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SECTION II
FINANCIAL AND ACCOUNTING POLICIES AND CORPORATE GOVERNANCE IN THE GLOBAL CONTEXT

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FINANCIAL AND ACCOUNTING POLICIES AND CORPORATE GOVERNANCE IN THE GLOBAL CONTEXT

WORLD-WIDE FLOWS OF FOREIGN DIRECT INVESTMENTS

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Abstract

This paper below is continuing once more on our studies about international directly invested capital. This latest approach of ours still aims to detect such specific flows across the world as resulting from data provided by the UNCTAD's specific statistics for the 1990-2015 interval the way that equations, in general, are supposed to be solved once their unknowns are found. This case still is one of „a single equation with several unknowns". And here the previous methods, as well as descriptions, will bear some adjustments in the below lines, despite the model that remains the same as in our previous papers, and some of our previous conclusions will here come to adjust, as well. But first of all it is our theory on FDI requiring its assertion, together with its specific model – i.e. another kind of model.

Key words: *foreign direct investments, direct investments abroad, external balance of payments, economic theories.*

JEL Classification: *E22, F21*

1. Theory on international direct investments

The *international investment* is made by capital invested / moving from one country to another. Several theories do try to explain such capital movements between countries here also considering the *direct* investment as directly involved in the real economy – i.e. industrial productions. A basic production related theory so sees the capital as a production factor that is supposed to „search" for the other factors – e.g. natural resources and even labour – in the production development order, basing on its plus in mobility against them and in both macroeconomic and international (other) areas (Markusen, JR & Venables 1995) – i.e. so in a kind of macro-micro „neutrality" for economics. An older theory – i.e. that results from another large theory that is the *international trade* theory (i.e. its later HOS Model, see Ely Heckscher's, Bertil Ohlin's and Paul Samuelson's variants) – sees the same phenomenon as resulting from the macroeconomic context in which capital becomes cheaper for some countries and so ready to be exported and circumstances like the lacks/empty spaces in the international market's specific competition and other countries in need for development come to sustain it (Helpman, E & Krugman, P. , 1985, Iancu, 1983).

.Once this theory relates to the international trade one, it takes over from the *comparative advantage*(i.e. of the countries) and here adds correspondingly the *competitive advantage* of firms (Mucchielli , 1997).

A third theory prefers a narrower space to focus on and a more detailed view: the individual product becoming a market good and getting its *life cycle* in consumption and consumers' preference – the good is first „born", then its demand-supply might rise, then it goes to reach a part of the domestic market space and even goes to exportation. But such an „increasing" story will meet its later „decay" – i.e. when the same good's industry goes to exportation, instead of the good itself for its consumption, as previously (Vernon 1979).

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Going further on, entire industries are observed to migrate to neighbouring countries, as in the splendid metaphor of „goose flying" – i.e. migrating industries do not usually go too far in the geographical area, but stop in the country's neighbourhood (Ozawa 1992).

Another theory prefers, instead of individual goods, to focus the international investment story on a similar life-cycle, the one of the individual firm (Dunning 1995; Horst 1972) – i.e. this way responding not only to the good's life cycle theory but equally to the previous one related to international trade, here by making the *investment* a rather *micro*- than *macro*-economic related issue. The firm, in its evolution, might acquire necessary conditions that make it an international investor. Other theories go on the same way observing multinationals as a real international zone of interests and forces that gets distinct from the one of States and so means something more than economic-related (Broaden, 1999, Buckley, PJ & Casson,1976), Ethier, WJ , 1986, Helpman, E.,1984, Muchieli,1985, 1991, 1992, 1997, Lall 1977).The polemic that here comes, besides the „micro versus macro" one, is the one of country-States being or not able to control such a process.

The theories on international direct investments so make not only a long list, but a contradictory landscape at the same, plus their references naturally multiply. Then, here comes our own theory in context that might be just one more one. International direct investments are made, once more, by individual countries that invest and the ones that receive the same capital invested – i.e. never the same country on both sides admitted. So, countries are *subjects* of investment transactions and the capital invested is the *object* of these. World-wide, the same capital invested is to be found on both entries (FDI- *foreign direct investments*) – i.e. for recipient countries – and issues (DIA-*direct investments abroad*) – i.e. for investor countries. Except for here admitting that capital might be exported from the country where it is cheaper, good-product- and firm-related arguments here are skipped – i.e. together with particularities and varieties that they suggest about; such a variety might here remain beyond that each country is admitted to be concomitantly both an investor (capital issuer) and an investment(capital) recipient -- and instead, the same capital is viewed as homogeneous and fluid stuff able to flow across the international area. Moreover, it is a world-belonging issue that is claimed/called by the country-subjects for their transactions between and each individual capital amount according to corresponding transaction's size.

Last, but not least, and in the same context of variety against homogeneity of capital, this last will be one of two kinds: (i) *cooperation capital(Ccp),* that is investment made now for its return expected after a while – i.e. that might be a capital specific, viewing its medium-long term work due to capital goods' lifetime and capital amortization periods – and (ii) *long-way flows (Lwf)* that are and make the investments in/to the so-called „Third World", basically for the last's development specific needs. Ccp is more complex than Lwf by working on both short & long distances – i.e. between countries in the same region, as well as between regions and areas not too close to one-another. Lwf, in their turn, get different from Ccp by: (a) always flowing between regions and areas that stay far from each-other, (b) not expecting capital returns – i.e. as much as they result from the capital that is cheaper in the capital exporter country – and (c) usually being larger individual amounts traded than are the Ccp cases and especially the ones within the region/between neighbouring countries. However, capital equally disposes of the capability of turning from Lwf to Ccp and conversely in various circumstances.

2. The model

This is also called the ***binary*** model: *foreign direct investments* /FDI (+/capital entries), versus *direct investments abroad* /DIA(-/capital issues) and *balance of international capital(FDI) stocks /* FDIstckBal(+/-), all related to individual world countries (i)(Andrei & Andrei 2019).

2.1. The static hypothesis

This is the following:

$$\Sigma\ FDI_i\ (i=1\rightarrow n;\ j=1\rightarrow m) = \Sigma\ DIA_i (i=1\rightarrow n;\ j=1\rightarrow m) \quad (1)$$

making then:

$$\Sigma\ FDIstckBal_{ij}\ (i=1\rightarrow n;\ j=1\rightarrow m) = 0 \quad (2)$$

for *total world flows* (up to one year cumulated FDI or DIA transactions) / *stocks* (more than one year cumulated FDI or DIA transactions).Flow has equally the sense of general components of the world capital, with their individual direction and sense in total world capital design and this will make the particular subject of this paper.

in which:

$$FDIstckBal_i (i=1\rightarrow n;\ j=1\rightarrow m) \neq 0$$

is the *FDI stocks balance* of the individual country i, FDI_i – DIA_i, in cumulating FDI&DIA stocks of all periods up to j and / or in the j period for this last's year flow. These being the theoretical possibilities of our model, corresponding applications naturally refer to the whole 1990-2015 interval for significant conclusions to be drawn. Our previous papers (Andrei& Andrei 2019, 2021) then produce these applications – i.e. related to the above given *model 1* formula (Table 1.).

Table 1.The model's applications

1	countries ranking according to FDI&DIA stocks
2	Dominant/major FDI&DIA countries, vs. the rest of countries
3	individual countries and/vs. world regions
4	types of the world regions, according to FDI's and DIA's behaviours
5	individual country's typical FDI&DIA behaviour on the long terms
6	searching for FDI&DIA/ international capital flows in association with the unitary model 2(see below 2.) -- identifying world capital sections(see Diagram 2).

2.1.1 Countries ranking according to FDI&DIA stocks

WIR(2016), our data table-reference, exposes two large tables that include FDI&DIA reported in US$ million by each of the 215 UNCTAD member country-States in each of the years of the 1990-2015 interval (26 years). Cumulating all these amounts, country rankings do result on all: FDI, DIA, the same on countries considered as *significant* and *non-significant* international capital flows/stocks and international capital *dynamics* (see below) on the same individual countries (Andrei& Andrei 2019,).Significant FDI country means over 0.2% of total world FDI stocks and significant DIA country the same for 0.1% of total world DIA stocks – i.e. the difference between the two being induced by some evaluation errors between total world FDI and total world DIA in WIR(2016)

2.1.2 Dominant/major FDI&DIA countries, versus the rest of countries

We recall the debates about *"two peaks of the iceberg"* (Andrei& Andrei (2019, pp 65-68) :

[a] the restricted/reduced one (4 world entities): Euro-zone, US, China and UK, these covering more than ½ of the total world capital amounts on both FDI and DIA; For Euro-zone just 14 countries (excluding those of Central and Eastern Europe already part of the Euro-zone): Germany, Netherlands, France, Spain, Belgium, Ireland, Italy, Luxembourg, Malta, Austria, Finland, Greece, Cyprus and Portugal.

[b] the large one(17 world entities): Euro-zone, US, China, UK, West Europe, Hong-Kong, Singapore, India, Russian Federation, Brazil, Mexico, British Virgin Islands, Japan,

Canada, Australia, New Zealand and South Africa, these showing really dominant/ capital majority inside the total one attributed to all the 215 countries in this study on both FDI and DIA parts of model 1. The West Europe is nominating the region/country group called in WIR (2016) "Other developed Europe", i.e. other than the Euro-zone : Switzerland, Sweden, Norway, Denmark, Gibraltar and Iceland.

These *"two peaks"* do find, in their turn, a double trend /two trends of the international capital:

/1/ the profound flows inequality / strongly uneven flows among countries;

/2/ individual countries' FDI and DIA approach each-other's levels (this is a regularity respected by both the above world capital majority countries and the non-significant capital countries of which's large majority report similarly low stocks on FDI and DIA).

Then two other results:

/a first result, the international directly invested capital (FDI&DIA) seems a game of "concentric circles" among countries, as diverse degree investors;

/ the second one comes especially from the [b] large peak, with its cumulative *FDIstckBal* of about (-) 10 bln. US$ – i.e. this is what really gives life to and makes the international investments really popular among world countries in this epoch.

2.1.3 Individual countries and/versus world regions

As the situation given by WIR(2016), all 215 countries are grouped into 18 regions throughout the world. Our interventions on this (Andrei& Andrei 2019, pp.68-283) were as follows:

- starting from the above [b] peak (17), 6 countries were considered out of regions: US, UK, Canada, Japan, Australia and New Zealand – the rest of countries were included in their regions North America, i.e. US and Canada isn't here considered a region like the others)
- the region called "Other Developed Europe" changed its name into "West Europe", without other interventions;
- the African regions called "East Africa", "Central Africa" and "West Africa" reunite into our "Middle Africa" according to the regional criterion of dominant FDI country existing, which here is Nigeria.

The result is having 16 regions: Europe-4, Asia-3, CIS-1, Near East-1, Africa-3, Latin America-2, Caribbean-1, Oceania-1 – the last two not even being regions, but groups of island countries – besides 6 individual and without region countries.

2.1.4 Types of world regions, according to FDI's and DIA's behaviours

Three such types of regions are found in Andrei& Andrei (2021, pp.7-11):

/ the *[a] type*: long-way flows f(Lwf) entries of the region go priory to one country or a small group of countries[f], as regionally FDI *major countries* with international capital majority and from them to the rest of the region, as part of the initial entries ($a=\Sigma ai < f$) – i.e. the [a] type of the regions is made by $\Sigma DIA/major.ctr \geq \Sigma FDI/rest.of.ctr$.

This way all countries in the region get positive *FDIstckBal* and just the dominant countries also get Ccp related to their DIA to the other countries in the region[a] and off the region investment partners – i.e. former Lwf investors into the same region[f]. Then, there might be about two kinds of capital responses on the medium-long term that enlarge the Ccp: the ones from the rest of countries back to dominant countries[a'], as within the region capital returns[a'/a%], the others from the region's dominant/major countries back to initial world investors, i.e. that make long-way Ccp through diminishing the initial

Lwf[f $\rightarrow$(f-f ')] and (f-f ') so becomes the current Lwf entries of the region.

The difference between these two international investment mechanisms in the model is that the ones within the region do add [a'/a%] to both intra-region Ccp and initial FDI-DIA turnover -- i.e. volume of international capital investments –, while the latter rises long-way

Ccp on the expense of Lwf [f-f']. Then, there will be formed total FDI&DIA of major countries and so f ' results as such and from now on it is to be coupled with the same inter-regions Ccp of the corresponding world investors' performing, as capital entries.

This type of regions is for: West Europe(with Switzerland), CIS(with Russian Federation), South Asia (with India), Central America (with Mexico) and Caribbean (with British Virgin Islands) – with just one dominant country – and East Asia (with China and Hong-Kong), South-East Asia (with Singapore, Thailand and Indonesia), Near East (with Turkey, Saudi Arabia, Israel and the Emirates), Southern Africa (with South Africa and Mozambique) and South America (with Brazil and Chile) – with more than one dominant country;

/ **the *[b] type*** is one of strong intra-region Ccp and then of equally strong DIA/Lwf regions, both as symptoms of economic expanding through capital investing. Here considering the n number of Yi member countries of the region and correspondingly the same of [bi] (Ccp) capitals invested from each country to another one and such initial investments meat their replies similar to the ones in regions of type [a] above and DIA in the rest of the world would be able to usually work from this (Andrei& Andrei 2021, pp. 9-11).

This type of regions is for just the Euro-zone and West Europe. But besides this, both regions keep some country dominance similar to the one of the [a] type – i.e. Germany, Netherlands, France and Spain together for the Euro-zone and just Switzerland for West Europe. So that these regions will rather classify as ***[b-mix];***

/ the *[e] type* is basically similar to the above [a] type – i.e. investment recipient regions --, except for no dominant country or group of countries inside the region like in the above [a] case – i.e. the world investors related to this type of region are assumed to negotiate with each country in the region as separately. Lwf entries, intra-region and inter-regions Ccp work similarly to the [a] above region case – i.e. paradoxically, despite no dominant FDI&DIA country, this type of region might include countries with inter-regions Ccp issues (i.e. i.e. Serbia& Montenegro, in South-East Europe, and the Visegrad-4 countries (Poland, Czech and Slovak Republics and Hungary), in the Central and Eastern Europe.

Intra-region Ccp either looks less detectable by our model in these regions, or these latest look like weaker cohesion regions/groups of countries, as compared to all the other above.

This type of regions is for: Central and Eastern Europe (CEE), South-East Europe, Northern and Middle Africa and Oceania.

2.1.5 The individual country's typical FDI&DIA behaviour on the long terms

Of the total of 215 reference world countries, 66 countries are what is called in our model *FDI significant* ($FDI_i \geq 0.2$ % of world stocks) and 60 countries are *DIA significant* ($DIA_i \geq 0.1\%$ of world stocks /Andrei& Andrei 2019, pp.258 and following). 6 countries, as the difference between, are supposed to be partly significant for international capital, i.e. just for FDI (capital entries).Or, this countries minority forms the exception to the above found rule of FDI&DIA related to one-another on individual countries. Finally, the rest of world countries stay *insignificant* FDI&DIA countries, a reality indicating that the majority of countries looks not to have yet joined the international capital(ist) business initiative . Not only this real economic (and financial) movement of countries might be found as historically induced – e.g. the time of our analysis comes just after the international debt crisis of the 80ies, while international investments might similarly perform without international debt producing, in their turn --, but also this quarter of a century analysed (1990-2015) might be long enough to be representative for what has happened with the contemporary capital – e.g. capital amortization lengths of diverse capital goods.

Finally, the camp of those (i.e. 66) having joined the international capital is formed by countries regularly:

/ starting with capital accumulation – i.e. important FDI: positive *FDIstckBal* frequently accompanies the capital scarcity of individual countries;

/ continuing with DIA as similarly up to about the FDI=DIA equality;

/ since both FDI and DIA get high enough – plus, the capital supply on the country's home market ensures its cheapness – DIA do take the initiative (FDI<DIA) and the country becomes an international investor – a moment in which the same country really enters its new development condition;

/ FDI<DIA being – i.e. contrary to FDI> DIA-- the symptom of economic expanding, the same new phase proves equally able to remake capital entries' (FDI's) dynamic against corresponding issues (DIA) at least temporarily /from time to time -- i.e. the international investments might not stay related to the primary economic development only, capital stock renewal and/or other facts could here get included in. Our findings include the one of converse dynamics between the two opposite capital flows(Andrei& Andrei 2019, Annex 1, pp. 295-296).

The truth of the above conclusions sees itself met by almost the whole Third World with positive *FDIstckBal*, and even China here might be the most representative example – i.e. the highest positive FDIstckBal coupled with the highest DIA dynamic world-wide. Just few examples of countries investing abroad in the absence of previous significant FDI accumulation: South Korea and Taiwan (East Asia), Kuwait and Qatar (Near East), Libya (North Africa), Suriname (South America), Cook Islands (Oceania) and other countries with less important capital amounts. The amounts here are less important as related to the total of world stocks, but our model appears in more difficulty when negative FDIstckBal is caused not by outflows (DIA), but by negative entries– e.g. Yemen, South Sudan. On the other hand, Germany (Euro-zone) and Switzerland (West Europe) could be the examples of FDI/inflows recovery for already important international investor countries as well.

2.2 The dynamic hypothesis

Unlike in the above static hypothesis, both FDI&DIA flows have their own dynamics, to be seen as independent from one-another:

$$\Sigma\, dynamics\text{-}of\text{-}FDI_i(j\text{-}j')(i=1\rightarrow n;\ j=2\rightarrow m;\ j'=1\rightarrow m\text{-}1\ )=0 \qquad (3)$$

$$\Sigma\, dynamics\text{-}of\text{-}DIA_i(j\text{-}j')(i=1\rightarrow n;\ j=2\rightarrow m;\ j'=1\rightarrow m\text{-}1\ )=0 \qquad (4)$$

in which:

- $dynamics\text{-}of\text{-}FDI_i(j\text{-}j')(i=1\rightarrow n;\ j=2\rightarrow m;\ j'=1\rightarrow m\text{-}1\ ) = FDI_{ij}/FDIworld.stck._{ij}(\%)$ -

  - FDI_{ij}'/$FDIworld.stck._{ij}$' (%) is the passing of the i country from its percentage in total world FDI stocks(%) of year j' to the one in year j and:

- $dynamics\text{-}of\text{-}DIA_i(j\text{-}j')(i=1\rightarrow n;\ j=2\rightarrow m;\ j'=1\rightarrow m\text{-}1\ ) = DIA_{ij}/DIAworld.stck._{ij}(\%\ )$- DIA_{ij}'/$DIAworld.stk._{ij}$' (%)

is the passing of the *i* country from its percentages in total world DIA stocks of year *j'* to the one in year *j*. Both percentage point numbers bear their algebraic signs indicating the advance into(+), versus step-back(-) of the country from the world capital market. Note that our model compares the individual countries to the world average on the capital dynamics criterion – i.e. nothing about absolute numbers or world capital's dynamic in this model.

3. Conclusion of the model

Andrei & Andrei (2019) offers a plastic image of the international directly invested capital flows as "concentric circles", i.e. first as "a game among the few", followed by distinct groups of countries successively involved in the flows movement, but naturally with decreasing amounts. But this image, despite some relevance that it bears, cannot and will not be the final one or the one that such a model could be able to achieve. It is too general and so incomplete – i.e. just all top investor countries face to the large regions of the Third World. No international

capital flows in detail from each investor country to each investment receiving country and/or region. Or, this will be for our following paper-approaches, in which intermediary work steps, e.g. making distinct the cooperation capital – i.e. between countries of comparable international capital sizes – from long-way flows – i.e. the ones from world investor countries to the same Third World. By the way, such a flows distinction proves able to come up directly from our above papers' double basic finding regarding the uneven world capital distribution throughout the world countries and the individual countries' trend of equalizing their FDI-inflows with DIA-outflows of capital. An imaginable end of this approach of ours in this moment could be the one in which our model results might confront statistics(facts) on international capital, be they partial and/or on specific countries and territories.

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THE USE OF ERP SYSTEMS IN THE CONTEXT OF THE COVID-19 PANDEMIC

Laura – Eugenia – Lavinia Barna[1]

Abstract

The evolution of ERP systems in the last decade has allowed a series of facilities for users of financial - accounting information from the stage of data processing to the stage of their analysis, thus helping to substantiate the decisions taken by the company's management. The current article aims to analyze the benefits offered by ERP systems to users of financial-accounting information in the context of the COVID-19 pandemic.

The research method used was based on a quantitative research, analyzing the main benefits of ERP systems in the context of the COVID-19 pandemic.

Among the results obtained by the author were the increase in the degree of automation of the daily tasks performed by the users of financial-accounting information, as well as the reduction of the inefficient consumption of resources.

Keywords*: ERP systems, COVID-19 pandemic, automation, financial-accounting data*

JEL classification: M15, M40, M41

1. Introduction

In 2019, the COVID-19 pandemic appeared in Wuhan, a deadly virus that spread very quickly and caused people to die. So that at the beginning of 2020, this virus spread throughout the world, causing, in addition to the large number of illnesses and deaths, a series of difficulties in people's daily activities as a result of the lockdown (both in the field of education, as well as in the business field).

Thus, in order to be able to continue the activity, it was necessary to move it to the online environment. More and more communication platforms (Teams, Zoom, Google Meet) have been improved to ensure continuity of activities (Shazad et al., 2021), including ERP systems that ensure efficient data processing and centralization.

The purpose of this article is to show the main benefits of ERP systems in the context of the COVID-19 pandemic.

The article is structured as follows: a review section of the specialized literature where the concepts were defined, a section presenting the research method approached, a section analyzing the results obtained as a result of the research method used and presenting the conclusions of the article.

2. Review of specialized literature

Digital evolution has led to the improvement of a large number of activities carried out by people, a concept that has developed even more as a result of the outbreak of the COVID-19 pandemic (Acosta, 2020). According to Kruszynska-Fischbach et al. (2022), the COVID-19 pandemic has forced many countries to implement a variety of restrictions to prevent the spread of this deadly virus. This was also confirmed by the authors Obrenovic et al. (2020) and Neumann et al. (2021). Thus, the evolution of digital transformation has determined the creation of new business models, but also significant changes in the organization of the activities carried out by companies.

According to Buk and Wiercioch (2021), "the COVID-19 pandemic accelerated the digitization process" of the activities carried out by companies (Demirci et al., 2020).

Acosta (2020) states that new technologies aim to "replace repetitive manual tasks". Al-Okaily (2021) is of the opinion that new technologies (such as ERP systems) have the role

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of processing and centralizing data, so as to better substantiate managers' decisions regarding the resources used and the company's activity.

Companies have always tried to adopt a procedure for streamlining and improving processes (Wanasida et al., 2021). Thus, more and more companies decide to implement ERP systems because they allow the storage of data processed by different departments in a single database (ERP systems database).

ERP systems are defined as an integrated IT system used to manage a large volume of both data and resources (Pareek, 2014; Hrischev, 2020; Kitsantas, 2022). ERP systems offer a series of benefits, among which the following can be listed and these are presented on figure 1:

Figure 1. The benefits of ERP systems
Source: Pareek, 2014

3. Research methodology and results analysis

The research method used was a quantitative analysis, focused on a questionnaire distributed to students and employees in the financial - accounting field. The sample of respondents consists of 112 people aged between 20 and 65 years. The data were collected between October 20, 2022 - November 7, 2022.

The residential environment from which the respondents come is mostly in the urban area (figure 2).

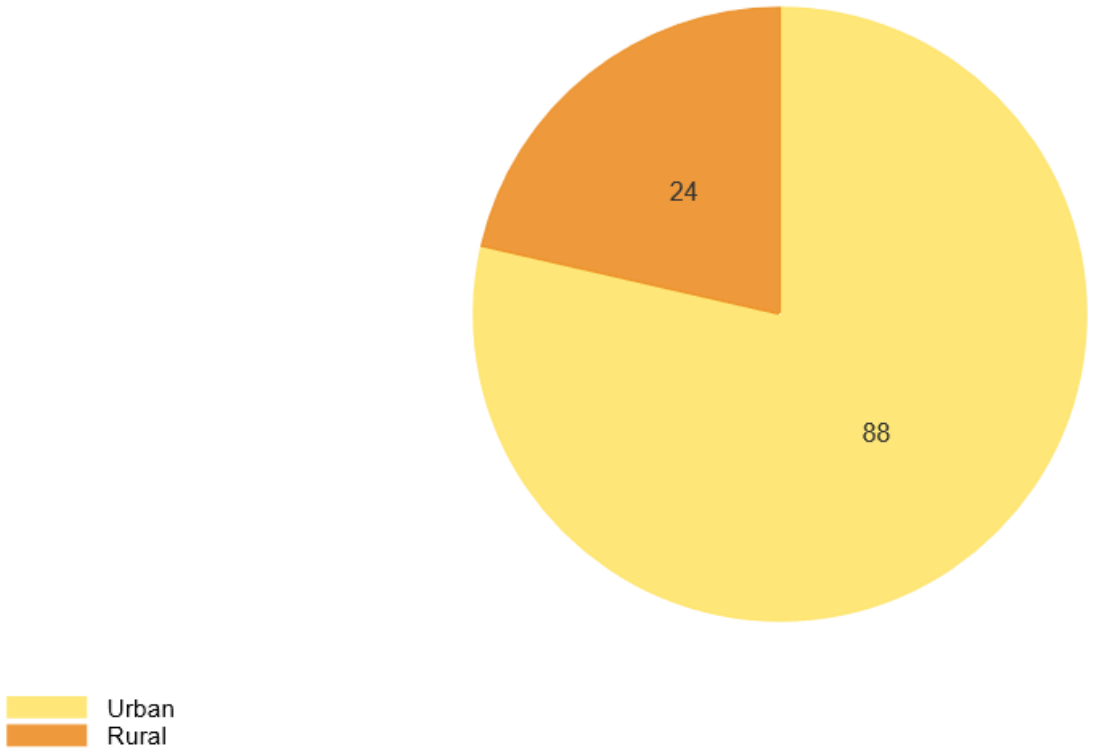

Figure 2. Residential environment
Source: Author's creation

Approximately 71% of the respondents have completed bachelor's studies, 26.5% have completed master's studies and only 2.5% have completed PhD studies. Following the survey, we noticed that the sample of respondents consists of 72.3% people who are employed in the economic field (approximately 77%), IT (8%) and the rest in other fields of activity.

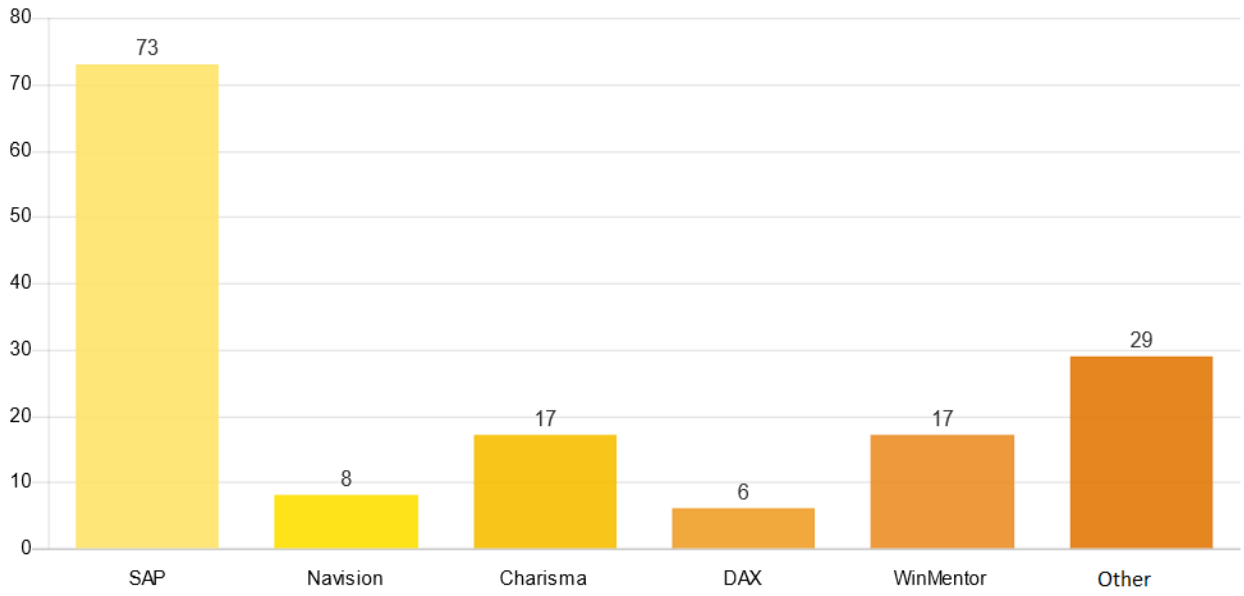

Figure 3. The ERP systems used by the respondents
Source: Author's creation

The most used ERP system by the respondents is SAP, they consider that the interface and modules ensure easy access to the processed information.

In the "Other" section, they said that they used B-org, Saga, Sage, Ciel, Sun System, Windone, Oracle etc.

As a result of the COVID-19 pandemic, where most activities have "migrated" to the online environment, the respondents noticed that these systems were improved to ensure efficiency in working from home, improving the performance of both employees and the company and improving work productivity. The tasks performed with the help of ERP systems were evaluated by the respondents as being automated in a percentage of 75%. Manually processed data has been reduced as a result of the use of ERP systems.

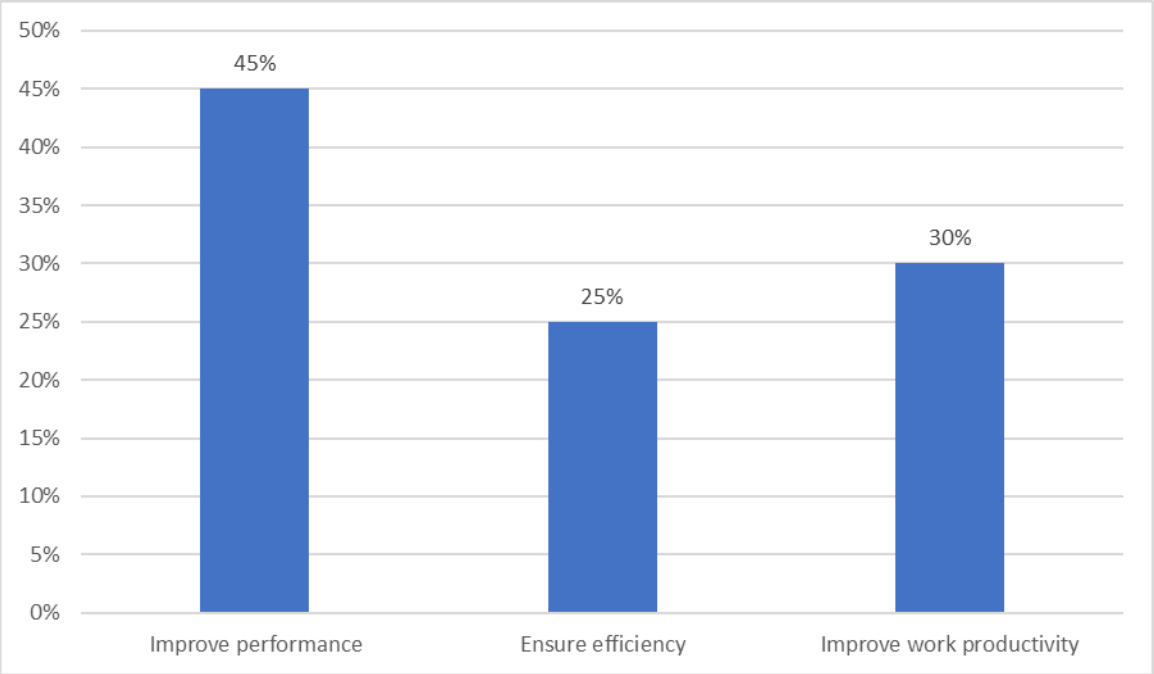

Figure 4. Aspects identified by the authors
Source: Author's creation based on sample

The companies tried to ensure a place as favorable as possible for employees, with the aim of ensuring that all their needs are met and that the activity is carried out in good conditions.

The future of occupations after COVID-19 pandemic are presented in figure 5:

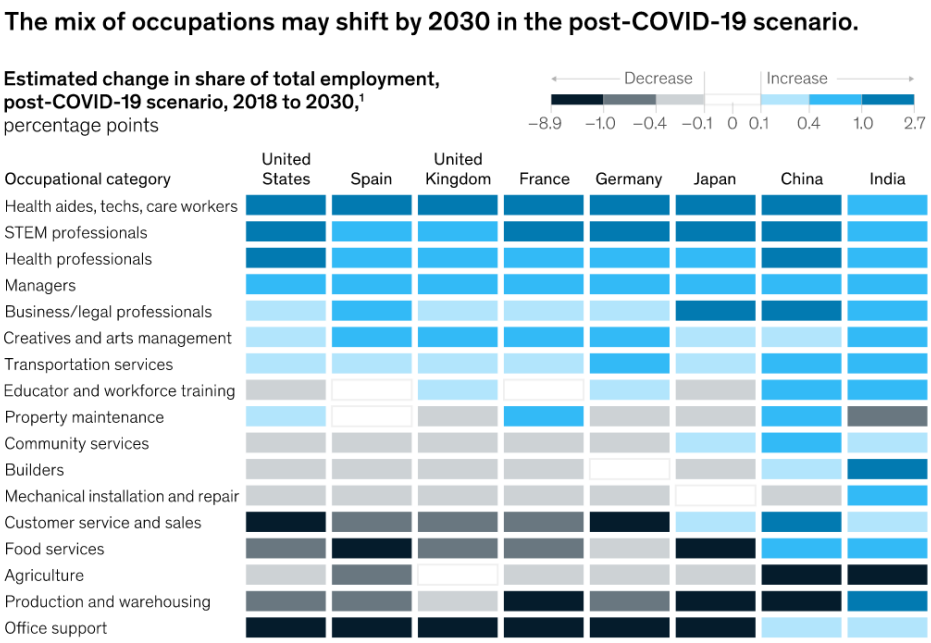

Figure 5. The mix of occupations may shift by 2030 in the post-COVID-19 scenario
Source: McKinsey Global Institute analysis, 2021

Other respondents are of the opinion that in the case of the COVID-19 pandemic, many of them felt the lack of colleagues or the decrease in productivity at work. Also, as a result of working from home, many people have developed depression or anxiety states, a greater degree of nervousness, sadness and other symptoms that they believe they developed as a result of the lack of physical interaction at the office.

As a result of the COVID-19 pandemic, many companies have identified the opportunity to thus reduce energy consumption and resources consumed in the office, thus trying to become green businesses. So that many companies have engaged in various sustainable development projects, providing training programs to employees. Thus, the employees were very receptive and agree with the idea that their company should develop sustainably.

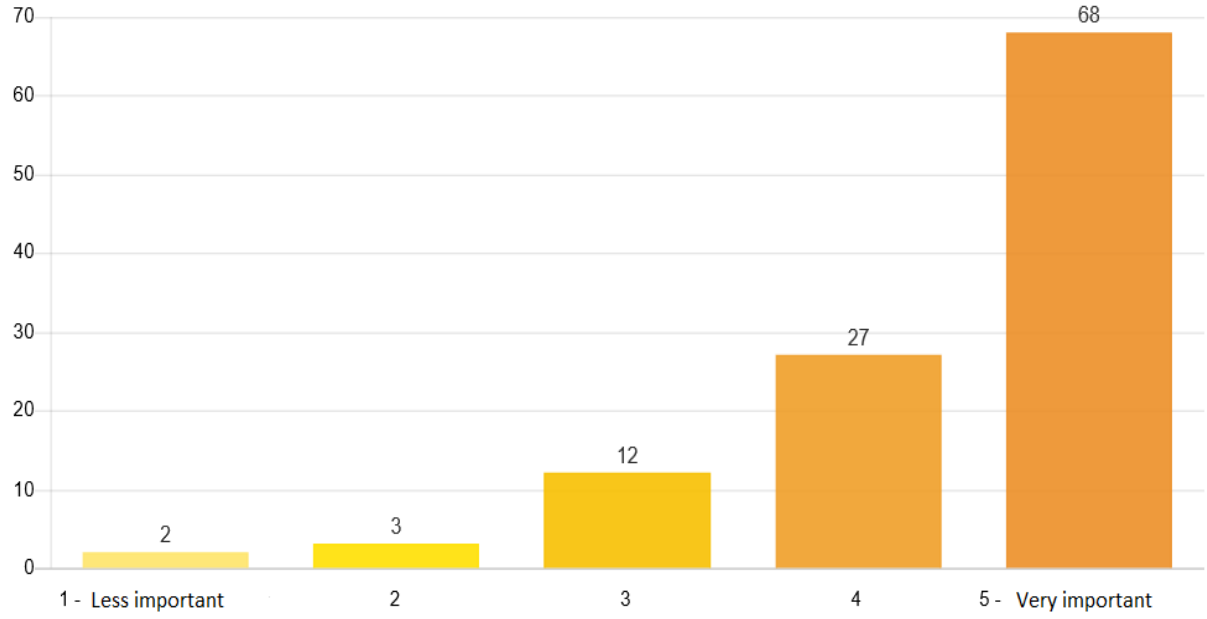

Figure 6. Appreciating the idea of protecting the environment and conserving resources
Source: Author's creation based on sample

Most respondents agreed on a scale from 1 to 5, with the maximum score of 5 representing that they agree with the idea of protecting the environment and preserving resources.

To the question "Do you think that sustainability should receive more attention within companies?", 62 of the respondents gave the highest score, resulting in an average of approximately 4.38 on a scale from 1 to 5.

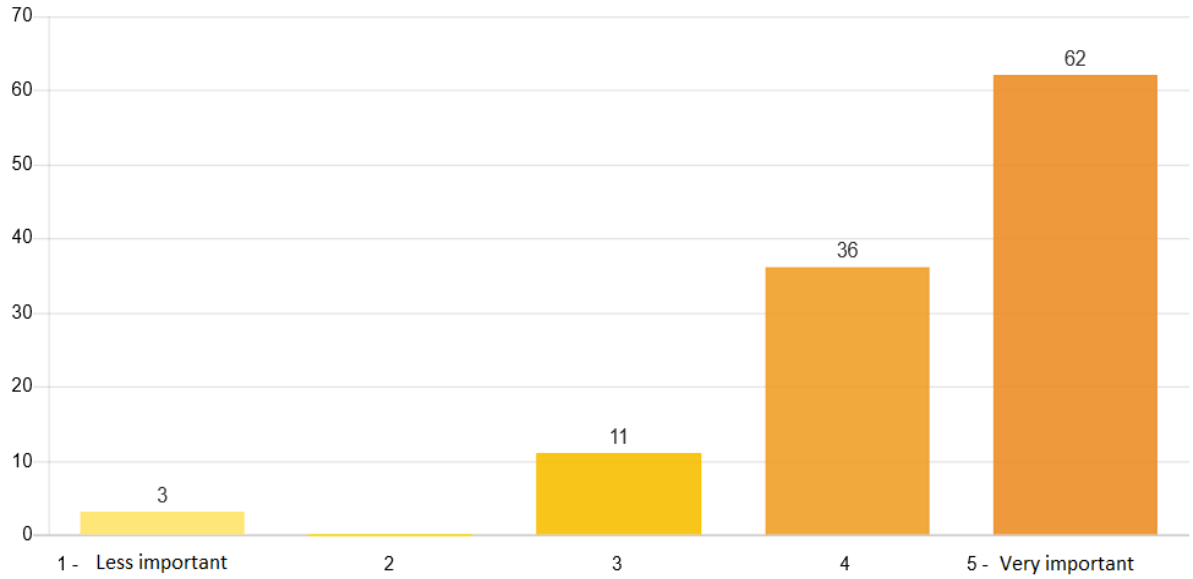

Figure 7. Sustainability should receive more attention within companies
Source: Author's creation based on sample

In the next section, author present the final conclusion based on the results of the survey and the articles studied.

4. Conclusion

The COVID-19 pandemic has affected most areas of activity, in some cases even forcing the digitization of a large number of activities. The digitalization of business processes determined a different impact of the way in which the company's activities were approached in the past.

Many companies decided during the COVID-19 pandemic to implement ERP systems, as a result of the multiple benefits offered by these systems. The modular structure of ERP systems allows each module to easily adapt to each department within the company. All data processed with these systems are stored in the system's database, ensuring quick access to information for the company's employees. Access to the data stored in the database of the ERP system is based on a user name and a password, so as to ensure the security of this data.

As a result of the results obtained with the help of the survey, the author came to the conclusion that ERP systems have the ability to increase productivity and work efficiency.

In conclusion, the use of ERP systems during the COVID-19 pandemic brought many benefits to users and companies, both from the perspective of data processing and storage, and from the perspective of the advantages offered to the company to develop sustainably.

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GUVERNAȚA CORPORATIVĂ LA NIVELUL MUNICIPIULUI BRĂILA

Angelica Bratu[1]

Abstract

With the appearance of GEO no. 109/2011, of Law no. 111/2016, of HGR no. 722/2016 and the Guide of the Ministry of Public Finance regarding the full management of state participation in the economy and the unified application by public authorities of GEO no. 109/2011 at the level of Brăila Municipality, HCLM no. 190/23.04.2021 regarding the approval of the organization regulation and selection committee's operations by the administrative boards' members of the public enterprises under the authority of the Municipality of Brăila. This article will deal with the procedure for each public enterprise with proposals for improvement that will contribute to the efficiency of governance on each individual element.

Keywords: corporate governance, governance regulation, investitors

JEL Classification: M41, M40

Introduction

With the appearance of GEO no. 109/2011 regarding the corporate governance of public enterprises, of Law no. 111/2016 for the approval of GEO no. 109/2011 and HGR no. 722/2016 for the approval of the methodological rules for the application of some provisions of GEO no. 109/2011, as well as the Guide of the Ministry of Public Finance regarding the integral management of state participation in the economy and the uniform application by public authorities of GEO no. 109/2011 based on art. 139 paragraph 1) in conjunction with the provisions of art. 196 para. 1 letter a0 of GEO no. 57/2019 regarding the administrative code, the Municipality of Brăila was obliged to approve the Regulation on the organization and operation of the Commission for the selection of the Boards of Directors of public enterprises' members under the authority of the Municipality of Brăila, adopting this HCLM no. 190/2021. Previously, based on the Opinion of the National Agency of Civil Servants, the "Corporate Governance Department" was established within the Technical Directorate, with two newly established positions of a legal advisor and inspector, through HCLM no. 70/19.02.2018. Until the position of inspector has been filled as a result of a competition, the work of the corporate governance department has been suspended. With the adoption of HCLM no. 343/16.07.2021 amending the explanatory note regarding the calculation of terms related to art 15 and art 47 of the Regulation approved by HCLM no. 190/23.04.2021 the activity of the corporate governance department could be carried out under legality conditions.

Thus, the first Report on the activity of public enterprises under the authority of Brăila Municipality according to the provisions of art 58 of GEO no. 109/2011 for the year 2020 no. 18868/29.06.2021 was published on the Brăila City Hall website, as required by the legal provisions in force. The next report for 2021 no. 20199/30.06.2022 is on the same website. For the year 2022, a report will be prepared during the year 2023.

The municipality of Brăila fulfills the function of tutelary public authority per the provisions of GEO no. 109/2011 regarding the corporate governance of public enterprises for the following enterprises:

- RA Brăila Free Zone Administration;
- SC Administration of Markets and Fairs SA Brăila;
- SC Braicar SA Brăila;

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- SC Dunarea Public Utilities Company SA Brăila;
- SC Eco SA Brăila.

This article will deal with the procedure carried out for the Brăila Free Zone Administration RA with proposals for improvement that will contribute to the efficiency of corporate governance on each individual element, respectively:

- the internal control which is one of the key elements of good corporate governance and is the subject of evaluation both by the internal audit and by the external audit, under the attention of the audit committee;
- The Board of Directors that analyzes and approves the internal audit plan after its approval by the Audit Committee;
-Risk management subject to the attention of the internal audit and the audit committees;
- The financial and non-financial reporting that represents the central element of the entity;
-The external auditor who certifies the correctness of the information provided by the entity and increases the confidence of investors through the Audit Report and the favorable opinion;
- The establishment of Audit Committees that contribute significantly to increasing the degree of trust and reducing fraud;
-Transparency, which is one of the basic principles of corporate governance and represents the extent to which an entity discloses financial information to interested parties.

Detailing

For the year 2020

The municipality of Brăila fulfills the function of tutelary public authority per the provisions of O.U.G. no. 109/2011 on the corporate governance of public enterprises, for the following public enterprises:

- R.A. Brăila Free Zone Administration;
- S.C. The Administration of Markets and Fairs S.A. Brăila;
- S.C. Braicar S.A. Brăila;
- S.C. Compania de Utilități Publice Dunărea S.A. Brăila;
- S.C. Eco S.A. Brăila;

R.A. BRĂILA FREE ZONE ADMINISTRATION

R.A. Administration Free Zone Brăila, a Romanian legal entity, has its registered office in the Municipality of Brăila, Anghel Saligny Street, no. 24, registration number at the Trade Register J09/1300/1994, unique registration code 6088916.

Established by H.G. no. 330/1994, the Brăila Free Zone Administration has autonomous management status and operates based on economic management and financial autonomy, respecting the provisions of Law no. 84/1992 on the regime of free zones in Romania, with subsequent amendments and additions.

R.A. The Administration of the Brăila Free Zone administers an area of 110.40 ha, located in the inner city of Brăila Municipality, composed of a number of 4 perimeters, located both in the central area of the city and in the industrial areas.

1. Shareholding policy

Through H.G. no.1222/2003 it was approved the passage of the Brăila Free Zone Administration R.A. under the authority of the Local Council of the Municipality of Brăila.

In 2020, the Board of Directors of R.A. The Brăila Free Zone administration had the following structure:

1.1. During the period 01.01.2020 – 20.07.2020:

– non-executive administrator – president;

– non-executive administrator (employed within the R.A. Administration of the Brăila Free Zone);

– non-executive administrator;

– provisional, non-executive administrator;

- 1 vacant position.

1.2. During the period 27.06.2020 – 31.12.2020:

– non-executive administrator – president;

– non-executive administrator (employed within the R.A. Administration of the Brăila Free Zone);

– three other non-executive administrators.

The executive management of R.A. The administration of the Brăila Free Zone in 2020 had the following structure:

1. During the period 01.01.2020 – 24.07.2020:

- Director General;
- Economic Director.

2. During the period 25.07.2020 – 31.12.2020:

- Director General;
- Economic Director – vacant.

In 2019, as a result of the mandate contract's termination as a member of the Board of Directors of R.A. Brăila Free Zone Administration - according to H.C.L.M. no. 393/22.07.2019, and the fact that a provisional administrator was appointed within the Board of Directors until 18.12.2019 - according to H.C.L.M. no. 276/29.05.2019, the Local Council of the Municipality of Brăila, as public guardian authority, through H.C.L.M. no. 648/31.10.2019 triggered the selection procedure for the appointment of 2 titular members within the Board of Directors of R.A. Brăila Free Zone Administration - 2018-2022 mandate.

At the end of this selection procedure, no candidate was admitted.

The Local Council of the Municipality of Brăila issued Decision no. 178/31.03.2020 regarding the resumption of the procedure for the selection of the members of the Board of Directors of the Autonomous Region Administration of the Brăila Free Zone, the term 2018-2022, for 2 vacant positions, approved by H.C.L.M. no. 648/31.10.2019.

The selection procedure was finalized with the appointment as members of the Board of Directors of the Autonomous Administration of the Free Zone Administration of Brăila, mandate 2018-2022, based on H.C.L.M. no.358/20.07.2020.

The medium and long-term objectives, that follow the government strategy in the field in which R.A. operates. The Brăila Free Zone Administration, are:

- Increasing the company's own revenues by diversifying the range of services;
- Stimulating businesses in the perimeters of the free zone;
- Infrastructure development and capital expenditure efficiency;
- Continuous promotion of the activities carried out and identification of new clients over long periods of time;
- Reduction of outstanding debts.

From these objectives, they derived the specific and quantifiable performance criteria assumed, respectively:

- Increase in income;
- Reduction of expenses;
- Profit increase;
- Increasing labor productivity;
- Reduction of the time to collect receivables;
- Lack of arrears.

2. Strategic changes in the operation of R.A. Brăila Free Zone Administration

In 2020, there were no strategic changes in the operation of R.A. Brăila Free Zone Administration.

3. The evolution of the financial and non-financial performance of R.A. Brăila Free Zone Administration

The financial and non-financial indicators of 2020 were drawn up according to the Revenue and Expenditure Budget of R.A. Brăila Free Zone Administration, approved by H.C.L.M. no. 72/20.02.2020.

Thus, The Income and Expenditure Budget approved was subject to rectification by H.C.L.M no. 385/31.08.2020 and by H.C.L.M no. 632/26.11.2020.

According to the data sent by R.A. Brăila Free Zone Administration, the results are:

3.1 Analysis of income realization

In the structure, the expenses incurred are as follows:

No.Crt.	Indicator	Amount (RON)
1	Total revenue, out of which:	4.841.309,00
2	Operating income	4.762.637,00
3	Financial income	78.672,00
4	Extraordinary income	0

Operating income of 4,762,637.00 RON is composed of:

No.Crt.	Indicator	Amount (RON)
1	Operating income	4.762.637,00
1.1.	Revenue from sold production, out of which:	4.691.931,00
1.1.1.	Revenue from services rendered	1.284.455,00
1.1.2.	Revenue from royalties and rents	3.123.087,00
1.1.3	Other income from sold production	284.389,00
1.2.	Other operating income	70.706,00

Operating income of 4,762,637.00 RON is composed of:

No.Crt.	Indicator	Amount (RON)
1	Financial income, of which:	78.672,00
1.1.	Income from favorable exchange rate differences	22.991,00
1.2.	Income from bank interest	55.293,00

The total revenues recorded in 2020 were 5,052,470.00 RON. Out of these, 4,841,309.00 RON represent income reported as coming from the execution of the BVC for the year 2020, the difference of 221,161.00 RON represents income from the provisions' extinguishment, with the role of adjusting expenses regarding current assets. In this instance, 104.83% of the income permitted by the BVC for 2020 has been obtained.

3.2 Analysis of the inclusion in the scheduled expenses

From the analysis of the total expenses realized, it is found that expenses were carried out in a percentage of 92.97% of those programmed and approved by BVC.

In 2020, R.A. The Brăila Free Zone administration made total expenses in the amount of 3,938,859.00 RON.

In the structure, the incurred expenses are presented as follows:

No.Crt	Indicator	Amount (RON)
1	Total expenses, of which:	3.938.859,00
1.1.	Operating expenses	3.918.145,00
1.2.	Financial expenses	20.714,00

Operating expenses in the amount of 3,918,145.00 RON represent the following expenses in the structure:

No.Crt	Indicator	Amount (RON)
1.	Operating expenses	3.918.145,00
1.1	Expenditure on goods and services, out of which:	553.110,00
	Inventory expenses	212.191,00
	Expenses regarding services performed by third parties	97.721,00
	Expenses with other services performed by third parties	243.198,00
1.2	Expenses with taxes, fees, and similar payments	433.518,00
1.3	Personnel expenses	2.610.735,00
1.4	Other operating expenses	320.782,00

The financial expenses in the amount of 20,714.00 RON represent unfavorable exchange rate differences, resulting both from the foreign exchange of the currencies received and from the monthly update of receivables and debts in foreign currency, according to the provisions of Order no. 1,802 from December 29, 2014, for the approval of the Accounting Regulations on individual annual financial statements and consolidated annual financial statements.

The direction fell within the approved limits, on all chapters of the BVC established by the model approved by Order no. 3818 of December 30, 2019, regarding the approval of the format and structure of the revenue and expenditure budget, as well as its supporting annexes.

3.3 Total expenses per 1000 RON of total income.

For 2020, R.A. The Brăila Free Zone administration had the task of achieving the programmed revenues with an effort of 917 RON total expenses per 1000 RON total revenues, an indicator that was achieved, the directorate recording a level of 814 RON total expenses per 1000 RON total revenues, something that is materializing in an economy of 103 RON per 1000 RON total income.

3.4 Gross Profit

The gross profit achieved in the amount of 902,450.00 RON exceeded the planned level of 381,620.00 RON by 520,830.00 RON. Exceeding gross profit is the result of savings made on total expenses and exceeding total revenues approved by the budget.

3.5 Total Level of Claims

The total receivables registered in the patrimony at the end of 2020, have a gross level of 530,124.00 RON, upon which intervention was made in the sense of adjustment with the amount of 74,038.00 RON by setting up provisions for uncertain customers, thus, resulting in net receivables in the amount of 456,086 0.00 RON.

Out of the total amount of registered receivables, the amount of 99,242.40 RON represents overdue receivables against the due dates held by uncertain customers, for which actions have been taken before the courts.

