

ELEVATING EUROPE

**SMART INITIATIVES AND
ADMINISTRATIVE INNOVATION**

Proceedings of the International Conference EU-PAIR 2023



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EDITURA UNIVERSITĂȚII „ALEXANDRU IOAN CUZA” DIN IAȘI

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(editors)

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Jean Monnet Chair. EU Public Administration Integration and Resilience Studies

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EDITURA UNIVERSITĂȚII „ALEXANDRU IOAN CUZA” DIN IAȘI
2023

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EDITORIAL MESSAGE

Dear Esteemed Readers,

We are thrilled to present to you the latest volume *Elevating Europe: Smart Initiatives and Administrative Innovation. Proceedings of the International Conference EU-PAIR 2023* which is the result of the 2023 EU-PAIR Annual International Conference – 2nd Edition *Challenges and Dynamics of European Administrative Area* held in Iasi, Romania, during 22nd and 23rd of June 2023, part of *Jean Monnet Chair. EU Public Administration Integration and Resilience Studies*, acronym *EU-PAIR*, project no. *ERASMUS-JMO-2021-HAI-TCH-RSCH-101047526*. This collection of insights and analyses delves into the intricate tapestry of the European Administrative Area, weaving together the threads of public and private affairs to foster sustainable economic growth, business resilience, and administrative innovation.

In the pages that follow, you will encounter a diverse array of contributions from esteemed scholars, policymakers, and professional experts, all converging to illuminate the multifaceted landscape of European administration. Our aim is not only to showcase the current state of affairs but to provide a roadmap for the future—a future where innovative administrative practices play a pivotal role in shaping the destiny of Europe.

The evidence presented in this volume underscores the integral role of the European Administrative Area in sustaining and enhancing the economy. From public policy frameworks to private sector initiatives, each article contributes to the broader narrative of how administrative innovation acts as a catalyst for progress. By exploring the intersections of public and private affairs, we aim to highlight the synergies that can propel Europe towards a brighter, more resilient future.

As we navigate the complexities of a rapidly evolving global landscape, the importance of administrative innovation cannot be overstated. This volume serves as a testament to the dynamism and adaptability inherent in European administrative practices. It is not merely a collection of scholarly articles; it is a call to action, urging stakeholders across sectors to collaborate, innovate, and elevate Europe to new heights.

We extend our gratitude to the authors, reviewers, and contributors who have made this volume possible. Their dedication to advancing the discourse on administrative innovation is commendable, and we are confident that the insights shared within these pages will serve as a source of inspiration for academics, policymakers, and practitioners alike.

In closing, *Elevating Europe: Smart Initiatives and Administrative Innovation. Proceedings of the International Conference EU-PAIR 2023* is more than a publication; it is a manifestation of the collective vision for a prosperous and innovative Europe. We invite you to immerse yourself in these proceedings and join us in the journey towards a future where administrative excellence is the bedrock of European success.

Sincerely,
Prof. Dr. Hab. Ana-Maria BERCU

Editor-in-Chief *Elevating Europe: Smart Initiatives and Administrative Innovation. Proceedings of the International Conference EU-PAIR 2023*

AT THE CROSSROAD OF DIFFERENT RESEARCH FIELDS: INDUSTRIAL RELATIONS, SMART WORKERS, SMART CITIES – THE IRSMART PROJECT AND BEYOND

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Abstract

Real-world problems need complex systems to be understood. In this context, interdisciplinarity has proved a reliable approach to tackle complexity. Combining multiple disciplines means covering multiple aspects of a certain issue. Furthermore, interdisciplinarity in social sciences helps tackling the most common limitations such as nonlinearities and co-evolution. The IRsmart project, combines multiple perspectives and diverse expertise to delve into the nexus among smart-working, industrial relations and smart cities. The main outcome of the project was to deliver a comprehensive picture on those issues benefiting from a consortium of 5 EU countries and gathering universities, research centers and trade unions. IRsmart represents a concrete instance of interdisciplinarity applied to real-world issues.

Keywords: *interdisciplinarity; complexity; complex systems; smart working; industrial relations; smart cities.*

JEL Classification: J08, A12, O57

1. INTRODUCTION: AT THE ROOTS OF THE IRSMART PROJECT

According to (Mainzer, 2011) modern scientific research stems out of real-life problems which are by nature complex. Interdisciplinarity is a powerful approach to address complexity by considering nonlinearity, self-organization, creative chaos, co-evolution, and blow-up regimes (Knyazeva, 2017). Applied to social sciences, interdisciplinarity allows for problem-oriented approaches, leading

to innovations that can address complex societal challenges. In fact, Kovács (2019) suggests to ground social sciences in complexity science to better understand the complex system and shape modern governance.

In this context, IRsmart project deals with issues concerning working from home, industrial relation, regulation, labour market, organisation of public and private companies, sustainability, smart cities. The aim is to investigate issues that are diverse in the European framework, but play a central role in the adoption of smart-working¹ practices in the respect of workers' rights:

- a) the regulatory framework,
- b) the working conditions,
- c) the organization of places, i.e., regions and cities.

In doing so the project gathers experts from five different European countries and different expertise. Partners of IRsmart span from universities, research centers, trade-unions. Each of the partners contributes providing its own national point of view on smart-working and smart city. In addition, there is another level of diversity which is related to expertise and different disciplines. This interdisciplinary approach to smart working and smart cities allowed IRsmart to better address this complex issue from multiple perspectives. The concept of smart-working has grown in importance during the spread of the SARS-CoV19 pandemics. In that period, considering all the measures of social contingency, smart working become the primary working arrangements all over the world. However, there was a heterogeneous presence of smart working regulations within the EU. In addition, there were also issues related to the ICT infrastructure and its suitability to allow for smart working (e.g., broadband coverage). In some other cases, employees did not have the correct skills set (i.e., digital literacy) to shift to remote working arrangements. The Smart City model is not a strictly defined and rigid paradigm exclusively based on the use of ICTs and on the consequent need for broadband network infrastructures. It is or should be considered as a comprehensive model, able in promoting and integrating actions, projects and investments in many different fields and sectors. Several dimensions or axes can be considered to describe a smart city: e.g., smart economy; smart mobility; a smart environment; smart people; smart living; and, finally, smart governance. These can be synthesized in

¹ Here, as we did in the project, we use the word smart working to encompass several types of out of office work, being aware of the sensible differences among the various types. E.g. according to Eurofound (<https://www.eurofound.europa.eu/it/topic/teleworking>) teleworking refers to a form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer's premises, is carried out away from those premises, on a regular basis. The characteristic feature of telework is the use of computers and telecommunications to change the usual location of work. ICT-based mobile work can be defined as the use of information and communications technologies (ICT), such as smartphones, tablets, laptops and/or desktop computers, for work that is performed outside the employer's premises. For most employees, mobile work could be considered a variation of telework, where workers carry out their job from a fixed location outside the employer's premises. The difference is that ICT-based mobile workers work in a range of locations and specifically use ICT to connect to shared company computer systems. Different levels of telework/ICT mobile work intensity and range of places at which individuals work might potentially have different consequences for working conditions.

a definition, among many others, of a smart city: a city is smart “when investments in human and social capital and traditional (transport) and modern (ICT) communication infrastructure fuel sustainable economic growth and a high quality of life, with a wise management of natural resources, through participatory governance” (Caragliu *et al.*, 2011).

Within this framework, in principles, it might be possible to include the concept of smart working as a factor that promotes more flexible working arrangements and influence the work-life balance. However, the literature highlights a lack of an operational definition of smart city. This in turn has an effect on the possibility to link this concept to others (e.g., smart working). The IRsmart project tries to tackle the issue via providing insights on smart working and smart cities from a country perspective and considering the different expertise of the consortium. With this approach, IRsmart project was able to unveil the main issues related to smart working and its implementation at EU level.

The work is structured as follows: first, a brief excursion in the literature of complexity and interdisciplinary with focus on social sciences. The next section of the paper highlights the approach of IRsmart in tackling the complexity of smart working, industrial relations and smart cities resorting to interdisciplinarity and multiple perspectives. The last section concludes identifying how this approach was effective in providing meaningful insights on the main issues subject of analysis in IRsmart. Combining multiple national perspectives and different disciplines, IRsmart was able to deliver a comprehensive framework.

1.1 Interdisciplinarity and complexity: a look at the literature

The earlier conception of interdisciplinarity was premised on the invention of a framework shared across disciplines to which each discipline contributed a bit. This concept is different from transdisciplinary, the next stage, that brings disciplines together in contexts, where new approaches arise out of their interaction something not like a compound but a super compound is produced (Chakraborti *et al.*, 2016). The study of economic complexity involves three lines of thinking: computational uncertainty, self-organization and dissipative structure, and a pluralistic and inclusive approach to economic thinking (Beker, 2019). The following works provide a clear picture of the challenges and opportunities of interdisciplinary approaches: (Barry *et al.*, 2008; Aral *et al.*, 2012; Neves, 2017). Neves (2017) provides a quite interesting picture of the interdisciplinary meaning in economics: from the (i) ‘economic imperialism’ (“explanation of all social behaviour through the use of instruments of economic analysis”) to processes of (ii) mutual inspiration and cross fertilization between economics and other (contiguous and less contiguous) fields. Some instances of cross-fertilization among different disciplines and economics can include (Jaffe, 2017; Neves, 2017):

- i. experimental psychology and neuroscience in the study of cognitive processes and economic behaviour, of the architecture of choice and economic design of markets;
- ii. approaches based on the science of complexity with approximations between physics, biology, natural sciences and economics (e.g., thermodynamics, chaos theory and non-linear dynamics; agent-based computational economics);
- iii. game theory in studies on conflict, cooperation and strategic behaviour, for example in the field of Industrial Organization.

The benefits of interdisciplinarity in economic research include enriching theory, gaining a better understanding of phenomena, and potentially shifting the dominant paradigm of economic thought (Damoc, 2018). Including other disciplines in economics studies might improve openness to new ideas and influences from other fields, leading to a more comprehensive understanding of complex economic phenomena (Truc *et al.*, 2020). As in the case of the IRSMART project, Fine, (2019) highlights that interdisciplinary helps tackling complex real-world problems leading to a more effective policy planning. In context such as the Sustainable Development Goals, expanding to other disciplines (e.g., sociology, psychology and anthropology) might frame the issue from multiple angles to acquire more knowledge of the issue under analysis (Nunkoo *et al.*, 2023). Addressing complexity with interdisciplinarity involves using complex systems and interdisciplinary approaches to develop novel hybrid perspectives. Complexity in economics research, implies addressing nonlinearity, economic dynamics, endogeneity, and chaos, and integrate concepts from dynamics, information, computation, and evolution. In this context, the collaboration with other disciplines might provide more suitable approaches to deal with those issues related to complexity (Knyazeva, 2017). In this context Parisi, (2021) proposed an interdisciplinary framework to address urban regeneration processes. Interdisciplinarity has also been successful in better understanding the complex human-environment interactions (Haapasaari *et al.*, 2012).

1.2 Interdisciplinarity tackling complexity: the IRsmart case-study

The aim of IRsmart is to provide a framework to the concept of smart-working and smart cities that considers multiple perspectives and expertise. Ideally, this approach identifies, validates, and analyses key dimensions of industrial relations and tripartite social dialogue across countries, regions and cities, also at the light of the European Pillar of Social Rights. The methodological approach will be multifaceted in accordance to the different issues analysed and objectives to be reached. It will be mainly based on desk research and field analysis, through the collection of already available data and qualitative surveys/interviews, coupled with focus groups with relevant stakeholders (worker representatives, public authorities, companies, workers, etc.). Overall, the information generated by this

mixed-method approach will provide novel data and useful insights to regional and local level policy makers and stakeholders. This analysis will feed constructive debates in the course of dissemination activities aimed at promoting awareness of both effective industrial relations/tripartite social dialogue practices and areas of improvement. The workflow of IRsmart, as synthesised in Figure1, is developed according to the analysis of three main different pillars: i) the regulatory/institutional pillar, ii) the workplace/internal-labour-market pillar; iii) the spatial/geographical pillar that integrate smart-working and smart cities, with a focus on environmental issues. All the three pillars considered will be addressed by project partners in order to end up with cross country comparison of the national/local case studies.

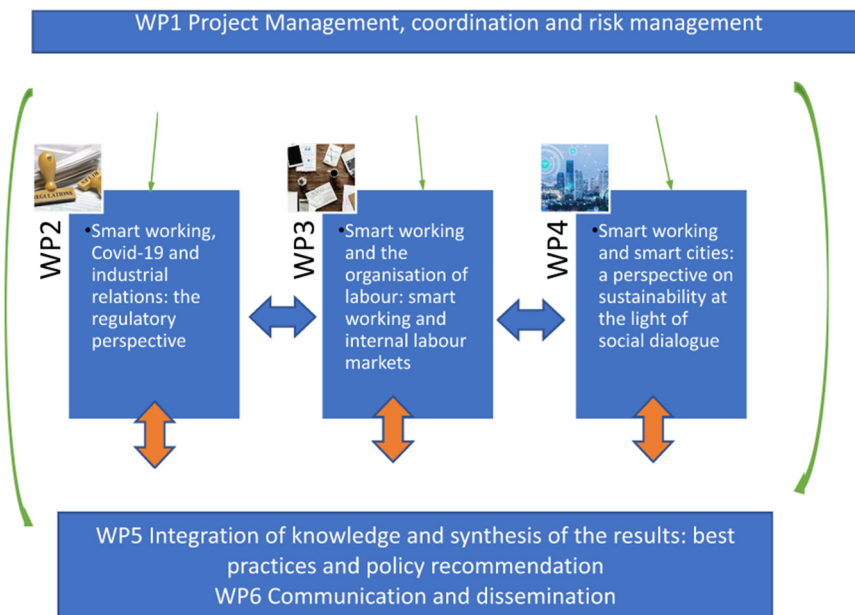


Figure 1. The workflow of IRsmart

Source: own representation based on IRsmart project working packages

Each and every member of the consortium provides its own perspective in all the areas subject of analysis. The first step was to provide the regulatory framework on smart working. Subsequently, the analysis shifted on the possible influence of smart working in the organizational structure of enterprises. Furthermore, the IRsmart focused on the possible of role industrial relations in shaping the smart working regulatory and organizational context. Once provided that, the following task was to include smart working within the much broader concept of smart cities in the framework of (urban) sustainability. Overall, the project allowed to deliver

a comprehensive framework that includes national, local and professional perspectives. The interaction among different concepts (e.g., smart working, industrial relations, smart city, sustainability), administrative levels (e.g., local, national) and stakeholders (e.g., workers, enterprises, citizens, government) contributed to enrich the complexity of the analysis. The IRsmart consortium is an ideal setup for such an endeavour because it collects partners from heterogeneous countries in terms of smart-working and smart cities diffusion, making it possible to draw and share best practices. Each member of the consortium is then supported by associate organizations belonging to the same region or country, representing relevant actors of the tripartite social dialogue. The work plan seeks to exploit this asset-structure by maximizing the opportunities for interaction and mutual feedback across partners at key strategic junctures of the project. Such a strategy increases the policy relevance of the analytical tools and of the empirical findings generated by the IRsmart project, also through comparative analysis across countries and regions.

As the differences across Europe between industrial relations systems, smart-working diffusion and urban areas' layout and dynamics are significant, it is necessary to include in the study a number of European cases in order to produce an informative comparative analysis: France, Italy, Poland, Romania, Spain. The selection of the five countries allows to consider various models of smart-working patterns and also various industrial relations systems within the EU. *France* – representing the continental model of industrial relations (with low level of union density, though with high impact on policies at the national level and the high potential to mobilise workers to collective actions), with smart-working share above the EU average in 2017 (7%) and during pandemic (38%). *Italy and Spain* – representing the Southern-European cluster (with relatively high trade union density and high coverage of collective agreements), in which share of smart-working before the pandemic stood below the EU average (3,5% in Italy and 4,1% in Spain) but rose significantly in April 2020 – especially in Italy (41%, above the EU average – 37%). Despite the increase, smart working in Spain did not exceed the EU average (30%). *Poland and Romania* – representing the Central and Eastern Europe model (with weak social dialogue institutions, including trade union density and low coverage with collective agreements, and minor impact of social partners on employment relations) – in which share of smart-working stood below the EU average before and during the pandemic (respectively: Poland – 4,5% , 31%, Romania – 0,4%, 19%), although showing a sharp increase (<https://ec.europa.eu/eurostat/>). In this framework, IRsmart gathers different expertise from universities to research centres and trade-unions. This includes all the relevant stakeholders that contribute to enrich the analysis providing their own perspective.

In terms of level of analysis, the regional and local (cities) levels are considered as important as the national for the purposes of the study. This is because regional industrial relations might have a stronger role than the national one in

dealing with issues that are very local-specific such as bargaining related to smart-working in local companies and the connected tripartite agreements on local mobility, costs bearing and infrastructure. Moreover, local specificities may play an important role with respect to the relationship between smart-working diffusion, working conditions and the smart-development of cities. However, the national level needs always to be taken into consideration since it provides the regulatory/institutional framework within which the regional and local tripartite social dialogue takes substance.

The three dimensions of analysis of the research work packages had the aim of dealing with the multifaceted issues considered in the project plan. From the regulatory perspective the results highlighted (in 2021) the lack of an overall EU directive whose development would provide guidelines on how to safeguard the rights and improve the well-being of remote workers. It is worth noting that in most of the EU countries the massive shift towards remote working, because of the pandemic, occurred in a context where there was at least a partial knowledge of it and/or related legislation. Nevertheless, the significant increase in remote working adoption, particularly in countries where it was not widely practiced before the pandemic, gave rise to novel work arrangements. This shift compelled public authorities and companies to address remote working specifically and incorporate it as a customary and integral mode of operation. The main points emerged from countries analyses concern the company organisations, too often unchanged in front of a new way of work organisation, as remote working, and the various purposes served by remote working the pandemic and post pandemic period: protecting vulnerable workers, addressing specific situations or redefining the work paradigm in general. The last issue is related to the effects that smart working brought to the employees and to the companies as well, which was the focus of the second research package, mainly focused on the company level. The interviews conducted to selected case studies highlighted the main reasons behind the introduction of smart-working: modernization and market adaptation, addressing workers' preferences for improved conditions, or as response measure during Covid-19 lockdowns. They also pointed out the implications, both positive (e.g., reduced commuting, increased work flexibility, greater autonomy) and negative (e.g., negative effects on physical and psychological health) of remote working for the employees' working conditions. A common consensus emerged from the interviews: the remote working is expected to remain a significant tool for companies and workers. This latter point shows the need to manage the remote working, also at a territorial level, bringing the research to focus on the relation and integration of smart working in smart cities. The collective findings from the five countries indicate that discussions surrounding smart cities and smart-working integration are still in their early stages. On this point important bottlenecks arise for the diffusion of smart working in smart cities. An important impediment to the widespread adoption of smart working lies in the unequal distribution of

broadband access and high-speed internet connectivity across the five countries. While urban areas follow a trajectory of digital integration and swift connections, bolstered by the emergence of smart working and co-working spaces, non-urban regions face substantial hurdles in evolving into smart territories. In these non-urban settings, fostering dialogue among diverse stakeholders becomes particularly crucial, serving as a mean to surmount obstacles and lay the groundwork for digital progress, ultimately attracting smart workers.

2. CONCLUSIONS: MAIN TAKEAWAYS OF THE IRSMART PROJECT

Real-world problems need complex systems to be understood. Interdisciplinarity has proved a reliable approach to tackle the growing complexity of modern scientific research. This is also valid in social sciences where studies identified how multiple disciplines are needed to foster research in the field. The IRsmart project should be considered a significant example of the application of interdisciplinarity to tackle issues related to smart working, industrial relations and smart cities. IRsmart delivers relevant insights on those three concepts and on their interconnections. It does so by providing a comprehensive picture of the issue from multiple perspectives. What emerges from the research activity is that remote working is a tool that shapes labor organization needs and must be managed through the dialogue among social partners and in the sphere of industrial relations. This likely involves a change in culture and perspective both for managers and for unions when we consider the company as the work filed of the social partners. From the managerial side the culture of control should be replaced by a culture mostly rooted on autonomy and trust, which in turn may create high levels of commitment from the employees, even when they do not work on the employer premises. On the side of unions, they need updated competences and perspective to answer the challenges that a model of remote working presents them, especially when the boundaries for their activity moves from the company to the territories, as we point out in the research part concerning the integration of smart cities and remote (smart-) working. This shift of perspective implies an innovative function of social partners at the local and national level and a re-organization of roles and responsibilities within the social partners in a changed arena of dialogue and conflict. If the connection between industrial relations and remote work has been established, initially in an atmosphere of skepticism and later during emergency management, engaging with the concept of smart cities demands a forward-looking transformation in industrial relations. The territory therefore gains heightened contractual significance because it is here that negotiation must effectively address the tangible and intangible disparities progressively exposed by the acceleration of remote work and it is here that the social dialogue must also manage the complexities presented the integration of smart-working and smart cities in terms of

planning, sustainability, transparency, knowledge, and the quality of life and work.

In addition to the above issues touched upon by the project research activity IRsmart also dealt with the one concerning the relation between remote working and environmental sustainability, which is of the utmost importance. The new ways of labor organization have an impact on the environment and on urban life, but the dimensions and metrics to be taken into account to measure such an impact are so many that it is of extreme difficulty to make meaningful evaluations. The role of social dialogue in this context may be that of mitigating the potential exacerbation of inequalities and polarizations in working conditions and occupations (Countouris *et al.*, 2023).

Given the results obtained, the role of unions should be revitalized in order to answer the complexity of the new framework they have to deal with and in order to be able to cope with, through the instrument of social dialogue, the new emerging phenomena that are going to revolutionize the labor organization. To do that, strengthening the role of social dialogue is a policy objective of primary importance as well as designing complementary industrial and labor market policies.

The project was able to gather universities, research centers and unions. This contributed to enrich the analysis benefiting from virtuous spillovers among countries and disciplines. In consideration of the various research domains investigated in the analysis the project was conceived as an interdisciplinary network of partners with different competencies, which were functional in dealing with the complexity emerged during the research activities. The idea of complexity slowly permeated the research and lead IRsmart results to highlight the phenomenon of ‘complexity in industrial relations’, that ought to be considered the cornerstones upon which to construct a future research agenda. The latter might imply a deepen analysis of territorial units and a wider partnership, in order to provide both more fine-grained results and a wider applicability of the research activity.

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ATTRACTING HIGH-POTENTIAL HUMAN CAPITAL IN PUBLIC INSTITUTIONS BY IMPLEMENTING TALENT MANAGEMENT

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Abstract

Talent management has become an essential element in profit-driven organizations, but in recent years research in the field has increasingly expanded to public institutions. The particularities of the public environment determined by rigid and intolerant legislation lead to ethical dilemmas that are difficult to overcome. Research in recent years shows that implementing talent management leads to increased organizational performance, including in public institutions.

To develop the educational system to the highest standards and to improve the quality of health services, this study aims to determine, through the analysis of the specialized literature and the theories in force, how to attract and maintain high potential human capital in the public educational and healthcare institutions, under the conditions of the manifestation of the governance actions and the reforms carried out by the state.

Keywords: *talent management; public institutions; attracting high performers.*

Jel Classification: M12, J45

1. INTRODUCTION

In recent years, the shortage of highly qualified personnel and the lack of attractiveness of certain positions in Romanian public institutions have demonstrated that human resource strategies and policies have become ineffective in attracting and managing the most valuable resource, human capital.

Global challenges arising from dynamic changes in the labor market have necessitated the development of methods for identifying, attracting, career development, and retaining valuable human capital within organizations, resulting in the emergence of a new field of research, talent management.

The concept of talent management was first used by the American Management Association in 1957 (Dooher and Marting, 1957), but the field predominantly developed after 2010 (Sparrow, 2019).

To gain a competitive advantage, leaders of major private sector corporations have sought innovative techniques for acquiring human capital with exceptional skills and competencies to ensure success and financial benefits through their own performance.

In this context, practitioners at McKinsey, a consulting company, introduced the term "War for Talent" in 1998, along with the publication of a work of the same title in the company's quarterly journal. Nearly 20 years later, Steven Keller and Mary Meaney, senior partners at McKinsey, draw attention to the changing needs of the labor market as well as the fact that the process of talent attraction within an organization needs to be supplemented with new information, processing, storage, and communication technologies.

Studies conducted in renowned companies have shown that analysis programs or algorithms for assessing the traits and characteristics of employees surpass human decisions by 20% in the processes of attracting and retaining performers within an organization (Keller and Meaney, 2017).

According to Lawler (2017), conventional talent management practices no longer serve organizations or their employees, and a reinvention of the methods for recruiting, hiring, and developing people is recommended. Consequently, the development of new best practice manuals in the field of talent management is necessary (Liu, 2019).

The majority of current concepts in the field of talent management, as addressed in the specialized literature, relate to the ways in which the most important assets of companies, human resources, are identified, attracted, developed, promoted, and retained within organizations. The result of implementing these processes is the placement of the right person in the right position based on their competencies and skills (Aksakal *et al.*, 2013).

Considering that in Romanian public institutions, the strategies for attracting and retaining valuable personnel have not significantly changed in recent years and are not adapted to the current labor market needs, this work aims to identify the best methods for attracting high-potential personnel in public institutions. This will be achieved through a literature review, the analysis of secondary data collected from public institutions' websites, online recruitment platforms, and semi-structured interviews conducted in three counties in Romania.

2. LITERATURE REVIEW

Research in recent years attests to the fact that the significant demographic decline will lead to a massive shortage of qualified labor globally. Moreover, the changes driven by technological development and artificial intelligence will result in major shifts in the labor market, necessitating the updating of existing theories. Current principles and practices of talent management were designed for periods of economic stability. However, in the current context of economic crises and globalization, new approaches to human capital management are required (Lawler, 2017).

Organizations that possess the best technology and abundant material resources but lack valuable human capital to manage these resources will face formidable obstacles and fail to achieve expected results (Bature *et al.*, 2018). Therefore, the most significant challenges for managers in both private sector organizations and public institutions are the attraction, development, and retention of personnel with outstanding abilities contributing efficiently to the achievement of established objectives (Sembiring and Damayanti, 2023).

The impact of technological development on the working environment has led to the disappearance of certain professions while compelling employees to adapt to new demands by developing new skills and competencies for continuous evolution, aligning with the organization's needs.

Collings and Mellahi (2009) define talent management as "a set of activities and processes that systematically identify key positions that contribute differentially to the organization's sustainable competitive advantage. It also involves developing a group of employees with high potential and performance to fill these roles, along with creating a differentiated human resource architecture to facilitate the continuous commitment of individuals to the organization."

Alziari (2017) suggests that talent management practices aim to identify a limited number of individuals with exceptional skills and competencies, which positively impact the organization's success. Decisions regarding talent attraction and acquisition should be overseen by organizational leaders and human resource departments.

Attracting personnel with exceptional abilities is the determining factor significantly contributing to an organization's performance (Iles *et al.*, 2010; Ulrich and Allen, 2014; Bhattacharya, 2015; Thunnissen and Gallardo-Gallardo, 2017). According to Armstrong and Taylor (2014), the first step in this process involves analyzing the strengths and weaknesses of recruitment, covering aspects such as the organization's reputation, employee salaries, benefits, professional development opportunities, career advancement, and working conditions.

As per the specialized literature, attracting highly qualified personnel in organizations from all fields is primarily influenced by employer branding. Employer branding offers a competitive advantage in the labor market, and a company's reputation is a primary factor when it comes to job choices (Poppleton, 2009;

Rop and Kwasira, 2015; Ulrich, 2016; Gourova and Gourova, 2017; Lawler, 2017; Boštjančič and Slana, 2018 – cited in Wallace et al., 2012; Maylett and Wride, 2017; Sparrow, 2019; Taylor, 2022; Dauth et al., 2023). Promoting the organization's culture and values through media channels, daily updating career sections with employment opportunities and benefits (Reynolds and Weiner, 2009; Lawler, 2017), and active presence on recruitment websites are considered the best practices for attracting top performers and more.

Attractive salaries, performance rewards, social benefits, a friendly working environment, and work-life balance play an essential role in attracting and retaining talent within the organization (Braiden, 2009; Sparrow, 2019; Mok and Chan, 2020; Turner, 2018 – cited in Hariharan, 2014; Hongal and Kinange, 2020). Advanced technology undeniably changes the competitive market and business environment (Alziari, 2017), marking a significant factor in attracting valuable human resources. Companies offering access to the latest devices, techniques, and working systems are preferred over those that have not adapted to technological progress (Sen and Bhattacharya, 2019; Hongal and Kinange, 2020).

Generation Y seeks attractive and challenging jobs, along with satisfactory financial rewards, family time, and career advancement opportunities (Wong, Wan and Gao, 2017). In contrast, Generation X prefers job stability and financial benefits, especially considering the reduced job prospects after the age of 40-45.

Attracting highly qualified personnel should be complemented with strong motivation and retention strategies, making key positions as attractive as possible (Bhebhe and Maphosa, 2016; Raja and Kumar, 2016), including a favorable working environment, recognition of merits, performance-based bonuses, private health clinic subscriptions or private pensions, training, and other forms of employee development and reward.

It is not enough to know how to attract valuable individuals; it is necessary to invest time and effort in talent management strategies to benefit from their abilities (Davies and Davies, 2011), offering them the optimal conditions for development and professional growth (Betchoo, 2017).

Governments aim to address changes related to employees in public organizations by innovating processes related to human resource supply, adopting effective governance policies, and implementing a series of actions through constant reforms. It is universally recognized that the activities of human resource managers to find, retain, and develop talent are associated with one of the most challenging missions (Cappeli, 2008).

Considering the current global economic situation and the rapid changes occurring in the labor market, it is concluded that the processes of attracting, recruiting, selecting, motivating, and retaining valuable human capital should align with both organizational objectives and employees' personal interests.

3. METHODS FOR ATTRACTING TOP EMPLOYEES IN ROMANIAN PUBLIC INSTITUTIONS

In order to identify how exceptional human capital is attracted to Romanian public institutions, and to examine the onboarding processes, development, and recognition of merits as talent management practices, the study employs a qualitative analysis focused on collecting secondary data from the websites of public institutions and online recruitment platforms. It also utilizes primary data collected during experimental research conducted in the Bacău, Iași, and Suceava counties. The interview guide was applied in public institutions in the healthcare, pre-university, post-secondary, and higher education sectors, as well as in media, culture, and public administration. The research population consisted of managers, human resources specialists, and experts in various fields of activity.

Years ago, positions in Romanian public institutions were highly sought after, and staff turnover was low compared to private sector organizations. Employer branding, indefinite employment contracts, and job security were the determining factors for attracting individuals with exceptional skills to public institutions, without managers in these organizations having to make additional efforts to leverage employees' full potential.

However, presently, beyond the benefits of indefinite employment contracts and job security, limited career advancement opportunities and the uniform distribution of salaries and financial incentives, without taking into account the size of the organization, job responsibilities, level of responsibility, degree of involvement, and seriousness in completing tasks, have led to a decline in interest in public sector fields.

The analysis conducted has revealed the following unfavorable aspects that produce negative consequences in attracting individuals with exceptional skills to the public sector.

In public institutions, employer branding is a decisive factor for attracting talented staff. However, the current job announcements are incomplete and do not provide sufficient details about career development opportunities and bonuses offered for completing complex tasks or achieving individual performance goals.

For instance, standard job announcements published on public institutions' websites contain information about the general conditions for applying to the advertised position according to current legislation, specific requirements such as education, experience, knowledge, and skills, the competition schedule, the bibliography required for the written test, the contents of the competition file, and the tests that candidates will participate in.

In contrast, on online recruitment platforms, private sector organizations emphasize job responsibilities, work environment, required experience and knowledge, medical and financial benefits, working conditions, and professional development or career advancement opportunities in their job announcements.

Responses from research participants confirm that the job announcements used to attract talented individuals to public institutions lack information about job objectives, work environment, career advancement and professional development opportunities, or the benefits offered, which contributes to the demotivation of individuals interested in applying for positions.

In private companies, the integration process takes between 3 and 6 months, depending on the characteristics of the position and prior experience. A dedicated mentor familiarizes new employees with the organization's objectives, the location of their work, internal regulations, professional expectations and goals, as well as methods and processes for professional development.

Sixty-eight percent of respondents stated that in their respective institutions, the integration of new employees is carried out through mentoring activities, introducing the workplace and colleagues, and outlining professional objectives. The remaining 32% said that in organizations where they work, adaptation to the new job is based on the integration skills of each new employee.

To identify the processes through which employees' professional development occurs, research participants were asked to mention the activities that contribute to expanding professional competencies and whether they are intended for a specific group of employees or all employees.

As a result of legislative changes in recent years, especially after 2010, certain categories of public institution employees can no longer participate in training courses, training, and professional development, or receive payment for hours worked beyond the regular work schedule. For medical, teaching, and academic personnel, opportunities for participation in training, knowledge sharing, workshops, team-building activities, international mobility, and conferences contribute to professional development and the acquisition of new knowledge necessary for daily activities. Over half of the study participants believe that the professional development process is addressed to all categories of employees. One-quarter of the respondents believe that only certain categories of employees benefit from training courses or other methods of professional development, while two respondents do not know or did not answer the question due to a lack of concern for this process in their organization.

Recognizing merits as part of talent management can be viewed from a financial or motivational perspective. Sixty-two and a half percent of respondents stated that their respective institutions award bonuses, financial incentives, and merit gradings, with opportunities for participation in research teams or highlighting outstanding results in departmental or service meetings. Thirty-seven and a half percent of respondents stated that due to current legislation, there are no material reward possibilities in their organizations, nor other forms of recognition for merits or outstanding results.

4. DISCUSSIONS AND CONCLUSIONS

In order to enhance the process of attracting competent personnel to Romanian public institutions, we believe it is useful and absolutely necessary to adopt new strategies by updating job announcements to align with current labor market requirements. These announcements should clearly state the organizations' expectations, objectives, career advancement opportunities, and bonuses offered. Simultaneously, we find it necessary to implement a new hiring assessment system that includes a test of individual knowledge and "Career Anchors" testing (Schein, 1990), which can provide relevant information to the employer about candidates and the positions they are suitable for.

In Romanian public institutions, current legislation favors the allocation of salaries and financial incentives without undertaking actions to standardize work, measure the degree of job occupancy, or assess the quantity and quality of work performed. This has significantly contributed to the demotivation of competent employees in the public system and their migration to private sector companies.

It is undeniable that individuals who work harder seek recognition for their merits and expect to be rewarded differently from disinterested and uninvolved individuals. Consequently, we believe that new criteria for awarding salary and material benefits and performance bonuses must be established, clearly regulated by specific laws at the level of public institutions.

Limiting opportunities to participate in employer-supported training courses has led to the emergence of categories of employees who lack interest in professional training, self-development, and self-improvement. They no longer engage in activities beyond those outlined in their job descriptions and are no longer interested in staying up to date with the latest developments in their respective fields.

Regulating these aspects will lead to an improvement in the processes of attracting, developing, and rewarding high-potential individuals who will use their skills and knowledge to enhance the prestige of the organizations they are part of.

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SAFEGUARDING FINANCIAL INTEGRITY: THE ROLE OF AUDITORS IN MITIGATING THE CREATIVE ACCOUNTING PRACTICES

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Abstract

This article explores the crucial role of financial auditors in curbing the prevalence of creative accounting practices. Creative accounting, characterized by the manipulation of financial statements to present a distorted view of an entity's financial performance, poses significant risks to financial integrity and investor confidence. Through a comprehensive analysis of existing literature and case studies, this study investigates the strategies that auditors can employ to limit the usage of creative accounting practices. It examines the importance of professional skepticism, ethical behavior, and adherence to auditing standards in detecting and deterring manipulative techniques. The article also explores the role of regulatory frameworks and audit quality in enhancing auditor independence and effectiveness. By providing insights into the challenges faced by auditors and offering practical recommendations, this research contributes to the ongoing dialogue on strengthening financial reporting integrity. It aims to assist auditors, regulators, and stakeholders in promoting transparency, accountability, and trust in financial statements. Ultimately, the findings of this study underline the vital role auditors play in preserving the reliability and credibility of financial information.

Keywords: *accounting; financial auditing; financial statements; creative accounting.*

JEL Classification: M42, M41

1. INTRODUCTION

In today's intricate financial landscape, maintaining the integrity of financial information stands as a cornerstone of trust in global markets. Yet, a shadow looms over this foundation – the ominous specter of “creative accounting.” Creative accounting, a term both evocative and foreboding, refers to the artful manipulation of financial statements by entities seeking to present a rosier, often deceptive, picture of their financial health. These practices not only distort the true

financial position of a company but can also erode investor confidence and shake the very bedrock of our economic systems.

In this era of increasing complexity, globalization, and innovation, creative accounting practices have become more sophisticated and elusive. Consequently, the role of auditors, those entrusted with the duty of independent scrutiny, has never been more crucial. Beyond mere number-crunching, auditors are the guardians of financial integrity, standing at the frontlines to detect and prevent the crafty maneuvers of creative accounting.

This article will underscore the critical significance of auditors in safeguarding financial integrity and ultimately, fortifying trust in financial reporting. As we journey deeper into this topic, it becomes abundantly clear that the relationship between creative accounting and auditors is not merely an academic exercise but a frontline battle in the war for financial transparency and honesty.

2. THE RELATIONSHIP BETWEEN CREATIVE ACCOUNTING AND AUDITORS

In this context, auditors play a pivotal role in upholding financial integrity. Their role extends far beyond merely verifying numbers on a balance sheet; auditors are enforced with identifying and mitigating creative accounting practices. This article delves into the multifaceted aspects of creative accounting, elucidates the methods employed by auditors to detect it, and emphasizes the significance of their role in preserving the transparency and credibility of financial statements. Through a comprehensive exploration of these topics, is aimed to underscore the critical importance of auditors in safeguarding financial integrity and fostering trust in financial reporting.

Auditors play a crucial role in contributing overall to the wealth of the society. Auditors ensure that financial statements of businesses and organizations are accurate and transparent. This transparency is essential for investors and creditors to make informed decisions, which, in turn, can attract more investment into the economy. Auditors provide an independent assessment of an entity's financial health. This helps build trust and confidence among investors, shareholders, and the public, leading to a stable and robust financial market. When people trust the financial system, they are more likely to invest and participate in economic activities. Auditors identify financial risks and weaknesses in internal controls. By addressing these issues, they help organizations mitigate potential financial crises, which can have a significant impact on the overall economy. Auditors ensure that businesses adhere to financial regulations and laws. This helps prevent financial fraud and unethical practices, promoting fair competition and a level playing field for all businesses. A well-regulated and audited financial system contributes to economic stability. It reduces the likelihood of financial scandals and market crashes, which can have devastating effects on wealth and economic growth. Auditors play a role in verifying tax compliance. When individuals and businesses

pay the correct amount of taxes, governments have more resources to invest in public services and infrastructure, benefiting society. Auditors help protect the interests of investors by ensuring that financial statements accurately represent a company's financial health. This protection encourages individuals to invest their money, stimulating economic growth.

As a conclusion, auditors help create a foundation of trust, transparency, and accountability in financial systems. This, in turn, encourages investment, ensures compliance with laws, and contributes to the overall wealth and stability of society.

Auditors can improve their impact on society and the financial industry by implementing several strategies and practices. Auditors can go beyond basic compliance and proactively encourage organizations to disclose more information in their financial statements. This can include additional details about risk management, sustainability practices, and long-term strategic plans, providing investors with a more comprehensive view of a company's operations.

Embrace advanced auditing technologies, such as data analytics and artificial intelligence, to perform more in-depth and efficient audits. These tools can help identify anomalies and potential issues in financial data more effectively, improving the quality of audits. Place a stronger emphasis on risk assessment during audits. By identifying emerging risks early on, auditors can provide valuable insights to organizations, helping them proactively manage and mitigate these risks, which can have a significant impact on financial stability. Invest in ongoing training and education for auditors. Staying updated on the latest accounting standards, regulations, and auditing techniques is crucial to ensure audits remain relevant and effective. Implement robust quality control measures within auditing firms to ensure consistency and accuracy in audit processes. This can include peer reviews and internal quality assessments to identify areas for improvement.

Uphold the highest ethical standards in auditing. Independence and objectivity are critical to maintaining public trust. Auditors should be vigilant in avoiding conflicts of interest and unethical practices.

Given the growing importance of sustainability and social responsibility, auditors can expand their role to include Environmental, Social, and Governance (ESG) auditing. This involves assessing an organization's environmental and social impact, which is increasingly relevant to investors and stakeholders.

Work closely with regulators, standard-setting bodies, and other stakeholders to influence and shape accounting and auditing standards. Auditors can contribute to the development of regulations that enhance transparency and accountability.

Engage in educational initiatives to help the public better understand the role of auditors and the importance of financial transparency. This can help bridge the gap between auditors and the general public.

Auditors should adapt their audit methodologies to address the unique challenges posed by evolving business models, such as technology companies and those heavily reliant on intangible assets (Alvin, 2007).

By embracing these practices and staying adaptable in a rapidly changing financial landscape, auditors can enhance their impact on society and continue to play a vital role in ensuring the integrity of financial systems.

Creative accounting is an umbrella term that encompasses a range of financial manipulation techniques employed by companies to misrepresent their financial health. These practices can include inflating revenue figures, understating liabilities, or altering the timing of expenses (Ghosh, 2018). The motivations behind creative accounting are diverse, ranging from the desire to meet earnings targets to securing favorable lending terms or stock prices. In some cases, it's driven by a need to conceal financial distress or fraud (Jones, 2011).

Auditors play a crucial role in detecting and mitigating creative accounting practices, but they typically cannot do it entirely relying on their own efforts. Auditors are expected to maintain independence from the entities they audit. This independence is vital to ensure unbiased and objective assessments. However, this independence also means that they rely on the information provided by the company being audited. They cannot independently verify every transaction and record within the company. Auditors have limited access to a company's internal operations compared to its management. They rely on management to provide access to records, information, and personnel. This reliance on the company's cooperation can limit their ability to uncover deceptive practices that may be well hidden. While auditors possess specialized expertise in financial accounting and auditing, they may not have the same level of industry-specific knowledge as the company's management. Creative accounting often involves exploiting industry-specific nuances and complexities, which may require additional expertise to uncover. Auditors are subject to regulatory oversight, which sets certain standards and requirements for auditing procedures. However, these standards may not cover every aspect of creative accounting, leaving some room for deceptive practices to evade detection. Effective mitigation of creative accounting often requires collaboration between auditors, regulatory authorities, and other stakeholders. Regulators may have investigative powers and resources that auditors lack. Additionally, whistleblowers and internal company controls can also play a role in exposing deceptive practices. As a conclusion, while auditors play a vital role in detecting and deterring creative accounting, they typically cannot do it entirely by themselves due to their independence, limited access, and the specialized nature of deceptive practices. A combination of auditors, regulatory oversight, industry expertise, and collaborative efforts is usually required to effectively address the issue.

Auditors are the gatekeepers of financial integrity. They are independent professionals entrusted with the task of examining a company's financial statements and expressing an opinion on their accuracy (Showalter, 2019). Their role goes beyond a cursory review; auditors employ a systematic and thorough approach to scrutinize financial transactions, internal controls, and accounting policies.

Auditors employ several methods to detect creative accounting practices. They analyze financial ratios, scrutinize complex transactions, and assess the reasonableness of estimates. They also conduct risk assessments and focus on areas where manipulation is more likely to occur. Additionally, auditors use data analytics and sophisticated software to identify anomalies and patterns that may indicate financial irregularities.

Perhaps the most potent tool in an auditor's arsenal is professional skepticism. This mindset encourages auditors to approach their work with a critical eye and a healthy degree of doubt. It means questioning management's assertions and seeking corroborating evidence. Professional skepticism is the auditors' shield against falling victim to deceptive accounting practices.

Yes, auditors often face challenges in detecting creative accounting practices, also known as earnings management or financial statement manipulation. These challenges arise due to various factors. Creative accounting techniques are becoming increasingly sophisticated, making them harder to detect. Companies may employ complex financial structures, off-balance-sheet transactions, or accounting policies that are technically within the bounds of accounting standards but manipulate the portrayal of financial performance. Some accounting standards allow for a degree of subjectivity, giving companies room to interpret and apply rules differently. This subjectivity can be exploited to manipulate financial statements while remaining technically compliant. Smaller audit firms may have limited resources and access to advanced data analytics tools compared to large firms. Detecting creative accounting often requires substantial resources and expertise. Auditors may face pressure from clients to overlook certain issues or to be lenient in their assessments. This pressure can come from a desire to maintain client relationships or fear of losing a lucrative audit engagement.

Auditors often have limited time to complete an audit, especially for larger and more complex organizations. This can make it challenging to thoroughly investigate and identify subtle manipulation techniques.

Creative accounting practices evolve over time, adapting to changes in regulations and market conditions. Auditors must continually update their skills and knowledge to keep pace with these changes.

Some industries, like technology or finance, have complex business models and financial instruments that can be difficult to understand fully. This complexity can make it easier for companies to hide manipulation.

Auditors rely on the information provided by the company being audited. If the company withholds or misrepresents information, auditors may have difficulty detecting manipulation.

To address these challenges, auditors must remain vigilant, exercise professional skepticism, use advanced data analysis tools, and stay informed about emerging trends in creative accounting. Additionally, regulatory bodies and standard-setting organizations often update accounting standards to close loopholes and

enhance transparency, which can help auditors in their efforts to detect and prevent creative accounting practices.

Definitely, auditors should collaborate and work together with authorities, such as regulatory bodies and law enforcement agencies, to ensure the integrity of financial reporting and to investigate potential financial misconduct. There are several reasons why such cooperation is important and may bring the expected results. Regulatory bodies and authorities have the legal and investigative powers to delve deeper into financial irregularities. Auditors can provide valuable insights and evidence to assist in these investigations. Authorities may have access to information that auditors cannot obtain independently. Collaborating allows auditors to benefit from additional data and resources when conducting their audits. Cooperation between auditors and authorities can lead to more effective enforcement of financial regulations. This can deter fraudulent activities and maintain the credibility of financial markets. The knowledge that auditors are willing to collaborate with authorities can serve as a deterrent to potential wrongdoers. It sends a message that financial misconduct will not go unnoticed or unpunished.

Working together allows for a quicker response to potential financial scandals or crises. Timely action can help prevent further damage to investors and the financial system.

Auditors possess expertise in financial reporting and accounting, which can be valuable to authorities during investigations. This expertise can aid in the identification of irregularities. Collaboration ensures that auditors and authorities are aligned in their objectives of maintaining financial market integrity and protecting investors. This alignment fosters trust and cooperation.

However, it's important to maintain the independence of auditors from the entities they are auditing and the authorities they may collaborate with. Auditors should maintain objectivity and professionalism in their work, even when cooperating with external organizations.

Overall, the collaboration between auditors and authorities is essential for maintaining transparency, accountability, and trust in financial markets, and it helps ensure that financial regulations are effectively enforced.

3. CONCLUSIONS

In today's dynamic and complex business environment, ensuring the integrity of financial information is paramount to maintaining trust in financial markets. The term "creative accounting" has gained notoriety as companies sometimes employ ingenious yet unethical tactics to manipulate financial statements. This practice not only jeopardizes the accuracy of financial reporting but also undermines the stability of the entire financial system. Safeguarding financial integrity in an era of increasingly complex financial transactions and global markets is an immense challenge. Creative accounting practices continue to evolve, posing a persistent threat to the accuracy and transparency of financial reporting. However,

auditors stand as a formidable bulwark against this tide of deception. Their role in detecting and mitigating creative accounting practices is indispensable. Auditors bring objectivity, expertise, and professional skepticism to the task of scrutinizing financial statements. They provide assurance to investors, creditors, and other stakeholders that the numbers presented are faithful representations of a company's financial health as we navigate the intricate terrain of modern finance, it is imperative that auditors remain vigilant and committed to their role as guardians of financial integrity. Their unwavering dedication to truth and accuracy in financial reporting not only serves the interests of individual stakeholders but upholds the stability and credibility of the entire financial system. The collaborative efforts of auditors, regulators, and the business community are vital to ensuring that creative accounting practices are exposed and eliminated, thereby fostering trust and confidence in the world of finance.

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UNDERSTANDING THE CREATIVE ACCOUNTING PRACTICES IN THE BANKING SECTOR

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Abstract

This article aims to present the world of creative accounting within the banking sector, with the scope to shed light on the deceptive financial practices employed by banks. Through an extensive literature review and analysis of real-world cases, this study examines the motives, methods, and consequences of creative accounting in banking. By exploring the intricate techniques used to manipulate financial statements, the article aims to enhance the understanding of the potential risks and implications associated with such practices. Moreover, it highlights the regulatory challenges faced by authorities in detecting and preventing these manipulative behaviors. This emphasizes the difficulties which regulatory authorities may encounter when it comes to identifying and stopping creative accounting practices in the banking sector. Creative accounting techniques are often designed to obscure the true financial position of banks, making them elusive and challenging to detect through conventional regulatory mechanisms.

Keywords: *accounting; banking industry; financial statements; creative accounting.*

JEL Classification: M42, M41

1. INTRODUCTION

There is no general accepted definition of creative accounting, as this is a very broad yet very complex subject. In essence, creative accounting refers to the practice of manipulating financial information, often within the boundaries of the law, to present a more favorable and potentially misleading view of a company's financial performance or position. It involves the use of accounting techniques that may deviate from standard accounting principles to achieve specific financial reporting outcomes, such as higher profits, lower expenses, or better financial ratios (Smith, 2015).

Other authors describe creative accounting as a practice in which financial professionals manipulate accounting methods, financial statements, or other financial data to present a more benefic or misleading picture of a company's

financial performance, often with the aim of achieving specific financial or strategic objectives. This manipulation can involve exploiting the flexibility within accounting rules and standards to influence investors, stakeholders, or regulatory authorities.

The classic definition of creative accounting specifies the manipulation of financial records and reports by companies to present financial information in a manner that deviates from general accounting principles, often with the intent of portraying a more favorable image of the company's financial health or performance (Naser, 1993). It involves the use of accounting techniques that, while not necessarily illegal, can be misleading to investors, stakeholders, and the public.

Creative accounting practices occur all industries and sectors, but certainly these are more prevalent in areas where there is a greater financial complexity, competitive pressure, or regulatory scrutiny (Scott, 1987). Some of the industries and sectors where creative accounting is more commonly observed are: financial services, technology, energy and natural resources, real estate, healthcare and pharmaceuticals, retail, telecommunications, construction and infrastructure, government and public sector, startups and emerging companies.

2. WAYS OF USING CREATIVE ACCOUNTING

The reasons and expected outcome from usage of creative accounting varies depending on the specific industry. Financial services sector consists mainly of banks, investment companies and insurance companies. Creative accounting can be used to manipulate financial statements for several reasons: to meet regulatory solvency and liquidity requirements, to create an appearance of good risk management, to conceal risky transactions and investments, or to enhance perceived profitability.

High-growth technology companies may employ creative accounting to justify valuations or to camouflage the slowing growth, through non-standard revenue recognition practices have been observed in this sector.

Energy and natural resources companies have complex financial structures and may use creative accounting to manage assets, reserves, and liabilities in ways that affect reported profits and asset values.

Real Estate companies tend to use creative accounting to inflate property values, manipulate depreciation schedules, and misrepresent income in the real estate industry, especially during market booms.

Healthcare and pharmaceuticals companies deal with intricate regulatory environments and complex financial instruments. Creative accounting is brought in to manage healthcare reimbursement, hide liabilities, or overstate the value of pharmaceutical patents.

Retailers may use creative accounting to smooth earnings, manage inventory valuations, or defer expenses, especially to meet quarterly or annual performance targets.

Telecommunications companies can experience creative accounting related to revenue recognition, subscriber counts, and the valuation of spectrum assets.

Construction and Infrastructure companies involved in large infrastructure projects tend to use creative accounting to spread costs or inflate project values.

Government and public sector companies may use creative accounting in government financial reporting, when there may be pressure to balance budgets, manipulate spend or meet fiscal targets.

Startups and emerging companies which are most of the times young companies and are seeking for investments, tend to engage in creative accounting to enhance their perceived growth and attract investors.

3. FACTORS THAT INTERFERE WITH CREATIVE ACCOUNTING

Above are only the major examples of industries and why the companies belonging to them can use creative accounting. It's important to note that creative accounting practices can be found in any industry where there is an opportunity to manipulate financial information and there are clear purposes, such as meeting financial goals, securing loans, or improving stock prices.

Regulatory bodies and auditors work to detect and prevent such practices to maintain transparency and trust in financial reporting.

Also, the usage of creative accounting by any sector of economy, is affected by the state of a country's economy. Several factors can contribute to this dependence: economic stability, regulatory environment, investor expectations, cultural factors, globalization, access to capital, political stability, market maturity.

In countries with stable and robust economies, there may be less motivation for companies to engage in creative accounting practices. In contrast, during economic downturns or recessions, companies might resort to creative accounting to maintain the appearance of financial health, secure loans, or attract investors.

The level of financial regulation and enforcement in a country can impact the prevalence of creative accounting. Stricter regulations and effective enforcement can act as deterrents, reducing the likelihood of such practices.

In countries where investors have high expectations for consistent growth and returns, companies may face greater pressure to use creative accounting to meet those expectations, especially in competitive industries.

Cultural attitudes toward financial reporting and transparency can vary. In some countries, there may be a higher tolerance for creative accounting practices due to cultural norms or historical precedents (Ghosh, 2018).

Companies operating internationally may adapt their accounting practices to align with global standards, which could reduce the use of creative accounting. However, they may still face pressures to meet local expectations and regulations.

Country's economic conditions, including interest rates and the availability of capital, can influence a company's decision to engage in creative accounting to secure financing or reduce borrowing costs.

Political stability or instability in a country can affect the prevalence of creative accounting. In times of political turmoil, companies may engage in such practices to mitigate risks or present a more favorable image to stakeholders.

In emerging markets, where accounting standards and regulatory oversight may be less developed, creative accounting practices might be more common as companies navigate evolving financial systems.

It's important to recognize that while economic conditions can influence the prevalence of creative accounting, ethical considerations, regulatory frameworks, and corporate culture also play significant roles. Companies operating in any economy should strive to maintain transparency, integrity, and adherence to accounting standards to build trust with stakeholders.

In the case of the Republic of Moldova, it's essential to highlight that the potential use of creative accounting is significantly higher, when the actual situation is passed through the above presented criteria:

Moldova has experienced economic challenges in the past and is experiencing them during the last 3 years, including periods of economic instability. In such situations, companies may face pressure to engage in creative accounting to present a more favorable financial picture.

The regulatory framework and enforcement of accounting standards in Moldova play a crucial role and currently these are underdeveloped. Reforms are strongly needed, and the country has all the support of the external partners. Strong regulatory oversight can act as a deterrent to creative accounting, while weaker enforcement may create opportunities for such practices.

The level of corporate governance and ethical standards within companies in Moldova must strengthen, in order to develop a stronger business environment that would influence the prevalence of creative accounting. Companies with strong corporate governance and ethical cultures are less likely to engage in such practices.

Currently, Moldovan companies do not operate internationally or could be able to seek international investment. If this would be possible, companies would be required to align their accounting practices with global standards, reducing the incentive to engage in creative accounting.

Several efforts are made and must be made, in order to improve transparency and financial reporting in Moldova. Whether driven by government initiatives or international organizations, this contributes to mitigating the use of creative accounting.

Companies in Moldova are facing challenges in accessing capital, and this could affect their financial reporting practices. In some cases, companies may resort to creative accounting to attract investors or secure loans.

The prevalence of creative accounting can vary between industries and sectors. In Republic of Moldova, there are some sectors, which are more susceptible to creative accounting due to specific challenges or competitive pressures.

Assessing the extent of creative accounting in Moldova, it's important to consider these factors in the context of the specific companies and industries operating within the country. Additionally, periodic reviews and assessments by regulatory bodies and international organizations can provide insights into the state of financial reporting practices in Moldova.

In depth, creative accounting in the banking sector involves the manipulation of financial data and accounting practices to achieve specific financial goals or to mask the true financial situation or even health of a bank.

The techniques are different and are applied depending on the ultimate purpose. Further will be presented some areas in which creative accounting can be used in the banking sector:

Loan Loss Provisioning (Expected credit losses) is one of the major areas for creativity. According to the International Financial Reporting Standards Banks set aside provisions for expected credit losses for the loan portfolio. Creative accounting can involve understating these provisions during good times to inflate reported profits. Conversely, during economic downturns, banks may overstate provisions to create hidden reserves that can be used to smooth earnings in future periods.

Asset valuation methodologies are different and create a door for creative accounting. Banks hold various financial assets, including loans, securities, bonds and investments. Creative accounting can involve overvaluing these assets to show a healthier balance sheet. Conversely, banks may undervalue assets, especially in times of financial distress, to minimize reported losses. Also banks may tend to window dress the recognition criteria.

Banks may use off-balance sheet transactions to hide certain assets or liabilities. For example, they can use special purpose entities to move risky assets off their balance sheets, making their financial positions appear stronger than they are.

Manipulating the recognition of interest income, fees, or other income sources can affect a bank's reported profits. For instance, a bank might recognize income prematurely or delay the recognition of losses to boost short-term performance.

Banks are required to maintain certain levels of Capital Adequacy Ratios and liquidity ratios. Creative accounting can involve reclassifying items as regulatory capital and manipulating with outflows of deposits even if they don't truly qualify as such, to meet regulatory requirements.

Banks must meet the required reserves requirements set by the monetary policy of the central bank. These reserves, once are increasing, are reducing the bank's ability to lend. Creative accounting might involve manipulating reserve calculations to free up cash for other purposes or to avoid penalties for insufficient reserves.

Risk management is a very important topic, supervised by central banks and even the financial auditors. A robust risk management framework assures the

proper functioning of the bank. Banks may engage in complex financial instruments to manage risk. These instruments can be used creatively to either hedge risk effectively or to obscure the true extent of risk exposure.

Close to the end of financial reporting periods, banks may engage in window dressing by temporarily shifting assets or liabilities to make their financial statements look more favorable to investors and regulators.

Banks may manipulate loan classifications to misrepresent the quality of their loan portfolios and the expected credit losses. For example, loans with potential credit issues may be reclassified as less risky to reduce the provision for loan losses.

The above-described creative accounting techniques, when applied, have strong evidence which makes difficult for the authorities and financial auditors to discover them. While some accounting practices may be creative but within legal boundaries, others may cross into fraudulent or unethical territory. Regulatory authorities and auditors play a crucial role in monitoring and detecting such practices to maintain transparency and financial stability in the banking sector. Violations of accounting and financial regulations can result in legal consequences and reputational damage for banks and their executives.

Creative accounting techniques can have far-reaching and detrimental effects on the entire banking sector, as well as the broader financial system and economy. Below are presented some ways in which these practices can impact the banking sector:

When creative accounting practices artificially inflate the financial health of individual banks, it can lead to a false sense of security in the sector as a whole. This can result in systemic risk, where weaknesses in one bank's financial position can spread to others, potentially triggering financial crises.

Creative accounting erodes investor and depositor confidence in the banking sector. When trust in the accuracy of financial reports diminishes, investors may pull their investments, and depositors may withdraw funds, leading to liquidity problems for banks.

Banks rely on accurate financial statements to make lending decisions. If creative accounting masks the true financial health of a bank, it can lead to misallocation of credit and a reduction in the availability of loans to individuals and businesses.

Regulators may respond to creative accounting scandals by implementing stricter regulations and oversight, which can increase compliance costs for banks and hinder their ability to operate efficiently.

Revelations of creative accounting practices can lead to significant volatility in the stock prices of affected banks and can have contagion effects on the broader financial markets.

Once investor trust is eroded, it can take a long time to rebuild. Loss of trust can result in reduced investment in the banking sector, which can impede economic growth.

Banks rely on interbank lending to manage liquidity. When creative accounting practices are uncovered, banks may become reluctant to lend to each other, leading to liquidity shortages in the banking system.

Creative accounting can result in credit rating agencies downgrading a bank's credit rating. This can increase the cost of borrowing for the bank and limit its access to capital markets.

Banks found to be engaging in creative accounting can suffer severe reputational damage, which can take years to recover from. A damaged reputation can lead to customer attrition and loss of business.

Regulators may be forced to intervene in troubled banks, potentially leading to bank closures, mergers, or government bailouts, all of which can have significant economic and political implications.

In summary, creative accounting practices can disrupt the stability and integrity of the banking sector, undermine investor and public confidence, and have far-reaching consequences for the broader financial system and economy. Preventing and detecting these practices is essential to maintaining the health and stability of the banking sector.

Limiting creative accounting practices in the banking sector involves complex efforts of various stakeholders, including regulatory authorities, auditors, financial institutions, and investors. Below is presented the potential contribution each of these parties can have in order to mitigate these practices:

Regulatory Authorities should ensure that there are stringent regulations: should establish and enforce strict accounting and reporting standards, such as Basel III for banking, to ensure transparency and accountability. Also, the authorities should Conduct regular audits of financial institutions to identify irregularities and enforce compliance with regulations. An additional option is to implement whistleblower protection programs to encourage employees and insiders to report any suspicious accounting practices without fear of retaliation.

Financial auditors are key players when it is a matter of creative accounting usage. External auditors must perform thorough and independent audits of financial statements to detect any irregularities or misstatements. Auditors should provide clear and transparent reports on their findings, highlighting any concerns regarding creative accounting practices.

Financial institutions should also take several steps in development of a strong ethical culture that prioritizes transparency, integrity, and compliance with accounting standards. Additionally, financial institution should establish robust internal controls and risk management systems to prevent and detect creative accounting practices. Financial institutions may appoint compliance officers responsible for ensuring adherence to accounting and regulatory standards.

Investors should conduct thorough due diligence before investing in financial institutions, including reviewing financial reports, audits, and governance practices. They must engage with the boards and management of financial institutions to encourage transparency and ethical practices. They should also use voting rights to support initiatives that promote transparency and responsible accounting practices.

Another subject who may contribute to limiting creative accounting usage are professional associations. These must ensure that accounting and auditing professionals receive ongoing training and education on accounting standards and ethical principles. Also, these must maintain and enforce a strong code of ethics that guides the behavior of accounting and auditing professionals.

Media and Public Opinion can limit usage of the creative accounting by ensuring investigative journalism, as it can play a crucial role in uncovering creative accounting practices and raising public awareness. Public scrutiny can put pressure on financial institutions to maintain transparency and ethical practices.

Governments can pass legislation that increases penalties for financial fraud and creative accounting, acting as a deterrent. Another action would be strengthening regulatory agencies responsible for overseeing the financial sector, providing them with the necessary resources and authority. Also, promotion of international collaboration to develop and adopt global accounting and reporting standards that reduce opportunities for creative accounting.

4. CONCLUSIONS

Creative accounting practices occur all industries and sectors, but certainly these are more prevalent in areas where there is a greater financial complexity, competitive pressure, or regulatory scrutiny. One of these areas is the banking sector. Creative accounting techniques can be used by banks in different areas, like: expected credit losses, asset valuation methodologies, off-balance sheet transactions, the recognition of income, Capital Adequacy Ratios and liquidity ratios, required reserves requirements, risk management, year - end window dressing, loan classifications. Creative accounting techniques used even by a single bank can have far-reaching and detrimental effects on the entire banking sector, as well as the broader financial system and even the whole economy of the country. Combating creative accounting practices requires a multi-faceted approach involving regulatory frameworks, industry self-regulation, ethical behavior, and vigilant oversight. By working together, these stakeholders can help ensure the integrity and stability of the banking sector.

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SYSTEMATIC REVIEW OF THE AGRIBUSINESS BRANDING LITERATURE: GATHERING THE RELEVANT GUIDELINES

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Abstract

Brands are viewed as strong weapons that enable change during this time, possibly more so than ever before. Through them, businesses can reach clients all over the world, and these customers share the business philosophies and public perceptions of economic players. As a result, a brand's success required a substantial base of devoted customers with the ability to shape their way of life. Agribusiness branding is the process of giving a firm or product in the agriculture sector a distinctive character. Branding serves two purposes: to set items or businesses apart from the competition and to foster a favourable image of the latter in the eyes of customers. Branding is crucial in the agribusiness because it enhance consumer loyalty and trust. An overview of the scientific studies that addressed the numerous elements or aspects of the brand in agriculture is what this research intends to do. The PRISMA 2020 declaration is adhered to in the current study's systematic reviews and meta-analysis of brand value, brand equity, brand trust, and brand loyalty examined in studies focused on branding agriculture in the previous 12 years. Although there are more papers on branding in agriculture, comprehensive evaluations of contemporary results and methods are lacking in the literature. Researchers pay close attention to brand value and trust as well as their interactions. Customer loyalty is seen as a key motivator for prosperous agricultural firms. The study offers information that is useful to both academics and business.

Keywords: *agribusiness branding systematic review; agribusiness brand value; agribusiness brand equity; agribusiness brand trust; agribusiness brand loyalty.*

JEL Classification: Q13

1. INTRODUCTION

The term “agribusiness” emerged in 1957 through the fusion of the words “business” and “agriculture” (Davis and Goldberg, 1957). This novel approach to agriculture and the food industry marked a pivotal moment in the evolution of the field, highlighting its significance and practicality. Extensive research has been conducted on this subject, culminating in the assertion that “agribusiness encompasses all facets of activities encompassing the production and dissemination of food” (Davis, 1955). The passage of time has allowed for the testing of operational hypotheses and the empirical validation of certain propositions, leading to a more intricate definition. This refined perspective posits that agribusiness entails “the entirety of operations associated with the production and distribution of agricultural goods, including storage, processing, and distribution of both intermediate and final products” (Davis and Goldberg, 1957; Davis, 1956).

The research landscape in this domain is characterized by a continual pursuit of knowledge, with the aim of presenting a more precise portrayal of reality. Consequently, by 1987, the accrued knowledge until that point expanded the concept to encompass “all enterprises and undertakings undertaken by suppliers of agricultural inputs, producers of raw materials and processors, transporters, and traders of agricultural products” (Downey and Erickson, 1987). The research trends for the 21st century is recognized as distinct in every aspect. Furthermore, stakeholders endeavour to leverage resources to a heightened degree, with a focus on efficiency, innovation, creativity, and notably, the collaborative creation of value (Merz *et al.*, 2018). The scope of agribusiness has also broadened to encompass “warehousing, wholesale, and retail” (Chait, 2014).

But still, agriculture and food are two different industries that have long played a vital role in the economic and social development of nations. Although increased investment in this area has boosted development and the inventive component, there is still a significant demand for cash in this industry. Previously, the emphasis was on the manufacturing side, with less attention on the additional value produced by processing the raw materials acquired. These features have steadily changed, with long-term agribusinesses prioritizing the integrated chain. The brand linked with consumer-company connections cannot be disregarded as a link between the company's current position and the intended position throughout time, based on this idea evolution. Scientific research and development experienced in daily practice must be closely linked since only this manner can added value be maximized (Hughes, 2014).

Agribusiness branding encompasses the strategic process of establishing a distinctive identity for a product or entity within the agricultural sector. The primary objective of branding is to delineate products or entities from their counterparts and engender a favourable perception of them in the minds of consumers (Kotler and Armstrong, 2010). Within the realm of agribusiness, branding assumes significance in fostering trust and fostering customer loyalty. Stakeholders,

including farmers, in the agricultural sector seek assurance in the reliability of the products they employ, and branding serves as a milestone in establishing such confidence. With the intensification of competition and globalization in the agricultural and food production sectors in the late 1990s and early 2000s, branding emerged as a focal point in agribusiness (Aghazadeh *et al.*, 2022). During this period, agricultural enterprises and entities recognized the imperative of cultivating and sustaining robust brands capable of distinguishing their offerings in the marketplace (Lewis *et al.*, 2014).

