

The provision from art.147 par.1 of the Criminal Codedecides that, in the indicated (or inferred) mitigating or aggravating circumstances of its criminal liability, "the legal entity is fined according to the law regime provision for the natural person". We emphasize that the correct and logical interpretation of the legal statement in question is based on the distinction between the *fining regime*(stipulated in the law for the natural person)and the *fining limits*(stipulated in the law for the natural person). The fining regime, incidental in case of mitigating or aggravating circumstances, refers to the abstract effects produced upon the special penalty limits, irrespective of their particular value, namely the intensity of reduction or increase of the penalty limits, (usually) expressed under the form of fraction or percentage, calculated by relating to the special limits of the incidental punishment in each case. The regime of penalty existing in the case of a mitigating or aggravating circumstance is a legal rule set in the abstract, with possible use to many types (categories) of penalties (imprisonment or fine).

So, by saying that "the legal entity is fined according to the law regime provision as the natural person" if there may be mitigating or aggravating circumstances, the legislator wanted to explain that (according to the principle of equality and parity system) for the legal entity there will be the same mitigating or aggravating circumstances as well in such cases, just like for the natural person, namely that the mitigating or aggravating effect shall act accordingly, andusing the same type of calculus, any reduction or mitigation by the same percentage or fraction of the legally indicated penalty being incidental, in relation to the penalty (and its specific limits) specific for the legal entity. The opposite interpretation, according to which the reference to the "fining regime for the natural person" would suppose taking over, in these cases, the fining penalty limits incidental to the natural person (intrinsic, specific) and their use in the case of mitigating or aggravating the criminal liability of the legal entity cannot apply, as such interpretation would lead to absurd and illogical solutions and – as such – unacceptable, which should be rejected according to the *ubi cessat ratio legis, ibi cessat lex*interpretation rule (for a point of view criticising the regulatory provision in art.147 par.1 of the Criminal Code, in the light of this interpretation – on the grounds that "the analysed text sends to… the provisions in art.61 of the new Criminal Code", aiming only at establishing the fine penalty for the natural person, see: Guiu, in: Antoniu *et al.*, 2011: 421, 422; also, for the statement: „Basically, considering these hypotheses, the provisions in art.61…shall be applied", see: Hotca, in: Pascu *et al.*, 2014: 724). Such a meaningless consequence would be that, under certain circumstances, by applying to the legal entity the mitigating or aggravating regime provided by law in certain rules of basic regulation on the situation of an offender –natural person, including the special penalty limits provided by law for the

natural person, we could set penalties outside the general limits for the legal entity, more precisely under its general minimum. Or, such a hypothesis is excluded by the very fundamental principle of criminal law sanction legality in respect of its extension which excludes the possibility to set or apply penalties without complying with their general limits (art.2 par.3 of the Criminal Code).

We do not believe that, in representing the legal legislator, there has ever been such intention of interpreting the provision, as it is more rational to appreciate that, from the start, the statement (as previously indicated) "the fining regime provided by law for the natural person" was considered to exclude the reference to "the penalty limits stipulated for the natural person", simply making reference to the intensity of the mitigating or aggravating effect of the penalty in relation with the legal entity's own penalty limits.

Consequently, we think that the text in art.147 par.1 of the Criminal Codedisposes that, by relating to the intrinsic (special) limits of fining, incidental in a clear case – and, of course, by complying with the general limits of the fine penalty – the same degree is being applied to the legal entity (yet, deriving from its special limits of fine penalty) the mitigating or aggravating effect of circumstances which lead to such result, such as: in case of multiple crimes, the application *mutatis mutandis*of provision in art.39 (par.1 let.c) of the Criminal Code, namely the compulsory increase of the main penalty within the multiple crimes by one third of the other applied penalty or of the sum of the other applied penalties for the rest of the concurrent crimes; the same applies in case of intermediate multiple crimes (application *mutatis mutandis*of provisions in art.44 of the Criminal Code); in case of singular consecutive crime, the application *mutatis mutandis*of provision in art.36 (par.1, the final thesis) of the Criminal Code, namely the possibility of increasing the penalty by applying a penalty which should exceed by maximum one third of its value, the special maximum stipulated by law for the committed crime (of course, the special penalty maximum for the legal entity); the same applies in the case of aggravating circumstance crime (the application *mutatis mutandis*of provisions in art.78 par.1, final thesis of the Criminal Code); in case of punishable atempted crime, the application *mutatis mutandis*of provisions in art.33 par.2 of the Criminal Code, for the purpose of setting the concrete penalty between the half-reduced limits of it stipulated by law for the committed deed; in case of mitigating circumstance crime, the application*mutatis mutandis*of provisions in art.76 par.1 (and 3) of the Criminal Code, for the purpose of setting the effective penalty between the one third-reduced limits of penalty stipulated by law for the committed deed; the application*mutatis mutandis* of provisions in art.79 of the Criminal Coderelating to solving the conjuncture of the mitigating and aggravating penalty causes (in this respect, also see: Vlăşceanu& Barbu, 2014: 320; Răduleţu, in: Toader *et al.*, 2014: 248). We underline again that the provisions in art.147 par.1 of the Criminal Codecannot be and must not be interpreted as making reference to the provisions in art.61 of the Criminal Code., which aim exclusively at the fine penalty applied to natural persons!

2. SPECIFIC CONCLUSIONS AND *DE LEGE FERENDA* PROPOSALS

As it results of everything previously stated, the new Romanian criminal legislation has emphasized both a series of continuous points and innovation points in terms of regulating the institution of the criminal liability of the legal entity, by comparing it with the previous regulatory stage. Unfortunately, this does not necessarily mean that the new solutions have always been and in all aspects clearly stated, so as to convey for sure the legislator's strict intention, there still being controversial aspects or aspects able to generate controversies. Of course, sometimes misunderstandings are not the legislator's fault, but are imputable to the tendentious or obtuse way of conveying and perceiving the message; beyond these situations, we can identify formal inconsistencies, even essential ones within the new regulation.

Among them, we mention (in our turn): the difficulty of pre-determining clearly enough the public institution area carrying out activities (too) that cannot be the object of the private domain; the existence of a certain opacity about the issue of determining the subjective aspects specific for the legal entity's guilt apart from finding out the guilt of those natural persons who have generated the criminal liability of the legal entity; the insufficient clarification of those categories of people who can generate, by their deeds, the criminal liability of the legal entity; the lack of clear reference of incident solutions under certain determined circumstances for the case of the offender –legal entity, to similar deeds committed by the offender –natural person (*e.g.*, the case of several crimes committed under the post-conviction unserved re-offence) etc.

As concerns this last issue, we resume the proposal of the legislator's express intervention to clarify the order of the sanction priority of the post-conviction (unserved)re-offence with multiple crimes in the case of the legal entity. Personally, we believe that, depending on the specific way of applying sanction to the post-conviction re-offence in the case of the legal entity (different, as shown, from the way of applying sanctions for the post-conviction unserved re-offence in the case of the natural person), the necessary solution is to come to the natural way of solving things by giving priority to the re-offence sanction and then to the multiple crimes. In this respect, the legislator should expressly indicate that the rule in art.43 par.2 of the Criminal Code does not include the legal entity. We also appreciate that in the text of art.79 par.2 of the Criminal Code, relating to the order of giving solutions in the case of multiple aggravation circumstances, it should be expressly shown – following the pattern in par.1 referring to the multiple mitigating circumstances – the position held within such multiple circumstances by the incidence of a special circumstance in the aggravation of penalty (this aspect would aim both at the criminal liability of the natural person and – by means of art.147 par.1 – of the legal entity), the present provision taking into account and establishing the order of application only for the multiple general aggravation circumstances.

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ABORTION AND THEOLOGY – AN IMPOSSIBLE CONCILIATION?

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Abstract: *Abortion has been the subject of intense debates over the years. Both the opponents and the sustainers of abortion have brought strong arguments in favor of their opinions. Because the abortion problem unveils important issues, such as the origin and the meaning of life, it was intensely analysed by theologians. The theological doctrines usually forbid abortion, because human beings are considered to be alive since the moment of conception. Therefore, it is important to find out whether it is possible to reach conciliation between abortion and theology. Because religion has an important influence over people's lives, religious view on abortion should be based not only on abstract principles, but also on the necessity to solve real-life problems; otherwise, people may suffer. The most important theological argument that promotes abortion claims that abortion must be allowed, in certain circumstances, because reality shows that, sometimes, abortion is needed. For example, these situations when abortion must be done are those when the pregnant woman faced severe economic or social problems, or when the pregnancy was the result of the rape. In these cases, if it was born, the child would suffer on financial or emotional ground, and also the mother would have a heavier life. This entitles us to say that conciliation between abortion and theology can be achieved if theology understands that, sometimes, to allow abortion means to express a form of compassion.*
Keywords: *abortion, theology, right to life, women's rights, the legal regime of abortion*.

Acknowledgement: *This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resourses Development 2007-2013.*

1. INTRODUCTION

Abortion has been the subject of sustained debates over the years. The intense debate over abortion comes from the fact that abortion highlights a whole range of aspects regarding human life, far beyond abortion itself. In the first place, abortion raises the question of the humanity of the fetus and of our right to decide whether the fetus will live or die. Furthermore, abortion brings us questions about life itself, about human relations, about women`s social role, about medical and legal issues. It seems that, once opened, the discussion over abortion brings endless debates, on a wide range of aspects concerning humanity. Although the aspects regarding abortion belong to an extremely

wide range of problems, it is somehow surprising to realize that, in fact, all opinions on abortion belong to one of the two major points of view: the one that forbids abortion and the other one, which considers that abortion, should be allowed.

It is easy to see that the abortion issue deals with some problems which are also of theological interest. This is obvious when we realize that, on the one hand, abortion brings into the light the problem of man's power over life, and, on the other hand, religion establishes that only God has the power to decide over life and death. This brings out a conflict, which is apparently impossible to solve, between those who believe that abortion should be permitted and theology. This is because most religions (and especially Christianity) strongly affirm that the fetus has its own right to life since the moment of conception.

Further, we will try to find out whether there is any possibility that abortion is accepted by theology.

2. THE MAJOR VIEWS ON ABORTION

In this section of the paper we will analyse the structure and the content of the opinions we take into account. In other words, we want to find out whether these well-defined views on abortion can be interpreted, in order to reveal tolerance towards the opposite opinion.

We start our search with what is, in our point of view, the easiest problem to analyse between the two: the secular opinion that allows abortion. The reason why we think it is easier to analyse this aspect, rather than the theological view on abortion, is that the secular view deals mainly with logical arguments, based on real problems which occur when people face abortion. In the theological speech, a great importance is given to the element called *faith*, which, in our opinion, is beyond any logical argument. Some thinkers have tried to prove the existence of God with logical arguments, but they had to admit that, acting this way, the conclusion is inevitable a probable one, and faith is needed when walking on theological ground [1].

a. The secular opinion that allows abortion

The secular opinion which considers that abortion should be allowed is actually a category containing various forms and shades, depending on the degree of tolerance and on the view shown towards the fetus and the pregnant woman.

We must say that we have rarely found an absolute tolerance of abortion, which is the allowance of abortion in absolutely all circumstances, whenever a pregnant woman would want to have an abortion. This is why we hope to find a convergence between the secular view and the theological view towards abortion. Mainly, the authors which firmly sustain abortion show rather concern for woman's freedom of choice instead of lack of concern for the fetus. This allows us to conclude that the tolerant attitude towards abortion is mainly a reaction to a social reality, and not an independent, self-grown attitude. And this is another element which makes us hope in a conciliation between the allowance of abortion and theology.

