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PUBLIC ADMINISTRATION

PUBLIC PROCUREMENT CORRUPTION IN THE EUROPEAN UNION

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Abstract: *Public procurement is one of the sources for money draining in Europe. Corrupt officials agree to corrupt public procurement contracts that ultimately serve their personal interests instead of the public good. This undermines the states' welfare and rewards dishonesty, disloyalty, and venality. The EU is trying to manage this problem. The task facing it is huge, but it has made some progress. It needs to do more to ensure compliance with public procurement standard and prosecuting offenders. This paper presents an overview of main public procurement issues, including some of the recent good practices concerning public procurement in the EU.*
Keywords: *public corruption, public procurement, e-procurement, anti-corruption.*

INTRODUCTION

Fighting corruption has become the credo of most governments, international organizations, and NGOs. Fighting corruption helps to ensure good governance, a strong economy, and, ultimately, a better life for everyone. Of course, if this fight's goal is the utopist goal of eliminating corruption, the fight is likely to be never-ending, if not futile to some extent. As pessimistic as one might be, however, some countries, including EU member countries, are reducing corruption. For example, countries throughout the world have begun fighting private sector corruption more vigorously in the past five years. Also, most developed countries have been targeting public sector corruption. However, public sector corruption is harder to manage because of its spread into almost all public affairs. Public and private corruption often operates in tandem, particularly when the public procurement involves public-private partnerships, a place where the demand side and the supply side of corruption can easily meet.

Over the years, international financial institutions have developed their own standards and rules for financing public procurement contracts. The World Bank Guide is one of the most comprehensive set of rules in this respect, including addressing the bidder selection process. These guidelines provide for the exclusion bidders involved in corruption scandals from the bidding process. They also recommend integrity pacts and

pre-qualification procedures for assessing the bidders' technical and financial competence, where appropriate. In 1995, UNCITRAL presented a Model Law on Procurement of Goods, Constructions and Services based in the World Bank's guidelines. A year later, the WTO created the General Procurement Agreement, which its members signed and ratified.

The OECD addressed the issue by creating the 2006 Action Statement of Export Credit Working Group and the Benchmark and Assessment Tool for Public Procurement Systems in collaboration with the World Bank, which is designed to evaluate and rank national public procurement systems. The OECD also issued its Principles for Integrity in Public Procurement, which remains a reference for public procurement procedure.

The European Union is facing the same challenge. The Central, South Eastern and Eastern European member-states are behind the rest of the members in their anti-corruption fight. Consequently, the EU loses an estimated 120 billion euro to corruption annually. The weakest players; that is, the most susceptible to corruption, remain the political parties, public administrations, and the public sector (Mulcahy, 2012, p.3).

Possibly 20 to 25 percent of the value of public contracts is lost to corruption each year, and "public procurement contracts in the EU have an estimated worth of around 15 percent of the EU's total GDP" (Neilsen, 2013, p.1), sometimes even more.

Government purchasing legislation has existed for more than 40 years in the EU. However, adding anti-corruption provisions only started in 2012. Adding anti-corruption provisions is difficult because this required considering compliance costs, administrative burdens and their effects on competition. Another complication was the absence of a trustworthy way to measure corruption (Adving, 2011, p.5), which remains a challenge today.

Interested parties have advanced different solutions. Uniformly, however, the goals are to promote integrity, transparency, accountability, fair competition and professionalism. This means that clear and transparent procedural rules, codes of conduct for all participants, anti-corruption training, clear and proportionate sanctions, measures to detect corruption and to assess and identify risks ("red flags" or corruption indicators), and encouraging and protecting whistleblowers are all essential.

In addition, the internet can provide easy access for the public and for the stakeholders to important aspects of the public procurement process, avoiding secrecy and suspicion. Debarment has also been successful.

PUBLIC PROCUREMENT RISK OF CORRUPTION

During the past decade, the trend has been to implement a new type of public administrative management based mostly on projects coordinated through public-private partnerships. Its purpose is to improve the delivery of public services by working closely with private companies to meet the public's needs. Yet, this close working relationship can also increase the opportunities for corruption. Corruption does more than divert public funds from their proper purpose; it also corrodes public respect for government, erodes the rule of law, distorts the economy, and, most tragically, burdens the poor the greatest.

Transparency International has created a comprehensive list of the effects of public procurement corruption. They run the gamut from harm to the environment, health and human safety to stifling innovation. Public procurement corruption distorts competition and endangers the economic development of the community as a whole (TI, 2014, pp. 9-10).

Public procurement procedure is complicated, limited in transparency and "impersonal" in that it public funds and not the funds of private investors. These three features make corrupt behavior hard to detect. Corruption can occur at any stage of the public procurement process: assessment of the needs phase (demand determination), preparation phase (project design and bid documents preparation), contractor selection and award phase, contract implementation phase, and the final accounting and audit stage (TI, 2006, p.17). Investments for needs that do not exist, a fake bidding process that looks more like a bribing competition, fake prices, poor quality of goods or services, and the like are but a few ways that corruption filters into public procurement.

Also favoring corruption is the number of people involved in public procurement process. Their diverse activities can easily provide cover for corruption. Their "one hard washes the other" attitude strengthens the unlawful operations, giving confidence to the actors. The chain is usually long (administrative officials, politicians, bidders, the sub-contractors, agents, consultants, business partners, managers) dissipating the responsibility and the blame.

The public sectors most affected by public procurement corruption in Europe and elsewhere are construction, public works, and the mining, oil and gas industries. (TI, 2014, p. 21)

Measuring the level of corruption, including public procurement corruption, is difficult because of the lack of accurate data from the EU states and the lack of a reliable way to measure corruption. Opinions differ over the results of the various econometric models for measuring corruption. One of the newest systems for identifying, measuring and helping to reduce public procurement corruption was commissioned by EU Commission as the result of a collaboration of OLAF, the European Court of Auditors, the OECD, and experts from PwC, Ecorys and University of Utrecht. The system estimates the direct material costs of corruption. It was tested on a sample of eight EU member states and five sectors where public corruption thrives: road and rail, water and waste, urban and utility construction, training, research and development. The EU member states investigated were France, Spain, Italy, the Netherlands, Lithuania, Hungary, Poland and Romania. The system found that public funds are lost through cost overruns, implementation delays or ineffectiveness. The amount of direct public loss from corruption was 13% of the overall budget of the project. The percent tended to be higher in projects with the smallest budgets. The bigger the budget, the larger the sums lost to corruption. The most vulnerable sector to corruption was the training one, where the relative loss rose to 44%, compared to the other sectors: 29% urban and utility construction, 20% road and rail, 16% water and waste, 5% research and development. In total, in 2010, the direct cost of corruption in public procurement in these five sectors, for the eight member states, ranged from 1.4 billion euro to 2.2 billion euro and the most

often encountered corruption was bid rigging, kickbacks and conflict of interest (OLAF, 2013, p.7).

Surveys focusing on the perception of and experience with corruption are published annually several institutions and organizations. Statistics by Eurobarometer, GRECO, Transparency International and OECD provide describe the severity of the problem, though not beyond question, most often directed at the accuracy of the data they use. However, as the anti-corruption fight increases its pace, states are more willing to provide truthful information.

According to Eurobarometer, in Europe, including the European Union, the United Kingdom has the least bribery (less than 1%) and a corruption perception of 64%, which is below the EU average of 74%. Denmark, Luxembourg, Sweden and Finland also have low bribery scores (less than 1%) but also have a most positive perception of corruption (20%, 42%, 44%, 29%, respectively), below the EU average. Germany, the Netherlands, Belgium, Estonia and France are following with a corruption experience index of under 2%. Opposite, there are most South Eastern and Eastern European EU member states that are registering high figures in favor of corruption. Greece, Romania and Bulgaria are causing concern since bribing looks to be an almost daily experience. Most of these scores match the Transparency International scores.

Still, data gathered responsibly and voluntarily delivered by EU states fall short. The new anti-corruption reporting system might force members to take action in the right direction and to solve this problem.

EU LEGAL FRAMEWORK AND LAW ENFORCEMENT

The EU development strategy, Europe 2020, focuses on employment, productivity and social cohesion. These goals cannot be reached without comprehensive and holistic anti-corruption legislation and effective enforcement. The European Commission in its "Communication for an European Industrial Renaissance" of January 2014 underlines ones more the importance of quality public administration as one of the factors to sustain EU growth (EU Report, 2014, p.3).

The EU member states' have similar public procurement laws. This legal framework seeks to ensure integrity, transparency, accountability, fair competition and professionalism. However, more is needed. For instance, states should ensure their criminal laws adequately cover bribery and conflicts of interest. Once in place, these laws must be vigorously enforced. As an aid to this enforcement, legislatures should enhance whistleblower protection laws and require certain disclosures from the parties involved, including their ownership, subsidiaries, and other major assets.

Public procurement legislation in the European Union has improved in recent years, inspired by encouragement and standard offered by the UN, the OECD, the WTO, and the World Bank. Several directives specifically address the public procurement process. Other directives can be viewed as covering corruption generally, yet in ways that apply to public procurement such as transparency during the public procurement process, exclusion of corrupt bidders "certified" by court decision, minimum standards for

contractual remedies and modification of contracts. Certain provisions also deal with abnormally low tenders.

The main directives are Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, Directive 2004/17/EC of 31 March 2004 coordinating the procurement procedures of entities in the water, energy, transport and postal services sectors, Directive 2009/81/EC of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defense and security, and amending Directives 2004/17/EC and 2004/18/EC, Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, Directive 2007/66/EC and Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

Until this year, transnational works concessions were still not dealt with under specific legislation, but, instead, they were dealt with under limited and general provisions (Directive 2004/18/EC). Transnational service concessions were only governed by EU Treaty principles. However, in 2011, EU Commission proposed to revise the public procurement directives to focus on vulnerable sectors such as water, construction, energy, transport, postal services, supply and service contracts and concessions (EU Anti-Corruption Report, 2014, pp. 22-23). The initiative was slowed by member states opposed to the additional costs for their national administrations the revisions would impose.

The proposed modifications were regarding Directives 2004/17/EC and 2004/18/EC. Also, a new directive was created to cover concession contracts, today, Directive 2014/23/EU.

In spite of different impediments, the directives were voted by the EU Counsel in February 2014. Member states have until April 2016 to transpose the new provisions with the exception of e-procurement rules that can be implemented as late as April 2018.

The new, improved provisions address a number of key issues, including the following: prevention of conflict of interests, e-procurement, and simplification of documentation, better access to the market for small companies, monitoring and reporting on public procurement activity by member states for a rigorous and uniform enforcement of EU law.

Member states are allowed to decide as they see fit if public works and services should be performed by public or private entities.

The new legislation is relying on the "most economically advantageous tender" principle and not on the "lowest price" one. Thus, enduring quality, social welfare, innovation and environmental protection are favored. The use of a standard "European Single Procurement Document" during the bidding phase could reduce the bidding companies' administrative costs by around 80%. Small firms are encouraged to bid by

new rules that permit contracts to be divided into lots. However, this might make the monitoring of the execution of the entire public work more difficult.

The new rules are stricter for subcontracting and abnormally low bids; red flagging and alert systems are also created to prevent and detect corruption.

Basically, Directives 2014/24/EU and Directive 2014/25/EU are meant to put a tighter filter on public procurement corruption using more flexible rules but without sacrificing strictness.

Besides legislation, the Tenders Electronic Daily (TED) database is offering a detailed list of tenders around Europe, providing for more transparency and publicity. The number of contract notices and contract award notices made public using this database has been growing during the past few years.

The EU challenge remains not the legislation but its enforcement. Thus, the European Commission monitors the correct implementation and enforcement of EU public procurement rules. It has been noted that in some member states infringements have occurred, such as lack of publicity and transparency, discrimination, direct awards, unjustified amendment of contracts. The majority of these cases were in the road and railway construction sector, health, energy, water/sewage, IT products and service contracts.

Since this year, the monitoring of public procurement rules enforcement was also coupled with the monitoring of anti-corruption fight. The first ever Commission anti-corruption report shows that in some member states, especially those from South Eastern and Eastern Europe, corruption of public sector is widespread and frequent. According to 2013 Eurobarometer survey, three out of ten construction and engineering companies were prevented to win a contract due to corruption, especially in Bulgaria, Slovakia, Cyprus, and Czech Republic. The most common corruption practices occurring in public procurement practices are: "tailor-made criteria for specific companies (57%), conflict of interest in bid evaluation (54%), collusive bidding (52%), unclear selection or evaluation criteria (51%), involvement of bidders in the design of specifications (48 %), abuse of negotiated procedures (47 %), abuse of emergency grounds to justify the use of non-competitive or fast-track procedure (46 %), amendments to the contract terms after conclusion of the contract (44 %)". (EU Report, 2014, pp. 24-25)

SOLUTIONS AND GOOD PRACTICES

Monitoring the implementation and the enforcement of the EU anti-corruption provisions by the member states and intervening where needed is in itself a way of aiding the anti-corruption fight. Member states willingly or unwillingly have to take anti-corruption actions and they are going to be held responsible for them. The new EU anti-corruption reporting system is already proving this.

The EU Commission's intent is to identify, share and promote good practices among its members creating a program in partnership with member states, NGOs, and other stakeholders. (EU Anti-Corruption Report, 2014, p. 5)

Solutions for dealing with public procurement corruption have been advanced by different public and private organizations. Reducing and eventually eradicating corruption can be achieved only by cooperation among public and private partners.

The concept of e-government is well-known today. It has been proven that e-government works only if three interrelated objectives are met: increasing the access to information, presenting the information in a transparent manner and increasing accountability by enhancing the ability to trace decisions/actions to individual civil servants (Bhatnaga, 2003, p.2).

Thus, the use of electronic communication can enhance government transparency and thus reduce administrative corruption. For instance, transparency makes financial and administrative transactions traceable, thereby showing how public money is spent and who is spending it.

The advantages of an e-procurement system, the one that EU is aiming for, are many: lower transaction costs, increased competition, decreased corruption, easy public procurement monitoring, and database creation.

E-procurement and e-invoicing proved to be efficient in the public procurement process exposing it to external scrutiny but not without fault. These solutions rely heavily on standardized and explicit rules and procedures meant to reduce the self discretion for partners involved in the procurement process. Also, the technical infrastructure is essential for e-procurement, involving connectivity, certified or tested e-procurement products, computers, trained personnel.

If the rules are not explicit and simple and the electronic system is not user friendly and if it is just an alternative solution to a hard paper one, then it will never target corruption.

From the same sphere of external monitoring, e-procurement can be coupled with civil society monitoring that involves representatives of civil society engaged in witnessing the public procurement stages (TI, 2014, p.29).

Price comparisons on-line interactive tools can be helpful in providing comparative information on public markets for municipalities: market shares, contracts distribution among municipalities and firms, quantities and unit price comparisons among different goods and services (TI, 2009, p. 97).

Another solution for curbing corruption in the public procurement process is the integrity pact promoted by Transparency International. The integrity pact between the government entity undertaking the procurement and the bidder stipulates that the first will prevent corruptive behavior of its officials and the later will abstain from bribery in order to secure a competitive advantage, including for the winning bidder until the full execution of the contract (TI, 2014, p.27).

The integrity pact reflects the best the collaboration and the efforts that have to be made by both partners to avoid corruption. Thus, under the pact, bidders have also the obligation to disclose all payments made in connection with the contract and to have a code of conduct and a compliance program for its implementation.

The sanctions for violating the rules vary according to the gravity of the offence: “denial or loss of the contract, liability for damages to the public entity or to other

competing bidders, forfeiture of the bid, performance bond or other security, debarment of the violation by the public entity for a certain period of time" (TI, 2014, p.27).

Integrity pacts have been used successfully in some European countries such as Austria and Germany, mostly for large-construction contracts.

Good practices concerning the public procurement process have been mentioned in the first EU Anti-corruption report issued in February 2014. Thus, it is evidence that good practices exists across the Union, but with more positive outcomes in Western member states.

The report notes that Germany had positive results not only in prosecuting corruption cases but also for taking preventive measures concerning public procurement at the local level, meaning towns and municipalities, especially in the construction sector, one of the most vulnerable to corruption. Some of these measures include establishing codes of conduct and central authorities for tender and awarding, rotation of staff, clear regulations on sponsoring and the prohibition on accepting gifts, organization of tender procedures, increased use of e-procurement, black lists or corruption registers, and other similar measures (EU Anti-Corruption Report, 2014, p. 28).

Italy has progressed in the field of establishing risk management and public procurement platforms. Several regional and local administrations have taken action against mafia infiltration in public structures and in public contracts to enforce transparency of public procurement at the regional level (EU Anti-Corruption Report, 2014, p. 29).

BASE is also the Portugal example of a unique national web portal used to centralize public procurement contracts, a way of keeping extended records on public procurement transactions, especially those in construction and real estate. Also, Portugal has an e-procurement platform that offers the possibility of downloading documentation free of charge, makes public calls for tenders, allows e-invoicing, and receives queries from suppliers, uploads and monitors public procurement contracts (EU Anti-Corruption Report, 2014, p. 32).

At the same time, Estonia, Lithuania, Poland, and Slovenia have made good progress in consolidating the fight against corruption. However, the business and civil society sectors in these countries are relatively weak. Nevertheless, the initiatives of Slovakian civil society have led to positive results concerning the accountability of local administration with regard to transparency of public spending. Transparency International runs a project in this field, focusing on independent monitoring. The Open Local Government Initiative of Slovakia ranks a hundred Slovakian towns using a set of criteria such as "transparency in public procurement, access to information, availability of data of public interest, public participation, professional ethics and conflicts of interests" (EU Anti-Corruption Report, 2014, p. 28).

Lithuania and Estonia have succeeded in implementing an e-procurement practice. More than 50% of the total value of public bids is done electronically, in total transparency, in Lithuania. The Estonian State Public Procurement Register is an electronic system providing for e-procurement and for other e-services. Its use tripled in just one year (EU Anti-Corruption Report, 2014, pp. 31-32).

Slovenia and Croatia have put in place electronic databases intended to remove corruption from public procurement contracts by tracking public money. The Slovenian database "Supervizor" contains information regarding contacting parties in business transactions using public money. It also provides information related to the management of all state-owned and state-controlled companies and their annual financial reports. The Croatian 2013 web portal and e-database is similar, providing information on public procurement procedures, on companies dealing with public funds and on public officials' patrimonies (EU Anti-Corruption Report, 2014, p.30).

Among Eastern European EU members, Romania is only noted for improvement in enforcement of anti-corruption legislation. Romanian National Anti-Corruption Directorate (DNA), a specialized prosecution office for combating medium and high level corruption cases, has indicted around "4700 persons, 90% of these cases being confirmed and finalized by court decisions resulting in 1500 convicted persons" (EU Anti-Corruption Report, 2014, p.14). However, now, it is the time to prove that Romanian government is committed to curb public sector corruption, implementing the new EU legislation and enforcing it for notable results. Also, it should adopt the solutions advanced by different organizations such as integrity pacts for a more versatile, complex and complete anti-corruption toolbox.

CONCLUSION

The ongoing EU legislative reform is meant to facilitate cross border joint procurement by providing uniformity and avoid the legal and procedural hurdles created by national law conflicts. Its second purpose is to minimize if not eradicate corruption from public procurement process by bringing transparency, integrity and accountability.

Solutions and good practices exist and most EU members have taken steps in the right direction but sometimes too small and/or too few. It is true that public procurement corruption still strives in Eastern European EU countries compared to its Western ones. Too often, interests groups are acting on behalf of the citizens on false pretences, spending public money to serve their own interest and living the community with the false impression of progress. Urban development/construction and healthcare remain the most prone to corruption. Maybe the new legislation and the new anti-corruption review mechanism will force these member states' governments to prioritize the anti-corruption fight and to act more responsibly for positive, even outstanding results.

The success of the new, improved EU public procurement legislation is to be seen since its implementation at national level is still in progress.

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FINANCE

UNIT-LINKED LIFE INSURANCE CONTRACTS WITH INVESTMENT GUARANTEES – A PROPOSAL FOR ROMANIAN LIFE INSURANCE MARKET

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Abstract: *The Global Financial and Economic Crisis has negatively influenced the international insurance markets, and implicitly the Romanian unit-linked life insurance market. As a consequence, unit-linked life insurance markets around the world are changing. Policyholders have become more aware of investment opportunities outside the insurance sector and they want to enjoy the benefits of investments in different financial instruments in conjunction with mortality protection, so insurers around the world have developed unit-linked products to meet this challenge. According to Romanian legislation which regulates the unit-linked life insurance market, unit-linked life insurance contracts pass most of the investment risk to the policyholder and involve no investment risk for the insurer. Due to the financial instability caused by the Global Crisis and the amplification of market competitiveness, insurers from international markets have started to incorporate guarantees in unit-linked products. Therefore the objective of this study is a proposal of a change in the design of these innovative products in order to respect the Solvency II regulation regarding the management of risk exposure and the policyholders' protection. The authors' purpose is to present a comparative analysis of the main financial instruments that may guarantee the unit-linked insurance contracts in order to create a balance between the insurers' interests and the policyholders' interests. This research proposes some legislative changes in the Romanian legislation regarding unit-linked life insurance market that may authorize the Romanian insurers to offer unit-linked contracts with and without investment guarantees.*
Keywords: *investment guarantees, regulatory changes, unit-linked products*
JEL Classification: G22, G14, C58, C87

INTRODUCTION

One of the most interesting life insurance products which have emerged in recent years has been the unit-linked contract (Boyle, 1977). The unit-linked insurance contracts are very popular in many insurance markets (United States, Canada, Asia, and Europe) since the middle of 1970s (Argesanu, 2004). Unit-linked contract is a life insurance policy with investment component. The returns obtained are linked to the performances of a financial asset (Gaillardetz, 2006).

The Global Financial Crisis has negatively influenced the international insurance markets, and implicitly the Romanian unit-linked life insurance market. As a consequence, unit-linked life insurance markets around the world are changing. Policyholders have become more aware of investment opportunities outside the insurance sector and they want to enjoy the benefits of investments in different financial instruments in conjunction with mortality protection, so insurers around the world have developed unit-linked products to meet this challenge (Hardy, 2003). Due to the financial instability caused by the Global Crisis and the amplification of market competitiveness, insurers from international markets have started to incorporate guarantees in unit-linked products.

Investment guarantees are very popular features in life insurance policies because in addition to paying a benefit payable on death or at maturity, these policies are tied to the return of an underlying asset or an actively managed portfolio. Thus, the policy also acts as an investment because the investor's capital is credited with a minimum return. In exchange for this protection, the policyholder pays a higher premium, reflecting the market risk assumed by the insurance company (Augustyniak and Boudreault, 2012).The payoff contains both financial and insurance risk elements, which have to be priced so that the resulting premium is fair to both the seller (insurer) and the buyer (policyholder) of the contract (Romanyuk, 2006). These products bear two different (independent) types of risk. First of all, we can look at the financial risk (related to the market). This risk was clearly stressed during the last few years, when the major stock market indices have dropped so much. On the other hand, the insurer deals with another type of risk - actuarial risk, related to the possibility of death for the insured (and hence the possibility of a claim) (Argesanu, 2004).

The objective of this study is a proposal of a change in the design of these innovative products in order to respect the Solvency II regulation regarding the management of risk exposure and the policyholders' protection. The authors' purpose is to present a comparative analysis of the main types investment guarantees commonly used in unit-linked insurance products. This research proposes some legislative changes in the Romanian legislation regarding unit-linked life insurance market that may authorize the Romanian insurers to offer unit-linked contracts with and without investment guarantees.

The structure of this paper is as follows: Section 2 discusses some previous research on the issue. Section 3 describes the main categories of investment guarantees commonly used in unit-linked insurance. Section 4 presents some legislative changes regarding the unit-linked life insurance contracts with investment guarantees. Empirical

results are presented in Section 5. Section 6 provides a summary of the main findings and some concluding remarks.

LITERATURE REVIEW

There is an extensive literature on the pricing, hedging and risk management of these contracts. See for example, Boyle and Schwartz (1977), Brennan and Schwartz (1979), Hardy (2003), Argesanu (2004), Gaillardetz (2006), Romanyuk (2006), Reichenstein (2009), Augustyniak and Boudreault (2012),etc. Boyle and Schwartz (1977), and Brennan and Schwartz (1979) were the first articles that elegantly described some of the option elements of life insurance products and demonstrated how the relatively young option pricing theory of Black and Scholes could be applied to value these contracts.Hardy (2003) discusses the modelling and risk management for equity-linked life insurance; the focus of his research is on stochastic modeling of embedded guarantees that depend on equity performance. Argesanu (2004) focuses on the risk analysis and hedging of variable annuities in incomplete markets. Romanyuk (2006) describes the problem of appropriate pricing of equity-linked life insurance contracts and hedging of the risks involved, and proposes the use of two types of imperfect hedging techniques: quantile and efficient hedging. Gaillardetz (2006) introduces a pricing method for equity-indexed annuities and valuates these products by pricing its death benefits and survival benefits separately.

TYPES OF INVESTMENT GUARANTEES

In this section the authors present the various types of investment guarantees commonly used in unit-linked insurance.

The unit-linked contracts offer some element of participation in an underlying index or fund or combination of funds, in conjunction with one or more guarantees. Without a guarantee, equity participation involves no risk to the insurer, which merely acts as a steward of the policyholders' funds. These fixed-sum risks generally fall into one of the following major categories:

- The guaranteed minimum maturity benefit (GMMB): guarantees the policyholder a specific monetaryamount at the maturity of the contract. This guarantee provides downside protection for the policyholder's funds, with the upside being participation in the underlying stock index. The guarantee may be fixed or subject to regular or equity-dependent increases.
- The guaranteed minimum death benefit (GMDB): guarantees the policyholder a specific monetary sum upon death during the term of the contract. Again, the death benefit may simply be the original premium, or may increase at a fixed rate of interest.

With the guaranteed minimum accumulation benefit (GMAB), the policyholder has the option to renew the contract at the end of the original term, at a new guarantee level appropriate to the maturity value of the maturing contract.

The guaranteed minimum surrender benefit (GMSB) is a variation of the guaranteed minimum maturity benefit. Beyond some fixed date the cash value of the contract, payable on surrender, is guaranteed.

The guaranteed minimum income benefit (GMIB) ensures that the lump sum accumulated under a separate account contract may be converted to an annuity at a guaranteed rate (Hardy, 2003).

REGULATORY CHANGES

This research proposes some legislative changes in the Romanian legislation regarding unit-linked life insurance market that may authorize the Romanian insurers to offer unit-linked contracts with and without investment guarantees.

According to the Romanian legislation which regulates the unit-linked life insurance market, unit-linked life insurance contracts pass most of the investment risk to the policyholder and involve no investment risk for the insurer.

Efforts of regulatory adaption to market realities should be seen as part of an evolving process where the progress achieved to date is consolidated in the light of experience and makes easier the solution of new issues as they arise.

The design of unit-linked products should ensure that they must offer above-market risk-adjusted returns compared with those available on portfolios of bonds and index funds, deposits, currencies, etc. (Reichenstein, 2009). As the U.S. Securities and Exchange Commission (2008) stated some warnings regarding the equity-indexed annuities, also the Romanian legislation should provide similar recommendations: unit-linked products are complicated products that may contain several features that can affect policyholders' returns. Policyholders should fully understand how these types of financial products compute their index-linked interest rate before they buy them.

A key regulatory issue is whether unit-linked insurance products are suitable investments. The national requirements should include certain conditions that must be met before an investment can be considered suitable: insurers should inform the potential customers that investments in unit-linked products are suitable only for some investors and also they must ensure that the policyholders understand the nature of this products, as well as the potential risks and benefits associated with these innovative products. Insurers must train the financial consultants about the characteristics, risks, and benefits of each product before they are allowed to offer these products to policyholders. Because of the unique nature of these products, many investors (policyholders) may not understand the features of these products, and may not fully appreciate the associated risks of investing in them (Reichenstein, 2009).

Also the insurers granting guarantees of this type must estimate the cost and include this cost in the premium and they have to establish the proper reserves for these guarantees (Boyle, 1977). In general the policyholder's account will be credited with a rate of return of some fixed guaranteed rate (up to 3%) that is applied to 90 percent of the premium.

EMPIRICAL RESULTS

This section models returns on unit-linked life insurance contracts with investment guarantees. These unit-linked products with investment guarantees are based on a mutual fund that invests in bonds and stocks: a high-risk fund that invests 100% in stocks, a medium-risk fund that invests 25% in stocks and 75% in bonds and low-risk fund that invests 100% in bonds. The database of contracts came from 2008 to 2013. The table below summarizes the returns, risk and risk-adjusted performance on BET Index, NBR Treasury bills, Deposits and unit-linked products.

For 2008-2013, the high–risk unit-linked product produced a geometric average annual return of 19.18%. The standard deviation of annual returns was 27.29%. The Sharpe ratio was 0.487, where the Sharpe ratio for an asset is defined as average/standard deviation of excess return on that asset. By definition, the alpha and beta for the BET Index were 0 and 1, where alphas and betas come from regressions using unit-linked returns and BET Index returns.

Table 1 Comparison of market-based returns and unit-linked life insurance returns, period 2008-2013

Asset	Geometric average annual return	Standard deviation	Sharpe ratio	Alpha	Beta
Market based-returns					
BET Index	20.23%	28.53%	0.497	0	1
Deposit	6.49%	2.05%	-0.025	-	-
NBR Treasury bills	6.51%	0	0	-	-
Unit-linked returns					
High- risk fund 100% stocks	19.18%	27.29%	0.487	0.004	0.924
Medium-risk fund 25% stocks and 75% bonds	11.17%	8.57%	0.623	0.054	0.283
Low-risk fund 100% bonds	7.62%	2.12%	0.495	0.064	0.062

Source: National Bank of Romania, Bucharest Stock Exchange databases, authors' calculations

CONCLUSIONS

Due to the financial instability caused by the Global Crisis and the amplification of market competitiveness, insurers from international markets have started to incorporate guarantees in unit-linked products. A unit- linked life insurance policy with an asset value guarantee is an insurance policy whose benefit payable on death or at maturity consists of the greater of some guaranteed amount and the value of a reference portfolio which is defined by the deemed investment of a predetermined component of the policy premium in a portfolio of common stocks or mutual fund-the reference fund (Brennan and Schwartz, 1979).

The authors propose some legislative changes in the Romanian legislation regarding unit-linked life insurance market that may authorize the Romanian insurers to offer unit-linked contracts with and without investment guarantees.

According to the empirical results, unit-linked life insurance products outperform returns on similar risk portfolios of Treasury's and index funds. Based on alphas and Sharpe ratios; these contracts have produced competitive market-based returns.

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FINANCIAL SUPERVISION ARRANGEMENTS: EXPERIENCE AND PERSPECTIVES

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Abstract: *The surveillance of financial markets has always been a preoccupation of decision makers, but the present crisis requires a reconsideration of former arrangements in order to deal with vulnerabilities and contagion. Traditionally, separate authorities ensured the supervision of banks, capital markets, insurance companies, given their rather small scale activity and specificities. But, the ongoing changes concerning the portfolio of financial products that have occurred during the last two decades have strengthened the connections among financial institutions. The paper analyses the manner The Bank of England and The European Central Bank have reconsidered the architecture of the regulatory and supervisory system to meet the challenges raised by the recent crisis. The main conclusion of the study is that there is no one size fits all supervising system and that its architecture depends on the specific financial history of a country, its economic development, culture, the concentration and openness of their financial systems, etc.*
Keywords: *banks, prudential supervision, risks*
JEL Classification: G18, G28

IDENTIFYING THE PROBLEM

Regardless of the regulatory and supervisory architecture, the prudential policies consider: the safety and stability of the financial institutions, deposit insurance, the safety of the payment systems, the business conduct, business ethics, etc.

The active involvement of Central Banks in the surveillance system is supported by the wide experience of these institutions, the professionalism of central bankers, their competitive advantage, the ability to manage systemic risks, the lender of last resort stance, etc. On the other hand, there are authors that oppose the active supervisory role of Central Banks arguing that they would become too powerful and their involvement on the financial market too deep (Volcker *et al*., 2008).

Nevertheless, empirical researches show that in 89 countries out of 136, the Central Banks are the sole supervisory authorities of the domestic banking systems, in 9 countries, including the USA, Central Banks are involved in supervising the financial sector, at large, besides the specialised authorities, while in 38 countries the Central Banks are not among the supervisory authorities (Barth, Caprio & Levine, 2013). Recent studies (Llewellyn D, 2006 apud Masciandaro, 2003) on the correlation between the concentration of supervision and the supervisory role of Central Banks show that the higher the role of these institutions, less concentration of supervision occurs. On the contrary, when there is a higher degree of financial concentration it is not the Central Bank that acts as supervisory authority. Goodhardt (2011) argues that Central Banks are more appropriate supervisory authorities than other agencies because their ability to control the liquidity, and promote stability measures in the financial system.

The present crisis has marked a shift in the supervisory systems: if 15 years ago a rift occurred in associating Central Banks with prudential supervision, nowadays their regulatory and supervisory role in preventing risks and in ensuring macro stability is reconsidered (Trichet, 2013).

The supervision of banking systems became a wide preoccupation of theoreticians and practitioners worldwide, since the new challenges raised by the economic and financial crisis posed the need for new approaches of the monetary decision makers. Presently, the design of financial supervision includes: the *institutional, functional, integrated and twin peaks* approaches, according to the policy makers and regulators views. The decision to employ one of these alternatives depends on the characteristic of the financial systems, the expected vulnerabilities that may occur, the resolutions of previous crises, historical precedence, financial culture, social capital, etc.

The institutional approach refers to the possibility of banks and other financial institutions (stock brokers, insurance companies, etc.) to decide on the regulator that will oversee the soundness of the business. As a traditional supervising system, it is nowadays challenged by the dynamic changes that occur on financial markets that become more interchanged. Therefore, China, Mexico and Hong Kong have revised the approach through various coordination mechanisms.

According to *the functional approach*, each financial business may be submitted to its own functional regulator. It was of common use in the Mediterranean group of countries: Italy, Spain as well as France and Brazil, but because its suboptimal structure, these countries preferred to slide towards integrated or twin peaks approach.

The integrated approach refers to a single regulator that supervises the soundness of all the financial sectors, allowing a unified oversight of a large variety of financial services, eliminating possible redundancies had supervision been exercised by several authorities. It proved to be effective on small financial markets and therefore countries with larger, more developed financial markets, i.e. Canada, UK, Germany, Japan, etc. that have previously used the integrated approach and were confronted with coordination difficulties, were forced to revise it.

The twin peaks approach is an objective based surveillance system, separating the regulators that oversee the soundness of financial institutions and regulators that focus on conduct of business. The advantage of the approach is that it incorporates the

effectiveness of the integrated system, but also considering its shortfalls in dealing with possible conflicts in pursuing financial soundness and the transparency consumers expect. The twin peaks approach is used by The Netherlands, Australia and the USA, but the weaknesses of the system triggered debates concerning the need of alterations in its functioning. The consolidation of the Dutch financial system in the early 1990s led to the adoption of this model. In this case, The Central Bank is the supervisory authority of the financial market, while another authority is responsible for the business ethics. This approach pursues the specialisation of various supervisory authorities on the following objectives: financial stability, prudential supervision, business ethics, providing the safety nets for savings and market competitiveness. This model reflects the rational changes that took place in the financial industry that were acknowledged as more effective.

There is a large support for this type of supervising arrangement that separates prudential supervision of the business ethics monitoring. The model was conceived in such a manner as to combine the advantages and effectiveness of the integrated model, mainly the conflict of interests. Moreover, this model allows a clear cut distinction and a greater compatibility between the attributes of the supervising authorities and the fair competition requirements because the same prudential rules are applicable to all institutions.

2. THE REFORMATION OF THE REGULATORY ANS SUPERVISORY SYSTEMS

2.1 The reformation of the regulatory and supervisory architecture in the EU

The 2007-2008 economic and financial crises emphasises the concept of systemic risk and the necessity to reconsider prudential supervision. The characteristics of the crisis show that solely the prudential supervision cannot guarantee financial stability. Therefore it is an urgent need to detect systemic risk and adopt the appropriate remedies. The main challenge in analysing systemic risk is to integrate all the relevant perspectives and have a comprehensive view on system, its dynamics and interconnections (Trichet, 2013).