In recent years, a growing body of literature on agricultural branding has arisen. The researchers looked at consumer perceptions, brand equity, and the role of branding in producing sustainable agriculture (Buzgău and Cosma, 2021). Agricultural branding research over the last 20 years has revealed that branding may be a successful method for promoting sustainable agriculture, earning customer confidence, and meeting changing consumer needs (Buzgău and Cosma, 2022). However, a range of elements such as product category, consumer knowledge, and the values and aspirations of various players in the value chain can all have an impact on branding success. While the number of studies on agricultural branding is increasing, thorough reviews that reveal current outcomes and methodology are absent in the existing literature. Systematic reviews can provide summaries of the state of knowledge in a field, allowing future research goals to be identified. This research aims to fill the gap by providing an overview of scientific studies that addressed the different components or features of the brand in agriculture and provided valuable information to both academia and industry.

The purpose of this research paper is to scan of the works published starting with 2010 in two worldwide databases (Web of Science and Scopus), concentrating on certain keywords, in order to discover the least investigated and examined dimensions in this field of activity.

2. LITERATURE REVIEW OF BRAND CONCEPT IN THE CONTEXT OF AGRIBUSINESS

Strong brands do not appear by chance, they are not the result of an accident (Keller and Brexendorf, 2019, p. 155), implying that the emergence of representative brands, as well as the evolution of the branding concept, was the result of laborious research and key results. The introduction of a new product or service to the market must be preceded by a series of research and studies to increase the likelihood of success. The researchers examined and summarized four branding actions that marketers could take: 1. identifying and developing the brand's stance and values; 2. developing and implementing brand-specific marketing campaigns; 3. measuring and assessing the brand's registered performance; 4. building and maintaining brand equity (Keller and Brexendorf, 2019). The application of these principles attempts to outline the brand strategy and maximize the potential value of the entity's new product/service launch.

The influence of brand trust and loyalty is studied in laborious research that look at the moderating and mediating effects of brand engagement and the reputation (Kwan Soo Shin *et al.*, 2019). According to the study, brand trust and brand engagement have a major effect on brand loyalty in the South Korean smartphone industry (Kwan Soo Shin *et al.*, 2019). The moderating impact of reputation in the link between brand trust and brand commitment presents ramifications that may be researched and replicated in other areas of activity. Without a doubt, a consumer may become loyal when, in addition to the quality and qualities of each product/service, he also benefits from psychological aspects, trust being created over time, via considerable consistency and perseverance from economic entities (Kwan Soo Shin *et al.*, 2019). Understanding these brand components and implementing the appropriate methods results in undeniable competitive advantages that provide the firm with long-term stability.

In addition to the approach to brand trust and loyalty, the literature discloses features connected to the relationship between brand equity and brand loyalty, with the emphasis on customer satisfaction (thus occupying the mediator position) (Kataria and Saini, 2019). Customer happiness is highly related to perceived quality, brand trust, cost value, and lifestyle components (Kataria and Saini, 2019). Simultaneously, research indicates that consumer happiness mediates the link between perceived quality and value given to costs and brand loyalty. This pleasure acts as a bridge between lifestyle and brand trust and client loyalty. As a result, according to some experts, customer purchases are predominantly dependent on brand qualities, rather than common ones (Kataria and Saini, 2019).

Innovation is a catalyst for advancement across various domains, including agribusiness. Within this sector, innovation assumes a crucial role, particularly in differentiating agri-food products, with far-reaching implications along the entire value chain (Lewis *et al.*, 2014). Increasingly, scholarly discourse is propelling the concept of entrepreneurial marketing (EM), drawing from case studies conducted on agribusiness enterprises. The collaboration of economic stakeholders within agriculture and the food industry, aimed at garnering more substantial advantages for the involved members, represents a driving force poised to propel progress within the agricultural and agri-food landscape. A robustly unified brand, even if it draws from multiple economic entities, holds the potential to wield amplified influence over supply streams and sales. This ancillary benefit extends to the ultimate consumer, who stands as the primary beneficiary (Lewis *et al.*, 2014).

Traditional agriculture is witnessing a decline in prominence, as there is an increasing advocacy for the adoption of organic practices. This shift is being propelled by a range of progressive policies at national, European, and even global scales. Individuals are displaying a growing receptivity towards food choices for themselves and their families (Marsden and Smith, 2005). Decision-makers are placing a significant emphasis on rural development, and the consistent infusion of expertise into organic farming could facilitate the realization of this aspiration.

Embracing environmentally conscious and sustainable entrepreneurship may serve as the linchpin for introducing local brands, concurrently yielding positive social repercussions (Marsden and Smith, 2005).

The strategic management of a brand can be enriched by drawing on “semiotic and anthropological models” (Bankov, 2019) tailored to specific contexts. An integral aspect to consider is the adaptability of this framework to very small, small, or medium-sized enterprises, underscoring its relevance beyond large corporate entities (Bankov, 2019). While various approaches have been researched and applied over time to construct, oversee, and evaluate robust brands (Keller, 2013), they exhibit certain gaps, particularly in their differentiation between commonplace and iconic brands (Bankov, 2019). Comparable models could find practical utility in agribusiness, particularly in regions with distinct traditional products, which have the potential to establish enduring local brands, transcending generational boundaries and contributing substantial economic value.

In branding, whether in any domain of operation, the fundamental elements encompass brand promotion and the perception of brand image (Haimid *et al.*, 2012). This holds true even for modest-sized agribusinesses, which confront a spectrum of distinct challenges. Various studies underline the significance of both brand promotion and brand image perception in enhancing the operational efficacy of small-scale enterprises within this sector, ultimately fostering value addition. Furthermore, these approaches are regarded as genuine catalysts for the sustained growth of companies over the long term. To put it differently, regardless of the scale or geographical location of the enterprise, these constituents assume a pivotal role, conspicuously contributing to both quantitative and qualitative evaluations of economic entities (Iwu *et al.*, 2015).

Brand value pertains to the brand's capacity to enhance the operations of its client firms and its effectiveness in competing against rivals (McGrath, 2005). It denotes the monetary worth attributed to having customers willing to pay a premium for a specific brand and the superior quality that a company seeks to associate with it (source: Cambridge Business English Dictionary). According to Ailawadi *et al.* (2003), brand equity signifies the willingness to pay a higher price for a branded product in comparison to a non-branded or alternative offering (Ailawadi *et al.*, 2003).

As for brand trust, Lau and Lee (1999) delineate it as a pivotal facet encompassing “product attributes and the highest anticipated quality in the interactions between company and consumer, as well as between brand and consumer”, ultimately fostering consumer allegiance to the brand (Lau and Lee, 1999; Nasir *et al.*, 2020). Brand loyalty, as described by Kotler and Armstrong (2010), signifies the commitment to repeatedly purchase a favoured product, irrespective of external factors and marketing endeavours that may prompt a shift in consumer behaviour (Kotler and Armstrong, 2010).

Various studies have examined these facets of branding within specific markets (Hettiarachchi *et al.*, 2020; Hovhannisyan and Bozic, 2013; Lucchese-Cheung *et al.*, 2021). However, within the agribusiness field, the specialized literature is notably limited. While there is a rising volume of literature on branding in agriculture, there remains a dearth of comprehensive assessments that present up-to-date findings and methodologies. Systematic reviews serve as valuable tools for summarizing the current state of knowledge in a field, thereby enabling the identification of forthcoming research emphases. This study endeavours to bridge this gap by providing a comprehensive survey of scientific investigations delving into the diverse components and aspects of branding in agriculture, thus offering useful insights for both the academic and industrial sectors.

3. METHODOLOGY

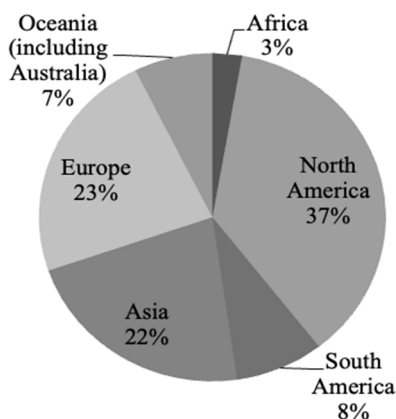
By discovering, selecting, assessing, and analysing the relevant papers, the research employs a systematic evaluation of past research. The analysis includes papers published in Web of Science and Scopus-indexed journals between 2010 and 2022. The searching process considered the following keywords: 'agribusiness branding', 'brand in agribusiness', 'agriculture brand', 'added value in agribusiness', 'CSR', 'sustainability', 'private label', 'price premium', 'willingness to pay', 'brand image', 'brand promotion', 'product differentiation'.

Following the first stage, which was set up in compliance with these constraints, the database had 209 articles (162 from clarivate.com and 47 from scopus.com). These were thoroughly examined, with the most important aspects determining an article's suitability for research being its complexity, scientific rigor, and compatibility with the study's key objectives (material pertaining to branding in agriculture and its dimensions). Other materials were not permitted. Following the screening method (Buzgău and Cosma, 2022), a total of 55 papers (45 from Web of Science and 10 from Scopus) were retained for analysis and separated into four groups considering the principal addressed brand dimension: brand value, brand equity, brand trust and brand loyalty.

Articles were analysed in each group based on the PRISMA 2020 statement. Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA) is a disclosure standard designed to combat systematic review underreporting (Moher *et al.*, 2009). It was designed specifically for systematic reviews of studies measuring the efficacy of health treatments, although the checklist factors also apply to reports evaluating other initiatives (Page *et al.*, 2021 A). The PRISMA 2020 statement (Page *et al.*, 2021 B) improves the 2009 version's reporting recommendations for systematic reviews to incorporate advances in research discovery, selection, evaluation, and synthesis. It comprises of a 27-item checklist with reporting recommendations for systematic evaluations.

4. RESULTS AND DISCUSSIONS

Given the writers' affiliations, the contributions are primarily from the American continent (Figure 1).



Source: authors' own processing

Figure 1. Articles by authors' affiliation

In terms of the branding characteristics in agribusiness, brand trust was investigated first (41.82% of the articles), followed by brand value (25.45%), brand loyalty (20% of the articles) and brand equity (12.73% of the investigated papers). More than 70% of the contributions are analysing primary data. From the total number of the articles, 63,63% are quantitative research. In the last 2 years, more than 10 articles focused the research on branding and related dimensions in agribusiness.

The investigated markets in the scanned articles are very diverse (Table 1).

Table 1. Articles by investigated markets

	Public	Market	Sub-field
BRAND VALUE	482 consumers	Ecuador	General Agribusiness
	1238 consumers	China	Fruit (apple) market
	general	general	Food Industry (Case Study: Carbonated Drinks Market)
	actual and potential customers	New Zealand	The wine market
	main Brazilian beer brands	Brazil	Beer market
	consumers of energy drinks containing different sweeteners	general	Food Industry (Case Study: Energy Drinks Market)

	Public	Market	Sub-field
	1510 businesses operating in various links of the supply chain	Sri Lanka	Cinnamon Market
	customers who purchase milk from the stores that are included in the present study	USA	The milk market
	customers at five grocery stores in northern Utah	USA	Dairy market (cheese, ice cream)
	population of Pulang Pisau district, Kalimantan Central	Indonesia	General Agribusiness
	executive members and administrative staff of an agricultural cooperative	India	Dairy market
	Indian agribusiness	India	General Agribusiness
	managers and staff involved throughout the supply chain	Tasmania	Broccoli Market
	296 employees of 37 agribusinesses	general	General Agribusiness
BRAND TRUST	Chinese consumers of fresh dairy products	China	Milk market (fresh milk especially)
	general	general	General Agribusiness
	Colombian food industry online brand communities (100 major agribusiness clients)	Colombia	Food industry in general
	938 consumers from Shandong Province in China	China	The market for fresh products, case study: the tomato market
	representative group of households in four major Chinese cities – Shanghai, Beijing, Guangzhou and Shenzhen and panel households	China	Dairy market (yogurt market)
	general	general	Food industry (case study - chocolate makers)
	general	general	Fruit Market (Case Study: Apple Market)
	group of farmers consisting of small tea garden holdings and supply factories in the state of Assam, India	India (North-East)	The tea market
	consumers/customers in a large US city	USA	Food industry (focus: liquid milk and ready-to-eat cereals (RTE) market)
	general	Canada	Ginseng market
	1000 valid answers	Brazil	Meat Market (Brazilian Beef)

	Public	Market	Sub-field
	200 respondents (June/July 2014 period)	Honduras	Dairy market
	general	general	General Agribusiness
	general	USA	Processed cheese market
	300 valid responses (192 - high familiarity and 108 - low familiarity) from beef consumers	Portugal	The beef market
	252 participants - online survey	Netherlands	The milk market
	300 Kosovars and 349 Albanians	Albania and Kosovo	Food industry: food safety and quality
	general	UK	The meat market
	Medjool data	general	Food industry
	283 consumers from Krasnoyarsk, segmented into 6 groups: men and women aged 18-65	Russia	Food industry - food quality
	general	Russia	Agricultural products market
	general	Europe	General Agribusiness
	fictitious data, didactic role	general	General Agribusiness
BRAND EQUITY	132 respondents	Brazil	Food Industry (Case Study: Pork Market)
	707 US cooperatives (2005-2011 period)	USA	Branch of agricultural cooperatives
	Japanese general merchandise stores	Japan	Vegetable farming
	a panel of wineries (reference period 1999 - 2013)	general	Viticulture
	the population of two of China's largest rice-consuming cities (Chongqing and Chengdu)	China	Rice Market
	small agribusiness firms in one of the economic "powerhouses" of the sub-Saharan region (SSA)	Nigeria	Small General Agribusiness
	US Cheese and Cereal Consumers	USA	Agricultural cooperatives (dairy and cereals)
BRAND LOY-	280 questionnaires collected from restaurant chain customers	Taiwan	Food industry (Food supply market - restaurants)
	consumer panel	Italy	Sparkling wine market
	retail customers	general	Ice cream and carbonated soft drinks market (retail)
	Nielsen scanner data	US	Craft Soda Market

Public	Market	Sub-field
general	general	Agribusiness (equipment)
scan data set from Kantar World-panel	China	Fresh food market (yoghurt market - case study)
unique household panel data set	Germany	Carbonated Soft Drinks Market
general	USA	The private label packaged salad market
402 respondents	USA	Food market
general	Italy	The wine market
general	general	General

Source: authors' own processing

Brand value

Several key factors and indicators influence the market evolution of agricultural and food industry companies, one of which is the brand strategies that a company or an associative form (agricultural cooperative, producer group, etc.) succeeds in formulating in order to correctly position itself in the first stage, and after differentiating the offer it exposes to the target group of consumers. Based on an assessment of specialized literature, several strategic directions that the business should examine in order to maximize its benefits and, indirectly, to increase the efficiency with which it performs its commercial activity may be recognized (Cerqueira *et al.*, 2020).

Brand awareness and understanding, as well as the evaluation of the determining factors in the purchase process, are only a significant predictor of intentions for the brand associated with some categories of products that have a more complex decision-making (purchase) process; in other cases, the impact is negligible (Macias *et al.*, 2021).

Affiliation with public utility institutions is important in agriculture because they play an important role in creating and accelerating the position of goods, as well as increasing their value by targeting the target client (Anugrah and Dewi, 2021).

In the field of cooperation, specialized literature refers to the concept of an agricultural cooperative or group of producers as a means of increasing the visibility and notoriety of the factors involved while also increasing their efficiency in carrying out activities, thereby generating well-being both at the associative form and at the individual end, with the brand image, the protective binder, and the invisibility serving as the catalyst of the process. In addition to this approach, we see an urge that appears on a brand, increasing its value in the context of supporting some social problems by committing significant resources in this area (Fountain and Forbes, 2019). According to this viewpoint, the value of agricultural brands rises dramatically as a result of the implications established by

corporate social responsibility (CSR), while also getting public recognition (Raj, 2014).

Elevating the theoretical worth of a brand can be pursued through several avenues, but practical confirmation underscores these endeavors. The specialized literature emphasizes the following concepts: firstly, enhancing customer satisfaction through effective management of product delivery timelines (Wang *et al.*, 2022). Secondly, employing specific protocols related to mergers and acquisitions, which can lead to a sequence of horizontal and/or vertical integrations along the agri-food chain. All of this exerts a direct impact on customers' willingness to pay (WTP), a factor intricately linked with brand value. Simultaneously, it serves as a significant metric in the brand valuation process (Lewis *et al.*, 2016).

Equally important is the emphasis on a comprehensive outlook, which necessitates translation into marketing strategies undertaken by economic entities within the agribusiness sector. These strategies are designed with a focus on annual or even multi-annual horizons, subject to periodic adjustments. In this context, two pivotal concepts come into play for effective adaptation and alignment with emerging economic landscapes: absorptive capacity and dynamic capacity associated with brands. This strategic approach aims to maximize benefits and enhance brand value over the long term (Ding *et al.*, 2014).

Brand equity

Consumer perception is a subjective aspect that is difficult to measure, but the specialist literature attempts to develop bridges by which they might be synced with the entrepreneurial aims of economic players.

Changes in the approach's maturity level may be observed from year to year, as the degree of complexity of specialist articles and other published materials rises, affecting both consumer happiness and loyalty to certain companies. Tangible pathways within the realm of brand equity warrant exploration. For instance, there is a noteworthy correlation between the origin of a product and the enhanced brand equity of certified products (De Oliveira and Spers, 2018). Additionally, it is postulated that the brand equity associated with certification processes directly contributes to the brand equity ascribed to the final product (De Oliveira and Spers, 2018). The theoretical substantiation of information supporting customers' attribution of heightened brand equity, particularly in the context of a certified brand guaranteeing elevated quality standards, offers a promising avenue. This can culminate in the acquisition of a sustainable competitive advantage (De Oliveira and Spers, 2018).

Empirical studies conducted have shed light on a direct correlation between the financial performance of agricultural cooperatives, construed as associative formations of farmers, and the brand equity linked with the products they market (Kashyap and Bhuyan, 2021). In terms of estimates, research by Grashuis (2018) posits that there are concrete indications that the majority of this impact is

facilitated by brands with a lengthier market presence (exceeding 3 years). This suggests a relatively delayed effect of brand equity on the economic-financial performance attributed to economic actors (Grashuis, 2018).

The willingness to pay (WTP) is also influenced by a brand's equity, a subject extensively examined in relevant studies. Notably, studies of representative nature contend that factors related to consumer mindset, particularly those seeking products with specific attributes pertaining to food security, exert the most significant influence on initial WTP (Masuda and Kushiro, 2017). In addition, specialized literature advocates the notion that specific product attributes, such as family ownership and origin, augment the WTP of customers. However, the effects of these factors do not always align with the objectives of economic entities (Grashuis and Magnier, 2018). Furthermore, the researchers (Grashuis and Magnier, 2018) posit that a critical challenge lies in the diversity of estimations concerning customer willingness to pay for other product attributes, particularly pertinent for cooperative entities striving to distinguish their offerings (Grashuis and Magnier, 2018).

Nevertheless, certain nuances can be discerned, as exemplified by the rice market and its implications in the Chinese context. Research findings in this domain (Xu *et al.*, 2018) underscore the price sensitivity among Chinese consumers for this specific product. Notably, the country of origin emerges as the most pivotal factor influencing the selection process for this item (Xu *et al.*, 2018).

In conclusion, the specialized literature, as outlined by Sellers-Rubio *et al.* (2017), emphasizes that firm and collective reputation play a pivotal role in endorsing product quality. This, coupled with companies' investments in advertising and promotion, significantly influences the pricing strategy for agri-food products.

Furthermore, the empirical evidence supports current research on brand marketing and brand image perception, affirming that these pivotal elements serve as antecedents to firm success irrespective of size or location (Iwu *et al.*, 2015). This forms a robust foundation for both short-term and long-term planning in the development of agribusiness enterprises. It also validates several assumptions that have not yet been explored from an academic research perspective.

Brand trust

The specialized literature brings together an extended series of study that exposes this topic either theoretically or practically or asks for hybrid formulae that employ experiments and case studies to justify the acquired findings.

The main guidelines revolve around concepts such as private brand or producer brand, labels that indicate the appearance of products in a specific area (territorial/regional brand), educational label, payment availability, but also studies with a purely didactic role, to train future generations.

Numerous studies have delved into the dynamics between a brand and a specific certification. In the context of agribusiness, a notable experiment conducted on Chinese consumers of fresh dairy products stands out. This study underscores

the tendency of these consumers to favor products that carry a distinct brand identity (Ding and Veeman, 2019). However, it is evident that a complex interplay of both substitution and complementarity exists between brands and certifications (Ding and Veeman, 2019). Furthermore, the research team from the aforementioned study affirms the presence of three distinct consumer segments for fresh milk: those inclined towards seeking a specific brand/certification, price-conscious purchasers, and regular customers (Ding and Veeman, 2019). Notably, the latter group of buyers is more likely to be actively seeking out brand/certification information. Respondents with higher levels of knowledge and trust are also more inclined towards brand/certification seeking behavior (Ding and Veeman, 2019).

In light of the fact that transparent practices are associated with elevated perceived integrity (Rim *et al.*, 2019), research suggests that the impact of transparency signaling is modulated by the nature of a company's Corporate Social Responsibility (CSR) efforts, a factor that directly influences customer perception (Rim *et al.*, 2019). Perceived integrity serves as a crucial factor influencing the connection between transparency and company reputation, whereas perceived competence remains unaffected by transparency signaling (Rim *et al.*, 2019).

The embodiment of customer trust materializes in their transition into consumers, as they express their willingness to pay for the respective agri-food products. A notable instance of this is evident in the case of certified organic tomatoes, where the willingness to pay was higher compared to tomatoes labelled as “green” or considered safe (GRS) (Yin *et al.*, 2018). From a brand perspective, there are instances where consumers exhibit a stronger preference for brands affiliated with independent businesses rather than those owned by agricultural cooperatives (Yin *et al.*, 2018). This presents a paradox, as most prior research focusing on brand value or equity has given precedence to cooperative forms, unlike the current concrete case, where individual actors are favoured.

Furthermore, a review of specialized literature regarding trust in a brand underscores that consumers are inclined to pay a premium for milk marked with an “educational label” (Rajo *et al.*, 2016). This endorsement reinforces the significance of university involvement and the trust placed by consumers in such products. It underscores the need to intensify public-private partnerships of this nature, as they wield a direct impact on both economic entities and the cultivation of new generations of professionals (Rajo *et al.*, 2016).

Furthermore, alongside the “green” and “educational” labels, there is a noteworthy emphasis on “internal labels” that pique consumer interest, often sought after for various food products (Lilavanichakul and Boecker, 2013). Similarly, both practical application and scholarly pursuits underscore a significant willingness to pay, particularly in a positive context. This willingness extends beyond the labels (green, educational, internal). When compared to products from individual farmers, the provision of additional information regarding the allocation of profits

within the agricultural entity emerges as a distinct competitive advantage (Grashuis, 2021).

The growing consumer concern over pesticide residues, as opposed to potential risks associated with genetic modifications in food, has been extensively scrutinized. These aspects have spurred a shift in processing practices for the respective raw materials, a transformation subsequently indicated visually on the product label (Greibitus and Van Loo, 2022). Additionally, customers allocate greater attention to labels pertaining to these production practices compared to labels associated with a different set of attributes (Greibitus and Van Loo, 2022). Consequently, the integration of this supplementary information through diverse and innovative labelling methods enhances transparency and stimulates consumer purchasing behaviour.

In the comparison between private brands and national brands, it is observed that retailers claim a larger portion of the overall margin (retail price minus associated production cost) for private brands. This situation can be surprising for national brands, especially when retailers choose to emulate the latter with their own offerings (Richards *et al.*, 2010).

Regarding trust, consumers tend to opt for a store brand if they have a strong loyalty to that particular retailer, even if the national brand offers superior attributes (Cakir and Secor, 2018). Extensive research suggests that employing national brand couponing can be an effective strategy for producers to deter the growth of private labels, at least in the case of processed cheeses (Bouhlal and Capps Jr., 2011). Additionally, the decision to purchase private label cheeses is influenced by various sociodemographic characteristics of households, including income, size, age and education level of the household head, as well as race, ethnicity, and location (Bouhlal and Capps Jr., 2011).

The trust that consumers place in brands originating from certain areas, which may be considered less developed, can be somewhat biased. It is important to recognize that not all companies from these environments are likely to engage in questionable practices or make mistakes in their production processes, despite the perceptions associated with their origin (Butova *et al.*, 2019).

Advancements in the crucial field of agriculture and the food industry hinge on the establishment of brands, which are subsequently promoted, often on a regional scale (Demakova *et al.*, 2020). The imperative of providing robust support for agribusiness, rooted in territorial branding, necessitated the prioritization of specific areas for food branding, forming the cornerstone of a long-term strategy (Demakova *et al.*, 2020). Correlating brands with a geographic region also bolsters the element of local patriotism, signifying consumers' contribution to the progress and development achievable within a region through concerted

In the apple market, the product name significantly influences consumer evaluations of new varieties, as well as existing ones. This effect is less pronounced in markets where traditional apple varieties dominate (Rickard *et al.*,

2013). The case presented showcases a unique innovative model where certain existing attributes of the product are transformed into a dual-functioning magnet: they serve to both differentiate it within its category (in this instance, within the field of apples) and position it distinctly in the eyes of consumers.

Conversely, in the meat market, consumers with a high level of familiarity tend to rely on color when evaluating quality. On the other end of the spectrum, individuals less acquainted with the product are inclined to view the brand as the most reliable indicator in this intricate quality assessment process (Banović *et al.*, 2012). However, the research points out that due to the variability in sensory quality within this range of meat products, the ability of highly familiar consumers to form quality expectations predictive of their experience is no better than that of the analyzed customers with lower familiarity (Banović *et al.*, 2012).

Models devised by researchers capture shifts in consumer behavior prompted by specific stimuli. These models serve to enhance comprehension of consumer behavior in relation to brand development, the influence of Word-of-Mouth (WOM), viral effects within the market, and the analysis of market penetration. Additionally, they address the adoption of more intricate service structures, particularly in closed cycles or integrated chains (Herrera *et al.*, 2018).

Companies may encounter unfortunate moments in their lifespan, where a positive reputation for corporate social responsibility (CSR) prior to any instances of misconduct positively impacts consumer assessments of the company. This, in turn, fosters support for its new products and facilitates its social rehabilitation following any incidents of inappropriate behavior (Insch and Black, 2018). These findings expand our understanding of the protective role played by a positive CSR reputation and its halo effect, particularly in cases of agri-food brand misconduct (Insch and Black, 2018).

Despite concerns over food safety, consumers in Kosovo and Albania tend to believe that domestically produced food is safer and of higher quality compared to imported products (Haas *et al.*, 2021). In Kosovo, citizens exhibit a higher likelihood than Albanians to perceive domestic food products as significantly superior to those from foreign markets, indicating an increased trust in local brands and even a sense of local patriotism (Haas *et al.*, 2021).

In the United Kingdom, consumers place significant emphasis on information regarding the origin of both fresh and processed meat products, especially in the aftermath of the unfortunate horsemeat incident in 2013 (Hussein and Fraser, 2017). The research also suggests that retailers have ramped up their use of voluntary labelling for processed meat products since 2013 (Hussein and Fraser, 2017). In this context, another form of labelling serves the same purpose, aiming to bolster customer confidence in a specific product or range.

Finally, scientific research holds a pivotal position in shaping the cognitive processes and perspectives of young generations, significantly influencing their thought patterns and their grasp of specific concepts (Siebert and Jones, 2013).

This approach can similarly be applied to companies in the agri-food sector, and beyond, when it comes to the development and enhancement of their most asset: their personnel or human resources.

Brand loyalty

Prompt market response is a significant competitive advantage for economic organizations that grasp their long-term resonance. The deliberate pursuit of loyalty is a difficult endeavor, and the factors competing to attain this aim (faithful/loyal clients) are among the most diverse.

In restaurants, characterized as a segment of the food supply market, the affective experience stands as a primary driver of customer engagement. Simultaneously, the sensory experience exerts a significant influence on cognitive engagement, though it does not have the same impact on emotional engagement (Barnes et al., 2014). Additionally, within this domain, research indicates that the aesthetic experience affects emotional commitment, but not cognitive engagement. It is worth noting that emotional involvement, being a pivotal mediator in establishing and deepening brand loyalty, emerges as a primary driver, followed by the cognitive component (Huang and Chen, 2021).

In retail, scholars affirm that retailers tend to promote strong brands more frequently, albeit in a somewhat superficial manner, in comparison to brands with lower loyalty (Allender and Richards, 2012). Furthermore, the findings underscore the significance of meticulously modeling wholesale prices when evaluating behavioral models of retail pricing (Allender and Richards, 2012). Retailers wield notable influence over customer purchasing behavior, particularly through the promotional strategies they employ. This impact is particularly pronounced for brands in their early stages or those lacking substantial resources for branding strategies.

Concurrently, research teams affirm the advantages of e-commerce over traditional offline retail channels in terms of fostering consumer loyalty (Wang et al., 2018). The results also indicate that online and offline markets encompass distinct business models, even within the context of the same brand (Wang et al., 2018). Regarding brand loyalty, evidence suggests a stronger customer attachment in the case of online purchases compared to the market examined in contrast. However, it is more challenging for latecomers in the online sphere to cultivate brand loyalty due to greater price sensitivity among consumers in offline settings (Wang et al., 2018).

The beverage market, encompassing both alcoholic and non-alcoholic beverages, presents distinct characteristics that are scrutinized in profile studies. These studies indicate that consumers of artisanal juices, particularly in the domestic market, exhibit lower price sensitivity and greater brand loyalty compared to the international market (Zare et al., 2020). Notably, loyal consumers of craft juices often reside in close proximity to the production site, and producers in this

category are typically small-scale operations with limited distribution areas (Zare *et al.*, 2020).

For soft drinks, research highlights that 63% of households exhibit loyalty to their preferred soft drink brand, expressing a preference for smaller bottles ($\leq 1,500$ ml) over larger ones ($> 1,500$ ml). This insight is derived from a study conducted in the German market, a significant indicator given Germany's status as the largest market for carbonated soft drinks in Europe (Hoffmann and Bronnmann, 2019). This examination involves a two-dimensional assessment encompassing loyalty and the juxtaposition of store brands versus national (and even international) brands. The recommendations stemming from this analysis emphasize the importance of incorporating these findings into the branding strategies employed by stakeholders in the food industry (Hoffmann and Bronnmann, 2019).

On the wine market, researchers delve into the impact of legislative changes on consumer loyalty. Specifically, the post-CMO (Common Market Organisation) reform is scrutinized for its role in augmenting consumer loyalty towards standard 0.75-liter wine bottles, wines hailing from protected areas classified by quality, and higher-priced wines. The study incorporates the examination of the polarization index, which significantly enhances the robustness of the research (Corsi *et al.*, 2014). This underscores how even legislative changes can positively influence customer loyalty towards specific wine varieties, a factor that should be effectively leveraged by stakeholders in this sector.

The masked competition that appears between agricultural equipment manufacturers, respectively their dealers, generates a discordant note in terms of loyalty; thus, the results of the studies certify that, the economic entities that have as their object of activity the supply of agricultural equipment pursue, through their marketing strategies, the transmission of those information to determine farmers' loyalty, sometimes unfairly. The distributors' primary aim is in being close to the agricultural entities, gaining their loyalty, and, if required, deciding the farmers' commitment to the brands themselves (Harmath *et al.*, 2021).

Brand awareness (price equals quality), perfectionist, conscious of high quality, confused by excessive choice, environmentally conscious, impulsive and careless, regular, loyal to the brand (loyalty store), healthy conscience, aware of the local brand, comfort and time-energy saving, shopping avoidance must be customized to the peculiarities of each location (Cankurt *et al.*, 2013). There are additional particularities associated to certain local impacts. Yet, as a general principle, the study provides a guideline that benefits from a wide coverage of agri-food consumption areas.

A notable conclusion of the studies analyzed is that utility is certainly more concave for new items than for commodities previously acquired by customers (Yonezawa and Richards, 2017; Salokhe, 2017). Capitalizing on these statements, we must be aware of consumers' intention to reduce their risks, a principle that is also applied in the case of entrepreneurs, so the launch of new products must take

these aspects into account, capitalizing on integral, sustainable, durable practices, quality indicators in the manufacturing process constant, because their absence is incompatible with consumer loyalty (Meng and Jaenicke, 2021). The continual quality demonstrated, the comprehension of customers' expectations and requirements, and their translation into practice through transparent methods, raise the value of this indicator, which accounts for consumer loyalty to a brand (Bassi *et al.*, 2020).

5. CONCLUSIONS

Examining prior studies is an essential foundation for forthcoming research on agribusiness branding.

There are various strategies to enhance brand value, including optimizing product delivery timelines, employing specific procedures for mergers and acquisitions, and implementing integrations within the agri-food supply chain. Additionally, transparency in communication, information sharing, and establishing enduring trust between the company and its consumers are pivotal factors. The product's origin positively influences the brand equity of certified items, and the equity associated with certification procedures directly impacts the brand equity of the end-product. The financial performance of agricultural cooperatives is closely linked to the brand equity of the products they offer. Consumers' willingness to pay is influenced by attributes related to food security. While family ownership and product origin contribute to increased willingness to pay, the outcomes may not always align with the objectives of economic entities. Firm and collective reputation, along with advertising expenditure, are influential in the pricing of agri-food products. Consumer trust in a brand within the agri-food sector is a highly valued metric for companies, prompting substantial investment to quantify and establish its enduring presence. Customer loyalty stands as a critical driver of success, closely monitored by companies prioritizing consumer preferences and needs.

There is currently a lack of data and academic attention directed at agricultural branding in underdeveloped or emerging countries, especially compared to more economically advanced counterparts. The future of branding in agribusiness hinges on ongoing research. Despite systematic literature analyses, the ever-evolving agribusiness landscape demands sustained investigation. Research must focus on agribusiness branding's sustainability, exploring how it can convey eco-friendly practices effectively (Grubor and Milovanov, 2017). In an increasingly digital world, understanding the impact of digital channels, social media, and e-commerce on agribusiness branding is crucial. Moreover, examining how branding strategies can foster global competitiveness in agribusinesses is important. Integrating emerging technologies, like precision agriculture and blockchain, into branding approaches warrants exploration. Interdisciplinary collaboration among marketing experts, scientists, economists, and environmentalists is key to navigating

this dynamic field. Continuous research in these areas is essential for elevating agri-business branding to meet the challenges and opportunities of the future.

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THE ECONOMIC ANALYSIS OF LAW AS AN ALTERNATIVE FOR THE DEFENCE OF INCLUSIVE MIGRATION POLICIES IN THE EUROPEAN UNION

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Abstract

The migration of human beings from one territory to another is a phenomenon that has been part of all eras of history. The contact between peoples has contributed to the formation of the populations of modern nation states, with their cultural heritage as a result of these interactions. Since Globalisation and the Information Society, migratory flows have intensified mainly to countries in the northwest of the world, as in the case of the member countries of the European Union, creating a multicultural environment that is contested by nationalist discourse. This discourse, fueled by the spread of fear that immigrants could harm nationals and the development of the country, has led to the growth of xenophobia in all the countries of the European Union. Xenophobia has a significant negative impact on the attempt to integrate the immigrant into the community of the host state and goes against the objectives of the Treaty on the Functioning of the European Union. It also makes it difficult to achieve the goals set out in the 2030 Agenda, such as those recommended in SDG 10 (reducing inequalities) and SDG 16 (defending peace, access to justice and effective institutions). It should also be noted that the defense of inclusive migration policies and the fight against xenophobia is based on various normative instruments at global, regional and national levels, but so far, they have proved ineffective in dealing with and effectively combating this type of structural crime. Xenophobia has grown in recent years in countries that have also seen an increase in the number of migrants. Based on this observation and the fact that the world economy is governed by capitalist ideology, in which economic power acts as an influencer in political and legislative decision-making, this paper aims to present Richard Posner's Theory of the Economic Analysis of Law as an alternative in defense of inclusive migration policies in the European Union.

Keywords: *economic analysis of law; migration policies; immigrant law; xenophobia.*

JEL Classification: K37

1. INTRODUCTION

The 21st century has been marked by the phenomena of Globalisation and the Information Society, as well as migratory flows resulting from Civil Wars, political and economic instability, and climate change, which have become a constant challenge for countries receiving migrants and refugees. Based on the understanding that migratory flows are inevitable, as well as the multicultural spaces that result from this reception and from the residence permits for immigrants from third countries, discussions and concerns about the interaction between national and foreign peoples within the same physical space, as well as about how to combat xenophobia, are becoming increasingly necessary. The need to think about, analyse, and measure existing migration policies and formulate improvements to them, making them more capable of ensuring a country's internal harmony, is fundamental to maintaining social order and public safety.

It should be noted that migration policies arise from the need to create guidelines for the state's normative production with regard to immigration and can either serve as an instrument to regularise the situation of the migrant population in the receiving country, attracting certain contingents such as students, researchers, and highly qualified professionals who are capable of contributing to the economic development of the destination country, or create restrictive measures that make it difficult for foreigners to enter and remain in the country. In the latter case, migratory policies that are considered restrictive are generally based on the fear that the increase in the migrant population in the country could cause an increase in spending on public services such as health and education, and even make them more precarious; or based on nationalist narratives that immigration could lead to the end of a monocultural society, with the consequent loss of the country's cultural identity and the possibility of fewer jobs or loss of job opportunities for nationals.

Thus, based on this nationalist narrative demonising migration and migration policies that aim to facilitate the inclusion of immigrants in the country, the reasons behind such inclusive policies, which are based on human rights and the international legal system, have lost strength due to the current identity crisis of human rights in this century, resulting in a weakening of the discourses that defend greater protection for the migrant population. Therefore, if, from a human rights perspective, inclusive migration policies have met with greater resistance to being implemented or recognised by nationals, an alternative is to defend the need for such policies from the economic perspective of gain for the society of the state receiving the migratory flows.

In the context of economic globalisation, it is notorious that the Global Economic System is predominantly capitalist and that political decisions, as well as legislative productions and the implementation of public policies, are influenced by Economic Power, by the invisible hand of the market, from the perspective of

the gain or contribution that such a decision or legal norm could make to the economic development of the state.

Based on the difficulty that human rights have in justifying the need for inclusion and protection of immigrants, the aim of this paper is to present an alternative for the defence of inclusive migration policies. In order to achieve this objective, this research paper, using a qualitative and inductive methodology, developed the text in three parts. The first part presents data on migratory flows to European countries, with a brief historical overview. The second part presents Richard Posner's Theory of the Economic Analysis of Law, and the last part seeks to demonstrate that Posner's Theory of the Economic Analysis of Law can serve as a theoretical and pragmatic alternative to justify and defend the need to improve inclusive migration policies in the European Union.

2. MIGRATION FLOWS TO THE EUROPEAN UNION IN THE 21ST CENTURY AND THEIR IMPACTS IN NUMBERS

According to the Jacques Delors European Information Centre, the recent history of immigration to Europe is divided into three periods. The first period covers the 1950s and 1970s, when European countries promoted the decolonisation of their former colonies on the African continent, which resulted in a significant migratory flow of nationals from these former colonies to the colonising countries for economic reasons. The second migratory movement covered the late 1970s and early 1990s, a period marked mainly by immigration due to family reunification and the search for labour in southern European countries. Finally, the third period of migration to Europe, which began in the 1990s, attracted many flows of immigrants from third countries, due to the formalisation of the European Union and driven by the search for better living conditions, especially in the areas of security and work (Eurocid, n.d.).

In 2021, the European Commission's report on the statistics of migratory flows to Europe pointed out that of the 447.2 million inhabitants of the European Union, 23.7 million were citizens of third countries, corresponding to 5.3 per cent of the European Union's population, and 37.5 million were born outside the European Union (European Commission, 2022).

According to Eurostat, 1.92 million people from third countries immigrated to EU countries in 2022. The report also states that, without this contingent of immigrants, the bloc's total population would have fallen by approximately half a million in 2019. In 2019, residence permits were issued to 3 million immigrants from third countries, in 2020, 2.3 million were issued, and in 2021, 2.95 million were issued. The decrease in the issuance of residence permits in recent years has been caused by the Covid-19 pandemic. Among the residence permits issued during these years, those issued for work stand out, since they went from 39% of the total number of permits in 2020 to 45% in 2021 (European Commission, 2022).

Also, according to Eurostat, in 2021, 8.84 million immigrants from third countries were formally in the labour market in the countries that make up the European bloc. However, the data collected shows that "the employment rate of the working-age population in the EU was higher for EU citizens (74 %) than for third-country nationals (59.1 %)". According to Eurostat, it is necessary to consider that many immigrants from European countries are "essential workers" (European Commission, 2022).

In a study conducted by the European Union's statistics office, Eurostat, the data collected on discrimination in the workplace against immigrants from third countries has increased significantly in recent years. In 2021, more than 1.1 million cases of xenophobia were reported. Germany, France, and the Netherlands topped the list of countries with the highest number of cases. The data also shows that the health sector was where the most cases of xenophobia were registered, corresponding to 7.1 per cent of all cases (Eurostat, 2022).

The Jacques Delors European Information Centre explains that the European Union's Immigration Policy aims to manage regular immigration and combat irregular immigration, as well as to promote the integration of immigrants in the receiving countries, with Articles 79 and 80 of the Treaty on the Functioning of the European Union (TFEU) as its legal basis. Among the conditions for granting residence permits to immigrants from third countries to the bloc are those for highly qualified workers, considered to be those who "occupy a labour activity requiring specific technical skills and therefore an appropriate qualification", established by Directive 2009/50/EC; those for students and researchers, considered to be those who "migrate to the EU for the purposes of research, study, training and voluntary service (under the European Voluntary Service/European Solidarity Corps)", established by Directive (EU) 2016/801; for Family Reunification, established by Directive 2003/86/EC, which allows non-EU citizens to bring their family members to the EU country in which they regularly reside; and lastly, for Long-term Residents, considered to be those who "have lived, on a regular basis, in an EU country for an uninterrupted period of five years", obtaining long-term resident status, under the terms of Directive 2003/109/EC (European Commission, 2022).

With regard to the objective of integrating foreign residents, this involves the adaptation of immigrants from third countries to the European Union through participation in the formal labour market, access to health and education at all levels, and participation within the political community, enabling this contingent to be part of society, in the sense of belonging and mutual respect (Eurocid, no date).

3. THE THEORY OF ECONOMIC ANALYSIS OF LAW BY RICHARD POSNER

The Economic Analysis of Law, which include Richard Posner as a main reference, emerged as an alternative in the crisis of the welfare state in the United

States (Lauda, 2009) and was presented with a more practical point of view in guiding the measures and policies adopted by governments, based on the understanding that decisions and norms should be guided more by everyday pragmatism and less by the pragmatism idealised by philosophical thought (Posner, 2010).

Thus, the theory's aim was to deal with law from the point of view of economic analysis, i.e. the cost-benefit that a rule can generate in life in society, serving as a starting point to guide the drafting of laws, public policies and even judicial decisions, making the issues surrounding these decisions into calculations that ultimately seek a pecuniary product that justifies the adoption of such measures or decisions. This is all based on Posner's understanding that through this procedure of economic analysis, a decision or normative production is more efficient, since the more pragmatic analysis makes it possible to improve the norm based on the effects it produces (Posner, 2010a). In Posner's words, his objective:

"to develop a moral theory that transcends classical utilitarianism and that establishes, as a criterion for judging the fairness of an action or institution, its ability to maximise society's wealth. This approach allows for the reconciliation of three competing ethical principles: utility, freedom and even equality." (Posner, 2010a, p. 138)

Tabak, in explaining Posner's Theory, understands that the Theory of the Economic Analysis of Law (EAL) can be applied to analyse proposed laws and public policies for the benefit of society, with the aim of identifying which will be more efficient and generate greater well-being when compared to previous laws or public policies being implemented (Tabak, 2015).

When dealing with Posner's theory, Aaken explains that there are three important perspectives in the study of law. The first of these is the social perspective, followed by the normative, and finally, the doctrinal. Aaken also characterises the social perspective as descriptive, in which the hypothesis created for the formulation of the norm must be tested and analysed. Thus, the standard formulated based on a need must, once it has taken effect, be analysed in terms of its positive and negative impacts as a way of measuring its social benefits and the need for improvement (Van Aaken, 2010).

With regard to cost-benefit analysis, Tabak explains the various formulas that have been created to turn the analysis of a legislative proposal or a public policy into numbers, among which the Poreto and Kaldor-Hicks equations stand out. He exemplifies this by proposing the hypothetical case of a public policy that aims to improve air quality in cities for future generations and which, in order to achieve this goal, will have to create a series of restrictions on polluting companies immediately, generating costs at the present time. Thus, Tabak, when considering that the cost of this policy is "1" at the present time, but that the benefit generated for the next generation is greater than "1", explains that what will determine whether or not such a policy should be implemented, in this cost-benefit analysis, is the discount rate, i.e. if the discount rate is less than 10% during this period, the gain

from such a policy will be positive and the benefits will offset the costs generated by implementation (Tabak, 2015).

Sunstein, for his part, suggests applying cost-benefit analysis as a way of responding to the general problem of fear, which arises when people are afraid of trivial risks, and explains that the possibility of misallocating public resources can result from certain fears. Thus, Sunstein's proposal is to overcome cost-benefit analysis from the point of view of conventional economics, to analyse it from the foundations associated with cognitive psychology and behavioural economics, which means that he is not an advocate that economic law analysis should be the influencer of every law or public policy (Sunstein, 2013).

It is a fact that economics as a science works with the distribution of resources, analysing the best way to use them, especially when they are scarce. Based on this understanding, Holmes and Sunstein apply the law in relation to the scarcity of resources and explain that rights depend on the existence of resources, and that the decisions made daily by rulers and judges reflect on the distribution of these resources. Thus, faced with a scarcity of resources, every decision involves weighing up the resources that should be applied to each need, and it is inevitable that the application of resources in one area may result in the abdication of investment in another area (Holmes and Sunstein, 1999).

Based on his cost-benefit analysis proposal, Sunstein explains that several recent studies have identified two systems of cognitive operations in the human mind that are involved in assessing the risks of a given activity. The first system, according to experts, acts quickly and is characterised by being more associative and intuitive, while the second system is slower and is characterised by being more deliberative, calculating, and analytical. He explains that: "The central point is that people have immediate and often visceral reactions to people, activities and processes, and the immediate reaction acts as a mental shortcut to a deliberative or analytical assessment of the issues." Thus, in the coexistence of these two cognitive systems, the second system, which is slower and more analytical, serves to correct the summary assessment produced by the first system, which is faster and more intuitive (Sunstein, 2013, p. 231).

To exemplify how this would occur in practice, Sunstein creates the following hypothesis: "System I may lead people to be terrified of flying in aeroplanes or of large dogs, but System II may create a check, guaranteeing an eventual conclusion that the risks are trivial." In this way, Sunstein understands that "fear is often a product of System I and that cost-benefit analysis can function as a kind of System II corrective, ensuring that people have a better sense of what's really at stake" (Sunstein, 2013, p. 232).

Tabak explains that Sunstein's idea is corroborated by that of Robert Frank, who emphasises that public policies and proposed laws that use cost-benefit analysis usually increase the wealth generated for the economy, which is in the interest of society as a whole (Tabak, 2015).

Frank, in an article entitled "Why is cost-benefit analysis controversial?", uses a hypothetical case to exemplify the cost-benefit principle in the case of installing guardrail on a dangerous stretch of road. He explains that the decision whether or not to install guardrail should take into account whether the cost of installing it will be less than the cost of the possible accidents, which would involve spending money on help and the deaths of those injured (Frank, 2000, p. 913). Frank goes on to explain that this purely calculating analysis has been criticised by those who believe that a human life cannot be measured in money and that their suffering would be morally illegitimate and argue that the guardrail should be installed anyway in order to save lives. However, the author warns that in a context of scarcity such as the current one, this perspective is unsustainable, since the amount spent on installing a guardrail could be used in other areas such as health, education, or security, and would help or save even more people (Frank, 2000).

From Frank's example, it can be seen that the cost-benefit analysis takes into account in which area or public policy the provisioned amount would be most efficiently spent. Thus, it is undeniable that EDA has the potential to contribute to decision-making, whether in the creation of regulations or in the drafting or implementation of a public policy, and it also serves as a basis for analysing migration policies.

4. THE ECONOMIC ANALYSIS OF LAW AS A DEFENSE OF INCLUSIVE MIGRATION POLICIES

From the perspective of the Economic Analysis of Law, Tabak explains that Posner's theory can be used to analyse normative proposals and public policies: "If these increase well-being and promote efficiency, then they should be adopted by society. When analysing a particular bill, for example, the question, from an EDA perspective, is whether this norm is more efficient than the status quo. If the norm is efficient, then it should be introduced, since it is possible to increase society's well-being" (Tabak, 2015, p. 325). In this way, it is also understood that EDA can be used to analyse and guide the development of migration policies, since their principle is the same as that of other public policies. A given migration policy is created with the expectation of promoting the greatest welfare for society.

Migration policies follow the same cycle as (other?) public policies: problem, agenda, formulation, decision, implementation, evaluation and extinction or improvement (Monteiro and Moreira, 2018). In this cycle, the problem arises from a factual finding, through a survey of data, such as the fact that records of xenophobic crimes have increased in European Union countries. Once the problem has been defined, it must be included on the government's agenda in order to put on the agenda the discussion and debates on how best to deal with the problem. The result of the debate is the formulation of measures that can tackle the problem,

followed by their implementation through a legal norm that must be produced by the state legislature. Once the normative instrument has been created, it must be analysed in terms of its effects on reality, by collecting data that can measure the effectiveness of the norm produced and whether or not it needs to be abolished or improved.

In the case of the Economic Analysis of Law, it would be applied in the evaluation phase of the legal norm produced to deal with the problem that gave rise to the need for the normative instrument. For example, if one of the objectives of migration policy is to integrate immigrants into the national community that has received them, it should be analysed whether the legal instruments created for this purpose are effective, because if they are not, there is a need to improve them. If the economic analysis of the law is applied to Directive 2009/50/EC, it becomes apparent that the directive was created with the aim of attracting highly qualified professionals by granting residence permits to immigrants who fulfil this condition. Thus, this Directive should have been created on the basis of an analysis that recognised the importance of attracting immigrant workers for the country's economic development. However, recent reports warn of an increase in discrimination against immigrants in the workplace, with the health sector being one of the sectors where a high number of complaints have been registered.

It should be noted that the health sector involves highly qualified professionals, and although they fulfil the conditions for regular immigration, xenophobia can be an obstacle to achieving the objectives of Directive 2009/50/EC, as well as integrating immigrants into the community, giving rise to the need to formulate new regulatory instruments aimed at implementing an inclusive migration policy.

5. CONCLUSIONS

The 21st century has been marked by an increase in migratory flows, mainly to the member countries of the European Union. The growth of the migrant population from third countries in the European Union has been accompanied by an increase in accusations of xenophobia against the foreign population living in the bloc's countries.

In this century, inclusive migration policies have always been justified and legally grounded in international treaties on human rights and in humanism, a philosophical and sociological current that values human beings because of their nature. However, it can be seen that human rights in the 21st century have been suffering an identity crisis due to the inefficiency in providing more practical answers to the problems faced by certain social groups, such as immigrants, as well as the fact that in a capitalist economic system, it is understandable that decision-making and the drafting of public or migratory policies are influenced by economic power.

In view of the data, it can therefore be seen that one of the major challenges in the migration issue is creating an inclusive migration policy that combats

xenophobia, since this crime, which is already defined in European legislation, makes it difficult to achieve the objectives set by European migration policy, such as integrating immigrants into the community. In this respect, the data collected can contribute to the analysis proposed by Posner's theory.

The data collected and published in Eurostat reports and dossiers indicates the valuable economic contribution made by foreigners living in European Union countries and, based on this data, it is concluded that it is possible to apply the theory of the economic analysis of law to demonstrate the benefits that a migration policy is capable of generating for the societies where these flows are destined and, thus, serve as a theoretical basis to substantiate the need to improve inclusion measures, as well as the fight against xenophobia, which has been growing in the European bloc.

In this way, given the difficulty of humanism in defending interculturality and inclusive migration policies, the theory proposed by Posner could become an interesting alternative for defending these policies, at a time when liberalism and capitalism have reached a new level with economic globalisation, and the valuation of human beings, from a purely calculating perspective, seems to be easier to justify according to their contribution and the product generated by it than by their simple human nature.

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HUMAN CAPITAL – EVALUATION MODELS

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Abstract

The development of the IT sector (the third industrial revolution), as a supporter of the new automated industrialization, has made the human resource to remain fundamental as long as it also undergoes a digital transformation (through literacy with new technologies and work methods. More, the significant advance of the IT segment in recent decades, which has reached a growth rate 2.5 times faster than that of the world economy, in the last 15 years, which has led to the creation of volatile dynamics in the human capital market of this segment. Thus, the continuous expansion of the information technology industry generates technological, geographical, social and cultural trends and migrations. The new industry 4.0 is based on a much more heterogeneous resource than that of semi-conductors: human capital. The heterogeneity comes from a series of characteristics of individuals which forms it, based on criteria of a technological nature, specific to the field (due to a wide variety of technologies used), availability (which refers to the location where they carry out their work: from the office or remotely), level of experience, or even from the technological background (many resources do not have an initial technical training, but choose to convert to the technological area) or the cultural one (which can significantly influence the communication processes between resources from different cultural backgrounds). In this paper, we aim to highlight human capital evaluation models, being some representative for this field, such as the Petty model, which emphasizes the financial value of the workforce, the Farr model, which proposes a new method of taxation, or the Engel model, who calculated the cost of training a productive individual as a function between age. Valuation models are important for the evaluation of human capital because they highlight relevant and irrelevant human capital characteristics, skills and knowledge that are involved in the development of an organization and that generate added value.

Keywords: *human capital; evaluation models; development.*

JEL Classification: J24, JO15

1. INTRODUCTION

The development of the IT sector (the third industrial revolution), as a supporter of the new automated industrialization, has made the human resource to remain fundamental as long as it also undergoes a digital transformation (through literacy with new technologies and work methods) and even not be significantly reduced by automation processes (Arntz, 2017). Moreover, the significant advance of the IT segment in the last decades, which reached a growth rate 2.5 times faster than that of the world economy, in the last 15 years (Huawei and Oxford Economics, 2017), created a volatile dynamic in the human capital market in this segment, bringing the concept back to the attention of human resources departments in large technological corporations, but also to policy makers.

The continuous expansion of the information technology industry, as a result of the fourth industrial revolution (Taramasso *et al.*, 2014) generates trends and migrations not only technological, but also geographical and even social and cultural. The new Industry 4.0 is based on a much more heterogeneous resource than that of semiconductors: human capital. The inhomogeneity comes from a series of characteristics of the individuals who form it, based on criteria of a technological nature, specific to the field (due to a wide variety of technologies used), availability (which refers to the location where they do their work: from the office or from a distance), level of experience, or even from the technological background (many resources do not have an initial technical training, but choose to convert to the technological area) or the cultural one (which can significantly influence the communication processes between resources from different cultural backgrounds).

The need to manage the human capital resource in the IT segment has also become a significant pressure for the IT market in Romania, in the conditions of an accelerated advance of the weight of the technology area in GDP, which reached 19% in 2019, continuing the growth trend and in 2020, despite the special economic conditions caused by the pandemic state. Human capital has become a resource with insufficient availability in Romania, with estimates from various studies showing a deficit between 15 thousand and 30 thousand specialists, in the period 2020-2021.

In this context, the need for academic research focused on this resource and this segment becomes very strong. Human resources represent an important pillar of the IT industry and require special attention.

Practical experience shows that in the new technological society, where communication and access to information eliminate the diffusion barriers of know-how, stimulating innovation, the adaptation of human capital to market dynamics becomes a challenge. The progressive speed with which technology advances (Kooimey *et al.*, 2011) requires a permanent adaptation of human capital. When we're talking specifically about technology professionals, who are at the forefront of change, the pressure to continually adapt is even greater. This field-specific

volatility often leaves behind the educational programs of public training institutions, which are subject to a difficult process of adaptation due to institutional bureaucracy. The importance of private facilities for the formation of human capital thus becomes major for feeding the massive needs of the market, but they are, as a rule, more expensive than public ones. The need for appropriate policies is thus strongly felt.

Our approach, trying to respond to the identified needs, will combine the analytical rigor specific to the academic plan, with the pragmatic efficiency coming from practical experience in the field of the technological industry. Thus, the perspective of the observations coming from current practice will complement the academic optics, sometimes even opposing them. Starting from the concept of human capital, which we will approach from an evolutionary perspective, observing its analytical course (in academic terms) from the first mentions until now, we will theoretically substantiate one of the levels (the main level of) our research. We will then turn to the methodological plan and make a theoretical profile of the main concepts of systems theory, which we will use as support for the creation of a theoretical model regarding the human capital market.

Our objective is to create a stimutable model of the human capital market, using as a methodology the systems theory (system dynamics) developed by Jay Forrester in the mid-1950s (Forrester, 1971). Through the prism of systems theory, then we will model the main structures that are the basis of the human capital market, dividing the main elements into stocks, flows and various types of variables specific to the targeted system. To validate the created structure, statistical data from a defined geographical area will be used, which will be collected and normalized to identify a reference mode. The peculiarity of the models developed with the help of this methodology is that they can be transformed into computer models, with the help of special software, and thus become true simulators for the behavior of the system in several situations or states in which the analyzed system can be found, in a certain Time interval. By changing different parameters of the model, corresponding to certain concrete elements of the analyzed social system, the change in the behavior of the system over time can be observed through simulation. In this way, different scenarios corresponding to different policies in real life can be tested in the virtual environment, and it is possible to evaluate their effects in a non-intrusive environment.

The simulation of the effects of some public and private policies, based on a virtual model of the human capital market in the IT segment, from a defined geographical area, by initializing the model with the parametric values specific to that market, will allow an easy perspective for any decision-maker and for any market trend analysis over time. Moreover, the basic structure of such a model will be adaptable to other markets, from other geographical areas, by simply changing the initial parameters, with the values specific to that market. Thus, due to its versatility, such a model can serve as a real 'flight simulator for management' (Sterman,

2002), within the reach of the authorities who can implement significant decisions in the analyzed system.

In order to become a relevant utility and a 'device' for academic research, for such a model it is also necessary to be aware of its limits and imperfections. The structural limitations, arising from the modeller's perception of the analyzed system, the parametric limitations, as a result of the level of accuracy with which the data can be collected, measured and interpreted, the technological limits, and other important limits, will be analyzed in the last part of our work. Also in this section, some future directions for research and expansion of the constructed model will be formulated.

2. HUMAN CAPITAL - EVALUATION MODELS

The first attempts to determine the financial value of a person were made by Sir William Petty, in 1691. Initially Petty, in order to try to determine the 'wealth' of a nation, considered it necessary to assign a financial value to labor. In this way he managed to demonstrate the economic power of England, of that period. For this he started from the national income from which he subtracted taxes and property taxes, and thus obtained the value of wages for the entire labor force (Hull, 1899). He calculated the value of human capital by multiplying the value of wages by the market interest rate from that time and capitalizing it. By this capitalization he obtained a value of human capital.

Although Petty's calculation model does not take into account labor maintenance costs before capitalization and becomes even more inefficient when human capital is evaluated by age, sex, etc., he nevertheless manages to provide a fairly accurate approximation of a nation's financial worth (Kiker, 1966).

Like Petty, whose approach came from the perspective of public finance, in 1853 William Farr proposed a new method of taxation. He starts from the idea that as long as people are productive, they should be considered and taxed like other forms of capital. To calculate the taxable value Farr starts from the present value of an individual's income from which he deducts living costs. The result is capitalized with the interest rate at the time of calculation (Farr, 2001). For cases of death Farr calculates compensation according to a table he proposes.

The main limitation of Farr's model is that, due to the formula for calculating the tax, depending on the future value of individual income, it would create an obligation for the taxpayer to pay tax on income that he has not yet earned. An illustration of this limitation is given by Kiker, who uses an imaginary exercise in which the function of calculating the tax, as a function of the capitalized value of expected future income, for Elizabeth Tailor, age 16, is the same as the function of calculation of a landlord who rents housing, also according to the capitalized value of expected future income (Kiker, 1966). The inefficiency of such a taxation system thus becomes evident.

In 1883, Ernst Engel calculated the cost of training a productive individual as a function of age, costs incurred before birth, and the annual percentage increase in costs. The previously mentioned parameters are, in Engel's opinion, constant, except for age, which cannot exceed the value of 26 years. Engel believes that at the age of 26 a person is already fully productive and his training process is completed. Regarding the costs before birth, Engel estimates three values (100, 200 and 300 marks) corresponding to the social position of the person for whom the formula is applied. The three values are correspondences of the working class, of the middle class (bourgeoisie), respectively of the aristocracy.

The basic equation of Engel's model calculates the total cost of 'production' of a human being:

$$C_x = C_0 \{1 + x + k[x(x + 1)/2]\}$$

where, x represents the age at which the calculation is made, C0 represents the costs recorded up to the time of birth and k represents the annual increase in costs.

Despite its limitations to accurately calculate the total cost of training a productive individual, the formula proposed by Engel, with some modifications, can be useful in calculating certain cost elements of human capital, such as the costs of education or those related to services of health (Kiker, 1966).

In 1867, in an attempt to establish a guide for the assessment of compensation payments, by insurers or employers, in the event of a person's death, Theodor Wittstein proposed a variation of Farr and Engel's calculation methods. The main peculiarity of the variant proposed by Wittstein is the axiom according to which a person's lifetime income is equal to the sum of his maintenance costs and his education costs. The model equations are:

$$C_{(n)=aR_{(0)}} \frac{L_{(0)}}{L_{(n)}} r^n - aR_{(n)}$$

$$C_{(n)=XR_{(N)}} \frac{L_{(N)}}{L_{(n)}} p^{N-n} - aR_{(n)}$$

where: a represents the annual maintenance costs, including education costs, for a German citizen, male, employed in a specific activity; $r = (1+i)$, where i represents the interest rate; $p=1/r$; L(n) represents the number of males alive at age n according to a table. R(n) represents the value at age n of an annuity of 1 thaler bought on the date of birth. X represents the value of the future production of an individual of average condition, involved in a certain activity; and N represents the age at which this individual enters production.

The main shortcomings of this method of calculation are, first of all, the previously mentioned axiom, which has no solid justification, and secondly, the way in which the formulas for calculating a person's capitalized income and the

calculation of costs were used of human capital formation, which presents the risk of doubling certain values.

It was also the life insurance market that needed an efficient way to calculate insurance premiums and insured values that led Dublin and Lotka to devise a way to calculate a person's worth. As the authors mention, such calculations can also be useful for estimating the costs of preventable diseases or premature death (Dublin and Lotka, 1930). Their proposed method of calculating the capitalized value of income minus maintenance costs can be useful in determining, for example, a person's worth to his family. In the event of the person's death, the family's income is reduced by the amount of income that the deceased person could have achieved, less the amount of maintenance costs.

The formulas of the Dublin-Lotka model are:

$$V_0 = \sum_{x=0}^{\infty} v^x P_x (y_x E_x - c_x)$$

Or

$$V_a = \frac{P_0}{P_a} \left[\sum_{x=a}^{\infty} v^{x-a} P_x (y_x E_x - c_x) \right]$$

where V_0 is the value of an individual at birth; $vz=(1+i)^{-x}$ represents the present value of a dollar due x years later. P_x represents the probability calculated at birth, of an individual to reach age x ; y_x represents earnings per individual from age x to $x+1$; c_x represents the costs of an individual's life from age x to $x+1$. V_a represents the value of the individual at age a .

The cost C for producing an individual up to age a can be calculated as follows:

$$C_a = \frac{1}{P_a} \left[\sum_{x=0}^{a-1} v^{x-a} P_x (c_x - y_x E_x) \right]$$

Or

$$C_a = v_a - \frac{1}{P_a v^a} V_0$$

Although considered a reference work for the clear and concise way in which the concepts are presented, it surprisingly suffers from an important limitation, that of considering the costs of maintaining a person as equal to the costs of living, which - at least for developed countries, this is not the case - because part of the

maintenance costs are included in the training process, but 'certain maintenance costs continue throughout the life of human capital' (Kiker, 1966).

In 1958, Jacob Mincer uses a human capital value model to explain variations in the distribution of income in the United States labor market. In the simplified version, the model starts from the calculation of the present value of the future incomes obtained by the individuals involved in production. Then the model is extended to take into account the number of years of training (training) and then a function is added to calculate market asymmetries. The model is initialized with data available at that time.

Despite the fact that Mincer's model confirms a theorem that is later picked up and demonstrated by Becker, that there is a directly proportional relationship between the level of education and the level of income, a number of limitations of the model are evident. First, for the sake of simplicity, it is assumed that all people have equal skills and equal employment opportunities, and that only the level of education differs. The level of education is considered higher if it lasts longer, and no other criteria are taken into account. The costs of education are assumed to be zero, but these are manifested as non-productive years, according to the assumption that during the training period the individual has no productivity.

Angela Baron points out that when it comes to measuring human capital, there is no universally accepted model, and that, as The Chartered Institute of Personnel and Development (CIPD) studies show, the model usually depends on the context chosen by the researcher. In terms of human capital management, research undertaken in the 2000s by the CIPD shows that the choice of units of measurement of human capital is less important than understanding the processes that lead to its formation and effective use. The studies also show that a high value of human capital is not a guarantee or does not demonstrate a high quality of the internal organization within the evaluated entity. That is why, again, it is important to analyze in the right context, to properly understand how human capital participates in productivity growth.

The lack of a unitary method of evaluating human capital, at the level of production organizations, is justified by the fact that for them some of the characteristics of human capital are irrelevant, having value only those skills and knowledge that are involved in the organization's production process, generate a added value.

Baron also shows that the measurement of human capital by organizations is carried out on three dimensions: measuring the effectiveness of the human resources policy; measuring the efficiency of processes related to stimulating the increase in value of human capital (for example through activities that generate internal transfer of information between employees in order to train specialists); measuring the impact of the investment process in human capital on production.

3. CONCLUSIONS

The first initiatives to calculate the human factor were aimed at estimating war losses or measuring the 'strength' of nations, according to the average value of individuals. Subsequently, economists focused on taxation, in the sense of determining the future productive value of the individual, for the application of appropriate taxation policies. At the beginning of the last century, a series of relevant models for evaluating the economic value of an individual had as their objective the determination of compensation for cases of death or work incapacity. All these initiatives were important starting points for further research. The Chicago school is credited with placing the concept of human capital in its current place in economic research.

The sources underlying the accumulation of human capital value and its productive implications were argued in a manner that has remained consistently valid to this day. The positive correlations between education, health and human capital accumulation remain to this day a kind of backbone for the economic theory of human capital. The study will be deepened by applying some models on established geographical areas with the aim of correlating the theoretical information with the practical part.