As we have already shown, the tolerance towards abortion embraces many forms. In the following lines, we will present the most important directions, taking into account the theoretical field and also the legal regime of abortion in different states, because we are convinced that a certain legislation on abortion reflects, either expressly shown or not, a certain moral and conceptual view on abortion.

Inside the category generally named the permissive attitude towards abortion there are two major systems: the system that shows absolute tolerance on abortion and the system that shows partial tolerance on abortion.

b. The absolute tolerance of abortion: theoretical and legal expression

The absolute tolerance on abortion is, as we have already sustained above, rarely seen. We have found it better expressed at legislative level, rather than at theoretical level. At theoretical level, it is relevant to mention the assertion of the Nobel Prize laureate Dr. James D. Watson, who claimed that, due to the finding of genetic abnormalities, the parents should be allowed to decide to kill their children even at three days after birth [2]. We conclude that, if this opinion allows killing newborn children until three days of life, it also allows abortion to be performed until the pregnant woman is about to give birth, at least if the fetus has genetic deficiencies. Still, we remark that, in this view, abortion is absolutely tolerated only in regard to the age of pregnancy until abortion can be performed; abortion is conditioned by a certain state of the fetus, which consists in the existence of genetic deficiencies. An absolute tolerance on abortion means, in our opinion, to allow the performance of an abortion anytime during pregnancy, with no reason at all, only because the pregnant woman (or other person) wishes so.

At legislative level, states usually avoid the explicit express of a large tolerance towards abortion. However, the reality proves that some states have a virtually absolute tolerance of abortion, although they do not officially recognize this regime. This is the case in China, where abortion is allowed, with no restrictions regarding the pregnancy age, as long as the mother gives her consent [3, 94-96]. Apparently, China gives great importance to mother's will refer to the fetus. Reality shows that, in China, the consent of the mother has been often neglected, and women have been going through abortion procedures against their will. This is because, since 1979, China has implemented the so-called 'one child policy', as an important part of its control over population-growth. This policy is not an official one, but has been highlighted by constant practices which encourage couples to have only one child. Moreover, China helps women to have abortions, because the state pays all the fees required and the women is granted a medical paid leave, in order to undergo an abortion. The main tool for controlling the population growth in China remains the use of contraceptive methods. Even Chinese Constitution provides that citizens must use family planning, which implies the use of contraceptives. And the Chinese Government helps people in the process of family planning through an organized system of sexual education and through free distribution of contraceptive products and services. But, in fact, the use of contraceptives has a high rate of failure, and abortion becomes a true backup plan for situations when contraceptive methods fail [4]. Some sources affirm that, in some cases, women were reportedly driven by force to

hospitals and underwent abortion procedures, if they already had at least one child, no matter the age of pregnancy [5]. The 'one child policy', combined with traditional Chinese culture, which requires that a couple has at least one male child, leads to an unusual, but predictable problem: the couples prefer to have a male child instead of a female child. Furthermore, due to this situation, it is logic that Chinese people do the so-called 'sex-selective abortion' [6]. This means that Chinese couples, knowing the sex of the fetus, may decide not to keep the fetus, if the fetus is a female. This practice leads to problems in the gender ratio among population, with a significant prevalence of males over females. Reportedly, in some provinces men are over 2 times more numerous than women [7]. In time, this unbalanced situation leads to problems concerning the foundation of a family. The Chinese Government is aware of this problem and tries to find solutions. For this purpose, it is forbidden to use modern medical techniques in order to observe the sex of the fetus. The physicians who don't respect the interdiction are subject to penalties. However, corruption or empathy makes the physicians to break the rules [8].

Still, China's 'one child policy' knows some exceptions. For example, in Shandong and Hebei provinces couples from rural areas are allowed to have a second child, if the first child is a female [9].

It results that the official Chinese point of view, that only the mother decides whether to have or not an abortion, remains only an empty slogan. In reality, abortion can be done whenever a pregnancy doesn't fit the official policy regarding population, which reveals an absolute tolerance on abortion.

Similar to China, North Korea shows a very tolerant attitude towards abortion. Still, this extreme permissibility is not expressly shown. Formally, abortion is allowed only if there are *good reasons* [3, 120-121]. The lack of any explanation regarding the meaning of these *good reasons* shows the intention to actually allow abortion on a wide range of reasons, because virtually any reason can be a good reason to have an abortion, from a certain point of view.

An extreme legal tolerance towards abortion, but for different reasons than those in China and North Korea, can be found in Canada. Here, there are no restrictions on abortion, regarding the age of the pregnancy or the existence of some reasons which would justify the abortion. This situation is due to the decision ruled by The Supreme Court of Canada in the case of R. v. Morgentaler, from 1988. In this case, Henry Morgentaler, a physician, has been accused of illegally performing a large number of abortions, because abortion was illegal at that time. The Supreme Court of Canada ruled that the ban on abortion was an infringement of the Canadian Charter of Rights and Freedoms, thus an infringement of the Canadian Constitution, because it was an infringement to women`s right to the security of the person [10]. The rule, which is still standing today, decided the total freedom of abortion in Canada. Furthermore, The Supreme Court of Canada, in the case Tremblay v. Daigle, from 1989, ruled that only the pregnant woman has the right to decide whether to have or not an abortion; the father has no right to decide on that matter [11].

It is interesting to compare the legal situation of abortion in China and Canada. Both countries have a high tolerance on abortion, but the reasons behind their legal status

of abortion are different. Although China officially claims that the decision to have an abortion belongs to the pregnant woman, in reality, the state controls women's right to choose. In Canada, the permissibility of abortion is also granted for women's interest; unlike China, Canada actually offers women a real right to choose, and the state does not interfere with a woman's intimate decision on having or not having a child. So, it seems that, unlike China, Canada really allows women to be free in terms of abortion. But, still, in Canada, things are not as good as it may appear. The problem here is that the cost of the abortion procedure, which is often high, is not always supported by the state. This leads to discrimination between women based on wealth. In China, the costs of the abortion procedure are generally supported by the state [3, 94-96].

It seems that, at least for now, the legal regimes which have a high tolerance on abortion are not perfect.

c. The partial tolerance on abortion: theoretical arguments and legal expression

The system that shows partial tolerance on abortion can be found on the most part of legal regimes around the globe. However, the degree of tolerance varies widely. Writing this section of our paper, we begin with the analysis of theoretical aspects, because the partial tolerance on abortion is well-represented in the theoretical speeches expressed over time. Then we will observe the characteristics of the legal systems which have embraced this view on abortion.

From the beginning we must underline that the authors that have tried to argue that abortion should be permitted have accomplished a hard task. That is because, while proving that abortion should be allowed, they must keep accordance with the accepted moral rules, and therefore, whatever their arguments may be, they must respect the idea that human life must be protected from the moment of birth [12].

It is surprising that, among authors that sustain the liberalization of abortion, we found an author that promotes abortion, although he declares himself to be a good Christian. It is the case of Roger A. Paynter, who believes that the allowance of abortion is an appropriate answer to real-life problems. In his view, it is difficult to say that a pregnancy which is the result of a rape, for example, is God's will. It results that, in difficult situations, a woman must have the freedom to decide whether to keep or not to keep an unwanted pregnancy [13, 236]. Based on the arguments exposed by this author, we tend to think that it is really possible to create conciliation between a tolerant attitude towards abortion and theology. After all, all religions promote kindness and compassion; therefore it is profoundly religious to understand the pain of a woman who gets pregnant against her will, as a result of a rape. We also tend to understand a woman who wants to have an abortion because she considers that, at least for the moment, she could not offer enough time or economically good conditions for a child, due to the fact that a child needs constant care and has some basic needs that have to be accomplished. So, our compassion aims also the child who would suffer if the mother did not offer him or her enough emotional or financial support. In this view, in order to justify abortion we don't

need to prove that the fetus is not a person and that abortion is not a crime. Instead, this view is based on choosing the lesser of two evils.

Not all opinions that promote abortion show compassion for the fetus. Actually, most of them try to explain that abortion must be allowed simply because the fetus is not a real human being.

Thus, it has been argued that the fetus only has the *potential* of becoming a human being, as his human abilities are not certain yet. Therefore, the balance between the fetus and a person which has been born is asymmetrical, in favor of the human being which has already been born. It has been argued that, although a newborn child is not aware of his or her own life, his or her existence is superior to that of a fetus, because the newborn child is valued by other people [14]. As far as we are concerned, we believe that this type of reasoning has the flaw of not taking into account the fact that, often, human beings are valued by people before their birth (for example, when a pregnant woman loves her child even before giving birth).

Other authors affirm that a human being gradually acquires the rights specifically own by a *person*. So, as long as the fetus does not have the specific features which define a person, it cannot be considered a person, therefore it does not have the right to life. Among the features which are thought to define a person there is consciousness, rational thinking and the ability to communicate [15]. We observe that, following this reasoning, we may conclude that a child, at least for a few months after birth, is not a real person, so it does not have the right to life. But this is a conclusion which obviously contradicts general moral rules. This way, we emphasize the idea that theories which have tried to rationally explain that the fetus is not a person are somehow far-fetched and have significant flaws. We prefer to admit that abortion must be tolerated, while considering the fetus a value which is worth to be protected.

An author which had a great influence over pro-abortion movement is Judith Jarvis Thomson. She compared the relation between the fetus and a fully developed person with the relation between an acorn and an oak: the acorn is not the oak, although it contains all the features which would help it to become an oak. She also compared the state of the pregnancy with the situation when a woman would be linked against her will to a violinist, through medical devices, for nine months, because this would be the only way to save the violinist's life. The author claims that no one would have the right to force the woman to stay in such a situation, therefore a pregnant woman must have the freedom to decide to have an abortion, if she wishes so [16].

In our opinion, the reasoning used by this author to justify abortion is wrong, because it uses a false premise. Unless the pregnancy is the result of a rape, the woman must always be aware that a pregnancy may occur, even when she uses contraceptive methods, so, somehow, she accepts this possibility. Furthermore, the state of a woman being pregnant is far from the state of a woman forced to stay linked to another person. Pregnancy is a natural state, which usually does not annihilate woman's abilities to live a normal life and, more important, usually pregnancy does not put the woman's life in danger. So, in our opinion, it is no use to argue that the abortion must be allowed, claiming that pregnancy is a brutal and unwanted change of a woman's life. Unless it is the result of a rape, pregnancy is a state which is *at least accepted as a possibility*, if not

wanted, by a woman. In spite of the fact that we do not agree the arguments offered by Thomson, we understand that Thomson, as a feminist, wanted to promote women's rights, in an era when women were just beginning to claim their rights (Thomson formulated her arguments in 1970's). So, her exaggerated arguments were a brutal response to the brutal reality that women found themselves under men's control over the years [17].

If we make a synopsis of the arguments used by different authors to sustain a wide liberalization of abortion, we observe that, in most cases, the arguments have some flaws. For example, the comparisons used by different authors in order to sustain that abortion must be allowed are strange and inappropriate. We have seen above how Judith Jarvis Thomson compares the state of the pregnancy to that of a woman connected against her will to another person, through medical devices. Another author compares the fetus with a cat and concludes that, because the cat is aware of its existence and the fetus does not have such awareness, the cat has the right to eat and to do other actions specific to alive beings, whilst the fetus does not have the right to life [18]. These comparisons are strange, unnatural, and they ignore the fact that pregnancy is a natural state. In our opinion, the relation between the fetus and the pregnant woman is unique; therefore it is useless to try to compare pregnancy with something else. The results of such a comparison can be nothing but wrong.