The first official steps in the macro prudential supervision were taken in 2011 when the European System of Financial Supervision was created based on two tiers: the macro prudential tier *The European Committee for Systemic Risk* and the micro prudential tier that includes separate authorities for the banking system, the capital market, insurance, and pension funds.

The next important step is the creation of the European Bank Union. The European Commission enforced the same prudential norms on the banking systems, requesting that the supervision should be exercised by a single authority. Thus the sole supervisory competence belongs to the European Central Bank.

The main objectives of the Single Supervisory Mechanism are the safety and the stability of the financial markets in Europe. The ECB will cooperate with the national authorities of the EU member states. Within the new mechanism, The ECB will directly supervise the 130 significant credit institutions that own 85% of the entire banking assets

in the Euro zone. Moreover, it will supervise at least three important credit institutions, while all the others will fall under the competence of national supervising authorities.

A major accomplishment at European level was the approval of the single rulebook, its aim being to consolidate the resilience of the EU banking system and to restore trust.

2.2 The British approach

In Great Britain, a major reform of the regulatory and supervisory system took place in 1998 when the „*Financial Stability Authority*" (FSA) was created. The reforms included a better cooperation of the supervising agencies. Thus the FSA cooperates with the Treasury and The Bank of England in the frame of a Memorandum. Moreover, the deputy Governor of The Bank of England is member of the FSA board while the president of the FSA is member of the Court of Directors of the Bank of England. The 2009 Bank law entrusted the Bank of England as guardian of the financial stability and supervisor of the payment system. (ECB, 2010)

In April 2013, a new regulatory framework came into force under the Financial Services Act 2012. The Financial Services Act 2012 brought significant changes to the regulatory framework of financial services in the United Kingdom, many of which impacted on the role of The Bank of England. The FSA, responsible for regulation of financial firms from both a 'prudential' and 'conduct' perspective, will cease to exist.

The Prudential Regulation Authority (PRA) is part of the Bank of England undertaking the responsibility for the micro prudential regulation of deposit-takers, insurers and major investment firms. The PRA will set the standards of supervising financial institutions at the level of the individual firm, promoting safety and soundness, seeking to minimise the adverse effects that they can have on the stability of the British financial system, thus contributing to ensuring that insurance policyholders are protected. The Financial Conduct Authority (FCA) is a separate institution from the Bank of England, responsible for ensuring that the main markets function appropriately and effectively. Its main objective is to protect consumers, the integrity of the British financial system and promote effective competition. The FCA will be responsible for the conduct and ethical regulation of all financial services firms, i.e. to prevent market abuse and ensuring that financial firms treat customers fairly. The FCA will also be responsible for the micro prudential regulation of financial services firms, e.g. asset managers, hedge funds, many broker-dealers and independent financial advisers that do not fall under the jurisdiction of the PRA.

The Bank of England will continue to pursue financial stability, having a statutory objective to protect and enhance the stability of the financial system of the United Kingdom. Financial Policy Committee identifies monitors and takes measures to remove or alleviate systemic risks that threaten the financial system as a whole, rather than at the level of the individual firm (Murphy & Senior, 2013).

3. CONCLUSIONS

The traditional hypotheses concerning the regulatory and supervisory structure were debated at length by theoreticians and practitioners as well. Lately, new regulatory and supervisory structures were implemented at national and international level, given that the financial innovation led to an ever more complex financial system meaning that supervision couldn't be concentrated exclusively at the banking sector.

The main determinants of these changes were:

The globalisation of financial operations intensified the international dimension of the regulatory systems that impacted on the national supervisory architecture;

2. The objectives became more extensive and complex. It became questionable whether an excessively great number of agencies raise the costs of supervision as well as its complexity;

3. Irrespective of the institutional structure, the financial conglomerates emphasize the necessity to have a consolidated view on each financial institution;

4. The changes in the institutional structure were a response to the present crisis, which emphasizes the concept of systemic risk and the necessity of its macro prudential supervision. The need of an institutional structure with a broader view over the entire financial system was identified as mandatory to detect the potential vulnerabilities;

But, as the latest developments show, the recent crisis was a result of too little regulations and lack of coordination and communication among central banks and supervisory authorities.

The debates on the architecture and effectiveness of different regulatory and supervisory systems continue since no widely accepted solutions were yet identified. There is a substantial heterogeneity of views concerning the supervisory policies worldwide, each country choosing the approach that best answers its specific circumstances.

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CORPORATE SOCIAL RESPONSIBILITY AND FINANCIAL CRISIS

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Abstract: *This paper studies the effect of financial crisis on Corporate Social Responsibility (CSR) practices and their performance during the financial crisis. Researchers have underlined that CSR practices can act as a radar (Hohnen (2007), could break or be aware of a potential economic and/or a financial shock (Thorme, 2009, Hohnen, 2007) and reduce the risks (Testa, 2008). Starting from the reference literature on CSR this paper empirically analyze Romanian companies listed on Bucharest Stock Exchange (BSE) in order to determine whether the CSR practices can be linked to companies financial performance during an economic downturn. From a total of 81 companies listed on BSE were considered only companies that are active in CSR. The period analyzed is between 2006 and 2012. Results suggests a positive relation between CSR practices and companies financial performance. Moreover this paper underlines the benefits of CSR practices as a strategy for long term business leading to competitive advantage and win-win opportunities.*
Keywords: *Corporate Social Responsability (CSR), financial performance, Romania, CSR practices, financial crisis*
JEL Classification: G34, L20

INTRODUCTION

The financial crisis started in USA in 2007 because of the liquidity problems faced by the banks (Taylor &Williams, 2009). As result worldwide economies and financial systems were affected. The period between the third quarter of 2007 until the 2009's first quarter had been considered the peak of the financial crisis (Filardo *et al*., 2010).European Commission (2009), mentioned that in Europe and in USA the financial crisis harsh results were in 2008 particularly in the second quarter of 2008 (Wyplosz, 2010).

The liquidity shortfall had a severe impact on many companies confronted with difficulties whenever they attempt to borrow money (financial capital) from the banks (Njoroge, 2009). As consequents, the recent financial crisis resulted in fall of investment, stock indexes, demand, financial institutions collapse, increased poverty, high unemployment rate worldwide and governments need it financial help to bail out their

financial systems (Adamu, 2009). Even today are still doubts regarding the recovery of some countries (UK, USA, and Greece) economy (Eatwell, 2010) while Foroohar (2011) discuss the probability of a double recession. The slow and rough recovery of worldwide economy will take a longer time than previous recessions (McKinsey Global Institute, 2011).In the face of the crisis many companies were struggling to stay "alive". The survival of the business becomes important against the increased corporate wealth (Ali *et al*., 2010).

The financial crisis had revived the interest of an old and familiar concept: responsibility. The need for responsibility focuses mainly on companies and their business practices (Peters, 2009). The concept of responsibility refers to actions that can be done now in order to meet the future challenges (Peters, 2009). Companies that understand and implement the social responsibility strategy into their business core are able to anticipate changes through their CSR practices (Hohnen, 2007). These companies are with the "ear to the ground" and are in a better position to anticipate and to respond to legal and economic framework, environment and social changes that might occur (Hohnen, 2007; Thorme, 2009).

The current crisis made shareholders to rethink their business strategies and to consider environment and social responsibilities important practices for the society and economic system. The CSR benefits have received increased attention from researches, scholars and international organizations bodies. Corporations use CSR practices as strategy to strengthen their relations with employees, investors, suppliers, government and customers. These strengthens link the corporations to loyalty brand (Wu, 2011), competitive advantage (Porter & Kramer, 2002), opportunities and reduces the risks (Porter & Kramer, 2006; Testa, 2008). Many researchers have focused their studies on the relation between CSR and corporate financial performance (Cochran & Wood, 1984; Waddock & Graves, 1997; McWilliams & Siegel, 2001; Tsoutsoura, 2004), consumer behavior (Ali *et al*., 2010) and companies effects on environment and society (Marcus & Fremeth, 2009). Little research has focused so far on company's financial performance during financial crisis and their relation with CSR practices. Therefore, the aim of this study is to analyze the financial performance of companies that continued their CSR practices during the financial crisis.

The rest of the paper is organized as follow: section 2 presents the literature review of previous studies regarding CSR and financial crisis. In section 3 the methodology is presented. Section 4 discuses the regression results and in the last part, the conclusions are presented based on the empirical results.

CSR: LITERATURE REVIEW

According to Selvi (et.al, 2010), CSR can be defined as the "role of business in society as a social performance". The Commission of the European Communities (2001) has defined CSR as "a concept whereby companies integrate social and environmental concerns in their business operations …on a voluntarily basis". In Kitchin (2002) opinion, CSR meaning changes over time while Lantos (2001) sees CSR as a useful marketing tool. There is no single definition regarding CSR and the role in society.

The literature on financial crisis and CSR is limited. Researcher's opinions are not unanimous: some argues that CSR is a threat for the company survival while others underlines the great opportunities ready to be discovered by the companies and on the positive side are the authors that look forward considering CSR practices as a long–term and sustainable business strategy regardless any financial and or/economic downturn. Various studies have been conducted to analyze the effects of CSR practices on company's financial performance. Among these studies, Fernández & Souto (2009) argue that CSR has a negative effect on company financial performance because of the extra costs imposed by CSR practices on businesses. This argument reinforce Friedman (1970) theory and his supporters in that the resources allocated to CSR practices fall as direct costs reducing shareholders profit shares. Therefore, this theory suggests that it not necessary for a company to become socially responsible because these costs reduce the company profitability (Orlitzky *et al.,* 2003).

Karaibrahimoğlu (2010) studied financial performance of 100 socially responsible companies before the crisis and when the crisis started, 2007 and 2008 respectively. The results indicated significant reduction of CSR projects during the financial crisis while other companies cut their expenses staring with CSR projects that were about to start (Kemper& Matin, 2010).

Arevalo & Aravind (2010) also investigate the effect of financial crisis on CSR. They considered for their study companies that adopt the principles of United Nation Global Compact (UNGC).The conclusion of the study was that companies that integrated UNGC principles in their business strategy in a responsible way, will not be affected by financial downturns or by any economic shock while companies that treat UNGC principles as a fashion will be more affected by financial downturns or any shock. The study also underlines that in some cases CSR principles are considered important starting points in improving business operation. In the face of the crisis many companies need to change their business strategy (Peter, 2009) and objectives in relation with social expectations (Porter & Kramer, 2002).

The questions raised in this study refer to those companies that continue their CSR activities without interruption even in times of crisis, supporting various social, environmental and artistic activities. Thus, the following questions are addressed: How financial crisis affected these companies financial performance? Was the effect positive or negative? If positive then Does CSR practices can be linked to company's financial performance?

CSR: THREAT OR OPPORTUNITY?

The financial crisis has shaken many companies, had caused losses and damage. However, in these uncertain situations, the crisis had brought not only threats but opportunities as well. The financial crisis can be a good indicator of socially responsible business activity. It highlights if companies connected their CSR practices to their core business in a responsible way or they fall victim to cost-cutting measures. Measuring CSR performance, one can identify companies strengths and weakness, can define (new) opportunities or modify their business strategy (Kok *et al.,* 2001).

Different variables and methods were used to test the effect of financial performance but there is no single approach to evaluate CSR performance. This research analyzes companies listed on BSE in Romania between 2006 and 2012.The data was collected from BSE were companies made public their profit and loss accounts and balance sheets .This paper fallow McWilliam & Siegal (2001) CSR measurement where CSR was considered dummy variable and as in Waddock & Graves (1997) model where CSR is an independent variable. The hypotheses are:

H_0 CSR practices influence positively company's financial performance, ceteris paribus

H_1 CSR practices influence negatively company's financial performance, ceteris paribus

In order to test the hypothesis, the OLS method was used.

The dependent variable in this study is ROE (Return on Equity).ROE show company financial leverage and is calculated as net income over shareholders equity. The independent variables are CSR, ENV (environment) and SOC (Social) and are dummy variable. Thus, if a company is socially responsible and maintained their social and environmental practices during financial crisis has a value of one and if not zero (Gujarati 1999; Wooldrige, 2008). Risk (is a proxy measured as long term debts over total assets) and size (total assets is a proxy for size) are controlled variables (Waddock & Graves, 1997; Tsoutsoura, 2004). For this study were considered only companies that have or they applied for ISO 14000 (environment certification), follow ISO 26000 standards and their CSR rapports are published, corporate governance or ethics codes. From a total of 81 companies listed on BSE remained only 19 companies which were corresponding to above conditions.

Table 1 provides correlation matrices and it can be notices that CSR is statistically significant and has a positive value on ROE. Also ENV and SOC are positive and statistically significant with ROE.

Table 2 presents the results regression of the OLS method used to test the hypothesis of this study regarding the positive or negative effects of CSR practices on company financial performance. The authors have found in a previous research, which is in process to be published, a positive and significant relation between CSR and financial performance of 21 companies in Romania.

Table 1 Correlation matrices for the key variable for the year's btw 2006 and 2012

	ROE	CSR	Size	Risk	ENV	Social
ROE	1.00	.009*	-.04*	.01**	.22**	.15*
CSR		1.00	-.07**	.16**	.35***	.12***
Size			1.00	.004+	- .03**	.09***
Risk				1.00	-.003**	.04***
ENV					1.00	.029*
Social						1.00

*p≤0.1; **p≤0.05; *** p≤0.001

The results of this study show a positive relation between CSR practices (Env and Social) and financial performance. The value of R^2 is 0.72 and that is a good value. R^2 shows how good the model is .In other words, the total variation in the dependent

variable is explained by the explanatory variables. The coefficient for Env is 0.034 and is statistically significant at 10% ($p \leq 0.10$). This means that, holding all other variable constant, a 1% increase in Env, ROE will increase with 3.4%. As well, the coefficient for Social is 0.54 and is statistically significant. An increase of 1% in Social coefficient, ceteris paribus, will result in a 5.4% positive increase on company financial performance. Therefore, we reject the hypothesis in which CSR practices have a negative effect on financial performance. This research have also used as dependent variable for regression model, ROA (Return on Assets) measured as net income over total assets and we found the same positive and significant effect of CSR practices on financial performance.

Table 2 Regression analysis

Dependent variable / Independent Variable	ROE
CSR	.0245*
Risk	-.056***
Size	.003*
Env	.034*
Social	0.54*
R Squared	.7208
No of obs	133
F-stat (p-value)	3.390 (.000)

*p≤0.1; **p≤0.05; ***p≤0.01

4. CONCLUSIONS

This study empirically analyzes the effect of CSR practices on financial performance during the financial crisis on 19 companies listed on BSE in Romania. The period considered for analyses is between 2006 and 2012. Although, the financial crisis has "pushed away" many companies from CSR practices because of the costs, the benefits arising from maintain these practices were understood and fully developed by some companies. Companies that followed and implemented CSR principles into their business core were the companies that spot the opportunities during the financial crisis. For many companies CSR practices constitute a threat while for others an opportunity. This research has found a positive relation between CSR practices and financial performance. The positive effects of CSR practices does not positively affect only financial performance but also the company's good reputation and differentiate the company from competitors through their goods and services (Thorme, 2009). There are some limitations of this study; it takes into consideration all companies regardless of industry and size. Further research should study if these CSR practices hold in time and whether any changes are made within these practices.

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THE INFLATION- INFLATION UNCERTAINTY NEXUS IN ROMANIA

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Abstract: *This study explores the causality between inflation and inflation uncertainty in Romania using monthly inflation data for the 1996:01-2012:12 period. If inflation uncertainty is defined as being the variance of unpredictable component of inflation then the use of autoregressive conditional heteroskedastic models can capture inflation uncertainty through the conditional variance of inflation. Inflation uncertainty is obtained from a GARCH model, while checking for any structural break in the series we find that there are possible structural breaks. The structural breaks in mean are captured using dummy variables in the AR-GARCH models and the best models are identified using the informational criterion. The influence between inflation uncertainty and inflation is tested using Granger causality. We find bidirectional causality between inflation and inflation uncertainty.*
Keywords: *inflation, inflation uncertainty, Romania*
JEL Classification: E31

INTRODUCTION

High inflation represents a big challenges for economies giving rise to economical and social problems also another important aspect of inflation is it's uncertainty, Friedman (1977) shows that if the households and companies know the future level of inflation they can make adjustments in contract and expectations which will minimize the negative effect, actually inflation and inflation uncertainty have similar importance in the monetary economics. The causality between inflation and inflation uncertainty was laid out by Friedman (1977) whose hypotheses was that inflation generates uncertainty in output and reduces welfare while Cukierman & Meltzer (1986) imply that high inflation uncertainty can induce high inflation. Inflation uncertainty is express usually as the conditional volatility from the GARCH models (Engle, 1982), TGARCH (Bredin &

Fountas, 2011), APARCH (Daal, Naka & Sanchez, 2005) and EGARCH (Jiranyakul & Opiela, 2010).

Evidence of structural breaks in inflation can be found in developed countries USA (Inclan & Tiao, 1994; Ahamada & Aissa, 2003) and European countries (Windberger & Zeileis, 2011), emergent countries (Korap, 2011).

This paper analyzes the relationship between inflation and inflation uncertainty in the presence of structural breaks in the mean in the case of Romania. The remaining of the article is organized as follows: Section 2 outlines the methodology; Section 3 describes the dataset, presents the unit-root test and structural break analysis ; Section 4 presents the results of GARCH models and the causality between inflation and inflation uncertainty; Section 5 concludes.

METHODOLOGY

The models used is an AR(p)-GARCH(1,1) model, with the following specification:

$$\pi_t = \alpha_0 + \sum_{i=1}^{p} \alpha_i \pi_{t-i} + \epsilon_t \quad (1)$$
$$h_t = \alpha_0 + \alpha_1 \epsilon_{t-1}^2 + \beta_1 h_{t-1} \quad (2)$$

Where eq.(1) expresses the evolution of mean of inflation using an autoregressive part with the error term $\epsilon_t \sim N(0, \sigma^2)$, while eq.(2) express the evolution of the conditional variance and $\alpha_0 \geq 0, 0 \leq \alpha_1 \leq 1, \beta_0 \geq 0$.

In order to take into account any possible structural changes in the time-series characteristics we use the Zivot-Andrews unit-root test (Zivot & Andrews, 1992) which is an extension of the Dickey–Fuller test by allowing for a break in intercept, trend or both.

In order to capture the structural breaks in mean the following dummy variable will be introduce in the GARCH model equation:

$$\pi_t = \alpha_0 + \sum_{i=1}^{p} \alpha_1 \pi_{t-i} + \beta_1 D_1 + \epsilon_t \quad (3)$$

where D_1 is a dummy variables which take the value 0 before the breakpoint and 1 after the breakpoint until the end of the period.

The causality between inflation and inflation uncertainty is done using Granger causality (Granger, 1969); in a VAR model with two variables the evolution of the inflation variable will be influenced by past values (lags) of inflation and past (lags) values of inflation uncertainty (Eq.5). Also, we assume that inflation uncertainty is affected by lagged values of himself, and previous values of inflation (Eq.4). For inflation and inflation uncertainty the Granger causality test is performed on the following equation:

$$h_t = \alpha_0 + \sum_{i=1}^{k} \alpha_i h_{t-i} + \sum_{i=1}^{k} \beta_i \pi_{t-i} + \epsilon_t \quad (4)$$
$$\pi_t = \gamma_0 + \sum_{i=1}^{k} \gamma_i \pi_{t-i} + \sum_{i=1}^{k} \delta_i h_{t-i} + \eta_t \quad (5)$$

The numbers of lags in the Granger causality tested are 2,4,6,8 lags.

DATA ANALYSES

The dataset consists of monthly Harmonised indices of consumer prices (*HICP*) from Eurostat Database for Romania, the HICP indicator are seasonally adjusted using X12 Arima methodology and it covers the period 1996:01 until 2012:12. The HICP is converted into monthly inflation using the following transformation:

$$\pi_t = ln\left(\frac{HICP_t}{HICP_{t-1}}\right) \quad (6)$$

for $t = 1, 2, \ldots, T$; where: π_t is the monthly inflation at time t and $HICP_t$ is the harmonized consumer price index at time t.

Figure 1 Inflation evolution 1996-2012

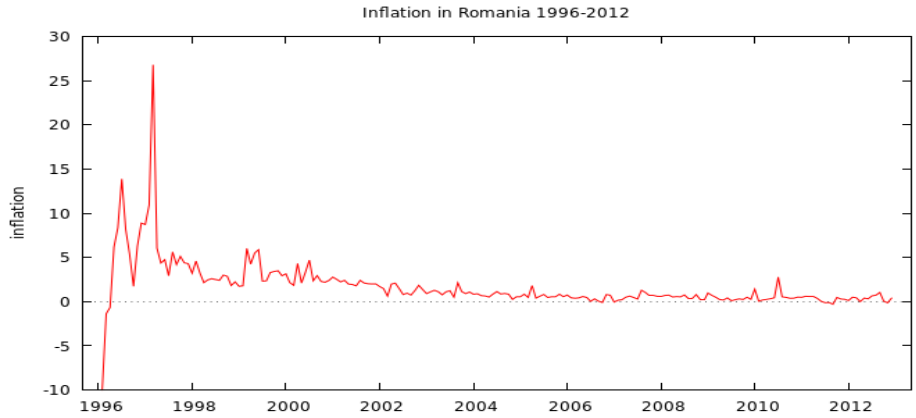

Table 1(a) presents the descriptive statistics of the monthly inflation, for the analyzed period, 1996:01 to 2012:12, the highest inflation period was observed before 2001. The inflation volatility, which can be measured through the standard deviation, is high in the case of Romania (2.84).

Table 1 Summary statistics

Summary statistics (a)			
Mean	1.7498	Standard deviation	2.8434
Minimum	-9.9989	Skewness	3.9645
Maximum	26.776	Ex. kurtosis	31.406
Unit-root tests (b)			
ADF	PP	KPSS	Zivot-Andrews**
-1.89	-7.42*	1.59	-11.65*

MacKinnon's 1% critical value is -3.46 for the ADF and PP tests, the critical value for the KPSS test is 0.739 at 1% significance level. The critical value for Zivot-Andrews test is -5.57 at 1% significance level. And * denote significance at 1% levels. ** The breakdate from the Zivot-Andrews test is in March 1997.

Table 1(b) present the result for the unit root test, based on the ADF and KPSS test we cannot reject the unit-root hypothesis, while the Phillips–Perron (PP) reject the unit-root hypothesis. Based on the contradictory results from the ADF, PP and KPSS we apply the Zivot-Andrews test, we reject the unit-root hypothesis and conclude that the series are stationary with a breakpoint in the mean equation in March 1997.

RESULTS

The inflation series is estimated using an AR(p)-GARCH(1,1) model, the Q statistics show that the residuals are white noise and the autocorrelation and partial-autocorrelation function show no autocorrelation. Also a GARCH in mean model is estimated but the model doesn't pass the specification test.

Table 2 Estimation results

	AR(7)-GARCH(1,1)		AR(7)-GARCH(1,1) in mean	
Variable	Coefficient	Prob.	Coefficient	Prob.
const	4.777782	0.0000	-3.448247	0.0014
log(GARCH)			0.112037	0.1949
dummy	-4.724535	0.0000	3.775237	0.0004
AR(1)	0.191101	0.0000	0.235979	0.0001
AR(2)	0.119970	0.0025	0.129230	0.0136
AR(3)	0.078225	0.0000	0.091967	0.1916
AR(5)	0.101295	0.0320	0.050144	0.5352
AR(6)	0.171013	0.0000	0.155588	0.0025
AR(7)	0.138954	0.0000	0.125501	0.0682
	Variance Equation			
C	0.005096	0.0025	0.011229	0.0000
ϵ_t	-0.052322	0.0000	-0.031923	0.0000
h_t	1.021275	0.0000	0.951249	0.0000
Akaike criterion	1.751136		1.825620	
Schwarz criterion	1.935112		2.02321	
Hannan-Quinn	1.825618		1.906873	
Q(6)	2.4409		1.5790	

Q(12)	9.0747	10.599
Q^2*(6)*	4.0345	2.5560
Q^2*(12)*	8.9254	5.0549

The parameters for AR-GARCG(1,1) are all significant at 5% level, while in the case of GARCH in mean model we find that log of inflation is not significant at 10% level. Next we test the Granger causality with different lags (2, 4, 6, 8) , Table 3 present the results and it can be observed that there is a bidirectional causality between inflation and inflation uncertainty regardless of the numbers of lags.

Table 3 Granger causality

Null Hypothesis:	F-Statistic	Lags
Inflation does not Granger Cause IU	118.19***	2
Inflation does not Granger Cause IU	90.03***	4
Inflation does not Granger Cause IU	75.66***	6
Inflation does not Granger Cause IU	36.42***	8
IU does not Granger Cause INF	55.87***	2
IU does not Granger Cause INF	53.05***	4
IU does not Granger Cause INF	69.618***	6
IU does not Granger Cause INF	5.84***	8

** * denote significance at 1% levels.

CONCLUSIONS

In order to understand the connection between inflation and inflation uncertainty (IU) in Romania we applied the Granger causality methodology on Romanian inflation for 1996-2012 period. Taking into consideration the possibility of structural breaks in inflation, using the Zivot-Andrews test, we find that for Romania the inflation is a stationary process with a breakpoint. The breakpoint is modeled using a dummy variable in the mean equation of inflation which is significant at the 5% level.

Testing the two hypotheses, (Friedman, 1977) and (Ball, 1992) that inflation generates uncertainty in output and reduces welfare and (Cukierman & Meltzer, 1986) hypotheses that high inflation uncertainty [IU] can induce high inflation, we find that for Romania there is a bidirectional causality between inflation and inflation uncertainty. Our results are similar to other studies on emergent economies (Jiranyakul & Opiela, 2010). This implies that the inflation targeting regime applied in Romania may stabilize the level of inflation and reduce inflation variability if effective.

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THE IMF APPROACH TOWARDS THE STRUCTURAL DEFICIT

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Abstract: *The aim of this paper is to assess the methodologies and techniques used by the International Monetary Fund in order to estimate the structural fiscal balance, which is crucial for evaluating fiscal sustainability. Ensuring fiscal discipline gained a major importance especially during the recent financial crisis. In the case of the Economic and Monetary Union in Europe the previous indicators were not enough to establishing an environment of fiscal discipline. Therefore, new limits regarding the structural deficit were imposed through the Treaty of Stability Coordination and Governance in the Economic and Monetary Union. However, experience shows that removing cyclical and other transitory elements from revenues and expenditure is not an easy task. This study will provide a clear understanding of the methodology used by the International Monetary Fund in order to quantify the structural deficit, its shortcomings, a comparison with the results obtained by the European Commission and recommendations. Furthermore, it will show that, despite the limits of the evaluating the structural fiscal balance, this represents the right indicator for stating where the economy is heading over the medium term.*
Keywords: *structural deficit, cyclically adjusted balance, one-off measures, fiscal compact*
JEL Classification: H62, H86, F36

INTRODUCTION

The importance of structural fiscal balances has been recently elevated by the Treaty of Stability, Coordination and Governance in the Economic and Monetary Union. Fiscal rules previously imposed by the Stability and Growth Pact were not enough in order to ensure the soundness of public finances in the euro area. Therefore, the Fiscal Compact introduced a new requirement referring to a limit of maximum 0.5 percent of GDP for the annual structural deficit. This limit is extended to 1 percent of GDP for countries that register debt levels below 60 percent and confront with low sustainability risk. In addition, automatic correction mechanisms have been established in case the threshold is breached.

Targeting the structural deficit does not represent a new and uncommon approach. According to the International Monetary Fund, some variants of the rules regarding structural balance targets are used by about 11 percent of the countries (IMF, 2009).

The underlying reasons that make the structural fiscal balance a better indicator for fiscal discipline are related to the fact that it provides a clear guidance as to the health and direction of fiscal policy, helps determine the size and direction of automatic stabilizers and it is a key component in the assessment of long-run fiscal sustainability by providing a view of what the fiscal balance is likely to tend towards as temporary factors dissipate (IMF, 2011).

Although it promises to tighten the fiscal discipline for the countries in the European Union, the structural fiscal balance is characterized by difficulties related to the methodologies used in order to estimate it.

Our paper presents the IMF's approach for computing structural fiscal balances and its shortcomings. First, we define the concepts used in estimation. The rest of the paper focuses on the calculation and the use of structural fiscal balances by the International Monetary Fund.

2. THE CONCEPT OF STRUCTURAL DEFICIT

The structural deficit represents a fundamental indicator for nominal convergence, through reflecting how the public finances are administrated. Taking into consideration that some of the euro area member states have exceeded the 3% of GDP limit for the government's deficit, as a result of inappropriate public finances management, it has been decided to monitor a new indicator – the structural deficit.

A low level of government deficit or even a government surplus can hide the existence of high imbalances. This is the case when the budgetary balance is the result of a favourable conjuncture - high public revenues accumulated during economic expansion.

Therefore, the consolidated government deficit does not represent an appropriate indicator for evaluating the fiscal policy. It reflects both the influence of permanent factors and transitory ones, without allowing us to distinguish among them. In order to determine if the deficit or the surplus is temporary and cyclical or permanent and structural, the economists have developed the concepts of structural budget deficit and surplus and cyclical budget deficit and surplus. By removing one-off revenues and expenditure, cyclical factors, and potentially other temporary effects from the headline fiscal balance, structural balances help judge the underlying fiscal position.

Structural or cyclically adjusted balances are typically calculated in order to remove the impact of the business cycle on the fiscal position and to provide a structural indication of the balance that lacks the temporary effects. Therefore, the structural fiscal balances ask the question: "what part of the changes in the fiscal stance is due to changes in the environment and what part to changes in policy" (Don Reis *et al.*, 2007, p.5).

The IMF, OECD, European Commission and other institutions, have developed a number of different definitions, ranging from the basic cyclically-adjusted balance concept to an augmented structural balance that includes corrections for one-offs, asset prices, commodity prices and output composition effects (IMF, 2012). Even though most

of the time the terms structural balance and cyclically adjusted balance are treated as equal, we want to point out that they have slightly different meanings. The cyclically adjusted balance captures the change in fiscal policy not related to the effects of the economic cycle on the budget. The structural balance controls for additional one off factors and other non-discretionary changes in the budget unrelated to the cycle (Bornhorst *et al*., 2011, p.2).

3. IMF's METHODOLOGY

The International Monetary Fund, like most international organizations, including OECD, uses a two-step methodology in order to determine the structural deficit (Mourre *et al.*, 2013). This methodology consists in calculating the cyclical component of the budget first and then subtracting it from the actual budget balance.

In algebraic terms this method can be explained by the following formula:

$$Structural\ fiscal\ balance = (B/Y) - CC$$

where, B/Y - nominal budget balance to GDP ratio
CC - cyclical component.

This approach followed by the IMF is similar to the one used by the OECD. However, it introduces a lagged component to capture the effect of income sources from the preceding year. The IMF does not explicitly include different components, as the OECD does. Another difference is that IMF links the cyclical component of expenditure to unemployment rather than to GDP. On the expenditure side, this approach is identical to the OECD, aside from the earmarked taxes (Bodmer & Geier, 2004).

Furthermore, the approaches used by the European Commission and IMF to estimate the cyclically adjusted budget balances are very similar. Both organizations base their calculation on the cyclical position of the economy, the output gap and on the relationship between the cycle and the different balance components.

Recently, the IMF released a user friendly template that helps calculate the structural balance both on a disaggregated basis – adjusting each revenue and expenditure item separately and adding them into an adjusted measure of the fiscal balance – and on an aggregated basis, adjusting directly aggregate revenues and expenditure.

Although the International Monetary Fund uses a comprehensive methodology in computing the structural deficit, there are well known measurement problems in calculating the structural balance. These limits refer to the estimation of the potential output and output gaps, the adjustment of fiscal revenues for the effect of business cycle using estimated revenue elasticity, and the question whether adjustments for asset price cycles, changes in the shares of various components of national income, or other factors are also needed (IMF, 2011, p. 68).

Therefore, calculating the structural fiscal balance is not an easy task (Bouthevillain & Quinet, 1999, p.325). Besides the advantages of targeting the structural component, there are also arguments against the use of this indicator (table 1).

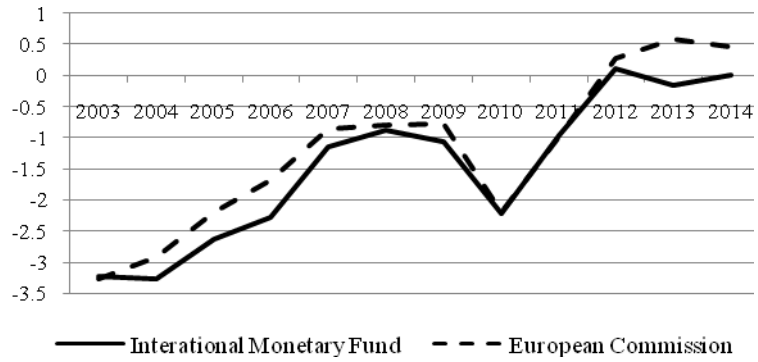
Table 1 Pros and cons for targeting the structural deficit

Pros	Cons
Relatively clear operational guidance Close link to debt sustainability Economic stabilization function (accounts for economic shocks) Allows to account for other one-off and temporary factors	Correction for cycle is complicated, especially for countries undergoing structural changes Need to pre-define one-off and temporary factors to avoid their discretionary use Complexity makes it more difficult to communicate and monitor

Source: Schaechter *et al*., 2012

In order to demonstrate that the estimation of the structural deficit is subject to wide margins of uncertainty, we have gathered the data for structural deficit in Germany and Greece, calculated by the IMF and the European Commission.

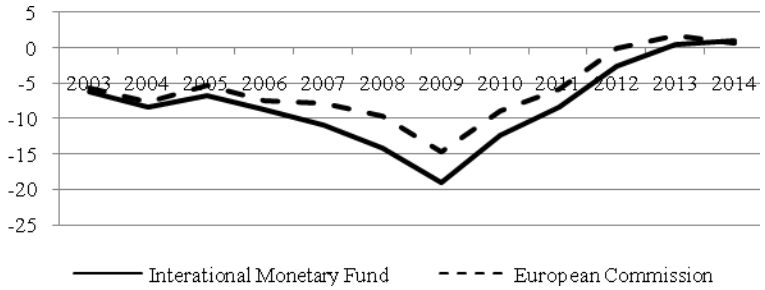
Figure 1 The structural deficit in Germania – IMF and European Commission estimations in 2003-2014



Source: International Monetary Fund (2013) &European Commission (2013)

Data illustrated in figure 1shows that the value for the structural deficit in Germany was higher when taking into consideration the estimations of the European Commission compared to the one of the IMF. The values were very close only in 2010-2012. The highest gap between the estimates of the two international organizations was registered in 2013 and equalled 0.7 percentage points. For Greece, the structural deficit estimated by the IMF was lower than the one estimated by the European Commission during 2003-2014 (figure 2).

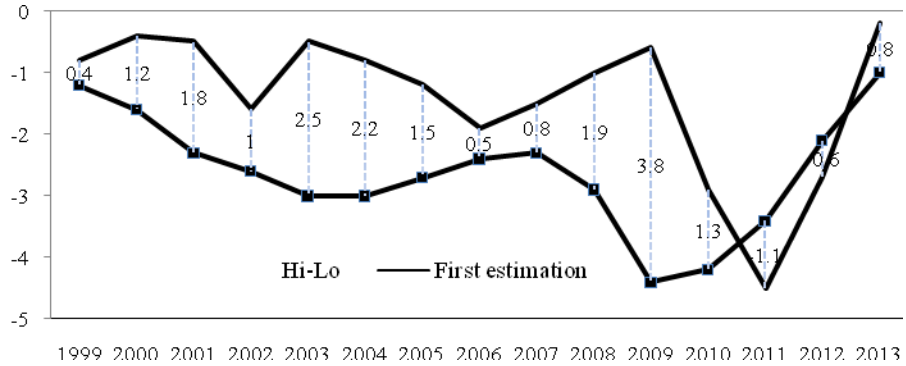
Figure 2 The structural deficit in Greece – IMF and European Commission estimations in 2003-2014



Source: International Monetary Fund (2013) &European Commission (2013)

Another problem related to estimating the structural deficit, besides the differences between the estimations of the IMF and European Commission, is that, sometimes, the same institution can re-examine the indicator and to provide new values for it. The International Monetary Fund published revisions of the level of the structural deficit (figure 3); between the first and the last estimation being significant differences. The highest level was registered in 2009 – a difference of 3.8 percentage points between the first and the last estimate of the structural deficit for the euro area.