3.6 Average monthly earnings per employee

The structure of personnel expenses, which were the basis for determining the average gross profit monthly per employee, is presented as follows:

	INDICATORS	Year 2020 PLANED	MADE	%
C.	Personnel expenses, out of which:	2.835.455,00	2.610.735,00	92,07
C	0. Salary expenses	2.440.492,00	2.232.237,00	91,47
	1. Salary expenses, out of which:	2.150.664,00	2.003.406,00	93,15
	a) basic salaries	1.521.256,00	1.406.919,00	92,48
	b) increments, bonuses, and other bonuses related to the basic salary (according to CCM)	591.833,00	559.865,00	94,60
	c) other bonuses (according to CCM)	37.575,00	36.622,00	97,46
C	2. Bonuses, out of which	289.828,00	228.831,00	78,95
	a) social expenses provided for in art. 25 of Law no. 227/2015 on the Fiscal Code, with subsequent amendments and additions, out of which :	107.449,00	51.402,00	47,84
	a) gift vouchers:			
	b) meal vouchers;	138.000,00	133.050,00	96,41
	c) holiday vouchers;			
	d) expenses regarding the participation of employees in the profit obtained in the previous year	44.379,00	44.379,00	100,00
	e) other expenses according to CCM.			
	3. Other personnel expenses:			
C	4. Expenses related to the mandate contract and other management and control bodies, commissions, and committees, out of which:	338.289,00	326.218,00	96,43
	a) for directors/ directorate, out of which:	163.001,00	150.930,00	92,59
	- fixed component;	145.001,00	132.930,00	91,68
	- variable component	18.000,00	18.000,00	100,00
	b) for the board of directors/supervisory board, out of which:	124.888,00	124.888,00	100,00
	- fixed component	95.316,00	95.316,00	100,00
	- variable component	29.572,00	29.572,00	100,00
	c) for the AGM and censors;			
	d) for other commissions and committees established according to the law.	50.400,00	50.400,00	100,00

INDICATORS		Year 2020		
		PLANED	MADE	%
C	5. Expenses with insurance contribution for work	56.675,00	52.280,00	92,25
	No. of staff predicted at the end of the year;	42,00	38,00	90,48
	No. the average number of employees;	40,00	38,00	95,00
	Average monthly earnings per employee determined based on salary expenses (RON/person);	4.481,00	4.393,00	98,03
	Average monthly earnings per employee (RON/person) determined based on salary expenses excluding profit sharing and social expenses.	4.768,00	4.685,00	98,26

In 2020, the total average number of staff was 38 people, employed with individual employment contracts for an indefinite period.

3.7 Labor productivity per average number of staff

The labor productivity achieved per total average staff, in current prices, was 113,523.00 RON compared to a level of 125,333.00 RON foreseen and approved in the BVC for the year 2020, and as a degree of achievement, it represents a percentage of 110.40%.

3.8 Arrears

For 2020, R.A. The administration of the Brăila Free Zone has not registered and had no outstanding payments (debts).

3.9 Asset Inventory

The actual inventory of the heritage was carried out, based on Decisions no. 3578 – 3580/01.09.2020, issued by the general director of the directorate, in accordance with the provisions of the Accounting Law no. 82/1991 amended and supplemented, of Order no. 2861/2009 for the approval of the Norms regarding the organization and performance of the inventory of assets, capital and liabilities and Order no. 1802/2014 for the approval of the Accounting Regulations compliant with European directives.

Under these conditions, the factual inventory and the evaluation of the inventoried elements were carried out according to the provisions of Order no. 2861/2009 by filling in the inventory lists, comparing the "quantities existing in management with those highlighted in the warehouse records for material goods and confirming customer balances based on statements signed by the economic agents that register debts to the management on 30.09.2020.

The capitalization of the positions in the inventory lists, in the sense of comparing the quantitative value records from the accounting with the evaluated values for each good in the inventory lists, was carried out until the date of submission of the accounting balance sheet.

Considering that the inventory took place during the year, the data resulting from the inventory operation carried out on 30.09.2020 were updated with the entries and exits from the period between the date of the inventory, respectively 30.09.2020 and the end of the financial year (31.12.2020), the updated data being then included in the Register - inventory. The operation of updating the data resulting from the inventory was carried out so that at the end of the financial year the real situation of the assets, liabilities, and equity elements was reflected.

3.10 Realization of the investment program

For 2020, R.A. The administration of the Brăila Free Zone has planned a volume of expenditure for investments of 1,038,000 RON. These expenses were covered from the point of view of funding sources in the amount of 3,040,000 RON, coming from: - depreciation in the amount of 352,000 RON; - distribution of profit in the amount of 150,000 RON; - unconsumed investment sources from previous years of 2,538,000 RON; In 2020, investment expenses were carried out in the amount of 261,000 RON, which represents a realization of the foreseen value of 25.14%. Investment expenses were covered by their own sources of financing.

4. The economic and social policies implemented by R.A. Brăila Free Zone

Administration Economic policies were oriented towards reducing losses and increasing net profit. The achievement of new investment objectives was also considered.

5. Data on the opinions of external auditors

The activity of R.A. The Brăila Free Zone administration was audited by an external auditor, formulating the following opinions:

- The financial statements provide a true picture of the director's financial position on 31.12.2020;
- There are no conditions that could generate significant doubts regarding the management's ability to continue its activity;
- The financial statements were prepared based on appropriate and consistent accounting policies.

6. Other elements established by the decision of the public guardianship authority

All Decisions of the Local Council of Brăila Municipality regarding R.A. The administration of the Brăila Free Zone were carried out.

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MANAGEMENT STRATEGIES, KEY TO DIGITAL TRANSFORMATION

Drd. Casiana Darie Maria[1]

Abstract

Macroeconomic events affect in multiple ways and companies should be aware of those challenges that came across. Broken supply chains continue to be a problem, labor disruption increase this year and affects organization internally, the pandemic also pushed digital economy at a faster rate than before.

ERP implementation came across with some challenges in 2022, prediction and trends for 2023 and beyond seems to keep those.

The key for organization is to understand why interferences happen and deploying KPIs throughout the journey as well as post-project to keep everything on track from start to finish. The end goal is to ensure that the implementation is on time and budget and minimizes operational disruption and maximizes potential business value.

Qualitative and quantitative findings present in this paper are fairly consistent among companies of comparable size and complexity. It is important for companies to know about how to maximize business value and get the full ROI.

This paper aims to present a few examples of things that might drive revenue enhancements and what is the prediction for 2023 and beyond.

Keywords: *Management strategies, ERP Implementation, Challenges in ERP, Trends.*

JEL classification: *G30O31*

1. Introduction

The technology is changes faster than human ability, business intelligence, artificial intelligence, machine learning, come with a lot of upgrading and the focus often falls too much on technology and too little on people and processes.

Digital transformation and sequent business model improvement have fundamentally transformed consumers' expectations and actions, pressured traditional businesses, and disrupted numerous markets (Peter, Thijs& Michael et al., 2021).

In this paper, we aim to reflect on the phenomenon and the literature from multiple fields to encouragement an understanding of digital transformation and to stimulate future research by providing strategic requirements. We have to accomplishing three objectives: First, to recognize the external factors that affects organization and produce them new challenges with these crises. Second, to discuss the important tools that can help organizations to build a strong management strategies (1) top five change management strategies, (2) top five change management concepts, all this creating the qualitative parts of topic. Third, to present research about EU implementation, comparation on 2019 and 2021, pandemic challenged.

2. Literature review

Digital transformation has affected people, businesses and systems seriously in recent years (M. Del Giudice et al., 2020)). This revolution is changing the way firms run businesses, and improve relationships within and across ecosystems (e.g., with buyers, contractors), posing new managerial opportunities and challenges.

Yuhao (2022) mentions the development of digital technologies causes digital transformation, as a strategic priority, which grants enterprises attain up with industry forefront in the turbulent, spurring managers to accelerate digital transformation for long-term growth. Accordingly, Gregory (2019) describes digital transformation as a process which firms respond to changes emerging in their environment by handling digital technologies to occur new paths of value creation.

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Therefore, Yuhao (2022) concluded innovation as an essential driving force of accomplishing and sustaining competitiveness and performance for organizations.

Current literature has exposed that digital transformation can relieve firms' information asymmetry (Huwei et al., 2022), encourage corporate improvement, enhance companies' performance (Huayun et al., 2022), and minimise companies' stock value crash risk (Huwei et al., 2022).

Hence, according to the Digital Competitiveness Ranking 2022 on the IMD World Competitiveness Center [8], some from the top ten countries are the US, Sweden, Singapore, and China in the economy-wide digitalization. Though it is natural that organisations are interested in digital transformation, it is not straightforward whether it may get tangible benefits to organisations and enhance shareholder value.

3. Challenges to apply digital transformation on organization

External factors causes new challenges, the pandemic also hard-pressed digital economy at a quicker than last years and organization around the word are feeling the effects.

Economic turbulence, global supply chain challenges, and hybrid workforces are just a handful of the elements that hint at new and emerging industry trends [10].

The degeneration and subsequent recuperation in economic activity during the COVID-19 pandemic have been unprecedented, mirroring the massive shifts in demand and supply generated by the closing and reopening of economies argues Maria Grazia on paper ECB Economic Bulletin[11].

Operational disruption seems to be an external factor that is defined as a "material" disruption to processes as a result of the change. For illustration, being unable to ship product because supply chain challenges or close the balance sheet are the two most general operational disruptions. This metric does not include smaller and more common disruptions, such as employee frustration, short-term inefficiencies, and other relatively minor disruptions [9].

Cloud software becomes unprotected. Cloud software, in many cases, has not be ready for embracing. Even so, software providers have been pressing their customers to go into the cloud [12]. Padma (2022) argues the benefits of cloud computing contains increased spreadsheet power, storage, flexibility, scalability, and lower IT equipment overhead costs

These vendors have had decades of R&D that have led to the creation of their on-premise solutions, and they have been shifting to cloud-computing solutions relatively quickly in an effort to appease investors and drive a subscription-based revenue model. As a result, these cloud solutions are integrated only for companies to find that there are shortfalls and immaturities in the system's capabilities[12].

4. Tools to build strong management

Change management turns out different in this decade and it is no surprise that organizational change management is the key to digital transformation achievement, and it has never been more accurate than those days. In this changing world and change management greatest practices have evolved as well in response to the abundance of transformation already taking place outside of the workplace.

Researching on different scientific paper on organizational change in the early 2020s we identify five change management strategies that ensure organizations and there transformation strategies to keep up with world crises that is affects year 2022 and beyond.

Table no. 1 Top five change management strategies

STRATEGIES	REMARK
Recognize Pressure	Given the ever-evolving landscape of the economy, the pandemic and even the personal and professional changes that have taken place over the past two years, people are feeling unprecedented pressure on several levels. From economic changes to social change, change has become somewhat of a constant. It leaves many to feel a continuous discomfort. When an organization pursues digital transformation in today's world and plans to change employees day in and day out, it has the potential to push people to their breaking point.
Spotlight On Culture	Just as people have been affected by the change in recent years, many organizations have also been affected. By understanding that external influences can effect organizational culture, we can be more realistic about where we are those days and how to get to where we want in future.
3 Pillars	Organizational change management is frequently the attach that claims together the 3 pillars of the DS (Digital Strategies): People, processes and technology. These pillars support a digital strategy and, to carry out a truly optimized operation, all three pillars must work synergistically to move.
Revolution Strategy	Once organization handle on the 3 pillars, should address the fatigue of change and adjust or refine business culture, then can be ready to devise a change management strategy. Without the basis of corporate strategy setting the groundwork, non-alignment will sprout, influence and even sabotage the overall progress of the business.
Alignment	The larger the organization, the more likely it is that your team will be misaligned. It takes objective and strategy to align stakeholders to ensure that everyone sweeps in the right direction. If there is ample misalignment, it often helps to take in an independent third party to get everyone to the same page.

Source: Own interpretation according to The 2023 Digital Transformation Report [9].

Table no. 1 describes top five change management strategies that are or could be adopted in each organization.

On the other hand change management is defined as the methods and manners in which a business describes and implements adjustment both within its internal and external processes [13].

To effectively manage change in any organization, it is important to understand the main concepts that affect change management.

Table no. 2 Top five change management concepts

CONCEPTS	REMARKS
Resistance	There are two types of resistance that will materialize regardless of the project: Intended resistance and unintended resistance. Awareness of resistance is the first step and can be attended by developing a strong strategy for change to contest it.
Interested party	Take a look on key interested party in each project. Analyze them can make us understand what makes them focus. They can offer a higher level of engagements and will lead to fruitful transformation projects.
Plan Communication	Is better than each message to be tailored for different departments, interested party or target audience. Therefore, need to repeat different elements of the project frequency to get point across and reach your audience.
Readiness benefits	Having a good understanding about how activities drive benefits realization and business value, will qualify the project team and interested party to stay on track.
Organizational Eagerness	Is a must to comprehend how prepared is the organization is to adopt new processes. Maintenance rhythm on our team's appetite for change will enable a positive approach to change management strategy, cultivating the chances of higher user adoption and whole digital transformation success

Source: Own interpretation according to the 2023 Digital Transformation Report [9].

Hence, Table no 2 reveal each component that helps to definitive a project plan and lead an organisation through a digital transformation.

In conclusion those concepts seem to become more prominent through 2023 according to the transformation that already covered 2022.

Since now we know how to obtain digital transformation, appear the question how to measure transformation results?

Best digital transformations collapse to deliver on time, budget, and business value. There are some major performance indicators (KPIs) that can be handled to accomplish and monitor any digital transformations and guarantee the project is increasing its ROI.

The end goal is to confirm that the implementation is on period and in on financial plan and also reduces operational disruption and expands potential business value. Therefore, we create a system of measurement to keep an instrument on that will help you do just that.

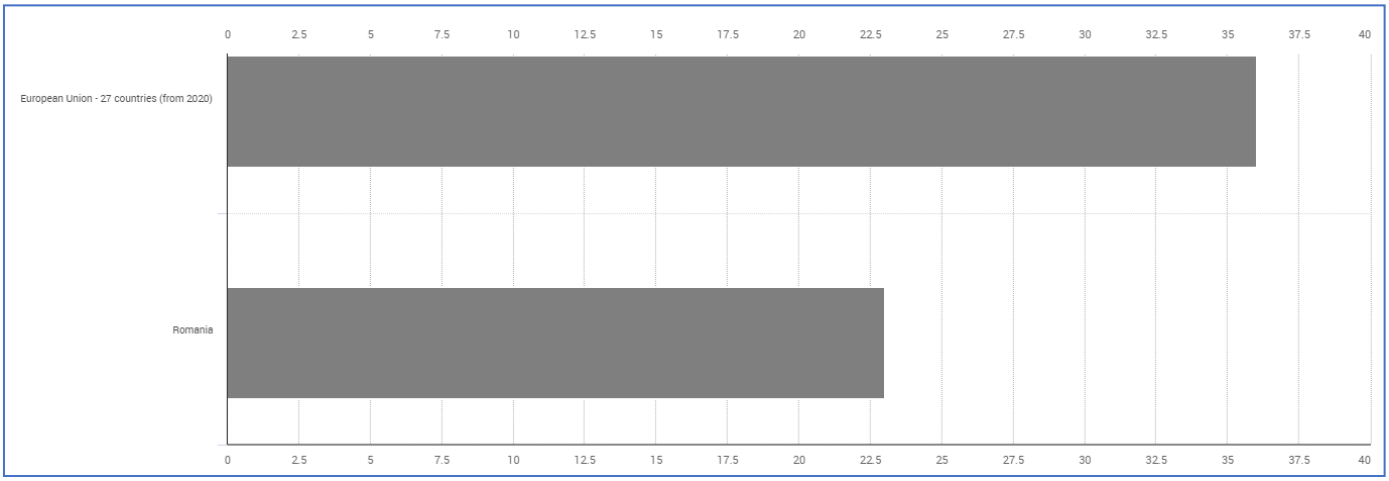
- Cost implementations and time – Most perceptibly KPI is overall based on cost and timing;
- Readiness of operational - Pretending the business developments and requirements in the upcoming state are explained, there should be a measurement system to quantify accomplishment and identify any breakdowns in the business processes[15];
- Business value and ROI – Also a performance metric to look at the business values and ROI. These anticipated business benefits are essential to understand.

5. Quantitative metrics

Using custom datasets from Eurostat Data Browser, we discovered 42 values displayed on geopolitical entity, and for time ten values displayed. On the other hand, we use like indicators "Enterprises who have ERP software" and unit of measure "Percentage of enterprises".

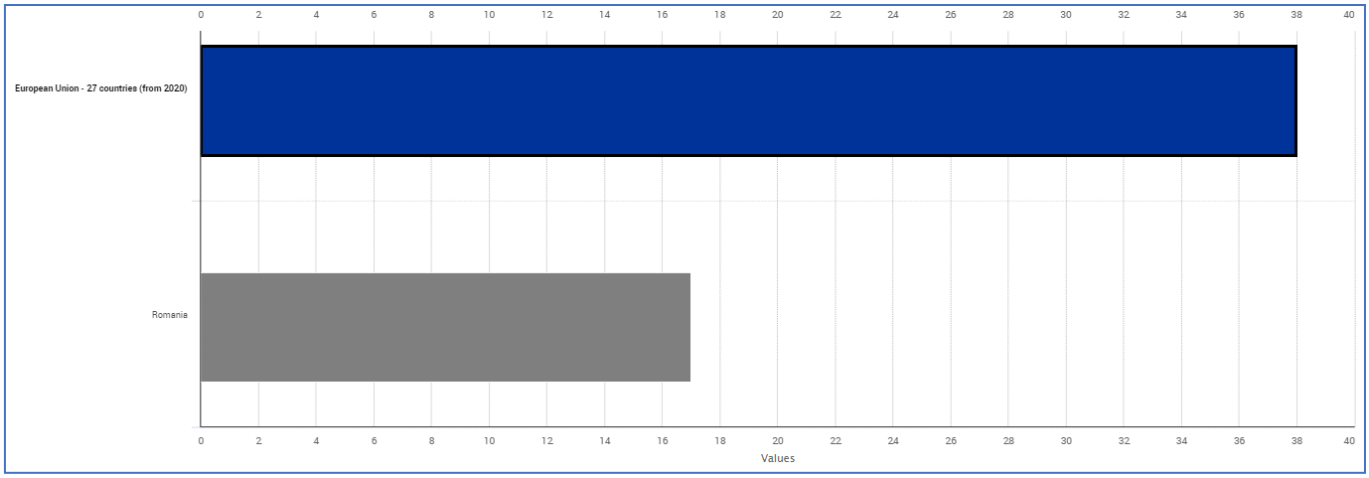
Hence, we filtered on 2 values geopolitical entity: European Union and Romania, for 2-year comparation, 2019 and 2021.

Fig. no. 1 Values for 2019



Source: Own processing from Eurostat [14].

Fig. no. 2 Values for 2021



Source: Own processing from Eurostat [14].

Type of enterprises contain all business without financial sectors that have ten or more employees.

If we synthesize in few words the graph's above, will observe that 2021 make considerable changes on EU. Percentages on 2019 it was 35% and growth to 38% on 2021, means EU recorded an increase by 3 percentage points (pp).

Throughout the pandemic crise digital transformation is affecting Romania, exposing us that it was not prepared for this kind of challenge.

From 22.5% percentages registered in year 2019, it downgraded to 16.5%, means that organizations keep their money for subsequent investments that is not considering a risk. The drop led to decrease by 6 percentage points (pp), hence the interest rate fall dramatically.

6. Conclusion and discussion

A business can count measures around what is expected. It can be inventory stages, optimizing inventory through better forecasting to reduce inventory by a certain percentage, or it might be that we are expect growth revenue by X% due to different sales enablement tools.

In deduction three big issues became particularly apparent in 2021. Primary, and perhaps the clearest to many of us, was the exceptional pressures on global supply chains produced by the COVID pandemic and the succeeding series of lockdowns and boundaries which different in their timing and difficulty from country to country.

Business must be strong and efficient of adapting to major disruptions so that it can improve long-term strategies and solutions to these compound challenges.

Forbes bring up that the businesses have faced huge challenges and have experienced an incredible amount of transformation over the past few years, and this won't slow down in 2023. Industries will be affected by consequences of the global pandemic, Russia's invasion of Ukraine, economic challenges, as well as an ever-faster development of technologies [16].

At the end this paper aims to give a fresh perspective on what's happening in those days, what are the challenges and how a business can pass thru them. What it will be in 2023 and beyond we will analyze soon, now we know the trend and prediction, and have a base of what we can do next to attain more strategies and add more digitalization on our business, invest in ERP or other application from software space.

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CORPORATE GOVERNANCE ON SUSTAINABILITY IN THE EU

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Abstract.

As part of the European Union's transition to a climate-neutral and green economy in line with the European Green Deal, the directions of action considered are related to the improvement of corporate governance practices to better integrate risk management and mitigation processes of human rights and environmental risks and impacts, including those stemming from value chains, into corporate strategies; the avoidance of fragmentation of due diligence requirements in the single market and creation of legal certainty for businesses and stakeholders as regards expected behaviour and liability; the increment of corporate accountability for adverse impacts, and insurance of the coherence for companies regarding obligations under existing and proposed EU initiatives on responsible business conduct.

This paper analyses the measures proposed at the EU level in order to achieve sustainability objectives by focusing on the business processes of the companies.

Keywords: *sustainable development, companies, corporate governance, environmental risks, business conduc.*

JEL Classification: *M48, O16, Q01.*

Regarding environmental, social and human rights related risks, impacts, measures (including due diligence) and policies, at EU level, sustainable corporate governance has been mainly fostered indirectly by imposing reporting requirements in the *Directive 2014/95 /EU - Non-Financial Reporting Directive*[2] *(NFRD)* on a significant number of companies.

The objectives pursued by the NFRD were to increase the transparency of certain companies, and to increase the relevance, consistency, and comparability of the non-financial information disclosed, by strengthening and clarifying the existing requirements; to increase diversity in the boards of companies through enhanced transparency in order to facilitate an effective oversight of the management and robust governance of the company and to increase the company's accountability and performance, and the efficiency of the Single Market.

In this regard, large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:

a) a brief description of the undertaking's business model;

b) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented;

c) the outcome of those policies;

d) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks;

e) non-financial key performance indicators relevant to the particular business.

These requirements are in force since the financial year started on 1 January 2017 or during the calendar year 2017.

On 23rd February 2022, the Commission published a *Proposal for a Corporate Sustainability Reporting Directive (CSRD)*, revising the NFRD, that will extend the scope of the companies covered to all large and all listed companies, require the audit (assurance) of reported

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[2] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

information and strengthen the standardisation of reported information by empowering the Commission to adopt sustainability reporting standards. This Directive will complement the current NFRD and its proposed amendments *(Proposal for CSRD)* by adding a substantive corporate duty for some companies to perform due diligence to identify, prevent, mitigate and account for external harm resulting from adverse human rights and environmental impacts in the company's own operations, its subsidiaries and in the value chain.

Of particular relevance of the *Proposal on CSRD* is that it mandates disclosure of plans of an undertaking to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement. The two initiatives are closely interrelated and will lead to synergies.

First, a proper information collection for reporting purposes under the proposed CSRD requires setting up processes, which is closely related to identifying adverse impacts in accordance with the due diligence duty set up by the Directive. Second, the CSRD will cover the last step of the due diligence duty, namely the reporting stage, for companies that are also covered by the CSRD. Third, the Directive will set obligations for companies to have in place the plan ensuring that the business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement on which the CSRD requires to report. Thus, the Directive will lead to companies' reporting being more complete and effective. Therefore, complementarity will increase effectiveness of both measures and drive corporate behavioural change for those companies.

The new due diligence rules will apply to the following companies and sectors:

A. EU companies:

- Group 1: all EU limited liability companies of substantial size and economic power (with 500+ employees and EUR 150 million+ in net turnover worldwide).

- Group 2: Other limited liability companies operating in defined high impact sectors, which do not meet both Group 1 thresholds, but have more than 250 employees and a net turnover of EUR 40 million worldwide and more. For these companies, rules will start to apply 2 years later than for group 1.

B. Non-EU companies active in the EU with turnover threshold aligned with Group 1 and 2, generated in the EU.

For defining the scope of application in relation to non-EU companies *the described turnover criterion* should be chosen as it creates a territorial connection between the third-country companies and the Union territory. Turnover is a proxy for the effects that the activities of those companies could have on the internal market. In accordance with international law, such effects justify the application of Union law to third-country companies. To ensure identification of the relevant turnover of companies concerned, the methods for calculating net turnover for non-EU companies as laid down in Directive (EU) 2013/34[1] as amended by Directive (EU) 2021/2101[2] should be used.

The definition of turnover foreseen by the Directive 2013/34/EU has already established the methods for calculating net turnover for non-Union companies, as turnover and revenue definitions are similar in international accounting frameworks too.

The Directive applies to the company's own operations, their subsidiaries and their value chains (direct and indirect established business relationships). In order to comply with the corporate due diligence duty, companies need to: *integrate due diligence into policies; identify actual or potential adverse human rights and environmental impacts; prevent or*

[1] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC

[2] Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches

mitigate potential impacts; bring to an end or minimise actual impacts; establish and maintain a complaints procedure; monitor the effectiveness of the due diligence policy and measures; and publicly communicate on due diligence.

For the purposes of due diligence, companies are entitled to share resources and information within their respective groups of companies and with other legal entities in compliance with applicable competition law.

► Companies shall *integrate due diligence into all their corporate policies* and have in place a due diligence policy. The due diligence policy shall contain all of the following:

a) a description of the company's approach, including in the long term, to due diligence;

b) a code of conduct describing rules and principles to be followed by the company's employees and subsidiaries;

c) a description of the processes put in place to implement due diligence, including the measures taken to verify compliance with the code of conduct and to extend its application to established business relationships.

The companies shall update their due diligence policy annually.

► Companies take appropiate measures *to identify actual and potential adverse human rights impacts and adverse environmental impacts* arising from their own operations or those of their subsidiaries and, where related to their value chains, from their established business relationships.

In order to allow for a comprehensive identification of adverse impacts, such identification should be based on quantitative and qualitative information. For instance, as regards adverse environmental impacts, the company should obtain information about baseline conditions at higher risk sites or facilities in value chains. Identification of adverse impacts should include assessing the human rights, and environmental context in a dynamic way and in regular intervals: prior to a new activity or relationship, prior to major decisions or changes in the operation; in response to or anticipation of changes in the operating environment; and periodically, at least every 12 months, throughout the life of an activity or relationship. Regulated financial undertakings providing loan, credit, or other financial services should identify the adverse impacts only at the inception of the contract. When identifying adverse impacts, companies should also identify and assess the impact of a business relationship's business model and strategies, including trading, procurement and pricing practices. Where the company cannot prevent, bring to an end or minimize all its adverse impacts at the same time, it should be able to prioritize its action, provided it takes the measures reasonably available to the company, taking into account the specific circumstances.

► In order to ensure that prevention and mitigation of potential adverse impacts is effective, companies should prioritize engagement with business relationships in the value chain, instead of terminating the business relationship, as a last resort action after attempting at preventing and mitigating adverse potential impacts without success.

For cases where potential adverse impacts could not be addressed by the described prevention or mitigation measures, companies shall to refrain from entering into new or extending existing relations with the partner in question and, where the law governing their relations so entitles them to, to either temporarily suspend commercial relationships with the partner in question, while pursuing prevention and minimisation efforts, if there is reasonable expectation that these efforts are to succeed in the short-term; or to terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe. In order to allow companies to fulfil that obligation, Member States should provide for the availability of an option to terminate the business relationship in contracts governed by their laws. It is possible that prevention of adverse impacts at the level of indirect business relationships requires collaboration with another company, for example a company which has a direct contractual relationship with the supplier. In some instances, such collaboration could be the only realistic way of preventing adverse impacts, in particular, where the indirect business relationship

is not ready to enter into a contract with the company. In these instances, the company should collaborate with the entity which can most effectively prevent or mitigate adverse impacts at the level of the indirect business relationship while respecting competition law.

As regards direct and indirect business relationships, industry cooperation, industry schemes and multi-stakeholder initiatives can help create additional leverage to identify, mitigate, and prevent adverse impacts. Therefore it should be possible for companies to rely on such initiatives to support the implementation of their due diligence obligations laid down in the Directive to the extent that such schemes and initiatives are appropriate to support the fulfilment of those obligations. Companies could assess, at their own initiative, the alignment of these schemes and initiatives with the obligations under the Directive. In order to ensure full information on such initiatives, the Directive also refer to the possibility for the Commission and the Member States to facilitate the dissemination of information on such schemes or initiatives and their outcomes. The Commission, in collaboration with Member States, may issue guidance for assessing the fitness of industry schemes and multi-stakeholder initiatives.

► Also, the Directive establishes the obligation for Member States to ensure that companies take appropriate measures *to bring to an end actual adverse human rights and environmental impacts* that they had or could have identified. Where an adverse impact that has occurred at the level of established direct or indirect established business relationships cannot be brought to an end, Member States should ensure that companies minimise the extent of the impact.

Under the due diligence obligations set out by the Directive, if a company identifies actual human rights or environmental adverse impacts, it should take appropriate measures to bring those to an end. It can be expected that a company is able to bring to an end actual adverse impacts in their own operations and in subsidiaries. However, it should be clarified that, as regards established business relationships, where adverse impacts cannot be brought to an end, companies should minimise the extent of such impacts. Minimisation of the extent of adverse impacts should require an outcome that is the closest possible to bringing the adverse impact to an end. To provide companies with legal clarity and certainty, the Directive define which actions companies should be required to take for bringing actual human rights and environmental adverse impacts to an end and minimisation of their extent, where relevant depending on the circumstances.

So as to comply with the obligation of bringing to an end and minimising the extent of actual adverse impacts under the Directive, companies should be required to take the following actions, where relevant. They should neutralise the adverse impact or minimise its extent, with an action proportionate to the significance and scale of the adverse impact and to the contribution of the company's conduct to the adverse impact. Where necessary due to the fact that the adverse impact cannot be immediately brought to an end, companies should develop and implement a corrective action plan with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement. Companies should also seek to obtain contractual assurances from a direct business partner with whom they have an established business relationship that they will ensure compliance with the company's code of conduct and, as necessary, a prevention action plan, including by seeking corresponding contractual assurances from its partners, to the extent that their activities are part of the company's value chain.

The contractual assurances should be accompanied by the appropriate measures to verify compliance. Finally, companies should also make investments aiming at ceasing or minimising the extent of adverse impact, provide targeted and proportionate support for an SMEs with which they have an established business relationship and collaborate with other entities, including, where relevant, to increase the company's ability to bring the adverse impact to an end.

► Companies should provide the possibility for persons and organisations to submit *complaints* directly to them in case of legitimate concerns regarding actual or potential human rights and environmental adverse impacts.

Organisations who could submit such complaints should include trade unions and other workers' representatives representing individuals working in the value chain concerned and civil society organisations active in the areas related to the value chain concerned where they have knowledge about a potential or actual adverse impact. Companies should establish a procedure for dealing with those complaints and inform workers, trade unions and other workers' representatives, where relevant, about such processes. Recourse to the complaints and remediation mechanism should not prevent the complainant from having recourse to judicial remedies.

In accordance with international standards, complaints should be entitled to request from the company appropriate follow-up on the complaint and to meet with the company's representatives at an appropriate level to discuss potential or actual severe adverse impacts that are the subject matter of the complaint. This access should not lead to unreasonable solicitations of companies.

► Under the Directive, companies should monitor the implementation and effectiveness of their due diligence measures. They should carry out periodic assessments of their own operations, those of their subsidiaries and, where related to the value chains of the company, those of their established business relationships, to monitor the effectiveness of the identification, prevention, minimisation, bringing to an end and mitigation of human rights and environmental adverse impacts. Such assessments should verify that adverse impacts are properly identified, due diligence measures are implemented and adverse impacts have actually been prevented or brought to an end. In order to ensure that such assessments are up-to-date, they should be carried out at least every 12 months and be revised in-between if there are reasonable grounds to believe that significant new risks of adverse impact could have arisen.

► Member States shall ensure that companies that are not subject to reporting requirements under Articles 19a and 29a of Directive 2013/34/EU report on the matters covered by the Directive by publishing on their website an annual statement in a language customary in the sphere of international business. The statement shall be published by 30 April each year, covering the previous calendar year.

Like in the existing international standards set by the United Nations Guiding Principles on Business and Human Rights and the OECD framework, it forms part of the due diligence requirement to communicate externally relevant information on due diligence policies, processes and activities conducted to identify and address actual or potential adverse impacts, including the findings and outcomes of those activities. The proposal to amend Directive 2013/34/EU as regards corporate sustainability reporting sets out relevant reporting obligations for the companies covered by the Directive. In order to avoid duplicating reporting obligations, the Directive not introduce any new reporting obligations in addition to those under Directive 2013/34/EU for the companies covered by that Directive as well as the reporting standards that should be developed under it.

But, as regards companies that are within the scope of the Directive, but do not fall under Directive 2013/34/EU, in order to comply with their obligation of communicating as part of the due diligence under this Directive, they should publish on their website an annual statement in a language customary in the sphere of international business, as we mentioned previously.

All these seven measures that companies need to take, in order to comply with the corporate due diligence duty, will contribute to more effective protection of human rights included in international conventions and will help to avoid adverse environmental impacts contrary to key environmental conventions.

Companies in scope will need to take appropriate measures (‘obligation of means'), in light of the severity and likelihood of different impacts, the measures available to the company in the specific circumstances, and the need to set priorities.

Also, national administrative authorities appointed by Member States will be responsible for supervising these new rules and may impose fines in case of non-compliance. In addition, victims will have the opportunity to take legal action for damages that could have been avoided with appropriate due diligence measures.

To ensure that due diligence becomes part of the whole functioning of companies, directors of companies need to be involved. This is why the Directive also introduces directors' duties to set up and oversee the implementation of due diligence and to integrate it into the corporate strategy. In addition, when fulfilling their duty to act in the best interest of the company, directors must take into account the human rights, climate change and environmental consequences of their decisions. Where companies' directors enjoy variable remuneration, they will be incentivised to contribute to combating climate change by reference to the corporate plan.

Small and medium enterprises (SMEs) are not directly in the scope of the Directive.

In order to support all companies, including SMEs, that may be indirectly affected, the Directive also includes, accompanying measures which include the development of individually or jointly dedicated websites, platforms or portals and potential financial support for SMEs.

The Directive will also underpin the Sustainable Finance Disclosure Regulation (SFDR) that has recently entered into force and applies to financial market participants (such as investment fund and portfolio managers, insurance undertakings selling insurance-based investment products and undertakings providing various pension products) and financial advisers. Under the SFDR, these undertakings are required to publish, among others, a statement on their due diligence policies with respect to principal adverse impacts of their investment decisions on sustainability factors on a comply or explain basis. At the same time, for companies with more than 500 employees the publication of such a statement is mandatory, and the Commission is empowered to adopt regulatory technical standards on the sustainability indicators in relation to the various types of adverse impacts1.

Similarly, this Directive will complement the recent Taxonomy Regulation, a transparency tool that facilitates decisions on investment and helps tackle greenwashing by providing a categorisation of environmentally sustainable investments in economic activities that also meet a minimum social safeguard2 .

The reporting covers also minimum safeguards established in Article 18 of the Taxonomy Regulation that refer to procedures companies should implement to ensure the alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organization on Fundamental Principles and Rights at Work and the International Bill of Human Rights when carrying out an economic activity categorized as “sustainable”. Like NFRD and the *Proposal for CSRD,* the Taxonomy Regulation does not impose substantive duties on companies other than public reporting requirements, and investors can use such information when allocating capital to companies. By requiring companies to identify their adverse risks in all their operations and value chains, this Directive may help in providing more detailed information to the investors. It therefore complements the Taxonomy Regulation as it has the potential to

[1] La 4 februarie 2021, cele trei autorități europene de supraveghere au transmis Comisiei raportul lor final (disponibil la adresa https://www.esma.europa.eu/press-news/esma-news/three-european-supervisory-authorities-publish-final-report-and-draft-rts), inclusiv proiectele de standarde tehnice de reglementare în ceea ce privește prezentarea informațiilor în temeiul SFDR

[2] Taxonomia va fi dezvoltată treptat. Toate investițiile eligibile din punctul de vedere al taxonomiei fac obiectul unor garanții sociale minime

further help investors to allocate capital to responsible and sustainable companies. Moreover, the Taxonomy Regulation (as providing a common language for sustainable economic activities for investment purposes) can serve as a guiding tool for companies to attract sustainable financing for their corrective action plans and roadmaps.

In conclusion, all these measures proposed aim to ensure that the Union, including both the private and public sectors, acts on the international scene in full respect of its international commitments in terms of protecting human rights and fostering sustainable development, as well as international trade rules.

Acknowledgements

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EXTERNAL DEBT AND PUBLIC DEBT OF EU COUNTRIES

Drăgoi Cătălin[1]

Abstract*:*

The appearance of the SARS cov 2 virus and its rapid worldwide spread triggered a medical crisis followed by an economic crisis in all the states of the world, including European countries. In order to be able to face the medical crisis, to be able to support the companies but also the disadvantaged social categories affected, the governments had to borrow money to face the growing expenses. The paper aims to study how public debt and external debt have evolved in the countries of the European Union in the years following the outbreak of the pandemic.

Keywords: *external debt; public debt*

JEL Classification: *H62, E62, E66*

The problem of state debts is one of acute topicality. States tend to borrow in order to be able to finance large investment projects, to subsidize certain branches of activity or to be able to deal with certain moments of economic crisis. All the states of the world are in debt and in economic history there is only one case in which a state managed to pay its foreign debt in full, namely Romania in 1989. Even though many states manage in certain periods to repay part of their loans and reduce the total debt, however, for long periods of time, the global trend is to increase the debts of the states. Exceeding a certain threshold, the loans whose initial purpose was to boost economic activity end up being a burden that weighs on the economy.

1. External debt in EU countries

At the level of the European Union countries, there have been three major periods of debt accumulation, both public debt and external debt. The first period after the years 2008-2009 following the financial crisis, after 2013 following the sovereign debt crisis (especially the crisis that arose in the PIIGS countries) and the third period the years 2020 and 2021 following the Covid 19 pandemic. To support the activities of the agents economic but also the support of some disadvantaged social categories affected by the 2020 lockdown that paralyzed economic activity around the world, but also by the logistical blockages that appeared later, the states of the world had to go into massive debt. At the level of the European Union, the external debt in relation to GDP increased only in 2020 from 123% to 130%. (fig. no.1)

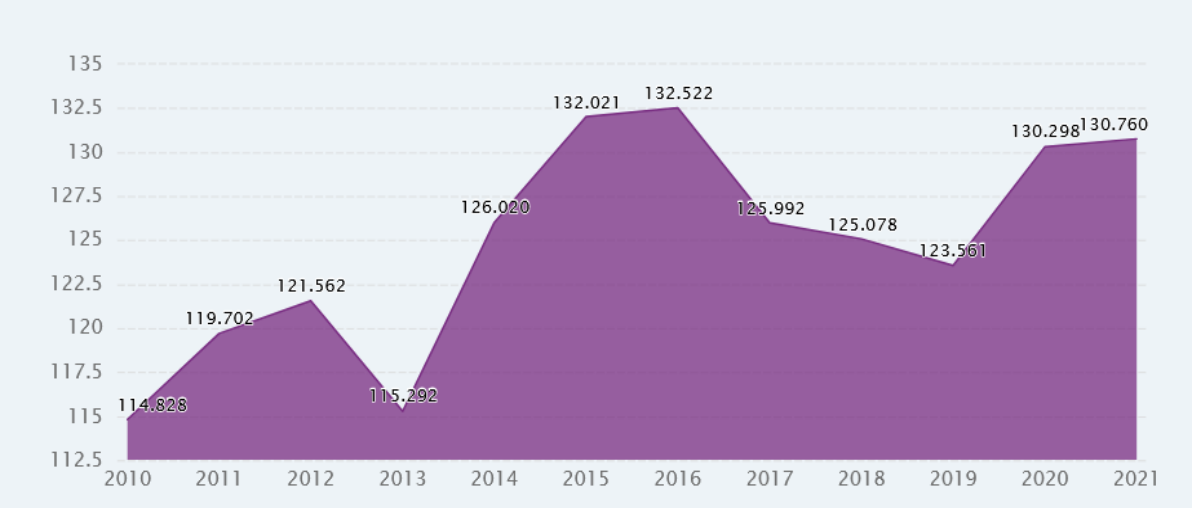

Figure 1. European Union's External Debt (% GDP), 2010-2021.
Source: CEIC Data

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The year 2020 is the year in which the pandemic caused by the SARS Cov 2 virus broke out worldwide, and the lockdown that lasted for 2 months seriously affected the functioning of the world's economies. The countries of the European Union were deeply affected both in terms of production, which was greatly reduced, as well as consumption of consumer goods and industrial goods. Investments were stopped or greatly reduced due to the uncertainty generated by the evolution of the virus, the uncertainty of the emergence of a vaccine that would block the spread of the virus and at the same time reduce the mortality and morbidity generated by the virus. The start of the economies after the lockdown was slow, cumbersome and as such the economic recovery of many states was partially made in 2021 in some countries and extended into 2022, which could have been a year of economic recovery if it had not appeared at worldwide, a series of disruptive factors: worldwide supply (logistics) problems, the energy crisis and the war in Ukraine.

As can be seen from table 1, in 2020 there were large decreases in GDP compared to the previous year in all the countries of the European Union (with one exception - Ireland), the most affected being the countries with a developed tourist sector with a contributor important in the construction of the GDP such as France, Spain, Italy, Greece, Portugal, Cyprus, Malta. If in 2020 all countries register decreases in GDP, in the following year they all turn positive, most managing to recover the decrease from the previous year. (table no.1)

Table 1. GDP and External Debt in EU countries 2020-2021

	GDP		ΔGDP		Ext. debt		Δ(Ext . Debt)
Country /Year	2020	2021	2020	2021	2020	2021	2021
Austria	379321	403104	-6.7	4.6	651206	646665	-0.70%
Belgium	456732	506205	-5.7	6.2	1305868	1336472	2.34%
Bulgaria	61331	67872	-4.4	4.2	41317	41496	0.43%
Croatia	50189	57200	-8.1	10.2	50873	51643	1.51%
Cyprus	21618	23437	-5.0	5.5	192715	189247	-1.80%
Czechia	215805	238238	-5.5	3.5	179866	191298	6.36%
Denmark	311760	336719	-2.0	4.9	17450	17448	-0.01%
Estonia	27465	31445	-0.6	8.0	27908	29780	6.71%
Euro area	11448069	12301065	-6.1	5.2	16025333	16415918	2.44%
Finland	238043	251367	-2.2	3.0	588467	603375	2.53%
France	2310469	2500870	-7.8	6.8	6516931	6402736	-1.75%
Germany	3405430	3601750	-3.7	2.6	5926223	6132897	3.49%
Greece	165326	182830	-9.0	8.3	556422	565233	1.58%
Hungary	137442	154124	-4.5	7.1	126850	134997	6.42%
Ireland	372836	426283	6.2	13.6	2912745	2954438	1.43%
Italy	1656961	1775436	-9.0	6.6	2443292	2477624	1.41%
Latvia	29457	32867	-3.8	4.5	37562	38290	1.94%
Lithuania	49507	55383	-0.1	5.0	42448	39560	-6.80%
Luxembourg	64781	72295	-0.8	5.1	3512716	3519702	0.20%
Malta	13074	14681	-8.3	10.3	93183	94046	0.93%
Netherlands	796530	856356	-3.9	4.9	3553401	3568437	0.42%
Poland	526445	574385	-2.2	5.9	362938	362327	-0.17%
Portugal	200088	211280	-8.4	4.9	407247	401999	-1.29%
Romania	218863	240154	-3.7	5.9	137262	140433	2.31%
Slovakia	92079	97123	-4.4	3.0	133	142	6.77%
Slovenia	47021	52208	-4.3	8.2	51086	52449	2.67%
Spain	1117989	1206842	-11	5.5	2328495	2341053	0.54%
Sweden	480556	537310	-2.2	5.1	99538	102785	3.26%

Source: Eurostat; Author's calculations;

The current account deficit was significant in the listed states, more strongly affected by the crisis (except for France and Spain), both in 2020 and in 2021. Along with these countries, although tourism does not have a significant contribution to GDP, Romania records very high values of the current account deficit in 2020 and 2021 as well.

In the year 2021, the increase in external debt of European countries continued, it is the second year of the pandemic and the worldwide problems generated by the pandemic continue, but the rate of debt growth has decreased. Given that countries' GDP is recovering quickly from the previous year's decline even as debts are rising, the faster rate of GDP growth means that in many countries the external debt to GDP ratio is falling from the previous year.

Table 2. External debt (% GDP) and Current Account (% GDP) in EU countries

	Ext. debt/GDP		Curent acc./GDP		ΔExt. debt/GDP
Country /Year	2020	2021	2020	2021	
Austria	171.68%	160.42%	1.9	-0.5	-11.2pp
Belgium	285.92%	264.02%	0.8	-0.4	-21.90pp
Bulgaria	67.37%	61.14%	-0.1	-0.4	-6.23pp
Croatia	101.36%	90.29%	-0.1	3.1	-11.08pp
Cyprus	891.46%	807.48%	-10.1	-7.2	-83.98pp
Czechia	83.35%	80.30%	2	-0.8	-3.05pp
Denmark	5.60%	5.18%	8	8.8	-0.42pp
Estonia	101.61%	94.71%	-0.3	-1.6	-6.91pp
Euro area	139.98%	133.45%	1.9	2.5	-6.53pp
Finland	247.21%	240.04%	0.6	0.9	-7.17pp
France	282.06%	256.02%	-1.8	0.4	-26.04pp
Germany	174.02%	170.28%	7.1	7.4	-3.75pp
Greece	336.56%	309.16%	-6.6	-5.9	-27.40pp
Hungary	92.29%	87.59%	-1	-2.9	-4.70pp
Ireland	781.24%	693.07%	-2.7	13.9	-88.17pp
Italy	147.46%	139.55%	3.7	2.5	-7.91pp
Latvia	127.52%	116.50%	2.9	-2.9	-11.01pp
Lithuania	85.74%	71.43%	7.3	1.4	-14.31pp
Luxembourg	5422.45%	4868.53%	4.1	4.8	-553.92pp
Malta	712.74%	640.58%	-2.9	-4.9	-72.16pp
Netherlands	446.11%	416.70%	7.1	9	-29.41pp
Poland	68.94%	63.08%	2.9	-0.7	-5.86pp
Portugal	203.53%	190.27%	-1.1	-1.1	-13.27pp
Romania	62.72%	58.48%	-5	-7	-4.24pp
Slovakia	0.14%	0.15%	0.4	-2	0.00pp
Slovenia	108.65%	100.46%	7.4	3.3	-8.18pp
Spain	208.28%	193.98%	0.8	0.9	-14.29pp
Sweden	20.71%	19.13%	5.9	5.3	-1.58pp

Source: Eurostat; Author's calculations;

2. Public debt in EU countries

It is worth noting that in the years before the outbreak of the pandemic in the countries of the European Union, there was a downward trend of government debt in relation to GDP, so of the 27 countries of the Union in 2019 , a decrease in this indicator was recorded in 24 countries, with the exception of Romania, Estonia and Lithuania. Evidently, in the European Union as a whole, there is a decrease in the government debt in GDP in 2019 compared to 2018.

In 2020, government debt in GDP "explodes" at the level of the European Union, increasing by 12.5 percentage points in just one year, with all countries registering a massive increase in this indicator. Obviously, the highest values are registered by Greece, Italy,

Portugal and Spain, whose historically high government debts raise the issue of their sustainability, but also the risk of their non-payment, which can generate a financial crisis at the European level, which could then spread worldwide similar to the financial crisis of 2008.

In 2021, out of the 27 countries of the European Union, due to the economic recovery and the rapid growth of GDP compared to the previous year, 20 countries succeeded in reducing the percentage of government debt in GDP, and this ratio decreased for the entire Union. It is important that the countries in the PIGS group managed to reduce this ratio, reducing the risk of non-payment of debts in their case.

In all four years, Romania records increases in government debt relative to GDP, and in 2020, thanks to loans of over 20 billion euros, this indicator is growing rapidly by 12 percentage points.

Government debt as a percentage of GDP had a downward trend in 2021 compared to 2020 in most European countries, with the exception of Germany, Slovakia, Malta, Romania, Latvia and the Czech Republic. We can see that in the countries that exceeded the threshold of 60% of government debt in GDP, they managed to reduce this percentage in 2021, on the other hand, many of the countries that have not yet reached this threshold had looser policies that allowed them to the percentage of government debt in GDP continues to increase. (table no. 3)

Table 3. General government debt (% of GDP), EU countries, 2018-2021

Year	**2018**	**2019**	**2020**	**2021**
Euro area	86.0	83.9	97.0	95.4
European Union	79.7	77.5	89.8	87.9
Belgium	99.9	97.6	112.0	109.2
Bulgaria	22.1	20.0	24.5	23.9
Czechia	32.1	30.0	37.7	42.0
Denmark	34.0	33.7	42.2	36.6
Germany	61.3	58.9	68.0	68.6
Estonia	8.2	8.5	18.5	17.6
Ireland	63.0	57.0	58.4	55.4
greece	186.4	180.6	206.3	194.5
Spain	100.4	98.2	120.4	118.3
French	97.8	97.4	115.0	112.8
Croatia	73.2	71.0	87.0	78.4
Italy	134.4	134.1	154.9	150.3
Cyprus	98.1	90.4	113.5	101.0
Latvia	37.0	36.5	42.0	43.6
Lithuania	33.7	35.8	46.3	43.7
Luxembourg	20.9	22.4	24.5	24.5
Hungary	69.1	65.3	79.3	76.8
Malta	43.7	40.7	53.3	56.3
Netherlands	52.4	48.5	54.7	52.4
Austria	74.1	70.6	82.9	82.3
Poland	48.7	45.7	57.2	53.8
Portugal	121.5	116.6	134.9	125.5
Romania	34.5	35.1	46.9	48.9
Slovenia	70.3	65.4	79.6	74.5
Slovakia	49.4	48.0	58.9	62.2
Finland	64.9	64.9	74.8	72.4
Sweden	39.2	35.2	39.5	36.3

Source: Eurostat

The public balance at the European level changed considerably in the years after the start of the pandemic compared to previous years as follows: In 2018, there are 14 countries that register a small budget deficit (up to 3% of GDP). In 2019, there are only 10 countries with a budget deficit. In 2020, all countries have budget deficits, some countries exceeding the threshold of 10% of GDP (Spain and Greece). In 2021, negative values are also recorded, but reduced compared to the previous year, with the exception of Luxembourg and Denmark, which register a budget surplus. On the whole of the European Union, the public balance deficit is 0.4% of GDP in 2018, 0.6% of GDP in 2019, 6.8% in 2020 and 4.7% in 2021. Unfortunately, Romania records a deficit of the public balance year after year, having some of the highest values at the European level. (table no. 4)

Table 4. Public balance (net borrowing/lending of government sector) in EU countries (% of GDP), 2018-2021

Year	2018	2019	2020	2021
European Union	-0.4	-0.5	-6.7	-4.6
Euro area	-0.4	-0.6	-7.0	-5.1
Belgium	-0.9	-1.9	-9.0	-5.6
Bulgaria	1.7	2.1	-3.8	-3.9
Czechia	0.9	0.3	-5.8	-5.1
Denmark	0.8	4.1	0.2	3.6
Germany	1.9	1.5	-4.3	-3.7
Estonia	-0.6	0.1	-5.5	-2.4
Ireland	0.1	0.5	-5.0	-1.7
greece	0.9	1.1	-9.9	-7.5
Spain	-2.6	-3.1	-10.1	-6.9
French	-2.3	-3.1	-9.0	-6.5
Croatia	-0.1	0.2	-7.3	-2.6
Italy	-2.2	-1.5	-9.5	-7.2
Cyprus	-3.6	1.3	-5.8	-1.7
Latvia	-0.8	-0.6	-4.3	-7.0
Lithuania	0.5	0.5	-7.0	-1.0
Luxembourg	3.0	2.2	-3.4	0.8
Hungary	-2.1	-2.0	-7.5	-7.1
Malta	2.1	0.6	-9.4	-7.8
Netherlands	1.5	1.8	-3.7	-2.6
Austria	0.2	0.6	-8.0	-5.9
Poland	-0.2	-0.7	-6.9	-1.8
Portugal	-0.3	0.1	-5.8	-2.9
Romania	-2.8	-4.3	-9.2	-7.1
Slovenia	0.7	0.6	-7.7	-4.7
Slovakia	-1.0	-1.2	-5.4	-5.5
Finland	-0.9	-0.9	-5.5	-2.7
Sweden	0.8	0.6	-2.8	-0.1

Source: Eurostat

At the level of the European Union, over the course of 10 years, expenses have increased permanently, having a relatively linear growth (similar for the Euro area). However, in 2020, there is a faster growth than in previous years. As far as incomes are concerned, they follow a similar evolution (the gap between expenses and incomes increases slightly from year to year), but in 2020 there is a large decrease in incomes due to the negative economic

evolution, but also a return of them (incomes) in the natural trend. The incomes for the euro zone have a similar evolution.