We also noticed that some of the authors who promote abortion use imprecise and unclear notions. It seems that, at one point, they get stuck in their own reasoning, because they find some weak points of their arguments, but have no solutions to strengthen them. For example, one of these authors (Mary Anne Warren) says that the fetus does not have a *significant* right to life. But can we divide the right to life in significant and less significant parts? The right to life either exists, or does not exist. Also, Judith Jarvis Thomson admits that, if a woman pregnant in seven months would want to have an abortion just because she wants to go on a trip, she should not have the right to do so. But Thomson does not offer any explanation for such an affirmation, which contradicts all her reasoning. After all, if we admit that a pregnancy is a real burden for the mother and that women must be free to have an abortion whenever they want, why should matter the age of pregnancy and the reason that determines a woman to have an abortion?

Even more, we remark that the majority of the sustainers of abortion act like pregnancy is the worst thing that could happen to a woman, ignoring what happens after birth. But the real problem of an unwanted pregnancy refers to raising the child, after birth. So, instead of forcing an explanation using weak arguments, they would rather focus their attention on justifying abortion on economical or social reasons.

The most plausible arguments in favor of abortion seem to be those that admit that the fetus has the right to be valued as an entity which has the potential of becoming a person. In this view, abortion is sometimes necessary, but not because women or men have an absolute right to decide on the course of the pregnancy. The necessity of abortion arises from the real life, which proves that there are good reasons, economical, social or medical, for a person to decide that an abortion must be done. Anyway, we think it is ridiculous to deny any value of the fetus, as long as the fetal stage is absolutely necessary for a human to come into being.

At legislative level, the most part of the states allow abortion, in certain conditions, which vary widely around the world. These conditions may be permissive (for example, in Romania, Australia, Austria, Bahamas, Belgium, Bulgaria, Cuba, Denmark, Finland, France, Germany, Great Britain, Greece, Holland, Hungary, Iceland, India, Italy, Japan, Moldavia, Norway, Russia, Slovenia, South Africa, South Korea, Switzerland, The United States of America) or very restrictive (Argentina, Brazil, Ecuador, Egypt, Ethiopia, Guatemala, Haiti, Iran, Ireland, Mauritania, Morocco, Poland, Syria) [3].

d. The theological view on abortion

Now we turn our attention to the theological view on abortion. Here, the things are much simpler. Although it admits some variations, theology considers that abortion must not be permitted, because the fetus has a right to life equal to a person which has been born. This is the view in Christianity, Buddhism [19], Hinduism [20], Islam [21], and Judaism [22], which are the main religions of the world.

As regards Christianity, we found out that the Bible does not directly forbid abortion. Still, it contains some references to accidental abortion and to fetal development, which have been interpreted in different ways [13, 234-235]. Inside Christianity, there are some differences between Orthodox Church and Catholic Church regarding abortion.

The Orthodox Church traditionally allow abortion only if it is necessary to save the life of the pregnant woman. This attitude has been constantly maintained by the Orthodox Church along the time [23].

The Catholic Church, in the present-day, totally forbids abortion, even if abortion would be necessary to save the life of the pregnant woman. The only situation tolerated by the Catholic Church is when, due to medical procedures used to save the life of the pregnant woman (other procedures than abortion), abortion occurs, as an unintended consequence [24]. However, this extreme attitude towards abortion of the Catholic Church dates back since 1869 [25]. Previously, the Catholic Church sanctioned abortion only if the fetus had passed the moment of *ensoulment*. The theory of *delayedensoulment*, embraced by the Catholic Church under the influence of St. Augustine's teachings, claimed that the fetus can be considered a human being only when it gained all the features specifically human. It was generally believed that the moment of ensoulment coincided with the moment when the fetus had its first movements. It was thought that the moment of ensoulment occurred differently for male and female fetuses: while male fetuses gained soul at 40 days after the moment of conception, female fetuses gained soul at 90 days after that moment [26 and 27].

The theory of ensoulment presented above seems rather surprising. We believe that it was a way to bring religious rules closer to people's needs. Obviously, unwanted pregnancies occurred, while society was generally reluctant to accept children which were born outside social rules. In these conditions, we believe that the theory of ensoulment was an indirect acceptance of abortion practices by the Catholic Church, when the pregnancy was in an early stage.

At this point of our paper, we highlight what seems to be conciliation between abortion and theology, because the theory of ensoulment, adopted for a long period of time by the Catholic Church, actually allowed abortion, in specific conditions, established through a religious dogma.

The authors who adopted the Christian perspective on abortion and used rational thinking to sustain the anti-abortion movement claim that we must consider the fetus a human being with full rights since the moment of conception. Their arguments often use analogy, and we must say that, compared to those used by pro-abortionists, their analogies seem to be more natural. For example, our doubt about the state of the fetus is compared to the situation when a hunter points the gun to a bush, not knowing what may be inside that bush: an animal or a human being; he does not have the right to shoot, based on the possibility that it may not be a human being. Therefore, we do not have the right to allow abortion, based on our supposition that the fetus may not be a real human being [28].

Christian perspective on abortion has been the foundation for many legal regimes. There are a few states that actually embraced the extreme Catholic Church attitude that bans abortion in all cases. This is the situation in Chile, El Salvador, Nicaragua, Malta and Vatican. Other countries in which the followers of the Catholic Church form the majority have a very restrictive legal regime of abortion. In these countries, abortion is allowed only in a few situations, usually to save the life of the pregnant woman, to prevent the birth of a child with genetic disorders or if the pregnancy is the result of a rape or incest. This is the case in the majority of states in Latin America [3]. As a consequence of the strict legal regime of abortion, in many countries where abortion is banned a large number of illegal abortions are performed, therefore putting the life of the pregnant women at high risk.

3. CONCLUSIONS: IT IS POSSIBLE TO FIND A CONCILIATION BETWEEN ABORTION AND THEOLOGY

We think that, whenever a religion allows abortion, even in very restricted situations, it occurs a form of conciliation between abortion and theology. A wider acceptance of abortion by the theological point of view is still scarce. Buddhism, Hinduism and Judaism show greater tolerance to abortion than Christianity and accept abortion if it is necessary, mainly for medical reasons, but also for economic and social reasons.

A true conciliation between abortion and theology doesn't mean that theology must accept abortion in any circumstances. This would be contrary to the essence of religions, which generally promote love and care towards all people, even if they are not yet born. A true conciliation may take place if theology accepts to analyse real-life facts, which prove that, sometimes, abortion is necessary. It is no use to formally affirm that any being is a gift from God, and, therefore, it always has the right to be born. In the constant fight between Good and Evil, we cannot know when the Evil interfered in God's plans. Maybe God gave us the scientific knowledge in order to overcome evil situations. So, in our opinion, abortion is sometimes necessary, for example for medical reasons

(when the fetus has a severe deficiency or when the pregnant woman's life is endangered).

We agree that it is harder to justify abortion using economical and social reasons. Still, we believe that the economic reasons cannot be ignored. Raising a child implies financial support, otherwise the child would suffer. Do we have the right to force a human being to suffer because the lack of basic living conditions? It is arguable.

Also, the social reasons are strong. For example, if the pregnant woman has not finished her studies yet, and she could not offer to the child enough emotional support, the child would also suffer. So, we ask ourselves again: do we have the right to force a person to bear the lack of emotional comfort, which is so necessary for a balanced development?

Fortunately, in the present-day, modern societies offer the so-called alternatives to abortion, which are ways to overcome the economic and social reasons that would justify an abortion. For example, if a pregnant woman does not want to raise the child herself, the child can be adopted by other persons or can be cared of by the state, in special institutions. Even more, contraceptive methods have become increasingly efficient, so the number of unwanted pregnancies has significantly dropped. So, at least in most developed countries, women are rarely faced with the abortion problem. Still, when a pregnant woman decides to have an abortion, she must be free to do that, in a legal context, because, otherwise, as we have already said, it is likely that she and the child would suffer, from one reason or another.

It seems like, if we are truly honest with ourselves, we must admit that abortion is a true form of *compassion*, either for the pregnant woman, or for the fetus, if not for both of them. And we strongly believe that conciliation between abortion and theology may occur if theology accepts that, sometimes, tolerance on abortion can be considered a form of *compassion*.

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RELATIONS OF PRIVATE INTERNATIONAL LAW-BETWEEN TRADITION AND MODERNITY

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Abstract:*We realize our approach, on the development of private international law reports, in the Romanian civil law in the context of a genuine legislative reform made through the entrance into force of the new Civil Code and the new Code of Civil Procedure. The monistic conception which fundaments this reform assumes that in our legal system, the new Civil Code represents the common law for the relations of the private life. This established that to the appurtenance of the traditional civil law to be added the other branches of private law which in one way or another belonged once to the civil law. Among these, the regulations from the sphere of private international law, occupy a very special place.Also concerning the analyzed relations, we find that the "return to the queen" of the rules of private international law, much improved, qualitatively and quantitatively. Of the several articles of the old Civil Code which served as a source of regulation to the regulations of private international law by capitalizing the traditional institutions in this way, vigorously sustained by doctrinal opinions and solutions of jurisprudence, has been coagulated the frame of our first law of private international law 105/1992. This law was absorbed by the new Civil Code, in the Book VII, suggestively entitled "Provisions of Private International Law".In the power of tradition, a number of principles and institutions of private international law have survived. Others however have experienced substantial changes. Therefore one speaks about a review and completion on behalf of modernization of the existing Romanian private international law.Between the natural reflex of conserving the traditional resisting elements and the need to modernize this area, are part the efforts of the Romanian legislator to update and complete the existent provisions, in line with the latest developments at the international and European level.*
Keywords: *legal relations with foreign elements; monistic conception; legislative reform; private law; common law*

1. GENERAL REMARKS

Among the reasons which forced the relocation and reassessing of the traditional institutions of civil law we mention as priorities:

- The essential political, economical and social changes spent in the almost 150 years from the adoption of the Civil Code.
- The need to bring back to "queen" and the reunification of this code with institutions which belonged once and which were abandoned in the favor of some independent branches of law and which are returning enriched by assimilating the contemporary European values, of those of the European integration in particular.

Through the institutions mentioned there are also those belonging to the private international law, strongly influenced by the complex and significant physiognomy of the reports forming norms of the private international law.

The specific of the private international law report is imprinted by the presence of extraneous elements that make possible its link with multiple systems of law or laws in different countries.Therefore is raised the question of identification from multiple concurrent regulations of that which will govern the legal relationship as a whole or on certain areas.

The sources of such regulations are primarily in the intern law, each state regulating by its own the reports of civil law with foreign elements.The intern character of the norms of private international law does not exclude the international sources which aim the treaty, convention or the international agreement, the customs with the same character which regulates the problems of private international law.

We find therefore a dualism of the sources of private international law to which is being added a specific method of regulation, indicating two ways to solve the problems related to:

- the conflicting rules, only of this law branch which indicates only the competent law without providing an appropriate practical solution;
- the way of the material or substantial norms which is directly applicable, in direct relations with the foreign element.

Also regarding the private international Romanian law we can notice that the return to the "queen"[7] of the specific regulations, far improved. The Civil Code of 1864 contained summary regulations of this kind. Only one item (art.2) served as a source of the dispositions of private law with a foreign element. From the analysis of the regulations of this field we can see that in general the legislative background was poorer than other branches of law. Therefore the main source of the provisions of this kind in solving the conflicts of laws was represented by the judicial practice." Even the appearance of the first norms of solving the conflicts of laws was the work of the lawyers of time which were seeking solutions to the problems raised by the course of social development." (Filipescu, 2005: 73)

The change of the political regime after 1990 imposed the need to harmonize the private international law provisions with the latest evolutions at the national, Community and international level. The efforts of the Romanian legislator resulted in the adoption of the first uniform regulation of private international law. It is the Law 105/1992 about the reports of private international law which proclaimed the independence of the private international law from the other branches of law. As shown, the mentioned law was absorbed by the new Civil Code which demonstrated a return in its space, with an improved content, adapted to the new requests imposed by the dynamics of the social life and the Romanian state status of European member. In the legal doctrine there has been raised the question whether through this has been made a reform or just an update. A

[7] I say "return to the queen" because in the our first Law of private international law, which offered a special regulation to the legal relations with foreign elements absorbed by the new Civil Code, has used the traditional institutions of Romanian private international law based on a few articles from the old civil Code (especially art.2)

clear answer in this way will be provided by the judicial practice of this area. As for us, we choose for the review in behalf of modernization of the existing private international law.