Figure 3 Differences between the estimations of IMF regarding the structural deficit in euro area countries



Source: International Monetary Fund (2013)

The limit of 0.5% of GDP for the structural deficit, as stated in the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, requires a higher precision that can be achieved in practice. In many cases, the retrospective approach of estimations for a certain moment determines changes with significant values or there are differences between the estimations of the International Monetary fund. Although in theory the analysis of the structural deficit seems to offer a better image of the fiscal discipline, the practical problems make difficult the use of this indicator.

CONCLUSIONS

Targeting the structural balances has taken a central position in the assessment of the fiscal policy owing to the benefits that it brings. Therefore, in this paper we have focused on the concept of structural deficit and on the methodology used by the International Monetary Fund in order to estimate it. The results show that there are limitations associated with computing the structural component that give rise to substantial gaps between the results of the IMF and other international institutions and even between the results of the IMF at different moments in time.

Although using the structural deficit at as target has both pros and cons, we consider that the arguments in favour are consistent enough in order to try to overcome the difficulties. Until the problems generated by the calculation of this indicator will be diminished, we recommend caution in interpreting the results.

One limit of this study is represented by the fact that it uses data estimated by the IMF, instead of using own data estimated with the template provided. Thus, an analysis of the structural deficit for countries in Eastern Europe based on the IMF's methodology presented in the excel template can be distinguished as a future research direction.

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CHANGES IN THE ASSET STRUCTURE OF COMPANIES AND THEIR IMPACT ON THE GLOBAL VALUE OF COMPANIES

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Abstract: *Changing the company's assets structure is a consequence of the changes which have taken place in the contemporary environment. Increasing the share value of intangible assets in favours of those tangible assets brings an increase in the value of the company, and for the assessor new problems related to the correct qualification inputs to this increase in value.*
Keywords: *business value, structure of intangible assets, financial management*
JEL Classification: G11, G32

INTRODUCTION

The changes produced in contemporary economic environment have resulted, among other things, to increase competition and globalization of markets. In this context the companies have concentrated their efforts for succeeding in the confrontations with an increasing number of competitors and professional. They have focused on enhancing the business of marketing products, using for this purpose different tools which were intended to persuade customers to choose their offer. In this perspective, the investment of firms have resulted, especially, in expenses of research and development, for the preparation of employment, in computer software, designed mainly to increase the quality and the functionality of products, along with cost reduction, or expenses on advertising and publicity seeking, with their help, the consolidation or even an increase in the market share.

IMMATERIAL INVESTMENTS - CREATIVE INTANGIBLE ASSETS

During the last decades great companies have known deep changes into economic models used. The desire to reduce costs has made that the companies transfer their production in countries where the workforce is cheaper. In this way its central concern is materialized in design and marketing operations. The share of expenses so-called

intangible has increased reaching over the last years to evolve from 21% in 1974 to 40% in 1988, to exceed 50% at the end of the century (Marion A., 1990, p. 12).

Various assessments of intellectual or immaterial investments indicate that they are increasing at a faster rate than that of investment materials.

The data, presented above have been extracted from companies' balance sheets, but they are considered to be undervalued. The reasons for this statement lie in the fact that from intangible costs, the ones that are holding the highest shares are:

- research and development;
- advertising and publicity;
- training and workforce;
- improvement of industrial production organization.

Only the first two are accounted in the accounts as active, since the principle of prudence determines restrictions to register them.

This major change in the sphere of investments refers to large enterprises. Small and medium-sized enterprises consecrate an increasing share of their resources for the expenditure for advertising and publicity, training of staff and the purchase of computer software.

RECONSIDERATIONS ON THE ASSESSMENT OF IMMATERIAL ASSETS

The development of immaterial investment has led to a series of reconsiderations on the validity of measurement, in classic vision, performance and effort made in financial theory and business practice.

If the necessity to take into account the immaterial investments in assessing performance and vulnerability is evident, its implementation requires the solving of three issues imposed for this category of investment valuation, namely:

- establish of some criterions of distinction between an input and an expense;
- the choice of a evaluation method of intangible/ immaterial investments;
- the determination of the service life of these investments.

The three issues need to be solved, because the manifestations of their effects, but also of efforts, in the case of immaterial investments are different from those materials. Forecasting, particularly, to the effects which record a high level of uncertainty, primarily due to the rapid change of data used to determine the effectiveness. Because of that, the extent of intangible investment efficiency has an increased difficulty.

For more detailed feedback is necessary a rational delimitation between an expense and a consumer, incurred in respect of the implementation of their investment, which would allow to establish more accurately the cash-flow, therefore the capacity to recover the invested capital.

Investment evaluation, as a general rule, and the immaterial, by contrast, although making use of various methods, however, continue to be dominated by empiricism (Colasse, 1993, p. 520).

The application of the most appropriate methods of assessing the intangible investments it is likely to lead to the determination of the correct revenue derived from their exploitation. A very important indicator in the evaluation of intangible investments

represent, in this case,, the period of time in which, as a result of this, there is an increase of productivity or sales.

The terms of immaterial investments reflected in the programs of the organization of production or in expenditure for the preparation of employment or with advertising and publicity are very dependent on the deployment of industrial production, in turn shaped by the consumer preferences, in a strong volatility.

Western companies have increased particularly in the last 40 years, their efforts of development through external growth. This was accomplished particularly, in the form transfers of assets between enterprises, companies in different countries, and resulted in partial contribution of capital, strategic mergers or absorptions. In other cases external growth has been achieved through acquisitions of holdings or through cooperation agreements or alliance.

Cooperation agreements or alliance have known during that decade a significant increase, which reflects a major change between firms, particularly in the industry of high-density of research and development.

Alliance operations and cooperation leads to a transformation of the form of the enterprises, but are difficult and complex analytical reviewed. They can consist either by creating joint branches, either by a collaboration based on contracts. In all cases are unused the classical indicators for measuring economic growth or financial performance.

Strategies of alliance, as classic external growth operations, remain an area of large enterprises, but the prospect of a major European markets could bring, in the coming years, this method in practice also in the case of medium-sized enterprises.

We believe that multiplication operations to increase externally, which appears as a major change, must result in the adaptation of financial analysis. It appears more necessary as well as the external growth path made on acquisition, although it has a positive impact on the economic and financial situation of the undertakings concerned is not without risk. Positive results do not occur until after a phase of vulnerability in the course of which the undertaking has to integrate new acquisitions. This implies the need to evaluate enterprises with the help of methods adapted to the situation in a manner more thoroughly.

Developing indicators meant to assess, in dynamic, on average periods the enterprise performance and vulnerability are requirements relating to set up an appropriate theoretical framework on its financial activity. These indicators should cover economic and financial performance, risks, solvency and financial autonomy.

Dominated by instruments, contemporary financial concepts are faced with issues of coherence and relevance to the field of reference. They appear as an accumulation of patterns models in which no one should be true that a grid of analysis of enterprise behaviour. Contemporary financial concepts rest on different logic, often contradictory fact that do not favours a representation multi-dimensional of the financial dynamic of the enterprise.

Financial products innovations in the last decade in the world bring in the field of evaluations a series of changes. Loans have been very cheap up three decades ago.

Enterprises were made their capital using to an extent the crediting method. Loans originated for the most part from banks, and the financial management of the enterprises

do not manifested at that time too much flexibility. Efficiency was used to refer to the extent that the enterprise was able to cover the loan interest payments and this was because any development or modernization was carried out using the loan capital.

In this context, the lodging of an optimal financial structure, as a prerequisite to maximize the enterprise value, has not been a concern for its managers. Equity might be confused, most often with the owners contributions, concerned only with the own resources collected in the share capital.

The world crisis which prevailed also by increasing inflation caused a rise in the cost of borrowed capital. This cost has become increasingly unbearable for enterprises which have imposed wide-ranging actions on their payment of debts and replacing loans with its own resources.

Risk amplification has forced shareholders to increase their claims concerning the remuneration of their shares. In this way has increased the cost of capital, sometimes over the cost of borrowed capital.

Optimizing financial structure becomes safe way and required to maximize enterprise value. Securitization causes easier access for businesses, on the financial market, and wide variation of sources of formation of capital allows an easier comparison between their cost and expected profitability. Businesses have the opportunity within this context, to opt for cheaper resources or if they are still too expensive, to give up their investment, if estimated profitability is unsatisfactory.

CONCLUSIONS

Theoretical determination of financial activity of the enterprise is a risky endeavour. As Professor Bernard Colasse remarked: "the finances of one company don't get along with theories which are not adapted" (Colasse, 1993, p. 28). This "adjustment" to contemporary realities involves the consideration and the objectives pursued by the company as well as the diversity of "actors" which may influence its decisions.

Classic financial conception designed on the hypothesis of maximizes profits and considering the value of the enterprise, cannot constitute a cornerstone of financial dynamics. The justification for this statement refers to the fact that this design disregards the complexity of motivations which may explain the behaviour of enterprises.

Profit maximization is not always a function of use-commune to leaders and shareholders- because it excludes the preferences and interests of other "actors", as well as employees who are in a position to exert an influence on the enterprise options. Over the long term there is a common concern of the highest parts of the "actors", which in financial plan expresses the desire that the company give rise to offer liquidities which will enable it to be cost effective hat will enable it to be cost effective, flexible and solvent.

Capital companies tend to be used, in particular, for intangible investment providing a higher return, are not exposed to risks and they are in correspondence with the financial management objective.

Changes in the last years in business environment have created conditions features close to perfect market where companies have unlimited access to sources of

capital, ensuring favourable prerequisites for financial management under the conditions of free initiative.

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THE IMPACT OF THE GLOBAL FINANCIAL CRISIS. EVIDENCE FROM EU COUNTRIES

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Abstract: *The recent financial crisis has affected the economies of all countries in the world, including the European Union (EU) countries and has given rise to new challenges for the EU unity and stability. This paper aims at emphasizing the most important determinants of the financial and economic crisis and its impact on the EU member states. Using the Least Square Method based on Panel Data, we analyze the different impact of the global crisis on the EU countries. For this purpose, we have considered four significant variables: dependent variable – economic growth, two independent variables – budgetary revenue and budgetary deficit and a dummy variable – financial crisis. Our result leads to the hypothesis that all EU member states were faced with the financial crisis, but the countries from the non-euro area were more affected than the ones from the euro area because their economies had a higher sensitivity to the disorders on the international markets and, at the same time, they were unable to manage their economic activities in order to limit the effects of the recent crisis.*
Keywords: *Global crisis, economic growth, budgetary deficit, regression model*
JEL Classification: C32, E62, G01

INTRODUCTION

After a period of strong economic expansion worldwide, the financial crisis that started in the real estate sector from the United States at the end of 2007 spread rapidly and it became global. Even if at the beginning only developed economies from U.S. and Western Europe were affected, soon the effects of the crisis were felt by all EU countries. They were faced with the deterioration of the national economies through economic downturn, rising unemployment, lower productivity and deteriorating government fiscal position (Eurostat, 2001).

In developed economies such as Belgium, Germany and Switzerland, the international financial crisis spread rapidly because the banks from those countries had large amounts of toxic assets from U.S. However, the banks from Austria, Sweden and Greece were exposed to non-performing loans from foreign subsidiaries and, on the other hand, the banks and the companies from South-Eastern European countries had a strong connection with the international financial market. At the same time, Ireland, Spain and

Britain faced their own "boom" of the house prices, increasing their vulnerability, which led to a decreased ability to withstand systemic shocks on the financial markets. Those aspects favoured the spread of the financial crisis in EU countries, but the effects were felt differently. For example, new EU countries experienced a sudden stop of capital inflows because, unlike developed countries, they could not implement countercyclical macroeconomic policies and therefore, the downturn was felt stronger than in the countries with developed economies. However, the effects of the crisis were felt by all EU member states through financial instability that every state tried to overcome by implementing their own anti-crisis measures.

This paper is structured as it follows: section 2 presents a short literature review on the recent financial crisis and its impact on the EU member states. In section 3, we describe the methodology used, we show the data selection process and the characteristics of our samples and we report our results. Finally, we present our main conclusions.

LITERATURE REVIEW

Many economic analysts believed that the main cause of the crisis was the securitization of mortgage loans, but its root causes were much deeper, both on micro and macroeconomic level (Isărescu, 2009). On microeconomic level, among the main causes we could mention financial deregulation, inappropriate economic policies, public debt exceeding the possibilities, frenzy securitization and complexity of financial markets. Financial deregulation in the early 1990s led to an increased bank competition and therefore, in order to withstand high competition, the banks were involved in more complex operations associated with increasing risk. However, deregulation meant the entry of certain "low cost" brokers (Bal, 2010) which provided loans for low income households. Regarding the inadequate economic policies, we could mention the reduction of the interest rate in 2001, while the U.S. economy faced an excessive liquidity. That decision determined the increase of the mortgage market and the consumption. The complexity of financial markets manifested through the development of sophisticated financial instruments such as financial derivatives and securitization (Swartz, 2008) that were characterized by the inability of the investors to properly understand the operating mechanism of those instruments and the difficulty in properly assessing the associated risks by the rating companies. On macroeconomic level, there were some economic and financial imbalances (Stiglitz, 2010) that led to a fast propagation of the financial crisis on global level. Thus, the global savings glut maintained the trend of excessive consumption in the U.S. which determined the economic crisis, but the connections with the global financial system favoured the spread of the crisis, affecting both developed and especially developing countries.

For a better understanding of the crisis causes, it was necessary to identify its main features. The recent global crisis was characterized by six basic elements: it was an exclusively financial crisis because it was the result of over financing; it was a punctual crisis because it originated in the U.S. housing market; it was a cyclical crisis (Staehr, 2010) because the economic theory indicated that after the development of a certain

economic phenomenon it was followed by its decline; it was a structural crisis because its causes were multiple; it was a predictable crisis, resulting both from its structural and cyclical character; it was a global crisis because the connections with the global financial system led to the spread of the recent crisis to all world economies (Dinga, 2009).

The fast propagation of the crisis from US to different countries, big or small, proved that there was a growing interdependency between national economies due to an intense market globalization, including the financial ones. The main effect of crisis was the decelerating economic growth of all countries that was reflected by the lowering of their GDP. Also, the international financial crisis manifested worldwide and therefore on the level of the EU by lower productivity, falling exports, limiting access to credit, decrease in global investments, lower incomes and corporate profits, rising unemployment, rising inflation, rising budget deficits and public debt.

METHODOLOGY

The model

In order to emphasize the impact of recent economic and financial crisis on EU countries, we used the Least Square Method based on Panel Data. For that purpose, we split our data in two sub-samples: first sub-sample was represented by 10 countries from the non-euro area (Bulgaria, Czech Republic, Denmark, Latvia, Lithuania, Hungary, Poland, Romania, Sweden, United Kingdom) and the second one included the 17 countries from the euro area (Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain). We considered as dependent variable the GDP growth and as independent variables: budgetary revenue, budgetary deficit and financial crisis (a dummy variable taking value 1 during the years 2008-2011 and value 0 otherwise). The basic equation of the regression model is represented by the equation no. 1.

$$(1)\ GDP_t = \alpha_0 + \alpha_1 \cdot INCOME_t + \alpha_2 \cdot DEFICIT_t + \alpha_3 \cdot CRISIS_t + \varepsilon_t$$

In order to check the robustness of our regression model we have applied the methodology used by Staehr (2010) and we have selected two control variables: public debt and unemployment rate. In addition to the basic model, we estimated three different models by introducing each variable at a time, and in the end, both variables.

DATA AND DESCRIPTIVE STATISTICS

The data for the 27 EU countries is available for the period 2005 – 2011 from EUROSTAT. Descriptive statistics is presented in Table 1.

Table 1 Descriptive statistics

Variable	Sample 1 -Non-euro Area		Sample 2 - Euro Area	
	Median	*St.dev*	*Median*	*St.dev*
GDP	0.0228	0.0516	0.0210	0.0379

Budgetary income	0.4015	0.0721	0.4240	0.0583
Budgetary deficit	-0.0283	0.0394	-0.0364	0.0610
Financial crisis	1.0000	0.4984	1.0000	0.4969
Public debt	0.3830	0.2148	0.6040	0.3245
Unemployment rate	0.0740	0.0340	0.0770	0.0362

RESULTS

Our findings suggest that, for the initial model, the financial crisis, the budgetary revenue and the budgetary deficit had a highly significant influence on the economic growth during the crisis period. The estimated models (by introducing the control variables) are presented in Tables 2-3.

Table 2 Sample model 1 – Non euro Area

Variable [a]	Basic Model	Model 1	Model 2	Model 3
Constant (C)	0.1720*** (0.0362)	0.2851*** (0.0466)	0.1825*** (0.0284)	0.3213*** (0.0505)
Budgetary income	-0.2649*** (0.8193)	-0.6218*** (0.1275)	-0.2702*** (0.0825)	-0.6763*** (0.1296)
Budgetary deficit	0.6125*** (0.1632)	1.0942*** (0.2048)	0.5821*** (0.1687)	1.0871*** (0.2018)
Financial crisis	-0.0406*** (0.0107)	-0.0495*** (0.0102)	-0.0399*** (0.0108)	-0.0490*** (0.0101)
Public debt	-	0.1287*** (0.0369)	-	0.1442*** (0.0375)
Unemployment rate	-	-	-0.1173 (0.1556)	-0.2516* (0.1456)
R-squard	0.4246	0.5149	0.4296	0.5365
Adjusted R-squared	0.3984	0.4851	0.3945	0.5003

***, **, * - Indicates significant at the 0.1 level, 0.05 level and 0.01 level

[a] - dependent variable is represented by GDP of EU member states

Table 3 Sample model 2 – Euro Area

Variable [a]	Basic Model	Model 1	Model 2	Model 3
Constant (C)	0.1117*** (0.0211)	0.1018*** (0.0218)	0.1011*** (0.0246)	0.0878*** (0.0255)
Budgetary income	-0.1578*** (0.0480)	-0.1127** (0.0548)	-0.1449*** (0.0505)	-0.0931 (0.0579)
Budgetary deficit	0.2547*** (0.0504)	0.1807*** (0.0669)	0.2690*** (0.0533)	1.1930*** (0.0679)
Financial crisis	-0.0272*** (0.0060)	-0.0288*** (0.0060)	-0.0278*** (0.0060)	-0.0297*** (0.0060)
Public debt	-	-0.0189* (0.0114)	-	-0.0204* (0.0114)
Unemployment rate	-	-	0.0721 (0.0.0865)	-0.0904 (0.0863)
R-squard	0.4367	0.4501	0.4402	0.4554
Adjusted R-squared	0.4221	0.4308	0.4205	0.4313

***, **, * - Indicates significant at the 0.1 level, 0.05 level and 0.01 level

[a] - dependent variable is represented by GDP of EU member states

Robustness check of our model suggested that, even if we include the other two variables in the model, it remained valid for both sub-samples. Moreover, the results suggested that an increase in public debt had a significant influence on the non-euro area countries, but also in the euro area countries at 10% level. The greater impact on non-euro countries may be explained by the fact that those countries were emerging countries and an increase in public debt required efforts from both authorities who needed to manage the debt and the population who must support higher level of taxation. Regarding the unemployment rate, it is significant at 10% level only for non-euro area countries. That might be explained through the fact that the financial crisis affected the economic activities on private sector, therefore the unemployment rate increased.

According to our results, the financial crisis had a higher impact on the EU countries. A high level of revenues, a low level of budgetary deficit, the public debt and the unemployment rate led to a weak economic situation in the EU countries. The most affected ones were the non-euro area countries, due to fact that they had hardly managed to cope with the shocks from the financial markets. Moreover, the efforts for reducing the negative effects of the crisis supposed a lot of time in implementing austerity measures, which in a short-term period meant poor living standards for the population and a decrease of the economic growth. Almost all countries started to feel the effects of the financial crisis in the late 2008, but the peak was recorded in 2009, when EU countries experienced dramatic fall of the GDP, at the same time with a large increase of the budget deficit and the public debt.

The most affected non-euro area countries were Latvia (-17.7%), Lithuania (-14.8%) and Estonia (-14.3). Despite the fact that, during the period when those countries joined the EU, they had the highest growth rate from the entire EU (12.22% in Latvia in 2006) and an unemployment rate below the European average, in 2009 they faced serious economic problems. The main reasons were represented by housing market collapse and the high debt ratio of both companies and population, because almost 90% of loans were in euro. Those events led to an increase in unemployment rate and the inability of the population to repay the loans, so by the end of 2009, the economies of Latvia, Lithuania and Estonia were the hardest hit economies in the world. In contrast, Poland succeeded to manage efficiently the effects of the financial crisis. It happened due to several factors: Poland's exports did not decrease with the same intensity as in other EU countries; the consumer credits in foreign currency were reduced (most populations' loans were in local currency); an increase in domestic consumption and positive values of GDP growth during the financial crisis period. However, Poland's ability to maintain low macroeconomic imbalances, allowed it to access an IMF credit line for the national economic recovery of 20.5 bill. USD.

The decreasing of economic growth for the non-euro area countries (figure 1) led to an increase of the costs for the recovery of the national economies and therefore, the budget deficit. A significant increase of budget deficit was registered in Latvia (-9.8%) and Lithuania (-9.4%).

Figure 1 Correlation between economic growth and budgetary deficit (EU 10)

Before crisis **During the crisis**

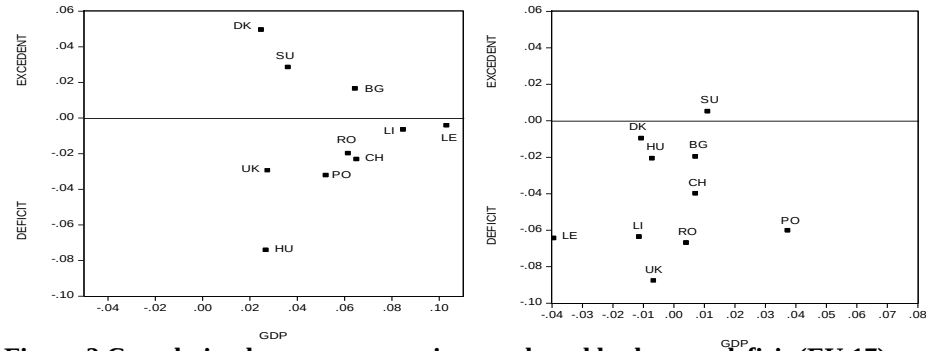
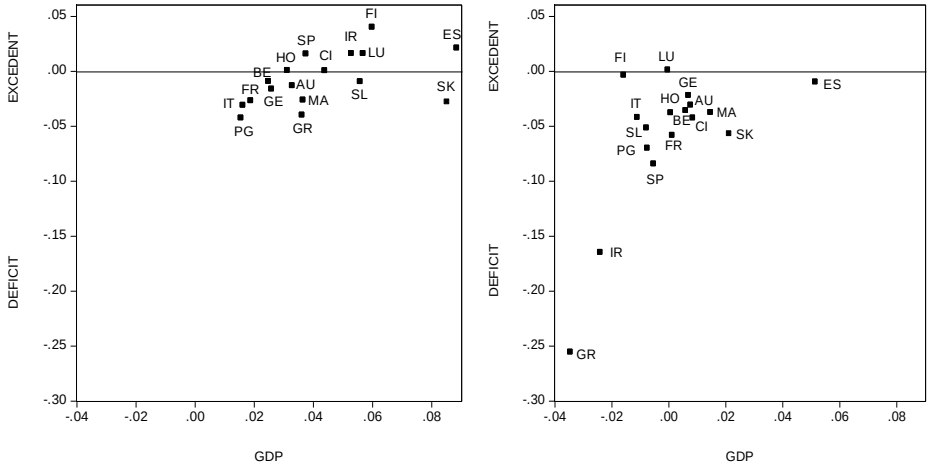


Figure 2 Correlation between economic growth and budgetary deficit (EU 17)

Before crisis **During the crisis**



From euro area countries, Greece was the most affected country, facing serious economic problems. The Figure 2 presents the distribution of the budget deficit and GDP growth for euro-area countries and the impact of the financial crisis on their economies.

Furthermore, we wanted to demonstrate that the differences regarding the GDP growth and the budgetary deficit of the two analyzed sub-samples (EU 10 and EU 27) were statistically significant. For that purpose, we conducted a t-test, according to Table 4.

Table 4 Paired sample test

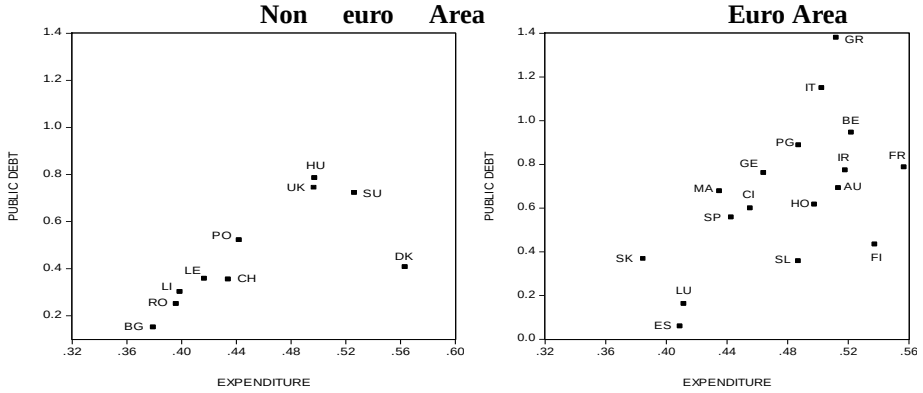
	GDP		Budgetary deficit	
	EU 10	EU 17	EU 10	EU 17
t –test value	4.548*	6.995*	3.049**	3.542*

*, ** - null hypothesis of equality is rejected at significance level of 1% and 5%

The results confirmed the fact that the financial crisis had a significant impact on the GDP growth of EU countries, both from non-euro area and the euro area. In the case of budgetary deficit, significant differences were registered in the non-euro area countries. For the countries from euro area the hypothesis was significant at 5% level. Moreover, for the EU countries, a significant value was recorded for the sovereign debt.

To emphasize the significant difference between public debt from countries from non-euro area and the euro area, we represent in Figure 3 the distribution of public debt and expenditure during the crisis for the two sub-samples.

Figure 3 Correlation between public expenditure and public debt



CONCLUSIONS

The main effect of the recent global financial and economic crisis consisted in the decrease of the economic growth rate in the world, triggering a chain reaction of all economic sectors as it followed: limiting access to credit led to lower productivity and therefore of the exports and investments; restricting economic activity meant lower incomes and, also, fewer jobs; rising unemployment led to increased public expenditure and they determined the increase of budget deficit and public debt. The connections with the global financial system favoured the spread of the crisis on all world economies, affecting both developed and developing countries. Among them, we included the EU member states that have experienced a decline in the economic activity since 2008.

According to our analysis, the global financial and economic crisis had a strong impact on the EU member states, so the decreasing revenues, the increasing budgetary deficit, public debt and unemployment led to a deterioration of their economic situation. Also, the obtained results suggested that the recent international financial crisis had different implications on the EU member states. The developed countries from non-euro area were more affected than the euro area countries as their economies had a higher sensitivity to market shocks and they had not been able to manage the crisis in order to limit the effect of the crisis. All those aspects hindered the economic recovery. Overall, all EU member states were faced with the economic crisis, but the most affected country was Greece and the less affected was Poland.

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THE LAFFER CURVE IN TERMS OF TAXATION IN ROMANIA AND IMPLICATIONS OF THE CHOICE OF INCOME TAX PERCENTAGE RATES

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Abstract: *Interaction between the way of income taxation and forming the budgetary resources under the impact of the reaction of production factors and implicitly of the evolution of the economy is highlighted and demonstrated by the Laffer Curve, one of the pillars of economic doctrines neoliberal which is based on stimulating the supply effect on economic growth. With this graphical representation that establishes the correlation between the actual fiscal pressure and tax revenue I collected and analyzed for Romania the two areas of the slope, admissible / inadmissible, in which the economy ranged between 1990-2013, especially in the prohibited area. This analysis was right if we consider the fact that large tax practice causes an increasing tax pressure with an emphasized degree of affordability that leads from taxpayers both individuals and companies in evading their tax obligations, generating evasion and tax fraud. Practicing high tax levies determines the state to lose twice: on the one hand to leverage the phenomenon of tax evasion and on the other hand the financial efforts directed to find and catch the tax evaders.*
Keywords: *Laffer curve, tax pressure, tax evasion, optimal taxation*

INTRODUCTION

In assessing the level of taxation, including in Romania, in the context of concerns for optimizing the size of the tax levies, the foundations of the Laffer curve can also be raised, according to which these levies may increase to a point, often called "optimal tax rate", after which it evolves conversely meaning, that as the more the percentage of tax revenue grows, the more the receipts decrease.

The relationship between tax rates and tax revenues flow in the market economy was highlighted by this curve by the American economist Arthur Laffer. He promoted the idea that the basic tax rate change may lead to two effects on tax revenues, namely: the arithmetic effect and the economic effect.

The arithmetic effect implies that when the tax rate declines, the tax revenues will decrease, too. In the opposite case when the tax rate increases, the arithmetic effect, it will lead to an increase in tax revenue collected per unit of income submitted to taxation.

The economic effect, however, causes a positive impact of lowering the tax rate on labor and production and consequently on the income tax base. Conversely, increasing the tax rate will have a contrary economic effect, of penalizing the participation in the activities taxed, thus changing the behavior of taxpayers in the sense of discouraging them.

Consequently, the arithmetic effect of the tax rate changes will have a reversed action to the economic effect of the same changes. When combining the two types of effects, the results of tax rate changes on tax revenues are not as pronounced anymore.

The attempt to capture the relationship between tax rate and the amount of tax levies made in Romania is based on data provided by the general consolidated budget of Romania, in the period after 1989.

In this analysis we will try to determine, due to the increase or decrease in the tax rate, in which area of the curve is positioned our economy: in the admissible or inadmissible area.

The variables considered were: the rate of taxation or fiscal level, according to Table 1; total tax revenue collected from the general consolidated budget, as nominal size (expressed in current prices of each year); GDP deflator index with base in chain (in percent from the previous year).

Based on relevant data, it shall be determined: GDP deflator index with a fixed base (in percentages compared to 1990) and the total tax revenues of the general consolidated budget, actual size determined by expressing in constant prices of 1990, being synthetically set out in Table 1, respectively represented in Figure 1.

From the data analysis presented in the table It follows that on the one hand, real tax revenue collected from the general consolidated budget decreased considerably in the first third of the period under review, so that in 1997, when the total tax receipts have reached the minimum, they represented only 65.2% of tax revenues collected in 1990; on the other hand, after 1997, the evolution of tax revenues to the general consolidated budget had an increasing trend, which reached, in 2005, the year of the introduction of the flat tax system, to represent 87.5% of revenues for the year 1990.

Between 2006 and 2007, there has been a significant drop in the tax levy and at the end of 2008; tax revenues collected by the consolidated general government recorded the highest growth in comparison to 1990, representing 98.7%. Later in 2009-2013, real tax revenues collected have remained at a level close and even superior to that recorded in 2005, the reference year regarding the waiver by Romania to the progressive system of taxation.

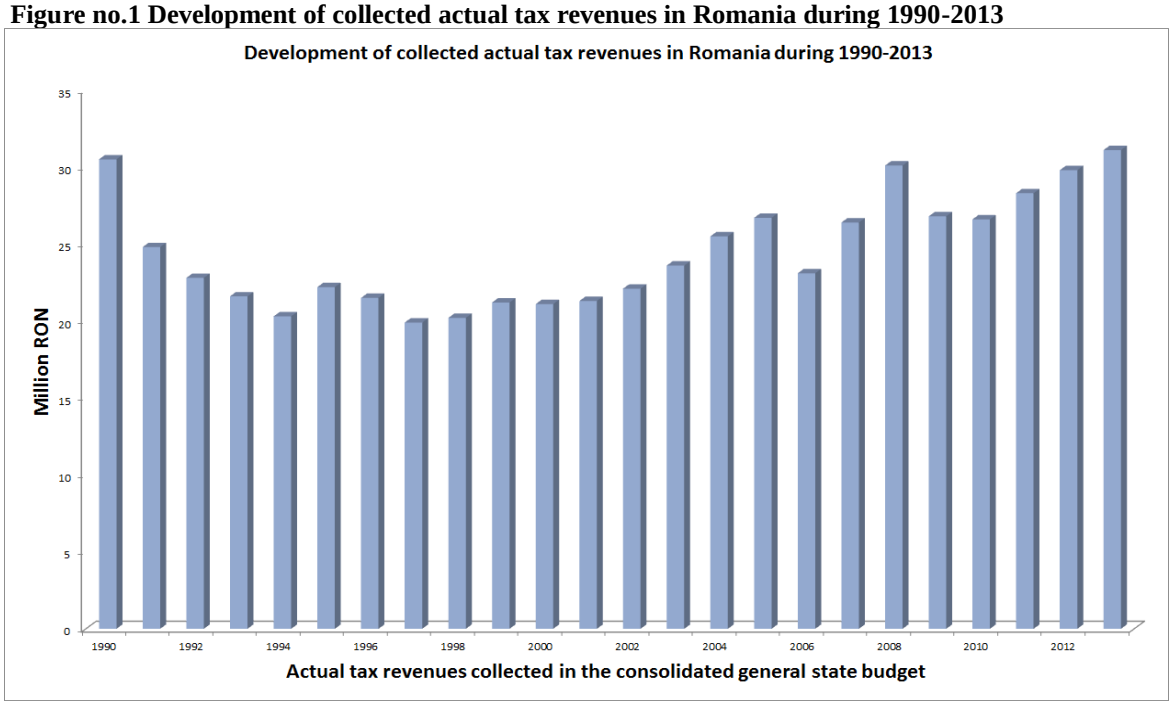
This development of tax revenue, as shown in the conditions from Romania, can be attributed to the evolution of the Romanian economy, but also the phenomenon of fraud and tax evasion manifested fully in this period.

Table no.1 The Laffer curve parameters for Romania

Year	Tax rate (%)	Nominal tax revenues collected at the general consolidated budget (million RON)	GDP deflated index with base in chain (%)	GDP deflated index with fixed base (1990, %)	Actual tax revenues, collected at the general consolidated budget (million RON, reference year 1990)
	1	2	3	4	5 [(2/4)*100]
1990	35,5	30,5	100,0	100,0	30,5
1991	33,2	73,2	295,1	295,1	24,8
1992	33,5	201,9	300,0	885,3	22,8
1993	31,3	626,9	327,4	2898,5	21,6
1994	28,2	1404,1	239,1	6930,2	20,3
1995	28,8	2080,3	135,3	9376,6	22,2
1996	26,9	2925,6	145,3	13624,2	21,5
1997	26,5	6700,0	247,3	33692,7	19,9
1998	28,2	10541,1	155,2	52291,1	20,2
1999	30,1	16404,6	147,8	77255,3	21,2
2000	29,3	23504,8	144,3	111524,1	21,1
2001	28,0	32669,9	137,4	153234,1	21,3
2002	27,6	41816,6	123,4	189090,9	22,1
2003	28,0	53248,2	119,4	225774,5	23,6
2004	27,9	66678,3	115,8	261446,9	25,5
2005	27,3	78281,4	112,0	292820,5	26,7
2006	31,8	63792,4	106,6	275900,3	23,1
2007	32,5	76365,8	104,8	289245,4	26,4
2008	32,0	94044,4	107,9	311949,3	30,1
2009	31,0	88324,3	105,6	329380,2	26,8
2010	33,0	93060,1	106,0	349450,2	26,6
2011	31,4	104687,0	105,8	369673,8	28,3
2012	33,0	114044,6	103,3	382001,9	29,8
2013	33,6	122937,8	103,9*	394590,9	31,1

Source: BNR rapports 1998-2013, (*) c o n s u m e r p r i c e i n d e x , www.insse.ro

Figure no.1 Development of collected actual tax revenues in Romania during 1990-2013



Comparative evolution of tax rate change (level of taxation) with the variation of actual tax revenue collected (Table 2) allows reference to the two segments of the Laffer curve, respectively the admissible and inadmissible area. Thus, if an increase (decrease) in tax rate from one year to another is accompanied by an increase (decrease) in actual tax revenue collected, the evolution of the situation will be in the allowable Laffer curve, which can be considered a good correlation between the two variables. But if the increase of the tax rate is associated with a decrease in actual tax revenue collected, then we can consider that the relationship between the two variables will be in the area of inadmissibility of the respective curve and thus an optimum level of taxation isn't achieved.