Compared to GDP, the evolution of both expenses and income follows a downward curve until 2020. We must remember that following the debt crisis of 2012, which particularly affected Greece but also the other countries in the PIIGS group, namely Portugal, Italy, Ireland, and Spain at the level of European countries, a consensus was created regarding the need to reduce public debt, so that even if public expenditures in absolute terms increased, relative to GDP they decreased because they had a less rapid growth than GDP growth. (fig. no. 2)

A similar curve also registers the revenues reported to GDP, but with a smoother downward slope so that the difference between budget expenditures in GDP and budget revenues decreased constantly until 2020, when, due to the pandemic, expenditures recorded a rapid jump from 47% of GDP to almost 54% of GDP on the whole of the European Union. The year 2021 records a slight reduction in expenses at the level of the European Union (of approximately 2% of GDP) and a slight increase (approximately 1% of GDP) of revenues at the level of the European Union, the budget deficit being smaller than in 2020 but more higher than the previous 8 years. (fig. no. 3)

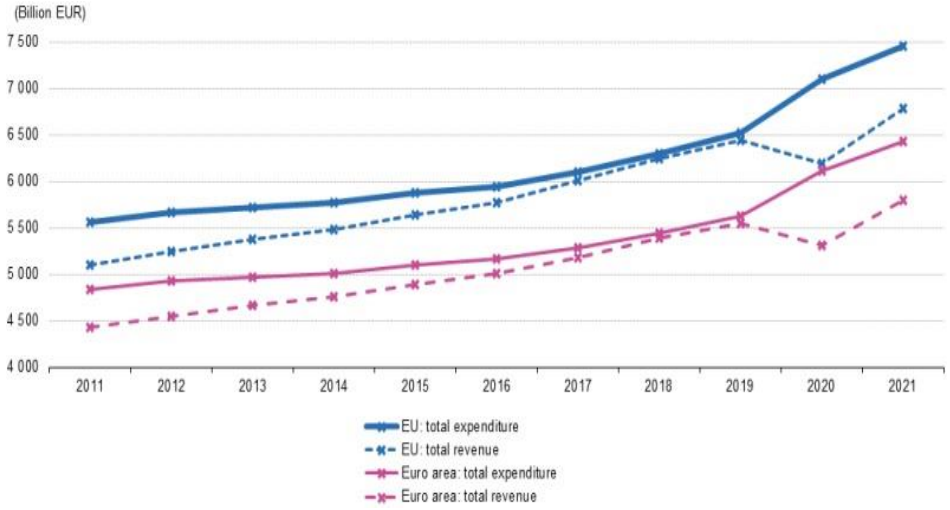

Figure 2. Development of total expenditure and total revenue, of EU and Euro area, 2011–2021

Source: Eurostat

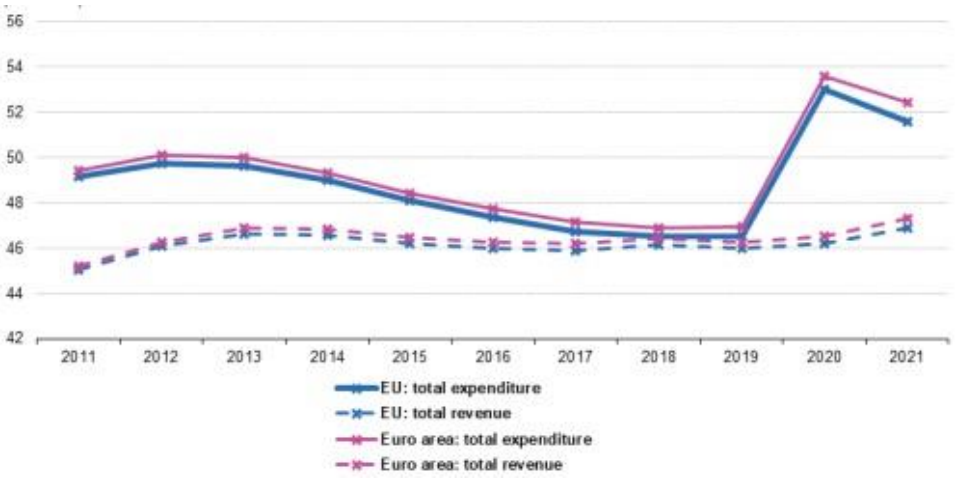

Figure 3. Development of total expenditure and total revenue (% GDP), of EU and Euro area, 2011–2021;

Source: Eurostat

The average cost of the public debt is made up of the weighted average of the interest rates related to various previous loans. That is precisely why the interest rate of the government loans made in the last year does not greatly change the average cost of the loans.

The average cost of central government gross debt in 2021 ranged from lows of 0.3% in Estonia, 0.6% in Finland, and highs of 3.2% in Hungary and 3.3% in Romania, respectively.

Comparing data from 2021 to 2020, there were decreases in costs for 23 countries, no change for Hungary and Denmark, and increases for two countries, namely France and Italy.

It should be noted that the costs at which Romania borrows are the highest at the European level, higher than those of highly indebted countries (Greece, Italy, Spain, Portugal) which also have a high risk of non-payment, or higher than Bulgaria's country with a GDP per capita lower than that of Romania. The rapid growth of Romania's external debt correlated with high interest rates raises the issue of the degree of indebtedness up to which Romania's external debt is sustainable and the number of years in which there is a risk of reaching this dangerous debt threshold. (fig. no. 4)

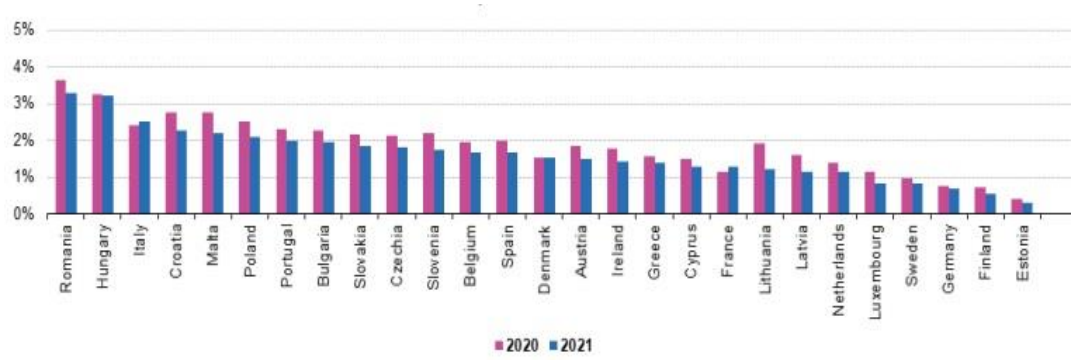

Figure 4. Average cost of central government gross debt, EU countries, 2020-2021;
Source: Eurostat

3. Conclusions.

The year 2020 will remain a reference year both through the outbreak of the SARS Cov 2 virus pandemic and the economic consequences and changes in society. If the years before the downgrading of the pandemic were characterized as a good economic period with economic growth and small budget deficits for the countries of the European Union, which managed to settle on a positive trend after the financial crisis of 2008 and the debt crisis of the countries of the PIIGS group of 2012 , for European countries the year 2020 brought increased budget deficits, current account deficits, a rapid increase in public debt and a significant increase in external debt. The year 2021 was a year of recoveries, so that only part of the EU countries managed to reach the economic level of 2019 at the end of the year, with all the financial efforts made by governments to support economic agents, different branches of the economy (especially tourism seriously affected in 2020).

Romania was not one of the countries seriously affected by the pandemic and in 2021 it managed to economically recover the decreases from the previous year, but the increasingly tight fiscal space must be taken into account, the increased budget deficit led to an increasingly public debt higher and the current account deficits of recent years have contributed to the increase of Romania's external debt. At the same time, the high interest rates at which Romania borrows can in time lead to reaching a threshold of the debt at which it becomes unsustainable, something that makes necessary a rethinking of lending policies, investment policies, salary policies, the pension system, the fiscal apparatus, a resettlement of the system of budget revenues and expenses.

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THE COHERENCE OF IASB REQUIREMENTS REGARDING THE QUALITY OF FINANCIAL INFORMATION WITH THE NEEDS OF FINANCIAL ANALYSIS

Guni Claudia Nicoleta[1]

Abstract

In this article we will present the need for quality financial information in a globalized economy. In the context of the international accounting harmonization phenomenon, the quality of financial and accounting information has improved considerably. The abundance of information allows organizations to increase their informational competitiveness parameters in relation to domestic and international competitors. Also, the characteristics of financial information will be presented from the perspective of the needs of financial analysis, because in order for the information to be useful in the managerial process, it must meet a number of main qualitative characteristics.

Keywords: *characteristics of financial information, the utility of financial information, the production of financial - accounting information*

JEL Classification: G3; G32; G34

1. Introduction

The use of IFRS by companies represents, in the understanding of the IASB, a greater guarantee of financial transparency. According to the Conceptual Framework for the Preparation of Financial Statements, "the general objective of financial reporting is to provide financial information on the reporting entity, useful to existing and potential investors, lenders and other creditors in the decisions they have to take about providing resources to the entity.

Decisions to purchase/retain/dispose of shares or debt depend on the returns expected by the owners, as well as the assessment of uncertainties related to future cash flows affecting the entity. Investors must therefore have access to financial statements that best reflect the resources controlled by the entity and the rights of third parties over it. They have the right to know the financial risks to which the entity is exposed. Finally, they need information that is directly comparable from one company to another in order to better allocate/invest capital without incurring unnecessary information reprocessing costs. Better than any other national reference, international financial reporting standards fulfill these objectives because they privilege the "translation" of economic reality in favor of often misleading legal appearances.

2. The need for quality financial information in a globalized economy

In the context of the phenomenon of international accounting harmonization, the quality of financial-accounting information has improved considerably. The abundance of information allows organizations to increase their informational competitiveness parameters in relation to domestic and international competitors.

In terms of this complexity, financial information in the modern economy has many meanings depending on the users. As the objectives pursued by users of financial statements are different, the financial analysis will be carried out in different ways. This demonstrates the importance and complexity of financial analysis.

All categories of users look at financial information from different angles. Whether they are interested in risks, profitability, debt capacity or loan repayment, users expect the entity to provide the necessary transparency for their expectations through published financial statements. Certainly the adoption of IFRS worldwide will bring advantages to investors.

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It is obvious that financial statements cannot meet all the information needs of users. Thus, considering the fact that the people who invest in an entity risk perhaps the most, the preparation of financial statements for them should also provide the other categories of users with the information necessary to make the right decisions. However, in a functioning economy based on competition, it is important to maintain a balance between the needs of each category of users and not to focus only on a series of information specific to a certain category.

The users of financial information in the modern economy can be classified as follows:

⇨ Investors and financial markets – investors are interested in the risks that their investment may face and the profit that can be earned. Shareholders are interested in information that enables them to determine the company's ability to pay dividends. Financial Market Authorities need information on listed companies in order to perform regulatory functions and better protect investors.

⇨ Employees and trade unions – they are interested in reliable financial information that will allow them to assess the stability and profitability of the company.

⇨ Clients – they are interested in financial information that allows the continuity of the company's activity, mainly as long as they have a partnership contract.

⇨ Financial creditors – they are interested in information that allows them to assess the debt and repayment capacity of the company.

⇨ Suppliers and other debtors – suppliers are interested in financial information that allows them to determine whether the credits granted will be paid when due: assessing the repayment capacity of the company.

⇨ The state and its bodies - they are interested in the financial information that allows the assessment of the distribution of resources and implicitly the activity of the company. They may require the publication of new information by regulating the activity of companies in order to determine tax policies and the basis for calculating national income.

Given this need for financial information, we must highlight the fact that the possession, manipulation and use of information can improve the cost-effectiveness ratio in many physical or cognitive processes. As an individual and social resource, the information has several characteristics that distinguish it from the traditional notion of an economic resource.

3. Characteristics of financial information from the perspective of financial analysis needs

For the information to be useful in the managerial process, it must meet a number of main qualitative characteristics. The specialized literature delimits the qualitative characteristics of accounting information into two groups: the first group, specific to accounting information in which relevance and accurate representation are included, and the second group, specific to the user, in which intelligibility, comparability, verifiability and opportunity are included.

Qualitative characteristics are the attributes that determine the usefulness of the information provided by the financial statements.

The usefulness of financial information represents a mixture of qualitative characteristics and generates added satisfaction for those who use it. The quality of the information provided by the financial statements depends on obtaining a true picture of the activity of any company. Financial information is the basis for decision makers who need data whose benefits outweigh the costs of obtaining it, and specific characteristics to be validated.

Relevance of information – relevant information has predictive and/or confirmatory value and is therefore capable of making the difference between decisions made by investors and lenders. Information has predictive value if it can be used as input to processes used in specifying future outcomes. They have confirmatory value if they provide feedback on previous predictions. The relevance of information is influenced by its nature and the threshold of significance. In certain cases, the nature of the information is sufficient by itself

to determine its relevance. In other cases, both the nature and the threshold of significance are important. Information is significant if above a certain value level - significance threshold - the omission or misrepresentation is likely to influence users' decisions.

Accurate representation – an accurate representation is complete, neutral and error-free. Information is complete if a user can understand the phenomenon described. Thus, descriptions and explanations as well as numerical representations are needed. Information is neutral if it is selected and presented without reservation. In other words, it is not intentionally over/underrated. Neutral information does not mean that it has no impact on decisions. By definition, useful information affects decisions. Also, error free does not mean perfect but means that there are no errors in the process used to produce them and there are no errors in their description.

Comparability – users must be able to compare an entity's financial statements over time to identify trends in its financial position and performance. Thus, the measurement and presentation of the financial effect of the same transactions and events must be done in a consistent manner within an entity, and over time for that entity, and in a consistent manner across entities.

An important consequence of the quality of the information being comparable is that users are informed of the accounting policies used in the preparation of the financial statements and of any changes to those policies, as well as the effects of the changes. Users must be able to identify differences between the accounting policies for transactions and other similar events used by the same entity from period to period and the ones used by different entities. The need for comparability should not be confused with mere uniformity and should not become an impediment to the introduction of improved accounting policies. It is not appropriate for an entity to continue to highlight in the accounting, in the same manner, a transaction or other event if the adopted policy does not maintain the qualitative characteristics of relevance and accurate representation.

Comprehensibility – an essential quality of the information provided by financial statements is that it must be easily understood by users. For this purpose, it is assumed that the users have sufficient knowledge on conducting the business and the economic activities, knowledge on accounting concepts and are willing to study the information presented with due attention. However, information on some complex issues, which should be included in the financial statements because of their relevance, should not be excluded simply because they may be too difficult for some users to understand. Access to financial information should be limited only by the lack of sufficient knowledge on conducting the business and the economic activities.

Verifiability - implies a consensus between different measures. For example, the historical cost of land reported on a company's balance sheet is usually highly verifiable. The cost can be traced to a barter transaction or the purchase of land. However, the fair value of land is much more difficult to verify. The term objectivity is often related to verifiability. The historical cost of land is objective and easily verifiable, but the fair value of land is subjective, influenced by the appraiser's past experience and biases. A rating is difficult to verify, which makes it less secure for users.

Timeliness – the timeliness of information is its availability early enough to allow its use in the decision process. It is also important that the information is useful for decision making. The need for timely information requires companies to be able to provide information to external users on a regular basis.

4. The Limits of Financial Information for Financial Analysis

The production, provision and use of financial-accounting information is the basis of a pertinent financial analysis. However, between the accounting system and the provision of real and complete economic information there is a mutual conditioning - or, rather, it would

be ideal to exist - in the current conditions marked by deep imbalances, when it would be vital to create a link between production, certification and use of information. It is known that financial information, as a fundamental element of financial markets, can improve economic performance in multiple ways.

Accounting communication consists of the data considered most appropriate to recreate the reality of the company before eventually influencing the receiver's choices and actions. The representation of this reality must be considered an attribute of information, without which it could have no value. The dissemination of accounting information represents a "game" of rules that ensure the continuity of the relationship between the company and its environment.

We must not forget that this type of information dissemination is also a matter of power. The temptation of manipulation and privacy is ever more present if we refer to the recent financial scandals that have cast doubt on the quality of accounting information since companies that were on the heights of success based on periodic reporting suddenly went bankrupt.

In this context, the shortcomings to which financial information users are subjected, through the financial statements published by entities, are numerous. These are generated by the characteristics of the information contained in the summary documents that are aimed at the past and do not favor the relevance of decisions that have a view to the future. At the same time, some information contained in the financial statements is based on estimates of various quantities, which determines that they have a subjective character.

Even though companies are often tempted to make public only certain information, the decision in this regard is conditioned by the expectations of the users of accounting information. They must be able to determine, based on the information received, the indicators that refer to the company's profitability, liquidity and solvency.

Determining the profitability of a company involves analyzing the amounts in the profit and loss account. But, not all indicators in this situation meet the needs of users, in the sense that they are also estimated values that refer to events that have taken place. Such estimated sizes are those that refer to depreciation and provisions and that influence the company's accounting profit.

Therefore, the profit highlighted in the income statement or an increase in it does not necessarily provide favorable information to users. It is possible that this increase is due to the use of a particular accounting option or a change in accounting methods. In order to analyze a company's profitability, users would also need information that would allow them to make comparisons with other businesses, not only comparisons over time for the same company. Spatial comparisons are sometimes irrelevant in the sense that companies may use different accounting policies, making the accounting information of different companies not comparable.

In addition to the profitability of a company, users are also interested in the degree of liquidity of the entity, which takes into account current assets and liabilities. At a first look at the financial statements, users could notice what is the ratio between current assets and liabilities and whether the company has liquidity or not. However, the company's liquidity is interpretable, just as the concepts of "current assets and liabilities" are interpretable, in the sense that those elements that will be realized within 12 months from the balance sheet date are current. In order to correctly analyze the degree of liquidity, the rate system must be used. Then, the users of the accounting information are interested in the ability of the company to generate profit, on one hand, and the financial risk to which it might be subjected, on the other hand. Neither the balance sheet nor the profit and loss account can fully clarify these issues. The synthesis calculation in which the cash flows and their formation methods are shown, and which comes to the support of users, is the cash flow statement.

5. Conclusions

In this article we have approached IFRS as a tool for reconciling the needs of financial analysis with the dynamics of the socio-economic and political environment, focusing on financial information as the basis of financial analysis. We highlight the following:

♦ Financial information in the modern economy has many meanings depending on the users. As the objectives pursued by the users of financial statements are different, the financial analysis will be carried out in different ways. In a functional economy, based on competition, it is important to maintain a balance between the needs of each category of users and not to focus only on a series of information specific to a certain category;

♦ The possession, manipulation and use of information can improve the cost-effectiveness ratio in many physical or cognitive processes;

♦ The usefulness of financial information represents a mixture of qualitative characteristics and generates added satisfaction for those who use it. Obtaining a true picture of the activity of any company depends on the quality of the information provided by the financial statements. Financial information is the basis for decision makers who need data whose benefits outweigh the costs of obtaining it, and specific characteristics to be validated.

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THE REFLECTION IN THE DASHBOARD OF THE RESULTS OF PROCESSING THE INFORMATION PROVIDED BY THE FINANCIAL - ACCOUNTING INFORMATION SYSTEM

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Abstract

Starting from the idea that the improvement of managerial decisions coincides with the assumption of risks attached to the activities they coordinate, by using the Dashboard managers can base their decisions in order to adopt them, ensuring a coherent and complete management of the company they are in charge of. The dashboard is supplied with information provided by SIFC, and the results presented are directly influenced by the fundamental qualitative characteristics of the information used. Taking into account the current economic context, it is necessary to reduce the resistance to change both of the organization itself and of its management.

Keywords: *financial information system - accounting, dashboard, piloting indicators*

JEL Classification: G3; G32; G34

1. Introduction

The piloting of any organization's activity refers to the indicators derived from facts that can be modified in order to change their trajectory.

The dashboard, as a piloting instrument of the organization, allows managers to have a real-time synthetic view of the main indicators regarding the organization and the business environment in which it operates, in order to make informed decisions. The dashboard used in the management of the organization's activity is highlighted by the following characteristics:

- presents in a systematized form the most significant information on the development, influencing factors and partial or final results of the activity of the organization, its sectors or compartments, providing necessary elements for decision-making and control;
- combines, in proportions determined by the specifics of the activity, information on current activity with statistical and forecast information;
- highlights the existence of deviations from plans and programs, and the unwanted evolution of some phenomena within the organization;
- provides reference elements for outlining remedial solutions and forward-looking measures;
- it has a non-standardized form, established according to the specifics of the activity pursued, the needs and the way of informing the leader to whom it is intended.

From the perspective of using the Dashboard as a piloting instrument, it is defined as a set of the most significant information on the performance of the activity of an organization/structure, presented daily to management in a precisely established and constant form, corresponding to well-defined information needs.

2. The pilotage indicators, the basis for drawing up the dashboard

Piloting indicators are identified in order to measure the achievement of the objectives, in order to facilitate the adoption of managerial decisions that lead to the increase of performances and the presentation of reports that allow the comparison of achievements with the objectives of the strategies or with other references such as: norms, standards, reports.

Piloting indicators are elements or a set of information elements, representative in relation to a concern or an objective, resulting from the tangible measurement or observation of a state, a phenomenon or an achievement. In order to ensure the qualities of a measuring instrument, the indicators must meet certain characteristics, i.e. to be accurate and objective,

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to have a variation consistent with the phenomenon under measurement, to have identical meaning in time and space, to be obtained quickly and to be cumulative when moving to a higher hierarchical level.

Choosing the characteristic indicators for the development of the Dashboard as a synthesis tool must allow the action, and in order to be efficient, it must contain characteristic indicators in a limited number. In order to limit the number of indicators, the Dashboard must contain only the information that is likely to generate short-term administrative decisions corresponding to the key points in the management of the company.

The pilotage indicators used for the construction of the Dashboard are classified as follows:

- indicators used to measure the financial performance in order to achieve the objective of financial diagnosis: activity indicators (Turnover/Production of the exercise/Added value and added value rates) and profitability indicators (exploitation result and "potential" rates of return/"potential" rates of return/"actual" rates of return);
- indicators for assessing the financial balance and the risk of bankruptcy (Global net working capital/NFR coverage ratio from FRGN/The need for working capital and financial balance rates, bankruptcy risk rates, liquidity rates) to perform the financial diagnosis of the organization;
- the assessment of the financing policy is carried out on the basis of the structure of stable resources, the degree of their use and the structure of temporary resources;
- the assessment of the development strategy also participates in the financial diagnosis of the organization and is carried out through internal/external growth rates and treasury flows;
- specific indicators reflect the points of success in a certain sector or the elements that must be developed and mastered to become efficient.

3. The Dashboard, a coherent and complete instrument for measuring and managing the performance of the organization

The dashboard is made up of a set of indicators presented in a synthetic manner and with a correlated periodicity, which must allow the person in charge to react quickly in case there are any issues. Due to its structure, the Dashboard organizes minimal information and it is a symmetrical presentation instrument and generally contains figures or graphs without detailed explanations. It is absolutely necessary that the information presented in the Dashboard refers only to the area where the person in charge can act, that it can be easily understood, analyzed and used as quickly as possible. Also, the Dashboard is intended for each operational manager; contains a relatively small number of indicators; the information is both financial and qualitative. This information is systematically brought to the attention of the user of the Dashboard and mainly refers to production in physical units, collections and expenses.

The dashboard represents a system of indicators in absolute and relative sizes and it is used in the evaluation, control and improvement of decisions by both top management and line management, offering the possibility of setting immediate objectives and validating achievements against forecasts.

The dashboard is a flexible management instrument that can be used by both top management and line management. Among the types of dashboards described in specialized literature and used as instruments by managers in managing organizations, we mention: the prospective/balanced dashboard, the specialized dashboard and the benchmarking dashboard.

The prospective/balanced dashboard constitutes one of the pillars of the management system through which the balance of the performance dimensions of an organization can be verified. Moreover, it groups a set of financial and non-financial indicators, which presents the construction of the organization's performance by balancing and interconditioning four forces, respectively general objective, specific objectives, key success factors and action plans, using the organization's breakdown based on processes and activities.

The non-financial nature of some indicators is a specific feature of the Dashboard, which allows the managers to dispose of data other than the financial-accounting one. Non-financial information allows a quick reaction of the decision-makers to unexpected or important changes in the business environment, given that operational managers circulate quantitative and qualitative data rather than monetary ones.

The specialized dashboard is made based on the indicators and the systematization of the specific parameters of the activity sector to which it is addressed and allows the tracking and understanding of the performance as well as the causes that led to the failure to achieve the expected performance. Consequently, specialized Dashboards must illustrate the overall picture of the identified phenomenon and allow access to details such as:

- identify facts and elaborate perspective; identify trends and exceptions;
- to be critical and reactive so as to allow the quick and timely adoption of a decision;
- to provide clear feed-back.

Specialized dashboards take over indicators of the results, link them to objectives, strategies up to the activity level.

The benchmarking dashboard resides through the concept of benchmarking which refers to a form of competitive analysis, a method to determine, systematically and continuously, how and by what means one can reach the same performance as the best ones, using the same measurement system. It is necessary that the processes, the product or the service to be measured comparatively with the best at international level and not necessarily with the best in the same field of activity. The benchmarking dashboard includes the list of indicators created at EU level, in order to benchmark performance based on key indicators of the organization's policy.

4. Stages of designing the Dashboard

The design of the Dashboard is the fundamental step in ensuring its successful use as a piloting instrument or managerial instrument. The development of the Dashboard is done according to a rigorous methodology. First, a project is drawn up, i.e. the organizational context is determined and the usefulness of drawing up a Dashboard for a specific manager of a management center is evaluated.

The procedure for developing the Dashboard can be staged as follows:

Determining the objectives: constitutes the determining aspect in justifying the development of a dashboard. Any objective must be quantifiable and determined over a certain period of time, the distinction between an objective and a mission being necessary. In order to be realistic, the objectives must be set in a reasonable manner and preferably discussed or negotiated with the general manager.

Establishing an action plan to achieve the objectives is done by identifying the parameters that have an influence on the objective.

The identification of the indicators is carried out by the manager who must choose as performance indicators the ones he considers the most relevant for assessing the result of his actions.

The Dashboard is designed by using methods that allow the best visualization of the indicators to be followed, such as: absolute values, deviations (+/-), rates, graphs, icons, tables, etc.

The development of a Dashboard refers to the elements that define it, being absolutely necessary that its editing terms take into consideration and receive information through relevant analyses, based on three important aspects: the key points of the decision; the variety of characteristic indicators; the way of presentation and the norms used. By following these requirements, the dashboard is supplied in a short and efficient time. Also, when developing the Dashboard, it will be taken into account that it meets the minimum requirements that its form and content must satisfy as follows: to refer in a balanced way to all the functions of the organization or the activity of the field involved; to contain information with a higher level of

processing and presented in the most accessible form; to ensure the rapid formation of an overview of the operation of the respective unit, activity or department and to facilitate the obtaining of conclusions; to be regularly presented to management.

5. Opportunities and limits in using the Dashboard

The improvement of SIFC by building and using the prospective/balanced Dashboard as a tool for measuring global performance induces a series of opportunities and limits on the organization.

Generically, using the Dashboard creates opportunities such as:

▪ favors the construction and consolidation of integrated systems through the opportunity to initiate communication between managers who ensure line management;

▪ allows the introduction of non-financial performance measures in performance measurement systems and favors the development of performance measures that improve reactivity, thus taking on a predictive character;

▪ provides permanent information to the manager on the level of achievement of the general and specific objectives;

▪ allows the rapid establishment of deviations in relation to the intended results, being able to be oriented towards the various activities carried out in the organization;

▪ it offers to the sectors of the activity management and to the general manager, the opportunity to focus their attention on the areas of activity considered a priority and to establish objectives that can be entrusted to responsibility centers;

▪ refers to establishing and analyzing a periodicity and procedures, which from the moment they are taken into account become integral parts of the information management system. The periodicity of the Dashboard is fixed for the duration of a financial year, at intervals less than one trimester, the resulting variations being determined by the way in which management is carried out in the respective organization.

Also, the use of the Dashboard induces, in general, on SIFC and on the organization limits as follows:

♦ one of the limits of the Dashboard refers to the fact that it *"...presupposes an explicit communication of the strategy and a structured content throughout the organization"*

♦ contains performance indicators determined after the action has taken place;

♦ it is quite difficult to put into practice as there is no theoretical model that holds the four specific conceptual levels that must be followed: the general objective, the specific objectives, the key success factors and the action plans. Of course, this limitation can be turned into an advantage, allowing the possibility of approaching the Dashboard from any perspective favorable to the organization.

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TENDENCIES IN PUBLIC AUDIT. IMPACT ON PUBLIC MANAGEMENT AND CITIZENS' LIVES

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Constanța Popescu[2]
Dr. Iliodor Tiberiu Pleșa

Abstract

This paper aims to analyze the main tendencies in the external public audit activity carried out by the supreme audit institutions, in the light of the latest developments at the international level, from a post-pandemic perspective.

The article also examines new approaches in external public audit, which could have a positive impact on both the supreme audit institutions, from the perspective of their specific activity, and on the management of the public sector, having a direct influence on the lives of citizens.

Keywords: *INTOSAI, supreme audit instiutions, public management, COVID 19*

JEL Classification: H12, H57, M4

Introduction

The COVID 19 pandemic has generated a series of changes at the level of contemporary society, which have had an impact not only on the way of organization and operation of some entities from the public or private sector, but also in terms of their involvement in managing the effects of this crisis.

The Supreme Audit Institutions (generally called SAI – Supreme Audit Institutions), as an important part of the institutional architecture of the states, have played an extremely important role in managing the effects of the COVID 19 pandemic, through the external public audit activity carried out on the public resources used by states in combating the crisis generated by the infection with the novel coronavirus, but also through guidance activities, where the regulatory framework related to their organization and operation allowed this, a fact that had an impact on public sector management.

1. The importance of supreme audit institutions in contemporary society

The importance of the supreme audit institutions in contemporary society is undeniable. This fact has been recognized by important international actors, such as the United Nations Organization that issued several resolutions (UN Resolution 9/3/2021, UN Resolution A/RES/ 66/209, UN Resolution A/RES/69/228) which aimed to emphasize the role of the supreme audit institutions in promoting the efficiency, responsibility, effectiveness and transparency of the public administration, but also in terms of strengthening the collaboration between the supreme audit institutions and anti-corruption bodies in order to prevent and combat corruption more effectively.

The specific activity of the supreme audit institutions is represented by external public audit, which is mainly carried out in the form of 3 types of audit: financial audit, compliance audit (control) and performance audit. Depending on the supreme audit institution, other types of audit are also performed, such as IT systems audit. Also, where the regulatory framework regarding the organization and operation of supreme audit institutions allows, they can carry out guidance/advisory activities (Pleșa I.T., Stegăroiu I., 2019) for public sector institutions, with respect to international auditing standards (see Figure 1).

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Figure 1. The main activities carried out by the supreme audit institutions

Source: made by the author

The supreme audit institutions have come together in an international organization called INTOSAI (International Organization of the Supreme Audit Institutions - https://www.intosai.org/). This umbrella organization, autonomous, independent and apolitical, brings together 196 members (supreme audit institutions), 5 associate members and 2 affiliated members. This organization aims to promote cooperation between supreme audit institutions in order to achieve the exchange of experience and best practices, as well as the development of international external public audit standards that are used by the external public audit community.

INTOSAI International Auditing Standard – P 12 *The value and benefits of SAIs – making a difference in the lives of citizens*, as its title suggests, describes the value and benefits brought by these institutions to society as a whole, especially in terms of citizens, as tax payers (INTOSAI P-12 The value and benefits of the supreme audit institutions – making a difference in the lives of citizens, https://www.issai.org/pronouncements/intosai-p-12-the-value-and-benefits-of-supreme-audit-institutions-making-a-difference-to-the-lives-of-citizens/). This standard describes, through well-established principles, the main features that a supreme audit institution must have in order to make a real difference in the lives of the citizens of the country in which it operates, but also the need to be a model for the other institutions in the public sector in terms of the quality of the services offered and compliance with ethical principles.

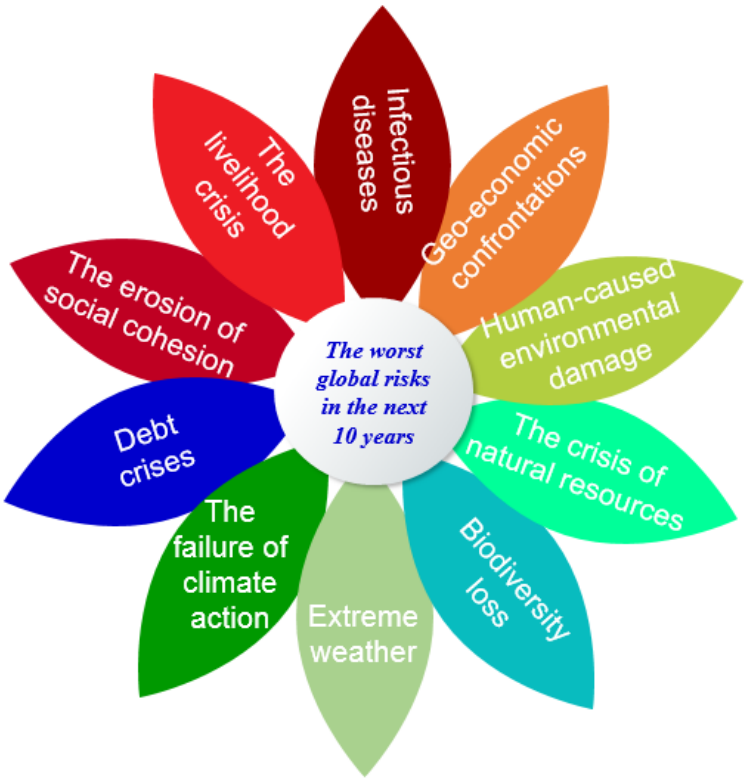
2. General trends in external public auditing

The economic challenges stemming from the COVID 19 pandemic continue to persist, with a pessimistic outlook for the world economy estimating a 2.3% decline by 2024 compared to normal non-pandemic conditions (World Economic Forum, 2022).

The crisis generated by the COVID 19 pandemic has also materialized in a series of risks, which have become systemic in this context.

The World Economic Forum has identified a series of risks estimated for the next 10 years, based on a questionnaire presented in the *Report on global risks in the year 2022* (World Economic Forum, 2022). These risks are shown in Figure 2 below:

Figure 2. The worst global risks in the next 10 years



Sursa: made by the author, based on the information presented in WEF Report 2020

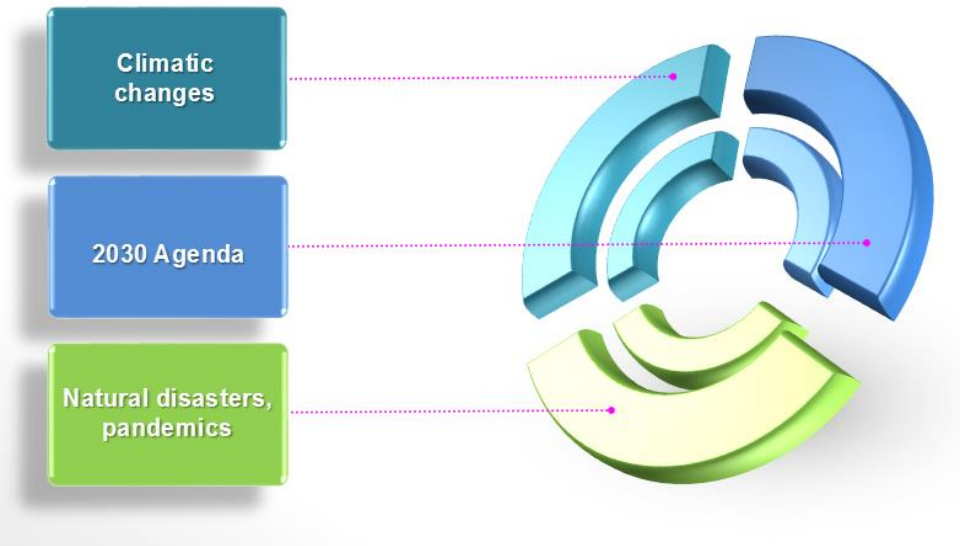
The risks presented in the Global Risks Report (2022) developed by the World Economic Forum based on the questionnaire launched on this occasion, which generated responses from 12,000 world leaders who identified critical near-term risks for the 124 countries from which they came from. These risks can influence decision-making at the national level and provide a means of comparison of national priorities in relation to global risks and their prospects.

These risks presented in the report refer to 5 areas: economy, environment, geopolitics, society and technology. It is interesting to note that the answers generated by the 12,000 leaders do not refer at all to the area of technology, although in the context of the COVID 19 pandemic, digitization has taken a vital place in adapting to the new reality, both for the public and private sectors private.

Starting from these risks, we can see that they require the attention of supreme audit institutions. Practically, almost all the 5 areas where the risks were identified are subject to external public audit, less the area related to geopolitics. From the analysis of the specific external public audit activity, respectively of the public reports and the annual activity reports drawn up by the supreme audit institutions, this information can be easily observed.

Along with the evolution of contemporary society, the supreme audit institutions also evolved, in the sense that, in addition to the traditional role of "guardians of public finances", they managed to become extremely useful on other levels as well, being asked for their support and on other areas, as can be seen below (Figure 3):

Figure 3. New approaches in external public audit



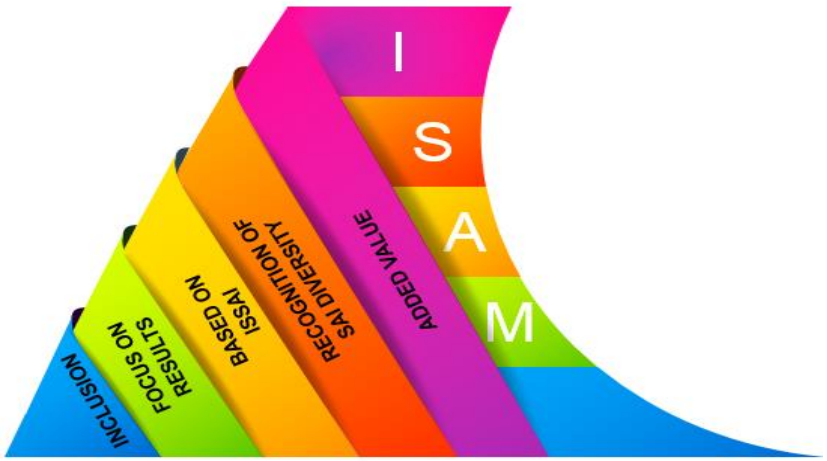
Source: made by the author

In September 2015, UN member states established the 2030 Agenda to end poverty, promote peace, distribute prosperity and protect the planet by 2030. As the first global agreement to establish a comprehensive action agenda with a universal vocation, the 2030 Agenda includes an ambitious set of 17 sustainable development goals and 169 related targets, which mobilize all countries and stakeholders towards the achievement of these goals and influence domestic policies (UN Resolution A/RES/70/1).

The Sustainable Development Goals, in particular, Goal 16 *Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels* underline the importance given to SAIs in monitoring the implementation of the Sustainable Development Goals, by protecting transparency and accountability.

On the other hand, this approach was one of the existing concerns at the INTOSAI level (INTOSAI-IDI, 2019), with the INTOSAI Development Initiative even developing an audit model in this sense (ISAM - https://www.idi.no /elibrary/relevant-sais/auditing-sustainable-development-goals-programme/isam/1076-isam-about-idi-s-sdgs-audit-model/file), to support supreme audit institutions in performing quality audits regarding sustainable development objectives. This model is based on five principles, shown in Figure 4 below:

Figure 4. IDI's ISAM model for auditing the implementation of sustainable development goals



Source: made by the author, based on ISAM

The ISAM model for the audit of sustainable development goals is developed as a performance audit of these goals, through which the achievement of the targets set at the national level by the states is sought. The principle of inclusion used by the ISAM model refers to the adaptation of this model to the different capacities of supreme audit institutions, depending on their degree of development, as well as the level of development of the performance audit.

The importance of supreme audit institutions has also proven to be crucial in difficult times for society, as was the case with the COVID 19 pandemic, by maintaining discipline in public financial management and ensuring transparency and accountability of governments (World Bank, 2020), in a climate characterized by uncertainty.

In the conditions of the COVID 19 pandemic, many of the activities that were easily carried out under normal conditions, required an adaptation to the new reality imposed by the COVID 19 pandemic. Thus, including the external public audit activity, required a series of adaptations, which to allow specific external public audit techniques to be carried out remotely, by electronic means. However, a number of tools specific to the audit activity, such as on-site inspection, have become almost impossible to achieve under the conditions of compliance with the social distancing measures imposed by the COVID 19 pandemic.

The international external public audit community reacted quickly to the crisis generated by the novel coronavirus pandemic through INTOSAI, with a database dedicated specifically to this purpose being created by the supreme audit institution from the Russian Federation, under whose leadership the organization was at that time (https://intosairussia.org/scei/covid-19-database.html). This database included examples of good practice used by SAIs, relevant audit reports, professional training tools, remote working, developing lessons learned to help prevent future pandemics. There was also information on relevant audit findings and methodologies on topics such as pandemic prevention, pandemic preparedness and response, previous audits related to disease outbreaks such as Ebola and SARS, health systems and spending related to COVID-19.

Climate change is another challenge facing humanity, combating it has become a global objective in order to protect life and ensure future sustainability. Through the Green Deal of December 2019, the European Commission set out to place the European Union at the forefront of the fight against climate change, with the aim of making Europe a pioneer in terms of climate neutrality by 2050, the European Court of Auditors increasing in this sense its role in the fight against climate change (Milionis et all., 2021).

Some authors believe that supreme audit institutions are vital in holding governments accountable for responding to climate change challenges and their financial impact (Cordery & Hay, 2021).

Moreover, through the activity carried out, we can say that the supreme audit institutions have a beneficial influence regarding the management of institutions in the public sector, fundamentally increasing its performance.

The special quality of the external public audit activity carried out by the supreme audit institutions, materialized through the audit reports drawn, led to the involvement of these institutions in the fundamental problems faced by contemporary society.

The general trend observed over time regarding the activity of the supreme audit institutions was that of their involvement in addressing the pressing issues facing society, through specific external public audit activities, but also through the guidance function, given the experience accumulated by these institutions over the time, taking into account the fact that they are perceived as independent and impartial institutions that can provide a real picture of the problems.

3. Proposals regarding new approaches in external public audit

Some authors considered that the risks associated with the COVID 19 pandemic have a systemic character and can be considered systemic risks, characterized by a high degree of uncertainty, novelty and increased interaction within the various systems (Kim et all., 2021).

While the research on the systemic nature of risks is not new, their approach has largely focused on financial systems and only more recently on areas such as climate change and natural disasters (Hagenlocher et. all, 2022).

The COVID 19 pandemic has generated a series of risks, which we can characterize as being of a systemic nature. We can even say that the COVID 19 pandemic represents a *black swan*, characterized by rarity, unpredictability and extreme impact (Taleb N., 2019).

A series of pre-pandemic issues have returned to the spotlight with the relaxing of pandemic-related measures, one of which is global warming, which we hear about it almost daily. In this context, the concept of *green swan* emerged risk (Bank for International Settlements, 2020), environmental events with highly disruptive potential from a financial point of view (*environmental black swans*), which could be behind the next systemic financial crisis. Basically, the events caused by global warming generated risks related to meteorological events that cause significant losses to people, firms and insurance companies, turning into risks to financial stability (Silva, L.A., 2020).

As for green swans, from the point of view of the approach regarding their impact on society, it is massive on humans (or even on civilization), the damage being almost irreversible in most cases. From the point of view of the severity of the effects, even without a full understanding of them, immediate action and good coordination are necessary in conditions of extreme uncertainty (Silva, L.A., 2020). In this situation, the involvement of supreme audit institutions in the audit of environmental expenditure is vital, the transparency of this expenditure and the responsibility of decision-makers on these issues can make a difference in the future for citizens.

In the context presented above, we believe that the external public audit activity carried out by the supreme audit institutions can evolve, in the sense of developing new types of audit, respectively new functions, that have a positive impact in terms of the management of public finances, as shown in Figure 5:

Figure 5. New approaches in post-pandemic external public audit

Source: made by the author

The systemic audit carried out by the supreme audit institutions can represent a very good solution, in order to identify the risks affecting various systems in the public sector. This type of audit is a comprehensive and detailed procedure for evaluating and clarifying how a system works (https://www.lambent.com/how-systemic-audit-works/). Starting from this type of audit, risks can be identified in different public sector systems, which can be addressed or even eliminated, as well as good practices, which can be successfully implemented at the level of public institutions.

From this perspective, another type of audit can be developed, ***the strategic audit***, which can address certain specifically chosen areas, depending on the objectives set at the national level by each individual state (https://intosairussia.org/chair-goals/strategic-audit.html).

System audit results can be a valuable information base for the supreme audit institutions, which can successfully develop the guidance/advisory function for public sector entities, in compliance with international external public audit standards. Thus, by identifying systemic risks and deviations from legality with a systemic character, they can be fixed, by implementing the measures and recommendations issued by the supreme audit institutions by the management of the audited entities, a fact that leads to the improvement of ***management performance in the public sector***, which has an impact on the ***lives of citizens.***

With regard to the COVID 19 pandemic, we believe that the supreme audit institutions can perform both systemic and strategic audits. This type of approach could be successfully used, allowing supreme audit institutions to effectively contribute to the improvement of the management of public sector entities and the quality of life of citizens, the provisions of the international standard INTOSAI – P 12 being all the more evident in this context.

Conclusions

The role and importance of supreme audit institutions has been highlighted over the time, both by the results of their specific external public audit activity and by their involvement in the emerging problems that society has faced, as was the case with the crisis generated by the pandemic of COVID 19, this being the general trend today.

It is also increasingly evident that the climate change is a new threat looming on the horizon and the experience of supreme audit institutions will most likely speak for itself again, as was the case with the novel coronavirus pandemic.

Adaptation to the new reality imposed by social distancing and the rapid digitization of activities has led to the adaptation of audit techniques, as well as the identification of new approaches in external public audit, among which systemic audit and strategic audit stand out, each of which has a role and importance both in addressing the crises that may arise and also in terms of improving the management of public finances, with an impact on the quality of life of citizens.

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THE IMPORTANCE OF MONEY LAUNDERING RISK ASSESSMENT AS PART OF ACCOUNTING OPERATIONS

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Raluca - Andreea Stoica[2]

Abstract

The purpose of this paper is to present the importance of having an international Anti-Money Laundering (AML) policy in place inside the business offering financial services.

Money laundering represent an easy way used by criminals and terrorists to keep themselves away from the authorities attention and in the same time, have control of their assets. So, the first part of this paper, will outline the threats that can be encountered by businesses operating into the 'regulated sector'. These firms are always at risk of providing services without knowing what is behind of a certain company's activities and that's why suitable procedures are required.

The second part of the paper will concentrate on elements of money laundering prevention and international Anti-Money Laundering programs. It is very important for the firms and individuals to understand the Anti-Money Laundering legislation, as this will help to identify, report and prevent money laundering activities.

The multi-faceted process of globalization has created new opportunities for international economic crimes. Criminals use a wide variety of methods to control and conceal the proceeds of their crimes, so anyone involved in these types of operations is committing a money laundering offence. So, the employees in high-risks industries need to identify unusual activities that can be associate with laundered money.

Keywords: *money laundering, risk, prevention, regulated sector, fraud*

JEL Classification: M40, M41, M48

Introduction

Money laundering is a way to give a legal appearance to funds obtained illegally, with the main purpose of generating profit for the person or group involved. It is the process of making 'dirty money' appear 'clean' and is used by criminals to hide the origin and real possession of income generated by their criminal activities. Also, we must take into consideration that money laundering has a negative impact on the worldwide economy, encouraging crimes such as drug trafficking and terrorism.

Criminals use a wide range of methods to control and conceal the proceeds of their crimes. Their goal is to be able to spend their money safe in the knowledge that it cannot be linked back to the original offences.

The phenomenon of 'money laundering' appeared a long time ago, being linked to the history of trade and the emergence of the banking system, being 'established' during the US Prohibition when the sale of alcoholic beverages and gambling led to the unprecedented enrichment of to those who were involved into these activities.

Firms operating in the 'regulated sector' – which includes accountants, auditors, insolvency practitioners, lawyers, and tax advisers – are required to assess the risk that their clients could be trying to launder criminal or terrorist funds and to put appropriate procedures in place to mitigate the risks.

Money Laundering – How it works?

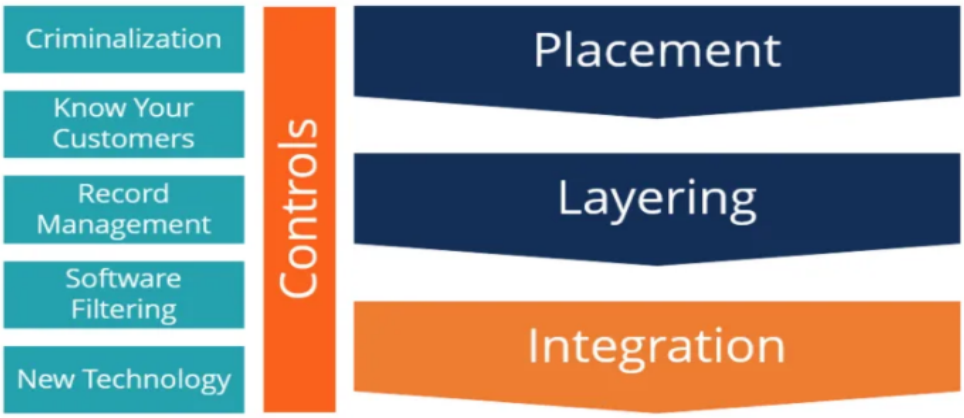
Money laundering refers to the methods criminals and terrorists use to keep control of their assets without them coming to the attention of the authorities. Businesses offering types of financial services that are potentially useful to money launderers are subject to a range of regulatory measures designed to prevent their facilities from being exploited for these purposes.

There are numerous ways to launder money, from the straightforward to complex ones, but one of the most common methods is to use a legitimate, cash-based business owned by a criminal organization. We can take as an example, if the organisation owns a coffee shop

or a restaurant, it might inflate the daily cash receipts in order to channel illegal cash using that business and its bank account.

Even if you have managed to get your illicit cash into an account, this is not the final step, as you will need to explain all those cash deposits. So, to disguise your money's criminal origin, you can move it around using any number of methods. For example, you can move money through many accounts, buy investments and sell immediately or use corporate bodies of unclear ownership. As a criminal, if you are careful about covering your tracks, you will only consider the process complete when you are confident that the link between your money and its criminal origin can no longer be traced.

Basically, the process involves three major steps - **placement**, **layering** and **integration** and different controls are put in place to screen suspicious movement that could involve money laundering. The following figure shows these three steps and controls that are used to prevent it.



Source: https://corporatefinanceinstitute.com/resources/knowledge/finance/anti-money-laundering/

1. **Placement** – getting the cash into the financial system. For example, deposit cash into bank accounts or buy tradable assets for cash.
2. **Layering –** covering the trail. So, to disguise your money's criminal origin, you can move it around using any number of methods as moving money through many accounts, buying investments, and selling them quickly or using corporate bodies of unclear ownership.
3. **Integration** – establishing a legitimate source of wealth. The best way to establish an apparently respectable explanation for your wealth is to get your money into legitimate investments, property, established businesses or other income-earning assets. Once this step is complete, you can pass yourself off as a wealthy private investor or a successful entrepreneur.

The crimes themselves can range from obvious things, like robbery and drug dealing, to more sophisticated activities like embezzlement, tax fraud and cybercrime. Organised criminals tend to use deliberately complex methods to launder their profits – often employing intermediaries to set up front companies and trusts in different jurisdictions, concealing their wealth behind corporate structures that resemble those of the legitimate economy. Anyone becoming involved in these types of operations is committing a money laundering offence.

Money Laundering - Grounds of suspicion

Sometimes you may know for certain that a client's actions amount to money laundering. For example, they might tell you quite openly about a tax or accounting fraud – perhaps because they do not really consider it to be a crime. More likely though, you will come across things that cause you to question whether the origin of funds or the purpose or the purpose of arrangements could be suspicious.

Suspicion is a matter of judgment, and you must decide when curiosity leads to doubt, and when doubt becomes suspicion. In some firms, every day can bring a client or transaction that needs a decision. In some firms, every day can bring a client or transaction that needs a decision on possible grounds of suspicion. In others, this could be a rare occurrence.

The companies within the 'regulated sector' need to monitor customers deposits and other transactions and must verify the origin of large sums, monitor and report suspicious activities.

To recognise the grounds of suspicion, you must maintain high standards of due diligence, proportionate to the assessed level of money laundering risk. Anyway, there are also limits and you are not expected to know more about a client than is appropriate for the service you are providing or for your own job function. For example, if your role inside the company is purely administrative, you are not expected to have the same knowledge of your clients' affairs as someone who is directly involved and gives professional advice. Also, you are not expected to be an investigator – conducting surveillance, questioning suspects, or seeking out evidence – nothing beyond carrying out your normal work in n alert and professional manner.

To picture a situation that can be encountered by an employee in real life on their day-to-day activity, we will be presenting the following simplified case:

Imagine you are currently working in an accountancy firm and a senior member of your firm has recently retired and you have taken over the responsibility for several of his clients and one of this is XYZ S.A., a company that your firm has been preparing annual accounts for a couple of years. Your attention is first drawn to this client when a call is put through to you from the Managing Director asking you to carry out a simple corporate re-structuring, transferring al the shares in XYZ S.A. to a holding company XYZ LLC registered in Dubai and they want for your firm to continue working for them. As you did not manage to look into the accounts of the company you have responded with the most obvious question, asking why the company has to be registered in Dubai, but the manager is avoiding responding to your question and leaves the call unexpectedly saying that has to join another meeting.

The abrupt termination of the call leaves you feeling rather uneasy, as you also recall Dubai featuring in a newspaper article you read recently about money laundering and the heroin trade in Afghanistan, so you decide it would be appropriate to investigate this. This way you find information about this subject on the authorized websites indicating the same thing and this flags the fact that you may have three indicators of money laundering here: a sudden change in a client's business arrangements, the involvement of financial centre reportedly linked with the drugs trade and a client's reluctance to answer routine questions. At this point, you have no actual grounds for suspicion, but you should centrality take steps to find out more bot the reasons for this move.

Looking into the last annual accounts, you see that they are a software company specializing in website development. So, it occurs to you that software is one of those commodities where the value may be hard to determine, making it an ideal cover for moving dirty money by invoicing for inflated sums. Deciding it would be good to find out more about the company's business, you do an online search and find the website, where you see a lot of bold statements about how the company work and links to a umber of client companies for whom they claim to have developed websites. Further online searches confirm that these sites do indeed exist, and you find that some belong to UK companies and some to companies in North Africa and the Middle East. You are reassured to see that the companies clints appear to

be genuine, but you still feel that you must have a better understating of their business, so you arrange a meeting with them to ask for further explanation on their basic business model. You also get in touch with your colleague that was previously working for this client and after getting a better understating of your client's business, you realise that you need to be alert for signs of possible money laundering, but this does not mean that you should start assuming that your clients are criminals. There is no reason of being worried if you have obtained credible and consistent answers to your enquiries.

So, whenever you come across something that gives you cause to question arrangements, it is important to obtain the relevant information to which you have routine access and consider whether you have satisfactory explanation that's consistent with what you know.

AML (Anti-Money Laundering)

AML is an acronym for the term Anti-Money Laundering. It is mainly used in the financial, legal and compliance sectors to develop the standard controls that companies, and organizations must carry out to avoid, identify and report suspicious behaviours of money laundering that can happen while carrying out their activity.