Both the previous regulations and the improved ones of the new Civil Code are based on the peculiarities of this new category of legal relations which aim the object of regulation and the specific method to which we referred earlier.

Firstly it is bounded the scope, and namely: the reports of civil law with foreign elements (seen in the broad sense of the term of civil law), so as to cover the entire area of private law. Till the adoption of the new Civil Code, these relations have met a special regulation given by the Law 105/1992, which capitalized the Romania institutions of private international Law, based on several articles of the old Code, especially on the article 2. While these articles were mentioning only the fundamental principles of international law, has been reached through a substantial contribution of the judicial doctrine to an adaptation of these few articles to the global demands of spiritual and material values to where we were inevitably enrolled.

As a general trend that can be drawn from an overview of Book VII of the new Civil Code, is the preservation of the many traditional solutions of private international law. In terms of goods has survived to the review the principle "lex rei sitae" on the condition and capacity of the person –the "lex patria" principle; the form of legal act is still subjected to the rule in many respects "locus regit actum" "lex voluntatis" the principle of autonomy reappears with an expanded scope not only to the consecrated areas but also in others such as that of a succession (art.2634); family (patrimonial regime – art.2590; divorce – art.2597) maintenance obligations (art.533); fiducia (art.2659).

So we cannot talk about a new private international law, but an update, and addition to the existing provisions, a review on behalf of modernization of our old Civil Code.

Moreover, the legislature reveals its intent to integrate the special regulation of the Law 105/1992 of the new Civil Code. Of course, where appropriate the legislature harmonized the provisions of the law with the new conception of the code upon some institutions (such as that of family). Therefore in the new regulations of private international law are reflected the latest evolutions at the European[8] and international[9] level of this field.

[8] In respect of contractual obligations, for example the art.2640 refers to the EU regulation in this regard. It is the 1980 Convention of Rome which was replaced by the Regulation no.593/2008 concerning the applicable law of the contractual obligations (Roma I). In a similar manner, the art.2641 concerning the law applicable for the non contractual obligation refers to the regulations of the EU law which at large are provided by the Rome II Regulation (no.593/2008). And other articles of the Book VII of the new Civil Code sent to EU law. In terms of obligations for example the art.2612 refers to the EU law, in particular to the Regulation no. 4/2009 on jurisdiction, the applicable law and the enforcement of decisions and cooperation in matters of maintenance. Till the entry into force there are still applicable the art.34 and 35 of Law 105/1992.

[9] Internationally we reminded the efforts of the Hague Conference on Private international law, which if did not succeed so far to elaborate an international convention with universal jurisdiction to offer uniform regulations concerning the international trade agreements, served so far as a source of inspiration for the regional regulations such as: the Rome Convention (1980) which came into force in 1991, regarding the

Some clarifications are required in connection with the subject of regulation of the Book VII of the new Romanian Civil Code and its subsidiary character of its content. As for the sphere of the relations with foreign elements that form the regulatory object of the book, it is important for this the art.2557 al.2 which states that "in the book the reports of private international law are: civil relations, commercial relations and some other private law reports with a foreign element."

At a first sight it seems that the sphere of the relations with foreign elements was considerably restricted and we do not find the family relations and the labor law. They might be among "other private relationships" to which the end of the par.2 of art.2567 is referring to. We wonder if for a greater precision of the legislature these should be expressly mentioned. But if in the relations of family with foreign elements the doubt is wasted, given the new conception of the Code shaped in the area of "family" we cannot say the same things for the employment relationship.

The internal labor relations (or with foreign elements) did not found their regulation in the new Civil Code. There is an article in this Code (2640, par.1) which refers to the Regulation no.593/2008 of the (EC) concerning the law applicable to contractual obligations, which included provisions related to the individual labor contract. It is the first clue that the reports of the labor law with foreign elements fall under Book VII, there where the regulation is insufficient. Therefore these other reports with foreign elements may be: family reports, labor reports, reports of the status of the person etc.

As for the foreign elements, specific to the private international law, this may be: the citizenship of an individual, the nationality of a legal person, the place of birth of the legal report, the place of illegal act, the domicile, the habitual residence or registered office etc.

To illustrate the relationship of the intern and international regulations, including the Community law, it is relevant the art.2557, par.3 of the new Civil Code which states that "the provisions of this Book are applicable as for the international conventions to which Romania is a party, EU law or if the provisions from the special law do not establish a new regulation."

It is outlined therefore, the subsidiary character of the provisions of the Book VII of the new Code which take effect only in the absence of a conventional or international legal framework. Moreover, in terms of contractual obligations or non-contractual, the Civil Code through the art.2640 al.2 states that "in the matters which fell under EU regulations, are applicable the provisions of this legal act, if not are provided otherwise by the international agreements or special provisions."

It is illustrative in this regard the Art.2641 par.2 which refers to the law applicable to the contractual obligations which notes that "in the matters which are not covered by the EU rules is applicable the law which governs the legal relationship between the parties, unless is not stated by international or special conventions."

The subsidiary character results strongly from the possibility given to the parties by the legal report to agree the applicable law, when is allowed. In the shown case the

applicable law of the contractual obligations to which we referred above or the International Convention on the law applicable to international contracts (1994) which came into force in 1996.

will of the parties will prevail only if such a possibility is not exploited, the criteria for determining the applicable law will be specified by the regulations of private international law. These regulations will provide solutions to the arising problems in legal life and in the case in which it is forbidden by law the assigning of the applicable law[10].

It should be shown that on the application on time of the provisions of the Book VII of the new Code, the Law no.71/2011 for the implementation of the new Civil Code through art.207 expressly states that "it will only e applied in cases decided after the entry into force of the new Civil Code, regardless of the date and place of the legal relationship".

But if the applicable law under the new rules of private international law of some legal relations arising prior to the entry into force of the new Civil Code would determine unjust consequences, the new regulation will be removed in favor of the previous regulations.Also assuming that the substantial law has suffered changes till its application, will be valid the provisions in force at the date of designation, whether the new Civil Code does not contain provisions contrary to this.

2. THE MODERNIZATION AND SYSTEMATIZATION OF THE RULES OF PRIVATE INTERNATIONAL LAW

The idea of unifying the rules of the private sphere, especially of the civil and commercial law, in the same code is not new. It took shape from the end of the nineteenth century (Vivante, 1893, resumed more vigorously in the twentieth century especially in French doctrine (Lyon – Caen, 1904: 208, Mapeand, 1974: 649). The arguments invocated in this effect were not immune to critics. But in general, the phenomenon is on the line of the historical evolution regulations and found its way in the actual civil Codes[11] or general laws[12].

In this tendency of modernization of the civil rights provisions, to ensure a new common frame of regulations for all the areas of the private life, it is also the new Civil Code. Referring to the object and the content of this Code, the art.2 al.2 states: "the present Code is made from a set of rules which constitutes the common law for all the fields to which the provisions refer to." One of these fields, with a particular specificity is the private international law. Therefore with a justified reason it can be claimed that the adoption of the new Civil Code has responded among other to some actual needs of compatibility with the intern and international regulations. The modernization and the evaluation of the institutions of international private law it is a part of this effort.

There were was necessary, there have been harmonized and completed the regulations of private international law with the provisions of the European Community law or with documents adopted in this regard. Among these documents, a particular

[10] Are the areas which from well defined reasons, are removed forms the principle of autonomy such as: the status and capacity of a person, the legal status of real estate, the legal form of documents

[11]Are illustrative in this respect the Italian Civil Code (1942), the Civil Code of Quebec (1994), the Dutch Civil Code of 1838 revised in 1992

[12] Law obligations in Switzerland (1911)

importance presents the drawn up conventions of the Conference of Private International Law in Hague (some even serving as an inspiration source in the design phase).

This explains the elements of innovations introduced in the content of Book VII, from which the most important are:

a) Although is not known an explicit definition, the principle of autonomy of will dominates the regulation of Romanian private international law. It is an expression of the tendency which took shape internationally and then in Europe, to give a greater importance to the liberty of the participants to the legal life in what concerns the applicable laws of the private international law reports, with the limits imposed by law or good manners. In the specialized literature it is noted that "the extend of personal autonomy aimed primarily the efficiency of the legal reports without noticing that this will lead to a greater applicability of the foreign law, thing which will raise the expenses of the proceedings (Uliescu, 2011: 459).

The principle which underlies such conflict regarding the contracts since the XIX-th century, being extended to the other legal acts. To these areas were added the content of Book VII and other subjects that the consecrated ones such as: matrimonial regime (art.2500) the divorce (art.1597), the maintenance (art.533), the succession (art.2634), the resent (art.2559) fiducia (art.2659) the claim of stolen or illegally exported goods (art.2615), undergoing transport goods (art.2618).

b) Certain specific institutions of the private international law, meant to solve the problems that the relations of law raises, met some innovations. I the order in which may arise, the institutions mentioned are: qualification, resending, public policy in private international law, fraud law. These are rules meant to help the judge in the qualification activity (of framing the dispute) or in case of resending. According to the new regulations, the resending is excluded in some situations in which the parties have agreed on the applicable foreign law (art.2559) par.3 of the new Civil Code.

c) As for the application of the foreign law, a difficult problem sometimes is that of determining its content. The article 2562 al.1 of the new Civil Code states that in this regard "the content of the foreign law is established by the court with certificates obtained from the bodies of the state which approved it or through an expert's opinion. The paragraph 2 of the same article adds that "the side which invokes a foreign law may be required to prove its content".

Inspired by the art.6 of the European Convention of the human rights, art.2562 par.3 states that establishing the content of the law should be realized in a reasonable time. In the case when it is impossible to establish the content the Romanian law is applicable (art.2562 par.3). The reasonable time will be determined from a case to another.

d) The novelty is also the regulation of the art.2563 which states that the interpretation and application of a foreign law will be made according to the existing rules. Also in this case the court will compel the party which invokes the foreign law to prove the interpretation and the application of the law.

e) As it regards the public order must be held, that for the first time the legal definition which has its roots in the art.2564 par.2. According to the mentioned article, the application of the foreign law breaks the public policy of Romanian international law

in the extend when would lead to an inconsistent result with the fundamental principles of the Romanian or European Law. In the shown case, the foreign law which was determined to be applicable by the rules of private international law will be removed in favor of the Romanian law.

f) Without defining fraud law, the art.2564 par.1 shows that on this regard the foreign law will be removed. In other words if the foreign law has become competent by law fraud of the Romanian law, this will be removed making the Romanian law applicable. Fraud law can retain less the attention of the legislative maybe because it occurs rarely. We remind although a new regulation of the Book VII which covers the fraudulent[13] stolen goods (as regulated[14] at the Community level on heritage assets).

g) Among the innovative elements of the regulations of private international law, a major significance are those of the habitual residence. It is a concept which replaced the domicile and the residence from the old regulations which extended and deepened in the last two decades, sustained by the regulation of private international law debated at Hague. In the Book VII of the new Civil Code the usual residence is stated in the art.2570 which in the al.1 states that "In the present Book the habitual residence of the individual is in the state in which the person has its main residence, even if din not fulfill all the legal formalities for registration. The habitual residence of some natural person acting in the course of its business is where the person has its main establishment." As for a legal person, the usual residence is in the state in which it has its main establishment, which can be determined after the place the legal person has its central headquarter.