From this perspective, a synthesizing situation is presented in the following table (no 2).

Table no 2 The annual variation in the tax rate and actual tax revenues, collected at the general consolidated budget of Romania in the period 1990-2013

Year	Tax pressure variation (%)	Variation in real tax revenues, collected at the general budget consolidated (mil. RON, current prices of 1990)	Area on Laffer curve	
			admissible	inadmissible
1990	-	-	-	-
1991	-2,3	-5,7	X	
1992	0,3	-2		X
1993	-2,2	-1,2	X	

1994	-3,1	-1,3	X	
1995	0,6	1,9	X	
1996	-1,9	-0,7	X	
1997	-0,4	-1,6	X	
1998	1,7	0,3	X	
1999	1,9	1	X	
2000	-0,8	-0,1	X	
2001	-1,3	0,2		X
2002	-0,4	0,3		X
2003	0,4	1,5	X	
2004	-0,1	1,9		X
2005	-0,6	1,2		X
2006	4,5	-3,6		x
2007	0,7	3,3	x	
2008	-0,5	3,7		x
2009	-1,0	-3,3	x	
2010	2,0	-0,2		x
2011	-1,6	1,7		x
2012	1,6	1,5	x	
2013	0,6	1,3	x	

Source: calculated based on data from previous tables

In comparison with data from the last table it is showed that in 1992, 2001, 2002, 2004, 2005, 2006, 2007, 2008, 2010 and 2011 tax rate was in the inadmissible area of the Laffer curve. In 1992, the raise of 0.3 percentage points of the tax rate led to a drop of 2 million EUR (current prices, year 1990) in tax revenue. Likewise, increasing the tax pressure was accompanied by the decrease of tax revenues collected on the basis of wider decrease of the GDP, which reflects a wider negative impact of tax growth. Regarding 2001, 2002, 2004, 2005, 2008 and 2011, although declining tax pressure corresponded to an increase in tax revenues collected, the economy is still in the inadmissible area of the Laffer curve, since this level is superior to optimal tax pressure (ensuring maximum tax receipts). Note that in 2008, a representative year of economic growth, the decrease by 0.5 percentage points of the tax rate resulted in the greatest increase of real tax revenues by 3.7 millions USD and their receipt to the general consolidated state budget. However, the economy was in the same restricted area of the curve. This means that the tax rate can be reduced further more to reach the optimal level to increase the GDP. On the other hand, it appears slightly illogical to assert that if fiscal pressure drop is followed by the decrease of tax revenues collected we are in the admissible area of the curve, and if fiscal pressure decrease is followed by increased tax revenues, we are in the inadmissible area. But the assessment must be made in relation to that optimal level of fiscal pressure that ensures the maximum of revenue and, therefore, becomes the correct assessment that the

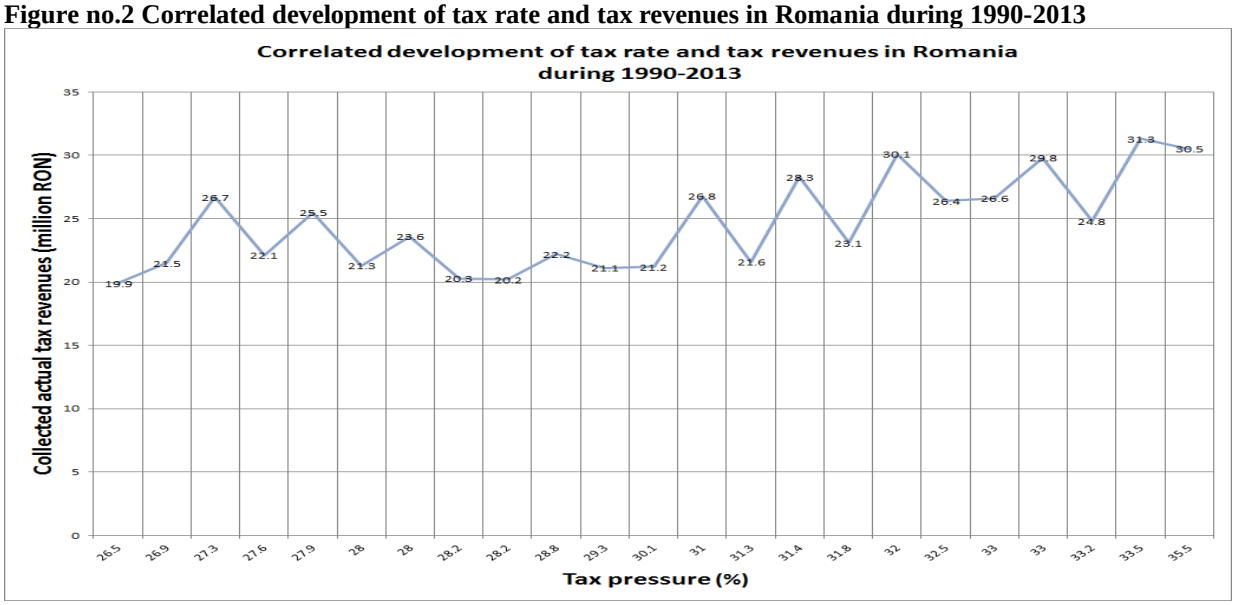
tax pressure is, in the first case, below optimum level, and in the second, over the considered optimal, in terms of addressing the Laffer.

Previous findings do not exclude the idea that longer-term decline in tax determines the increase of the tax base by stimulating work, investment, and by surfacing as many of the activities that were not taxed and are part of underground economy.

At the same time, it can be seen that in 13 years of the period considered, the rate of taxation, namely the degree of tax registered a negative annual variation; the increase in tax revenue was only in 6 years and in 7 years the decrease of tax pressure matches with the reduction of tax revenues. In comparison, the 9 positive annual fiscal pressure variations correspond in 6 cases, with the increase of collected tax revenues.

A graphical representation of the correlated evolution of the two variables corresponding to the Laffer curve, based on data on Romania's consolidated budget, is shown in Figure 2.

Figure no.2 Correlated development of tax rate and tax revenues in Romania during 1990-2013



According to the graphical representation from figure 2, we see that except for taxation rate of 35.5% for the first year of commencement of the transition (1990), inconclusive, general taxation degree to which there was the highest level of tax revenue collection is the 33.5% recorded in 2013, when the actual tax revenues were 31.1 million RON. This level of tax rate of 33.5%, which should generate maximum tax revenue collected, did not exclude the existence of the phenomenon of evasion of tax payment, confirmed by controls performed by specialized institutions within NAFA. Tax evasion has reached this year a level of 16.2% of GDP according to data released by the Fiscal Council. It can also be admitted that in terms of determining the tax pressure on tax receipts or paid by taxpayers, the bigger the level of tax evasion is, the lower the "accepted" tax burden is.

On the other hand, the lower level of taxation in Romania, provided that tax rates for the main taxes are close to those of the other countries in Eastern Europe, only

Lithuania has a lower tax burden, indicates a weak collection of levies, the lowest recorded in the VAT and income tax, which is in direct connection with the phenomenon of tax evasion.

But at the same time its sensitive decrease after 2000, took place amid increasing in real terms, gross domestic product, namely the reduction of tax rates. In addition, it is to be noted that the increase in the tax base is not sufficient to compensate the loss of revenue due to the reduction of tax rates, especially in the more drastic drop in the level of tax compliance and of expansion of tax evasion practice.

Compared to detached observations it appears contradictory that taxation in Romania was charged by the taxpayer as being high, perception partly explained especially for employers and individuals employed, if taken into account also the social security contributions which were located at the highest level compared to other countries in Central and Eastern Europe.

With a tax rate of 16%, our country is far below the level of taxation in the EU Member States, being surpassed by a number of 16 countries among which France, Sweden, Denmark, Austria, Italy, Norway.

However, structural analysis of compulsory levies shows a decrease, while the share of direct taxes in total tax revenues, and an increase in indirect taxes, which are usually preferred due to their higher efficiency, including in less prosperous periods economically speaking, but deeply unfair to taxpayers-individuals. We can say, therefore, that in Romania, during 1990-2013, the tax burden pressed on both shoulders mainly of individuals and on companies both by the high level of taxation on labor and through indirect taxation, which was based on taxing consumption.

This phenomenon could explain a significant decline in the level of voluntary compliance of these categories of tax payers regarding payment within the consolidated general government fees and taxes due. According to Eurostat data, Romania has a share of GDP levies by about 10 percentage points lower than the European average of 40%, being the 4th in the EU in this ranking.

Regarding the choice of percentage share of income tax, of the Keynesian theory background that gave rise to the tax multiplier, the idea of flat rate taxation is not a novelty in the theory and practice of tax.

The confrontations among specialists on this issue were stuck, especially in the area of tax reporting this process to one of the basic principles of taxation, namely that of fiscal equity. But this principle has known debatable meanings and interpretations, some economists supporting progressive taxation, while others opted for the proportional one.

Most economists agree that if fiscal pressure exceeds a certain threshold, any additional tax is damaging the economy, risking also the reduction in revenue collected.

In this case, if one accepts that there is a certain limit to fiscal pressure, the crucial issue is to know where it is and if it is respected or not. If this limit was exceeded, the best way to revive the economy is the release of tax “yoke".

Precisely this was the meaning of deep reforms implemented in some countries, like the US, England and others.

Profound tax reform in England during the Thatcher government was in large measure a consequence uprising middle and upper classes, weary of "confiscation" by

taxes, too large a portion of the product of their efforts. Similar situation was presented in the US at the beginning of the presidency of Ronald Reagan, when marginal tax rate reached 60-65%, being further reduced to 40%.

One of the negative consequences of tax progressivity is its stimulating effect of propensity to substitute labor with rest, making it an obstacle of the economic growth. Exactly the personal income tax progression becomes increasingly more critical and therefore subject to tax fairness. Critics of progressive rates show that diligent payers should not be punished by higher taxes, but the tax should be proportionate.

Most countries in South-Eastern Europe and the former socialist that are new members of the EU, introduced flat tax and post assessments results concluded that there were significantly increased tax revenues.

Thus we can mention: Poland with market shares between 19% and 40%, Bulgaria between 10% and 24%, Czech Republic between 12% and 32%, Hungary between 18% and 36% and Slovakia with 19% and 22%. By practicing these tax rates these countries have the lowest fiscal pressure in the European Union.

Compared to the disadvantages that progressive taxation and high levels have, it stands out the benefits of promoting the flat tax for individual incomes and its report to tax principles.

The essential objections that bring progressive taxation focus on the idea that the tax burden is much harder as a proportion, on higher income. To any such objections it might be brought the counterargument that individual tax progressivity could have meant to compensate, somehow, many of indirect taxes tend to press harder in proportional terms, on revenues of the population categories with lower incomes.

It is envisaged that most of the indirect taxes (VAT, excise duties) are set in flat rate. On the other hand, supporting the idea of progressive rates, the main argument which is brought is that progressive taxation is the most important tool of income redistribution. Although the claim is well founded, it should be borne in mind that it can achieve a redistribution of income in the practice of a tax system in proportionate shares. This may do both the at the stage of mobilization of budget revenues and the spending of them by providing services of which it can benefit specific priority population groups (example: home heating subsidies for low income etc.).

Regardless of the technical ways or practiced tax, the taxes themselves are an important way of redistributing a portion of GDP, but its proportions vary considerably.
In this regard, we subscribe to the view that proportional taxation (in flat) has the great merit that it provides a viable premise of an acceptable equity, both for those who pay more, and for those who pay less (in absolute value), a rule that, once accepted, no longer creates problems generated by progressive taxation, or by that in fixed amounts per person. It appears to be particularly important also the null impact of taxation in flat, resulted in that the application on each income leaves unchanged the relationships between the net remuneration of different types of work and does not affect the optimum allocation of capacity to work.

There may be different views on changing or preserving the relationship between the two incomes when they are reduced by the same amount or in the same proportion. There is, however, no doubt that the two which were equal income before tax would

remain equal after tax cuts, too. Here, the effects of progressive taxation differ considerably from those of proportional taxation (in flat). In conclusion, the advantages of using the income tax flat rates are achieved through issues, such as:
- largely meet the criteria of fairness in taxation;
- provides greater transparency of the tax system, since the flat provides each taxpayer easily the opportunity to calculate the amount of tax liabilities;
- ensures equal tax treatment of all taxpayers, regardless of the size evolution of revenue upon them will be applied the same tax rate to determine the size of the tax burden;
- encourages increased efforts to work towards a better life and contributes to reducing tax evasion in the decrease of underground economy and thus increase government revenue;
- it increases the efficiency of taxes, due to reduced costs related to its establishment and collection .

We can also appreciate that the practice from many countries of the flat is determined by other advantages which are:
- stimulates business with positive influence in attracting and opening new direct investment from both domestic and foreign companies, especially multinationals;
- establishment of new small and individual enterprises concomitantly with specialized labor absorption in different fields;
- significant decrease in expenditure of tax administration both in terms of how to record, control and collect the tax revenue because it greatly simplifies the procedures and specific reports when it no longer occurs at the end of the financial year, revenues globalization.

Referring to the alternative "progressive rate or flat tax," the American economist Milton Friedman shows that the finding according to which personal income tax progressive rates, which is the most used by governments to change income distribution had had a limited effectiveness in reducing inequalities. This defends a lower income tax, which is good in economic terms for the free market and the private initiative.

Giving up at practicing progressive rates of income tax instalments and the introduction of the flat tax overturns much of the architecture of the tax system in Romania, which - through the personal income tax introduced in 2000 - has increased bureaucratic elements and determined charges extremely high occasioned by settlement and collection of such taxes, between 2000 and 2004.

Applying the flat income tax does not exclude, however, the possibility that the tax system is so constructed that the tax can be used as an important instrument of social protection, establishing the minimum taxable income and deduction personal system for difficult family situations, ensuring in this way, the correlation of the size of taxes paid by the taxpayers contribution capacity.

Approaching taxation at lower percentages respectively the flat applied in Romania is usually associated, fiscal relaxation phenomenon which occurs, but only if it is not accompanied by compensatory measures aimed to the new employment tax by introducing taxes or increase existing ones, suggesting that the flat would be perverse to tax reduction.

Thus, for instance, the introduction of the flat tax of 16% on personal income and profit companies in Romania, in the opinion of the public authorities who proposed it, is the core of tax relief, which took into account the main objectives: supporting private entrepreneurs; attracting foreign investment; reducing the share of the shadow economy; sustainable economic growth; creating more jobs; increasing savings and investment; stimulating free initiative, which should lead to the strengthening and the development of market economy in Romania.

On the other hand, however, after having introduced 16%, which initially left to the holders of income more financial resources, the government has realized that it can meet its commitments to international organizations and institutions, and then took many decisions to institute or increase taxes likely to be questioned initially announced fiscal easing application.

The realities related to the application of the flat tax revenues and profits in Romania have confirmed some opinions of its complainants who felt that it is a hasty measure, not based on an impact analysis, which would jeopardize the balance budget anticipating that this would be accompanied by increases in other taxes or introducing new ones; it will generate increases in utility prices or will require cuts in budgetary spending etc.

In this context, it is significant that in the conditions in Romania, to cover budget gaps created by fiscal relaxation, it turned to solutions with compensatory character, both the in terms of revenue growth, especially through increases in other taxes, as well as the limitation of budget expenses.

Among these we can mention: doubling the tax on the turnover of micro enterprises; reducing wages and eliminating bonuses and pension recalculation steps; doubling the dividend tax from individuals; 10-fold increasing bank interest and the tax gains on the stock market; more drastic taxation of gains from real estate and rents, etc.

Overall, we can say that the results are positive, although there are still specialists who manifest their concern about the timeliness of the introduction of the flat, as well as negative effects on inflation and macroeconomic stability, etc.

On a larger scale, it is acknowledged that the analyses undertaken from the perspective of any tax reform should be determined by multiplying the magnitude of the effect of tax rate reduction percentage. Thus, large-scale reduction of the tax rate may lead to an excessive aggregate demand, thus causing unmanageable inflationary effects.

Moreover, short-term effects of fiscal policy differ considerably from those in the long term. In this regard, some economic schools of thought say that a temporary increase in current income (by lowering the tax rate on short-term) causes a significant change in consumer spending of households. Conversely, an increase in permanent income (by lowering the tax rate on long-term) causes a strong change in consumption and thus of aggregate demand.

In this context, it is considered, moreover, that the measures of fiscal relaxation are the essence of the economic approach in terms of aggregate supply; concluding that tax reduction will lead to an increase in budget revenues on account of economic development.

Without disputing the positive impact of tax cuts on aggregate supply we consider that reducing taxation has effects on both aggregate demand and aggregate supply, but those effects are differentiated in size. Moreover, one can accept that, frequently, the incidence of tax reduction is in the foreground, much stronger on aggregate demand than on aggregate supply.

CONCLUSIONS

Increasing or decreasing the fiscal pressure in a given interval of time is closely linked to the economic and social role of its state of intervention in order to provide financial resources to cover public spending. The interventionist action, often excessive in the economy, has generated over time debates that led to a new economic thinking which is represented by the American economist Arthur Laffer. This one, in his experiment, used as the basis of analysis the US market economy, and highlighted by a curve, the correlation between fiscal pressure and flow rate of tax revenues collected.

In the research carried, I tried after the Laffer curve model to determine for Romania, during 1990-2013, the relationship between the two parameters: fiscal pressure and tax revenue realized and the change influence of these parameters on the economy. I found that as the fiscal pressure increases it takes place a compression of economic activity and hence a decrease in tax revenue receipts to the general consolidated state budget. Conversely amid falling tax burden it is produced an improvement of the indicators of economic growth, the production of goods and services increases, and investment is reinvigorated. It is preferable that when the economy is in the inadmissible area of the curve, political decision makers to promote measures of fiscal law for broadening the tax base that would result in increasing the amount of tax revenue while boosting production and investment activity.

We consider that the practice so far in our country, of single rate of income tax for companies and individuals with all the shortcomings, is still able to be maintained, even if it meant broadening the tax base for activities underrepresented, by creating new taxes and increasing others.

Simultaneously it is required a special attention in terms of improving the state through its activity, administration and collection of all fiscal and budgetary revenues, increase voluntary compliance of taxpayers to pay taxes and owed contributions. In the same direction, it is imperative that the specialized institutions, to take firm action, through modern and perfected means, to prevent and combat all acts of evasion and tax avoidance, especially in high-risk areas, as well as in the control of large fortunes.

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MONETARY TENSIONS AND FACTORS GENERATING THEM

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Abstract: *The paper begins with some conceptual delimitations and with outlining the theoretical framework on the topic approached starting from the concept of monetary tension, but also modalities of expression and possibilities of identification or evaluation of such tensions, by reporting to some specific indicators that, through their meanings and evolution, can either reflect the presence of tensions, or to represent generators of them. To a great extent, however, the paper focuses on econometric analyzes of the presence of some monetary tensions and of the impact factors under the concrete conditions in Romania, in 2008-2013, by building and applying two models in which the indicators M2 monetary aggregate and the interbank interest rate are considered dependent variables, expressing the presence of certain monetary tensions while GDP, the total bank loans, the non-performing bank loans, the interest rate on bank loans, etc., appear as factors generating tensions and as determinant variables.*
Keywords: *M2 monetary aggregate, ROBOR ON, GDP, interest rate, non-performing loans, total loans*

INTRODUCTION

The notion of "tension" emerged and is used primarily in the medical field, but is also used in other areas of human life and activity, being given to it connotations related to the "state of health" or to the less performing way of functioning of the various components of living organisms, including systems, processes, social relationships etc.

On a broader plan, it is recognized also the need for the existence of some "tensions" whose values can vary within normal limits such is, in medicine, the case of blood pressure that characterize situations of normal functioning of living organisms and, implicitly, of maintaining the state of health. In contrast, especially in other areas, most often, references to "tensions" aim exactly the exits from the normal state, presuming values outside the acceptable limits, suggesting possible malfunctions and the perspective of producing phenomena or events with negative consequences, perceived as specific risks.

In the same context, the economic area and literature, taking and adapting various terms that come from other areas appeal more often lately to phrases like "states of tension" or "financial stress", which characterize economic and financial phenomena marked by the emergence of some malfunctions or unbalancing trends, for example, on the financial and monetary markets etc.

At the same time, it has to be admitted also the idea that the very functionality of the economy, as macro system, depends on the health and the way of functioning of each structural component, which can be perceived as an internal organ of this system. Therefore, the possible disruptions in the functioning of some components, including those with financial-monetary substance, can cause the overall alteration of the

economy's functioning, including a contamination of the other components, which would lead to worsening the disruptions, meaning "illness "or even blocking of the entire economy, as a state similar to coma for the living organisms.

From the same perspective, the recent economic and financial crisis has reconfirmed the idea that shocks in the financial-monetary area can have significant effects on the real economy and that the instability in the financial-monetary field causes the manifestation of some systemic risks (Kliesen, Owyang and Vermann, 2012, p .369). Moreover, it appears that financial-monetary stress episodes characterized by imbalances in bank lending activity are strongly associated with sharp declines in the economy, than the other episodes of stress related financial-monetary markets. Also, the periods of recession corresponding to the financial stress generated by banking activity tend to last more than double than those not preceded by this type of financial stress (Cardarelli, Elekdag & Lall, 2009, p.6). As a consequence, the identification of possible monetary tensions and the analysis of their manifestation, namely of the factors that determine them may lead to interesting findings and conclusions with possible generalized character.

THEORETICAL APPROACHES

The presence of some major malfunctions which signifies certain tensions similar to "illnesses" in the sphere of monetary and financial processes is preceded, as in the case of living organisms, by the occurrence of some specific symptoms, whose correct identification and interpretation would allow actions to stop damage, to correct abnormal situations or to prevent the occurrence of others, which presumes promoting of policies appropriate for the concrete conditions in which the monetary and credit market evolve, at a time or another.

The premises of such an approach derive from the fact that, nowadays, in most advanced economies, but also in developing ones, including in Romania's case, monetary policy is designed and implemented by independent central banks, aiming to ensure primarily the price stability on the background of the evolution of economy as a whole (Zurbrugg, 2012, p.3). But decisions related to such policies, having as main target the limitation of the future evolution of inflation (Kydland and Prescott, 1977; Barro and Gordon, 1983) are under the incidence of some competing pressures as they must ensure, on the one hand, price stability and, on the other hand, maintaining economic growth and reducing unemployment (Copelovitch & Singer, 2008, p.667). Likewise, the academician Isarescu showed that, even it is unanimous recognized the need to ensure economic growth but also a low inflation, in the short term there is a certain tension between the objective of low inflation and the one of stimulating growth, because on such a horizon the monetary policy influences the real economic variables (Isărescu, 2013, p.9).

Also, the scientific literature emphasizes the idea that, generally, the central bank focuses its monetary policy towards adjusting the supply of money or the levels of monetary aggregates (Keister, Martin & McAndrews, 2008, p.41), making use of its tools, seen as powers conferred on the system to determine the existing volume of money or to change it (Friedman, 1959, p.24). Therefore, when monetary policy is credible and

manages to ensure price stability, the expectations regarding inflation are at low levels and are well anchored (Zurbrugg, 2012, p.4).

On the other hand, some authors find monetary tensions generated also by the fact that cyclical effects of monetary policy are not consistent with those of the regulations of the banking activity, primarily, of the lending one, the two approaches having quite opposite orientations. Thus, monetary policy tends to behave countercyclical, while banking regulation acts procyclically, causing a contraction of the banking activity in periods of recession (Goodhart & Shoenmaker, 1993). In this regard, it is noted that, usually, in case of an economic downturn or a recession, central banks react by expanding the money supply to spur the economic recovery. But in the same period, the same central banks, as supervisory and regulatory authorities, ask, usually, commercial banks to increase their reserves and to improve the quality of their loan portfolio, leading to a restriction of credit, and thus of financing of economic agents, although they should facilitate the financing of investment and consumption (Copelovitch & Singer, 2008, p.667). Furthermore, there are outlined two types of tendencies, with confusing character, from the lenders and investors, namely, one to underestimate the risk in periods of boom and one to overestimate it in times of economic downturn (Berger & Udell, 2004). According to the first tendency, they are inclined to ignore the possibility of obtaining losses, taking risks that generate non-performing loans (Hakkio & Keeton, 2009, p.10) and hence monetary financial tensions associated to them. The second tendency is present in the conditions of economic recession, when lenders and investors overestimate risks, which leads to lower investment and income generating activities etc., including to the emergence or worsening of other tensions in the money market.

In relation to the above, it appears to us of real interest the observation that, to a great extent, manifesting of monetary tensions organically intertwines with the bank lending activities, including with the quality of loan portfolios of commercial banks, these being retrieved in the imbalances that appear on monetary and credit markets, but also in the levels of specific indicators determined at the macro level. Under the latter aspect, we associate also to the idea expressed by some researchers (Wong et al, 2007; Yiu et al, 2009), which consider that by the content and the evolution of their levels, some indicators may reflect the presence of monetary tensions, but they can appear also as factors that generate such effects, as inflation, etc.

At the same time, it is worth mentioning that along with factors that express the state of the real economy, out of which is distinguished, in the foreground, GDP, it is growingly invoked, lately, as a driver of tension, the deterioration of the quality of bank loan portfolios and particularly increasing of the share of non-performing loans (Von Hagen & Ho, 2004; Filip, 2014). This involves the accumulation of a growing volume of bad loans, which reduces liquidity at the commercial banks' level, necessitating recourse to central bank credit for new resources, which may lead to an excessive money supply, and so to tensions in the money and credit market.

In the same context, marked also by the globalization of the last financial crisis, it appears that, since its onset, in most countries of the world, both the volume and the share of nonperforming loans (NPLs) showed continuous growth trends, leading in different,

but significant, proportions to imbalances, respectively tensions in financial-monetary area.

In relation to the above mentions, we appreciate that, in principle, become necessary knowing and monitoring the presence and amplitudes of monetary tensions, which can be identified and evaluated by observing the levels and dynamics of some benchmarks of them, such as those relating to money supply and, mainly, the dynamics and changes in M2 monetary aggregate, or to short-term interbank interest rate, but also to the inflation rate or exchange rate etc. Simultaneously, it is necessary to identify the determinants and to analyse their impact on the level and variance of each indicator of this type, which reflects the presence or amplitude of monetary tensions, starting from causal links typical for the involved variables and processing the data corresponding for specific situations of time and space.

From the same perspective, we believe to be revealing deepening the analyses on the manifestation of monetary tensions, both in terms of M2, and in that of the interbank interest rate. In this respect, it is acknowledged that by its content and dimensions, M2 monetary aggregate highlights potential monetary tensions, especially through the sharp changes of its values registered in specific periods. Moreover, reporting its dynamics to that of the real GDP provides findings of real interest for the elaboration of monetary policies. In turn, a distinctive analysis of these variations based on the specific causal links can highlight factors generating monetary tensions represented by indicators such as: the change in total bank loans; the NPLs volumes; GDP; the interest rate on bank loans.

In a similar manner, the approach of the analysis on the presence and magnitude of monetary tensions, highlighted through the interbank interest rate, should be based on its level and causal links with determining factors of specific tensions.

In principle, the level of the interest rate on the interbank market evolves depending on the ratio between supply and demand for credit of the commercial banks participating in such transactions. But, it is acknowledged that any disruptions or blockages of monetary resources, on the levels of commercial banks or the banking system as a whole, can produce shocks in their workflows, generating major increase of the interest charged on the market, meaning monetary tensions. Causes that can lead to such tensions are various and, implicitly, there can be identified several impact factors or determining variables of the level of the interest rate on the interbank market, among which are: the change of total bank credit; the change in the interest rate on bank loans; the relative change in non-performing bank loans; M2 size etc. Thus, the growth of bank loans coupled with the monetary policy to reduce interest rates and increase liquidity promoted by the central bank and with a possible increase in NPL's share in a given period, usually results in an increase of the interest rates on the interbank market. If we assume, however, the reverse changes of the previously cited determining variables, their impact on the interest rate in the interbank market would be reflected in a reduction of the latter. In both cases, changes of the interbank interest rate in higher dimensions, compared to the accepted normal, would signify the presence or amplification of monetary tensions.

DATA ANALYSIS AND RESULTS

Our econometric analysis begins with assessing of causality linkages between the dynamics of M2, on the one hand, that we conceive as dependent variable, and GDP, the change in total bank loans (ΔTL), the volume of non-performing bank loans (NPL) and the interest rate on bank loans (LIR), on the other hand, considered as determinant variables. Thus, using quarterly statistical information for the period 2008-2013, and processing them using Pearson correlation led to the results presented in Table 1:

Table 1 The Correlation Matrix

Covariance Analysis: Ordinary					
Sample: 2007Q4 2013Q4					
Correlation					
Probability	M2	GDP	NPL	ΔTL	LIR
M2	1.000000				

GDP	0.559144***	1.000000			
	0.0037	-----			
NPL	0.972248***	0.510601***	1.000000		
	0.0000	0.0091	-----		
ΔTL	0.714983***	0.322288	0.613781***	1.000000	
	0.0001	0.1161	0.0011	-----	
LIR	-0.707974***	-0.471392**	-0.815939***	-0.240885	1.000000
	0.0001	0.0174	0.0000	0.2461	-----

***, **, * - denotes significance at 1%, 5% and 10%, respectively

As expected, according to the data in Table 1, emerged significant positive correlations between M2 and GDP dynamics, respectively the change in total bank loans and a significant reverse correlation of M2 with the interest rate on bank loans.

Particularly, data from the same table 1, reveals that during the period under analysis, between M2 and the volume of NPLs there was a highly significant positive correlation, highlighted, both by the correlation coefficient (0.972248) and by the threshold of statistical probability of less than 1%. Moreover, the fact that these correlations have a significance level below 1%, entitles us to consider possible expressing the determination relationships of the dependent variable (M2) by those determining variables, through an OLS regression model that can be played in the following form:

$$M2 = \beta_0 + \beta_1 PIB + \beta_2 CRNP + \beta_3 \Delta CRT + \beta_4 RDCR + \varepsilon \quad (1)$$

By testing the proposed regression model, using the data set for the analysed period, for Romania, were obtained the results summarized in Table 2:

Table 2 Results of applying the regression equation regarding M2 in Romania's case

Dependent Variable: M2		
Method: Least Squares		

Sample: 2007Q4 2013Q4				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
GDP	0.087298	0.033159	2.632687	0.0160
NPL	1.775699	0.144290	12.30642	0.0000
ΔTL	0.362065	0.158072	2.290512	0.0330
LIR	1.903723	0.688509	2.764994	0.0119
β_0	118.2085	13.64183	8.665149	0.0000
R-squared	0.980275	Mean dependent var		196.0982
Adjusted R-squared	0.976330	S.D. dependent var		25.35417
S.E. of regression	3.900770	Akaike info criterion		5.737082
Sum squared resid	304.3202	Schwarz criterion		5.980857
Log likelihood	-66.71352	Hannan-Quinn criter.		5.804695
F-statistic	248.4832	Durbin-Watson stat		1.650809
Prob (F-statistic)	0.000000			

The results in table 2 reveal, in the foreground, a very high degree of viability of the proposed regression equation (R-squared = 0.9803; Adjusted R-squared = 0.9763), which confirms that the size of M2 changes especially under the impact of the mutations on GDP, on the volume of NPLs and on the other variables included in equation (1).

From the processing of the data, have resulted also significant relationships of positive determination of M2 by the dynamics of the quarterly GDP and by the changes in the total volume of bank loans, for these variables being recorded probabilities significantly below the 5% threshold.

The same results, attest also the fact that the volume of nonperforming loans significantly influences the dynamics of M2, as confirmed by the resulted very high probability (Prob. = 0.0000). Therefore, we can say that an increase in non-performing loans is likely to create additional pressure in the money market and lead ultimately to an excessive increase in the size of M2, generating certain monetary tensions.

Also the interest rate on bank loans appears too to have a significant positive influence (Prob. = 0.0119) on the evolution of M2, given its interaction with other determinants, although the strict correlation between these two variables resulted before to be negative.

On the other hand, an econometric analysis regarding the manifestation of monetary tensions, considering as dependent variable the overnight interest rate on interbank loans (ROBOR_ON), we propose as determinant variables: the quarterly relative change in nonperforming loans (ΔNPLR); the volume of M2; the quarterly change in the interest rate on bank loans (ΔLIR) and the quarterly change of total bank loans (ΔTL). Such an analysis is based on processing of statistical data related to these variables for the period 2008-2013 in the case of Romania, based on the evaluation of the related correlations and the results are presented in Table 3.

Table 3 The Correlation Matrix

Covariance Analysis: Ordinary					
Sample: 2007Q4 2013Q4					
Correlation					
Probability	ROBOR_ON	ΔNPLR	M2	ΔLIR	ΔTL

ROBOR_ON	1.000000				
ΔNPLR	0.575942***	1.000000			
	0.0026	-----			
M2	-0.704903***	-0.326054	1.000000		
	0.0001	0.1117	-----		
ΔLIR	0.754143***	0.187727	-0.406160**	1.000000	
	0.0000	0.3689	0.0439	-----	
ΔTL	-0.387554*	-0.129361	0.714983***	-0.249476	1.000000
	0.0556	0.5377	0.0001	0.2291	-----

***, **, * - denotes significance at 1%, 5% and 10%, respectively

The results express the existence of a significant and positive correlation between the quarterly relative change in nonperforming loans and the overnight interest rate on interbank loans indicator (Prob. = 0.0026), the correlation coefficient having also a high value (0.575942). This highlights the fact that along with the increase of non-performing loans, we are witnessing a price increase of interbank lending, which is explainable by the fact that banks are forced to create additional provisions, reducing their supply of financial resources available to be lend to banks with deficits, which, in relation to the higher demand, leads to higher rate of interest on these loans.

At the same time, the rise of the interest rates on loans to customers has too a significant impact of growth on the overnight interest rate on interbank loans, provided that the lending banks expect yields from lending to other banks on similar levels to those granted to non-bank customers.

On the other hand, we note the existence of significant reverse correlations between the overnight interest rate on interbank loans and M2 (Prob. = 0.0026) and total bank loans variation (Prob. = 0.0556). These results can be interpreted as meaning that an increase in M2 creates conditions for the existence of a surplus of resources available at the level of the commercial banks, increasing the supply of credit and, under these circumstances, reducing the cost (represented by interest) of interbank loans.

In its turn, the change in the volume of total loans granted by banks, can have both a positive effect and a negative one on the interbank interest rate, whose major fluctuations indicate the presence of some monetary tensions.