Anti-Money Laundering, AML compliance practices focus on performing procedures that discourage and prevent potential violators from engaging in money laundering fraud or crime. In this way, criminals cannot hide the illicit origin of money in any type of transaction.

In the fight against money laundering the government is responsible for enacting legislation to combat money laundering. Risks of money laundering and terrorist financing is a major concern for the EU financial system and for the security of its citizens. EU strengthens its permanent efforts to combat money laundering and terrorist financing.

Accountants can be involved at any stage of the process, for example:

- While preparing the accounts of a small business, you may notice an unusually high proportion of cash transactions, as compared with online or card payments, indicating a possible placement operation.
- While doing an audit you may spot suspiciously large payments for intangible services like consultancy which could be a cover for layering transactions.
- You could be engaged by a company that conducts entirely legitimate business, but which as acquired using laundered money, thus providing an apparently respectable income for the owners – a successful integration operation.

Criminals tend to use deliberately complex arrangements, so it is very unlikely that you will be able clearly identify all the different stages of a money laundering operation.

The European Union issues Directives compelling member states to implement AML measures in their own legislation. Regulatory bodies ensure that firms they supervise operate policies and procedures in compliance with the national legislation.

Your firm has anti-money laundering policies and procedures that must be followed by all relevant staff. All regulated businesses are required to assess the level of money laundering risk presented by their clients and the services they are providing to them, and to apply AML measures proportionate to the risks identified – a process that is formally known as the 'risk-based approach'.

There are money laundering offences that you are at risk of committing – even inadvertently - in the normal course of your work. These offences – which also carry criminal sanctions – fall under three headings:

1. **Assisting** – it is an offence to become concerned in an arrangement that you know or suspect assists someone to a launder money.
2. **Tipping off** – you must not inform a client or any outside party about suspicion of money laundering.

3. **Failing to report suspicions -** if in the course of business, you know or suspect, or have reasonable grounds for knowing or suspecting, that another person is engaged in money laundering, you commit an offence if you fail to make a suspicion as soon as is practicable.

Practices and requirements established by the AML compliance regulations on Money Laundering Prevention not only help businesses not to get involved in possible frauds and crimes but also their assessment improves, optimizes, and automates their usual processes.

Conclusion

Money laundering is the illegal process of making large amounts of money generated by a criminal activity, such as drug trafficking or terrorist funding, appear to have come from a legitimate source. The money from the criminal activity is considered dirty, and the process "launders" it to make it look clean.

It is important to understand the magnitude of the risks associated with money laundering. These criminal practices are a considerable offence for society, companies, and individuals, and therefore compliance with the practices of prevention of money laundering is mandatory for all kinds of business and organizations and is strictly regulated in every state, country, and region.

The legislation is responsible for guiding the regulated sectors on how to operate and proceed. Compliance and legal departments are responsible for ensuring that all company processes meet the requirements requested by the AML regulations of each state and country.

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INSURANCES STRUCTURE DEVELOPMENT PERSPECTIVES

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Abstract:

The insurance sector is an important part of the EU's financial sector. Insurance represents a key sector of the European economy, whose influence is felt both in the protection against risks in the economic and social field of the member countries, in the role of stimulator of the idea of saving in the medium and long term, and as a provider of funds for financial markets. The research method used in this work is the investigation of statistical sources, regarding the structure of insurance at the European level, as well as in Romania, in the last five years. The results signal that the globalization of financial services continues to mark the entire evolution of the insurance and reinsurance field, and also another important aspect refers to the sudden revaluation of risk premiums that can lead to a decrease in the value of insurers investment portfolios.

Keywords: *insurance, structure, globalization, solvency*

JEL Code: G22

1. Introduction

In the market economy, the crisis generated by COVID-19 was superimposed on a European economic environment characterized by low yields and a high level of uncertainties, which led to an intensification of these vulnerabilities from the perspective of insurance companies. In this context, the high degree of uncertainty and the existing challenges have led to an increase in the risk of maintaining very low long-term interest rates and of a sudden revaluation of risk premiums, which has imprinted a tendency to amplify the risk of solvency, profitability and reinvestment for insurance companies.

2. Theoretical approach

The development of a single European insurance market was a gradual process that lasted several years. The directives of the European Union relating to insurance represent the generally accepted principles at the level of the European Community with the aim of standardizing the rules of insurance and facilitating international trade, referring primarily to the activity of insurance, but also to that of reinsurance. (Ciurel, V., 2000)

At the European level, it can be stated that the world of insurance has experienced an overall evolution, with certain common characteristics, but also with appreciable differences from one country to another. It must be stated first of all that Europe is the birthplace of modern insurance and remains an essential market worldwide, with rapid growth especially in the branches of life and savings insurance, but occupying second place after the United States. (Constantinescu, D., 2002) We are currently witnessing a maturation process of the single European insurance market, with achievements, but also with its difficulties, which have not yet been overcome. (Acatrinei, M., 2020)

If we refer to the international level, the insurance market is characterized by a high degree of heterogeneity as a result of the diversity of damage-causing events and the activities it can affect. (Joldeș, C., 2020). As a result of this fact, it is practically impossible to define a single insurance and reinsurance market, each of them being characterized by the preponderance of certain insurance categories, the existence of certain insurance and reinsurance companies, specific rules and regulations, higher coverages or exclusions more extensive. (Badea, D., 2004)

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Between insurers, reinsurers and insureds: large multinational companies tend to raise their self-insurance threshold and transfer risks or part of them directly to reinsurers; the choice is made more and more on the principle of global financial management. (Bistriceanu, Gh., 2002)

3. European and Romanian insurances structure analysis between 2017-2021

Very low interest rates, higher risk premiums and the potential increase in liquidity requirements, in the context of an increase in the value of claims and the value of redemptions, could increase the risk of inefficient asset allocation, in the sense that assets do not match the characteristics of liabilities. In addition, uncertainty about capital markets could also contribute to increasing the risk that asset allocations will not be efficient.

It is observed that the portfolios of insurance companies both at the European level and in Romania are mainly oriented towards investments in bonds. Unlike the investment structure of EEA insurers, in Romania government bonds hold a much higher weight (85%). Unlike Romanian insurance companies, insurers in Europe have oriented themselves towards a greater diversification of investments, in search of higher returns, considering that one of the main vulnerabilities for European insurers is related to the persistence of the prolonged environment of very low interest rates.

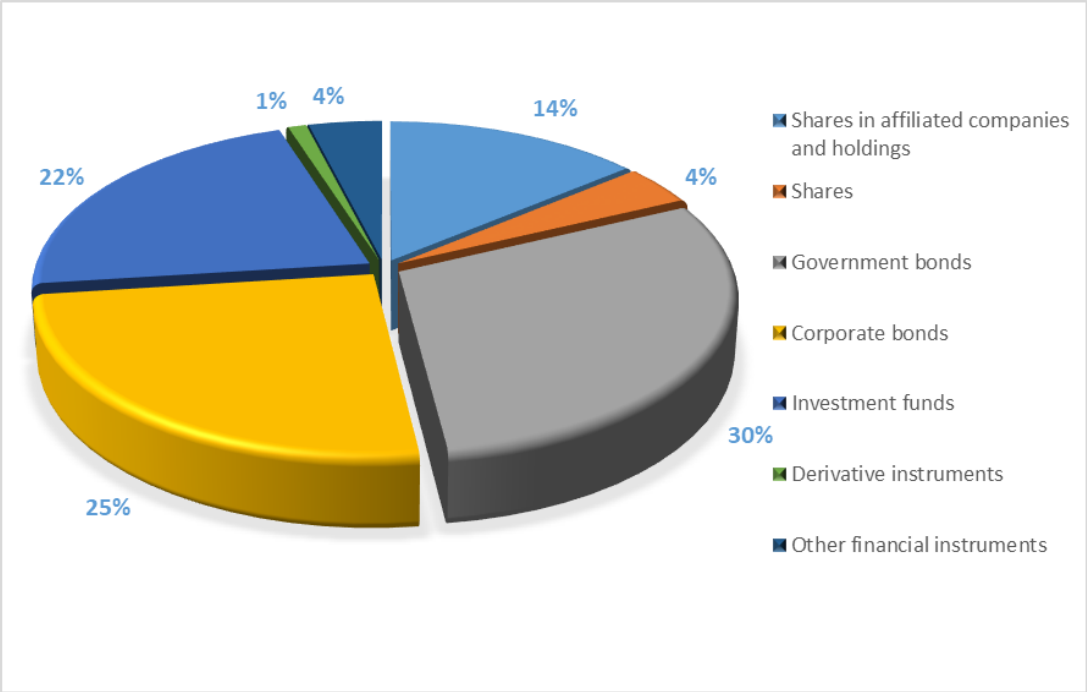

Figure 1. Aggregate investment structure of insurance companies in Europe (QIV 2021, 30 countries)

Source: processed after the report of the Financial Supervisory Authority

The degree of insurance penetration in GDP, an indicator calculated as the ratio between the value of gross premiums written and the gross domestic product (GDP), recorded significant values in the case of France during the analyzed period. In 2021, France (12.2%) recorded the highest value, followed by Germany (8.7%), Italy (8.1%) and Spain (5.4%). In the case of Romania, we observe an increasing trend regarding the degree of penetration of insurance in GDP in 2021, showing a value of about 1.29% compared to the level of 1.15% of GDP in 2020. The degree of penetration of insurance in GDP increased in Romania due to the significant increase in the volume of gross premiums written.

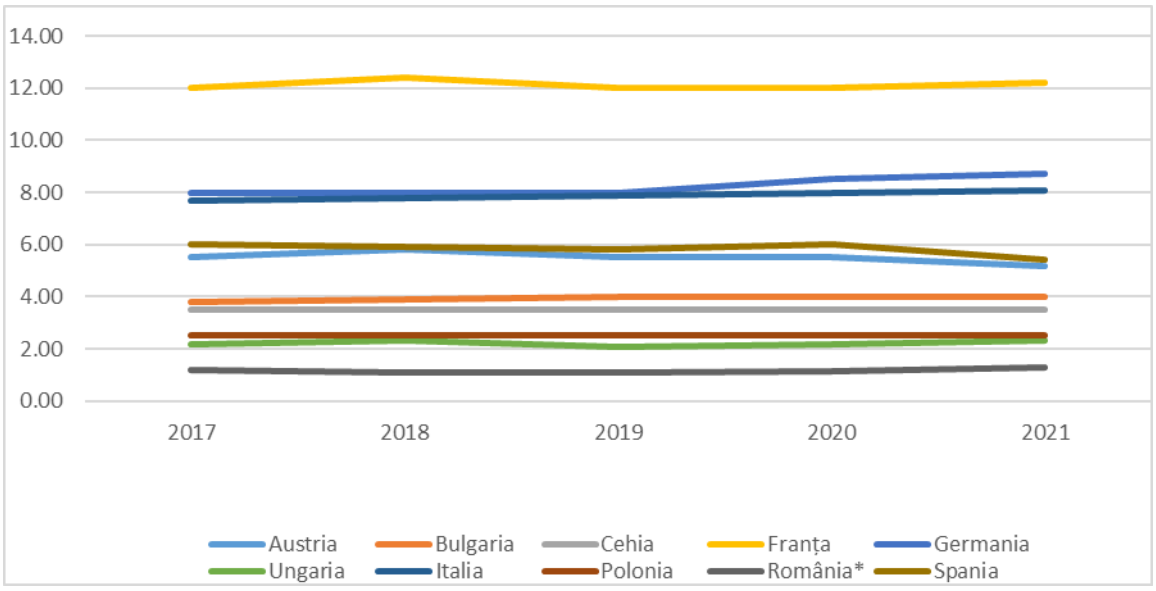

Figure 2. Insurance penetration in GDP

Source: processed after the report of the Financial Supervisory Authority

Insurance density is an indicator that shows how much, on average, the resident of a country spends on insurance products. In 2021, France occupied the first position also regarding this indicator (4,478 euros/inhabitant), followed by Germany (3,733 euros/inhabitant), Italy (2,436 euros/inhabitant) and Austria (2,213 euros/inhabitant) . In the case of Romania, in 2021, the insurance density was at a value of 161 euros/inhabitant, increasing by approximately 24% compared to the previous year.

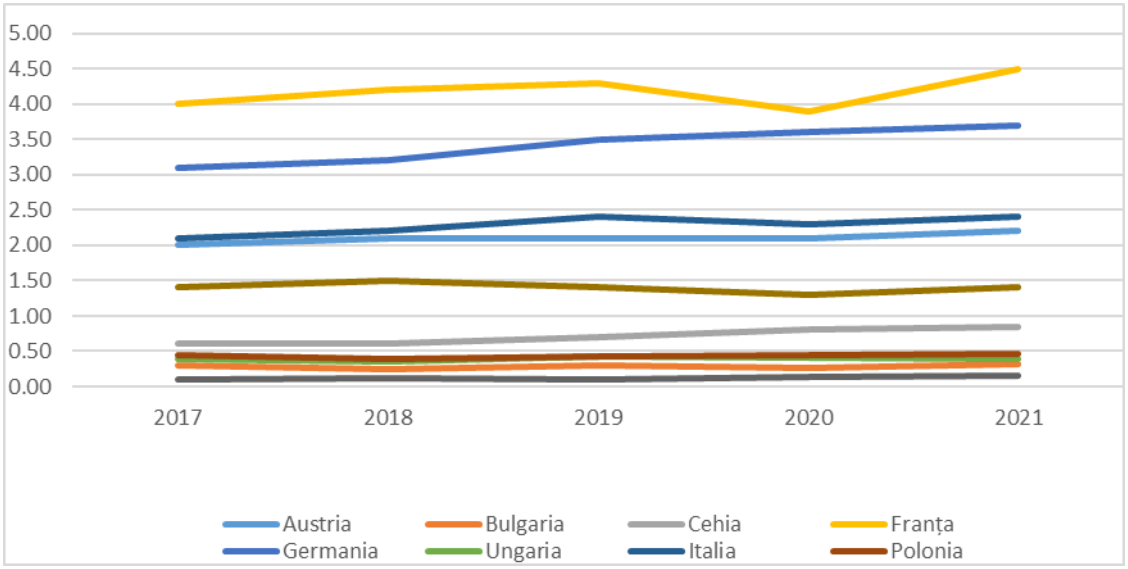

Figure 3. Insurance density (EUR)

Source: processed after the report of the Financial Supervisory Authority

The share of life insurance activity in the total insurance sector in Romania from the perspective of the volume of gross premiums written is at a low level compared to the other EU states analyzed. In 2021, the volume of gross written premiums for the life insurance segment registered a modest decrease, while the value of written premiums for the non-life business increased slightly, which caused the weight of the life insurance segment to decrease to 18% in total subscriptions.

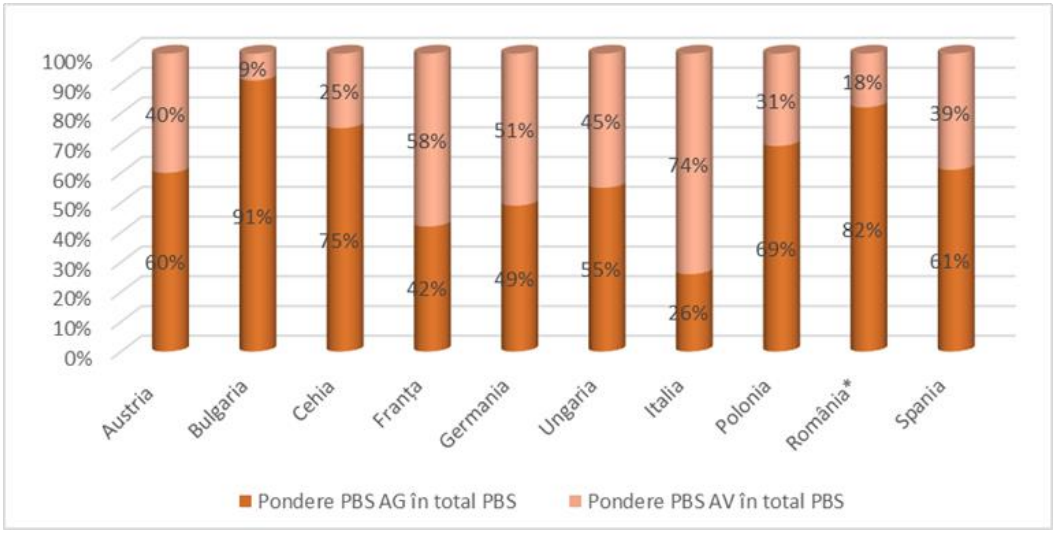

Figure 4. The structure of the insurance market according to the gross premiums subscribed for the general and life insurance activity (QIV 2021)

Source: processed after the report of the Financial Supervisory Authority

Regarding the solvency of the European insurance system, according to published statistics, the SCR rate at the level of the insurance market in the 30 countries that report to EIOPA was in the fourth quarter of 2021 at a level of 2.59, and the median SCR rate was at a value of 2.20.

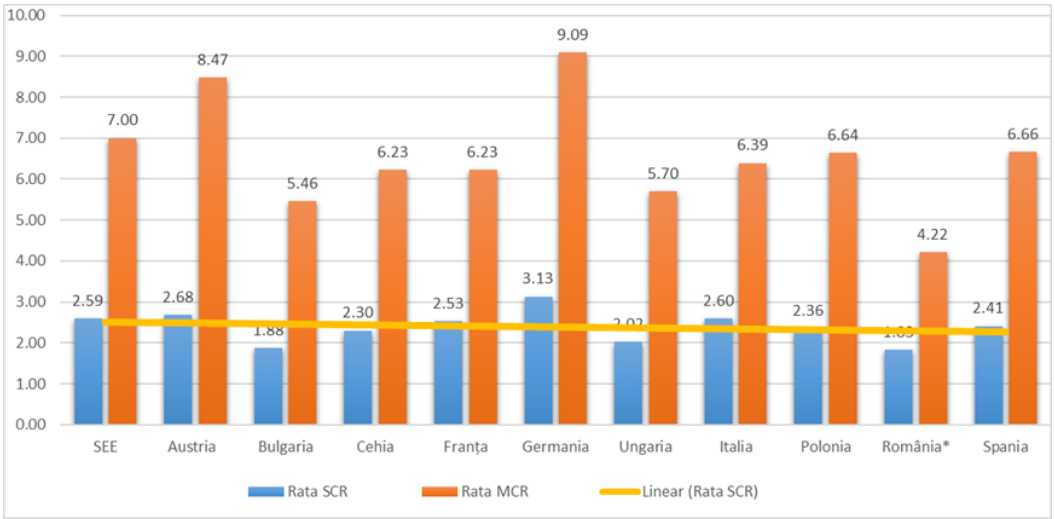

Figure 5. Solvency Capital Requirement (SCR) and Minimum Capital Requirement (MCR) rates (QIV 2021)

Source: processed after the report of the Financial Supervisory Authority

Although Romania registers lower levels of these indicators compared to the European average, the prospects for the development of the insurance sector remain favorable. Therefore, increasing the level of consumer confidence in the insurance industry, launching new insurance products and adapting them to the needs of the population, as well as developing financial education remain effective ways to strengthen the insurance sector in Romania.

Conclusions

Insurance policies are essential for many Europeans and for European companies. They protect citizens against financial losses in the event of unforeseen events. Insurance companies also play an important role in our economy, channeling savings into financial markets and the real economy, thus providing European companies with long-term financing. Insurance protection is essential for many households, companies and financial market participants. The insurance sector also provides pension income solutions and helps channel savings into financial markets and the real economy.

One of the key challenges for today's insurance market is low interest rates. Insurers, especially life insurance, which accounts for 65% of the EU insurance market, face significant problems in obtaining guaranteed interest rates for products sold in previous years.

Therefore, the business models of life insurance companies are currently undergoing profound changes, one of the consequences of which is the assumption of additional risks. Moreover, digital technologies and an increased use of large volumes of data (big data) have significantly reshaped the insurance market (Fintech), creating not only opportunities for companies but also a series of new challenges and risks for customers.

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INTERNAL AUDIT AND ALBANIAN SMES

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Abstract

Small and medium-sized enterprises have long been recognized as engines of economic growth and development. The impact of small and medium enterprises even in the global economy are very important for increasing employment and reducing poverty. Studies have shown that majority of SMEs die prematurely, before reaching their goals due to poor management resulting from inadequate, weak, uncertain accounting and financial information, as well as the lack of regular auditing and risk management. The purpose of this research is to access the impact of internal audit at Albanian SMEs. The sample for the study consists of 110 entrepreneurs and 80 managers. Primary data for the study were collected by a combination of survey questionnaire and semi-structured interviews. Findings from the study highlight the lack of standard audit system and financial records has been a major obstacle to statutory audit of many SMEs, and by extension negatively affects their performance as they find it difficult to convince stakeholders (creditors, suppliers, tax authorities, etc.), that there was regular supervision by an independent auditor for their business activities. The finding further revealed that this can be eliminated through the adoption of a sound audit system that complies with the Auditing Standards. It has therefore been recommended that SMEs should be encouraged to embrace internal auditing.

Keywords: Internal audit, SMEs, risk management, control, activities, monitoring and evaluation.

1. Introduction

One of the main driving factors in choosing SMEs for this study is that the effectiveness of internal control tends to be more problematic for these types of businesses. Large enterprises and corporate companies have legal requirements to maintain effective internal control and the larger nature and scale of their business operation generally leads them to recognize the need for an effective internal auditor. However, as the literature on this issue points out, this tends not to be the case for SMEs. Therefore, the study chooses SMEs as the main problematic area in this regard. The choice to deal with Albanian SMEs is mainly justified by the relative physical accessibility for researchers, given the fact that the study aims to collect primary data on which to base its analysis. In addition, as highlighted in the background information, the national economy benefits greatly from the business activities of SMEs which represent about 99.8% of all types of enterprises in Albania and offer high job opportunities for its workforce. Therefore, the research question of this paper is directly related to the context of why the study is important. Although the importance of an internal audit system is widely accepted among large companies, it is usually said that an efficient internal control system is lacking or not sufficient. strong in most SMEs in general. This study highlights the importance of having sound standardized internal audit in SMEs.

2. Literature review

The Institute of Internal Auditors (IIA, 1999) defines internal auditing as an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. Internal audit and ANS help an organization meet its objectives by bringing a systematic, disciplined approach to evaluating and improving the effectiveness of risk management, control and governance processes. To add value to an organization, the

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internal audit function must not only make reliable recommendations, but also communicate its recommendations effectively so that the organization's management relies on those recommendations. Therefore, internal auditors have recently been given greater responsibilities in strengthening internal control systems and risk management procedures (Spira and Page, 2003; Holm and Laursen, 2007) and the role of internal auditors is changing. from a traditional audit approach to a more proactive value-added approach where internal auditors are partnering with management (Bou-Raad, 2000; Leung et al., 2011). Beasley et al. (2005) found that corporate management had renewed its interest in risk management and developed a deep new interest in internal auditing. The literature has well recognized the role of internal audit in enhancing corporate performance, financial reporting and corporate governance (Lin et al., 2011; Mihret et al., 2010; Allegrini et al., 2006; Carcello et al., 2005; Nagy and Cenker, 2002.). Leung et al. (2011) argue that if internal auditors want to proactively contribute to good corporate governance, they must determine how and in what way this can be done, and they identify issues related to internal control, the evaluation of risk and management processes as the main factors. that internal audit contributes to good corporate governance. Traditionally, internal auditors were acting as "policemen" who checked and monitored company procedures and the level of compliance with regulations (Skinner and Spira, 2003). Currently internal auditors can be portrayed as consultants and the internal audit function of companies is considered to help achieve corporate objectives and add value. As noted by Sarens and De Beelde (2006), internal auditors are expected to actually make things happen rather than waiting to respond. In developed countries, the role of internal auditors has recently been affected by dramatic changes in regulations, mainly corporate governance codes/standards and the emphasis on strengthening the internal controls of organizations of these codes/standards (Flesher and Zanzig, 2000; Pass 2006 & 2004; Holm and Laursen, 2007). Investing in internal auditing can add value to an organization through operational efficiency, asset preservation, more reliable financial statements, and the achievement of an organization's goals and objectives (Feng et al., 2009). While internal audit objectives are set with a focus on controls, risks and governance, a recent study by Leung et al. (2011) finds that there is a lack of correlation between the tasks performed by internal auditors and important internal audit objectives, except for internal control and risks. According to COSO (1992), “Internal control is defined as a process performed by the board of directors, management and other personnel of the economic entity, designed to provide reasonable assurance about the achievement of objectives in the following three categories: effectiveness and efficiency of operations, reliability of financial reports and compliance with applicable laws and regulations". According to the Institute of Internal Auditors (IIA) (2004) “Internal auditing is an independent, objective assurance and advisory activity designed to add value and improve an organization's operations. It helps an organization meet its objectives by bringing a systematic, disciplined approach to evaluating and improving the effectiveness of risk management, control and governance processes. Sawyer (2003) stated that internal auditing is “a systematic, objective evaluation by internal auditors of various operations and controls within an organization to determine whether:

3. Methodology

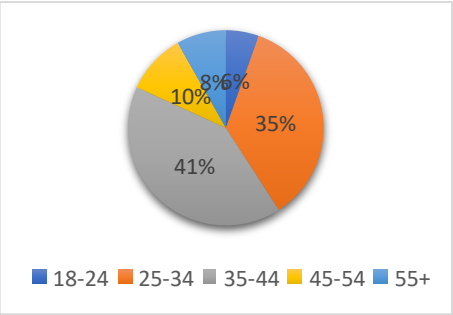
The methodology used in this paper is: To structure and analyze, the semi-structured interview method was used for senior business leaders. The data collection method used in the research is the qualitative method used. This is considered more appropriate for the nature of this research as it enables the description of internal audit in SMEs. The method also enables to perceive how respondents create and understand internal control in SMEs. Additionally, semi-structured interviews were also used during data collection. The interviews were conducted in the respective workplaces of the participants and this is believed to make the

participant feel comfortable to naturally answer open-ended questions and comments which are very important in qualitative research. Such a form is among the most popular methods to do research, which seems more practical and more suitable for this paper which focuses more on describing and explaining the perceived nature of internal audit than they are informed, how are entrepreneurs ready to invest and other similar questions in small and medium enterprises. Indeed, internal control is a sensitive issue to discuss. Those responsible for ensuring that control mechanisms are implemented in the enterprise are usually unwilling to disclose how such mechanisms actually work for fear that the enterprise is exposed to fraudulent actions. The anonymous survey reduces the risk of non-response. Individuals feel more free to answer given this fact. Therefore, owners of small and medium-sized enterprises were interviewed. These enterprises are involved in different lines of business, starting from restaurants, supermarkets to the sale of spare parts for vehicles. We believe that this heterogeneity of businesses increases the importance of the data collected from each enterprise and at the same time enables the eventual emergence of a theory that reflects the variety of cases in the real business world. Likewise, building and distributing an online questionnaire is important to create an idea about the reality of organizations in Albania.

4. Questionnaire and interview analysis

4.1 Analysis of the interview on entrepreneurs

In the interviews addressed to entrepreneurs, 110 people participated, the majority of whom are 35-44 years old, with 45 people who belong to 41% of the total, followed by the 25-34 age group with 39 people who belong to 35% of the total. of the total, the rest 11 people, i.e. 10% of the total age group 45-54 years old, followed by the age group +55 years old where only 9 people participated, corresponding to 8% of the total of 110 people, and finally the youngest age group 18- 24 years old with 6 people which means only 6%. These data are expressed graphically as below:



Graph 1. Age group of entrepreneurs in research n=110 Source Authors

In terms of geographical distribution according to cities, entrepreneurs participated, 38% from Korça, 23% from Tirana, 14% from Durrës, 6% from Elbasan, 5% from Shkodra, from 4% from Vlora and Lezha and with only 3% from Fieri and Dibra. These data are expressed graphically as below:

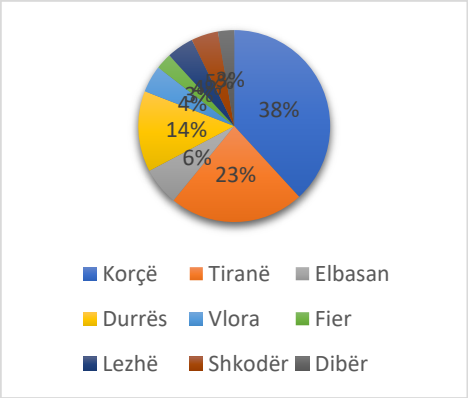


Chart 2. Geographical distribution by cities, n=110
Source Authors

Entrepreneurs were also asked the question of which of the economic activities their business was a part of. In the given options, fields such as construction, trade or others were presented where it is expressly noted that a large part of them have chosen the other option. Including here different answers starting from real estate agency, translation office, language courses, design studio, travel agency, chancellery, winery and many others including health activities such as dental or laboratory clinics as well as accounting offices and insurance. All these types of businesses demonstrate a variety of activities that are expressed in the chart below;

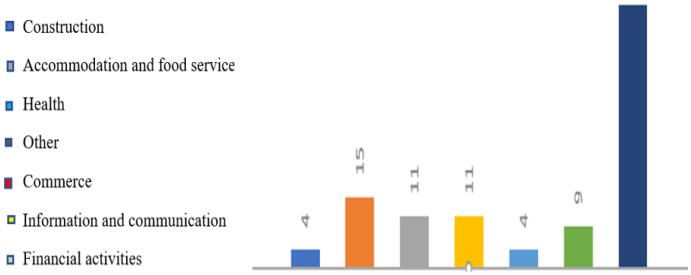
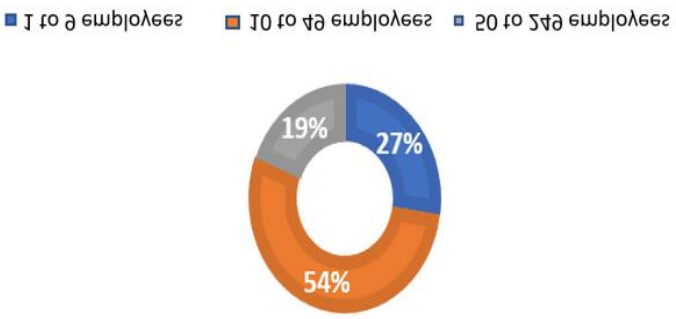


Chart 3. The field of activity in the type of business taken into research, n=110.
Source Authors

In terms of how many employees they employ in their businesses, the majority chose the option 10-49 employees. This interval represents the number of employees of a small business, which means 59 people out of 110 people that is the total have chosen this interval, or otherwise 54% of them. The rest have chosen the option 1-9 employees, this interval represents micro-enterprises and the questionnaire showed that 27% of them or 30 people chose this category. And at the end is the range of 50-249 employees, where only 21 of the respondents have selected this category, which represents medium enterprises.



Graph 4. Enterprises according to the number of operating workplaces. n=110
Source Authors

An extremely important point in terms of internal audit is information. In the questionnaire, the question was asked how informed the entrepreneurs are about what internal audit is, and it was found that a large part of them were not at all informed concretely, 74 people out of 110, i.e. 69% of them. About 22 people have affirmed that they are somehow informed about what the internal audit is, so 20% of them and the rest with only 12 people state that they are very informed, as can be seen in the graph presented.

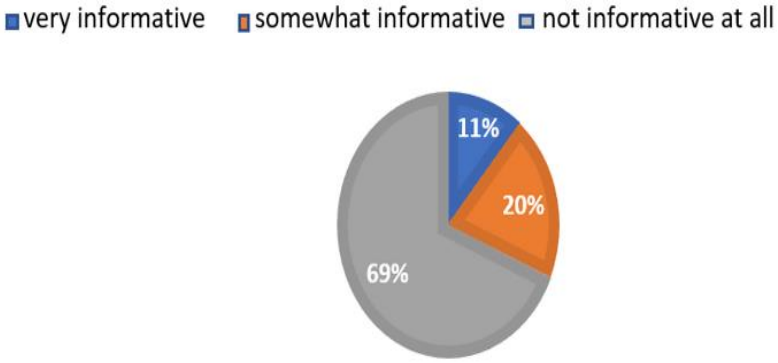


Chart 5. Information on the meaning of audit and its importance in relation to organizations n=110
Source Authors

The internal audit is carried out by auditors, i.e. professionals in the field, to show how well informed the entrepreneurs are, they were asked who performs the audit and the alternatives such as the entrepreneur, manager and professionals were presented. The vast majority of them with 58% stated that they did not they know who performs the internal audit, so 64 people are included here and people who answered that they are somehow informed about the internal audit. Another part of 19 people chose the manager option, that is 17% of them, being followed by 12 people who have chosen the entrepreneur option, i.e. 11%. In the end, there are only 15 people who really know who performs the audit and this part represents 14% of the total.

Chart 6. Those responsible for conducting the internal audit, n=110
Source Authors

The internal audit serves for key points in businesses such as the personnel to the financial condition of the business. Of the 110 respondents, only 70 of them answered. The alternatives in the question were all selectable, so you can solve only a part of them or all of them. Out of 70 people, 37 of them have selected the audit option serves to control financial documents, 21 of them have selected the option of using resources efficiently. The rest of 12 people chose the personnel review option, while finally 11 people chose the risk identification option. Since the internal audit develops all these options, only 10 of them have selected them all.

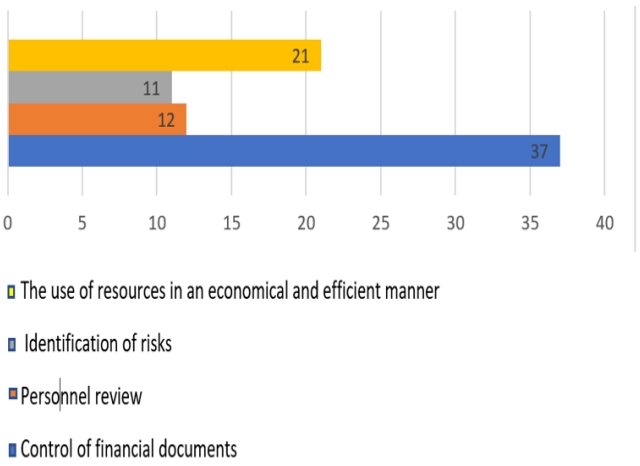


Chart 7. The importance of internal audit for organizations, n=110
Source Authors

Since we are dealing with SMEs or otherwise SMEs, the question has been asked whether they consider internal audit important considering the size of their business. Out of 110 people, 81 of them say that it does not seem important to you, that is 76% and 25 of them affirmed that it seems important to you regardless of the size of the business. The people who answered yes were also asked the following question about how important they see it from 1-5 and the answers resulted in an average of 2.54.

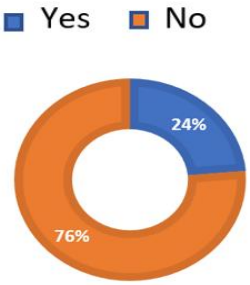


Chart 8. The importance of internal audit for organizations, n=110
Source Authors

The willingness to invest in something that is not part of your business is extremely important. This shows how willing entrepreneurs are to go beyond other investments to a service that adds value to the business. Only 6 people out of 110 were very willing to invest. The rest, 51 people, were somewhat willing to invest, so with less certainty than the first 6 people, and at the end there is a considerable part of 53 people who they are not ready to invest for the audit regardless of its importance.

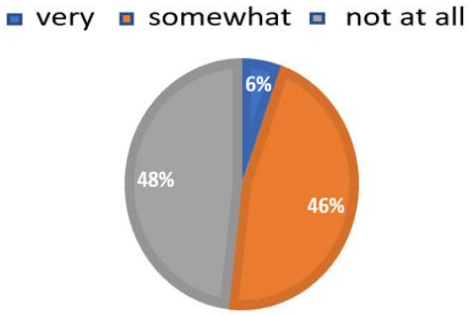


Chart 9. Investment for a real internal audit as a value for the organization, n=110
Source Authors

To show concretely how often audits are carried out in Albanian businesses, the frequency of audits is presented in the chart below. It is noted that a significant part of them, i.e. 98 people out of 110, claim that internal audits are never carried out in their business. Only 8 people chose the option less often than once a year, 2 people chose once a year and only 1 person chose the option more than once a year. We underline that the last person has a business of 140 employees, this justifies the frequency of the internal audit. In the following, only 6 people stated that their business makes continuous assessments to determine if the internal audit works and is effective.

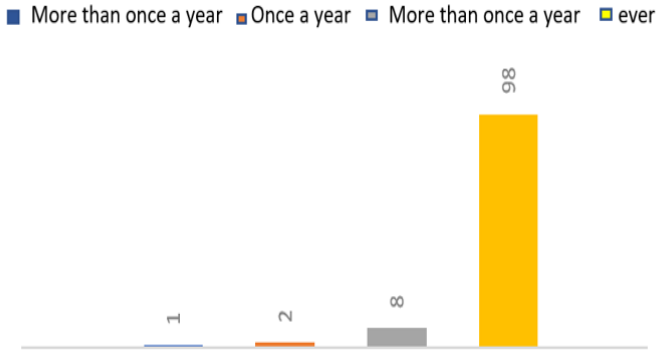


Chart 10. Effectiveness of the organization's internal audit, n=110
Source Authors

5. Conclusions

Internal audit is an important tool to help the management of organizations to find the right solutions in meeting the objectives. Through findings and recommendations, auditors provide assurance and advice on the management of internal control systems, risk and governance. Business management in Albania still has an incomplete conception and a low level of awareness about the role of contemporary internal audit services. This is related firstly to the information, cost and quality of audit activities, where in important cases the quality of this service is estimated to be not at the levels required by contemporary standards and practices and secondly to the lack of recognition and misuse of these services by many administrators and managers.

Auditing should add value, helping managers to reconsider their roles and responsibilities in order to strengthen the Internal Control System and make it a powerful tool in meeting their objectives. They also serve internal auditors to improve their practice activities. As far as the businesses in Albania are concerned, it would be very important for them to clearly understand that the audit is important and gives value to the business. This small investment compared to other types of investments required by the business helps them move forward by advising and suggesting alternative solutions, making the audit investment return several times over.

Regarding the segment of businesses, in which the audit operation is oriented, we can talk about auditors related to specific functions of the organization - for example, quality auditor, balance auditor, auditor of social and environmental behavior of the organization, security auditor, auditor of the organization and of the organization's procedures, including IT - or we can talk about the audit of aspects that are more related to management, such as: the organization's environment, the constituent values of an organization, incentive policies and personnel qualification, etc., and related to the audit of the organization's control and performance systems.

In both cases, in any case, it is a matter of different types of organization audit that differ between them in terms of: work object, methodologies, goals, techniques and necessary professional levels. Regarding the object of the audit, you can talk about a process that stands

at the beginning of a result or only the result of a process. This distinction is very important, as it characterizes the modern concept of auditing, more and more oriented to guarantee the reliability of a process and to give assurance on the accuracy and reliability of the result. Different stages or different processes need radical controls by professionals in the field. .

The importance of various internal audit activities should change significantly in the coming years from what is currently practiced, as the results from the questionnaires made showed that the information and importance given to internal audit is almost zero. Changes must be made since the businesses of small businesses that think they don't need it, when the simple fact that they don't have an internal audit could be the reason they haven't expanded further but have remained small businesses with little capacity and horizon. .

6. Recommendations

1. Small and medium-sized enterprises should be encouraged to adopt a sound internal audit system and the cost of installing and operating such systems should be minimized.

2. Internal audit should not be related to the size of small and medium-sized enterprises and accountants involved in the audit of enterprises should adopt methodologies that adequately capture the accounting and reporting needs of enterprises and comment on their peculiarities, if necessary. in the audit report.

3. Adherence to internal controls as determined by management (even if instructions are received from professional accountants) is essential to maintaining data integrity.

4.Professional auditor roles as consultants/part-time accountants are of immense value to entrepreneurs on how to better manage their business organizations for excellent results.

5. Regulatory bodies, educational and financial institutions as well as other stakeholders should organize periodic trainings related to internal audit for SME owners/managers as well as regulate the consulting fee for easy access to consulting services in order to have participation.

6. Small businesses urgently need to develop an appropriate culture for audit services. This will adequately promote the financial performance of their businesses.

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CONSIDERATIONS REGARDING THE EMERGENCE OF THE TWO TYPES OF CRISIS - THE FINANCIAL CRISIS OF 2008, THE PANDEMIC CIRSIS - COVID-19

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Abstract

The specialized literature has a rich area of studies regarding the financial crisis of 2008 and the pandemic - COVID-19 – the comparative elements with reference to the form of manifestation and their consequences, also, being significant,The financial crisis of 2008 originates in the large financial centers of developed countries, the situation of the financial markets deteriorating strongly, since September 2008, along with the bankruptcy of the American Investment Bank Lehman Brothers. There have been a series of imbalances that propagated, over time, also in the economies of developing countries, with different forms of manifestation, given the specific character of each country and category of population.Compared to the crisis of 2008, the current pandemic crisis has its origin in a health crisis with the consequence of economic repercussions, whose propagation occurred suddenly, with negative effects worldwide. This form of crisis generated by the spread of the Coronavirus had negative effects that affected the activities of many sectors: the health system, the chain of purchases and sales, the restriction of production or the temporary suspension of the activity of some industrial branches, the sector of Small and Medium Enterprises and other fields: trade, tourism, transports. This experienced a wide, rapid propagation, with a radical impact on the economy, stopping the activities of some economic operators, shortly, becoming a global phenomenon, with an impact on the world's economies. The financial crisis that began in 2008 manifested itself through the disruption of the financial system and real estate markets in the USA, having a relatively slow propagation, globally, compared to the COVID-19 pandemic. In the pandemic crisis, differently from the global crisis, the policies, measures and strategies applied, in economic terms, aimed, among other things, at limiting the bankruptcy of companies, reducing losses and unemployment, and were also accompanied by health aspects. The constraints that appeared in the financial crisis of 2008 were the consequence of the deterioration of the financial system, a situation different from the crisis caused by the COVID-19 pandemic, whose determinant factor was the spread of the coronavirus, having consequences in health, economic and social plan. The present study tries to present some aspects noted by the specialized scientific literature, regarding the origins and consequences caused by the two types of crisis, as well as the aspects that differentiate them but also similarities. Also, some opionis have been reported according to which the effects caused by the pandemic crisis, at the level of economies, are less severe than those of the global financial crisis and induce a lower risk of recession emergence, compared to those caused by the global financial crisis. There are also opinions that consider that the current crisis has severe effects on the world's economies. The conclusions drawn note that although there were similarities in the reaction of the world's governments to the current crisis, it can be stated that the measures applied to save their economies consisted of a set of more extensive initiatives, interventions and resources than those applied in the crisis of 2008, these being motivated by the high degree of propagation of the current crisis. The research methodology used consists in documentation from the specialized scientific literature, summarizing and processing through own interpretation of the ideas and ensuring the coherence of the ideas in an original formulation.

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1. Introduction

The specialized literature has a rich area of studies regarding the financial crisis of 2008 and the pandemic crisis - COVID-19 - the comparative elements being also significant with reference to the form of manifestation and their consequences.

1.1. Characteristics of the financial crisis

The financial crisis of 2008 lies in the large financial centers of developed countries, the situation of the financial markets has been deteriorating, strongly, since September 2008, along with the bankruptcy of the American Investment Bank Lehman Brothers. Over time, the imbalances have also spread in the economies of developing countries, with the form of manifestation having a specific character for each country and population category. (Te Velde 2008; IDS 2008; Toporowski 2009 quoted by Gurtner, 2010, p.2)[1], (BCE – Banca Centrală Europeană, 2010)[2]. The impact was significant, as the recorded economic growth were also based, to a large extent, on cross-border capital inflows. The degree of confidence among the participants in the financial markets has decreased, the financing conditions have tightened, as, in addition to the reluctance of international creditors to provide new liquidity, governments have begun to compete with the private sector, for resources (BCE - Banca Centrală Europeană, 2010)[3].

According to Rafael Doménech, economic analyst at BBVA Reserch, as a rule, the causes of the recession of 2008 were a series of imbalances that penetrated, at a certain moment, in a variety of economies, the consequence of "a real estate bubble and financing" (Rafael Doménech quoted by Canfranc M.R., 2020, p.2)[4]. Other elements also characterized the recession of 2008, for example, a high level of debt of physical persons and legal entities. The imbalances that cannot be controlled in the long term, resulted in broughting the economy to a sudden halt, resulting in the bankruptcy of many indebted companies and financial institutions, accompanied by the deterioration of the payment capacity of households. (Rafael Doménech quoted by Canfranc M.R., 2020, p.2)[5].

The disturbances emerged at the macroeconomic level led to the increase of vulnerabilities causing deep adjustments, in economic and social terms (decrease in the volume of exports, increase in the external deficit, decrease in the profitability of companies, degradation of the situation on the labor market) (BCE - Banca Centrală Europeană, 2010)[6].

The debates focused on the implications of the fiscal policy in supporting the economy, in the context of the economic recession, have attracted the increase in the considerations given to the efficiency of some fiscal incentives, in the economic recovery efforts. The aim was to prevent the negative effects of an economic recession and it required an appreciation of fiscal measures, expressed in the tax and expenditure systems (Izvorski, 2018; Ad Van Riet (Ed.) - ECB, 2010)[7].

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[1]Gurtner Bruno,, 2010, p. 2, ”La crise économico-financière et les pays en développement, (Translated by David Fuhrmann), *Revue internationale de polittique de dévelopment*, Issue 1/2010, p. 201-227, https://doi.org/10.4000/poldev.131, ”The Financial and Economic Crisis and Developing Countries” (Translated by **Jacqueline** Gartmann), *International development policy*, Issue 1/2010, p.189-213, https://doi.org/10.4000/poldev.144;, quotes Te Velde 2008; IDS 2008; Toporowski 2009;

[2] Banca Centrală Europeană, Eurosistem, Raport de convergență, mai, 2010;

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[5]Canfranc Miguel Rodriguez, 2020, p. 2, ”From the Great Recession to the Great Pandemic: the differences between the 2008 and 2020 crises”, BBVA, quotes Rafael Doménech – Head of Economic Analysis at BBVA Research and Professor at the University of Valencia;

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1.2. Characteristics of the pandemic crisis

Unlike the crisis of 2008, *the current pandemic crisis* takes rise from a health crisis whose consequences were economic repercussions, with a high degree of propagation, which suddenly appeared (Canfranc M.R., 2020). The current crisis caused by the COVID-19 pandemic has generated negative effects that have spread worldwide, affecting many economies, by worsening their situation, signifying risk elements that can lead to recession or even economic depression (Zongyun, Panteha, Dervis, Itani, 2022)[1]. There were challenges and constraints at the level of the economy, in the field of public health, the existing course of social and economic life was affected, the shock manifesting itself, both in the Member States of the European Union and in other countries of the world. The created situation has led governments around the world to take measures to respond to its economic consequences. In addition to attempts to respond to the health crisis and supporting measures for enterprises, governments are looking for solutions to support economies in the transition to the post-COVID-19 era (Gibson Dunn, 2020)[2].

The negative effects caused by the spread of the coronavirus have marked most economic sectors (Roland Berger, 2020)[3]:

- the sanitary system taken by surprise had to respond to the increased needs regarding the need to provide equipment, devices and materials necessary for the new conditions that have arisen;
- there were difficulties in carrying out the activities of the companies, the possibilities of acquisitions and sales, situations of production restriction or the temporary suspension of the activity of some industrial branches, - in the Small and Medium Enterprises sector, company closures.

One area affected is that related to travel, which has been disrupted following the protection measures applied (closure of borders, quarantine of many areas, entry restrictions). Other areas were in similar situations: trade, tourism, transport, the effects being felt acutely, in the field of employment, through the suspension (technical unemployment) or cease (layoffs) of employment contracts (Roland Berger, 2020).

The specialized scientific literature observes a series of aspects regarding the origins and consequences caused by *the two types of crisis*, as well as the aspects that differentiate them. (Zongyun, Panteha, Dervis, Itani, 2022).

The constraints that appeared in *the financial crisis of 2008* were the consequence of the deterioration of the financial system, a situation different from *the crisis caused by the COVID-19 pandemic*, whose the determinant factor was the spread of the coronavirus, having consequences in health, economic and social level. (Bosco D., 2008)[4].

The economist Rafael Doménech (Rafael Doménech quoted by Canfranc M. R., 2020, p.3)[5] believes that in the current crisis of 2020 it could lead to a more pronounced recession compared to that of 2008, manifested by the contraction of the economy, high degree of distrust and a high impact on unemployment, by emphasizing it, but without leading to

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[1]Zongyun Li, Panteha Farmanesh, Dervis Kirikkaleli, Itani Rania, "A comparative analysis of COVID-19 and global financial crises: evidence from US economy", *Economic Research-Ekonomska Istraživanja*, Volume 35, Issue 1, , 2022, p. 2427-2441, (pag. 1-43), 2022;

[2]Dunn Gibson, "Crisis Management & COVID-19 Response: Plan Now to Mitigate Against the Ripple Effects of COVID-19 Crisis", March 23 2020, 2020 Gibson, Dunn & Crutcher LLP;

[3]Roland Berger, "This crisis is different – Comparing the Coronavirus Crisis with the Financial Crash", Latest update of our corona economic impact series, April 24, 2020, Roland Berger GmbH;

[4]Bosco Decan, "2008 vs. 2020: A Financial Crisis Comparison", *Personal Finance*, 7/24/2020, "2008 vs. 2020: A Financial Crisis Comparison": 2020 : Articles : Resources : CLA (CliftonLarsonAllen) (claconnect.com), 2020;

[5]Canfranc Miguel Rodriguez, 2020, p. 3, "From the Great Recession to the Great Pandemic: the differences between the 2008 and 2020 crises", BBVA, quotes Rafael Doménech – Head of Economic Analysis at BBVA Research and Professor at the University of Valencia;

economic depression. It also indicates that this impact manifests itself in the short term (Canfranc M.R., 2020).

There were, however, opinions according to which the effects caused by the pandemic crisis, at the level of economies, are less severe than those of the global financial crisis and induce a lower risk of recession emergence, compared to those caused by the global financial crisis. (Zongyun, Panteha, Dervis, Itani, 2022)

There are also opinions that consider that the current crisis has severe effects on economies, worldwide (Gao et al., 2021; Su et al., 2021a, quoted by Zongyun, Panteha, Dervis, Itani, p. 1, 2022)[1] with emphasis on the labor and consumer markets (Zongyun, Panteha, Dervis, Itani, 2022).

1.3 Differences between the two crises

A series of other aspects that differentiate the current pandemic crisis from the financial crisis of 2008 should be pointed out, as follows:

⇒ *The form of propagation and the relevant characteristic*.

The crisis of 2008, whose manifestations began with the disruption of the real estate and financial markets in the USA, spread globally after a certain period. In contrast with this, *the crisis caused by the COVID-19 pandemic* differs from that of 2008, in terms of the consequences felt quickly, in the form of shocks caused in the economy: the increase in unemployment, the closure of some businesses, the decrease in consumption (Roland Berger, 2020)[2].

⇒ *The cyclical* manifestation *character* of the pandemic crisis, unlike *the systemic* one of the 2008 financial crisis (Canfranc M. R., 2020, p.2, 3).

The 2008 crisis had a *systemic character* manifesting itself in the financial system, an idea reinforced by Enrique Marazuela (Director of investments at BBVA Private Bancking) who observes the systemic character of the 2008 recession, a consequence of the deterioration of the financial system, manifested by non-performing loans, debts that could not be paid. ("unsustainable levels of debt") (Enrique Marazuela quoted by Canfranc M. R., 2020, p.2)[3].

The crisis caused by the COVID-19 virus had a *cyclical character*, its onset being the health crisis whose effects spread throughout the economy, by stopping a large part of the activity of economic operators, with effects, especially, on the labor market (unemployment increase through the interruption of the activity of some enterprises) (Canfranc M. R., 2020, p.2, 3)[4].

⇒ The *concrete* aspect of its origin, different from the relative *diffuse* one of the 2008 recession.

Compared to the crisis of 2008, whose origin lies in the bankruptcy of the Lehman Brothers' bank, which generated a lack of confidence in the financial system, globally, *the current pandemic crisis originates in a health crisis* caused by the spread of infection with the COVID -19 virus, worldwide. (Canfranc M.R., 2020, p.3; Strauss-Kahn M.-O., 2020)[5].

⇒ *Priorities in employing measures*

In 2008, the effects of the crisis were felt in the financial system, an element worth noting being the poorly capitalized banks. *The global crisis of 2008*, spread in the financial system, led to the explosion of the real estate bubble in the USA and, in the chain, the consequences fell on the

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[1]Zongyun Li, Panteha Farmanesh, Dervis Kirikkaleli, Itani Rania, 2022, p. 1, "A comparative analysis of COVID-19 and global financial crises: evidence from US economy", *Economic Research-Ekonomska Istraživanja*, Volume 35, Issue 1, 2022, p. 2427-2441, (pag. 1-43), https://doi.org/10.1080/1331677X.2021.1952640 quotes Gao et al., 2021; Su et al., 2021a;

[2] Roland Berger, "This crisis is different – Comparing the Coronavirus Crisis with the Financial Crash", Latest update of our corona economic impact series, April 24, 2020, Roland Berger GmbH;

[3]Canfranc Miguel Rodriguez, 2020, p. 2, "From the Great Recession to the Great Pandemic: the differences between the 2008 and 2020 crises", BBVA, quotes Enrique Marazuela, Director of investments at BBVA Private Bancking;

[4]Canfranc Miguel Rodriguez, 2020, p. 2, "From the Great Recession to the Great Pandemic: the differences between the 2008 and 2020 crises", BBVA, quotes Enrique Marazuela, Director of investments at BBVA Private Bancking;

[5] Canfranc Miguel Rodriguez, "From the Great Recession to the Great Pandemic: the differences between the 2008 and 2020 crises", BBVA, 15.02.2020; Strauss-Kahn Marc-Olivier, "Can we compare the COVID-19 and 2008 crises ?", May 5 2020, Atlantic Council,

demand and the standard of living, which had an unfavorable impact on the international financial markets, reaching, in the end, to the global recession. The consequences felt on the international financial markets determined the taking of some measures aimed at revitalizing the financial system, to combat the slowdown in economic growth and support the revival of the economy. One of the measures was a better regulation of the financial system, part of the role falling to financial institutions (Strauss-Kahn M.-O., 2020).

