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The *Romanian Economic and Business Review* (ISSN 1842-2497) intends to provide a forum for academic analysis of the economic phenomena and institutions affecting the world economy in general, and Romania, in particular. *REBE* examines a wide variety of phenomena related to economic growth and business development and attempts to publish high quality research focusing on the role of institutions and public policy, within both a national and international context. *REBE* encourages cross-disciplinary research work of Romanian and foreign scholars.

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The ROMANIAN ECONOMIC AND BUSINESS REVIEW (REBE) is a refereed journal published four times annually by the Romanian-American University. The editors invite submissions of articles that deal with important issues in economy and business. Papers that focus on specific phenomena and events affecting Romanian economy are particularly encouraged. Because REBE seeks a broad audience, papers should be comprehensible beyond narrow disciplinary bounds.

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**SMALL AND MEDIUM ENTERPRISE'S GROWTH AND NEW TECHNOLOGIES IMPLEMENTATION**

Marius-Dan Dalotă\*

**Abstract**

*If managers of many SME do not clearly assume the necessity to modernize their organizations, they will not be able to take advantage of all its resources' potentialities, not only the technological resources, but also of the capacities and qualifications of the human resources. This article looks at how new technologies and their inherent risks have to be considered to achieve performance, to enhance productivity, and to strengthen competitiveness. The solution demands the understanding of the capacities of technologies, the possibility of exploring their benefits and the effort of acquiring an improving the management performance.*

**Keywords:** Innovation management, Change management, SME's growth, Performance management

**JEL Classification:** L20, L26, M15

**1. Introduction**

A major issue for all SMEs is how to survive by maintaining or increasing market share through innovation. The relative advantages or disadvantages to a manufacturing company of focusing on single or tightly-related portfolio of products or, of diversifying is well known. For small to medium-sized enterprises (SMEs), there is often little choice. Many will have entered the market as single product or technology-led companies without the finance to broaden their product range even if this were considered strategically desirable[1]. This paper explores the characteristics of innovative SMMEs.

The comprehension of new technologies and all its potential abilities can actually become a source of weakness, because managers cannot use them against competitors or to profit from the opportunities that these technologies can offer [2]. The solution of this situation demands that one understand the capacities of these technologies, their adequacy to each business, the possibility of exploring their benefits and the effort of acquiring a new management mentality. At the same time, it is vital to understand how the new technologies are closely linked to the information systems and how their security guarantees business continuity.

Sustainable growth and profitability require technological innovation and attentive control perspectives. Innovation through new products and technologies has a tremendous impact on organizations' growth. Growth plans rely on more than new products. They include innovation management and adequate management mentalities to adopt new technologies within several processes [3].

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## 2. Factors contributing to SME's innovation

The conceptual relationship between entrepreneurship and innovation is related on factors affecting their development [4]:

- *Innovation and entrepreneurship are complementary* because innovation is the source of entrepreneurship and entrepreneurship allows innovation to flourish and helps to realize its economic value.
- *Entrepreneurship uses innovation to expand business scope and boost growth.* Therefore, entrepreneurship and innovation are dynamic and holistic processes that are not confined to the initial stage of a new venture.
- *The development of entrepreneurship and innovation, and interaction between them for the successful commercialization of innovation, require an organizational culture and a management style that are innovation-focused and supportive.*

Organisations engaged in entrepreneurship and innovation face implementation problems that are as follows:

- *As a result of some technological innovations, SMEs are restructured,* and this has led to a significant loss of jobs, lower staff morale, and problems caused by understaffing.
- *Funding can be a problem.* It is very hard for a small company to be innovative in product development because it is hard to find the funds required to promote that product.
- *Managers do not like to lose control* and they can feel “a bit of a threat if someone become too creative”, and this can hinder the development of innovation.
- *Time, persistence, and risk taking are required* to get a new product accepted by markets.
- *The systems of innovation and entrepreneurship are very informal in many SMEs.*
- *It is the most situations is impossible to measure the outcomes of SMEs innovation and entrepreneurship* because it is very difficult to separate them from the overall business of organisations.
- *Recruitment of staff and good people management are key issues* facing innovative and entrepreneurial organisations. It is difficult to acquire people who are able to bring “new blood, new ideas, new thinking and new horizons to the organisation”. And retaining them is even more difficult.

Regarding process innovation, current literature suggested innovation was part of a long-term organisational evolution, customer relationships were important to long-term sourcing both financial and knowledge terms, and human resources [1]. Past literature identified several aspects of what was considered as critical success factors for innovative strategy in SMEs and effective strategic formulation in successful small hi-tech firms development, promoting a corporate culture, creating structure reflecting in the effective use of systems and technology and investors in people (currently known as process innovation), analysing competitors, developing co-operations and partnerships. We should add other important factors like

flexibility, short communication lines, close relations with customers, motivation of management and labour force, less bureaucracy, little filtering of proposals with strong interest in product development and technological change as part of the characteristics and strengths of an innovative culture.

Focussing on new product development suggest that product innovation activities are the cornerstone of better-performed companies. Manufacturing SMEs by repeatedly introducing innovative new products opens up new market niches, which is essential to their survival. Innovation literature also places great importance on company learning, benchmarking, training and networking. Size, age and flatter hierarchies were found in literature to have effects on company innovativeness.

Company culture and ways of working is consistent with literature which suggests SMEs' main impetus for innovation came from board level, with a spread of participation. A good level of training is found in more innovative companies.

### **3. Market-orientation, learning-orientation and continuous improvements in SMS's innovation**

There exists both empirical and theoretical studies investigating the linear or causal relationships among the market-orientation, learning-orientation, innovativeness, and, thereby, their combined impact on firm performance. Most of the empirical studies focused on the large-scale organizations in western/developed countries, while ignoring the SMEs in general and SMEs in developing countries in particular. Specifically, studying the SMEs in developing countries contributes to the literature for three reasons:

- The majority of the market-orientation and learning-orientation studies were conducted in developed western countries, e.g. USA, UK, using the measure scales of Narver and Slater (1990), Kohli *et al.* (1993), Ruekert (1992), Calantone *et al.* (2002), and others. However, replication of the market-orientation, learning-orientation, and innovativeness studies is warranted, because if these constructs are reliable and valid, they should also be applicable in different environments and economies, such as Turkey.

- Market- and learning-orientation studies mostly investigated large firms having 250 or more employees. However, the applicability of market-orientation, learning-orientation, and innovativeness measures, and their research models, which were developed for large-scale firms, may have different meanings in a SME context. For instance, SMEs face particular problems in the formulation of their innovation strategies due to:

- their deficiencies arising from their limited resources and range of technological competencies;
- influence of their owners/managers on the decision-making;
- dependence on small numbers of customers and suppliers;
- focus on the efficiency of current operations.

• Empirical studies on market-orientation, learning-orientation, and innovativeness in SMEs are fragmented or incomplete. For instance, studies exist that investigate relationships between:

- *market-orientation and overall firm performance;*
- *export performance and financial performance;*
- *learning-orientation and firm growth and innovativeness and firm performance;*
- *firm's innovativeness and performance.*

Yet there remains a gap in empirical research investigating the relations among the market-orientation, learning-orientation, firm innovativeness, and firm performance as an integrated model in SMEs.

The term “market-orientation” found a broad appeal in the marketing literature. The literature describes market-orientation as a set of behaviors and processes, or an aspect of culture to create a superior customer value. By using a cultural framework, the boundary of the market-orientation concept is extended by incorporating the development of information about competitors, and interfunctional collaboration. The cultural framework of marketing, adopting a strategic view, identified three components of market-orientation:

- a) obtaining and using customer information;
- b) developing a strategic plan based on such information;
- c) implementing the plan to respond to customer needs.

Market-orientation is a cognitive, behavioral, and cultural aspect of a firm's marketing concept that puts the customer at the center of the organization and its development. Empirical studies on the effect of market-orientation on superior performance revealed inconsistent results for a model of market-orientation, learning-orientation, innovativeness, and firm performance in an SME context.

A market-oriented firm, which has excellent market information gathering and processing abilities, is able to predict the requirements and changes in markets accurately and quickly, allowing them to respond quickly and appropriately. Thereby, they enhance their competitive advantage. In this regard, it has been asserted in the SME literature that market-orientation provides small firms with a potential competitive advantage over large firms, because SMEs:

- *are closer to customers and able to exploit their needs and wants quickly and more flexibly;*
- *are able to transfer customer intelligence quickly, with less deterioration, due to their reduced organizational layers and bureaucracy;*
- *can implement the marketing plan fast, because it is less formal.*

Considering that SMEs may lack a long-range focus and strategic orientation that their customer orientation in general and market-orientation in particular are critical determinants of performance and consistent with SME literature, it is hypothesized that:

***A.- Market-Orientation will positively lead to firm performance in SMEs.***

Another well-known factor that impacts firm performance is firm innovativeness. The positive role of firm innovativeness on firm performance has been supported by many theoretical and empirical studies of new product

developments, technology adoption and diffusion, process improvement, and innovation. Of particular importance to an SME's innovativeness is the reflection of the environmental uncertainty and the lack of technology competencies for new product development, cost effectiveness, operational efficiency, emerging market niches, and process innovation. The studies note that SMEs should be innovative to get a competitive advantage due to their limited resources, vulnerability to uncertainty, turbulence in business environments, and the extensive powers of customers and suppliers.

SMEs that follow a proactive business strategy foster innovativeness as a central part of corporate culture. SMEs can achieve leadership positions by applying aggressive innovation strategies in niche industries. High-tech SMEs, e.g. electronics, software, and biotechnology, for instance, demonstrate improved performance by generating new markets and industries due to their innovativeness. Because innovativeness has long been associated with entrepreneurial behavior, and theoretically linked to a high tolerance for ambiguity, taking risk, and evaluating uncertain situations more favorably, it is therefore hypothesized that:

***B.- Firm innovativeness will positively lead to firm performance in SMEs.***

Noting the importance of innovativeness for firm performance, it is also important to mention the mechanisms that promote the firm innovativeness in order to investigate the relations in a holistic way. According to recent studies, learning orientation influences firm innovativeness in three ways:

1.- *since learning occurs through organizational observation and interaction with their environments, it is more likely to be committed to innovation;*

2.- *since learning organizations are linked with their environment, it has the knowledge and ability to understand and anticipate customer needs and emerging markets; and*

3.- *since organizations closely monitor the competitors' actions in the market, their strengths and weaknesses, and successes and failures, that environmental scanning contributes to firm innovativeness.*

A lot of the theory on learning-orientation and firm innovativeness is based on empirical studies completed on large-based firms rather than SMEs. In this sense, there is a gap in the empirical investigation of learning-orientation and firm innovativeness in SME literature.

Organizational learning studies in SMEs note that learning in small firms is context sensitive, firm-specific, and work-based, which is, by nature, reactive and produces operational efficiency in the short-run - indicating adaptive rather than innovative behavior. Exploitation of each bit of information and then utilizing such information in the workplace to advance new operational practices, in essence, develops new schemata or thinking ways, and knowledge for employees. The people become more adaptive to different views, procedures, and ideas, and become proactive to enhance the quality of workplace and the operations of firms and customer satisfaction. Therefore, it is hypothesized that:

**C.- *Learning-Orientation will positively lead to firm innovativeness in SMEs.***

Even though market-orientation and learning-orientation are antecedents of innovation, the effect of market-orientation on firm innovativeness is mediated by learning-orientation. The market-orientation fosters a knowledge-producing behavior - providing a source of ideas for change and improvement by market information processing and marketing strategies. The knowledge generated by market-orientation has little benefit if not appreciated and implemented for firm innovation.

**D.- *Market-Orientation will positively lead to firm innovativeness via Learning-Orientation*** (Learning-Orientation will mediate the relationship between Market-Orientation and firm innovativeness) in SMEs.

Even if there is a common agreement about the relationship among learning-orientation, market-orientation, and innovativeness, there is no clear agreement about the direction of the relationship between learning-orientation and market-orientation. The studies promoting the relationship of learning-orientation — market-orientation, essentially investigated the *market information processing* rather than market-orientation. In fact, Farrell and Oczkowski (2002) found that by investigating 340 organizations, market-orientation is able to encompass learning-orientation, but learning-orientation is not able to encompass market-orientation. Market-orientation firms are effective in producing knowledge and this culture of knowledge production, inevitably leads to knowledge-questioning values. In conclusion, organizations that are able to appreciate the value of timely and relevant information (market-orientation), will also be intelligent enough to challenge existing assumptions about the way the market operates (learning-orientation).

**E.- *Market-orientation will positively lead to learning-orientation in SMEs.***

One of the most studied factors, which has synergy with market-orientation, is learning-orientation. Many researchers argued that market-orientation only enhances performance when it is combined with a learning-orientation. Since market-oriented firms focus on customers and their feedback in the established markets, they ignore the emerging markets, technologies, and competitors. Learning-orientation, embracing the commitment to learning, shared vision, open-mindedness and interorganizational knowledge sharing, fosters a set of knowledge-questioning and knowledge-enhancing values that leverage the adaptive behaviors provided by market-orientation to a higher-order learning that leads to the development of breakthrough products, services, and technologies, and the exploration of new markets.

In addition, to learning-orientation, another mechanism emphasized by the management and marketing scholars is firm innovativeness, which refers to that portion of a firm's culture that promotes and supports novel ideas, experimentation, and openness to new ideas.

Continuous Improvement Management has eight major characteristics:

- 1.- *CI requires a long-term commitment.*
- 2.- *A change is needed in the organization culture.*
- 3.- *Staff participation in the quality improvement process is vital.*
- 4.- *CI organizations put their customers and clients above all other considerations.*
- 5.- *The quality chain needs to be in place.*
- 6.- *Teamwork is an essential part of CI.*
- 7.- *CI means continuous quality improvement.*
- 8.- *CI is management led and driven.*

Continuous Improvement Management is perceived by specialists as an evolutionary process which leads to a better way to compete, a process that adds value to existing processes and that encompasses the whole organization.

There is a substantial range of opinions and ideas about what constitutes innovation as following:

- *“what makes innovation challenging is the fact that it is very difficult to agree on a common definition, and also to decide which firms are the most innovative and how to quantify innovation activity”;*
- *“innovative companies are especially adroit at continually responding to change of any sort in their environments and are characterized by creative people developing new products and services”;*
- *“technological innovation is the process by which industry generates new and improved products and production processes”;*
- *“innovation is the creation of any product, service or process which is new to a business unit”;*
- *“innovation is about doing things differently or better across products, processes or procedures for added value and/ or performance”;*
- Peter Drucker defines innovation as *“the means by which the entrepreneur either creates new wealth-producing resources or endows existing resources with enhanced potential for creating wealth”.*

Both of these definitions make reference to the terms change and creativity - they imply that innovation is the harnessing of creative ability within individuals and the workforce in response to change.

A distinction between “radical and incremental” innovation also exists in the literature.

- *“Radical innovations refer to products and processes that result from advances in knowledge whereas incremental innovation refers to the continual process of improvement of techniques”;*
- *“Innovation is the process of taking new ideas effectively and profitably through to satisfied customers”.* It is a process of continuous renewal involving the whole company and is an essential part of business strategy and every day practice.

Reflecting the above discussion, effective business innovation will be defined as *“the harnessing of creative ability within individuals and the workforce in response to change, by doing things differently or better across products, processes or procedures through the continual process of improvement of techniques and the successful production, assimilation and exploitation of novelty”.*

Is it possible for organizations to progress from CI to effective business innovation as defined? To answer this, separate but related underlying questions need to be addressed.

- *Why would SMEs want to become more innovative?*
- *How can SMEs progress from CI to effective business innovation?*
- *Why would SMEs want to become more innovative?*

The idea that companies need to innovate to help maintain the correct strategic direction has been further developed. The innovation can help companies maintain or increase competitive advantage.

Brown (1994) believes that companies must innovate for three main reasons:

- *they may seek to gain advantage by taking an offensive stance and an industry lead in the use of new techniques;*
- *they may have to innovate in response to innovation by competition;*
- *they may innovate to forestall or pre-empt innovation by others that would harm their own business.*

A stronger competitive position cost, and quality are linked to an SME's approach to innovation. Can SMEs progress from CI to effective business innovation?

There are six main categories of innovation: *product, process, application, system, core competence and horizontal transfer*. The linkage between innovation and CI can be seen where each type of innovation goes through the CI process for successful innovation. Successful innovation depends on the CI process, the Continuous Improvement strategy of CI and innovation will enable SMEs to develop their management understanding for future growth and competitiveness.

#### **4. Information technology as an innovation**

It is well known that processes and technology improvements can contribute to meet quality and process-performance objectives. The identification of innovative improvements, that could increase the organization's quality levels, is a decisive process to change the process performance. Strategically, the success of most management innovation processes also depends on a competitive effort, which may include a deep knowledge of technological advances and an adequate analysis of networks' benefits. To prevent obsolescence and death, many small and medium sized enterprises (SMEs) are economically obliged to adopt new technologies [2].

Many sectors such as financial services, information technology (IT), manufacturing, transport, central government, consultancy, computer manufacturing, retail/wholesaling, and publishing are related to operational use evaluation of IT because they already depend on all the capacities of IT. The evaluation of these abilities and their respective benefits that may be exploited by enterprises is a complex process. There is no agreement on an ideal way to evaluate or how to make the evaluation process better. To make best use of management resources, the

diffusion and adoption of new technologies should be linked to evidence their managerial and cost effectiveness.

The innovators can be inventors if they are able to manage research and development function. Knowledge workers (human capital) can deal with what target market accepts or expects as value, and are able to defend their organizations against the aggressive movements of their competitors. Knowledge management (KM) focuses on the people involved in creating, sharing, and leveraging knowledge among functional areas. This involvement is the basis of an organizational culture, which regards highly learning, teamwork, knowledge sharing, and innovation.

Many SMEs are not able to adopt rapidly new technologies and this difficulty should be understood. Some factors are still hindering the adoption of some new technologies:

- *Resistance to change.* Despite of the dissemination speed of information and communication technology (ICT), we still have to face a situation of some employees who do not wish to modify their personal ways of executing their ordinary tasks.

- *The use of new technologies limited to some functional areas.* This limitation can be faced as a preventing force that hinders the use of new technologies within an integrated perception of an enterprise performance.

- *Owners' mentality.* Employees do not think like owners and owners' relationship to the business is fundamentally different from theirs. Many owners are managing their own business according to their traditional visions and they are interested neither on innovativeness nor on modern processes.

- *Organizations dimensions.* To some SMEs, it is quite enough to keep using the commercialization processes that have been used until now and the information about clients (needs, purchase behaviors, and satisfaction levels) is based on personal relationships.

- *Some users present a significant lack of technical qualification.* This problem may lead to a deficient use of equipments and applications and it is not possible to use every potential capacities coming from IT.

- *The fear of facing new technologies as a source of organizations' insecurity.* When data are processed according to traditional techniques, the information obtained is tangible, it does not disappear, it cannot be destroyed, and robbery is much more difficult.