This connection point is frequently found in areas such as: promise of marriage (art.2587); effects of marriage (art.2589); matrimonial regime (art.2590) divorce (art.2600); inheritance (art.2633); the substance of the legal act (art.2638 par.1).

h) In matters of maintenance, the efforts of modernization have emerged in certain rules that have removed the traditional solution. The art.2612 states that "The law applicable to the obligations of maintenance is determined according the rules of the EU law." The inspiration source is in the EC Regulation no.4/2009 of the EU Council on jurisdiction, the applicable law, the recognition and enforcement of the decisions and cooperation in matters of maintenance[15]. This regulation refers to the Hague Protocol of 23 November 2007 on the applicable law of the maintenance obligations. The mentioned protocol consecrates as a general rule the application of the state's residence law to which are added some special rules. But as shown in the previous, the obligation of maintenance can be subjected to the right that the parties in their autonomy may designate.

i) In matters of succession, the Romanian legislator has used the international and community efforts and achievements. Many of the solutions are already in the phase of project, but they served as a source of inspiration for the new Civil Code. Art.2633 of the Book VII consecrates the rule to which the inheritance is subjected to the law of the State

[13] Art.2615 of the new Civil Code states that „the claim of a stolen good or illegaly exported is subjected at the choice of the original owner, or the law of the state on which the good is situated at the time, or the law of the State where the good is when is claimed.

[14] The directive 93/17/ EEC of 15 March 1993 on the return of the cultural objects which illegally passed from the territory of a Member State (published in OJ 174 of 27 March 1993).

[15]The regulation entered into force on 11 June 2011.

where the deceased had died, at the time of death, the usual residence[16]. It was abandoned in this way the rule that the law applicable to inheritance was that indicated by the nature of goods (movable or immovable).

j) The contractual and non-contractual obligations have been and continue to be a priority and with permanent attention of the legislature. Is the field where have been made the most progress on this field. Numerous conventions have been adopted under the UN auspices, of the International Institute for the Unification of the Private law or the Conference of the International Law at Hague.

The same effort to unify the regulations of this field we see in the European Community area by adopting the Convention regarding the applicable law of the contractual obligations (Rome 19th June 1980)[17]. In the materialization and detailing of the dispositions of these Conventions, at the EU level were developed two regulations: Rome I Regulation[18] regarding the applicable law of the contractual obligations and the Regulation Rome II on the non contractual obligations[19].

The fact that has been adopted two different regulations in a matter which is not made without difficulties, generated some controversy. Overall, have been kept the advantages of some modern regulations, autonomous, designed to smooth the roughness and to remove the existing legislative differences.

As for the new Civil Code, the affected area of the obligations with international elements refers both to the law of the contractual obligations as to the law applicable to the non contractual obligations. The art.2640 states that "The law applicable to the contractual obligations is determined according to the EU regulations. In the same manner, the art.2641 refers to the extra contractual obligations adding that the law applicable to these "is determined according to the EU law regulations". As we can see,

[16] This law will regulate the most important fields of this institution such as: the moment and place of opening the inheritance; the persons destined to inherit; the qualities required to inherit; exercise of the possession of the goods left by the deceased; the obligation of the heirs to bear the liability; the substance of the will; the modification and revocation of a testamentary disposition and the testamentary dispositions; the division of inheritance. It must be shown that the new Civil Code makes the mention that if a heritage is vacant the goods located on the Romanian territory will become property of the Romanian state.

[17] Romania became part of the Convention in the Treaty of Accession to the European Communities, ratified by Law 157/2005 published in the Official Gazette of Romania Part I, no.465 of 1 July 2005.

[18] The Rome I Regulation has replaced the Rome Convention (1980) on the applicable law of the contractual obligations, concluded between the Member States of the European Communities at that time. It entered into force in 1991 committing all the EU signatory states. The content of this Convention, completed and improved has formed as an object of regulation for the EC Regulation no.593/2008 regarding the applicable law of the contractual obligations, known as the Rome I Regulation published in the EU Official Journal on 4 July 2008.

[19] The Regulation EC no.864/2007 of the European Parliament and of the Council of 11 July 2007(Rome II) published in the O.J.199/40 of 31 July 2007 presents a particular importance especially concerning the obligations non contractual made through an unlawful act. Regarding these, the applicable law is that in which the deeds have been committed (art.4 par.1). Beside this main rule, the Rome II regulation contains two exceptional rules applied in two cases. The first case is when the person who made the prejudice and the person claimed to e liable are from the same country. In this case it is applicable the law of that country. The second case refers to the situation when the illicit deed is connected to another country. In these conditions the rule applicable also in other areas is that of the country to which the legal report is more grounded.

in the both cases the applicable law will be identified after the specific regulations adopted at the Community level. So, for the determining the applicable law in fulfilling the contractual obligations will be consulted the Regulation Rome I and for the identifying the applicable law the Regulation Rome II.

It should be noted that in both cases for the areas that are not covered by the Community law, will be applied the provisions of the new Civil Code "if through treaties, international conventions or special dispositions there is nothing provided"[20]. Likewise for the contractual obligations it can be seen that the applicable law is independent by the law which governs the assembly of the contractual operation, which is determined after the principles of the private international law influenced by the "lex voluntatis".

As for the contract, as a legal act will be applicable the provisions of the Book VII, Chapter 5 entitled "legal document." These provisions are strongly influenced by the principle of the autonomy of will, with a significantly expanded scope.

3. CONCLUSIONS

The limited space of this article allowed us to make some brief observations upon the peculiarities of the private international law reports and of the way in which these found its consecration in the Romanian law.

Having as a siege of regulation few articles from the Civil Code of 1964, these reports have formed the object of investigation and regulation of our firs law of private international law no.105/1992. The legal norms have been adopted on this way and remain as a reference point and a culmination of the Romanian legislature, to offer a special regulation covering a wide range, especially complex of the law relations with foreign elements. In the developing of the Law no.105/1992 regarding the reports of international private law, have been used the traditional institutions of the Romanian private international law founded on some articles of the old Civil Code, sustained by the specialty practice and doctrine. Through its content, the mentioned law has the right to "proclaim" the independence of the international law from the other branches of law. We wonder, with some other specialist authors if this freedom "redoubt" which regulates the private international law reports, once conquered should not be protected, independent from the regulatory body of the regulatory body of the civil Code. The gesture would not have been a singular one because the most European countries have recently adopted rules of this type and opted for a special regulation, distinct from the civil codes in force.

As I stated earlier, the Romanian legislator preferred the option of incorporating the provisions of private international law in its last Book suggestively entitled

[20] See the art.2640 al 2 and the art.2641 al 2. Art.2640 al 2 states that "in the matters which are not under the incidence of the EU regulations are applicable the provisions of the current code applicable to the legal act if is not provided through international conventions or special dispositions". So in the shown assumptions will be applied the provisions of the Chapter 5 entitled "Legal Act" (art.2637-2639) of Title II, entitled " Conflicts of laws" Book VII of the new Civil Code. The art.2641 al.2 states that in "the matters which are not under the EU regulations, will be applied the law which governs the legal relationship existing between the parties, if it is not otherwise stated through conventions, international agreements or by special provisions."

"Provisions of Private International Law". These regulations of this book represent the common law (jus commune) and will only be applied only if by international conventions to which Romania is a party, through the right of the EU or special regulations, will not decide otherwise. According to the legal norms, it will be determined the applicable law to the relation of civil law with foreign elements. Exceptions are those cases in which the parties of the legal reports agree upon the applicable law when it permitted.

Unlike the previous legislation, in the conception of the new Civil code, the liberty of the parties of the private international report to indicate through their will the applicable law is significantly extended to areas previously removed to this principle.

From an overall analysis of the Book VII of the new Civil Code it may be seen as a general tendency, the conservation of much from traditional solutions of private international law. It takes shape the intention of the Romanian legislator revealed since the explanatory memorandum from the adoption of the new Civil Code to integrate the content of the special law in the body of this Code. Where appropriate, the provisions were harmonized with the provisions of this law with the new Conception of the Code upon some institutions related to the field of private international law. The stated goal was to align the Romanian regulations to the latest evolution at the European level or international. In the face of such realities, some practitioners wonder if the absorbing of the Law 105/1992 by the new Civil Code is on the line of the realized reform or keeping its independence the private international law is subject to a necessary revisions, additions and updates. Several arguments plead in the favor of revision, in the name of modernization, of the existing Romanian private international law.

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ANALYSIS OF GOOD PRACTICES IN THE COMPETITIVE ENVIRONMENT IN ROMANIA

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Abstract: *Competition rules operate in a complex economic, legal and political context, both internally and internationally. European Union calls for the development of multilateral competition rules to eliminate frictions in international trade relations and avoid conflicts of sovereignty.*
Keywords: *Competition, competition policy, good practice*

Acknowledgement: *This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013.*

INTRODUCTION

Competition has been defined by the European Commission report on competition in 1971, as the best stimulus for economic activity, ensuring participants in the economic life the widest possible discretion. Competition is one of the European policies and is governed by the rules included in Section VII, entitled "Common rules on competition, taxation and approximation of laws". The rules contained in the TFEU are intended to ensure free, undistorted practicable competition, to prevent the emergence of practices that affect trade between Member States or the general interest of economic operators and consumers.

The provisions of art.101 TFEU prohibits and declares incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market. Art.102 TFEU states that it is incompatible with the internal market and prohibited in so far as trade between Member States of the European Union is likely to have affected the behavior of one or more businesses to use in a dominant position abuse market or in a substantial part of it. Monitoring of compliance art.101 and 102 TFEU is carried out by the European Commission. The control procedure is carried out under Regulation (EC) no.1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in art.101 and 102. The European legislation is transposed into our law by Competition Law no.21/1996. The rules which are implementing these

provisions are established by regulations and instructions issued by the Competition Council, which is secondary legislation.

ANALYSIS OF THE MAIN ANTI-COMPETITIVE PRACTICES

- The agreements between organizations, decisions made by associations of organizations and concerted practices may be grouped into the concept of the Entente. In our law, the legal regime is established by art.5 of the Competition Law.21/1996 [similar art.101 para.(1) TFEU]. Entente means any agreement occurred between two or more organizations, expressed in written form regardless of title or nature of the act or clause containing it - or implied, express or implied, whether public or occult, having as their object or effect the coordination of competition behavior (eg. price fixing, allocation of markets or sources of supply).
- The abuse of dominance is governed by art.6 para.(1) of Law no.21/1996 which prohibits any abuse by one or more organization of a dominant position on the Romanian market or in a substantial part of it. The concept of dominance was defined by the European Court of Justice as a position of economic strength enjoyed by an organizations which enables it to affect competition in a relevant market that has the capacity to behave independently of competitors and its buyers and ultimately, to the final consumers of the product. European Court of Justice has defined the concept of abuse in the case of Hoffmann-La Roche as an objective concept relating to the behavior of an economic operator who is in a dominant position, which allows it to influence the market structure on the degree of competition is reduced due to economic agents concerned and, using methods other than those which condition normal competition, prevents the maintenance of the degree of competition on the market or prevents the growth of competition (A&S, 2008:214).
- Merger. The merger means where a number of operators have a high percentage of economic activity in a market, expressed as total sales, assets or labor used. A merger refers only to transactions in which the change of control in the organizations concerned is lengthy. Mergers can be achieved through the merger between previously independent organizations or through the control acquisition (C, 2011:93).