In the pandemic crisis, different from the global crisis, the measures taken, in order to limit the bankruptcy of companies, to reduce losses and unemployment, were accompanied by sanitary aspects. The dismissal of employees was limited by the application of technical unemployment subsidized by the government and the reduction of working hours. State guarantees were granted to the banks in order to grant credits to the companies, so that they could face the shocks of the crisis. (Strauss-Kahn M.-O., 2020).

In the current pandemic crisis, the policies, measures and strategies applied in economic and monetary terms must respond to some consequences and challenges that are almost identical or that exceed those of the financial crisis of 2008 (Zongyun, Panteha, Dervis, Itani, 2022, p.1,2). The negative impact was felt in many sectors such as: industry, food, tourism, transport, trade, so governments are taking measures on several levels (economic, health, social) to combat the negative effects in the economy and creating possibilities to revive the activity interrupted in pandemic (resumption of the operation of enterprises whose activity has suffered as a result of the pandemic crisis, creating labour force employment opportunities, avoiding unemployment), purchasing sanitary materials (masks, medicines, vaccines, etc.), combating the spread of the coronavirus by applying some restrictions for the protection of the population. (Bosco D., 2008; Canfranc M.R., 2020).

⇒ *The speed of propagation and the reaction of the authorities* is another element of differentiation between the two crises (Strauss-Kahn, M.-O., 2020).

The pace of propagation of the *pandemic* also determines a quick reaction of the authorities, both in terms of protecting the population and in taking measures and initiating policies that come in support of supporting the economy (Strauss-Kahn, M.-O., 2020).

In *the global financial crisis* of 2008, the economic recovery developed slowly, lagging until 2010, with a gradual revival capacity (Strauss-Kahn, M.-O., 2020).

1.4. Similarities between the two crises

→ *Other opinions show some similarities between the two crises:*

⇒ Joaquín García Huerga (Head of Global Strategy at BBVA Asset Management) (Joaquín García Huerga quoted by Canfranc M. R., 2020, p.3)[1], notices the presence, in both stages of the crisis, of some negative consequences on the labor market, an element also present in the 2008 crisis and other effects.

⇒ Marc-Olivier Strauss-Kahn (2020) *finds the presence of several elements present in both crises:*

✓The *uncertain nature* of the two crises whose origin lies in two important economies - the United States, for the crisis of 2008 and China, for the pandemic crisis that emerged at the end of 2019.

✓*Propagation of the two crises, worldwide.*

The crisis of 2008 was the result of the granting of "subprime" loans until 2007, having the effect of *blocking international financial relations* and amplifying the uncertainty, even regarding the economic policies needed to combat this crisis. Similarly, in the COVID-19 crisis, *commercial relations have stopped* for a part of the globe. (Strauss-Kahn, M.-O., 2020)

[1] Canfranc Miguel Rodriguez, 2020, p.3, "From the Great Recession to the Great Pandemic: the differences between the 2008 and 2020 crises", BBVA, 15.02.2020 quotes Joaquín García Huerga (Head of Global Strategy at BBVA Asset Management);

- ✓ *Ampleness* Another element of similarity between the two crises is the fact that both global crises were considered to be the most significant after the Great Depression. (Strauss-Kahn, M.-O., 2020);
- ✓ *In order to combat the effects of the crises*, in both situations a series of monetary and fiscal policies were initiated which substantially supported the efforts to combat and limit their negative impact. (Strauss-Kahn, M.-O., 2020);
- ✓ In the two crises, there is noticed a tendency to return to increase the role of the state, by enhancement the area of action of the public authorities. (Strauss-Kahn, M.-O., 2020).
- ✓

2. Conclusions

It can be noted that although there were a number of similarities between the two analyzed crises, for the aspects highlighted above, regarding the governments' reaction, the simultaneous responses of the developed countries did not lead to their coordination, internationally (Strauss-Kahn M.-O., 2020).

The financial crisis that began in 2008 manifested itself through the disturbance of the financial system and real estate markets in the USA, having a relatively slow propagation, worldwide, compared to the COVID-19 pandemic (Roland Berger, 2020).

By comparison, *the crisis caused by the COVID-19 pandemic* knows a wide, rapid propagation, with a radical impact on the economy, stopping the activities of economic operators and, thus, affecting the production supply chain, up to the final consumer (Roland Berger, 2020).

An aspect that can be found in both crises - the global financial crisis of 2008 and the current pandemic crisis, is the increase in the capacity of propagation, both with reference to shocks, in the case of the first crisis and of disease transmission, in the situation of the current crisis (Billio M, Caporin M ., 2010)[1].

The form of propagation of the pandemic crisis was fast, large-scale, it became, in a short time, a global phenomenon, which affected the world's economies through the restrictions applied (blocking borders, measures for social distancing, isolation, etc.) (Gunay S., Can G., Segovia E. T.(Ed.), 2022)[2].

Although there were similarities in the reaction of the world's governments to the current crisis, it can be stated that the measures applied to save their economies consisted of a set of initiatives, interventions and more extensive resources than those applied in the crisis of 2008, these being motivated by the high degree of propagation of the current crisis (Roland Berger, 2020).

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[2]Gunay Samet; Can Gokberk; Segovia Trinidad J.E. (Editor) "The source of financial contagion and spillovers: An evaluation of the COVID-19 pandemic and the global financial crisis", *PLoS One*, 2022, 17(1): e0261835, eCollection 2022, Published Online 2022 January 14, doi: 10.1371/journal.pone.0261835.

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THE ROLE OF CLOUD ACCOUNTING IN ECONOMIC DEVELOPMENT OF EMERGING COUNTRIES

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Abstract

The way we work, learn, communicate, buy, and sell items is changing as a result of digitalization and the inventive use of digital technologies. Cloud computing is an emerging digital technology that is growing rapidly. It is an internet-based computing model which shares computer resources instead of having local servers. Has been reported that usage of cloud computing in the accounting domain reduces IT management overall costs and allows large scale consolidation and optimal use of software and hardware resources. It also has the potential to make large-scale resources available to small business which will not be able to afford these otherwise.

The opportunities provided by Cloud Computing to developing countries are: on-demand access to data and computing resources that can enhance productivity and improve service delivery in both private and public sectors of emerging economies.

Keywords: accounting software, technology, Cloud Computing, Cloud Accounting

JEL Classification: M40, M41, M48

Introduction

Cloud accounting software is similar to traditional, on-premises, or self-installed accounting software, except that the accounting software is hosted on remote servers, similar to the SaaS (Software as a Service) business model. The data is sent to the "cloud", where it is processed and returned to the user.All application functions are performed off-site, not on the user's desktop. In cloud computing, users access software applications remotely over the Internet or other network through a cloud application service provider. Using cloud accounting software frees the company from installing and maintaining software on individual desktop computers. Cloud accounting solutions also allow employees in other departments, departments or subsidiaries to access the same data and version of the software.

There are some key distinctions between cloud accounting and traditional on-the-spot accounting. Cloud accounting is more flexible. Accounting data can be accessed from anywhere on any device with an Internet connection, rather than on a few selected local computers. Second, unlike traditional accounting software, cloud accounting software automatically updates financial information and provides real-time financial reporting. This means that account balances are always accurate and fewer errors occur due to manual data entry. They are also better able to manage multi-currency and multi-company transactions more efficiently.

In the local world, every time a company grows, it faces higher software licensing and maintenance costs, as well as new licenses and fees for database, systems administration and other software programs. The firm should also make costly capital acquisitions of new hardware, such as servers. With cloud solutions, businesses don't get stuck with expensive equipment and licenses, which are expensive when business contracts are concluded, and there are also no major cost increases when they expand a little.

Cloud accounting solutions offer an equally secure (and sometimes even more secure) method of storing financial information than traditional accounting software. For example, a computer or laptop of the company with critical financial information could be lost or stolen, which could lead to a security breach. Cloud accounting, however, leaves no trace of financial data on company computers, and access to that data in the cloud is encrypted and password protected. Data sharing is also less worrying. Through cloud accounting, two people simply need access rights to the same system with their unique passwords. Traditional methods often require flash drives to carry data, which could be lost or stolen.

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Finally, cloud providers typically have backup servers in two or more locations. If a server shuts down, you still have access to your data. Information stored only on the spot could be destroyed or damaged in a fire or natural disaster and can never be recovered.

Cloud computing definition

In the last decade, the technology that has seen the biggest growth is cloud computing. Cloud computing is different from the traditional way in which information is accessed and stored. In the traditional calculation method, data is accessed and stored in the spaces where the computer or server accesses the data. This form of calculation requires the user to download the software directly to his computer and any other computers that will need the benefits of the software. Once a file is created by software, the information is saved directly on the computer. If a user wants to access the files they created on a desktop, they will have to go back to the same desktop or transfer the files manually using a universal serial bus (USB) to access the files again. The important thing to remember about transferring the file to another location is that any changes made to the file will only be applied to the file on the computer where the changes occurred. For the changes to appear on the original computer, the file should be transferred back as an updated version. An alternative to this would be to use a local area network (LAN) to connect to a personal server where the company's files are stored. This would allow users to access files from any device connected to the server. This method of accessing files is popular in companies and schools, for example, due to its large user base. However, this means that in order to access the files, the user must be in the spaces where the server is located. However, cloud computing works to combat some of these tedious problems.

Unlike traditional computing, information accessed and created through cloud computing is not related to the hardware on which it is created and edited. While traditional computing required users to download and install software on each device, cloud computing software is accessed remotely. The software used by the user is located on a remote server provided by the software company. For a user to access the software, all they have to do is connect to the internet and connect to the portal provided by the cloud server. When the information is created and edited, all the information is saved on this remote server. The files for this information will not be located on the computer they were accessed on. Instead, the information can be accessed and edited from any device that has an internet connection. The user's location doesn't matter. This form of storage also means that any changes to the file will be recognized in all locations when the changes are made and saved. Some software programs allow user edits to be witnessed in real time by others. This technique can be seen in Google's online document creation software, Google Docs. Whenever a document is edited, the software automatically starts updating and saving changes. This allows users to see the progressive typing of other users as in real time. Numerous software programs have emerged in an attempt to use cloud technology. Some people use cloud technology on a daily basis without realizing it. With the popularity of cloud computing, it only makes sense for companies and firms to start applying it to their accounting methods and offerings.

Challenges in implementing Cloud Accounting technology

Although the benefits of Cloud Accounting technology are recognized at the company level, the implementation of Cloud applications is quite slow, due to the uncertainty of management in terms of control and ownership of information. According to a KPMG study, data security and privacy are among the main concerns of users regarding the use of cloud-based services. Security concerns are based on the fact that confidential company information is stored on a server that can be accessed via the Internet and not on your own computer.

The main concern of accountants for the transfer to a new system is justifiable. A successful business to be efficient and knowledgeable about what it offers. The transfer to a new system requires not only time to implement the system, but also for employees to become familiar with the

software. The impact and complexity of moving to the cloud is related to the software, size, business style and technological experience of the company trying to implement it.

As with any software change, the first thing you need to focus on is getting old information about the new software. For some cloud computing solutions, this task may not be as difficult as others. QuickBooks Online has integrated a migration process that allows users to transfer information from QuickBooks desktop software directly to its cloud computing counterpart. For cloud software that is not directly related to other accounting software, there is often the option to convert the accounting information to an acceptable file format. Many cloud options use CSV files to read accounting data from other software. These files are easy to manage through Microsoft Excel and are plain text, tabular versions of the user's accounting data. Although these systems have a means of importing previous data, they do not allow all file types and may not be able to recognize every uploaded form or file. Recent transactions will need to be entered manually and other transactional information, such as direct entries in the general ledger, will need to be entered as summary information, such as a test balance sheet. If you do not have software or file types that comply with import restrictions, your historical data will need to be saved to your desktop. This will mean that the information on the cloud accounting software will start as summary information, with no historical data in it.

The size and culture of the business will also have an impact on ease of integration. Larger businesses are harder to initially transfer to the cloud. There are many more people to train on the new system and many more files that will need to be transferred.

If a firm also tends to have a substantial inventory, large number of transactions, or complex software integration, they could also begin their transition to the cloud ("Moving the System to the Cloud," 2017). Having a substantial inventory and a large amount of transactional data would mean that more files would have to be converted or even manually entered into the new system. If a business relies on an interwoven software system, cloud system integration can be difficult and time consuming. The companies that are best suited for a fast transition to the cloud are small, young companies with technological experience ("Moving your system to the cloud", 2017). They will have fewer members to train, will have less financial information to transfer and will be more comfortable and familiar with how the new technology works.

The last thing you need to know about transferring to a new system is when to do it. By transferring data, you want to make sure that it is clean and up to date. The best transfer periods would be after the end of the month, the end of the fiscal year or after clearing a major account. Data cleaning or data washing is a process used to detect and correct data from an incorrect, incomplete, improperly formatted or redundant database. This allows the transferred data to be error-free and constantly formatted. However, preparation for switching should be made a few months before the agreed transfer. This will allow users to become familiar with the system and can reduce the workload during the migration process. Thanks to the network connectivity of the cloud accounting software, it can be connected to information about banking transactions. This means that during installation, accountants can continue to work on the old system, while the cloud system is automatically updated via the bank feed. This implementation strategy is known as a parallel approach. By running two systems simultaneously, employees can feel comfortable with the new system while still using the old one, and the results of the new system can be compared to the old ones to make sure everything works correctly.

Data security

When thinking about cloud computing and security, most people worry about information security on the web. They worry about data security and the online security measures that are being put in place to protect it. One safety factor that seems forgotten is

physical safety. While most people worry about hackers, they sometimes forget about the physical dangers of their data. Not only does a business owner have to worry about accessing his data via the internet, but also the protection and security that is provided to their information due to physical theft, loss and natural disasters.

Businesses can be affected by equipment theft and natural disasters. If a computer is stolen from work, all the files that are on the computer are also taken with it. This could be a large amount of extremely sensitive and confidential information. Once the equipment is stolen, there is no way to remove the files from the equipment. Files that are stored on your computer can only be accessed and modified from your computer. This importance in security also comes into play with the possibility of losing information on transfer. Some files are simply too large to be emailed, so they must be transported by other means. Some of these means may require the use of a USB drive. As useful and convenient as USB drives are, their size becomes the biggest flaws and benefits. They are small and compact, which allows easy transfer from one installation to another. However, this dimension also makes them exceptionally easy to lose. Once these tiny devices are lost, information about them is also lost. Business owners may be smart enough to have an extra copy of their files on their computer, but that doesn't change the fact that the drive is somewhere out there with all the information still available on it. A safeguard against this would be to encrypt the USB so that users authorized only with the encryption key can view it. Similar to how a person can cancel their credit or debit card once it is stolen, files of this importance must have a guarantee to prevent the information from getting into the wrong hands.

Cloud computing provides a solution that allows business owners to ensure the physical security of their data. When it comes to theft, data stored in the cloud is not stored on a computer. Instead, the information is stored on large server systems. If someone had access to a business computer, they should know how to enter the server system to access the files. They may not be able to access the files they want due to editing and viewing limitations. In another situation where someone can physically take an entire server tower, the information is still secure. The information directly in the server tower is not stored in a standard file format. Instead, it is stored as encrypted data. For someone to access information directly from the server, they should know how to encrypt the information stored on it.

The server system is also what allows company information not to be lost during the transfer or completely destroyed during a natural disaster. Physical transport of files is what allows the loss of information during daily use. Cloud computing allows access to files from all locations, without the need for email, USB or physical printing. In the event of a natural disaster, most cloud providers use a redundancy system. While they have a main server system in one location, they also have a whole host of servers that specialize in making copies of the information stored on the main server in another location. If a disaster destroys the primary server system, then the provider will switch access to the fire servers. This ensures that little or no data is lost and that companies can continue their normal business. The server system is also what allows company information not to be lost during the transfer or completely destroyed during a natural disaster. Physical transport of files is what allows the loss of information during daily use. Cloud computing allows access to files from all locations, without the need for email, USB or physical printing. In the event of a natural disaster, most cloud providers use a redundancy system. While they have a main server system in one location, they also have a whole host of servers that specialize in making copies of the information stored on the main server in another location.

Cloud accounting providers have different authentication techniques to ensure that the person who logs into the account is the authorized party. In addition to username and password, companies can implement two-factor authentication. This is a technique that requires the user to enter several forms of identification before they can connect. Some

companies may also have the user enter a security pin that is emailed or sent as text when trying to connect. Another means of two-factor authentication is to ask the person logging in to answer a security question before they can access the data. In order for an unauthorized party or hacker to access your account and financial information, they must not only know your username and credentials, but they must also have access to registered devices or email accounts to validation codes. If, however, someone can successfully log in to your account, there are security measures in place to warn you and prevent further action. Many software vendors have a feature that, when enabled, notifies the authorized user that someone is connecting to the application. When such a login is made, the application warns the user, either by text or by e-mail, that an attempt has been made to connect. If the login attempt was not authorized, the software will automatically disconnect the user and block additional access from that location or computer. Cloud software also includes permissions for users, which limit what data certain people can see and edit. If someone successfully enters the undetected system, they would need the appropriate user permissions to retrieve the data they are following. The audit log that is embedded in most software programs will also report when the data is changed and who changed it. This allows constant monitoring within the system.

If the data stored outside the organization's country may require the user to implement different document retention laws for each country in which the data is stored. Laws on the retention of documents require the retention of data for a certain period of time. For some countries, this can be as little as a few months or as big as a few years. If a company closes its business and concludes its cloud service contracts, the countries hosting the servers continue to require that copies of the files be kept for access by government officials. Despite these laws and regulations, government officials still need to have a warrant or court order to search for computer systems in most cases (Gilbert, 2011). A best practice that a cloud application client can implement is to add a clause to the service provider contract so that all government and legal access requests are forwarded to the client. This will let users know when their data is trying to be accessed by officials and that they have a say in whether the data can be accessed or not.

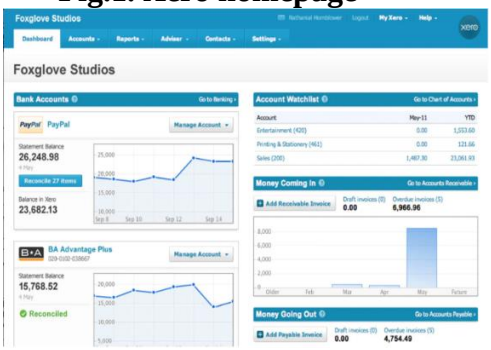
When thinking about cloud computing and security, most people worry about information security on the web. They worry about data security and the online security measures that are being put in place to protect it. One safety factor that seems forgotten is physical safety. While most people worry about hackers, they sometimes forget about the physical dangers of their data. Not only does a business owner have to worry about accessing his data via the internet, but also the protection and security that is provided to their information due to physical theft, loss and natural disasters. Businesses can be affected by equipment theft and natural disasters. If a computer is stolen from work, all the files that are on the computer are also taken with it. This could be a large amount of extremely sensitive and confidential information. Once the equipment is stolen, there is no way to remove the files from the equipment. Files that are stored on your computer can only be accessed and modified from your computer. This importance in security also comes into play with the possibility of losing information on transfer. Some files are simply too large to be emailed, so they must be transported by other means. Some of these means may require the use of a USB drive. As useful and convenient as USB drives are, their size becomes the biggest flaws and benefits. They are small and compact, which allows easy transfer from one installation to another. However, this dimension also makes them exceptionally easy to lose. Once these tiny devices are lost, information about them is also lost. Business owners may be smart enough to have an extra copy of their files on their computer, but that doesn't change the fact that the drive is somewhere out there with all the information still available on it. A safeguard against this would be to encrypt the USB so that users authorized only with the encryption key can view it. Similar to how a person can cancel their credit or debit card once it is stolen, files of this importance must have a guarantee to prevent the information from getting into the wrong hands.

Ease of access

The main difference and the most widespread advantage is that cloud accounting has over software premise is its ease of access. Thanks to internet-connected cloud accounting, users can access the software from any location with internet access and from any device with internet browsing functions. This can be a major advantage for business owners and accountants. Traditionally, accountants will receive information from their clients only once a week, if not monthly. The information was often transported in batches via physical files or USB drives. This would mean that the accountant will only have access to transaction information days after it has taken place. Incorrect records and inadmissible transactions will not be seen by the accountant until long after the transaction has taken place. With this new degree of access, accountants can now have instant access to their client's books. Questions can be answered at any time, errors can be detected earlier, and timely entries and reports can be created. This becomes especially beneficial for business owners and accountants who are usually on the move or are naive in running an accounting system for a business.

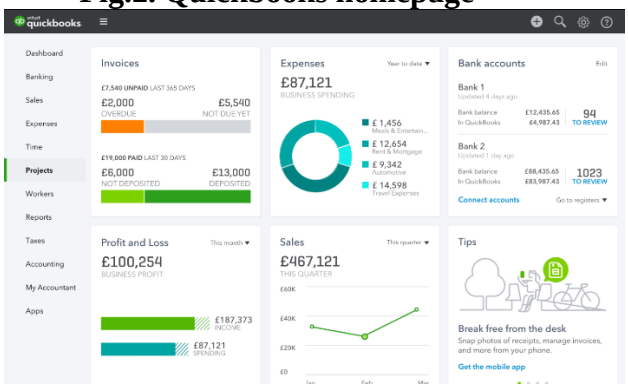
Cloud accounting software also offers a great deal of convenience through its connectivity. The main focus has been on accessing cloud software via laptop, but many companies have mobile applications that connect with their browser-based counterpart. It has never been easier to keep track of business expenses on a trip. Instead of keeping receipts and transforming them at the end of a trip, mobile apps will allow you to upload a picture of your expense receipt. This way there is no difficulty in tracking the source document. These applications may not offer as many features as the browser-based version, but they still allow for easy accounting work on the go. Most applications (ie QuickBooks, NetSuite, and Xero) will allow the user to create and track estimates, invoices, expenses, and payments.

Fig.1. Xero homepage



Source: https://www.softwareadvice.com/accounting/

Fig.2. Quickbooks homepage



Source: https://www.nsula.edu/

Fig.3. Netsuite homepage

Source: https://cofficient.co.uk/

Similar to how the browser-based version and the mobile version of cloud accounting software can connect to each other, these applications can also connect to other third-party Internet-based applications. Connecting to different applications can simply mean transactions automatically related to basic accounting software or even adding and improving features in basic accounting software. As mentioned above, mobile applications with accounting software allow the storage of images with receipts with user-borne expenses. Some applications, such as Expensify, have taken a step further by incorporating OCR technology that interfaces with cloud-based accounting services. Optical Character Recognition (OCR) is software that converts document images into editable computer text files (Wyle, 2007). This allows users to scan forms, such as physical invoices and other images, such as PDFs, to make them searchable and fillable. This allows the program to identify key information on a form (eg seller name, date and amount) and send it to the system automatically. Another technology that could increase the transmission of data retrieved from OCR is artificial intelligence (AI). AI is a computer-based expert system that attempts to mimic human behavior (Laudon, 2018). Through machine learning, which is the process of improving computer programs without explicit programming (Laudon, 2018), software can learn to perform tasks and even improve them.

As the AI program becomes more familiar with how expenses and other transactions are entered into the accounting software, the AI becomes better at automatically classifying and entering transactions. QuickBooks Online already has AI in place with the self-ranking feature and expense finder ("Machine Learning: Unlocking the Power of Millions for Prosperity One," 2017). Together, AI and OCR have the potential to reduce manual data entry time and errors for users of cloud-based accounting applications.

The second form of connection, as mentioned above, is to connect your accounting software to another application to automatically share transaction data. Businesses and payments are becoming more digital, and the largest provider of mobile person-to-person payments is PayPal (Panno 2016). For e-business, PayPal can be their main transaction base. The cloud allows you to connect the accounting software to the user's PayPal account and automatically record transactions from it. All the user has to do is set up how they want their accounting software to recognize PayPal transactions and then the software will do the rest. The software can also be synchronized with the user's bank.

Automating accounting systems not only reduces the time required for manual entry, but also reduces the errors that occur from it.

Although the internet connection is one of the strengths of cloud computers and is the reason for many of its features, it can also act as one of its biggest problems. Cloud computing

runs exclusively over the internet. If there is an inaccessibility or interruption of the internet connection between the user and the server, then the ability to use the software will be reduced or become one. Traveling accountants may reach areas where they cannot access an internet connection. Without this, they will not be able to do their job until they go elsewhere. Businesses with a large employee base or an independent ISP may also find that their service is slow and has a long load time for cloud-based applications. This would be due to the bandwidth of the company consumed or a low internet speed. Make sure you have a trusted ISP can make a difference in how you experience cloud applications. For companies that want to take extra precautions, contracting with a second internet provider can be a good practice. If something happens to the company's main internet provider, a second provider gives the company the ability to work non-stop. Using Ethernet instead of Wi-Fi will also lead to improvements as long as it is in the plan of the internet provider.

There is the aspect of server downtime that the consumer cannot control. As with all internet applications, sometimes a server needs to be disabled for maintenance and updates. They are a necessity that keeps the software up to date and works to their full potential, but it also means that the service will not be available for a certain period of time. Most companies will try to plan these time periods in the minimum traffic time, but they cannot always be guaranteed. There are times when servers go down unexpectedly. Cloud providers try to apply the "five nine" principle, in which their servers run 99.999% of the time, and the rest is unscheduled maintenance (Defelice, 2010). However, this is a great promise to keep and does not take into account downtime for scheduled server maintenance. When servers return online, there is a risk that some features may no longer be available. This is an inherent risk with any software update, as some features may no longer be compatible with the new model. The developer will often make an effort to restore any missing features in the next update.

Conclusions

The last decade has propelled an impressive development of information technology. The border between technology and our society is fading, as IT tools and gadgets are spreading in almost every aspect of our lives. In an environment as dynamic and challenging as the economy, companies are considering a new way of doing business. The concept of the cloud is becoming more and more popular over time, and more and more companies are adopting cloud-based software to improve their efficiency and experience many other benefits. The cloud accounting model allows all business participants (business owners, accountants, auditors and clients) to work closely together by accessing updated financial data at the same time via the Internet. This article focuses on cloud accounting solutions seen from different points of view. In particular, we looked at the business and accounting perspective of these technologies. We identified some of the benefits of cloud-based software and also discussed the most important concerns involved, as perceived by both business owners and accountants.

The transition to the cloud is just beginning. It could become the fundamental factor for reshaping our reality and redefining globalization as we know it. If accountants give technology a chance to prove its worth, the accounting profession could ultimately act as a globally standardized entity and take business to the next level of efficiency.

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SECTION III
EUROPEAN LAW AND PUBLIC POLICIES

EVOLUTION OF TELEWORK IN THE E.U BEFORE AND AFTER THE COVID-19 PANDEMIC

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Abstract

Concepts, history, similarities and non-similarities between remote and classical work will there below be found to be approached through statistical analyses in the EU member countries. Eurostat, the official EU statistics, through its department called Labour Force Survey (LFS), was used especially for data of previous years and decades in Europe, but for the last 2021-2022 interval results of scale survey conducted by the European Foundation for the Improvement of Working and Living Conditions(Eurofound) were rather decisive. This latter was a live survey made by Eurofound and called Living, Working and COVID-19 Series. Its aim was responding to the newly arisen difficulty on the search of that common denominator, as conceptual and legal, for all EU member States in the respect of remote work. This survey research was enough helpful to this paper in understanding the impact of work organization and its specific measures taken during pandemic on all activities, production, productivity and especially on employees in the EU.

Keywords: *remote work,work from home, telework, , COVID-19, European Union, Romania*

JEL classification: *J81, J21, J24, O52*

1. Introduction

Differences subsist in nomination and law-ruling among EU member States on concepts like: *remote work, teleworking, working at home* and *home-based work* (ILO,2020). Difficulties here strengthen since no unique statistical standards within the EU region on this and then the recent Covid-19 pandemic made it worse on data comparability and collection. The higher number of people working from home, i.e. directly imposed by the social distancing policy and by lockdown, was one of primary effects of the pandemic. Then, situation might extend on at least the medium term, in which both the new work location and organizing strengthen their significance.

A context in which the International Labour Organization(ILO) came to publish some guidance in defining and measuring the distance work - i.e. *"Defining and measuring remote work, telework, work at home and home-based work"* - in May 2020. This guidance was intended to strengthen the four concepts for the help of national statistic synchronized reports, including data collection at the national level. The countries' feed-back was expected since April 2021, but surprisingly no country produced this kind of reports – i.e. based on such new guidance. This made necessary new special and specialized studies at the EU level, especially for telework – i.e. before and during the Covid-19 pandemic.

2. Methodology and data collection

A description of distance work/ telework will be seen below mostly basing on data from *EU Labour Force Survey (EU-LFS)* made by EUROSTAT (the largest European household sample survey). Data and analyses develop on extended periods in this data source and our paper will here select just those referring on distance/home-work.

A second data source will be the *European Working Conditions Survey*(EWCS), done by *European Foundation for the Improvement of Living and Working Conditions (Eurofound)*

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– i.e. this will be for deepening conclusions on telework and its consequences /impact on humans' life during the pandemic in the EU and Romania.

Actually, Eurofound since 2015 does collect data on a set of variables that make possible measuring the work at distance in a comparative way among the EU member countries – i.e. through the *European Working Conditions Survey*.

The survey made by Eurofound during the pandemic and called *Living, working and COVID-19* was developed in the EU countries by three stages. The first one took the April-May interval, the second stage was June-July the same year, 2020, and the third one came in the next 2021 on the February-March interval.

2.1 Eurostat

The Eurostat data see a high enough weight of employees never working from home before the pandemic period in the EU region – i.e. it is true that the same weight was slightly lowering between 2002(90.8%) and 2019(85.6%), then in 2020(79%) and 2021(76%).

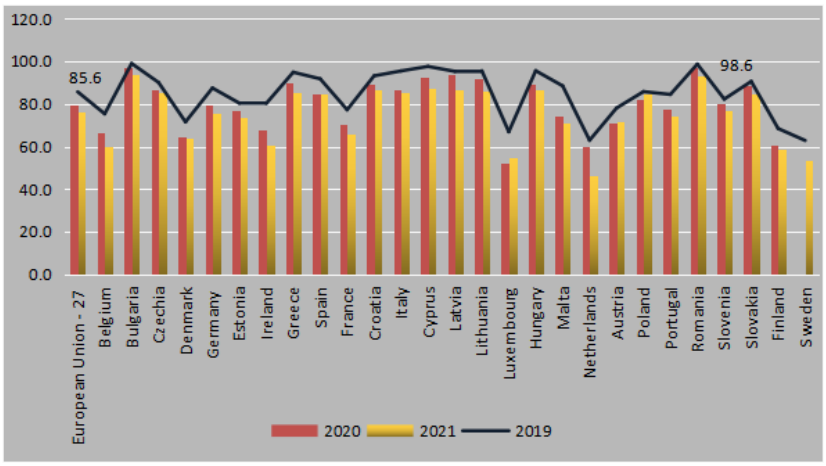

Figure 1. EU - Employed persons never working from home (%) of the total employment

Source: *Eurostat - Labour force survey 2021, EU-LFS [lfsa_ehomp]*

Eurostat keeps statistics on distance work on three categories of workers: (a) frequently/usually, (b) sometimes and (c) not usually working at distance/from home. (a) *Frequently /usually working from home/at distance* means any productive activity so developed for at least one half of the total working time of the last four weeks before the survey done. (b) *Sometimes working at home/distance* means having worked this way for at least one hour in the same four weeks time before the study done.

In the pre-pandemic years, in most EU member countries *sometimes* working at distance was the most highly frequent among employees, i.e. 9% of the whole employed population of 15-64 years old, then about the same in 2020 and easy rising in the next 2021 to 10.6%.

In 2020, when the Covid-19 pandemic already, the *usually* distance work was getting the most highly frequent rather in the whole world and even the typical work arrangement for the pandemic. It was not too much different in the EU: 5.4% of the 15-64 years old employed people in 2019, as during the last decade up to the pandemic, then a spectacular rise to 12% in 2020 and 13% in 2021. See *Figure 2* for both *sometimes* and *usually* distance work arrangements' evolving in the EU's population employed between 2006 and 2021.

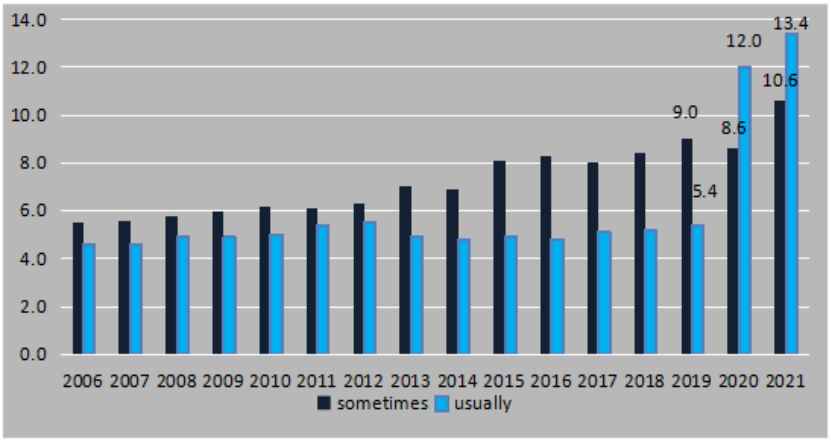

Figure 2. EU - Employed persons *sometimes* and *usually* working from home, (%) of the total employment

Source: *Eurostat - Labour force survey 2021, EU-LFS [lfsa_ehomp]*

The whole population's working at distance/from home weight significantly rose from 14.4% in 2019 to 21% in 2020 and 24% in 2021. Actually, the Covid-19 crisis enlarged the distance work size by as much as 7 percentage points between 2019 and 2020 and by 3 percentage points between 2020 and 2021. As by EU *member countries*, the highest percentage of employees usually working from home in the EU region in 2019 (before the pandemic) was in Finland, 14% of the country's total employment, and about the same in Netherlands, the two followed by Luxembourg, with 11%. Then, in pandemic this top-countries of the EU group did not too much change: Finland(25.1%), Netherlands(22%), but they came to be over-passed by Luxembourg(28.1%), and Ireland(32%) became the new top one (figure 3).

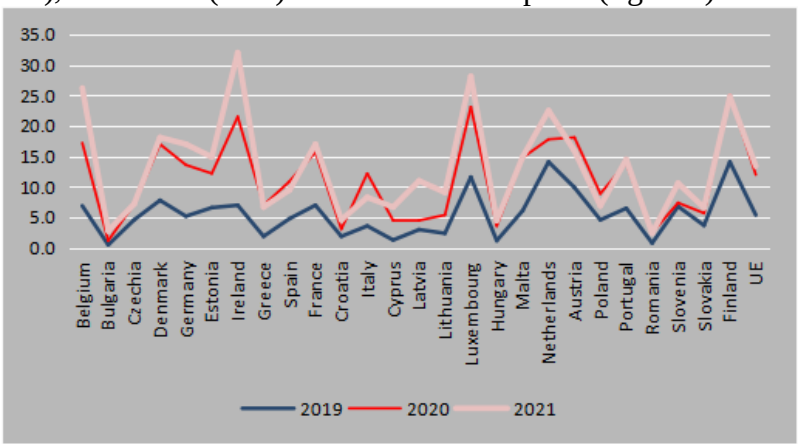

Figure 3. EU member countries - Employed persons *usually working from home* (%) of the total employment 2019-2021

Source: *Eurostat - Labour force survey 2021, EU-LFS [lfsa_ehomp]*

As by *age groups* in the EU region, the one of 50-64 years old is not only the highest age one, but equally the first one for working-from-home both before and during the pandemic – i.e. 6.6% in 2019 and about double in 2020. The 25-49 years old group comes next – i.e. 5.2% before pandemic and also doubling in 2020. Finally, the youngest 15-24 years old group worked from home only by 2.1% of their effective before the pandemic, but this percentage just tripled to 6% in 2020 and then went even up to 7.4% in the next 2021.

2.2 Eurofound and ILO

And now it is the moment to observe the difference of results between the above EU-Labour Force Survey (Eurostat) and the other data source here used, i.e. Eurofound *Survey* - with a common Eurofound-ILO report (Eurofound 2020,2021). Causes of such differentiation (Diagram

2) would be supposed to come at least from the following: -
data collecting procedures: for Eurostat, in each country data collected by the institutes of statistics from the households and then reported to the European statistic office, the same in both pre- and pandemic periods; for Eurofound, a live survey directly on the ground in each country;

- reporting methodologies: Eurostat directly reports the *sometimes* and *frequently* types results; Eurofound uses as a methodology questionnaires launched in several rounds, addressed by telephone to representative samples in terms of age, gender, occupation from each of the EU member countries;
- measuring the specific effects of the pandemic: i.e. differences in national laws, the same of/in concepts themselves for distance working and of others by country methodologies, all these leading to difficulties in data comparability among countries under pandemic.

In such circumstances, as already mentioned in the paper abstract., the impact of the pandemic appears much more surprised by Eurofound through the multitude of questions in the questionnaires addressed to workers in the EU. Therefore, there will be briefly here developed some results published by Eurofound, using its interactive database. This live survey of Eurofound was called *"Living, working and COVID-19"* and started in the April-May 2020 as the result of the International Labour Organization (ILO)'s recommendation to the EU space in the interest of how people were living and working there.

The survey has been made as electronically in all the EU member countries on representative employee samples and by several rounds both in 2020 – i.e. in April-May, when lockdown in most EU member countries – and in 2021 – i.e. when society and economy were entering a step by step opening phase in part of these countries, but in others a new restrictions wave was preparing.The primary survey rounds revealed that the employees in the EU were starting the work-at-home experience as the consequence of the lockdown and the others measured taken by the authorities in the healthcare related crisis context. 65.4% of respondent employees in the EU region had never worked from home before the pandemic and the rest of 34.6% had done it at least on occasions (Figure 4).

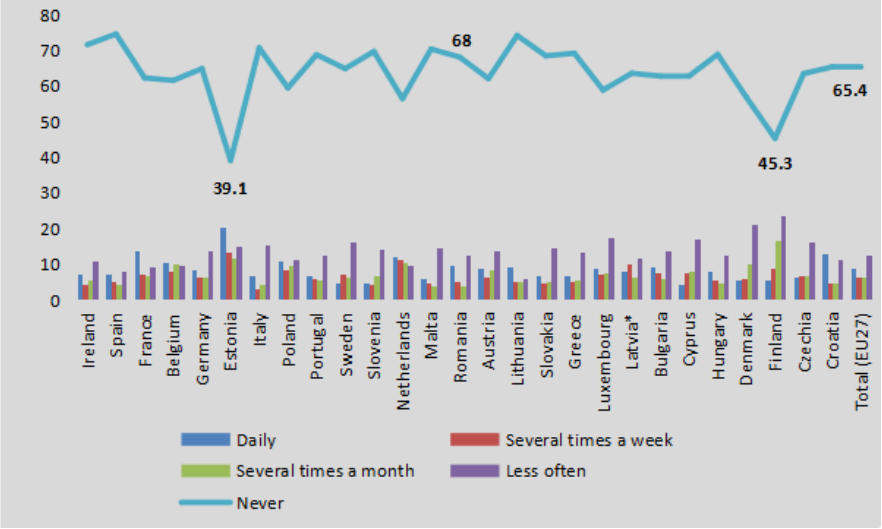

Fig 4. EU- Frequency of working from home before the outbreak (%) - Apr/May 2020
Source : *Eurofound (2020)*

Work-at-home taken in the Covid19 Pandemic conditions did not remain a restricted crisis-related alternative, but it brought an important change for the near future as a new opportunity of keeping jobs and employment. Throughout the EU region, also in pandemic, Romania had the lowest percentage of respondent-employees working-from-home, 19%, while this highest corresponding percentage was in Finland, 61%, the EU member countries' average was 36.3% and

other above average countries as such were Luxembourg, Belgium, Netherlands and Denmark, all with actually more than 50%, a group followed by Ireland, Austria, Italy and Sweden with about 40% of respondents also recognizing the new situation as the effect of the pandemic (Figure 5). Romanians proved less experienced in this before the pandemic (Eurofound 2020).

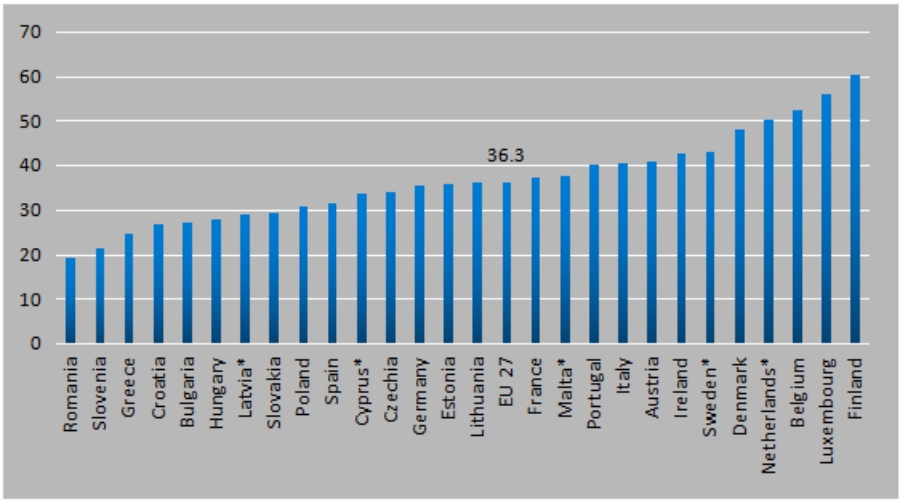

Figure 5. EU respondents who started to work from home strictly as an effect of the Covid19 Pademic (%)- april/may2020

Source : *Eurofound (2020)*

2.3. Location of work

Actually, Eurofound, in its Survey, took the location issue of work done in its larger sense – i.e. home, for work-at-home, but not only: the employer's diverse establishments and/or working points, other places accepted by the employer and adequate to the specific of work or of relationships with customers. Throughout the survey's three rounds deployed, the same employees worked either at home, or in other locations/ headquarters/ work-points, therefore the percentages do not add up to 100%. The whole EU region's 36.3% average for working-at-home employees found in the April-May 2020 1st round then rose to 44.3% in the 2nd June-July round of the same year. Most employees (i.e. 51.2%) remained to work in the employer's headquarters and work points; the rest in other places roughly according to the work specific and others related to. In the 3rd round of this same survey, i.e. February-March 2021(Figure 6), the weight of working-at-home employees started diminishing, i.e. 42.2% in the E.U countries, in favour of those going back to the employers' places, i.e. about the rest of 58.5%.

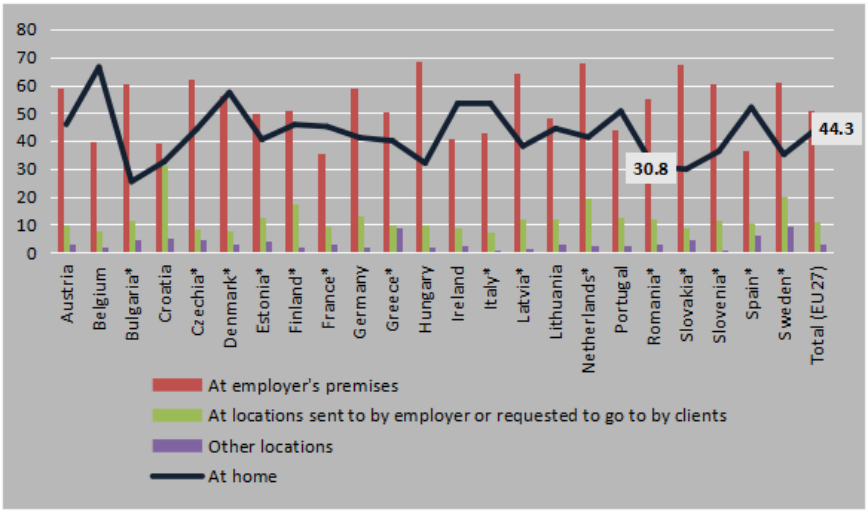

Figure 6a. Location of work during the Covid-19 pandemic(%); 2020 Jun/Jul

Source : *Eurofound, 2021*

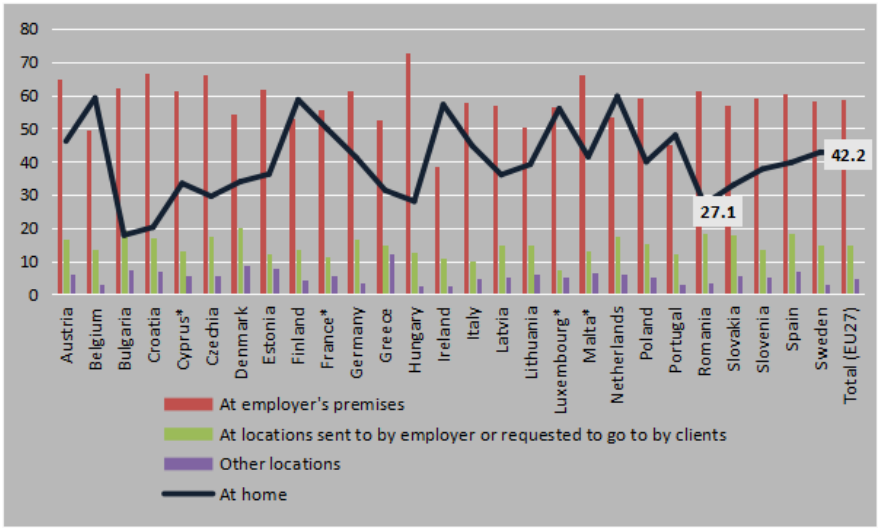

Figure 6b. Location of work during the Covid-19 pandemic(%); 2021 Feb/Mar

Source : *Eurofound , 2021*

3. Changing in working hours in the E.U member countries during Covid19 Pandemic

The lockdown, again, has strongly influenced the work time throughout the E.U region. So, in April-May 2020 the number of hours worked clearly here diminished – i.e. actually 32.4% of the interviewed employees was saying so, while another 31.5% comparable part of the interviewees said they were working the same time as previously.

It is also true that percentage results appear different in different countries. One third of the E.U member States accused a lowering of the work time in the pandemic interval, e.g. Croatia, Cyprus, France, Greece, Italy, Malta, Spain and Romania. But similarly to the whole rest of the EU, in Romania 36.7% of the interviewees said the number of working hours had gone down and another 30.2% said the work time had stayed the same as previously. Finally, see the next Table 1 for two groups of EU member countries according to changes happening to the work time of employees during April-May 2020.

Table 1. EU -Change in working hours' by countries (% of respondents); 2020 Apr/May

Stayed the same				**Decreased a lot**	
Austria	32.6	Latvia	37.8	Croatia	37.0
Belgium	34.0	Lithuania	41.2	Cyprus*	42.3
Bulgaria	36.2	Luxembourg	36.3	France	46.0
Czech Rep.	40.1	Netherlands	37.3	Greece	51.8
Denmark	42.9	Poland	33.1	Italy	43.7
Estonia	36.7	Portugal	33.8	Malta*	36.2
Finland	52.5	Slovakia	37.6	Romania	36.7
Germany	36.9	Slovenia	35.5	Spain	35.3
Hungary	42.8	Sweden	54.0	Total (EU27)	32.4

Source : *Extracted from Eurofound , 2021 data*

In June-July 2020 – i.e. when the primary anti-pandemic restrictions were lifted and an important part of the employees then went back to their previous work places - in only 4 countries the work time was seen going down – i.e. Greece, Portugal, Italy and Spain -, while in the rest of the Union, the former working time was going to recover (Table 2).

Table 2. EU- Change in working hours' by country (% of respondents);2020 Jun/Jul

Stayed the same				Denmark	55.4	Netherl*	49.7	**Decreased a lot**	
Austria	31.5	Hungary	40.9	Estonia	50.3	Poland*	30.5	Greece	32.3
Belgium	38.2	Ireland	33.9	Finland	43.4	Romania	36.9	Italy	30.5
Bulgaria	44.6	Latvia	43.7	France	32.4	Slovakia	43.1	Portugal	26.3
Croatia	49.0	Lithuania	41.1	Germany	44.0	Slovenia*	43.3	Spain	27.7
Czech Rep.	42.7	Luxembourg	32.8	Total (EU27)	36.3	Sweden*	45.9		

Source : Extracted from Eurofound , 2021 data

The weekly average number of hours worked in the EU went about 41.5 in June-July 2020 and 40.1 in February-March 2021. Of these totals of hours worked, the worked-at-home ones were about one third (34%): 14.2 hours worked at home within the EU in June-July 2020 and 14.5 in in February-March 2021.

4. Performance of work - Quantity and quality

The same Eurofound survey also searched to investigate quantity and performance of work, its evolving up to the pandemic period and during this in its way, i.e. through specific questions-answers. At the EU level 40% of the interviewed employees claimed the quantity-performance of work as staying the same in pandemic. In other words, the workers' performance would not have varied with the pandemic in both variants of less or of the same work time(Figure 7).

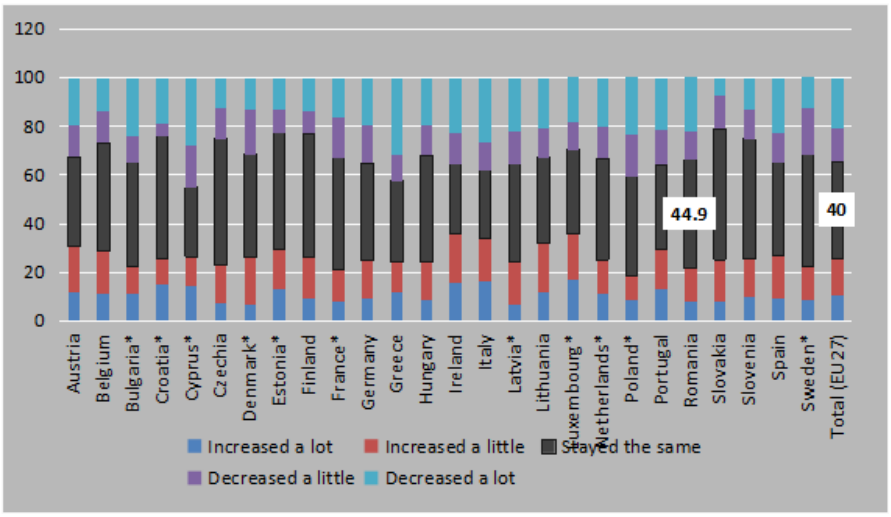

Figure 7. EU- working performance (quantity) during Pandemic, by country (% of respondents); June/July2020

Source : *Eurofound , 2021*

However, in Greece, Italy and Cyprus it is rather about the same between the performance staying constant and the one significantly decreasing . As for the quality of the same work done most interviewees also said it was the same as before the pandemic, and this once more when quantity – i.e. number of hours worked – had gone down.

46.1% of the EU respondents, after reassessing all their own work performances, concluded as such while 32.4% of respondents admit that the hours worked had diminished.

It was rather the same for Romania, where 40.9% of respondents saw their quality of work rather constant for most of the time(Figure 8).

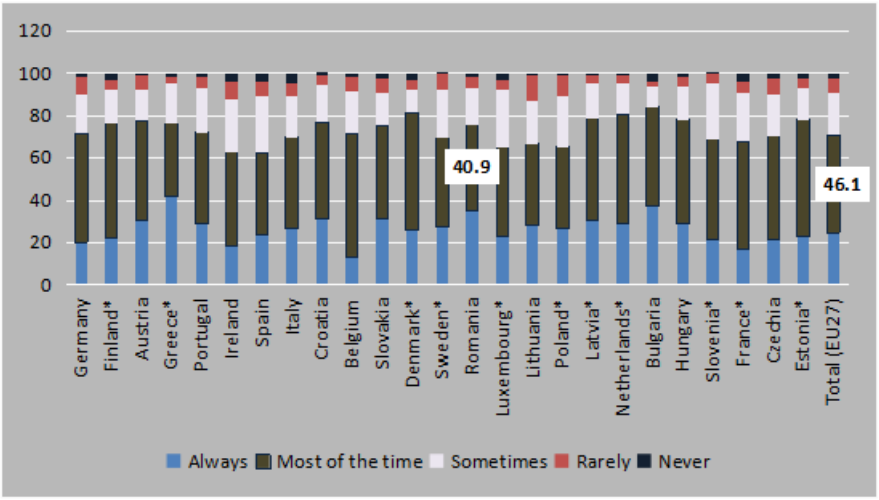

Figure 8. EU- working performance (quality) during Pandemic, by country(% of respondents);iunie/iulie2020

Source : *Eurofound, 2021*

And now there can be said that the first conclusion, an interesting one, is already here approached: neither the pandemic restrictions, nor the lockdown with the work-at-home alternative have lead to diminishing the work quantitative and qualitative performances, according to data extracted from Eurofound survey.

5. Conclusions

It looks like previously to the recent Covid19 pandemic in both the employee's and employer's minds the latter's place was the main, if not even the lonely work place admitted. Then, the pandemic, lock down, social distance and related measures taken by the authorities and the employers saw themselves forced to accept their establishments leaved empty and to proceed to organizing other places for work (KCS, 2020). *"Work is what you do, not where exactly you are when doing it"* seems an actually old expression today updated as it was from the beginning. As for the EU Organization, previously to the pandemic both Eurostat and national statistics were collecting data on basically measuring the work-at-distance, but data comparability amongst was suffering – i.e. both concepts related to and legislation in the domain stayed different for all parts. Then, the International Labour Organization (ILO) made some recommendations on such reporting, but some circumstances made them impossible in practice for E.U member States.