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GOOD PRACTICES IN THE IMPLEMENTATION OF COHESION POLICY: THE CASE OF CENTRAL AND EASTERN EUROPEAN COUNTRIES

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Abstract

The EU enlargement process is accompanied by a series of differences between EU member states regarding economic development. In this context, the efficient implementation of cohesion policy has become more necessary in order to reduce the disparities between countries and between different areas and regions in the same country. This paper aims to analyze the effects of cohesion policy in the Central and Eastern European (CEE) countries for the 2014-2020 programming. Based on the data provided by the European Commission, the Romanian Fiscal Council, Eurostat and Cohesion Open Data Platform, we investigate the impact of the cohesion policy by analyzing the use of European Structural and Investments (ESI) Funds, the member states capacity to attract and retain the ESI Funds, including the absorption rate in general, but also in an economic environment affected by the COVID-19 pandemic. The research showed that the impact of cohesion policy has proven to be positive in the analyzed countries, with positive results in the field of infrastructure, research and innovation, education, health, environment and the competitiveness of SMEs. These positive results also led to a continuous increase of GDP per capita throughout the 2014-2020 programming period.

Keywords: *cohesion policy; European Structural and Investments (ESI) Funds; Central and Eastern European countries; absorption rate.*

JEL Classification: F36, O40, O57

1. INTRODUCTION

Cohesion policy is one of the most important policies of the EU, with a major impact on the member states. This policy was officially created with the signing of the Single European Act in 1986, when the concept of economic cohesion was also introduced, but the interest in this policy, able to face the disparities between regions, appeared a long time ago, since 1957 with the Treaty of Rome. Although initially, the cohesion policy represented a simple redistribution of small amounts of money between the member states, over time, it proved its role and became an essential policy for the member states' development.

The center of the cohesion policy is represented by the regions of the less developed member states, with the aim of removing the barriers to economic and social growth in order to reach the level of the other EU developed member states. In each programming period, the cohesion policy sets a series of objectives, financially supported by the structural funds, used as instruments to redistribute the funds for the investments of the member states. Cohesion policy represents an opportunity for countries to achieve sustainable economic growth, but it depends on their ability to attract and use the available funds.

This paper aims to analyze the implementation of the cohesion policy from 2014-2020 and the effects on the Central and Eastern European (CEE) countries. This research is motivated by the essential role that cohesion policy plays for the development of a member state.

The paper is structured as follows: section 2 reviews the literature regarding the cohesion policy and its role; section 3 presents data and methodology applied; section 4 illustrates the results and discusses the findings. Finally, section 5 concludes the paper, highlighting the contribution and limitations of the paper.

2. LITERATURE REVIEW REGARDING COHESION POLICY AND ITS ROLE

Cohesion policy is one of the most visible policies of the EU, one of the best known by citizens and with a strong impact on the member states. Even though it is one of the major policies of the EU, it does not have a clear and unanimous definition, as it is difficult to cover all aspects with a simple definition (Petcu and Roth, 2015). The difficulty comes from its complexity and its means of implementation. Even if it is a concept without an unanimously accepted definition, it is meant to be an investment in the future of Europe (Dinulescu, 2018). Of course, this is not an obstacle for authors to define cohesion policy, but there is not a unique perspective.

The European Commission defines cohesion policy as the EU's strategy to promote and provide support for the harmonious development of its member states and all its regions (European Commission, n.d.). This policy is found in the context of economic disparities, which exist at the level of the EU territory, and which

affect the sense of unity, because they can create tensions between the rich and poor regions of a given area (Mihalcea, 2012).

According to Ionescu (2016), the regional policy and the cohesion policy are directly connected together with other EU policies and they have in common the fact that they share a focus on citizens' well-being and sustainable regional development across Europe.

Petcu and Roth (2015) consider that their definition covers all the relevant aspects regarding the cohesion policy and they report that the cohesion policy is one of the EU policies and presents itself as a complex one with ambitious objectives, which prove to be implemented through a partnership between regions and member states, on the one hand, and the EU institutions, on the other.

Cohesion policy is the most explicit and visible expression of solidarity within the EU, but it is not limited to that. It can be seen as an aid to self-help and its success depends mainly on the capacity, but also the training, of the parties involved (Ahner, 2009). Cohesion policy has the role of offering, in addition to financial support and advice, exchange of experience, cooperation with other actors, capacity building through training, constructive dialogue between different levels of governance, all of which are essential for achieving the proposed objectives.

This policy is considered to be a supranational policy, being simultaneously linked to the national level of the member states, but the fight against discrimination, marginalization and social exclusion are absolutely essential for it, aiming to cure the effects, not the causes of inequality (Ghebrea, 2012).

The need for this policy appears in the context of the existence of one of the most competitive areas of the world at economic level, the EU, within which there are certain disadvantages, such as regional disparities, including the different welfare levels of the member states. These negative aspects come from the differences resulting from economy, geography, history, politics, culture, thus EU regions cannot compete on the same level and result in an increase in disparities or the appearance of others (Dinulescu, 2018). From this point of view, the main goal of the policy is to reduce economic and social disparities in all EU member states (Brunazzo, 2016).

The cohesion policy was born in the context of the EU considered more than a simple common market, based on common values and policies with the member states, the policy having the role of putting into practice the solidarity between the states and strengthening the competitiveness of the EU economy. At the same time, we also mention the role of the policy to fulfill the fundamental objective of the EU presented in the EC treaty, namely reducing the gaps between the regions of the states and extending all the existing advantages of the fair common market throughout the EU area, achieving economic and social cohesion (Mihalcea, 2012).

In addition to all this, cohesion policy demonstrates its importance by financing infrastructure investments, which prove to be more than necessary, investments in human resources, the modernization of regional economies and their diversification, the creation of jobs, the improvement of public administrations, the modernization of them, encouraging transparency and good governance (Mihalcea, 2012). States, which benefit from investments through cohesion policy, record higher results in the field of economic growth and are better able to catch up with the EU level.

In the context of the 2008 financial crisis, the economic recovery policies did not take into account the support of the cohesion policy which would have played an essential role in reducing the deficit (Batusaru, Otetea and Ungureanu, 2015).

The role of cohesion policy consists in improving the conditions that determine sustainable growth at region level, jobs, an increase in well-being, improving the quality of the environment from which all EU citizens can benefit (Ahner, 2009). In order to achieve the objectives, it is called to promote investments in human resources, in social capital, helping to mobilize resources in disadvantaged regions, removing blockages at the level of low productivity, improving the ability of regions to adapt to an environment that is constantly changing, encouraging an innovative business environment and encouraging cooperation.

In relation to these objectives, the role of the cohesion policy consists in supporting the member states in achieving economic growth, with an emphasis on disadvantaged regions, with the aim is to bring these regions to the same economic level by eliminating the disparities between them, supporting certain sectors and SMEs, combating unemployment and investing in human resources.

3. DATA AND METHODOLOGY

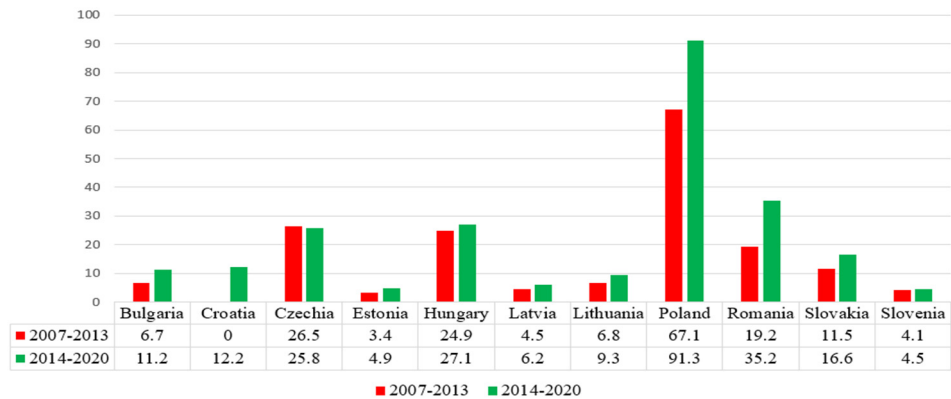
For our analysis we use as a sample of 11 countries from Central and Eastern Europe that are EU members. Data was collected from the official sites, Cohesion Open Data Platform and Eurostat for the period 2007-2013 and 2014-2020. In order to process the data, it was used the tabular calculation method and for highlighting the results it was used the graphical representation.

As methodology, we mainly use documentary research, also comparative method was used in the analysis of the instrument and the results of the cohesion policy during the programming period 2007-2013 and 2014-2020. Among the official documents that were the basis of this research are the European Commission reports and the reports of the Romanian Fiscal Council.

According to the Treaty of Lisbon, the EU aims to develop and continue actions leading to the strengthening of its economic, social and territorial cohesion. The EU aims to reduce disparities between regions, with an emphasis on the least developed regions, so it uses ESI funds as tools to channel member states' contributions into investments in areas such as infrastructure, human resources and the environment (Brandsma, 2014).

From the EU budget, approximately 351.8 billion euros have been allocated to the cohesion policy for the period 2014-2020, i.e., 1/3 of the EU budget intended to fulfill the proposed objectives. This period comes with novelties compared to the previous period: more specifically formulated objectives, more emphasis on results, pursuing a series of clear, measurable targets, so as to achieve a much higher degree of accountability (DG Regio, 2014). The programming period 2014-2020 follows the lessons learned from previous periods, thus the Commission offered much greater flexibility to regions and member states regarding the implementation of projects, a stable framework, with clear and specific rules, based on guidance and past experiences.

Since 2004, most of the structural funds have been directed to the countries of Central and Eastern Europe, with increasing amounts from a financial programming period to another (DG Regio, 2014).



Source: Cohesion Data (<https://cohesiondata.ec.europa.eu/countries/14-20>)

Figure 1. Total EU Allocation in the 2007-2013 and 2014-2020 programming periods (billions of Euros)

From the data presented in Figure 1, we note that there is a significant increase in the amounts allocated from the ESI funds. This increase is due to the more complex objectives assumed by the cohesion policy, the changes in society and the problems that arise, such as environmental pollution with the solution of introducing a low-carbon economy, the COVID-19 pandemic, the high number of young people without education, the high number of unemployed, the growing number of SMEs, the improvement of e-health, e-education, e-inclusion systems. In the case of Poland, it can be seen a difference of almost 11.7 billion euros in total allocations between the two programming periods. A significant increase is registered also in Romania, but the Czech Republic obtains less resources compared to the previous period by approximately 3.8 billion euros.

During this period, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime & Fisheries Fund (EMFF) also joined the cohesion policy financing field. They had the role of supporting the agricultural and maritime sectors. It is also introduced the Youth Employment Initiative (YEI), launched in 2013 with the aim of supporting the implementation of the "Youth Guarantee" programs until 2023. Basically, YEI supports young people who are in regions with an unemployment rate of over 25% and is exclusively dedicated to young people aged between 15-24, who are neither working nor following any vocational training or educational program (European Commission, 2013). The initiative co-financed by the ESF supports apprenticeship programs, supports internships, professional training programs leading to a qualification. For the analyzed period, the initial budget of the YEI was 6.4 billion euros, but the increasing level of youth unemployment determined an increase in the last three years of the programming period of 2.5 billion euros, resulting a total of 8.9 billion euros. According to Table 1, Hungary is the main recipient, receiving approximately 1 billion euros, due to the youth unemployment rate which, according to Eurostat, was 26.1% in 2013, and in 2020 it dropped to 12.5%. Poland and Romania received significant amounts through this initiative, where the unemployment rate in 2013 was 27.6% and 29.6% respectively, and at the end of the period it reached 10.9% and 21.6% respectively.

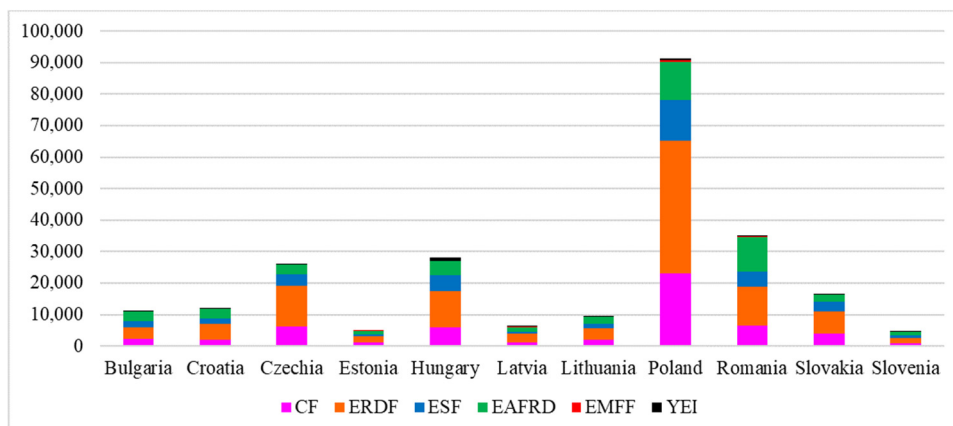
Table 1. The distribution of the cohesion policy budget in the 2014-2020 programming period (millions of euro)

Country	CF	ERDF	ESF	EAFRD	EMFF	YEI
Bulgaria	2,207	3,898	1,743	3,129	81	111
Croatia	2,131	4,833	1,945	2,825	253	206
Czechia	6,144	13,076	3,657	3,076	31	28
Estonia	1,062	2,051	589	1,082	101	0
Hungary	6,025	11,381	5,024	4,590	38	1,000
Latvia	1,247	2,666	670	1,446	140	58
Lithuania	2,040	3,684	1,246	2,238	63	64
Poland	23,140	42,164	12,954	11,945	531	539
Romania	6,535	12,376	4,856	10,968	168	303
Slovakia	3,991	7,167	2,958	2,276	9	172
Slovenia	914	1,672	732	1,156	22	18

Source: Cohesion Data (<https://cohesiondata.ec.europa.eu/countries/14-20>)

Also, from Table 1 we are able to find that the main users of ESI funds turn out to be Poland detached from the rest, Romania, Hungary and the Czech Republic. In a more detailed analysis, Figure 2 gives us the overall picture and it can be seen that the ERDF redirects most financial resources to the regions of the member

states. All ESI funds focus on the four least developed countries: Poland, Romania, the Czech Republic and Hungary. In the case of EMFF, smaller amounts are presented, but those redistributed to Poland and Croatia should not be neglected.



Source: Cohesion Data (<https://cohesiondata.ec.europa.eu/countries/14-20>)

Figure 2. The distribution of the cohesion policy budget in the 2014-2020 programming period (millions of euro)

4. RESULTS AND DISCUSSION

The cohesion policy has positively influenced areas such as technological development, research and innovation, as well as the competitiveness of SMEs, these are just a few. This influence materialized in a series of results, including the fact that the ERDF supported around 1.8 million businesses, over 360,000 new jobs were created of which 36% were located in France, Portugal, and Germany, over 180,000 newly established SMEs received support, 85,000 researchers were provided with enhanced research infrastructure, more than 12 million households gained access to internet speeds of at least 30 Mbps, a renewable energy production capacity of 6,700 MW is being supported, over 15 million people gained access to clean water, more than 66.4 million people will benefit from improved public services of which 46% were in Poland and Spain and 17.9 million students benefited from improved educational infrastructure (European Commission, n.d.).

According to the Eighth Report on Economic, Social, and Territorial Cohesion (European Commission, 2022) the funding has reached 112 euros per person annually and in less developed areas it has even reached 400 euros per person. This report also presents the results of the cohesion policy from 2014-2020, as well as examples of successful projects. The impact of the cohesion policy materialized in the increased collaboration between SMEs and research centers and universities with the number of researchers reaching 2,555 during this period

(Czechia), investments in SMEs led to the removal of barriers to innovation, enhanced employee skills, increased workforce and company profits, production growth and exports (Poland). Moreover, numerous start-ups were created, water networks were modernized, providing drinking water for over 454,000 people (Estonia), projects implemented in the healthcare sector reduced the mortality rate in cases of cardiovascular diseases and lowered the suicide rate, education investments led to a higher enrollment of foreign students in universities (Lithuania). During this period, projects supporting both environmental protection and mobility were implemented, one of these projects being the Bubi bicycle in Budapest or hybrid buses, over 300 km of railway tracks were modernized, more than 200 km of new roads were constructed and over 8 million people benefited from improved healthcare services, schools were renovated, benefiting over 170,000 students (Hungary). All the infrastructure investments that have been carried out, including the construction of new roads and the modernization of existing ones, have led to increased road safety and significantly reduced the number of accidents. For instance, in Lublin, Poland, accidents have been reduced by 74% and travel duration and environmental pollution have also been reduced.

Through the investments made by this policy during this period, 45.5 million individuals were helped to enter the job market, benefiting from education and professional training. All these investments are estimated to bring about a 5% increase in GDP in some less developed regions, for every euro spent during this period an additional 2.7 euros will be added to the GDP over 15 years after the completion of the 2014-2020 period.

We considered the absorption rate to be a relevant indicator of good practices in the implementation of cohesion policy. As examples of good practices, we can refer to the funded area in which different countries have implemented cohesion policy to address the specific needs of the regions, the areas being presented previously.

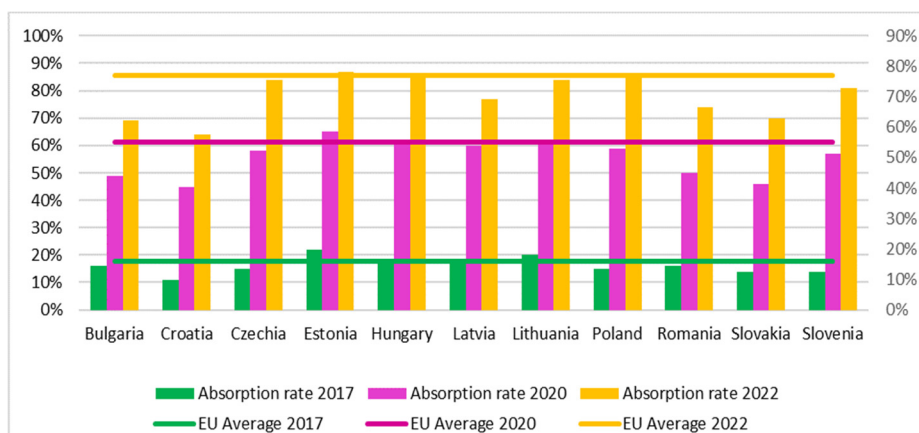
According to the data provided by Table 2 and Figure 3, we initially observe a low absorption rate during 2017. Most countries faced difficulties in using the funds offered by the EU, even towards the end of the programming period, some countries stand out with a slightly higher level compared to the others, exceeding or reaching the EU average, including Estonia, Latvia and Lithuania. Most countries were around 15%, below the EU average, with the lowest absorption rates recorded in Croatia, Slovenia and Slovakia. By the end of the programming period, most member states have absorbed approximately half of the EU funds through the cohesion policy, with the highest rate being in Estonia (65%). On the last position of the ranking, there are countries that have not achieved an absorption rate of even 50%, such as Croatia (45%), Slovakia (46%) and Bulgaria (49%). Countries like Poland, Romania, Hungary and the Czech Republic receive financial resources whose level is higher compared to other states, but a higher absorption rate is not found. The funds allocated during this programming period can be

used until the end of 2023, with the budget being supplemented in this period through the Recovery and Resilience Mechanism, aimed at mitigating the impact of the COVID-19 pandemic in the member states. Close to the deadline, the absorption rate has increased for the analyzed countries, but many of them remain below the EU average, like Romania (74%), Slovakia (70%) and Bulgaria (69%).

Table 2. The absorption of ESI funds during the programming period 2014-2020 (billions of Euros)

Country	Allocation 2014-2020	Payment 2017	Absorption rate 2017	Payment 2020	Absorption rate 2020	Allocation 2014-2020	Payment 2022	Absorption rate 2022
Bulgaria	9.8	1.5	16%	4.8	49%	11.2	7.7	69%
Croatia	10.7	1.1	11%	4.7	45%	12.2	7.9	64%
Czechia	23.9	3.5	15%	13.9	58%	25.8	21.7	84%
Estonia	4.4	0.9	22%	2.8	65%	4.9	4.2	87%
Hungary	25.0	4.3	17%	15.1	61%	27.1	23.1	85%
Latvia	5.6	0.9	17%	3.3	60%	6.2	4.7	77%
Lithuania	8.3	1.6	20%	5.2	62%	9.3	7.9	84%
Poland	86.1	13.3	15%	50.5	59%	91.3	78.8	86%
Romania	30.9	4.9	16%	15.5	50%	35.2	25.9	74%
Slovakia	15.3	2.1	14%	6.7	46%	16.6	11.6	70%
Slovenia	3.9	0.5	14%	2.2	57%	4.5	3.6	81%

Source: Cohesion Data (<https://cohesiondata.ec.europa.eu/countries/14-20>)



Source: Cohesion Data (<https://cohesiondata.ec.europa.eu/countries/14-20>)

Figure 3. The absorption of ESI funds during the programming period 2014-2020 (billions of euro)

The Fiscal Council of Romania (2020) considers that the low absorption rates are caused by limited progress or lack of progress in implementing the “2019

Country Specific Recommendations”. These recommendations concerned the skills acquired through education that needed improvement, particularly with a focus on digital skills, yet programs in this regard were entirely absent according to the European Commission. Additionally, the Commission observed delays in the implementation of projects in areas such as innovation, infrastructure and transportation due to administrative capacity gaps and inefficient procurement procedures.

To increase the rate of absorption, the Fiscal Council recommends that the efforts to be concentrated on enhancing administrative capacity for project management, prioritizing large-scale projects and their implementation, improving the public procurement system, ensuring predictability in the legislative framework, and focusing on strategic planning of investments in the crucial areas.

The absorption of funds depends on the capacity of central and regional authorities to develop coherent multi-year plans, to finance, to oversee project implementation and to prevent fraud and corruption. Furthermore, a relationship between absorption capacity and economic situation has been demonstrated, leading to the conclusion that disadvantaged regions encounter the most difficulties in fund absorption. These regions simultaneously require financial support for economic recovery (Katsarova, 2013). This absorption of European funds becomes necessary within the context of achieving reduced disparities or even eliminating disparities among member states' regions, addressing social exclusion and poverty, improving the education system, transportation networks, waste and water management systems (Fiscal Council, 2020).

In the management and implementation stages of the cohesion policy, we can mention a series of examples of best practices in the EU. The *public procurement system* can become a barrier or a success factor in project implementation, being highly susceptible to corruption. Contracts awarded without conducting competitive bidding represent a strong indicator of the standards set in the field of public procurement. Countries like Croatia (7%), Slovakia (6%), Lithuania (4%) and Latvia (7%) are among the top countries with a low percentage of contracts awarded without competitive bidding (European Commission, 2021, p. 227). These countries have enforced a practice of issuing participation invitations for all contracts within the bidding process. This approach has created a transparent bidder selection process, increased competition and led to more generous offers.

Estonia implemented an *electronic public procurement system*, which is a centralized system providing authorities and suppliers the opportunity to participate in the procurement process online. The system is called “E-procurement” and has been in operation since 2010 until it was replaced by SPPR (Public Procurement Register System) (Ministry of Finance, 2023). This system allowed the simplification of public procurement procedures by introducing standardized forms and reducing the number of documents that need to be physically completed. Additionally, the system allows the generation of detailed reports regarding the

procurement process, promotes transparency by publishing all procurement announcements and provides access to the history of public procurement.

SMEs represent an important component of the economy and are beneficiaries of ESI funds and national regulations, their simplicity and clarity, can provide a stable framework for businesses to operate efficiently, encouraging sustainable economic development and attracting grants (European Commission, 2017). In this regard, countries like Estonia have *simplified the business startup process, reduced the number of procedures, sped up processes and achieved full digitalization*. In this country has been implemented “e-residency”, a system that allows both citizens and foreigners to register businesses without physical presence (Republic of Estonia, n.d.). To start a business in Estonia in 2020 a fee equivalent to 1% of GNI per capita needed to be paid and three administrative procedures had to be completed and the entire process taking 3.5 business days (European Commission, 2022). Comparing with Poland, where the fee was approximately 12% of GNI per capita, involving five administrative procedures and a total time of 37 business days, Estonia falls into the category of best practices for supporting entrepreneurs. While Poland is taking measures to speed up processes and eliminate steps, improvements are gradual. For instance, online platforms have been introduced for setting up a company, but even after fulfilling platform requirements, the individual still needed to present certain documents in copies to the public institution. On the other hand, Croatia falls into the category of countries where business registration is 100% online with a single access point created.

Slovenia introduced *the SME test* to identify barriers hindering investments and to support SMEs. This test serves the purpose of monitoring the impact of national legislation on SMEs. Different areas, such as taxation, the labor field, access to finance, are analyzed and SMEs are given the opportunity to express their opinions and experiences, providing a basis for understanding the needs and concerns of SMEs. Additionally, this member state is the first to develop a comprehensive national transport strategy, including all modes of transport and has the role of identifying the barriers in this sector and the main investment priorities in national, regional and regional transport at EU level (European Commission, 2017).

Since a large part of the grants attracted by the states goes to *construction, the regulations* in this area are important for the economy, but also for the use of the funds. For most member states, the procedures, costs and the time required to obtain a building permit are complex, lengthy and expensive, with the main challenges arising from numerous pre-construction approvals and the obtaining excavation permits. Countries like Croatia or the Czech Republic have adopted regulations that simplify all procedures, eliminating certain pre-construction approvals and improving the electronic systems for obtaining authorizations. This has led to the rapid issuance of permits and reduced fees (European Commission, 2021). Hungary has removed the requirement to obtain prior approval for certain projects,

which is still applicable for large-scale projects such as hospitals, schools, and industrial projects like power plants and refineries in protected areas. This requirement was eliminated in the reform period of 2016-2018 through the amendment of laws, including Law No. LXXVIII of 1997 (World Bank Group, 2020).

Another example of best practice in implementing the cohesion policy can be found in Latvia, which has adopted *a smart specialization strategy* focused on the research field. The aim of this strategy is to strengthen ties with the private sector and promote internationally competitive research institutions. Thus, a reform of research institutions was adopted, which contributed to the concentration of investment funds on priority areas, also stimulating private investments in the field of innovation (European Commission, 2017). The strategy was adopted in 2014 and introduced a new set of criteria for allocating public resources to research and innovation investments. Projects that aimed at future economic improvement, the development of human capital, scientific excellence and another criterion was the net economic value or the financial and social benefits that the project will bring.

Simplifying administrative procedures has proven to be a good practice, successfully adopted by Estonia and resulting in a high absorption rate. This simplification was achieved through a series of measures including complete digitization of procedures, the introduction of online platforms like PRIA (Board Agricultural Registers and Information), which provides support to beneficiaries in the agricultural sector, offers information about funding opportunities, guidance and enables the submission of declarations. The platform also allows beneficiaries to access information about farm animals, their locations and about registered slaughterhouses. Another measure is the reduction in the frequency of reporting, this means that beneficiaries are responsible for focusing on project implementation and reports are requested less frequently. These reports are submitted in a concise format or in another case beneficiaries only submit reports when there are issues or deviations from the initially established project plan. These measures are applicable only to certain projects, such as small-scale projects.

The *introduction of guidelines for the European funds applicants* is another practice adopted by many countries, as well as Romania. These guides provide clear information, guidance for those interested in accessing structural funds and the types of operational programs that can be accessed for project financing (Mituța, Maier and Moise, 2021).

The implementation of *a system to manage and to monitor projects funded through ESIF* is an example of good practice in Hungary. Its name is the European Union Structural Funds Management and Monitoring Information System (EUSFMIS) and it is responsible for overseeing payment requests, monitoring and investment reporting (Novian, 2022). This system covers all stages, from applying for funding to submitting final reports and can be used by applicants, administrators and project overseers. Additionally, the system collects, processes and stores statistical and financial data on fund utilization, tracks the implementation and

monitoring of operational programs, ensures reporting, accounting, control, data collection and transmission in accordance with legislation.

An example of good practice that is adopted by many countries is the *implementation of training programs in the field of structural funds for authorities or applicants*. In Latvia, the European Institute of Public Administration offers courses for national, regional or local authorities, management, certification and audit authorities, NGOs and other individuals involved in ESI funds. The latest course aimed to present the 2021-2027 programming period, the changes brought about by this period, eligibility criteria, changes in auditing, how to address irregularities, risks and more (European Institute of Public Administration, 2021).

In the Czech Republic a system known as “eDotace” has been implemented *to simplify the reimbursement process for beneficiaries*. This system is accessed through a web portal, providing the ability to complete and submit payment requests along with supporting documents. At the same time, the system can detect errors or inconsistencies, provides information about the status of requests and after the approval of requests, the system makes payments to applicants. Through this system, in the Pilsen region, requests can also be made to obtain subsidies for public interest projects, the amounts granted and the beneficiaries can be consulted on the website (Regional Office of the Pilsen Region, n.d.).

The development of administrative capacity for managing and implementing the cohesion policy is considered to be a good practice and an example of this is Croatia, which has established dedicated administrative structures to benefit from ESI funds and to manage and implement the cohesion policy at the national level. We can mention the Agency for Auditing the Implementation System of European Union Programs, a public institution that focuses on auditing and verifying the compliance of EU program implementation (ARPA, n.d.). Another entity created in Croatia is the Central Agency for Financing and Contracting European Union Programs and Projects, which is responsible for managing EU programs and regional development programs (Croatian Government, 2022).

The introduction of *standardized forms* represents a significant point in the evolution of cohesion policy. Poland has been using these standardized forms since the 2007-2013 programming period, but they are even more numerous in the subsequent financial programming period. These standardized forms are used for funding applications and financial reports and reduce the risk of errors, the need for additional information or clarifications, save time and facilitate project monitoring. Additionally, they reduce financial resources and project evaluation is conducted more quickly and objectively.

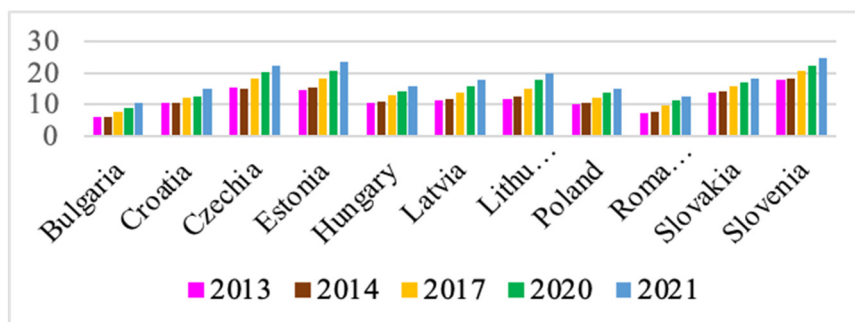
The main financial resources of the cohesion policy are focused on supporting less developed regions and an efficient cohesion policy and a high absorption rate will be reflected in economic development and implicitly in an increase in GDP per capita.

According to the data from Table 3 and Figure 4, it can be observed an upward trend in GDP, in 2021 being the year in which the highest values were recorded. The biggest increases have been recorded in 2021 in Estonia and Slovenia, as well as in Lithuania and the Czech Republic. The lowest values are recorded in Bulgaria and Romania, but they are increasing. These GDP values have been recorded against the backdrop of an economy affected by the COVID-19 pandemic. In this context, it can be observed that the support provided by authorities, both at the national and EU levels, including through the cohesion policy, has resulted in positive outcomes.

Table 3. GDP per capita in CEE countries during the period 2013-2021 (thousands of euro)

Country	2013	2014	2017	2020	2021
Bulgaria	5.790	5.960	7.420	8.890	10.330
Croatia	10.440	10.380	12.100	12.460	14.720
Czechia	15.170	15.000	18.330	20.170	22.270
Estonia	14.320	15.240	18.120	20.670	23.640
Hungary	10.330	10.770	12.980	14.140	15.870
Latvia	11.320	11.850	13.900	15.940	17.840
Lithuania	11.850	12.480	14.950	17.810	20.000
Poland	10.090	10.560	12.120	13.720	15.060
Romania	7.150	7.560	9.510	11.440	12.610
Slovakia	13.760	14.090	15.570	17.110	18.110
Slovenia	17.700	18.250	20.820	22.360	24.770

Source: Eurostat (<https://ec.europa.eu/eurostat/databrowser/view/tec00001/default/table>)



Source: Eurostat (<https://ec.europa.eu/eurostat/databrowser/view/tec00001/default/table>)

Figure 4. GDP per capita in CEE countries during the period 2013-2021 (thousands of euro)

Synthesizing, we can confidently state that the cohesion policy has a positive impact on the development of regions and member states. The objectives of this period align with the current needs of citizens, aiming to improve their well-being as well as that of the environment, public institutions, and the business environment. Structural and investment funds are used as tools to achieve these objectives, redirecting financial resources towards priority areas such as transportation, education or healthcare. However, for the cohesion policy to achieve its full potential, member states must act in this direction, whether it involves necessary institutional changes to properly implement projects or addressing challenges in achieving maximum fund absorption rates.

5. CONCLUSIONS

Cohesion policy has proved to be essential in reducing the gaps between the regions of the member states, bringing the respective regions on an upward trend regarding economic growth. The ESI funds support key sectors of the member states in order to support the achievement of the objectives set during the financial programming period. Over time, the budget allocated to the cohesion policy has increased, implying an increase also of financial allocations for the member states. They are focused on the areas that are economically backward and depending on the absorption rate, they have the opportunity to invest in essential areas such as education, infrastructure, health and human resources to reach economic growth.

The countries of Central and Eastern Europe are the main destinations of the financial resources mobilized through the cohesion policy, registering an improvement in the standard of living which depends on the ability to attract and use the European funds. These countries also appear to be the countries with the lowest recorded absorption rates due to numerous barriers. In order to successfully implement cohesion policy, EU member states have made significant changes at national level, such as amending legislation, adopting strategies or implementing new systems that have the role of simplifying the projects implementation.

The impact of cohesion policy has proven to be positive in the countries of Central and Eastern Europe, resulting in positive results in the fields of infrastructure, research and innovation, education, health, the environment and the competitiveness of SMEs. A significant help provided by that policy was the financial support intended for the member states affected by the COVID-19 pandemic, when the health sector was experiencing real deficiencies and the economy was negatively affected. These positive results also led to a continuous increase in GDP per capita throughout the 2014-2020 programming period.

After Romania's accession to the European Union in 2007, due to its economic position, it was included among the member states with accentuated regional disparities, for which the cohesion policy granted significant funds to remedy them. Romania's accession took place in the context of the 2008 crisis, when the cohesion policy could represent the solution to this, but in the recovery policies

it was not used to its maximum potential, as evidenced by the low absorption rate. Although the next programming period turns out to have more positive results, the absorption rate at the end of the period was below the EU average, drawing attention to this fact also from the European Commission.

Based on our research, we can make a series of proposals. Thus, in order to improve the degree of attraction and use of ESI funds, Romania must develop human capital, by introducing courses on the management and implementation of funds, digitization, simplifying the legislation or using the public-private partnerships for the efficient funds' management. Romania can use good practices to implement changes at the national level, through the transfer of policies adapted to the country's situation.

Regarding corruption, Romania is doing efforts, and among the measures that can be taken additionally are the protection of media independence, the creation of a specialized court for the resolution of corruption cases, which can contribute to the acceleration of processes and the deterrence of corruption crimes, the increase of punishments. Also, introducing an educational program in schools and universities on ethical values can lead to the creation of a culture that does not tolerate corruption.

Also, we can add to the proposals, the simplification of the procedure related to reimbursement requests by reducing the necessary documentation and thus simplifying the process for both the beneficiary and the authorities, but the measure must be compensated with an increase in controls. To improve the procurement process, a system can be implemented to evaluate bidders based on performance and integrity, thus choosing reliable suppliers to ensure that there is not only one bidder in the auction.

The research has a series of limitations. First, the research is limited to a relatively short specific time periods, thus both implementation and results focused on the 2014-2020 programming period, which may influence the understanding of the complexity, evolution and impact of cohesion policy on member states. Secondly, the impact of the COVID-19 pandemic on the economy was an important factor to consider in the analysis of the cohesion policy, given the fact that it represented an impediment in the evolution of the policy. Another limitation is the different impact of the cohesion policy on the regions, which requires a differentiated assessment to closely analyze its impact. Also, the identification of good practices in the implementation of the cohesion policy represented a complex task, being difficult to identify them in different states with different legislation.

Further research can include a comparative analysis over a longer period, including the previous period 2007-2013 and the period 2021-2027, an analysis by region on the impact of cohesion policy or an analysis of successful projects in different regions in order to identify the positive characteristics and factors that influence the successful implementation of cohesion policy.

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DIRECTIONS FOR THE DEVELOPMENT OF PUBLIC SERVICE PERFORMANCE MANAGEMENT IN THE REPUBLIC OF MOLDOVA

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Abstract

At the moment, the public administration is in an unfortunate situation where public office is neither attractive nor motivating for good and honest professionals. The implementation of some dimensions of the public administration reform is delayed or proceeds with difficulty. The public administration continues to perform functions that do not exactly correspond to the role of the state in a functional market economy. For this reason, the modernization of public administration is a desire of the whole society, regardless of the fluctuations of the opinion polls. However, the modernization of a country is not possible without the gradual and constant reformation, at all levels, both vertically and horizontally, of all the political and social components of the state, including increasing the performance management of the public office.

Keywords: *public management; performance management; public administration; transparency; good governance.*

JEL Classification: H83, H11

1. INTRODUCTION

In June 2014, the Republic of Moldova and the European Union signed the Moldova-EU Association Agreement. By signing it, the Republic of Moldova made a commitment to develop democratic institutions, in accordance with the standards and rules of the European Union. Thus, the reform of the public administration system is a complex process of bringing our country closer to the standards of the European Union. Therefore, at the request of the Government and with the support of the European Union, in October 2015 the evaluation process of the public administration of the Republic of Moldova was launched, which is a complete X-ray of the public administration through the prism of the public administration principles developed by SIGMA.

At the global level, through the adoption of the 2030 Agenda in September 2015, 17 Sustainable Development Goals were established which, in the next 15 years, will guide the development policies of the member countries of the United Nations Organization. Taking into account the need to develop effective governance based on the rule of law to achieve the Sustainable Development Goals, UE member countries, including the Republic of Moldova, agreed on Goal 16 "Peace, justice and strong institutions", through which they assumed " the development of efficient, transparent and accountable institutions at all levels" (target 16.6) and "ensuring a needs-sensitive, inclusive, participatory and representative decision-making process at all levels" (target 16.7). Guided by the mentioned internal, regional, and global context, the Government undertook, through its Activity Program, to create the necessary premises for the complex approach and in a systemic, planned, and visionary way of public administration reform.

The existing regulatory framework guarantees access to information about the performance of public authorities and institutions, but also about how they serve citizens and the business environment in their activity. No less important are the mechanisms for monitoring and implementing laws regarding transparency (transparency in the budget process and transparency of the decision-making framework), but also the existence of tools for informing and involving civil society, the associative sector, and other actors interested in the process of elaboration and approval of decisions and normative acts. The institutionalized dialogue between the central public administration and the local public administration and the involvement of all interested actors at the initial stages of conceptualization/elaboration of governmental decisions ensure a better connection with the realities of the territory, a higher quality of the adopted acts and adequate conditions for their effective implementation.

Responsibility and transparency are two important elements of good governance. Transparency is a powerful force, which, applied consistently, effectively contributes to fighting corruption, improving governance, and promoting accountability. Transparency is a precondition and a premise for the accountability of the public administration and involves more than the minimum periodic reporting, but also the availability to make information accessible on one's own initiative and to respond positively to requests for information. The concept of responsibility refers to the legal and reporting framework, organizational structure, strategy, procedures, and actions that ensure the legality of the institution's mandate and the best functioning in the public service. The notion of transparency refers to the timely reporting of reliable, clear, and relevant public information regarding the status, mandate, strategy, activities, financial management, operations, and institutional performance.

2. THE CURRENT SITUATION AND THE PROBLEMS IDENTIFIED IN THE PERFORMANCE MANAGEMENT OF THE CIVIL SERVICE

Analyzing the current situation of the public administration in the Republic of Moldova, several problems regarding the management of the public function are outlined. The most important issues will be described below.

Problem 1. The system of elaboration, promotion, and monitoring of public policies in the field of management of the public function and civil servants is carried out by the State Chancellery in an insufficient way. The reorganizations of the State Chancellery in 2016 and 2019 involved a significant reduction of the role and functions in the field of public office management and civil servants. The reorganization of 2016 reduced the powers of the State Chancellery in the field of civil service only to the level of approval of staff positions and coordination of the professional training process (3 staff units). The 2019 reorganization involved the creation of the Directorate of Public Service Management and Human Resources, with mixed functions of policy development and staff administration in the State Chancellery. Both reorganizations had systemic repercussions on the State Chancellery's ability to efficiently and proactively manage the field of public function, which is a strategic level for ensuring a modern public administration with a body of professional and integrity civil servants, able to work in favor of citizens.

The number of positions allocated proved to be insufficient to ensure the realization of the legal provisions regarding the development, promotion, and implementation of the state policy in the field of human resources in the public administration. This is mainly due to the complexity and high volume of tasks arising from the changes in the normative framework regarding the modernization of the public function and the status of civil servants, according to the objectives and priority actions established in the Government's Activity Programs, but also the correspondence with international standards in the context of the requirements of accession to the European Union.

Arising from the importance of increasing the attractiveness of the public office and the development of human capital in the public service, as well as the vision of progressively ensuring the compliant and full exercise of the powers of the State Chancellery in the field, through Government Decision no. 789/2022 for the modification of some decisions of the Government in December 2022, the Public Service Management Directorate was established, an autonomous subdivision made up of 8 personnel units. This reorganization improves the situation in the field, but the number of units remains insufficient and does not allow the systematic realization of the competence regarding the monitoring, evaluation, and reporting of the implementation of state policy and personnel procedures in public authorities, as well as the systemic analysis of petitions/complaints of officials public regarding the violation of certain rights provided by the legislation.

Problem 2. A career in public office, especially for young professionals, is not attractive. The capacity of the state to quantitatively and qualitatively cover the personnel requirements in the public administration is insufficient. Public functions constitute about 4.2% of the country's workforce and 27% of the staff employed in the budget sector. The share of public functions in the central public administration is 59% and 41% in the local public administration. According to the situation on 01.01.2022, the total number of positions and positions in public authorities was 49,313, representing an increase of 9.5% and 5.7%, respectively, compared to the years 2019 and 2020. From the total number of positions and positions in public authorities, 6,743 (14%) positions were vacant. The workforce of civil servants with general status increased by 8.8% compared to 2019 and 2.9% compared to 2020. The increase in the number of public positions with special status was 0.5%.

Public positions with general status are mostly held by women (74% - women, 26% - men), compared to 60% in OECD countries. At the same time, the share of women in higher-level public management positions is 60%, public management positions - 70%, and executive public positions - 76%. Public positions with special status are mainly occupied by men - 80%. Women are less represented in positions of public dignity (31%). From the data presented by the public authorities, it follows that the share of women in positions of public dignity differs greatly across the levels of administration.

Thus, there is a gender imbalance in Level II LPA - only 18% women and 82% men, down 0.8% compared to 2020. 20. On 01.01.2022 the average age of civil servants was 45 years, respectively 43 years in the central public administration and 48 years in the local public administration. The dynamics of the average age in the last three years varies between 44 and 46 years. Regarding seniority in public office, 62% of civil servants from the Republic of Moldova have more than 7 years of work experience in public office. Civil servants with less than 2 years of experience represent 12%.

The vacancy rate stands at 86.3%, largely at the same level as in previous years. 82% in central public administration and 90% in local public administration. At the same time, a relatively low level of occupation of higher-level public management positions is highlighted, 74.1% in 2021 and 81.5% in 2020, at an average monthly salary of 25 thousand lei. One of the possible causes is related to the reorganization of some ministries, which led to the delay in the launch of competitions and/or the promotion of civil servants. In this regard, most public authorities are faced with a shortage of staff, high workload for existing staff, and a low level of candidates in competitions for vacant public positions, especially for executive positions.

Among the procedures for occupying public positions, the meritocratic ones prevail, constituting about 70% (competition and promotion). Thus, the main way of occupying public positions is the competition (55%), which indicates an

insignificant increase compared to 2020 (54%). Promotion as a way of career development and growth by occupying a public position higher than the one exercised, based on merit, is constant compared to 2020, having the same index (14%). Promotion to a higher public office applies only if there are available public office vacancies. In this sense, in LPA, 8 there are limited opportunities for promotion, given the fact that they are small organizational structures. It is important to mention that from the data provided by the public authorities, about 4% of the employed civil servants held the public office in other ways than those provided by the legislation, noting the existence of some violations of the normative framework regarding the occupation of the public office.

It is noted that the attractiveness of public office remains at a relatively low level: in 2021, on average, only 1.7 people applied for a public office. The low number of candidates for a vacant position can also be an indicator of a structural lack of confidence in the fairness of the recruitment and selection system. The staff turnover for the year 2021 was 11.24%, especially among people employed in the first years of activity.

The causes of the reduced capacity of the state to cover the personnel needs, from a qualitative perspective (skills) and from a quantitative perspective (occupied personnel units) and the lack of attractiveness of career development in the public office of qualified people were also highlighted in the studies carried out within the technical assistance project financed by European funds to support the reform in public administration, as follows:

1) The remuneration of work is perceived as inadequate in relation to the requirements and responsibilities of a public position; the pay system is not perceived as fair and does not encourage performance at work. According to the data presented by the Ministry of Finance, the average monthly salary of civil servants in the central and local public administration (with the exception of public authorities with civil servants with special status) for the year 2021 was 10,533 lei. Salary levels depend, to a large extent, on the hierarchy of the public authority in the administrative system (central, territorial, local), which determines a difference of at least 30% difference between the salaries of civil servants in Central Public Administration and LPA, and in the case of the existence of other salary rights (specific increase, other increases), the difference is even greater, especially in the case of some public authorities on the line. Compared to private sector salaries, salary levels for positions of similar complexity to those in the public service are uncompetitive. According to the normative framework, the results of the evaluation of individual performances are taken into consideration when determining the half-yearly performance bonus, which on average constitutes 10% of the basic salary.

2) Incompatibilities and legal restrictions established by statute are not compensated by other benefits. In accordance with the provisions of Law no. 158/2008, the civil servant is limited in the possibility to occupy another

remunerated position, with some exceptions. According to the law, the civil servant bears disciplinary, civil, administrative, and criminal liability for the actions/inactions in the public office.

3) The career development system is not predictable, and the opportunities for promotion in the public office are limited. The career development system is a rigid one, whereby advancement to a higher position occurs only in the event of a higher position being vacant and at the discretion of the superior. Promotion in public office in most public authorities is a challenge for the efficient management of human resources. This is especially the case at the higher levels of the hierarchy, where naturally there are even fewer vacancies and the chances of promotion are almost non-existent. This has a negative effect on the motivation and professional development of civil servants, especially in the case of civil servants in the LPA.

4) Bureaucratic organizational culture. For the most part, the organizational culture in public authorities is predominantly focused on process, rules, procedures and less on results, less encourages creativity and innovative approach to solving problems at the workplace. The prevailing management style is authoritarian, participatory management practices and employee involvement in the decision-making process are not institutionalized.

5) Lack of an integrated framework of general and specific skills in the public service, adapted to the needs of positions in the public administration, correlated with national priorities. At the current stage, the recruitment and selection process take place in a decentralized manner, there is no clear system of reference regarding the minimum general and specific skills required to hold a public position. Nor is the professional development process sufficiently focused on the development of skills as a priority and less on the accumulation of knowledge.

6) Overloading of staff in public authorities. The relatively low rate of filling vacant and temporarily vacant positions, especially in the administrative authorities subordinate to the ministries, as well as the maintenance of the moratorium over several years, creates conditions of staff overload and elements of the burnout syndrome. In this sense, the quality of work drops dramatically.

7) Reducing the number of graduates who decide to stay in the country, and the university offer is limited in terms of the spectrum of specializations for some public positions. In recent years, there has been a sharp drop in graduates in some areas with narrow specialization in the public service, especially for local public administration.

Problem 3. The existing system of professional development of civil servants does not sufficiently respond to the needs of the public service, institutional, and individual professional training of civil servants, especially those in the local public administration.

According to the normative framework of the civil service, the professional development of civil servants is an important part of the process of capacity

development in a broader sense. Law no. 158/2018 establishes that the civil servant has the right and the obligation to continuously improve his skills and professional training, and each public authority is responsible for ensuring the organization of a systematic and planned process of continuous development of the civil servant.

Public authorities have the obligation to provide each civil servant with various forms of continuous professional development with a duration of at least 40 hours per year, each senior civil servant and senior civil servant with an initiation course for the professional development of managerial skills with a duration of at least 40 hours, and for each debutant civil servant an initiation course with a duration of at least 40 hours. To finance the professional development process of civil servants, each public authority must annually allocate at least 2% of the salary fund.

During 2021, the professional development of civil servants continued to be affected by the pandemic situation, but service providers adapted to the new conditions and continued to provide professional training through the use of distance learning tools, and through different communication platforms and virtual learning (zoom, google classroom, e-learning platforms, etc.). According to statistical data, for the year 2021, 11,136 civil servants benefited from training, with 1,644 civil servants more than in 2020. In this context, the adaptability of training service providers and public authorities to the new educational realities. The total training rate of civil servants, as well as the disaggregated data by levels of the public administration, are presented in graph no. 3. It is found that the central public authorities ensured a higher training rate compared to those in the local public administration level I and level II.

During 2021, only 6,747 (43.8%) civil servants were trained for at least 40 hours according to the normative acts: Central Public Administration – 52.7%, LPA I – 25.8%, LPA II – 31.6%. In the same period, 598 novice civil servants were trained, of which 453 were from the central public administration and 145 from the local public administration. Thus, only 16% of debutant civil servants benefited from the minimum number of hours of training according to the legal framework, which indicates a significant decrease compared to 2020, where 48% of debutant civil servants benefited from professional development in the first six months in the public service, this although an effective training system is vital to any organization in order to develop and maintain professional standards of staff conduct and performance.

The main national provider of training for civil servants is the Institute of Public Administration within the State University of Moldova (the reorganized Academy of Public Administration). The Institute of Public Administration is responsible for the implementation of the State Order for the professional development of civil servants, which includes training programs for different categories of personnel from central and local public authorities. The state order is developed

by the State Chancellery in coordination with the Institute of Public Administration, based on the results of the training needs identification exercise carried out by the Institute of Public Administration, within the limits of the available budget.

Annually, by state order, the Institute of Public Administration trains on average 1,200 civil servants, or approximately 8% of the total number of civil servants. Additionally, through collaboration agreements with central and local public authorities, it carries out training activities for over 3,500 civil servants or another 23% of civil servants. Based on the existing infrastructure (3 functional training blocks), the average training capacity of the Institute of Public Administration is 10,000 civil servants or 67% of the total civil servants, twice as much as currently used.

Civil servants from public authorities benefit from a series of online courses made in cooperation with external partners. In 2021, over 40 civil servants benefited from the training programs implemented by external partners, including:

- 1) Japan International Cooperation Agency; Economic and Commercial Office of the Embassy of the People's Republic of China;
- 2) The Government of the Republic of Singapore through the Cooperation Program;
- 3) Government of India through the Indian Program for Technical and Economic Cooperation.

In 2022, the State Chancellery signed the Memorandum of Understanding with the Romanian Ministry of Development, Public Works and Administration, which involves collaboration projects in several fields related to the public function. In 2022, within this partnership, in collaboration with the National Institute for Administration, approximately 400 civil servants benefited from the training programs, of which 160 civil servants from LPA.

The training programs covered the following topics:

- 1) European policies, strategies, regulations, and decisions with an impact on national public administrations;
- 2) Management of European projects; Management of European projects for local and regional development;
- 3) Legal protection of human rights: the jurisprudence of the European Court of Human Rights.

According to the studies carried out within the technical assistance project to support the reform in public administration, in 2020 only 50% of civil servants managed to fulfill the requirement of mandatory training hours and the following weak points were highlighted:

- 1) Training programs are not directly based on demand, i.e., on the individual needs of civil servants, but on a supply-based approach, where public institutions choose between courses offered by the national civil service training provider and those provided through the projects of international donors.

- 2) The national civil servant training provider does not have a role as a systemic developer and training organizer in the professional development system, even if it is involved in the analysis of training needs, in the development and delivery of training, and remains primarily a training provider which reacts to the expressed needs of the public authorities and to the contributions of the State Chancellery.
- 3) The national civil servant training provider does not consistently take a pro-active role in monitoring the obvious systemic training needs arising from new structures, legislation, regulatory acts, or organizational changes.
- 4) There is still a certain degree of reluctance of civil servants to attend training courses due to the high volume of work they have or the lack of attractiveness of training programs; department heads do not sufficiently encourage participation in training programs, largely due to the high workload and lack of human resources to replace the temporarily absent employee.
- 5) Those public authorities, where the interest in training is visible, face concrete problems in identifying the appropriate trainers, with the necessary knowledge, experience, and skills, considering that the private, commercial, training market remains underdeveloped.
- 6) When the necessary training is not provided (nonexistent or insufficient), it is not clear how civil servants can access training to meet the mandatory 40-hour training requirement.
- 7) The national civil servant training provider provides induction training for newly recruited civil servants but cannot include all of them in this training due to limited resources.
- 8) The content of the courses for senior positions and middle and top managers does not meet the demand. Apparently, the general courses offered have not improved considerably in recent years in terms of content and training approaches. It was also found that many civil servants have already attended all the courses offered and fail to meet the target of 40 hours of training per year.
- 9) Even if the current legislation obliges public authorities to allocate 2% of the salary fund for training to partially cover training costs for their particular needs, such a contribution is not always granted. However, in the period 2018-2020, only 3% of central public authorities allocated 2% of the salary fund for training, less than 20% of institutions allocated between 1-2%, and almost 80% did not allocate funds for training.
- 10) In many ministries, the training needs of civil servants are identified through the performance appraisal exercise, but unfortunately, performance appraisal depends to a large extent on the superior's attitude towards the civil servant, not providing a generally accepted framework for

identifying skill gaps. Consequently, it appears difficult to identify skills gaps and ensure that they have been bridged through training.

By Government Decision no. 485 of 13.07.2022 regarding the reorganization through merger (absorption) of some institutions in the fields of education, research and innovation and the provisions of State Chancellery Order no. 44 of 27.07.2022 regarding the absorption of the Academy of Public Administration by the State University of Moldova" Academy of Public Administration merged with the State University of Moldova. This reorganization benefits the academic and theoretical training of people who wish to obtain bachelor's degrees in the field of public administration, civil servants with higher education who follow post-graduate and master's programs but may constitute an impediment in ensuring the quality and relevance of the continuous professional training process of civil servants.

3. DIRECTIONS FOR INCREASING THE EFFICIENCY AND EFFECTIVENESS OF THE PERFORMANCE OF CIVIL SERVANTS

Emerging from the specifics of the current situation regarding the management of the public function in the Republic of Moldova, the priority directions and objectives are oriented towards increasing the efficiency and effectiveness of the performance of civil servants, in order to increase the quality of services in the public sector.

The Republic of Moldova has an integrated and competent system of civil service and civil servants, which efficiently and fairly manages quality and accessible public services, through professionalization and stability, supported by a professional/meritocratic, transparent, and motivational resource management system human in public service. The institutional framework applicable to the public function is well defined, elaborated on the basis of good practices and European standards in the field of management of the public function and civil servants, correlated with the priorities of the state and provided with the human and informational resources necessary for a modern public administration oriented towards innovations and modern technologies.

The State Chancellery currently has duties established according to the normative framework regarding the elaboration, monitoring, and evaluation of the implementation of the state policy in the field of management of the public function and civil servants, within the ministries, of other central and local administrative authorities. In the perspective of implementing the objectives of this Strategy, the State Chancellery will have a clearer role and better-defined attributions, as well as the necessary technical and personnel resources, so as to significantly increase the institution's capacity to ensure an efficient management of the public function and officials public, in accordance with the needs of the public administration and the requirements of accession to the European Union.

In this sense, the proposed actions aim at the following concrete directions:

- 1) Carrying out an analysis of the current institutional framework on the basis of which concrete recommendations and measures to strengthen the capabilities of the State Chancellery and the professional capacities of civil servants responsible for the public office will be developed. An action plan will be developed regarding the fulfillment of the duties established by the normative framework to ensure a high-performance management of the public function and civil servants, as well as for the foundation of the decision-making process regarding the development of public policies;
- 2) The operationalization of an administrative structure within the State Chancellery, with clearly defined functions regarding the elaboration, monitoring and evaluation of the implementation of the state policy in the field of the management of the public function and civil servants;
- 3) Allocation of the technical and personnel resources necessary to carry out the duties established regarding the management of the public function and civil servants;
- 4) Elaboration of standard operating procedures, as a priority – the procedure for monitoring the implementation of the normative framework regarding the management of the public function.

The proposed interventions aim to increase the capacity and quality of implementation of state policy and personnel procedures regarding public office at the level of central and local public authorities. In this sense, the concrete directions will aim at improving the normative framework regarding the roles and attributions of the human resources subdivision within the public authorities and increasing the professional capacities of the staff within them.

For a high-performance management of human resources in public authorities, complex data processing is necessary for all personnel administrative processes, in the format of an independent automated information system or a modular integrated part in Automated Information System Electronic register of employees. Thus, the automated information system is thought of as an open system, accessible with various rights of use for all employees of public authorities. In this sense, it is proposed that each employee have a personal account to access their own data and to obtain through the intranet the information they need, and other useful materials in the exercise of their duties, the use of the electronic signature, etc. If Automated Information System Electronic register of employees will develop the necessary functionalities, it will be opted for modular integration in Automated Information System Electronic register of employees, which would simplify the process of interoperability between systems (keeping, extracting, and completing/improving information related to work reports), thus expanding the main objectives of the system automated information system, which will lead to the provision of an automated tool necessary for the efficient management of human resources in public authorities.

Thus, the information system will have the following objectives:

- 1) providing up-to-date and structured information according to the law regarding public authorities personnel;
- 2) ensuring a work tool for the officials responsible for the management of the public service personnel that offers the possibility of creating electronic personal files for them;
- 3) generation of administrative documents, certificates, forms, and other documents relevant to personnel management in electronic format;
- 4) documenting the performance of personnel procedures (recruitment, selection, integration, professional development, evaluation, stimulation, sanctioning, etc.);
- 5) providing a stable and up-to-date database regarding the personnel of the public authorities at the national level to provide specific information in real time and to generate the necessary reports for decision-making both at the national level and at the level of the public authority;
- 6) integration as a basic component in a single IT system at the public administration level for the record of personnel in the budget sector.

The new information system is to exercise four main roles:

- 1) Work tool used at the local level for the personnel of the human resources subdivisions within the central and local public administration authorities with the possibility to create electronic personal files, to generate administrative acts, certificates, other documents relevant to personnel management, to document the achievement personnel procedures and generate standard and on-demand reports;
- 2) Information tool for the staff of public authorities regarding their personal data from the database and for relating to the institution;
- 3) Statistical tool related to an electronic database regarding the personnel of public authorities, accessible at the national level with real-time access and with the possibility of generating various reports;
- 4) Unique high-performance management system for the complete data of public authorities personnel with the possibility to migrate data from existing systems.

The attractiveness of the public service is ensured by the application of a meritocratic and transparent system of access and promotion in the public office, the application of adequate remuneration that stimulates performance, as well as by the promotion of an organizational culture focused on the development of human capital in public authorities.

The objective and activities of this Priority Directorate align well with the corresponding provisions of the Public Finance Management Development Strategy for the years 2023-2030, Component 2: Elaboration and planning of the budget, Specific Objective 3: Ensuring an adequate level of remuneration in the budgetary sector. In the implementation process of these two strategic documents,

the coordination and cooperation between the State Chancellery and the Ministry of Finance is very important in ensuring a balance of salary levels for public positions and private sector positions of similar complexity. The reference indicator (benchmarking) of the degree of correspondence is 75%, taking into account the guarantees specific to the public sector. One concern will be ensuring the vertical and horizontal internal equity of the salary system and ensuring financial-budgetary sustainability.

Identify and implement another mechanism for substantiating and allocating the current individual performance boost, which is linked to institutional performance, awarded in a transparent, balanced and coherent manner, and which incentivizes and rewards performance.

Motivation as a psychological process represents "the set of dynamic factors that determine the behavior of an individual". People may have different reasons for engaging in a particular type of behavior. Personality, social conditions, experience, group influences, or other factors can impact motivation. The public administration is in competition with the private sector regarding the identification and maintenance of qualified personnel, so the importance given to the motivation of civil servants must be significant and not be reduced only to the approach of remuneration and material rights in general. The forms of motivation that will be implemented involve legislative changes and salary policies to reward effort and professional performance, as well as other aspects regarding the non-financial motivation of staff.

Equity in remuneration for the work performed, including as a form of motivation, will remain one of the basic principles of salary policies specific to the public service. Respecting the principle of equal pay for equal work, the state will also maintain its financial remuneration policy to ensure fair pay under comparable working conditions. In the process of transition towards a competitive salary system, based on national priorities and existing financial constraints, the salary policy will have a more flexible character, which will allow the application of specific salary measures.

The creation of a coherent and unitary system for the remuneration of civil servants involves the development and implementation of the methodological framework for the transparency, monitoring, and control of remuneration, increments and other salary rights, in the field of public service, correlated with the Law on the unitary system of remuneration in the budgetary sector and its amendments subsequent. To improve the unitary salary system in the budget sector, the following will be considered:

- 1) revision of job evaluation methodologies and re-evaluation of functions within the occupational group "Public Administration";
- 2) the elaboration of several options regarding the salary of civil servants with the estimation of financial costs together with the Ministry of Finance, as well as with the consultation of social dialogue partners;

- 3) updating the primary and secondary normative framework regarding the unitary salary system in the budgetary sector, regarding the occupational group "Public Administration";
- 4) the implementation of the necessary changes in the normative framework regarding salaries in the budgetary sector, the "public servants" component, so that, gradually, until 2025, the degree of attractiveness of the career in the public office will increase. In the case of civil servants in the local public administration, the salary measures will be correlated with the reform of the local public administration.

Within the monitoring activities of salary developments in the public administration, a distinct component will aim to frame these developments in the wider context of the remuneration of professional activities at the national level. Thus, the periodic evaluations will also track and highlight the ratio between the average salary level in the public service and that in the private sector for positions with tasks of similar complexity. The conclusions of such evaluations will allow a substantial improvement in the foundation of future measures, related to increasing the competitiveness of the state as an employer, the degree of transparency regarding salaries paid from public money, as well as the quality of processes.

Implementation of a clear and predictable system of management and career development, including managerial succession, by defining and implementing transparent procedures for recruitment and selection, as well as promotion in public office.

In order to ensure ethics and transparency in public administration and the creation of a predictable system of career development, new measures regarding the mobility of civil servants may be introduced and the reorganization of the career system on several professional levels horizontally and over a longer period will be analyzed of time compared to the current system.

The regulated procedures that ensure the reform of the career development of civil servants aim at:

- 1) Transparency and clarity regarding the stages, criteria, requirements and roles of the persons directly involved, doubled by the unitary applicability of the established rules;
- 2) The capacity of the mechanisms used to ensure a consistent application of the four general principles in the field of employment and exercise of functions, namely competence, competition, transparency and performance;
- 3) The capacity of the mechanisms used to ensure the testing and validation of the possession of general and specific competences, as they are established for each function category.

Public positions will be filled by selection based on professionalism, transparency, and political non-involvement in the recruitment process, with priority being given to the form of employment by promotion, including internal

competition. Recruitment and selection will be organized and carried out with the involvement of professional human resources departments and independent competition committees made up of persons properly trained to carry out such activities. The public authorities will form the cadre reserve, including from the candidates who ranked second to be employed in vacant public positions, provided they meet the requirements of the post. Public management positions will be filled as a matter of priority through promotion and/or internal competition, based on the list of personnel proposed for managerial succession, based on managerial potential and/or relevant experience in management, studies, professional experience, qualities/attitudes professional relevant to occupy a public management position.

The definition and piloting of a mixed system (national competition for recruitment and access to public office combined with specific selection for the post) transparent recruitment and selection of candidates in executive public positions in central public authorities, based on an annual recruitment plan, of the substantiation of which will be coordinated by the State Chancellery.

The recruitment and selection system will require, for some types of positions, a pilot model of a national competition for entry into the body of civil servants (automated process), through which the key skills needed to occupy a public position will be tested. This intervention to change the system will be initiated only on the condition of increasing the attractiveness of the civil service in the central public administration. The positions that will be the subject of such contests will be identified following analyzes by referring to the general and specific skills as well as to the similarity with the conditions and duties similar to other positions/functions in public administration. The rules regarding the use of the two recruitment methods will be transparent, established on the basis of clear methodologies so as to ensure a uniform implementation; recruitment through national competition will be used until the end of the period covered by this Strategy, only for institutions at the central level, in a pilot system. Regardless of the chosen form of recruitment, the recruitment system will be reformed, so that the emphasis is placed on the validation of relevant aspects from a qualitative point of view – previous professional experience (as an alternative to the current requirements regarding "longevity in the specialty of studies"), the level of qualification requested (as an alternative to the current requirements regarding the level of completed studies) and the ability of the tested person to use in a practical way a series of theoretical knowledge held in relation to the field of activity.

The specific measures aimed at ensuring the transparency and good organization of competitions, the implementation of the new recruitment system involve, in addition to updating the regulatory framework, and:

- 1) Improving the publicity of the contests by publishing, together with the announcements regarding the vacant positions, the information regarding the skills, attributions, and responsibilities;

- 2) Strengthening the capacity of institutions to organize and manage the decentralized testing of specific knowledge and skills for the occupation of public positions and, as the case may be, contractual positions;
- 3) Ensuring the physical infrastructure necessary for the gradual computerization of public service competitions;
- 4) Training of the personnel involved in the recruitment and promotion processes, especially the members of the competition commissions and those for the resolution of appeals.

Introducing a skills framework for public administration staff is an important step toward a higher degree of professionalization of public administration. Thus, by designing the skills framework, the conditions for developing occupational standards for jobs in the public administration will be established, as well as the preconditions for new quality standards regarding the specific requirements of the public office, including the relevant experience needed to occupy a certain position. 180. The introduction of the skills framework/occupational standards will allow a recruitment aimed at validating the possession of predefined general and specific skills, respectively evaluation and promotion based on the way in which the respective skills are actually used in the exercise of the functions, but also a basis for the development of the curricula of the specialized programs of training.

Counseling and professional guidance will aim to capitalize on the skills and potential of each individual in career development, including through training and mobility. These measures will lead to an increase in the quality of human resources in the public administration. Although in the 2030 time horizon all categories of public functions and all fields of their exercise are considered, in the next period public functions with general status and those fields that are considered strategic for the operation of the public administration will be addressed with priority: the elaboration and coordination of public policies, development of regulations, human resources management, financial management and internal audit, project management, institutional representation in international relations and European integration.

The competence framework for public administration staff aims at:

- 1) General skills, applicable to all public functions: social skills, language skills, digital skills, etc.;
- 2) Specific competences, established by field and category of the public function: professional competences, managerial competences, social competences, orientation towards the result, orientation towards the citizen and respect for human rights, professional attitudes such as promoting innovation, initiating change and institutional integrity.

In order to facilitate the achievement of the desired results, within the implementation of the specific stages of the creation of the competence framework (consultations with interested parties, updating the normative framework, establishing methodologies and developing guidelines regarding their application, planning

training activities intended for people involved in the development of competence frameworks/occupational standards, of those involved in their implementation and of the persons concerned by the requirements regarding the possession of skills) will be capitalized, through collaborations, the experience and expertise in the field of the university environment, as well as of other actors with good professional references in similar processes, as well as consultancy external.