BEST PRACTICES IN COMPETITIVE ENVIRONMENT

When we talk about competition it is important to identify a series of principles to provide not only an effective legal framework, but also an implementation procedure at the level of the competent authorities and the control fora. Thus, in this study we aim to identify the best practices in the international European and Romanian competitive environment. With globalization, the effects of illegal behavior, such as the exploitation cartels are felt in many EU member states, and beyond. European Commission Directorate competition is a balancing factor in solving transeuropean issues, by its powers of investigation, imposing coercive measures and sanctions.

Applying best practices in the field of competition is to promote the adoption of transparent procedures to limit as much as possible the impact of regulations likely to have the effect of restricting competition cooperation between authorities.

a. *Transparency*. Each state has an obligation to ensure transparency of competition rules. Therefore, national competition authorities must ensure and make all efforts for competition law to be accessible to all national and international operators. Also, the European Commission must publish on its website the results of investigations following complaints by various operators. in this sense there needs to be posted both admissions decisions and the rejection. When the rejection decisions are being made, we must protect the legitimate interests of the person are filing the complaint, his identity not be disclosed.

b. *Privacy*. The competition authority must ensure confidentiality of classified information concerning the details of commercial activity carried out by the operators involved in an investigation. In this sense, the competition authority should establish clear and strict rules on criteria used to define confidential information in accordance to national law. The rules of confidentiality must be respected by officials from the competition authority, which are not permitted to use such information for purposes other than that covered in the investigation procedure, as this information must not be disclosed to third parties.

c. *Due process*. In competition law, the right to a fair trial requires enforcement of the rights of all parties equally. In this sense, each party involved in an investigation is entitled to be sent a statement of the reasons for the investigation, has the right to be heard, to comment on all the new issues raised during the investigation. Parties are entitled to submit written responses to the statement of the competition authority as may request a face-to-face hearing. The hearing allows the parties to develop orally the arguments that were presented in writing and to supplement, where appropriate, the written evidence or to inform the Commission of other matters that may be relevant. The hearing also allows Parties to submit their arguments on issues that may be important in the event of imposition of fines. The fact, that the hearing is not public, guarantees that all participants can express themselves freely. Any information disclosed during the hearing is used only for the purposes of judicial and / or administrative.

d. *Non-discrimination*. Competition authorities, courts, and others involved in the investigation of violations of competition must apply competition policy, good practice and procedure so as not to violate the principle of equality between economic operators and national international involved in a competitive relationship.

e. *Taking decisions*. When applying sanctions the competition authority must give detailed reasons for its decisions. In this respect, the publication of decisions will allow other traders to be able to establish a certain competitive conduct which does not affect the interests of other market participants. The competition authority should emphasize the facts under investigation, applicable law, and give detailed reasons for the application of sanctions imposed. These decisions are subject to judicial review. In turn judges must ensure due process and analyze the decision taken by the competition authority impartially.

EXAMPLES AND PROPOSALS FOR IMPLEMENTATION STRATEGIES

Cooperation. Competition authorities have a key role in the implementation of good practices in the field of competition. In this regard, they must carry out an activity as transparent both with the European Commission (DG Competition), the other competition authorities in other EU Member States and economic operators of domestic and European. However, the competition authority must bear a permanent dialogue with the courts to give their education and training of judges ruling competition litigation. Regulation No.1/2003 gave the court a wider role in the competition, which requires that judges have the necessary training.

Inform businesses and consumers on competition law, the rights enjoyed and opportunities to access other markets. In this plain, it requires that the competition to develop an accessible website that anyone interested to find the information they need; to organize seminars with business and legal.

Transparency. Requires that decisions rejecting complaints handled by the competition authorities and the European Commission to be made public without disclosing the identity of the ones involved and compliance with professional secrecy. Thus, it can avoid repetition of anti-competitive behavior.

CONCLUSIONS

Applying the best practices in the field of competition not only provide a framework conducive to a fair trial, but also promotes effective competition policies, a healthy competitive environment that benefits both operators and end-users, provide free access to the resources of the national and international competition, without prejudice to the legitimate interest of each state. The differences in best practices dictated by economic and legislative environment in each state, lead ultimately to the creation of international harmonization reflected in the common principles that guide good practice that should be followed in each country.

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CONSIDERATIONS ON CORPORATE CRIMINAL LIABILITY.THE PENALTIES APPLICABLE TO LEGAL ENTITIES

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Abstract: *The article deals with the penalties set by the Romanian criminal law applicable to the legal entities, as a consequence and also an expression of the penal liability of the legal entities. The article analyzes first the fine- as an unique penalty among the principal legal penalties applicable to legal entities, but focuses especially on the secondary, complementary penalties, thosesanctionsthat may be appliedalongside the principal penalty, in order to complete the repression of the principal penalty - such as the dissolution of the legal entity or the suspension of the activity of the legal entity, going on with the closure of some work units and the placement under judicial supervision, until the display or the publication of the conviction sentence of the legal entity, penalties that have been specially conceived in order to correspond to the specific activity of the legal entities.*
Keywords: *legal entity, legal penalties, complementary penalties, dissolution of the legal entity, suspension of the activity of the legal entity*

Acknowledgement: *This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resourses Development 2007-2013.*

1. THE PENALTIES APPLICABLE TO LEGAL ENTITIES

1. The penalties applicable to legal entities

They are regulated in art.136 of the new Criminal Code and the first evident issue of that provision is that, among the principal penalties set by criminal law (life imprisonment, imprisonment and criminal fines), the fine is the only principal penalty that can be applied to a legal entity for committing a crime.

According to art.137 of the new Criminal Code, the fine represents a sum of money that the convicted person is obliged to pay to the state. The analysis of the new provisions - modified or newly introduced in the special part of the new Criminal Code - reveals a significant increase in the number of crimes for which the penalty is the fine as

the only principal penalty, and also an increment in the number of crimes for which the fine is provided as an alternative to imprisonment.

This fact reflects the adoption by the Romanian criminal legislator of the tendency that appeared for a long time in modern criminal legislation to increase pecuniary penalties to the detriment of the penalties depriving of liberty, as it is unanimously accepted that pecuniary penalties have many advantages, especially in terms of the expenses incurred by the State to ensure their execution.

Regarding the limits and the manner of calculation of the fine penalty in the new Criminal Code, the new criminal provisions do not provide for simple minimum and maximum limits of it, but there is a system, that of the "day-fine", for calculating its amount.

Concretely, the court shall determine, first, the number of days-fine that the accused legal entity is obligated to, taking into account the general criteria of individualization of punishment stipulated in art.74 of the New Criminal Code. Subsequently, the court shall determine the amount of a day-fine taking into account criteria such as turnover – in the case of the legal entity with lucrative purpose, respectively the value of the patrimonial assets in the case of other legal entities. The court will also take into account the other obligations - criminal, civil or administrative - incumbent and which are to be executed by the accused legal entity. Therefore, the amount of the fine that the legal entity will finally have to pay is the product of the number of days-fine and the amount of a day-fine.

For legal entities, the general limits on the days-fine are between 30 and 600 days, and the amount of a day-fine is between 100 and 5,000 lei. It follows that the general limits of the fine penalty for legal entities range from a minimum of 3,000 lei to a maximum of 3,000,000 lei, limits which cannot be exceeded regardless of the number and nature of causes for mitigation or aggravation that could appear in the case of the accused legal entity.

The law also provides for special limits of the days-fine, which vary depending on the gravity of the committed crime, as well as in the case where the fine penalty is provided alternately with imprisonment, in which case the number of days-fine vary depending on the limits of the alternative principal penalty.

Regarding the effective execution of this principal penalty, the convicted legal entity must pay the fine within three months of a final conviction. If the legal entity is unable to pay the fine in full in the period of 3 months, the appointed judge at the express request of the legal entity may order the payment rescheduling of the fine in monthly installments for a period not longer than two years (art.25 of Law no.253/2013).

In case of failure to observe the deadline for payment in full or of one installment of the fine, the execution of the fine penalty is done by compulsory enforcement, according to the provisions of the Fiscal Procedure Code.

One of the most important aspects regarding the payment of a fine by a legal entity, aspect connected to the ratio of the criminal liability of the legal entity and the personal liability of some employees of the legal entity (manager, agent or principal), is that the legal entity that has been applied the criminal fine may not bring a civil action in

recourse against the natural person who committed the act in its materiality, in order to recover the amount paid as criminal penalty.

2. Complementary penalties applicable to legal entities

Complementary penalties have been defined in the doctrine as being those sanctions that may be applied alongside the principal penalty, in order to complete the repression of the principal penalty. [2]

These measures are also justified by the fact that in many cases the individual who was responsible for the infringement cannot be identified, due to complex corporate decision-making mechanisms and the flux of managers and employees within the company. [3]

The essential feature of complementary penalties is their facultative character, the principle being that of their application when the court finds that, compared to the nature and the gravity of the crime and to the circumstances in which the crime was committed, these penalties are necessary and proportional with the aim pursued by the application of any criminal penalties.

The complementary penalties applicable to legal entities are: the dissolution of the legal entity, the suspension of the activity of the legal entity, the closure of some work units of the legal entity, the prohibition to participate in public procurement procedures for a period of two years, the placing under judicial supervision and the display or publication of the decision of conviction.

A. The dissolution of the legal entity

It is the most severe complementary penalty and it is applied to a legal entity convicted of a crime in any of the following hypotheses:

a) *the legal entity was established for the purpose of committing crimes:*

In this hypothesis the judicial authorities must have proved undoubtedly that the main reason for which the legal entity was constituted is that of committing crimes. As shown in the doctrine, in this case it should be considered the effective, concrete activity, conducted by the legal entity, and not the one stated in the constitutive documents of the legal entity, which can only be legal. [1] Criminal liability is not diminished and the application of the complementary penalty is not removed if the legal entity also carries out subsidiary legal activities, but its main activity is that of committing crimes. Naturally, in qualifying the activity of a legal entity as being carried out in order to commit crimes, there should be taken into consideration only the crimes committed with intent, simple or *praeter intentionem*, and not the crimes committed by recklessness or negligence. In the same sense, the doctrine emphasized that it is not relevant the gravity of the crimes intended to be committed in the activity of the legal entity, as the sanction of dissolution can be applied for the perpetration of crimes of lesser gravity.

b) the second hypothesis the complementary penalty of dissolution of the legal entity is applied is that when the object of activity of the legal entity has been diverted in order to commit crimes and the penalty provided by law for the committed crime is imprisonment exceeding 3 years.

In this hypothesis the legal entity initially conducted a licit activity, but this activity was later diverted, acquiring an illicit criminal character. Case law has shown that it is not necessary for the entire activity of the legal entity to have become illegal, but, as in the previous hypothesis, it is sufficient that the activity became only partially illegal. At the same time, to attract the incidence of this penalty, it is sufficient to commit one crime after the diversion of the activity of the legal entity. It is also worth mentioning that it would be considered only the crimes for which the law provides for imprisonment of more than 3 years.

c*) the third hypothesis is considering the case of not execution in bad faith by the legal entity of one or more complementary penalties - suspension of activity, closing of some work units, prohibition to participate in public procurement procedures, placement under judicial supervision - penalties that had been imposed by a previous definitive criminal judgment.*

In case of failure of the legal entity to execute the complementary penalty of display or publication of the decision of conviction, firstly it would be ordered the suspension of the activity of the legal entity for a maximum period of 3 months. If within this term the complementary display or publication of the decision of conviction is not executed, in bad faith, it is ordered the dissolution of the legal entity. Unlike the previous regulation, the new Criminal Code expressly provides that the complementary penalty of dissolution of the legal entity is not to be ordered in the case of public institutions, political parties, labor unions, employers' organizations, religious organizations or ethnic minorities' organizations, established according to law or the legal entities active in the media. Since dissolution is a complementary penalty, which applies in addition to the principal penalty of fine, dissolution will be made after the execution of the fine and possibly after other measures ordered by the court, such as confiscation of the assets.