This was what made ILO and Eurofound proceed together to that large Survey regarding the pandemic period and work-at-home in all the EU member countries (ILO 2020) -i.e. data comparability on both. Eurofound succeeds to reveal enough profound aspects related to the Pandemic's effects, but first to the human perception, here including physical and psychical affections, plus the employees' options for the post-pandemic future.

In its work order, Eurofound finds that a majority of 65.4% of employees never did work from home before the pandemic and the rest of 34.6% did it at least on occasions – as correspondingly, in Romania, 68% of interviewees never worked from home before the pandemic and the rest of 32% did it in diverse forms, e.g. daily, a few times a week/ month or more rarely. Then, the weight in the total employees of those who stared working at home directly as the result of pandemic was as high as 36.3% for the whole EU.

The *weekly average number of hours worked* by the interviewees in the EU went as high as 41.5 hours in June-July 2020 and 40.1 hours in February-March 2021.One third of this average number of hours worked a week was made by the work-at-home: 14.2 hours a week in June-July 2020 and 14.5 hours a week in February-March 2021(34-36% of total for both).

In this same survey context respondents have got about equally divided about yes and no worked time significantly reduced in pandemic between, respectively, 32.4% and 31.5%. But despite such a difference of opinions on the worked time, the work performance, in quantitative and qualitative terms, was viewed as similar before and during the health crisis – i.e. 40-46% for the EU respondents.

Finally, it was since the decrease in the number of cases of Coronavirus and the weakening of the intensity of the Pandemic, that the question about continuing or not the work-from-home really raised for both employees and employers. And if yes how exactly? The Eurofound's survey's results also include part of the employees' declared preference for continuing the work from home over the pandemic period – this is at least comparable with the opposite preference of other employees for going back to their former work (employer's) places. More exactly, this is about a majority of employees preferring to work form home a few times a week.

Last, but not least, activities themselves are different amongst the way that not all of them prove able to accept shifting work places between the traditional employers' ones and others, e.g. the ones that belong to the employees'. Sectors like constructions, food and cosmetics industries rather couldn't afford such a structural change. In such circumstances more firms opt for a presumptive hybrid work force of the future (KCS,2020).

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FRAUD ON THE LAW REGARDING THE RIGHT TO FREE MOVEMENT AND RESIDENCE IN THE TERRITORY OF THE MEMBER STATES FOR CITIZENS OF THE UNION AND THEIR FAMILY MEMBERS REFLECTED IN THE JURISDICTION OF THE CJEU

Dr. Gheorghe BONCIU[1]

Abstract

In this article, the author analyzes the fraud and the abuse of the law regarding the free movement of people as reflected in the jurisprudence of the CJEU. The right to free movement of persons is an essential element of European citizenship, assuming that EU citizens can move freely between member states to live, work, study or retire in another state. The essence of the right to free movement is to eliminate discrimination between workers from different countries and to offer equal opportunities to all citizens of the European Union. Although this concept has many benefits, it also had a negative impact, as cases of fraud or abuse of rights have been reported. The author defines the notions of fraud on the law and abuse of law with regard to the free movement of persons considering the regulations of EU law and the constant jurisprudence of the CJEU. Also, the solutions pronounced by the CJEU in the case study analyzed with regard to the free movement of persons in order to establish uniform practices by the member states of the European Union are also taken into account.

Keywords: *free movement of persons, European citizenship, European Union, member states, workers, family, fraud on the law, abuse of law, jurisprudence.*

1. Premises. The right to free movement of persons is one of the four fundamental freedoms of the European Union (EU) and at the same time an essential element of European citizenship assuming that EU citizens can move freely between member states to live, work, study or retire in another state. The Maastricht Treaty[1] laid the foundations of what is today the European Union, namely a "special subject of international law"[2]. One of the many novelties of the Maastricht Treaty is the establishment of European citizenship for any person who has the citizenship of a member state of the European Union. Any person who holds the citizenship of one of the EU member states is automatically also a citizen of the Union. Union citizenship does not replace national citizenship, but only complements it.

Approximately 11 million citizens of the Union have already benefited from this right and currently live in another member state. Many more citizens of the Union move regularly to other member states, in the interest of business or as tourists, without controls in the Schengen area or with a quick control at the border. Article 21 paragraph (1) of the Treaty on the Functioning of the European Union stipulates that any citizen of the Union has the right to free movement and stay on the territory of the member states, subject to the limitations and conditions established in the treaties and the measures adopted for their implementation.

Although conditional on the existence of a national citizenship[3], European citizenship, currently called "Union citizenship"[4], confers a series of rights on European citizens, namely[5]: the right to free movement and residence on the territory of the member states ; the right to vote and be elected in the European Parliament, as well as in local elections in the member state where they reside, under the same conditions as nationals of this state; the right to enjoy, on the territory of a third country where the member state whose nationals are not represented, protection from the diplomatic and consular authorities of any member state, under the same conditions as the nationals of this state and; the right to address petitions to the European Parliament, to address the European Ombudsman[6], as well as the right to address

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the institutions and consultative bodies of the Union in any of the languages of the Treaties and to receive an answer in the same language.

The right to free movement, as a fundamental right granted to the citizens of the member states, is registered in the primary law of the European Union, since 1951, in the Treaty establishing the European Economic Community. The protection of the rights and interests of the citizens of the member states of the Union, as objectives of the European Community, later of the European Union, determined the drafters of the Treaty to, by establishing a European citizenship, grant natural persons, European citizens, the right to free movement, i.e. a "right primary and individual to travel and stay, freely, on the territory of the member states"[7] . According to the Treaty establishing the European Community (TCE), the recipients of this freedom were, par excellence, those who exercised a "remunerated activity" and this because, in accordance with art. 39 par. 3 lit. b) and d) of the TCE, "the right to stay and to move freely in the territory of a member state, as well as the right to stay in the territory of a member state emanates from the status of worker"[8]. The notion of "worker", in the meaning of the TCE, was initially developed by Regulation (EEC) no. 1612/1968 on the free movement of workers within the Community[9], respectively by Directive 68/360/EEC on the elimination of restrictions on the movement and stay of workers from member states and their families within the Community[10].

2. The right to free movement within the European Union. The Court of Justice of Luxembourg expressed itself in the sense that "the right of nationals of a member state to enter the territory of another member state, as well as the right of residence, for the purpose provided by the treaty - in particular for the search or exercise of a professional activity, paid or independent, or to join his/her spouse or family - constitutes a right conferred directly by the treaty or, as the case may be, by the provisions adopted for its implementation"[11]. Over time, the Court "confirmed the principle of a broad interpretation of the right to free movement, this being a corollary of the concept of European citizenship"[12]. Thus, the Court "used (…) the notion of "worker", in a broad sense, to include not only those involved in economic activity (employees/employers, self-employed workers and service providers), but also students who do a internship or the unemployed looking for a job. At the same time, the Court gave a wider and more general dimension to the notion of "free movement", by referring to the nature of the cases presented, highlighting the individual and social dimension of freedom of movement, which was no longer seen as a simple tool necessary to establish a common economic markets.

In other words, the Court moved from the notion of free movement of workers to the concept of free movement of persons"[13]. The right to free movement, along with the other rights established by art. 20 para. (2) TEU, "is exercised under the conditions and limits defined by the treaties and by the measures adopted for their implementation"[14]. Thus, one of the duties of the European Commission was and is to initiate draft legal acts to implement the principles enshrined in the Treaties. In this approach of the Commission, Directive 2004/38/EC on the right to free movement and residence on the territory of the member states for citizens of the Union and their family members[15] is included, perhaps one of the most controversial legal acts adopted at the level of the European Union .

According to art. 1, the directive establishes the conditions for exercising the right to free movement and residence on the territory of the Member States by the citizens of the Union and their family members and establishes the right of permanent residence on the territory of the Member States for the citizens of the Union and their family members. At the same time, the directive provides for the possibility of restricting the mentioned rights for reasons of public order, public safety or public health. These reasons, however, cannot be invoked for economic purposes. Measures taken for reasons of public order or public safety

must respect the principle of proportionality and be based exclusively on the conduct of the person concerned. "Previous criminal convictions cannot justify taking such measures. The conduct of the person in question must constitute a real, present and sufficiently serious threat to a fundamental interest of society. Reasons that are not directly related to the case or that are related to considerations of general prevention cannot be accepted"[16]. Regarding measures based on public health grounds, art. 29 para. (1) of the directive specifies that "the only diseases that justify measures to restrict free movement are diseases with epidemic potential, as defined by the relevant documents of the World Health Organization, as well as other contagious infectious or parasitic diseases, if they are subject to protective provisions applicable to nationals of the host Member State".

The restriction of the rights to free movement and residence of persons is based exclusively on the stated reasons, however, member states may adopt the necessary measures to refuse, cancel or withdraw any right conferred by the directive, in case of fraud on the law or abuse of law, such as marriages of convenience. In other words, in order to protect themselves against abuses of law or fraud and, in particular, against marriages of convenience or other forms of union contracted solely for the purpose of benefiting from freedom of movement and residence, Member States have the possibility to adopt the necessary measures" [17].

3. The notions of "fraud on the law" and "abuse of law" have not been defined by the Union legislator, which is why the European Commission, in its Communication entitled Guidelines for a better transposition and application of Directive 2004/38/EC on the right on free movement and residence on the territory of the member states for Union citizens and their family members[18], came with some clarifications based on the jurisprudence of the Court of Justice of the European Union. Thus, considering the jurisprudence of the Court of Luxembourg, the Commission considers that, for the purposes of the directive, "fraud can be defined as deception or the invention of a subterfuge, with intention, in order to obtain the right to free movement and residence in accordance with the directive. In the context of the directive, fraud is likely to be limited to the falsification of documents or the false presentation of a material fact regarding the conditions provided for the right of residence. Persons who have been issued with a residence document only as a result of the fraudulent conduct in connection with which they have been convicted may have their rights refused, canceled or withdrawn in accordance with the directive"[19].

The definition takes into account the Emsland-Stärke case[20], in which the Court stated: "the finding of a practice as abusive requires, on the one hand, a set of objective circumstances"[21] and, "on the other hand, imposes a subjective element that consists in the desire to obtain an advantage resulting from the community rules by artificially creating the conditions necessary to obtain it"[22]. This point of view is joined by the one specified in the decision pronounced in the Centros case, in which the Court emphasized that "national courts can take into account (...), from case to case and based on objective elements, the abusive behavior or fraudulently of the persons in question, in order to deny them, as the case may be, the benefit of the invoked provisions of Community law, these courts must also take into account, for the evaluation of such behavior, the objectives pursued by the Community provisions in question"[23]. Fraud can consist, for example, in the falsification of identity or residence documents, respectively the presentation of false material elements that prove that the necessary conditions for obtaining the right of residence are met [24].

Regarding the abuse of rights, according to the Commission, it can be defined as "an artificial behavior, adopted strictly in order to obtain the right to free movement and residence, in accordance with European Union law which, despite compliance with the conditions provided for by the Union rules, does not correspond to the purpose of these

norms"[25]. The definition takes as its starting point the Kol case, in which the Court held that "a worker (…) does not fulfill the condition of having held a regular job in the host Member State (…) when he exercised the activity on the basis of a residence permits that were issued to him through fraudulent behavior"[26]. Later, the Court specified that "a national (...) who, intending to carry out a salaried or self-employed activity in a member state, defeats the relevant controls of the national authorities, falsely declaring that he is going to this state for tourist purposes it is outside the scope of protection"[27] of European Union law.

The rules on the free movement of workers refer only to the performance of actual and real activities. The reasons of a worker from a Member State seeking a job in another Member State do not take into account his right of entry and residence, if he carries out or wishes to carry out an actual and real activity [28] . Nationals of a Member State can invoke the right of entry and residence only if they have already exercised their freedom of movement to carry out an economic activity in another Member State [29]. Free movement of workers is a fundamental freedom of all EU citizens. Any EU national who meets the conditions – for a period of time, provides services to another person or business, is subordinate to another person, receives remuneration for these services – is a worker and is therefore entitled to a range of freedoms and rights of the EU [30]. The typical example of the abuse of law is marriages of convenience.

4. Marriages of convenience – means of facilitating the entry and illegal stay in the European Union of citizens of third countries. The problem of marriages of convenience did not appear with the mention made by the European Union legislator in the content of Directive 2004/38. In 1997, the Council adopted a Resolution on the measures to be adopted to combat marriages of convenience[31], thus drawing attention to the risks that such marriages entail, in terms of the right to free movement within the European Union . In the sense of the Resolution, marriage of convenience is "the marriage of a national of a member state or a national of a third country, who benefits from the right of residence in one of the member states, with a national of a third country, for the sole purpose of to avoid the rules on the entry and stay of third-country nationals and to obtain, for the third-country national, a residence permit or a residence permit in a Member State"[32].

The resolution establishes, in point 2, the factors that must be taken into account when the existence of a marriage of convenience is presumed, among which we mention the following: the spouses have never met before marriage; the spouses are inconsistent with regard to their personal data, the circumstances in which they met or other important personal information concerning them; the spouses do not speak a language understood by both; proof of an amount of money or gifts offered to conclude the marriage (except for money or dowry gifts in cultures where this custom is practiced); in the past of one or both spouses there is evidence of previous marriages of convenience or other forms of abuse of rights or fraud in order to acquire the right of residence, etc. In the event that one of these factors leads to the idea of the existence of a sham, the Member State concerned will not issue the residence permit or residence permit until it has verified that it is not a marriage of convenience and that all the requirements for entry and stay are fulfilled[33].

If the Member State in question determines that it is a marriage of convenience, the penalty is that the residence permit or residence permit will be withdrawn, revoked or not renewed[34] . The sanction provided by the Council Resolution can also be found in Directive 2003/86 on the right to family reunification[35]. According to art. 16 para. (2) of the directive, "member states may reject an application for entry and residence for the purpose of family reunification or may withdraw the residence permit of a family member or may refuse to renew it, if it is found that: have been used false or untrue information or false or falsified documents or that fraud or other illegal means have been used; the partnership, marriage or

adoption was carried out solely to enable the person concerned to enter or reside in a Member State'. In these situations, the directive considers that we are in the presence of a marriage, a partnership or an adoption of convenience, cases in which "member states can carry out specific controls (...). Also, specific controls can be carried out when renewing the residence permit of family members"[36]. Marriages of convenience can concern marriages of third-country nationals with: other categories of third-country nationals living in the EU, EU nationals who have exercised their right to free movement or their own nationals.

Directive 2004/38 provides, both in the preamble[37] and in the normative text[38], that in order to protect against abuses of law or fraud and, in particular, against marriages of convenience or other forms of union contracted exclusively for the purpose of benefiting from freedom of movement and residence, member states have the opportunity to adopt the necessary measures. Within the meaning of the directive, marriage of convenience is defined as a form of union entered into exclusively for the purpose of benefiting from the freedom of movement and residence under the directive, rights which the persons concerned could not otherwise benefit from. With regard to this definition, the European Commission notes that "a marriage cannot be considered of convenience only if through it one benefits from an advantage related to immigration or even any other advantage. The quality of the relationship is irrelevant regarding the application of art. 35 of the directive"[39]. It is also the Commission that expands, by analogy, the definition of marriages of convenience to "other forms of union concluded only for the purpose of benefiting from the right to free movement and residence, such as (registered) partnerships of convenience, fictitious adoption or the situation in which a citizen of a member state of the European Union declares that he is the father of a child from a third country in order for him and his mother to benefit from citizenship and right of residence, knowing that he is not the child's father and not wanting to assume parental responsibility"[40].

However, determining whether a marriage is of convenience is not an easy matter, given that it can be confused with genuine marriages (eg arranged, representative or consular marriages) or non-genuine ones (eg marriages of convenience, deception, forced or false[41]. The Court ruled that a marital relationship cannot be considered dissolved, as long as it has not been dissolved by the competent authority. If the persons live separately, the marriage is not dissolved, even if the spouses intend to divorce at a later date. Consequently, in order to benefit from a right of residence as a family member pursuant to Regulation no. 1612/68, it was not necessary for him to live permanently with the worker [42]. The term "family members" in Article 41 of the EC-Morocco Cooperation Agreement includes persons who have a close family relationship with the worker. This applies to relatives in the ascending line, including those related to the worker by marriage. However, these persons must actually live with the worker [43].

An interpretation of a legal term based on social developments in the member states must take into account the situation in the whole Union, not just in one state. The right to be accompanied by an unmarried partner is a social advantage and is governed by the principle of non-discrimination. It follows that a Member State cannot grant an advantage to its own nationals but deny it to other EU workers on the basis of their nationality [44]. The additional condition of previous legal residence in the EU which restricts the free movement of family members of third-country nationals of EU migrants is incompatible with the text and purpose of Directive 2004/38/EC and the objective of the internal market. The Court ruled that it is irrelevant whether a marriage was concluded before or after the Union citizen migrated to the host Member State, where the marriage was concluded, and whether the third-country national entered the host Member State before or after the marriage [45].

5. Actions by the European Commission to support member states in the fight against fraud and abuse of law. In its Communication of 25 November 2013 on the free movement of EU citizens and their families[46], the Commission announced that it will support Member States' authorities to implement EU legislation enabling them to fight against potential abuses of the right to free circulation by developing a manual on dealing with marriages of convenience. The manual, which accompanies the Commission's 2014 Communication on supporting authorities in combating the abuse of the right to free movement[47], supports national authorities to effectively manage individual cases of abuse in the form of marriages of convenience, without however, it compromises the fundamental objective of guaranteeing and facilitating the free movement of EU citizens and their family members who use the provisions of EU legislation in good faith[48].

Thus, in Case C-409/20, Subdelegación del Gobierno en Pontevedra (Fine in case of illegal stay) - Directive 2008/115/EC on the common standards and procedures applicable in the Member States for the return of third-country nationals in a situation of illegal stay , in particular Article 6(1) and Article 8(1) thereof in conjunction with Article 6(4) and Article 7(1) and (2) of this directive, the CJEU decided that it must be interpreted in the sense that it does not oppose a regulation of a member state which sanctions the illegal stay of a national of a third country in the territory of this member state, in the absence of aggravating circumstances, in the first instance, with a fine accompanied by the obligation to leave the territory of that member state within the stipulated period, unless, before the expiry of this period, the said national's stay is regularized, and, in the second phase, if the stay respects of the national is not regularized, by a decision ordering his mandatory removal, provided that the mentioned term is established in accordance with the provisions of Article 7 paragraphs (1) and (2) of the directive.

The manual clearly explains that it provides national authorities with operational guidance, supporting them to detect and investigate alleged cases of abuse in the form of marriages of convenience. The guidance and information included in the handbook should ensure that the practices of national competent authorities are based on the same factual and legal elements within the Union and that they contribute to compliance with EU law[49]. Marriages of convenience are typical examples of abuse, information from Member States on this type of marriage shows that this phenomenon exists, but its extent varies significantly from one Member State to another. EU legislation contains a series of guarantees designed to support member states in combating cases of abuse. However, as regards the way in which these guarantees are used, the responsibility rests with the Member States, the Commission, as the "guardian" of the European Union legislation, supports the efforts of the States in this regard.

Citizens of one Member State can rely on European citizenship for protection against discrimination on grounds of nationality by another Member State. A residence permit can have declarative and evidentiary force only with regard to the recognition of the right of residence. The possession of a permit cannot be a requirement for the right to a benefit, if it is not necessary for one's own nationals to produce some similar document. This would be unequal treatment [50]. The principle of free movement of workers which prohibits discrimination on grounds of nationality applies not only to Member States, but also to private enterprises. It may be legitimate to require a job applicant to have a certain level of language knowledge, and holding a degree may be a criterion for assessing that knowledge. However, the requirement to provide evidence of one's language knowledge exclusively by means of a specific diploma, issued in a specific province of a Member State, constitutes discrimination on grounds of nationality [51].

6. Conclusions. Through its policy, the European Union aims to create a European area of freedom, security and justice in which there is no longer a need to control people at internal borders, regardless of nationality. At the same time, there is an extensive process of implementing common standards regarding the control at the Union's external borders and visa, asylum and immigration policies. The essence of free movement consists in the elimination of discrimination between the citizens of the member state on the territory of which they are located or carry out their activity and the citizens of the other member states who live or work on the territory of this state. These discriminations can refer to conditions of entry, travel, work, employment or remuneration. By ensuring such a non-discriminatory regime, the free movement of people within the European Union is achieved.

In addition to legislation and doctrine, an important role in establishing the current legal framework of the free movement of persons was played by the jurisprudence of the Court of Justice of the European Union, which through the adopted decisions determined each time the specification of the rights regarding equality and non-discrimination and which established the principle of the supremacy of Union law as a fundamental principle [52]. Related to this principle, it was also shown in the doctrine that the system of laws created by international law is complementary to the national laws of individual states and in no case antagonistic to them, as it is based on the same principles and pursues the same goal in defending the rule of law. The judgments issued by the Court are binding only for the referring courts, not for the parties, and the solutions are not for resolving the dispute but for interpreting the rules of Union law applicable to the dispute [53]. This fact led the legal doctrine to declare that the Court's decisions are not decisions and the relationship with the national European courts of referral remains one of horizontal and not of vertical subordination. The jurisdictional activity of the Court of Justice of the European Union interferes with that of the European Court of Human Rights in terms of the defense and respect of the fundamental human rights guaranteed by the European Convention in the sense that the two courts cooperate, analyze both within their jurisdictions and national law.

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TAXATION AND THE FISCAL POLICIES UNDER THE IMPACT OF THE COVID-19 PANDEMIC IN THE EUROPEAN UNION

Gica Gherghina Culiţă[1]

Abstract

Challenges of the COVID-19 pandemic drastically impacted the public budget of the European Union. Public expenditures rose due to the necesary equipment for the critical state of the health care systems. From the usual masks and complex machines, like the ventilated respiratory assistants, to the vaccines, all implied financial resources were above the planned budget.

At the same time, Covid-19 has resulted in unprecedented disruption to the mechanic industry of most countries, regardless of their size or stage of development. In particular, the main sectors of economy were blocked and that meant a reduction of public revenue. This forced the countries to find new ways to balance the public budgets.

The global economy is still facing slow growth, high global uncertainty caused by the Russian-Ukrainian war, rising prices of energy and high level of inflation. This paper presents the situation from the past two years, as well as perspectives based on the Taxation Trends in the EU.

Keywords: taxation, COVID -19, fiscal policies, public expenditures, public revenues

JEL Classification: E60, E62, E63

1. Taxation levels in EU and world at the begining of COVID - 19

In 2020, the year of the start of the COVID-19 pandemic, tax revenues as a percentage of GDP increased slightly in the European Union to 40.1% of GDP. While tax revenues decreased in nominal terms in 2020, GDP decreased more, which increased the tax-to-GDP ratio.

In 2020, the share of taxes in GDP in the EU was high compared to other advanced economies (Chart 1), 6.4 percentage points above the OECD average (33.8%) and almost 15 percentage points above that of the United States.

The pandemic has had a different impact on other advanced economies. In nominal terms, countries such as Canada and the UK have seen declines in income, offset by larger declines in GDP. In the United States, revenues remained almost constant, while in other countries, such as New Zealand, South Korea or Switzerland, tax revenues increased. In all these cases, the share of taxes in GDP increased - from 0.7 percentage points in South Korea and New Zealand to a modest 0.1 percentage points in the United Kingdom.

Chart no. 1

Tax revenues (including social contributions) in the EU and selected countries, 2020 (% of GDP)

(*) OECD data for Australia and Japan in 2019.

Source: European Commission, DG Taxation and Customs Union, based on Eurostat and OECD data (extracted May 2022)

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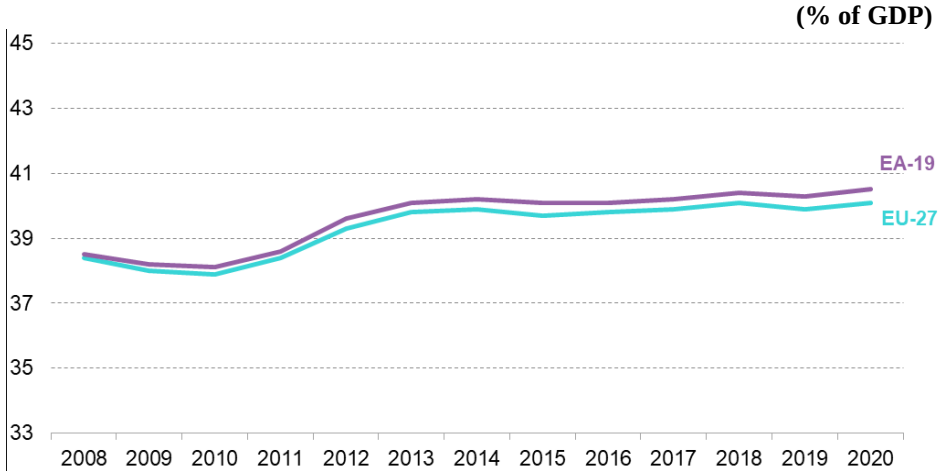
An analysis of recent and long-term developments in tax revenues in the EU and its 27 Member States and a comparison of the situation in the EU with other advanced economies shows that taxation in European countries is on average higher than in other countries, both at EU-27 and EA-19 level. The data used for the comparison comes mainly from Eurostat, supplemented by data from the Organisation for Economic Co-operation and Development (OECD), mainly for non-EU countries.

Tax-to-GDP ratio increased in the EU in 2020, despite the COVID-19 pandemic. Actual statutory taxes and social contributions in the 27 Member States (EU-27) accounted for 40.1% of gross domestic product (GDP) in 2020. While the tax burden increased in 2020 in nominal terms, tax revenues decreased by 3.9%. This is the first decline in tax revenue since the 2009 financial crisis. As GDP has fallen more than tax revenue, 4.4% in nominal terms, the tax-to-GDP ratio increased in 2020 by 0.2 percentage points (pp) and is 2.2 pp higher than in 2010 (37.9%, see graph 1). The euro area has seen similar developments as it has increased its tax burden by 0.2 pp to 40.5% in 2020.

Chart no. 2

Tax revenue (including real social contributions), EU-27 AND EURO AREA, 2008-2020



Source: Eurostat (online data code: gov_10a_taxag, extracted in May 2022.)

In 2020, the economic shock caused by the COVID-19 pandemic led to a drop in tax revenues in nominal terms in most Member States. Only in three Member States were revenues in 2020 higher than in 2019 (Bulgaria, Denmark and Lithuania). However, due to the general decline in GDP, most countries (16) increased their tax-to-GDP ratio. The largest increases were observed in Spain (2 pp), Latvia (0.9 pp) and Portugal (0.8 pp), while Ireland (1.9 pp) and Luxembourg (1 pp) recorded the largest decreases. In the case of Spain, tax revenue fell (4.5% in nominal terms compared to 2019) much less than GDP, which fell by 9.8%. Ireland, on the other hand, had a similar fall in revenue, but GDP rose by more than 4%.

In 2020, Denmark, France and Belgium had the highest tax-to-GDP ratios in the EU, while Ireland (3) and Romania were at the lower end of the distribution. Ireland also saw the largest fall in 2020, by 1.9 percentage points to 20.1%, more than 20 percentage points below the EU weighted average.

In the latest forecast (spring 2022), the share of taxes in GDP is expected to have increased in 2021, but to fall in subsequent years to 39.5% in 2023.

Labour taxes were more resilient than other tax bases in 2020, changing the tax structure in the EU. Labour taxes were 21.5% in 2020, the highest point in the time series and 0.8 pp higher than in 2019. The share of labour taxes in total taxation was 53.5% in 2020, also higher than in the last decade. Consumption taxes stood at 10.8% of GDP in 2020, 0.3 pp lower than in 2019. Revenue from capital taxes also fell slightly, by 0.2 pp, to 7.9% of GDP.

Revenue from environmental taxes accounted for 2.2% of GDP in 2020, down from 2.4% in 2019. The main cause of this decrease was lower revenues from energy taxes, especially from fuel consumption used for transport. The various mobility restrictions imposed in 2020 due to the pandemic could have been behind this change as energy consumption decreased in the EU in 2020.

Good and comparable data are fundamental to support discussions and policy making in all areas, including tax policy. In the report "Tax trends", which accompanies the Annual Tax Report (2022 edition), we find a wealth of information on key tax indicators and, more specifically, on tax revenue by type of tax for all EU Member States and the EU as a whole, as well as for Iceland and Norway. In 2020, the last year of the 12-year period analysed (2008-2020), the effects of the start of the COVID-19 pandemic in 2020 are presented, which makes this edition particularly interesting. In addition, the paper presents the latest tax reforms in each country.

The annual report on taxation in 2022 presents the current state of taxation in the European Union. The report aims to describe in a clear and accessible way the latest reforms and the main indicators used by the Commission to assess progress in tax policies in EU Member States and at EU level.

The report provides information on the main EU tax priorities for:

- boost innovation and productivity, thereby supporting an EU economy that is ready for the digital and global challenges ahead;
- contribute to social equity and prosperity, ensuring that everyone pays their fair share and that EU tax systems support an economy that works for people and responds to their needs;
- make tax administrations more effective and efficient and ensure good cooperation between tax administrations, thereby contributing to the stability and simplicity of EU tax systems.

In addition, given the priorities of the digital and green transition and several important tax developments at EU and international level, the report focuses on three topics: green taxation and its contribution to tackling climate change and supporting ambitious environmental goals; the digital transition and its effect on tax systems, in terms of tax rules, tax revenue collection and tax administration; and corporate taxation in the 21st century.

2. Impact of COVID-19 measures

The COVID-19 pandemic has presented countries with a unique set of challenges in recent history. The contagiousness of the virus has necessitated measures to protect the population, including mobility restrictions and even the temporary closure of a wide range of businesses (cinemas, bars, restaurants, etc.). Entire economic sectors have been suspended. These measures have had a significant economic impact, with possible medium and long-term consequences for the economic and social fabric.

Countries have taken very different initiatives to minimise the impact of these restrictions on businesses and citizens: maintaining a certain level of income for people who have been unable to work; mobilising additional resources for public services and strengthening areas under greater pressure, such as health services (hiring additional staff, purchasing additional protective equipment, medical equipment and infrastructure, etc.); and providing direct and indirect support to businesses, including subsidies and tax deferrals and credits.

As a result, EU public spending has increased significantly. Discretionary spending amounted to €420 billion (3.1% of GDP). Eurostat estimates an increase of €600 billion in total public spending in 2020, which represents an annual increase of 6.6 percentage points of GDP. Three areas seem to have absorbed most of the additional spending: social protection, economic affairs and health.

Table 1

Difference between public expenditure by function in 2019-2020

	Billion EUR	% growth	pp of GDP
Total	**597.9**	**9.2**	**6.6**
Social protection	238.0	8.8	2.7
Economic affairs	205.7	33.4	1.7
Health	95.0	9.7	1.0
General public services	18.6	2.3	0.4
Education	*14.4*	*2.2*	*0.3*
Defence	8.8	5.2	0.1
Public order and safety	9.0	3.9	0.1
Environmental protection	4.2	3.8	0.1
Housing and community amenities	1.4	1.7	0.0
Recreation, culture and religion	2.9	1.8	0.0

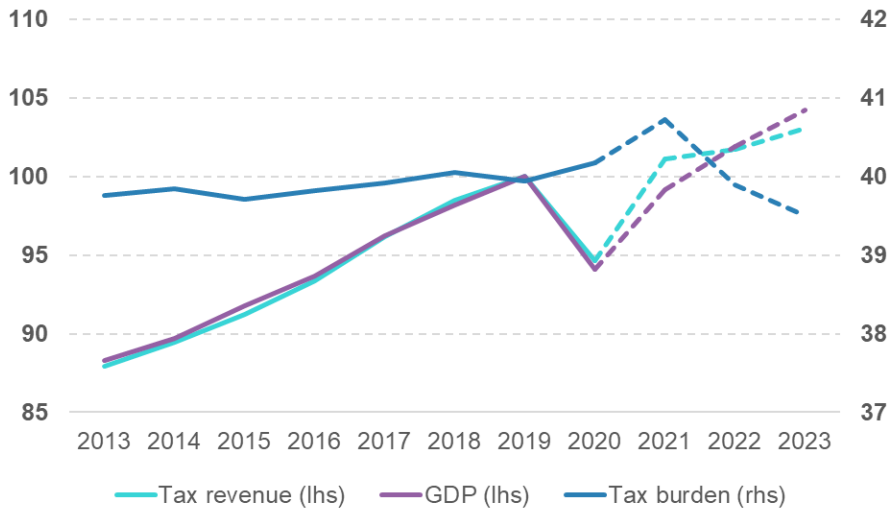
Source: Eurostat (online data code: gov 10a exp)

This additional spending would have helped mitigate the decline in GDP at the expense of higher deficits and debt. The additional spending could also have had an impact on the level of tax revenues and could explain why the decline in tax revenues was less pronounced than the decline in GDP. For example, leave programmes provided an income stream for people who were unable to work due to pandemic restrictions. This to some extent supported social contributions and labour tax revenues. In addition, a large part of this revenue would have gone to consumption, thus supporting additional economic activity and supporting value added tax (VAT) and other indirect tax revenues. This economic support has helped to keep viable businesses and jobs alive, minimising the impact of the pandemic on tax revenues and contributing to the long-term sustainability of public finances.

The overall impact on tax revenues and their relationship to GDP is rather country-specific. It depends on the type of measures; the extent and duration of support; the economic structure of each country, the sectors that were affected and the sectors and businesses that received support (or even benefited from the pandemic); and the type of jobs that were lost and for how long (e.g. high-income versus low-income workers). It is therefore difficult to establish a single general explanation for all Member States.

Chart no. 3

Tax burden, tax revenue and GDP in the EU-27 (2013-2020), forecast (2021-2023) (index 2019=100, left side, % of GDP, right side)



Source: European Commission, DG Taxation and Customs Union, calculations based on data from DG ECFIN, AMECO, (extracted in May 2022). Note: Dotted lines indicate forecasts. Tax revenue and Tax burden excluding imputed social contributions. Tax revenue and GDP in real terms.

3. Tax revenues in 2022 and forecasts

As mentioned above, in 2020 tax revenues in the EU fell less than GDP, leading to an increase in the tax-to-GDP ratio. According to the latest available full economic forecast from the European Commission, in 2021 tax revenues and GDP were above the 2019 level in nominal terms, in real terms only tax revenues were above the 2019 level, with GDP still below the 2019 level. Tax revenues grew more than GDP in 2021, increasing the tax burden to 40.7%.

GDP is projected to grow faster than tax revenues from 2022 onwards. This will result in the tax-to-GDP ratio falling by 0.2 percentage points in 2022, and by 2023 it will stand at 39.5%, 0.6 percentage points lower than in 2020.

The evolution of the war in Ukraine, the energy crisis, the current high inflation in the EU and the evolution of the pandemic create a very volatile scenario that could have a significant impact on forecasts.

Table 2 shows the projected evolution of the tax-to-GDP ratio for Member States, EU-27 and the euro area according to the latest available estimates. At Member State level, by 2023, the tax-to-GDP ratio is expected to decrease significantly in some countries, such as Denmark (4.4 pp) and Latvia (2.1 pp). However, the tax burden is expected to be higher by 2023 in Bulgaria (2.5 pp) and Malta (2.2 pp).

Table 2

TAX REVENUE (INCLUDING REAL SOCIAL CONTRIBUTIONS) 2018-2020 (ACTUAL) AND 2021-2023 (FORECAST)

(% of GDP)

				Forecast			Trend
	2018	2019	2020	2021	2022	2023	Diff 2020 – 2023
EU-27	40.1	39.9	40.1	40.7	39.9	39.5	-0.6
EA-19	40.4	40.3	40.5	41.2	40.5	40.1	-0.4
Belgium	44.8	43.5	43.6	43.1	42.8	42.9	-0.7
Bulgaria	29.7	30.3	30.6	32.4	32.5	33.1	2.5
Czechia	36.0	35.9	36.0	35.0	33.9	33.6	-2.4
Denmark	44.4	46.8	46.8	47.2	43.6	42.4	-4.4
Germany	39.9	40.1	40.0	41.3	40.1	39.7	-0.3
Estonia	33.0	33.5	34.0	34.4 (*)	33.3	32.8	-1.2
Ireland	22.4	22.0	20.1	21.2	20.7	20.0	-0.1
Greece	40.0	39.5	38.9	39.0	39.5	37.1	-1.8
Spain	34.7	34.8	36.8	38.5	37.3	36.3	-0.5
France	46.3	45.3	45.6	45.3	45.3	45.7	0.1
Croatia	37.6	37.6	37.0	36.1	35.7	35.7	-1.3
Italy	41.6	42.2	42.7	43.4	43.0	42.5	-0.2
Cyprus	33.3	34.4	34.6	36.8	35.5	35.2	0.6
Latvia	31.0	30.6	31.5	30.7	29.8	28.9	-2.6
Lithuania	30.0	30.3	30.8	32.8	32.0	31.6	0.8
Luxembourg	39.3	39.5	38.5	38.1 (*)	37.6	37.4	-1.1
Hungary	36.9	36.4	36.3	33.7	35.0	34.8	-1.5
Malta	30.2	29.8	29.7	31.0	32.0	31.9	2.2
Netherlands	38.8	39.3	39.7	39.6	39.1	38.7	-1.0
Austria	42.3	42.6	42.1	43.3	42.5	42.7	0.6
Poland	35.1	35.1	35.7	36.9	34.6	33.7	-2.0
Portugal	34.7	34.5	35.3	35.8 (*)	34.9	34.8	-0.5
Romania	26.0	26.1	26.3	26.5	27.1	27.0	0.7
Slovenia	37.5	37.3	37.6	37.7	36.8	36.4	-1.2
Slovakia	34.0	34.4	35.0	35.6 (*)	34.9	34.4	-0.6
Finland	42.4	42.3	41.9	42.8 (*)	42.0	41.6	-0.3
Sweden	43.8	42.8	42.9	43.2 (*)	42.2	41.7	-1.2

Source: European Commission, DG Taxation and Customs Union, based on Eurostat and DG Economic and Financial Affairs, AMECO. NB: Tax revenue data in this table, extracted in May 2022 (*) These values are actual values, not forecasts.

Revenue structure by level of government

In 2020, the share of income required from social security funds increased. The COVID-19 pandemic had an impact on the tax revenue structure in 2020, which in turn influenced the share of revenue required by the different levels of government.

Social security contributions increased in 2020, both as a percentage of GDP and as a share of total income. This has a direct impact on the share of revenue required from social security funds, which increased in the EU by 0.9 percentage points to 36.9% of total revenue, representing 14.8% of GDP.

In 2020, the share of aggregate tax revenue (including actual social contributions) required by central or federal government was 44.6% in the EU, 1.1 percentage points lower than in 2019 and 2.6 percentage points lower than a decade ago. Another 17.9% went to local or state governments. Around 0.6% of revenue goes to the EU institutions, consisting of receipts from the common agricultural policy and trade with third countries.

There are considerable differences between EU Member States in terms of tax structure depending on the level of government. For example, some have a federal government or may grant local regions a certain degree of fiscal autonomy (Belgium, Germany, Spain, Austria). In Malta, the social security system is not reported separately from the central government, while Denmark finances most of its social security through general taxation, implying large intra-governmental transfers to social security funds. Ireland started reporting data on social security funds in 2021.

The share of sub-central revenues (defined as revenues at local level plus, where they exist, at Land or other regional level) ranges from around 1% (Malta) to almost a third of total revenues (Belgium and Germany). The amount of tax revenue recorded in general government is a very imperfect indicator of fiscal autonomy, as sub-sectors of general government may have (legal) rights to receive current transfers within general government or other revenues from other sub-sectors.

Revenue structure by type of tax

Traditionally, taxes are classified as direct or indirect. A direct tax is levied on income and wealth that is sustainable and directly from a specific person (natural or legal) by means of a tax notice (e.g. personal income tax (PIT), corporation tax (CIT) or wealth tax).

An indirect tax - such as VAT, an import duty or an excise duty - is a tax levied on a material or legal event of an incidental or temporary nature and on a person (natural or legal), who may often be an intermediary and not the person responsible for that event (hence the indirect nature of the tax).

Employers and employees pay social security contributions to a social insurance system that is set up to cover pensions, healthcare and other social provisions.

The pandemic reduced the share of indirect taxes and increased the share of social security contributions.

Revenues from direct taxes, indirect taxes and social security contributions each accounted for about one third of total EU-27 revenues in 2020. Due to the pandemic, indirect tax revenues fell by 0.3 percentage points of GDP to 13.4%. Over the same period, social contributions increased by 0.4 pp of GDP to 13.5% of GDP and direct taxes increased by 0.1 pp to 13.3% of GDP. Thus, the share of social contributions (33.5%) was slightly higher than the share of direct or indirect taxes. According to the latest economic forecasts, indirect taxes will be the fastest growing type of taxes during the pandemic recovery.

The changes at EU level can be explained by looking at general trends in Member States. The share of social security contributions has increased in almost all countries and indirect taxes have decreased across the board. Direct tax revenues showed a more mixed pattern, while all three categories suffered reductions in nominal terms. In relative terms, the increase in social security contributions can be explained by more resilient labour markets, probably as a result of government interventions in the form of leave schemes or other support during the pandemic.

The structure of taxation varies significantly from country to country. Denmark has the highest share of direct taxes in total tax revenue (65.9%), followed by Ireland and Malta. In general, the share of social contributions in total tax revenue is correspondingly low in these countries. In Denmark, most social expenditure is financed from general taxes, which explains the extremely low share of social contributions and the high share of direct taxes in total tax revenue. In contrast, the Czech and Slovak tax systems are characterised by high shares of social contributions to finance their social protection systems and relatively low shares of direct tax revenues. In four countries (Bulgaria, Croatia, Hungary and Sweden), indirect taxes account for more than 50% of their revenues.

Distribution of tax burden by type of tax base

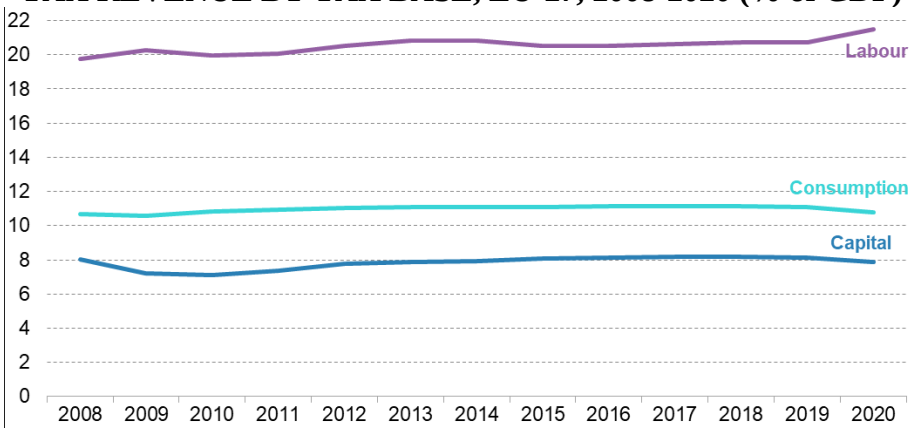
Labour tax revenues increased as a percentage of GDP in 2020, while consumption and capital taxes decreased.

In 2020, income by tax base in nominal terms fell in three categories (consumption, labour and capital) due to the COVID-19 pandemic. However, when measured relative to GDP, revenue from labour taxation increased by 0.8 pp to 21.5% of GDP.

Labour taxes include employers' and employees' social security contributions. These are components that have largely underpinned the overall growth in labour tax revenues. At the same time, revenues from consumption and capital taxes fell by 0.3 pp and 0.2 pp respectively, as shown in Chart 4.

Chart no. 4

TAX REVENUE BY TAX BASE, EU-27, 2008-2020 (% of GDP)



Source: European Commission, DG Taxation and Customs Union, Taxation data, based on Eurostat data.

In 2020, the evolution of tax revenues by tax base significantly affected the tax structure in the EU, which had been stable between 2014 and 2019. Graph 4 shows the distribution of tax revenues and their evolution since 2008. As explained above, the combined increase in labor tax revenues with decreases in capital and consumption taxes has led to a significant increase in the share of labor tax revenues), indirect taxes account for more than 50% of revenues.

The structure of taxation differs significantly between Member States, but the pandemic seems to have had a similar impact on most Member States. The share of labour tax revenue increased in all Member States except Hungary, where it decreased by 0.8 pp, and saw minor decreases in Finland and Poland (both 0.1 pp). In Malta (4.7 pp), Greece and Spain (both 3.4 pp), the increases in the share of labour tax revenue were remarkable. The overall increase in the labour tax share depends to a large extent on the increases in social contributions mentioned in the previous section. Some countries have seen significant decreases in the share of revenue from consumption taxes, e.g. Cyprus (3 pp), Ireland and Slovenia (2.8 pp in both cases). At the same time, Malta (3.7 pp) and Denmark (2.5 pp) have seen a decrease in the share of revenue from capital taxes.

Taxation of consumption

In 2020, EU-27 revenues from consumption taxes fell by 0.3 pp to 10.8% of GDP, a 7.1% drop in nominal terms. In GDP terms, this was the lowest level of consumption taxes since 2010. An important factor in this decrease was the fall in final consumption due to the pandemic, of 3.6% in nominal terms. The various VAT rate cuts implemented by some countries in 2020 may also have played a role. In fact, VAT revenue, as the main component of consumption taxes, fell by 0.2 pp to 6.9% of GDP in 2020.

EU implicit rate of consumption tax decreased in 2020

The implicit consumption tax rate (ITR) is the ratio of consumption tax revenue to the estimated tax base. In 2020, the EU-27 consumption RIT decreased for the first time since 2009. It decreased by 0.2 pp to 17.1%. The euro area followed a similar trend, down 0.3 pp to 16.5%. Part of this fall could be linked to temporary decreases in VAT rates implemented by Member States such as Germany and Ireland. In both countries, the reduction in RIT at consumption was the largest, by 1.6 pp and 0.9 pp respectively. Despite the EU-wide decrease in 2020, RIT at consumption increased in most countries, notably in Malta by 1.1 pp and in Latvia by 0.9 pp.

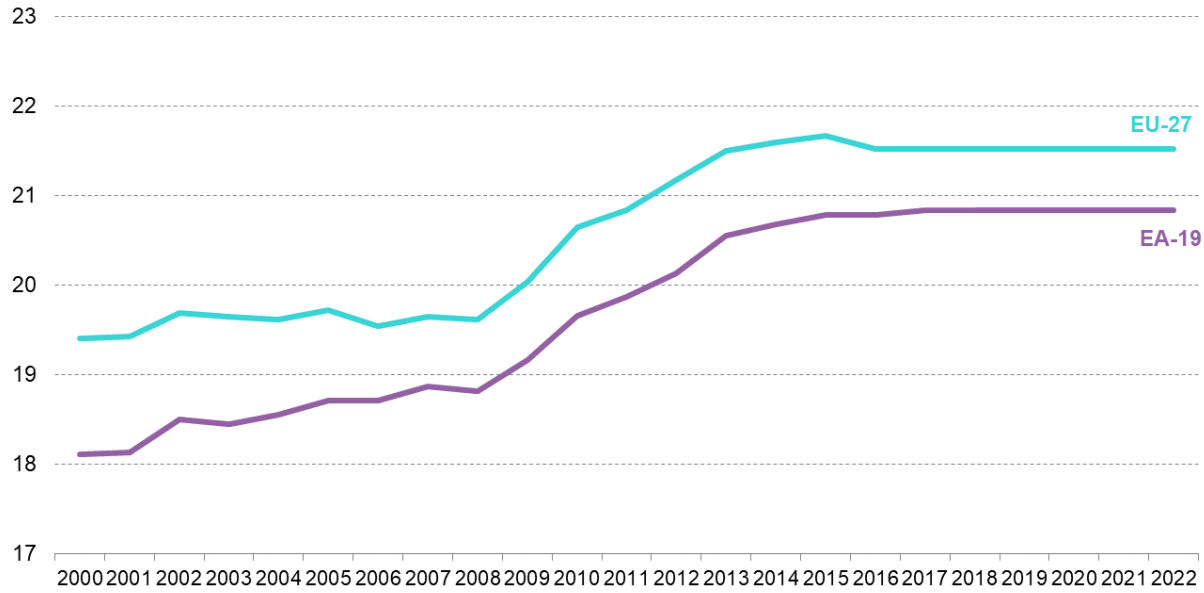
Value added tax is the main contributor to the implicit rate of consumption tax in all Member States.

VAT is usually between two thirds and three quarters of the RIT for consumption. In Sweden, VAT accounts for more than 75% of RTI, which is the highest proportion in the EU, compared to around 55% in Greece and Italy.

However, the VAT-free components are also significant. On average, energy taxes in the EU-27 account for about 16.1% of RIT on consumption and are mainly composed of excise duties on mineral oils. These taxes are a significant component of RIT on consumption for Greece and Italy (over 20%), but contribute less to this indicator in Austria, Malta and Hungary. Tobacco and alcohol taxes account for 7.1% of RIT on average at EU level, and the remaining 12.1% is other residual excise duties.

Chart no. 5

EVOLUTION OF THE AVERAGE STANDARD RATE OF VAT, EU-27, 2000-2022 (%)



Source: European Commission, DG Taxation and Customs Union, Taxes in Europe database.

Standard VAT rate unchanged at the beginning of 2022

After a period of increases (2009-2013), the average standard VAT rate in the EU-27 stabilised and then remained unchanged between 2017 and 2022 at 21.5% (Chart 5). The lowest standard rates are in Luxembourg (17%) and Malta (18%). On the other hand, the highest VAT rate is in Hungary (27%), followed by Denmark, Croatia and Sweden (all at 25%).

In 2022, and in connection with the impact of the war in Ukraine on the EU economy, some countries could reduce VAT rates or place certain products at reduced rates, for example energy products. Governments will have to balance between reducing the tax burden on businesses and citizens, collecting tax revenues to cope with deficits caused by pandemics and current inflationary pressures. In conclusion, more measures are expected in the public finances of the European States.

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ADMINISTRATION OF EVIDENCE BY LAWYERS OR LEGAL ADVICERS

Nicolae, Grădinaru[1]

Abstract

At the first court term at which the parties have been legally summoned, the parties, present in person or represented, may agree that the lawyers who assist and represent them administer the evidence in question.

Consent for the administration of evidence will be given by the parties, personally or through a special power of attorney, in front of the court, taking note of this in the conclusion, or by a document drawn up in front of the lawyer, who is obliged to certify the consent and the signature of the party which he assists or represents. If there are several parties assisted by the same lawyer, consent will be given by each of them separately.

At the same time, each party is obliged to declare that for the respective procedure it chooses its domicile with the lawyer who represents it.

Key words: *parties, conclusion, special power of attorney, court, consent, signature.*

JEL Clasification: KO, K1

According to the provisions of art. 366 of the Code of Civil Procedure, the provisions of the code are applicable to all disputes, except those concerning the marital status and capacity of the persons, family relations, as well as any other rights on which the law does not allow to make a transaction.

The court's obligation

At the first court term at which the parties have been legally summoned and if they are present or represented, the court will ask them if they agree that the evidence be administered according to the provisions of this subsection.

Convention of the parties

At the first court term at which the parties have been legally summoned, the parties, present in person or represented, may agree that the lawyers who assist and represent them administer the evidence in question, according to the provisions of this subsection.

Consent for the administration of evidence will be given by the parties, personally or through a special power of attorney, in front of the court, taking note of this in the conclusion, or by a document drawn up in front of the lawyer, who is obliged to certify the consent and the signature of the party which he assists or represents. If there are several parties assisted by the same lawyer, consent will be given by each of them separately.

At the same time, each party is obliged to declare that for the procedure in this subsection it chooses its domicile with the lawyer who represents it.

The given consent cannot be revoked by one of the parties.

Conducting the court session

According to art. 369 of the Code of Civil Procedure, during the administration of the evidence by the lawyers, the court hearings, when they are necessary, take place according to art. 240, with the mandatory participation of lawyers[2].

Measures taken by the court

According to the provisions of art. 370 of the Code of Civil Procedure, after establishing the validity of the given consent, the court will take the measures provided for in art. 237 para. (2).

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[2] Art. 240 of the Civil Procedure Code

The investigation of the trial takes place in front of the judge, in the council chamber, with the summoning of the parties. The provisions of art. 154 are applicable.

In appeals, the investigation of the process, if necessary, is done in open session.

When, according to the law, requests can be made even after the first court term at which the parties are legally summoned, the court can grant a short term for this purpose, notified to the parties represented by the lawyer.

The provisions of art. 227 and of art. 254 para. (2)-(4) are applicable[1].

The party that is unjustifiably absent from the deadline for the approval of evidence will be deprived of the right to propose and administer any evidence, except for the one with documents, but will be able to participate in the administration of evidence by the other party and will be able to fight this evidence.

The deadline for the administration of evidence

According to art. 371 of the Code of Civil Procedure, for the administration of evidence by lawyers, the court will establish a term of up to 6 months, taking into account their volume and complexity.

The 6-month period may be extended if during the administration of the evidence:

1. an exception or a procedural incident is invoked on which, according to the law, the court must rule; in this case, the term is extended by the time necessary to resolve the exception or incident;

2. terminated, for any reason, the legal assistance contract between one of the parties and his lawyer; in this case, the term is extended by at most one month for hiring another lawyer;

3. one of the parties has died; in this case, the term is extended by the time during which the process is suspended according to art. 412 para. (1) point 1 or with the deadline granted to the interested party for bringing the heirs to trial[2];

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[1] Article 227

Throughout the process, the judge will try to reconcile the parties, giving them the necessary instructions, according to the law. For this purpose, he will request the personal appearance of the parties, even if they are represented. The provisions of art. 241 para. (3) are applicable.

In disputes that, according to the law, can be the subject of the mediation procedure, the judge can invite the parties to participate in an information session regarding the advantages of using this procedure. When he considers it necessary, taking into account the circumstances of the case, the judge will recommend the parties to resort to mediation, in order to settle the dispute amicably, in any phase of the trial. Mediation is not binding on the parties.