In order to increase the attractiveness and attraction of young specialists interested in developing a career in the public administration, it is proposed to introduce into the national legislation the mechanism for organizing and conducting the program of paid internships in the public service. Thus, paid internships in the public service will represent an effective way of attracting young talents to the public service, subsequently being employed through a special mechanism in the public office. The major goal of the internship program is the development of the professional skills of the interns and the acquisition of professional experience, necessary for the professional activity, thus facilitating the transition from the education system to the labor market.

Based on the positive experience of 2022, when the first such internship program was organized with the support of the Delegation of the European Union from Chisinau (pilot project), it will be generalized and institutionalized at the level of the central public administration, under the coordination of the State Chancellery. On the one hand, the internship program will provide practical training opportunities for graduates of university bachelor's or master's programs or students in their final years who wish to pursue a career in the public service. On the other hand, the central public administration will also have the opportunity to attract young specialists with a vocation, especially for the deficient fields.

The professionalization of the public service is ensured through a modern system of professional training of human resources in the public administration that covers the real, constantly changing needs of professional development, according to institutional priorities and their specific attributions, with the provision of equal opportunities to accredited training providers in the field of public administration.

The main ways of strengthening institutional capacities in order to ensure the implementation of the strategic components of the professional development process of public administration personnel include:

- 1) Development of the technical and personnel capacity of the national institution coordinating the training/professional development of public administration personnel, to European quality standards;
- 2) Development of the institutional mechanism related to the implementation, monitoring, and evaluation of the professional development process in the public administration;
- 3) Development of institutional mechanisms for correlation between training actors (including the creation of unitary standards, thematic working

groups between experts, as well as the organization of periodic events, to multiply the results and disseminate good practices acquired, through collaboration with external partners);

- 4) Development of the network of certified trainers, with experience in public administration, to provide training services at the workplace ("in-service") and at a distance;
- 5) Development of the network of national and international partners to provide professional development activities.

Professional training involves the development of skills, according to the needs to carry out the tasks and service attributions established in the job description. In this sense, a methodological framework is needed to assess the competences of the staff before and after the training process in order to identify the increase of the targeted competences. Thus, the methodologies and procedures regarding the evaluation of the impact of the training will consider as a reference the framework of competences necessary to fulfill the duties of the service by the personnel of the central and local public administration.

In order to improve the methodological framework related to the professional development of staff, the State Chancellery will grant, to staff from public authorities with attributions in the implementation of professional development programs, support for the establishment and organization of specific programs regarding:

- 1) continuous training of public administration officials;
- 2) the training and specific training required to enter the public office or for promotion;
- 3) training of personnel with management positions and positions of public dignity.

The professional development of the staff from the public authorities will be achieved through:

- 1) managerial development programs with emphasis on leadership, modern public management, and human resources management;
- 2) professional development programs for civil servants from the branch subdivisions of the ministries, with an emphasis on the substantiation, elaboration and implementation of public policies through the lens of EU requirements and international good practices;
- 3) professional development programs for dignitaries and civil servants from the local public administration, focused on developing skills in areas such as: budget management, investment project management, public procurement, urban planning, and heritage management;
- 4) professional training programs for those responsible for human resources management in public authorities;
- 5) distance learning programs (E-learning) with general themes.

At the local public administration level, the improvement and training programs organized and provided on the electronic platform by the Congress of Local Authorities of Moldova together with external partners should also be mentioned.

4. CONCLUSIONS

In the Republic of Moldova, important progress has been made regarding the reform of the legal foundations of the public service, but the national normative framework still does not incorporate all the provisions of the European principles of administration. Until the current stage, modest results have been obtained in the following areas: integrity management, salary and protection systems for civil servants. Adopting the normative framework is not enough to efficiently manage the public function and the civil servant, because the quality of its implementation depends on several factors, including the attitude and responsibility of the decision-makers. We conclude that, at the current stage, in the Republic of Moldova the formal norms are implemented in the daily management of the public service. It follows that all the factors involved in this process must make efforts to ensure the implementation of the provisions of the normative framework up to the level of internalization of the rules and procedures of transparent and impartial management of civil servants, re-read through their attitude, in order to increase their performances.

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EUROPE AT A CROSSROADS: AN ANALYSIS OF CURRENT AND FUTURE CHALLENGES WITH A HISTORICAL PERSPECTIVE

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Abstract

Europe stands at a crossroads. The purpose of this essay is to analyse key current and future challenges faced by the EU with a historical perspective. I shall address successively political and geopolitical issues, economic issues, and the question of EU widening and deepening.

Keywords: *European Communities; European Union; history.*

JEL Classification: N44

1. INTRODUCTION

Europe stands at a crossroads (Grin, 2023). In this chapter, I will try and analyse key current and future challenges faced by the European Union (EU) with a historical perspective. The views and opinions expressed here are mine and are not binding on my institutions of affiliation. Global challenges will have an important place in my considerations. Of course, we cannot predict the future. It is not written in advance. Nor does history repeat itself mechanically. But the lessons of history and their help in exposing structural factors are a key help.

In this essay, I shall start by addressing political and geopolitical issues. Then, I shall turn to economic issues. Finally, I will consider the question of EU widening and deepening.

2. POLITICAL AND GEOPOLITICAL ISSUES

There has been a historical shrinkage of Europe due to the world wars, decolonisation, and the economic catch-up of other regions. During the Cold War, Europe was divided by the Iron Curtain. The control of its historical destiny was in the hands of the USA and the USSR.

Initial illusions came with the end of the Cold War. But new trends developed in the years 2000 and subsequently deepened. Firstly, the liberal international order, international law and the multilateral system have come under increasing tension (Zwahlen, 2023). Secondly, new global threats have arisen, such as terrorism, rogue states, the disintegration of certain states, and nuclear proliferation. Thirdly, Russia has returned in the international geopolitical game, asserting itself more and more as an empire. Fourthly, we have witnessed the accelerated rise of China and other developing countries. The group of countries called “BRICS” has become notorious. Fifthly, we have also witnessed the global narrowing of the democratic field, with political competition and parties, the media, academics, and the judiciary as their first victims (Freedom House, 2022; Le Temps, 2022). Sixthly, massive rearmament worldwide has surged. Spending on defence in the world amounted to 2,240 billion US dollars in 2022, representing 2.2% of the world gross domestic product (GDP). This absolute figure is a historical record. The spending of the USA was 877 billion dollars, representing 3.5% of its GDP (twice the figure of EU countries) and 39% of world expenditures. China came second with 13% of the world total. All the member States of NATO represent together 55% of world expenditures (Tian *et al.*, 2023).

US-China relations are increasingly structuring the international order, which may end up in bipolarity. This may endanger Europe’s autonomy in the future. America’s influence in Europe is again on the rise through security and energy. NATO has made a spectacular comeback.

Interstate war in Europe has returned with Russian aggression against Ukraine. Europe and America have issued sanctions against Russia and provided Ukraine with weapons. At the same time, the West appears more isolated than in the past on the world stage.

The development of a Community Europe started within Western Europe in 1950 through the Schuman Declaration designed by Jean Monnet (AJMFE, 1950). At the beginning, there was a limited number of six countries (Belgium, Federal Germany, France, Italy, Luxembourg, Netherlands). The structure was partly confederal, partly federative. The birth of three Communities, coal and steel (1952), common market (1958), and Euratom (1958) revolved around Franco-German reconciliation. The aim was to break centuries of animosity and conflict. The scope of the Communities that later became the European Union was without historical precedent and no other region in the world can stand the comparison. The essence of the Community project has always been political. The historical objectives have been peace, prosperity, and freedom.

Since the end of the Second World War in 1945, the USA have stayed involved in European security. This has been called for by West European countries, has been accepted by successive American decision makers and has created a path dependency. Even the end of the Cold War did not change this fact. With it came the extension of Pax Americana to Central and Eastern Europe. NATO

enlargements preceded those of the EU. Since the end of World War II, Western Europe has been integrated into a transatlantic system lead by the United States. Consequently, there has been no European strategic autonomy. No real Europeanisation of security and defence policy occurred despite the creation of the Common Security and Defence Policy (CSDP). And the war in Ukraine could push this prospect further away.

A division of tasks has been established: NATO for security and defence, the EC/EU for prosperity and for bringing closer the European peoples. Transatlantic relations have not always been quiet. Huge tensions arose between EU member States and with the United States in 2003, at the time of the second Iraqi War. There were also strong transatlantic tensions at the time of the Trump administration. Future political developments in the United States will be crucial for Europe. The key question is whether, in the end, Europeans would be able or not to cope with a hypothetical American disengagement. Another related question is how long it would take Europeans to manage a transition phase leading to a real autonomy combined with respect by the other powers in the world.

3. ECONOMIC ISSUES

After the Second World War, a prevailing Western idea was that trade softens manners. A liberal international economic order, called the Bretton Woods System, was established under American leadership. It initiated the period of contemporary liberalisation. A liberal Western order was blossoming simultaneously with the development of welfare states, especially in Western Europe. There was a large economic disconnection from the Soviet bloc and China.

The World Trade Organisation (WTO) was established in 1995, succeeding the GATT. The number of States belonging to the WTO continually expanded from 77 to 164. Still, the functioning of the WTO has been increasingly jammed in parallel with the surge in regional integration schemes around the world.

Accelerated globalisation went hand in hand with the rise of global neoliberalism. The financialization of the world developed. World trade and the world GDP rose. Billions of people in developing countries left extreme poverty. But this came at the cost of the large deindustrialisation of Western countries and the rise of inequalities across the world.

Historically speaking, the European Communities (EC) have broadly followed a liberal economic model, but with exceptions such as the Common Agricultural Policy (CAP). Since the 1980s, neoliberal policies have spread in Europe. This trend was characterised by the rediscovery of markets, deregulation, and privatisations. It influenced the EU especially in the 1990s and 2000s.

A political shock between economic doctrines was clearly visible at the EC level as of 1988. It was a question of flanking or not the internal market in progress by the development of common policies and economic and monetary union.

Internal market concerns have been more and more integrated with policy issues (such as the protection of consumers, workers, citizens, and the environment).

After the end of the Cold War, Germany was a strong promoter of growing economic interdependences between the West and Russia. This policy was only reversed in 2022 after Russia invaded Ukraine. This war has implied a severe energy crisis in Europe with a risk of stagflation. Growing dependency towards the United States for energy supplies has arisen. Russian raw materials are increasingly going to China. There are rivalries in the Western world to reimplant industries and state aids distort competition.

The world faces a global problem of rising indebtedness, accentuated by the various crises since 2008. It is becoming a problem with growing interest rates. In the Euro zone, public debt was representing 92% of GDP in 2022, but it was above 110% in five countries: France 112%; Spain 113%; Portugal 114%; Italy 144%; and Greece 171% (Galland-Beaune and Verdes, 2023). The questioning of welfare States for financial and demographic reasons is bound to become critical.

Neoliberal policies are increasingly questioned in the EU. Following the Covid-19 crisis and the war in Ukraine, there has been a debate in Europe on the necessity to repatriate certain strategic industrial activities and to diversify the supply and value chains. European leaders mention strategic sectors: these are strategic raw materials and sources of energy, batteries, semiconductors, as well as certain medical equipment and products (Bassin, 2023).

Is it possible to decarbonate the economy at a sufficient pace to avoid an environmental disaster? How to effectively coordinate action between States and between the public and the private sectors? Is it conceivable to have a prosperous green economy based on innovation or will populations have to reduce drastically their welfare to save the environment? Or will the environment not be saved, creating huge risks for the future of mankind? Obviously, Europe is not spared from these debates. The economic and environmental challenges are truly global, but world governance lags far behind.

4. EU WIDENING AND DEEPENING

There has been a long story of EC and EU widening, from 6 member States initially to 27 today. Brexit, which came into effect in 2020, was a peculiarity. It has not created a precedent for other countries. Quite the opposite. In geostrategic terms, Brexit represents a weakening of Europe unless the British absence from the EU institutions allows the latter to truly make a major qualitative leap on the way to a more complete political union.

Today, there are eight official candidate countries to the EU (Albania, Bosnia and Herzegovina, Moldova, Montenegro, North Macedonia, Serbia, Turkey, Ukraine). There are intrinsic difficulties of absorbing them. The whole process seems impossible without a prior or simultaneous deepening of integration. There will likely be a future race between widening and deepening. This is a classical

scenario in the history of integration. Necessity appears to favour enlarging for several reasons: to recognise and respect Europeanity, to avoid geostrategic holes on the continent where other world powers could enter, to allow economic opportunities both for current and acceding countries. But there are also risks: a weakening of the rule of law, increasing conflict on values, corruption and opportunities for crime, risks of blocking the EU decision-making process due to the mechanical increase in the number of member states if the rule of unanimity does not disappear or is not at the least severely shrunk, difficulties in increasing the EU budget, specific risks of interference due to close connexions between some acceding countries and foreign powers (Cox, 2023).

Differentiation, or variable geometry, is another tool at the disposal of Europeans. Firstly, there is intra-EU differentiation as exemplified by the Euro zone and the Schengen-Dublin area. The key here is to properly articulate the functioning of such a zone with the whole EU, and to keep the door open for non-participating countries.

Secondly, there can be extra-EU differentiation. In this regard, the European Political Community (EPC) was established in 2022 between 44 European countries, including the 27 and the two executive presidents of the EU (the president of the European Council and the president of the European Commission). The EPC, which can be characterised as an intergovernmental forum, held its inaugural meeting in Prague on 6th October 2022 and its second meeting in Chisinau on 1st June 2023. It now includes all the 46 member States of the Council of Europe plus Kosovo. Only Russia and Belarus are obviously out. It is too early to know now what the EPC will bring. One will have to observe it in the future. It could achieve the following: create added value in international cooperation, develop the reflex for collaboration, enhance a feeling of Europeanity and common belonging, create a new tool for EU external action, and allow concrete developments in domains such as energy, infrastructures, and security. The risks would be that the EPC creates a gasworks and delays EU widening for improper reasons.

One must always insist on the novelty of the Community method designed in the 1950s, which has been the key engine of progress. It organises not only the discussion between countries, but also allows to a large extent the decision-making capability of the Community (now the Union) thanks to qualified majority voting among States and the action of some of the common institutions in charge of crafting the common interest of the group and checking the proper implementation of rules. At the same time, there has been a strong resilience of intergovernmental practice, promoted by leaders such as Charles de Gaulle, Margaret Thatcher, and some others in the Central and Eastern European countries.

I would argue that it will be necessary to generalise the practice of qualified majority voting in the Council and the European Council. It would probably be even better to transform the Council into a European Senate whereby Senators would be elected by direct universal suffrage. The size of the European

Commission should also be reduced while the powers of the European Parliament ought to be increased. The Union should be able to become a unitary actor on the world stage. The procedure for revising the European treaties should be modified to make it more effective and democratic at the level of the whole Union.

Historically speaking, the integration process has designed elements of deepening: creation of the common market, transformation into an internal market, development of new policies, including EMU and Schengen-Dublin, development of a citizens' dimension, encroachment upon national sovereign policies, institutional reforms even if the core of the institutional design dates back from the 1950s, creation of a common debt following Covid-19 (Grin, 2022). I will argue that there is a need to strengthen CFSP and CSDP to produce more internal coherence, to avoid foreign attempts to divide the Europeans, to make the Union less dependent on the sole USA, and to rationalise public spending by allowing "bigger bang for the buck".

European integration history has occurred through crises and revivals. The EC/EU have been most of the time in crisis rather than not. A crisis does not necessarily mean a hindrance for the integration process. Sometimes it is delayed, sometimes it is reoriented. However, things become more critical in the event of a stack of several crises (especially of a political nature and affecting the domain of values) and a long period of probation (Grin, 2022).

The challenge of maintaining cohesion within the EU will be increasingly important. The rise in populism and nationalism, leading to distrust between peoples, is worrying. In this regard, the years 2010 have left a poor legacy. A chasm developed between North and South following the consequences of the 2008 crisis. There has been a second chasm between East and West, connected notably to the issue of values. The threat of centrifugal forces is clear. The future of the rule of law will be essential while it is threatened by some countries. Socio-economic cohesion will also require important means.

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STRENGTHENING THE STABILITY OF THE BANKING SECTOR OF GEORGIA VIA EU STANDARDS

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Abstract

The contribution of the banking sector in a sustainable development of Georgia is high. In order to increase the stability of the financial sector, strengthen its role and increase the efficiency of sustainable financing, it is important for the National Bank of Georgia to improve the supervisory mechanisms and the financial market through implementing the practices of the European Union. The article focuses on the structural features of the financial sector that contributes financial stability, the aspects of the Georgian economy, the social and environmental issues of the sustainable financing framework, the analysis of climate-related risks, the management of financial risks related to sustainability, the convergence of the Georgian banking legislation with the legislation of the European Union, the CRD IV package, the directives of the European Union and ways of implementing legal regulations, assessment of corporate governance and reporting system, improvement of audit quality.

Keywords: *corporate governance; sustainable financing; risk management; financial reporting.*

JEL Classification: G21

1. INTRODUCTION

The Government of Georgia carries out a number of activities to achieve the Sustainable Development Goals (SDGs) due to taking into account national circumstances and thereby contributes to sustainable development. As required by the Paris Agreement, Georgia made a Nationally Determined Contribution (NDC) to the United Nations Framework Convention on Climate Change (UNFCCC). (Sustainable financing guide for Georgia, 2019).

The National Bank of Georgia makes a significant contribution to the sustainable development of the country and takes concrete steps in the direction of promoting sustainable financing. The banking sector of Georgia was able to implement successfully the framework of sustainable financing and develop it in

practice. In the very framework financial sector and capital market participants pay special attention to social and environmental issues and the management of risks related to it as it ensures both financial stability and sustainable development of the economy.

The National Bank actively continues to cooperate with various international organizations, such as the Sustainable Banking Network SBN. (SBFN, 2023), the International Finance Corporation (IFC), the Organization for Economic Cooperation and Development (OECD), in order to develop a sustainable financing framework in Georgia. In order to raise awareness about sustainable financing, the National Bank, in cooperation with the private sector, translated principles of green, social and sustainable development bonds of the International Capital Market Association into Georgian. It was published on the ICMA website (ICMA, 2023). It is guided by various international standards, which include IFC's Performance Standards (IFC, 2023), Equator Principles (Equator Principles, 2023) and the European Bank for Reconstruction and Development Risk Management Guide (EBRD, 2023).

2. MATERIALS AND METHODS

According to the Constitution of Georgia, the National Bank of Georgia is independent. Representatives of the legislative and executive authorities have no right to interfere in its activities. In order to promote the financial stability and transparency of the financial sector, and to protect the rights of consumers and investors, the National Bank supervises the financial sector. In order to ensure the stability and transparency of the financial sector of Georgia and to increase the effectiveness of sustainable financing, it is important constantly improve the supervisory mechanisms of the National Bank of Georgia in accordance with the best practices of the European Union, which will ensure the stability and transparency of the financial system and contribute to the sustainable economic development of the country.

Climate change and the pursuit of sustainability and sustainable business might be regarded as among the world's "wicked problems", especially as they are multi-dimensional problems. (Villiers, 2022, pp. 548–566).

The idea that businesses not only had to keep shareholders' interests but also those of other stakeholders in mind started to gain traction (Freeman, 1984). In the 1980s, stakeholders increasingly began paying attention to the adverse effects of business operations on the natural environment in the form of, for instance, pollution, natural resource depletion, and biodiversity loss, creating a conversation on corporate sustainability that grew in parallel with the conversation on corporate social responsibility (Montiel, 2008; Bansal and Song, 2017). In 1987, the WCED (1987) introduced the term "sustainable development" as development that does not jeopardize the life of future generations in its Brundtland report. This boosted the attention paid to this issue among scholars, practitioners,

governments, and society in general. Since then, scholars and practitioners have developed various definitions to incorporate sustainable development into the business context and business operations.

In 2015, the United Nations launched the Sustainable Development Goals (SDGs)—a compilation of 17 societal-level goals, 169 targets, and 231 indicators—aimed at achieving global sustainability by 2030 (United Nations, 2015). The SDGs have been described as the most comprehensive framework ever formulated to address global societal grand challenges (Kolk *et al.*, 2017; Sachs *et al.*, 2019; Wettstein *et al.*, 2019).

In 2018, a corporate governance code was implemented for commercial banks in Georgia, which is similar to the principles of corporate governance of the Basel Committee on Banking Supervision. The Code covers environmental, social and governance (ESG) issues, gender diversity requirements, remuneration policies, a modern risk management framework for banks.

The term “ESG” first emerged in finance and mainly targeted business investors. It was first coined in the report “Who Cares Wins: Connecting Financial Markets to a Changing World,” compiled by UN Global Compact and published in December 2004 (Global Compact, 2004). Sometimes, complicated organisational structures combine with legal complexities, leading to a further reduction of accountability, as evidenced by the frequently unsuccessful litigation involving parent and subsidiary companies. Parent corporations are rarely found liable for the conduct of their subsidiaries. (see, e.g., Mares, 2020).

A systemic approach is necessary while providing certainty about the connections and the objectives between the sustainability goals and the legislative provisions. In the words of the European Systemic Risk Board (2023), regulation should be complex (state-contingent, risk-sensitive, case-dependent) enough to appropriately capture the heterogeneity of institutions, risks and circumstances, but not so convoluted and onerous to comply with and enforce that it results in unnecessary cost burdens, discourages competition and innovation, leaves room for regulatory arbitrage or induces hard-to-anticipate behaviors that can increase systemic risk.

On 21 April 2021, the European Commission adopted a proposal for a Corporate Sustainability Reporting Directive (CSRD), amending the existing reporting requirements of the NFRD to include information on a broader range of environmental, social and governance factors and for such information to be provided in line with new reporting standards created by the European Commission through its European Financial Reporting Advisory Group. Adopting a shift in terminology from non-financial information to sustainability information (to reflect that such information does have financial relevance), the CSRD seeks better data from companies regarding their sustainability risks and impacts and to improve the reliability, comparability and relevance of the information provided by companies regarding their sustainability risks, opportunities and impacts. The proposed

CSRD, covering all large companies and all companies listed on regulated markets (except listed micro-enterprises), aims also to tackle the “lack of precision in the current requirements, and the large number of private standards and frameworks in existence” (European Commission, 2021).

It is internationally recognized that problems related to sustainability can become a source of financial risks. When assessing risks, attention should be focused on such topical issues as: physical damage caused by climate change; and the structural changes needed to move to a low-emission economy. Physical and transition risks affect the macroeconomic environment and may cause significant financial losses; physical risk is considered acute when it is caused by climate and weather-related events. A physical risk is chronic if it is caused by gradual climate change, such as global warming. Transition risk is the financial risk that may arise as a result of making the necessary changes to move to a low-emission economy. As a result of changes in environmental policy, technology, and market sentiment, assets such as stocks, bonds, derivatives, and other forms of equity in the economy may be revalued. The rate at which the revaluation will take place is still unclear, although this may have a great impact on financial stability and the sustainability of financial institutions. "Sustainable financing", according to the European Union Commission, combines two important parts: directing finances to projects that will promote sustainable and inclusive growth; and improving financial stability, during the process making a decision about investment, environmental, social and governance factors should be taken into consideration.

Sustainable financing includes finance aimed at climate change adaptation and mitigation, green and social activities, which, on the one hand, serves the long-term economic sustainability of organizations, and on the other hand, the stability of the financial sector and the growth of their role in this direction. The Sustainable Development Guide for Georgia was created as a result of cooperation with IFC/SBN. It is based on the best international practice and is in line with the EU Commission Action Plan.

The taxonomy of sustainable financing developed by the National Bank of Georgia includes green and social taxonomies. The green taxonomy is a list of green activities that serve to achieve environmental goals and develop a green economy. On the other hand, social taxonomy includes categories that aim at social empowerment of target groups. Target groups include socially vulnerable groups, such as persons with disabilities, migrants, displaced persons, socially vulnerable families, people below the poverty line, etc. The above-mentioned activities will contribute to the achievement of climate, green, social and sustainable goals.

According to the Sustainable Financing Guide for Georgia 2019, commercial banks must pay attention to climate change mitigation and adaptation, environmental pollution issues, conservation of natural resources, ecosystem protection, other environmental issues, and related risks while studying environmental

factors, at the same time to social factors issues such as inequality, Inclusivity, labor relations, human rights, ensuring community health and well-being, empowering women and girls, reducing poverty and investing in human capital. Banks will need to establish governance structures that incorporate social and environmental issues into their decision-making processes, including management structures, employee relations, and compensation policies. The corporate governance framework developed for the banking sector of Georgia is sound and comprehensive, in line with the best international standards, it is noted in the 2021 report on the implementation of standards and codes (ROSC) published by the World Bank (World Bank, 2021).

According to the report, the overall corporate governance structure is positively evaluated and it is noted that the Supervisory Board, together with the Board of Directors, is responsible for developing and approving risk management frameworks. The Directorate and the Supervisory Board are also responsible for ensuring the independence and effectiveness of the internal audit function, and the Audit Committee of the Board is responsible for ensuring the adequacy, independence, and effective cooperation between the internal and external auditors. The report on the introduction of standards related to the internal audit function emphasizes that commercial banks meet the relevant standards by 100%. The code establishes the minimum requirement for the number of independent members on the board, the share of women members of the board has increased, however, the improvement of corporate management standards based on international practice should continue continuously.

According to research conducted within ROSC, over the past twelve years, there has been an increase in the awareness and perception of the importance of corporate governance among relevant stakeholders. Investors have the opportunity to evaluate Georgia's corporate governance practices based on the ROSC report. The Corporate Governance Code has a significant and positive effect on the application of international standards in the corporate governance practices of the banking sector.

The Corporate Governance Code for commercial banks and capital markets includes ESG reporting and disclosure requirements, which will make the markets more environmentally friendly. The National Bank, in cooperation with the Organization for Economic Cooperation and Development (OECD), has developed the principles of information disclosure and reporting for financial institutions. These principles are based on various international standards for disclosure of information on sustainable development issues, such as the Sustainability Accounting Standards Board (SASB), the Task Force on Climate-related Financial Disclosures (TCFD), the United Nations The UN Principles for Responsible Investment (PRI) reporting framework 2018, the Global Reporting Initiative (GRI), these documents can be used by financial institutions as guidelines on how to disclose information on ESG-related issues that may affect on the company's

business model and strategy, policy and due diligence, risk management and results. The National Bank together with the OECD, in order to ensure comparability and compatibility of information, also plans to provide financial institutions with a template for ESG reporting and information disclosure. Principles of ESG reporting and information disclosure will enable relevant institutions to successfully monitor and evaluate steps taken in the direction of sustainable financing. At the same time, the National Bank continues to work on the development of other tools for measuring progress, including the creation of an information hub.

We have investigated the challenges and effectiveness of the implementation of sustainable development standards, and for this purpose, research questionnaires were created in Google Forms to study the specific measures planned in the four main directions of the guide to sustainable financing developed by the National Bank of Georgia: 1. Raising awareness and increasing qualifications, 2. Sustainable financing flows 3. ESG risk management 4. Transparency and market discipline.

The first phase of the research design involved research population, identification, and profiling. 19 managers of rated commercial banks in the banking sector of Georgia were selected, mostly graduates of Sukhumi State University.

Due to the lack of research on sustainability issues in the banking sector, it was decided to conduct an exploratory study aimed at identifying risk reduction factors.

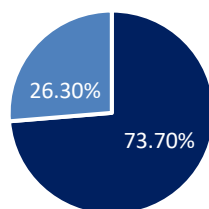
3. RESULTS

As a result of the interview with the employees of the commercial banks, it was determined what issues of sustainable development in the banking sector should be focused on.

50% of the surveyed managers of commercial banks believe that environmental, social and governance issues are considered in the bank's strategy, and 86% believe that environmental, social and governance (ESG) issues are reflected in the bank's corporate governance code and are disclosed in the report, 79% of employees believe Gender diversity is protected. According to 71%, environmental, social and governance (ESG) issues of loans containing risks are studied, and 57% believe that the issues of continuing supervision of risks are given a lot of attention. Determining social and environmental risks when making a decision on granting credits is a difficult issue, 57% think so. Research on the issues of sustainable financing in the bank is often conducted with 64% opinion. The advantages of sustainable financing are known to 64% of respondents. 71% of respondents noted that banks should study more actively a. If the risks of climate change had an impact on the bank's investments, the quality of loans, and other banking activities, and b. They should systematically consider and evaluate the potential environmental and social effects of their activities. The results of the

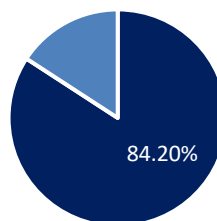
questionnaire, which was addressed to the members of the supervisory boards of banks, are shown in Figure 1.

a. Do supervisory board members actively assess financial and non-financial risks, including environmental, social, and governance (ESG) issues such as climate change risks? (19 responses)



■ Yes

b. Has the supervisory board successfully integrated environmental, social, and governance (ESG) risks into the bank's risk management framework? (19 responses)



■ Yes ■ No

Figure 1. Questionnaire results

4. CONCLUSIONS

The CRD IV package should be introduced into the banking legislation of Georgia, which includes capital adequacy requirements, compliance criteria for administrators of institutions and owners of significant shares, leverage ratio, net stable funding ratio, quality of large risk positions, corporate governance, transfer and licensing of a significant share, internal capital assessment and information disclosure requirements.

It is also important to review the legal and enforceable framework of payment services in accordance with EU directives and regulations and prepare appropriate legal amendments, as well as the prudential supervision framework, the rules for the execution of payment operations, the rules for registration and deregistration of payment service system operators, client authentication requirements and secure open communication standards.

By constantly updating the financing guide, bank employees will have the opportunity to find all existing definitions of sustainable financing products, which will review ESG risk management requirements and ESG summary issues

in the corporate governance code, principles of reporting and information disclosure, green, social and sustainable bonds and green credit, green bonds and Release Guide.

The employees of the bank must constantly undergo training in order to be able to use the new rules and regulations. Within the framework of joint projects, consultations of foreign experts, interactive workshops, legal revision of regulations adopted or prepared by the National Bank, and analysis of gaps should be carried out, as well as assistance in the development of legislation or methodology. These activities will be focused on sharing knowledge, experience and best practices. Proposals for changes in the law, manuals, and training materials should be developed together with foreign colleagues.

The National Bank of Georgia should further strengthen its supervisory function in terms of regulating the banking and payment services market, in accordance with EU legislation and best practices;

Bank managers should assess (ESG) in all aspects and use sustainability as an internal management tool to assess risk and impact related to social aspects and the environment.

Due to the multitude of important and complex interests and long-term risks, close cooperation between science and the business sector, politics, regulatory bodies, and institutions is necessary for the implementation of the requirements stipulated by the UN sustainable development agenda. Stakeholder engagement is a step forward to make appropriate sustainability decisions and update guidelines.

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THE NEW YORK CONVENTION: A REGULATING
AND STANDARDIZING INSTRUMENT FOR ENHANCING
THE INTERNATIONAL EFFECTIVENESS
OF FOREIGN ARBITRAL AWARDS

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Abstract

The 1958 New York Convention was the result of political negotiations and international empirical debates. Its text was finalized during a multinational conference, building upon the project proposed by the International Chamber of Commerce in Paris and the Economic and Social Council of the United Nations. Distinguished scholars in the field of international trade law actively participated in the drafting of the Convention, including Prof. P. Sanders (Netherlands), Dr. O. Glossner (Germany), F. Eisemann (CCI), M. Domke (USA), G. Holleaux (France), M. Matteucci (Italy), among others. Compared to previous treaties and common law in the field of arbitration, the New York Convention introduced significant innovations and improvements. Notably, the treaty expanded its scope, eliminating the requirement for the parties to be nationals of one of the signatory states. The primary objective of this paper is to discuss the series of progressive steps that must be followed after the adoption of the New York Convention. It will provide a detailed analysis of the importance of specialized internal regulations, using comparative and analytical methods. The main goals of this paper include defining the scope of the 1958 New York Convention and identifying standardized solutions for applying the grounds for refusing the enforcement of foreign arbitral award.

Keywords: *foreign arbitral award; efficiency; 1958 New York Convention; international arbitration; alternative dispute resolution.*

JEL Classification: K12, K20

1. INTRODUCTION

The New York Convention possesses the prerogative of establishing a standardized international framework, rightfully regarded as the "most advanced system, replacing arbitrariness with objectivity" (Căpățină, 1997) or as former President of the International Court of Justice, Judge Stephen Schwebel, opined about the New York Convention, "It works." (Born, 2001) The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards was adopted on June 10, 1958, under the auspices of the United Nations and came into force on June 7, 1959, presently applicable in 156 states. The New York Convention has become the "cornerstone of international commercial arbitration" (Van den Berg, 1981), hailed by scholars as "the most efficient exemplification of international law in the entire history of commercial law" (Mustill, 1989).

The New York Convention was crafted to address the deficiencies of its predecessors: the Geneva Protocol of September 24, 1923, regarding arbitration conventions, and the Geneva Convention of September 26, 1927, on the execution of foreign awards, both adopted under the League of Nations. Pursuant to Article VII(2) of the New York Convention, the Geneva treaties "shall cease to have effect between contracting states on the day and to the extent that they are bound by this Convention." Consequently, the Geneva Convention and Protocol fell into disuse.

Before delving into the analysis of the New York Convention, it is essential to underscore that it is a part of a "network of regulations" contributing to the "international legal circulation of arbitral awards" (Căpățină, 1997). This network of international norms includes international and regional conventions governing the international effects of foreign arbitral awards, such as the European Convention on International Commercial Arbitration of 1961, the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965, the Inter-American Convention on International Commercial Arbitration of Panama of 1975, the Amman Convention on Commercial Arbitration of 1987, the Organization for the Harmonization of Business Law in Africa Treaty of 1993 (commonly referred to as the "OHADA Treaty"), as well as numerous bilateral treaties on legal assistance and reciprocal recognition of investments. An analysis of these principal international arbitration conventions demonstrates that they supplement the conventional regime governed by the New York Convention, which, nonetheless, remains the primary international standard for the efficacy of foreign arbitral awards.

2. DATA AND METHODOLOGY

The present research is a comparative study that involves the description, analysis, and interpretation of norms pertaining to foreign arbitral awards. Its primary objectives are to ascertain the influence of political institutions, the formulation of policies favoring alternative dispute resolution, and the assessment of the

effectiveness of the 1958 New York Convention as the principal international benchmark for foreign arbitral award enforcement. Through a meticulous examination and interpretation of existing norms, as well as the identification of pertinent tools and legal provisions, this research seeks to inform policy decisions and regulatory frameworks aimed at enhancing business development and consumers protection in Moldova, drawing inspiration from European best practices.

Therefore, this concise analysis delves into information concerning foreign arbitral awards and the role of political institutions in shaping policies and promoting the efficacy of the 1958 New York Convention. Such an examination entails the evaluation of foreign arbitral award laws, regulations, and EU-level policies to identify optimal approaches for the Republic of Moldova.

By means of this comparative research, it may be possible to pinpoint key factors that contribute to the efficacy of alternative dispute resolution, particularly in the context of arbitration. These factors could include the level of political commitment to foreign arbitral awards and the effectiveness of the 1958 New York Convention.

This article underscores the significance of foreign arbitral awards and subsequently expounds upon the importance of the 1958 New York Convention. Moreover, this research methodology encompasses the analysis and comparison of data from various sources to draw conclusions and provide recommendations. Throughout the research process, an array of methodologies has been employed, including:

a) Analysis: Breaking down the topic into distinct sections, referring to legal doctrine, EU and national regulations.

b) Synthesis: Identifying unique concepts, tracking the evolution of consumer protection legislation, enforcement bodies, and redress systems through the use of digital tools.

c) Deduction: Formulating conclusions based on the research material and presenting a personal perspective on the subject matter.

d) Classification: Categorizing various aspects into distinct groups based on specific criteria to enable in-depth examination.

e) Analogy: Comparing different institutions and legal provisions in various jurisdictions to identify commonalities and distinctions.

f) Observation: Studying statistical data and monitoring the progression of digital tools for effective consumer protection.

g) Comparison: Contrasting the level of legal regulation of consumer protection institutions in the national legal framework of the Republic of Moldova with regulations in foreign jurisdictions.

3. LITERATURE REVIEW ON THE INTERNATIONAL CIRCULATION OF FOREIGN ARBITRAL AWARDS AND THE EFFECTIVENESS OF THE 1958 NEW YORK CONVENTION

A substantial body of study proposals and opinions has already been generated on foreign arbitral awards and the effectiveness of the 1958 New York Convention, as well as on enforcement institutions and redress systems, highlighting the influence of political institutions.

A significant role in the endeavor to standardize regulations concerning international commercial arbitration is played by the UNCITRAL Model Law on International Commercial Arbitration, developed by the United Nations Commission on International Trade Law (UNCITRAL) in 1985. This Model Law has affirmed the recognition and enforcement of foreign arbitral awards, particularly in Articles 35-36, which bear resemblance to Articles IV-V of the 1958 New York Convention. The primary intent of the authors was to ensure that this Model Law did not contradict the 1958 New York Convention but, rather, contributed to its incorporation into national law.

In comparison to previous treaties and common law in the field of arbitration, the New York Convention introduced significant innovations and improvements. The treaty has a broader scope (Van den Berg, 1981), eliminating the requirement for the parties to be nationals of one of the signatory states. The concept of "double exequatur" was abolished, and the burden of proof was shifted: once the applicant presents the arbitral award and the arbitration agreement to the enforcing court under Article IV, the burden of providing evidence shifts to the recalcitrant party invoking the grounds for refusal stipulated in Article V. The grounds for refusing recognition and enforcement of foreign arbitral awards are comprehensively regulated (Fouchard *et al.*, 1996). Article V of the Convention restrictively regulates five grounds that may be invoked by the respondent, and two additional grounds that may be invoked by the respondent or *ex officio* by the court to refuse the effects of foreign arbitral awards.

The new international instrument establishes an international regime for the efficacy of arbitration agreements through a substantive provision in Article II, which requires a written form and governs the effects of both the arbitration clause and the arbitration agreement (Karabelnikov, 2012). At the suggestion of Professor P. Sanders of the Netherlands, it was decided to avoid the adoption of two separate international treaties, as was the case with the Geneva Conventions. Instead, the New York Convention introduced provisions governing the efficacy of arbitration agreements with the aim of enhancing the international efficacy of arbitral awards (United Nations, 1999). The Convention gives priority to the parties' choice in constituting the arbitral tribunal, the arbitration procedure, and the applicable law, as expressed in the arbitration agreement. In the absence of an agreement on these matters, it stipulates the application of the law of the place where the award was made.

The system of the 1958 New York Convention is represented by several key elements, including its scope in terms of material and territorial coverage, its mode of application encompassing the fundamental principles and rules governing the interaction of conventional norms with national and international law, and the actual provisions of the Convention itself.

4. ARBITRAL AWARDS ELIGIBLE FOR ENFORCEMENT WITHIN THE FRAMEWORK OF THE NEW YORK CONVENTION

The norms of the 1958 New York Convention on the international effectiveness, as per Article I(1), apply to arbitral awards "made in the territory of a State other than the one where recognition and enforcement are sought and arising out of differences between individuals or legal entities." Additionally, it also applies to arbitral awards not considered as domestic awards in the State where recognition and enforcement are sought. Article I(2) further clarifies that by arbitral awards, it means "not only awards made by arbitrators appointed for a specific case but also those made by permanent arbitral bodies to which the parties have submitted.

1) The Material Scope of Application of the Convention

The delineation of the material scope of application is determined by establishing the following constitutive elements:

a) The award subject to the Convention is an 'arbitral' award -

The Convention does not provide a specific definition of an arbitral award; however, it specifies that these awards can be issued by both institutionalized and ad-hoc arbitrations, both holding equal authority.

The qualification of the term "arbitral award" is determined by the court seized in accordance with the forum's law. In the judicial practice of the Republic of Moldova, in the case of *Horus SA v. the Ministry of Health of the Republic of Moldova* in 2013, the issue of classifying a decision as an arbitral award was addressed. In this case, the Ministry of Health and the Ministry of Justice of the Republic of Moldova requested the refusal of recognition and enforcement of a decision issued by an "adjudicator," arguing that it did not represent an "arbitral award" but rather an act of a pre-contentious procedure, the "adjudication" procedure. According to the Moldovan Law on Arbitration and the Law on International Commercial Arbitration terms like "adjudicator" and "adjudication" are not recognized, and therefore, they are not covered by the definitions related to arbitration. The first-instance court and the Court of Appeal in Chişinău rejected these arguments as unfounded, explaining that, according to the contractual provisions, the parties had stipulated two consecutive arbitration procedures, referred to in English as "adjudication" and "arbitration." The first referred to an ad-hoc arbitration procedure, while the second referred to an institutionalized arbitration, in case

one of the parties disagreed with the decision in the first phase of arbitration. The claimant, Horus SA, demonstrated that the "adjudication" procedure was identical to arbitration, with parties being notified, informed about the arbitration process, presenting their claims and evidence, all of which were examined by a sole arbitrator referred to as an "adjudicator."

Comparative judicial practice demonstrates that common law courts have ruled that the interpretation of the term "arbitral award" should take into account the spirit of the New York Convention, the nature and content of the document submitted for enforcement, regardless of its title, and whether it conclusively decides the dispute, including issues related to jurisdiction. For this, the award must be rendered by arbitrators, conclusively resolve the dispute or certain contentious issues, and be binding on the parties.

b) The Arbitral Award is Final and Binding on the Parties -

The 1958 New York Convention established the binding nature of arbitral awards. This criterion is defined by the ground for refusing recognition and enforcement under Article V(1)(e), which states that recognition and enforcement may be refused if "the award has not yet become binding on the parties or has been set aside or suspended." German and French jurisprudence has explained that an award is binding because it cannot be challenged through an appeal either in another arbitral tribunal or in a common law court. The exercise of certain remedies, even if they may lead to the annulment of the award (such as annulment proceedings, revision, or setting aside), does not affect the finality of the award because the new judgment corresponds to a different legitimacy, namely, the constitutional authority to exercise, under strict scrutiny, judicial control (Matei, 2009). Thus, even if an arbitral award has been challenged in the state of origin through annulment proceedings, it can still be submitted for recognition and enforcement under the 1958 New York Convention. However, the court seized of the matter may refuse to enforce an award that has been suspended or set aside under Article V(1)(e) at the request of the respondent, provided that the necessary evidence has been presented.

Regarding the determination of the binding nature of an award, legal scholars have differing opinions on the method of qualification. According to some authors, the award will be assessed as binding in relation to the law of the state of origin, given the provision of Article V(1)(e) of the Convention (De Boissesson, 1990). According to an alternative opinion, the qualification should be made through autonomous interpretation, with reference to the rules of the 1958 New York Convention, in order to avoid the establishment of a "double exequatur" for the arbitral award if it were to be classified based on the law of the state of origin (Sanders, 1979).

The final character of an arbitral award implies that the adjudicating authority, the arbitral tribunal, has definitively and conclusively decided on contentious

issues or the entire dispute, without the possibility of repeating the judicial act that would lead to the modification or revocation of the award.

Therefore, the forum seized must examine the documents submitted for recognition and enforcement in light of these two criteria to determine whether they can be granted their proper legal effects. Comparative judicial practice notes that the following types of arbitration awards can fall within the scope of the Convention:

- Single (global) arbitral awards – These are final arbitral awards that fully resolve all issues in dispute and the arbitrated dispute as a whole (Fouchard *et al.*, 1996).

- Partial arbitral awards – These conclusively resolve a part of the dispute, with the remaining issues to be resolved by the arbitral tribunal. The condition is that these contentious issues must be separable from the rest of the dispute (Colombia Corte Suprema de Justicia, 2011);

- Interlocutory (interim or preliminary) awards – These decide a preliminary issue to dispose of the parties' claims, such as the statute of limitations, the applicable law to the case, etc. However, an interlocutory award must contain a mandatory and final decision on specific issues.

- Consent awards – These record the parties' agreement regarding the settlement of the dispute. However, such cases have not been encountered in jurisprudence (UNCITRAL Secretariat, 2016).

- Awards on costs and arbitration expenses.

c) *The award arises from disputes between persons, and/ or businesses* –

The Convention does not provide details regarding the legal status of the parties involved in the arbitral dispute. However, both doctrine and jurisprudence have concluded that the term "legal persons" encompasses state-owned enterprises as well as states, represented by authorities, agencies, subdivisions when acting *de iure gestionis*.

Regarding the effectiveness of arbitral awards invoked for forced execution against a state or a state-owned enterprise, the issue of jurisdictional immunity and enforcement immunity of states continues to generate discussions and interpretations in both doctrine and jurisprudence (Kronke *et al.*, 2010). The principle of international public law *par in parem non habet imperium* underpins the legitimacy of state immunity. However, a distinction must be made between jurisdictional immunity, whether absolute or functional, and enforcement immunity (Cheng, 2011).

The general rule, accepted as the majority opinion in doctrine (Gaillard, 2008) and judicial practice, presumes that states cannot invoke jurisdictional immunity once they have agreed to submit the dispute to arbitration. However, waiving jurisdictional immunity does not necessarily mean waiving enforcement

immunity for the state, as accepting an arbitration clause does not imply a general waiver of jurisdictional immunity.

As a result, some high-profile cases, such as the NoGa v. Russian Federation case, have generated different interpretations, particularly by Russian authors. For example, M.M. Boguslavskii contradicts the rule recognized by the Paris Court of Appeal regarding the loss of the right to jurisdictional and enforcement immunity upon the conclusion of an arbitration agreement (Boguslavskii, 2005).

Efforts to enforce arbitral awards against state assets have encountered various difficulties in practice. Attempts to seize state assets used for *iure imperii* activities have been hindered by states invoking enforcement immunity. Similarly, efforts to seize state assets used for *iure gestionis* activities have been rejected on the grounds of incorrect targeting of the debtor. Jurisprudential practice in Switzerland, Sweden, Austria, Germany, and the USA has supported this approach, allowing forced execution on state assets used for *iure gestionis* activities (Penggelly, 2009). In this context, similar to the NoGa case, in another case, Republic of Cameroon v. Winslow Bank & Trust, the Paris Court of Appeal explained that even if the state agreed to waive its enforcement immunity regarding its assets through a clause in an international trade contract, "this cannot be considered an express waiver of enforcement immunity with respect to assets used by the diplomatic missions of the Republic of Cameroon.

d) The award pertains to disputes deemed commercial in nature

This criterion is relevant in determining the material scope when a member state has invoked the commerciality reservation upon accession to the Convention. The qualification of disputes as commercial in nature for arbitration purposes will be determined according to the law of the forum, as the Convention does not provide a specific definition for this term.

2) Territorial Criteria for the Scope of the New York Convention

The New York Convention uses territorial criteria to define foreign arbitral awards. An arbitral award can be classified as a "foreign arbitral award" under Article I(1) of the Convention based on the following two cases: (a) the award was rendered in a state other than the one where recognition and enforcement are sought; and/or (b) the arbitral award is not considered a "domestic award" in the state where recognition and enforcement are requested. According to judicial practice and doctrine (Kronke *et al.*, 2010), an award will not be considered "domestic," even if it was rendered in the state where recognition and enforcement are sought if it was rendered using a foreign arbitral law or if it exhibits elements of internationality connecting it with other legal systems, thereby not being closely affiliated with the "domestic" character. This can also occur when both parties in the dispute are foreign. The inclusion of these two alternative criteria for determining the qualification of an award as "foreign" represents a compromise

reached at the time of signing the Convention between states favoring connections to domestic jurisdictions and states seeking to liberalize the international effectiveness of arbitral awards. Based on the wording of the second criterion in the Convention, some authors (Van den Berg, 1981) consider it discretionary, with states having the freedom to choose whether or not to apply it. Nevertheless, the second criterion is increasingly invoked in practice and is even stipulated in national legislation, as is the case in the Republic of Moldova under Article 475 of the Civil Procedure Code. Such extraneous elements as the nationality of the parties, their domicile or residence, are not relevant for determining the qualification of a "foreign award" under the New York Convention. Additionally, the Convention does not require the state where the arbitration is based to be a party to the New York Convention but offers states the opportunity to invoke a reciprocity reservation, a reservation that has been raised by a large number of Convention member states.

a) An arbitral award rendered within the territory of another state

Even though the criterion of territoriality is based on objective location circumstances, the interpretation of the conventional norm "*where the award was made*" presumes some difficulties, debated in doctrine and jurisprudence. Advocates of territorial and transnational concepts have debated the role and importance of the seat of arbitration. Consequently, determining the seat of arbitration for cases in which the parties designated Bucharest as the place of arbitration, but the hearings and debates took place in Chişinău, and the sole arbitrator wrote and signed the arbitral award in Berlin, may lead to different solutions regarding the "*place where the award was made*" within the meaning of the New York Convention. The vast majority of scholars and contracting states consider that the choice of the parties will prevail, and alternatively, the indications of the location of the arbitral tribunal. Therefore, the concept of the "seat of arbitration" needs to be defined as a legal concept, and not just from a physical or geographical point of view. In countries such as Germany, Luxembourg, the Netherlands, England, Spain, a foreign award is considered solely if it was rendered within the territory of another state, thus disregarding the second criterion established by the Convention.

b) Awards that are not considered national according to the law of the forum

According to this additional criterion, arbitral awards that are not considered "domestic" in the enforcing state will fall within the scope of the New York Convention. In this regard, the court will apply its national law to define domestic or national awards, in contrast to foreign awards. From positive law and judicial practice, the following categories of "non-domestic" awards have been identified:

(i) Awards rendered according to procedural law (*lex arbitri*) of another state: This may lead to the application of the Convention to an arbitral award issued within the territory of the forum state but applying a foreign procedural law. This criterion was applied in Germany until the amendments to the Civil Code in 198, and in judicial precedents in the United States. Also, the civil procedural legislation of the Republic of Moldova has incorporated this criterion in Article 475(2)(b) of the Civil Procedure Code, which states that an arbitral award will be considered foreign if "it is issued within the territory of the Republic of Moldova, but the procedural law applied is that of a foreign state."

(ii) Awards issued within the territory of the requested state but containing sufficient elements of internationality to render it irrelevant to its respective legal order. The U.S. Federal Arbitration Act lists some elements of foreignness: the nationality (citizenship) of the parties, the location of properties in dispute, the place of performance of services, works, and other reasonable connections with other states. Judicial practice interprets these elements individually or cumulatively, depending on the specifics of the case at hand.

(iii) International or "a-national" awards – represent another disputed category in terms of their qualification. These awards, by the will of the parties, are detached from any national legal system and are issued applying arbitration rules identified by the parties. Some authors have opposed the qualification of such arbitral awards as eligible for recognition and enforcement under the New York Convention (Van den Berg, 1981). However, recent developments demonstrate that courts tend to admit them for recognition and enforcement, even though such cases are rarely encountered.

In the jurisprudence of the Netherlands and the United States, it has been recognized that the purpose and intention of the New York Convention are to recognize these "a-national" arbitral awards as foreign awards (*Société Européenne d'Etudes et d'Enterprises*, annexe 3).

The system of the 1958 New York Convention comprises 156 member states, which, through the ratification of the treaty, commit to respecting and applying the convention's rules regarding foreign arbitral awards. However, under Article I(3) of the international treaty, states are given the option to make certain reservations, which entail additional limitations on the scope of application of the 1958 New York Convention:

a) Reciprocity reservation: It allows the application of the Convention only to the recognition and enforcement of awards made in the territory of another Contracting State. This reservation is irrelevant to the nationality of the parties, who may come from states that are not parties to the Convention. Courts in England, Austria, Germany, and other countries have considered the situation at the time of recognition and enforcement proceedings and deem the reservation met when a state acceded to the Convention during that period, even if it was not a signatory to the treaty at the time of the award's issuance (*Kronke et al.*, 2010).

This reservation has been made by over two-thirds of the contracting states, including the Republic of Moldova.

b) Commerciality reservation: Allows a state to apply the Convention only to disputes arising from contractual or non-contractual legal relationships that are considered commercial under its national law. Although Article I(3) refers to national law for the qualification of the term "commercial," in practice, courts often interpret this term quite broadly, sometimes with reference to the definition contained in the UNCITRAL Model Law on International Commercial Arbitration.

The scope of the 1958 New York Convention can also be limited by signaling its non-retroactivity. Although the Convention does not contain an express provision in this regard, some states, including Bosnia and Herzegovina, Malta, Croatia, and the Republic of Moldova, have indicated in their implementing legislation provisions regarding the non-retroactivity of the Convention.

5. PRINCIPLES AND RULES FOR THE INTERPRETATION AND APPLICATION OF THE 1958 NEW YORK CONVENTION

The New York Convention system is being consolidated through the use of uniform principles and rules for the interpretation and application of its provisions, which directly determine the success of this international instrument and contribute to achieving its primary goal. Interpretation shall be carried out in accordance with the provisions of Articles 31-32 of the 1969 Vienna Convention on the Law of Treaties. In this regard, recognition and enforcement courts must apply these rules of interpretation, and in case of drafting ambiguities, they shall be resolved by considering the context, intent, purpose, and preparatory work of the Convention. This approach aims to ensure the uniform application of the Convention's provisions in all signatory states, directly contributing to the primary goal of the Convention, namely the promotion of international trade and the resolution of international disputes through arbitration. The Convention seeks to facilitate the recognition and enforcement of arbitral awards and arbitration agreements. Therefore, the courts seized of the matter cannot interpret the Convention by referring to their national law unless their national law expressly provides for such a reference.

The application of the Convention for five decades, along with the efforts of UNCITRAL, ICCA, CCI to standardize and generalize judicial practice in this field, has led to the crystallization of trends in application and interpretation. These trends have allowed the establishment of widely accepted principles of application and interpretation. These principles include the *pro-enforcement bias* principle (ICCA, 2011), the principle of maximum effectiveness (Gélinas, 2013), the presumption of the effectiveness of the arbitral award and arbitration agreement (Van den Berg, 1981), the prohibition of reviewing the merits of the arbitral award, and the principle of the most favorable law for the international

effectiveness of arbitral awards, as stipulated in Article VII of the 1958 New York Convention.

6. STANDARDIZATION OF THE INTERNATIONAL FRAMEWORK FOR THE INTERNATIONAL EFFECTIVENESS OF FOREIGN ARBITRAL AWARDS AND PROSPECTS FOR THE EVOLUTION OF THE CONVENTIONAL FRAMEWORK

The 1958 New York Convention was crafted to serve the interests of international trade and, by extension, international arbitration (Briner, 1999). In pursuit of these objectives during the drafting phase, the participating states set goals such as standardizing domestic legislations through the adoption of internationally uniform rules, providing contracting states with predictable and secure knowledge of how other contracting states would operate concerning the effects of foreign arbitral awards, and establishing objective criteria that would limit divergent interpretations of the international treaty (ICCA, 2009).

Over the course of the 58 years since the adoption of the New York Convention, it has become the international reference system for the international effectiveness of foreign arbitral awards, successfully establishing a global network for the circulation of arbitral awards within a unified normative context.

Comparative analysis of jurisprudence regarding the application of the New York Convention has been carried out since 1976 in the renowned international Yearbook Commercial Arbitration. Over 38 annual editions, more than 1,300 court decisions have been analyzed, selected based on the specifics of the Convention's application (Van den Berg, 1981)

According to estimates, only 10% of the cases reported have seen refusals to recognize and enforce arbitral awards (Van den Berg, 1981). The 1958 New York Convention stands out as one of the few treaties where judges take into account the uniform judicial practice of other member states. However, in recent years, there have been several court decisions with unsatisfactory interpretations of the Convention. Therefore, some authors have advocated for the promotion of uniform judicial interpretation, while others have proposed a comprehensive revision of the international treaty. The common goal of both currents of thought is to ensure an international regulatory framework favorable to the international effectiveness of foreign arbitral awards, as well as the harmonization and unification of international trade law, a goal reaffirmed by UNCITRAL's resolutions and recommendations.

This remarkable success, however, does not fully meet the goals of the convention's authors, as the current situation presents several difficulties in improving this standardized international system.

On the one hand, the brevity of the New York Convention's provisions leads enforcing courts and legal scholars to engage in legal and theoretical interpretations. However, once subjected to interpretation, the Convention's provisions end

up being categorized in different, sometimes divergent ways. This creates difficulties in harnessing the effects of arbitral awards, reduces predictability, and increases the risks of international trade. In such circumstances, the unique system of the New York Convention risks transforming into 156 national implementation sub-systems, ultimately jeopardizing the primary goal of the international treaty, which is "to promote international trade and international arbitration by facilitating the recognition and enforcement of foreign arbitral awards." (ICCA, 2011)

Professor Em. Gaillard considers that the most serious problems in applying the Convention are related to two complex situations: disputes involving states or state-owned enterprises and the manipulation of the public policy ground, which is invoked *ex officio* by the enforcing court (ICCA, 2009). It is noted that the interpretation of the Convention by the judicial authorities is the most pressing issue, as the success of any international treaty in this field depends on the meaning attributed to it in case law. Despite the successes achieved, there are still inconsistent and incoherent applications of the Convention in comparative jurisprudence (Cheng, 2011), including in states that have implemented the UNCITRAL model law or have national regulations in line with the New York Convention.

Among the deficiencies (United Nations, 1999) of the 1958 New York Convention, the following have been highlighted:

a) The absence of a comprehensive scope of application of the Convention, in the sense that it does not generally apply to the enforcement of arbitral awards considered domestic. The definition of an award as "foreign" is outdated and inadequate (ICCA, 2009).

b) The written form regulated by the treaty for the arbitration agreement is too strict in the context of modern international trade and information technology developments.

c) The possibility of enforcing interim arbitral awards under the Convention is confusing.

d) The discretionary power of the judge to allow the enforcement of an arbitral award, even if a ground for ineffectiveness stipulated in Article V(1) has been found, is not applied as a rule but as an exception.

e) The annulment of the arbitral award by the state of origin is a ground for refusing the effectiveness of the foreign arbitral award in accordance with the New York Convention.

f) The enforcement procedure regulated by the Convention is not sufficiently clear and leaves ample room for national law.

g) The issue of applicable law is resolved by constant reference to conflict of laws rules. There is a need for substantive regulation of minimum standards for arbitration agreements and awards through a treaty.

h) Too much significance is given to the law of the seat of arbitration. Determining the validity of the arbitration agreement according to the law of the seat of arbitration does not reflect the parties' intent.

7. CONCLUSIONS AND RECOMMENDATIONS

To achieve the objectives of consolidating and improving the efficiency system of the New York Convention, the following actions can be proposed:

- Continuous assessment of the judicial practice of signatory states regarding the effectiveness of arbitral awards under the 1958 New York Convention.
- Strengthening uniform solutions to problematic issues related to the application and interpretation of the Convention.
- Dissemination of uniform standards and information to national courts.
- Facilitating an ongoing dialogue among the signatory states of the Convention regarding judicial practices in the field.
- Providing signatory states with guidance and recommendations for improving the local situation.
- Organizing international forums for the dissemination and coordination of measures to enhance the conventional efficiency system.

In conclusion, the 1958 New York Convention has succeeded in establishing a homogeneous, coherent, and widely applicable conventional system. The New York Convention system is characterized by the specificity of its rules, legal institutions, subjects, and scope of application. It also has the capacity to generate uniform principles and practices of application, all contributing to ensuring an international circulation of the effects of arbitral awards.

The main current deficiencies of the treaty include problems arising from the inconsistent interpretation and application of the Convention by judicial authorities. These deficiencies can be addressed primarily through actions aimed at enhancing and perpetuating the Convention, rather than by promoting a new international treaty. Therefore, promoting a new treaty in this area is not the most opportune solution at the moment. It is necessary, first and foremost, to strengthen the existing framework of international arbitral award effectiveness, and the promotion of a new convention could be initiated once the majority of signatory states to the 1958 New York Convention are willing to modify the existing normative framework.

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IMPLEMENTATION OF THE FIRM'S PERFORMANCE MEASUREMENT SYSTEM IN THE MANAGEMENT PROCESS

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Abstract

Performance improvement is always a strategic issue for any business operating in a market economy, as it is an important basis for business survival and development. In order to assess the performance of firms in various fields it is necessary to use financial and non-financial indicators in performance measurement models. The aim of this paper is to review the design of different systems for measuring firm performance by identifying the management processes and systems that companies use to improve performance and accountability. When we refer to a performance measurement system, we are basically referring to a benchmark of what the organization considers important and how well it is performing, by measuring performance we can turn assumptions into concrete and clearly understood facts, pointing the way to process improvements, which will ultimately lead to more effective business models. Therefore, the objective of this paper is to contribute to a better understanding of the context of performance measurement development, the methodological approach of the research focusing on the definition and presentation of the concept of a firm's performance management system, and also, the identification in the literature of firms that have implemented such an effective performance measurement system.

Keywords: ERP system; strategic performance; Business Performance Management; key performance indicators; Balance Scorecard; Total Quality Management; strategic management.

JEL Classification: M10, M21, M41

1. INTRODUCTION

There is currently a lot of interest in performance measurement with many companies trying to implement the balanced scorecard. However, there is also evidence that many of these implementations are not successful. This paper reviews the design of various performance measurement systems published in the literature. Collecting and analysing data in a consistent manner provides management with real-time information to evaluate, control, and improve systems, as well as information on meeting customer requirements and achieving objectives. Analysing financial indicators is not enough in making decisions, managers must also take into account non-financial factors, invest in human resources, internal processes, pursue customer loyalty, invest in improving products and services, and make decisions efficiently and effectively. This paper aims to capture theoretical aspects of the concepts of performance measurement, performance indicators, measurement system and performance management, as well as an analysis of how to implement a performance measurement system in various organizations.

Today, there is a strong focus on developing strategic management mechanisms within companies and improving business processes. Thus, the aim of the paper is to review the literature with reference to balanced scorecard (BSC), Key performance indicators (KPI) as indispensable tools in a firm's performance measurement system. To achieve this goal, we set the following objectives:

Objective 1: To deepen the literature on "performance measurement system", "performance management", "Balanced Scorecard - BSC", Key Performance Indicators – KPI.

Objective 2: Background analysis of the literature on the implementation of an effective performance measurement system in organisations.

Objective 3: Identify studies that have contributed to the development and improvement of performance measurement systems.

The analysis carried out aimed to contribute to an overview of the topic and helped to identify new research directions.

2. LITERATURE REVIEW IN THE UNDERSTANDING AND APPLICABILITY OF AN EFFECTIVE FIRM PERFORMANCE MEASUREMENT SYSTEM

Performance measurement has become a popular topic for both industrialists and academics, reaching the stage of being identifiable as a specific subset in operations in the management literature (Pilkington and Liston-Heyes, 1998). However, despite this popularity, there is evidence that not all performance measurement initiatives are successful (Hudson, Smart and Bourne, 2001). Other researchers have argued that 70% of attempts to implement performance measurement systems fail (Wudhikarn, 2016, pp. 1702-1731). Therefore, the objective of this paper is to contribute to a better understanding of the factors that influence the success or failure of performance measurement initiatives by reviewing the

literature. In this part of the paper, the authors capture the definitions used in performance measurement, briefly tracing the background to the development of performance measurement and highlighting the main advantages and limitations of performance measurement. In recent years, the Balanced Scorecard (BSC), as a strategic tool that is part of a performance measurement system, has attracted much interest from both researchers and organizations (Hoque, 2014, pp. 33-59). and, managers and academics have recognized the BSC as one of the most important management tools for researchers, professionals, and managers (Wudhikarn, 2016, pp. 1702-1731).

The Certified Six Sigma Green Belt Handbook has featured the Balanced Scorecard as one of nine key quality approaches over many years, referring to its benefits for controlling outcomes in key management areas of an organization (Munro, Ramu and Zrymiak, 2015, pp. 1-30). American Society for Quality textbooks have also referred to the BSC. It is demonstrated in the Certified Manager of Quality/Organizational Excellence book that key BSC measures should be chosen carefully in each segment, as organizations can only use smart and confident decisions to achieve the desired outcome (Westcott, 2014, pp. 132-199). Since its inception in 1992, the Balanced Scorecard has changed and evolved. This is important because Robert Kaplan and David Norton have managed to keep the concept fresh and aligned with current management thinking. This model has been adopted by many organisations and presents a methodology for monitoring organisational performance based on measurable objectives and indicators.

The benefits of a good performance management system include: increased employee retention and loyalty; better communication between different levels of management; increased productivity and efficiency (Armstrong, 2006, pp. 12-20). Most performance measurement systems today use a combination of accounting and non-accounting-based measures, short or long-term indicators, or quantitative and qualitative components. In addition to being timely, performance measures need to be consistently applied or measured. A good performance measurement system will include both short-term and long-term measures to motivate managers to make decisions that will meet both corporate and their own short- and long-term goals.

3. APPROPRIATE TOOLS FOUND IN A PERFORMANCE MEASUREMENT SYSTEM IN FIRMS

Many organisations often work with many randomly collected and sometimes overly complex measurement tools, making them inefficient. Many of these tools are incorrectly referred to as key performance indicators (KPIs), the emphasis should be on the term key because it emphasises the importance the indicator has for the organisation (Badawy *et al.*, 2016, pp. 47-52). The importance of using KPIs is found through their application in many areas: healthcare system, construction sector, public transport system, supply chain network, human resources,

etc. Key performance indicators should be created according to organisational objectives in a clear and achievable way to provide direction, data and real conditions for evaluation, by setting them appropriately effective performance management will be built.

The characteristics of performance indicators relate to the fact that they are factors that tend to indicate the health, progress and/or success of a project, process or different service areas. A defining aspect of Key Performance Indicators is that they are very often process-oriented and focus on resources and processes that are likely to lead to successful outcomes. These specific characteristics of KPIs help to define and measure organisational objectives, which are fundamental to the current and future success of an organisation (Parmenter, 2007). The effective and relevant selection of KPIs has become essential, defining these indicators is an extremely difficult task as it encompasses a variety of aspects such as: business strategy, business objectives, measurement, analysis and reporting (Letrache, El Beggar and Ramdani, 2016, pp. 222-227). The calculation and interpretation of a single indicator cannot serve to assess the performance of an entity, as this process requires the analysis of a diverse set of performance indicators. It is considered that a set of indicators used in the assessment of overall performance includes, to the extent that they are relevant for the economic entity in question, both financial and non-financial indicators, in order to ensure a balance between financial (past-oriented) and non-financial (future-oriented) indicators.

Non-financial information in the composition of key performance indicators is as important as financial information. Thus, the non-financial dimension targets several perspectives (Jovan and Zorzut, 2006, pp. 1-6): the fulfilment of multiple tasks with a certain level of resources (personnel, raw material, machinery, etc.), such as: *flexibility of production volume, flexibility of changing the production process, flexibility of changing the product, response time to changes, design time, change/replacement of tools, ability to perform multiple tasks in a timely manner, interruptions due to breakdowns, supplier delivery time*, and as a determinant of production performance, time is distinguished, namely: *production time, on-time delivery, delivery frequency, lead time, order processing time, response time, design time, stock turnover speed, execution time, transfer time, decision cycle time, document processing time*.

Over time, a number of methods and frameworks for designing and implementing performance measurement systems have been introduced in the literature to assist organizations in defining a set of measures that reflect their objectives and assess their performance appropriately through a balanced scorecard such as the Balanced Scorecard (BSC) (Kaplan and Norton, 1992, pp. 71-80). The Balanced Scorecard (BSC) represents, that strong and balanced strategic management system that facilitates the implementation of strategy, using measures to ensure that corporate vision and strategy are implemented and achieved, these performance measures provide the framework for a strategic measurement and

management system, built in four linked perspectives: financial, customer, internal business process and learning and growth (Kaplan and Norton, 1996a). It is thus noted that the Balanced Scorecard requires expertise in its implementation, although successful implementation is not that easy (Kaplan and Norton, 2004), taking several years to achieve the full benefits that will subsequently enable organisations to clarify their vision and strategy and translate them into action, leading to substantial change and improvement (Pitt and Tucker, 2008, pp. 241-254).