If managers of many SMEs do not clearly assume the necessity to modernize their organizations, they will not be able to take advantage of all its resources' potentialities.

## 5. Dimensions of SMEs growth through innovation

Three main sources of growth can be determined [3]:

- a) *Technological improvement* – It is well known that processes and technology improvements can contribute to meeting quality and process - performance objectives.

b) *An increase in the quantity of capital* – Very often, technology is deeply linked to investment because it is embodied in new machinery and better equipment.

c) *An increase in the number of workers, their skills and educational levels.*

Industry growth depends on several internal and external factors, such as physical assets, technologies all along the chain value, human resources in general and qualification levels in particular and also organizational capabilities. In general, the firms are more likely to reap profits and social benefits when they are in high-growth industries.

SMEs can increase their activities and businesses in some ways and grow in some dimensions. The following dimensions can be identified:

a) *Raise the level of integration of the technologies* – The management of technologies and the exploitation of all their potential is strictly linked to the possibility of integrate their synergies.

b) *Intensify innovative technology processes* – This direction of innovation is a decisive contribution for the modernization of businesses and the implementation of competitive strategies.

c) *Increase the number of markets where the company operates* – Internationalization and globalization are direct consequences of this decision.

d) *Increase businesses' portfolios* – The company that today is involved in a given industry can tomorrow widen its investment to other industries;

e) *Increase the number of operational uses of technologies* – Many technologies can have applications in operations of a different nature.

To position strongly for future growth in the global marketplace, an organization has to make some effort to increase its investments in R&D and to focus on the implementation of advanced production innovations and practices.

The growth of an organization, the technologies that are being used along all its activities, and business strategies that have been formulated are strictly related. Even organizational culture deals with technologies and growth[3].

Technological progress driven by a decision to enhance productivity and profitability often fosters growth. The competitive success of most enterprises is strongly related to decisions such as:

- *producing products and services according to high quality standards;*
- *quantifying production in the correct manner;*
- *anticipating and responding to changing consumer needs;*
- *reducing production costs in order to enhance profitability.*

The success of SMEs depends on:

- *using advanced technologies in an integrated manner,*
- *being aware of changing clients's needs, producing quality goods and services,*
- *enhancing profits by reducing costs,*
- *reaching new markets within a competitive perspective,*
- *wide-open mentality.*

The growth effort has to include:

- *New technologies for manufacturing with ecological safety.*
- *Designing and modelling of secure facilities.*
- *Adopting zero-waste procedures in manufacturing and processing.*
- *Upgrading of existing installations.*
- *Developing new organizational tools and methodologies.*
- *Reducing resource consumption in order to reach competitive production costs.*

Many SME's are not able to envisage growth as a competitive need and this difficult mentality and/or reluctance should be understood.

The identification of innovative improvements that could enhance organizations' movements for growth is a decisive process to reach growth objectives. Innovation in production, distribution, and communication processes serve as a vital source of productivity growth and other competitive advantages. The success of most management innovation processes is also a function of competitive efforts.

The managerial decision regarding obtaining growth results has to take into account what is needed to reach a rapid modification in the professional qualification levels of workers and managers. It is indispensable that a strict and dedicated cooperation exists among governmental entities, industries and educational sectors. When an entrepreneur does not have experience and technical knowledge in the financial domain he may have a distorted perception of the reality, because an increase in sales does not necessarily correspond to an increase in profitability and, therefore, does not open the possibility of self-financing. It is well known that some entrepreneurs prefer self-financing because it provides them with more control. It is required to create new higher education models in the domain of entrepreneurship. We agree that a new higher education models will require the commitment of governments, universities, and associations.

## **6. Conclusions**

Entrepreneurship and innovation should be regarded as ongoing, everyday practice in organisations. If managers of many SME do not clearly assume the necessity to modernize their organizations, they will not be able to take advantage of all its resources' potentialities, not only the technological resources, but also of the capacities and qualifications of the human resources.

Advanced manufacturing technologies, information and communication technologies and new services lead to the increases in productivity that is essential to any country's economic growth under a perspective of competitive advantages. Successful organizations will be technological advances to create an appropriate organizational arrangement to support competitive growth.

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**CRISES WARNING MODEL - STRESS TEST. ALBANIAN CASE**

Doriana Matraku\*

**Abstract**

*Risk is a permanent companion of any business, including also the banks, which have the objective of managing the money entrusted by the depositors. The effectiveness of this management requires safe and profitable transfer of money between the giver and recipient. Modern, reliable and well-managed banks are not only able to assess current threats, but are also familiar with the size of this risk. They are able to assess whether this risk is acceptable or if the accepted security level is exceeded. Stress test is an effective way to do research based on quantitative theoretical models in the management of banking risks. In fact, it is also a mandatory tool to be implemented in the banking system in the Capital Requirement Directive, also known as Basel II. Stress test is a model used also by Albania to assess the status of the banking system, through individual analysis of the banks and the banking system entirely.*

**Keywords:** stress test, risk evaluation, Albanian banking system.

**JEL Classification:** G01, G21, G32

**1-Preliminary considerations on stress test**

On its simplest form, stress test is a reevaluation of portfolio assets and/or the obligations through the use of a set of variables, which serve to show the sensitivity of the banks therefore, the immunity under the changing risk.

In this context, the notion of risk is understood as a threat and its presence have negative effects on the banking system, particularly on financial outcome, which directly impacts equity and therefore also the value earned by the owners. But regardless of whether the source of risk may be the environment (such as a crisis) or whether it comes because of wrong decisions by the owners, its negative effects should not move on to other depositors or creditors of the bank. This means that banks' equity should be sufficient to protect deposits and other liabilities in the event that we face a situation of inability to pay.

Stress test examines the stability of financial institutions and financial sector in general versus unpleasant events from two perspectives: micro, in which financial institutions are evaluated, and macroeconomic, evaluating the whole system against macroeconomic shocks.

Stress test is used by banks in order to manage risk<sup>1</sup>. Typical scenarios include fluctuations in the stock market, shock on interest rate and exchange rate and economic recession. In short, the objective of stress test is to determine the losses (hypothetically) which usually are associated with the banking sector.

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<sup>1</sup> An International Survey of Stress Tests: "Ingo Fender, Michael S. Gibson, and Patricia C Mosser". Federal Reserve Bank of New York, Current issue in economics and finance. November 2001, volume 7 number 10

Put in a way, *stress test* is a methodology that takes into account the sensitivity of macroprudential indicators to macroeconomic changes or shocks. The objective of stress test is the identification of risks in the most transparent way possible, by assessing possible losses of a portfolio in normal markets.

## 2- Stress test and its application in South Eastern Europe

Stress method is used in many countries after year 2000. The data shown on table 1 represent the starting year for the application stress test in some European countries.

**Table 1. Starting year for the application of stress test**

State	Year	State	Year
<b>Albania</b>	2004	<b>Kosovo</b>	2008
<b>Austria</b>	2003	<b>FYROM</b>	2003
<b>B&amp;H</b>	2005	<b>Montenegro</b>	2006
<b>Bulgaria</b>	2002	<b>Poland</b>	2006
<b>Croatia</b>	2004	<b>Rumania</b>	2003
<b>Czech Republic</b>	2002	<b>Serbia</b>	2007
<b>Hungaria</b>	2000	<b>Slovakia</b>	2005
<b>Greece</b>	2006	<b>Slovenia</b>	2005

*Source: World Bank "Macprudential Stress-Testing Practices of Central Banks in Central and South Eastern Europe", September 2010, pg 4.*

In the table we distinguish Bulgaria, which applies the stress test since 2002 (but only in 2010 made it public). Bad and restructured loans accounted for 4.6% of the Bulgarian banking system's portfolio at the end of June 2009, exacerbated by the slowdown in lending activity. But according to stress test the Bulgarian Central Bank, the banking system is stable and healthy.

Along with Bulgaria, the Czech Republic is noted, among the first which applied stress test in 2002 (preceded by Hungary in year 2000), for their respective banking systems. While some of the other countries of Eastern Europe have started the application later. Specifically, Croatia has applied this method in 2004, Bosnia & Herzegovina in 2004, Montenegro in 2006, Serbia in 2007 and Kosovo in 2008.

All these countries rely on macroeconomic analysis. In Austria, Bulgaria, Czech Republic, Macedonia, Montenegro and Poland banks operate with macroeconomic scenarios and seek to assess their impact on credit, market and liquidity risk indicators.

Frequency of stress testing varies in these countries. Tests can be on quarterly basis (Albania, Austria, Bulgaria, B & H, Czech Republic, Macedonia and Montenegro) twice a year (Croatia, Hungary, Kosovo, Romania and Slovakia), on annual basis (Poland and Slovenia)<sup>2</sup>.

<sup>2</sup> *World Bank "Macprudential Stress-Testing Practices of Central Banks in Central and South Eastern Europe", September 2010, pg 6-7.*

While Table 2 contains a summary of application of the stress test of the countries taken into consideration so far, with the main scenarios and possible outcomes.

**Table 2. Stress test application from different countries and possible results**

Central Bank	Risk factors	Outcome Indicators	Static/ Dynamic
<b>Bank of Albania</b>	Credit risk: aggregated data NPLs estimation Market risk: interest rate, exchange rate. Liquidity risk: withdrawal of deposits Contagion risk: not addressed	Credit and Market risk: CAR Liquidity risk	Static
<b>Austrian National Bank</b>	Credit risk: NPL and LLP ratios estimation Market risk: interest rate, equity price, exchange rate. Liquidity risk: decrease in liquid funds, deposits' drain. Contagion risk: bank failures	Credit and Market risk: system-wide credit loss distribution Liquidity risk: liquidity ratios. Contagion risk: total losses in the network model	Static
<b>Bulgarian National Bank</b>	Credit risk: information about PDs from a bottom-up stress test; attempt for estimations for corporate and household PDs. Market risk: interest rate. Liquidity risk: not addressed Contagion risk: not addressed	Credit and Market risk: :CAR	Static
<b>Central Bank of the Republic of Kosovo</b>	Credit risk: ad-hoc shock in NPL Market risk: interest rate, exchange rate. Liquidity risk: withdrawal of various types of deposits .	Credit and Market risk: CAR	Static
<b>National Bank of the Republic of Macedonia</b>	Credit risk: increase in classified risk Market risk: interest rate, exchange rate. Liquidity risk: withdrawal of deposits Contagion risk: not addressed	Credit and Market risk: CAR; assumptions for income.	Static
<b>Central Bank of Montenegro</b>	Credit risk: aggregated data NPLs estimation. Market risk: interest rate, exchange rate. Liquidity risk: withdrawal of various types of deposits . Contagion risk: not addressed	Credit an Market risk: CAR; assumptions for income .	Static

*Source: World Bank "Macprudential Stress-Testing Practices of Central Banks in Central and South Eastern Europe", September 2010, pg 4.*

Table 2 clearly gives the degree of differentiation of the tests in these countries. For some countries, for example, Austria, Czech Republic, Hungary, Bulgaria, Romania and Slovakia, the models used are the results of several years looking at building models, while for Croatia, Kosovo, Montenegro and Serbia, stress test models are yet in the initial stage.

Application of the stress test from Southeastern European countries and particularly in our region is a very important moment, but no less important is its improvement in the future. Thus, the Central Bank of Kosovo, Montenegro, Bosnia

& Herzegovina and Serbia, an important challenge is still going to be building a reliable database. While from the modeling point of view, the Central Bank of Hungary, Croatia and Czech Republic, plan to work more for a better assessment of income. It is worth mentioning here that the Albanian model is built on the Austrian experience and it is apparent the alignment with our model.

According to the Committee of European Banking Supervisors (CEBS), the stress test conducted in mid-2010, from 91 European banks to consider, 7 of them (5 Spanish and two German banks) could not pass "health test" assessment on the ability of banks to survive the future economic shocks.

According to analysts of UniCredit in Milano, investors should consider how the banks get the money they lend. Spanish banks receive more than half of their funding from customer deposits, which is a more stable source of money than the interbanking market.

If we move further into the banking system, namely France, we can affirm that it is true that stress test did not identify any French bank with problems. But, having said that, although French banks are seen as healthier, they are supported from other banks financing. In a few moments of financial crisis, interbank lending came to be almost stationary, thus creating problems to those who rely more than necessary in this type of financing.

Therefore, stress test is important even if we consider the domino effect in the interbanking market, often known as contagion risk. Since the banks are linked together in a complex way of the credit system, this domino effect plays an important role in the banking sector.

In such a system, the inability to pay a financial institution would cause problems in another institution and so the problem will spread throughout the system. In this regard, it is visible the probability that Greece's problems spread to other countries even closer to it, such as Spain and Portugal. Therefore, companies must be vigilant that may face the contagious risk. At the same time, it is stressed that a number of countries of Central and Eastern Europe are faced with similar situations as Greece and Spain, meaning low export competitiveness, rising unemployment and high debt to those who are credited as consumers. For these reasons, as well as other structural reasons, the risk of contagious effect among the countries which joined EU membership recently remains high.

### **3- Application of stress test in Albania**

Stress test, with its focus on the impact of macroeconomic shocks on the stability of the financial system in Albania, is focused in the banking sector.

These shocks have to do with higher interest rates, disruption of exchange rates, increasing inflation rate, lower rates of economic growth or adverse changes in the indicators of the payment balance<sup>3</sup>.

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<sup>3</sup> Asian crises (such as in Korea and Thailand) confirmed that macroeconomic shocks, the collapse of the gross domestic product, price and market conditions, the price of real estate, together with inadequate monetary policies led to pressures inflation and latter "contributed" to the crises of financial systems.

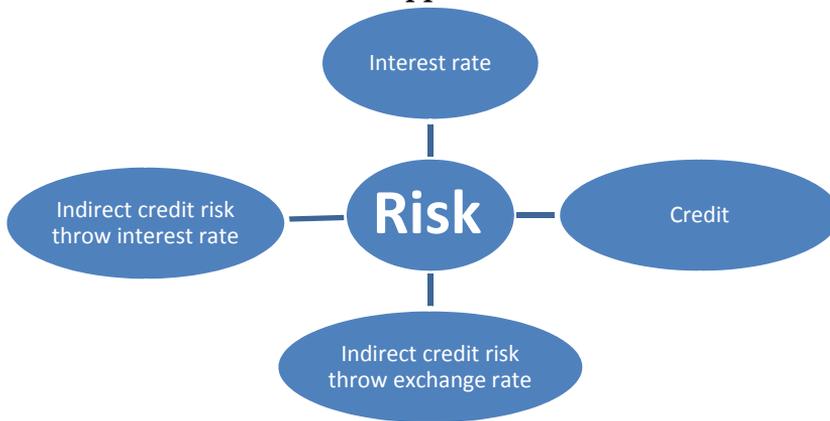
Basel II related to the stress test on:

- Focus on risk management;
- Market Risk Amendment, which requires the application of stress tests;
- Supervisors should consider how the bank evaluates “unexpected events” in the calculation of the size of capital (paragraph 750);
- Banks should assume shock event and test their internal model and their assessment procedures (paragraph 527);
- Risk of concentration (paragraph 775);

**3.1 Methodology of stress tests applied in Bank of Albania.**

The current model of stress test used in Albania includes 5 scenarios. Scheme 1 gives a summary these shocks as well as the tests built for each of them.

**Scheme 1. Stress test scenarios applied in Albania**



**Table 3. Stress test risks<sup>4</sup>**

<i>Risks</i>	<i>Test</i>
<i>Exchange rate risk.</i>	First test $S = FX_c^{NOP}$ Second test $S = FX_c^{ABS}$ $IRC_b^{FX_c^{NOP}} = \Delta^r FX_c \cdot NOP_{b,c}$
<i>Interest rate risk.</i>	$IRC_b^{\Delta^r} = \sum_{m=1}^M \frac{NP_b^m}{(1+r+\Delta^a r)^m} - \sum_{m=1}^M \frac{NP_b^m}{(1+r)^m}$
<i>Credit risk</i>	$\Delta NPLR_{it} = \alpha + \beta \Delta i_{it} + \gamma \Delta p_{it} + \delta \Delta GDP_{it} + \lambda \Delta T \circ T_{it} + \epsilon_{it}$ $\Delta^r NPLR = C + B \cdot \Delta^r GDP$

<sup>4</sup> Michael Boss”office memorandum” Bank of Albania, February 24, 2004

<b>Indirect credit risk throw exchange rate</b>	$NPLR_c = \frac{NPL_c}{TL_c} ;$ $\Delta^r NPLR = \hat{\beta} \cdot \Delta^r I = -\hat{\beta} \frac{D}{I} \Delta^r FX$ $\Delta^r NPLR_b = B \cdot \Delta^r I = -B \frac{D}{I} \Delta^r FX$
<b>Indirect credit risk throw interest rate</b>	

*Source: Michael Boss"office memorandum" Bank of Albania, February 24, 2004*

The risks<sup>5</sup> mentioned above are the most evident for the Albanian banking system. Thus, the bulk of lending is realized in foreign currency, mainly in euros and in dollars, so a fluctuation in the exchange rate would cause serious problems in the bank's balance. Credit risk is of great importance, because there is a possibility that the borrower not to repay the lender for the loan taken. This risk is reflected NPLr, which is defined as the ratio of problematic loans / total loans. Further more, the level of lending has grown tremendously in recent years.

Another risk to the banking system is the interest rate. This risk relates to the impact of interest rate fluctuations in the costs of financing and investment.

Can this model predict crisis situations? Should we use a different model forecast or should re-evaluate the existing model?

The model mentioned is the current model that uses the Central Bank of Albania to test the endurance of the banking sector to adverse alleged developments of economic indicators and its needs for additional capital. The results of this analysis (stress test 2009)<sup>6</sup> generally represent a banking system protected from exchange rate risk and interest rate risk. Albanian banking sector is more sensitive to credit risk assuming a doubling of the value of loans. From the analysis results, that the banking sector can withstand a worsening of loans portfolio, which lies in a period of one year. However, for individual banks additional capital may be necessary depending on the situations presented.

Also, the Central Bank of Albania recognizes that this model relies on the hypothesis raised, whose assumptions are likely not to materialize into reality.

#### 4. Critical review on stress test

In the field of modern banking are being applied more and more sophisticated mathematical models as a result of huge growth of the complexity of financial operations. Although these models take into account the large number of variables present and are often based on the results of statistical analysis, economic reality is

<sup>5</sup> Bank of Albania: "Raporti i Stabilitetit Financiar 2009" pg 63.

<sup>6</sup> Bank of Albania: "Raporti i Stabilitetit Financiar për gjashtëmuajorin e parë të 2010" pg 24.

unpredictable to the end and the forecast results are correct up to a certain degree of stability.

Besides, like other models, stress testing works based on simplification of real state on the market. Despite efforts to create stress scenarios and express them in quantitative terms, the complexity of real situation “motivates” us to make several assumptions and simplifications. In other words, these algorithms fail in extreme situations, it is therefore necessary to make a simple identification of key risks, the extent and the impact they have on the banking, linking them with the effects of capital requirements.