The significant correlations between the overnight interest rate on interbank loans and the other variables mentioned above, identified according to Table No. 3, provide the necessary support to build a regression model where the dependent variable is ROBOR_ON, and the other variables are determinants, which we present in the form of the following equation:

$$ROBOR\_ON = \beta_0 + \beta_1 \Delta CRNPR + \beta_2 M2 + \beta_3 \Delta RDCR + \beta_4 \Delta CRT + \varepsilon \quad (2)$$

Further, processing the data for the period 2008-2013, in Romania's case, by applying the proposed regression equation (2), led to the results in Table 4:

Table 4 Results of applying the regression equation regarding ROBOR_ON in Romania's case

Dependent Variable: ROBOR_ON				
Method: Least Squares				
Sample: 2007Q4 2013Q4				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
ΔNPLR	0.080735	0.019912	4.054639	0.0006
M2	-0.064526	0.017315	-3.726631	0.0013
ΔLIR	2.415054	0.390198	6.189305	0.0000
ΔTL	0.054841	0.051233	1.070406	0.2972
β_0	18.60611	3.567581	5.215329	0.0000
R-squared	0.877589	Mean dependent var		6.401200
Adjusted R-squared	0.853106	S.D. dependent var		3.519693
S.E. of regression	1.348982	Akaike info criterion		3.613434
Sum squared resid	36.39504	Schwarz criterion		3.857209
Log likelihood	-40.16792	Hannan-Quinn criter.		3.681047
F-statistic	35.84590	Durbin-Watson stat		1.853212
Prob (F-statistic)	0.000000			

The values shown in table 4, indicate that the evolution of the overnight interest rate on interbank loans is determined in a very high proportion (R-squared of 0.8776, Adjusted R-squared of 0.8531) by the determinant variables included in the developed econometric model, which confirms the relevance of this model.

Moreover, the results in the table highlight the significant dependence of the overnight interest rate on interbank loans by the relative variation of non-performing loans and by the variation of the interest rate on bank loans, the changes in the two variables determining changes in the same direction of the dependent variable. We also note that both determining variables present values of probability below a level of statistical significance of 1%, which leads to rejection of the null hypothesis for the value of their coefficients and confirms the reliable dependence of the dependent variable by the action of these factors. By default, the values obtained, prove that, in the analysed period, the increase in volume of non-performing bank loans caused a pressure in the money market for rising the interbank interest rate.

Simultaneously, we find that there is a significant dependency (Prob = 0.0013), but reversal, of the levels of the dependent variable by the dynamics of M2, and in the case of the change in the volume of total bank loans, the probability value leads to the conclusion that it is less significantly influencing the dependent variable. However, through the resulting coefficient (Coef = 0.054841) it is found that the variation of the volume of total bank loans causes an evolution in the same direction of the variable determined.

CONCLUSIONS

The undertaken research emphasizes, firstly, the necessity of approaching the monetary tensions and generally of those related to economic and financial domain, in a similar way to those specific for the living organisms, to whom it is associated also the functioning of the economy, with all its components, including the money markets, where

may occur states of "tensions" or "financial stress". From this perspective, the presence of some major malfunctions or disorders of the monetary flows, including of those related to bank credit, means the existence of some tensions similar to "illness" of living organisms. As result, identifying these tensions and of their generating factors, through analyzes, and applying of appropriate monetary and credit policies, become indispensable to counter certain possible shocks on the financial-monetary plan, with disruptive effects on the real economy, as in the recent global crisis.

In the same context our research highlights the possibilities of identification and analysis of both of the presence and intensity of any monetary tensions and of some the factors generating them, by reporting to the levels and dynamics in time and space, recorded by some indicators specific to this domain, based on their content and characteristic causal links. Thus, we believe that indicators such as M2 monetary aggregate, interbank interest rate, etc. reflect also the presence of some monetary tensions, although in other circumstances they can become generating factors of other manifestations of tensions of monetary kind. Correspondingly, other indicators (GDP, nonperforming bank loans, interest rates on bank loans, etc.) appear in positions of generating factors.

Developing research through econometric analyzes, on the presence of monetary tensions and their determinants, focusing on the case of Romania, in the period 2008-2013, incorporates several steps. These include the building and the application of two econometric models, in which the M2 monetary aggregate and interbank interest rate are dependent variables while GDP, nonperforming bank loans, total bank loans, the interest rate on these loans and even M2 (in the second model) are determinant variables and the corresponding data processing confirmed a high degree of viability for both models.

Also, the analysis centred on the evolution of M2 monetary aggregate, certifies the manifestation of monetary tensions and highlights its significant dependence by the dynamics of GDP, and especially those of the volume of non-performing bank loans and interest rates on bank loans but also by the total bank loans variation. On the other hand, the analysis of the dynamics of short-term interbank interest rate, whose variations confirm the existence of certain monetary tensions, shows its significant, but reversely, dependency by the dynamics of M2 monetary aggregate. Moreover, the results confirm that the respective dependent variable evolves correlated and in close dependency with variations in interest rates on bank loans and the volume of non-performing bank loans, which appear as factors generating monetary tensions.

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CRISIS EFFECTS TO INSURANCE MARKET

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This article was presented at the international conference "MONETARY, BANKING AND FINANCIAL ISSUES IN CENTRAL AND EASTERN EU MEMBER COUNTRIES: HOW CAN CENTRAL AND EASTERN EU MEMBERS OVERCOME THE CURRENT ECONOMIC CRISIS?" April 10-12, 2014, IAȘI – ROMANIA

Abstract: *The economic crisis affects all financial system components, including insurance system, which is an important component. There are three types of financial crises: currency crises, banking crises and debt crises. The term insurance crisis is, in our opinion, different in its effects from economic crises in insurance industry. Economic crisis affects the insurance industry because of the insurance integration in financial system components and their interrelations. There was a delimitation between insurance, banking and financial markets, but we see nowadays, in the context of globalization, a major interaction between these fields (bank assurance and unit-linked insurance products are just a few examples). Actual paper wants to emphasize the evolution of the Romanian and some European countries' insurance market during the recent financial crises. In this approach, we consider that the situation that characterizes the entire economy and financial system, it is also valid for insurance market and insurance system. Our research refers goal to some comparisons with the evolution of the European insurance system and market and Romania focusing the analyse on some important indicators such Insurance Density, Insurance Penetration Rate, total Growth Premium, Gross Written Premium. The effects of crisis on insurance market (life section) are highlighted through a linear regression panel data (from EUROSTAT database 2002-2010).*
Keywords: *market, insurance density, insurance penetration rate, crisis, gross written premium*
JEL Classification: G01, G22

LITERATURE REVIEW

A review of economic literature suggests that there are also multiple definitions of financial crisis and channels that influence the insurance industry and market. A reliable definition is provided by *SwissRe* that define financial crisis as "the collapse of a country's financial system with serious effects on the real economy, caused by economic imbalances and/or political uncertainty. There are three types of financial crises: currency crises, banking crises and debt crises"(Swiss Re, 2009).

During time there have been a number of disturbances in insurance markets that were named "crises" (Blundell *et al*., 2008). A first example that is, some periods characterized by the failure (or near failure) of one or a number of insurance firms, reduction in the supply of insurance and significant disruption of economic activity in the 1984–1986 in U.S. These events were called "liability insurance crisis", during which U.S. property/casualty insurers made huge losses and insolvencies became commonplace.

The collapse of the 300-year-old Lloyd's insurance market in the early 1990s provides or shortage in terrorism cover following the events of 11 September 2001 is other examples of a major disruption in the insurance industry. These types of crises are not though the subject of our enquiry.

Financial crises occurred periodically, well known being Mexico's Tequila Crisis (1994-1995, currency and banking crises), Asian Crisis (1997/1998 currency and banking crises) and The Tango Crisis – Argentina (2001/2002) .

Crisis affects all financial subsystems, but its trigger can be found in financial relations and mostly fiscal ones, (Oprea, Bilan, Stoica, 2012), including central and local levels (Oprea, 2011) and (Cigu, 2011). Crises affects public sector and its efficiency (Zugravu, Sava, 2012) with important implications on public revenues and expenditures (Fîrțescu, 2010 and Petrișor, 2012), insurance (Bențe, 2010), foreign direct investments (Martin *et al*., 2012) and capacity of absorption for European funds (Droj, 2010). In terms of human resources management practices show a poor concern for entrepreneur's for a real labor exploitation in Romania. Financial and legal factors are most difficult to overcome; as a result, the potential human is a key target for small and medium entrepreneurs (OECD, 2009).

Some recent papers (Baluch, Mutenga, Parsons, 2011) suggest the term insurance crisis, which, in our opinion is different from the effects of economic crises in insurance industry. Of course, an economic crises affects the insurance industry because of the insurance integration in financial system components (see above) and their interrelations. Even if, historically speaking, there was a delimitation between insurance, banking and financial markets, we see nowadays, in the context of globalization, a major interaction between these fields (bank assurance and unit-linked insurance products are just a few examples).

Economic literature reveals some conclusions about crisis effects on insurance. The economic impact of financial crises usually results in declines of economic output, the depreciation of currencies, increasing inflation and interest rates, and stock market crashes. During a debt crisis, defaults on government debt arises (Swiss Re, 2009). The effects of a financial crisis on an insurance market are multiple: demand for insurance drops, resulting in a decline in new business; increase in lapses of savings-oriented life insurance policies; premiums usually lag behind inflation; claims increase promptly as a result of higher prices; insurers report negative technical results. Some lessons can be learned from actual and previous crises. Insurers should take into consideration: strengthen risk management and supervision; use and understandable risk management; taken into discussion risk models and non-linearity; take heed of the lessons from agency and portfolio theory; financial conglomerates need to be supervised at the group level (Elinga and Schmeiser, 2010).

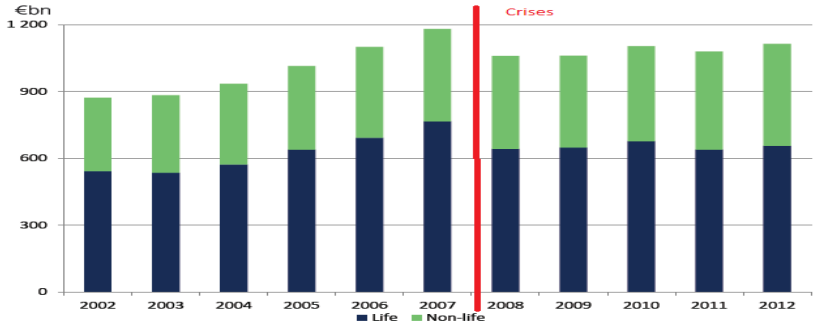
INSURANCE MARKET AND INSURANCE SYSTEM INDICATORS - EVOLUTION DURING CRISIS

In 2011, the European insurance market has 36% share of the global market followed by North America (29%) and Asia (28%), suggesting the importance of

European market insurance in the economy on all components in 2011: life insurers paid out about €615bn in benefits; non-life insurers paid out more than €305bn in claims, of which about €100bn was for motor insurance, circa €85bn for health insurance and in excess of €55bn for property insurance claims; around a quarter of EU citizens are covered by private medical insurance; European insurers had more than €7 700bn invested in the global economy, an equivalent to 55% of the GDP of the European Union; the European insurance industry employs approximately 950 000 people directly. All facts suggests that crisis in insurance market has important effects on other financial or non-financial economic sectors. In 2012, total gross written premiums in Europe grew 1.6% in 2012 to €1 114bn. In life, which accounts for almost 60% of all premiums, the declining trend of 2011 was reversed, whereas in non-life a steady increase of almost 3% is estimated. The most important markets continue to be the UK, France, Germany and Italy, which have around 70% of total life premiums in Europe. Data indicate that the European insurance industry that was eroded by the economic crisis in 2008, recovered in terms of total premiums subscribed. Total premiums increased with 2.9% (constant exchange rates) to € 1 057bn, driven mainly by the life sector, that has more than 60% of all premiums and, compared to earlier year, the total amount of premiums decreased by more than 6%. The evolution is presented in Figure 1

After a sharp decline in 2008 due to financial crisis, on the European life insurance market were expected to reach € 647 bn in 2009, which corresponds to a 4.7% increase over the previous year. After an increase of almost 3% in 2008, non-life insurance premiums decreased moderately in 2009 to € 409bn from € 417bn, being for the first time in the last decade, that from year to year growth rate of current was negative. Following the recovery of capital markets in the second half of 2012, European insurers' total investment portfolio, estimated at market value, is expected to grow from almost €7700bn in 2011 to almost €8500bn in 2012.

Figure 1 Evolution of total gross written premium life and non-life in Europe during Crisis



Source: from data in ***, Report on the Romanian Insurance market and the insurance Supervision in 2012, p.

INSURANCE CRISIS IN ROMANIA

Total gross premiums written by insurance undertakings in 2010 on both insurance categories reached 8,305,402,152 lei, down in nominal terms by 6.36% compared with the previous year, with a real rate pointed to 13.26% in real terms, considering the impact of inflation (see table 1). In 2012, gross written premiums for both non-life and life insurance amounted to an aggregated total of 8,256,914,950 lei – 434,604,998 lei more than in 2011, i.e. 5.56% up in nominal terms and 0.58% up in real terms. The Romanian insurance market still relies heavily on the motor insurance segment, given that 62.81% of gross written premiums for non-life insurance are generated in this particular insurance class.

Year	Gross written premiums	Increase in nominal terms compared with the previous year	Inflation rate	Increase in real terms compared with the previous year
	(lei)	(%)	(%)	(%)
2006	5,729,284,541	29.70	4.8	23.68
2007	7,175,789,699	25.25	6.57	17.53
2008	8,936,286,505	24.53	6.3	17.15
2009	8,869,746,957	-0.74	4.74	-5.23
2010	8,305,402,152	-6.36	7.96	-13.26
2011	7,822,309,952	-5.82	5.8	-10.98
2012	8,256,914,950	5.56	4.95	0.58

Source: ***, Report on the Romanian Insurance market and the insurance Supervision in 2012, p.9

In 2010, the gross premiums written by domestic insurance undertakings in other EU Member States were slightly higher than the gross premiums written in Romania by the branches of insurance undertakings authorized in other Member States, on the basis of the freedom of establishment (CSA, 2011). The drop in the volume of gross written premiums combined with the increase in current price GDP has led to a slight fall down in the insurance penetration rate in 2010, as shown below. All data suggest that in Romania the effects of economic crisis were strong (13% decrease in real terms in 2010 and 5% in 2009), due by influence of general economic factors, such inflation, depreciation of exchange rate, but also specific factors such the drop of insurance contracts from companies and people, the diminution of ages, income, the decrease of leasing market and so on.

The drop in the volume of gross written premiums combined with the increase in current price GDP has led to a slight fall down in the insurance penetration rate in 2010. Thus, the insurance penetration rate (the ratio between gross written premiums and GDP) was 1.62%, with 0.18% lower than in 2009. It was the first year of lower insurance penetration rate, considering that by 2010, this indicator had been on a consistent upward trend.

The insurance penetration rate, determined as the ratio between gross written premiums for non-life and life insurance and GDP, was 1.40% - 0.05 % more than in 2011. The non-life insurance penetration rate was 1.10%, - 0.05 % more than in 2011, while the life insurance penetration rate was 0.30% - the same as in 2011.

Indicator	2003	2004	2005	2006	2007	2008	2009	2010
Insurance Penetration Rate (%)	1,41	1,46	1,54	1,67	1,77	1,77	1,80	1,62
Insurance Density (lei/inhabitant)	123	160,4_	204_	265,7	332,4	415,62	413,27	387,85

Source: ***, Report on the Romanian Insurance market and the insurance Supervision in 2012, p.11

According to the data, in 2012 there were a total of 15,379,627 in force insurance contracts, compared to 2011 (15,361,480 contracts). Insurance undertakings reported 11,827,799 in force non-life insurance contracts, which mean 76.91% of total, with 64,207 non-life insurance contracts more than in 2011. Insurance undertakings also reported 3,551,828 in force life insurance contracts, which represent 23.09% of total with 46,060 life insurance contracts less than 2011. According to the data, the number of employees in Romania in 2012 was 6,230,000, of which 0.19% were employed in the insurance sector (***, *Report on the Romanian Insurance market and the insurance Supervision in 2012*, p.11-13, www.csa-isc.ro).

INFLUENCE FACTORS ON EUROPEAN LIFE INSURANCE MARKET

Methodology and Data Description

The objectives is to analyse some influence factors from life European insurance market such *Number of enterprises (line), Number of persons employed (linpe)* and *Personnel costs (lipc)* on dependent variable *Life Insurance Gross direct premiums written.*

Data used in model are from the Eurostat database (indicator sbs_5a,http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database). The equation is stated below:

ligdpw [Country, Year] = a + X(lipc, line, linpe) b + u[country], where X refers to variables.

The description of dependent and independent variables is stated in Table 1.

Table 1 Summarize of model variables

Variable	Obs	Mean	Std. Dev.	Min	Max
time	300	2006.5	2.87708	2002	2011
ligdpw	290	50.12414	55.60611	1	168
line	290	16.95862	17.37591	1	57
lipc	290	43.23793	49.05941	1	149
linpe	290	47.22759	52.64068	1	160

Regression Analyses and Results

To estimate the effects of the independent variables we run two linear regression (default standard error and robust) and two panel data regression (default standard error and robust), finding that No of enterprises and No of persons employed are statistically significant ($p<0.001$) on robust estimation data panel regression (4^{th} model in table with minimal BIC). The results are in concordance with economic theory, meaning that an increase in number of insurance enterprises and number of persons employed in insurance industry are increasing gross direct premium written. Results of the panel regression and data panel regression (set as Country, Year) are presented in Table 2.

Table 2 Results of linear regression and data panel regression

	Linear Reg~n b/se	Linear Reg~t b/se	Panel Data~n b/se	Panel Data~t b/se
LI No of enterprises	0.729***	0.729***	0.877***	0.877**
	(0.17)	(0.18)	(0.19)	(0.26)
LI Personnel costs	0.293***	0.293***	0.200*	0.200
	(0.07)	(0.08)	(0.08)	(0.10)
LI No persons empl~d	0.263***	0.263***	0.313***	0.313***
	(0.07)	(0.07)	(0.07)	(0.08)
constant	12.631**	12.631***	11.797**	11.797*
	(4.00)	(2.57)	(4.09)	(4.40)
R-sqr	0.360	0.360	0.338	0.338
dfres	286	286	258	28
BIC	3045.8	3045.8	2941.2	2935.5

* p<0.05, ** p<0.01, *** p<0.001

CONCLUSIONS

We conclude that crisis expand major risks that affects the insurers, such as: a rise in interest rates; currency devaluation; decline in property prices; the increasing of credit risk (incl. government default); fall in stock markets; higher inflation; expansion of political risk. Some influence factors as Number of enterprises, Number of persons employed analysed through linear and panel data regressions are statistically significant, an increase of these variables boosting the life insurance market.

Some lessons can be learned from actual and previous crises, that insurers should take into consideration some actions: strengthen risk management and supervision; use and understand risk management; take heed of the lessons from agency and portfolio theory; introduction of supervision to financial conglomerates that need to be supervised at the group level.

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FISCAL POLICY IN AND AFTER CRISES

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Abstract: *The general objective of this paper is to present the sustainability of fiscal policy measures in times of financial crises and after, when the economy recovers. Our aim is to provide some possible measures, lessons, recommendations and best practices that can be used in the future concrete situations. In addition, in this paper we analyze the use of fiscal tools from different doctrinal perspectives.*
Keyword: *Automatic stabilizer, Economic crisis, Taxes and benefits, Fiscal policy, Fiscal sustainability.*
JEL Classification: E32, E62, G18, H21

INTRODUCTION

The economic literature reveals two types of approaches to fiscal sustainability, the first uses econometric techniques to determine whether fiscal policy is sustainable in the past, and second, trying to assess future tax policies, analyzing projections on economic growth and fiscal policy indicators (Alesina et al., 2002).

They were born impressive debate in the literature about how countries have resorted to discretionary measures to mitigate the negative effects of the financial crisis or whether they were based on the automatic stabilizers to adjust macroeconomic. The problem is whether countries that has some weak automatic stabilizers offset by discretionary fiscal measures. This dilemma arises from the fact that economic stabilization is associated primarily with the ability to stabilize taxes and transfers income and consumption automatically given that the economy is facing a crisis period.

SPECIFIC USE OF FISCAL INSTRUMENTS

Government decision maker's reaction to economic and financial crisis was different (Hörisch, 2013; Mike, 2011), some governments prefer to prepare and

implement extensive economic incentives, others preferring restrictive fiscal policy instruments (such as Ireland and Hungary), each choosing the balance to either stimulated or inhibited.

As is known, the financial crisis has caused many shortcomings of the EU countries, the fiscal situation deteriorated dramatically in these countries. Thus, different countries have approached financial support programs (van den Noord, 2011), (so we can identify Ireland, which provided for this mechanism almost twice its GDP, other countries like United Kingdom, and Belgium have used 20-30% of GDP to support effectively the economy, and another group of countries, including Austria and Germany, whose support was actually around 10% of GDP). In addition to direct costs, there are indirect fiscal costs, which are found in deteriorating fiscal situation, and rising cost of public debt (Bénassy-Quéré and Roussellet, 2013).

For example, Greece (Monastiriotis, 2013) has made great efforts in recent years to ensure fiscal sustainability, reducing its huge budget deficit. Some of these measures were aimed at reducing public sector wages by 10% or limiting public sector employment, increase the VAT rate from 19% to 21% and then to 23% and excise duty, reduction of bonuses received by employees or retirees the introduction of new taxes on luxury goods consumption, on pensions or higher profits. Another type of measure that has promoted the Greek government was to strengthen the control of public expenditure and investments. On the other hand, the pension system has also been restructured, increasing the retirement age from 60 to 65 years to reach the target by 2015, introducing a system of penalties for those who withdraw from the labour established earlier.

Following these steps in the cascade, the budget deficit was reduced by 5% from 2009 to 2010, but growth is still not revealed. The Greek government has instituted a compulsory holiday for public sector employees who were near retirement age and took into account the flexibility of the labour market. In addition, there were still introduce other taxes on property and social benefits were cut.

All these fiscal measures have generated discomfort among citizens and political instability. But measures continued to be taken, so the payments on the public sector were reduced by 25%, while tax rates have risen by more than 20% in three years. Results tough for the government and citizens have ceased to occur, such as private sector wages declined and the unemployment tripled. So many negative effects, incoherent and too few solutions to the problems faced and are facing Greece. It is true that the budget deficit has declined, but this was not due to direct measures of public spending and taxes, but other instruments that directly targeted budget deficit and public debt, helped the state by international financial institutions.

However, the austerity measures implemented at the state level have not been beneficial for the economy of the state concerned, inhibiting investment and demand and leading to increasing unemployment and general economic conditions degradation. Thus, some authors (Monastiriotis, 2013) opined the management of this crisis of the Greek political system revealed five types of failures: failure of communication with citizens, coordination failure of parties political, negotiation failure with eurozone partners, failure to implement austerity measures and the failure of strategy. But efforts still continue in

the current context and the main target should be structural problems of the Greek economy.

The austerity measures implemented by the Government of Ireland (Hardiman and Regan, 2013) have generated positive effects on the economy, and that one of the reasons being the fact that this country has an export-oriented economy. One of the serious problems in the crisis was to recapitalize the banks, which generated an increase in public debt in GDP from 40% to 100% and even 120% in 2013. In Ireland, agreement with international financial institutions aimed at reducing the budget deficit, which reached 7.3% in 2008 and 14% in 2009 (due to the reduction of budget revenues by 20% and increase the level of public spending to 20% of GDP in this period) , but had negative effects on economic performance, the economy experienced a strong fall (between 2008 and 2011 decreased in real terms by 14.5%), which worsened living conditions for citizens and led to increasing levels of unemployment.

The crisis also influenced the economic performance of Italy (Goretti and Landi, 2013) generating an increase in unemployment (from 8.4% in 2010 to 11.4% in 2013) while indicators of public finances are out of control so the government had to intervene to reforming the pension system and improving the business environment; outside them, the Italian government has relied on the strength of automatic stabilizers, limiting discretionary measures (Dolls et al., 2012).

In addition, Slovenia (Neck *et al*., 2013) suffered greatly as a result of the financial crisis, public debt as a percentage of GDP increased from 22% in January 2009 to 54.1% in 2012.

Regarding Spain (Conde-Ruiz and Marín, 2013), one of the most important problems of this country is unemployment, whose level has reached 26 % in 2012 because the economic crisis has affected labour-intensive sectors. In addition, the fiscal crisis in Spain is mainly on the present income level due to expansion of the black economy and tax evasion and, not least, the housing bubble. The Spanish government has implemented the first phase of a series of measures expansive fiscal policy (to reduce taxes, as they were some measures on income and corporate tax , and the expansion of public expenditure types , eg local investment or to support strategic areas). In the second phase was implemented a series of fiscal consolidation measures to address the excessive deficit, which involved tax increases or creating new taxes (VAT, eliminating some deductions, etc.) and public spending cuts (reducing or freezing public sector wages, reduced public investment, limiting the granting of certain social benefits).

CONCLUSIONS

Fiscal policy is an important tool that policy-makers can use it when the economy is facing economic and financial crisis. Both types of interventions, automatic or discretionary, are effective and taken into account in public financial instruments creating packages.

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THE COMPOSITION OF PUBLIC EXPENDITURES ON ECONOMIC AFFAIRS IN CEE COUNTRIES AND ITS IMPACT ON ECONOMIC GROWTH

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Abstract: *The aim of this study is to investigate the composition of public expenditures on economic affairs for a group of CEE countries and its impact on economic growth. Even if the economic theory generally admits the positive impact of such expenditures, from the policy-making perspective the choices regarding the level and the composition of these expenditures are crucial, as these expenditures are under strong influences of a mix of political, institutional and macroeconomic factors. The existing empirical evidence does not provide clear answers to the question of which is the optimal structure for economic affairs expenditures. Using regression analysis for data over 1995-2012, we estimate the intensity of the correlations between these categories of public expenditures and economic growth. Our results show that growth is affected only by certain types of expenditures, with significant different intensities.*
Keywords: *public expenditures on economic affairs, economic growth, CEE countries*
JEL Classification: H50, O40, O52

1. INTRODUCTION

The relationship between public expenditures on economic affairs and economic growth is largely debated in the economic literature, as many countries have tried to foster the economic growth and the development of the private sector through these types of expenditures. Even if the economic theory generally admits the positive impact of such expenditures, the size and the composition of public expenditure on economic affairs is a subject of great importance in the literature, as these expenditures are under strong influences of a mix of political, institutional and macroeconomic factors.

The importance of this subject was increasing in recent years, as many governments have tried to fight against economic crisis by increasing the allocations of financial resources for these expenditures. According to European Commission (2014), since the recent economic crisis, many European countries have recorded significant

differences in the level of public expenditure for economic affairs. Romanian government spent 8.3% of GDP on economic affairs in 2007, followed by a decrease of 2.1% of GDP in 2012 (down to 6.2% of GDP). In comparison, in Slovenia, public expenditure policy options were oriented toward increased financing of social security (18.9% of GDP) and spent only 3.9% of GDP on economic affairs.

The aim of our paper is to investigate the relationship between the categories of public expenditures on economic affairs and economic growth for a group of CEE countries (Bulgaria, Hungary, Romania, Poland, Estonia, Latvia, Lithuania, Czech Republic and Slovenia). As the existing empirical evidence does not provide clear answers to the question of which is the optimal structure for economic affairs expenditures, we use regression analysis to estimate the intensity of the correlations between each category and economic growth.

Section 2 of our research provides a survey of economic literature on this issue, while the next sections (section 3 and section 4) present data and the research methodology and a discussion of the results obtained. Section 5 contains the concluding remarks and recommendations for budgetary policy.

2. LITERATURE REVIEW

This section reviews briefly the literature on public expenditure on economic affairs and economic growth.

Most of the existing studies on the relationship between public expenditure on economic affairs and economic growth have shown that growth is strongly affected only by certain types of public expenditure. Public infrastructure, communication and information systems, government-funded research and development are the most often cited examples of publicly provided goods which contribute positively to aggregate production (Carboni & Medda, 2011). Infrastructure is indispensable to achieve the main development targets in developing countries such as urbanization, industrialization, export growth and sustainable economic development (Kim, 2006).

Specific types of economic affairs expenditures are found to be significantly correlated with economic growth especially in countries depending on a few sectors of the economy. It is the case of countries relying especially on agriculture or tourism, as leading sectors of economic development. For example, a study by Mapfumo *et al.*, (2012) point out the importance of agriculture as an engine of economic growth, over the period 1980-2009, for Zimbabwe. The contribution of agriculture to economic growth was also underlined by many other studies, such as Johnston & Mellor (1961), Gould (2013) and Chang (2009).

A few studies have examined the effects of public expenditures on transport and communication and economic growth. Among them, the seminal papers of Aschauer (1991), Aschauer (2000), Easterly & Rebelo (1993), Easterly & Levine (2001), followed by many others researchers, as Nurudeend & Usman (2010), Yamamura (2011) found out that transportation spending is an important determinant of long run economic performance and infrastructure in transport and communication is consistently correlated with economic growth

On the other hand, Kustepeli *et al.,* (2008) investigated the effects of investments on highway infrastructure and the results from cointegration and causality analysis suggested a week relationship between highway transportation infrastructure, economic growth and international trade for selected countries.

The relationships between public expenditures on economic affairs and economic growth in CEE countries are only partially investigated. As far as we know, there are no studies focused only on the impact of public expenditures on economic affairs, such as agriculture, transport, communication, mining, manufacturing and construction, R&D in economic field and other economic affairs.

3. DATA AND METHODOLOGY

According to data provided by European Commission (2014), for the CEE countries analyzed, public expenditures on transport and communication was the largest category of consolidated central government expenditures on economic affairs (CGEA), equivalent to an average of 61.03% of total and 3.01% of GDP in 2012. High shares were recorded in 2012 in Poland (76.59% in CGEA, 3.6% of GDP), Czech Republic (66.70% in CGEA and 3.7% of GDP), Romania (3.39% of GDP and 64.67% in CGEA) and represented almost half of public expenditures on economic affairs in Lithuania (1.5% of GDP and 45.87% in CGEA), who has the highest share for the groups of agriculture and fuel and energy.

The next largest category was for agriculture, forestry, fishing and hunting, with an average for the CEE countries of 14.53% of in CGEA and 0.7% of GDP in 2012. The highest shares were recorded in 2012 in Lithuania (29.92% in CGEA and 1% of GDP) and Romania (19.92% in CGEA and 1.04% of GDP) and the lowest in Czech Republic (7.89% in CGEA and 0.4% of GDP) and Poland (9.84% of t TPE).

Public spending on general economic, commercial and labour affairs represented in average 14.40% of total expenditures for economic affairs and 0.7% of GDP in 2012. The governments of Latvia (30.04% in CGEA and 1.6% of GDP), Hungary (29.36% in CGEA and 1.8% of GDP) and Slovenia (20.57% in CGEA and 0.8% of GDP) spent more than the average, while Lithuania, Estonia, Czech Republic were below the average.

Spending related to coverage fuel and energy represented in 2012, in average, only 3.39% in CGEA, with the highest shares in Lithuania (10.71%), Czech Republic and Romania (6.02%) and the lowest in Bulgaria (0.08%). For the industries of mining, manufacturing and construction, the specific weights in CGEA were insignificant, with an average registered in 2012 of 0.85% for the CEE countries.

Table 1 The composition of public expenditures for economic affairs for CEE countries in 2012 (%)

Indicators/ Countries	BG	CZ	EE	LV	LT	HU	PL	RO	SI
General economic, commercial and labour affairs	16.52	8.48	7.74	30.04	3.27	29.36	6.81	6.79	20.57
Agriculture, forestry, fishing and hunting	18.29	7.89	15.27	9.70	29.92	8.36	9.84	19.92	11.55
Transport and communication	63.22	66.70	64.39	54.31	45.87	55.53	76.59	64.67	58.02
Fuel and energy	0.08	6.02	1.05	2.57	10.71	1.86	1.12	6.02	1.10
Mining, manufacturing and construction	1.13	0.64	1.03	0.81	0.78	0.62	1.50	0.72	0.37

R&D Economic affairs	:	3.07	4.52	0.02	0.00	3.06	1.23	0.5	2.90
Other expenditures	0.76	1.24	3.99	1.08	4.56	1.05	2.13	1.39	:

Source: Authors' calculations, according to data provided by European Commission, 2014

The last category is the one of R&D in the field of economic affairs, which represented in average 1.91% in CGEA in 2012, higher in Estonia (4.52% in CGEA and 0.2% of GDP) and much lower in Lithuania, Latvia and Romania.

Using a linear multiple regression we test whether public expenditures on economic affairs are associated with higher economic growth. Data for this analysis is annual and range from 1995 to 2012 for a group of CEE countries (Bulgaria, Hungary, Romania, Poland, Estonia, Latvia, Lithuania, Czech Republic and Slovenia), chosen mainly on the basis of data availability. Data for gross domestic product and public expenditures on economic affairs is drawn from European Commission (2014).

The equation is the following:

Equation (1): RGDP= C(1)*GEN +C(2)* AGR + C(3)* TRCOM + C(4)* IND + C(5)*Fuel+C(6)* R&D +C(7)* OTHER

The dependent variable is the real GDP growth rate, while the independent variables are the shares of each group of public expenditures on economic affairs in total public expenditures on economic affairs: general economic, commercial and labour affairs (GEN); agriculture, forestry, fishing and hunting (AGR); transport and communication (TRCOM); mining, manufacturing and construction (IND); fuel and energy (Fuel); research and development in economic field (R&D) and other expenditures (OTHER).

Our estimation might be affected by the composition of the panel, where each country has unique characteristics, such as cultural, political factors. Even if such factors are important for economic growth, they are difficult to measure and have not been taken into account in the present paper.

4. DISCUSSION OF RESULTS

Table 2 provides the results of testing the applicability of the multiple linear regression using the categories of public expenditure on economic affairs of a group of CEE countries for the period 1995-2012. The statistical program used is Eviews7 and the method chosen for the linear regression equation is the Pooled Least Squares method.

Table 2 Testing the applicability of the multiple linear regression model using categories of public expenditure for economic affairs in CEE countries for the period 1995-2012

Dependent variable: GDP			
Method: Pooled EGLS (Period weights)			
Period: 1995-2012			
Independent variables	Coefficients	Independent variables	Coefficients
GEN?	-0.104598* (0.023683)	Fuel?	-0.092057 (0.059815)

	[0.0000]		[0.1284]
AGR?	0.095616*** (0.053965) [0.0808]	IND?	0.126339 (0.092004) [0.1741]
TRCOM?	0.055263* (0.011343) [0.0000]	Other	-0.207851*** (0.104332) [0.0503]
R&D?	0.230343*** (0.132470) [0.0865]		
R-squared	0.163627		
Adjusted R-squared	0.090899		
S.E. of regression	4.844965		
Sum squared resid	1619.685		

*Note: In () are standard deviations of coefficients; in [] are highlighted the associated probabilities; * - statistically significant to 1%; ** - statistically significant to 5%; *** - statistically significant to 10%*
Source: own calculations in Eviews7

Table 2 provides the regression results for the disaggregated public spending variables. Looking at the R-Squared indicator, we can see that the regression explains approximately 16 percentages of the variations in real output. According to these results, not all public expenditures on economic affairs contributed to economic growth, and those who did, had slightly different contributions, over the period between 1995 and 2012. The coefficients for fuel and energy and also for industry are not statistically significant to 10% and have not been introduced in the equation.

The regression equation is the following:

Equation (2): RGDP = -0.10*GEN+0.09*AGR+0.05*TRCOM+0.23*R&D - 0.20*OTHER

We found a positive correlation between expenditures on agriculture, forestry, fishing and hunting and economic growth, respectively an increase with one percentage point of this group of expenditure increases real GDP growth rate by 0.0956 (9.56%). The result is consistent with theoretical framework and empirical findings (Mapfumo *et al.*, 2012) for other developing countries. As data from table 1 proves, this category is very important for CEE countries, counting as the second largest category in CGEA. In CEE countries they recorded a downside trend in last 20 years, as the market-based mechanisms were created in this sector. They seem to stabilize at current levels and remain very important due to the still low performance of the private agricultural sector. For example, in Romania, the share of agriculture and forestry in total expenditures on economic affairs has registered significant changes: an increase from 36.53% in 1995, to 47.10% in 1997, followed by a sharp decline to 31% in 1999 and to 19.9% in 2012. Because of their largest potential impact on economic growth, we strongly support an increase in their funding, especially on those sectors with export potential.