The BSC model identifies four combined perspectives or related activities, oriented towards learning and development; internal processes; customers; and finance (Kaplan and Norton, 1996b, pp. 1-68). The learning perspective is brought into the context of organizational sustainability and can be measured by employee motivation, employee empowerment, employee retention and turnover, and information system capabilities (Al-Najjar and Kalaf, 2012). Related to the internal business process perspective, several value chains of processes, innovation, operations and after-sales service are identified, with the focus of the internal process being how to achieve financial goals and customer satisfaction (Kaplan and Norton, 1992, pp. 71-79). Customer perspective is a perspective that measures a company's ability to provide customers with quality services and products, including delivery efficiency and customer satisfaction (Kairu *et al.*, 2013, pp. 81-88), as well as a perspective that indicates the extent to which an organization uses customer-generated information in developing a strategy to meet customer needs and wants (Lee, 2006, pp. 50-64). The financial perspective is given by a series of measures such as net operating income, return on capital employed (ROCE), revenue growth, return on investment (ROI), cash flow, etc., the focus being on the revenue growth strategy and the productivity strategy (Kaplan and Norton, 2000). Within the BSC, managers' attention is directed towards non-financial indicators with the role of assessing customer satisfaction, employee satisfaction, process duration and quality of results (Ștefănescu and Silvestru, 2012). Thus, BSC is the key to improving a company's profitability. (Madrid-Guijaro, Garcia and Van Auken, 2009, pp. 465-488), even if financial measures are however insufficient to create future value through investments in customers, suppliers, employees, processes, technology, and innovation (Gawankar, Kamble and Raut, 2015, p. 10).

The BSC is presented through strategy maps, used to communicate and describe the strategy in a clear and concise manner to all members involved both inside and outside the organization, highlighting the dynamics of a strategy over time, so that there are links between the measures and objectives set and managed (Kaplan and Norton, 2004). Also, the Balanced Scorecard as a performance measurement device, and continuous improvement of company performance and strategic outcomes allows companies to track short-term financial results while simultaneously monitoring their progress in building capabilities and acquiring intangible assets that generate growth for future financial performance (Chang and Cho, 2008, pp. 13-23), by applying this tool providing feedback on both internal

processes and external results (Davis and Albright, 2004, pp. 145-153). The BSC thus focuses, on the strategic level of management objectives, i.e., through this tool, managers at all levels monitor results in key areas of the business (Dospinescu *et al.*, 2013).

4. IMPLEMENTATION OF PERFORMANCE MEASUREMENT SYSTEMS AT COMPANY LEVEL

In this part of the paper we have aimed to draw on a review of the literature that addresses the issues surrounding the design and implementation of performance measurement systems and the implementation of performance measures themselves.

A relevant study (Radujković, Vukomanović and Burcar Dunović, 2015) conducted for the construction industry examines the perceptions of three different construction management perspectives: investors, consultants and contractors. The study conducted found that, KPIs differ between investors (customer satisfaction, cost, time, quality), consultants (how the project is supported, number of delays due to owner, cost, cost growth, profitability) and contractors (quality, time, cost, productivity). Other research (Kusrini, Novendri and Noor Helia, 2018) established the most important KPIs for a building materials warehouse, and for other types of warehouses so that the manager can effectively improve warehouse performance (KPI for productivity - the number of products received within one hour by an employee, KPI for storage - the length of time it takes to store a product, KPI for storage - how much of the location's floor space is occupied by a product, KPI for order picking - the time it takes to pick orders, and KPI for shipping - the number of orders shipped by an employee within one hour). Another study that focused on the application of the BSC model resulted in other positive effects, such as employee satisfaction and business understanding, these areas being interconnected, being able to better influence organizational performance (Ettlie and Rosenthal, 2011, pp. 285 –299). Related to the implementation of BSC in organizations, there are studies that, have resorted to the development of ten commandments, five of them refer to what a company should do and five things a company should avoid in developing a performance measurement system (McCunn, 1998, pp. 34-36). We can thus appreciate that it is an ongoing challenge faced by executives, managers, practitioners, and researchers in measuring the performance of organizations. Evidence has shown that performance management system, especially BSC, is implemented in about 70% of firms in Western countries (Hasan and Chyi, 2017, p. 87). It is also found that BSC has been widely used among others in different industries such as higher education industry (Chimtengo, Mkandawire and Hanif, 2017, p. 84) and healthcare industry (Gonzalez-Sanchez, Broccardo and Martins Pires, 2017). From the literature review of three countries (Portugal, Spain and Italy), BSC appears to be an essential management tool for healthcare organizations, helping to quantify the intangible assets

of healthcare services that make a huge difference in a competitive market (Santos and Fidalgo, 2004, pp. 85-116), order picking and KPI for dispatch - the number of orders dispatched by the employee within one hour).

There is increasing talk in the literature about performance measurement systems, and their importance to the health of companies, as evidenced by the numerous research studies published on the successes and failures of implementing such systems. Thus, we find studies that describe how resistance to introducing a performance measurement system can stem from lack of understanding and fear of risk, and three elements of implementation can overcome this: a top-down measurement architecture, a systematic review architecture, and an integrated budgeting and planning process (Meekings, 1995, pp. 5-12). Other studies identify the classic problems found in the change management literature, namely lack of leadership and resistance to change, their solution focusing on promoting change and saving time and effort, citing the importance of standardized reporting (Hacker and Brotherton, 1998, pp. 18-23). Relevant is also the study by Eccles (1991), who argues from his experience working with organizations implementing performance measurement systems that there are three important factors for the success of such a system, namely: the development of an information architecture with supporting technology, the alignment of incentives with the new measurement system, the leadership given by the CEO. A comprehensive study, aimed at describing in detail the five-year evolution of performance measurement systems in manufacturing companies (Bourne *et al.* 2000, pp. 754-771). Studies reviewing the literature on the implementation of performance measurement systems conclude that the performance measurement literature is at the stage of identifying difficulties and pitfalls to be avoided, based on the experience of practitioners, with few published research studies (Bourne *et al.*, 2003, pp. 1-24).

In the literature, there are plenty of examples of companies in various industries that have implemented performance measurement systems to assess their performance and drive continuous improvement, and these companies use performance measurement as a critical part of their management and strategic planning processes to monitor their performance, make data-driven decisions and achieve their business goals.

5. DEVELOPMENT OF TOOLS USED IN PERFORMANCE MEASUREMENT SYSTEMS

A shift in evaluation metrics from a purely financial-based evaluation to a more holistic framework evaluation should always be the main concern of all organisations to adapt in the contemporary business world, to survive, and to achieve sustainability. A relatively recent study (Joppen *et al.*, 2019) presents a concept on Key Performance Indicators in future manufacturing, considering existing and new Key Performance Indicators to record changes in the context of digitization. Also in the sphere of digitization, it is shown in a study (Ghahremani-Nahr and

Nozari, 2021), that, the use of digital marketing key performance indicators (followers, number of searches, content views, delivery rates) can increase the productivity of marketing activities and can help to increase the effectiveness and optimize the marketing spending budget, and understanding these key performance indicators can help organizations to create value and attract more and more views.

In terms of studies that have developed the perspectives of the BSC model, we find a study that, proposed a new model for the BSC framework that includes 6 perspectives: *financial, customer, internal processes, learning and growth, risk management and social perspectives* (Razek, 2012, pp. 7-15). Thus, various studies have been identified in the literature, which develop the four perspectives of BSC. Starting from the essential aspects of the four perspectives, some authors have made a key contribution, showing that investing in learning and growth capabilities, improving the efficiency of internal processes, delivering value to customers and increasing financial success are important for most organizations and all levels within organizations (Figge *et al.*, 2002, pp. 269-284). Other approaches (Niven, 2005; Chimtengo, Mkandawire and Hanif, 2017, p. 84) reinforce the importance of the financial perspective, showing that it assesses the contribution of organisational strategy to improving financial performance. Related to the customer perspective, in one study we find embedded within this perspective, a series of measures that generally focus on four categories (Lee, 2006, pp. 50-64) namely: *quality, time, service and performance*, which help managers answer the question "How do customers view organizations?" (Chimtengo, Mkandawire and Hanif, 2017), as well as indicators, which refer to: *on-time delivery rate, market share percentage, customer rejection and retention* (Putri, Baga and Burhanuddin, 2017, pp. 34-42). It is appreciated that the perspective related to the internal business process ensures those performance expectations that will be met by developing strong internal control within the organization (Al-Najjar and Kalaf, 2012, p. 44), this approach helps to identify key business processes in which to excel (Gekonge, 2005, p. 4). Also, another study related to the development of internal perspective of business processes, propose that SWOT analysis should be incorporated with internal business perspective to achieve success, and as measures of this perspective can be: *new products, reduction of production time, production units, average customer waiting time and others* (Kshatriya *et al.*, 2017, pp. 75-86). Contributions to the learning and development perspective have been made through studies that focus on how employees can develop themselves and create more value for the organization (Pourmoradi, Niknafs and Abdollahian, 2016, pp. 133-142). As relevant indicators, within this perspective, with an important role in achieving the company's objectives, the following are delineated (Gonzalez-Sanchez, Brocardo and Martins Pires, 2017): process effectiveness (quality information system), employee capability (experienced and skilled) and the degree of company alignment (culture, teamwork, and congruence).

Many companies have adopted the Balanced Scorecard (BSC) since its inception in the early 1990s, and some researchers (De Geuser, Mooraj and Oyon, 2009, pp. 93-122) have asked, does the BSC add value to companies and if so, how does it contribute to organizational performance? The results indicated that the Balanced Scorecard has a positive impact on organisational performance by improving the integration of management processes. This aspect, prompted other researchers (Burkert, Davila and Oyon, 2010, pp. 345-362) to conduct analyses that target the impact of BSC application on managerial and organisational performance and found that, there are few empirical results available that justify the effectiveness of BSC on a large scale. Other research (Albertsen and Lueg, 2014, pp. 431-465) showed that through their research, valid constructs for BSC are not found, placing too much emphasis on planning with BSC and not enough on evaluation and control. An analysis of the studies presented in the paper, lead us to appreciate that, BSC can be a remedy to overcome shortcomings related to the use of financial or production measures, helps to identify the causes of company failure, is able to adapt to the changing business environment and is categorically, an essential management tool for strategic planning.

Another important aspect in the development of organisational performance measurement systems is the role of information technology. Thus, with the evolution of accounting information systems and information technology, the needs of organizations have increased, leading to the use of integrated systems called ERP (Enterprise Resource Planning) systems, which manage all business processes in an organization (Gronwald, 2017). An ERP system is an integrated software solution that enables efficient management of resources and processes within an organization, covering a wide range of functions including inventory management, workforce planning, financial accounting, project management, customer relationship management and more, the main purpose of an ERP system is to consolidate all of an organization's operations and data into a central platform so that internal activities can be visualized and better coordinated (Bradford, 2019). From these above mentioned descriptions we can see the role of ERP systems, to help the organization to share and transfer data and information within the organization (between departments) and outside the organization (Elmonem, Nasr and Geith, 2016, pp. 1-9), to provide support for optimization and automation of business processes, but also to reduce the working time for a given task (Sørheller *et al.*, 2018, pp. 470-477). Through the studies that have been developed (Elragal and Haddara, 2012, p. 22) it could be found that, ERP systems are the most adopted information technology solutions in organizations, a fundamental advantage of an ERP solution is the integration of series of operations into a single system, allowing collaboration, communication and coordination of activities within the enterprise (Wingreen, Mahdavian and Gupta, 2014). The use of an ERP system is recommended in all areas of business being very useful for monitoring, controlling

and coordinating all activities, processes and operations within an enterprise (Dospinescu *et al.*, 2013).

We thus appreciate that, along with BSC, KPI, ERP systems are indispensable to any organization in the conduct of business, especially since important decisions are made by managers based on the information provided by these systems. No manager can ignore the importance of measurement systems in the organization, because information technology is constantly developing especially that in the future it is expected that online accounting technology will change the accounting profession (Ionescu, Prichici and Tudoran, 2014, pp. 3-15).

6. RESEARCH METHODOLOGY

Based on the specialized literature analyzed and presented in the work, as well as starting from other relevant studies (De Geuser, Mooraj and Oyon, 2009, pp. 93-122; Burkert, Davila and Oyon, 2010, pp. 345-362; Albertsen and Lueg, 2014, pp. 431-465; Mihalciuc *et al.*, 2022; Mihalciuc and Grosu, 2022) the research hypothesis related to the importance of the existence of a performance measurement system within organizations is formulated, namely: Implementation of measurement systems performance influences decision-making. Thus, in order to analyze the importance of the existence of a performance measurement system within organizations, a number of 60 questionnaires were applied that targeted companies with the specific activity of road transport of goods in the forestry field. Through the application of this questionnaire, the evaluation of the existence of performance measurement systems at the level of these types of entities and the impact of their implementation in decision-making was pursued. The description of the general variables and those related to the analysis undertaken are presented in Table 1 and Table 2, thus using, within the research, the analysis methods, which consider descriptive statistics.

Table 1. Descriptive statistics regarding the general variables analyzed

Variable	Number	Percent
Age	60	100%
< 30 years	10	16.67%
30-39 years	25	41.67%
40-49 years	20	33.33%
over 50 years	5	8.33%
Gender	60	100%
Female	18	30%
Male	42	70%
Education level	60	100%
Post Secondary School	15	25%
Bachelor Studies	32	53.33%
Master Studies	13	21.67%
Doctoral Studies (PhD)	0	0.00%
The position held in firm	60	100%
Manager	38	63.34%
Administrator	12	20%
Accountant	5	8.33%
Head of Department	5	8.33%
Other functions	0	0.00%

Source: own processing

Table 2. Descriptive statistics regarding the analyzed variables

Variable	Value	Per- cent
<i>Importance of implementing performance measurement system in organizations</i>	Yes	82%
	Not	18%
<i>Relevant indicators in performance measurement</i>	Financial	30%
	Non-Financial	0.00%
	Financial and Non-Financial	70%
	I don't know/I don't answer	0.00%
<i>Performance review period within the organization</i>	Quarterly	55%
	Semester	15%
	Annual	28%
	Over 1 year	2%
<i>Analysis of financial indicators</i>	Yes	65%
	Not	25%
	I don't know/I don't answer	10%
<i>Analysis of non-financial indicators</i>	Yes	55%
	Not	35%
	I don't know/I don't answer	10%
<i>Factors influencing the analysis of financial and/or non-financial indicators</i>	Lack of specialized human resources	32%

Variable		Value	Per- cent
		Lack of time	35%
		Lack of financial resources	23%
		It does not represent an interest for the organization	5%
<i>The frequency of decision-making regarding the implementation of performance measurement systems</i>		Long term	55%
		Medium-term	30%
		Short term	15%
<i>Analyzed information on the implementation of performance measurement systems</i>		Costs	40%
		Customer satisfaction	25%
		Market analysis	10%
		Provision of services	14%
		Staff performance	11%
<i>The objectives pursued in making managerial decisions regarding the improvement of the company's performance</i>		Increasing the portfolio of clients	45%
		Cost reduction	25%
		Increasing the quality of services	15%
		Improving staff performance	10%
		Actions for improvement the client fidelity	5%
<i>Knowledge of the BSC tool - Balanced Scorecard</i>		Yes	20%
		Not	80%
<i>Applicability of the BSC</i>		Yes	5%
		Not	80%
		I don't know/I don't answer	15%
<i>Knowledge of KPI Key Performance Indicators</i>		Yes	50%
		Not	50%
<i>Using KPIs</i>		Yes	40%
		Not	40%
<i>%</i>		I don't know/I don't answer	20%
<i>Knowledge of ERP Enterprise Resource Planning systems</i>		Yes	60%
		Not	30%
<i>ERP implementation</i>		Yes	40%
		Not	20%
		I don't know/I don't answer	40%
<i>Feedback on the effective measurement of performance within the firm</i>		It effectively measures the most important factors that determine the current and future success of the organization	Yes 82%
		Not	18%
		There is an ongoing process by which the organization's performance	Yes 78%
		Not	22%

Variable		Value	Per- cent
	measurement aligns with the company's strategy	Yes	65%
		Not	35%
	The performance measurement and data provided frequently turns into future action, experience, and detailed analysis	Yes	100%
		Not	0,00%
	Performance measurement results are used to improve the services offered, maximize profit, customer loyalty, etc	Yes	75%
		Not	25%
	Employees are educated on performance measurement and the measurement system	Yes	91%
		Not	9%
	The performance measurement system generates decisions, transparency, and collaboration	Yes	75%
		Not	25%
<i>Feedback on the performance measurement system</i>	The performance measurement system is based on interdepartmental collaboration	Yes	75%
		Not	25%
	The performance management system is dynamic and flexible	Yes	98%
		Not	2%
	The implementation of a measurement system within an organization leads to making decisions under conditions of efficiency and effectiveness	Yes	70%
		Not	30%

Source: own processing

Taking into account the results regarding the descriptive statistics from tables 1 and 2, in the next section of the paper the aspects that validate the formulated research hypothesis are discussed.

7. RESULTS AND DISCUSSIONS

Following the data analysis, after the presentation of the descriptive statistics in Table 1, where we find the general variables, we observe that 41.67% of those surveyed have an age between 30 and 39 years, followed by a percentage of 33.33% of categories with age between 40 - 49 years. So, we can talk about uniformity of the age of the personnel categories that want systems to measure the company's performance within the organizations in this sector. The gender of the respondents is predominantly male (70%), but this aspect is determined by the fact that for this field, which can be associated with the field of technology, the workforce within transport organizations is predominantly represented by male employees. Although this field is constantly changing, due to legislative changes regarding this branch, more and more women enter this field, managing to bring economic benefits within the organizations they manage. Regarding the completed studies, most of the respondents have bachelor's degrees (53.33%) or have postgraduate studies (21.67% master's degree). From the point of view of the position held within the organization, the majority of respondents are managers (63.34%), being the main ones who make decisions regarding the management system and are responsible for the smooth running of the company's activity. Also, in the questionnaire, a percentage of 20% administrators answered, and the respondent accountants and heads of the logistics department have an equal percentage of 8.33%.

Starting from the situation described previously, to test the hypothesis: The implementation of performance measurement systems influences decision-making, various questions were asked to the respondents, described in Table no. 2. In the conducted study, almost all respondents (82%) consider it beneficial to implement a performance measurement system within the companies in which they operate, even if such systems are or are not implemented at their level. Managerial decisions are based on the information provided following the implementation of performance measurement systems, both based on financial indicators, as well as on financial ones. Related to the ability to better reflect the organization's performance or the efficiency of a performance measurement system, the respondents (70%) considered that both financial and non-financial indicators are relevant in order to implement a performance measurement system. A percentage of 30% of respondents consider that financial indicators are the most relevant, not taking into account other non-financial factors that are related to measuring the performance of organizations, such as: customer satisfaction, quality of services offered, and employee motivation. If we were to refer only to the non-financial indicators, none of the respondents consider them to be the most relevant from the perspective of performance measurement. More than half of the respondents, respectively 55%, answered that, within the organizations where they work, performance measurement is carried out quarterly, which we can infer that some of the respondents measure performance using financial indicators. A fairly large percentage (28%)

was recorded in terms of performance measurement once a year, this measure being the most effective one that can include in the most real way the determination of performance based on both financial and non-financial.

To the question related to the analysis of financial indicators, 65% of respondents state that they are analyzed at the organization level, which indicates that the vast majority have implemented a performance measurement system based on financial indicators. A percentage of 25% answered that there is no analysis of financial factors, which denotes the implementation of an ineffective system, companies should have a clear and up-to-date record of financial indicators in order to make managerial decisions. A small part of the respondents (10%) answered that they do not know if these indicators are measured at the organization level, which indicates a weak involvement and interest on the part of managers and a lack of communication between the company's management and employees. Based on the study, over half of the respondents (55%) analyze non-financial indicators, which shows that at the management level there is a major interest in measuring performance through the analysis of non-financial indicators. We consider that at the level of the percentage of 35%, which shows that, within the organizations, no analyzes are carried out regarding non-financial indicators, these aspects are treated by companies as irrelevant, the financial analysis being the only source through which the management of the organization adopts decisions. In general, newly established companies and those with a low number of employees do not want to invest in the training and improvement of personnel in order to implement performance measurement systems, considering this a waste of time and a waste of financial resources, and managerial decisions are taken on the basis of financial indicators from the profit and loss account. On the other hand, a percentage of 10% of the respondents stated that they do not know if such an analysis is done at the company level, which highlights a lack of information within the company's departments regarding the objectives to be pursued and the proposed strategies, as well as the results aimed at measuring performance.

The surveyed respondents presented the causes in a differentiated manner, which did not lead to the analysis of financial and/or non-financial indicators. Thus, 32% of the respondents stated that they do not have dedicated human resources in order to carry out these analyses, arguing that one cannot speak of a performance analysis under conditions of efficiency and effectiveness if there are no specialized people at the level of the organizational structure. This aspect also shows the fact that the organizational management does not have an interest in this direction. Also, a percentage of 35% stated that the lack of time is an impediment, considering the continuous legislative changes in this field and the high workload for employees. Some of the respondents, a percentage of 23%, considered that the lack of financial resources prevents the realization of such analyses, as companies are not willing to allocate funds for the specialization of human resources in this sector or the employment of specialized human resources, while

5% of the respondents do not consider this type of analysis to be of interest to society. Of the organizations that have implemented performance measurement systems, 55% believe that they lead to long-term decision-making, while 30% state that they are representative of medium-term decision-making, and the remaining 15% believe that, provides information for short-term decision-making.

The vast majority of respondents (40%) believe that information related to costs is the most relevant for decision-making because we cannot talk about achieving objectives and implementing strategies if we do not have clear information about costs, the possibility of investing, both technologically, as well as in terms of human resources, or the possibilities of modernization and improvement of the services offered to customers, this factor being, moreover, decisive when we make decisions regarding the investment of financial resources. Adequate management of the effects of operating activities becomes a necessity, and measuring the effectiveness of the decisions taken is an element of management focused on creating the conditions for a stable improvement of economic results, controlling thus contributing to the supervision of the stability of economic results, ensuring that their improvement is linked the rationalization of financing costs related to the operation of the enterprise (Nesterak, Kołodziej-Hajdo and Kowalski, 2023). In the implementation of the company's performance measurement systems, another determining factor is customer satisfaction, as they represent the main source that will bring income to the company. The more the organization seeks to retain existing customers but attract new customers, the more favorable performance measurement systems will record. Considering the high competition in the transport field, and the rather low demand influenced by economic and political factors at the global level, it causes the management of transport organizations to adopt new strategies in order to retain the loyalty of current customers and try to win new customers at attractive rates. An important factor at the level of transport company organizations in this sector is market analysis. In this sense, companies must constantly analyze the market, the factors that influence imports and exports, fuel tariffs, the insurance market, legislative changes at national and international level, in order to adopt strategies and allocate financial resources in conditions of efficiency. Of course, the management must also take into account the competitors on the market, what rates they apply, what is the quality of the services they offer, what strategies they adopt, in order to obtain the best possible place on the freight transport market. Information on service delivery and staff performance are relatively valued factors (more than 10%) regarding the implementation of performance measurement systems, companies mostly focusing on cost analysis and customer portfolio.

Regarding the objectives pursued in making decisions regarding performance improvement, 45% of the respondents answered that the most important objective is to increase the client portfolio, because in recent years the number of companies in the field of transport has increased significantly, and the demand for decreased

quite a lot, both following the covid pandemic and following the military conflict between Russia and Ukraine, negatively influencing the market in this area. Another major object, which the respondents identified in percentage of 25% is that of cost reduction, this objective being more and more difficult to achieve, due to the increase in fuel prices, of over 20% in the last two years, as well as the fact that the insurance market also recorded huge increases in terms of insurance premiums, some administrators having to take certain risks and give up optional policies in order to reduce costs. Another aspect is related to the costs related to salaries, which have increased, employers having to adapt to the legislative changes in the Labor Code regarding both the minimum salary and the per diem payment of drivers. On the other hand, in this field of transport, attractive salaries must be given to the staff, in order to motivate them and to carry out all the contracts concluded with the customers. Part of the respondents, in percentage of 15%, have as their objective the increase of the quality of the services offered, this objective being a relevant one if investing in the fleet of means of transport, through the purchase of new means of transport, which will obviously lead to the reduction of costs regarding fuel and of the significant costs that could be incurred with their repairs and maintenance. The objective related to the improvement of staff performance, is also considered relevant in the proportion of 10%, in general transport managers seek to attract young workforce and to train and motivate them accordingly, in order not to have to resort to continuous changes of employees, because this aspect will lead to the provision of services of a lower quality, with repercussions on the loss of customers, the weakening of internal processes, and obviously a considerable financial impact. Related to customer loyalty, a fairly small percentage of 5% of respondents is observed, who considered their loyalty objective in making decisions regarding performance within the company. From our point of view, it is increasingly difficult for operators in this sector, due to the low demand, companies having to resort to specific ways of retaining the loyalty of current customers and looking for innovative methods to attract new transport contracts, trying to reduce costs as much as possible at the organization level.

The general purpose of performance evaluation is to improve the efficiency of the organization by ensuring that the individuals who compose it work at the highest level of their abilities and that they also develop their full potential, in this sense organizations should develop specific performance measurement systems their needs. As we can see from the centralized information in table 2, a fairly large percentage of respondents (80%) do not know this performance measurement tool, nor do they implement the Balanced Scorecard method. We do not notice the same thing with KPIs, being still known in percentage of 50% and still applied in percentage of 40%, this aspect showing the interest in using the most specific indicators, key specific to the field.

Technological evolution clearly influences the business world, thus changing work environments and business management (Pirău, 2022), the use of

information technology (IT) allowing a company to quickly, accurately and timely access information that helps in decision-making, thus increasing competitive advantage and also leading to an increase in their profitability (Stoica and Ionescu-Feleagă, 2022). Any transaction that the company carries out with external entities must be recorded, through the business applications built in *Enterprise Resource Planning ERPs*, to collect and provide data (input or output) and for analysis (Faccia and Petratos, 2021). Thus, considering the vital ERP type system within transport companies, we interviewed the respondents regarding the knowledge and applicability of this type of integrated system, the results of the study showing that it is known in proportion to 60%, but from the point of view of implementation, only 40% of the respondents have implemented it at the company level, which still shows the increased interest in such a type of system, the companies in this sector, managing to find new alternative methods and systems to become more useful in such an accelerated environment of change. Due to the fact that digitization has facilitated familiarization with a constantly changing work environment, they have also determined service providers to develop their services, resources and infrastructure to support them (Krájnik and Demeter, 2021).

Related to the implementation of performance measurement systems at the level of transport companies, it can be observed that the vast majority (over 55%) analyze the most important factors in order to determine the present and future success based on the data provided following the continuous implementation of processes aimed at performance measurement. Human resource is considered by the respondents to be an extremely important component in performance management, the great majority (75%) appreciating positively the management's communication with the departments within the companies, regarding performance measurement. All respondents (100%) appreciated the fact that the results obtained lead to improved services, profit maximization and customer loyalty. Regarding the appreciation of the performance measurement system, the respondents believe that their implementation generates decisions, transparency both at the level of the organization and outside it, customers being more and more interested in these aspects. Also, 75% of respondents appreciate the fact that the implementation of systems at the level of organizations are based on interdepartmental communication, which denotes a close connection and communication between them, in order to achieve strategic objectives. The same percentage of respondents, namely 75%, appreciated the fact that the management system is dynamic and flexible, which suggests that transport companies frequently measure the company's performance and constantly adapt to economic, social and environmental changes. Almost all respondents (98%) appreciated the fact that the implementation of performance measurement systems lead to efficient and effective decision-making, which denotes the fact that the objectives to be achieved have a favorable impact within the organization, the performance indicators are chosen, implemented and lead to

results that reflect the reality regarding the activity carried out within the organizations.

The questionnaire applied to companies in the field of freight transport, shows that they are prepared for an accelerated computerization process, that they are aware of the advantages of implementing an efficient system for measuring the company's performance and, of course, the fact that the existence of a system for measuring the company's performance also influences decisions managerial.

8. CONCLUSIONS

Determining the degree of performance of organizations begins with the identification of specific indicators that allow a detailed quantification of process performance, measuring the performance of an organization being a criterion of connection between effectiveness, efficiency, quality, productivity, profitability, satisfaction. One of the necessary conditions for an effective performance measurement system is the definition of activities and the precise establishment of key indicators. Thus, the continuous measurement of performance, through key performance indicators, is a concept used by companies, which through the contribution of financial and non-financial indicators, helps organizations to estimate and consolidate their success. Based on these directions, a manager monitors and controls only a few key indicators relevant to the organization in order to achieve the most important objectives, such as high product quality and high productivity. In this work, information was provided regarding the use of key performance indicators, in order to establish the implicit objectives of the companies, together with the BSC tool that perfects the company's performance management and measurement system, properly integrated with the help of ERP systems. As it was found from the study of the specialized literature, those companies that already have a sophisticated IT infrastructure and a good corporate information architecture have a high chance of finding the ability to develop performance measurement support systems as well.

This paper was primarily based on the reflections of practitioners, and on the numerous researches, which have focused on performance measurement within companies, this aspect representing an ongoing challenge faced by directors, managers, practitioners, and researchers. The main concern of all organizations should be a holistic approach to performance measurement in order to adapt, survive, and ensure business sustainability. In this sense, the BSC has undoubtedly become the most well-known and useful performance measurement system today due to its broad and holistic applicability in almost all industries. It has been found that as the business environment evolves, more and more perspectives within the BSC have emerged and developed. The implementation of BSC within organizations leads to the improvement of business models as well as their performance, providing an overview of the performance of organizations and being able to help identify problems and take measures to solve them.

Following the study, it was found that companies prefer to analyze predominantly financial indicators, resulting from quarterly, half-yearly and annual financial reports. Although the implementation of performance measurement systems based on financial and non-financial indicators are more expensive, more and more companies adopt the implementation of these systems in order to improve the management system. Also, both employees and the management of the company are not interested in allocating time and money in order to implement performance analysis systems based on financial and non-financial indicators. Following the analysis, it was found that a considerable part of the companies in the sample implement performance measurement systems in order to develop long-term strategies, while some of the respondents are reluctant to implement systems over a longer period of 3 years, this fact also due to the continuous changes regarding the legislation regarding the transport of goods in the forestry sector. As we well know, the transport market has been strongly affected in the last period due to both the Covid pandemic and the excessive increase in prices, the high competition in this field causing the managers of transport companies to be as innovative as possible in order to maintain current customers and to attract new potential customers. Another important factor at the level of transport companies is given by the human resource, which, as it emerges from the study undertaken, properly understands the concept of performance measurement, which shows that if employees are informed about the strategies and the objectives to be achieved, as well as explaining them as clearly as possible, they will be able to help the management in achieving the objectives. It is observed that the information regarding the role and importance of performance measurement is spread throughout the organization, thus employees will be able to take into account in the activity carried out the objectives and strategies pursued and will be able to help the organization in the implementation of performance measurement systems and their improvement.

Performance measurement represents a complex and continuous process that involves time, availability, allocation of financial resources, human resources specialized in this field, being also a dynamic and continuous process that includes defining objectives, identifying KPIs, collecting and analyzing data, acting and reviewing and updating the performance measurement system. Moreover, the performance measurement system must be indispensable within an organization regardless of its size. Thus, it is indicated that more and more companies adopt emerging performance measurement systems, which are based on the information generated by non-financial indicators such as customer satisfaction, market analysis, motivating and educating human resources, continuous verification of the quality of services offered and their adaptation to market conditions. We can conclude that the implementation of performance measurement systems is the most important factor that provides the organization's management with information about the activity carried out.

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TALENT MANAGEMENT PRACTICES IN ROMANIAN PUBLIC INSTITUTIONS

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Abstract

The evolution of practice-oriented management scholarship turned its focus from the material subject-matter of scientific management to human resources. Emphasis on the key role of human capital in the process of organizational development grew together with technological progress, labor market global opening and migration towards better-paid jobs.

The identification of talented human resources became increasingly difficult due to lack of clear and specific tools for measuring individual competences, and also due to current confusion in the literature in the field regarding the concepts of talent and talent management.

Although there has been published a high number of research articles dealing with talent management, especially after 2010, their number is still low in Romania.

This study aimed to identify talent management practices used in public institutions in three Romanian counties: Iasi, Bacau and Suceava by means of a qualitative study, in which, a structured interview was applied to human resource managers and experts, as well as to other specialists in such sectors as healthcare, education, culture and public administration.

The collected data led us to the conclusion that extensive empirical research comprising a high number of public institutions in all sectors and regions of Romania is needed for establishing the need and usefulness of implementing talent management practices on a high scale.

Keywords: *talent; talent management; practices; public institutions.*

JEL Classification: O15, M12, J45

1. INTRODUCTION

The economic crises of the last decades and the lack of qualified personnel in many areas of activity have led to a reassessment of the existing approaches in the recruitment and selection of personnel and have promoted new ways of identifying, developing and retaining employees who through their own performances can contribute to the performance of the organization.

The field of talent management emerged and developed in response to changes in the global labor market with the publication of *The War for Talent* by McKinsey practitioners in 1997.

Initially considered an integral part of human resource management (Lewis and Heckman, 2006; Tarique and Schuler, 2010), the field of talent management has evolved over time, and the number of empirical research is increasing from year to year. Current approaches in the literature are focused on four research directions (Ingram and Glod, 2016): talent management is represented by a set of practices and functions strongly related to human resource management (Lewis and Heckman, 2006; Tarique and Schuler, 2010); talent management is the exclusive approach of talents in the organization, respectively of employees considered top or elite (Christensen and Rog, 2008; Downs and Swailes, 2013); talent management is focused on the development of the talent pool within the organization (Boudreau and Ramstad, 2005; Aksakal *et al.*, 2013); talent management is focused on identifying key positions at the organization level without discovering talents, theory supported by Iles, Preece and Chuai (2010) and Vural, Vardarlier and Aykir (2012).

Through this paper, we aim to identify the talent management practices used globally based on the review of the specialized literature as well as the practices currently used in Romanian public institutions.

2. CURRENT APPROACHES IN THE LITERATURE

Often confused with HR practices due to the lack of clear definitions and theoretical foundations, talent management practices are different and depend on the needs of each organization.

Initially, studies focused on the fact that talent management practices are a reinterpretation of human resource practices, but while the second category allowed especially the inclusive approach, the first referred strictly to the recruitment and development of a small number of people considered potentially talented.

Based on the review of 31 articles published between 2015 and 2022, we have determined that there are five basic ideas (Alziari, 2017) that have promoted the implementation of talent management practices in private organizations: talent management is different from human resource management, talent is specific to a small number of employees, decisions on talent management fall to managers and not human resource specialists; the "moment of truth" - the decision on occupying

a position and who is the right person for this position belongs to managers; human capital management applied responsibly, generates competitive advantages. Alziari (2017) concludes that talent management is different from personnel management as well as requiring customized approaches.

According to Sparrow (2019), the concepts that have contributed to the development of the field of talent management are: *systematic attraction, identification, development, involvement and retention within the organization of human capital that through its own skills can contribute to the development of the organization* (Apud Chartered Institute of Personal and Development, 2008); *development of the human resources portfolio by identifying talents; planning the need for human resources; recruitment and career development based on behavioral indicators* (Apud, Boyatzis, 1982); *knowledge-based jobs as a competitive advantage* (Apud Zuboff, 1988); *remuneration per person and not per job* (Apud Lawler, 1994).

Claus (2019) considers that individual-level talent management practices must be developed based on three traits of human behavior: reason, will and self-interest, and Kravariti and Johnston (2019) argue that in the private environment, talent management practices have been implemented in order to improve corporate performance and with the aim of developing valuable human capital.

Private sector organizations use talent management practices in accordance with current theories, regardless of where or in what field the research was conducted: workforce needs planning, procurement, performance management, leadership development, career management, talent assessment, talent hiring, and talent retention (Bolander, Werr and Asplund, 2017; Levy *et al.*, 2017; Saha, 2017; Pandita and Ray, 2018; Pagheh, 2019; Luna-Arocas, Del Valle and Lara, 2020; Ruchira *et al.*, 2020; Al Aina and Atan, 2020; Gillberg and Wikström, 2021; Ćizmić and Ahmić, 2021; Dauth *et al.*, 2023) plus depending on the specifics of each organization and other types of practices such as identifying critical positions, job shadowing programs, coaching and mentoring, intrinsic and extrinsic rewards, frame rotation, job safety, special work tasks to stimulate learning, creating project teams, team involvement in international projects. (Glaister *et al.*, 2018; Landry, Schweyer and Whillans, 2018; Salau *et al.*, 2018; Meyers, 2019; Mujtaba, Mubarak and Soomro, 2022).

Research in the literature published in recent years on talent management practices in public institutions is small in number and is generally adapted to the culture and legislation in the country where the study was conducted.

Talent management research books mention that the most appropriate talent management practices for public institutions are talent identification, talent recruitment, talent development and talent retention (Lee and Rezaei, 2019).

The analyzed articles aimed at identifying talent management practices in public institutions in various areas of the globe have confirmed that these practices exist but are implemented according to the specifics of each organization.

Due to the rigid legislation, only reward management can be implemented in public institutions in Slovenia by granting performance bonuses (Kozjek and Franca, 2020), and in Scotland the implementation of talent management practices in public institutions encounters obstacles and requires the readjustment of the thinking of practitioners in the field of human achievements to the current requirements of the labor markets (Grant *et al.* 2020).

While Namibia's Universities implement selection, recruitment, hiring and career advancement practices (Baporikar and Smith, 2019) in Namibia's government organizations, no talent management practices are implemented due to lack of consensus among managers, HR departments and employees (Filippus and Schultz, 2019).

In government institutions in China and Pakistan, attracting and retaining talented staff is done through scholarship systems, staff development programs employed over the past 5 years, the provision of work housing as well as tax exemptions (Saddozai *et al.*, 2017). In the Universities of Ghana, emphasis is placed on training, development, performance evaluation, rewarding talented staff and providing better working conditions (Bartrop-Sackey *et al.*, 2022).

In higher education institutions in Saudi Arabia, three talent management practices are identified: attracting talent, managing top talent performance, training and developing talent (Nasser, 2019), and in the health field, talent development and retention practices are tailored to each function: administrative staff consider it essential to recognize merits, and medical staff want career development and succession planning (Al Mheiri *et al.*, 2021).

Following a study conducted in six Australian universities, Mohammed, Hafeez-Baig and Gururajan (2019) determined that the most important processes used in talent management within the education sector are talent acquisition, performance management, coaching and leadership development.

The vast majority of studies are focused on the benefits that talent management practices bring to organizations, but there is little empirical research that analyzes the impact and dimensions of an ethical and psychological nature that these practices have on employees. We also note that the research carried out in recent years is focused on how to approach talent management practices and whether these practices should be applied to all employees in the organization or only to type A players, respectively to 10% of the organization's staff, which is distinguished by outstanding performance (Michaels *et al.*, 2001).

According to the specialized literature, recruitment, selection, development and promotion practices in key positions of potentially valuable personnel within the organization, often contribute to its motivation and the achievement of outstanding performances. Studies conducted globally on the implementation of talent management practices have shown that they are useful and necessary for the success of organizations.

In the private environment, exclusive talent management practices are preferred, and in public institutions inclusive practices, but these conclusions cannot be generalized, because current research in the public system is small in number and cannot generate theoretical benchmarks.

The consequences of exclusive approaches of talent management practices in the private sector have led to numerous labor market disputes. Employees considered less talented saw themselves excluded from the development and promotion processes, which led to a sharp demotivation and implicitly the desire to leave the company.

Following the analysis carried out, we found that talent management practices evolve and differ from one country or institution to another, which leads to the need to reassess existing approaches and requires the intensification of research from a multidisciplinary and interdisciplinary point of view and the development of new manuals in the field of talent management adapted to the new conditions on the labor market (Liu, 2019).

3. DATA COLLECTION AND ANALYSIS

The purpose of this approach was to identify the talent management practices currently used in Romanian public institutions.

In this regard, we have applied an Interview Guide in public institutions located in three counties of Romania. Due to the current confusions regarding the field of study of talent management, only 16 people responded to the invitation to participate in the research.

The study participants were asked to mention whether the institutions in which they operate implements talent management practices, to exemplify these practices, their type and, if necessary, to highlight the benefits brought to the organization by their implementation.

In what follows, we give a synthesis of the responses collected from the research participants (Table 1).

Table 1. Talent Management Practices by Business Area

Activity field	Talent management practices used in the respondent's organization
Culture	<i>Talent Identification Castings Workshops to develop professional skills Organizing international events where experience exchange takes place</i>
Pre-university education	<i>Ensuring teacher continuity in the classroom Enrolling and attending training courses Assigning specific tasks to the identified talent and financial motivation, to the extent permitted by law</i>

Activity field	Talent management practices used in the respondent's organization
Post secondary education	<i>Staff career development, by retaining talents, by promoting work-life balance Motivating employees Staff participation in various personal and professional development courses, Hierarchical professional growth Participation in exchanges outside the country</i>
Post secondary education	<i>Participation in Olympics and competitions Participation in recreational activities</i>
Higher education	<i>Talent recruitment, identification, development and retention, career management and succession planning</i>
Higher education	<i>Facilitating access to doctoral and postdoctoral fellowships Engaging high-skilled human resources Facilitating access to internal grants Support for publication in impact factor journals Promotion based on competence and performance criteria</i>
Media	<i>Practice sessions with senior journalists Opportunity to approach various journalistic styles in order to identify skills Premiums, prizes and bonuses</i>
Pre-university education	<i>Mentoring Programs Participation in different Erasmus courses and programs</i>
Health field	<i>Hiring Assessment Promotion</i>
Higher education	<i>Identifying potential employees on the market who have achieved valuable results and attracting them to the recruitment phase; Rewarding performance by reducing the teaching norm, by rewarding research results Inclusion in research projects Dissemination of good practices and financial reward through certain payroll mechanisms Award of the merit gradation Refresher programs Promotion to management positions</i>

Source: answers from study participants based on interview guide

Based on the responses received from study participants, we note that in the vast majority of institutions, talent management practices are implemented, although sometimes they are confused with human resource management practices. Even if they were initially reluctant to change and it was not easy at first,

employees appreciate how their work and effort are recognized, they are motivated, efficient, willing to make additional efforts to reach their true potential.

All participants in the study believe that these processes contribute to employee performance and at the same time bring benefits and add value to the organization. Especially in areas where talent is regarded as an essential condition of filling positions, practices are applied by talent management in close connection with the objectives of the organization and employees alike. At the same time, six research institutions do not have particular concerns for human resources and no talent management practices are implemented.

Respondents working in these institutions believe that the implementation of talent management would benefit the organization and employees, but at the same time would lead to inequalities and favoritisms, practices quite common in Romanian public institutions. 44% of respondents say that exclusive talent management practices are implemented within the institution of origin and that inclusive talent management practices would be appropriate, 12% of respondents say that exclusive practices are implemented within the institutions and that they are suitable for the field in which they operate, while 44% of respondents say that inclusive practices are applied within the institutions of origin and that this is the model that fits the organization to which they belong.

We can say that talent management practices are indispensable for Romanian public institutions that want to strengthen their talent pool and achieve long-term performance.

We also believe that talent management practices can be adapted to the needs of each field of activity and are absolutely necessary in order to identify personal skills and abilities for placing employees in the right jobs as well as promoting them to key positions.

The participants of the study believe that the implementation of talent management practices on a large scale in the future will have a positive impact, leading to increased performance and the achievement of organizational goals, and at the same time will contribute to increasing job satisfaction and the desire for self-development and continuous self-improvement of employees.

4. DISCUSSIONS AND CONCLUSIONS

Based on the literature review we conclude that talent management practices depend on the specifics of each region and each field of activity in which they are implemented.

The challenges currently faced by Romanian public institutions regarding the management of human resources and the implementation of talent management practices are human in nature and the current legislation that promotes the equalization of personnel without taking into account the activities carried out, the time required to achieve them, the responsibility, involvement and skills of each. With employment in a public institution, the vast majority of people are no longer

willing to make additional efforts, react negatively to change and do not invest time and resources in professional and personal development.

There are areas of activity where staff is insufficient and the workload is very high, and legislative and financial constraints contribute to the demotivation of valuable employees and for these reasons they migrate to better paid jobs.

The study provides an overview of the state of implementation of talent management practices in public institutions in Romania.

We aim as a future research direction to extend the study to other Romanian public institutions as well as to involve a larger number of human resources specialists in research, in order to identify new methods of attracting, developing and retaining valuable employees that provide their satisfaction and coincide with the needs of the organization.

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ON SUSTAINABILITY AND ITS IMPLICATIONS, THROUGH THE LENSES OF INTERNATIONAL LAW

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Abstract

The Sustainability is a common term in many areas of activities and sometimes it appears to be a creation of the present, which is not true. Since the definition of sustainable development was adopted in 1987 by the Brundtland report "Our common future" it became commonly accepted and gained immense significance. In the context of rapid changes of our world in all fields and continuous environmental, social and economic challenges, understanding and embracing sustainability is crucial for the well-being of humanity and future generations.

The concept implies the efforts to find a delicate balance between economic development, environmental protection and social progress, hence it encompasses a wide range of measures to be undertaken by states.

The aim of the paper is to briefly explore the origins of sustainability as a concept, its features and impact on the evolution of different social, legal, and economic relationships. At the same time, its multidimensional character will be highlighted. From the first concerns on the use of resources, in the 60's to the Objectives of Sustainable Development adopted by the United Nations and widely acknowledged by the international community and organizations, including the European Union, the concept evolved and influenced changes in the world.

Keywords: *Brundtland Report; Sustainable Development Goals; United Nations.*

JEL Classification: K33, K37, K38

1. INTRODUCTION

Sustainability as a concept is present almost everywhere in our life, in the public discourse and it is associated with the most areas and environments: business of different types, independent activities, environmental policies, international trade, healthcare (ten Have and Gordijn, 2020) as a fundamental right and access to healthcare services, smart cities, energy sector, education, agriculture and food industries, justice, human rights and the list could go on. It has become

an essential element of projects or grants with a European Union or national source of financing. The European Union has a holistic approach on sustainability and relies on the goals established within the United Nations (European Commission, 2023).

The concept presents various facets and an interdisciplinary nature considering the need for collaborative efforts to address global challenges. Hence, it seems to be a creation of the present times and a general goal of our society. The commitment for this goal seems to be real, yet one may ask what does it mean (Elder, 1991) and what is its origin? (Mensah, 2019). Addressing this question is the principal aim of the present paper.

If one looks for the usual meaning of the term, one can observe that it refers to the “the quality of being able to continue over a period of time” or “the idea that goods and services should be produced in ways that do not use resources that cannot be replaced and that do not damage the environment” (Cambridge Dictionary).

Although the concept has become a part of the usual language, due to the fact it is used in different contexts and meaning, regardless of the analysis perspective, it is an amorphous concept (May, 2018). Therefore, exploring its origins, the significance and evolution in time presents theoretical and practical interest. The aim of the paper is not to give a comprehensive analysis of the concept but a general overview on its dimensions in International Law.

2. ROOTS AND REGULATION

Essentially, the concept of sustainability represents a global approach to development that aims to meet the needs of the present without compromising the ability of future generations to meet their own needs. This may not seem complicated and it is in accordance with many of the current concern of states and other stakeholders (Wyeth and Termini, 2015), especially regarding the pervasive consequences of climate changes.

Yet, the roots of sustainability can be traced back to the early 20th century when scholars and thinkers began to raise concerns about the depletion of natural resources and environmental degradation. In other words, the topic is not new, instead the international community is more aware of the profound changes and their effects not only on present generation but also on the future ones.

The landmark act in this regard is The Brundtland Commission's report “Our Common Future” adopted in 1987 (UNGA, 1987). The name under which the 1987 Report is widely known belongs to the Commission's chairwoman, Gro Harlem Brundtland. It defined and popularized the modern concept of sustainability, as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

The official name of the Commission was World Commission on Environment and Development, and it was established by the United Nations in 1983

(UNGA, 1983). As the Report states, it was the task given by the General Assembly to this Commission to elaborate a “global agenda for change” (UNGA, 1983).

The concept was even used earlier, in the 1970’s to describe an economy “in equilibrium with basic ecological support systems”, therefore, it does not represent a concern articulated during recent years, the challenges concerning resources and the future generations was a topic already discussed. In essence, the main pillars are those identified and established by the early acts adopted in this field.

The Commission defined sustainability in the following wording:

“Humanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs. The concept of sustainable development does imply limits - not absolute limits but limitations imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to absorb the effects of human activities. But technology and social organization can be both managed and improved to make way for a new era of economic growth. The Commission believes that widespread poverty is no longer inevitable. Poverty is not only an evil in itself, but sustainable development requires meeting the basic needs of all and extending to all the opportunity to fulfil their aspirations for a better life. A world in which poverty is endemic will always be prone to ecological and other catastrophes” (UNGA, 1987, para 27).

The Report makes a comprehensive analysis of the state of the planet and society at that time, including different types of information and data from the 1960’s and anticipating future effects in economic, social, environment and human rights fields.

The wording of the definition is interesting and linked to the idea of finding a balance, yet it is not clear and does not comprise an exhaustive list of policies and concrete measures to be undertaken by states and affirms the idea of responsibility towards future generations (May, 2018), a notion that is frequently used at the present especially in the context of climate change and environmental policies.

Annexe 1 of the Report makes a synthesis of the key legal principles of sustainability and the list includes intergenerational equity, which emphasizes the fair and equitable distribution of resources and benefits across generations, ensuring that future generations inherit a world with adequate resources and opportunities; intra-generational equity which focuses on fairness and equity within the current generation, addressing social, economic, and environmental disparities to promote a just society; conservation and efficiency which highlights the efficient use and conservation of natural resources to minimize waste and reduce environmental impacts, promoting long-term resource availability; the precautionary principle which suggests that when there is scientific uncertainty regarding the potential harm of an activity, precautionary measures should be taken to prevent potential adverse effects.

The precautionary principle is strongly attached to the environmental protection and responsibility of states and it was disseminated to other subsequent legal instruments. The most eloquent wording of this principle can be found in the 1992 Rio Declaration on Environment and Development as its Principle 15:

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. (UNGA, 1992)

However, a lecture of its content shows that it does not establish any positive obligations for states and only highlights that lack of scientific proof does justify lack of measures to be undertaken by states (Ellis, 2006).

There are multiple dimensions of sustainability, considering the high degree of complexity of the areas concerned, from environment to economic, social, and even cultural sustainability, all of them having many interconnected traits.

Environmental sustainability focuses on conserving natural resources, reducing pollution, and maintaining ecosystem health to ensure a balanced and sustainable environment. Economic sustainability promotes economic growth, development, and prosperity while ensuring social equity and environmental responsibility. Social sustainability addresses societal well-being, social justice, human rights, and inclusivity, aiming for an equitable distribution of benefits and opportunities for all. Cultural sustainability preserves cultural heritage, diversity, and traditional knowledge, recognizing the role of culture in sustainable development.

The 1987 Report emphasized that sustainable development is not merely an environmental issue, but an all-encompassing challenge requiring an integrated approach. It called for a harmonious integration of economic development, social inclusivity, and environmental stewardship. The idea was to create a global framework that considers the interdependencies between economic systems, environmental stability, and societal well-being.

A significant aspect of the Brundtland Report was its exploration of the global North-South divide. It acknowledged the differing levels of development across the world and emphasized the need for international cooperation to bridge these gaps. It underlined that sustainable development must address poverty eradication and equity on a global scale. Over time it had a profound influence on shaping international sustainable development frameworks and policies.

The Brundtland Report is seminal and established the paradigm of sustainable development as a core principle for global progress, emphasizing an integrated approach that harmonizes economic growth, environmental preservation, and social equity.

3. THE UNITED NATIONS AGENDA 2030

All the aspects presented up to this point clearly reveal that sustainability should have a preventive effect or influence, considering that humanity is facing severe effects of the climate change, biodiversity loss, social inequalities, and

resource scarcity. The negative context made sustainability increasingly critical. Governments, businesses, civil society, and individuals are recognizing the urgency to transition towards sustainable practices and policies.

One of the most influential and worldwide known agreement (not in the technical sense of an international treaty) is represented by the *Sustainable Development Goals* (or SDGs) established by the United Nations in its 2030 Agenda (UNGA, 2015), intensively promoted and made visible. The current Sustainable Development Goals seek to build on the Millennium Development Goals, the previous version adopted by the General Assembly of the United Nations, which included 8 goals (Eradicate extreme poverty and hunger, Achieve universal primary education, Promote gender equality and empower women, Reduce child mortality, Improve maternal health, Combat HIV/AIDS, malaria and other diseases, Ensure environmental sustainability, Develop a global partnership for development), and complete what they did not achieve.

Various international and national sustainability initiatives followed, which demonstrates a global commitment to sustainable development.

The Sustainable Development Goals are multi- and interdisciplinary and cover different areas of life, from poverty to good health, quality education, food and agriculture, climate action, sustainable cities, gender equality and non-discrimination, decent work, to peace, justice and strong institutions. All 17 Sustainable Development Goals are interconnected and have a list of 169 special targets to be achieved (UNGA, 2015).

As for the implementation of all the goals, the General Assembly Resolution that established them states the following:

“All of us will work to implement the Agenda within our own countries and at the regional and global levels, taking into account different national realities, capacities and levels of development and respecting national policies and priorities (...)” (UNGA, 2015, para 21).

As it appears, the text describes a general obligation incumbent to states and individuals at the same time, which is quite vague (Hirokawa, 2016) and may leave room for further questions on its efficiency.

From a legal perspective, there is an important question on the legal status of sustainable development, which means what is its relationship with the sources of International Law, namely those that the International Court of Justice applies when assessing on an application submitted by a state or states. The sources are codified in article 38 of the Statute of the International Court of Justice, the only international legal act on this matter (Moldovan, 2022), and all present special features.

As previously stated, sustainable development was defined by the Brundtland Report, which is not an international treaty, it is, technically speaking, *soft law*. However, it was included in the provisions of treaties and other reports, declarations, of different international organisations and may be considered, by effect of

opinio juris, as part of customary international law, although there is a strong resistance towards such a recognition, mainly based of the lack of a clear recognition or qualification as such from an international body (Barral, 2012). The main key of this issue is that recognising its customary, legal nature means that if it is legally binding, therefore creates obligations for states. And this is a main point when addressing the eventual responsibility of states.

Considering the complexity of fields where sustainability operates, it is certain that it implies the need for coherent policies and effective measures (Craig and Benson, 2013), the definition being a subsidiary problem.

4. CONCLUSIONS

Sustainability presented here from the perspective of the most relevant instruments of International Law is undoubtedly a multifaceted and dynamic concept that addresses the interconnectedness of economic, social, and environmental systems. It is a concept that implies an integrated approach. Achieving sustainability requires consistent efforts from states and the entire international community and action from all stakeholders, including at an individual level. It requires at the same time, a comprehensive understanding of its historical roots, significance and fundamental principles, in order to highlight its multidimensional aspects. It is difficult to anticipate if humanity will be able to reach this goal, to effectively put into practice the collaborative efforts and interdisciplinary approaches that are essential to address the complex challenges of sustainability and pave the way for a more sustainable future for all. Factors such as national differences and approaches may affect the way that principles and aims established by the United Nations and acknowledged by all international organisations are received and implemented at the national level by the national authorities. The vertical effect of disseminating the principles of sustainable development must be analysed by reference to the domestic dimension and will in giving effect to the goals established by the international framework.

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THERMAL REHABILITATION OF BUILDINGS - AN ESSENTIAL COMPONENT OF GLOBAL CLIMATE CHANGE POLICIES. A PUBLIC POLICY VIEW IN THE UNITED STATES, THE EU, CHINA AND AUSTRALIA

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Abstract

Starting from the premise already stated in the title according to which the energetic rehabilitation of buildings is an essential component of the policies regarding the fight against the climate change, this paper briefly presents several international variants of thermal rehabilitation policies and energy of buildings, with the lens of the most important countries, both from the point of view of the number of buildings that must be subjected to this process, as well as the diversity and efficiency of the policies adopted and the programs used in order to achieve this objective. This presentation of policies from some of the most important countries in the world is not intended to be exhaustive, but it provides a general and useful perspective on the most effective and used specific programs.

The second part of the work includes a presentation of the most important legislative measures and national programs adopted by Romania in the effort to improve the energy performance of the built real estate fund, as well as a series of useful conclusions for both Romania and any other state in a similar situation. Any of the presented models, even if only briefly, we consider that they could represent sources of inspiration for identifying the most suitable and effective solutions for a country like Romania, which is at the beginning of the road on the path of adopting and implementing policies to combat a climate changes, in general and those regarding the thermal rehabilitation of buildings, in particular.

Keywords: *combating climate change; thermal rehabilitation of buildings; energy performance of buildings; the built real estate fund; green energy; sustainable public policies.*

JEL Classification: Q01, Q56, Q58, F63, F64

1. INTRODUCTION

Nowadays, almost all developed or developing countries respond to the challenges of climate change through various programmatic vehicles likely to improve the environment and the daily life of the inhabitants. Some of these states have even launched long-term programs, that impose ambitious goals, as reducing the carbon footprint and fight against pollution. There are two areas that can have a direct positive impact through the efficient management of the fight against polluting emanations, especially since they are permanent polluters: the automotive industry and the thermal efficiency of buildings. In this article we will address the second field, which lately enjoys special attention from public administrations all over the world.

Frequently, states with the most advanced and effective thermal rehabilitation policies for buildings are also the largest polluters. We do not believe that this reality is necessarily justified by the awareness that these states are causing serious damage to the environment, but rather the fact that they have strong economies capable to support financially extensive environmental recovery and protection programs. The United States, China and the European Union are able to advance pollution, but also to fight against it. This study on the thermal rehabilitation of buildings is dedicated to these three state entities. In this study, Australia also drew our attention, a less populated country with a small number of homes, but with a vast territory, which contributes significantly to any environmental changes that take place on a global scale.

2. MODELS OF PUBLIC POLICIES ON ENERGY REHABILITATION OF BUILDINGS

Without pretending a comprehensive presentation of the programmatic and financial instruments that the most developed countries in the world use, for a better understanding of the actions taken at global level on the energy rehabilitation of buildings, we decided to make a brief x-ray of such tools. They have been designed and implemented in different parts of the world, any of them, or even different combinations can be examples of good practice in this field.

2.1. The United States of America

The United States has the particularity that each member state of the US Union applies its own policies on the thermal rehabilitation of buildings. Although there are central regulations, the application depends on each state, given a variety of arguments such as: climatic conditions, allocated funds, the interest of the population in that program, as well as the technical support provided by the state administration.

Another feature of the United States is the traditional political antinomy between Democrats and Republicans. So, the former are the supporters of the implementation of as advanced and innovative environmental policies as possible,

in general, without recanting themselves from this attitude nor the issue of energy rehabilitation of buildings, while Republicans are traditionally reluctant to technical innovations in climate change and do not approve of the high costs of these environmental protection policies either. Even under these conditions, the United States has gradually become a global leader in the thermal rehabilitation of buildings, although the existence of multiple bureaucratic layers (local, state, regional, national) must be noticed, which somehow hinders the technological advance and efficiency of the programs.

Although the US public policies used in the energy rehabilitation of buildings are quite varied and complex, the present study will emphasize two public programs that we have selected precisely because of their popularity and efficiency. These are the government programs *Building America*, *The Weatherization Program* and *Passive Solar Design Strategies*.

In 2015, the *Building America* program of the US Department of Energy designed an integrated strategy for the energy rehabilitation of homes, the efficiency of the living space and the launch of innovative policies. From a technical point of view, the program focused on the concept of thermal efficiency and on optimal systems of comfort and ventilation of the indoor air. These three axes were called “Technology-to-market Roadmaps”.

The main goal was to accelerate the improvement of the energy performance of existing and new residential buildings, but also to achieve an optimal energy efficiency for each house, respectively a reduction of 40% of energy used to condition the space and heat the water.

The program addresses single-family homes and aims to be complete in 2025 (Department of Energy, 2013).

A number of benchmarks have been settled in the substantiation of this program. Thus, it was appreciated that the heating and cooling of a home in conditions of optimal housing comfort, participates with 50% in the energy consumption of that household, and the savings cannot be achieved without improving the efficiency of the building envelope. It was also calculated that the implementation of the program will reduce energy consumption at national level by 3%. The program is still operational, with the US Department of Energy working very closely with industry organizations, contractors, builders, real estate developers, program managers and manufacturers. The government laboratories, the research teams and the experts in the field carry out research, development, demonstration, and validation projects on the ground. The program is an outpost of construction technologies and practices designed to de-carbonize buildings, while focusing on equity and benefits for communities. Therefore, this nationally implemented US government program has proven to be very effective and popular, continuing to apply and innovate continuously for 8 years.

A second US government program related to the one described above is called “The Weatherization Program” (air conditioning program) and is also

implemented nationally (Arizona Department of Housing, 2021).

The program has a social component because it addresses the low-income population. Those with due income are allowed, through this program, to reduce their energy bills, making buildings more efficient from the energy point of view. This program began in 1973, initially in the state of Maine, later expanded throughout the New England region, and then nationally, and since then, improvement and thermal efficiency services have been provided to a number of 7 million homes. The Air conditioning program has the main purpose to reduce fuel or electricity costs for space heating and water heating in households, while improving the health and safety of the tenants.

The funds for this program come from the US Department of Energy and the Department of Health and Human Services. The characteristics of the program refer to the following technical aspects of housing improvement:

- reduction of leaks in pipes where heating and central refrigeration are distributed through a forced air system;
- installation of low flow shower heads;
- addition of thermal insulation to the envelope of the residential building, the most typical insulation in the attic;
- shading the windows exposed to the sun, especially for the houses that use central cooling with refrigeration;
- implementation of air leakage control measures to reduce excessive infiltration of outside air;
- test, regulation and maintenance of heating and cooling equipment
- other energy conservation improvements, identified by the energy auditor at home.

The program is still popular and continues to be implemented by many American states, each acting with its own specificity.

The third energy rehabilitation program for US buildings that we want to present is the Passive Solar Design Strategies. Although it was also launched with the help of the US Department of Energy, this program is an initiative of a group of organizations and individuals, so it is a private initiative. It appeared from the need to create an efficient design tool that could be customized for the specific needs of builders in cities across the United States. This program involves a large number of participants, specialists from various fields of activity (Department of Energy, 2023).

The program is supported by some renowned public and private institutions, such as the Florida Solar Energy Center, the government's Solar Energy Program, Los Alamos National Laboratory and National Renewable Energy Laboratory.

The key concepts of this program are energy conservation (using insulation levels, air circulation control, window type and location, energy efficiency equipment), temperate heat of the sun (south use of windows, limited solar technique) and natural cooling (by increasing air movement and so-called

“shading strategies”). The essential elements of this technical mechanism refer to the orientation of the windows to the south and to the thermal mass.

The principle of operation is as follows: a passive solar system collects solar energy through south-facing glass and stores solar energy in thermal mass, respectively in materials with high heat storage capacity – concrete masonry, tile, water, brick, concrete slab.

The thermal mass must be seen as the ability of a material to absorb, store and release heat. Thermal delay is the speed at which a material releases stored heat. For the most common building materials, the larger the thermal mass, the larger the thermal gap.

The program is funded by contributions from the US Department of Energy, but also by contributions from non-governmental organizations and real estate owners.

2.2. The European Union

The European Commission's Communication sent to the European Parliament on 14.10.2020 presents a situation of EU buildings, emphasizing their heterogeneous and outdated character (COM/2020/643).

The Commission refers to the fact that 220 million buildings and 85% of the EU's building stock were built before 2001. It is estimated that approximately the same percentage of these buildings will remain standing in 2050. All this stock is energy inefficient, turning Europe into a huge museum. At European level, buildings are responsible for 40% of the Union's energy consumption and 36% of total greenhouse gas emissions.

Taking these realities into account, the EU has proposed a program, entitled “The Climate Target Plan 2030” to reduce greenhouse gases by at least 55% in 2030 compared to 1990 (European Environmental Agency, 2023).

From this plan, the section on energy efficiency – and thermal rehabilitation of buildings – is the most important. In this section it is calculated that, in order to meet the target set by this program till 2030, the final energy consumption of buildings should be reduced by 14% and by 18% consumption related to heating and cooling. It is therefore imperative that the EU focus on how to make buildings more energy efficient, less carbon-consuming and more sustainable.

Returning to the European Commission's Communication to Parliament in 2020 on this subject, he points out that only 11% of the existing building fund in the EU is subject to a certain level of renovation each year, and the renovation addresses very rarely and, therefore, insufficiently the issue of energy efficiency of buildings. Only an insignificant percentage of 1% of the total annual renovations would be focused on reducing energy consumption and efficient thermal rehabilitation of buildings, not to mention the fact that in some regions of the EU the renovation of buildings in energy efficiency conditions is non-existent.

As a result, the Commission has therefore established a sub-program

“Renovation Wave for Europe”, with the epicentre made up of several key principles regarding the renovation, thermal rehabilitation and efficiency of buildings in the period 2030-2050 (COM(2020)643).

Thus, energy efficiency is considered the horizontal guiding principle of European climate and energy governance. Other rules considered fundamental refer to the accessibility of rehabilitation in all its aspects: technical, financial, legal, etc.; thinking of the life cycle of the building, respectively its circularity and of the materials used; high environmental and health standards, correlation of the notions of “green” and “digitization” in all European actions, programs and projects and especially in terms of energy efficiency of buildings; improving architectural aesthetic standards (Building Performance Institute Europe, 2021).

As it can be seen, new concepts of public policies have been introduced such as “the accessibility of rehabilitation” which is the activity of building and especially of renovating sustainable and energy-efficient buildings, but on a large scale. In particular, they are considering middle- and low-income households or areas considered vulnerable. This accessibility of the program must bring it as close as possible to the European citizen who, without technical, financial, legal and any other support, could not commit to the sustainable rehabilitation of his home (COM(2020)643).

Another concept of this program is “circularity” which refers to the action of transforming parts of constructions into carbon tanks, but also the promotion of green infrastructure through the use of carbon-returning organic building materials (such as wood obtained from sustainable sources).

The European Union is therefore opening a new direction through this program for the final achievement of the climate neutrality target by 2050, but through instruments aimed at other priority EU policies, such as solidarity and social intrusion.

As for the financing of these programs, this is done from the funds of cohesion policy, which are traditionally European financial instruments for the public financing of direct investments in the thermal rehabilitation of buildings; the temporary recovery and resilience facility that provides integrated support for the renovation of buildings at local and regional level, co-financing of Member States, which must focus on more efficient verification and monitoring systems, other funding schemes, European public or private.

Regarding the private investment system, the InvestEU program will act to provide technical assistance, financing and guarantees for private sector investments. There is already a positive background in this field, through the existence of the European Fund for Strategic Investments. Funds “Window for social investment” and “Sustainable infrastructure window” are financial resources dedicated to the energy renovation of buildings, focusing on social housing, public buildings, schools, hospitals. There is also, within these two funds-windows and a part allocated for the support of SMEs and the residential sector.

2.3. China

China, reluctant for a long time to join the international environmental treaties and avoiding long-term, even short-term, commitments to thermal rehabilitation of buildings, has gradually managed to change its approach and develop advanced and effective programs in this field, which can be considered remarkable in terms of innovation.