Hence, the value of stress test should not be exaggerated, especially during financial crises, because they can only roughly estimate the size of possible future losses based on variables that determine the negative developments as well as appreciate the extension of the period of financial collapse.

On the other hand, we stress that the process of testing can not be limited to the application of certain mathematical formulas. Stress test is a broader concept because it includes the selection and analysis of variables that determine the parameters of output.

So in conclusion we can say that passing the test should not immediately lead us to conclude that we have financial stability, since it is considered more systemic risk than individual risk or collective. Moreover, the test design is such that does not allow simultaneous variation of all risk factors, but presupposes the perception or consideration of only one set of risk factors. While the test failure is a signal of institutional weaknesses, passing it will not automatically mean that we have an overall financial condition healthy. For this reason, the stress test can not replace a systematic treatment of the risk, as discussed in the agenda of the G-20.

## **5-Conclusions**

The crisis of financial markets and especially banks, have imposed changes in the risk management. It has become necessary to develop or re-project existing models which offer us early warnings about the threat of bankruptcy as well as to determine the eventual impact of bank failure. One of the tools that tell us that resistance to the phenomenon of crisis is a stress test. Its intentions, at least in banking, are focused at assessing the level of economic resistance to the risk that exists.

The events that accompanied the recent global financial crisis, showed that in conditions of economic downturn bankers and managers take profit only for themselves, explaining success thanks to the skills to predict and excellent management of financial operations, not to mention the positive impact of favorable environmental conditions. In crisis situations, but the same owners and same boards of banks claim they are just as brilliant as before, but in adverse environmental conditions are exactly those conditions those bankers who are to blame for failures and bankruptcies. This way of reasoning gives bankers the “right” to receive help from outside, while holding in hand “weapons” - deposits of millions of customers

who have no equivalent right to cover the loss of their assets. And that, in the final analysis, serves as an effective instrument for blackmail and to receive, from all this, the capital subsidy from the state budget.

Although the Albanian banking system was affected little by the crisis compared with countries such as the Baltic countries or Iceland, a statement is applicable to the banking system in the global level, "privatization of profits and nationalization of banks' losses." Behavior of banks around the world is, in fact, as described by De Soto (2009), "banking is based on a partial backup in the form of deposits," which confirms the known conclusion of superiority that has safety on the businesses at risk.

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## THE PENSION SYSTEM FOR FARMERS IN ROMANIA FACTS AND PERSPECTIVES

Iuliana Cenar\*

### Abstract

*The implementation of performance-based budgeting as a fiscal policy goal involves, among others, raising predictability in terms of the size and spending manner of public financial resources, including farmers' pensions. At the same time, social responsibility requires the government to pay more attention to the impact of operations undertaken economically, socially and environmentally. Amid these premises, this paper approaches the following: setting coordinates for the current pension system for farmers, highlighting the role of the government in managing and financing this system, assessing its viability by using a linear statistical model and extrapolations.*

**Keywords:** pension, farmers, statistical modeling

**JEL codes:** G23, J26

### 1. Introduction

Favoring economic progress is found among the objectives of the financial policy of every country through economic social relations established during the process of forming and using public financial resources, which the government needs in order to exercise its rights and obligations towards the nation. Among the multitude of factors upon which this objective depends, we will refer to social protection for farmers – the elderly.

Thus, the public pension system, which is facing unprecedented challenges, includes farmers in the specter of its beneficiaries (the members of former agricultural production cooperatives and the farmers in agricultural areas that were not included in a production cooperative, and, since 1992, the forest landowners and farmers, as well as their family members aged over 15, who performed unwaged work in their farms or in associative forms of agriculture).

### 2. The specific of farmers' pensions

Among the elements of individualization for farmers' pensions, we can identify at least the following:

- The late inclusion in the social insurance system: only in 1977, regulated by Law no. 4 regarding pensions and other social insurance rights for members of agricultural production cooperatives and Law no. 5 regarding pensions and other social insurance rights for farmers with individual farms in areas that were not included in a production cooperative;

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- The existence (before the reforming process) of discriminating conditions in granting pensions, both in terms of the retirement age and in terms of the calculus of seniority (based on number of norms and not on years of employment);

- Method of financing: universal, non-contributory, funded by the state budget (starting with 2005). Non-contributory financing refers to the system's inputs, namely the extremely low share (approximately 2.5%) of active farmers that contribute to the social insurance system to supply with money the pensions of inactive farmers. In this case, we are dealing with an intergenerational transfer of financial resources, as well as a generational transfer due to the fact that retirees contribute through various taxes.

- The pension's quantum: much lower than for other social groups. In the last five years it accounted for approximately 40% of the pension's quantum for social insurance pensions. By funding farmers' pensions from the state budget, a pension that initially belonged to the social insurance system has been practically transformed into social welfare, a guaranteed minimum income.

- Population ageing (according to Eurostat, the proportion of the population aged over 60 was 29.1% in 2010, and the estimations for 2050 increase this percentage by 5.7 percentage points) and, additionally, a population decrease (for the age group 0 to 19, from 21.8% in 2010 to 18.9% in 2050) are contemporary phenomena, which impact the size of the pension system, including the social benefits for farmers Stegaroiu (2009, p. 47).

Paradoxically, the population ageing phenomenon, which is prominent in Europe, doesn't affect this social category. Why? Because we are referring to a population segment for which the inputs were "suspended" in 1992, when agricultural production cooperatives were eliminated. As for the farmers who worked in agricultural areas that were not included in a production cooperative, they have the lowest pensions. They had to contribute with money each month in order to receive and continue to have the right to a pension. Unfortunately, for most of them, "nothing was ever paid and they have no pensions" Dobrescu (2010, p. 26).

### **3. The viability analysis for the current pension system for farmers**

#### *3.1. Premises*

Given the aging population and the decline of the active work force, each country must implement specific reforms, tailored to the social aspects that must be taken into account Dragota and Miricescu (2010, p. 101).

In terms of life expectancy in Romania (68.7 years for men and 75.7 for women, according to a prognosis for 2020 - Seitan (2008) and of the percentage of retirees who achieved full contribution (48.67% - [www.mmuncii.ro](http://www.mmuncii.ro)), the objectives of the model developed recently by Martin (2010), namely increasing the default retirement age (up to 67 years old) and extending the average period of contribution to the public pension system from 15 to 40 years in order to cover most of the individual's life cycle, don't seem to fit to the structure of the pension system in our country, at least not in the coming years, and especially not when farmers are concerned. The

growing reluctance of current active persons shouldn't be neglected, nor should the principle of equity, which concerns equal rights between present and future generations.

At the same time, the state has the responsibility to identify the financial means that will determine the mobilization of financial resources, the accounting of all the influence factors, including the fact that for a certain period of time (until 2025) the burden of covering “the social allowance for farmers” will diminish.

In the last 10 years, the financial effort of the government for farmers' pensions has been based on two indicators: the quantum of the average monthly pension for farmers and the number of retired farmers. Their evolution over the past 10 years is shown in the following table:

**Table 1. The quantum of the average monthly pension for farmers and the number of retired farmers – between 2001 and 2010**

Year Indicators	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Average monthly pension for farmers (lei)	27	34	39	74	88	117	159	253	300	308.8*
Number of retired farmers (thousand persons)	1766.6	1677	1571	1476.3	1291.7	1005.3	931.9	866.1	799.2	741.8*

\* The date refer to the first ten months of 2010;

Source: <http://www.mmuncii.ro/ro/55-view.html>

The presented data reveal the growing evolution of the farmers' pension quantum of approximately 11.43 times in 10 years as a result of increasing the score for each year of the useful time taken into account at the calculus of the pension, as well as the indexation of pension point value. At the same time, the downward evolution of the number of retired farmers is also obvious, from 1766.6 thousand people in 2001 to 741.8 thousand people ten years later.

Therefore, this structure of the pension system that is financed from the state budget is going to “disappear”, which implicitly means relieving the state of the burden of ensuring financial resources for former retired farmers. Although, the expenditure with farmers' pensions represents a small percentage of total expenses covered by the state budget, given the premise that one must know how to persevere in order to achieve balance (Confucius) and the need to active the role of forecasts in identifying the reforming strategies for social policies, we wish to estimate the moment when the government will stop allotting financial resources for “former” farmers (according to Law no. 263/2008, since 2011 the concept of farmer was redefined according to the realities of economy: people aged between 16 and 63, who

live temporarily or permanently in rural areas, as well as family members who own, under any title, agricultural or forest lands, fisheries, livestock and beehives; people who perform agricultural activities in their own household, as well as unwaged work in agriculture, forestry, animal husbandry, pisciculture, apiculture, sericulture and so on).

### *3.2. Statistical modeling*

Next, we wish to determine the number of retirees for the coming years in order to identify a basis for the measurement of the government's effort to support farmers' pensions (we will use the data in the studied sample – 2001-2010).

We assume that the number of retirees varies linearly in relation to time. According to the data regarding the evolution of the number of agricultural retirees seen above, we intend to determine a function that highlights this aspect and to determine the representative ness of the model.

The number of retirees in relation to time can be expressed by cumulating the trend and the deviations from this trend:

$$Y(t) = T(t) + \varepsilon \quad (1)$$

$$T(t) = a + b \cdot t \quad (2)$$

Of the trend comes from the system of equations:

$$\begin{cases} M(y(t)) = a + b \cdot M(t) \\ M(t \cdot y(t)) = a \cdot M(t) + b \cdot M(t^2) \end{cases} \quad (3)$$

With:

$$M(t) = \frac{1 + 2 + \dots + 10}{10} = 5.5$$

$$M(y(t)) = \frac{1766.6 + 1677 + 1571 + 1473.3 + \dots + 741.8}{10} = 1212.69$$

$$M(t^2) = \frac{1^2 + 2^2 + \dots + 10^2}{10} = 38.5$$

$$M(t \cdot y(t)) = \frac{1 \cdot 1766.6 + 2 \cdot 1677.2 + 3 \cdot 1571 + \dots + 10 \cdot 741.8}{10} = 5629.2$$

After substitution, we obtain:

$$\begin{cases} a + 5,5*b = 1212.69 \\ 5.5a + 38.5*b = 5629.11 \end{cases} \quad (4)$$

$$\Rightarrow \begin{cases} b = - 126.13 \\ a = 1906.41 \end{cases}$$

The mathematic formula:

$$T(t) = 1906.41 - 126.13* t \quad (5)$$

The following table is drawn up to check the consistency of the model with reality; the table includes deviations from the trend:

**Table2. Deviations from the trend**

	2001	2001	2003	2004	2005	2006	2007	2008	2009	2010
t	1	2	3	4	5	6	7	8	9	10
y(t)	1766.60	1677.00	1571.00	1473.30	1291.70	1005.30	931.90	866.10	799.20	741.80
T(t)	1780.28	1654.15	1528.02	1401.89	1275.76	1149.63	1023.50	897.37	771.24	645.11
$\varepsilon(t)$	-13.68	22.85	42.98	74.41	15.94	-144.33	-91.60	-31.27	27.96	96.69

Where:

$$\varepsilon(t) = y(t) - T(t) \quad (6)$$

The statistical test is based on random variables:  $F = \frac{R_{01}^2 (n - 2)}{1 - R_{01}^2} \quad (7)$

Based on a risk  $\alpha \leq 5$  of the Fischer Table with the degrees of freedom  $\nu_1 = 1$  and  $\nu_2 = n - 2 = 8$ , it results that the distribution  $F_{\nu_1, \nu_2} = 5,32$  and the acceptance of linearity in the distribution [0; 5.32]. A particular F value is calculated on the basis of the sample data (n = 10).

$$F_{calc} = \frac{\hat{R}_{01}^2 (n - 2)}{1 - \hat{R}_{01}^2} \quad (8)$$

$$\hat{R}_{01} = \sqrt{1 - \frac{\det M}{m_{00} - m_{11}}} \quad (9)$$

Where:

$$M = \begin{pmatrix} m_{00} & m_{01} \\ m_{10} & m_{11} \end{pmatrix} \quad (10)$$

And:

$$m_{00} = \sigma_Y^2 = \frac{(1766.6-1212.69)^2 + (1677-1212.69)^2 + \dots + (741.89-1212.69)^2}{10} = 136120.86$$

$$m_{11} = \sigma_t^2 = \frac{(1-5.5)^2 + (2-5.5)^2 + \dots + (10-5.5)^2}{10} = 8.25$$

$$m_{10} = M_{01} = M((t*y(t)) - M(t)*M(y(t))) = 5.629.2 - 5.5*12124.69 = - 1040.59$$

So,

$$\det M = 136120.86*6.67 - 1040.59^2 = 40169.55$$

$$\hat{R}_{01} = \sqrt{1 - \frac{40169.25}{136120.86*8.25}} = 0.982 \quad (11)$$

$$F_{\text{calc}} = \frac{0.964(10-2)}{1-0.964} = 214.22 \notin [0;5.32] \quad (12)$$

Because  $F_{\text{calc}}$  doesn't belong to the distribution  $[0; 5.32]$ , we can conclude that  $Y(t) = 1906.41 - 126.13*t$  explains quite well the evolution of the number of agricultural retirees in relation with time at the level of the global population, for a materiality value of 5%.

Next, we want to make a forecast based on the determined linear model for the year 2012 by considering a materiality value of 5%. Thus, we will use the formula:

$$P(\hat{Y}_{n+h} - t_{\frac{\alpha}{2}, n-2} * \sqrt{\hat{V}} \leq Y_{n+h} \leq \hat{Y}_{n+h} + t_{\frac{\alpha}{2}, n-2} * \sqrt{\hat{V}}) = 1 - \alpha \quad (13)$$

Where  $y_{n+h}$  is the precise forecast based on the model for the used sample  $t_{\frac{\alpha}{2}, n-2}$  is the chart value from the Fisher Table, corresponding to  $n-2$  degrees of freedom and a probability of  $\alpha/2$ , and the variation is given by relation:

$$\hat{V} = \hat{S}^2 \left[ 1 + \frac{1}{n} + \frac{(t_{n+h} - \hat{t})^2}{\sum_{i=1}^5 (t_i - \hat{t})^2} \right] \quad (14)$$

$$\hat{S}^2 = \frac{\sum_{i=1}^5 \varepsilon_i^2}{n-2} = \frac{(-13.68)^2 + 22.85^2 + \dots + 96.69^2}{10-2} = 6084.71 \quad (15)$$

And:

$$\hat{V} = 6084.71 \left[ 1 + \frac{1}{10} + \frac{(13-5.5)^2}{(1-5.5)^2 + (2-5.5)^2 + \dots + (10-5.5)^2} \right] = 10.557.549$$

$$\sqrt{\hat{V}} = 102.75$$

$$\alpha / 2 = 0.025 \Rightarrow t_{\frac{\alpha}{2}, n-2} = 2.896$$

$$n - 2 = 8$$

For 2012 we have:

$$\hat{V} = 9809.29; \sqrt{\hat{V}} = 99.04; Y(12) = 1935.08 - 134.08 * 12 = 392.85$$

So, result:

$$P(392.85 - 2.896 * 102.75 \leq Y_{13} < 392.85 + 2.896 * 102.75) = 95\%$$

$$P(106.03 \leq Y_{12} \leq 679.67) = 95\%$$

So, in 2012, the number of retirees will be between 106.03 and 679.67 thousands persons, with a probability of 95%.

According to the calculus it results that the linear model is representative for the given situation. Further extrapolations were made for the years 2012 – 2019:

**Table 3. The estimated number of retirees with a probability of 95% for the period between 2013 and 2019**

Year	Estimated number of retirees - 95% probability
2013	$P(-34.81 \leq Y3 \leq 568.25) = 95\%$
2014	$P(-179.56 \leq Y14 \leq 460.74) = 95\%$
2015	$P(-179.56 \leq Y15 \leq 460.74) = 95\%$
2016	$P(-464.29 \leq Y16 \leq 240.95) = 95\%$
2017	$P(-609.21 \leq Y17 \leq 133.61) = 95\%$
2018	$P(-754.8 \leq Y18 \leq 26.94) = 95\%$
2019	$P(-901 \leq Y19 \leq -79.12) = 95\%$

It is possible that in 2017 this category of pensioners will no longer exist, and, at the same time, it's possible that the state will cover pensions for a number of 133.61 thousand retirees ( $P(-609,21 \leq Y17 \leq 133,61) \leq 95$ ).

However, we may say with certainty that the government will be relieved of the burden of ensuring financial resources for former retired farmers in 2019.

#### **4. Conclusions**

The government must always be prepared to notice changes in the surrounding systems and to analyze the consequences. From a socio-cultural perspective, we are witnessing changes in the demographic structure, in the value system of people, in the relationships of different social interest groups.

The aspects presented in this paper allow us to formulate at least the following conclusions:

- the late introduction of farmers in the social insurance pension scheme;
- the quantum of farmers' pensions could be considered as being at the other end of special pensions due to their extremely low level, a little over 300 lei, while other categories of pensions were 100 times higher;
- currently, Romania is combining public budget funding, non-contributory financing (farmers' pensions, occupational pensions) and funding through social insurance (contributory financing);
- Even if the population's decline hasn't had important economic consequences yet, the long-term consequences may lead to imbalances for the entire future demographic evolution. Improving birth rates can't prevent the decline and aging of the active population until 2025, but the most serious consequence is the growing economic burden over the declining active population.
- the statistical approach of the current component of the public pension system for agricultural workers highlights that by 2019 it will no longer have beneficiaries, which will diminish the financial burden placed on the state budget and will force the introduction of a different pension scheme for the "new" farmers. For them, with a few exceptions, the government will pay benefits only in 2025;
- in terms of the "categories of beneficiaries" criterion, we may say that the lifespan of the pension system for farmers created in 1977 will be 42 years. The transformations endured by agriculture in recent years call for the principle of complementarity's, meaning the current categories of retirees will be replaced by others, adequate to the new economic conditions.

The efficient operation of budget programming will require a longer period of time to show benefits because it involves efforts to improve the analysis, management and implementation capacities. Of course, in addition to farmers' pensions there are many other variables that must be analyzed when using certain tactics to materialize social objectives or when preparing strategies meant to generate long-term financial sustainability.

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**RAPID ASSESSMENT METHODS. SOME ASPECTS OF THE  
EVALUATION OF INTANGIBLE ASSETS**

Gheorghe Lepădatu\*

**Abstract**

*The rapid assessment methods are applied in a very similar way in the business area: they say a certain rule and then shows a series of circumstances (limitations) that may influence the outcome of the assess or can even make rule inapplicable. In other words, “rules are made to be broken”. In the literature, the rapid method is called “standard method” or “simple method”. Rapid methods can be found, in English language, under the names “Rules of Thumb” or “Shorthand formulae” (shorthand formula simplified).*

**Keywords:** assessment, multiple income, international standard of practice in assessment

**JEL Classification:** M41

**1. Advantages and disadvantages of the rapid assessment methods**

Based methods are called the “thumb rule”, which is defined in American Heritage Dictionary as “a useful principle with broad application, but without claiming to be accurate or reliable in any situation”<sup>1</sup>.