Another positive correlation was found for transport and communication expenditures (0.05), which is lower comparing to the coefficient found for agriculture.

Looking at the quality of infrastructure, according to The Global Competitiveness Report (Schwab, 2013, p. 432) we found not so high values for this indicator: 5.2 weighted average in 2012-2013 (1-worst, 7-best) for Estonia and Slovenia, 5.1 for Czech Republic in 2012-2013, 3.4 average value for Romania and 4 for Poland. Looking at the share for these expenditures (Table 1), we think that these expenditures were over-funded and future measures are needed to provide an optimal allocation for this sector. For example, Romania spent 64% of total expenditures on economic affairs on transport, but it ranked 106 in a sample of 148 countries and also had the last rank at European level and among the group of CEE countries. We strongly support the rule of efficiency in funding this category of public expenditures, as a solution to the budget crisis and the need for active policies for increasing economic competitiveness.

The highest positive coefficient was found for R&D expenditures (0.23) and the result is similar with other empirical findings for developing countries (Bose *et al.,* 2007). Looking one more time at Table 1, we think that R&D expenditures were underfunded over the period analyzed (less than 1% of the total expenditure for economic affairs in Latvia, Lithuania, Romania). We believe that budget policies in CEE countries should focus on significant increase in R&D expenditures, in-line with the objectives of the EU Treaty, of strengthening the scientific and technological bases of Community industry and encouraging it to became more competitive at international level (European Commission, 2006, p.4).

The relationship between other public expenditures for economic affairs and gross domestic product (GDP) has been identified as a negative one (-0.20). This category includes administration, operation or support activities relating to other industries, general and sectored economic affairs, which cannot be assigned to others categories of economic affairs. Further investigation is needed to decompose the aggregate correlation to the specific components of these expenditures.

We also found a negative correlation (-0.09) between fuel and energy expenditures and gross domestic product, but the result is not statistically significant. The results could be explained by a significant reduction in financing these public expenditures over the period analyzed for the selected CEE countries, as a response to financial crisis (Dornean, 2012). The relationship between real GDP growth rate and industry has been identified as a positive one (0.12), but it is not statistically significant. The positive correlation can be assigned to their general impact on aggregate demand.

5. CONCLUSIONS

This paper investigated the relationship between the composition of public expenditures on economic affairs and economic growth in a group of CEE countries.

Based on the model, our empirical results suggest that the category with the highest positive coefficient of correlation with economic growth is is R&D. Expenditures on transport and agriculture, forestry, fishing and hunting were found with lower positive coefficients, while for fuel, other expenditures and general economic, commercial and labour affairs, the relationships with real GDP growth rate are negative.

Based on the comparison between the composition of economic affairs expenditures and the results of regression analysis we suggest significant increases in funding agriculture and R&D expenditures, and a more efficiency- oriented funding for all expenditures, especially for transportation. In what concerns industry, public financial support in CEE countries should focus mainly on the development of the small and medium sized enterprises, due to their high potential for job creation.

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LAW

BONA FIDE PURCHASER AND THE SALE OF A PROPERTY BELONGING TO ANOTHER. QUESTIONS ON THE EVOLUTION OF JURISPRUDENCE IN THIS FIELD UNDER THE NEW CIVIL CODE

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Abstract *Unlike the previous Romanian Civil Code (1864) which did not regulate the sale of the property belonging to another, according to the evolution of the other laws on European level and on the recitals of harmonizing European regulations, the new Romanian Civil Code, which entered into force on 1 October 2011, expressly regulates in Article 1683 the institution of selling another's property, which marks a change intended to clarify the way this institution functions in the legal practice. This article discusses the way the legal practice will receive the new regulation and raises a number of questions about the vision of the bona fide purchaser who did not know about the lack of ownership of the seller and the ability to implement in these conditions the solutions provided by Article 1683 of the new Civil Code on the sale of the property belonging to another.*
Keywords *sale of property belonging to another, bona fide, jurisprudence, the new Romanian Civil Code.*

INTRODUCTION. GENERAL CONSIDERATIONS

The issue of selling the property of another arises only in the cases where a determined individual asset is alienated by a person who does not have the capacity of an owner, and in the absence of an express regulation in the previous legislation have determined the existence of certain solutions and different interpretations in doctrine and legal practice.

The absence of an express regulation regarding the institution of selling the property belonging to another in the previous Romanian Civil Code (1864), led to different opinions and controversies about its validity in the legal literature and practice. The specific regulation of the institution of selling the property belonging to another in Article 1683 of the new Civil Code marks a change in vision regarding this institution of the Romanian legislator, with the mention that although this option is commendable, it remains to be seen and analyzed the way this rule will be perceived in the legal practice

and how it will be applied (The New Romanian Civil Code – Law no. 287/2009 was published in the Official Gazette of Romania no. 511 of 24 July 2009, it was amended by Law no. 71/2011 and rectified in the Official Gazette of Romania no. 427 of 17 June 2011 and in the Official Gazette of Romania no. 489 of 8 July 2011. Law no. 287/2009 was published in the Official Gazette of Romania no. 505 of 15 July 2011– based on the Article 218 of Law no. 71/2011 for the enforcement of the Law no. 287/2009 regarding the Civil Code, published in the Official Gazette of Romania no. 409 of 10 June 2011- and rectified in the Official Gazette of Romania no. 246 of 29 April 2013).

THE SALE OF THE PROPERTY BELONGING TO ANOTHER – INTERPRETATION. THE ABSENCE OF AN EXPRESS PROVISION IN THE PREVIOUS CIVIL CODE V. THE EXPRESS REGULATION IN NEW CIVIL CODE

The one who buys an asset from a person with no ownership over it, not even apparently, will be able to invoke in his defense the principle of bona fide (good faith) which contradicts other principles of civil law: nemodat quod non habet or nemo plus juris ad alium transfere potest quam ipse habet (Codrea, 1998: 28).

In case the seller, with no capacity of an owner, does not communicate to the purchaser his capacity, his action is a deceptive action violating the principle of bona fide (Herlea, 1990: 32).

Until the implementation of the new Civil Code, in the absence of an express regulation of the institution, the solutions adopted in doctrine and practice for the issue of selling a property belonging to another were different, a distinction being made as the consent of the parties was affected by the defect or error or the conclusion of the contract was made by informed consent (Deak, 2001: 55-57; Chirică, 2008: 64-73; Dogaru, Olteanu, Săuleanu, 2009: 68-69; Macovei, 2006: 41-43; Sanilevici, Macovei, 1975: 33; Cărpenaru, Sănciulescu, Nemeș: 2009, 27-29).

Thus, when the parties, or at least the purchaser was deceived about the ownership of the seller, it was considered that the sanction of partial invalidity intervened for the vitiation of the consent by error (*error in personam*), and if the parties had known the seller's lack of ownership, although the issue is controversial, the solution promoted in theory and in practice would have been that of the absolute invalidity for the case of fraud, parties of bad-faith having the intention to produce a damage to the real owner.

In practice, the absolute invalidity of the sales-purchase contract was noted as it was held the existence of bad faith of the parties because the administered evidence showed purchaser's knowledge regarding the legal situation of the apartment in question and the fact that this apartment is in the possession and service of the plaintiff, from the date of purchase; therefore, if the sold asset is the property of another person, the contracting parties being informed, the agreement has an illicit ground, thus being void (Court of Appeal - Pitesti, Civil Decision no. 254/R/08.02.2002 in Pivniceru, Protea, 2009: 56).

A different opinion asserted that the foundation of the sales contract cancellation must start from deception because the purchaser acting in good faith, was misled by the

seller of bad faith on his capacity as owner, while others have expressed the idea that the selling of a property belonging to another would mean deception by omission or reluctance, the problem in this case being the breach of a contractual obligation namely information (Stănciulescu, 2008: 37).

A decision of the High Court of Cassation and Justice held that the sale of the property of another does not justify the application for a declaration of absolute invalidity for an illicit act because in the civil law it is not forbidden as it is neither illegal nor contrary to good morals or public order (High Court of Cassation and Justice, Civil and Intellectual Property Section, Decision no. 5801/21.10.2004 in the Journal Dreptul, no. 10, 2005: 224-225).

Prior to the implementation of the new Civil Code, if the owner drafted an action for the invalidity of the act on the grounds that the sale was made by fraud, aiming to remove the property from his ownership, as a true owner of the property, the action would be admissible (Court of Appeal – Iasi, Civil Decision no. 1201/20.10.1998 in Pivniceru, Protea, 2009: 58), on the ground that the sale made by fraud against the ownership right is a case of absolute invalidity according to the principle *fraud corrupts everything* (*fraus omnia corumpit*), a solution that can no longer be accepted in present as the new Civil Code recognizes the validity of the institution regarding the sale of a property belonging to another, speaking here about the postponement of the ownership transfer.

As a novelty, the new Civil Code expressly provides in Article 1672 among the main obligations of the seller also the obligation to transfer the ownership of the property. This changes the way we should analyze the condition required in the previous doctrine and legal practice that the seller should be the owner of the determined individual sold property, a condition which currently is not required, the seller holding the obligation to transfer the property subsequently otherwise being engaged in a contractual liability.

With regard to the provisions of the new Civil Code regarding the sale of a property belonging to another, it is considered that Article 1683 determines the ending of an era in which the sale of the property belonging to another opened a wide open field for doctrinal discussion and diverse and innovative jurisprudential solutions (Moţiu, 2011: 111).

By express regulation of the sale of property belonging to another in Article 1683 NCC, the legislature recognizes its validity and tries to eliminate the previous controversies by introducing the obligation of the seller to transfer the ownership of the determined sold individual property from its true owner to the purchaser (Gheorghiu in Baias, Chelaru Constantinovici, Macovei, 2012: 1757-1758; Boroi, Stănciulescu, 2012: 355-357; Stănciulescu, 2012: 128-130; Florescu, 2011: 36-37). Thus, he does no longer require the seller to have the capacity of ownership of the sold determined individual property at the conclusion of the sale.

If the law or the will of the parties does not indicate otherwise, the property is shifting to the purchaser at the moment of the asset acquisition by the seller or at the moment of the ratification of the sales contract by the owner, according to the obligations within the original sales contract initially concluded between the non-proprietary seller and the purchaser.

The obligation of the seller to transfer the property shall be deemed accomplished either by the seller's acquisition of the asset or by ratification of sale by the true owner or by any other means by which property of the buyer is obtained, directly or indirectly, *ie* by any means which result in obtaining the right of property by the purchaser (Dumitru in Atanasiu, Dimitriu, Dobre et al, 2011: 624).

Unlike the solution of absolute invalidity of selling the property belonging to another admitted prior to the implementation of the new Civil Code in doctrine and in legal practice for the case where both the seller and the purchaser had knowledge about the lack of seller's ownership, according to Article 1683 paragraph (4) NCC, if the seller does not provide transfer of ownership to the purchaser, termination of the contract may be requested and, as a consequence, the refund of the price paid by the buyer, and, where appropriate, the recovery of damages may be requested.

WHAT WILL THE PROCEEDING BE IN PRACTICE IN CASE A BONA FIDE PURCHASER IS MISLED BY THE SELLER?

Both on the level of interpretations in doctrine and the way in which it will be proceed in legal practice, the question arises on to the solution to be applied in case of a bona fide purchaser who does not know the fact that the seller is not the true owner and who was misled about the ownership of the seller, being led to believe that the seller is the true owner.

Different opinions have already been expressed, although there are no specific solutions in legal practice to confirm a direction of interpretation. On the one hand it was considered that in this case, in the case of the seller's failure to transfer the real ownership from the owner to the purchaser, the purchaser cannot request cancellation of the sales contract only its termination (Dumitru in Atanasiu, Dimitriu, Dobre et al, 2011: 624), although we believe that this solution is questionable as the provisions of Article 1683 paragraph (4) NCC become applicable only to the assumption that both parties knew about the seller's lack of ownership, the buyer was informed in this regard and agreed on postponing the transfer of ownership.

On the other hand there is the interpretation according to which, in this case, the solution admitted until the implementation of the new Civil Code will be applied, ie the solution of partial invalidity for vitiating the consent of the buyer by error regarding the seller's capacity of ownership (Dobrilă, 2014: 286).

To be entitled to seek the partial invalidity of the sales contract under these conditions, according to Article 1208 NCC the error shall not be forgivable, because the sales contract cannot be canceled by the fact that in certain circumstances the error was known, by reasonable diligence, by the purchaser. Furthermore, according to Article 1211 NCC it is necessary the invocation of the error to be made by the bona fide purchaser, and not contrary to the requirements of good faith.

Bona fide requires the obligation of the purchaser to make all the necessary verifications on the capacity of the seller's ownership, including documents that the seller uses to justify in his right. Bona fide is based not only on the existence of the capacity but also on the demanding verification of the capacity of the owner to remove any doubt

about the validity of the capacity of the seller and according to this, we can determine whether his diligence were likely to prevent him ending up in an error (Cîrstea, 2011; Court of Appeal – Constanta, Civil Section, minors and family, labor disputes and social security, Civil Decision no. 13/C/18.01.2010 in Jurindex).

According to the roman definition, "bona fide is the consciousness, the sincere belief of a person who believes an asset belongs to him" (*Bona fides est illaessa putantis rem suam esse*). Thus, the significance of our behavior centered on trust (*fides*) must be sought in good faith (Ciucă, 2009: 23).

When selling the property belonging to another, the place of bona fide is between the false faith (ignorance) in a certain state of facts, faith that is strong enough to be conclusive for both parties or at least for one of them and the misleading appearance, which sincerely convinces everyone or almost everyone. Anyway the foundation of bona fide cannot be constituted by the indifference or lack of action to verify the consistency between the state of facts and the law (Cotea, 2007: 425-426).

SELLING THE PROPERTY BELONGING TO ANOTHER – THE POSSIBILITY TO HOLD LIABLE A PERSON FOR THE OFFENCE OF DECEPTION

In the legal practice, in terms of criminal responsibility, the selling property belonging to another is relevant also under the terms of deception offence, governed by Article 244 of the new Criminal Code, regulated in the chapter of crimes committed against property by disregarding the trust, which means that in certain situations transition may occur from the sphere of civil law in the sphere of criminal law.

The demarcation between criminal and civil liability is unclear traced, and this is reflected in the legal practice which found a way to solve such problems but not in all cases (Pătulea, 2003: 119).

The deception offense is held in those situations where the seller, without the capacity of ownership for the property sold, misleads the purchaser in concluding the sales contract, that is when the seller falsely presents the real situation and misleads the purchaser about his capacity as owner, presenting himself as the real owner of the property in order to arrogate to himself or to another an unjust property or when this brings damages to the purchaser (Dobrilă, 2014: 289-297; Dobrilă, 2011: 281-293).

Regarding the existence of the deception offense in certain cases of selling the property belonging to another (Bogdan, 1999: 115; Ciucă, 1990: 29; Diaconescu, 1990: 28), it is considered that by falsely asserting that the seller is the real owner of the property sold is a deception because induces the purchaser a false representation of reality (Jakab, Halcu, 2005: 251; Bocşan, Bogdan, 1999: 50).

Although the institution of selling the property belonging to another is allowed and expressly regulated in the new Civil Code, the possibility of admitting the existence of the deception offence for certain situations where there is a sale of property belonging to another refers not to the institute itself, but to those cases in which there is the intent to deceive through this operation, ie when the bona fide purchaser is misled by the seller.

CONCLUSIONS

The new Civil Code comes to correct the lack of an express provision of the institution of selling the property belonging to another, which have led to solutions and different interpretations in doctrine and legal practice prior to the implementation of this code.

Although the new Civil Code marks a change of vision regarding this institution, in that it acknowledges its validity, it remains to be seen the way this institution will be perceived and how it applies in legal practice, taking into account that not all the aspects (*eg* the bona fide purchaser misled by the seller) were clarified. Although on the level of legal literature certain views were expressed on issues that are still unclear, the solutions from the legal practice (missing for now) are the ones that will come to confirm a direction of interpretation.

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APPROACHES ON THE LEGAL NATURE OF THE OFFENSE PROVIDED BY ARTICLE 200 FROM THE NEW ROMANIAN CRIMINAL CODE: MURDER OR INJURY OF THE NEWBORN COMMITED BY THE MOTHER

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Abstract: *The current article approaches the issue of the judicial classifying specific to the criminality norm provided by art. 200 of the New Romanian Criminal Code, analyzing the options and following the consequences, produced by adopting each one of these, in correlation to some institutions regulated in the general section of the Criminal Code, that is the participation or the prescription. The analyzed criminality norm gives expression, without any doubt, to a manifestation of mitigating type in the criminal policy of the current Romanian lawmaker, comparing the incrimination norms from which it derives, that is murder, respectively the basic crimes against the body integrity or of the physical health of a person. However, there are many ways and means available to the lawmaker, in which it is possible to express this mitigating tendency and each one of these determines a different impact on some general institutions of the Criminal Law, which this current article analyzes by means of particularization to the hypothesis of the incrimination of murder or injury of the newborn, committed by the mother.*
Keywords: *art. 200 Romanian Criminal Law; the infanticide or the injury of the newborn by the mother; mitigation; judicial nature; implications on some general institutions of the Romanian Criminal Law.*

AN OVERVIEW ON THE REGULATION EVOLUTION: FROM THE PREVIOUS CRIMINAL CODE TO THE NEW ROMANIAN CRIMINAL CODE

On February 1, 2014, the legal system in Romania has experienced the annulation, after more than four decades of activity, of the Criminal Code from 1968 (applicable since January 1, 1969), the latter being replaced by a new Criminal Code enacted in 2009 (Law no. 286/2009). Among partial transformations that tend to characterize the new general criminal law in Romania (which was meant to be - something even announced in its Statement of reasons - a synthesis between the aspects of local normative tradition in criminal matters and the new aspects of novelty, from which, many of them were intended to be influenced by modern reference legislations

from other states), we may also include the incrimination from article 200, with the *nomen juris:* "Murder or injury the newborn committed by the mother".

The regulation from the first paragraph of the article perpetuates, with some changes, the former incrimination contained in art. 177 of the former Criminal Code, called "Infanticide", maintaining as a main characterizing line, the mitigation criminal policy, in relation to the incrimination of murder (art. 188 Criminal Code in force; art. 174 former Criminal Code), aspect revealed by the substantial gap between the penalties prescribed by law as a consequence of committing these crimes. The second paragraph marks a new aspect, tending, in principle, to appropriately design this mitigating attitude of the legislator (in circumstances similar to those in par. 1, to be described below) also on other incriminated offenses, namely some of the activities which affect the physical integrity or health, provided in their basic forms in art.193-195 from the current Romanian Criminal Code, which the former regulation did not provide. In order to operate any mitigation under such circumstances, the former code allowed only the possibility of the court to seek the institution of the voluntary general mitigating circumstances, which did not provide, however, in a general manner, the mitigation. As we shall reveal in more detail below, this latter mitigating trend, which we appreciate to have led to the provision of art.200, par.2 from the Criminal Code in force, did not find (unfortunately), a comprehensive form of expression, thus leading to a discordant niche of the regulation, which enhances the controversy on the legal nature of the legal provision analysed here.

Under a strictly evolutionary, technical aspect, we advise the reader to focus, firstly, on the terms of the regulations we have already mentioned, contained in the former, as well as in the current Romanian Criminal Code.

Thus, while the art.174 of the former Criminal Code incriminated, with the side note "Murder", the act of killing a human (of intentionally suppress his life), providing for it the main punishment of 10 to 20 years of prison and an additional penalty (mandatory) consisting of the interdiction of certain rights (among those indicated by art. 64 of the former code), the two following articles (175 and 176) governed the aggravated forms of this offense, under the names of "aggravated murder" (a kind of "first-degree murder") and "extremely aggravated murder", sanctioning them with more severe main abstract punishments (imprisonment for 15 to 25 years for first-degree murder, and alternative punishment - either life imprisonment or imprisonment from 15 to 25 years - for extremely aggravated murder). In principle, the commission of an act of suppression of the life of a very young child (known within the universal criminal doctrine as *infanticide*), was legally framed at least as a form of first-degree murder, for such a victim always represented "a person who lacks the capacity to defend itself" (as provided in art. 175 par. 1 letter *d* from the former Romanian Criminal Code).

However, to this legal qualification it was extracted the offense committed on a newborn child, by its own mother, if the murder happened in a relatively short time after birth (although the law did not determine the exact extent of this time, it was only stated that the offense had to be committed "immediately after birth"), and if, in addition, the offender committed the offense under the control of a mental disorder caused by the act of birth; this offense was provided in a separate text, art. 177 of the former Criminal

Code, titled (in a *mot-a-mot* translation) "Infanticide" ("Filicide") – the Romanian term being "Pruncucidere" – and was provided with a much lower penalty than murder (in its basic form and - *a fortiori* – its aggravated forms), namely imprisonment from 2-7 years without the requirement for an additional penalty. In addition, while the offense of attempted murder (simple, first-degree or extremely aggravated) was incriminated and therefore punishable (according to par. 2 of art. 174, 175 and 176 of the former Criminal Code), such a provision was not also found within art. 177 (from which it came out that, in conjunction with the provision of art. 21 par. 1 of the former Criminal Code, the attempted filicide, though possible, did not have, in itself, a criminal relevance).

This separate regulation, with the differences thus highlighted with respect to murder, of the filicide (which was not accompanied, symmetrically, by a norm of a mitigating nature corresponding to the mother, who under the same circumstances would have only caused an intentional or praeter-intentional touch or injury of her child or newborn physical integrity or health), led to discussions in doctrine and practice on the correct framing of the filicide legal nature. The main views were that of assessing the act as a stand-alone offense, distinct from that of murder, as a variant or autonomous species of homicide, namely that of its consideration as a mitigated form of murder, dependent on the standard offense from art. 174 of the Criminal Code (for a more detailed exposure and review of the controversial opinions expressed on the legal nature of filicide in the former Romanian criminal doctrine - which can be considered to remain valid, at least in part, also for the future - see: Dunea , 2007: 203 and the following ones). This latter view has become, over time, of a major importance, showing itself more rational with respect to the impact triggered by its adoption on some general institutions of criminal law (especially the one of participation), as well as by correlation to the incrimination goal.

In short: adopting the view according to which the filicide was an autonomous crime with respect to murder would have led to the reference of the eventual participants contribution towards the offense (instigators, accomplices, co-authors) as being participants to filicide, not murder, and therefore the punishment should have been applied also to them, a lower one than that of murder, provided in art.177 of the former Criminal Code. The purpose of the regulation, however, was to sanction less severely (only) the person who had murdered the newborn baby under a momentary impulse of a condition that caused a reduction (but not a complete disappearance) of discernment, as a specific effect of the physiological act of birth (issue that had to be proven, mainly by a forensic specialized expertise), for this person appeared to be less dangerous to society, because of the specific conditions which influenced her while manifesting her criminal impulse. However, this person could not be other than the woman who had just given birth; the potential participants to the offense, along with this one, could not share with her the diminished discernment due to a specific event just them, nor did they benefit, thus, from the legal presumption of a decreased degree of social danger, comparing to that of any other person who would intentionally suppress the life of a human being. As such, it was logical for them to be denied the access to lower penalty (specific to filicide), the mitigation brought by its governing being determined by a situation of a (strictly) personal circumstantial element value, non-objectifiable, and - as such – non-transferable on the participants, no matter if they had known or had foreseen it! (Michinici & Dunea

in: Toader *et al.*, 2014: 128, 129). Or, a proprer solution could be achieved only if filicide was regarded as a mitigated form of murder, mitigation motivated by purely personal circumstance, in which only the victim's mother could be found, so that her offense was framed according to art. 177 of the former Criminal Code, as a murder derived form, by means of mitigation, and any other participant contributions were to be classified within the basic offense (murder) from which it was derived the filicide (more exactly, not within simple murder, but - at least – within the first-degree one, that is within another derived form of the basic crime, but with derivation in the sense of criminal liability aggravation).

Formally, the solution was also supported in terms of legislative technique employed: if aggravated forms of murder were not regulated (as with other incriminations), even in the same article (in separate paragraphs) in which it was provided the offense in its basic standard content, but in separate articles (and relatively different marginal names), then it would appear symmetrically that a form derived by mitigation from the same incriminating basis should be regulated separately, in another article, even under an own *nomen juris,* without however losing the addiction to the standard crime from which it derived; moreover, the incrimination of all these forms / versions of murder, was done in a single organizational structure of the special part of the former Criminal Code: Title II, Chapter I, Section 1.

The criminal irrelevance of the filicide attempt (possible, but non-incriminated, so devoided of the ability to generate, by itself, punishment), while the simple murder attempt and its aggravated forms were criminally relevant, we don't think to have altered the operational nature of the opinion according to which the filicide represented a mitigated form of murder, whereas it is not needed a symmetry of incrimination in this regard. A mitigated form of an offense to which is incriminated the attempt for the basic form, as well as for the aggravating ones, may not know its regulation itself, precisely because, being mitigated - therefore carrier of a lower hazard - it is possible that, in the opinion and criminal policy option of the legislator, to appreciate that the criminal repression is not justified unless the result of the mitigated offense occurs effectively, and not if the execution act is conducted without an objective finality. Questionable might be the hypothesis of an aggravated form of an offense, for which the attempt would not be provided and sanctioned, although for the standard form, the legislator would incriminate it; in case of the mitigated form, however, a similar reasoning can no longer be carried out with the same success!

For these reasons, we believe that within the regulation of the former Criminal Code it could have been argued, pertinently from a logico-rational point of view, but also a formal-structural one, the proper legal nature of filicide, as mitigated form of murder, derived from / dependent on it.

The new Criminal Code has operated in this area a number of changes, both terminological and structural, as well as in terms of content, which raises some additional difficulties in further support of the same solution. Thus, it was added a dimension aiming at the mitigated incrimination not only of the mother's act, who, within the context and moments already indicated generically, murders her newborn baby, but also that of the mother, who under the same circumstances, hurts him or causes injury of his

physical integrity or health, or causes his death praeter-intentionally (by an exceeded intention) – intentionally acting only in the sense of hurting or injuring the victim, its death occurring as a more severe result, imputable on the basis of o lower form of guilt than intent, namely, any form of negligence. Bringing together these two aspects of incrimination in a single article (article 200 of the Criminal Code), the legislator also located this regulation within a different organizational structure of the special part of the code - namely Chapter III ("Crimes committed against a family member") from Title I ("Crimes against the person") - than the one within which murder is found - Chapter I ("Crimes against life") from the same title – respectively than the one within which are provided the basic (and aggravated) forms of the crimes of common assault, physical injury and assault or injuries causing death – Chapter II ("Crimes against physical integrity or health") of Title I.

There are also some content changes (in par. 1) brought against the former incrimination of filicide, but these do not constitute the primary object of the present study, so that we intend, in order to facilitate the reader's task, to indicate below the form in which it is stipulated, of *lege lata*, the Article 200 of the Romanian Criminal Code in force:

"(1) *The murder of the newborn baby immediately after birth, but no later than 24 hours, committed by the mother in a state of mental disorder, shall be punished with imprisonment of one to five years. (2) If the offenses stipulated in art. 193-195* [namely, some of the crimes against physical integrity or health – *our specification*] *are committed on the newborn child immediately after birth, but no later than 24 hours, by the mother found in a state of mental disorder, the special limits of the penalty shall be of one month, respectively, three years*. "

CRITICAL ANALYSIS OF SOME QUESTIONABLE ISSUES OF THE REGULATION FROM ART.200 OF THE ROMANIAN CRIMINAL CODE IN FORCE

As indicated before, the new legislator framed the incrimination of the offense of newborn murder or injury committed by the mother in another article organizational group than the one in which are found the incrimination rules from which it was started, obviously, the drawing-up of the incrimination contained in art.200, namely murder and offenses under art.193-195 of the Criminal Code. Under these circumstances, to further assert that we're dealing with a mitigated form of an offense with a basic content (as we noticed before, a thing that represented the dominant view regarding filicide, according to the former code), becomes a more difficult thing to do because, on one hand, the heterogeneity of the regulation from art.200 of the Criminal Code breaks the unity of derivation from a single standard incrimination (talking about a link with several separate offenses) and, on another hand, because a normal legislative technique, meant to raise no artificial interpretation problems of an incriminating rule's legal nature, should not (could not) frame the mitigated form (but dependent on the standard form) of a basic crime, in another organizational group of incriminating rules than the one to which belongs the standard offense itself from which the derivation was made (in this case, by mitigation).

In light of these considerations, it would seem that the legislative technique selected for the drafting of art.200 of the new Romanian Criminal Code, revives a controversy apparently solved (or which it was about to be solved) to the contrary of the previous criminal regulation, supplementing the arguments focused on a formal criteria that would support the idea that we are in presence of a stand-alone incrimination, which can be explained as a manifestation of mitigated criminal policy in relation to the offenses of murder, common assault, personal injury or bodily injury causing death, but with no need to double this explanation by the actual qualification of the rule from art.200 of the Criminal Code as a mitigated form of these crimes / offences.

The consequent result (but unsatisfactory) of such interpretative vision would be that the role and contribution brought to the commission of such offense by the participants, other than the mentally disturbed mother, would have to be also reported to the incrimination of art.200 from the Criminal Code, thus becoming incidents also for such persons, the penalties provided by this latter article, in principle lower than those established for the offenses indicated above (thus, according to art.188, for simple murder, the new Criminal Code provides imprisonment from 10 to 20 years and interdiction of certain rights – namely, those provided by art.66 of the Penal Code; art.189 sets for the aggravated murder the alternative sanction: life imprisonment or imprisonment from 15 to 25 years and prohibition of certain rights; art.200 par. 1 provides only imprisonment from 1-5 years without interdiction of certain rights; art.193 par.1 has for common assault, in its basic form, the alternative sanction of imprisonment from 3 months to 2 years or a fine; par.2 sets for aggravated assault the alternative sanction of imprisonment from 6 months to 5 years or a fine; in art. 194 par. 1, for simple bodily injury it is provided the imprisonment from 2-7 years; in par.2 for aggravated bodily injury, the sanction is imprisonment from 3-10 years; art.195 provides for bodily injury causing death a punishment from 6-12 years in prison; while in art.200 par. 2 it is provided for any of these offenses, committed by mentally disturbed mother of the newborn, on it, in the first 24 hours after birth, a unique punishment consisting of imprisonment from 1 month to 3 years). Or, as we said before, the purpose of the provision from art.200 of Criminal Code (which we appreciate to have remained identical with the one having determined the mitigation of the criminal liability for filicide, in regard with murder, within the former Criminal Code), is to exert a lower repression towards a certain active subject with a diminished discernment (due or at least related to the biologic event of birth), being incidental a special circumstance of a strictly personal mitigation, thing that continues to exclude, logically, any other participant to the commission of such an offense, except the mother, from the benefice of mitigation!

Thus, we believe that the rule of art. 200 of the new Criminal Code highlights an interpretative conflict generated by a tension (even opposition) between the formal systematization of the norm - on one hand - and understanding or applying it to the spirit and the purpose for which it was created - on the other hand (in other words, it is shown a form of the classic conflict between the interpretation of the law done in its *letter* and that done in its *spirit*) - which of course, is criticisable as an exercise of legislative technique and has the ability to lead to non-unitary solutions in the judicial practice (as a result of

misunderstandings and confusion that could thus create while understanding the role, purpose and position of the incrimination text).

Despite these new challenges, the doctrine analysing the provisions of the new Criminal Code, published so far, seems to prevail (and thus to perpetuate the view – which was dominant in the former regulation - on the legal nature of filicide) the point of view according to which the regulation from art. 200 of the Criminal Code devotes mitigated forms (therefore, legally dependent of the respective basic offenses) of the offenses of murder, assault and battery, injury or bodily injury causing death. It is true that this idea is not always expressly and clearly stated as such (in some cases, the issue is not even the subject of an actual conscious analysis), the author's attitude in the matter being often deduced from indirect or generic formulations towards the mitigated nature of the sanctioning treatment imposed in art.200 in relation to the one prescribed in art.188, 189, 193-195 of the Criminal Code, or from the solutions envisaged to the issue of legal classification of criminal activities of participants in committing the offense, or by noting that within art.200 it is not established, *per se*, an own constitutive content, typical of autonomous offense. (Bogdan et al., 2014: 67-69; Neagu in Pascu et al., 2014: 78-84; Toader et al., 2014: 350, 351; Udroiu & Constantinescu, 2014: 277; Morosanu in Voicu et al., 2014: 319).

Sometimes, the lack of concern and direct approach to the problem of the legal nature of the incrimination from art.200 of the Criminal Code leads, within the same specialty papers, to self-contradictory formulations, that properly highlights the uncertainty (in this respect) of the regulation, as well as the interpretative counterproductive uncertainty generated even by the legislator. Thus, for example, although from the overall of some exposures, it would come out the adherence to the opinion of the dependant legal nature on other incriminations of art.200 provisions of the Criminal Code. - as a common framework for the mitigated forms of the offenses mentioned in the respective legal text - it is also asserted that "the offense [of art.200 of the Criminal Code. – *our specification*] is regulated, according to the result produced, in a standard variant and in a mitigated one" afferent to paragraph 1, paragraph 2 respectively. (Neagu, in Pascu et al., 2014: 79). Or, obviously, it is impossible for one and the same incrimination rule to combine two opposing legal natures, being also a mitigated form of another offense **(**thus, being dependent and subsequent to the fulfilment of the basic constitutive content of an incrimination rule), as well as standard form (thus an autonomous, standalone offense) in relation to another provision, that would represent, at its turn, the mitigated form of the first one. In addition, the reasoning regarding the provision of paragraph 2 of art.200 from the Criminal Code as a mitigated form of the provision of par.1 of the same article, improperly ignores the observation of a logical rule which must stand, as it is natural, at the foundation of the normative process of developing a mitigated form of a crime, namely the fact that the derivation through mitigation can be only made by starting from the essential elements of the standard constitutive elements of a basic incrimination. However, it must be mentioned the fact that the constitutive elements of the offenses described at par. 2 of art. 200 of the Criminal Code do not derive from the constitutive elements of the offense described in

par. 1, so the assessment that we are in the presence of an incrimination unit, showing a standard form and a mitigated form thereof, is - in our opinion - unsustainable.

It must olso be mentioned, moreover, also as an objectionable aspect of the regulation of art.200 from the Criminal Code, the lack of consistency in relation to sanctioning murder, injury and batteries or bodily injury causing death - on one hand - and respectively to the battery or other violence - on the other hand. Thus, while the abstract sentence for killing the newborn by the mother, as described in art.200 of the Criminal Code, is clearly reduced compared to the one provided for murder (simple and - even more – first-degree), mitigating aspect that is still maintained with respect to the newborn's injury by the mother, in relation to the incriminations of art.194 and 195 of the Criminal Code, this is not necessarily the same for the newborn's injury by its mother by simply assaulting him or exerting other violent acts causing physical suffering. Thus, as we have indicated, the legal punishment for common assault (art.193 par.1) is an alternative: imprisonment from 3 months to 2 years or a fine. According to art.200 par. 2, however, imprisonment in this case, is to be situated between the limits: 1 month - 3 years. Passing over the circumstance that it does not come out clearly from the formulation of art.200 par. 2 (in conjunction with the rule of art.193 of the Criminal Code) if it remains or not valid the sanctioning alternative of the criminal fine in the case of committing battery or other violence under the conditions indicated by art.200 - what must, however, be highlighted, also as a flaw of the new provision, likely to generate contradictory interpretations - it is to note that the special limits of the imprisonment punishment are derived asymmetrically against the reference standard: the minimum is lower (which proves a tendency to manifest a mitigation criminal policy, consistent with the rest of the sanctioning attitude from the analyzed article), while the maximum is increased (which transmits an inexplicable and contradictory trend to manifest an aggravating criminal policy, found in disagreement with the very purpose of the incrimination concerned).