On the other hand, it should be mentioned, from the premises still, that China has the largest number of buildings globally, and its programs, although effective, can only cover a small part of the total built area. At the same time, given its immense industrial productive structure, China initially expressed a desire to be itself the innovator and the main creator of original public policies and applied to its economic and social specificity. Subsequently, China reconsidered this regressive approach, becoming a global promoter of the environmental protection and of the policies environmentally friendly, but with measures adapted to its specific situation.

Therefore, what is characteristic of China is the creation of so-called climatic zones with unitary and common climate characteristics of each of them. Thus, in China, the thermal design of the building envelope and the implementation of current energy efficiency standards are adapted according to the geographical position, the morphological structure of the relief and the climate situation of each region (Lujian, Bing and Liu, 2022). The Chinese approach is proving to be very flexible and, we believe, very effective, there are several climatic zones with thermal rehabilitation and energy efficiency programs of various and different buildings depending on the specifics of each climatic zone, taking into account a complex of technical characteristics, from the positioning of the building to the building materials used.

The Chinese architectural diversity, accompanied by the un-precedential real estate development, creates a specific on which the zonal climate classification and the mathematical, precise distribution of the local, regional and national programs of thermal rehabilitation of buildings work easily.

In this context, it is appropriate to mention an important programmatic document adopted by China in 2013 and approved by the State Council, called “The Green Action Plan”, which was created by the National Commission for Reform and Development. It is a national plan that reveals the importance of supporting sustainable buildings that must meet a key requirement for the promotion of the ecological progress in urban and rural construction areas, launching the concept of “life cycle of the building” and accelerating the process of creating a resource-saving and environmentally friendly society, implementing policies, regulations, institutional mechanisms, standards and new and revolutionary technologies (China's Policies and Actions Addressing Climate Change - China's National Development and Reform Commission, 2013).

The action plan focuses on the construction of new green buildings and on

the thermal-ecological rehabilitation of the existing ones. The increase of the “green” habitable area was estimated from 0.8 billion sqm to 1 billion sqm and of the rehabilitated area from 60 million sqm to 120 million sqm.

2.4. Australia

Another country at the vanguard of building thermal rehabilitation innovation is Australia. Having a huge territory, comparable to that of China and the United States, Australia has a significantly smaller population than the other two countries, so the number of buildings is significantly reduced. This reality creates optimal conditions for testing ultra-innovative programs and experiments that make Australia a model to follow.

In this study we will refer to an Australian government program, entitled “Nationwide house energy rating scheme”, respectively the National Energy Assessment Scheme of the House, which particularly drew our attention. This program has been created and implemented since 1993 and has helped guide smarter home design and construction choices, especially in terms of thermal efficiency. Specific to this program is the provision of software tools that can evaluate the energy efficiency of a home. So far, this program has focused on evaluating building materials for walls, insulation, windows, and roofs. The program offers a software evaluation starting from a maximum of 10 points to assess the heating and cooling effort needed to maintain a comfortable home (Department of Climate Change, Energy, Water, 2022).

Since September 1, 2022, the software program has been updated, with quotations now referring to energy consumption for the whole house, including major appliances (water heaters, lighting, pool pumps and spas), solar panels and batteries. The evaluation and grading system was also modified, respectively by assigning points from 1 to 100, where 100 becomes a house with a net energy value 0. A very interesting aspect is that evaluations over 100 points are also possible, as is the case with those buildings that generate more heat than they use.

This program enjoys both government support and private sector support. The latter is translated into “ecological loans” which lead to the delivery of new or renovated homes with scores above the minimum standards.

3. ENERGY REHABILITATION OF BUILDINGS IN ROMANIA

The targets of environmental regulations with a greater impact feel the speed of the transition as inversely proportional to their adaptation possibilities. Therefore, no matter how great the resilience of communities, the existence of transition periods is very useful as it allows for adjustment: actors can build technological infrastructure, adequate knowledge and training of skills needed to comply with government support. Transition periods and compensations are two fair and legal solutions to balance property rights and environmental rights.

Property and environmental rights collide when environmental regulations limit the entrepreneurs and the companies in how they can use their property and benefit from their investments. The legitimate expectations of the owners are protected by administrative law, so the changes should not be sudden, in order not to affect the substantial legal rights of private property holders or repeat, as it would increase inequality and uncertainty in the markets.

If investor rights collide with human rights, including environmental rights, courts must be willing and able to rely on human rights and environmental law, and will have to find a balance between the rights of individuals and legal entities. The access to basic goods and a healthy environment must be a priority.

In this context and as an EU member state, Romania has taken over in its legislation most of the European regulations on the energy performance of buildings. These include Directive 2010/31/EU on the energy performance of buildings (EPBD), Directive 2012/27/EU on energy efficiency (EED), Directive 2009/125/EC establishing a framework for the setting of eco-design requirements for energy-related products.

The national legislative framework on energy efficiency in building renovation is therefore comprehensive and has comprehensive regulations on the building architecture and the quality in construction, the architectural and environmental renovation of the building fund, the protection of historical monuments and the quality of housing. The relevant fields and the main applicable legislative acts regarding the energy efficiency of the buildings are provided in Law no. 372/2005 on the energy performance of the buildings, Law no. 121/2014 on energy efficiency, Law no. 325/2006 on the public heat supply service, as well as the secondary legislation elaborated mainly by the National Energy Regulatory Authority (ANRE). So, regulatory authorities for both electricity and natural gas sectors were established in Romania with the mission to create and implement the appropriate regulatory system to ensure the proper functioning of the electricity and natural gas sector and markets.

Through these normative acts, concepts relevant to the field of increasing the energy performance of buildings were introduced in the Romanian public space, such as: “cogeneration”, “major renovation”, “in-depth renovation”, “energy performance of the building”, “renewable energy”, “energy audit of the building”, or “decarbonate real estate park”.

In all this context created at national and global level, a newer concept introduced in the Romanian legislation drew our attention, namely that of „building whose energy consumption is almost equal to zero” which was defined by art. 3, point 15 of Law no. 372/2005 as “a building with a very high energy performance, for which the energy requirement to ensure energy performance is almost zero or very low and is covered as follows:

- a) at least 30%, with energy from renewable sources, including energy from renewable sources produced on site or nearby, within a radius of 30 km from the GPS coordinates of the building, starting with 2021;
- b) minimum proportions of energy from renewable sources, including energy from renewable sources produced on site or nearby, within a radius of 30 km from the GPS coordinates of the building, for the periods 2031-2040, 2041-2050 and after 2051, are established by decision of the Government”.

Although this legislative framework creates a clear general context, the absence of firm and well-articulated public policies makes Romania's performance in this field still low.

When mapping such public policies, we believe that it would be necessary to establish general and unanimously accepted benchmarks so as to enjoy the stability needed for them to take effect.

Some of these benchmarks should address issues such as determining the degree of state involvement in such projects; continuity and stability of public policies and implicitly of direct and effective financing from public funds, equal and non-discriminatory treatment granted to all owners of buildings destined for localities, at least for one of them; minimum and mandatory standards on the energy performance of rehabilitated buildings with co-financing from public funds.

The Romanian public policies on the energy rehabilitation of buildings therefore suppose the involvement of government or local authorities in projects that can be considered private and that generate a positive and effective patrimonial impact on private property, but also a positive impact on the environment, which is placed in the area of general interest.

At the same time, the involvement of the state determines the degree of involvement of the owners. We think that the total exclusion from the rehabilitation effort of the housing fund (mostly private in Romania) of the owners, is counter-productive. It sends the wrong signal to the public who understands from this that only the state has obligations in this regard. At the same time, public accountability for investments made from public funds on private property is missed. Unfortunately, the types of financial instruments that Romania uses do not create a culture in which building owners assume responsibility for their properties, but rather generate the expectation for the government to remain responsible. As these buildings are renovated, owners may not maintain their buildings properly, expecting to receive ongoing non-refundable financial support. In addition, substantial budgetary resources would be needed for a complete renovation of the remaining stock of buildings, which is unlikely to be available. For example, the program „Energy Efficiency House” that aims to increase the energy performance of single-family homes by subsidizing condensing boilers, heat pumps, solar thermal panels, microgenerators and other systems (mechanical ventilation with heat recovery, insulation, etc.) has had limited success so far.

On the other hand, the introduction of commercial loans, together with subsidies, would now seem very difficult for public and multifamily buildings, but could work for single-family homes. Thus, as a first step, co-financing needs will have to be met from public funds through reimbursable grants, for local government buildings and multi-family buildings, until financial intermediaries want and will be able to take a stronger role in this direction.

As the goal is to achieve an extremely energy-efficient and fully decarbonised building fund, reforms and investments should address issues that go beyond strict energy performance limits but are relevant to achieving climate neutrality. Such a set of requirements is likely to materialize in additional costs for the future building fund, which raises questions about how a fair transition is achieved, in which the legal rights of all parties are recognized and balanced together. Some actors are vulnerable: smaller companies, entrepreneurs and individual owners, who may lose their livelihood due to transition policies. Even actors who are not vulnerable deserve equality and equity (Romanian Ministry of Public Works and Development, 2017).

For instance, a cost-effective renovation could be done in such a way that when the building reaches the end of its life or undergoes another major renovation, different products or building materials can be separated from each other. This allows reusing or recycling, which can substantially reduce demolition waste that reaches the garbage dump. Therefore, future circularity possibilities depend directly on how the renovation works are managed, the materials are chosen and assembled. At present, the principles of the circular economy will be implemented only for buildings of historical or architectural value that are subject to renovation.

We believe that, in order to obtain a stock of truly net-zero-carbonate buildings, it will be necessary to give up considering the design, the construction and the operation of buildings independently of each other and move on to issues related to the entire life cycle.

3.1. Description of Romania's Housing Stock

The national building fund consists of public and private residential and non-residential buildings, located in urban and rural areas, in areas in development, in areas in economic equilibrium and in areas in economic and / or demographic decline.

There are about 8.2 million homes in Romania, distributed in 5.6 million buildings. In the urban area, 72% of the dwellings are in city blocks, while in the rural area 94.5% are single-family houses.

Most Romanians live in small homes, either in single-family homes or in apartments in multifamily buildings. More than 63% of these homes have a usable area of less than 50 m², which is much smaller than in most EU countries; less than 5 % of the dwellings in the Netherlands, Spain, Denmark, and Luxembourg have similar dimensions. Almost half of all homes (47.5%) are in rural areas,

where 95% of living spaces are individual homes and in urban areas 72 % from living spaces are located in multifamily buildings.

After the fall of the communist regime, in Romania there was an extensive process of privatization of the housing fund which until that date had belonged to the state and had been built from public funds. This is how the majority of the Romanian population currently owns their own homes, the percentage of 94.7% representing one of the highest in Europe. This feature has a special relevance in the implementation of energy renovation policies of the housing fund. The owners are predominant, or their financial power is low, such as their financial capacity to cope with the financial effort to renovate the buildings they own and bring them to modern standards of sustainability and energy efficiency.

Another important feature is that after the 2000s a constant process of rehabilitation of buildings composed of houses was observed, but without thereby achieving high quality standards for buildings renovated so far through the efforts of owners. This process is started, mainly for condominium-type buildings located in urban areas, almost exclusively, but it is in very different stages, depending on the degree of economic development of the region in which it is located, which has allowed some of the owners to make more important investments, as they were in cities with higher economic development, with more and better paid jobs and a level of evolution of collective and individual thinking more deeply connected to the information promoted at European and global level.

Government programs supported by the state budget have also been developed, but also programs of magnitude and local interest supported by cities' own budgets or EU funds or international financial institutions (IFI). That is why, so far approximately 33% of buildings have undergone energy renovation, followed by the remaining difference of approximately 77% of the total area of the building fund, to be renovated by 2050. Most (about 91%) of buildings that need renovation are in the residential sector, of which single-family homes are both in rural areas, as well as in urban ones it represents about 65 %.

About 53% of the residential buildings were built before 1970 and over 90% before 1989. In Romania, one in seven families face serious housing problems, most often regarding poor quality of walls, floors, and window frames.

An adequate financing is one of the most important elements to ensure that the various government strategies, policies and plans effectively produce the desired results. EU Member States have different approaches to the role of government in implementation and financing. It is widely accepted that a certain level of government intervention is needed to overcome technical and financial barriers that usually prevent the normal conduct of renovation actions.

According to the Romanian legislator, financial instruments for energy savings mean any financial instrument, such as funds, subsidies, tax reductions, loans, financing by third parties, energy performance contracts, energy saving guarantee contracts, outsourcing contracts and other contracts of the same nature

that are available on the market by public institutions or private bodies to cover, in part or in full, the initial cost of measures to improve energy efficiency (Romanian Government Emergency Order on the Environmental Fund 2005/196).

3.2. Types of Programs and Funding from Public Sources

One of the most important tools for fighting climate change in Romania is the *Environmental Fund* for the support and implementation of the projects and programs for environmental protection and for achieving the objectives of the European Union in the field of environment and climate change. Other instruments considered in the strategy include the *National Building Renovation Program* to strengthen public funds (from EU programs, national budget funds, IFI initiatives) in order to offer a range of products to support all market segments.

EU building renovation programs typically use financial instruments such as grants, loans combined with grants and refundable grants.

A national program with a high grants rate (of 80% -100%), as it is currently the case of public and residential buildings, would not be sustainable. However, the most recent national program launched by the Romanian Government for the energy efficiency of buildings has adopted a transparent scheme granting 100% funding of eligible expenditure for the improvement of residential fund built before 2000. It is about a de minimis aid scheme called “Support for the Implementation of the National Recovery and Resilience Plan under the Recovery and Resilience Mechanism — Integrated renovation/ moderate or in-depth energy renovation of multi-family residential buildings”.

At the same time, in order to respect their international environmental agreements and to protect their citizens' right to a healthy environment, the Romanian government aims to accelerate the transition to sustainability through legislation and policies. In order to use the MRR financing instrument, Romania developed its own Recovery and Resilience Plan (PNRR) which set out its priority areas for investment in order to exit the crisis, revitalize and increase resilience.

Component 5 of Pillar 1 of PNRR, Renovation Wave Fund, focuses on measures regarding the building sector. It proposes two sets of reforms and four main categories of investment for the implementation of legislative changes and the creation of a fund for the renovation of public, residential and heritage buildings. The total budget proposed under this component is 2.2 billion euros. Expected results include a national building register, the development of pilot centers for the recovery and reuse of building materials, legislative adjustments to increase the energy performance of buildings. At the end of the implementation process there will be approximately 1,000-1,500 renovated blocks (4 million m² of residential buildings) and approximately 2,000 renovated public buildings (2.5 million m²) (Romanian Ministry of Investments and European Projects, 2021).

3.3. Financing from Private Sources

The “green mortgage loan” is granted to those who want to purchase real estate that benefits from a “Green Home” certification offered by independent evaluators who establish energy efficiency during the life cycle of a building (from the design, construction to operation and deconstruction phase). This certification attests to the higher energy efficiency of the building, either to those who wish to purchase a home or a house that presents a A class of energy performance certificate, real estate which also qualifies from the point of view of European regulations for the category „green mortgages”. In this way is encouraged the purchase of sustainable and quality real estate, with a positive impact on the environment and on the quality of life. At the same time, the real estate market has focused on green banking products with low interest rates and a simplified workflow, which can lead to a balancing of the real estate market by the fact that higher prices of energy-efficient buildings are offset (at least partially) by these “incentives” in “green banking products”.

The banks and the practitioners in the Romanian banking sector request legislative changes to recognize this particular category of loans and to ensure conditions and facilities designed to directly encourage their granting. In this way, a second objective could be achieved, namely the development of a local market for green credit.

According to market studies, half of Romanians define sustainability through care for the environment, through elimination of pollution behaviours, by saving electricity, by improving infrastructure and the health system. That is how sustainability is correlated not only with environmental protection, but also with increasing the quality of living standards and individual well-being. This is how banks become a vector for the public information and education on green investments, both in real estate and in sustainable business. As the public's interest in green investment increases, so does the concern of banking market players to create dedicated offers of sustainable financing.

The residential market increased greatly in 2021, thus increasing the number of loans granted for the purchase of energy-certified A Class housing to around 40% from the housing loan portfolio, with growth forecasts at 50% in the next 2 years. Once the public is educated and informed, he will understand that a building in the “green” category can have an impact on several levels, both economical (current maintenance costs reduced by up to 70% on energy and repairs, by up to 30% on water, compared to a classic home), as well as social and environmental.

Finally, the green credit market can be amplified by green bond issues that are listed on the Bucharest Stock Exchange.

Regarding the green insurance, the analysis we undertook did not offer us spectacular answers at the Romanian level. The products of this type offered by the insurers acting on the Romanian market are maintained in the wake of the

green banking activities which are much wider and more diverse. Somehow, this is natural, because banking and insurance work in tandem (Stricker *et al.*, 2021).

The European Sustainability Regulation has as purpose to increase transparency on how financial market participants integrate environmental, social and governance (sustainability risks and opportunities, “ESG”) in their investment decisions. It introduces, at the same time, a classification system with new transparency requirements for certain financial products (EU Council Regulation on sustainability in the financial services 2019/2088).

In this context, the largest insurance companies in the world operating in Romania as well, such as ING and Allianz have announced their full readiness to align their own policies with EU requirements such as the transparency of sustainability information.

Also, topics on environmental, social and governance issues are integrated into the business strategies of these companies through internal instruments establishing rules on risk management, underwriting standards, or asset investment procedures with possible environmental, social or governance impact.

At the same time, given the increasingly present nature of the challenge of sustainability in all areas of investment, we expected the products of the Green insurance type to be more numerous and varied. It is true that there are still many disagreements about what is truly sustainable and what categories of environmental risks need to be taken into consideration by insurers, so that many companies in this field are still doubtful on this matter. However, we believe that the European Taxonomy Regulation provides many answers to the sustainability standards to be applied in the field of investment, which is why we believe that initiatives of specific actions or products of green insurance are also possible, which will be developed in Romania in the near future.

4. CONCLUSIONS

Thermal rehabilitation of buildings has become an essential component of global climate change policies. It has become axiomatic that the transfer of heat from inside buildings to the outside has a substantial contribution to global warming. At the same time, the energy independence of buildings can bring an important release of the pressure currently being exerted on the states of the world and on their economies on meeting the need for electricity. Finally, the old built fund can become a huge source of pollution for future generations, so the principles of sustainable development require the identification of new solutions, as original and progressive as possible. For this reason, we considered it useful to offer a selection of some of the most important public policies implemented in developed countries such as the USA, the EU, China, and Australia.

Any of these, as well as combinations of them, can be models of good practice for other states interested in identifying the most appropriate solutions related to their climate situation, but also at their level of economic development

and technological evolution.

In conclusion, we can see that there are no generally applicable ideal solutions globally. Also, the technical solutions must be adapted to the concrete geographical, climatic, social-cultural, and economic context. At the same time, we believe that local traditions should not be neglected, because they also reflect a synthesis of the best solutions adopted by the locals in relation to the objective reality in each region. These traditions should be intelligently and constructively intertwined with the latest discoveries known scientifically and technologically. However, all this also requires adequate and well-structured funding so as to obtain both adequate accountability of building owners, but also a deeper involvement of the private sector in the effort to implement public policies on fighting climate change by rehabilitating buildings of any kind as accurately and efficiently as possible.

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LOCAL BUDGET AS A TOOL FOR RESILIENT CITIES – COMPARATIVE APPROACHES AND BEST PRACTICES ACROSS EU MEMBER STATES

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Abstract

The core problem of resilient cities is ensuring the capacity to preserve their main functions and keep provide public services throughout different shock or stress, while protecting and enhancing community members' lives. Along the many factors related to cities' resilience (e.g. territoriality, urbanization, infrastructure, social capital, educational attainment, the skills of the region's workforce, place attachment, leadership, community cohesion and efficacy, community networks, and knowledge and learning etc.), fiscal variables should be considered as crucial ones, since both providing public services and fueling the (good) triggers of resilience, for medium and long term, need to be supported by public financing. Moreover, recent economic and pandemic crises demonstrated that local finance are in many cases very fragile, local public incomes being largely affected by their effects, and thus producing a negative impact on local expenditures and municipalities development. In this context, cities' fiscal resilience gained an important position on governments' public agenda, claiming better-oriented public policies, which could be supported by empirical evidence that scientific research could bring. On this direction, our paper intends to identify the main roots of the local budgets resilience and the specific connections with cities resilience, based on a sample of 23 EU Member States, synthesizing the best practices that could be adapted to other systems.

Keywords: *local budget, resilient city, EU*

JEL Classification: H70, I39

1. INTRODUCTION

Resilience is a broad and multifaceted term, but in general, it is understood as the ability to manage the instability caused by shocks and disturbances within a system (Shaw, 2012). The notion is currently adapted in a variety of sciences and fields. Cities' resilience refers to their capacity to withstand current shocks, rebound, and prepare for new challenges while preserving their main functions, providing public services, and protecting and enhancing community members' lives. Nowadays, urban communities represent interlinked, complex, and dynamic systems; thus, a city's resilience may be measured by its territorial extent, urbanization degree, quality and quantity of infrastructure, social capital's value, the level of educational attainment, the skills of the region's workforce, place attachment, leadership, community cohesion and efficacy, community networks, knowledge and learning, etc. Along with these factors, fiscal variables should be considered as crucial ones, based on the prerequisite that the local budget's resilience represents one of the main drivers of cities resilience, as we claim within this study, by providing public services and fueling the (good) triggers of resilience on the medium and long term.

Financial and fiscal resilience have become more widely discussed in the policy discourse and among academics since the 2008 Great Financial Crisis. The debates and research were still ongoing and have now become a hot topic in the context of the pandemic crisis, which debuted in 2020 and whose negative economic and financial effects will be felt over a long period of time. Therefore, the key projected and committed goals worldwide at this time are inclusion, safety, resilience, and sustainability of cities.

In this context, the purpose of this study is to identify the main roots of local budgets' resilience and the specific connections with cities resilience, based on a sample of 23 EU Member States. As a new approach, we proposed for scoring a set of ten fiscal variables, based on which we computed a Local Budget Resilience Index, in order to measure and assess the resilience of local finances before and after the COVID-19 pandemic (periods 2019 and 2021, though at the end of 2021 the pandemic hadn't yet been stopped).

The paper continues with Section 2, providing a brief documentation of the literature in the field. In Section 3 we presented the specific connections of the local budgets with cities resilience. In Section 4, we examined local budget resilience and calculated the Local Budget Resilience Index across 23 European Member States, comparing the score for 2021 with 2019, and synthesized some best fiscal policy approaches. In Section 5 some concluding remarks are presented.

2. LITERATURE REVIEW

The resilience concept was founded by C.S. Holling, who formulated the following definition, which is now widely acknowledged: "a measure of the persistence of systems and of their ability to absorb change and disturbance and still

maintain the same relationships between populations or state variables” (Holling, 1973, p. 14). Another comprehensive and yet actual definition of resilience was established by Wildavsky (1988, p. 2): “learn how to do better through adversity”. Later, the term was appropriated and applied to a variety of fields and sciences, as well as to the financial field, and so, the terms of *financial resilience*, *fiscal resilience*, and *cities’ resilience* are relatively new and by consequence, it might be challenging to give them a proper and commonly accepted definition.

Since resilience in general is the ability to face situations of shock and disruption, for the European Union, economic resilience is now a major and basic concept of policy discourse as well as an ongoing research topic for academics, their approaches to emphasizing its main elements, features, and patterns being of large interest. Conducting a study on the level of resilience for CEE nations between 2005 and 2020, Zamfir *et al.* (2022, p. 6) highlighted three main distinct elements of economic resilience: vulnerability in front of shocks, capacity for shock absorption, and the ability to recover quickly after a shock. In line with this, Barbera *et al.* (2014, pp. 19-20) states five dimension of resilience: robustness (and vulnerability), anticipatory capacity, awareness, flexibility and recovery ability. Also, the results of this research conducted to four patterns of resilience: proactive resilience, adaptive resilience, passive/fatalist resilience, complacent resilience (Barbera *et al.*, 2014, pp. 29-30). Referring to urban resilience, Amizardeh *et al.* (2022, p. 1) expose three main approaches of this: recovery, adaptation and transformation.

Cities’ resilience is also a relative new concept and topic for debate, as previously stated, and it refers to their capacity to withstand current shocks and rebound and prepare for new challenges while preserving their main functions, providing public services, and protecting and enhancing community members’ lives. Cities that are resilient encourage inclusive growth, well-being, and sustainable development. Local authorities should always look into ways to make cities more resilient. Many studies in the extant literature support the notion that local governments are crucial for creating resilient cities and successfully coping with shocks and stressors in local communities. According to the research in the field, decentralization is considered to be one of the pillars for cities’ resilience. In this sense, Pisano (2020, p. 15) show that decentralisation of facilities may be considered as an urban factor that can be used to define and evaluate strategies for post-COVID cities. Also, Arcidiacono (2020, p. 14) conducted a study for 22 European countries and revealing that decentralization can lessen a shock’s negative effects and help the economy in the recovering process. In addition, the author claim that local self-government strategies are essential for reaching economic and social progress. Many papers have emphasized the determinants of resilience, among which we also find some triggers rooted in local public fiscal variables. The findings of Ailincă (2022, p. 1) highlight that public investments in health, education, research, and development are essential for lowering socio-economic

vulnerabilities at the EU27 level, emphasizing the need to concentrate on the relationship between efforts and outcomes. Similarly, Rizzi *et al.* (2018, p. 9) states that among the main drivers force of resilience it can be encountered the research and development expenditures, health infrastructure, education level, public transport, waste collection employee etc. Conducting a study on regional resilience in the context of the 2008–2010 economic recession, Davies (2011, p. 8) demonstrates that fiscal policies had a significant impact on regional resilience, but this differs depending on the political and institutional factors in each country, with the study referring to the expansionist policies of 2008–2010 and the fiscal restraints of 2011–2012.

In a study for Italy, Germany, and the United Kingdom, Barbera *et al.* (2021, p. 12) discovered two sorts of responses in the face of shocks: “*bouncing back*” and “*bouncing forward*” strategies. According to the authors, bouncing back strategies are more likely to occur under financial vulnerability circumstances (putting off investments, increasing taxes), whereas bouncing forward strategies are more likely to occur under significant anticipatory capacities (adapting service delivery, setting out new services). Likewise, other researches show regions with innovative leaders exhibit a stronger potential for resistance and recovery in times of crisis (Bristow and Healy, 2020), suggesting the local public administration as a key player in determining resilience. Other studies claiming for the importance of the local government for smart cities (the term “smart” is sometimes interchangeable with “resilient”) are: Hodzic *et al.* (2021), Hodžić and Arnautović (2019), or the importance of local fiscal approach during the last great shock produced by the Covid 19 pandemic: Nemeč and Špaček (2020), Rodríguez-Cohard *et al.* (2020), Clement *et al.* (2023).

Finally, the following elements contribute to a resilient city’s capacity: infrastructure in health, education, transportation, communications, human resources, dedicated and innovative local leaders, strong institutions and a quality legislative framework, well-founded and flexible policies at the same time, an economy with multiple sectors, and so on. Looking further, most of these elements are interconnected with local fiscal variables (both on the spending and revenue sides, as well as on the side of results at the end of the budgetary exercise), and are directly influenced by the quality of fiscal-budgetary policy and strategies at the local level. As such, local budgets, in condition of financial sustainability, should be regarded as a great instrument for boosting cities’ resilience in the face of various shocks and stressors due to their link with the (positive) triggers of cities’ resilience. By leading smart fiscal policies, local governments should be able to anticipate shocks and disturbance factors and make a significant contribution to helping communities cope with them, absorb them, and adapt the provision of public service delivery.

3. LOCAL BUDGETS AND THE CITIES' RESILIENCE

Resilient cities represent a wide notion, and generally it refers to the capacity of urban systems to have the ability to foresee changes and shocks using data analytics tools, defend against them by reorganizing resources and the links within the system, respond to disturbances by setting plans and strategies for crisis management, and then return to their original potential of growth and development. The key factors that influence the cities resilience are broad and varied: territoriality, urbanization, infrastructure, social capital, educational attainment, the skills of the region's workforce, place attachment, leadership, community cohesion and efficacy, community networks, knowledge and learning, the characteristics of the local economy, culture, and last but not least, the sustainability of public finances, etc. All together, they would shape the resilience capacity of cities when confronted with various changes and shocks that suddenly occur.

Cities are at the forefront of identifying the needs for offering public services and investing in a high-quality urban environment. Key players in cities need to ensure economic prosperity and individual well-being, and thus, they need to address and cope with public needs related to them, such as mobility costs, congested roads and overloaded public transportation, expensive houses, parking difficulties, pollution, living costs, access to quality education and cultural services, access to quality relaxation and leisure services, urban infrastructure problems, the need of large green spaces, vulnerability to physical disasters, economic disturbances, etc. In this context, public local governments are one of the major participants, having local budgets as a great tool at their disposal that can contribute to the achievement of city resilience characteristics.

One of the primary pillars on which resilient cities rely is imperatively represented by the resilience capacity of local budgets, which is given by their ability to withstand unexpected expenditures by sound financial sources, to successfully (re)prioritize public expenditures, and, overall, to adapt to the new challenges in times of crisis. The strength of local budgets should ideally imply that local revenues would be as little as possible affected by shocks and stressors and that there would be a reserve fund available to public local leaders to be used in emergency situations, allowing for further financing of supplemental and extraordinary expenditures. Also, a strong budget implies balanced financial management without deficits, low levels of local public debt, and low levels of local public debt and public debt service, all of which would provide fiscal space in difficult circumstances.

The fundamental prerequisites to build resilient local budgets are decentralization and financial autonomy. Additionally, to ensure that local budgets are resilient, local leaders must implement appropriate policies. These leaders have to constantly search for approaches to diversify and boost local revenues, particularly those with fixed tax bases, which are by their very nature inflexible to

economic fluctuations, finally seeking to attract enough predictable and stable sources of local incomes.

As additional sources of local public revenue, we encounter public-private partnerships, European non-reimbursable funds, loans, municipal bonds, inter-municipal associations etc. These are excellent instruments for financing important investment projects in key urban areas and delivering essential services as health, education, creating better urban setting, durable city infrastructure, accessible housing, and good design of public space. It is important to note that such actions attract and encourage, and directly involve private investments (especially in the case of public-private partnerships), promoting economic growth. Private investments, which are a crucial part of a city's resilience, can be stimulated through specific subsidies and tax incentives too.

Adopting a policy aimed at increasing the efficiency and productivity of local spending as well as increasing capital expenditures in detrimental of some current expenditure components is another requirement for resilient budgets. Our prior research suggested that particular attention should be given to local expenditures for economic affairs, health, and education: Oprea *et al.* (2022, p. 7) show that local socio-cultural expenditures produce positive implications on a Regional Development Index computed by the authors in a sample of 41 counties in Romania for the timeframe between 2000 and 2018; Onofrei *et al.* (2022, p. 10) also found empirical evidence, based on a sample of 21 EU Member States, for the period between 2001 and 2019, that local economic affairs have a positive and significant impact on the regional GDP per capita.

Overall, public policy should generally concentrate on better fiscal governance and vertical and horizontal coordination within the budgetary system, in order to increase and maintain an appropriate level of fiscal space, which shapes the resilience capacity of local budgets, these being recognized as a great tool for fostering city resilience.

4. THE DYNAMIC OF LOCAL FISCAL RESILIENCE UNDER THE PANDEMIC CRISIS

We find that the most relevant indicators at local level through we can assess the budgetary resilience are shares of: fixed base revenues in local total tax revenues, mobile tax base revenues in total local revenues, transfers in total local revenues, fiscal revenues in total local expenditures, local health spending in total local expenditures, local education spending in total local expenditures, local economic affairs spending in total local expenditures, local budgetary balance in total local expenditures, local debt in GDP. Appropriate levels and values of such variables are supposed to establish certain sustainability of local budgets, the effects of which will spread positively in the life of the communities, acting as a good triggers of cities resilience.

On the revenue side, we chose two primary sources of income by considering their tax bases: the fixed base income and the mobile tax base. The fixed base income represents a more stable source of income but is more fragile in volume in comparison with the mobile tax base, which more substantial but is characterized by less stability when confronting economic disturbance. Such income variables can also be discussed from the perspective of their ability to regulate the economy in front of various shocks and stressors, acting as incorporated stabilizers or discretionary within fiscal policy strategies (Baunsgaard and Symansky, 2009; Fischer and Justo, 2010).

Thus, we claim that feeding the growth potential of the mobile tax base represents a critical requirement for ensuring better conditions of predictability and stability of local revenue. In practical terms, the ideal scenario would be when fixed base income is as substantial, or even higher than the local mobile tax base (which doesn't happen very often in reality), and together they complete the self-financing capacity of local budgets (reflected by the share of local fiscal revenues in total local expenditures). By consequence, a low share of inter-administrative transfers is required to reach the functioning of a local financial management in conditions of autonomy, minimally depending on financial resources transferred from the state budget.

Furthermore, under circumstances of financial and administrative autonomy, local budgets show premises for an effective and fruitful management of local public expenditures. Thereafter, on the expenditure side, we put forth four local spending areas (that we aforementioned) with a strong potential to support community development and welfare. Local health spending is meant to fund public health services, to rise and maintain the general state of health; they include as well, investments in physical infrastructure and medical equipment and investments in research and development in the field. Local education spending is willing to provide public education services, investments in infrastructure and in research and development in the field, too, encouraging the long-term economy's creative potential. Such facts highlight the argument that issues relating to health and education are the primary prerequisites for achieving social progress. As regarding economic affairs spending, they support also local industry, commercial sector and labour affairs, and housing and community amenities serve as investments in the welfare of citizens and community development.

Balanced local budgets represent another fundamental requirement regarding their sustainability and resilience. Similarly, a low level of local debt in terms of the total amount and its annual costs (local debt service) is required.

In accordance with the above, we propose the mentioned variables, as a group of indicators to assess and reflect the resilience of local budgets, given their specific connections and positive influences on society progress. As such, we assessed and ranked them for a sample of 23 European countries, for the periods 2019 - 2022, aiming the to evaluate the resilience of local budgets before and after confronting

the COVID-19 pandemic. The assigned scores and colours (in the “heat” tables below) for each variable as it follows: 0,25 – At risk (orange); 0,5 – Less Resilient (yellow); 0,75 – Resilient (light green) and 1 - Very Resilient (dark green). We presented them in Table 1.

Table 1. Variables scores

The variables and their description	The scores
<i>The share of fixed base income in local total tax revenues (V1)</i>	
Lower than 10%	0,25
Between 10 and 20%	0,50
Between 20 and 30%	0,75
Higher than 30%	1,00
<i>The share of mobile tax base in total local revenues (V2)</i>	
Lower than 20%	0,25
Between 20 and 35%	0,50
Between 35 and 50%	0,75
Higher than 30%	1,00
<i>The share of transfers in total local revenues (V3)</i>	
Higher than 60%	0,25
Between 60 and 40%	0,50
Between 40 and 20%	0,75
Lower than 20%	1,00
<i>The share of fiscal revenues in total local expenditures (V4)</i>	
Lower than 10%	0,25
Between 10 and 30%	0,50
Between 30 and 50%	0,75
Higher than 50%	1,00
<i>The share of local health spending in total local expenditures (V5)</i>	
Lower than 20%	0,25
Between 20 and 30%	0,50
Between 30 and 40%	0,75
Higher than 40%	1,00
<i>The share of local education spending in total local expenditures (V6)</i>	
Lower than 20%	0,25
Between 20 and 30%	0,50
Between 30 and 40%	0,75
Higher than 40%	1,00
<i>The share of local economic affairs spending in total local expenditures (V7)</i>	
Lower than 10%	0,25
Between 10 and 20%	0,50
Between 20 and 30%	0,75
Higher than 30%	1,00
<i>The share of local housing and community amenities spending in local total expenditures (V8)</i>	
Lower than 5%	0,25
Between 5 and 10%	0,50
Between 10 and 15%	0,75
Higher than 15%	1,00
<i>The share of net lending/ net spending in total expenditures (V9)</i>	
Lower than -7%	0,25

The variables and their description	The scores
Between -4 and -7	0,50
Between 0 and -4%, and higher than 5%	0,75
Between 0 and 0,5%,	1,00
The share of local debt (GDP %) (V10)	
Higher than 5%	0,25
Between 2,5 and 5%	0,50
Between 0 and 2,5%	0,75
Equal to 0	1,00

Source: the authors

In Table 2, we presented changes in local fiscal variables on the revenue side, before pandemic conditions and two years after it.

Table 2. Heat table of local revenue resilience in European countries (2019, 2021)

Country code/ Year	The percentage of fixed base income in local total tax revenues (%)		The percentage of mobile base income in total local revenues (%)		The percentage of transfers in total local revenues (%)		The percentage of fiscal revenues in total local expenditures (%)	
	2019	2021	2019	2021	2019	2021	2019	2021
AT	11.41	14.14	15.56	14.17	64.45	66.10	17.51	16.40
BE	7.87	8.68	30.63	27.54	48.47	52.54	33.20	30.44
BG	22.59	23.60	8.34	7.13	82.65	83.79	10.59	9.48
CZ	2.57	2.23	45.04	42.49	41.53	45.97	48.78	46.54
DE	3.77	3.21	38.18	37.78	42.51	44.52	40.87	39.61
DK	0.94	0.88	36.34	36.51	58.10	58.21	36.89	37.01
EE	21.06	23.70	2.60	2.39	87.23	88.74	3.26	3.02
ES	1.51	1.33	46.79	45.82	41.93	43.86	49.94	48.50
FI	5.51	5.11	46.47	45.74	29.47	31.70	46.38	47.48
FR	2.19	1.97	52.13	55.44	29.90	27.01	53.08	56.60
HR	4.32	4.53	40.63	33.70	45.68	54.31	41.58	34.66
HU	1.69	2.19	31.62	27.79	54.29	60.07	31.85	29.22
IT	4.36	3.69	30.13	27.34	55.65	60.35	31.55	28.46
LT	21.56	21.44	4.01	3.51	87.86	89.74	5.16	4.62
LU	3.54	2.65	35.66	31.95	47.78	52.49	40.60	33.22
LV	0.74	1.08	52.67	49.85	38.22	39.43	56.06	49.39
NL	16.93	13.66	10.51	9.84	72.46	75.65	12.38	11.54
PL	2.97	2.14	31.26	29.44	59.99	63.18	31.76	31.29
PT	6.27	5.57	41.78	38.53	33.51	39.48	46.84	39.15
RO	13.25	13.14	9.84	9.20	82.77	84.15	11.12	10.88
SE	2.68	2.34	52.07	50.09	35.17	38.14	51.56	52.59
SI	1.11	0.69	39.19	36.41	41.89	46.94	39.32	37.00
SK	19.76	8.26	6.47	7.20	79.35	80.58	8.22	7.83

Source: made by the author, based on Eurostat database

In general, across European states, the fixed base income (mainly formed by property income) at local governments is lower than the mobile base income

(formed by income tax and indirect taxes on goods and services), highlighting the vulnerability of local budgets in times of economic disruption. Both of them suffered decreases during the COVID-19 pandemic period.

The countries that had a relatively high amount of fixed base income at local government during the analysed periods are Estonia, Bulgaria and Lithuania. This level is considered Resilient by our ranking, and none of the countries have obtained a Very Resilient rank (more than 30% in total local revenues). On the other side, the local budgets ranked At Risk with their level of fixed base income are in Sweden, Denmark, and Latvia, despite the fact that the first two are among the most developed in Europe. It's important to note that each country has its own inter-administrative system and political regime, which sometimes place such figures on non-comparable bases.

However, some of the developed Western and Nordic countries hold a Very Resilient rank regarding their level of local mobile base income. So, their local fiscal revenues are based mainly on income, and indirect taxes such as taxes on productions and imports. But being known that these are sensitive to economic fluctuations, this scenario suggests that local budgets and revenues would be significantly impacted by future crises and other stressors in the economy. As such, it is likely that local governments wouldn't have the capacity to absorb future shocks and the necessary flexibility to re-design and adapt the local fiscal policies and strategies for a smooth cross-over of them.

Inter-administrative transfers are another significant source of revenues for local budgets, as shown by our "heat" table above. For some countries the table is showing light green (Resilient) and for the most of the countries is showing yellow (Less Resilient) and orange (At risk). None of the countries have dark green (Very Resilient), meaning a level of transfers under 20% of local revenues. Countries having the highest transfers (the lowest level of local financial autonomy) are Lithuania, Estonia, Romania, Bulgaria, Slovakia, The Netherlands etc. and countries having the lowest transfers (the higher level of local financial autonomy) are: France, Finland, Sweden, Latvia, Portugal ranked as Resilient. None of them are Very Resilient at this revenue category.

In the end, analysing the level of fiscal revenues in total local expenditures (reflecting the self-financing capacity of local governments), we ranked this as Very Resilient in few countries in the selected sample (France, Sweden, and Latvia for 2019 only, because this declined to Resilient in 2020). At an overview, the Resilient rank of this indicator is predominant across the analysed sample, and only in few countries the self-financing capacity of local budgets was ranked as At Risk (Estonia, Lithuania, and Slovakia and Bulgaria in 2021).

As a general trend, we note that for the majority of the countries, the local fiscal indicators suffered decreases, which were compensated by transfers from the central level, underlying poor resilience for most of the local budgets. Significant changes were experienced, for example, by local budgets in Slovakia, where fixed base

income had the rank Resilient (19,76%) in 2019, but it turned to At Risk (8.26%) in 2021; in Latvia, the local mobile base income was Very Resilient (52,67%) in 2019 and it turned to Resilient (49,85%) in 2021; in Poland, the transfers have been given the Less Resilient rank (59,99%) in 2019 and it turned to At Risk (63,18%) in 2021, and similar cases are noticed in Hungary and Italy too. Overall, Bulgaria, Italy, Hungary and Latvia experienced a downturn in the total fiscal revenue resilience rank, from 2019 to 2021, as a consequence of the negative impact of the economic and social damages produced by the pandemic.

The appropriate way to have “heat” table with more colours of light and dark green is to continue the decentralization process, by perfecting the legal regime of the formation of local public revenues. Through the wider decentralization of local public revenues, we assume the reduction of inter-administrative transfers and, therefore, fixing them as own revenues of local public budgets, thus determining increase, at least equivalent, in both indicators of local income fixed base and local income mobile base. It is natural to claim that the increase of the local income mobile base must be prioritized, due to their nature of providing a better resilience of local budgets in front of factors and stressors of economic disturbance.

Similarly, in Table 3, we exposed changes in local budget expenditures under pandemic conditions by comparing their dynamics from 2019 to 2021.

Table 3. Heat table of local revenue expenditures in European countries (2019, 2021)

Country code/ Year	Local health spending in total local expenditures (%)		Local education spending in total local expenditures (%)		Local economic affairs spending in total local expenditures (%)		Local housing and community amenities spending in local total expenditures (%)	
	2019	2021	2019	2021	2019	2021	2019	2021
AT	21.97	24.29	17.55	17.05	12.03	11.38	1.58	1.42
BE	0.40	1.07	19.58	19.66	9.75	9.41	2.75	2.82
BG	8.50	9.92	35.25	34.89	7.49	9.47	15.50	11.04
CZ	13.00	14.88	30.59	30.07	17.22	17.50	4.29	3.61
DE	2.14	2.45	16.67	17.19	13.41	14.45	3.30	3.34
DK	24.93	26.04	8.57	8.09	3.33	3.32	0.25	0.24
EE	15.15	15.85	40.13	37.11	14.28	16.24	4.03	4.51
ES	1.23	1.10	3.51	3.54	16.61	17.49	4.32	4.34
FI	26.78	27.35	16.69	16.51	6.50	6.34	0.87	1.11
FR	0.69	0.72	13.94	13.61	19.71	20.22	8.18	8.17
HR	21.15	23.14	29.52	29.40	18.16	17.52	6.89	6.34
HU	4.12	5.43	14.18	13.26	20.34	17.91	7.13	8.45
IT	48.22	49.76	6.28	6.08	11.75	11.93	2.57	2.47
LT	18.73	22.08	35.89	35.59	11.66	10.11	5.31	4.69
LU	0.58	0.69	12.34	12.22	14.34	15.51	5.02	5.19
LV	9.31	12.69	36.98	35.17	16.85	18.75	9.24	8.90
NL	1.57	3.66	31.00	30.53	12.59	12.84	2.91	2.83

Country code/ Year	Local health spending in total local expenditures (%)		Local education spending in total local expenditures (%)		Local economic affairs spending in total local expenditures (%)		Local housing and community amenities spending in local total expenditures (%)	
	2019	2021	2019	2021	2019	2021	2019	2021
PL	15.27	18.01	25.03	25.10	14.78	13.66	3.54	3.11
PT	6.48	6.19	12.39	11.02	16.00	18.45	7.92	8.09
RO	22.78	23.16	6.55	6.60	19.76	22.24	9.95	8.81
SE	27.00	29.04	22.06	21.40	6.50	6.17	2.32	2.10
SI	12.97	15.46	36.98	36.56	12.86	12.63	4.00	3.95
SK	2.80	4.06	40.79	40.11	14.89	15.05	5.90	5.15

Source: the authors, based on Eurostat database

On the spending side, orange (At Risk) and yellow (Less Resilient) are also the most frequently seen colours. Regarding local health expenditure, with the exception of Italy, where the indicator is graded as Very Resilient in 2019 and 2021 as well (48.22 and, correspondingly, 49.76%), for all the countries in the studied sample, this is classed as At Risk and Less Resilient.

The local education spending indicator is in a different scenario, which is ranked as Resilient in many countries (Slovenia, Lithuania, Latvia, Bulgaria etc.) and Very Resilient for Slovakia and Estonia for 2019, but for the last in 2021 it changed to Resilient. The indicator is graded At Risk in Estonia, Italia, Romania etc.

Local economic affairs spending is scaled Less Resilient (in yellow) as an overall overview; paradoxically, this indicator is lower (At Risk) in Denmark, Sweden, Finland) and higher (Resilient in 2021) in Romania and France. This may be explained by the fact that local communities in emerging countries may still have significant needs in this field to address, as well as by how public competencies are divided among administrative levels in each nation (Alcidi *et al.*, 2014).

Regarding the local housing and community amenities indicator, this is also scaled as At Risk in more than half of the countries in the analysed sample, especially Western and Nordic countries, and as Less Resilient, in general in Southern and Eastern countries. Only in Bulgaria is ranked Very Resilient in 2019 and Resilient in 2021, the decrease is being interpreted as a sign of the negative impact of the pandemic.

It is preferable to maximize the portions of such expenditures destined for investments in human capital, infrastructure, and welfare to increase the standard of living and, and ultimately to foster a resilient and sustainable urban environment.

In Table 4, we presented the scores for public local balances and for local debt.

Table 4. Heat table of local budget results variables in European countries (2019, 2021)

Country code/ Year	Net lending/ net spending in total expenditures (%)		Local debt (GDP %)	
	2019	2021	2019	2021
AT	-0.28	2.59	4.2	4.9
BE	-0.43	-0.14	4.9	4.6
BG	-1.69	3.77	1.1	1
CZ	5.53	7.01	1.5	1.4
DE	3.01	2.82	4.6	4.6
DK	0.56	0.04	7.2	6.7
EE	-0.91	-3.28	2.7	2.9
ES	5.11	-2.12	1.9	1.8
FI	-5.69	-1.33	12.4	13
FR	-0.40	0.29	8.6	9.9
HR	-3.16	5.19	1.7	2.6
HU	-1.33	-4.70	0.6	0.6
IT	0.15	-0.68	6.9	6.7
LT	0.96	2.60	1	1
LU	9.87	-3.74	1.4	1.3
LV	5.27	0.10	6.7	6.7
NL	-2.09	0.96	7.1	6.6
PL	-1.43	-3.35	3.9	3.8
PT	5.07	-0.39	4.6	5.1
RO	-1.97	0.82	1.6	1.6
SE	-3.62	1.60	12.6	12.6
SI	-0.73	-2.34	1.8	1.8
SK	2.05	-5.48	2.1	2.2

Source: the authors, based on Eurostat database

For local balance and local debt, the predominant colours tend to be light and dark green – Resilient and Very Resilient Rank. The better ranked (Very Resilient) are the local balances in Denmark, Lithuania, Austria, Sweden, The Netherlands, Romania, France, Latvia (0 – 0,5% in total local expenditures). Also, for many countries, this indicator is classed as Resilient (from 0 to -4%, and higher than 5%).

For the analysed sample, the ranking of local debt indicator tends to provide a more comprehensive view, as this is scaled Resilient (from 0 to 2,5% in GDP) in the Southern and Eastern countries, and At Risk in Western and Northern countries, with values higher than 5% in GDP: Finland, Sweden, France etc.

When borrowing, but public authorities need to ensure that they reach a level of local debt under a sustainable threshold, without excessively burdening future generations and that the borrowed amounts are naturally spent on profitable investment projects.

Finally, Table 5 reflects the total scores for local budgets resilience across selected countries of European Union, comparing the period before and after pandemic (even if the pandemic hadn't yet been stopped at the end of 2021).

Table 5. Local Budget Resilience Index for European countries (2019. 2021)

C/Y	V1		V2		V3		V4		V5		V6		V7		V8		V9		V10		LB Resilience Score		Change
	2019	2021	2019	2021	2019	2021	2019	2021	2019	2021	2019	2021	2019	2021	2019	2021	2019	2021	2019	2021	2019	2021	
AT	0.5	0.5	0.25	0.25	0.25	0.25	0.5	0.5	0.5	0.5	0.25	0.25	0.5	0.5	0.25	0.25	0.75	1	0.5	0.5	4.25	4.50	▲
BE	0.25	0.25	0.5	0.5	0.5	0.5	0.75	0.75	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.75	0.75	0.5	0.5	4.25	4.25	-
BG	0.75	0.75	0.25	0.25	0.25	0.25	0.5	0.25	0.25	0.25	0.75	0.75	0.25	0.25	1	0.75	0.75	1	0.75	0.75	5.50	5.25	▼
CZ	0.25	0.25	0.75	0.75	0.5	0.5	0.75	0.75	0.25	0.25	0.75	0.75	0.5	0.5	0.25	0.25	0.75	0.75	0.75	0.75	5.50	5.50	-
DE	0.25	0.25	0.75	0.75	0.5	0.5	0.75	0.75	0.25	0.25	0.25	0.25	0.5	0.5	0.25	0.25	1	1	0.5	0.5	5.00	5.00	-
DK	0.25	0.25	0.75	0.75	0.5	0.5	0.75	0.75	0.5	0.5	0.25	0.25	0.25	0.25	0.25	0.25	1	1	0.25	0.25	4.75	4.75	-
EE	0.75	0.75	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	1	0.75	0.5	0.5	0.25	0.25	0.75	0.75	0.5	0.5	4.75	4.50	▼
ES	0.25	0.25	0.75	0.75	0.5	0.5	0.75	0.75	0.25	0.25	0.25	0.25	0.5	0.5	0.25	0.25	0.75	0.75	0.75	0.75	5.00	5.00	-
FI	0.25	0.25	0.75	0.75	0.75	0.75	0.75	0.75	0.5	0.5	0.25	0.25	0.25	0.25	0.25	0.25	0.5	0.75	0.25	0.25	4.50	4.75	▲
FR	0.25	0.25	1	1	0.75	0.75	1	1	0.25	0.25	0.25	0.25	0.5	0.75	0.5	0.5	0.75	1	0.25	0.25	5.50	6.00	▲
HR	0.25	0.25	0.75	0.75	0.5	0.5	0.75	0.75	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.75	0.75	0.75	0.5	5.75	5.50	▼
HU	0.25	0.25	0.5	0.5	0.5	0.25	0.75	0.5	0.25	0.25	0.25	0.25	0.75	0.5	0.5	0.5	0.75	0.5	0.75	0.75	5.25	4.25	▼
IT	0.25	0.25	0.5	0.5	0.5	0.25	0.75	0.5	0.75	1	0.25	0.25	0.5	0.5	0.25	0.25	1	0.75	0.25	0.25	5.00	4.50	▼
LT	0.75	0.75	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.5	0.75	0.75	0.5	0.5	0.5	0.25	1	1	0.75	0.75	5.25	5.25	-
LU	0.25	0.25	0.75	0.75	0.5	0.5	0.75	0.75	0.25	0.25	0.25	0.25	0.5	0.5	0.5	0.5	0.75	0.75	0.75	0.75	5.25	5.25	-
LV	0.25	0.25	1	0.75	0.75	0.75	1	0.75	0.25	0.25	0.75	0.75	0.5	0.5	0.5	0.5	0.75	1	0.25	0.25	6.00	5.75	▼
NL	0.5	0.5	0.25	0.25	0.25	0.25	0.5	0.5	0.25	0.25	0.75	0.75	0.5	0.5	0.25	0.25	0.75	1	0.25	0.25	4.25	4.50	▲
PL	0.25	0.25	0.5	0.5	0.5	0.25	0.75	0.75	0.25	0.25	0.5	0.5	0.5	0.5	0.25	0.25	0.75	0.75	0.5	0.5	4.75	4.50	▼
PT	0.25	0.25	0.75	0.75	0.75	0.75	0.75	0.75	0.25	0.25	0.25	0.25	0.5	0.5	0.5	0.5	0.75	0.75	0.5	0.25	5.25	5.00	▼
RO	0.5	0.5	0.25	0.25	0.25	0.25	0.5	0.5	0.5	0.5	0.25	0.25	0.5	0.75	0.5	0.5	0.75	1	0.75	0.75	4.75	5.25	▲
SE	0.25	0.25	1	1	0.75	0.75	1	1	0.5	0.5	0.5	0.5	0.25	0.25	0.25	0.25	0.75	1	0.25	0.25	5.50	5.75	▲
SI	0.25	0.25	0.75	0.75	0.5	0.5	0.75	0.75	0.25	0.25	0.75	0.75	0.5	0.5	0.25	0.25	0.75	0.75	0.75	0.75	5.50	5.50	-
SK	0.5	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	1	1	0.5	0.5	0.5	0.5	1	0.5	0.75	0.75	5.25	4.50	▼

Source: the authors, based on Eurostat database

In general, the pandemic caused local government finances to deteriorate, as seen in our table above for at least nine countries. Local budget resilience scores declined in 2021 compared to 2019 in nine countries: Bulgaria, Estonia, Croatia, Hungary, Italy, Latvia, Poland, Portugal, and Slovakia. For eight countries, the computed local budget resilience score remained unchanged (Belgium, Czech Republic, Germany, Denmark, Spain, Lithuania, Luxembourg, and Slovenia), which may be seen as a restraint on the growth of resilience capacity or, more optimistically, as the ability of local budgets to withstand in the face of crisis.

The greatest local budget resilience score was achieved in France in 2020 (6 points), which is still very low when compared to the maximum potential level (of 10 points). Sweden, Latvia and Slovenia followed closely behind, while the lowest scores were computed for local budgets in Belgium, Hungary, Austria, Estonia, Italy, etc. As suggested before, each country has a distinct public administration system with particular characteristics. Some of the countries in the selected sample

are federal (Belgium and Austria) or regional (Italy) states where public finances are organized and function under multiple administrative layers, which explains why at the local administrative level few competencies and public financial resources are administered.

At an overview, the resilience capacity of municipal budgets is quite low across European Member States, according to our heat tables, where the colours orange (At Risk) and yellow (Less Resilient) predominate. On the revenue side, it is noticeable that there is a need to raise the fixed tax base and reduce inter-administrative transfers. On the expenditure side, there is a need to increase spending in the following areas: health, education, economic affairs, housing, and community amenities. In large part, these have a significant contribution to the development of communities by stimulating the quality of human capital and welfare, as well as stimulating investments in quality urban infrastructure and land use design and other good triggers of cities resilience.

Some of the best approaches that can be addressed within budgetary systems, aiming the boosting local budgets resilience too are related to: periodic and accurate control and evaluation of the local tax base, streamlining local taxation system and removing tax exemptions, improving the local tax collecting system, stimulating the growth of the local economic heritage, the exclusive use of income from the exploitation of the local domain only for economic expenditures, attracting local investment, controlling public spending for social assistance, public procurement, and personnel, eventually their preventive limitation and other similar categories too, participatory and multiannual budgeting, controlling local public debt.

5. CONCLUSIONS

Our study is based on the thesis that local budgets, in condition of financial sustainability, represent a great instrument for boosting cities resilience in the face of various shocks and stressors, by delivering public services and by fuelling the (positive) triggers of cities' resilience.

In this context, the purpose of this study was to identify the main roots of local budgets' resilience and the specific connections with cities resilience, based on a sample of 23 EU Member States. As a new approach, we proposed for scoring a set of ten fiscal variables, based on which we computed a Local Budget Resilience Index, in order to measure and assess the resilience of local finances under the COVID-19 pandemic scenario. The variables we chose are shares of: fixed base income in local total tax revenues, mobile tax base in total local revenues, transfers in total local revenues, fiscal revenues in total local expenditures, local health spending in total local expenditures, local education spending in total local expenditures, local economic affairs spending in total local expenditures, local housing and community amenities spending in local total expenditures, local budgetary balance in total local expenditures, local debt in GDP. The assigned

scores and colours (in used in the “heat” tables) for each variable as it follows: 0,25 – At risk (orange); 0,5 – Less Resilient (yellow); 0,75 – Resilient (light green) and 1 - Very Resilient (dark green).

On the revenue side as well as on the expenditure side for the majority of the countries, the local fiscal indicators suffered decreases, mostly of them being ranked as At Risk and Less Resilient, underlying poor resilience for most of the local budgets. Only for local balance and local debt, the predominant rank is Resilient and Very Resilient, raising the final score of Local Budget Resilience Index.

At an overview, our computed Local Budget Resilience Index show low scores across the selected sample of European Members States, thus, the greatest local budget resilience score was achieved in France in 2020 (6 points) while Sweden, Latvia and Slovenia followed closely behind. The lowest scores were computed for local budgets in Belgium, Hungary, Austria, Estonia, Italy, etc. The index suffered declines in 2021 compared to 2019 in nine countries, weakening the local resilience capacity and in other eight countries this remained unchanged. For the group of eight countries this may be seen as a restraint on the growth of resilience capacity or, more optimistically, as the ability of local budgets to withstand in the face of crisis.

As particular remark is the fact that, across Member States, the fixed base income (mainly formed by property income) at local governments is lower than the mobile base income (formed by income tax and indirect taxes on goods and services), highlighting the vulnerability of local budgets in times of economic disruption. So, it would be naturally to support fiscal policy measure that would lead to boosting local income mobile base, due to their nature of providing a better resilience of local budgets in front of factors and stressors of economic disturbance.

In order to raise the standard of life and to promote a resilient and sustainable urban environment, it is preferable to maximize the percentages of the local expenditures intended for investments in human capital, infrastructure, and welfare (spending for health, education, economic affairs, housing and community amenities), in detrimental to other current expenditures categories.

Some other best policy practices approaches need to focus on: periodic and accurate control and evaluation of the local tax base, streamlining local taxation system and removing tax exemptions, improving the local tax collecting system, stimulating the growth of the local economic heritage, the exclusive use of income from the exploitation of the local domain only for economic expenditures, attracting local investment, controlling public spending for social assistance, public procurement, and personnel, eventually their preventive limitation and other similar categories too, participatory and multiannual budgeting, controlling local public debt. By leading smart fiscal policies, local governments should be able to anticipate shocks and disturbance factors and make a significant contribution to helping communities cope with them, absorb them, and adapt the provision of public service delivery.

One of the primary limitations of the study refers to the existence of a rigid database since the analysed countries have different administrative systems. For this reason, as a future research direction, we mention carrying out a similar study on groups of countries with similar administrative systems over several years and possibly including the Local Budget Resilience Index calculated in econometric regression models to establish the specific link with cities resilience.

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INTEGRATING INTERSECTIONALITY IN EUROPEAN UNION POLICIES

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Abstract

Achieving better gender equality is still one of the challenges that the European Union (EU) has to properly address. The current EU gender equality strategy aims to erase gender inequalities in all policies areas and actions of the EU, highlighting the importance of strong legal frameworks to protect and promote gender equality. The EU recognizes the need to suppress any form of discrimination and disadvantage based on gender, race, ethnicity, class, sexual orientation, disability, and other factors. The task is even more challenging in cases where individuals may experience overlapping forms of discrimination. In this context, the paper analyses how and if the intersectionality principle is integrated in EU policies, improving gender equality.

Keywords: *gender equality; intersectionality; public policies; European Union law.*

JEL Classification: K38, K31, K33

1. INTRODUCTION

Gender equality is one of the eternal challenges of our society, a challenge that has been addressed in different way from country to country throughout centuries. From defining it to promoting and to managing it, the issue has been a constant entry on governments and intergovernmental organizations' agendas. Both in public and private sector, gender equality promotion needs to be based on strong governmental policy that will consider national political, social, economic and cultural realities impacting on gender equality.

As many people around the world do, Europeans militate for the achievement of gender equality when it comes to education, health, labour, access to and holding of public office etc.

During the last fifty years, the European Union has taken major steps towards gender equality and parity. However, its strategy and action plans need to be adapted to new social and economic realities that require a better understanding

and management of pluri-discrimination situations that individuals or groups are the victims of.

2. LITERATURE REVIEW

Gender equality in public and private sector is the result of a long history of social subordination of women to men. Despite major steps towards gender equality and parity during the last fifty years, the issue is as current as ever.

Gender equality studies show that there is quite hard to understand and properly define the term. In her study focused on social representation of gender equality in the workplace, in some French companies, Coron (2020) highlights the importance of having a clear gender equality definition since it varies according to gender, professional field and managerial status and this is the reason for the difficulty of successfully implementing such policy. Promoting a common gender equality culture and definition in the workplace, whether in public or private sector, should be based on awareness campaigns, especially for French men workers, who do not give much consideration to the issue, but rather to equal pay and equal access to responsibilities.

A similar solution is proposed by Pierotti *et al.* (2018) that studied men behaviour during gender sensitization programs. The study shows that male participants at gender sensibilization programs significantly changed their quotidian behaviour but still, they resisted the conceptions of equality that challenged the existing gender system, leaving gender hierarchy intact.

In Europe, as elsewhere in the world, gender quality remains a sensitive topic. Research shows that gender inequality manifests itself differently from country to country based on social, economic, political and cultural factors.

Thus, Johnston (2019) investigates the under representation of women in public administration in UK and at global level, presenting vertical and horizontal occupational segregation and demonstrating that inequalities continue to exist. She also argues that women and other minorities' lack of representation is affecting public policy that, in its turn, affects the legitimacy, trust, integrity in public institutions.

In the same policy context, it is argued that gender mainstreaming should be the goal of local, regional and national public administration. Calvo *et al.* (2017) noticed that in Spain, the updating of equality plans was abandoned by some public bodies while other demonstrated a proactive attitude towards it. Even in this case, the implementation of gender equality plans was weaker because public officials opposed in different ways the involvement of gender specialists. Thus, those who led gender equality actions insisted the resistance on the part of the staff, and those who have not led equality actions conjured the lack of leadership or political commitment.

Profiroiu and Nastaca (2018) had found that in Romanian central administration institutions women have access to decision-making positions, without being

discriminating. Also, almost ten years before, the research of Sandor *et al.* (2011) that was based on a questionnaire focusing on gender stereotypes, gender discrimination and gender segregation in employment revealed that a high degree of gender equality exists in Romanian local public institutions as well. The results of the research “showed small amounts of cases of sexual harassment, discrimination in hiring, promotion, pay and benefits, evaluation, advancement and task distribution in the institutions or occupational mobility” among public servants (Sandor *et al.*, 2011, p. 227).

Despite these encouraging findings, it was proven that even in countries where women hold leadership positions, gender equality might not be relevant after all. For example, in several of her studies, Zake (2011) proves that compared to European Union Members, Latvia has the highest percentage of women in power in public administration. However, gender inequality still exists because men are the ones who mostly govern important cities and hold position in the national secretariat ministry, while women are leaders of small regions and towns, departmental sections of national public institutions and deputies.

This is just one example of sectoral differences in gender inclusion that prevent a genuine gender parity in Europe, where policy areas that are dominated by men still exist. Thus, from a management perspective, opportunity, power, and numbers do matter greatly either in public or private sector.

In this context, an even more complicated gender equality matter is the intersections of gender with sexual orientation, race, ethnicity, indigeneity, disability, and age. Crenshaw used the term intersectionality in 1989, illustrating how different individual characteristics such as gender, race, social status, and minority status mix together and ultimately, influence the legal status of a person from the same group, such as black women. Thus, according to Crenshaw (1989) while focusing on the most privileged members of a group, the others that are multiply burdened are marginalised and their anti-discrimination demands not being understood because in their case, the sources of discrimination are less evident, more discrete. As a result, members of the same group could be faced with different discrimination situations that could generate problems when it comes to gaining social status, having access to public positions, dignities, and decision-making positions.

Crenshaw (1991) argued that intersectionality “sheds light on how gender, race and ethnicity, class, religion, country of origin, sexual orientation, disability, and age interact and diversify individual and collective experiences of discrimination”.

In fact, in the context of public policy, intersectionality reveals the limitations and the exclusionary nature of the policymaking process (Manuel, 2000).

Today the term is used by the United Nations in its gender equality agenda and represents a debated issue in its regular reports on the subject.

Intersectionality has also been integrated as a principle in the latest EU Gender Equality Strategy (2020-2025).

3. THE EVOLUTION OF INTERSECTIONALITY IN THE EU

According to the European Institute for Gender Equality (EIGE), intersectionality is an “analytical tool for studying, understanding and responding to the ways in which sex and gender intersect with other personal characteristics/identities, and how these intersections contribute to unique experiences of discrimination” (EIGE, 2023).

In its latest Gender Equality Report (2022), the European Commission has considered intersectionality to be a cross-cutting principle needed to be followed when implementing the EU gender equality strategy.

The source of this principle is in fact the Treaty on the Functioning of the EU (TFEU). According to Article 10 TFEU, “the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation” when defining and implementing its policies.

In order for intersectionality to work, several conditions need to be met: a solid legal framework and guidance, a good understanding and interpretation of the concept by authorities, adequate training for staff to recognize and solve pluridiscrimination situations, a decompartmentalized work structure and culture, and the availability and good management of data (La Barbera, 2022).

The EU has taken some steps towards meeting these requirements.

In 2020, the European Commission (2022) adopted its five-year strategy on gender equality. A year later, the first report on gender equality was published. The accent was on the fight against gender-based violence, on the right to equal pay and the exclusion of payment discrimination, equal access to education, women’s participation in politics and female representation in decision-making. The report included a brief note on the integration of intersectionality in EU gender policy at that time, mentioning the adoption of the Roma strategic framework for equality, inclusion and participation for 2020-2030 and the Action Plan on Integration and Inclusion of Migrants for 2021-2027.

Under the EU Roma strategic framework for equality, inclusion, and participation, Member States are encouraged to create and implement national Roma plans with targeted measures, especially for women and girls, and thus, improve their life expectancy by five years, decrease their unemployment rate, and encourage their participation in society.

The European Commission together with the Council of Europe (2018) supported JUSTROM3 project meant to improve the access to justice of Roma women. The programme was implemented in Italy, Greece, Bulgaria and Romania, where representatives of the judiciary, law enforcement and human rights advocates were trained to recognize and properly address multiple discrimination situations that Roma women might be faced with (European Commission, 2022).