If the judge recommends mediation, the parties will appear before the mediator, in order to inform them about the advantages of mediation. After the information, the parties decide whether or not to accept the settlement of the dispute through mediation. Until the deadline set by the court, which cannot be shorter than 15 days, the parties submit the minutes drawn up by the mediator regarding the result of the information session.

The provisions of para. (3) are not applicable if the parties tried to settle the dispute through mediation before the action was initiated.

If, under the conditions of para. (1) or (2), the parties reconcile, the judge will note their consent in the content of the decision he will give. The provisions of art. 440 are applicable.

Art. 254 paragraphs 2 and 4

The evidence that was not proposed under the conditions of para. (1) will no longer be able to be requested and approved during the process, except in cases where:

1. the need for proof results from the amendment of the request;
2. the need for the administration of evidence emerges from the judicial investigation and the party could not foresee it;
3. the party informs the court that, for thoroughly justified reasons, it could not propose the required evidence within the deadline;
4. the administration of the evidence does not lead to the postponement of the judgment;
5. there is the express agreement of all parties.

In case of postponement, for the reasons provided in para. (2), the party is obliged, under the penalty of losing the right to administer the approved evidence:

a) to submit the list of witnesses within 5 days from the approval of the evidence, when the evidence with witnesses is requested;

b) to submit certified copies of the cited documents at least 5 days before the deadline set for the trial, if the evidence with documents has been approved;

c) to submit the interrogation within 5 days from the approval of this evidence, in cases where the interrogation must be communicated, according to the law;

d) to submit the proof of payment of the expenses necessary to carry out the expertise, within 5 days from the appointment of the expert or within the term established by the court according to the provisions of art. 331 para. (2), if the expert evidence was approved.

[2] 3Art. 412

The trial of the cases is suspended by law:

4. in any other cases where the law provides for the suspension of the process, the term is extended by the period of the suspension, the provisions of art. 411 para. (1) point 2 not being applicable.

Test administration schedule

In no more than 5 days after the approval of the evidence, the lawyers of the parties will present to the court the program for their administration, bearing the signature of the lawyers, in which the place and date of the administration of each evidence will be shown. The program is approved by the court, in the council chamber, and is binding for the parties and their lawyers.

In the processes provided for in art. 92 para. (2) and (3) the program will be communicated immediately to the prosecutor, under the conditions of art. 383[1].

The evidence can be administered in the office of one of the lawyers or in any other agreed place, if the nature of the evidence requires it. The parties, through lawyers, are obliged to communicate their documents and any other documents, by registered letter with confirmation of receipt or directly, under signature.

The agreed date for the administration of evidence can be changed, with the consent of all parties.

If the administration of the test is not possible for objective reasons, a new term will be established. If the parties do not agree, the court will be notified, according to art. 373.

Unjustified non-compliance with the program entails forfeiture of the party's right to administer the respective test.

The provisions of art. 262 are applicable[2].

Incident resolution

According to art. 373 of the Civil Procedure Code, if during the administration of evidence one of the parties formulates a request, invokes an exception, the inadmissibility of any evidence or any other incident regarding the administration of evidence, it will notify the court which, with the summons of the other party, by concluding given in the council chamber, it will be pronounced immediately, and when necessary, in no more than 15 days from the date on which it was notified. The termination can only be challenged with the merits of the case.

Entries held by third parties

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1. by the death of one of the parties, until the heirs are brought into the case, except when the interested party requests a deadline for bringing them to court.

[1] Article 92

(2) The prosecutor may present conclusions in any civil process, in any phase thereof, if he deems it necessary to defend the legal order, the rights and interests of citizens.

(3) In the specific cases provided by law, the participation and submission of conclusions by the prosecutor are mandatory, under the penalty of absolute nullity of the decision.

[2] 996 / 5,000

Translation results

Art.262 Expenses necessary for the administration of evidence

When the administration of the approved evidence requires expenses, the court will ask the party that requested it to submit to the registry office, immediately or within the term set by the court, proof of the payment of the amount established to cover them.

In cases where the evidence was ordered ex officio or at the request of the prosecutor in the process initiated by him under the conditions provided for in art. 92 para. (1), the court will establish, by conclusion, the costs of administering the evidence and the party that must pay them, being able to charge them to both parties.

Failure to deposit the amount provided for in para. (1) within the fixed term, the party forfeits the right to administer the approved evidence before that court.

Depositing the amount provided for in para. (1) however, it can be done even after the deadline has passed, if this does not postpone the judgment.

The provisions of para. (1)-(4) are also applied in the event that the administration of the evidence is done by rogatory commission.

If it is ordered to produce a document held by an authority or another person, the court, according to the provisions of art. 298, will order the request for the document and, as soon as it is submitted to the court, its communication in a copy to each lawyer[1].

Verification of documents

According to art. 375 of the Code of Civil Procedure, if one of the parties does not recognize the writing or signature in a document, the lawyer of the interested party, according to art. 373, will request the court to proceed with the verification of the documents.

Hearing witnesses

According to the provisions of art. 376 of the Code of Civil Procedure, the witnesses will be heard, at the place and date provided in the program approved by the court, by the lawyers of the parties, under the conditions of art. 318 para. (1) and art. 321 para. (1), (2), (4) and (5)[2], which apply accordingly. The hearing of the witnesses is done without taking an oath, but they are warned that if they do not tell the truth, they commit the crime of perjury. All this is mentioned in the written statement.

The witnesses provided for in art. 320 will be heard only by the court[3].

Recording of testimony

According to art. 377 of the Code of Civil Procedure, the testimony shall be recorded exactly by a person agreed upon by the parties and shall be signed, on each page and at the end, by the lawyers of the parties, by the person who recorded it and by the witness , after he became aware of the contents of the recording.

Any additions, deletions or changes in the content of the testimony must be approved by the signature of those mentioned (lawyers of the parties and witnesses), under the penalty of not being taken into account.

If the testimony was stenographic, it will be transcribed. Both the transcript and its transcription will be signed (lawyers of the parties and witnesses) and submitted to the file.

If the testimony was recorded with audiovisual means, it may be later transcribed at the request of the interested party, in accordance with the law. The transcript of the records will be signed (lawyers of the parties and witnesses) and submitted to the file.

Authentication of testimony

The parties may agree that the witnesses' statements be recorded and authenticated by a notary public. The provisions of art. 376 are applicable.

The Expertise

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[1] Art. 298

If the document is in the custody of a public authority or institution, the court will take measures, at the request of one of the parties or ex officio, to bring it, within the term fixed for this purpose, putting in view the head of the holding authority or public institution the measures that can be taken disposes in case of non-compliance.

The holding public authority or institution has the right to refuse to send the document when it refers to national defense, public safety or diplomatic relations. Partial extracts may be sent if none of these reasons oppose it. The provisions of art. 252 para. (3) shall apply accordingly.

[2] Art. 318 paragraph 1

The president, before taking the statement, will ask the witness to show:

a) name, surname, profession, domicile and age;

b) if he is related or related to one of the parties and to what degree;

c) if he is in the service of one of the parties.

321

Each witness will be heard separately, those who have not yet been heard cannot be present.

The order of hearing the witnesses will be fixed by the president, taking into account the request of the parties.

After the hearing, the witness remains in the courtroom until the end of the investigation, outside only if the court decides otherwise.

During the hearing, the witness will be allowed to give his testimony freely, without being allowed to read a previously written answer; however, he can use notes, with the approval of the president, but only to specify figures or names.

[3] Art.320 exemption from oath

Children who have not reached the age of 14 and those who lack discernment at the time of the hearing, without being placed under a ban, can be heard without an oath, but the court will draw their attention to tell the truth and will take into account, in the assessment their deposition, their special situation.

According to art. 379 of the Code of Civil Procedure, if an expert opinion is approved, in the evidence administration program the parties will include the name of the expert they will choose by their consent, as well as the names of the advisors of each of them.

If the parties do not agree on the choice of the expert, they will ask the court, at the time when the evidence approves, to proceed with his appointment, according to art. 331 para. (1) and (2)[1].

The expert is obliged to carry out the expertise and hand it over to the lawyers of the parties, under signature of receipt, at least 30 days before the deadline set by the court. Also, he has the duty to give explanations to the lawyers and the parties, and after fixing the court term, to comply with the provisions of art. 337-339.

On-site research

According to art. 380 of the Civil Procedure Code, if an on-site investigation has been ordered, this will be done by the court according to the provisions of art. 345-347. The minutes provided for in art. 347 para. (1) will be drawn up in as many copies as there are parties and will be handed over to their lawyers no later than 5 days after the investigation[2].

According to the provisions of art. 381 of the Code of Civil Procedure, when the summons to the interrogation has been approved, the court will summon the parties, at the set term, in the council chamber. Copies of the interrogation thus taken, as well as of the one ordered and received according to art. 355 para. (1) will be immediately handed over to the lawyers of the parties[3].

Evidence Incidents

The court will decide on the request to replace the witnesses, to hear them again or to confront them.

Also, under these conditions, the court will rule on the request to admit new witnesses or other evidence that proves necessary and that could not be foreseen to be requested according to art. 237 par. (2) point 7[4].

Written conclusions

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[1] Art. 331

If the parties do not agree on the appointment of experts, they will be appointed by the court, by drawing lots, from the list drawn up and communicated by the local expertise office, including the persons registered in its records and authorized, according to the law, to carry out expertise judicial.

The conclusion of the appointment of the expert will establish the objectives on which he is to pronounce, the term in which he must carry out the expertise, the expert's provisional fee and, if applicable, the advance for travel expenses. For this purpose, the court can fix a hearing in the council chamber, during which it will ask the expert to estimate the cost of the work to be performed, as well as the time required to perform the expertise. In the same way, the court can fix a short term for when it will ask the expert to estimate in writing the cost of the work to be performed, as well as the term necessary to carry out the expertise. The position of the parties will be recorded in the conclusion. Depending on the position of the expert and the parties, the court will set the deadline for submitting the expert report and the conditions for paying the costs necessary to carry out the expertise.

[2] Art. 347 paragraph 1

About the findings and the measures taken on the spot, the court will draw up a report, in which the parties' arguments and objections will be recorded, which will be signed by those present

[3]Art. 355 paragraph 1

The state and other legal entities under public law, as well as legal entities under private law, will respond in writing to the interrogation that will be communicated to them in advance, under the conditions provided for in art. 194 lit. e).

194

e) showing the evidence on which each end of the claim is supported. When the proof is made through documents, the provisions of art. 150. When the plaintiff wants to prove his claim or any of its parts by questioning the defendant, he will ask for his appearance in person, if the defendant is a natural person. In cases where the law stipulates that the defendant will respond in writing to the interrogation, it will be attached to the summons. When witness evidence is requested, the name, surname and address of the witnesses will be shown, the provisions of art. 148 para. (1) sentence II being applicable accordingly.

[4] Art.237 The purpose and content of the trial investigation

In the research stage of the process, procedural documents are completed, according to the law, at the request of the parties or ex officio, for the preparation of the debate on the merits of the process, if necessary.

In order to achieve the purpose provided for in para. (1), the court:

7. will approve the evidence requested by the parties, which it finds conclusive, as well as those which, ex officio, it considers necessary for judging the trial and will administer them in accordance with the law.

According to art. 383 of the Code of Civil Procedure, after the administration of all the evidence approved by the court, the plaintiff, through his lawyer, will draw up written conclusions regarding the support of his claims, which he will send, by registered letter with acknowledgment of receipt, or hand them directly, under signature, to the other parties in the process and, when appropriate, to the Public Ministry.

After receiving the plaintiff's written conclusions, each party, through its lawyer, will draft its own written conclusions, which it will communicate to the plaintiff, the other parties, and, when appropriate, the Public Ministry.

Compilation of the file

The attorneys of the parties will prepare a file for each party and one for the court, in which they will submit a copy of all the documents that, according to the law, confirm the administration of each piece of evidence.

The files will be numbered, bound and will bear the signature of the lawyers of the parties on each page.

Submission of the file to the court

At the expiration of the term set by the court, the lawyers of the parties will present the case file to the court together.

Judgement of the cause

According to art. 386 of the Code of Civil Procedure, upon receiving the file, the court will fix the trial term, notified to the parties, which will not be longer than 15 days from the date of receipt of the file.

At this term, the court will be able to decide, for good reasons and after listening to the parties, to administer new evidence or to administer directly in front of it some of the evidence administered by the lawyers.

For this purpose, the court will establish short deadlines, further, given to the parties. For the presentation before the court, the witnesses will also be summoned in a short time, the cases being considered urgent. The provisions of art. 159 and of art. 313 para. (2) are applicable[1].

If, at the set deadline, the court considers that it is not necessary to administer new evidence or some of those administered by the lawyers, it will proceed to the substantive trial of the trial, giving the parties the floor to present conclusions through the lawyer.

The provisions of subsection 3 "Evidence" of section 2 of chapter II of the Code of Civil Procedure are applicable, if this subsection does not provide otherwise.

At the request of the lawyer or the interested party, the court can take the measure of the judicial fine and the obligation to pay compensation, in the cases and conditions provided by the provisions of art. 187-190.

Legal advisers

According to art. 399 of the Code of Civil Procedure, the provisions of this subsection are also applicable to the legal advisers who, according to the law, represent the party.

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[1] Article 159
The subpoena and the other procedural documents, under penalty of nullity, will be handed to the party at least 5 days before the court date. In urgent cases or when the law expressly provides, the judge may order the shortening of the term for serving the summons or the procedural document, mentioning this in the summons or the procedural document.
Art. 313 paragraph 2
In urgent cases, witnesses can be ordered to be brought with a mandate at the very first term.

SECURING EVIDENCE IN CIVIL PROCEEDINGS

Nicolae, Grădinaru[1]

Abstract

Securing the evidence is that contentious procedure in which the interested party can request to ascertain and preserve, as a matter of urgency, the evidence that he intends to use in the trial, if there is a danger that they will disappear or if it would be difficult to administer future.

Anyone who is interested in urgently ascertaining the testimony of a person, the opinion of an expert, the condition of goods, movable or immovable or obtaining the recognition of a document, a fact or a right, if there is a danger that the evidence will disappear or be difficult to administer in the future, he will be able to request, both before and during the trial, the administration of these evidences.

Key words: *securing the evidence, reporting to the court, danger, recorded, administration in the future.*

Jel Clasification: KO,K1

As a rule, the evidence is administered during the judicial debates, that is, after the court has been referred to the trial of the case. However, there are situations when a means of evidence that could be used to solve a case may disappear before the start of the trial or even during the trial, but before the phase of the proposal and administration of the evidence.

In order to prevent such a situation, the law regulated the procedure for securing the evidence.

Securing the evidence is that contentious procedure in which the interested party can request to ascertain and preserve, as a matter of urgency, the evidence that he intends to use in the trial, if there is a danger that they will disappear or if it would be difficult to administer future.

Anyone who is interested in urgently ascertaining the testimony of a person, the opinion of an expert, the condition of goods, movable or immovable or obtaining the recognition of a document, a fact or a right, if there is a danger that the evidence will disappear or be difficult to administer in the future, he will be able to request, both before and during the trial, the administration of these evidences.

If the opposing party gives its consent, the request can be made, even if there is no urgency (art. 359 of the Code of Civil Procedure).

The urgency is not of the essence of securing the evidence, the opposing party may not object to the taking of the evidence.

Even without the existence of a danger, securing the evidence can be done with the consent of the opposing party.

The provision of evidence can be requested in the main way or incidentally, that is, both before and during the trial.

The interested party shall indicate in his request for securing the evidence which are the evidence whose administration he requests, the facts he wants to prove, as well as the reasons that make it necessary to secure them or the agreement of the opposing party.

According to art. 359 of the Code of Civil Procedure, anyone interested in urgently ascertaining the testimony of a person, the opinion of an expert, the condition of goods, movable or immovable property or obtaining the recognition of a document, a fact or a right, if there is a danger in order for the evidence to disappear or be difficult to administer in the future, he will be able to request, both before and during the trial, the administration of these evidences.

If the opposing party agrees, the request can be made, even if there is no urgency.

The law outlines a condition for the admissibility of the request for evidence, namely the condition of urgency.

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The procedure for ensuring the evidence is conditioned by the urgency imposed by the existence of a danger of the evidence disappearing or of making it difficult to administer it in the future.

The urgency determined by this danger is a matter of fact, left to the discretion of the court.

In this sense, there is also Decision no. 173/2007 of the Constitutional Court, which finds that the procedure for ensuring the evidence is a special, emergency procedure, which has a limited purpose, that of preserving some evidence that is in danger of disappear or be difficult to administer in the future.

Anyone interested in urgently ascertaining the testimony of a person, the opinion of an expert, the state of things, movable or immovable, or acquiring the recognition of a document, a fact or a right, may request the administration of these evidences if there is a danger that they disappear or be difficult to administer in the future. Likewise, any person who has an interest in urgently establishing a certain state of facts that could cease or change until the administration of the evidence may ask the court in the district in which the finding is to be made to delegate a bailiff from the same district to ascertain this state of fact on the spot.

Thus, the Court finds that any interested person can resort to this procedure, the fundamental condition of such an approach being the existence of a danger in the administration of the evidence or in the ascertainment of a certain state of facts that could cease or change until the administration of the evidence, without that the criticized provisions contravene the provisions of art. 16 of the Constitution.

The Court also finds that the criticism that the criticized provisions of the law contravene the provisions of art. 21 of the Constitution. The procedure for securing the evidence has a contentious nature, the court having to adopt all measures to ensure the fundamental procedural guarantees. Free access to justice is compatible with the establishment of special procedures, for special situations, and implies the existence of unique procedures for special situations, such as that of securing evidence. Moreover, the evidence administered through the procedure regulated by the Code of Civil Procedure can also be used by the party that did not request their administration, the preservation of the evidence under these conditions does not deprive the interested parties of the right to challenge it with other evidence during the substantive trial.

Also, as a guarantee of the right to defense, the legislator provided, in the event of an emergency finding of a certain state of facts, the obligation to communicate the minutes to the person against whom the finding was made, if he was not present at the investigation.

The Court finds that the author of the exception of unconstitutionality did not indicate the international provisions considered to be violated by the provisions of the Code of Civil Procedure, so this criticism cannot be retained[1].

The urgency will not be evaluated as a condition of admissibility, and the evidence will be administered without further checks if the opposing party gives its consent, it is the party that, in an existing dispute or possible dispute with the author of the request for securing the evidence, could stands on the procedural position opposite to this one, of administering the evidence under the exceptional conditions of this procedure.

The agreement of the other party must be express, the lack of objection or effective opposition of the opposing party, cited in this procedure having no meaning.

The request for the provision of evidence can be formulated both in the main way, that is, when the process requiring the administration of the evidence has not started, but also incidentally, respectively during the process that has already started, a situation in which it has the character of an incidental request.

[1] Decision no.173/2007 of the Constitutional Court

According to art. 360 of the Code of Civil Procedure, the request will be directed, before the trial, to the court in whose district the witness or the object of the finding is located, and during the trial, to the court that hears the trial in the first instance.

The party will show in the application the evidence whose administration it claims, the facts it wants to prove, as well as the reasons that make it necessary to provide them or, as the case may be, the agreement of the opposite party.

The court will order the summoning of the parties and communicate a copy of the application to the opposing party. It is not obliged to file an objection.

The court will resolve the request in the council chamber, by conclusion.

In case of danger in delay, the court, assessing the circumstances, will be able to approve the request without summoning the parties.

From a material point of view, securing the evidence promoted in the main way is always the competence of the court[1].

Thus, if the litigation is in the appeal phase, the stage in which the party promotes a request for proof, the appellate court delegates its powers to the court that judged in the first instance.

From a territorial point of view, when the claim is promoted by the main way, it is tried at the court in the district where the witness or the object of the finding is located, and when it is promoted incidentally, there is a legal extension of the jurisdiction of the court that judges the litigation also over the incidental claim. The extension is also doubled by a delegation if the dispute is at the stage of appeals.

[1] Civil sentence 3933 /212/2015 Constanța Court
Analyzing the conditions of admissibility of the request for securing evidence in relation to the documents submitted by the parties and the factual situation presented by the parties, the court considers the following:
According to art. 359 C. proc. civ. anyone who has an interest in urgently ascertaining the testimony of a person, the opinion of an expert, the condition of assets, movable or immovable, or obtaining the recognition of a document, a fact or a right, if there is a danger that the evidence will disappear or be difficult to administer in the future, will be able to request, both before and during the trial, the administration of these evidences. If the opposing party agrees, the request can be made even if there is no urgency.
The evidence assurance procedure being special, derogating from the principle of immediacy, the court must limit its investigation to the purpose of the request, respectively only to assessing the admissibility of the evidence and to verifying the fulfillment of the requirements prescribed by law for this procedure in a restricted framework.
The legal text regulates two conditions for the admissibility of the procedure of securing the evidence that justifies the derogation from the principle of immediacy provided by art. 16 of the Civil Procedure Code, namely the urgency and possibility of changing the factual situation until the future administration of the evidence or the defendant's agreement to the administration of the evidence.
The defendant's agreement cannot be inferred from his silence or absence, but the willingness to provide evidence must be expressed clearly and not in a subsidiary manner.
Regarding the fact that the defendant in the present case did not expressly agree to the administration of the evidence consisting of the technical expertise by way of securing evidence, it follows that it is necessary for the court to examine the fulfillment of the emergency condition, as well as that of the possibility of change the factual situation of such a nature as to attract a difficulty in the administration of evidence in the future.
Urgency is based on the danger that the object of evidence will disappear even before the start of the trial according to the common law procedure, or even during the trial, but before the phase of the proposal and administration of the evidence, or it will be difficult to administer in the future so that the party no longer be able to prove their claims or defenses and assumes the existence of a constraint for the administration of the evidence at the time of the introduction of the request for securing evidence. Also, the court appreciates that urgency should not be confused with necessity.
In support of the request, the plaintiff submitted documents, as well as photos in illegible format, undated to prove the defects of the property requested to be subject to expert examination without showing the court the possible negative consequences of them that would justify the present request for evidence.
Therefore, the plaintiff neither claimed nor proved the fact that in case of non-administration of this evidence, she would be exposed to imminent damage and that any delay in the administration of the evidence would put the property to be expertized in a state of danger that would lead to its disappearance or would cause a change in the factual situation to the point of the impossibility of proving the possible claims or creating difficulties for the performance of such expertise in a common law procedure.
Therefore, the court finding that the summons request did not invoke or provide any evidence from which the interest and necessity of an urgent technical expertise with the objectives indicated by the plaintiff can emerge, will reject the request for evidence as inadmissible.

The request for securing the evidence must comply with the form and content of the summons request, with certain particularities:

a) the object of the request is the provision of proof, so the party will have to show which is the evidence whose administration it claims and the facts it wants to prove;

b) the reasons that make it necessary to ensure them, i.e. the justification of the emergency situation that justifies the incidence of the procedure or, as the case may be, the agreement of the opposing party.

The request is judged in the council chamber, as a rule with the summoning of the parties, the exceptional situation of not summoning them will be assessed by the court according to the request and the reasons to justify it.

Submission of the objection is not mandatory.

The request is resolved by conclusion, pronounced in a public meeting.

In the case of the admission of the request, the conclusion does not mean the closing of the file, because the measure of admission of the request is followed by the administration of the evidence, which is done in the same file, according to art. 362 NCPC.

With the admission of the request both from the perspective of admissibility and merits, the court will also take all necessary measures for the administration of the evidence, establishing, when necessary, the obligations of the parties in relation to it.

Regime of appeals

According to art. 361 of the Code of Civil Procedure, the decision admitting the insurance claim is enforceable and is not subject to any appeal.

The decision of rejection can be challenged separately only by appeal within 5 days from the pronouncement, if it was given with the summoning of the parties, and from the communication, if it was given without their summoning.

From the point of view of appeals, only the decision rejecting the request for the provision of evidence can be appealed within 5 days from the pronouncement, if it was given with the summons of the parties, and from the communication, if it was given without summoning them.

The decision to admit the request is not subject to any appeal and is enforceable.

Administration of insured evidence

According to art. 362 of the Code of Civil Procedure, the administration of the evidence that must be provided can be done immediately or at the deadline that will be fixed for this purpose.

The administration of the secured evidence is established by a conclusion, which is not subject to any appeal.

After admitting the request for securing the proof and taking all the measures for the administration of the evidence, the court will proceed to its administration, in compliance with all the rules for the administration of evidence, both general and those specifically regulated for each category of evidence.

The file will be finalized by the conclusion that confirms the administration of the evidence.

The decision pronounced under these conditions is not subject to any appeal.

Probative power

According to art. 363 of the Code of Civil Procedure, evidence provided under the conditions provided for in art. 362 will be examined by the court, at the hearing of the trial, under the ratio of their admissibility and conclusiveness. If it finds it necessary, the court will proceed, if possible, to a new administration of the secured evidence.

The secured evidence can also be used by the party that did not request their administration.

The expenses incurred with the administration of the evidence will be taken into account by the court that judges the case on the merits.

Emergency finding of a state of fact

According to art. 364 of the Code of Civil Procedure, at the request of any person who has the interest to ascertain urgently a certain state of facts that could cease or change until the administration of the evidence, the bailiff in whose jurisdiction the ascertainment is to be made will be able to ascertain this state of fact on the spot.

If making the finding requires the participation of the opposing party or another person, the finding can only be made with their consent.

In the absence of agreement, the interested party will be able to ask the court to approve the making of the finding. The court can approve the making of the finding without summoning the person against whom the request is made. The provisions of art. 360-363 apply accordingly.

The record of findings will be communicated in a copy to the person against whom the finding was made, if he was not present, and has the probative power of the authentic document.

According to art. 365 of the Code of Civil Procedure, in case of danger in delay, the provision of evidence and the ascertainment of a state of fact may be done on non-working days and even outside legal hours, but only with the express approval of the court.

Completing or redoing some tests

According to art. 391 of the Code of Civil Procedure, the court can proceed to complete or restore some evidence, if, from the debates, the necessity of this measure results.

SOME CONSIDERATIONS ON THE GENERAL GROUNDS FOR NON-PUNISHMENT IN THE ROMANIAN CRIMINAL CODE

Raluca-Viorica, Lixandru[1]

Abstract

Attempt is the form of crime in the execution phase which is between the beginning of the execution of the action which constitutes the material element of the objective side and the production of the socially dangerous result.

It is an imperfect form of the act (because it was not completed by consummation), reflecting a mismatch between the subjective side (the intention to commit a consummated act) and the objective side, that is, what was actually accomplished.

Key words: attempt, causes of non-punishment, punishment.

JEL classification: *K 14*

Objectively speaking, the attempt appears as an act of execution, which is followed by an immediate consequence in the objective reality, and from a subjective point of view, the attempt contains the same psychological elements as the completed offence, but the difference from it (typical offence) consists in the occurrence of certain causes (circumstances) that no longer lead to the result desired by the perpetrator.

The legal definition of the attempt is contained in article 32 paragraph (1) of the Criminal Code: "*Attempt consists in the execution of the intention to commit the crime, which execution has been interrupted or has not produced its effect*."

The conditions of the attempt result from its legal definition, namely:

a) the existence of intent to commit a crime, a subjective condition. The decision to commit the offence is manifested only by intention, (which may be direct or indirect), and is excluded in the case of guilt and in the case of praeterintention.

In practice (C.S.J., Criminal Division, Decision No. 1946 of September 12, 1996, in the Repertory), it was decided that hitting a person in the head with an axe handle, resulting in a skull fracture with loss of bone substance and permanent physical infirmity and disability, characterizes attempted murder, there being intent to kill, and not the offence of grievous bodily injury, which excludes such intent. The court also held that the participation of several people in the brawl and the striking of the victim with a chain on that occasion, which caused the victim to suffer a cranial puncture and danger to life, reflected the perpetrator's intent to kill. Such an act constitutes, therefore, an attempt to commit the crime of murder, and not the crime of affray (C.S.J., Criminal Division, Decision No. 504 of February 9, 2000, in the Case Law Bulletin of the C.S.J. for 2000).

Likewise, the act of striking a person, with force, in the neck region, using a piece of broken glass, with the consequence of causing serious, life-threatening injuries, constitutes an attempt to commit the crime of murder, and not the crime of grievous bodily harm (C.S.J., Criminal Division, Decision No. 1710 of June 11, 1995, in the Repertory).

Enclosing a piece of land with a non-insulated electric cable, placed under a voltage of 220 V and touching the cable by a person who was electrocuted and suffered serious injuries, healed after medical intervention, constitutes attempted murder with indirect intent. The defendant's failure to stop the car in front of a roadblock organized by the police and forcing the vehicle to pass, resulting in serious injury of to a police officer, constitutes an attempt to commit the offence of aggravated murder (aggravated murder under the current Criminal Code) and not bodily harm (C.S.J., Criminal Division, Decision No. 3037 of November 24, 1998, in the Bulletin of the Jurisprudence of the Supreme Court for 1998). In the same sense,

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the head-on collision with a policeman who signals a car stop, after increasing its speed, despite the warning of a witness in the car, but with the consequence of serious brain trauma, constitutes an attempt to commit murder.

b) the criminal intent to commit the offence - is an objective condition and consists in committing one or more acts of the material element of the objective side of the offence.

The distinction between preparatory acts and enforcement acts has generated numerous disputes in criminal doctrine, and some criteria have been put forward to resolve this issue:

- *subjective criteria* – on the basis of which the objective activity of the perpetrator is considered to be an act of execution if it reveals the intention to commit the crime (opening a cash box with a key reveals the intention to appropriate the goods inside, whereas procuring a key print is only a preparatory act);

- *objective criteria* – on the basis of which a certain activity is considered to be an act of execution, depending on its position in the dynamic process of committing the offence, when it is directly oriented and capable of producing the illicit result without any further activity. For example, pointing an axe at a person's head is considered an act of execution, whereas procuring this object is a preparatory act.

- *formal criteria* – on the basis of which the court considers a certain activity to be a preparatory or enforcement act depending on how it performs the act of conduct prohibited by law. For example, a person who approaches with tools capable of opening a car performs a preparatory act, since he/she has not appropriated the asset, as required by the *verbum regens* of the offence of theft (Article 228 of the Criminal Code: "*Taking movable property from the possession or custody of another, without his/her consent, with the aim of wrongfully appropriating it*").

We believe that in order to solve the problem of the distinction between preparatory acts and enforcement acts, all three criteria mentioned above (Vintilă Dongoroz, 1939) should be taken into account, and a *mixed*, cumulative *criterion* should be considered. Thus, both acts which are part of the act of conduct prohibited by law (*verbum regens*), and acts which are objectively (unequivocally) linked to the material object of the offence will be regarded as acts of execution, without any further activity being necessary to achieve the dangerous result.

c) The execution is interrupted or fails to produce a result. This condition distinguishes the attempt from the completed offence, due to circumstances beyond the control of the offender or within his/her control:

- in case of interrupted (imperfect) attempt - interruption of execution and non-production of the result

- in the case of a completed (perfect) attempt – the execution is completed, but the result is not produced.

Attempt will only be punishable if the offence it refers to is not one of those for which attempt is impossible.

The impossibility of attempt may derive from the specificity of the material element, from the specificity of the subjective element, the will of the legislator or the nature of the offence.

Thus, ***the attempt is not possible***:

- ***Due to the specificity of the objective element***, they are not susceptible to attempt:

a) *omissive offences* – if the person has a legal obligation to act and remains in passivity, the offence is consummated by the subject's abstention, by his/her inaction;

b) *habitual offences* – these offences require the repetition of the act a sufficient number of times, resulting in the unlawful conduct, and the repetition of the act makes it impossible to attempt.

c) *crimes with prompt execution* – which exclude the attempt due to the lack of succession in time of the acts of execution (for example, the crime of threat - Article 206 of the Criminal Code)

- ***Due to the specificity of the subjective element***, they are not susceptible to attempt:

a) *intentional offenses* - because attempt presupposes the existence of an intention to commit a crime. In the case of foreseeable guilt, the result occurs because the person wrongly assumed that it was impossible to produce the result, and in the case of simple guilt, the individual did not even have in mind the representation of a certain result;

b) *pre-intentional offences* – exclude attempt because the more serious result was caused by the fault of the offender, who initially did not want the aggravated result. For example, in the case of blows or injuries causing death - Article 195, which refers to Article 193 and Article 194 of the Criminal Code – the offender initially inflicted blows or other violence on the victim (Article 193), but the result of his/her act became more serious, which requires a new legal classification of the act as bodily injury (Article 194), and if the victim is ultimately killed, the offender will be liable for blows causing death (Article 195 Criminal Code);

c) crimes committed spontaneously exclude by their nature the idea of attempt.

- ***Due to the will of the legislator or the nature of the offence***, attempts are not possible in the case of *offences of attempt* - we are referring to the attempt to endanger national security (Article 401) and the attempt against a community (Article 402 of the Criminal Code), offences for which, by the will of the legislator, the mere attempt to commit these acts is assimilated to the consummated form of the offence.

The grounds for not punishing the attempt are desertion and prevention of the result.

According to Article 34 of the Criminal Code *"(1) The perpetrator shall not be punished if, before the crime was discovered, he/she desisted from committing it or notified the authorities of its commission in such a way that its commission could be prevented, or if he himself/she herself prevented the commission of the crime.*

(2) If the acts performed until the moment of desistance or prevention of the result constituting another crime, the penalty for that offence shall apply."

A. Desistance is the attitude of the offender to voluntarily give up execution begun, even though there was a real possibility of continuing it and the offender was aware of it. Compared with the previous rules, the current Criminal Code states that the withdrawal must take place before the discovery of the offence.

Desistance implies a voluntary abandonment of the execution of the offence, not a renunciation imposed by certain external circumstances. Desistance also implies that the offender is in the act of carrying out the offence, and cannot intervene when the execution has been completed – without producing a result – or after the offence has been completed. Desistance can only occur in the case of interrupted attempts (Costel Niculeanu, 2001).

For the perpetrator to benefit from the provisions of Article 34 of the Criminal Code, it is necessary:

- there is a ***commencement of execution*** of the act;

- the execution of the offence is interrupted ***before the material element*** of the objective side of the offence ***is achieved***;

- the interruption must be ***the expression of the free will of the perpetrator***, the reasons for the renunciation are irrelevant, the important thing is that it be irrevocable.

In practice, it has been ruled that there is no desistance if the defendant abandoned the victim, after repeated attempts to kill him/her, following his/her cries for help (Supreme Court, Criminal Division, Decision No. 1407/1978).

In the same sense, it has been decided that there is no desistance when the defendant hits the victim with a bat on the head with the intention of killing him/her and does not repeat the blow, although he/she would have had this possibility, because the perpetrator's action was finished (Supreme Court, Criminal Section, Decision No. 1407/1978).

Desistance also exists when the perpetrator breaks into the house to steal the money he/she finds on the table and although he/she has the opportunity to take it, he/she gives up and leaves the house of his/her own accord. Desistance exists when, in order to neutralise the victim and commit the theft, the perpetrator obtains toxic substances, enters the home and

gives up the theft on his/her own initiative. In this situation there is desistance for theft, but the perpetrator is liable for possession of toxic substances and for housebreaking (Supreme Court, criminal decree no. 2950/1970, R.R.D. no. 3/1971, p. 133).

B. Preventing the result from occurring consists in the perpetrator's wilful frustration of the result of his/her act after it has been fully achieved.

For the perpetrator to benefit from the provisions of Article 34 of the Criminal Code, the following conditions must be met:

- the perpetrator has fully performed ***the action***;
- the perpetrator, after the act has been committed, ***to prevent the result fro occurring***;
- the prevention of the result is done by the perpetrator ***voluntarily***;
- preventing the result from occurring before the ***discovery of the fact***;

Preventing the result is only possible in *material offences*, which presuppose a certain result, *not in formal offences,* where the state of danger occurs when the offence is committed.

In doctrine (Costel Niculeanu, 2001) it has been considered that preventing the result should not be confused with the act by which the perpetrator tries to repair the damage already caused, for example transporting the victim to the hospital.

C. Effects of desistance and prevention of the result

Desistance and prevention of the result are *causes of non-punishment, of impunity, and determine, if they occur, the non-punishment of the offender* even for the attempt to commit the crime in which he/she started the execution or prevented the result.

The effects of desistance and prevention of the result are highlighted in the terminology of Article 34 paragraph (1) of the Criminal Code, which states that: *"The perpetrator shall not be punished if, before the discovery of the offence, he/she desisted or notified the authorities of the commission of the offence in such a way that the consummation of the offence could be prevented or if he himself/she herself prevented the consummation of the offence."*

According to Article 34 paragraph (2) of the Criminal Code, "if the acts performed up to the moment of desistance or prevention of the result constitutes another offence, the penalty for that offence shall be applied."

With regard to the effects of the non-punishment causes, it should be emphasized that the attempt is not removed, it continues to exist, but the perpetrator will not be punished for it.

Impunity arising from the waiver or prevention of the result is not absolute; however, it does not remove the possibility of being held liable for everything that was committed before the cause of non-punishment.

In practice, it has been decided that there is desistance when the perpetrator, after having broken into a dwelling and removed several goods from the cupboard, has left the dwelling on his/her own initiative, without taking any of them; in this case, however, he/she will be liable for the acts carried out up to the moment of desistance (Supreme Court, Criminal Division, Decision No. 2950/1970, in the Collection of Decisions 1970).

Conclusions

There are the following similarities and differences between the two grounds for non-punishment:

- The existence of a commencement of enforcement and full enforcement of the action, in the event that the result is prevented;
- Interruption of execution and prevention of the result - non-consummation of the offence;
- Both grounds for non-punishment must be the expression of the free will of the offender;
- Desistance and prevention of the result must take place before the discovery of the act by the prosecuting authorities or by any person;
- The effect of desisting or preventing the result is that the offender in this situation is not punished;

- Both are personal circumstances, benefiting only the perpetrator or perpetrators who have desisted or prevented the result from occurring.

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REVISITING MODERN WRITERS IN THE DIGITAL ERA

Georgiana Mîndreci[1]

Abstract

The richness and the depth of digital resources nowadays is not only unimaginably (if compared to, let's say, merely fifty years back into the past) and utterly dependable on, but also highly misleading if not carefully verified and double-checked against all already known and accepted references among critics. But once this step is cautiously and academically dealt with and checked on any researcher's list, the digital abundance of information can open (virtual) door after (virtual) door, can hasten the research process dramatically and lead to new discoveries and paths. This article tries to identify how the digital era can help find new meanings and connections between a modern writer's life and his literary career by taking the example of a very influential 20th century American writer: J. D. Salinger.

Keywords: *Digital era; literary connections; literary career; J. D. Salinger; digital resources.*

JEL Classification: *KO*

Introduction

Jerome David Salinger is still one of the most debated writers, not only within academic circles, but also in any other art-related fields, especially the film industry. A mere "Google search" will end up with hundreds of different references, all different and distinct from one another. There have been films, songs, interviews books, articles, reviews made and written with and about Salinger and/or his characters.

Salinger's childhood has never been publicly discussed and almost all his biographers agree on the fact that he was more a recluse and some of them even consider that his popularity is due more to the controversy created around his name than to his writing talent. But in spite of all this we now know that is one of the most important American writers of the 20th century.

Sources and Literary Career Development

Concerning Salinger's education we can say that he attended schools on Manhattan's upper west side, where he had satisfactory results, except in arithmetic. He probably spent many summers in upstate or New England camps. When he was eleven, in the summer of 1930, he was voted "the most popular actor" at Camp Wigwam, Harrison, Maine – hence the cinematic atmosphere in all his works.

Concerned about his studies, his parents enrolled him in Manhattan's highly rated McBurney School, an expensive but none too chic establishment, when he was thirteen, in 1932. McBurney had links with YMCA and it was Jerry's last school. During the same year the family moved to Park Avenue. At the enrollment interview he said he was interested in dramatics and tropical fish. But he flunked out a year later. A friend who knew him then recalled that "he wanted to do unconventional things. For hours, no one in the family knew where he was or what he was doing; he just showed up for meals. He was a nice boy, but he was the kind of kid who, if you wanted to have a card game, wouldn't join in."(Grunwald, 1962: 11-from *New York Times*, June 2 and 7, 1941).

At McBurney, Salinger's performance was well below the average, his most dismal grades were in Latin and geometry and he spent the summer of 1934 at Manhasset School, trying to make up in these subjects. His English and journalism marks were also poor (in the first year at McBurney he was rated seventh in a class of twelve). Here he was also

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nicknamed Sonny by his colleagues, perhaps with a hint of sarcasm. The only school activities that attracted him at this school were in the fields of journalism and dramatics.

All these facts easily available nowadays, at just "a click distance," obviously point out to an array of similarities between the author and his most outstanding literary creation in terms of characters: Holden Caulfield. Like Holden, he became the manager of the school fencing team, but he also was the heading of the Dramatic Art. Jerome Salinger also was a reporter on the *McBurneian*, and he acted in two school plays, taking a female part in each, and winning rave reviews. His passion for acting actually started very early: at the tender age of seven, Jerome was the best actor at a summer camp in Maine. The final report from this school described him as "very good in dramatics" and - more surprising - "good in public speaking." He was not very much interested in or involved with sports, but he liked Ping-Pong and soccer (but he also suffered a lot of accidents: a broken leg, a broken ankle and a broken arm).

It is often said that Jerome Salinger started writing at the age of fifteen, which is to say during his first year at Valley Forge Military Academy, which might also be a model for Pencey Prep in *The Catcher in the Rye* – yet another important similarity pointed out by the numerous digital and traditional bibliographical resources. The academy is not very far from New York; it is near Wayne, a small town in Pennsylvania. It seems that the decision to send Jerome Salinger to Valley Forge was taken in haste, because Sol's letter of enrollment is dated September 20 and the school's academic year was due to start on September 22. Salinger spent two years at this school, graduating in June 1936.

J. D. Salinger was not a recluse at Valley Forge; he belonged to a lot of clubs, like, for example: the Glee Club, the Aviation Club, the French Club, the Non-Commissioned Officers' Club, and Mask and Spur (a dramatic organization). During his senior year, he also served as literary editor of *Crossed Sabres* - the academic yearbook In 1935 Salinger was nicknamed in this school magazine "Salinger the Sublime". On the final page of the 1936 yearbook, Jerome D. Salinger excels himself in a rhetorical vein and his contribution is offered as a class song for the boys of '36 (Crossed *Sabres, 1936:138)*:

Hide not thy tears on this last day
Your sorrow has no shame:
To march no more midst lines of gray,
No longer play the game.
Four years have passed in joyful ways
Wouldst stay these old times dear?
Then cherish now these fleeting days
The few while you are here.

The last parade, our hearts sink low:
Before us we survey—
Cadets to be, where we are now
And soon will come their day.
Though distant now, yet not so far,
Their years are but a few.
Aye, soon they'll know why misty are
Our eyes at last review.

The lights are dimmed, the bugle sounds
The notes we'll ne'er forget.
And now a group of smiling lads:
We part with much regret.

Goodbyes are said, we march ahead
Success we go to find.
Our forms are gone from Valley Forge
Our hearts are left behind.

To this day, Salinger's class song is enshrined in the Valley Forge school hymnbook, along with works by Martin Luther and John Wesley, and is still sung at graduation ceremonies.

Salinger was enrolled as a boy soldier, but he has said that he hated life at military school. Nevertheless, the evidence is contradictory. His career at Valley Forge is marked by a curiously companionable struggle between eager conformism and sardonic detachment. Some of his co-students remember the sardonic side of the writer: he used to talk in a pretentious manner ("as if he were reciting something from Shakespeare"), he had sardonic wit and humor, and sometimes he was cynical, moody and a bit of an outsider. He knew he was more gifted about writing than the rest of his colleagues, he also was very sophisticated. In his conversations he often used sarcasm when talking about the others and the routines they had to obey and follow in school. He did not want to become a cadet; he enjoyed breaking the rules. Somebody else remembers that "he loved conversation. He was given to mimicry. He liked people, but he couldn't stand stuffed shirts. Jerry was aware that he was miscast in the military role. He was all legs and angels, very slender, with a shock of black hair combed backwards. His uniform was always rumpled in the wrong places. He never fit it. He always stuck out like a sore thumb in a long line of cadets. " (Hamilton, 1988: 23)

During the years at the military academy, Salinger met a lot of people, cadets or colonels, who, later on, might have been models for some characters (like Ackley, Stradlater, Marsala, etc.) in the novel *The Catcher in the Rye* and not only. For example, there was a cadet who did fall to his death from a window in one of the dormitories, like James Castle in *The Catcher*.

It was at Valley Forge that Salinger first began to think of himself as a writer, and not just as a writer for the school yearbook. At nights, he said, holding a flashlight under the bedcovers, he wrote stories. But these stories are now lost because none of them was published.

At the age of seventeen, Salinger left Valley Forge and, in June 1936, respecting his parents' wish, he applied for admission to New York University. His grades were adequate for college entry, and so he was accepted for the fall semester. He left after a single year, leaving no trace of ever having been there. But secretly, he had made up his mind; he was going to be a writer, a professional. But this, being a professional, meant making a living by the sale of words, and also constant productivity. In the mid 1930's the market of short stories was healthier than many other sectors of the American economy. At the time there were some very famous magazines, which played a very important part in Salinger's literary career. A magazine like *Esquire*, for instance, had won itself an audience and some prestige by publishing Hemingway's *The Snows of Kilimanjaro* and Fitzgerald's *The Crack Up*. Thus, magazines like *The New Yorker* and *Esquire* were, for Salinger in 1936, the quintessence of high sophistication.

In the relationship between Salinger and his father there was a tension. Sol Salinger did not want his son to be a writer or an actor; he wanted him to join the family tradition, but this would prove to never be the case.

Salinger decided to get out of New York and he went to Cape Cod and Canada. The only job Salinger had held on to was his *Kungsholm* jaunt of 1937. Back in New York in September, he started work on an autobiographical novel and some other short stories. Although J. D. Salinger was now pouring out the stories at a hectic rate, the breakthrough came in the summer of 1941; *Collier* printed the short piece *The Hang of It* as "A Short Story Complete on This Page." In March 1941, Lend-Lease began, and in April the first U.S. "shot in anger" was fired at attacking German submarines. America could soon be at war. At the

beginning of July, it had been announced that U.S. Army troop strength had reached 1.4 million eight times larger than it had been a year earlier. So Salinger probably wrote *The Hang of It* in May 1941, aiming at a new audience: the apprehensive young recruit. It was J. D.'s first major magazine appearance, but it also marked the loss of his literary innocence.

In the same year, 1941, he finally broke into the pages of *Esquire* with a good-humored parody, of the same sort of story with which he had contributed to *Collier*'s, this one being called *The Heart of a Broken Story*. The narrator tells us a story for the slicks, a "boy-meets-girl" story, as the writer characterizes it. But, of course, in this story the boy does not meet the girl, except in his imagination.

At the age of twenty-two, Salinger was still living with his parents, in their apartment on Park Avenue. At this particular time he was not very happy; he wanted more money, he craved respectability and he was thinking of the boy hero Holden Caulfield as a portrait of himself when young.

Further on, we find out about some letters in Texas, addressed to Elizabeth Murray. Her name was found in a biography of Eugene O'Neill. In the fall of 1941, Salinger had been dating O'Niell's daughter, Oona. Someone called Elizabeth Murray had introduced him to her. According to the biography, the romance had always been fairly uneasy, and Salinger had all along had serious reservations about Oona's personality. During the period when he first began dating Oona O'Neill, Salinger was restless and irritable. He was not able to settle at Park Avenue. He took off to the country for a while, or he rented himself a room in the city for a couple of weeks, but not really using it.

On December7, 1941, the Japanese bombed Pearl Harbor, and Salinger was surprised by his own feelings of patriotic outrage. Earlier in the same year, he had volunteered for the draft but he had been rejected. He was told he had a mild heart complaint. But as the war was declared, he wanted to make a contribution. So he even wrote to Milton S. Baker at Valley Forge, asking if the colonel could recommend a defense job for him. Four months later, though, the volunteer was reclassified and drafted for service in the army. On April 27, 1942, he reported to Fort Dix and from there he was transferred to Fort Monmouth in New Jersey for a ten-week instructor's course with the Signal Corps. His writing hadn't been very good lately, so the break was quite welcomed and well timed. In June 1942, Salinger decided he would make a try for Officer Candidate School, and he wrote off for references to Colonel Baker at Valley Forge and to Whit Burnett. Nothing seems to have come from this first application. In July, most of Salinger's Signal Corps class transferred to Signal OCS. He himself was given an instructor's job with the Army Aviation Cadets and posted South to the U.S. Army Air Force Basic Flying School at Bainbridge, Georgia. Salinger, as a military school graduate, was annoyed he had not been granted a commission. In 1943 he tried again. He had been posted by then to a cadet classification squadron at a base near Nashville, Tennessee.

In September-October, 1942, he published in *Story*, *The Long Debut of Lois Taggett* set in a New York "society" world that Salinger himself had known between the time he left school and he entered the army.

Coming back to Salinger's sentimental life, we can say that during his early twenties, he had plenty of girlfriends. For him there were two kinds of girls: those he despised immediately and those he fell in love with and afterward semidespised. When Carole Marcus (a friend of Oona O'Neill) got married to William Saroyan, Salinger saw it as a sign and he started to woo Oona by mail. Now she seemed more urgently desirable than when he had actually been with her in New York. But some time later, Oona married the fifty-four-year-old Charles Chaplin. At first Salinger pretended indifferent, but then he made no effort to disguise his sense of physical revulsion.

In 1943, Salinger believed he had "hit the jackpot" when the *Saturday Evening Post* bought a story called *The Varioni Brothers*. But nothing came of this. The book is a parable on evils of commercialism.

In the autumn of 1943, the FBI paid a visit to McBurney School to check on Salinger's school background. This time his application was successful, he was vetted for admission to the Counter Intelligence Corps. Thus in October 1943, Salinger was demoted from acting stuff sergeant back to corporal and was transferred to Fort Holabird in Maryland to be trained as a special agent. Between December 1943 and May 1944 about eight hundred American special agents were shipped to England to be trained there in "theatre intelligence duties" before being assigned to specific fighting units. Salinger's posting came through in January 1943. Not long after his departure for Europe, Salinger sent three stories to the *Saturday Evening Post* and the magazine accepted all three. They also paid two thousand dollars per story and it seemed the big score Salinger had been dreaming of. One of the stories deserves much more attention and it is called *Last Day of the Last Furlough*. The hero of the story is called John F. Gladwaller, and his army number is 32325200, and this was Salinger's own army number. The message is clear: those close to him (close enough to recognize his number) should attend to this story with special care. The story appeared in July 1944, a month after Salinger was known to have gone into combat.

In the same year, 1944, Salinger also published in *Story* magazine the story *Once a Week Won't Kill You*.

By March 1944, Salinger was stationed at the headquarters of the Fourth Infantry Division at Tiverton, in Devon, the setting for the first section of his famous postwar story *For Esmé- with Love and Squalor*.

From Salinger's letters we could learn that during the pre-D-Day buildup he was writing hard and had actually completed six chapters of the Holden Caulfield novel. In England, he was made to feel like an American, an American soldier at whom the Devon locals were usually staring.

Between June and August the 12th Infantry Regiment moved from Cherbourg down to Paris. But on August 25, when the regiment entered Paris, Salinger had heard the biggest news since D-Day: Paris was free. He was only in Paris for a few days but, of course, he did not allow all the excitement to distract him from his literary objectives. Salinger had heard that Ernest Hemingway was in town, holding Liberation day court at the Ritz Hotel and he decided to pay him a visit. So, they met and it had been a cozy visit, with Hemingway admitting that he had read Salinger's stories in *Esquire* and that he had liked them, he thought that Salinger had a lot of talent. Nevertheless, there is in print a story that on some later occasion Hemingway visited Salinger's unit (as a war correspondent), but Salinger became disgusted when Hemingway shot the head off a chicken to demonstrate the merits of a German Luger. Of course, there is no evidence to demonstrate the authenticity of the story; but we do learn from Salinger's letters that he had little patience for Hemingway's macho posturing. Salinger's war heroes rarely have a taste for war.

The war went on. There were various battles but one was the toughest and the bloodiest -the one at Hürtgen Forest, about which Salinger wrote an elegy called *The Stranger*.

Salinger, after a short hospitalization, finally got his discharge from the army in November1945. But in between another odd thing happened. He got married. His bride was a French girl he could hardly have known for more than a few weeks. Her name was Sylvia, and, according to Salinger's army friends, she was a doctor, probably a psychologist or an osteopath. They got married in September 1945 and then moved and lived in Germany. It seems that the marriage lasted eight months. Salinger did take Sylvia back to the States, but "she couldn't separate herself from her European ties," as a friend has explained. She went

back to France and she got a divorce. Salinger announced the end of the marriage from a hotel in Florida. This setting is similar to that in *A Perfect Day for Bananafish***.**

For the next two years, 1945 to 1947, Salinger did not publish too much, but he continued publishing short stories and also the first published stories to include material about Holden Caulfield.

Ironically, it was in these troubled years that Salinger at last made his debut in *The New Yorker* with *A Slight Rebellion off Madison*, on December 21, 1946.

In 1949, Salinger had his first and last experience of teaching. He agreed to spend a day at Sarah Lawrence College, addressing a short story writing class. He said he liked the class but it was not something he would ever want to do again. He had to label the writers he respected, and afterwards he said the names he should have said at the college: Kafka, Flaubert, Tolstoi, Chekov, Dostoevsky, Proust, O'Casey, Rilke, Lorca, Keats, Rimbaud, Burns, E. Brontë, H. James, Blake, Coleridge. Only one American was mentioned, but Salinger did not want to name any living writers.

On July 16, 1951, the product of ten years' labor, *The Catcher in the Rye***,** was published. The book was not an immediate success, but after two years it was in the top of postwar fiction. In the same year Salinger also published in the *New Yorker* the story *Pretty Mouth and Green My Eyes.* During the period after *The Catcher*, Salinger planed a trip to Florida and Mexico, he fell in love unsatisfactorily, he used to go to parties and then wished that he hadn't.