Regarding the comparison betwen the penalty provided in art.200 par.2 of the Criminal Code and the one indicated by art.193 par.2 (aggravated assault), both of the special limits of imprisonment are lower in the first case (which maintains a consistent attitude of mitigation), but we're facing again the problem of maintenance or suppression of the alternative penalty of the fine, without which, it recurs also in this case an aggravating centrifuge trend, discordant in relation to the general construction of the article. These major regulating inconsistencies increase the dilemma of the correct legal qualification of the incrimination rule of art.200 from the Criminal Code, diminishing thus the success of its argumentation as a mitigated form of the offenses mentioned within the text, although the purpose of its appreciation in this manner, in comparison to the purpose of the legal provision and to the institution of criminal participation, is not at all undermined.

Another correlation aspect with general criminal law institutions, that might be influenced by the adoption of some of the legal qualifications in question, which can be attributed to the provision from art.200 of the Romanian Criminal Code, is the one related to the institution of criminal liability temporal limitation. Thus, according to the provision of art.153 par.2 letter *b*) Criminal Code, as an exception to the rule of criminal liability

prescriptibility of most offenses, it is provided that (along with genocide, crimes against humanity and crimes of war) are imprescriptible the crimes referred to in art.188 and 189 and the deliberate offenses followed by death of the victim, namely the offenses of murder and first-degree murder, respectively praeter-intentional crimes (committed with exceeded intention) that led to death. It is questionable to what extent the legal classification of art. 200 of the Criminal Code may or may not partially draw the incrimination of this text within the domain of the imprescriptible criminal offenses.

We believe that the discussion tends to refer only to the issue regarding the newborn murder committed by the mother (art.200 par.1), because as for the incrimination of the newborn injury by the mother (art.200 par.2) things seem to be clear. Thus, as long as the scope of art.200 par.2 of the Criminal Code is attracted to the commission of one of the offenses described in art. 193 or 194 of the Criminal Code, the rule of the criminal liability prescriptibility would be applicable, without doubt. Conversely, if the application of art. 200 par. 2 of the Criminal Code is attracted to an assault or bodily injury causing death, then we would be in a case of imprescriptible crime, under the final provision of art. 153 par. 2 letter *b*) from the Criminal Code, which generically provides its incidence under the hypothesis of commission of any intentional crime followed by death of the victim. In these circumstances, we can appreciate that the interpretation direction concerning the incrimination from art. 200 par. 1 from the Criminal Code as representing an autonomous incrimination, self-reliant by reference to murder, would lead to the idea that the offense in question is not imprescriptible (so it is prescriptable) because it is not covered by the restrictive indication contained in art. 153 par. 2 of the Criminal Code. (provision with a purely circumstantial scope, being a provision of exception from the rule, thus subject to universal imperative in criminal law: *restringenda sunt strictissime interpretationis*). It is true that the same conclusion could be reached as a result of accreditating the opinion according to which the newborn murder offense committed by the mother is a mitigated form of murder, but considering in such manner the legal qualification of the rule in question, we believe that it is possible to glimpse also an interpretative result, namely the classifying of the offense as being imprescriptable. This, because the text of art. 154 par. 2 letter *b*) Criminal Code expressly refers to art. 188 and 189 of the Criminal Code - true - but what else is the newborn murder by the mother (in this interpretation) but a form derived from art. 188, dependent on its legal qualification of the latter? Moreover, we may notice that when the legislator specifically intended that the offense falling under art. 200 par. 1 of the Criminal Code should not follow the legal regime and should not have the same legal consequences as the ones of the offence from which it derived, namely murder (in its basic form - art. 188 - or first-degree / aggravated thereof - art. 189, or even partly, art. 199 of the Criminal Code, etc.), he felt the need to emphasize this in particular. For instance, according to art. 242 of Law no. 187/2012, of implementing the new Criminal Code, it is expressly provided that **"**In applying the provisions of art. 189 par. 1 letter *e*) from the Criminal Code [according to which a first-degree murder is the one committed "by a person who has previously committed an offense of murder or attempted murder offense" – *our specification*], *an offense of murder previously committed* is any act of killing a person,

committed with the intent provided by art.16 par.3 of the Criminal Code, except offenses referred to in art.190 and art.200 of the Criminal Code".

So, through a quasi-extensive interpretation (and - it's true - *in mala partem*) of the provision which enshrines the cases of exceptional criminal liability imprescriptibility (which we may admit that is not perfectly consistent with the interpretation technique and policy generally accepted in criminal law, yet being the result of a logical reasoning!), we might consider that the best chance to integrate the incrimination from art. 200 par. 1 of the Criminal Code within the imprescriptable offenses category comes from the direction of its legal qualification as a mitigated form of murder, rather than from the one of its opinion as an autonomous offense.

In order to weight criticism (partly justified) that might rise towards the issues developed, one wonders what would be the logic and consistency of a legislation that would lead to appreciation as being imprescriptable of a less serius offense – from a related species of criminal offenses - as common assault or injury causing death of the newborn committed by the mentally disturbed mother immediately after birth (within 24 hours) - an act committed with exceeded intent - but without integrating within the category of imprescriptable offenses, a more severe offense from the same species, as it is the newborn murder committed by the mother, under the same conditions (therefore an offense committed with an pure intention to surpress life)? We believe that the obvious response emphasizes in a sufficient manner the rhetorical nature of the questioning and properly supports, (also) from this angle of perception of the problem, our opinion that, despite the syncopes of the current regulation, the proper legal nature through which it should be regarded, *de lege lata*, the rule of art. 200 of the Criminal Code, is the one of mitigated form of murder (par. 1), respectively mitigated form, as appropriate, of the offenses from art. 193-195 of the Criminal Code. (par. 2).

As it was said, the circumstance that the attempt is not criminally relevant to any of the offenses covered by the provisions of art. 200 of the Penal Code, although it is incriminated for murder and for the aggravated form of bodily injury, is not in itself an argument to directly support the view that the newborn murder or injury committed by the mother is an autonomous incrimination, and there is no element of automatic denial of the opinion that the text focuses on the mitigated forms of other crimes, when considering a purely personal circumstantial element, equally relevant as a mitigating factor of the social dangerousness of all these crimes, in their basic content. It is in fact the lower weight of this social dangerousness that may be the reason why the legislator considered that only the consumed form of these offenses is able to appeal criminal liability, being granted a criminal relevance! Therefore, if upon the newborn is only attempted an act of murder, by the active subject, especially circumstancied and under the conditions expressly indicated in art. 200 par. 1 from the Criminal Code, such as the newborn did not die, suffering only one of the specific results of the offenses indicated at art. 193 or 194 from the Criminal Code, the lack of criminal relevance of the attempt thus committed shall lead to the incidence retention of art. 200 par. 2 from the Criminal Code (Neagu, in Pascu et al, 2014:84). To the extent in which the attempt in question did not cause such a consequence, the offense shall not be able to generate criminal liability at all.

PRECISE CONCLUSIONS AND *DE LEGE FERENDA* PROPOSAL

As it comes out from the issues presented to this point, the entry into force of the new Romanian Criminal Code has revived and perpetuated an old controversy (which - partially – within the last period of activity of the former criminal regulation seemed to be outdated), concerning the legal qualification of incriminating the newborn murder or injury committed by the mother. The dissenting opinions that circulated troughout the doctrine - namely: the evaluation of the provision in question as a mitigated form of other crimes, to which it remains dependent, or on the contrary, its perception as an autonomous incrimination, distinct (detached) from those generating it - has the ability to achieve some distinct solutions to the problem of the manner and results of the correlation of this incriminating criminal rule with some general institutions of criminal law, such as participation and prescription.

One may notice that, in matters pertaining to form, manner and place of settlement, the new code tends to accredit more than the previous one the view of this act as a self-reliant offense. On the other hand, a consistent and coherent approach to the statutory provision in question, in terms of a logico-rational, systematic interpretation (by reference to the effect on some general criminal law institutions) and teleological interpretation (considering the scope of regulation), rather support the variant of art. 200 as a mitigated form of other offenses (murder, common assault or other violence, injury, bodily injury causing death).

The main antagonism between these two interpretative variants is capable of generating confusion in interpreting and applying the law, thus, having become unpredictable / unforeseeble, dangerous aspect and - therefore - objectionable, especially since it is accompanied by unacceptable inconsistencies in regulation, as the dissidence from the projection of penal policy generally mitigating of the text, that is imposed by the correlation of the penalty referred to in art. 200 par. 2 to the one shown in art. 193 of the Criminal Code, for the crime of common assault or other battery. The reason for this latter inconsistency we believe to be represented by the extremely broad scope of consequences (and, correspondingly, by the exessive plateau of social dangerousness) which the provision of art. 200 par. 2 of the Criminal Code tries to group under the category of a unitary abstract penalty. Thus, if the alternative of the criminal fine is, of course, outrageous (socially speaking) and with no real reeducational support, in the event of common assault or injury causing death of the newborn by the mother, it is certain the fact that the lack of this alternative, or the special maximum which is superior to the common assault, is not justified when common assault offense is committed by an active subject and in curcumstances that, within the other hypothesis of the same regulation, are evaluated as mitigating sources, and not of aggravation of the criminal liability.

In these circumstances, the accreditation of the idea that art. 200 of the Criminal Code is rather a framework for mitigated forms of other crimes, than an autonomous incrimination, is from our point of view, a compromise solution, more rational and functional than its alternative (self-reliant incrimination), but still imperfect, given the regulatory manner. In other words, a kind of lesser evil, chosen in competition with a

greater evil, which of course is a solution which, scientifically, leaves much to be desired!

The solution we propose to the legislator would be, observing a third possible alternative found at its disposal (in general), to express by special criminal law rules a mitigating attitude of criminal policy (alternative which he should choose to the detriment of the two already presented in this matter). It's about building a special cause to diminish the sentence. This would mean the complete abandonment of the idea of the criminal autonomy of the newborn murder or injury committed by the mother, leaving the legal qualification of the offenses committed to achieve, as appropriate, as murder, common assault or other battery, injury, bodily injury causing the death (or domestic violence - art. 199 of the Criminal Code - but in an mitigated form, though, by an express stipulation, it might be removed from the incidence of that text the offenses described at art. 200, especially since the legal nature of the rule in art. 199 of the Criminal Code tends to be controversial, acting - in our opinion - rather as a particular cause for aggravation, than as a stand-alone offense or as a common container for the aggravated forms, on a certain basis, of the same crimes, already indicated in this framework), to which it would simply be added the special mitigated provision, of mitigation of the legal punishment (in principle, as a fraction or percentage of statutory penalty for each basic incrimination, from those to which reference is made).

Thus, without doubt, the activities of the participants who do not check the reason of the mitigation would relate to the respective underlying offense (or, eventually, to its qualified derivation) without the benefit of the special and strictly personal cause of mitigation, which benefits only to the active subject especially indicated in the mitigating rule. Also, no doubt could arise over the imprescriptibility of the newborn murder by the mother, removing the irrationality (which it was already indicated) of a strict interpretation (which is correct, however, methodologically speaking) of art. 153 of the Criminal Code, in conjunction with art.200 par.1 of the Criminal Code (in its current form), by comparison with the result of correlating art.153 with art.200 final part of par. 2. Eventually, if the legislator would seek to extract some of the offenses committed in such circumstances from the category of imprescriptible crimes, he should expressly stipulate an exception from the reference to the praeter-intentioned offenses with fatal outcome, included *de lege lata* at the end of art. 153 par. 2 letter *b*) Criminal Code.

In addition, the mitigation may be achieved also in the situation indicated at par. 2 by separate reference to each of the standard incriminations, so as to cover the inconsistency according to which in some cases the commission of the offense under the special conditions described at art. 200 has a mitigating value, and in other cases, it does not (on the contrary, it has - at least partially – an aggravating value).

The only drawback that we glimpse regarding the solution thus proposed would be that, in the absence of an express provision regarding the incrimination of the attempted murder of the newborn commited by it’s mentaly troubled mother, this act would follow the regime of standard reference incriminations, which would mean that the murder attempt of the newborn by the mother, as provided by law, and the injury attempt of the newborn (under the same conditions), aimed to produce one of the consequences provided by art. 194 par. 1 letter *a*)-*c*) from the Criminal Code, would become criminally

relevant as well. If this isn't the legislator's will, we consider that a simple express provision on the contrary, attached to the norm including the reason of the penalty's mitigation, would be sufficient in order to maintain, under this aspect, the present situation.

Foreseeing - we believe - more benefits than drawbacks, of the solution proposed, it might be legitimately raised the question concerning the reason for which it is not appreciated, including *de lege lata*, that the text of art. 200 of the Romanian Criminal Code does not actually express such a special case of reducing the sentence, so that the forwarded proposal become operational without the need for any modifying legislative intervention. The doctrine already stated that one of the novelties of the new criminal encodings is that it is provided at art. 200 "par. 2 a special cause of reducing the penalty for the offenses of common assault or other battery, injury or bodily injury causing death committed over the newborn child, but not later than 24 hours after birth, by the mother found in a state of mental disorder" (although in relation to the provisions in par. 1, the authors in question have appreciated that the law establishes, in fact, an attenuated form of murder). (Udroiu & Constantinescu, 2014: 277)

Unfortunately, the general theoretical criteria to accurately differentiate three possible ways (already mentioned) by which the criminal legislator could express, through special criminal rules, the mitigating criminal policy option, have not yet been detected with sufficient precision in the doctrine, as they are still part of a relative indeterminacy in the criminal law theory, awaiting a clearer configuration in the future. However, through the observation of some rules that are presented with certainty as having the legal nature of special mitigating causes (*e.g.* art. 411 of the Criminal Code, having an explicit *nomen juris*: "causes of sentence reduction" in relation to offenses against national security), we may conclude that the rule writing style and the manner of determining the sanction are the main differentiating characteristic features.

Thus, a particular cause for reduction a sentence refers to the incriminations in relation to which it operates, states the element in the consideration and presence of which it becomes incident (without resuming practically the exposure of the incrimination, by describing its constituent content), and specifies the mitigation extent, basically as a fraction or percentage of the penalty provided by law for the offense / offenses to which it works. These items are not present as such in the formulation of art. 200 of the Romanian Criminal Code. Thus, in par. 1 the formulation tends to describe the offense itself, as it commonly performed the creation of an autonomous incrimination, and the punishment limits are determined directly and not derivatively, being only the result of a comparative assessment of the interpreter that they are lower than the ones provided for murder (and for first-degree murder and – the more so - for domestic violence). The wording of par. 2 tends to begin in a style closer to the specific wording of a special cause of a sentence reduction, firstly, making generic reference to certain incrimination rules, then specifying the mitigation element, but the manner of determining the abstract sentence (also directly) as well as the fluctuations between the decrease and increase of the represion, by reference to various penalties provided by law for the offenses to which reference is made, do not satisfy, at their turn, the apreciation

that right now the text of art.200 from the Romanian Criminal Code could be legitimely interpreted as representing a special cause (*per se*) of penalty reduction.

Therefore, we propose to the legislator the adoption of the above mentioned solution in the matter of the newborn murder or injury offense committed by the mother, given the advantages present by it, towards the analyzed alternatives. In this regard, we believe that a simple adjustment of the formulation of the text would be sufficient, of the type (of course, perfectible): "If the murder offenses, or the ones provided in the art.193-195 are committed on the newborn child immediately after birth, but no later than 24 hours, by the mother found in a state of mental disorder, the special limits of the penalty are reduced by...", afterwards following a percentage or a fraction assessed as appropriate.

At the same time, to avoid the potential confusions able to be shaped concerning the criminal liability, in relation to art.200 of the Criminal Code, we propose the legislator an intervention to expressly clarify this issue, according to its actual criminal policy option. Thus, to the extent that there are no aims at integrating any of the offenses covered by this legal text within imprescriptible crimes, we believe that the legislator should expressly exclude from the final reference contained in art.153 par.2 letter *b*) Criminal Code, the offense of common assault or injury causing death committed by a mentally disturbed mother, on her newborn child, in the first 24 hours after birth. Such a provision, in conjunction with explicit mentioning in the beginning of the text of art.153 par.2 letter *b*) Criminal Code, only of the offenses provided by art.188 and 189 of the Criminal Code, and not of the murder described in art.200 par.1, would transmit with sufficient clarity and predictability the message that none of the criminal offenses committed so as to receive legal qualification in art.200 of the Criminal Code, are not imprescriptible (in other words, that they are, in their entirety, prescriptible). A formulation of the text that would satisfy this requirement of clarity could be: "*The prescription does not remove the criminal liability in the case of (...) the offenses referred to in art. 188 and 189 and of the intentional crimes followed by death of the victim, except in art. 200 par. 2 / or / except newborn common assault or bodily injury, causing death, committed by the mother* "(of course, the proposed wording is certainly perfectible).

However, contrarily, if the lawmaker's will is that of integrating among the imprescriptible crimes, along side murder, the murder or bodily injury causing death to the newborn, committed by the mother (together with all the provisions indicated by art. 200 Criminal Law), then we mind that there is an express provision in this sense, which completes the current one from art.153 l.2 letter *b*) Criminal Code and would be pertinent and not redundant, because – as we already showed – an interpretation of the norm of *lex lata*, in this sense, cannot be achieved, but with great difficulty and with the price of some sensitive, disputable and hard to assume interpretative tricks and deviations from the generally accepted rules of the reasonable and equilibrated endeavor of judicial interpretation!

In any case, maintaining the text's current wording, art.153 l. 2 letter *b*) Criminal Law, in conjunction with the particular situation of the incriminating provisions of art. 200 Criminal Law, is in our opinion profoundly dissatisfactory, because – as we already

have mentioned above – a strict interpretation of *lex lata* leads to the inacceptable conclusion that the less, praeter-intentional crime against the newborn's life, committed by the psychically troubled mother, is imprescriptible, in comparison with its aggravated crime, of intentional killing of the child, which in the same conditions, would remain prescriptible. *Ubi cessat ratio legis, ibi cessat lex!*

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THE SOCIAL CONSEQUENCES OF THE LEGAL REGIME OF ABORTION: A COMPARATIVE VIEW

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Abstract: *In this paper, we will analyse the legal regimes of abortion, in different period of times and in different countries, as we try to reveal the influence of a certain legal regime of abortion in people's lives, as well as at social and legal level. Unlike other aspects closely connected to humans, the abortion issue has known a very wide range of legal regimes. In ancient times, people tolerated abortion, and sometimes considered that abortion was necessary. The rise of Christianity has brought the idea that the fetus must be valued, therefore abortion was banned. The 20th century knows the emergence of some social and ideological movements, such as feminism, which claimed that the regime of abortion must be liberalized. These movements, along with the change of social mentalities, have lead to the liberalization of abortion. The landmark of the liberalization of abortion in western societies is thought to be the decision ruled by the Supreme Court of the United States of America in the case Roe v. Wade, in 1973. Since then, many states adopted a liberal regime of abortion. As regards the social consequences of the different ways to regulate abortion, it was proved that a severe prohibition of abortion leads to an increased number of illegal abortions, often with negative consequences on the pregnant women. Due to this fact, we believe that the liberal regime of abortion is the right choice, because it offers real solutions to people's problems concerning abortion.*
Keywords: *Abortion, Christianity, feminism, 20th century, social context.*

1. DEFINING THE ISSUE

The legal status of abortion is different than the legal status of other human actions. The difference comes from the fact that, unlike other human activities, which have an obvious antisocial character, abortion has an intricate moral regime. This lack of a consensus on the moral status of abortion generated an extraordinary variety of legal forms in regulating abortion. Each state has tried to find the best way to deal with abortion, according to the general context of a specific country, taking into account political, and economic, social or religious factors. Abortion issue has some specific features, which made it possible to appear a wide range of legal solutions, unlike other domains closely related to humans. For example, in what concerns the act of murder, countries unanimously drastically sanction such an act. But, when it comes to abortion, legislations have significant differences. Thus, it is extremely interesting to analyse the

differences, but also the similarities of the legal regime of abortion around the world; the interest of such a comparative analysis consists in finding a better way to understand the abortion issue, therefore in finding solutions to the existing problems surrounding abortion. It is also useful to analyse the effect of the legal regimes of abortion in people's lives; this way we can observe which of the legal regimes of abortion have been improving people's lives or, contrary, have been deepening the problems that the abortion issue has already brought in people's lives.

Usually, law is meant to solve the problems which people are confronting with and to organize society, in order to improve people's lives. Our researches on the abortion issue, however, revealed that, as concerns the abortion problem, the situation is different than other issues. Sometimes, the legislation on abortion, instead of making life easier for people, actually deepened or created problems. Often, the abortion policies have become a trademark for a certain period of time or for a certain political regime. Often, the legislation on abortion was just a way to implement a certain political view, regardless of people's real needs. In this paper, we will analyse the legal regimes of abortion, in different period of times and in different countries. Our goal is to reveal the influence of a certain legal regime of abortion in people's lives, as well as in the dynamic course of social evolution.

In order to achieve our goal, we will follow the two major directions in the legal regulations on abortion: the restrictive regime of abortion and the liberal regime of abortion. We will take into account the context which favored one or another type of legislation, as we try to reveal the social consequences of the legal regimes of abortion.

2. THE RESTRICTIVE REGIME OF ABORTION

2.1 The context that generated the expression of restrictions in regulating abortion

The legal restrictions on abortion are not as old as we might think. Actually, in ancient times, it seems that people tolerated abortion and sometimes considered abortion a necessary procedure, although regrettable [1]. Actually, we can identify some factors which generated the evolution of the severe regimes in regulating abortion. These factors are: religion, ideological or political interests, and demographic reasons. Although abortion has been the subject for intense philosophical debates, we cannot identify a direct link between philosophical views on abortion and the legal regime of abortion. Rather, philosophy has been a place where different authors have tried to justify the religious or the political view. Often, in philosophy, a certain view on abortion was rather a premise, and not a conclusion [2]. This is why, in discussing the sources for the legal restrictions of abortion, we choose to analyse the three elements presented above. In the following lines we will point out the role of these elements in shaping legislation on abortion.

2.2 Severe legislations on abortion based on religious ground

The emergence of Christianity brought in the rise of the social awareness towards the value of the unborn child and, therefore, the tendency to ban abortion. Going further on this attitude, the Catholic Church imposed a highly severe regime of abortion, since the 19th century, when Pope Pius the 9th established that abortion must be forbidden in all circumstances, as being the equivalent of a murder [3]. In the countries where Catholicism was a major religion, the legal regime of abortion was influenced by the religious view. As a consequence, in many legislation systems, abortion has been banned. Today, in most countries that have a severe legal regime of abortion legislation is heavily influenced by religion. The countries which have the most radical view in terms of banning abortion are those influenced by the Catholic Church. For example, in Vatican, Chile, El Salvador, Malta, Nicaragua, abortion is prohibited in all circumstances, even if abortion would have been necessary to save the life of the pregnant woman [4].

Other countries, also under the influence of the Catholic Church, allow abortion only in very few circumstances, usually when the life of the pregnant woman is endangered, when pregnancy is the result of a rape or of incest, or when the fetus has severe abnormalities. The majority of states in Latin America have such a regime of abortion [4].

In a rather tolerant Europe, there are still some countries with a severe regime of abortion. This is the case in Ireland and Poland. In Ireland, although abortion is banned, the Constitution provides that women have the right to go abroad and have an abortion in another country [5]. It is a strange solution, which proves that the will to maintain an ideology, even an obsolete one, can be stronger than a state's duty to protect its own citizens. It turns out that, in what concerns abortion, often ideology came first, and legislation did not accomplish its basic mission, which is to create a better background for the full development of people.

It is important to mention that, in some countries where abortion is severely restricted, it seems that authorities silently tolerate the practice of illegal abortions. For example, in Brazil, although legislation forbids abortion in almost all circumstances, there are some procedural requirements in order to sanction abortion, which are hard to be fulfilled. These requirements consist, among other, in proving that there was a pregnancy in progress, when the abortion was performed. But the evidence for a pregnancy is hard to pursue, because women who undergo abortion procedures are also punished for having an abortion. Therefore, no woman is willing to undergo a medical examination, in order to reveal that she had been pregnant. As a consequence, a very small number of persons are actually condemned for performing illegal abortions [4].

2.3 Severe legislations on abortion based on ideological or political ground

As we have already shown before, abortion policies were used in order to promote the official political views. For example, in Nazi Germany, the legal regime of abortion was different, depending on the category of population it was directed to. For native Germans, abortion was prohibited, in order to preserve the purity of the 'superior' race, and also to create human combatants, in view of the future war. As concerns the Judaic population, abortion was largely permitted. Even more, abortion was compulsory for

Jewish people in certain circumstances. This ideology took extreme forms and, in order to promote abortion for Judaic people, some Nazi thinkers even claimed that the maternal instinct was not real; therefore the decision to have an abortion should not emotionally affect women [6].

The example above proves that abortion policies have been used as a tool to promote certain ideologies. The specific nature of the abortion issue allowed a kind of adaptation of views regarding abortion, according to the political and ideological interests. The reason for such a versatility of the abortion issue is the fact that people had and still have many questions about what happens during pregnancy. Even today, in spite of the great development of the medical sciences, there are still many questions about how human life begins. Maybe some questions will always remain without answer, as far as we accept that life is a miracle that transcends reason. Due to this nature of the abortion matter, there were enough empty spaces, which different theories tried to fill up, offering possible explanations. This offered the base for creating theories that sustained certain ideologies.

2.4 Severe legislations on abortion based on demographic reasons

But restrictions on abortion were not always connected to the religious view on abortion, and sometimes they had other explanations, for example the demographic needs. In the 20th century, in a Europe preparing for war, an increased number of military forces were needed. Especially after World War I, as Europe prepared for World War II, the legislators in different countries grew in understanding the implications of the abortion policies in shaping the military forces [6].

In Romania, the Decree nr.770/1966 introduced an extremely severe regime of abortion, mainly for demographic reasons. Before this Decree, a tolerant legislation on abortion coexisted with a dramatic decrease of population (although not necessary linked to the liberal regime of abortion) [7].

3. THE LIBERAL REGIME OF ABORTION

At one point, this biased attitude towards abortion could no longer stand, as society began to shift its attitude, and became more open in accepting reality instead of fake appearances. Although, as we have shown before, liberalization of abortion is not a modern concept, in the 20th Century the question of liberalization of abortion would be raised again, after centuries of domination of the anti-abortion ideologies.

The raise of the pro-abortion movements in the 20th century is closely linked to the feminist movement, which gradually grew in claiming that women must have the right to decide over the opportunity to have an abortion. After being ignored for a long time, the inextricable link between the abortion issue and women became more and more acclaimed, and so was the idea that women must have the right to choose to have an abortion, if that was their will [8].

At the same time, society became aware of the fact that, despite being illegal, abortion occurred in many cases, sometimes with fatal effects on the pregnant woman.

For example, the death of Gerri Santoro, as a result of an illegal abortion, generated intense debates in the United States of America over the liberalization of abortion [9].

All these changes in social mentalities evolved simultaneously with the affirmation of human rights. In the struggle to identify and to define the content of the human rights, people wondered if women had the right to have an abortion or whether the fetus had the right to be born.

Although there are still many questions today, it is certain that the last decades have brought a liberalization of abortion unknown before. The landmark of the liberalization of abortion in western societies is the decision ruled by the Supreme Court of the United States of America in the case Roe v. Wade. Through this decision, the door was opened for a liberal legislation of abortion, as it was ruled that abortion was available by simple request, until the fetus became viable [10].

The consequences at the social level were significant. Feminists considered this a victory, which encouraged other claims of the feminist movement and of generally of all women. This helped women to gain rights in different fields, where they began to have roles previously recognised only to men, such as the leading positions in private and public institutions.

Today, many countries have a liberal regime of abortion. Still, the degree of permissibility knows great variations from country to country. Thus, some countries allow abortion by simple request, up to a certain age of pregnancy (for example, Romania, Germany, France, Italy, Russia, South Africa, Tunisia). Other countries, although they actually widely allow abortion, require the fulfillment of some conditions; still, in many cases, these conditions can be widely interpreted, so they include almost every conceivable situation (for example, Great Britain, Hungary, Israel, Australia, Japan) [4].

4. CONCLUSIONS ON THE SOCIAL CONSEQUENCES OF THE LEGAL REGIMES OF ABORTION

Generally, a severe legislation on abortion creates the premise for a large number of illegal abortions. The illegal abortion procedures are performed, in almost all circumstances, by unqualified persons, in unhealthy conditions. It results that the legal prohibition of abortion puts the health and the life of the pregnant women at great risk. Often, this risk is materialised, when the illegal abortion procedures lead to severe injuries of the pregnant woman or even to her death.

Overall, we believe that severe restrictions on abortion have a negative social effect. History has proved that abortion has been a constant practice in human society, no matter how severe the legislation on abortion has been. Thus, banning abortion alone cannot lead to the decrease in the number of abortions. If nothing else changes in the society, women who face an unwanted pregnancy would choose to have an abortion. In order to prevent a woman from having an abortion, legislators would rather take measures to promote the use of contraceptive methods and, simultaneously, encourage people to freely want to have children. As economic factors are often very important in

taking the decision to have children, legislators should pay attention to the economic element.

An indirect effect of a certain legal regime of abortion is the raise of social awareness towards the consequences of that regime. In other words, one of the effects is actually the experience gained in understanding whether that way to regulate abortion is good or bad. Regarding this aspect, we can say that the world has known all possible legal regimes of abortion. In some cases, great variations of legislation on abortion occurred in the same country, along the time, for example in Romania. States must learn from their own history of regulating abortion, but also from other countries' experience.
Due to the fact that the severe regimes of abortion had so many negative effects, as we have shown above, we believe that the liberal regime of abortion is the right choice, because it brings solutions to people's real problems concerning abortion.

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PRELIMINARY OBSERVATIONS ON CYBERCRIME, CYBERSECURITY AND NATIONAL SECURITY

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Abstract: *The draft law on Romania's cybersecurity has given birth to much debate. In order to stress a number of issues, the author presents concepts such as cybercrime, cybersecurity and national security, their significance/trends, their relationships and how they stem from internal regulations and activity reports of competent organisms in the field.*
Keywords: *cybercrime, cybersecurity, national security.*

1. GENERAL OBSERVATIONS

As we have already indicated (Sandu, F., Ioniță G.-I., 2005: 265) (Ioniță G.-I., 2011: 9), the "computerization" of social life and perpetrators' increased technical skills have led to the occurrence (or grafting of "classic" criminal elements) of a new form of criminality in general, cybercrime, which developed and diversified invading increasingly all sectors of activity.

Due to the size of this phenomenon, authorities have raised the issue of whether it is a threat to Romania's national security and, since the answer was positive, Romania's Cybersecurity Strategy was drafted, followed by the promotion of a Draft Law on Romania's cybersecurity, which led to much debate.

2. THE CONCEPT AND TRENDS OF CYBERCRIME

2.1 The concept of „cybercrime"

A. Romania's Cybercrime Strategy (SCND, 2013) define cybercrime as (art. 3) all the acts stipulated by the criminal law or any other special laws which represent a social danger and which are carried out willingly through or against cyberstructues.

B. The Draft Law on Romania's cybersecurity (CoD, 2014) (the initial version), the definition of "cybercrime" seems to have been taken (under art.5 point 5) from Romania's Cybersecurity Strategy (art. 3) because, in the Advisory opinion on this draft law (LC, 2014), at point 6, the Legislative Council specified that the definition of "cybercrime" considers the essential features of the crime, as stipulated in the 1968 Criminal Code, and not the definition set through the provisions of art.15 of the new Criminal Code (Law no.286/2009). At any rate, in the version adopted by the Chamber of Deputies and sent to the Senate, the definition of cybercrime is no longer included.

2.2 Cybercrime trends

According to Directorate for Investigating Organized Crime and Terrorism (DIOCT, 2014: 63-66), the concrete analysis of solved cases also confirmed for the year 2013 a statistically growing trend; thus, it was noted that:

- the number of files remaining from the previous years has grown (1784 files in 2013 as compared to 1602 files in 2012), just like the number of new files (1836 files in 2013 as compared to 1521 files in 2012).
- the number of solved files has grown (1121 files in 2013, as compared to 852 files in 2012), simultaneously with the number of indictments (173 indictments in 2013 as compared to 168 in 2012) and the number of convicted persons (373 defendants in 2013 as compared to 351 defendants in 2012).

From among the important files solved by Directorate for Investigating Organized Crime and Terrorism in 2013, here are some of the most relevant (DIOCT, 2014: 67-74).

A. In file no. 100/D/P/2011 of the Territorial Bureau of Sibiu, under the indictment, arraignment was decided for 54 defendants (out of whom 13 in remand) for acts of setting up, adhering to or supporting, under any form, an organized criminal group as stipulated at art. 7 of Law no. 39/2003, fraud with particularly serious consequences in continued form, as stipulated at art. 215 paragraphs 1, 2, 3, 5 of the Criminal Code with enforcement of art. 41 paragraph 2 of the Criminal Code, electronic fraud in continued from, as stipulated at art.48 of Law no.161/2003.

The defendants were part of a group organized in order to obtain financial benefits from misleading several damaged parties, money transfer units within banking institutions, supermarkets and other companies, by having the employees thereof enter incorrect data in the money transfer applications. Thus, the defendants contacted employees of the damaged parties under a false identity and pretending to be calling from the bank headquarters and, under the false pretense of system trials, asked them to operate money transfers onto the names of persons especially recruited to this end. Subsequent to the operations and after the transaction code was obtained, it was sent by SMS to other members of the group, who, against a fee, withdrew quickly the amounts from the accounts where they had been transferred in order to avoid the transaction being blocked. In some cases, the group members sent electronic messages to employees' professional emails, whereby they were informed that "simulations" were to take place

for the system, and they also specified a phone number which was previously identified by defendants by deviating the call to the mobile phone number used by them in jail.

The damage created following these acts was estimated to RON 154,600 and EUR 235,000, while the amount of damaged goods was RON 180,000.

The file was referred for settlement to the Court of Prahova.

B. In file no.89/D/P/2010 of the Territorial Bureau of Maramureş, under the indictment, arraignment was decided for a defendant who committed the crimes stipulated at art.48 and art.49 of law 161/2003, both with enforcement of art.41 paragraph 2 of the Criminal Code, art.290 of the Criminal Code, with enforcement of art. 41 paragraph 2 of the Criminal Code, art. 29 paragraph 1 letters a and b of Law 656/2002 (money laundry), art.246 of the Criminal Code with reference to art.258 of the Criminal Code, all with the enforcement of art. 33 letter a of the Criminal Code.

The defendant, an employee of B.C.R. Branch from Şomcuta Mare, Maramureş County, damaged over 30 natural persons and legal entities (customers of the bank) through the electronic system used, then used the amounts so as to obscure their origin through investments in the construction of a building.

The total damage due to these criminal acts was estimated to RON 1,114,492.03, EUR 55,350 and USD 495, and in order to recover this amount, insuring measures were established on the defendant's movables and immovable properties.

The file was referred for settlement to the Court of Maramureş.

C. In file no.64/D/P/2011 of the Territorial Bureau Craiova, under the indictment, arraignment was decided for 23 defendants for committing crimes stipulated at art. 7 paragraph (1), with reference to art.2 letter b points 14 and 18 of Law 39/2003; art.25 of the Criminal Code with reference to art.42 paragraphs (1), (2) and (3) of Law 161/2003 with reference to art.41 paragraph 2 of the Criminal Code; art.26 of the Criminal Code with reference to art.49 of Law 161/2003, with enforcement of art.41 paragraph (2) of the Criminal Code; art.27 of Law no.365/2002 with enforcement of art.41 paragraph (2) of the Criminal Code; art.26 of the Criminal Code with reference to art.215 paragraphs (1), (2), (3) and (5) of the Criminal Code with enforcement of art.41 paragraph (2) of the Criminal Code; art.293 paragraph (1) 2nd thesis and paragraph (2) of the Criminal Code and art.29 paragraph (1) letters a and b of Law 656/2002.

It was noted that, in the period 2006-2011, the defendants organized a criminal group which operated in a coordinated manner in order to commit several serious crimes on the territory of Romania, the USA, England and Canada, committing crimes such as electronic fraud, unauthorized access to computer systems, money laundry, and false identity. More precisely, a network was organized and specialized in fraudulent Internet transactions which estranged important amounts from people mostly of American, British and Canadian citizenship. The group members used false documents (IDs, passports, driving licenses, false diploma degrees) which they provided to accomplices in order to withdraw money. The amounts obtained from these crimes were used to buy movables and immovables, but they were also divided among several persons in order to obscure their origin.