Another example of intersectionality implementation is the action plan targeting migrants' integration and inclusion in the EU that prioritizes anti-discrimination, taking into account individual characteristics of migrants and of EU citizens with a migrant background such as gender, age, level of education, religion etc. Using the Asylum, Migration and Integration Fund, the Commission co-financed five transnational projects focusing on social and economic integration of migrant women (EU Commission, 2021).

Also, the Commission supports women empowerment outside the EU through the new five-year Gender Action Plan (GAP III) and a new multi-annual financial framework meant for specific EU programmes dedicated to strengthening gender equality.

The Commission latest report on gender equality (2022) focuses on the same issues but also adds gender mainstreaming and insists more explicitly on intersectionality in implementing gender equality policy in the European Union.

Thus, the Commission is trying to address discrimination in a complex way, paying particular attention to combatting sex discrimination based on personal characteristics and identities in order to achieve a more comprehensive and complete equality, and to ensure social progress for all women. For example, intersectionality is at the base of the new 2023/970/EU Directive on pay transparency. In this case, the definition of gender pay discrimination includes sex discrimination combined with "racial or ethnic origin, religion or belief, disability, age or sexual orientation" (EU Commission, 2022).

Also, the proposal for the directive on fighting violence against women and domestic violence urges Member States to provide a much-needed protection to these individuals by adapting their fighting instruments to the specifics of discriminated women that are discriminated based on their gender or sex, ethnicity, age, etc.

The EU LGBTIQ equality strategy (2020-2025) also takes intersectionality into account. In 2021, the LGBTIQ equality subgroup was created under the High-Level Group on non-discrimination, equality and diversity to support and monitor progress in the Member States in developing specific action plans. Under this strategy, EU authorities intend to extend the list of "EU crimes" by criminalizing the hate speech and the hate against LGBTIQ people that are usually faced with multiple discrimination situations.

At the same time, following the objectives of the Strategy on the rights of persons with disabilities (2021-2030), the European Commission saw through the creation of a group of experts called the Disability Platform specialized in the protection of individuals, including women, with different disabilities. It is believed that this structure will better manage pluri-discrimination situations by gathering data and exchanging good practices between Member States representatives and EU civil society organizations with expertise in the field (European Commission, 2022).

Intersectionality is also guiding the implementation of the EU Anti-racism action plan 2020-2025. The Commission decided to improve the collection of equality data on racial and ethnic origin by harmonizing the way it is gathered and to quantify its intersectionality in respect to religion or belief, and gender.

These examples prove that the EU is taking the right steps towards preventing and eliminating multiple discrimination situations and slowly improving gender equality norms and regulations. However, Member States comply differently with EU requirements and thus, the achievement of social gender equality varies greatly among them.

An EU 2020 comparative analysis on gender equality laws provides a general overview on the implementation of EU legislation in this field and reveals that Member States have specific problems concerning their national law but also, general ones, like the implementation of EU directives such as the one on gender pay transparency, the enforcement of equality law in general, the lack of implication of social partners in promoting gender equality, the low level of financial compensation obtained in court by complainants.

In some European countries, a major concern remains the multiple discrimination and the reinforcement of gender stereotypes. The report shows that cases of (sexual) harassment and domestic and gender-based violence are frequent in Europe as well (European Commission, 2020).

Various reports point out the shortcomings in achieving gender equality based on countries' own evaluations and experts' opinions. Thus, measuring gender equality achievement is a rather subjective process.

A composite indicator that could be used to measure gender equality progress based on the EU policy framework is the Gender Equality Index (GEI) proposed by the European Institute for Gender Equality (EIGE). GEI represents a good step forward in measuring gender equality. It is based on six core domains (work, money, knowledge, time, power, and health), two additional ones (violence against women and intersecting inequalities), and it is using 31 indicators.

In 2019, GEI analysis focused on the intersection of disability, age, level of education, country of birth and family type with gender, revealing the array of differences between different groups of women and men in Europe.

According to GEI, in 2021, the EU scored 68 out of 100, where 100 is the maximum score a country can register. However, there is much fluctuation in scores among Member States and overall, it is obvious that Europe had achieved timid results in gender equality and at the present pace, it will take almost three generation to achieve gender equality (EIGE, 2021).

However, some experts believe that the index needs to be perfected because of its lack of precision when it comes to distinguish between specific achievements of most developed European countries. Also, because it is measuring gender equality together with economic and social developments, the index overstates the former achievements in the more developed European countries and, the

progress made in gender equality (Olaskoaga-Larrauri and Salaverri-Ruiz-Ozaita, 2020).

Another specific tool is the Gender Inequality Index (GII) developed by the United Nations, a composite metric of gender equality measuring the gaps between women and men based on three dimensions (reproductive health, empowerment, and labour market) and showing the loss of human development potential due to existent inequalities in these areas (UNDP, 2022).

4. CONCLUSIONS

The European Union has made efforts to incorporate intersectionality into its public policy but the extent and effectiveness of implementation vary across the EU, Member States domestic policy, laws and their enforcement resulting in substantially different outcomes.

The EU's commitment to bring intersectionality in public policy remains a challenge and efforts need to be made to improve understanding, awareness, and implementation of intersectionality across all policy domains by all Member States.

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BRIEF CONSIDERATIONS ON SOME DOCTRINE AND JUDICIAL PRACTICE ISSUES IN THE MATTER OF CRIMES AGAINST THE FINANCIAL INTERESTS OF THE EUROPEAN UNION

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Abstract

A brief analysis of the crimes against the financial interests of the European Union revealed the main problems generated in the judicial practice by the application of these rules established expressly and distinctly from the rules already existing in the domestic legislation. In 2000, the Romanian legislature regulated, in a distinct chapter of the Law for the prevention, detection and sanctioning of acts of corruption, the crimes against the financial interests of the European Union, stating in article 5 that, by sanctioning them, the law ensures the protection of the funds and resources of the European Union. Problems connected with the relation regarding the concurrence with some of these crimes and crimes regulated in the special part of the Criminal Code, with the establishment of the quality of the active subject or the passive subject of these incriminations, required and still require an analysis in the light of doctrinal approaches and judicial practice. This article aims to highlight the most important problems and their solutions through the lens of legal provisions and jurisprudential solutions.

Keywords: *fraud; deception; concurrence of crimes; European Union budget; legal person.*

JEL Classification: K14

1. GENERAL CONSIDERATIONS ON THE NEED FOR THE SEPARATE REGULATION OF CRIMES AGAINST THE FINANCIAL INTERESTS OF THE EUROPEAN UNION

Fraud is a significant cause of destabilization and disruption of patrimonial relations. It can take a multitude of forms, from a simple deception to the most sophisticated ways of swindling. Restoring the legal situation becomes all the more difficult the harder the method of fraud is to discover and prove. However, it goes without saying that, in patrimonial matters, the detection and sanctioning

of fraudulent acts affecting patrimony is a priority, and their prevention is an important objective.

The protection of the financial interests of the European Union has been regulated since 1995 in the Convention on the protection of the European Communities' financial interests, a convention that over the years has been supplemented by a series of protocols. The need for a unified set of regulations in the EU member countries regarding the protection of the financial interests was generated by a harmonized legal definition of fraud and the obligation of states to penalize fraud in this matter.

The convention was replaced as of 6 July 2019 by Directive 2017/1371 of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law, given that the convention established minimum rules on the definition of crimes and sanctions in the field of fraud concerning the financial interests of the EU. Although as a result of the application of the Convention, the legislation of the member states was subject to changes aimed at harmonization, it is essential to continue the approximation of the criminal law of the member states, as well as the act of supplementing it with the criminalization of other serious manifestations of behaviour from the category of fraud in this field.

At the same time, the financial interests of the Union are defined as being represented by "all revenues, expenditure and assets covered by, acquired through, or due to: (i) the Union budget; (ii) the budgets of the Union institutions, bodies, offices and agencies established pursuant to the Treaties or budgets directly or indirectly managed and monitored by them" (art. 2 par. 1 of Directive no. 2017/1371).

By Law no. 78/2000 for the prevention, detection and sanctioning of acts of corruption - published in the Official Gazette no. 219/18 May 2000, an appropriate protection of the financial interests of the European Union is provided in Romania through a distinct regulation in Section 4¹ of four crimes directed against the financial interests of the European Union. New acts were criminalized, such as:

- "the use or presentation of false, inaccurate or incomplete documents or statements, if the act results in the wrongful obtaining or wrongful withholding of funds or assets from the budget of the European Union or the budgets administered by it or on its behalf" (art. 18¹ of Law no. 18/2000),
- "the changing of the destination of funds or assets obtained or withheld from the budget of the European Union or from the budgets administered by it or on its behalf, without complying with the legal provisions", (art. 18² of L. no. 18/2000),
- "the use or presentation of false, inaccurate or incomplete documents or statements, which results in the illegal reduction of the resources of the European Union budget or of the budgets administered by it or on its behalf", (art. 18³ of Law no. 18/2000),

- the violation, due to fault, by the manager, administrator or person with decision-making or control powers within an economic operator of a job-related duty, by failing to fulfil it or by performing it defectively, if the act resulted in the performance by a person who is under their authority and who acted on behalf of that economic operator of one of the crimes provided in 18¹-18³ or the commission of a crime of corruption or money laundering in relation to European Union funds.

This ensured compliance with the Directive, which requires member states to adopt the necessary measures to make fraud committed with intent that harms the financial interests of the European Union a crime.

Directive no. 2017/1371 provides that member states must adopt measures to punish as a crime the attempt to commit any of the crimes mentioned in article 3 and article 4(3). By art. 18⁴ of Law no. 78/2000 it is expressly provided that attempted crimes regulated in 18¹-18³ are punishable.

With regard to sanctions, the crimes regulated in the Romanian legislation are punishable by imprisonment, and if they produce particularly serious consequences, aggravated forms are provided for, in which case the special limits of the punishment are increased by half, which complies with the provisions of the Directive that the sanction be a maximum penalty of at least four years in prison when the act involves significant damage or advantage (art. 7 par. 3 of Directive no. 2017/1371).

Such an analysis starting from the initial moment from which the regulation of these crimes in Romanian legislation began and reaching the current regulation was more than necessary to realize that, in terms of legislation, the Romanian legislature made efforts to faithfully transpose the international regulations in the matter of the protection of the financial interests of the European Union, even with the risk of regulating what was already regulated, of generating problems of interpretation and application of the rule in domestic law, which led to the need for the intervention of tools to unify judicial practice.

Romania, therefore, secures an appropriate protection of the EU's financial interests at the legislative level and a proportionate sanctioning of frauds that affect them, the sanctions being much higher than those provided for patrimonial frauds that do not affect such financial interests.

As a guarantee of the compliance with these desiderata, the obligation to take security measures in the event of the commission of these crimes, but also the exclusive competence of criminal prosecution of these acts which belongs to the National Anticorruption Directorate, were provided.

2. PROBLEMS REGARDING THE CONCURRENCE BETWEEN THE CRIMES AGAINST THE FINANCIAL INTERESTS OF THE EUROPEAN UNION AND OTHER CRIMES FROM THE ROMANIAN CRIMINAL LAW

Out of the desire to ensure the harmonization of national legislation with international regulations, the Romanian legislature created the incriminations in the section on crimes directed against the financial interests of the European Union, taking into the content of the crime the elements described in the definition of fraud that harms the financial interests of the European Union.

Therefore, there arose the problem of identifying the relationship between these crimes and crimes already existing in the national legislation, a problem which received a solution from the High Court of Cassation and Justice. Of extreme importance are Decision no. 4/2016 pronounced by the Panel for appeal in the interest of the law and Decision no. 3/2020 issued by the Panel for preliminary ruling on questions of law. Both decisions represent mechanisms for the unification of judicial practice and are binding from the date of publication in the Official Gazette.

Law no. 78/2000 criminalized the “use or presentation of false, inaccurate or incomplete documents or statements, if the act results in the wrongful obtaining or wrongful withholding of funds or assets from the budget of the European Union or the budgets administered by it or on its behalf” (art. 18¹). Also, in the Criminal Code in force art. 306 criminalizes the illegal obtaining of funds consisting in “the use or presentation of false, inaccurate or incomplete documents or data, in order to receive the necessary approvals or guarantees for the granting of financing obtained or guaranteed from public funds, if it results in the wrongful obtaining of these funds”. Both crimes refer to the same material element, the difference being represented by the damage, as a result of the wrongful acquisition of funds, to different budgets. In the case of the first offence, the budget of the European Union or the budgets administered by it or on its behalf are affected, and in the case of the offence regulated in the Criminal Code, the national budget is affected.

In judicial practice, the problem that required a solution through a decision in the interest of the law concerned the situation in which, through the same act, damage occurred both to the general budget of the European Union or the budgets administered by it or on its behalf, as well as to the state budget, as there were courts which considered that the two crimes were in concurrence, but also courts whose solution related to a single crime - the one provided by art. 18¹ of Law no. 78/2000. Through a binding decision, it was established that we were in the presence of a single crime and that “the fact of using, within the contracting authority, through an action of the author, inaccurate documents or statements, which resulted in the wrongful obtaining of funds from the budget of the European Union or from the budgets administered by it or on its behalf, as well as from funds from the national budget, fulfils the constituent elements of the single offence provided

by art. 18¹ of Law no. 78/2000” (High Court of Cassation and Justice, the panel for appeal in the interest of the law, decision no. 4/2016, published in the Official Gazette, part I, no. 418/2.06.2016).

The solution pronounced by the supreme court was predictable, and the strongest argument lies in the fact that the plurality of damaged properties is not likely to attract a plurality of crimes. Moreover, the decision is also relevant because it establishes the fact that the offence provided by art. 18¹ of Law no. 78/2000 is a special variant of the offence of fraud, because the use or presentation of false, inaccurate or incomplete documents or data is a concrete way of misleading the authority, misleading which defines the material element of fraud. In the specialized literature it has been appreciated that between the crime of fraud and the crime of embezzlement, as well as between each of these crimes and the crime regulated by art. 18¹ of Law no. 78/2000 there is a relationship from genus to species, these crimes representing atypical forms of the generic crime of fraud Anghel-Tudor (2021, p. 267).

This classification is important, because, in the absence of it, being in the presence of rules with almost identical content, the difficulties of judicial practice are inherent. The concurrence of criminal rules on the protection of the financial interests of the EU, on the one hand, and the protection of national financial interests, on the other hand, can be resolved by identifying three pillars of budgetary interests, one of which is common, protected by the effective national criminal law (Costea, 2017).

What is worth noting, however, is the fact that, from the point of view of the sanctioning treatment, there is no difference between the criminal law that protects national financial interests and the criminal law that protects European financial interests, as the same sanction is provided, consisting of a prison sentence from 2 to 7 years. It is worth considering the fact that such an identity of sanctioning regime has been reached, especially since, in the initial version of Law no. 78/2000, for the offence regulated by art. 18¹, the sanction was a prison sentence with limits ranging from 3 to 15 years, a much harsher penalty than that provided for the offence of embezzlement. It is also noted that only the custodial sanction is provided for, although Directive no. 2017/1371 allows that in the event of damage of less than EUR 10,000 or an advantage of less than EUR 10,000, member states have the possibility of providing sanctions of a non-criminal nature.

Another issue of judicial practice that also arose regarding the rule regulated by art. 18¹ of Law no. 78/2000 was the one concerning the establishment of concurrence or, on the contrary, absorption with the crime of forgery in documents under private signature. Considering that the crime directed against the financial interests of the EU can be carried out by presenting false documents, and in the national legislation the crime of forgery in documents under a private signature imposes, in a hypothesis, the condition of using the forged document by the author of the forgery, the problem referred to the supreme court concerned the situation

in which the same person as the author or secondary participant contributed to the commission of the forgery and is the one who presented the false documents committing the crime provided by art. 18¹ of Law no. 78/2000.

Noting that the material element of the offence of forgery in documents under private signature is not included in its entirety in the material element of the offence provided by art. 18¹ of Law no. 78/2000, what is found in the latter regulation being only a condition that characterizes the offence of forgery in documents under private signature, the court established that in the situation under analysis the correct solution was that of holding the two crimes in actual concurrence. (High Court of Cassation and Justice, the panel for preliminary ruling on questions of law, decision no. 3/2020, published in the Official Gazette, part I, no. 138/21.02.2020).

The process of harmonizing domestic legislation with European legislation, achieved by supplementing national legislation with new rules, can generate difficulties in interpretation and application, can lead to the wrong establishment of the relationship between new crimes and already existing crimes, and decisions to render judicial practice consistent become a real use to eliminate these shortcomings.

3. JUDICIAL PRACTICE ISSUES REGARDING THE ESTABLISHMENT OF THE QUALITY OF ACTIVE SUBJECT AND PASSIVE SUBJECT IN THE CASE OF CRIMES AGAINST THE FINANCIAL INTERESTS OF THE EUROPEAN UNION

The active subject of the offence provided by art. 18¹ of Law no. 78/2000 can be any natural person who meets the general conditions of criminal liability. The person who commits the act may be the beneficiary of European funds, may be the one who, in order to commit the act, creates the false documents which, once used or presented, lead to the wrongful obtaining or wrongful retention of funds or assets from the budget of the European Union or the budgets administered by it or on its behalf or can be the person authorized to submit the necessary documents in order to access the funds for the beneficiary.

In judicial practice, it has been specified that, in addition to meeting the general conditions of criminal liability, the active subject must also meet the specific eligibility conditions provided by the project or funding program aimed at. Thus, it was expressly specified that in the case of people who fill in a payment request to APIA in order to benefit from SAPS support, “the farmer or the person empowered by him through a power of attorney authenticated by the notary, must submit the supporting documents regarding the right of use, as well as other documents that prove the use of the land, documents without which the application cannot be declared eligible” (Timiș Tribunal, sentence no. 142/2018). We consider that the requirement for the active subject to fulfil the eligibility conditions provided for in the financing program is excessive, because the active subject can try to cover

up the lack of fulfilment of these requirements by false, inaccurate, incomplete statements, or simulate the appearance of fulfilment and thus end up with fraud to the financial interests of the European Union.

The cumulative requirement outlined in court practice and necessary for the existence of the active subject of the offence does nothing but reduce the field of applicability of the rule, excluding, leaving out of criminal liability those situations in which, although the damage was caused, the condition of the existence of the active subject of the offence is not met. However, such a solution clearly contradicts the constant concern to sanction the fraud committed to the detriment of the Union's budget, a budget that constitutes a true common patrimony of the citizens of the Union.

The liability of legal entities for committing crimes against the financial interests of the European Union was also provided in the Convention on the protection of the European Communities' financial interests and expressly specified in Directive 2017/1371 (art. 6 par. 1), the states having to adopt the necessary measures to make sure that the legal person can be held criminally liable for the above-mentioned acts.

In Romanian legislation, the institution of criminal liability of the legal person was regulated for the first time through an amendment to the Criminal Code in 2006, the current Criminal Code providing in art. 135 that all legal entities can be held liable, except for the state and public authorities when the acts were committed "in the pursuit of the object of activity or in the interest or on behalf of the legal entity". Also, in accordance with par. (2), the liability of public institutions can only be held for crimes committed in the exercise of an activity that is the object of the private domain.

The liability of legal entities does not exclude the initiation of criminal proceedings against natural persons who are the authors of the mentioned crimes (art. 6 par. 3 of the Directive). Therefore, in the doctrine, it was appreciated that if, for the same crime directed against the financial interests of the EU or for crimes committed in concurrence, the criminal action was initiated both against the legal person and against the legal representative of the legal person, this one has the obligation to appoint an agent to represent its legal interests. In the event that the legal entity does not fulfill this obligation, in order to avoid the conflict of interests, the prosecutor conducting the prosecution, the judge of the preliminary chamber or the court will appoint an agent from among the insolvency practitioners (Jigău, 2018).

Regarding the passive subject, the holder of the social value which is also the main passive subject is the European Union. The secondary passive subject is represented by the person who has the obligation to administer and manage the funds coming from the EU budget, from the budgets administered by it or on its behalf (Anghel-Tudor, 2021, p. 223). The Romanian state, as a passive subject, will be represented by the contracting authority.

4. CONCLUSIONS

A brief analysis of the crimes against the financial interests of the European Union revealed the main problems generated in the judicial practice by the application of these rules established expressly and distinctly from the rules already existing in the domestic legislation. Establishing the quality of the active and passive subject of the offence provided by art. 18¹ of Law no. 78/2000 proves to be much more necessary and important than in the case of other crimes where the text of the law indicates clearly enough the persons who have this quality. The specifics of the regulation demonstrate the fulfilment of the requirements imposed by Directive 2017/1371 on the elements of fraud, the sanctioning of the attempt, the criminal liability of the legal person, but also the sanctioning of the participants.

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THOUGHTS ON OUR BEAUTIFUL (UN)SUSTAINABLE CITIES

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Abstract

We are crowding in ever-expanding cities, and as we do, we realize that we cease to be “alone”. Through true webs of non-human life, cities provide much richer habitats than today's heavily exploited agro-industrialized rural areas, only apparently green. Attracted by the abundant food and, to a large extent, protected from the danger of being hunted, in addition to the shelter from other natural dangers, a veritable menagerie of wild life, deprived of their natural habitats, also feels at home in the cities. The destruction of natural habitats and the rapid loss of biodiversity implicitly derived from it can no longer leave us indifferent. Any ecosystem comprises the physical environment and the organisms that inhabit it, interacting as a functional unit. Uniquely, as one author noted, urban ecosystems are designed primarily as spaces for the people who inhabit them, combining the built environment (buildings, transport infrastructure) with vegetation (that we call green space). Except for scientists, we usually perceive non-human organisms in cities only in terms of their usefulness or desirability (or undesirability): pets or pests. Of course, there are many progressive alternative spaces in the urban environment, but we need a profound shift towards understandings and practices of citizenship that involve living alongside several other species in a shared space. Will the existence of urban wildlife help us city dwellers understand the wider socio-ecological systems of which we are part?

Keywords: *sustainable city; resilience; nature; birds and animals.*

JEL Classification: Q01; Q56

1. INTRODUCTION

The following paper looks at defining the smart city by effectively including as a component element nature, birds and animals of the city. Humans construct and modify their surroundings to support the demands and desires of society and cities are unlike other ecosystems, because they are essentially built by and for one species: humans. They are thus characterized by altered patterns of

connectivity, resource availability, inter- and intraspecific interactions, temperature, and habitat structure (Groffman and Likens, 1994).

It is in recent years, that urban ecology has emerged as a unified discipline, focusing also on the many ways in which urbanization alters abiotic and biotic conditions that influence species interactions, patterns and processes and how they feed back to people via changes in ecosystem function (Nancy *et al.*, 2000). Redefining cities as intrinsically coupled human and natural systems acknowledges not only those social decisions shape urban ecosystems, but also that ecological changes motivate important human decisions.

2. OUR CITY?

We are crowding in cities that ever expand, and as we do, we cease to be “alone”. Through complicated webs of non-human life, cities provide much richer habitats than today's heavily exploited agro-industrialized rural areas, only apparently green. Attracted by the abundant food and, to a large extent, protected from the danger of being hunted, in addition to shelter from other natural dangers, a veritable menagerie of wild animals, deprived of their natural habitats, also feels at home in the cities.

In 2007, according to studies, the world reached a critical threshold: for the first time in history, the number of people who lived in the urban environment exceeded that of people in the rural environment. Since then, this statistic has continued to rise rapidly. By the middle of the 21st century, it is estimated that two-thirds of the more than 9 billion people worldwide will live in the cities, with Europe and North America in the process of becoming urban continents for more than a century.

The destruction of natural habitats and the rapid loss of biodiversity implicitly derived from it can no longer leave us indifferent. Any ecosystem comprises the physical environment and the organisms that inhabit it, interacting as a functional unit. Uniquely, as one author noted (Nancy *et al.*, 2000), urban ecosystems are primarily designed as spaces for the people who inhabit them, combining the built environment (buildings, transport infrastructure) with vegetation (called green space). We usually perceive non-human organisms in the cities only in terms of their usefulness or desirability (or undesirability): pets (dogs and cats) or pests (insects, pigeons and rodents).

Of course, there are many progressive alternative spaces in the urban environment, but we need a more profound shift towards understandings and practices of citizenship that involve living alongside several other species in a shared space.

For example, today there are, according to statistics, more than 400 million pigeons worldwide, most of which live in the cities. Due to their breeding since ancient times, there are dozens of varieties of pigeons. Perhaps we wouldn't necessarily expect to find so many pigeons in the city, but it seems that they live here for the same reasons as humans do - their comfort. High-rising concrete buildings

are their perfect territory, as they replicate the cliffs that still harbour feral pigeons, and the birds usually feast on leftovers thrown from cafes and restaurants.

In his book, *Darwin Comes to Town*, biologist Menno Schilthuizen recounts an interesting experiment conducted by a Sorbonne professor, Marion Chatelain, which appears to show that city pigeons have evolved to a darker plumage due to the detoxifying properties of the feathers loaded with melanin. Pollution is no longer a problem for them. Still, the fact that city pigeons gather in large numbers in one place makes them very present in people's concerns: some love them, others hate them. The fact that feral pigeons are considered pests, though the exact causes are not specified, is representative. In my city, Timișoara, as a measure to control the number of pigeons, feeding them on the public and private domain of the municipality has been prohibited and is punishable by a fine. Many do not appreciate the urban phenomenon these birds have given rise to, and municipalities are under pressure from angry citizens, representatives of public institutions and companies specializing in pest removal, who demand quick and visible solutions.

But, we could also refer to pigeons differently, actually as one of the few bits of wildlife we interact with now that we have almost all moved to the cities. An information campaign, followed by the construction of dovecots and the setting up of feeding areas for pigeons, would be more beneficial. There are cities that, for example, have found the solution of building "supervised pigeon houses" where pigeons from cities can settle. They offer professional care that respects the pigeons' well-being. This method reduces the inconvenience caused to the population and pollution in the city. Feeding makes them healthier and more resistant to disease, and their well-being is ensured by regular check-ups by a veterinarian.

The pigeons may not, however, be the only type of wildlife that should concern the city, according to the Court of Justice of the European Union. Affected by the intensive agriculture, habitat destruction, and persecution by farmers, the European hamster is another example of animal that adapted to the city comfort.

In a representative decision from the perspective of human – urban animal relation in the civilized world the Court of the EU decided on the protection of hamsters whilst they live in the city. According to the judgment (that we will present *in extenso* due to its importance), a property developer, which employed IE, instigated work for the construction of a building on land where the European hamster had settled. The owner of the land, who was aware of that fact, informed the property developer of the situation, which appointed an environmental expert before work commenced. The expert drew up a map of the entrances to the European hamster burrows and determined, in a specific zone, whether the burrows were inhabited.

Before the building work was carried out, the property developer had the topsoil removed, the construction site cleared and a pathway to the construction site built in the immediate vicinity of the entrances to the European hamster burrows ('the harmful measures'). In particular, the aim behind removing the topsoil was

to cause the European hamster, which had settled in the areas where the building work was to be carried out, to relocate to areas which had been specially protected and reserved for it. However, prior authorisation for the harmful measures had not been sought from the competent authority and therefore had not been obtained before the work commenced. Moreover, at least two of the burrow entrances were destroyed. The City Council of Vienna therefore took the view that IE, as an employee of the property developer, was responsible for the deterioration or destruction of resting places or breeding sites of the European hamster and, pursuant to Paragraph 10(3)(4) of the WNSchG, imposed on him a fine, which, if not paid, was liable to be converted to a custodial sentence. IE brought an action before the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria) challenging the imposition of the fine on the grounds that, inter alia, the European hamster burrows were not being used by the hamsters when the harmful measures were implemented and those measures did not lead to the deterioration or destruction of resting places or breeding sites of that animal species.

In that context, the referring court was uncertain as to the interpretation of Article 12(1)(d) of the Habitats Directive. It took the view that it was necessary for the terms contained in that provision, such as ‘resting places’, ‘breeding sites’, ‘deterioration’ and ‘destruction’, to be clearly defined, given that infringement of the national provision which transposes Article 12(1)(d) of the Habitats Directive may give rise to criminal penalties. In particular, the referring court took the view that the considerations set out by the European Commission in its guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC (final version, February 2007) were imprecise and left scope for considerable discretion as to how those terms are to be interpreted.

By its first question, the referring court asked, in essence, whether Article 12(1)(d) of the Habitats Directive is to be interpreted as meaning that the term ‘resting place’ referred to in that provision also includes resting places which are no longer occupied by one of the protected animal species listed in Annex IV(a) to that directive, such as the *Cricetus cricetus* (European hamster).

According to the European Court, it should be noted that the aim of the Habitats Directive, pursuant to Article 2(1) thereof, is to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States. Further, under Article 2(2) and (3) of that directive, the measures taken pursuant thereto are to be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of interest for the European Union, and are to take account of economic, social and cultural requirements and regional and local characteristics. Article 12(1)(d) of the Habitats Directive requires Member States to take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) to the directive in their natural range, prohibiting the deterioration or destruction of breeding sites or resting places. In order to comply with

that provision, the Member States are required not only to adopt a comprehensive legislative framework but also to implement concrete and specific protection measures. Similarly, the system of strict protection presupposes the adoption of coherent and coordinated measures of a preventive nature. Such a system of strict protection must therefore make it possible to prevent effectively the deterioration or destruction of breeding sites or resting places of the animal species listed in Annex IV(a) to the Habitats Directive. In addition, it should be noted that the *Cricetus cricetus* species, commonly known as the European hamster, is one of the animal species protected by the Habitats Directive. It is in the light of those preliminary considerations that the first question referred is to be examined.

As regards, first, the wording of Article 12 of the Habitats Directive, as stated in paragraphs 19 and 20 above, that article requires Member States to take the requisite measures to establish a system of strict protection for protected animal species in their natural range. In particular, paragraph 1(d) of that article requires Member States to take the requisite measures prohibiting the deterioration or destruction of breeding sites or resting places of those species. Accordingly, it is clear that the wording of Article 12 of the Habitats Directive provides no indication as to how the term ‘resting places’ is to be defined. Nevertheless, the Court has held that the acts referred to in Article 12(1)(d) of the Habitats Directive are not only intentional acts, but also include non-deliberate acts. By not limiting the prohibition laid down in Article 12(1)(d) of the directive to deliberate acts, which it has done in respect of the acts referred to in Article 12(1)(a) to (c), the EU legislature has demonstrated its intention to give breeding sites or resting places increased protection against acts causing their deterioration or destruction. Furthermore, unlike the acts referred to in Article 12(1)(a) to (c) of the Habitats Directive, the acts covered by the prohibition laid down in Article 12(1)(d) do not relate to animal species directly but seeks to protect significant parts of their habitats. It follows that the aim of the strict protection offered by Article 12(1)(d) of the directive is to ensure that significant parts of the habitats of protected animal species are preserved so that those species can enjoy the conditions essential for, inter alia, resting in those habitats. The same conclusion follows from a reading of the Commission guidance document referred to in paragraph 15 above, which states that resting places — defined as the areas essential to sustain an animal or group of animals when they are not active — ‘also need to be protected when they are not being used, but where there is a reasonably high probability that the species concerned will return to these ... places’. Consequently, it is apparent from the context of Article 12(1)(d) of the Habitats Directive that resting places which are no longer occupied by a protected animal species must not be allowed to deteriorate or be destroyed since that species may return to such places. As regards, third, the objective pursued by the Habitats Directive, it should be recalled that, as pointed out in paragraphs 18 to 20 above, the directive seeks to provide strict protection for animal species, in particular by means of the prohibitions laid down in Article

12(1) of the directive. Therefore, the scheme of protection laid down in Article 12 of the Habitats Directive must be sufficient effectively to prevent interference with protected animal species and, in particular, their habitats. It would not be compatible with that objective to deny protection for resting places of a protected animal species where they are no longer occupied but where there is a sufficiently high probability that that species will return to such places, (which is a matter for the referring court to determine). Accordingly, the fact that a resting place is no longer occupied by a protected animal species does not mean that that place does not enjoy the protection offered by Article 12(1)(d) of the Habitats Directive. In the light of the foregoing considerations, the answer to the question is that Article 12(1)(d) of the Habitats Directive must be interpreted as meaning that the term ‘resting places’ referred to in that provision also includes resting places which are no longer occupied by one of the protected animal species listed in Annex IV(a) to that directive, such as the *Cricetus cricetus* (European hamster), where there is a sufficiently high probability that that species will return to such places, which is a matter for the referring court to determine.

People, pigeons, hamsters, the city are all Nature. Understanding the Nature in its various forms and the fact that we are dispossessing so many species of their natural habitats, threatening their survival without offering them an alternative, could lead to the extension of the concept of the right to the city of the birds and animals that live here with us. The only evidence at this moment is that urban wildlife will develop together with the extension of the cities’ limits, so time has come that we reached on a line of behaviour in this respect. The opinion of the Court, whose case-law is much richer, is crystal clear: we are not the only rightful inhabitants of the city. Or, in an epoch when we talk of making our cities smarter it is unconceivable from a civilized perspective to ignore urban wildlife.

Still, although we know that we are playing the role of changing the evolution of life, we are currently unfortunately in the stage of human-animal conflict. If we want to live in smart cities, it is necessary to make room for an inclusive, real and honest dialogue, in order to find the most suitable and effective solutions, in the short and long term, to improve the coexistence between humans and animals.

3. CONCLUSIONS

In the collective imagination, today, nature symbolizes freedom and beauty. At this moment in human history, however, it is sometimes placed in opposition not only to industrialization and urbanization, but also to the city, which appears more than ever as a symbol of the supreme power of humans and their ability to transform their environment. At a time when urban areas are home also to the wildlife and environmental concerns are growing, we must aspire to a new form of closeness to nature. In the heart of our cities, some of us, most of us, we hope, yearn for a bit of nature.

Note:

* Şimon (Romania), a village in the municipality of Bran in the county of Braşov, lies about one kilometer to the east of the border with the ‘Bucegi’ site, which the European Commission, on a proposal from Romania, added to the list of sites of Community importance under code number ROSCI0013. A further such site, the ‘Munţii Făgăraş’ site (code number ROSCI0122), is situated some eight kilometres to the west of that village. The standard data forms record wolves as being present on both sites. At around 19.00 on 6 November 2016, employees of the DMPA and UN, as a veterinary surgeon, made their way to Şimon, acting under the direction of TM, with the intention of capturing and relocating a wolf which for several days had been loitering around the home of a resident, playing and eating with that resident’s dogs. After receiving a dose of anaesthetic medication for veterinary use delivered via a hypodermic gun, that wolf was tracked, captured and then lifted by its tail and the scruff of its neck, taken to a vehicle some distance away, and then placed in a cage for transporting dogs. The DPMA employees coordinated the transport of the captured wolf to the Liberty natural bear reserve in Zărneşti (Romania), which also has a fenced area for wolves from non-compliant zoos. However, during the journey, the wolf managed to break the cage in which it was held and fled into the surrounding woods. On 9 May 2017, Alianţa pentru combaterea abuzurilor filed a criminal complaint against TM, UN and the DMPA, as well as against other people working for the DPMA, concerning offences related to the capture and transport of a wolf in poor conditions. It is clear from that complaint that authorisation to capture and transport the wolf had not been sought. The Judecătoria Zărneşti (Court of First Instance, Zărneşti, Romania) asked to what extent wild specimens of the *Canis lupus* species may be deliberately captured or killed in the absence of a derogation based on Article 16 of the Habitats Directive, where those animals are sighted on the outskirts of communities or enter the territory of a local authority, or whether a derogation is mandatory in the case of any non-captive wild specimen, regardless of whether that specimen has entered the territory of a local authority. That court observed that the main aim of the Habitats Directive, which is ‘to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements, [by making] a contribution to the general objective of sustainable development’, is fully justified when protected animals leave their natural habitat. However, a strict interpretation of the provisions of that directive could result in the State being released from any obligation where those animals have left their natural habitat, which would be contrary to the objective pursued by that legislation. The court referred, in particular, to the derogation from the rules on the protection of threatened species laid down in Article 16(1)(c) of the Habitats Directive, under which the concept of ‘public safety’ is closely connected with situations in which animals belonging to threatened species are outside their natural habitat. In those circumstances, the Judecătoria Zărneşti (Court of First Instance, Zărneşti) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling: ‘Must Article 16 of [the Habitats Directive] be interpreted as requiring the Member States to lay down derogations from Articles 12, 13, 14 and 15(a) and (b) also in cases where the animals belonging to threatened species leave their natural habitat and are in its immediate vicinity or completely outside it?’

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THE MULTI-STAKEHOLDER NETWORK AS POLICY TOOL FOR A ROBUST GOVERNANCE OF THE PUBLIC ORGANIZATIONS IN TURBULENT TIMES

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Abstract

In the recent years, both public and private organizations are facing various complex and turbulent issues, with disruptive effects, that require appropriate responses to improve their resilience and robustness. The multi-stakeholder model, based on an extensive partnership between different public and private entities, can be a suitable mechanism for robust governance in a surprising, unpredictable and uncertain environment. Multi-actor networks help to mobilize valuable resources, to stimulate innovation and identify joint solutions, but take on many of the difficulties and redundancies specific to joint action. Considering the constraints, the lack of flexibility and the reduced administrative capacity of the public system in Romania, organizational changes are needed to improve the resilience and robustness, starting from the main guidelines of the European public system. Organizational changes refer to the following aspects: the ability to redesign policies in a coherent way, the adoption of appropriate policies and procedures, the presence of information systems and networks able to provide effective and prompt feedback, the flexibility, the agility, the capacity to reform. The paper illustrates the application of multi-stakeholder model as a policy tool to improve the resilience and governance of public and private organizations. From a methodological point of view, the approach is an integrated one, based on extensive documentation on the involvement of public organizations in multistakeholder partnerships. The results illustrate the benefits of multi-stakeholder approaches and some dysfunctions characteristic of these partnerships. The paper also aims to identify solutions to overcome the identified negative aspects, that affect their functionality: the lack of strategic orientation and the reduced administrative capacity, the lack

of resources and the reduced degree of involvement of public and private entities due to the early stage of development of the multi-stakeholder model in the Romanian economic and social context.

Keywords: *governance; public organization; multi-stakeholder initiative; resilience.*

JEL Classification: H12, Z18

1. INTRODUCTION

As society develops, numerous increasingly complex and challenging problems arise, manifesting at regional, national, or global scales, and their resolution requires progressively complex political measures and infrastructures (Tainter, 1988; Aruștei, Manolescu and Neculăesei, 2014). In recent decades, society, including public and private sector organizations, has faced numerous unforeseen events, generically termed “wicked problems” in the specialized literature (Peters, 2017; Head, 2022), which have generated imbalances in the social, economic, political, and environmental realms (Bach and Wegrich, 2019; Bednar, 2023). These problems possess a set of characteristics that influence how they can be addressed and resolved: exceptional complexity and unpredictable evolution that make their definition by stakeholders, the identification of causes, and a scientific approach challenging (Lazarus, 2009); their cross-cutting character, owing to the fact that they affect numerous stakeholders who may engage in finding solutions, sometimes with conflicting values and interests (Conklin, 2006); their dynamic nature and continuous volatility over time, giving them a “relentless” character (Weber and Khademian, 2008).

Crisis situations disrupt and destabilize the functioning of economic, political, and social systems. In such conditions, two issues arise:

maintaining the functionality of long-term public policy development processes when contexts change suddenly.

the emergence of infrastructures (socio-technical structures) to ensure system flexibility and resilience in the face of changes, considering that political processes and the context are interdependent, dynamic, and co-evolving (Adger, Eakin and Winkels, 2009; Ansell, Sørensen and Torfing, 2023).

Organizations in the public sector play a crucial role in overcoming various crisis situations (Talmaciu, 2012), as they face the need to enhance their resilience, robustness, and capacity to develop more effective public policies capable of providing an adequate response to cope with disruptive phenomena (Rittel and Webber, 1973). Although the role of non-governmental organizations is continuously expanding, public entities remain central pillars in addressing society's major issues (Aruștei, Manolescu and Apostoaie, 2014). A significant challenge for public policies in the occurrence of events with disruptive effects is to identify the most suitable measures (social contracts) for risk-sharing, conflict reduction, and the promotion of economic and social stability (Anderies and Janssen, 2013; Shep-
sle, 1989).

Considering the constraints, lack of flexibility, and reduced administrative capacity of the public system in Romania, organizational changes are necessary to enhance resilience and robustness, following the main guidelines of the European public system. Organizational changes encompass the following aspects: improving the capacity to redesign public policies in a coherent manner, adopting robust policies and procedures suitable for crisis management, implementing information systems and networks capable of providing efficient and timely feedback, enhancing flexibility and agility, and continually reforming the public system - transitioning towards decentralization (Witesman and Wise, 2009).

The paper illustrates the application of the multi-stakeholder model as a political instrument for enhancing the resilience and governance of public and private organizations. From a methodological point of view, the approach is an integrated one, based on extensive documentation on the involvement of public organizations in multistakeholder partnerships.

The results demonstrate the benefits of multi-stakeholder initiatives (MSIs) by enhancing the resilience of governance systems when facing disruptive phenomena, as well as some of the characteristic dysfunctions of these partnerships. The paper also aims to identify solutions to overcome the identified negative aspects: the lack of strategic orientation and reduced administrative capacity, the shortage of resources, and the low involvement of public and private entities due to the early stage of development of the multi-stakeholder model in the Romanian economic and social context.

2. RESILIENCE AND ROBUSTNESS OF PUBLIC SYSTEMS IN A TURBULENT ENVIRONMENT – THEORETICAL DELIMITATIONS

Turbulence can be defined as a situation in which events, demands, and support interact and change in highly variable, inconsistent, unexpected, or unpredictable ways (Ansell and Trondal, 2018). In today's society, turbulence represents the “new normal” for public administration and governance systems, necessitating a better analytical framework for understanding their effects and identifying possible response measures. Although the factors generating turbulence manifest differently due to the specificity of the economic and social context in which public organizations operate, it is useful to design a generic analytical construct through which they can better manage continuously changing parameters, variability, and temporal complexity.

The concepts of turbulence and crisis are considered complementary in the specialized literature, as most crises exhibit patterns of turbulence. Depending on the sphere and scale of manifestation, turbulence can be categorized into three major categories (Ansell and Trondal, 2018):

- turbulence stemming from the external environment of organizations (changes in legislation, accidents, extreme weather events, rapid technological changes, armed conflicts or political crises, health crises, food crises, etc.);

- turbulence originating from the internal organizational environment (personnel fluctuations, conflicting rules, internal reforms, conflicts between organizational silos/ departments, etc.)

- scale or cross-cutting turbulence that manifests at different levels of society and public authority.

For the public sector, highlighting the importance of adaptability and stability of social systems to disruptive factors has become an increasingly common metaphor (Tobin, 1999; Talmaciu, Percic and Manolescu, 2023; Chenoweth and Stehlik, 2001; Chaskin, 2008).

Bureaucratic public organizations have the ability to efficiently address simple problems by applying standardized solutions. However, when unforeseen events of high complexity arise, which are challenging to resolve through individual organizational efforts, there is a need to implement collaborative governance mechanisms within networks of political, economic, and social partners that sometimes extend beyond national borders (Ansell, Sørensen, and Torfing, 2020; Smit and Wandel, 2006). Turning to multi-stakeholder approaches for addressing complex problems offers multiple advantages: resource mobilization, information sharing, knowledge and expertise sharing, stimulating innovation, greater institutional robustness due to the joint effort in identifying and implementing solutions, and providing the necessary infrastructure for the rapid restoration of social equilibrium (Talmaciu, Manolescu and Percic, 2020). However, the collective effort to find the most suitable solutions for restoring social stability also entails a series of inconveniences: conflicting objectives among participants, differences in opinions regarding the nature of the problems and the effectiveness of proposed solutions, discrepancies in reporting, reluctance to share knowledge and/or resources, and the occurrence of genuine “dialogues of the deaf” (Koppenian and Klijn, 2004; Klijn and Koppenjan, 2016).

Managers of public organizations face significant challenges due to the highly complex interactions that arise among various categories of stakeholders involved in multi-stakeholder networks (Anderies and Janssen, 2013).

Resilience is a useful concept for assessing the capacity of systems and organizations to withstand external shocks (Manolescu and Talmaciu, 2021b). Resilience can be defined as the ability of a system to recover and return to a state of equilibrium after the occurrence of a disruptive event (Davoudi, 2012; Talmaciu and Manolescu, 2021). To achieve resilience, organizations should continuously enhance several capacities: learning and knowledge generation, adaptability, agility, self-organization, and balance (Anderies and Janssen, 2013). Social resilience at the community level is a phenomenon characterized by the three dimensions of sustainable development: economic, social, and spatial (Manolescu, Percic and

Talmaciu, 2019). It is closely dependent on the informal institutional context (broadly defined): the rules, norms, and behaviours governing society, as well as the formal context, namely organizations, stakeholders, and branches/constitencies (Adger, 2000).

Institutions can be sustainable, robust, and resilient depending on a series of culturally contextual factors favourable to adaptation (Adger, 2000; Capano and Woo, 2017): legitimacy, the maintenance of social capital (socialization processes, the existence of mechanisms for social control, opportunities for social participation, civic engagement, and mutual support), historical evolution, inclusivity/ exclusivity, norms, and trust networks as integrative features of social organization.

Resilience appears to be a common phenomenon that typically results from the effective functioning of basic human adaptive systems. If these systems are protected and in good working order, development remains robust even in the face of severe crisis situations (Masten, 2001). Governance robustness is a property of institutions, political and administrative systems, and the political tools used.

In addition to their exceptional complexity, a characteristic of disruptive phenomena is turbulence: surprising evolution, inconsistency, unpredictability, and uncertainty. All of these hinder the existence of predetermined solutions (Ansell and Trondal, 2018).

In a generic sense, robustness represents the ability of a complex system to maintain its functionality in the face of shocks or disturbances. According to the theory of organizational robustness, it is defined as "the capacity of an organization to retain its core characteristics, the fundamental operating model, and to fulfil its functions when confronted with changes in the internal or external environment" (van Oss and van 't Hek, 2011).

A robust system is dynamic, flexible, and adaptive, with the ability to maintain its functionality in the presence of destabilizing factors and transition to a new state of equilibrium (Kitano, 2007; Bednar, 2016).

Robust public policies exhibit several characteristics: the capacity for coherent redesign or remodelling when a disruptive factor emerges (Craft and Howlett, 2012); the presence of procedures, information systems, and networks of actors that provide prompt and effective feedback/response; flexibility or the ability to change policy components, procedures, and tools; highlighted agility, demonstrated by the ability to intervene rapidly when necessary; the capacity for reform and continuous transition between centralization and decentralization.

The conception and implementation of robust governance strategies are conditioned by the existence of collaborative networks like MSIs (Ramus, Vaccaro and Brusoni, 2017). Thus, leadership systems centered on administrative control must give way to trust-based systems, which offer several advantages:

- greater flexibility, innovation capacity, and adaptability, along with decentralization (Fraher and Grint, 2018);

- facilitation of rapid learning and collaborative efforts due to communication processes that transcend professional and organizational boundaries (Covey, 2006; Ostrom, 1990);

- the need to build, nurture, and strengthen collaborative relationships between public organizations and relevant actors (Ansell and Gash, 2008);

- enhancement of future capacity to address turbulent issues - more flexible and agile public institutions and programs (Craft and Howlett, 2013; Renn, Klinke and van Asselt, 2011);

- the emergence of a new organizational vocabulary and a new mindset/culture that favour the transition from producing standardized services to creating innovative, scalable solutions that provide robustness (Bach and Wegrich, 2019).

The need to address complex problems through collaborations with multiple actors in networks and partnerships helps mobilize valuable resources, stimulate innovation, and build common ownership over shared solutions (Roberts, 2000; Ansell and Gash, 2008; Sørensen and Torfing, 2011; Manolescu and Talmaciu, 2021a; Torfing, 2019; Wegrich, 2019; Bednar and Godkin, 2009).

3. SOME CHARACTERISTICS OF PUBLIC GOVERNANCE IN ROMANIA

Studies on the effectiveness and quality of governance highlight that the public administration in Romania exhibits among the weakest performances among the 27 EU member states. Thus, data regarding governance indicators provided by the World Bank, as presented in Table 1, reflect the poor performance of the public sector in Romania and the need for reform: the quality of regulations ranks last among the 27 member states, governance effectiveness and corruption control rank 26th, and Voice and Accountability rank 24th.

Table 1. The Worldwide Governance Indicators (WGI) World Bank

Governance indicator	Score	Rank UE 27
Voice and Accountability	0,60	24
Political Stability and Absence of Violence/Terrorism	0,53	22
Government Effectiveness	-0,13	26
Regulatory Quality	0,31	27
Rule of Law	0,41	23
Control of Corruption	-0,04	26

Source: adapted from Kaufmann and Kraay (2023)

The poor quality of governance and its causes are reflected in the data in Table 2. According to the Legatum Prosperity Index, Romania ranks 24th out of

the 27 EU countries in terms of the governance sub-index, with the weakest performances in the following chapters: Government Effectiveness ranks 27th, Institutional Trust ranks 26th, and Government Integrity ranks 25th.

Table 2. The indicators of governance quality in Romania

Indicator	Score	Rank_global (167 nations)	Rank_UE27
Governance pillar	57,1	51	24
Executive constraints	58,7	48	23
Political Accountability	85,7	39	23
Rule of Law	56,8	45	19
Government Integrity	59	49	25
Government Effectiveness	46,4	85	27
Regulatory Quality	50,8	52	23
Institutional Trust	35	144	26

Source: adapted from Legatum Institute Foundation (2023)

The lack of trust in the public administration in Romania is reflected in the results of the Romanian Institute for Evaluation and Strategy survey (IRES, 2016), which highlights the following perceptions of respondents: public officials prioritize personal interests over public ones (60.5%), they are characterized by a lack of professionalism (40%), and a lack of integrity (42%), authorities are unable to act quickly in response to emerging issues (50%), the activities of authorities are inefficient (42%), there is a very low level of trust in local government representatives (less than 20%), and over 90% of study participants believe that the level of corruption is unbearable.

Successive attempts to reform the public administration in Romania have proven to be ambiguous, lacking coherence and continuity, with initiatives introduced by one government being changed by the next. The administrative framework based on a traditional approach is particularly complex, difficult to understand, and analyze. Public servants themselves, who should have supported the reform process, often do not understand the purpose of reform and are not familiar with its content (Șandor and Tripon, 2008; Andrei, Profiroiu and Turturean, 2006).

As in the case of Western countries, the reform processes in Romania have been driven by two major factors: economic factors (large public deficits, high government spending, high levels of taxation) and public distrust in public authorities (the government), creating a dual pressure from representatives of the business environment and citizens. The most ambitious reforms are typically adopted during times of crisis: economic recession, health crises, political instability,

crises caused by extreme weather events, accidents, and so on (Hîntea, Profiroiu and Țiclău, 2015).

Successive reform processes in Romania aim to transition to a new model of public governance (OECD, 2023), characterized by the development of networks of economic, social, and institutional actors that seek to address common problems or achieve social objectives. Its main characteristics include frequent and ongoing interactions among stakeholders (abandoning the state's partner role, with the state acting as a facilitator and coordinator), a network-oriented approach (developing adaptable and flexible networks of stakeholders based on mutually beneficial communication and collaboration processes), the presence of formal and informal rules among network members, collaborative governance processes that require high levels of trust and social capital, and the achievement of more robust, resilient, and efficient governance systems (Țiclău, 2014).

After Romania's accession to the EU, various types of collaborative networks have emerged that can contribute to improving the quality of governance by enhancing the collaborative capacity of actors at the local level.

One type is represented by Local Action Groups (LAGs), developed as initiatives for rural development, characterized by lower managerial capacity of public authorities and poor communication compared to urban areas. Their number has steadily increased since the first initiative in 2006, reaching 239 associations in 2017, covering 88.57% of Romania's territory and 49.85% of the total population. Some characteristics of this type of partnership are: lack of strategic orientation, membership instability, limited administrative and community capacity (due to their early stage of development and limited experience), insufficient allocated resources, lack of qualified human resources, lack of experience in partnership working, limited autonomy, and underdeveloped infrastructure (Manolescu and Talmaciu, 2021a). In Romania, Local Action Groups (LAGs) have been organized as formal partnerships that bring together various entities from rural areas and small urban localities: private organizations (55.75%), public entities (25.41%), and representatives of civil society (NGOs 18.1% and individuals only 0.74%).

Another type is represented by collaborative cluster networks that have proven to be efficient and effective in mobilizing capabilities and harnessing the synergistic potential of various stakeholder categories. These networks can engage in finding rapid solutions to economic, environmental, health/medical, political, and other challenges. They operate in various sectors depending on the specialization of each region's economy.

In 2020, Romania had 78 clusters, categorized as follows: 3 clusters in the Gold Label category (the highest performance level for Eastern Europe), 17 clusters in the Silver Label category, and 58 clusters in the Bronze Label category, with 115 innovative clusters identified (Hollanders and Merkelbach, 2020). These clusters can contribute to the development process by identifying better solutions for leveraging competitiveness factors, promoting synergy among business

representatives, educational and research institutions, NGOs, and public institutions. In Romania's case, these initiatives are in an early stage, with no clusters showing advanced performance in any field of activity.

Table 3. The distribution of innovative clusters by development regions and performance categories

Region	Total	Basic performance	Average performance
North-West	19	16	3
Center	17	11	6
North-East	10	9	1
South-East	11	6	5
South Muntenia	13	9	4
Bucharest Ilfov	15	8	7
South West	9	8	1
West	21	19	2
Total	115	86	29

Source: adapted from Hollanders and Merkelbach (2020)

The distribution of these cluster networks is uneven across the territory, with a higher concentration of such initiatives found in more developed regions (Table 3): Bucharest Ilfov has 15 clusters (7 with average performance), the West region has 21 clusters (2 with average performance), and the Northwest region has 19 clusters (3 with average performance) (Talmaciu, 2022).

Although the swift adoption of cluster initiatives in Romania is commendable, the next steps should focus on enhancing the efficiency of these partnerships.

4. OBSTACLES TO THE ROBUSTNESS AND RESILIENCE OF PUBLIC ORGANIZATIONS IN ROMANIA

The application of a collaborative model of public governance, inspired by corporate governance models, which can contribute to improving governance performance, the robustness, and resilience of public administration, faces numerous obstacles. These obstacles are related to: the low administrative capacity of central and local public administration authorities, as highlighted in the data in Table 1; factors related to the national cultural context, such as a significant power distance (score of 90 compared to the EU countries' average of 52) or an orientation towards collectivism (score of 30 compared to the EU average of 57); high levels of formal and functional politicization, which negatively impact HR activities and the performance of public servants; the low level of social capital reflected in the indicators in Table 4.

Declaratively, the reform of HR activities is an important objective of central and local public authorities, but politicization is the main obstacle to reform. There is no motivation for an efficient administration as long as the organizational culture in public administration perpetuates changes in human resources after every electoral cycle (Gheorghe, 2010). Public servants are frequently recruited through informal and political connections. Over 57% of top positions in central administration and nearly 43% of employees in local administrations had political affiliations between 2007 and 2012 (Andrei, Profiroiu and Oancea, 2012).

Table 4. Indicators of Social Capital in Romania

Romania	Score	Rank global	Rank UE 27
Social Capital	50	115	26
Personal and Family Relationships	78,6	47	19
Social Networks	69,6	74	19
Interpersonal Trust	32,8	136	24
Civic and Social Participation	20	159	27
Social Tolerance	48,7	111	23

Source: adapted from Legatum Institute Foundation (2023)

The development of collaborative governance networks of the Multi-Stakeholder Network (MSN) type and the establishment of sustainable, robust, and resilient institutions are negatively influenced by the unfavorable conditions of factors that contribute to the low level of social capital (ranked 26th). Among these factors, we can mention: social involvement, civic engagement, and mutual support (ranked 27th among EU countries), interpersonal trust (ranked 24th), the presence of trustworthy social networks as integrative features of social organization (ranked 19th), and the low level of social tolerance (ranked 23rd). It is essential that in the coming period, as primary objectives in the administrative process, there should be an orientation towards improving the presented key indicators and adapting the best practices from the administrations of other member states.

5. CONCLUSIONS

In recent decades, society has been facing an unprecedented proliferation of unforeseen events that generate crisis situations, leading to economic and social imbalances. To address these highly complex issues and restore social equilibrium, there is a need to implement collaborative governance mechanisms and establish governance networks among political, economic, and social partners, sometimes transcending national borders. When public and private actors collaborate and actively engage in day-to-day governance processes, it becomes

significantly easier for them to cooperate during turbulent crises when the stakes are higher.

Implementing more robust and resilient governance systems and mechanisms involves a transition from traditional governance systems centered on administrative control to more open, flexible, and adaptable systems based on trust and broader involvement of economic and social actors in identifying solutions to crisis situations. Multistakeholder-based approaches offer multiple advantages but face several obstacles: the lack of trust of citizens in institutions (resulting in their low legitimacy); the very low level of social capital reflected in the very limited involvement of citizens in creating social control mechanisms; the very low level of trust among economic and social actors, which negatively affects mutual support; and the limited administrative capacity of public administration authorities, among others.

The establishment of multistakeholder network initiatives after the year 2000, which could contribute to improving the quality and effectiveness of governance, is still in its infancy, and experience in this regard is limited. To accelerate the transition to the new model of public governance, based on the development of participative networks of stakeholders, several measures are necessary:

- building and strengthening relational trust and mutual understanding, which require long-term actions and investments;
- rethinking the relationships between public administration and citizens to increase citizens' trust in public authorities (improving the legitimacy of public institutions);
- bringing the administration closer to citizens and involving them in co-creating new tools and mechanisms of public governance;
- reinventing leaders to enhance their ability to design robust solutions to turbulent problems;
- engaging public leaders in continuous dialogue with employees and stakeholders to involve them in the conception and implementation of new strategies and to help accelerate the learning process.

In Romania, successive reform processes have been initiated to transition from the old bureaucratic system of governance, characterized by the paternalistic role of the state and excessive centralization of power, to a new model of public governance characterized by the development of networks of economic, social, and institutional actors aiming to address common issues or achieve social objectives. However, this reform process is progressing at a very slow pace due to the high level of corruption and the lack of efficiency and integrity in governance.

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ROMANIAN PUBLIC PROCUREMENT – AN OVERVIEW

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Abstract

The results of public procurement processes have a major impact on the life of every citizen. An overview of the system can provide both citizens and staff involved with comprehensive information about the processes. Digitalisation of processes is also having an impact in this area. Competition and transparency of processes can contribute to reducing costs and increasing the quality of services offered to citizens by Romanian public institutions. Time, as the duration between the publication of a contract notice and the signing of the contract, is an indicator of the performance of the processes carried out within the system. The statistical analysis was conducted on a number of more than 4000 open procedures and simplified procedures carried out under Romanian Law 98/2016; The duration of a tender procedure is influenced first of all by the type of procedure applied and then by the number of participating tenders, the value of the procedure and the number of lots in the procedure. This research could not analyse the complexity of the subject matter of the procedure.

Keywords: *procurement; performance; time; survey.*

JEL Classification: H57, H41

1. INTRODUCTION

Public procurement is a vast field, encountered on a daily basis and directly affecting all citizens of a country through the results of the processes carried out within it.

According to data published by the Organisation for Economic Co-operation and Development, in 2020, public procurement in Romania represented 11.17% of GDP, compared to the average of the EU OECD member states which have a value of 14.94% of GDP (OECD, 2022).

The purpose of this paper is to provide an overview of the public procurement system and the influence of the legislative framework on it.

The legislative factor plays an important role in this system, directly influencing the duration of the processes.

Digitisation of the system often helps in shortening the duration of the processes.

2. LITERATURE REVIEW

With the accession to the European Union on 1 January 2007, Romania's public procurement system was aligned with the European Public Procurement Directives. Emergency Ordinance No 34 of 19 April 2006 (EGO 34/2006) (Romanian Government, 2006) on the award of public procurement contracts, public works concession contracts and service concession contracts took an important step in aligning with European procurement rules by transposing of the European Parliament and the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (European Parliament and the Council, 2004).

EGO 34/2006 allowed the submission of tenders in sealed envelopes, the transmission of requests for clarification and replies by e-mail/fax/post, the transmission of communications by fax/email/post.

The Ordinance underwent numerous amendments and was repealed by Law 98 of 19 May 2016 on public procurement, which entered into force on 26 May 2016, a law transposing Directive 2014/24/EU at national level.

Law 98/2016 requires the submission of tenders, requests for clarifications, and responses including communications via National Electronic Procurement System (SEAP) and the use of electronic signatures, and only by way of exception allows procedures to be conducted offline (outside SEAP) (Romanian Parliament, 2016) (European Parliament and the Council, 2014).

In October 2018, the National Agency for Public Procurement (NAPP) issues Order 1581/2018 on the approval of the standard forms of the interim evaluation minutes related to the award procedures of public procurement contracts/framework agreements, sectoral contracts/framework agreements and works concession and service concession contracts with the effect of the duration of the evaluation period of an award procedure (National Public Procurement Agency, 2018).

According to Article 75 paragraph 1 of EGO 34/2016, in the case of open tenders whose value was above the threshold which requires publication in the Official Journal of the European Union, the period between the date of transmission of the contract notice and the deadline for submission of tenders had to be at least 52 days, with some possibilities to shorten this period (Romanian Government, 2006).

This period was changed in Law 98/2016 to 35 days, article 74, paragraph 1., and if tenders can be submitted electronically, this period can be reduced by another 5 days (Romanian Parliament, 2016).

This article transposes article 27 of Directive 2014/24 and should be read in connection with Recital 80 of the same Directive (European Parliament and the Council, 2014).

A new attempt to reduce the duration of procurement processes was made in 2020 when Law 98 was amended and the evaluation committee was required to draw up the report of the procedure within 60 working days for open tender procedures and 20 working days for simplified procedures. These time limits can be extended only once by 30/50 working days for open tender procedures and by 15 working days for simplified procedures (Romanian Parliament, 2016).

The deadlines for extending the period for drawing up the report of the award procedure have undergone multiple changes since 2020 and until now because for some procedures it is clearly not possible to fit within these deadlines.

Time, as a key performance indicator of the system, has also been used in other studies on public procurement systems (Baldus and Hatton, 2020; Patrucco, Luzzini and Ronchi, 2016; Patrucco *et al.*, 2019). It is also mentioned in other works (OECD, 2013; Ungureanu, 2023).

3. STUDY OBJECTIVES

The main objective of this study is to create an overview of the public procurement system in Romania.

As secondary objectives I am considering:

- Analysis of the percentages for each type of contract in the total number of contracts and types of procedures, of the frequency of occurrence of procedures with final phase of electronic tendering and of the distribution of the number of procedures by field of activity of the contracting authority.
- Analysis of the duration of each type of procedure by field of activity of the contracting authority.
- Analysis of the impact of digitisation and legislative changes on the duration of an award procedure.

4. ANALYSIS

The statistical analysis was carried out on more than 4000 award procedures from a 2021 sample.

The results obtained on the 2021 sample were compared with those obtained on a sample of 2018 procedures carried out before the entry into force of the NAPP order and with those obtained on a sample of 2016 procedures carried out under EGO 34/2006.

The data were also compared with data from other information sources - World Bank.

The current analysis was carried out on three secondary datasets, published by the Authority for the Digitisation of Romania on <https://data.gov.ro/> in the datasets section (Romanian Government, 2023).

The Authority for the Digitisation of Romania is the institution that develops and operates multiple IT systems, technically and procedurally ensuring their functioning. It ensures the functioning of the electronic public procurement system within the National Electronic Procurement System (SEAP).

The database file for the first part of the study is based on the Contracts 2021 - Q1 dataset containing the award notices published by all Contracting Authorities in the period 01.01.2021-31.03.2021, covering a total of more than 5500 procedures.

Given that the subject of the analysis focuses on public procurement of budgetary institutions in Romania, which organize procurement on the basis of Law 98/2016, a number of 1248 notices related to other legislation (Law 99/2016 regarding sectorial procurement, Law 100/2016 regarding works concessions and service concessions, EGO 34/2016, EGO 114/2011 concerning the award of certain public contracts in the fields of defence and security) were removed from the database.

As a result of these database cleaning operations, a total of 4037 records remained, representing 1788 Open Tender procedures and 2249 Simplified procedures.

The first data file used for comparison is a report from the second quarter of 2018 period 01.04.2018-30.06.2018.

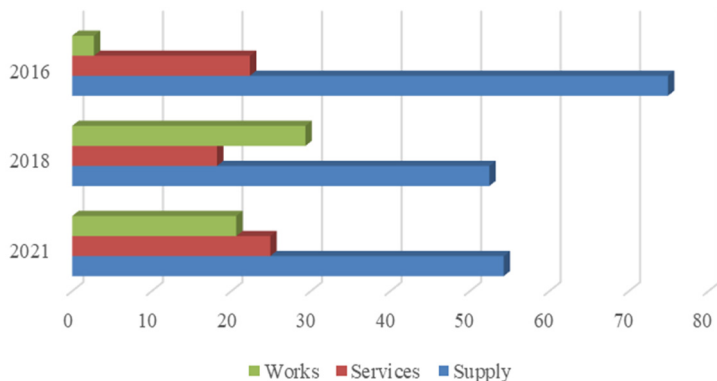
Following the operations to eliminate erroneous, incomplete records, procedures carried out on the basis of the other regulatory acts mentioned above (Law 99/2016, Law 100/2016, EGO 34/2016, EGO 114/2011) a total of 550 tender procedures with complete records resulted.

The second database file for comparison is based on the Contracts 2016 -S1 dataset containing the award notices published by all Contracting Authorities in the period 01.01.2016-30.06.2016, comprising a number of more than 1500 award procedures.

Following the operations to eliminate erroneous, incomplete records, procedures carried out on the basis of the other regulatory acts mentioned above (EGO 114/2011) a total of 878 award procedures with complete records resulted.

As can be seen from Figure 1, the proportion of works contracts increased in 2018 compared to 2016, and then decreased slightly in 2021. Supply contracts, with a share of more than 70% in the 2016 sample, registered a decrease in percentage in 2018 to a share of more than 50% which was maintained in the 2021 sample.

Service contracts remained at around 20% of all procedures initiated in all three samples.

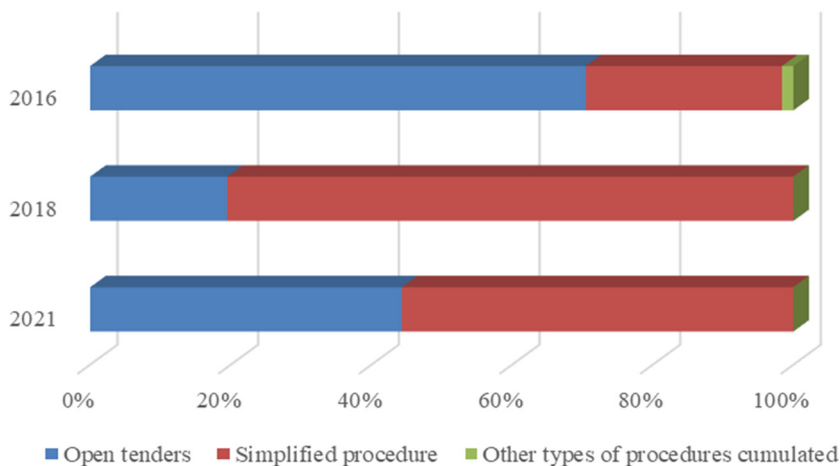


Source: the author

Figure 1. Percentage of contracts by type of contract

The graph clearly shows an increase in public investment in the construction sector from 2016 to date compared to a decrease in procurement.