The Oxford English Dictionary (quoted in the same work), shows even from the definition the origin: “A method or procedure derived entirely from practice or experience, without any scientific basis, a practical method for approximating”. Rapid assessment methods are used in many situations: for example, know that editing a page with text written on two lines spaced between approximately 250 words. Of course the exact number depends on the size of fonts, page margins, the presence of illustrations or tables. Rapid assessment methods are applied in a very similar and in business: they say a certain rule and then shows a series of circumstances (limitations) that may influence the outcome or to assess the size or can even rule inapplicable. In other words, “rules are made to be broken”. Rapid assessment methods are specific to small business (enterprises) and only to the branches, sometimes even only areas, covered. Mainly they are used to evaluate companies for sale - buying. Rapid assessment methods as they say the name, make a rapid assessment, not necessarily exact, a business, more than to give an approximate picture of its value. Another objection that can bring to this type of assessment methods could be the fact that business would be based solely on past information on those businesses and the different habits of industry or business area that is located. Restrictions on use of

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<sup>1</sup> Heather Smith Linton, 2004, pagina 190.

rapid assessment methods are also represented by the purpose of the assess: they do not apply to assessments for accounting and financial reporting, assessing the contribution of members, listing, international transactions, taxation, obtaining credit, privatization or (re) nationalization, judicial expertise, etc. confined to the initial assessment of the business (enterprise) as a starting point of negotiations for the sale - purchase from private.

Countries with tradition which were and still are quite used these methods of assessment are Great Britain, USA and France, but their applicability is more restricted since IVSC<sup>2</sup> - International Valuation Standards Committee, has developed a particular standard in this field, the International Standard Practice Evaluation 12 (GN 12), as will be explained further.

However, the arguments for the rapid assessment methods are still widely used in business? We appreciate that these methods, in addition to aspects of history, traditions and culture involved, presents some clear advantages:

1. are operational, it requires more time for calculating the value,
2. are simple, does not require laborious calculations or confidential information (based on a minimum of information, the public generally: book value, gross income, net profit, etc.)
3. give values close to market values of business, the price being determined objectively<sup>3</sup>,
4. not expected to give a rigorous set value:
5. are spectacular, give a quite realistic in a short time;
6. is achieved with low cost, generally not need expert assistance;
7. are neutral, non-partisan, not take any of the parties to the transaction by entering any arbitrary coefficients;
8. transparent, verifiable and predictable for either side;
9. reflect differences in business (enterprises) due to ford, geographical area, local customs and habits, etc.,
10. part of the treasure of tradition, history and economic culture of the peoples concerned, with widespread.

Because of those certain advantages, business intermediaries use to help customers to set a sale price for their businesses, generally small in size and complexity.

The most important types of rapid assessment methods are:

- multiples of annual gross income
- multiple of annual net income (or cash flow - net treasury, EBITDA = profit before interests, taxes, depreciation and amortization<sup>4</sup>)

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<sup>2</sup> International Valuation Standards Committee, lodged in London.

<sup>3</sup> Market value is the estimated amount for which property would change the date of valuation, between a buyer and a seller decided at a specified price target transaction after proper marketing activity, the parties have acted knowingly, prudently and without compulsion ”;(International Valuation Standards, Seventh Edition, 2005, page 82).

- a multiple of book value (from sheet)
- multiple of the unit of production or income (salary, room, seats, subscribers, etc...).

Relying heavily on data from the books, the results of these evaluation methods have a greater relevance as the accounts are managed with more accuracy (honesty), and the legal economy and financial - accounting and taxation are more stable. Also have to be considered other requirements that may result in calculating market value. Otherwise, use a single multiplier has no significance. The economy is more stable, more diverse and advanced, it produces more sales transactions - purchase of business (enterprises) and thus appear more and more rapid assessment of their methods, more relevant, more reliable and credible.

## **2. Methods based on multiple income**

Closest theoretical and methodological framework for these methods consists of the discounted cash flow method (DCF - Discounted Cash Flow) because it quantifies the amount of future revenue (and hence value) of the business using current income (capitalization), or show the present value of a future cash flow (update). Some make a quick assessment based on current income multiplication, only instead of a percentage rate cap / update, it uses a multiplier.

The first step in using an income multiplier is similar to the first stage of applying the DCF method: the choice of base, type and size of the gain to be multiplied. Probably the best basis for the calculation of earnings is the cash flow (net treasury), but not always have all the information to calculate exactly. Therefore, because cash flow is not immediately visible in the financial reporting of small companies<sup>5</sup>, rapid assessment methods in different areas should find and use a different basis of calculation. It is generally advisable to use current or historical net income or earnings (profit) before falling interest and taxes (EBIT)<sup>6</sup> and EBITDA to approximate two cash flows. Evaluating a company where the owner has an excessively high salary and / or give himself other great benefits granted in addition to salary (car service, health insurance premiums, etc.) will need to make some adjustments to make these revenues comparable to those of other firms in the same area.

A second step is to choose the size that will be applied multiple income type selected. This multiple will be chosen depending on the degree of business risk, as where we choose the share capitalization rate risk or to update the DCF method. In general, the multipliers value is in the range 3 to 5 times, coinciding with a profit rate of 33% per year for a gain multiplied by three times, or with a profit rate of 20% per

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<sup>4</sup> Earnings Before Interest, Taxes, depreciation and Amortisation. These methods are consistent and comparable value obtained by rapid assessment methods, with market values, which include the sales comparison approach, income capitalization approach (including discounted cash flow analysis) and cost approach (International Valuation Standards edition seventh, 2005, page 81).

<sup>5</sup> All accounting systems, financial reporting required for small and medium-sized balance sheet (with annexes) and profit and loss account.

<sup>6</sup> *Earnings Before Interest and Taxes.*

year for a gain multiplied 5 times. This approximates the capitalization rate or update that could derive from a theoretical construct more sophisticated, such as the DCF method. We could watch the size of these multipliers also from the angle of view of the expected duration of the investor to recover their investment: for example, an investor who has paid for a business of five times its net profit is expected to recover their investment in 5 years.

### 3. Other rapid assessment methods

Historical book value of assets is representing the owner (enterprise value - V), which is calculated by subtracting liabilities (D) of total assets (A), resulting in net assets accounting (NCA) or equity ( $C = V = A - D$ ).

The carrying amount includes all net profits of past years, if the company did not pay dividends to owners. Thus, according to the payment of dividends, we can use the book value (net asset accounting) to evaluation the multiplier (if dividends were paid) or without multiplier (if you have not paid dividends).

Book value problem is that it does not necessarily reflect market value and no goodwill value internally generated business. As a method of using multiple versions of gross income are multiple method income of a production unit (room in the hotel) or the method of multiple net profit a worker (truck driver), as a special highlighting the role and importance of factors for successful business in different sectors. A quick assessment can be considered the brand valuation method, developed by specialists of the company Interbrand Group PLC London, entitled “Method net profit multiple historical one”<sup>7</sup>.

### 4. The role of the business intermediaries

Business intermediaries work closely both with sellers and buyers of business in order to facilitate transactions. Thus, the seller, intermediary helps to determine the amount of business (enterprise) and develop its marketing plan for it to identify potential buyers. When a client (potential buyer) makes an offer, the intermediary that negotiates with the selling price and other terms of the sale - purchase and helps the buyer to obtain financing. Business intermediaries and business transaction adds value in several ways:

1. develop and implement marketing plan for finding and selecting buyers, which is a time consuming activity,
2. accurate assessment of the business through one of the methods presented above,
3. experience, the database of similar transactions and their contacts to provide access to deep knowledge of the market, thus they managed to find more buyers compete and thus to obtain a better selling price.

Costs of intermediation activities in carrying out business transactions are:

- a) a fee between 6-10% of the business transaction (another quick assessment!)

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<sup>7</sup> Sorin V. Stan, Ion Anghel, Veronica Gruzniczki, 2006, paginile 142 – 146.

b) a charge for conducting initial assessments and to prepare and implement marketing plan, which may lead to a total cost for the seller between 5. 000-10.000 dollars<sup>8</sup>, one that may include recovering the selling price.

### **5. International Standard of Practice Evaluation**

To assess these small businesses, there is a particular international standard: International Standard Practice Evaluation 12 - NG 12, entitled “Evaluation of specialized property-generating business (PSGA)”. In the globalized world (even step by step, as is the case with the formation of the European Union, for example), the methods provided by this standard tends to replace the use of rapid assessment, as presented here, due to limitations and disadvantages their above.

Thus, NG 12 provides that this standard is targeted exclusively to assessing PSGA-sites, but should be used in accordance with the provisions of other international valuation standards, such as:

- NG 1: Assessment of the property,
- NG 3: Evaluation of plant, machinery and equipment;
- NG 4: Evaluation of intangible assets,
- NG 5: Evaluation movable,
- NG 6: Assessment of the enterprise,
- NG 9: discounted cash flow analysis.

The assessment also PSGA also the subject of an international standard for assessing IVS 1 - Market value as basis for evaluation, and if the aim is to record PSGA value in financial reporting, then apply the provisions of international standards for financial reporting applications IVA 1 - Assessment of Financial Reporting. PSGA are considered as individual business (itself) and, currently, are assessed on their potential profit before interest, tax, depreciation and amortization (EBITDA) to reflect the activity of a reasonably efficient operator, often using DCF method or using a capitalization rate applied to EBITDA.

PSGA extra profit generated more than market expectations, and which may be assigned to the business manager<sup>9</sup>, will not be included. The specific situation of the manager, on the fiscal position, depreciation policy, the cost of borrowed capital and capital invested in business is not taken into account in establishing a base of comparison for different properties and different management. Although the techniques and concepts are similar to those commonly used for valuing business, truly, with the amendment that PSGA assessment disregards tax liabilities, depreciation policy, the cost of borrowed capital and capital invested in the business, assessing PSGA based on other input data than the underlying, typically, an enterprise evaluation. Evaluation results can be shared between different parts of PSGA assets to financial reporting, establishing property tax and, when requested, for property lending.

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<sup>8</sup> In U.S.A.

<sup>9</sup> It's about goodwill (goodwill) personnel manager.

## 6. Evaluation of rapid methods of intangible assets

Intangible assets are measured by rapid methods in two ways:

- a. Directly and individually, or
- b. Indirectly and globally, in all business / enterprise.

In the first case, intangible assets are assessed individually or the enterprise value is represented by their value, or those value plays an important part in determining the total amount of enterprise. When car dealers, one of two methods for assessing the business determine its value in terms of its goodwill, calculated as an amount representing 1 to 3 times the business gross profit (EBT). Alcoholic beverage outlets are evaluated by two rapid methods, which take into account the value of a license for the sale of alcoholic beverages, its cost calculated. The value of such stores is calculated by adding twice the amount the owner an annual retains for itself (SDC), the license cost and value of stock.

In the second case, by this method of assessment is implicitly recognize intangible assets in the total value of its business, whether exclusively owned or related business and the personality of the manager, staff, etc. that further work remains in the acquired company that sold.

## 7. Conclusion

Even if these rapid assessment methods have a solid scientific foundation, they also got a spread, utility, applicability and importance that can no longer ignore them. For business owners, appraisers, business intermediaries, employer groups, trade or profession, consulting firms, professional evaluators, research institutes, teachers, etc. they have great value and relevance, and therefore should not be looked. These methods can provide a fairly accurate picture of a business as a starting point for planning transaction. Certainly these methods must be combined with other methods, themselves in need, as noted, thorough analysis, adjustments and interpretations for each case. Also, these methods may be alternatives to turn to check the reliability of results obtained from other assessment methods. Another advantage, quite importantly, the rapid assessment methods is that not collide with the provisions of the International Valuation Standards, they may have methods that produce similar market value, based on market comparisons and income multiplication or profits.

However, for recognition and reliability, these methods of assessment should be imposed on companies traded in an active market<sup>10</sup>.

Their reliability and accuracy it is not so high that it can be used for purposes of registration in accounting, financial reporting preparation, listing on stock exchanges, international transactions, obtaining bank loans, evaluating the contributions of

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<sup>10</sup> An active market is a market where all conditions are met: (a) items sold in the market are homogeneous, (b) can always be found willing buyers and sellers, and (c) prices are publicly available"; (International Accounting Standard No. 38 in volume 2002 International Accounting Standards, Economic Publishing House, Bucharest, 2002, page 38-10).

members, privatization or (re) nationalization, evaluation legal or tax purposes, etc., where more precise methods should be used. Their area of application is the assessment of business than for sale - purchase them from private.

In conclusion, the importance of rapid assessment methods and business affairs lies in three major aspects:

- theory: historical significance;
- methodology: is simple and fast,
- practically: can be useful to Romanian companies acquiring small companies in the UK, U.S., France , etc..

Regarding Romania, to extend the application of these rapid assessment methods is necessary to stabilize the economy, reducing inflation, keeping proper accounts, increasing the number of sales transactions - purchase of business and performance criteria for active market (within the meaning of IAS 38, above).

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## DEVELOPMENT AND IMPLEMENTATION OF RELATIONSHIP MARKETING PRINCIPLES IN ROMANIAN HIGHER EDUCATION ENVIRONMENT

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### Abstract

*The thirst for knowledge and the evolution of human society determines the development of marketing activities designed to discover the real needs of society, to intuit new needs and to satisfy them into profitable purposes. Internationalization of higher education is a consequence of globalization. Today, higher education institutions want to become bigger, to develop more and more research programs, to attract more students better prepared to cope with the continuously increasing competition coming from the foreign large universities.*

**Keywords:** educational marketing, relationship marketing, quality, satisfaction, loyalty

**JEL Classification:** M31, M39

### Introduction

The purpose of the present paper is to highlight the connection elements between relationship marketing - defined as “... *an organization function and a set of processes which creates, delivers and communicates value for customers and administrates long-term relationships with them, in the benefit from the organization and its partner*” (A.M.A., 2004, p.17-18) and educational marketing, seen in our opinion, as a new optical system of education at a national and international level, a new way to relate to the market.

Within any market, for any business, a marketing view offers us the perspective of giving base to any step of offering value by studying human behavior and organizational needs and searching the means of meeting their requirements in superior conditions and with a higher efficiency than competitors do. Providing value is a comprehensive process which requires all the resources of the organization and consistently involves a continuing effort to manage the relationship with the customer and the other components of the micro-organization.

In education things are similar. Educational institutions should act within the market starting from knowing the needs expressed within the social and cultural

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context of the individual and society and ending with the specific needs of the organizations. The individual needs to acquire certain knowledge and skills to be able to deal with actual labor market requirements. The educational institution as a provider of educational services, has to maintain relationships with the effective and potential education consumers and beneficiaries in order to ensure its continuity in a world where globalization process force you to use marketing activities designed to help you in the process of customer loyalty.

### **1. Long term customer relationships.**

“The need to see the educational activity in a marketing view is determined by the similarities it has with the economic activities in the service field. In this sense, schools are placed in the position of environmental agents, their success or failure being ultimately determined by the degree of integration within it” (Smedescu, 2004, p.412).

The primary purpose of providing educational services is to anticipate current and prospective customers' needs for education and to produce intellectual satisfaction.

In today's world education institutions are increasingly oriented towards investigating the needs of society so that they can act as an intermediary between the carriers of the demand for education and labor market. Education appears as a very complex system that is designed to train individuals from an intellectually point of view in order to meet labor market requirements which have evolved a lot today. “It may be noted that school maintains marketing relationships with two categories of clients: on the one hand with the economic entities from the national economy, labor recipients who supply themselves with the specific human resources, in which the educational institution appears as a supplier of labor, on the other hand, students who supply with the necessary knowledge for a job. In this case school is a provider of education services” (Smedescu, 2004, p.412). The need for specialists in a particular represents the base of the demand creation. Thus it is important that various schools and universities to be responsive to market developments in order to change the bid in line with these changes.

Young people show great sensitivity to labor market when making the decision to invest in their training and to pursue a higher education institution because they easily feel the best professions in terms of both earnings and employment opportunities. In this context education and research are the means by which we build a new type of society.

Knowledge society, the computerization of education, sustainability, globalization and the European Union construction, problems of contemporary world and the gap between educational systems from Europe, countries in the Pacific and North America, the increased dynamics of labor markets, the multiplication of higher education providers and the increased competition both between universities and between universities and various agents in the socio-economic or cultural environment, have led to profound and multidimensional transformations at the level

of the European universities in order to increase their international competitiveness, which imposed a new thinking and designing the entire system of higher education” (Teodorescu, 2009, p.226).

Now more than ever, universities are using increasingly sophisticated means to attract top students by promoting a superior educational offer which fully meet the rapid changes in science, technology and labor market, focusing on building long – term relationships with educational services consumers.

So between educational marketing and relationship marketing there is a very strong connection, both putting an emphasis on lasting relationships. Relationship marketing focuses on establishing long term relationships with customers and keeping them, because experience has shown that it is much easier for a company to retain customers than to attract new customers. Long term relationships are based on an amount of knowledge acquired over time, experience and confidence gained from collaborative relationships with customers.

“Organizations that want to exploit the potential offered by applying the principle of relationship marketing calculates and monitor an extremely important indicator, *the customer value throughout the entire period of the relationship with the organization* (the client value during his “life” along with the organization as its suppliers). This value is calculated as the present value of the entire stream of profits generated by the client/ student relationship, taking in account a medium term or a long term. Practitioners often considered a period of two to five years to estimate the future value date. Estimating the monetary value of those units (VVi) can be achieved using the following formula:

$$VVi = \sum_{t=1}^T (Sit - CDit) - CMit \left( \frac{1}{1+\delta} \right)^t$$

where: *i* identifies the considered client; *t* (from 1 to T) is the time unit (month, year etc.); *Sit* are the goods brought by the client *i* (the sales of the organization to the client *i*); *CDit* are the indirect costs associated to the client *i*; *CMit* are the marketing costs associated to client *i*; *δ* it’s the interests rate (the capital cost used to calculate the date net value )which correspond to the time unit *t*” (Bălan, 2010, p.38)

## **2. Satisfaction – a primary component of the higher education system**

University as part of the educational market should not be content only with funding tools to attract the student as a supreme aim of its existence. The work of these culture and education institutions must be much broader oriented to the satisfaction audience.

Through student satisfaction we can understand a sum of activities and processes of integration into the socio-economic dynamics through which the educational institution provides a proper environment for the mental, cultural and professional development of the individual, through selection, a curricula adapted to specific market demands, teaching staff and quality educational services, vocational counseling, skills development for the assertion of the individual creative personality

adapted to the various areas of specialization, continuous improving of the brand of the university, personalized relationships, post graduation relationship management. It is possible that this satisfaction will be conscious by the student after graduation, in the labor market, its recognition being even more important. But between the current and later perceived value, the value offered and perceived by the current student will determine his retention in the same institution in master and doctoral cycles, and the attraction of other education consumers. Student satisfaction appears as the main goal that guide the work of a higher education institution to adopt the most effective strategies to assure maximum success.