B. The suspension of the activity of the legal entity for a period of 3 months to 3 years or the suspension of one of the activities of the legal entity

This complementary penalty consists in the prohibition of performing the activity or one of the activities of the legal entity, in the realization of which the crime was committed. The suspension of the activity or of one of the activities cannot be ordered in the case of public institutions and other institutions. After the decision of conviction is definitive, the judge delegated with the execution communicates a copy of the judgment to the authority that authorized the establishment of the legal entity and also to the authority that registered the legal entity, to the authority that established the institution not subjected to authorization or registration, as well as to the bodies having attributions of control and supervision of the legal entity, according to Art.34 of Law no.253/2013, in order for them to take the necessary measures to suspend the activity.

If during the term for which the suspension was applied, the competent authorities find it has not been respected - that is the legal entity has continued the activity – they will immediately notify the judge delegated with the execution who will take the necessary measures - eventually will notify the court for the application of the penalty of dissolution of the legal entity, as shown above.

The same institutions mentioned above, at the end of the period of suspension ordered by the court decision, expunge from registers the specific effectuated mentions.

C. Closure of some work units of the legal entity for a period of 3 months to 3 years

This complementary penalty may be ordered only in the case of legal entities with lucrative purpose and only on the work units in which took place the activity of the legal entity in the realization of which the crime was committed. The doctrine appreciated on this complementary penalty, that for its ordering it is important the dangerous nature of carrying out an activity in a specific work unit, and not the activity of the legal entity as a whole. The doctrine has shown that, unlike the complementary penalty of suspension of activity, which involves the inability to perform the activity that led to the committing of the crime during the suspension, the complementary penalty of closing certain work units enables the legal entity to open another work unit even in the same city in which to conduct the lucrative activity lawfully. [1]

It was also mentioned that it can be ordered on the same legal entity, both the complementary penalty of closing a work unit and the penalty of suspension of some of its activities, but it is not possible to have a cumulative suspension of all the activities and the closure of all work units. [1]

D. The prohibition to participate in public procurement procedures for a period of 1 to 3 years

Is consists of the prohibition to participate, directly or indirectly, in the procedures for awarding public procurement contracts provided by the G.E.O. no.34/2006 regarding the award of public procurement contracts and the contracts of services concession and it can be applied both to legal entities having a lucrative purpose and those without a lucrative purpose (associations, foundations). The doctrine stated about this complementary penalty, that it is a real "restriction of the exercise capacity" of the legal entity, and that it also concerns indirect participation in public procurement procedures, ie either by simulation through the interposition of entity, or if the legal entity acts as a subcontractor of another legal entity which participated in the public procurement. [1] If the legal entity has already public procurement contracts in progress, they can be maintained, as the complementary penalty applies *ex nunc*, ie only for the future, and not *ex tunc*, but there cannot be concluded additional acts to extend the procurement contracts concluded previously. However, the doctrine has shown that, exceptionally, if the crime for which the legal entity was convicted was committed in the execution of or in connection with the public procurement contract already concluded (eg. - a crime of giving bribes to officials who have awarded the public procurement contract) its cancellation will be ordered, as effect of restoring the situation previous to the crime.

E. Placement under judicial supervision

It is a complementary penalty introduced by the new Criminal Code and consists of the appointment by the court of a judicial trustee who will oversee, during a period of 1 to 3 years, the activity which gave rise to committing the crime. The purpose of this sanction is to prevent the recidivism into criminal activity of the legal entity. In the doctrine it has been showed that this institution corresponds to the sanction of suspension of the sentence under supervision, as a means of judicial individualization of the execution of the punishment in the case of a natural person. [1]

This complementary penalty cannot be ordered cumulatively to that of dissolution or suspension of the activity of the legal entity, as this would mean to deprive of object the judicial supervision.

The execution of this complementary penalty is done by appointment by the delegated judge of a judicial trustee chosen out of the insolvency practitioners or of the legal experts, specifying that it cannot be appointed as judicial trustee the insolvency practitioner who was entitled to representation of the legal entity in the criminal proceedings.

Regarding the judicial trustee's duties, they relate only to the supervision of the activity in connection with which the crime was committed. Thus the trustee is entitled to participate, without voting rights, at any meeting of the governing bodies of the legal entity in which the activity of the legal entity is discussed, has access to all work units where it takes place, but he does not have the right of decision in the management of the activity of the convicted legal entity and he is bound to respect the confidentiality of the data that he takes notice of in the exercise of his mandate.

If the legal entity precludes the judicial trustee’s duties, the court may replace the complementary penalty of judicial supervision with that of suspension of the activity of the legal entity during a legal term.

F. The display or publication of the decision of conviction

This complementary penalty consists in the obligation, imposed by the court that convicted the legal entity, to display or publish or both a fragment established by the court containing the considerations for the decision and the full body of the conviction decision. The display is made in fragment in the place and in the manner established by the court, for a period between one month and three months. Publication is also done in the form prescribed by the court in print or audiovisual media or by other audiovisual means set by the court at the expense of the legal entity. The court decision also establishes the number of media appearances without exceeding 10 appearances and in the case of publishing by other means of audiovisual broadcasting, without exceeding a period of 3 months. The judge appointed with the execution periodically checks the fulfilment of the obligation to display - by police representatives - or to publish the conviction decision and, in the case of non-execution of this complementary penalty, he can notify the competent court for the replacement of this penalty with that of suspension of activity of the legal entity.

CONCLUSIONS

With the introduction of criminal liability of legal entities, the Romanian criminal legislator also implemented in the Romanian legislation the penalties that are involved by using this form of liability. However, considering the category of subjects of law that these penalties are applied to - namely legal, moral entities, they must be adapted to the legal entities’ nature and specificity. Therefore, to the only principal penalty possible in the case of legal entities – the criminal fine, it had to be added a series of complementary penalties, which according to the nature and gravity of the committed crime, would nuance and make efficient the application of criminal law in the case of legal entities.

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CONSIDERATIONS REGARDING THE WILL OF THE PARTIES IN ENFORCEMENT PROCEDURES

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***Abstract**: This article analyses some theoretical and practical issues concerning the principles applicable to enforcement procedures, in the context of the modifications on the Civil Procedure Code and the implementation of European regulations on enforceable titles. The importance of parties will is observed in enforcement proceedings, starting with the enforcement application, choosing the competent enforcement executor, carrying out the procedure and finalizing it.*
***Keywords**: enforcement, trial, availability, creditor, debtor*

Acknowledgement: *This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013.*

1. THE AVAILABILITY PRINCIPLE IN CIVIL TRIAL

The entire civil procedural activity is governed by the availability principle. This important rule of the civil trial has three main components: initiating the procedure, establishing its boundaries and finishing it (Durac, 2014, p.47-56.)

For the judgement phase of the trial, the three components are regulated by art.9 CPC, with the title „Disposal right of the parties". The first component, the initiation of procedure, is about triggering the trial by the right owner (the interested party) or by other parties or authorities, stipulated by the law. The second, establishing the boundaries of the procedure and the configuration of procedural frame, is about establishing the claims, defences and facts to be solved by the competent court (Jeuland, 2014, p. 306). For this end, art.196 CPC provides that the fundamental elements of the application are the name of the parties, the claims, the facts and the signature. The court is prohibited, unless otherwise provided by law, to change the procedural frame from a subjective point of view (regarding the parties), an objective one (regarding claims) or factual (regarding the facts to be discovered or analysed). As a general rule, the judge has to solve the case in the subjective, objective and factual boundaries established by the parties, according to art.22 par.6 CPC. The three elements of procedural frame will be found in the substance of the judgement, both in the solution and in reasons, and will constitute the basis of res judicata. The judge cannot, except otherwise provided by law, change the coordinates established in the statements of the parties, but can only establish the reality of facts and

give them the correct legal interpretation. For this reason, in order to find out the truth, the judge has certain of powers, like the ones provided by art.22 par.2 CPC, but they do not alter or diminish the availability principle. On the contrary, the imperative of find out the truth start with the claimant triggering the application and giving the court the exact coordinates of his judicial investigation. The judge will establish the facts and apply the law in the boundaries determined by the parties in their statements (Durac, 2014, p.36-38).

The third component of the availability principle in the judicial phase of the trial is given by the procedural acts by which the parties finalize the trial without an actual solution given by the judge, resulting from the appreciation of facts and the application of law. These acts, enumerated by art.9 par.3 CPC are the discard of the application, disclaim of the subjective rights, acknowledgement of claims or of judgements, the transaction, discard of the appeal, discard of enforcement. Beside these, art.9 par.3, final thesis provides that the parties can dispose of the civil trial in any other form, provided by the law, which can be considered to be the fourth dimension of the availability principle, subordinated and in close relation with the legality principle.

There are no legal provisions regarding the availability principle in the enforcement procedure, but its application is evident, even if art.9 CPC does not include a specific paragraph, like art.6 CPC does with regard the right to a fair trial. Structuring the elements of the principle under the same model like the one applicable to the judicial trial, we can refer to the right of the creditor to initiate the procedure, establishing the boundaries and frame of the enforcement, both for the obligations to be enforced and ways of enforcing them, procedural acts to end or finalize the enforcement and other ways provided by law.

2. TRIGERRING THE ENFORCEMENT

The first component of the availability principle is the one referring to the commencement of enforcement proceedings. The creditor is the only one able to decide upon the opportunity of initiating the enforcement, namely to decided when to start it and to choose the enforcement officer who will carry out the procedure. The creditor can initiate the procedure as soon as he holds an enforcement title or order (Perrot, Thery, 2013, p.130), more precisely as soon as the debt is due, or can decide to wait for the debtor to voluntary fulfil his obligation, in order to avoid paying the expenses. Triggering the enforcement has therefore two components related to the availability principle: choosing the enforcement officer and applying to the enforcement officer.

Regarding the first issue, art.651 par.1CPC provides for a rather wide range of territorial competence of the enforcement officer, related to the competence area of a Court of Appeal where his office is situated, the same rules being found in art.8 of Law no.188/2008 concerning the enforcement officers. The creditor has therefore the option between all the enforcement officers in the area of a Court of Appeal, as the Constitutional Court recently has established (Constitutional Court Decision no.348/2014 regarding the unconstitutionality of articles 650 (1) and 713 (1) CPC, par.15). Once the creditor has chosen one of the enforcement officers he cannot simply decide on another.

The replacement of the enforcement officer can be decided only by the enforcement court, at the creditor's request, according to art.652 par.4 CPC (Oprina, Gârbuleț, p.175-176).

Regarding the second component of the principle of availability related to initiating the enforcement procedure, namely the application for enforcement, according to art.663 par.1 CPC, the enforcement can be initiated only by the creditor, unless otherwise provided by law. The text makes reference to two different categories of exceptions: situations when the enforcement can be started ex officio, without a statement from the creditor; situations when the application for enforcement can be formulated by another person or entity.

On the first issue, it is to be noted that the new Civil Procedure Code does no longer provides for situations like the one in the former Procedure Code art.453 par.2, situations in which the enforcement was decided by the first court. In other words, the new Civil Procedure Code provides a wide application of the availability rule in relation to triggering the enforcement, which can be commenced only if an application is launched by the creditor or another person. This rule can be observed as well in article 622 par.2, on the moment of commencing the procedure: the moment when the enforcement officer is invested with the enforcement application.

On the second issue, of the person who can apply for the enforcement, the rule is that only the creditor can initiate the proceedings. As an exception, the law provides for cases when the application can be formulated by other persons, such as the public prosecutor, in cases provided by article 92 par.5 CPC, according to art.657 CPC.