Given that the thresholds for competitive tendering instead of direct procurement have increased simultaneously for all three types of contracts (supply, services, works), I consider that this modification had little impact on the increase in the percentage of works contracts.



Source: the author

Figure 2. Procedure Percentage

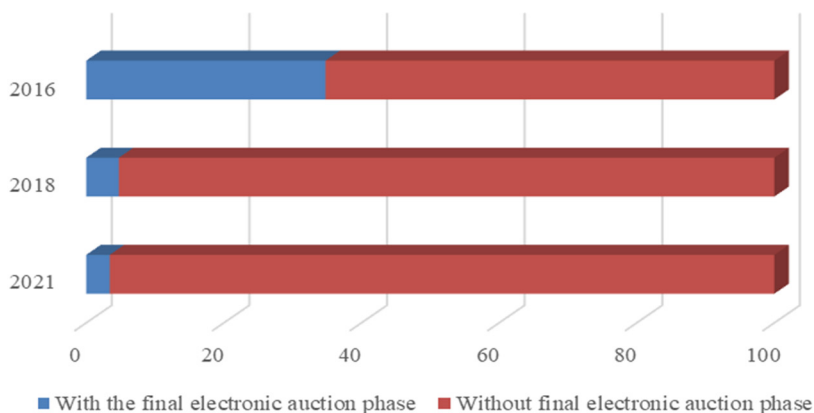
Figure 2 shows us that the most frequently used award procedures are the open tender and the simplified procedure.

In the sample of procedures analyzed in 2016, open tenders accounted for 70.47%, compared to simplified procedures which accounted for 27.9%. In 2018 the percentage decreased, and in the 2021 sample they represented almost half: open tenders – 44.30%, simplified procedures 55.68%.

The decrease in 2018 is certainly justified also by the increase in the percentage of procedures for awarding contracts of works, for which the threshold for awarding works in 2018 through open tender was more than 24 million lei without VAT, compared to the threshold for open tender for supplies and services which was 648 288 lei.

We can see that all the other types of award procedures are present in all 3 samples in a very small proportion.

The European Directive does not establish rules below the threshold of open tendering, the regulation of the simplified procedure is strictly at national level, other countries do not have such a procedure, applying direct purchases with a shorter duration of the procurement process.



Source: the author

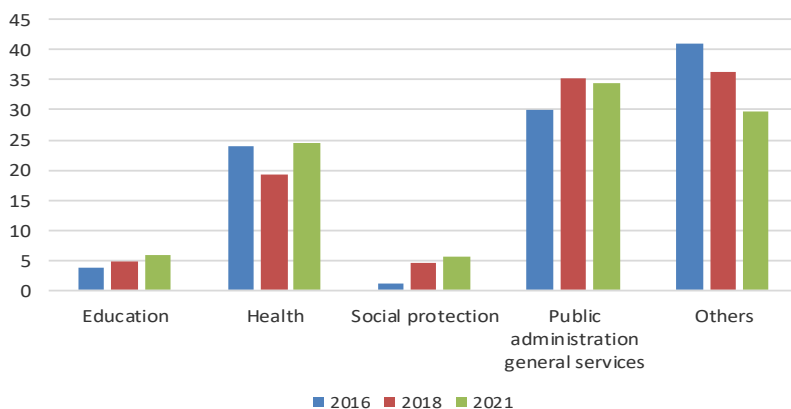
Figure 3. Frequency of occurrence of procedures with final electronic auction phase

The frequency of procedures with a final stage of electronic tendering decreased significantly in the 2018 sample and even more in the 2021 sample (Figure 3). This can be explained very simply, in almost all the first half of 2016 the award procedures were conducted offline (the bids were submitted in a closed envelope), once the Law 98/2016 came into force, these procedures are conducted online and only in some conditions they can be conducted offline.

The new Electronic System for Public Procurement in Romania - SEAP - allows economic operators, although I am of the opinion that it should not, to see the number of bidders registered in the procedure. In the case of electronic tenders, most bidders submit a preliminary offer at the level of the estimated budget so, if

in the final stage of the electronic tendering process only he remains, he will have no interest in reducing the price, the procedure being awarded at a higher value than if he did not know the number of bidders registered in the procedure. Similar is the case with award procedures when bidders see that they are the only ones registered in the procedure, the trend most of the time is to come up with a price close to the estimated value, as opposed to the situation when they see that there are more of them when the trend is to submit a lower price in order to win.

If they didn't see the number of bidders registered, they would definitely submit lower bids to increase their chances of winning.



Source: the author

Figure 4. Percentage of total procedures by the domain of contracting authority

Regarding the number of procedures organized according to the field of activity of the Contracting Authority (Figure 4), we can observe an increasing trend in the number of award procedures carried out by Contracting Authorities in the field of Education as well as those in the field of social assistance which carried out in the 2021 selection sample about 5% of the number of procedures;

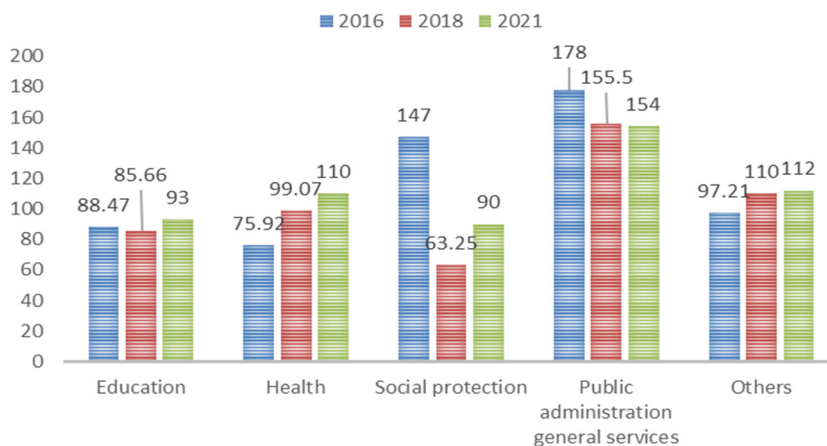
Institutions in the health sector registered a decrease in the number of procedures in the 2018 sample, compared to the 2016 sample and to the 2021 sample when they carried out almost 25% of the total number of procedures.

Local or county government institutions carried out between 30% and 35% of the number of award procedures.

The average duration of an open tender, measured in days (Figure 5), shows a decreasing trend for education institutions in the 2018 sample compared to the 2016 sample and then a slight increase in the 2021 sample to about 90 days.

Healthcare institutions saw an increase in the 2018 sample to around 100 days compared to 2016 when they were under 80 days, and in the 2021 sample, processes are on average almost 110 days long.

Institutions in the field of social protection registered a surprising decrease in the 2018 and 2021 sample compared to the 2016 sample. They also stand in terms of duration of proceedings for the 2021 sample at around 90 days.



Source: the author

Figure 5. Average duration (in days) of the open tender procedure by the domain of contracting authority

Local and county government institutions also showed a downward trend in the 2018 sample compared to the 2016 sample, the value in the 2018 sample being almost equal to that of the 2021 sample.

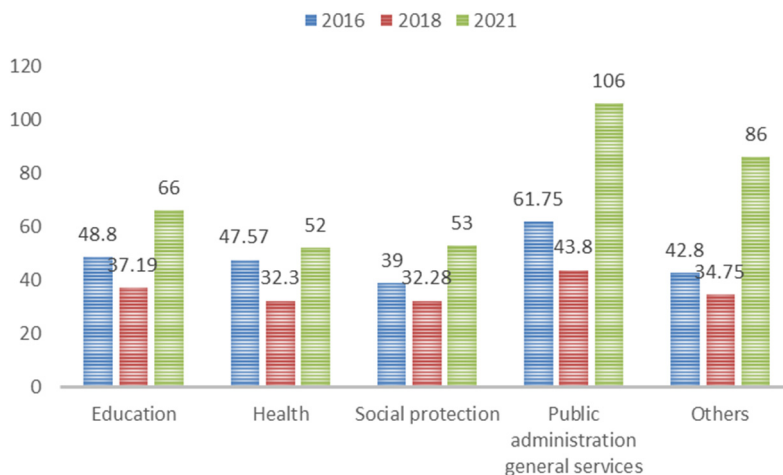
All these decreases are caused also due to the legislative change that occurred in 2016, with the transposition of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and abrogating Directive 2004/18/EC, which placed a strong accent on the digitalization of the procurement process and by reducing the waiting periods for the submission of tenders given that tenders are transmitted primarily by electronic means.

The increase in duration in 2021 samples compared to 2018 samples is significantly influenced by Order 1581/2021 issued by NAPP.

As regards the duration of a simplified tender procedure (Figure 6), a decrease can be observed in all 5 areas of activity in which public institutions were grouped in terms of procedures in the 2018 sample compared to those in 2016, as an effect of the digitization of processes in the public procurement system.

Also, we can observe a definite increase in the duration of simplified procedures in the 2021 sample compared to the 2018 sample, an increase that, as a practitioner in the field, I put it on the ground of the enforcement by Order 1581/2018 and subsequently amended by Order 1170/2021 published in the Official Journal of standard models of forms of verbal processes of award,

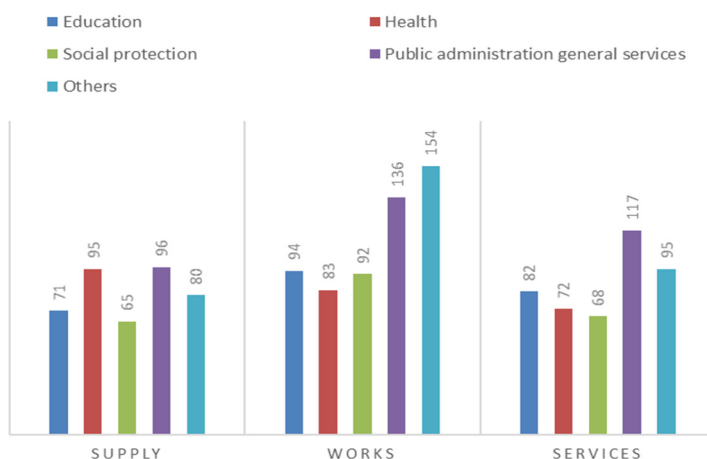
mandatory to use and which exponentially increased the work of the commission for the evaluation of tenders and implicitly the time of the award procedure.



Source: the author

Figure 6. Average duration (in days) of the simplified procedure by the domain of contracting authority

Regarding the average duration of the process, by each type of contract (Figure 7), in the sample of 2021 it can be observed that in terms of supply contracts, the shortest duration is for institutions in the field of social protection (65 days), followed by institutions in the field of Education (71 days).



Source: author

Figure 7. Average duration (in days) by type of contract for 2021

Social protection institutions often award contracts with the same specifications every year (food, uniforms and equipment), which leads to a routine and familiarity with the specifications, which may be one of the possible factors leading to this good result.

In terms of works contracts, the best performers are medical institutions (83 days), followed by institutions from social assistance and education with 92 days. Institutions in the field of local and county government have one of the longest duration (136 days) of procedures for awarding works contracts, most probably due to the higher complexity of works contracts specific to this sector.

As regards service contracts, the social assistance institutions (68 days) are the best in terms of the duration of the award procedure, followed by health institutions with 72 days and education institutions with 82 days. At the other end of the scale are local and county government institutions with 117 days.

5. DISCUSSIONS

The duration of the public procurement process in this study was considered to be the time between the date of publication of the tender notice and the date of the contract for public procurement.

The average duration of the award procedures in the sample analysed for 2021 (88 days) is comparable to that published by the World Bank in its report on public procurement carried out in Romania in 2020 of 92 days (which includes both calls for tenders published under Law 98/2016 and those published under Laws 99/2016, Law 100/2016 as well as those awarded under Law 114/2011; (WorldBank, 2023).

The value published by the World Bank is calculated between the date of publication of the tender notice and the date of contract award (this date usually refers to the date of publication of the notices on the result of the procedure - which is several days earlier than the contract date considered in our study) - no additional information was found in the World Bank study on or clarifying this date.

6. CONCLUSIONS

As can be seen from the analysis of the graph on the proportion of procedures with a final electronic tendering stage, transparency is not always a positive impact, although it is often positive, this time it would only be useful for procedures with more bidders, with a higher degree of competitiveness and where it can have significant positive effects.

With the transposition of Directive 2014/24/EU by Law 98/2016, as it can be seen from the analysis, a decrease in the duration of award of open tenders procedures and simplified procedures, as direct effect of the increased degree of digitalization of the procurement process compared to the one regulated by EGO 34/2016.

Very often, legislative changes have a negative effect on the duration of the procurement process, this time, the enforcement of standard models - which in some cases could have added value to the quality of the tender evaluation process - has led to an obvious increase in the duration of the process and therefore its cost as well as delays in achieving the results expected by that procurement.

A limitation of this study is the number of procedures that have incomplete or erroneous data entered into the system by contracting authorities, especially on the old SEAP portal (2016 data sample). On the new version of the SEAP portal, there are more fields that are mandatory to fill in and include data validation, so the data samples relating to award procedures carried out after 2018 are more complete and with more accurate data.

Future research to analyse the impact of legislative changes would be useful each time there are legislative changes that affect the duration of the procurement process, to see if they have led to an increase in the duration of the procurement process or a decrease of it.

ACKNOWLEDGEMENTS

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ACCOUNTING FOR INNOVATIONS IN VENTURE CAPITAL ACTIVITY PROPOSED FOR THE REPUBLIC OF MOLDOVA

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Abstract

In businesses with a risk profile, from which innovative projects originate, investments have an important place. When venturing into a project, the investor must be extremely cautious and calculated, correctly assess the risks related to venture capital activity, and the position of the economic agent, who initiates the project, must be an exemplary one, which accurately reflects the economic reality and its perspective to generate as high a return as possible. For this purpose, the accounting of innovations in venture capital activity must provide all users with the most truthful information. In the study, the author formulated a hypothesis: the financing sources of innovative projects represent capital investment sources, this is why it is necessary to know the capital market and its efficiency, from which it can be deduced that the innovative activity requires special knowledge of the field, starting from the operational record to the accounting record of all operations, including financial reporting based on fair value according to International Financial Reporting Standards. Under the conditions of the operation of the venture activity mechanism, the meaning of information and reporting in the financial statements takes on particular importance, because the results of the venture capital activity are reflected in slips, registers, order journals, trial balances and financial statements, the purpose of which is to provide actionable information for the adoption of the most effective solutions by its users.

Keywords: *innovations; accountancy; funding investment; capital venture; business angels.*

JEL classification: M41

1. INTRODUCTION

Venture capital investments are investments in a developing business or start-up whose success prospects are unknown. For the reasons that venture capital investors take a lot of risks in choosing innovative projects, they are extremely careful and use several sources of information such as accounting data and records,

financial reports, reports of financial analysts, etc., according to which they base their decisions of investment. Although a leading part in the process of financing innovative projects belongs to the state through the elaboration of normative acts and laws intended to regulate the activity with a risk profile, nevertheless a special place in this chain belongs to the capital market and the efficiency in terms of resource allocation. In a contemporary and competitive economy, "the role of capital markets is to allocate available resources, in a way that allows for the most efficient use" (Vîlcu, 2019, p. 107). Thus, the capital market can be considered efficient if it is simultaneously efficient: a) from the point of view of resource allocation, b) from the operational point of view, and c) from the informational point of view. The market must meet the following conditions to be considered efficient (Duțescu, 2000):

- there should be no securities trading costs;
- all information to be valid, fairly and free of charge, for all market participants;
- participants in capital markets transactions to have homogeneous forecasts regarding the implications of the information received.

Equally current is the opinion according to "a modern accounting system is the one that ensures the opening of accounting to investors" (Ștefănescu, 2005, p. 226). In this sense, the application of International Financial Reporting Standards (IFRS) for financial instruments is an optimal solution for reasons of comparability of accounting information and financial reporting on capital markets. Contemporary economic reality comes in arguing the hypothesis that accounting information now allows investors to analyze past, present and even future events in the entity, which can confirm or deny the initial forecasts for the purpose of financing innovative projects. The accounting profession should be particularly concerned with the presentation of financial statements and reliable and appropriate information based on fair value according to IFRS 13 (Fair Value Measurement). Otherwise, accounting information can become an additional risk factor in the innovation process, especially at the funding stage.

2. LITERATURE REVIEW

The state's interest in the development of venture activity is manifested through the support provided, a fact indicated in the strategic development documents. Innovation was the core of the Europe 2030 Strategy agreed upon by the member states within the European Council and which supports smart, sustainable and inclusive growth. The Europe 2030 Strategy approaches the concept of innovation in a broader sense: both research-based innovation and research aimed at business models, design, brand strategies and services. The creativity and diversity of European citizens and the strength of European creative industries offer a high potential to generate growth and create new jobs through innovation, especially for SMEs. The need to strengthen the links between the research

environment and the business environment, as well as the acceleration of the importance of scientific research for the needs of the business field, is indicated in all the policy documents that governed and govern the field of innovations (the National Program in the fields of research and innovation for the years 2020-2023, the Research and Development Strategy of the Republic of Moldova until the year 2020, the Innovation Strategy of the Republic of Moldova for the period 2013-2020 "Innovations for competitiveness" and the National Development Strategy "European Moldova 2030"). The tendency to promote venture capital activity is enshrined in the basic strategies both at the level of the international communities and at the national level. For example, the European Commission (EC) issued in 2008 The Small Business Act for Europe, in which the role of innovations in economic growth is eloquently described and the number of principles are determined, among which: the creation of the institutional framework; facilitating the access of small and medium enterprises to sources of financing and the development of a favorable business environment. Back in 2010, the European Commission approved a European strategy for economic development - "Europe 2020", which represents a strategy for smart, sustainable and inclusive growth, in which such a strategy was approved for rapid development and the achievement of predetermined objectives flagship initiative as an Innovation Union, with the aim of encouraging innovations and facilitating the financing conditions of scientific research. Then, at the national level, in 2012, the Government of the Republic of Moldova approved the Strategy for the development of the small and medium-sized enterprises sector for the years 2012-2020. In addition to this, in a parallel sequence, the Activity Program of the Government of the Republic of Moldova 2016-2018 was developed, in which it was stipulated to ensure the European course in the business sphere, improving the climate of the investment environment for the development of small business. The Moldova 2030 Strategy describes implementation tools that provide financial support to venture-type research and innovations capable of producing new progress in the business sphere. This financial support is carried out at any stage of development of the venture capital enterprise in two forms: loans to innovative companies and joint ventures (stock package) with risk capital.

On the way to the normative regulation of innovative activities, only in 2020, the law on alternative collective investment bodies is adopted, which is the basic law for the legislation of venture activity. In the same way, the law on small and medium-sized enterprises, which is part of the institutional framework for the development of innovative activity, is adopted, and a draft law with reference to venture capital is also proposed for examination and approval.

With reference to the accounting of operations related to innovations, it is necessary to develop an accounting mechanism specific to the risk activity guided by the provisions of different standards, because in the International System (Financial Reporting Standards - IFRS) there is no single standard of accounting

regulation and reporting for businesses of risk. So, for this, it is proposed to apply IAS 20 "Accounting for Government Grants and Disclosure of Government Assistance", in combination with IFRS 9 "Financial Instruments" and IFRS 2 "Share-Based Payment".

3. RESEARCH DESIGN AND METHODS

The purpose and objectives of the research consist in studying the financial instruments and the accounting of innovations in venture capital activity, the specific features of the management of creation and innovation activities, the specific mechanism of accounting, financing with venture capital, financial reporting, improving the legal framework in the field of innovation and of venture activity, analysis of the interdependence and interaction of venture activity subjects. In this research, we resorted to the fundamental methods of investigation of the legislation, among which we mention the logical method, which is generally based on the logical interpretation of the provisions of national and European Union legislation in the field of innovations. We also used the analytical method of research with the help of which we studied and analyzed the primary and secondary regulations adopted to implement the provisions of the legislation in the given field. The research carried out is also based on methodologies based on theoretical-scientific and empirical principles and analytical methods: analysis and synthesis of scientific literature documents, comparative analysis of information, statistical methods; observation; induction and deduction. We also used the comparative method in examining the "Global Innovation Index 2021" Report.

4. RESULTS AND DISCUSSION

In the ranking of the Global Innovation Index 2021, the Republic of Moldova is placed 64th out of 132 countries in the world, accumulating a total of 32.3 points out of 100 (The Global Innovation Index).

Table 1. The positioning of the Republic of Moldova according to different criteria

The year	Innovation Input	Innovation Output	Infrastructure	Human capital and research	Market sophistication	Business sophistication	Institutions	Creative outlets	Knowledge and technological results
2021	80	54	82	77	74	87	81	53	54

Source: Global Innovation Index 2021

The need to implement innovations is already visible at different levels of the country's development on the path of European integration, having the current

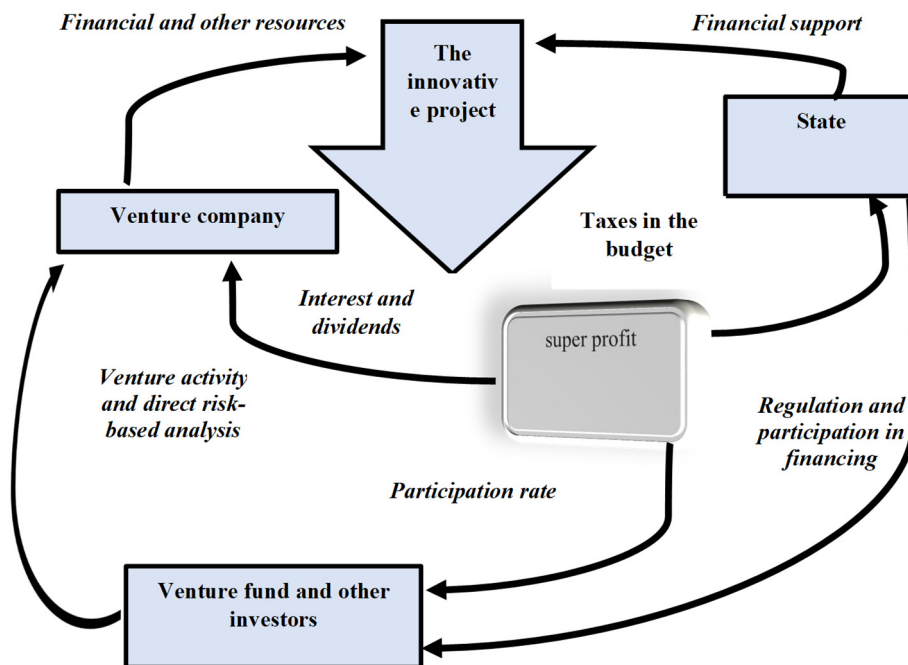
status of the EU country, especially in the conditions of the energy crisis in which our country is currently. Thus, objective no. 1 of the "European Moldova 2030" National Development Strategy is to increase incomes from sustainable sources and mitigate inequalities, and the premise is the development of opportunities for innovations and entrepreneurship. The EU could be a worthy model to follow, especially for the IFRS portable accounting model based on the fair valuation value of financial instruments and investments, but also in terms of strategies. SND "European Moldova 2030" is a national long-term strategic vision document, which indicates the country's development directions and which adapts the priorities, objectives, indicators and targets of the international commitments that the Republic of Moldova has assumed in the national context. According to her, on the one hand, the implementation of innovations in practice for development, on the other - the investment of financial resources in organizations whose activities are related to the development and innovative ideas, most of which do not have sufficient financial resources.

The investment is based on two important pillars: 1) the risks, and 2) expected profit.

Any investor seeks to obtain from venture companies with innovative activities increased profitability or a super-profit, which is possible only through a risky venture, where the risks incurred can lead to losses throughout the entire period of development of the innovative project, and the end to obtain a profit surplus. Financing a new entity, as a result, the venture company appears. For the efficient use of the financing program with the increased risk of losses, and the probability of obtaining super profits is low, a special mechanism for structuring free financial resources, called risk funds or venture funds (from the law – the body of collective alternative placement OPCA), whose activities are mostly stimulated and regulated by the state. This OPCA, arising from certain conditions, invests in an individual entrepreneur (usually a start-up), who is co-interested in the possibility of obtaining super-profits (Țurcanu and Golocalova 2017). From a legal point of view, the venture fund is an investment fund made up of investors, with or without legal studies, legal entities and/or natural persons with any organizational-legal form in the manner provided by the legislation in force. The main objective of financing with venture capital consists in the fact that the financial resources that belong to investors (private entities, funds, banks, the state) and the intellectual possibilities of venture companies, as well as their opportunities in the form of original ideas and technologies will be able to come together in order to organize the business to achieve increased profitability.

Each investor pursues his own objectives: the internal ones - primarily count on realizing the idea, occupying a new niche on the market and obtaining his share of the capital, the external ones - expect the recovery of investments and obtaining a profit surplus, the state sees the economic advantages for the improvement of the economic situation, the stimulation of employment and the possibility of

consolidating the budget from the account of fiscal obligations (Țurcanu and Golocalova, 2017).



Source: Țurcanu and Golocalova (2017)

Figure 1. The relationship, interaction and interdependence of the entities of the venture activity

The venture capital investor does not invest directly in production, but in the company's share or statutory capital, which cannot be withdrawn on its own initiative until the end of the term indicated in the financing agreement.

Figure 1 schematically shows the interaction and interdependence of three venture activity subjects.

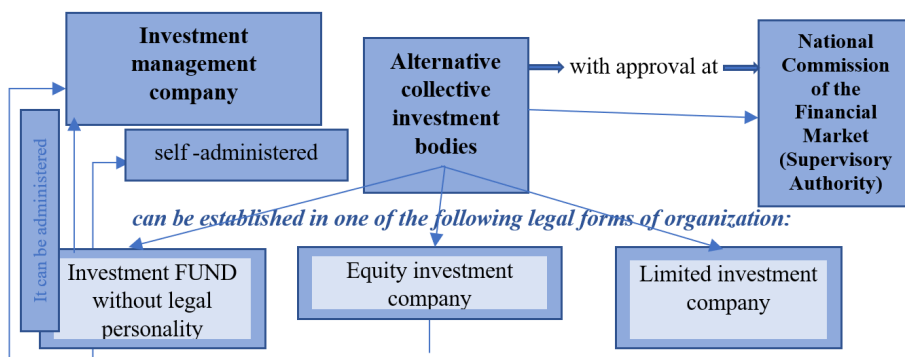
At the current stage, in the Republic of Moldova, there is the necessary legal framework and the development perspective in the field of innovations, but the implementation mechanisms are poorly developed, because there is no alternative collective investment body with risk capital like a venture fund (Found Venture) registered and approved by the Supervisory Body - the National Financial Market Commission. Accordingly, we cannot develop any accounting and financial reporting mechanism specific to this type of risky activity.

According to art.1, The Law on Alternative Collective Investment Bodies has the following purpose and fields of application:

- regulates the constitution, approval and operation of OPCA;

- regulates the requirements for the organization, licensing and activities carried out by SAI, the obligations related to the management of OPCA with risk capital and long-term investments;
- regulates the rules regarding OPCA asset depositories.

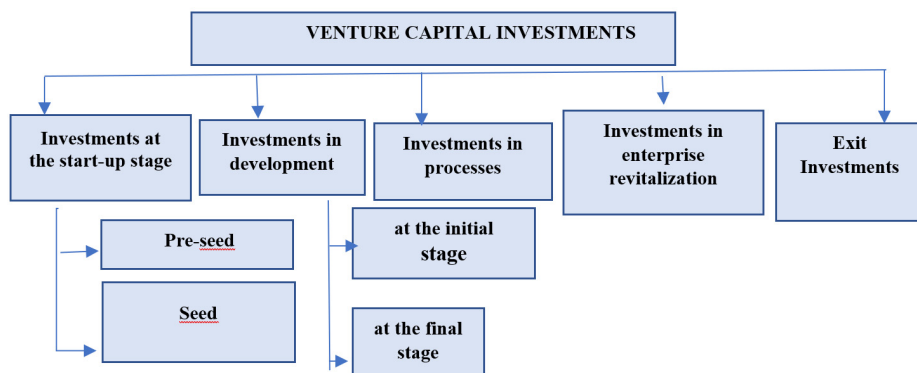
Although it was possible to adopt a law for the legal foundation of OPCA, which, in fact, refers more to venture funds, which attract financial resources from certain investors in order to place them according to the investment policy promoted in their interest, however, the coverage area of the entire venture activity is much wider. Since the actors of this type of activity with risk capital carry out activities on the capital market, compliance with the regulations of the capital market law (2012) is also required, and the professionals who select the innovative projects in order to establish the financing criteria must be certified on the market of capital and possess necessary and specific knowledge in this respect.



Source: the author computation

Figure 2. Model for setting up an alternative collective placement body according to the legal form of the organization according to the legislation in force of the Republic of Moldova

At the same time, it is found that investments with venture capital represent a direction of perspective in financing the innovative activity of entities through flows of venture capital within the national economy. Based on these benchmarks, the specific operating mechanism inside the entities that deal with the development of innovative projects and the accounting mechanism of operations that depends on the funding sources are also built. Next, I will schematically present the types of investments with venture capital (Figure 3).



Source: the author computation

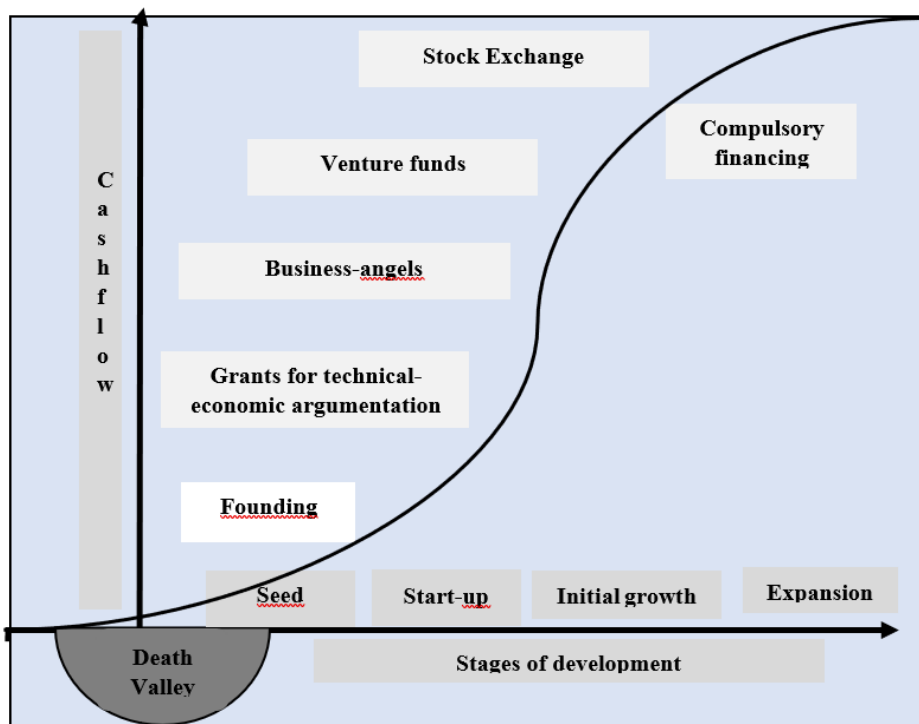
Figure 3. Structure of venture capital investments

Every product, service, market or enterprise, by essence, develops like a human being, i.e., they are born, develop, grow old and die. Innovative companies are no exception, operating in accordance with the life cycle concept. The profitability and success of the venture company depend on several factors and, most importantly, on the value of its shares.

Researching theoretical approaches to the concept of accounting as a process of providing information for subsequent financial and managerial analysis offered by scientists allows for defining its general notion. Accounting is an important part of the management system and can be referred to as the process of collecting, preparing, recording and combining information about the operations of a company. It provides the justification and effectiveness of managerial decisions aimed at defending the financial interests of the owners against internal and external challenges and threats (Țurcanu and Golocalova, 2017).

Actions must be clearly systematized in stages and accurately executed only in the sequence shown in Figure 4.

At the "seed" stage, the accounting records will reflect the quantitative and estimated value of the initial research on the basis of which the business concept designs will be made, including operational data such as technical-economic arguments, determination of market potential and economic viability. At the given stage, the entity is in the initiation process: the team is being formed, which will manage the project, respectively costs will accumulate in accounting and from the team members' salaries. Since, at this stage, the profit and income are completely missing, the entrepreneur, in the given case, will be in the position of the researcher or the inventor, who needs resources to carry out some activities of theoretical and applied argumentation of the commercial potential of the concept.



Source: Mochalina (2010)

Figure 4. Graphical representation of development stages, cash flow and funding sources of innovative projects

The "Start-up" stage involves the accounting of the activities of creating the production model, and the trial testing of the innovative product. From an operational point of view, the market will be thoroughly researched and sales channels will be sought, also the company will be given an official status. Major importance must be given to the start-up phase of venture-type activity, because it is precisely at the initial stage of development of the innovative project that the main complication in the evaluation of the innovation manifests itself, as a result of demonstrating the quality of human capital (Legenchuk and Usatenko, 2020). At the start-up phase of the implementation of the venture activity, the intellectual contribution of the author of the idea is of primary importance (Ivanov, 2014), and he must be included in the form of human capital in the statutory capital in the stage of its formation. At this stage, the legal form of the future relationship between the human capital holder and the venture capital investor is also established. From this context, it is necessary to draw attention to the issue of evaluation and the financial reporting scheme of innovations, as a result of the investment of human capital in venture activity as a modern trend in accounting methodology. Human

capital represents the totality of acquired skills and knowledge, skills and innovations, the efficient use of which contributes to increasing income and other benefits.

In the accounting records at the stage of initial growth, accounting entries related to reaching a stable level of sales and the start of growth will be reflected. An expansion of the production process will be observed in the operational activity of the venture entity. The initial growth stage can be divided into three phases:

- The first phase of the initial increase – the organization of the records through primary documents of the production process;
- The second phase of the company's development will reflect in the accounting data a volume of production, which determines the real demand on the market;
- The third phase of initial development refers to a rather rapid increase in the volume of production and will record in the accounting records the obtaining of a real profit, which significantly reduces the level of investment risk.

At the stage of initial growth, the main source of financing for innovation entities is venture funds. Venture capital funds and the financing process will be properly reflected in the accounting records, and at the operational level, the process of receiving financial resources from funds that invest in the high-risk business will be followed. As a rule, 70-80% of innovative projects do not generate profits, but the profit of the other 20-30% covers almost all losses, damages and scraps.

At the expansion stage, to increase the production volume of the innovative product, the entities can obtain financing from various sources. At this stage, the company already has a certain history, all accounting operations aim to reflect these indicators, and visible results of innovative activity are pursued. Therefore, the financing sources of innovative entities at the expansion stage are much more varied than at the previous stages.

At the stage of expansion in the accounting system, a significant increase in the production volume will be observed, at the operational level, respectively - a significant increase in the market share.

The provisions, which would also cover innovative processes, which would not be contradictory and would serve the purpose of developing a transparent representation in the financial reporting of scientific progress, are not defined in the normative basis of the accounting system of the Republic of Moldova. For this reason, we will use the International Financial Reporting Standards (IFRS).

Table 2. The accounting mechanism of operations related to venture activity in the context of IFRS

Choice	Regulation	Accounting evaluation	The model of ASSESSMENT	The representation mechanism of innovations
Traditional	IAS 38	The pattern cost	Initial cost	<p>➤ At the research stage: Dt "Operating expenses" Kt "Obligations" or "Accounts expenses incurred"</p> <p>➤ At the development stage: Dt "Intangible assets" Kt "Obligations" or "Accounts expenses incurred"</p>
Proposed	IFRS 2	The model on income base	Binomial, Monte-Carlo	<p>➤ At the initial phase of the formation of the statutory capital: Dt "Intangible assets" Kt "Social capital"</p>

Source: developed by the authors based on Țurcanu and Golocialova (2015)

Although here too, there is a lack of a basic standard to regulate the issue of reporting and accounting in venture activity, nevertheless, these questions can be resolved based on the concept of fair value measurement. In order to evaluate human capital at the start-up phase, two estimation models are accepted in the IFRS system:

- 1) based on the cost model - IAS 38 "Intangible assets"
- 2) based on income - IFRS 2 "Payment based on shares" (Golocialova and Maior, 2018).

Applying one of the evaluation models requires a separate mechanism for representing innovation-related operations. For analysis in the table below, the traditional mechanism and the one proposed for representing the operations of venture activities based on the comparison of the existing approaches within the concept of valuation according to IFRS (Țurcanu and Golocialova, 2015).

5. CONCLUSIONS

As we have already mentioned, the key point of risk activity is the realization of an innovative project or an innovative idea. I believe that the evaluation of this idea, as a result of its financing, will be possible only on the basis of the concept of fair value. Namely, this explains the rationale for using IFRS to reflect accounting operations in venture activity. In this sense, I note that the accounting and reporting system of the Republic of Moldova built on the basis of the National Accounting Standards (SNC) lacks regulations to reflect transparently the accounting operations related to venture capital activity. According to the studies carried out, I can conclude that state support of innovative activity is, indisputably,

necessary and, in some cases, mandatory. The tax reliefs and facilities, the simplification, promotion and implementation of venture capital will have a beneficial influence from the macroeconomic perspective on the development of the process of financing innovative activity in the Republic of Moldova.

Although a step forward towards the legislation of the financing of innovative projects was made, with the appearance of the legislative acts on risk capital, namely Law No. 2 of 06.02.2020 on alternative collective investment bodies, however, no positive trends are observed in terms of implementation mechanisms and concrete for entities with venture activity. Based on the above, the improvement of accounting is requested, namely:

- development of an accounting model for venture activities, as well as venture funds;
- formation of an informational-accounting system to systematize analytical operations;
- developing financial reporting methods for participants in venture capital activities and accounting for innovations at each stage of the development of the innovative project;
- development of accounting methods for the results of venture activities and evaluation of the efficiency of the use of venture capital for financing based on the use of the forecast balances of the post-investment value;
- development of strategic accounting of property in enterprises with venture activity.

Since accounting is closely related to taxation and legislation, there is a need for moderate regulation of all phases of the venture activity, it is also necessary to develop mechanisms for reflecting all accounting operations, for the formation of appropriate management reports, statistical and fiscal Financial Reports through structuring corresponding to the field of venture activity. It is necessary, not only to harmonize the legislation but also to stimulate entrepreneurs to innovate, to develop venture funds, which it seems will not be successfully achieved without the rigorous support of the state or without having access to European funds with venture capital.

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THE RULE OF LAW – AN ESSENTIAL VALUE OF THE EUROPEAN UNION

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Abstract

The rule of law is an essential concept, considering the state's submission to the legal norms established at the national level, being known, over time, under different names: rechtstaat, l'état de légalité, rule of law. The regulation and effective implementation of this principle make the difference between democratic and totalitarian regimes.

The present paper aims, first, to define the notion of the rule of law, as well as the requirements that it implies. The aim is then to establish the legal framework of the rule of law in the European Union. The second part of the exposition emphasizes the application and the concrete defense of the analyzed principle by the institutional structures of the European Union.

The article is of real importance both for the specialists in the field and especially for the European member states of this regional organization they belong to, states whose fundamental obligation is the adequate application of the demands of the rule of law.

The objectives of this article are, on the one hand, to determine the complex content of the concept of the rule of law. On the other hand, the commentary of the various positions, expressed by important Union institutions, regarding the effective defense of the rule of law was pursued.

Keywords: *rule of law; application; European Union; member states.*

JEL Classification: N44

1. THE CONCEPT OF THE RULE OF LAW AND ITS IMPERATIVES

The phrase rule of law was originally defined by the expression *rechtsstaat*, used by German authors on the matter at the end of the 19th century. Later, in France, the analyzed concept was designated, in the legal literature, by the construction of *l'état de légalité*, to find it, then, in the Anglo-Saxon area, under the name of *rule of law*.

The well-known English constitutionalist A. V. Dicey considered that the rule or supremacy of law has three meanings. The first one represents the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power. Therefore, the rule of law means that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary Courts of the land. The second significance of this term refers to the fact that every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals (the equality before the law). Thirdly, the rule of law is the law of the constitution, which are not the source but the consequence of the rights of individuals, as defined and enforced by the Courts; the principles of private law formulated by the action of the Courts and Parliament; thus, the constitution is the result of the ordinary law of the land (Dicey, 1982, pp. 114-115).

The need for the state to be a defender and servant of the laws is judiciously explained by Aristotle, who appreciated that: “for this is law, for order is law; and it is more proper that law should govern than any one of the citizens: upon the same principle, if it is advantageous to place the supreme power in some particular persons, they should be appointed to be only guardians, and the servants of the laws, for the supreme power must be placed somewhere” (Aristotle, 1912, p. 83). In the same sense, it was also stated that the rule of law is “that bundle (bunch) of principles recognized on a world scale, which means ensuring the autonomy of the individual, his freedom of action and the self-limitation of the state's sphere of action, in favour of the individual” (Popescu, 1998, pp. 36-39).

Asking whether the rule of law is an ideal or an ideology, the American authors Allan Hutchinson and Patrick Monahan tend to consider that the rule of law is rather an ideology, “transcending partisan concerns” (Hutchinson and Monahan, 1987, p. 102).

The definition provided by Professor Tudor Drăganu explains, in a synthetic way, the characteristics of the concept under consideration: “the rule of law is considered that state which, organized on the basis of the principle of the separation of state powers, in the application of which the judiciary acquires a real independence and, following through its legislation the promotion of the rights and freedoms inherent in human nature, ensures the strict compliance of its regulations by all of its organs, in their entire activity” (Drăganu, 1992, p. 12).

Widely commented in the legal literature, the imperatives of the rule of law cover multiple aspects, resulting from the complex nature of the analyzed notion, aspects that mainly concern: the subordination of the entire institutional system of the state to the law; placing the law on the highest place in the hierarchy of legal sources; the provision and the effective implementation of the principle of separation of powers in the state; the consecration and the concrete application of the fundamental human rights and freedoms; the existence of independent and impartial courts; independence of the press.

As rightly noted in the legal literature (Lautenbach, 2013, p. 18), “legality is the core element of the rule of law. First, legality requires government to act on the basis of law. Second, it sets a number of quality requirements to which law must adhere, such as generality and clarity. Legality also requires that the judiciary reviews the legality of governmental acts and provides individuals with access to a fair hearing”.

Justly, the doctrine (Chevallier, 2023, pp. 60-64) explained the mechanism by which the rule of law operates in a democratic state, which is different from the police state: “the rule of law differs from the police state insofar as the power of those who govern is not unconditioned but subject to the law. Because it reduces rulers to a simple function of executing legal norms, the rule of law, in its absolute expression, results in the erasure of the phenomenon of power. In this scheme, the key role is devolved to the judge who, in theory, does not exercise real “power”, because he must content himself only with applying the law and ensuring compliance with the hierarchy of norms in the manner as objective as possible”.

In a clear, concise, and comprehensive manner, Sir Tom Bingham determines the plurivalent content of the notion under consideration: the rule of law is not an arid legal doctrine, but is the foundation of a fair and just society, is a guarantee of responsible government, is an important contribution to economic growth and offers the best means yet devised for securing peace and cooperation (Bingham, 2011, pp. 110-132).

Therefore, the rule of law, “the guarantor of order and justice” (Gilia, 2004, p. 18), implies the existence of an accessible system of legal rules, elaborated judiciously, to which all subjects of law submit to it, a legal system that is fairly implemented by the independent judicial courts.

2. THE FRAMEWORK OF THE RULE OF LAW IN THE EUROPEAN UNION

Several Union institutions have the mission of defending the rule of law, through the methods established by Union legislation, such as the European Commission, the Council, the European Parliament, the Court of Justice of the EU. We will determine, briefly, the actions carried out, in this sense, by the structures of the Union mentioned above, as well as the legislation related to the rule of law in the European Union.

In its original version, the Maastricht European Union Treaty included, in art. B paragraph 1, among its objectives, some exigencies on which the concrete application of the rule of law is based (Treaty on European Union TEU, 1992): to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in

accordance with the provisions of this Treaty; [...] to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union.

The consolidated form of the Maastricht Treaty (Consolidated version of TEU, 2020) determines, expressly, in article 2, the values that underlie the European Union: human dignity, freedom, democracy, equality, the rule of law, human rights, including the rights of persons belonging to minorities. The infringement of article 2 cited above has as a consequence the application of the mechanism stipulated by article 7 of the EU Treaty. The importance of these values is reflected significantly in the doctrine (Rossi, 2020): “these values do not only represent the profound roots, but also the founding identity of the EU legal construction”. In the legal literature (Spieker, 2023) it was rightly emphasized that “systematic and comparative considerations along with the provision’s drafting history strongly suggest that Article 2 TEU contains legal principles, not moral values [...] the Court has found ways to overcome the indeterminacy of these values by operationalizing them through specific Treaty provisions”. Article 2 TEU must be corroborated with the second subparagraph of Article 19(1) TEU (“Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law) and with the third paragraph of Article 4 TEU (“Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardize the attainment of the Union's objectives”).

The rule of law, a fundamental value of the Union, an essential condition imposed on candidate states for integration into the European Union, is mentioned by the Charter of Fundamental Rights of the European Union, second paragraph (“the Union is founded on the indivisible, universal values of human dignity, freedom, equality, and solidarity; it is based on the principles of democracy and the rule of law”) and constituted a constant, persistent and permanent preoccupation for the Union institutions. We will list, in the following, some of the most important legal acts that were the object of the rule of law, whose detailed analysis was the object of another study.

The *European Commission* has issued various legal acts in the area, such as: Communication from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union, named Respecting and promoting the values on which the Union is founded of 15 October 2003 (European Commission, 2003, 606 final); Communication from the Commission to the Council and the European Parliament. A new EU Framework to strengthen the Rule of Law (European Commission, 2014/0158 final); Commission

Recommendation (EU) 2016/1374 of 27 July 2016 regarding the rule of law in Poland (European Commission, 2016a); Commission Opinion regarding the Rule of Law in Poland. C (2016) 3500 final (European Commission, 2016b); Commission Recommendation (EU) 2017/146 of 21 December 2016 regarding the rule of law in Poland complementary to Recommendation (EU) 2016/1374 (European Commission, 2017a); Reasoned Proposal in accordance with article 7(1) of the Treaty on the European Union regarding the rule of law in Poland. Proposal for a Council Decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law. (COM (2017) 835 final). 2017/0360 (European Commission, 2017b); Commission Recommendation (EU) 2017/1520 of 26 July 2017 regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374 and (EU) 2017/146 (European Commission, 2017c); Commission Recommendation (EU) 2018/103 of 20 December 2017 regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374. (EU) 2017/146 and (EU) 2017/1520 (European Commission, 2018a); Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalized deficiencies as regards the rule of law in the Member States. COM/2018/324 final - 2018/0136 (European Commission, 2018b); Communication from the Commission to the European Parliament, the European Council, and the Council, further strengthening the Rule of Law within the Union State of play and possible next steps. COM/2019/163 final (European Commission, 2019a); Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Strengthening the rule of law within the Union A blueprint for action. COM/2019/343 final. (European Commission, 2019b); Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee of the Regions 2020. Rule of Law Report. The rule of law situation in the European Union. COM/2020/580 final (European Commission, 2020); Proposal for a Council Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary 2022/0295 (European Commission, 2022).

The European Parliament has been also constantly concerned with the content of the rule of law concept through various legal acts adopted in this field alone or with the Council, as has been analyzed in detail in another previous research (Verga, 2023, pp. 462-486): European Parliament resolution of 14 September 2016 on the recent developments in Poland and their impact on fundamental rights as laid down in the Charter of Fundamental Rights of the European Union (2016/2774(RSP)) (European Parliament, 2016a); Resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights. 2015/2254(INL) (European Parliament, 2016b); European Parliament resolution of 17 May 2017 on

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3. THE APPLICATION OF THE RULE OF LAW BY THE COURT OF JUSTICE OF THE EUROPEAN UNION

The implementation of the values imposed by the rule of law has been achieved, over time, by different institutions that defend the rule of law in the European Union, as stated in the previous section.

However, the basic role regarding the settlement of disputes related to the rule of law belongs to the Court of Justice of the European Union. In the following, we will comment on some relevant decisions, pronounced in the examined field, regarding only a few aspects of the rule of law, such as the effective judicial protection with its corollary: the independence of the judiciary.

3.1. Case C-64/16, Judgment of the Court of 27 February 2018

Case C 64/16 (Court of Justice of the European Union, 2018) had as its object a request for a preliminary ruling under Article 267 TFEU from the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal). The request has been made in proceedings between the Associação Sindical dos Juizes Portugueses (Trade Union of Portuguese Judges, “the ASJP”) and the Tribunal de Contas (Court of Auditors, Portugal) concerning the temporary reduction in the amount of remuneration paid to that court’s members, in the context of the Portuguese State’s budgetary policy guidelines. This request concerns the interpretation of the second subparagraph of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union.

In the application of some administrative acts of “salary management” adopted under Law no. 74/2014, the remuneration amount of Tribunal de Contas (Court of Accounts) judges was reduced.

By its question, the referring court seeks, in essence, to ascertain whether the second subparagraph of Article 19(1) TEU must be interpreted as meaning that the *principle of judicial independence* precludes general salary-reduction measures, such as those at issue in the main proceedings, linked to requirements to eliminate an excessive budget deficit and to an EU financial assistance programme, from being applied to the members of a Member State’s judiciary.

The judicial instance of Luxembourg appreciated that *the European Union is a union based on the rule of law* in which individual parties have the right to challenge before the courts the legality of any decision or other national measure relating to the application to them of an EU act.

The Court stated that “the existence of an effective jurisdictional control, provided by art. 19 para. 2 TEU intended to ensure compliance with Union law is inherent in a rule of law”. Therefore, any member state must ensure that its courts meet the requirements of effective jurisdictional protection. In order for this protection to be guaranteed, preserving the independence of such a body is primordial.

The guarantee of independence, inherent in the mission of a court, was determined by the jurisprudence of the Court of Luxembourg (Court of Justice of the European Union, 2006, judgment of 19 September 2006, Wilson, C-506/04, EU:C:2006:587, paragraph 49; Court of Justice of the European Union, 2017a, judgment of 14 June 2017, Online Games and Others, C-685/15, EU:C:2017:452, paragraph 60; Court of Justice of the European Union, 2017b, judgment of 13 December 2017, El Hassani, C-403/16, EU:C:2017:960, paragraph 40). This guarantee is imposed not only at the level of the Union, but also at the level of the Member States, with regard to national courts.

The Court also emphasized that the independence of national courts is especially essential for the proper functioning of the judicial cooperation system constituted by the preliminary ruling mechanism provided for in Article 267 TFEU,

because this mechanism may be activated only by a body responsible for applying Union law and which also meets this criterion of independence.

In the view of the Luxembourg Court, this requirement of judicial independence is inherent in the judicial activity and comprises two aspects. The first aspect, of external order, supposes that the body concerned exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever.

The second aspect, of an internal order, is related to the notion of impartiality and aims at equidistance from the parties in the dispute and their interests from the perspective of its object. (Court of Justice of the European Union, 2006, judgment of 19 September 2006, Wilson, C-506/04, EU:C:2006:587, paragraph 52).

Like the protection against removal from office of the members of the body concerned (judgment of 19 September 2006, Wilson, C-506/04, EU:C:2006:587, paragraph 51), the receipt by those members of a level of remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to judicial independence.

The salary reduction measures at issue in the main dispute were adopted on the basis of imperatives related to the elimination of the excessive budget deficit of the Portuguese state and they were of a temporary nature.

These measures were ordered not only for the members of the Court of Accounts, but also for representatives of the legislative, executive, and judicial powers.

Therefore, the Court ruled that the second subparagraph of Article 19(1) TEU must be interpreted as meaning that the principle of judicial independence does not preclude the application to members of the Tribunal de Contas (Court of Accounts) of general salary-reduction measures, such as those at issue in the main proceedings, linked to requirements to eliminate an excessive budget deficit and to an EU financial assistance programme.

Therefore, by interpreting art. 19 paragraph 2, the court concluded that the member states establish the necessary modalities to ensure an effective judicial protection for individual parties in the areas regulated by Union law.

The previously cited provision concerns areas governed by Union law, regardless of the situation in which the Member States implement this law, in the sense of Article 51 paragraph (1) of the Charter of Fundamental Rights of the European Union.

Article 19 paragraph 2 applies to any national court capable of ruling, as a court, on the matters relating to the application or interpretation of Union law and which thus fall within the fields regulated by this law.

This decision is a historical one in the doctrine (Magaldi, 2022, pp. 127-157; Coutron, 2018, pp. 1417-1434; Torres Pérez, 2020, pp. 105-119), as it judiciously

concerned the content and interpretation of Article 19 paragraph 2 TEU, determining guarantees on judicial independence.

3.2. A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court), Joined Cases C-585/18, C-624/18 and C-625/18

In these Joined Cases C-585/18, C-624/18 and C-625/18 (Court of Justice of the European Union, 2019a), the Luxembourg court answered, concisely, the preliminary questions asked. Thus, article 47 of the Charter of Fundamental Rights of the European Union and article 9 (1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding cases concerning the application of EU law from falling within the exclusive jurisdiction of a court which is not an independent and impartial tribunal, within the meaning of the former provision. In this case, the Disciplinary Chamber of the Supreme Court of Poland, recently created, is competent to rule on cases concerning the application of EU law. The Court leaves the task of the referring court to determine whether the circumstances that were the basis for the creation of this Chamber, its characteristics, as well as the way of appointing its members determine the lack of independence and impartiality of this Chamber. We consider these indications of the Court to be decisive benchmarks in this context, leading to the violation of the provisions cited above.

In the same case, the Court decide that the principle of the primacy of EU law must be interpreted as requiring the referring court to disapply the provision of national law which reserves jurisdiction to hear and rule on the cases in the main proceedings to the abovementioned chamber, so that those associated cases may be examined by a court which meets the cited above requirements of independence and impartiality and which, were it not for that provision, would have jurisdiction in the relevant field.

In the Court's opinion, in accordance with the principle of the separation of powers which characterizes the operation of the rule of law, the independence of the judiciary must be ensured in relation to the legislature and the executive.

The Court of Justice resumed the previous jurisprudence and explained that the independence requirement of a court includes two aspects: the exercise of its function wholly autonomously and impartiality.

The interpretation of the article 47 of the Charter invoked in this case must respect the ECtHR jurisprudence on the matter. In this regard, in order to establish whether a tribunal is 'independent' within the meaning of Article 6(1) of the ECHR, regard must be had, inter alia, to the mode of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body at issue presents an appearance of independence (ECtHR, 6 November 2018, *Ramos Nunes de Carvalho e Sá v. Portugal*, CE:ECHR:2018:1106JUD005539113, § 144).

According to the European Court of Human Rights, *impartiality* can be tested in various ways, namely, according to a subjective test where regard must be had to the personal convictions and behaviour of a particular judge; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, European Court of Human Rights, 2003, ECtHR, 6 May 2003, *Kleyn and Others v. Netherlands*, CE:ECHR:2003:0506JUD003934398, § 191 and European Court of Human Rights, 2018, 6 November 2018, *Ramos Nunes de Carvalho e Sá v. Portugal*, CE:ECHR:2018:1106JUD005539113, §§ 145, 147 and 149).

In the examined case, the Court of Justice clearly explained what the *principle of the effective judicial protection* consists of: the principle of the effective judicial protection of individuals' rights under EU law, referred to in the second subparagraph of Article 19(1) TEU, is a general principle of EU law which is now enshrined in Article 47 of the Charter, so that the former provision requires Member States to provide remedies that are sufficient to ensure effective legal protection, within the meaning in particular of the latter provision, in the fields covered by EU law.

Therefore, a rule of national law cannot prevent a national court from using that discretion, which is an inherent part of the system of cooperation between the national courts and the Court of Justice established in Article 267 TFEU and of the functions of the court responsible for the application of EU law, entrusted by that provision to the national courts.

The joined cases examined, whose context has been determined by the amendments made to the Law on the Supreme Court of Poland (The Law on the Supreme Court of 8 December 2017), by creating, inter alia, a Disciplinary Chamber within this court, are closely related to another case relevant to our study, **Case C-619/18 R**.

In the Judgment of 24 June 2019, *Commission/Poland* (Court of Justice of the European Union, 2019b), the Court of Justice found that, due to the adoption of the new amendments to the Law on the Supreme Court (which lowered the retirement age of the judges of the Supreme Court, applied that measure to judges currently serving in that court and empowered the President of the Republic with discretion to extend the exercise of active judicial service of the judges of the referring court beyond the new retirement age), the Republic of Poland had undermined the irremovability and independence of the judges of the Sąd Najwyższy (Supreme Court) and failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

That requirement that courts be independent, which is inherent in the task of adjudication, forms part of the essence of the right to effective judicial protection and the fundamental right to a fair trial, which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected

and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded (judgment of 24 June 2019, *Commission v. Poland (Independence of the Supreme Court, C-619/18, paragraph 58)*).

The instance of Luxembourg determined that the demand of the courts being independent has two aspects. The first one, which is external in nature, requires that the court concerned exercise its functions wholly autonomously. The second aspect, which is internal in nature, is linked to impartiality.

3.3. Joined Cases C-558/18 and C 563/18

The **Joined Cases C-558/18 and C 563/18** (Court of Justice of the European Union, 2020) had as object two requests for a preliminary ruling in these associated cases concern the interpretation of Article 19 (1) TEU. The requests have been made, first, in proceedings between *Miasto Łowicz (town of Łowicz, Poland)* and the *Skarb Państwa — Wojewoda Łódzki (State Treasury — Governor of Łódź Province, Poland)* ('the State Treasury') concerning a claim for payment of public subsidies (Case C-558/18) and, secondly, in criminal proceedings against VX, WW and XV for participation in kidnappings for financial gain (Case C-563/18). The Court decided that these requests for a preliminary ruling must be declared inadmissible, because they are not necessary for solving the substance of the two cases.

However, it is significant to present the context in which the two preliminary questions were addressed, the Court's view of the current Polish judicial system, because of the legislative changes, which seriously affected the independence of the judiciary.

In these cases, the referring courts considered problematic the composition of the Disciplinary Chamber of the Supreme Court, whose members are appointed by the President of the Republic, on the proposal of the Superior Council of the Judiciary. Thus, through the law that amended the existing law on the Superior Council of the Judiciary, the 15 judges, who have the capacity of magistrate, are no longer appointed by their colleagues, but by Sejm (lower chamber of the Polish Parliament) This factual situation raises great doubts regarding the independence and impartiality of the Superior Council of the Judiciary.

It is also relevant to emphasize that both judges who had referred the questions to the Court for a preliminary ruling in those cases had received from an assistant to the disciplinary officer responsible for cases relating to judges in the ordinary courts a summons to attend a hearing, as witnesses, concerning the grounds which led them to refer those questions and the issue whether judicial independence could have been undermined by the fact that the two judges in question did not adopt their respective orders for reference independently. Furthermore, those judges received from the assistant to the disciplinary officer an order to file a written statement concerning potential "*ultra vires* conduct" for having

referred those questions for a preliminary ruling, in breach of the conditions laid down in Article 267 TFEU.

Through the new amendments to the Law on the Superior Council of the Judiciary, this body has jurisdiction to hear appeals against decisions of court presidents on the transfer of judges to other judicial formations. This fact determines the exercise of a great influence and pressure by the Superior Council of the Judiciary on the court presidents, thus affecting the independence of the judicial activities carried out by them. It is worth underlining the fact that many court presidents were appointed by the current Minister of Judiciary and were also appointed to the National Council of the Judiciary.

In this context, we also mention the fact that, through the new changes brought to the Law on the organization of the ordinary courts, the Minister for Justice is empowered to appoint the disciplinary officer responsible for cases concerning judges sitting in the ordinary courts and he also fulfils the role of chief prosecutor. Furthermore, the considerable influence thus conferred on the Minister for Justice does not have adequate safeguards.

In the same sense, through the amendments made to many laws by the Polish Parliament, a much more severe disciplinary regime applicable to judges was determined. Thus, currently any examination of criticisms regarding the lack of independence of a judge or a court is the exclusive competence of the Chamber of Extraordinary Control and Public Cases of the Supreme Court of Poland, recently created. This Chamber presents similar defects, from the point of view of the way of appointing its members, with the Disciplinary Commission, mentioned in the previous decision (Independence of the Disciplinary Chamber of the Supreme Court, C-585/18, C-624/18 and C-625/18, EU:C:2019:982). The Polish Ombudsman pointed out the multiplication of disciplinary procedures and administrative measures and currently the adoption of disciplinary sanctions against some judges, for the reasons already mentioned.

In the Court's opinion, the provisions of national law which expose national judges to disciplinary proceedings as a result of the fact that they submitted a reference to the Court for a preliminary ruling cannot therefore be permitted. The mere prospect of being the subject of disciplinary proceedings because of making such a reference or deciding to maintain that reference after it was made is likely to undermine the effective exercise by the national judges concerned of the discretion and their functions.

3.4. European Commission v Republic of Poland, Case C-791/19

The **Case 791/19** (Court of Justice of the European Union, 2021a) had as object an action for failure to fulfil obligations under Article 258 TFEU.

In the judgment of July 2021 handed down in the case analyzed below, Poland was convicted by the Court of Justice for breaching Article 267 TFEU and Article 19(2) TEU.

Poland has been condemned for the infringement of its obligations under article 19 paragraph 2 for several reasons, the Court indicating also the national legal provisions adopted, which violate Article 19. In the first instance, Poland has not guaranteed the independence and impartiality of the Disciplinary Chamber, which is competent to review decisions made in disciplinary proceedings against judges. Then, this state has allowed that the content of judicial decisions can be qualified as a disciplinary offence regarding the judges of the ordinary courts. More than that, Poland conferred on the President of the Disciplinary Chamber the discretionary power to designate tribunal with jurisdiction at first instance in cases concerning judges of common law courts and, consequently, did not guarantee the examination of disciplinary cases by a court “established by law”. Poland did not guarantee that disciplinary cases against judges of the ordinary courts are examined within a reasonable time, as well as bit provided that the acts related to the appointment of a defense counsel and the taking up of the defense by that counsel do not have a suspensory effect on the course of the disciplinary proceedings. Last but not the least, Poland violated the requirements of art 19 because the disciplinary tribunal conducted the proceedings despite the justified absence of the notified accused judge or his or her defense counsel and, therefore, it did not fail to guarantee respect for the rights of defense of accused judges of the ordinary courts.

Finally, Poland was also convicted for violating Article 267 because it allowed the right of courts and tribunals to submit requests for a preliminary ruling to the Court of Justice to be restricted by the possibility of triggering disciplinary proceedings.

3.5. A.B. and Others v Krajowa Rada Sądownictwa and Others, Case C-824/18

The **Case C-824/18** (Court of Justice of the European Union, 2021b) had as object a request for a preliminary ruling under Article 267 TFEU from the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) and it concerns the interpretation of several articles of EU legislation, of which it is of particular interest for this research art. 2, art. 19 para. 2 of the TEU, art. 47 and art. 52 of the Charter of Fundamental Rights.

The requests have been made in proceedings between A.B., C.D., E.F., G.H. and I.J., and the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland) (“the KRS”) concerning resolutions by which the latter decided not to propose to the President of the Republic of Poland (“the President of the Republic”) the appointment of the persons concerned to positions as judges at the Sąd Najwyższy (Supreme Court, Poland) and to propose the appointment of other candidates to those positions.

The Court ruled that the second subparagraph of Article 19(1) TEU must be interpreted as precluding national legislative amendments where it is apparent that those amendments are capable of giving rise to legitimate doubts, in the minds of

subjects of the law, as to the imperviousness of the judges appointed, by the President of the Republic of Poland, on the basis of those decisions of the National Council of the Judiciary, to external factors, in particular, to the direct or indirect influence of the legislature and the executive, and as to their neutrality with respect to the interests before them. Such influence may lead to those judges not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society governed by the rule of law must inspire in subjects of the law.

The Luxembourg court has also decided that the second subparagraph of Article 19(1) TEU must be interpreted as precluding provisions amending the state of national law in force under which despite the fact that a candidate for a position as judge at a court such as the Supreme Court lodges an appeal against the decision of a body such as the National Council of the Judiciary not to accept his or her application, but to put forward that of other candidates to the President of the Republic of Poland, that decision is final inasmuch as it puts forward those other candidates, with the result that that appeal does not preclude the appointment of those other candidates by the President of the Republic of Poland. Moreover, such an appeal may not be based on an allegation that there was an incorrect assessment of the candidates' fulfilment of the criteria taken into account when a decision on the presentation of the proposal for appointment was made here it is apparent that those provisions are capable of giving rise to legitimate doubts as to the imperviousness of the judges thus appointed by the President of the Republic of Poland, on the basis of the decisions of the National Council of the Judiciary, to external factors, in particular, to the direct or indirect influence of the legislature and the executive.

Where it is proved that the second subparagraph of Article 19(1) TEU has been infringed, the principle of primacy of EU law must be interpreted as requiring the referring court to disapply those provisions and to apply instead the national provisions previously in force while itself exercising the judicial review envisaged by those latter provisions.

4. CONCLUSIONS

The respect for the rule of law is the responsibility of both the entire institutional system of the Union and its member states.

The legislative framework on the matter is relevant, thus indicating a constant concern of the institutions and bodies of the Union to regulate, as widely as possible, such an area and to take a firm position in case of repeated violations of the requirements of the rule of law.

As presented in the paper, the rule of law concept presents great complexity and imposes multiple exigencies. Of these, in the present exposition, the effective judicial protection, with its corollary, the independence of justice, as analyzed in

the jurisprudence of the Court of Justice at the level of the European Union, was considered.

Member States have the responsibility to ensure, in each case, the respect of the right to effective judicial protection of individual rights derived from the legal order of the Union, according to the jurisprudence of the Court (Court of Justice of the European Union, 1998, judgment of 22 October 1998, IN. CO. GE.'90 and Others, C-10/97 to C-22/97, EU:C:1998:498, paragraph 14; Court of Justice of the European Union, 2008, judgment of 15 April 2008, Impact, C-268/06, EU:C:2008:223, paragraphs 44 and 45; Court of Justice of the European Union, 2015, judgment of 19 March 2015, E.ON Földgáz Trade, C-510/13, EU:C:2015:189, paragraphs 49 and 50). In this respect, the independence of the judiciary refers to two aspects. The first one presupposes that the respective body exercises its jurisdictional functions in a completely autonomous manner. The second aspect requires the observance of objectivity and the absence of any interest in the settlement of the dispute outside the strict application of the rule of law.

The Luxembourg Court also determined a series of guarantees regarding the requirement of judicial independence, which were detailed in the examined cases.

Therefore, national authorities in the Member States have the obligation to comply with the requirements of EU law and jurisprudence regarding judicial independence, as well as the obligation not to adopt domestic legal rules that violate the requirements imposed by the second subparagraph of Article 19(1) of the TEU, corroborated with art. 47 of the Charter of Fundamental Rights.

Despite the prompt action of the Union's institutions in the face of the inappropriate behaviour of some member states, some of them continued to maintain a hostile attitude regarding the respect for the values implied by the rule of law.

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The conference volume titled 'Elevating Europe: Smart Initiatives and Administrative Innovation. Proceedings of the International Conference EU-PAIR 2023' is a comprehensive compilation that encapsulates the essence of our recent conference held in Iasi, Romania, at *Alexandru Ioan Cuza University of Iasi*, Faculty of Economics and Business Administration during 22nd and 23rd of June 2023, through the Jean Monnet Chair. EU Public Administration Integration and Resilience Studies EU-PAIR project no. ERASMUS-JMO-2021-HAI-TCH-RSCH-101047526.

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