*“The psychosocial climate of the courses and seminars is a major landmark in student satisfaction. The professor involves in teaching with his entire personality, he is emotional investing, he shares his cognitive and life experience with his students, establishes certain relationships with them. These relationships depend on his structure, personality, his style of leading the educational activity, his individual features and on the group of students”* (Turtureanu, 2003, p.35). It is necessary that the teacher know his students in order to induce them the competition spirit, selflessness, to develop a personalized relationship with each student individually, and to encourage them in being partners into the knowledge process, because they are motivated by these elements. *“Students should not be considered to be an object of educational action, but one of its topic, active participants in their own development. The teacher will sow the idea that they both have to learn continuously to meet the educational requirements”* (Turtureanu, 2003, p.37).

Student satisfaction comes from the quality of the educational act, the high level of professional training of teachers staff, the quality of the material base, but also from his personal qualities, acquired during the previous years of study, because the quality of each cycle depends decisively on quality of previous cycles. “Customer satisfaction occurs when expectations were met. Reaching the maximum level of satisfaction leads to *customer enthusiasm*” (Schüller and Fuchs, 2004, p.209).

Thus we can say that university educational marketing involves a system of activities focused on the satisfaction of its students and anticipating their requirements having a strong resemblance with the relationship marketing which is oriented towards satisfying customer needs at a higher level and to retain and create a long lasting relationship with them. In the activities based on relationship marketing, customer satisfaction comes when he is satisfied with the goods or services acquired from a firm this leading to *preference*, meaning that state of wanting more and more to work with a firm because it meets a lot of his expectations. Educational marketing also involves investigating the education consumer behavior, innovative ideas and develop predictions about the evolutionary trends of the educational market, as the relationship marketing targets the investigation of the consumer’s behavior, its influence factors and the roles that each person has within the consuming process.

To keep your customers, it is necessary to make them happy with the goods or services you deliver, that's why relationship marketing emphasizes customer satisfaction as educational marketing targets the educational consumer satisfaction.

In education it is important that both the student and teacher to understand that “*learning is not an objective transmission from one holder to a recipient, but bidirectional development, a concerted transformation of a master who is confirmed as such leaving his disciples to affirm the value, and a disciple who wants to become master itself. There isn't only an exchange of services, but an evolution in the destiny of those who are involved*” (Popescu et. al., 2004, p.4). To ensure the quality of education it is required a periodical review of the analytical programs, encouraging student to work throughout the semester by various methods such as assessment tests, tutorials, case studies, checking the presence of students - all leading to an increased work efficiency.

Measure the quality of education will be fully evaluated by the student only after graduation, but before that happens we consider highly important that for the teacher to develop empathetic relationship with the student by which he will understand the attitudes, feelings, students' personal experiences, all of this enabling communication and contributing to higher performance through sharing so different emotions or states, teachers becoming in this way accomplices in the further training of those whom they guide.

### **3. Evaluating the relationships with the consumers.**

Like an educational institution, we consider also that in a company it is necessary a regular evaluation of the customer database, encouraging the work of staff through various incentives in order to enhance work efficiency and thus to ensure a better relationship between employees and customers.

“Relationship marketing involves establishing *personalized relationships* with customers to gain their loyalty” (Preda et. al., 2009), as educational marketing involves creating a *personalized relationship with students* so that both student and client to feel they are the focus of the organization, to feel important for the company or for the institution with which they work, in this way increasing the trust and loyalty. Also in relationship marketing the measure of quality will be evaluated based on the customer and employee relationship and also based on the good or service provided.

The satisfaction status of a customer does not always mean a higher quality of goods or services supplied by a particular company because there are many customers who are satisfied with less. Therefore, quality evaluation is made by researching the satisfaction of many customers from different backgrounds and different income so that error to be minimal.

Relationship marketing requires a completely different approach of the relations with business partners and primarily those with customers, from the classical manner, based on ties of immediate advantage (opportunity time). From the classic “*Make and Sell Marketing*” we reach to “*Sense and Response Marketing*”, said Ph. Kotler (Kotler et al., 2002, p. 26). A keen understanding and anticipating of the customer long term needs takes place of the main effort of expanding the market based on a quantitative increasing supply and number of buyers (Pop, 2006, p.35). This classical sale - purchase relationship is replaced by a longevity partnership between trade partners based on trust, respect and effective collaboration.

The trust and satisfaction generated by business relationships with a partner represents premises in the process of creating its attachment to the organization with which he is developing those links (Pop, 2006, p.37). The professor Grönroos says about relationship marketing that it is “... *the process of identification, stabilization, growth and if necessary, end of the relationships with customers and other stakeholders, so that the objectives of all parties involved are met.*” (Grönroos, 2005, p. 101).

In educational marketing and also in relationship marketing, the consumer becomes the nucleus around which all marketing efforts revolves, because it is seen as a source of profit for any institution. “Private universities in the U.S. are a good illustration of this principle. They attempt to create a *single relational culture* that links the university students and graduates with the institution they are studying or have studied” (Pop, 2006, p.40). This thing highlights the similarities between relationship marketing and educational marketing which aims to establish personal relationships with education consumers in order to know them better, creating in this way the possibility to discover new needs that can be answered in the shortest time.

#### 4. Consumer loyalty

As in the case of educational marketing, “relational marketing focuses on attracting, retaining and regaining the lost customers. In essence, each organization must make simultaneous actions in order to attract and retain customers, but investing a different amount of resources in each of the two areas, depending on the life stage of the organization, product / brand and market” (Bălan, 2007, p.39).

To retain customer is needed a lot of involvement. Customer retention is the result of a process that creates a long term relationship with the customer and which leads the customer to a stage of real preference for the company. Preference is the result of an intense collaboration, following which the customer is satisfied with the services rendered. A previous step in gaining students loyalty within the framework of educational marketing or clients loyalty in the case of relationship marketing and also for the implementation stage is the attachment for the institution. The attachment for the organization, product or brand, needs a certain change in customer’s behavior through different ways of making them feel important for the organization. Loyalty programs for student or for a client involve a number of activities such as providing quality services, integrated communications and brand which maintains its value on the market, providing support services around products basic, exploiting feedback, use of cooperative strategies, offering bonuses or recognition of loyal consumers and of their merits. Customer retention is a complex process that requires coherent action plans from period to period.

Education institutions in Romania can build consumer loyalty programs through continuous quality improvement of the educational offer, by offering competitive advantages to the graduates. In a changing educational market, in an increasingly competitive environment of the educational institutions must differentiate themselves by consistently provided valuable to the audiences and others groups of interest.

## **Conclusions**

By the above we can say that between relationship marketing and educational marketing there is a strong connection, as both focus on building long – term relationships, proximity to customers, quality and satisfaction, an efficient communication, retention of clients and students and their attachment and loyalty, as customers for a company and students for an university are the engine that ensures the continuity and prosperity of the institution.

We consider important for any organization to put in the center of its activity the client, as well as any university should put the student in the spotlight of its activities, in order to ensure superior value for the consumers and society as a whole. Peter Drucker argued that “*marketing is so important that it can not be treated as a separate function*”, considering that it represents” the “*whole business seen from the viewpoint of the end result, the customer's perspective.*”.

Educational marketing as well as relationship marketing must adopt an ethic and social orientation heading to high quality and satisfaction standards for the consumers, creating also a new development perspectives by adopted a new work style based on an increasing confidence.

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## ROMANIA IN FRONT OF A NEW EUROPEAN CHALLENGE: THE FINANCING OF HEALTH SYSTEMS

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### Abstract

*The Global Organization of Health defines the health system as „the totality of the organizations, institutions and resources consecrated to the improvement of health.” The financing of a health system refers to the way in which the funds necessary for the development of the activity in the sanitary sector are collected and also to the modality in which these funds are allocated and then used. The chosen financing modality, combined with the type of organization of the sanitary system determines who has access to the health care, the cost of this care, the productive efficiency and not least the quality of the offered services. All these intermediary results determine in their turn the final results of any health system: the health condition of the population, the financial protection against the risks and not least the degree of satisfaction of the consumers of services. The paper proposes a compared analyze of the various financing mechanisms of health systems in Europe, to conclude on the advantages and disadvantages of each system. Concerning our country, we search the answer to the question: “Is a supplementary health insurance viable in Romania and would it reduce the costs of the patients?”*

**Keywords:** healthcare systems, Bismarck social insurances, market mechanisms.

**JEL classification:** M48, I11, I18

### 1. Means of financing the healthcare systems

*The healthcare system represents „ the total amount of organizations, institutions and resources used in order to improve health”.*

*Financing a health care system refers to the way in which the funds necessary to the development of the sanitary field activities are being collected.*

The mean of financing which is chosen, combined with the type of the sanitary system organization, determines who has access to the health cares, the cost of those cares, the productive efficiency and last but not least, the quality of the services

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which are being offered. In their turn, all the intermediate results, determine the final results of any healthcare system: population health level, financial protection against risks and the level of satisfaction of the services consumers.

*There are five main means of financing the healthcare systems : financing from the state budget; financing through the social health insurance; financing through the private health insurance; financing through direct payments; communion financing.*

The means of financing the health care systems appear in these pure states, in which they have been described, only very rarely, most of the times them being „skinned” to the specific conditions existing in each country, and , sometimes, they even appear in a mixed form inside the same healthcare system.

Ideally speaking, it seems that the best financing solution would be that of a three leveled healthcare system:

1. for the public goods and healthcare services, which have a major impact on the level of health, the best method is financing through general taxation.

2. for necessary health cares, derived from the individual sickness risk, the best methods are public financing through special taxation or social healthcare insurance.

3. for the services which are considered non- necessary ( with non-proved efficiency, luxury ones, or the ones requested by the patients), the best methods are financing through private health insurance or through direct payment.

The strategy which should be adopted by any country which wants to apply a mixed financing system, is to define the public goods, necessary goods, luxury goods in the healthcare system, this being done based on the society values and the existing funds.

*FINANCING FROM THE STATE BUDGET.* Through this mean of financing, the funds are collected into the state budget, and afterwards they are allocated to the sanitary system. Population coverage is general, each person contribution being dependant on their income and not on their individual risk.

*There are several sources, where from the funds can result: general taxation; special taxation for healthcare; other budgetary incomes.*

*The general taxation result from three main sources: import/export taxation; taxation on the economic agents; salary taxation, and also on the global income.*

The funds which are collected in this way, most of the times don't represent a stable source of financing the health system. The explanation is that, for some governs, health doesn't represent a main priority, and this aspect combined with the economic instability of the transition countries, leads to a crises of the funds allocated to the sanitary system.

#### *FINANCING THROUGH HEALTH INSURANCE*

Health insurance is a way in which many of the average and high income countries manage to cover the sanitary system expenses, in a significant proportion.

*There are two main types of health insurance: compulsory insurance ( social insurance and public insurance done by the govern), and voluntary insurance (private).*

Social health insurance. There are two main differences between the social and private insurance. In the first place, the social insurance is mandatory. Each eligible

person must enlist and pay the suitable amount of money. Secondly, the premiums and benefits belonging to the social insurance are established by the existing law, this being the reason for which they can be modified more easily than the ones of the private insurance,

Financing the social health insurance system is made through obligatory contributions, usually equally paid both by the employees (under the form of a percent from the salary) and the employers. In some of the countries in order to include also the people that work outside the official sector, the contribution can be calculated as a percent from the global income of those people (e.g. Farmers).

In the health insurance system, the government contributes with funds from the State budget, in order to finance some precise objectives which are not covered by the insurances, like: health programs of national importance, rehabilitations in the health area, endowment with gears of high performance etc. The underprivileged groups that are not included in the social health insurance are also the government responsibility.

*TYPES OF SOCIAL HEALTH INSURANCE:* There are two main types of social health insurance from the point of view of the funds administration:

- Social health insurance administrated by the government, through governmental agencies;
- Social health insurance administrated by public or private insurance companies,
- Social health insurance administrated through governmental agencies;

Social health insurance administrated by the government, through governmental agencies:

In this case, the government is the one that establishes the contribution level together with the offered services.

The health unities that are included in the insurance plan can belong exclusively to the government property, or these can be mixed, both private or governmental, in the first case the insured person having the possibility of choosing. It is obviously that the first model, the one of the State monopoly against the services contractors, has indeed many disadvantages, like birocrtatism and lack of liberty from the beneficiary side, causing diminution of the quality of the medical act.

The major disadvantage of this kind of system is tied with the political pressures. The political pressures is affecting the allocation of the resources, together with the payment ways done by the medical services contractors. On the other hand, the politicians may promise in exchange of the electoral support, unrealistic packets of services which will be a burden for the next generations. We encounter these kind of health insurance systems in the Latin America countries.

Social health insurance administrated by public or private insurance companies (Bismarck model):

In this situation, the task of the government is to declare mandatory insurance for all the eligible people. The citizens have the liberty of choosing among several

insurance funds, either public or private. In many countries these kinds of funds are named “sickness funds”, and can be organized also by trade unions.

The organization for offering health care may vary accordingly to the different social insurance plan. For example in Japan, most of the specialists from the tertiary assistance are represented by the employees of the hospitals, while in Germany and France, the payments are done separately by the insurance funds for doctors, and hospitals. This leads to a scanty integration for the hospital services, and a weak coordination among doctors and hospitals, causing diminution in efficiency.

*The advantages of this kind of system*, in comparison to the one of the social health insurance administrated by the governments would be the following: non-interference of the politics, the decrease of the birocratism, competition among the insurance funds, causing a quality increase in the medical act.

However, the encountered issues are tied with the apparition of the adverse selection, the insurance funds trying to draw the healthy people in the area of the sick people and the young people in the area of the old ones. We encounter this kind of the Bismarck model heath insurance in Germany, France, Japan, Benelux, Austria, and soon in Romania.

*Voluntary, Public social insurance: The private health insurance is offered by non-profit insurance companies or for profit, on the base of individuals or groups.*

In what concerns the individual medical insurance it is calculated accordingly to the sickness risk. The amplification of the contribution also depends on the packet of services that is offered, plus the administrative expenses, plus profit. The last two ones represent 40- 50% from the insurance. The high administrative costs are explained by the high marketing costs, needed for selling the insurance to as many individuals as possible,

The private insurance may be also offered to groups of individuals, usually employees of the same employer or members of unions.

In the last years it could be noticed an increase in the interest for the private insurances, seen as a mean of the income increase for health. However, implementing this kind of system in the health care market, raises a series of problems like: does the insurance be thought as for individuals or as for groups of individuals? Should the insurance societies be for profit or non profit?

The most important aspects are tied by the government role. Its important task is to establish the legislative framework without which an insurance society cannot work. The executive may also imply in a series of problems like: creating some back up funds for the insurance companies similar to the ones from the bank system with the aim of preventing any kind of fraud.

What is absolutely clear is the fact that the option of the private insurances doesn't stop the government from the responsibility of involving in the financing health system. On the contrary the private insurance raises a lot of legislative and management problems.

As a conclusion it may be said that the private insurances are representing indeed an extra source of income for heath. Implementing the private insurances are

requiring precise regulations and an attentive and constant supervision, and most of the countries cannot respect these kind of requirements.

It is significant the fact that the only state in the world that has a private health system based on private insurances is USA. However, even here the government offers medical care to the disadvantages groups through two programs: Medicaid, for the poor ones and Medicare for the old people and handicapped people. The last program covers around 38 mil people. 15% from the Americans don't have medical insurance.

*Financing through direct payments:* There are several types of direct payments: total payment of the services; co-payment (an established sum for each medical visit); co-insurance ( a certain percent from the visit cost)

The total direct payment of the medical services is done in the private area, while the co-payment and co-insurance are done in the public area.

The positive effects of these payment ways might be: the reduce of the non necessary services, quality increase of the services, efficiency increase.

The problems that are encountered are tied with the fact that the poor individuals or the old ones, the ones that receive the medical services might reduce the consumption if the needed care due to payment impossibility.

The researches show the fact that introducing the direct payments hasn't lead to a significant increase of the health funds, increase which is estimated to less than 10%. More than this, no improvements could be done in the quality of the medical services.

In conclusion there are many possible negative effects of this way of financing. It is important to be understood the limit of the method, the impact and especially the context of each country.

*Communion financing:* It is a method that may be applied in the rural area. It is based on the fact that the members of a community should pay in advance a contribution with the scope of obtaining a packet of medical services, when these will be needed. The contribution covers a part from the costs, the rest being offered by the government. Contributions may be obtained also from the local industry where this exists. The Communion financing proposes most of the times to cover the primary care costs, the drug costs and also a part from the hospitalization costs.

The communion financing is based on two principles: cooperation among the community members and trust among them. This method may be encouraged and sustained by the government through legislative initiatives, technical and financial assistance. Ideally is that the organization of the communion financing to be independent from the local and central authorities.

*Other methods of financing:* There are new methods of financing, like Managed competition, Managed care, and health costs. Etc.

*Managed competition* means mandatory insurance for the individuals, with the liberty of choosing the insurance company which will negotiate with the contractors the best conditions for the offered care payments.

The payment of the contributions will be depending on the income ( for covering an unique care packet) toward a national (central) fund of insurances, which will pay to the insurance companies funds as per individual, depending on the sickness risk. Fucks shows that although some of the countries have tried this kind of financing (Dekker in Holland, Clinton in USA), we cannot reach to the conclusions about the advantages and disadvantages of this method.

*Managed care* is a new concept that integrates financing with the offering of health care and which implies services in an integrated, responsible and competitive system, and the insured person negotiates with the contractor. The Contractor is the organization of HMO Type Health Maintenance Organization from USA. These organizations request contributions that have the same characteristics with the ones from the private health insurances ( tied with risk, for the individuals contributions, or communion for the group contributions.)

Usually these contributions are less than the ones from the private insurances, because it limits the access to certain contractors and it appears the sharing of the financial risk with the contractor through capitation contracts and global budgets.

Financing through health accounts is a financing health care method which is based on mandatory payment of a monthly contribution in a personal health account. In case of some diseases, the money from this account may be used for purchasing from the market some cares which are needed. The money from these accounts can be used only for the health payments, can be donated to the family members for being used in the health care or taken when retirement ( but keeping a minimal level into the account). The system is applied in Singapore under the name of Medisave, being completed by other two plans: Medishield for catastrophic events and Medifund, which pays minimal services for the inhabitants that have no other insurance.

## **2. Health insurance financing in the EU countries**

### *2.1 General aspects*

Health insurance financing and organization in the EU countries follow the institutional, political and national socio-economical customs. These carries out a series of social objectives in financing and efficient medical services using an approachable price.

For financing a health system it is needed to collect money from the population for getting in contact with the contractors of the medical services.

The main objective of the systems is the one of distributing the costs of the medical services among the sick people and the healthy ones and of modulating them depending on the resources that each individual possesses.