2. THE ENFORCEMENT FRAME: OBJECT AND WAYS OF ENFORCEMENT

The second component of the availability principle in the enforcement proceedings is the one related to the enforcement frame, namely the object of the enforcement and the ways of enforcing the obligation provided by the title.

On the first issue, the right of the creditor to choose is restrained, because the obligations to be enforced are stipulated by the title. If the obligation is pecuniary, if the title does not provide for interest, penalties or other means of updating the amount, the creditor can ask the enforcement officer to update the debt according to the criteria provided by the enforcement title and, in the absence of such a criteria, according to the inflation rate, from the date when the judgement became definitive or, if the title is not a judgement, when the debt was due, to the date of the payment. In both cases, the calculation made by the enforcement officer is also enforceable.

If the obligations provided by the title are alternative, the creditor does not have the right to choose between them, in the first stage. According to article 675 CPC, the right to choose between alternative debts belongs to the debtor, in 10 days after being notified by the enforcement officer, under the sanction of losing that right. If the debtor does not make the choice in writing in the stipulated time, the right is passed to the creditor and the debtor will be summoned to fulfil the obligation chosen by the creditor.

On the second issue, a distinction must be made between pecuniary debts and other enforceable obligations. The creditor right to choose is predominant in cases when the debt is pecuniary, because in these situations the enforcement has an indirect character and can be made in various forms, such as movable or immovable seizure, garnishment etc. All the ways of enforcing a pecuniary obligation can be simultaneously or separately be exercised, at the creditor's choice (art.622 par.3 CPC), except when the immovable asset is seized (art.799 par.3 CPC).

This component of the availability principle is also contained in art.663 par.3 let.c) CPC, according to which the application for enforcement has to include the identification by the creditor of the ways of enforcement. The creditor's decision on this regard can be influenced by the assets owned or the debtor or his incomes and their enforceability. Also, the creditor has the possibility of not including in his application for enforcement any reference to the ways of enforcement to be followed, if, at the moment of initiating the procedure he does not hold any information on the assets or income of the debtor or other components of his patrimony. This possibility is clearly stated in art.665 par.3 CPC, regulating the elements in the decision of the enforcement officer to commence the execution. This decision has to include the identification of the ways of enforcement, when they were expressly indicated by the creditor in the application for the enforcement. In other words, the creditor can opt, according to the availability principle, to include in his application for enforcement the indication of the ways of enforcement, by doing that framing the enforcement into those ways, or make no reference to those ways, case in which they will be determined along the procedure, depending on the assets or income owned by the debtor.

Tightly linked to this issue is the one regarding the possibility of the creditor to choose to seize one or more of the debtor's assets. The creditor can choose to start the execution over all assets or incomes of the debtor or over a part of those assets or incomes. The final thesis of art.629 par.1 CPC provides that all incomes or assets owned by the debtor can be garnished or seized, according to the law, only in a proportion necessary to fulfil the obligations stated in the enforcement title. These provisions must not be interpreted in a way that will lead to the conclusion that the creditor cannot start the enforcement over all assets and incomes. The rule does not restrain that possibility. On the contrary, according to art.2324 par.1 CPC, the debtor is responsible for the fulfilment of his obligation and the guarantee awarded by law to all his creditors is his entire patrimony, all his assets and incomes. This is the general warranty of all obligations are for all creditors, awarded by law as a way of securing the civil circuit of rights and obligations. Therefore, as a holder of this warranty, the creditor can start the execution over all goods or incomes, but the proceedings will end as soon as all obligations are fulfilled, voluntarily or forced (Cayrol, p.202-203).

This conclusion can be also drawn from art.701 CPC, regarding the limitation of enforcement. This can be asked by the debtor when the creditor seizes simultaneouslymore than one assets of the debtor and their value is obviously disproportionate with the value of the debt. In such a case, the debtor can ask the enforcement court to limit the execution in some of the assets, thus suspending the execution on others. The premises that this regulation is based on is that the creditor has

started the proceedings by seizing all assets of the debtor or a vast proportion of these assets, based on his right described above as a part of the availability principle. This right exists even if the creditor has a warranty over some of the assets, because he is not obliged to start the execution over these assets, but can chose to seize other assets owned by the debtor, except the situation when his warranty is a mortgage. In this case, the creditor cannot ask for the sale of other goods, unless the goods under mortgage are insufficient to cover the debt (art.816 par.4 CPC). If the debtor has a guarantor, the creditor can chose to start the proceedings over the assets of the debtor and guarantor, who can ask that the execution to be carried out first over the assets of the debtor (art.2294 C. civ.) or divided between guarantors (art.2298 C. civ.), unless otherwise agreed.

If the enforcement is carried out over movable assets, even if the creditor specifies the assets that he wants to be seized, the enforcement officer can also seize other goods, if he considers that the one indicated by the creditor are not sufficient for the debt recovery (art.730 CPC).

3. THE ROLE OF THE PARTIES WILL ON THE COMPLITION OF ENFORCEMENT

The third component of the availability principle is about the ways the debts are recovered, via enforcement procedure or in another manner, and also about the suspension and termination of the enforcement procedure. Regarding this issue, art.630 CPC provides that during the procedure, under the supervision of the enforcement officer, the parties can agree that the enforcement procedures will be carried out only over a part of the debtors assets or only overs his income, that the sales will be voluntarily and not forced or that the debts will be recovered in any other way not prohibited by law. The prerogative given to the parties according to this article is a strong and important component of the availability principle. Most of the time, this agreement of the parties takes the form of a transaction, defined by art.2267 of the Civil Code as a contract by which the parties prevent or finish a litigation, including the enforcement procedure, by concessions and reciprocal discard of rights or by transferring rights one to another. This transaction might not be closed in writing, because according to art.2272 Civil Code the written form for this contract is not a validity condition, but only one provided for evidence. In these situations, the debt is recovered following an enforcement procedure, under the supervision of the enforcement officer or enforcement court. The parties can decide upon which goods will be sold, if the sale is voluntary or not, under the condition that law is respected. The availability principle is subordinated to the legality principle therefore the parties cannot decide to enforcement ways that are contrary to the law or are in fact an abuse of law.

This last component must be observed in particular: if the parties, by their agreement, are trying to obtain an illicit result, than the operation is an abuse prohibited by art.12 par.1 CPC, according to which all procedural rights must be carried out in conformity with good faith according to the scope they were provided by law and without violating the procedural rights of another person. This is way the law provides that even

if the enforcement procedure is carried out based on an agreement of the parties; the procedure must be supervised by the enforcement office, which has the role of looking over the legality of that procedure and preventing abuse of rights. This role is exercised, for instance, in case the sale of immovable assets by the debtor, with the agreement pf the creditor (art.753 CPC) or of a direct sale (art.754 CPC).

The will of the creditor is predominant when talking about the suspension or the termination of enforcement procedure. According to art.700 par.2 CPC, the enforcement procedure will be suspended by the enforcement officer if the creditor asks that, meaning that the will of the creditor is sufficient to trigger that end, without other conditions necessary. The creditor does not have to give reasons to his decision regarding the suspension and in such a case; the enforcement officer cannot continue the procedure. This voluntary suspension of the enforcement will take place without the intervention of the enforcement court, so no judgement or court order is necessary to this end. After the enforcement procedure was suspended voluntarily, the creditor can decide to restart it, if the enforcement did not expire according to art.696 CPC, the expiration time being of 6 months.

The creditor can decide to finish the enforcement procedure, by voluntarily discarding it, according to art.702 par.1 point 3 CPC. Discarding the enforcement is an important act based on the will of the creditor with a procedural and not substantial consequence. In other words, it does not lead to extinction of the subjective right, but only to the ending of the enforcement procedure. This conclusion can be drawn from art.708 par.3 CPC relating to the statute of limitations regarding the right to enforce a title. Is the creditor decides to end the procedure, this will not influence the statute of limitations, but if it is not expired, the creditor will be able to start a new enforcement procedure, based on the same title, because his substantive right is not extinct. Unlike the procedure in front of the court, during which the creditor can give up the trial or the substantive rights, during enforcement procedure, the creditor can only give up the procedure and in this case the enforcement officer will give him back the title. After that, it is the creditors choice to start new enforcement procedure, is the statute of limitations did not expire meanwhile. Giving up the procedure can mean that the creditor does no longer want to recover the debts, but can also have a different reason. For instance, according to art.845 par.9 CPC, with the creditors consent, the enforcement officer will try to sell the immovable goods for the third time, starting the bidding at 50% of the value established by expert evaluation. In this case, the goods can be sold at the highest price offered, if there are at least two bidders, even if that price does not cover the debt. Such a result can be disastrous to the creditor. He might prefer to give up the procedure at this point that agreeing for the goods to be sold at very low prices and start a new procedure in the future, when there will be better chances for a good price, sufficient for the recovery of the debt.

As noted above, the waiver of enforcement provided by art.702 para.1 pt.3 CPC has strictly a procedural effect, leading to the cessation of enforcement, and not a substantial one, the loss of the right to obtain the enforcement. This effect may occur indirectly through rules on limitation, which it is no longer interrupted when executing cancellation. But we do not exclude any possibility of a waiver to substantial enforcement

or provision of an act similar to that covered by art.408-410 CPC. This can be done by a remission of debt (art.1629 of the Civil Code.). When executing creditor waives not only the enforcement procedure, but its manifestation has the purpose of releasing the debtor from its obligation, he will not be able to subsequently submit a new application for enforcement; the obligation is extinguished organically, substantially. Remission of debt may be expressed or implied (art.1630 par.1 Civil Code) and may result in certain acts or deeds of the creditor. Thus, according to art.1503 par.1 Civil Code, voluntary submission of original document confirming the claim made by the creditor to the debtor, one of the co-debtors or fidejusor, will trigger the presumption that the obligation is extinguished by payment. The burden of proof is allocated to the party who claims that the remission was made for another purpose. If the original document voluntarily submitted is authentic, the creditor is entitled to prove that the delivery was made on a ground other than the settle of the obligation. As shown above, in the case remission of the enforcement by the creditor made under art.702 para.1 pt.3 CPC, enforcement shall cease and the executor will deliver to the creditor, personally or through a representative, the enforcement title. If the delivery of the enforcement title to the creditor is followed by remission of the title by the creditor to the debtor, this has the effect of a remission of debt, which presumes the settlement the obligation of payment.

The creditor will not be able to make a new application for execution later, only to the extent that the enforcement order was an authentic one and he can prove that the remission was made for a reason other than settle the obligation. In all cases, it is presumed, until proven otherwise, that the entry of the debtor, a co-debtor or guarantor of the original document in the possession of the title was made by a voluntary delivery of the creditor (art.1503 par.3 Civil Code). For example, if after giving up the enforcement procedure the creditor makes a new application for enforcement, the debtor may oppose to it by the way of the contest of enforcement, claiming that the obligation was settled, if he is in possession of the original enforcement order (the situation may be encountered when in the second application for execution has attached a certified copy of the enforceable title under Art.663 para.4 CPC). In such cases, the creditor can prove either that the title came into the possession of the debtor in another way than by voluntary remission (i.e., was stolen) or, if the title is an authentic one, it was handed over to the debtor for another purpose than settle the obligation.

4. CONCLUSIONS

The will of the parties plays an important role in enforcement proceedings. Triggering enforcement proceedings can be done only at the request of the creditor, who also establishes the frame of the execution, the parties may close transactions during the execution and completion of the procedure can also be caused by unilateral will of the creditor or by the common will the parties. The principle of availability is still subordinate to that of legality, because any manifestation of will may be made only in accordance with the procedural rules enacted in Book VI of the Code of Civil Procedure, and rights should be exercised with respect for economic and social purpose which was enacted by the legislature.

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