Up until 1952, Salinger aimed to belong to an order based on talent and on the disciplines of art; but after 1952, he spoke of "talent" as if it were the same thing as "enlightenment". The author Leila Hadley met him first in 1951 and then after two years, after she got married, and she remembers Salinger was a great friend of Sid Perelman, but he was not easy to be with. She had read some of his work at the time and she had liked it very much, but she also remembers that he hated clichés and he liked contradicting people. "But he did have this extraordinary presence-very tall, with a sort of darkness surrounding him. His face was like an El Greco. It wasn't a sexual power; it was a mental power. You felt he had the power to imprison someone mentally […]," she said. (Hamilton, 1988:127) She also recalls that Salinger had written her a list of ten books on Zen art—an old interest in J.D. Salinger's philosophy of life.

In March 1952, he finally set off on his trip to Florida and Mexico. We do not have too much data about this trip, but we do know that on his return he urged Hamish Hamilton to consider publishing a British edition of *The Gospels of Sri Ramakrishna*. He even sent a copy of the book to the editor. The book is more than a thousand pages and is a kind of a single volume study course in world religions or of the Hindu mystic way. Ramakrishna believed that no religion, no quest for God or Allah could be thought of as "untrue," and he had offered hospitality to Christian, Muslim, and Buddhist teachings in the course of his own search of enlightenment. The book was first published in America in 1942 and that is also period around which Salinger became interested in Zen art and philosophy. There have been found many connections between Zen art and Salinger's works, especially in *The Catcher in the Rye* and in *Nine Stories.*

Few people have seen Salinger during a decade; but his reputation and the excitement about his work continue to grow. His fiction has been translated into Italian, French, German, Dutch, Swedish, Norwegian, Danish, Japanese, Hebrew, Serbo-Croatian, Czech, Finnish, and other languages.

A son, Matthew, was born February 13, 1960, but the marriage lasted only until 1967, when his wife obtained a divorce in Newport, New Hampshire. The children continued to see Salinger. In fact, his daughter Margaret Ann continued to avoid publicity as completely as her mother does, but his son did not do the same thing. He followed the very path that once

tempted J. D. Salinger himself. While an undergraduate at Columbia University, Matthew took three acting classes and one singing lesson a week at the Lee Strasberg Institute. This training resulted in some appearances in off-Broadway theatres and led to his starring in *Deadly Deception,* a movie made for television. Salinger's daughter, later on, wrote a very original biography about her father, called *Dream Catcher: A Memoir* – one of the best books, but also the most critical.

The excitement over Salinger reached what may be called his apogee in September 1961, when the already much-discussed *Franny* and *Zooey* were published in a book with a few witty and misleading remarks by Salinger on the dust-jacket instead of an announced introduction of a thousand words. The book almost immediately shot into the first place on the *New York Times Book Review*'s list of best sellers and remained there for six months. Even though Salinger refused to permit book clubs to circulate the work, it sold more than 125,000 copies within two weeks after the publication. Dissatisfied with his previous publisher, who allowed a volume of Salinger's short stories to be published in a paperback volume with a lurid cover; Salinger finally sold the rights to William Heinemann for an advance of four thousand pounds, although another publisher had offered him ten thousand.

While translations of *Franny and Zooey* were prepared, Salinger continued to lead a life much like that Holden Caulfield dreamed of when he said that he would pretend to be a deaf-mute and hide his children.

The publication in a single volume in January 1963 of *Rise High the Roof Beam, Carpenters and Seymour: An Introduction* marked a collection of his most recent work, which was apparently all he wished collected.

Salinger's last published story had appeared in *The New Yorker*, 19 June 1965, before the breakup of his family: *Hapworth 16, 1924*.

In 1978, Salinger had the fourth largest private land holdings in Cornish, assessed at $216,350. His desire for privacy was respected, especially by his neighbors.

In 1974, appeared an unauthorized edition, published in two volumes, apparently in Berkeley, California, by still-unidentified persons, under the title *Complete Uncollected Short Stories of J. D. Salinger*. So, Salinger denounced violation of his privacy, in his first public statement in years, to Lacey Fosburgh, the San Francisco correspondent for the *New York Times*.

Later, in 1986, the suit against San Francisco booksellers over the private collection of short stories settled in Salinger's favor. But, similarly, when the British writer Ian Hamilton (as we have already mentioned in the beginning of this chapter) wanted to publish in August 1986 an unauthorized biography of Salinger, based in part on previously unpublished materials, Salinger again through an agent objected and obtained a restraining order. The temporary order became a permanent injunction when, in November 1987, the U. S. Supreme Court refused to review the verdicts of two lower federal appeals courts that had upheld Salinger's position. The American and British publishers, however, announced the publication of a completely reviewed book under the title *In Search of J. D. Salinger* in 1988.

Conclusions

J. D. Salinger was not a total recluse. For example, he came at a testimonial dinner for the retirement of John L. Keenan, with whom he served World War II.

He appears to be in total control of his affaires; he simply does not want to be bothered. He has earned the right to mind his own business, and he insists also that others mind theirs. But the others do not always do so, and thus Salinger cannot always escape the publicity he shunts. Kevin Sims's documentary, *The Man Who Shot John Lennon*, telecast on British ITV, 2 February 1988, and on 9 February on the American PBS "Frontline" program, dramatized the way in which a misreading of *The Catcher in the Rye* influenced the slaying of the former member of "The Beatles" by Mark David Chapman, who had totally identified himself with

Holden Caulfield. It is thus obvious that the richness of the resources, especially the digital ones facilitate indeed the connections and hasten the research process dramatically, leading to new discoveries and paths, as long as they are reliable.

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CAN (RE-)TRANSLATION HELP GAIN NEW INSIGHTS ON A TEXT ?

Georgiana Mîndreci[1]

Abstract

Translation has long been the object of research for numerous researchers, critics, theoreticians, academics and, of course, translators themselves. The numerous theories, trends, lines and schools of research do not represent the topic of this short paper, but the very act of translating, and that of re-translating a text. What are the gains of doing such work? Can it be applied to literary texts only or is there a wider range when it comes to re-translating a text? Upon little reflection of these questions, a natural answer would be that if the translation is well done, what use would there be for another one? Yet, upon more careful and detailed reflection, furthermore, upon analyzing and comparing such cases, the answer changes dramatically. Thus, this article tries to identify how the (re-)translation of a text can bring back to life overlooked meanings, details, connections, interpretations and, most importantly, new insights on a text and even on the author.

Keywords: *Translation; (re-)translation; new meanings; new insights; text analysis.*

JEL Classification: *KO.*

Introduction

This article aims to present the way in which translation and, by extension, re-translation, can play a vital role in and influence the literary system of a country. Such cases are not frequent and that is why it is all the more important to emphasize the role played by a novel or a text, in this particular case, J. D. Salinger's novel in this norm-breaking aspect of translation. I believe that such a courageous attempt would not have been possible without such a demanding text as Salinger's *The Catcher in the Rye*. It is also true that there are not too many languages which function or which have the same system as the Finnish one, and this means that without the two above-mentioned components such a revolutionary norm-breaking and norm-changing aspect of translation would not have been possible. This also represents the reason for choosing the Finnish translation as the basis for this brief research given that it is neither my mother tongue, nor do I speak it. Nevertheless, due to the studies published and the research on this topic, it is possible to reach a conclusion in the light of the above-mentioned.

Text and Translation Analysis

Laura Routti in her paper entitled "Norms and Storms: Pentti Saarikoski's Translation of J. D. Salinger's *The Catcher in the Rye*" discusses the relationship between translation and norms through a case study focusing on Pentti Saarikoski's Finnish translation of J. D. Salinger's novel. The most important point made by her study is that, in an attempt to render the stylistic qualities of Salinger's novel in his translation, Saarikoski was compelled to violate the norms regulating the use of language in the target literature of the time. Following the initial "shock" in the target culture, *Sieppari Ruispellossa* is, however, seen to have gained an influential, norm-initiating role in the evolution of the Finnish literary system as a translation through which the use of slang was introduced to it as a new, alternative means of expression.

In culture-related aspects of translation the concept of norms is a frequent subject of discussion. Many critics believe, and I share this point of view, that the cultural specificity of norms makes translating such a highly challenging activity. Norms are, in the majority of cases, not universal but particular, and that is the main reason why a translator has to maintaining a position of mediator between two cultures. This means that a translator is also

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frequently faced with a situation in which (s)he has to choose whether to conform to the norms prevailing in the source culture (SC) or to those prevailing in the target culture (TC) in order to avoid a clash between the two. The first Romanian translation of Salinger's novel seems to fit the first pattern described by Laura Routti and the explanation may be represented by the culture-related and historical background of the period of the translation.

The relationship between norms and translation is a twofold one since norms influence translators, but translators in their turn can influence norms. As mediators between cultures, translators are in a position to change norms of the TC through their translations and, in this way, to contribute to the development of the literary system of the target language. There are, as Laura Routti stated, cases in which a translation conforming to the SC norms is altogether rejected as norm-violating by recipients in the TC, but in other cases such translations may, in fact, gain a position as exemplary literary models which authors in the target literature are willing to follow. Regarding translation as an activity characterized, at least in theory, by a double obligation, namely faithfulness to the ST on the one hand, and loyalty to the norms prevailing in the TC on the other hand, the aim in her paper was to shed light on the context, and on the specific constraints in that context, in which Saarikoski's translation was produced, as well as on the impact it came to have in the evolution of the Finnish literary system.

The concept of norms in translation and socio-cultural contexts is also highly important, but not discussed at this point. Yet, for better understanding the context in which the Finnish translation appeared, further brief general considerations on the concept of norms will be made. The concept of norms is generally considered to have been introduced to translation studies through the work of Gideon Toury in the late 1970s. Toury himself, however, has refused to claim credit for having associated norms with translation, regarding Jiri Levý and James S. Holmes as the originators of a norm-based approach to translation studies (Toury, "A Handful of Paragraphs" 10). The view of translating as a norm-governed activity presupposes that translators at work are subject to expectations prevailing in a certain community at a certain time. Norms influence not only the production, but also the selection and reception of translations (Schäffner, "The Concept of Norms" 6). However, as mediators between cultures in which different norms prevail, translators are also in a position to introduce and change norms. As Laura Routti notes, reader responses are highly time-dependent, and textual qualities introduced by a norm-violating translation may eventually be domesticated and come to be regarded as natural elements of the target literary system. In that process of change, a translator whose work may first have been disapproved of as norm-breaking may, in the course of time, come to be highly appreciated as a norm-initiator. Based on Toury's concept of initial norms, one can say that Saarikoski, positioned between the SC and the TC, could either choose to conform to the ST and the norms realized through it, or make his translation conform to the norms of the TC.

One of the most important messages of Salinger's *The Catcher in the Rye* is the expression of Holden Caulfield's rebellion against the phoniness of the adult world and the use of language in the novel is of crucial significance in this regard. Holden's speech is, at one and the same time, typical and unique. Salinger created the double effect in a masterly fashion by making it a mixture of features typical of teenage vernacular spoken in New York in the 1950s, and of strong personal idiosyncrasies (Costello 327). The overall tone of the novel is highly colloquial and the vocal quality of the narrator's sentence structure has led some critics to conclude that Salinger thought of the novel more in terms of spoken than of written speech (Costello 329).

The Finnish translation of the novel, as mentioned by Laura Routti mentions, was published ten years after the original version's publication, namely in 1961. Reproducing Holden's distinctive idiom in Finnish turned out to be so difficult for the young translator. Laura Routti adds that Saarikoski was 22 at the time and that at some point he was, in his own words, driven to near despair. The main problem was related to Salinger's use of highly

informal language in *The Catcher in the Rye*, as in Finnish literature the use of slang was practically unknown at the time. In an attempt to remain faithful to the original novel and to make the Finnish Holden sound like his American counterpart, Saarikoski created a vernacular to correspond with the tone of the ST. This required not only linguistic and cultural competence from the translator, but also the courage to juggle with the norms that regulated the use of language in the Finnish literature of the time.

The same parallel could be easily drawn between the original version of the novel and the first Romanian translation, especially while thinking about the historical background around the year 1964 when the communist regime was in power and when the use of slang in print was not a matter of option, it was simply unconceivable. There is nevertheless a major difference between the Finnish literature and the use of slang and the Romanian one. In Romanian, both in the common use of language and even in literature, slang words and expressions existed, but they were not used in the same proportion. The censure of the communist regime was too high to allow such words to be seen in print at that time. And Romanian was not a singular case, as we have just seen and we shall see further on.

The Finnish *Sieppari* was published in 1961, at the beginning of a decade of great cultural turmoil in Finland, as Laura Routti noted. On the literary scene, modernism had had its breakthrough in the previous decade, but the struggle for the dominant position in the centre of the literary system was still very much in process, with modernist and realist forms of expression in opposition to each other, as she described the historical and cultural background, which was at the opposite pole in comparison with the Romanian atmosphere. In the overall context, the multiplicity and versatility of literary forms of expression in the 1960s can be seen to have contributed to the development of what has since come to be known as postmodernism, as Laura Routti stated.

Saarikoski accepted the task of translating *The Catcher* in October 1959 and finished it in December 1960 and, Laura Routti mentioned, according to the original agreement, Saarikoski was supposed to have finished the translation task by June 1960, but due to unforeseen difficulties the work was delayed by approximately six months. These difficulties arose mainly from Salinger's use of highly informal language in *The Catcher*, which seemed very difficult to fit into the Finnish literary context. Historically, one of the tasks of translated literature in Finland had been to enhance the development of literary Finnish, and until then the majority of Finnish national literature had conformed to that norm. However, exactly what "literary Finnish" should be like had been a matter of dispute for a very long time: disagreements on whether it should be based on western or eastern dialects had culminated in "the battle of dialects" in the first half of the 19th century, as Laura Routti stated in her paper.

I believe that one of the reasons why the original text is so difficult to translate is that the language itself raises such difficulties. The translator himself or herself must have the same intelligence as the writer himself in order to be able to render the same ideas with the same or at least similar means, to adapt the source text and culture to the target language and culture. Perhaps this is also one of the reasons why the first Romanian translation was not a complete success and why the Romanian literature, as many others as well, felt the need to revive, to improve, to give a second translation to the audience, as an alternative not only to a new perspective, but also to a new culture and society. The second Romanian translation of Salinger's novel seems to offer, at least, a new perspective after the fall of the communist regime, a freer one, and one in which all the language norms and barriers reflecting the political norms and barriers are no longer visible and no longer exist. It goes without saying that the Finnish translator's articles and opinions (mentioned by Laura Routti) did not enjoy only positive reactions, there have been many negative reactions too, many of them mentioned, explained and analyzed by Laura Routti in her book, but which no longer represent the aim of this sub-chapter.

Saarikoski simply decided to reject the use of "literary Finnish" altogether, and to create an artificial vernacular based on urban colloquial language. The vernacular came to reflect features from different language varieties. For the most part it was based on the teenage slang spoken in Helsinki at the time, but it also included dialectal features of the Finnish spoken in Vironlahti, a country district where Saarikoski had spent his childhood, as well as a number of anglicisms, as Laura Routti added. The task of creating this vernacular involved a lot of "field-work": Saarikoski visited cafés frequented by young people and attended their parties to listen to their language, as the writer of the article continued her idea. This also seems to be the case of the translator of the second Romanian version of *The Catcher* though apparently not rising at the same level as the Finnish one. *Sieppari* thus came to symbolize the first step towards the modernization of literary Finnish. The articles written by Saarikoski and the strategy he then adopted in his translation of *The Catcher* show that, in an attempt to render the slangy tone that Salinger had employed in *The Catcher*, Saarikoski made a conscious decision to violate the norms governing the use of literary language in Finnish literature at the time.

Laura Routti mentioned that the responses to the eventual publication of *Sieppari* were, of course, controversial. In its employment of an informal, colloquial language variety it was bound to cause a commotion because it struck readers as something quite unexpected. Some critics applauded the Finnish translator's vision and agreed that no other person could have produced the Finnish version of Salinger's *The Catcher in the Rye* as skilfully as Saarikoski. Some other critics had been quite harsh on Saarikoski, even claiming that he has written his own version of Salinger's novel, considering the Finnish translation even a fraud, as Laura Routti explained in her article by giving complete quotations of different critics and their points of view. But not all of the reviews of *Sieppari* were disapproving. Some critics did, in fact, think that Saarikoski had succeeded in his task remarkably well, and considered the use of Helsinki slang in *Sieppari* perfectly appropriate. Unfortunately, not being able to speak Finnish I can only attempt to appreciate as true or false these opinions based only on other critics' points of view since I do not have the necessary means to provide my opinions on the Finnish translation, and thus an objective analysis is not possible at this point. But the main idea leads to the fact that the Finnish version actually managed to change the norms in the Finnish literature and this is one of the most important aspects of this sub-chapter since it opens the path to a whole new way of looking at and using translation and its tools combined with social and cultural norms.

Laura Routti stated that Pentti Saarikoski has probably been the best translator one could think of for this novel. His translation conveys the tone and the rhythm of the language spoken by today's school children. *Sieppari* has captured the spirit of the Finnish city, although the story itself takes place in a city across the world. I consider that this seems to be the main task of any translator while transposing one text from a SL into a TL. Perhaps this idea is related to the fact that the first Romanian version of Salinger's novel was not a very successful one and that the second one was considered "too bold" and at times the exact opposite of the first one—a fact which did not allow Romanian critics to have the same opinions about the Romanian renditions of *The Catcher* as the Finnish ones in terms of translation and norm breaking, at least not yet. Nevertheless, the future may always bring new attempts to translate a text and break old linguistic rules and norms, although it is less likely in the case of the Romanian linguistic system.

Conclusions

The conclusion, based on the critics' studies and research, is that the Finnish translation played an innovatory role and an influential one in the literary system of Finland by breaking the norms of the TL, in order to render the stylistic qualities of the ST, and by

introducing the use of slang language in Finnish, as a new and alternative means of expression. Thus, translation can play a vital role and also influence the literary system of a country, as in the case of the Finnish translation. Salinger's novel can have a norm-breaking role in translation and such a courageous attempt is also mainly due to Salinger's text, from a linguistic point of view. The author of the Finnish translation, out of the desire to render the stylistic qualities of Salinger's novel, was forced to break the norms of the TL and thus his translation gained a highly influential and initiating role, a norm-setting role, in the evolution of the Finnish literary system. This was mainly due to the introduction of the use of slang in language as a new and alternative means of expression.

This also leads to the idea that translators have to be faithful to the original text and never attempt to censure the ST. The fact that some translations in question changed the language of the ST because they considered it offensive or taboo demonstrates that such cases should never be part of a translator's task. Furthermore, the fact that more and more people take interest in such situations may indicate that more and more researchers are concerned with finding ways of preventing or avoiding mistranslations from occurring in the future, but also to discover new meanings, to bring back to life overlooked ones or details, connections, interpretations and, most importantly, new insights on a text and even on the author.

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NON-DISCRIMINATION ISSUES BETWEEN MEN AND WOMEN IN THE MATTER OF CHILD CARE LEAVE

Isabela, Stancea[1]

Abstract

To give men and women with caring responsibilities a better chance of staying in work, every worker should be entitled to five working days' carer's leave a year. Member States may decide that such leave may be taken in periods of one or more working days, on a case-by-case basis. To take account of different national systems, Member States should be able to allocate carer leave using a reference period other than one year depending on the person who needs care or support or on a case-by-case basis. A continued increase in care needs due to an aging population is expected, and a corresponding increase in the prevalence of age-related impairments is expected. Member States should take into account increasing care needs when developing their care policies, including carer leave.

Key words: *man, woman, non-discrimination, child, leave.*

Classification: JEL KO, K1

Romania must transpose into national legislation by August 1 and 2, 2022, respectively, two European directives: Directive 2019/1.158/EU and Directive 2019/1.152/EU, which bring significant changes to labor legislation.

Until now, Directive 1.158/2019/EU has been partially transposed through the adoption of GEO no. 57/2022 for the amendment of Law 202/2002 on equal treatment opportunities between women and men, the most notable changes being the introduction of the concepts of "caregiver leave" and "flexible work forms" as well as the fact that protection against discrimination and dismissal is granted for employees who request the exercise of these rights. However, the legislative amendment risks remaining confused and devoid of substance in the absence of harmonization of these new notions through the corresponding amendment of the Labor Code[2].

Thus, Directive 2019/1.158/EU aims to ensure a balance between the professional and private life of parents and carers of children and supports and complements the action of member states in the field of equality between men and women in terms of opportunities on the labor market and treatment at work, equality between men and women being a basic principle of the European Union.

Similarly, Article 23 of the Charter of Fundamental Rights of the European Union stipulates the obligation to ensure equality between women and men in all areas, including employment, work and remuneration.

Article 33 of the Charter provides for the right to be protected against any dismissal for reasons of maternity, as well as the right to paid maternity leave and parental leave granted following the birth or adoption of a child, in order to reconcile family life and professional life.

Work-life balance policies should contribute to gender equality by promoting women's participation in the labor market, by sharing caring responsibilities equitably between men and women, and by reducing gender disparities in income and remuneration. These policies should take into account demographic changes, including the effects of an aging population.

Work-life balance remains a considerable challenge for many parents and workers with caring responsibilities, particularly due to the increasing prevalence of extended working hours and changing working hours, which has a negative impact on employment of work among women. A major factor contributing to the underrepresentation of women in the labor

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[2]https://www.bursa.ro/codul-muncii-va-fi-modificat-semnificativ-in-aceasta-vara-61830743

market is the difficulty of finding a balance between work and family obligations. When they have children, women typically work fewer hours in paid employment and spend more time performing unpaid caregiving responsibilities[1].

Having a sick or caring relative has also been shown to have a negative impact on women's employment, with some women dropping out of the labor market altogether.

The current national legal framework provides few incentives to encourage men to take on an equal share of caring responsibilities. The imbalance in the conception of work-life balance policies for women and men deepens gender stereotypes and differences in the context of working life and care.

Equal treatment policies should aim to tackle the problem of stereotypes associated with the occupations and roles of both men and women, and the social partners are encouraged to play their key role in informing both workers and employers and in raising their awareness regarding the fight against discrimination.

Moreover, fathers' use of work-life balance schemes, such as leave or flexible working arrangements, have been shown to

to have a positive impact by reducing the relative amount of unpaid family work performed by women and leaving them more time for paid employment.

The equal use of family leave by men and women also depends on other appropriate measures, such as the provision of physically and financially accessible childcare and long-term care services, which are essential to enable parents and other people with caring responsibilities to enter, stay or return to the labor market. Removing economic disincentives can also encourage people who represent the secondary source of family income, mostly women, to participate fully in the labor market.

In order to encourage a more equitable distribution of care responsibilities between women and men and to enable early bonding between fathers and children, the right of fathers to take paternity leave should be introduced or, when and to the extent in which the right of an equivalent second parent is recognized by domestic law. This paternity leave should be taken around the time of the child's birth and should be clearly linked to this event for the purpose of care.

Member States are responsible for determining whether they allow part of the paternity leave to be taken before the birth of the child or whether they require all of the leave to be taken after the birth, the time frame during which the paternity leave must be taken and whether and when conditions allow part-time paternity leave to be taken in alternating periods, for example for a number of consecutive days of leave separated by periods of professional activity, or in other flexible formulas.

Member States have the possibility to specify whether paternity leave is expressed in working days, weeks or other time units, taking into account the fact that ten working days correspond to a period of two calendar weeks.

To take into account the differences between Member States, the right to paternity leave should be granted regardless of marital status or family status as defined by national law.

In our country, most fathers do not use their right to parental leave or transfer a considerable part of it to mothers, so it would be necessary to extend the minimum period of non-transferable parental leave from one to two months from one parent to the other, to encourage fathers to take parental leave while maintaining each parent's right to at least four months of parental leave as set out in Directive 2010/18/EU.

Ensuring that at least two months of parental leave are available exclusively to each parent and cannot be transferred to the other parent is intended to encourage fathers to make use of their right to this leave.

[1] Directive (EU) 2019/1158 of the European Parliament and of the council of 20 June 2019 on the balance between the professional and private life of parents of caregivers and repealing Council Directive 2010/18/EU

It also promotes and facilitates the reintegration of mothers into the labor market after a period of maternity and parental leave.

A minimum of four months of parental leave is guaranteed by law for workers who are parents. Member States are encouraged to grant the right to parental leave to all workers with parental responsibilities, in accordance with national legal systems.

Given that flexibility increases the likelihood that each parent, in particular the father, will make use of the right to parental leave, workers should be able to request parental leave on a full-time or part-time basis. norm, in alternating periods, such as for a number of consecutive weeks of leave separated by periods of professional activity, or in other flexible formulas. The employer should have the possibility to accept or refuse such a request for parental leave on other than full-time basis. Member States should assess the extent to which the conditions and detailed formulas of parental leave should be adapted to the specific needs of parents in particularly disadvantaged situations.

The period during which workers should be entitled to parental leave should be linked to the age of the child. That age should be set in such a way as to allow both parents to make effective use of their full parental leave entitlement.

To facilitate reintegration into the workplace following a period of parental leave, workers and employers are encouraged to maintain voluntary contact during the period of leave and may agree on any appropriate measures to facilitate reintegration into the workplace. Maintaining such contact and taking such measures is to be decided by the parties concerned, taking into account domestic law, collective agreements or national practices. Workers should be informed about promotion procedures and internal vacancies and should have the opportunity to participate in such procedures and apply for such positions. Studies have shown that Member States that offer a significant share of parental leave to fathers and that provide the worker on parental leave with remuneration or an allowance at a relatively high replacement rate have a higher percentage of fathers taking parental leave and a positive trend in the employment rate among mothers. It is therefore appropriate to allow these schemes to continue, provided they meet certain minimum criteria, instead of providing remuneration or allowance for paternity leave.

To give men and women with caring responsibilities a better chance of staying in work, every worker should be entitled to five working days' carer's leave a year. Member States may decide that such leave may be taken in periods of one or more working days, on a case-by-case basis. To take account of different national systems, Member States should be able to allocate carer leave using a reference period other than one year depending on the person who needs care or support or on a case-by-case basis.

A continued increase in care needs due to an aging population is expected, and a corresponding increase in the prevalence of age-related impairments is expected. Member States should take into account increasing care needs when developing their care policies, including carer leave. Member States are encouraged to grant the right to carer's leave also for other relatives, such as grandparents or brothers or sisters. Member States may require a prior medical certificate attesting to the need for significant care or support for a serious medical reason.

In addition to the right to carer's leave provided for in this Directive, all workers should retain the right to be absent from work, without loss of employment rights already acquired or in the process of being acquired, for reasons of force majeure in unforeseen family emergency situations, as provided for in Directive 2010/18/EU, in accordance with the conditions established by the member states.

All Member States should take the necessary measures to ensure that workers with children up to a certain age, at least eight years old, as well as carers, have the right to request flexible working arrangements for care purposes. The duration of such flexible working arrangements may be subject to reasonable limitations.

Our country should establish a level of remuneration or allowance related to the minimum period of paternity leave at least equivalent to the level of sick leave at the national level. As the right to paternity leave and the right to maternity leave have similar objectives, namely to create a bond between parent and child, Member States are encouraged to provide for pay or allowance for paternity leave equivalent to pay or allowance for maternity leave maternity at national level. When setting the level of remuneration or allowance for the minimum non-transferable period of parental leave, Member States should take into account that taking parental leave often involves a loss of income for the family and that the person who is the primary source of income of the family will be able to make use of their right to parental leave only if that leave is well paid enough to allow a decent standard of living.

Member States shall take the necessary measures to prohibit the dismissal and any preparations for the dismissal of workers on the grounds that they have requested or taken such leave.

Member States shall adopt the regime of sanctions that apply in the event of non-compliance with national provisions adopted pursuant to transposing directives or relevant provisions already in force concerning rights included in the scope and shall take all necessary measures to ensure their application. Sanctions must be effective, proportionate and dissuasive.

Member States shall introduce the necessary measures for the protection of workers, including workers who are employee representatives, against any unfavorable treatment by the employer or against any unfavorable consequences resulting from a complaint lodged within the undertaking or from any legal proceedings with the aim of ensuring compliance with the requirements established in the directives and transposed in the specific national legislation.

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LEGAL ASPECTS REGARDING THE TRANSPARENCY AND PREDICTABILITY OF WORKING CONDITIONS IN THE EUROPEAN UNION

Isabela, Stancea[1]

Abstract

In the current economic-social context, minimum information requirements regarding the essential aspects of the employment relationship and working conditions should be established, at the level of the Union and then of the member states, which should apply to all workers, for to guarantee that all workers in the Union benefit from an adequate degree of transparency and predictability in terms of their working conditions, while at the same time maintaining reasonable flexibility of atypical forms of work, thus preserving the benefits them for workers and employers.

Therefore, in the current dynamics, it is necessary to update the labor legislation in our country, which aims to improve working conditions by promoting more transparent and predictable forms of work, while ensuring the adaptability of the labor market.

Keywords: *labor market, employee, communication worker, working conditions.*

JEL classification: K0, K1

According to art. 31 of the Charter of Fundamental Rights of the European Union every worker has the right to working conditions that respect his health, safety and dignity, to a limitation of the maximum working time and to daily and weekly rest periods, as well as to a rest leave paid annually.

Regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment in terms of working conditions, access to social protection and vocational training, the transition to permanent forms of work must be encouraged, in accordance with legislation and collective labor contracts, the necessary flexibility must be ensured for employers to quickly adapt to changes in the economic context, innovative forms of work must be promoted that ensure quality working conditions, entrepreneurship and activity must be encouraged independent and that occupational mobility must be facilitated; employment relationships resulting in poor working conditions must be prevented, including by prohibiting the abusive use of atypical contracts and that any trial period must be of reasonable duration[2].

Workers also have the right to be informed in writing upon employment of their rights and obligations arising from the employment relationship, including any trial period, before being dismissed, workers have the right to to be informed of its reasons and to benefit from a reasonable notice period, the right to resort to effective and impartial dispute resolution mechanisms, and in case of unjustified dismissal, have the right to a remedy, including adequate compensation .

Recently, the labor market has undergone profound changes as a result of demographic developments and the fact that digitization has led to the creation of new forms of work, which have supported innovation, job creation and the development of the labor market. Some of the new forms of work vary considerably from traditional employment relationships in terms of predictability, generating uncertainty as to the applicable rights and social protection of the workers concerned.

Therefore, in this changing world of work there is an increasing need for workers to be fully informed of their essential working conditions, and this information should be provided in a timely manner and in writing in an easily accessible form accessible to workers. In order to adequately frame the development of new forms of work, workers in the Union should also

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[2] Principle no. 5 of the European Pillar of Social Rights, proclaimed in Gothenburg on November 17, 2017.

be provided with a series of new minimum rights aimed at promoting security and predictability in employment relationships, achieving at the same time an upward convergence among member states and maintaining the adaptability of the labor market.

Under Directive 91/533/EEC, most workers in the Union have the right to receive written information about their working conditions. However, this Directive does not apply to all workers in the Union. Moreover, protection gaps have appeared for new forms of work created following recent labor market developments.

Therefore, there should be stability, at the level of the Union and then of the Member States, minimum information requirements on the essential aspects of the employment relationship and working conditions, which apply to all workers, in order to guarantee. that all workers in the Union benefit from an adequate degree of transparency and predictability in this employers.

Therefore, in the current dynamics, it is necessary to update the labor legislation in our country, which aims to promote working conditions by applying more transparent and predictable forms of work, while ensuring the adaptability of the labor market.

To this end, EU Directive 2019/1152 of the European Council and of the Council of June 20, 2019 on the transparency and predictability of working conditions in the European Union, states that states ensure that employees have the obligation to inform workers about the essential member elements . of the employment relationship. Said information shall include at least the following elements:

(a) the identity of the parties to the employment relationship;

(b) the place of activity; if there is no fixed or main place of activity, the principle according to the working activity has various places of activity or is free to establish its own place of activity, as well as the registered office of the enterprise or, if applicable, the domicile. the employer;

(c) any of the following:

- the name, degree, type of work or category of professional activity for which the worker is employed; or a brief characterization or description of the work;

(d) the date from which the employment relationship begins;

(e) in the case of a fixed-term employment relationship, the date on which it ends or its expected duration;

(f) in the case of temporary agency workers, the identity of the user enterprises, as soon as possible after it is known;

(g) the duration and conditions of the probationary period, if any;

(h) the right to training offered by the employer, if any;

(i) the duration of the paid holiday to which the worker is entitled or, if its duration cannot be indicated when the information is provided, the procedure for granting and establishing this leave;

(j) the procedure to be followed by the employer and the worker, including the conditions of form and length of notice periods, in the event of termination of their employment or, if the length of notice periods cannot be indicated when the information is provided, the method of determining of these notice periods;

(k) the remuneration, including the initial basic amount, any other components, if applicable, indicated separately, and the frequency and method of payment relating to the remuneration the worker is entitled to receive;

(l) if the pattern of work organization is wholly or largely predictable, the length of the worker's standard working day or standard working week and any overtime provisions and related remuneration and, where applicable, the arrangements regarding shift work;

(m) if the worker's work organization pattern is wholly or largely unpredictable, the employer shall inform the worker of:

- the principle according to which the work schedule is variable, the number of hours guaranteed in payment and remuneration for work performed in addition to the guaranteed hours;

- reference hours and days when the worker may be required to work;

- the minimum period of prior notice to which the worker is entitled before starting a work assignment and, as the case may be, the cancellation deadline;

(n) any collective labor contracts that regulate the working conditions of the worker or

in the case of collective labor contracts concluded outside the company by special peer institutions or bodies, the name of these competent institutions or bodies within which the contracts were concluded;

(o) if it is the employer's responsibility, the identity of the social security institution or institutions that receive the social contributions related to the employment relationship, and any social security protection provided by the employer.

The mentioned information can be communicated, if necessary, in the form of a reference to the legal acts and to the administrative or statutory provisions or to the collective labor contracts that regulate the aspects mentioned in the respective letters.

If it has not been communicated in advance, this information may be communicated individually to the worker, in the form of one or more documents, during the period starting with the first working day and ending no later than the seventh calendar day or in the form of a document, within one month starting from the first working day.

Member States may develop forms and models for these documents and make them available to employees and employers, including by publication on a single national official website or by other appropriate means.

Each state within the European Union must ensure that the information regarding the legal acts and administrative or statutory provisions or collective labor agreements of general application that regulate the applicable legal framework, which must be communicated by employers, is made available at a level generally, free of charge, in a clear, transparent, comprehensive and easily accessible way remotely and electronically, including through existing online portals.

Member States shall ensure that any change to the elements of the employment relationship and any change to additional information in the case of workers sent to another Member State or to a third country, is communicated by the employer to the worker, in the form of a document, in the most as soon as possible and at the latest on the effective date.

This document is not communicated in the case of changes that only reflect a modification of the legal acts, administrative or statutory provisions or collective labor contracts applicable at national level.

According to art. 7 of EU Directive 2019/1152 of the European Parliament and of the Council of June 20, 2019 on the transparency and predictability of working conditions in the European Union, each member state must also communicate a set of additional information for workers sent to another member state or in a third country.

Thus, Member States shall ensure that, when a worker has to perform work in a Member State other than the one in which he normally carries out his activity or in a third country, the employer communicates the above-mentioned documents before the worker's departure and that the documents include at least the following additional information:

(a) the country or countries in which the overseas work is to be performed and the anticipated duration

Hers;

(b) the currency in which the remuneration is to be paid;

(c) if applicable, benefits in money or in kind related to the work performed;

(d) information indicating whether repatriation is envisaged and, if so, the conditions for repatriation of the worker;

(e) the remuneration to which the worker is entitled under the legislation applicable in the host Member State;

(f) as the case may be, any allowance specific to the posting and any reimbursement measures for transport, board and accommodation expenses;

(g) the link to the single official national website created by the host Member State pursuant to Article 5(2) of Directive 2014/67/EU of the European Parliament and of the Council (15).

This information can be provided, where appropriate, also in the form of a reference to the specific provisions of the legal acts and to the administrative or statutory acts or to the collective labor agreements that regulate the respective aspects.

Unless Member States provide otherwise, these obligations do not apply if the duration of each working period spent outside the Member State in which the worker normally carries out his activity is four consecutive weeks or less.

Regarding this aspect, it must be emphasized that Member States must ensure that, if an employment relationship is subject to a trial period, as defined in domestic law or national practices, that period does not exceed six months.

In the case of fixed-term employment relationships, Member States shall ensure that the duration of the trial period is proportionate to the expected duration of the contract and the type of work. In case of renewal of a contract for the same position and tasks, the employment relationship is not subject to a new trial period.

Member States could also exceptionally provide for longer trial periods when the nature of the work justifies it or when it is in the worker's interest. If the worker has been absent from work during the probationary period, Member States may provide that the probationary period may be extended accordingly by the duration of the absence.

It is important to note that national legislation must ensure that an employer does not prohibit a worker from working for other employers outside the working hours established with that employer and does not subject the worker to unfavorable treatment for this; in this sense, conditions can be set for the use of incompatibility restrictions by employers, based on objective reasons such as health and safety, protection of business secrets, integrity of the public service or avoidance of conflicts of interest.

Any member state of the European Union must ensure that, in the event that a worker's work organization pattern is wholly or largely unpredictable, the employer requires the worker to perform work only if the following two conditions are met cumulatively:

a) the work is performed within pre-established reference hours and days;

b) the worker is informed by his employer regarding a service task with respect to a reasonable period of prior notice, established in accordance with domestic law, collective labor agreements or existing national practices in the matter.

A worker has the right to refuse a job assignment without suffering negative consequences if one or none of the above requirements are met.

Where national law allows an employer to cancel a work assignment without compensation, the employer shall take the necessary measures, in accordance with national law, collective agreements or national practice, to ensure that the worker is entitled to compensation where that the employer cancels the work task previously agreed with the worker, after the completion of a reasonably determined deadline.

National legislation must ensure that a worker with at least six months of service at the same employer, who has completed his probationary period, if any, can request a form of work with more predictable and safer working conditions, if it is available and that it receives a reasoned response in writing and to be able to limit the frequency of requests that trigger this obligation.

Any Member State must ensure that the employer provides a reasoned response in writing within one month of receiving the request. As regards natural persons acting as employers, as well as micro and small and medium-sized enterprises, Member States may

provide for the extension of this period by a maximum of three months and may allow oral communication of the response to a subsequent similar request submitted by the same worker, if the justification of the answer regarding the worker's situation remains unchanged.

Workers who consider that they have been dismissed or have been subjected to measures of equivalent effect because they have exercised their rights set out in this Directive may request the employer to provide well-founded reasons for the dismissal or equivalent measures. The employer presents these reasons in writing.

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THE ABILITY TO CONTRACT - AN ESSENTIAL CONDITION IN EVERYDAY LIFE

Ana-Maria Vasile[1]

Abstract

The contract is one of the most common forms of the legal act today. Practically, the contract represents a fundamental legal institution of the law that was and continues to be the main source of obligations, through which the circulation of goods, the provision of services and, in general, the satisfaction of the material and spiritual needs of people are achieved.

In the traditional conception of contractual liability, it is closely related to the idea underlying the principle of the binding force of the contract. Since the contract has the force of a law in the relations between the parties, it is considered that the pendant of this principle is that each party must be responsible for the possible non-compliance with its "law", therefore for the violation of the "private norm" that the contract generates.

The conclusion of the contract implies not only the realization of the agreement of will but also the valid formation of this agreement in terms of the capacity of the parties, the content of the will and the validity of the object.

Key words: contract, capacity, liability, incapacity

1. Introduction

The 20th century was characterized by a wide development of two instruments of obligation law, the contract and contractual responsibility. It manifests itself through the quantitative and qualitative growth of the "contractual" concept, as a legal expression of the birth of a "contract culture". In this sense, it was emphasized that the contractual field has acquired an unprecedented extension due to its invasion of meanings that go beyond the given legal definition, until to the point where one could even speak and consider that the metaphor of the contract occupies, "public space"[2].

The phenomenon of the contract, in its expansion, is the direct result of increasing the power of the idea of contracting society.

A contract seeks to achieve a goal, and this is always legal. The purpose is represented by the legal relations that the act can generate. Those who conclude a legal act do not aim so much to establish certain relationships, as to achieve their content. Reports are good because their content includes rights and civil obligations that the legal act can generate.

Until now, the contract has been of interest from a substantial point of view, emphasizing its voluntary nature, the fact that we are dealing with a consent, an understanding, produced with the intention of generating legal effects.

The sale-purchase contract, known as an instrument of economic exchanges, is one of the most common contracts in commercial relations, being the most common in operations of production, sale and resale of goods, provision of services, execution of works.

The contract has a strong educational role in the life of our society, being the "law" of the contracting parties and, therefore, obliging the parties to respect the commitments assumed. It introduces into the relations between people the sense of responsibility for their duties and promotes collaborative relationships, educates people in the sense of contractual discipline and creates skills and habits in this sense, thus contributing to the development of citizens' consciousness.[3]

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[2] Liviu Pop, Ionuț-Florin Popa, Stelian Ioan Vidu, Elementary treatise on civil law. Obligations, according to the new Civil Code, Universul Juridic publishing house, Bucharest, 2012, page 239

[3] Tudor Popescu - Civil law. Course notes, Hyperion Publishing House, Bucharest, 1991, p. 39

2. The capacity to contract

In legal terms, the ability to conclude a civil legal act means the ability of the subject of civil law to become the holder of civil rights and obligations by concluding civil legal acts, respectively the ability of natural or legal persons to conclude, personally or through representation, a civil contract.

According to art. 28 para. (1) Civil Code, "civil capacity is recognized for all persons", and the provisions of para. (2) establish that any person has the capacity to use and, except for the cases provided by law, the capacity to exercise. The limitation of the capacity of use and the deprivation, in whole or in part, of the capacity to exercise, can be done only in the cases and conditions expressly provided by law.

According to the Civil Code, in art. 1.180 Civil Code, in the field of contracts, the rule is the capacity to contract. According to this provision, "any person who is not declared incapable by law or prevented from concluding certain contracts" can contract. Also, according to art. 1.652 Civil Code "all those who are not prohibited by law can buy or sell".

Based on these conditions, the principle of capacity is enshrined, according to which, in general, all people enjoy the ability to sell.

There are also some exceptions, thus, two categories of people do not have the right to conclude contracts:

- minors without exercise capacity;
- persons placed under a judicial ban, under the terms of the law, respectively physical persons lacking legal capacity.

The company is not limited only to the category of natural persons as the contract, but in full right legal persons participate vehemently in the conclusion of civil, commercial contracts...

To the two categories of natural persons who do not have the right to conclude contracts, we could add the category of legal persons who do not have the exercise capacity necessary for their legal functioning, although anyone can, in principle, be a seller.

The sale-purchase being an act of disposition, gives the right to the minor and those placed under the ban to be able to sell if they are assisted or represented under the conditions of common law and the approval of the guardianship court has been obtained in the cases provided by law (possibly also the opinion of the family council). If, in relation to one's own patrimony, the sale-purchase is intended for the execution of acts of conservation or administration, the required capacity is that provided by law for acts of conservation and administration. The inability to sell represents a prohibition to sell established in consideration of the respective person.

According to common law, they do not have the capacity to contract even natural persons who, although capable, i.e. having full exercise capacity, this right is restricted by an express legal provision, under the conditions of art. 53 of the Romanian Constitution. Legal entities may be added to them which, although they have the capacity to exercise acquired under the law, are forbidden by law to conclude certain categories of contracts.

In the old regulation, the only prohibition provided by the Civil Code was that provided by art. 1,307 of the Civil Code, according to which the sale cannot be made between spouses[1]. The current Civil Code abandoned the previous concept and no longer provided for

[1] The regulation had a threefold purpose:
a) To prevent the spouses from entering into donation contracts under the guise of a sale-purchase, which would have been irrevocable, although according to art. 937 Civil Code, donations between spouses were always revocable during the life of the donor;
b) To defend the interests of reserved heirs who, in the case of donations, can ask for the report or request the reduction of liberality that violates the inheritance reserve. If the sale-purchase had been allowed, this possibility could have been circumvented by disguising the donation under the guise of a sale-purchase contract;
c) Protecting the interests of creditors who could have been defrauded by concluding fictitious sales-purchase contracts.
The penalty for violating the provision of art. 1.307 C.civ. it was relative nullity, being the protection of a private interest, not a general interest.

this incapacity. On the contrary, art. 371 of the Civil Code provides that "Unless the law provides otherwise, each spouse can conclude any legal documents with the other spouse or with third parties"[1].

The provisions of art. 1.652 of the Civil Code establishes that "all those who are not prohibited by law can buy or sell". The conclusion would be that an express prohibition is necessary through a law whereby a certain person does not have the right to buy or sell or to buy and sell at the same time.

3. Inability to contract

The inability to contract is an exceptional situation and it must be expressly provided for by law. By establishing a certain disability, a specific goal is pursued, such as:

- defense of the minor's material interests;
- defense of public morality;
- defending the interests of third parties.

At the same time, one can appreciate the type of nullity that affects the act concluded by an incapable person, in relation to the goal pursued by the legislator by establishing such an inability to contract.

Incapacitations aimed at protecting a public interest, in case of non-compliance, are sanctioned with absolute nullity, as in the cases provided for by art. 1,654 letter c)[2], of the act concluded with their ignoring, and those that defend a personal interest or even of a narrower group (so not public) are sanctioned with relative nullity, as in the cases provided by art. 1,654 lit. a)[3] and b)[4]. The nature of the nullity is expressly shown by the mentioned legal provision.

In accordance with the provisions of art. 53 of the Romanian Constitution, "the exercise of certain rights or freedoms can be restricted only by law and only if it is required, as the case may be, for: the defense of national security, order, health or public morals, the rights and freedoms of citizens ; carrying out the criminal investigation, preventing the consequences of a natural calamity or a particularly serious disaster" [par. (1)]. According to the provisions of para. (2) of the same article, "the restriction must be proportional to the situation that determined it and cannot affect the existence of the right or freedom".

In the case of the sales contract, these disabilities regulated by law according to the mentioned constitutional provisions, represent disabilities to exercise certain rights, and not disabilities to use[5]. If these disabilities in question would be qualified as being of use, they would affect the existence of the rights to sell and buy, rights that are granted by law to people other than those affected by the respective disabilities, so that, in the light of the provisions para. (2) of art. 53, the legal provisions establishing them would be unconstitutional.

The inability to contract that can affect natural or legal persons can be viewed from various perspectives.

4. Inabilities to buy

Most of the inabilities are those of buying certain goods, by certain people. According to the provisions of art. 1,653 para. (1) Civil Code, under the penalty of absolute nullity, judges, prosecutors, clerks, executors, lawyers, notaries public, legal advisers and insolvency practitioners cannot purchase, directly or through interposed persons, litigious rights that are within the jurisdiction of the court in whose constituency he carries out his activity.

The ban also does not apply to cohabitants, because they do not have the special quality required by the analyzed text, that of being spouses.

[1] Ghe. Comăniță, Ioana-Iulia Comăniță, "Civil law. Special civil contracts", Ed. Universul Juridic, Bucharest, 2013, page 26.

[2] c) civil servants, syndic judges, insolvency practitioners, executors, as well as other such persons, who could influence the conditions of the sale made through them or whose object is the goods they administer or whose administration they supervise.

[3] a) the trustees, for the goods they are tasked to sell.

[4] b) the parents, the guardian, the curator, the temporary administrator, for the goods of the persons they represent.

[5] I make an exception for foreigners, natural or legal persons, whose disabilities regulated by law are for use, and not for exercise

By litigious rights[1] we must understand that category of rights, regardless of their nature, regarding which there is a dispute regarding their substance, regardless of what phase that dispute is in, with the exception of the enforcement phase.

This inability to be a buyer of litigious rights is likely to prevent the abuses that could be committed by the categories of persons listed above, taking advantage of their quality and position in the processes in which they would pursue the valorization of the purchased litigious rights. The identification of the litigious rights would be done by reporting to the seat of the court that was referred to the respective litigation, starting with the judgment on the merits and continuing with the appeals, ordinary and extraordinary.

Several categories of operations for the purchase of litigious rights are established that can be concluded by the categories of persons listed above, considering the origin and purposes for which the purchase of those litigious rights is made. In this sense, the following are exempted from this prohibition:

• the purchase of succession rights or shares in the property right from co-heirs or co-owners, as the case may be;

• the purchase of a litigious right in order to satisfy a claim that arose before the right became litigious;

• the purchase that was made to defend the rights of the one who owns the asset in relation to which the disputed right exists[2]

Thus, in any of the excepted situations, there can be no danger that those who will buy the litigious rights related to those goods can use abusively or fraudulently the quality or the functions they have within the jurisdiction of the courts that judge those disputes.

As regards the sanction related to the prohibition to purchase litigious rights, this is also absolute nullity and it is also an express nullity, established in order to avoid the controversy prior to the current Civil Code, regarding the nature of nullity. Some authors considered that in this case we are in the presence of a relative nullity[3], and others appreciated that the protected interest is a public one and the nullity is absolute[4].

"We have also previously appreciated that the sanction must be absolute nullity because in the discussed case the protection of the seller's interests is pursued as well as a broader interest, which is related to the good prestige of some professions of public interest".

Violation of the prohibitions regarding the sale of land to foreigners and stateless persons is sanctioned with absolute nullity.

Art. 1654, para. (1), regulates another category of inability to buy. The legal provision according to which the following categories of people are unable to buy, directly or through intermediaries, even through a public auction:

• trustees, for the goods they are tasked to sell, with the exceptions provided by art. 1304 para. (1)[5], referring to the act itself and the double representation;

• parents, guardian, curator, provisional administrator, for the property of the persons they represent;

• civil servants, syndic judges, insolvency practitioners, executors, as well as other such persons who could influence the terms of the sale made through them or whose object is the goods they administer or whose administration they supervise.

The mentioned inabilities also apply in the case of sale by public auction.

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[1] Paragraph (3) of art. 1.653 defines the litigious right as when there is a started and unfinished process regarding its existence or extent

[2] Art. 1.653, para. (2), Civil Code.

[3] Gh. Comăniță, I.-I. Comăniță, op.cit., 2013, page 29

[4] Ibid.

[5] "The contract concluded by the representative with himself, in his own name, is voidable only at the request of the representative, unless the representative has been expressly authorized in this sense or the content of the contract has been determined in such a way as to exclude the possibility of a conflict of interests."

5. Inabilities to sell

The Civil Code also establishes an inability to sell, also with reference to persons unable to buy, regulated by art. 1654[1], but the incapacity will be limited to certain requirements. In this sense, para. (1) provides that "the persons provided for in art. 1.654, para. (1), they cannot also sell their own assets for a price that consists of a sum of money derived from the sale or exploitation of the asset or patrimony that they administer or whose administration they supervise, as the case may be". Para. (2) contains the specification that the prohibition established by para. (1) will also apply appropriately to contracts in which, in exchange for a performance promised by the persons listed in para. (1) of art. 1654, the other party undertakes to pay a certain amount of money.

The inability to sell refers to the same category of people, but in somewhat different situations. The first case [paragraph (1)] in which the sale of property owned by the categories of persons in question, which are sold against a price obtained by them as consideration for the sale, exploitation or supervision by them of a property or of another person's patrimony, in which case there could be a temptation to obtain the necessary amount to be paid as a price at the expense of the one whose interests must be defended and promoted by the persons listed in paragraph. (1) of art. 1654[2].

. The second case considers the situation where the persons in question only promise a certain benefit to third parties and they oblige themselves to pay them a sum of money.

This time, the legislator does not indicate the type of sanction that should be applied in case of violation of the examined incapacity. A rational prohibition is established by art. 1,656: none of the persons incapable of selling or buying, according to the law, have active procedural legitimacy to introduce actions - in their own name or in the name of the protected person - to cancel the sale made in violation of the incapacities examined in the previous ones.

According to art. 1.655 of the Civil Code, the parents, the guardian, the curator, the provisional administrator regarding the assets of the persons they represent, civil servants, syndic judges, insolvency practitioners, executors, as well as other such persons, who could influence the conditions of the sale made by through them or whose object is the goods that they administer or whose administration they supervise, besides the fact that they cannot buy the respective goods, they cannot also sell their own goods when the price to be paid for these goods is made up of a sum of money that comes from the sale or exploitation of the good or patrimony that it administers or whose administration it supervises, as the case may be.

"The sanction of sales-purchase contracts concluded in violation of the aforementioned prohibitions to sell is relative nullity when the sellers are parents, guardians, curators or provisional administrators, and absolute nullity when the sellers, under the conditions shown, are civil servants, judges- syndics, insolvency practitioners, executors, as well as other such persons who could influence the conditions of the sale."

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[1] "(1) They are unable to buy, directly or through intermediaries, even through a public auction:
a) Trustees, for the goods they are tasked to sell;
b) Parents, guardian, curator, provisional administrator, for the assets of the persons they represent;
c) Civil servants, syndic judges, insolvency practitioners, executors, as well as other such persons, who could influence the conditions of the sale made through them or whose object is the goods they administer or whose administration they supervise.
(2) Violation of the prohibitions provided for in para. (1) lit. a) and b) are sanctioned with relative nullity, and those provided for in letter c) with absolute nullity."

[2] Regarding this incapacity, the doctrine stated that "the interest of the persons provided for in art. 1654 para. (1) to sell one's own assets as profitably as possible conflicts with the interests of the persons protected by the law. If the amount of money that represents the sale price does not come from the exploitation of the asset or the patrimony that he administers or whose administration he supervises, the inability to sell does not operate. If the origin of the amount of money paid as price was indifferent, the inability to sell would also be the inability to buy for the person protected by the prohibition" (M. Gavriș, in the collective work "New Civil Code. Comments, doctrine and jurisprudence", Vol. III, Art. 1650-2664, Ed. Hamangu, Bucharest, 2012, p. 12).

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