This mechanism reflects the consensus which is encountered in the UE according to which health cannot be abandoned in favor of the market mechanisms.

Each country has developed its own financing mechanisms.

Along the history, there have been remarked different types of social insurances. The most important ones are: the Bismark social insurance model, Beveridge social

insurance model, insurance systems in a continuous flow ( Pay-as- you- Go) and insurance systems with funds capitalization.

In order to analyze them we may group the mentioned models as per below:

### *2.2. The Bismarck social insurance model versus the Beveridge social insurance model*

The Bismarck social insurance model, was named after Otto von Bismark, the chancellor of the second Reich. This one has introduced for the first time in Europe a legal system of social insurances. The Chancellor is considered the creator of the first German modern State through institutional- organizing reforms initiated as a reply to the problems caused by the industrialized process in Europe.

Social protection in Europe, becomes at the end of the 18<sup>th</sup> century, as a consequence of a strong economical recession, an issue of State interest, before this being limited to a rudimentary model of social insurance based on charity and voluntaries.

The State implication has been reduced in most of the European countries . In 1881, Bismarck introduced for the first time a mandatory State social insurance model, adding in 1883 the payments for sickness cases, in 1884 the insurances against work accidents and in 1889 a comprehensive plan of age and disabled pensions.

The most important observation for this system is the one that it has mandatory character, associated to the work contracts.

The system is supported by: the employer, employee and State. The administration of the system has been done through some territorial structures, “ aid agencies”. This social insurance system covered a relatively small category of the population, mostly addressing to the factories workers.

Occidental Europe then took over the bismarck system, this one becoming the alternate model for the beverage insurance system or Anglo- Saxon, system that is characterized by scanty and fixed benefits, financed from the State budget, from taxex and general duties, representing a minimum level of protection often combined with private insurance systems.

*Beveridge Social Insurances:* Lord Beveridge published in 1942 a report about the situation of the british society, in which he suggested to adopt a system of paid pensions from duties and general taxes, from the State budget, having a constatnt level for all the beneficiaries.

In the Berveridge system, the significant social actors – unions, employers – are not involved in the structure and the administration of the system. The continental system represents a comprehensive protection, ofthen undoubled by the private systems, with benefits in proportion with the contribution, namely incomes.

To have a better observation of the differences between the two insurance systems, there were grouped in the below table their main characteristics.

	<b>Bismarck social insurances</b>	<b>Beveridge social insurances</b>
Finiancing source	<i>Social insurances Fund – the individuals contributions are constituted in a distics fund</i>	<i>State Budget – financing is done through taxes and general suties</i>
Social insurance administration funds	<i>The fund is more often administrated in a tripartite regime: state, liable to payduties, beneficiaries, through representations of certain asociations Unemployment: state – union – employers Pensions: State- pensioners-employers Health:state- doctors- unions</i>	<i>Administration is done only by the State</i>
Benefits level	<i>The benefits are in relation with the incomes, namely the level of the contribution</i>	<i>Benefits are constant, and low as a level</i>
The importance of the private insurances	<i>Low</i>	<i>High</i>

### 2.3. Mandatory systems in a continuous flow ( PAY-AS-YOU-GO) versus mandatory systems with funds capitalization

*Systems with funds capitalization:* the contributions are invested in different economical activities that bring profit

The main advantage of these systems is that fact that these don't depend either upon the dependence rate or the demographic evolution; these funds will always have money to pay the pensions.

These system also have disadvantages, namely they cannot face the unexpected post-pension inflation, and the payment of the benefit  $i$  in relation to unexpected inflation is almost impossible, which causes a decrease in the real incomes from the pension.

*Pay-As-You-Go systems* (exceptions: the different system of pensions associated with the contribution, in Sweden and Japan): this systems means pension payment from the money paid by the liable to pay duties, namely employees.

These systems have the advantage that they protect the pensions from inflation, can increase the pensions as a real value in relation to the economical boom and the eligibility criteria for an integrated pension can be anytime modified, adjusted in a certain way that it adjusts the benefits to the current economical situation.

The main problem of these systems is represented by the strong connection of dependency rate and also the fact that it may face payment incapacity.

The Health systems from UE are financed through public or direct contributions. There are three main financing systems in UE. The first one (known under the name if the Beveridge model), is characterized through public financing based on duties.

The second system (Bismarck model), the financing through mandatory insurances. The third system is done through private financing, using volunteer insurances.

## Health financing systems of the UE countries:

Countries	The dominant financing system	The complementary main financing sources
<i>Finland, Greece, Ireland, Italy, Sweden,, Spain, Great Britain</i>	<i>Public: fiscality</i>	<i>Private volunteer insurance, direct payment</i>
<i>Denmark, Portugal</i>	<i>Public: fiscality</i>	<i>Direct payment</i>
<i>Austria, Belgium,, France, Germany, Luxemburg</i>	<i>Public: Mandatory social insurance</i>	<i>Private volunteer insurance, direct payment, fiscality</i>
<i>Holland</i>	<i>Mix between the mandatory social insurances and private volunteer social insurances</i>	<i>Direct payment, fiscality</i>

Patients participation contribute in a varied proportion to the medical care financing in all the UE countries.

Most of the UE countries apply exoneration dispositions from taking part all the costs of the small income categories and other disadvantages groups.

The mandatory insurances together with the volunteer insurances are administrated by the social agencies, organisms that collect contributions accordingly to the incomes in order to distribute them under the form of benefits in the moment that medical services are needed, are at the repayment of the expenses.

The financing method used in hospitals is different from one country to the other, the main forms being: the daily cost of the hospitalization, the group cost of clinic diagnose.

## 2.4. Health systems financing of the UE countries

## Health Systems financing of the UE countries

Country	Organisation Method	Financing
AUSTRIA	<i>Mandatory health insurance, covering a complete plan of services</i>	<i>It is encountered into the legal health insurance regime, but the contribution to the private insurance is significant</i>
BELGIUM	<i>Mandatory health insurance for major risks</i>	<i>Health insurance payments completed through important subventions of the State</i>
DENMARK	<i>The national health service financed through duties</i>	<i>System financed with 85% through duties, the rest coming from the patients participation at the costs</i>
FINLAND	<i>Serviciu național de sănătate, progressive retirement of the State and power decisiontransferater on local level</i>	<i>Central and local financing, completed by the national system of health insurances and costs participation</i>
FRANCE	<i>Mandatory health insurance covering the cvasi-total population</i>	<i>Insurance agencies payments and cost participation.</i>
GERMANY	<i>High number of health insurance agencies, an important private sector</i>	<i>Mandatory and volunteer payments of health system m, only 21% are generated through taxes</i>
GREECE	<i>Mandatory health insurance, national health service, an important private sector</i>	<i>The private sector is substantial, and there is an important market that functions in parallel.</i>
IRLAND	<i>national health service and complementary volunteer health system</i>	<i>Financing is dominated by taxes; a small part comes from insurances</i>
ITALY	<i>national health service on the principle of mandatory health insurance</i>	<i>Financing and social payments are almost in equal parts</i>
LUXEMBURG	<i>Mandatory health insurance</i>	<i>Social contributions completed through subventions from the State (27%)</i>

HOLLAND	<i>A complex system of public and private insurances, but that tends to a national system,</i>	<i>Social contributions completed through volunteer and private insurance</i>
PORTUGAL	<i>national health service on the principle of duties and mandatory health insurance</i>	<i>Payment and social contributions. Marginal private sector</i>
SPAIN	<i>National health service of the low developed State. Fiscality is mixed with the health insurance</i>	<i>Financing dominated by taxes; a small part coming from social contributions</i>
SWEDEN	<i>national health service strong decentralized, local democratic control</i>	<i>Local financing completed with public funds and employers' contributions at the national social insurance system</i>
GREAT BRITAIN	<i>national health service financed through duties</i>	<i>Financing dominated by taxes. Small private sector</i>

### 3. Health financing system in Romania

#### 3.1. History .General characteristics

The financing of the Romanian health system has known in the last 15 years, from the conceptual point of view, three main stages:

1. The mandatory insurance plan through general taxes;
2. The mandatory insurance plan through general duties and health taxes;
3. The health insurance plan through general and health duties;

Before 1989 and till 1992, the Romanian financing care system was based on mandatory insurances, under the form of a financing through general taxes. The State was collecting through the Finance Ministry all the denel taxes and duties. From these amounts, then the Government and the Parliament decided which amount should be allocated to the Health Ministry that was in fact the tertiary pay maker, because it was the main credit chief account.

It must be highlighted the fact that the Health Ministry was the only contactor of health care through sanitary institutions (hospitals, institutions), which lead to the existence of an integrated health system, with the main role represented by the Health Ministry and its territorial organisms.

This method of financing lead to two important consequences:

1. The population perception that the health care is a process which is not payable and that this is the State responsibility;
2. Lack of exact definition of the health care that the citizens had, causing the perception that any kind of care may be offered if the are the necessary resources.

The collected fund and administrated every year by the Health Ministry represented about 3% from the Romanian GDP, with small variations in plus or minus from one year to the other. This kind of financing still exists nowadays, representing about 15% from the total amounts expended for the healthcare system.

A particular case of the financing through general duties was the one **from 1995-1997**, when a parts from the sanitary expenses were covered by funds coming from the local budgets and not from the state budget.

Starting with 1992, it appeared a new method of financing in the Romanian sanitary system, namely the Special Fund for Health. This Fund had the role of completing the financial resources that the Health Ministry had through allocation from the State budget. The goal of this special Fund was to compensate the drugs

price done ambulatorium. The Financing through this special Fund added to the existed one through direct allocation from the State budget, representing 20% from the total amounts expended for the health care system financing.

The effects if introducing the special health Funds were:

1. Increase of the collected resources for the healthcare financing

2. Making sensitive the employers to the fact that the paid amounts, contribute in a direct way to the health care offered to the employees; a special tax has been added to the already existent taxes level for each employer;

*Starting with 1998*, as a consequence for adopting the special health care insurance law, the main financing is done through collecting some special taxes, dedicated to health that come directly or indirectly from employers, employees, pensioners, unemployed. This financing mechanism was doubled by the Insurance Agencies that are public institutions that are not subordinated to the Health Ministry.

The effects of these financing methods were:

1. showing clearly the fact that money used in health care are coming from each citizen;

2. separation of the one that finances the health system ( companies insurances) by the one that offer health services ( Health Ministry in most of the cases) and establishing some contracts among the partners;

3. fiscality increase for employees from 2 % to 5 % and then to 7 %.

Introducing the financing through social insurances didn't stop the financing through genral taxes, but it brought to the definition ( more or less clear) of the sanitary activity area that would be covered by the two principal financing methods: health social insurances and public insurance administrated by Health Ministry.

What needs to be mentioned is that, from the collected funds point of view, the introduction of the social health insurance in 1998 hasn't increased the funds, the total amount of money allocated to the health system being 3% of the GDP. Once the social health insurance have been fully introduced, starting with 1999, and once the contribution increased from 5% to 7%, the total amount of money allocated to the health system has increased, which led to a total of 4% of the GDP.

It is important to say that the three means of financing which have been described above, are not the only ones which existed or still exist inside the Romanian healthcare system. They are the ones which dominated the financing of the system, and which are the base of the public insurance scheme. Besides these three means, there are other ways in which the healthcare system attracts important sums of money: direct payment of certain services ( stomatological, ambulatory special services, etc).

In 1997, Romania introduced a new health insurance system, through 145/1997 law, a system which is based on a modified version of the Bismark model. Today, some structures from the following models, coexist inside the Romanian healthcare system ( primarily taking into account the mean by which it is being financed)

- model – social state insurance (state treasury)

- the Beveridge model – the “filter” role principle ( role belonging to the family doctors – which are freely chosen by the patients, and financed through taxes)
- The Bismark model – the social health insurance system (based on mandatory insurance premiums, dependant on income)

*To sum up, a national healthcare system has functioned in Romania until 1997, a system based on the collection of funds through taxes.*

The Social Health Insurance Law was adopted in 1997, which marked the transition to a new system, the social health insurance system. This system started fully functioning beginning with 1999.

*In Romania, there are two main sources for the health funds : the social health insurance funds, which are being completed with money from the state budget.*

*Financing through social health insurance.* The gathering of funds for the social health insurance is regulated by the Social Health Insurance Law, in the Financing chapter and consists in the employer’s and employees’ equal percent contribution (7%). The funds are used for paying the medical services suppliers, although lately, it has been observed that the health insurance is being used for objectives which normally should have been paid from the state budget (national health programs, payment of certain salary rights).

*Financing from the state budget.* Apart from the social health insurance system, there also is a system of direct taxation (taxation on income, on profit) and of indirect taxation (VAT, excises). The money coming from the budget are managed by the Health Ministry.

*The destination of the money coming from the budget:* the construction or repairing of sanitary institutions; performant medical equipment acquisition; diagnosis, curative, rehabilitation activities, recovery of work capacity).

Apart from those two means of collecting funds for the health system (social health insurance, state budget), there can be other sources of money: direct payments from the patients to the medical services suppliers (private clinics, costs of certain services which are not discounted by the Insurance houses and which are inlisted in the Frame Contract); co-payments, voluntary contributions, in the future, once the private insurance houses appear.

The problems which appear in the Romanian system are mainly caused by the difficulties which appear when collecting the funds. Because there is a lack of clear legal stipulations, the district houses have difficulties in collecting the funds, and one of the factors is the existence of some big industrial units, which are in debit, not only to the state budget, but also to the social health insurance funds.

Another problem is the mandatory deposit of the funds to the Treasury, with an interest of only 10%. Not being able to receive a bigger interest, as the ones in the banking market, together with a high inflation, lead to a decrease of the real amounts which get to the sanitary system. Another important source of loss of the funds belonging to the health system is the underground economy.

### *3.2 Strengths and weaknesses of the romanian healthcare system*

The Romanian healthcare service system, up until 1989, which hasn't encountered drastic modification even after 1990, was inspired (towards the end of the '40 and in the '50) by the soviet model (Semasko), but it also had similitudes with the systems existing in some countries in the West of Europe – Great Britain, and some nordic countries.

The principles of the system, many of which were in accordance to the recommendations made by the World Health Organisation, were based on the state vision, prophylaxis, the unity of the way the whole system was managed, planification, gratuitousness and large accessibility to medical assistance, the scientific character of the sanitary politic and the conscious participation of population in defending their own health.

- It is important to understand that the health services are just a subsystem of the sanitary system and it refers to the institutions and the preponderant medical services which these institution offer.

In its essence, the healthcare service system has been and still is a system organized and financed by the state, being made up of a network of sanitary institutions which belong to the state, managed in a centralized structure, which is led by the Health Ministry. The financing is made through general taxes and duties through the state budget, and the doctors are employees of the state.

- Critical examination of financing, organization and functioning of the healthcare services system points that, besides its shortcomings, there are also a series of advantages. This is a very important perspective for what medical assistance plans to be in the future, and this perspective has been more and more present in the specialty works elaborated especially by the academic area, of the eastern experts and consultants, which were called to propose changing solutions.

From this point of view, the system which functioned in Romania had a series of positive elements, which have been more obvious especially in the rapid economic growth periods.

- The system has been developed on the equality principles, and it ensured access to vast health services for the whole population. The access to the system hasn't been influenced by the payment capacity of the patient. The advantage of payment absence in the moment of utilization has slowly eroded when the income of the medical profession became more and more inadequate, and the sums asked for or suplimentary received from the patients by the medical personnel became to be acceptable from a social point of view, or even considered the right of the personnel.

- The financing and organization of the system have permitted an efficient control of the costs. The proportion in GDP of the costs for healthcare was relatively low. "The price" of a certain limitation was the lack, or limitation of access to certain services, especially the ones which required greater expenses for equipment or materials (for example, renal dialyses, cardiovascular surgery, transplants, articular prosthesis, computerised scans). The system functioned with low structures and administrative costs.

- The services infrastructure has been extensively developed, so that a good network of small medical units, polyclinics and hospitals existed. Unlike other former socialist countries, the network of primary medical assistance has been developed from the organizational point of view, but neglected from the endowment one. It is here where the most inequalities were obvious, inequalities regarding the medical personnel, regarding the economic development between districts, between urban/rural etc. When the dispensaries became part of the hospitals, the competition for resources was won by the quality medical services, to general medicine detriment. This had a negative impact on the systems efficiency, because the cases which could be solved at a primary level in the hospitals, overcrowding them, and consuming their resources.

- Population medical assistance assurance with beds was good, even more oversized than the actual needs, and than the possibilities of covering the costs and than the existence of the beds in other eastern countries. The hospitals consume over 70% of the budget allocated to health protection and solve only 20% of the population's sanitary needs.

- There has been sufficient qualified medical personnel and a quality medical education. In this domain too, if we take into account the density of the doctors reported to the GDP, Romania has a convenient position. The political interference has led to disfunctions in the forming of the medical personnel, especially in the '80 (the cessation of qualification of the specialist doctors and their access into cities, elimination of the the qualification which took place after highschool, for the medium workers)

By the middle '70 there have been registered obvious improvements of the health state, this being shown by the increasing of the life duration, the eradication or reduction of a lot of transmissible diseases, reduction of infantile deaths, the initiation of national programs concerning the cardiovascular diseases, cancer, tuberculosis, mental and dental health. The medical services had a great role in these improvements.

In spite of the disadvantages, the healthcare services system had a series of negative aspects, which starting with the '80 have become more and more visible, and so, the health state of the population and the medical assistance deteriorated.

After the revolution, some of the characteristics of the sanitary system have become discordant to the requirements of a democratic society, of a new type of state, and when the market economy emerged, in the transition period, a series of negative aspect became more and more acute.

The healthcare system which functioned in the past and which is still dominant in Romania, at a closer look, has a series of weaknesses and disadvantages. Probably the main conceptual limit was the misunderstanding of the fact that health is a "business of the whole society", which means incorporating it into the economic and social development, as a target or as a variable. This is the point from which resulted the second fatal consequence, this being to credit the sanitary services with the responsibility and possibility of improving the health state of the population, when

the ascribable part of the sector doesn't represent more than 10-15% anywhere. The logical result was the blaming the doctors and the sanitary system for all the discontents generated by the deterioration of the health state, which in fact was the result of a mixture of factors (economical, social, behavioral, biological, environmental)

- Excessive medical norms of health, influenced by the manner of management of the services, highly reduced the chance for an intersectorial approach, which took into account all the factors with influence on health.

- Rigid planification, together with the centralized and commanding system, have suffocated the initiatives and responsibility in managing the health services and especially in adapting them to the sanitary needs, which are always changing. The centralized model, by imposing rigid norms and standard, most of the times arbitrary ones, through an administrative manner, has been an obstacle in the way of adapting the services to the local needs of the people, which are different from one zone to another. These norms have led to an inefficient mixture of abundance and wastage in some regions, and absence in others.