The total damage due to the defendants' criminal activity was estimated to RON 858,088 and in order to recover it, the measure of distraint was decided upon some movables and immovables.

The file was referred for settlement to the Court of Gorj.

3. THE CONCEPT AND SIGNIFICANCE OF CYBERSECURITY

A. Romania's Cybersecurity Strategy (SCND, 2013) defined cybersecurity (art. 3) as the normality condition resulting from the enforcement of a proactive and reactive set of measures which ensure the confidentiality, integrity, availability, authenticity and non repudiation of information in electronic format, of public or private resources and services from cyberspace.

In this context (SCND, 2013), proactive and reactive measures (which are applied in order to ensure normality) may include policies, concepts, standards and guides of security, risk management, training and awareness activities, the implementation of technical solutions for the protection of cyber infrastructures, identity management, consequence management.

The need to adopt the Cybersecurity Strategy, as presented in the Substantiation Note to Government Decision no. 271/2013 (on the approval of the enforcement thereof) (GoR, 2014a), is represented by:

- setting the conceptual, organizational framework necessary to ensure cybersecurity;
- developing the national risk management abilities in the field of cybersecurity and reaction to cyber incidents under a National Program;
- promoting and strengthening the security culture in the cyber field;
- developing international cooperation in the field of cybersecurity.

In a synthesis (MoFA, 2014), Romania's Cybersecurity Strategy presents the main objectives, principles and directions for the awareness, prevention and fight of threats, weak points and risks related to Romania's cybersecurity and for the promotion of domestic interests, values and objectives in cyberspace.

B. The Draft Law on Romania's cybersecurity (CoD, 2014) takes over (art.5) the definition of cybersecurity (including observations on proactive and reactive measures) from Romania's Cybersecurity Strategy (art. 3).

This normative draft (CoD, 2014) stipulates (art. 4) that cybersecurity aims:

- to create the resilience of cyber infrastructures;
- to increase the ability to react to cyber incidents and to diminish their impact on the resources and services of cyber infrastructures;
- to ensure the protection of data managed through cyber infrastructures;
- to ensure the trust necessary to develop the information society and business environment in cyberspace;
- to ensure equal and non discriminating access of persons to public information and services provided through cyber infrastructures;
- participative, democratic and efficient governance of cyberspace;

- to make cyber infrastructure owners aware of the need to ensure cybersecurity;
- to ensure the climate necessary to exert people's fundamental rights and freedoms in cyberspace.

It also mentions [art.3 paragraph (1)] (CoD, 2014) activities which ensure cybersecurity, namely:

- knowing, preventing and fighting threats and attacks, and diminishing the weak points of cyber infrastructures for the purpose of managing risks related to the security thereof;
- preventing and fighting cybercrime;
- cyber protection.

4. THE CONCEPT AND SIGNIFICANCE OF NATIONAL SECURITY

A. Romania's National Security Strategy (SCND, 2007) mentions (in its first sentence), the significance of national security, namely that it:

- represents the fundamental condition for the existence of the Romanian nation and State (as well as a fundamental objective of government)
- refers to national values, interests and objectives.

In the same context (SCND, 2007), it has been stressed that national security:

- is an imprescriptible right which derives from complete sovereignty of the people;
- relies on constitutional order;
- occurs in the context of the European construction, Euro Atlantic cooperation and global evolutions.

As for the measures/activities which ensure national security, the following are specified (SCND, 2007):

- appropriate political, economic, diplomatic, social, legal, educational, administrative and military measures;
- the activity of information, counter information and security;
- efficient crisis management (in compliance with the conduct norms of the European and Euro Atlantic community and the provisions of international law).

B. Law no.51/1991 on Romania's national security (PoR, 2014) defines Romania's national security (art. 1) as the condition of lawfulness, balance and social, economic and political stability necessary for the existence and development of the Romanian national state as a sovereign, unitary, independent and indivisible state, the conservation of order, as well as the climate favorable to the exertion of citizens' fundamental rights, freedoms and duties, according to the democratic principles and norms stipulated in the Constitution.

This normative act (PoR, 2014) also mentions (art. 2):

- the measures which ensure national security, namely the awareness, prevention and removal of internal or external threats which may impact the fundamental values specified in the definition of national security;
- the moral duty to contribute to the organization of national security which all Romanian citizens have as an expression of their loyalty to the country.

5. THE RELATIONSHIP BETWEEN CYBERCRIME, CYBERSECURITY AND NATIONAL SECURITY

A. The Explanatory memorandum (GoR, 2014b) to the Draft Law on Romania's cybersecurity stipulate that:

- cyber threat is among the most dynamic threats to national security (as indicated by the recent evolution of cyber-attacks in our country)
- cybercrime prevention is an essential element which contribute to cybersecurity, an essential component of Romania's national security (as specified by the representatives of the Public ministry - Directorate for Investigating Organized Crime and Terrorism and those of the Ministry of Internal Affairs – General Inspectorate of Romanian Police).

The Draft Law on Romania's cybersecurity (CoD, 2014) stipulates [art. 3 paragraph (1)] that cybersecurity:

- is a component of Romania's national security;
- is also conducted through the prevention of cybercrime.

In the same context (CoD, 2014), the draft of the same normative act [art. 3 paragraph (2)], specifies that:

- cybercrime is prevented under the terms of Law no. 161/2003;
- cybercrime is prevented by judicial bodies under the terms of the criminal legislation.

B. The Substantiation Note to Government Decision no. 271/2013 (GoR, 2014a) stipulates that, given the unprecedented development of information technologies and information society, cyberspace has (gradually) developed into an environment for the promotion and strengthening of conventional threats to national security and cyber attacks against national information and communication systems.

C. It has been noted (SCND, 2007: 4) that Romania's Cybersecurity Strategy aims (among others) to achieve information and electronic security.

This strategy has mentioned (SCND, 2007: 12) that information or electronic aggressions:

- are new, asymmetric threats;
- tend to increase in terms of dangers and occurrence likelihood;
- can seriously affect the security of Romanian citizens, the Romanian state or the organizations of which Romania is part.

It has also been mentioned (SCND, 2007: 37-38) that national security includes, structurally, the security of information and communication systems.

It has also been noted (SCND, 2007: 40) that, for individual safety, the security of communities and of the business environment to reach European standards, special endeavors are necessary to fight activities which endanger, among others, the safety of information and telecommunication networks.

6. CONCLUSIONS

The importance of cybersecurity is obvious given the unprecedented development of information technology and the society's increasingly high dependence on technology.

It is also clear that, mentioned in the Draft Law on Romania's cybersecurity [art. 3 paragraph (1)], cybersecurity is a component of Romania's national security and it is also achieved by fighting cybercrime.

In exchange, the meaning granted to such concepts is debatable, just like the manner in which the initiators of the Draft Law on Romania's cybersecurity have understood to approach this issue because, unfortunately, cybersecurity can turn into "cyber espionage" (Manolea, B., 2014).

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CONSIDERATIONS ON CORPORATE CRIMINAL LIABILITY

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Abstract: *The current article deals with a concept recently introduced in the Romanian criminal law- the corporate criminal liability. The essay starts with a short presentation of some historical aspects regarding this issue, focusing on the practical necessity to admit the criminal liability of the legal entities. Then the article deals with the concept of corporate criminal liability as a whole, presenting the theoretical objections to establishing corporate criminal law, and focusing on some of the most important objections, the fictional character of the legal entity and their incapacity of action and especially, the so said "non punishability" of the legal entity with the traditional punishments in the criminal law. Every objection is accompanied by the contrary theoretical and practical reasons for not admitting the principle "societas delinquere non potest" in the criminal law, and we insisted on the efficiency and the advantages of the pecuniar punishments for the legal entity. In the last part, the article presents the recent regulations from the Romanian criminal law regarding the corporate criminal liability and the specific punishments consecrated in the new Romanian Criminal Code.*
***Keywords**: legal entity, corporate criminal liability, corporate sanctionary system, corporate crime, societas delinquere non potest.*

1. INTRODUCTION. A BRIEF HISTORY OF THE CONCEPT OF CORPORATE CRIMINAL LIABILITY

If within the theory of civil law, the civil liability of the legal entity is a unanimously admitted, beyond any controversy issue, in the theory and practice of criminal law the matter of the corporate criminal liability was one of the most controversial issues of law. [1]

In doctrine it was noted that, viewed either as real, as fiction, or just as organization technique of the patrimony, the legal entity, and implicitly the legal personality, have followed a prosperous genetic process in the field of civil and commercial law [*2*]. So, for a long period of time, the legal liability of the legal entity has been assigned only a civil character, which was mainly motivated, as we will show, by

arguments such as the fictional character of the legal entity and its impossibility of physical action.

Unlike the non-discriminatory treatment in comparison with the natural person offered in civil law, in criminal law the legal entity has been "maltreated" as it is also expressly indicated in the title of a reference work in the field of criminal law [2]

Law history attests the fact that corporate criminal liability constituted a necessary reality and applied since ancient times, but which has not been granted, because of doctrinal disputes, special and specific regulation.

Thus, since ancient times there were recorded various forms of liability and of sanctioning bodies for grave and harmful acts to society. Thus, actions such as demolition of walls, depriving citizens of theaters, baths, the confiscation of artillery and bells of the cities are undoubtedly repressive measures taken against certain communities, so against some collective persons.

Moreover, the case of the Montpellier city, that in 1379 massacred the king's officers as protest against the taxes considered illegal, which was then sanctioned by the king to pay fines of considerable amount, the demolition of the city walls, withdrawal of privileges and deprivation of university, is the first case of conviction of a community, so not a natural person, for committing the crimes of murder.[3]

Over time, the institution of corporate criminal liability has been the subject of serious doctrinal disputes, started as a result of the discrepancies between the reality that demanded the punishment of reprehensible conduct of some communities and theoretical constructs whose arguments were trying to advocate for conceptual impossibility of engaging the criminal liability of a non-natural person.

2. **OBJECTIONS TO ESTABLISHING CORPORATE CRIMINAL LIABILITY. THE FICTIONAL CHARACTER AND THE INCAPACITY OF ACTION OF THE LEGAL ENTITIES**

The main objections raised over the years to corporate criminal liability were: the fictional character of the legal entities, their incapacity of action, the principle of specialty of capacity, the lack of the subjective element in the case of legal entities and the personal nature of criminal liability.

The argument of *the fictional character of the legal entities*, their lack of physical, concrete existence, this was the oldest and main argument against the possibility of engaging the criminal liability of legal entities. The argument has its origins in the civil law theory of the fiction of legal entities, theory according to which only the human being can be a genuine subject of law, while legal entities can only be fictional subjects, recognized only to address the need to identify the holder of some patrimonial rights. [1]
Illustrative of the controversy about the fictional character of the legal entity is the exchange of doctrinal lines between the French jurist Leon Duguit that launched the famous French aphorism "*I have never had dinner with a legal person*" and the answer of his colleague, the jurist Jean Claude Soyer "*Neither have I, but I often saw it paying the bill*." [2]

This conversation reflects the essence of the controversy between the fictional, theoretical character of the legal entity and the obvious reality of its existence and involvement in the social and economic life today.

It is a fact that nowadays legal entities play an essential role in all areas of social and economic life and enjoy recognition of their legal capacity in most areas of law, they have their own patrimony, distinct from the patrimonies of the persons who compose it, they have rights and obligations distinct from those of their component members, thus their "reality" the non-fiction of their existence is an evident aspect that cannot be disputed.

Moreover, according to a recently expressed opinion in the doctrine, which was appreciated as "the effect of an anthropomorphic reflex" [2], legal entities are born, live and die, are in a deplorable or in a good state of health, are surrounded by friends or by enemies, and have the possibility to be part of a family [2].

In this context, the recent Romanian doctrine reminds the phrase that defines a national, large-scale, contemporary process, having tax evasion flavor, namely the action of "registering on the firm" various goods to avoid the payment of some taxes or to get the diminishing of profit and consequently of the income tax. [2]

As appreciated in the doctrine, the non-recognition of corporate criminal liability becomes a shield which provides cover for natural persons to commit acts positioned at the delicate border between licit and illicit. [1]

In conclusion, it is obvious that, on the fictional character of the legal entity in conceptual terms, the controversy can never be solved in the favor of one or the other opinion that supports or denies it. Therefore in the recent doctrine it was sought to reconcile the contrary opinions through acceptance and inclusion of both arguments and consequently the admission of the idea that "the legal entity cannot be defined as belonging exclusively to the real or fictional domain" being placed "with one foot on a land and the other on another, suggesting, in other words, that legal personality is an undoubtful reality, but for its full analysis and understanding in criminal law terms, one must resort to imaginative processes" [2].

The author brings in support of his opinion a decision of the British Supreme Court that, using such an imaginative method, stated that the legal entity can be anatomically described as consisting of a brain and a nerve center which controls what it does, represented by the managerial staff, with arms that act in accordance with the received instructions, represented by the company workforce. Therefore, concludes the author of the opinion, by analogy with the natural person, as long as the brain acts with the intent to commit a crime, and arms put into practice this intention, the legal entity can and should be held liable for the committed crime. [2]

From the fictional character of the legal entity derived the other objections, such as the incapacity of action of the legal entity, the principle of specialty of capacity, the lack of the subjective element in the case of legal entities, the personal nature of criminal liability as well as the unpunishability of the legal entities.

Regarding *the incapacity of action of the legal entities*, it has been argued that legal entities do not have their own capacity to act, all their acts being in fact the

expression of a human substrate, and that, consequently, this is actually the element on which criminal law should act, and not on the legal entity. [2].

However, the conflicting doctrinal views have showed that, on the contrary, one can speak of a legal entity's own action when a deliberative committee of the legal entity secretly adopts the decision of committing a crime, and that actually it is not necessary a true power of action of the legal entity, its governing bodies being those who hold this power. Moreover, it was argued that as long as the legal entity is recognized a capacity to act in civil law, it is not possible for this capacity not to be recognized in criminal law. [1]

3. CONSIDERATIONS REGARDING THE PUNISHABILITY OF THE LEGAL ENTITY

Another highly supported argument against the possibility of engaging corporate criminal liability was the *unpunishability* of legal entities, their impossibility of being sanctioned with the penalties prescribed by criminal law, impossibility resulting mainly from the technical difficulty of implementing a punishment on legal entities, as well as their inability to feel the full effects of the penalties, in the event of finding appropriate sanctions. [1]

These arguments have also been discarded with the help of logical and relevant arguments, being shown in the recent doctrine that, on the one hand, the sanctions applicable to legal entities cannot and must not be identical to those set for natural persons, which is only normal, given the fundamental differences between the two categories of persons. [2] On the other hand, it has been rightly argued that the lack of identity of the sanctions applicable to the two categories of subjects of law does not discriminate between the natural persons and the legal entities, as it does not create any premises for different effectiveness, perhaps a lack of effectiveness of the sanctions applicable to a category in comparison to the sanctions applicable to the other category. [1] In other words, it was argued that, since the legal entity cannot be "convicted" and forced to execute classic custodial sentences, its engagement of criminal liability could only be theoretical, lacking any practical effectiveness.

Thus, if the legal entity is not capable of movement and self-determination as is the natural person, the imprisonment of its governing bodies cannot be an effective sanction for it, as the guilty governing bodies can be and are actually soon replaced anyway.[2] Instead, legal entities have patrimony, economic and fiscal rights, freedom of self-management and legal existence. So the sanctions applicable to legal entities must concern these aspects, and mainly the economic, pecuniar aspects.

To prove the effectiveness of primarily pecuniary sanctions applicable to the legal entity, it is relevant the case of an American company producing medical equipment, which sold medical instruments that had not been tested sufficiently in advance and, shortly after their use in hospitals, have killed a person and produced serious damage to the health of 10 other people, which led to the withdrawal from the market of these instruments. During the criminal trial, the company pleaded guilty to the crime of illegal experimentation on humans, recognizing that it had released for sale a small number of catheters to see if they were safe and effective. The company was sanctioned with a

criminal fine in the amount of 30.9 million dollars, was put under the tutelage of a third party board of directors elected by the authorities and was under obligation to hire experts and consultants to verify that products comply with the legal norms and to send periodic reports to the control authorities in the field. All these sanctions and measures did not affect the company's activity, which continued to produce medical instruments and to make profit, and which did not violate the legal provisions, so that it can be argued that the purpose of the punishment was reached. Thus special prevention was clearly made, and the general one was presumably made, since after this case there was no record of similar acts committed by other companies in the area. [2]

4. CORPORATE CRIMINAL LIABILITY IN THE NEW ROMANIAN CRIMINAL CODE

The general legislative consecration of corporate criminal liability in the Roman criminal law came with Law no. 278/2006 amending the previous Criminal Code, although special provisions in this respect could be found already in Law no. 299/2004 concerning the corporate criminal liability for the offenses of counterfeiting currency and other valuables, but these provisions had never been implemented due to the lack of proper criminal procedure provisions.

De lege lata, corporate criminal liability is consecrated by the provisions of art. 135 of the new Criminal Code, which state in paragraph 1 that *"The legal entity, excepting the state and the public institutions, is criminally liable for crimes committed in achieving the object of its activity or in the interest or on behalf of the legal entity."* and in paragraph 3 that *"Corporate criminal liability does not exclude the criminal liability of the natural person who contributed to the commission of that act."*

Thus, the Romanian criminal law establishes a model of direct criminal liability, consisting of the legal entity being liable for its own act, and not for the act of another person, regulatory model taken from the Dutch and Belgian legislations.[1]

As it was noted in the doctrine, the legislator does not individualize the natural persons or the bodies through which corporate criminal liability could be engaged, in order to avoid the limitation of the scope of these persons/bodies, and thus to avoid providing opportunities to evade criminal liability by the legal entity formally entrusting decision attributions to persons other than those expressly provided by law. [4]

De lege lata, the sanctions applicable to legal entities are regulated in art. 136 of the new Criminal Code, and they are: the fine, as main penalty, and a series of complementary penalties: legal entity dissolution, suspension of activity or of one of its activities, the temporary closure of some branches, temporary prohibition to participate in public procurement procedures, being placed under judicial supervision, and also the display or publishing of the decision of conviction.

CONCLUSIONS

Beyond doctrinal disputes, the consecration of corporate criminal liability is legitimized by necessities of practical nature, imposed by the realities of today's complex economic and social life.

The increase of crime of collective entities - corporate crime - is now a reality that no one denies any longer. Logically, to find an effective response against this phenomenon, the criminal legislator has only two options: either to adapt individual criminal liability as to cover situations in which a crime was committed "under the umbrella" of a legal entity, or to establish a liability specific to legal entities. But, as noted in the doctrine, although solving the new problems based on individual criminal liability would perhaps be the most convenient solution, in practice it has revealed many shortcomings and the inability to substantiate an effective reciprocation to corporate crime.[1]

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CONCEPTUAL DISTINCTIONS REGARDING THE NOTION OF ENFORCEMENT

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***Abstract**: This article analyses some theoretical and practical issues concerning the notion of execution, in the context of the modifications on the Civil Procedure Code and the implementation of European regulations on enforceable titles. It can be noticed a certain autonomy of the execution phase and a crystallisation of a specific discipline, with particular rules.*
***Keywords**: enforcement, litigation, enforcement order, autonomy, creditor, debtor*

1. THE AUTONOMY OF THE PROCEDURAL ACTIVITY OF ENFORCEMENT

According to the classical conception on the civil trial, the execution (executio) is considered to be the second phase of it, following the judgment phase (cognitio). This concept, however, is not valid in every situation: in certain cases, the trial stage phase is not to be followed by enforcement (for example, when the judgement can't be enforced, either because of the solution, either because it is not enforceable) (Durac, 2014); the reverse situation can also be encountered, when the execution phase is not preceded by a trial (when the enforcement title is not a judgement).

The new Civil Procedure Code governs the enforcement as a phase of the civil trial, giving it this way a quasi-independent character toward the judgment phase more significant than in the previous regulations. This is proved also by transitional provisions and the implementation ones included in Law No.76/2012. According to these, the provisions of the new Civil Procedure Code apply exclusively to enforcements that started afters its entry into force. In this respect, it must be noticed the moment of investing the enforcement body. More exactly, if the application for enforcement is filed after the date of entry into force of the new Civil Procedure Code, the entire enforcement procedure, including the enforcement incidents, will be regulated by its provisions. On the other hand, if the enforcement application has been entered prior to the entry into force of the new Code, the whole enforcement procedure, starting with the approval of enforcement and including the incidents, shall be governed by the provisions of the

previous Code. It is so to be noticed a separation between the two phases of civil suit: even if the trial stage has been governed by the previous Civil Procedure Code, the enforcement will be subject to the regulations of the new Code, in so far as the application of enforcement measures has been introduced after the date of entry into force of this new regulation. (Oprina, Gârbuleț, 2013)

It can be noticed that this legislative perspective can be highlighted by the terminology used by art.3 of Law no.76/2012. In paragraph 1 of this article shall be used the term „trial" to designate the trial stage in front of a judge or court, and the term „enforcement" to designate the phase of enforcement. The same terminology is to be found in Articles 24 and 25 of Civil Procedure Code, referring to the time application of the procedure law: concerning the applicable law in new trials, art. 24 provides that the provisions of the new law of procedure applies only to trials and enforcements that begun after its entry into force; regarding the law applicable in ongoing trials, Article 25 (1) provides that trials in the process of judgements and enforcements started under previous law shall remain subject to that legislation. (Boroi *et al.*, 2013)

The wording is objectionable because it can lead to the conclusion that the enforcement is not part of the civil trial. We don't agree with this interpretation. It is important to notice that the concept of trial in such a context can be given two meanings: a broad one, including both trial in front of a court and enforcement, and a restricted one, relating exclusively the trial in front of the court. The wording of Article 3 (1) Law no 76/2012 and the transitional and implementation provisions which follows it, as well as Article 24 and 25 of Civil Procedure Code, highlights a certain autonomy of the enforcement towards the judgement phase of the trial, underlined especially by the applicable law, that can be different for the two phases. More accurate, if the application has been filed prior to the date of entry into force of the new Civil Procedure Code, the judgement will be governed by the provisions of the previous Code, but if the enforcement application is lodged with the enforcement body after the entry into force of the new Code, the phase of enforcement will be governed by it, including the incidents and contest of enforcement.

In the light of these considerations, we think that a definition of the enforcement phase must relate to it as an activity and not necessarily a phase of civil trial. Without doubt, the enforcement is a trial related activity, to which general rules regarding procedural documents, nullities, terms and conditions are applicable. However, considering the way the legislator is using the term „trial", as it was shown above, the enforcement shall be particularized as a distinct procedural activity, with implications in both theory and practice of law. As well the enforcement phase has its autonomy towards the trial in front of the court; the discipline of civil enforcement law is going thru a process of individualization. We can think about a discipline separated from Civil Procedure, or at least a branch of it, with its own rules and principles, some similar to those applicable to Civil Procedure Law, some specific.

Having in mind the above mentioned considerations, the enforcement can be defined as being a procedural activity related to the trial, carried out by the enforcement bodies in accordance with the procedures laid down by law in order to accomplish the obligations stipulated by the enforcement order. The definition refers to the main

coordinates of the enforcement activity: the procedural character, the role of the enforcement body, the grounds and purpose of the enforcement, its legality.

2. LEGAL CHARACTERISTICS OF ENFORCEMENT PROCEDURE. THE CONECTIONS WITH SUBSTANTIAL LAW

The enforcement, as a procedural activity meant to lead to the accomplishment of the obligations laid down in the title, has a subsidiary character to the voluntary fulfilment of those obligations. Even if the safety of the civil circuit would require that the obligations laid down in the enforcement title (judgement or another order) must be achieved in all situations, there may be cases in which this does not happen, either because the statute of limitations expires, either because the parties, namely the creditor and debtor, decide to resolve their judicial conflict in another manner, by negotiation or mediation, for instance. These situations, which are covered by the principal of availability, do not alter the mandatory nature of the enforcement title and the imperative that it must be carried out voluntarily. As in the case of the substantial legal report, the enforcement report requires, in the first place, the debtor's action: the obligation can be fulfilled without prior notice from the creditor. The enforcement title, as a basis of the enforcement procedure, can be respected and accomplished by the debtor at any time. More precisely, the obligation contained in the title does not need the creditor's confirmation; it is not possible for the creditor to choose whether or not the payment is received. If the debtor desires, he can fulfil his obligation and the creditor cannot refuse or postpone the voluntary achievement. The voluntary execution, by payment, constitutes the rule, in accordance art.662 (1) Civil Procedure Code. This provision gives procedural meaning to the substantive discipline laid down in Article 1469 (1) Civil Code, according to which „the obligation is fulfilled thru payment when it is voluntary accomplished".

Speaking from a practical point of view, the interest for studying the enforcement procedure does not concern these situations of voluntary fulfilment the obligations, which are mainly subject to civil law. The enforcement law regulates those situations in which the creditor is forced to apply for enforcement to establish or, as the case may be, to restore the disrupted legal order, by the non-fulfilment of the obligation by the debtor, or the violation of the creditors' rights. The owner of the violated right must act, must apply for enforcement if the report does not work or fail due to the debtors passivity or improper fulfilment of the obligation. From this point of view, the enforcement is a part of the civil action manifestation, as defined in Art. 29 Civil Procedure Code – all procedural means lay down by law for the protection of the claimed right or for the defence (Durac, 2014).

The notion of enforcement is not specific to the procedural law. It is also used in the material law, regarding obligations, when it is referred to the fulfilment of obligations, either in nature, or by equivalent, being, along with the payment, a way of fulfilment of the obligation. Emphasis must be placed in a different manner: the rules provided by Article 1516 – 1548 Civil Code are substantial, referring to a metamorphosis of the legal report, determined by the non-fulfilment of the obligation. If the payment is not made, the creditor has, according to art.1516 (2) Civil Code, three alternatives: to

apply for enforcement; if the obligation is contractual, to obtain the resolution of the contract or, as the case may be, a reduction of its own obligation; to use, when appropriate, any other means provided by law, to achieve its rights. The creditor shall be entitled to the whole, exact and on time fulfilment of the obligation (Article 1516 (1) Civil Code), meaning that the right is automatically and legally doubly shielded: the creditor is the owner of the substantial right itself, but also of the right to enforce the obligation on the debtor because, according to Articles 1527 and 1530 Civil Code, the creditor may ask for the obligation as it is or for the equivalent. (Pop *et al*., 2012)

As mentioned above, by analysing the rules provided by the Civil Code and Civil Procedure Code with regard to enforcement, emphasis must be placed in a different way: if the provisions of the Civil Code regulate the creditors ways to obtain an enforceable title, the ones contained in the Civil Procedure Code refer to the enforcement stage of the trial, after the creditor already obtained an enforcement order. If the title is an order other than a judgement, the creditor can directly apply for enforcement, according with the provisions of the Civil Procedure Code, no longer needed to prove its claim in front of the court. In this case, the creditor has, however, to ask for a declaration of enforcement, according to Article 640^1 Civil Procedure Code.

Within the meaning of the civil procedure law, the enforcement is, as is has been stated by the previous definition, a procedural activity based on the existence of an enforcement title, more exactly of an obligation contained in the enforcement title that must be carried out by the debtor. Therefore, the right is not only claimed (as in the definition of the civil action provided by Article 29 Civil Procedure Code), but confirmed by a judgement which has res judicata power. If the enforcement title is not a judgement, but another order, the debtor can, however, invoke substantial defence by contest against enforcement, if the law does not provide for a special procedural path for this purpose (Article 712 (2) Civil Procedure Code). Of course, there are similarities towards the functioning of the legal report before and after the enforcement title is obtained. The rule is, as mentioned above, the voluntary fulfilment of the obligation, by payment. To this end, the creditor must send a prior notice to the debtor or apply to the court (Article 1522 (1) Civil Code). Also, the law provides for situations when prior notice is not required (Article 1523 Civil Code).

As mentioned above, the enforcement can be started without prior notification, simply by applying to the enforcement officer (Article 622 (2) Civil Procedure Code). Even so, and as a general rule, the enforcement procedures can be enacted only after the debtor is served a notification, according to Article 666 and 667 Civil Procedure Code. The debtor can pay in the time stipulated by the notification and by doing so can obtain a reduction of the enforcement expenses (Article 669 (2) Civil Procedure Code. If the debtor does not pay before the enforcement is started, his payment cannot be however considered voluntary. We have to take into consideration as the starting point of the enforcement the application made by the creditor to a competent enforcement body. The creditor can do so as soon as the obligation is due or if the debtor has lost the right to pay in a certain time (Article 662 (4) Civil Procedure Code). In order to legally start the enforcement procedure, the application must comply with the legal requirement of article 663 Civil Procedure Code. Also, the original title or a certified copy must be filed along

with the application. The rule provided by Article 622 (3) Civil Procedure Code, according to which, if the debtor does not voluntarily fulfil his obligation, it can be enforced by applying to a enforcement office, must not be read in the sense that the creditor has to award the debtor a due time before enforcing the title, other than the situations when the law or the court established such a time. By contrary, as mentioned above, the creditor can start the enforcement, more precisely can apply for enforcement to a competent body, as soon as the obligation prescribed by the title is due.

A difference is however to be made between different types of enforcement orders. The judgements can be carried out without any declaration of enforcement, but other orders must be declared enforceable, according to Article 640^1 Civil Procedure Code. A special and distinct category is represented by the European Enforcement Orders, according to Article 636 Civil Procedure Code. These orders, even if are not issued by a Romanian court or according to Romanian law can be enforced in Romania without any other prior formality, such as a declaration of enforcement. In other words, they are considered enforceable by law. It belongs to this category the titles certified as European Enforceable Orders in accordance with Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims, Regulation (EC) No 861/2007 establishing a European small claims procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure. (Crifo, 2009) In their case, the certification of the title as European Enforcement Order in the Member State of origin leads to the elimination of both the recognition procedure, as well as the declaration of enforceability, if they are to be enforced in Romania. As of January 10th 2015, along with the application of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the rule will be extended to all judgments given in a Member State, which shall be enforceable in the Member State concerned without any declaration of enforceability being required (Art. 39).

3. PRACTICAL IMPLICATIONS OF TIME WHEN THE OBLIGATION IS FULFILED. THE DETERMINATION OF DIFFERENT STAGES OF THE EXECUTION

It is possible for the debtor to pay after the creditor has already applied for enforcement, but before the enforcement was approved or before the debtor has been served a notification regarding the enforcement, according to Art.666 Civil Procedure Code. The payment made by the debtor is in this case a voluntary one or not? In order to answer this question, it is necessary to divide the enforcement into three stages, considering the subjective position of the debtor and the subsidiary character of the enforcement.

In the first stage, if the payment is made between the moment of the application for enforcement and the notification of the debtor, it can be considered voluntary. Even so, the debtor has to also pay the expenses made after the registration of the enforcement application (Article 669 (2) second phrase Civil Procedure Code).

The second stage is placed between the moment when the debtor is served the notification and the expiration of the due time given to him in order to fulfil his

obligation, depending on the type of enforcement procedure (in some case, such as third party debt order, prior notification serviced to the debtor is not required, according to Article 782 Civil Procedure Code; prior notification is also not required in the situations provided by Article 668 Civil Procedure Code). The fulfilment of the obligation in this stage can no longer be considered voluntary, but the debtor can obtain a reduction of the expenses, such as the fees of the enforcement office fee or the creditor's lawyer, in relation with their activity (Article 669 (2) third phrase).

In the third stage of the enforcement, the enforcement procedure is carried out and even of the debtor makes a payment; it is not a voluntary one. Therefore, in order to end the enforcement, the debtor must also pay the expenses made so far by the creditor within the enforcement procedure.

It is to be noticed a difference between the situation when the debtor pays after the application to a court is filed, if he was not served a notification to pay prior to that or such a notification is not required, and the situation when the debtor pays after the application for enforcement is launched. In the first scenario, because an enforcement order is not yet issued, the debtor can pay, in a reasonable time, calculated form the date the application was filed. In this case, the debtor will not pay judicial expenses, which will be supported by the creditor (Article 1522 Civil Code). More than this, the debtor is exonerated from the payment of expenses if he agrees with the claims made by the creditor and accepts the debt as far as the first hearing, except the situations when a noticed has been served to the debtor before claims were brought into court or the law provides that such a notification is not required (Article 453 Civil Procedure Code).

After the commencement of the enforcement procedure, by virtue of the application made by the creditor to the enforcement body, the debtor can no longer be exonerated from the payment of expenses, but can only obtain a reduction. The enforcement title makes the right to be double protected by a significant procedural component: the right is confirmed, acknowledged and therefore must be realized, enforced. The fulfilment of the obligation by the debtor after the commencement of the enforcement is therefore not entirely a payment, within the meaning of Article 1459 (1) Civil Code, even if it's made before the service of the notice according to Article 666-667 Civil Procedure Code.

The enforcement activity is therefore, in all cases, triggered by the launch of the enforcement application with the competent body, even if the enforcement is approved after that. The beginning of the enforcement is not necessarily the same as the beginning of enforcement acts, the most important consequences of this distinction being the one regarding enforcement expenses. The enforcement will last until the achievement of the rights established by the title, as well as the payment of interest, penalties or other royalties given by the title or by law, as well as enforcement expenses (Article 622 (3) Civil Procedure Code).

As mentioned above, the enforcement does not require the service of a notification prior to launching the enforcement application, by opposition with the provisions of the substantial law, which requires such a notification, as a general rule. The legislator seems to establish an exception to this rule, in the case of to do obligations, such as the registration or withdrawal of a right, act or fact in a public registry, the release

of a certificate, handing over a document or other such obligations. In accordance with Article 622 (4) first sentence Civil Procedure Code, the enforcement of such obligations can be made by a simple request of the entitled person, on the basis of the enforcement title, without the need to apply to an enforcement officer, unless the law provides otherwise, and in cases of non-fulfilment by the debtor, the creditor may apply for enforcement measures.

The distinction made by the legislator is however artificial. In fact, the fulfilment of any obligation, regardless of its nature, can be obtained thru a simple request by the creditor and without the support of an enforcement officer, especially when the obligation is provided by an enforcement order. The creditor may chose, prior to applying to an enforcement body, to serve a notification of payment to the debtor, who can be interested in making the payment in order to avoid additional expenses. The creditor, however, can also apply directly for enforcement, as long as his right has been confirmed by an enforcement order, even in case of obligations mentioned by Article 622 (4) Civil Procedure Code. The enforcement procedure of these obligations implies a time of 10 days for the debtor to achieve the obligation, starting from the service of the notice via executor. For instance, in cases in which the fulfilment of the obligation contained in the title is in relation with the registration of a right in the real estate registry, against the person registered as owner, the creditor is entitled to request the registration directly to the real estate registry office, or via an enforcement officer, according to article 908 (1) Civil procedure Code. It is therefore the creditor's choice to apply to the real estate registry office before enforcing the title or to apply to an enforcement body that will follow the enforcement procedure prescribed by Article 902 and the following Civil Procedure Code. Same rules apply in cases regarding the registration of rights in other public registers (Article 908 (3) Civil Procedure Code). Therefore, there is no case in which the creditor has to service a notification to the debtor for the fulfilment of the obligation laid down in the title, but the creditor can chose to do so. The enforcement order entitles the creditor to immediately and without delay, apply for enforcement.

4. CONCLUSIONS

The essential distinction between the concept of enforcement in a substantial meaning and a procedural one, is given by the existence of an enforcement title: the rules relating to enforcement in a substantial meaning, contained mainly in the Civil Code, apply to the creditor who is seeking to obtain an enforcement title; the ones regarding procedural enforcement, mainly contained in the Civil Procedure Code, apply to the creditor who already holds an enforcement title. Its existence empowers the right and involves its accomplishment. The enforcement activity has a procedural nature, the right is already recognized, confirmed and the creditors aim is no longer to prove it, but to attain it.

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