The normative planification was ineffective and inefficient. Although it was hardly tried to reduce the lack of balance throughout administrative methods, and through equal distribution of personnel and medical infrastructure, the result was a failure. Even today, we may notice that the system hasn't managed to reduce territorial inequality, neither at the health state level, nor in assuring doctors and beds for all the population who needed them.

Financing based on historical criteria, without taking into account the different sanitary needs of the population, has emphasized the differences between the districts.

- Subfinancing of the services has determined a delay in the introduction of new technologies, necessary in diagnosis and treatment of actual pathology, and this delay also generated losses in assuring daily use medicines and sanitary materials. All these have discouraged the preoccupation of the health services towards the medical care quality insurance and evaluation.

- The lack of a coherent politic system in the health domain after 1990, was also favoured by the inheritance of a deficit in the capacity of systematical analyses and strategy development, all these in the conditions of an insufficient qualification in the public health management and the healthcare services.

#### **4. Conclusions**

To create a performed health system has represented a major objective of the State organisms since 1990 when the Health Ministry set up a reform process with the objective of fulfilling the fundamental goal: improving the health situation of the population, efficiency increase in using the resources, of change in the relationship between doctor and patient and increase of the satisfaction level of all the beneficiaries and all the contractors of medical services.

The beginning of the Sanitary Reform meant the reorganization of the health service and of the financing health services system.

For doctors, the essence of the reform means an increase of the incomes in order to reach a decent level and to cover the huge responsibility of a medical activity done with seriosity. This fact could have been fulfilled on 1<sup>st</sup> april 2008 when through the normative paper packet regarding the salary of the medical staff, it was approved a new plan of salary though which the doctors incomes and of the auxiliary employees from the health system was increased.

For the population, the sanitary reform means stop promising sanitary services that cannot be covered from the esistent money, and eventually to receive sanitaru services accordingly to the needs.

But there is one question: what is the dimension of the allocated budget for the Romanian sanitary system in comparison to the medium budget of the UE countries?

For establishing this dimension we start from the Romania GDP , which in comparison to the mediul GDP of the west center of the UE, represents 1/3. the allocated Romanian health system represents the 10<sup>th</sup> part from what it produces, namely 3.3% from GDP of the west center UE, which is very little in comparison to the other UE countries.

In the UE, the public expenses for helath are 8% from the GDP for the west center, and in what concerns the allocated amount per inhabitant in the West Europe is of 3000Euros and in the Est- communism countries this amount varies from 700 to 900 euros. In Romania, the amount allocated per inhabitant is around 400 euros.

On the other hand, it may be noticed a significant increase of the GDP percent allocated to health in Romania, from 3.6% in 2004 to 4% in 2007 and to 6% in 2008.

In conclusion we may appreciate:

- ◆ the way a health system is financed determines the available amount of money, who bears the financial burden, who administrates the fund, and if the costs inflation may be controlled.

- ◆ the capacity of mobilize funds is in strong relation to the income per inhabitant;

- ◆ the same financing method cannot be applied to the whole countries. The health systems are different from one country to the other, especially depending in its socio-economical development;

- ◆ unproportional distribution of the available funds, lack of coordination among the different sources of financing, together with the inadecvate attention paid to the costs and to the efficiency, represent major problems that are faced by the health system fianancing from the countries that are in transiy;

- ◆ most of the actual fianancing systems are not “pure”. Most of the countries have mixed varied methods of financing, depending on its specific and health objectives,

- ◆ none of the financing method is ideak and cannot offer a magic solution that may solve the problems of the health financing, especially in the low developed countries;

◆ the long objective is to establish a common politics for all the UE countries based on values and common principles to ensure a better health for the inhabitants

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**TFP AND ENDOGENOUS GROWTH IN SOUTH EAST EUROPEAN COUNTRIES WITH SPECIAL FOCUS ON ALBANIA**Elida Liko  
Tonin Kola\***Abstract**

*The main objective of this paper is to determine the forces that have driven the economic growth in Albania relative to Southeast and Central European countries from the beginning of transition period year 1993 until 2008, before the global crises was spread in developing countries. We are based in Growth –Accounting approach in order to specify the role of total factor productivity (TFP) as growth enhancing factor in different phases of their economic development and an econometric analyze of major growth factors based on endogenous growth theory. The main findings of this paper are: (1) TFP and capital accumulation has been playing an important role for all countries under survey, the impact of labor as growth enhancing factor has been limited (2) macroeconomic stability, trade openness, and investment in infrastructure matters to growth. Therefore we support the idea that Albania government should give priority of scare government resources towards these sectors.*

**Keywords:** Productivity, economic growth, panel data analyze**JEL Classifications:** O4, O47, O57**1. Introduction**

The focus of all policy makers in developing countries are effective policies that aim to attain sustained growth, improving living standards and eliminate poverty and disease. This paper is focused on the role of government policies for sustaining economic growth in Albania. The motivation behind this is the fact that both set of variables, credible macroeconomic stabilization and range of reforms are needed to sustain long term growth. Related to necessary reforms Albania has made considerable progress, we have a liberalized trade regime, we are member of WTO organization since 2000, and have signed many bilateral free trade agreements with neighbor countries<sup>1</sup>, regarding to competition policies, in Albania is open the competition office, and since year 2002 have introduced the system of deposit insurance necessary for financial sector development.

Albania has had an impressive GDP growth rate over the transition period, before financial crisis the growth rate for time period 2002 -2007 has been sustain at

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<sup>1</sup> In December 2006, Albania together with neighbor countries substitute bilateral free trade agreement with a single agreement of free trade, and signed an extension of free trade agreement with Central European Countries which will bring a further trade liberalization

6 percent level, which is comparable with growth rate reported by our neighbor countries. In the last year Bosnia and Herzegovina, and Montenegro, have reported respectively 6 percent and 5.9 percent annual real GDP growth rate. The domestic inflation rate has been in the same line with that reported in Montenegro at about 2.8 percent, but high relative to 2.3 percent in Bosnia and Herzegovina<sup>2</sup>. According to official sources the domestic growth rate of 6 percent is sustainable and is expected a small increase in the near future<sup>3</sup> but the impressive growth rate that Albania has reported in the beginning of transition period around 13 percent is considered unreachable in midterm. The limit integration of Albania into global financial market make possible the small impact of financial crisis during 2008-2009 in Albania economy, the recession on Albanian trading partners has lead to a fall in exports. The economic activity of European Union was deteriorated by the last quarter of 2008. The economic growth declined from 0.7 to -0.8 percent in the third quarter to -1.2 percent in the fourth quarter of 2008, this caused a slowdown in Albania economic growth from about 7 percent to 3.3 percent in 2009. Decrease in remittances, was another channel through which the global crisis affected Albania economy, remittances have fallen dramatically with about 16 percent during global crises.

This impressive growth rate was supported by increase in total factor productivity, that since year 2000 have had a considerable decline<sup>4</sup>. This paper will be focused on determining the role that government expenditure has played in sustain growth rate in Albania. After making a selective literature review, will briefly be analyzed Albania reality with growth enhancing factor relative to other transition economies, followed by econometric estimation and summary and conclusion.

## 2. Growth accounting

Growth accounting approach is used in this work in order to determine the extent in which the improvement in technology contributes to the GDP increase. According to this methodology, the growth rate of technology is measured indirectly as the growth rate that cannot account for observable inputs, capital and labor. The basic of growth accounting is represented by Solow (1957).

The basic assumption is that output is produced according to Cobb –Douglas production function, with constant returns of scale, in the function of the form:

$$Y_t = A_t K_t^\alpha L_t^{1-\alpha}$$

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<sup>2</sup> The dates are taken from 2007 transition report published by EBRD. About 6 percent growth rate is achieved in countries with different exchange rate regime. In Albania is applied managed float regime, in Bosnia and Herzegovina Currency board pegged to euro and in Montenegro Unilateral Euroization to euro.

<sup>3</sup> See Macroeconomic and Fiscal framework for the period 2009 -2011, published by Ministry of Finance. In these report based on the improvement and increasing in industrial production, a gut performance in business sector, an increase in exported goods and FDI, the country is expected to sustain the present growth rate of 6 percent and is given an estimated forecast of about 7 percent for 2010.

<sup>4</sup> IMF Albania selected issue 2006. According to this report total factor productivity growth seem to have stabilized in recent years at the low levels in Albania. One reason for this stagnation determined in the report was less advancement in structural reforms in the Country.

$A_t$  is the technology level,  $Y_t$  is the total GDP,  $K_t$  is the capital stock and  $L_t$  is the number of worker employed in the economy. From the above equation the change in TFP in logarithms term could be calculated as

$$g_a = g_y - \alpha g_k - (1 - \alpha)g_l$$

Another assumption made in order to evaluate TFP impact on growth, is that the elasticity's of output with respect to capital and labor are respectively 0.3 and 0.7<sup>5</sup>.

In this work is analyzed the performance of Albania economy relative to other developing countries. For the time period under survey, year 1993 -2007, are used the GDP date reported by Penn World Tables that made possible making comparison between counties.

The ILO database is used for measurement the total number of worker employed in the economy in the given year. For capital measurement is used the perpetual – inventory method, which considers that the capital stock available in a given period, is equal with capital from previous period plus investment during the given period minus depreciation. The standard formula for the capital stock accumulation is:

$$K_t = K_{t-1}(1 - \delta) + I_t$$

In order to evaluate the level of capital stock we have also assumed the constant rate of depreciation at about 3 percent, and the initial capital output ratio relative to GDP 3 percent.

The results abstained are shown in the following table:

**Table 1:** Growth Accounting Results for Transition Economies (in percent annual average 1993 -2007)

	Real GDP Growth	Investment/GDP	Contribution of Growth (percentage points)		
			Capital	Labor	TFP
<i>Albania</i>					
1993-1995	0.28	16.3	0.18	0.01	0.09
1996-1999	0.07	16.5	0.01	0.13	0.19
2000-2003	0.08	25.1	0.04	-0.03	0.07
2004-2007	0.06	24.4	0.02	0.01	0.03
<i>Bulgaria</i>					
1993-1995	-0.02	13.5	0.03	0.00	-0.04
1996-1999	-0.02	13.2	0.03	0.03	-0.06
2000-2003	0.07	20.1	0.04	0.01	0.02
2004-2007	0.06	26.9	0.02	0.01	0.03

<sup>5</sup> Theoretically the social marginal product of capital and labor are computed based on factor prices. In the absence of the information for factor prices it is assumed that the sum elasticity of output related to labor and capital is constant and equal to 1. The similar assumption was made by Loukianova and Unigovskaja (2004), in their empirical work related to recent growth in low income and CIS countries,

<b><i>Croatia</i></b>					
1993-1995	0.02	17.6	0.01	0.00	0.01
1996-1999	0.05	24.1	0.03	0.00	0.02
2000-2003	0.06	26.1	0.04	-0.01	0.03
2004-2007	0.05	31.8	0.01	0.01	0.03
<b><i>Czech Republic</i></b>					
1993-1995	0.05	29.5	0.05	0.02	-0.02
1996-1999	0.04	29.8	0.01	-0.01	0.04
2000-2003	0.06	28.5	0.02	0.01	0.03
2004-2007	0.06	26.8	0.02	0.01	0.03
<b><i>Hungary</i></b>					
1993-1995	0.04	18.8	0.05	-0.02	0.01
1996-1999	0.04	22.8	0.04	0.00	0.00
2000-2003	0.07	22.7	0.01	0.00	0.06
2004-2007	0.04	22.2	0.02	0.01	0.01
<b><i>Latvia</i></b>					
1993-1995	-0.05	14.3	0.04	0.01	-0.10
1996-1999	0.05	20.9	0.06	0.01	-0.02
2000-2003	0.08	26.5	0.05	0.01	0.02
2004-2007	0.09	36.0	0.04	0.01	0.04
<b><i>Macedonia</i></b>					
1993-1995	0.03	11.2	0.04	0.02	-0.03
1996-1999	0.04	12.7	0.01	0.01	0.02
2000-2003	0.04	17.4	0.01	0.00	0.03
2004-2007	0.04	19.7	0.03	0.01	0.00
<b><i>Poland</i></b>					
1993-1995	0.08	17.2	0.04	0.01	0.03
1996-1999	0.06	22.9	0.04	0.00	0.02
2000-2003	0.04	20.7	-0.01	-0.02	0.05
2004-2007	0.06	20.2	0.03	0.01	0.02
<b><i>Romania</i></b>					
1993-1995	0.06	26.0	-0.01	-0.01	0.08
1996-1999	0.01	20.1	-0.02	0.02	0.04
2000-2003	0.07	21.4	0.02	0.00	0.05
2004-2007	0.07	22.9	0.03	0.01	0.03
<b><i>Slovakia</i></b>					
1993-1995	0.04	23.5	0.01	0.00	0.03
1996-1999	0.05	32.7	0.02	0.00	0.03
2000-2003	0.06	27.3	0.01	0.01	0.04
2004-2007	0.07	28.3	0.04	0.01	0.02
<b><i>Slovenia</i></b>					
1993-1995	0.08	20.9	0.06	0.01	0.01
1996-1999	0.06	24.8	0.03	0.00	0.03
2000-2003	0.06	25.5	0.02	0.00	0.04
2004-2007	0.05	27.9	0.03	0.01	0.01

Before interpreting the evaluated data it is important to stress that measurement of TFP should be considered with some reserves, not only because of the set of assumptions made for constructing the growth approach, but also from technical problems such as the impossibility to account for the efficiency with which the inputs are used, hidden employment, as well as measurement problems.

From the above reported data the contribution of TFP in Albania after year 2000 has decreased significantly relative to the period before 1999, although the impact of TFP is still important for growth sustainability. A very important role for Albania's growth performance has been played by capital accumulation. If we compare the real GDP decomposition in Albania with other developing countries reported in the above table, it could be noticed that for all the countries under survey, strong growth of GDP has been driven by TFP. The contribution of capital accumulation has also been an important growth-enhancing factor for about all the countries, especially after year 2000. The impact of labor has been limited in about all countries under survey.

### 3. Econometric analyses of major growth factors

In this part we are focused on analyzing the role of government policies on growth for countries under survey. The early years of transition are not included in the model in order to avoid the distortion that came from the early reform such as price liberalization in these countries.

#### 3.1 *The literature review*

The Solow growth model (1956), shows that persistent long term growth must come from technological progress, but doesn't explain where technological progress comes from. By treating exogenous growth determinants, this model leaves no room for government policy to affect long term growth rate. Late 1980 early 1990 some authors like (Lucas 1988), (Barro 1990), developed endogenous growth theory model that changed the view of the role of government in growth theory. Bad government policies accumulate less capital and fail to use the capital they have as efficiently as they might. In the framework of this theory (Cortright 2001), states that policy makers need to pay careful attention to all the factors that provide incentives for knowledge creation (R&D, the education system, macroeconomic expectation, and openness to trade).

Macroeconomic literature especially Keynesian school suggested that government spending accelerates economic growth. It is broadly accepted that physical infrastructure and a limited set of public goods are necessary for economic development. However as government moves beyond these core functions economic growth is adversely affected<sup>6</sup>. World Bank report (2006), stresses that not only the government size but also expenditure

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<sup>6</sup> Garrett and Rhine (2006), explain the negative impact of government in growth related to three main points. Increase in government sector will first lead to high taxes, second the returns will be diminished as government undertakes activities which are not well suited, third reliance on the market and on the presence of economic freedom that facilitate the process of discovering new production methods will be decreased

composition matters for economic growth, especially in counties when the government is weak. Some authors like (Falcetti, Lysenko, Sanfey 2005) have incorporated the overall fiscal balance variable in standard growth model and have found empirical support for positive impact of fiscal surpluses in enhancing economic growth. Other authors have done a disaggregated analyze of government expenditure on growth, in order to measure the impact and direction of different expenditures categories in growth. (Douglas and Williams 2007); (Bose, Haque and Osborn 2003) have strongly support the modern growth theory, that states that education is an important key variable to economic prosperity, and recommend allocation of scarce government resources towards education sector. Wang and Otto (2005) have analyzed the relationship between growth and nine major areas of government expenditure. They found that different expenditure have different impact on growth. Highways were related to growth positively, expenditure on environment, housing, administration and insurance trust had a negative impact. They didn't found evidence that the education expenditure was statistically important to growth, but expenses in education were positively related to growth. (Pang and Michael 2007), (Zareva 2002), (Falcetti, Raiser, Sanfey 2000) have found evidence that political stability, government effectiveness, public spending on education, quality of labor force, control of corruption and property right are important determinant of growth. (Mensbrugge 2007), have found empirical support for positive impact on growth of government expenditure in infrastructure and education together with other variables like FDI and trade openness. Empirical support for positive impact of FDI in growth is found by (Neuhaus 2005)<sup>7</sup>.

For developing countries in standard growth models are often incorporated variables that measure the macroeconomic stability of a country (inflation rate and trade openness) and variables that measure the level of financial development. Related to inflation the empirical work have supported the negative relationship between inflation and growth, see (Bruno and Easterly 1996), (Faria, Carneiro 2001), (Amber and Cardia 2002). The negative relationship is supported by theoretical perspective, because inflation undermines the confidence of domestic and foreign investors, and worsens long run macroeconomic performance of the county. The level of financial development is found to be positively related with economic growth<sup>8</sup>. In countries with underdeveloped financial system remittances have found to be beneficial to economic growth see (Quillin, Segni, Sirtaine and Skannels 2007).

In this work consistent with similar studies that are mention above, the role of government sector in economic growth is not studied separately but together with important growth determinant factors.

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<sup>7</sup> Alfaro (2003), Carkovic and Levine (2002), have found that FDI directed in manufacture sector have resulted growth enhancing, but FDI directed in primary sector empirically had a negative impact in growth. Alfara and Charlton (2007), supports the fact that FDI effect differs by sectors and their effect in growth increases when it is account for the quality of FDI

<sup>8</sup> Papaioannou (2007), have found that financial development foster aggregate growth mainly by lowering the cost of capital in developing countries and emerging economies.

### 3.2 Model specification

For econometric work are used annual data for the period, year 1994 –2007, for nine transition economies. In econometric analyze are considered two set of variables. In the first set of variables are included the variables that are related to overall macroeconomic condition of a country, such as CPI, trade openness, a variable that measure development of financial system, represented by credit to private sector. In the second set of variables are included fiscal variables represented by total government expenditure rate relative to GDP, and the EBRD infrastructure index. We have used the average annual GDP growth rate as the dependent variable.

The regression form for a country  $i$  is as follows:

$$GDP_{growth\ i} = \alpha_i + \beta_{1,i}CPI + \beta_{2,i}TRADE + \beta_{3,i}CREDIT + \beta_{4,i}INVEST + \beta_{5,i}BUDGET\ EXP + \beta_{6,i}EBRD\ Infrastructure\ index$$

CPI is average annual inflation, TRADE is the ratio of export plus import relative to GDP, CREDIT is total credit to private sector relative to GDP, INVEST is total investment to GDP ratio. In the short run is expected positive impact on growth of total budget expenditure relative to GDP.

On the bases of analysis for nine transition economies, the main results can be summarized as follows:

- The impact of total government expenditure ratio relative to GDP is positive for the countries under survey, which is consistent with economic theory related to short time relationship between these variables. This variable is not statistically significant. One possible explanation for this is that fiscal consolidation in developing countries is basically based on reduction of government expenditure. For example Albania fiscal adjustments that have started since September 1992, is basically focused on expenditure cuts. Measure on the revenue side was introduction of VAT late 1997, after 1999 the adjustment occurred through cut on public expenditure<sup>9</sup>. The EBRD infrastructure index is positive related to growth and statistically significant. This result is consistent with the work of (Mensbrugge 2007) that determines the role of infrastructure key growth enhancing factor.

- The impact of inflation, which is used to measure the impact of stabilization macroeconomic policy on growth is negative and statistically significant

- Financial development measured by ratio credit to private sector relative to GDP has a positive impact, but is not statistically significant. Other empirical studies, such as (Honohan 2003), (Kan and Pentecost 2000), and (Rioja and Valey 2002) in countries with low level of financial development have found an uncertain positive relationship between financial development and growth, but positive relationship was uncontestable for countries with intermediate and high level of financial development. For developing countries with borrowing difficulties a substitute for financial development is fund to be private remittances see (Guiliano and Arranz 2005), therefore are determined growth enhancing variable.

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<sup>9</sup> See the publication of Ministry of Finance of Albania

▪ Investment, and trade openness relative to GDP have a positive significant impact on growth

**Table 2:** Regression Results: Dependent variable real GDP growth (fixed effect estimation)

Sample for nine countries

Method: GLS (Cross Section Weights)

	<i>Coefficient</i>	<i>Std. Error</i>	<i>t-Statistic</i>	<i>Prob.</i>
<b>BD expenditures</b>	0.011	0.566	0.207	0.836
<b>CPI</b>	-0.073	0.035	-2.095	0.039
<b>CREDIT</b>	0.020	0.040	0.497	0.620
<b>EBRD Infrastructure index</b>	2.507	0.722	3.475	0.000
<b>INVEST</b>	0.126	0.053	2.377	0.020
<b>TRADE</b>	0.046	0.021	2.200	0.031
<i>Country fixed effect coefficients</i>				
<b>Albania</b>	0.69			
<b>Bulgaria</b>	-2.00			
<b>Croatia</b>	-3.69			
<b>Czech Republic</b>	-2.55			
<b>Hungary</b>	-4.82			
<b>Poland</b>	-3.98			
<b>Romania</b>	-1.12			
<b>Slovakia</b>	-1.51			
<b>Slovenia</b>	-3.01			
<b>R –Squared</b>	0.83	Mean dependent var		5.615998
<b>Adjusted R-squared</b>	0.79	S.D. dependent var		2.369696
<b>S.E. of regression</b>	1.08	Sum squared resid		66.45800
<b>F-statistic</b>	56.99	Durbin-Watson stat		1.559132
<b>Prob(F-statistic)</b>	0.00			
<b>Number of observation</b>	72			

#### 4. Summary and Conclusion

In this paper are analyzed the main forces that have driven the economic growth in Albania relative to some Southeast and Central European countries, from the beginning of transition period year 1993 until 2007. The Growth –Accounting approach has specified the role of total factor productivity (TFP) and capital accumulation important for growth performance, in different phases of their economic development, the impact of labor as growth enhancing factor has been limited.

The demand decomposition analyze have specified consumption the main driver of output recovery. Investment has played an important role, especially after the year 1999. Foreign trade performance has also played an important role in growth.

The econometric analyze of major growth factors has concluded that macroeconomic stability of a country, trade openness, and investment in infrastructure matters to growth.

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## TAX SYSTEMS IN WEST BALKANS COUNTRIES<sup>1</sup> – BETWEEN SIMPLICITY AND EFFICIENCY.

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Albana Hashorva\*

### Abstract

*There are two main features characterized every tax system: simplicity and efficiency. These features converge not necessarily with each other. The simplicity of a tax system is related and implies the simplicity of tax calculation. In other site this characteristic is a very important element regarding tax collection and also affects the transparency among different economics activities. But how much these system are efficient?*

*The efficiency of a fiscal system is related particularly with the characteristic of a tax as an instrument for implementation of different economic policies, incitement of economic development, achievement of particular structural changes, etc.*

*In this framework the paper aims to perform a comparative analyze of fiscal systems for different West Balkans Countries. The main objective of the paper is to analyze how much the tax systems of these countries reflect the simplicity and transparency, and in the other site, how much those serve as a mechanism of economic development. In this approach the paper effort to explain, if the tax systems are considerate only as an instrument of budget revenue collection, or these system have considerate also as an incentives targeted economic development of these countries.*

**Keywords:** Tax System, simplicity, efficiency.

**JEL codes:** H20; H21; H22

### Introduction

This study aims to develop a comparative analysis among fiscal systems of West Balkan Countries. In addition to this introduction the paper deals four main topics. In the first section is displayed the dynamics of tax income in the various Balkan Countries. The aim of this section is to show the weight of fiscal system on the structure of the budget incomes of these countries. The second section deals with direct taxes: personal income taxes, and the profit taxes (corporate income taxes), aiming to shows the systems that have chosen diffrenet countries, and whether they are based on progressive tax or the flat tax. In the third section are analyse the indirect taxes, focused on value added tax; this section treats the level of consumption tax as well as the differentiations made in different countries. The

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<sup>1</sup> In West Balkan Countries in this paper are included: Albania, Bosnia & Herzegovina, Croatia, Kosovo, Macedonia, Monte Negro and Serbia.

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fourth section give a general competitive analysis of the tax systems for separate countries, intending to reflect the policies being applied in Balkans Countries, both in the aspect of simplification of fiscal system and also of their efficiency. The study ends with the conclusions and references.

### *1. The dynamics of fiscal incomes and their structure in West Balkan Countries.*

The political changes in West Balkan Countries were accompanied with a lot of important institutional changes closely linked with the new system based on market economy. One of the most important changes was the one of fiscal reform. The dynamic of this reform has been determinate by the dynamics of the economic democratic changes and their opening toward the market economy. Nowadays the fiscal systems in West Balkan Countries have already been consolidated and they constitute one of the main pillars of the functions of these economies. Although being very fundamental, the fiscal reforms were carried out in a relatively short period of time. Despite of their problems and continuous corrections, the fiscal systems operate in conformity with the objections and principles of a fiscal system in a market economy. In this point, it is to underline that the tax revenues actually constitute the main source of the budget revenues of West Balkan Countries.

On the other hand, these achievements enable today to analyze fiscal systems in Western Balkan Countries in a more qualitative way. The fiscal system in all those countries has actually been seen mainly in the function of its most important objective: the realizing of budget revenues. Thus the setting up of these systems is based mainly on the fight against fiscal evasion, aiming at the extension of the tax payers. Beyond this important objective, we think that fiscal systems should be considerate in the view of their efficiency as well.

As far as the efficiency is concerned it has a broader meaning. In a certain point of view it is related to the known economic principle on the “temporary neutrality” of tax. In other point of view, the efficiency of a system can take into consideration the fact how the fiscal system serves as an instrument to incite and realize certain economic policies. In fact none of fiscal system is totally “neutral” because each system has exemptions for special cases which aim to stimulate an activity or another.

Today all West Balkan Countries have set up a fiscal system similar to the one of the European Developed Countries. Actually these systems base on the three main kinds of taxes like: personal income tax (PIT), corporate income tax (CIT) and value added tax (VAT)

The table 1 presents both the budgetary incomes and fiscal ones in proportion to the GDP of West Balkan Countries.

Table1: Budget revenue in GDP - 2008<sup>2</sup> (%)

	Albania	Bosnia & Herzegovina	Croatia	Kosovo	Macedonia	Monte Negro	Serbia
<b>Total budget revenue</b>	24.3%	25.1%	33.7%	24.2%	36.4%	41.8%	18.4%
<b>1. Tax Revenue</b>	18.1%	14.1%	20.3%	20.7%	21.3%	28.9%	17.1%
<b>2. Non - tax revenue and contribution</b>	6.2%	11.0%	13.5%	3.5%	15.1%	12.9%	1.3%

Source: Budget 2008 from respective countries, World Bank estimation of GDP, and author's calculations.

The budget revenue fluctuates according to the countries from 18,4% of GDP (Serbia) to 41,8% (Monte Negro). The weight of tax revenue is between 14,1% of GDP for Bosnia and Herzegovina and 28,9% for Monte Negro, while other countries have nearly the same fiscal burden, which fluctuates between 17-20% of GDP. For all the above mentioned countries the budgetary revenue constitute nearly 27,7% of their GDP. This percentage shows the declining tendency of the budget revenue in proportion with the GDP of these countries, which in the years 1991-1995 has been about 36,8% and in the period 1999-2002 was about 34,6%<sup>3</sup>.

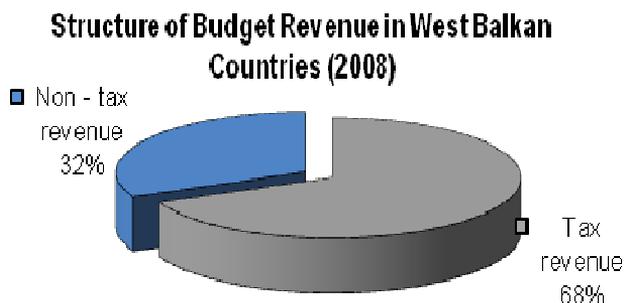
In general, the revenue taxes for the region constitute about 18,9% of GDP while the ones from other sources were 8,8% or respectively 68% and 32% of the totally budget revenue (graph 1).

In comparison with the previous periods of time there has been raised the part of the income taxes. If we would include the incomes from the social contribution in the part of revenue tax, in 2008 this part for Balkan Countries constituted about 93,4% of the budget revenue, while the revenue from other sources constituted only 6,6%. In the period 1999-2002 these parts constituted 86,2% and 13,8% respectively<sup>4</sup>. These data compared to the previous periods of the time in one side indicate the relative decline of the weight of the public sector in the economy and on the other side it indicates the role of the fiscal system within the public sector.

<sup>2</sup> "Non tax revenue and contribution" include also social contribution.

<sup>3</sup> Grabowski, M. dhe Tomalak, M – "Tax System Reforms in the Countries of Central Europe and the Commonwealth of Independent States" – Special Study, pg. 260. In this paper in West Balkan Countries are included only Albania, Croatia, Macedonia, Bulgaria and Romania.

<sup>4</sup> Grabowski, M. dhe Tomalak, M – "Tax System Reforms in the Countries of Central Europe and the Commonwealth of Independent States" – Special Study, pg. 263. Here social contribution are included in tax revenue.



Graph 1

The analysis of the tax structure among different countries is important as well. The budgets of these countries do not have a standard presentation, a thing which makes difficult the accuracy of comparative data. However the analysis of the countries might be presented in the following table (table 2):

Table 2: Direct and Indirect tax in Tax Revenue - 2008<sup>5</sup> (%)

	Albania	Bosnia & Herzegovina	Croatia	Kosovo	Macedonia	Monte Negro	Serbia
<b>Tax Revenue - total</b>	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>1. Direct tax</b>	14.5%	11.1%	17.6%	NA	21.1%	19.7%	18.8%
<b>2. Indirect tax</b>	65.5%	75.7%	78.3%	NA	74.1%	63.2%	69.0%
<b>3. Other tax</b>	20.0%	13.2%	4.1%	NA	4.8%	17.1%	12.1%

*Source: Budget 2008 from respective countries, World Bank estimation of GDP, and author's calculations.*

The indirect taxes (63,2% - 78,3%) constitute the heaviest weight from the tax revenues. In Bosnia and Herzegovina the direct taxes constitute 11,1% and in Macedonia about 21,1%. In these percentages, beside the high rates of indirect taxes, influences the fact that indirect taxes on production can be simply management, so the informality here is smaller. On the contrary the lower percentage of direct taxes shows the informality of respective countries.

The data of the structure of direct and indirect taxes, for all countries together, are presented on the graph 2.

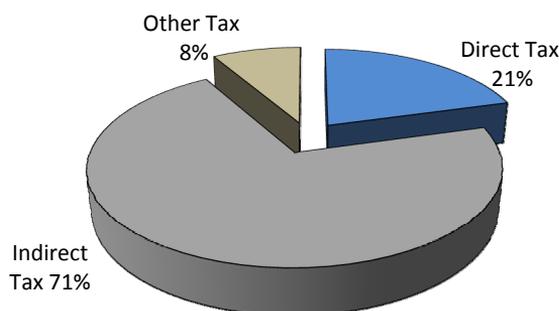
The indirect taxes (for example VAT) are considered to be taxes on consumption because they weigh down on the final consumer through goods prices. The high weight of these taxes generally shows that the West Balkan Countries implemented fiscal systems that are based on consumption.

The structure of direct taxes shows that various countries have different structures (table 3). Thus for both, Albania and Macedonia, the tax revenue towards personal income tax are almost the same with corporate income tax. While for Monte Negro and

<sup>5</sup> Data for Kosova are missing.

Serbia the personal income tax constitute the heights weight respectively 64,1% and 68,1%. In Croatia the corporate income tax revenue is very high 86,2%. The later is linked with the high rates that Croatia keeps on applying on corporate income tax 20%, in comparison with 9%-10% being applied in other countries.

**Tax structure in West Balkan Countries (2008)**



Graph 2

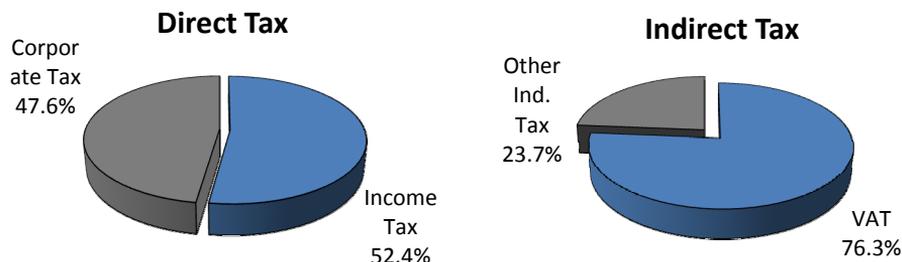
Table 3: Structure of direct and indirect tax - 2008 (%)

	Albania	Bosnia & Herzegovina	Croatia	Kosovo	Macedonia	Monte Negro	Serbia
<b>Direct tax</b>	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>1. Income tax</b>	53.0%	NA	13.8%	NA	49.7%	64.1%	68.1%
<b>2. Corporate tax</b>	47.0%	NA	86.2%	NA	50.3%	35.9%	31.9%
<b>Indirect tax</b>	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>1. VAT</b>	72.2%	NA	75.8%	NA	61.6%	78.5%	75.0%
<b>2. Other indirect tax</b>	27.8%	NA	24.2%	NA	38.4%	21.5%	25.0%

Source: Budget 2008 from respective countries, World Bank estimation of GDP, and author's calculations.

As far as the indirect taxes are concerned the data show that the main tax is that of VAT.

For all countries together, the structure of direct and indirect taxes is presented on graph 3.



Graph 3

In general the budget revenue in percentage toward GDP for West Balkan Countries is presented on table 4. It strikes the eye the lower weight of the personal income tax and that of corporate income tax: about 1,9-2,0% of GDP. At the same time by VAT, percentages is about 10,2% of GDP. On this table “non tax revenue” constitute about 8,8% of GDP. In fact in this category are also included the revenues from social contribution, which constitute about 79% of non tax revenue, or differently about 7% of GDP. All these data show that the tax revenue is realized from those taxes that can be collected and managed easily.

Table 4: Budget and Tax revenue in relation to GDP- 2008 (%)

	Albania	Bosnia & Herzegovina	Croatia	Kosovo	Macedonia	Monte Negro	Serbia	Total
<b>Total budget revenue</b>	24.3%	25.1%	33.7%	24.2%	36.4%	41.8%	18.4%	27.7%
<b>A. Tax Revenue</b>	18.1%	14.1%	20.3%	20.7%	21.3%	28.9%	17.1%	18.9%
<b>1 Direct tax</b>	2.6%	1.6%	3.6%	NA	4.5%	5.7%	3.2%	3.9%
<b>1.1 Income tax</b>	1.4%	NA	0.5%	NA	2.2%	3.6%	2.2%	2.0%
<b>1.2 Corporate tax</b>	1.2%	NA	3.1%	NA	2.3%	2.0%	1.0%	1.9%
<b>2. Indirect tax</b>	11.9%	10.7%	15.9%	NA	15.8%	18.3%	11.8%	13.4%
<b>2.1 VAT</b>	8.6%	NA	12.0%	NA	9.7%	14.3%	8.9%	10.2%
<b>2.2 Other indirect tax</b>	3.3%	NA	3.8%	NA	6.1%	3.9%	3.0%	3.2%
<b>3. Other tax</b>	3.6%	1.9%	0.8%	NA	1.0%	4.9%	2.1%	1.6%
<b>B. Non - tax revenue and contribution</b>	6.2%	11.0%	13.5%	3.5%	15.1%	12.9%	1.3%	8.8%

Source: Budget 2008 from respective countries, World Bank estimation of GDP, and author's calculations

## 2. Direct taxes: progressive and flat tax.

In the relation between simplicity of fiscal system and that of economic incitement, the first question to be analyzed is that whether this system is a progressive tax system or a system it is based on the flat tax.

The progressive systems are characterized by the increase of tax rates with the raise of income level. These systems aim to provide a more social level in the revenue distribution because the individuals with higher incomes are charged with a higher fiscal rate.

The systems based on the flat tax are characterized by the same tax rate, in spite of the level incomes. In this way these systems better serve both the simplicity and neutrality of the tax. Above all the flat tax systems are considerate to be more stimulating for the economic growth. In the progressive tax system, the increase of tax percentage with the raise income level in fact penalizes more saving than consumption. Thus, theatrically these taxes influence more negatively on the stimulation of the increase of incomes of subjects or individuals, because the more goods they realize the more taxes they are charged with. Starting with this it is accepted the fact that with the same level of governmental expenses, the progressive tax will have a more negative effect on the economic growth than the flat tax. The idea is: it is important not only the income tax level, but also the structure of their

collection. Thus for years in Europe has been recommended, among others, the transition from progressive tax to the flat tax, in order to incite economic growth.

The main criticism toward the flat tax is the fact that this tax compared to the progressive one makes a softer distribution of the tax burden between the groups with higher and lower incomes, favoring in this way relatively the individuals with lower incomes. However, the economic analysis being broken down for years in countries where this tax is in force, indicates that the above mentioned phenomenon is gradually accompanied with the gradual income growth even for the groups of population with lower incomes. This occurs because the application of this tax for some years makes possible that its positive effect on the economic growth increases in general with lower incomes to the ones with higher incomes.

Most of the East European Countries have passed into flat tax in the last 10-15 years. Estonia was the first country in Europe which put into practice the flat tax of 26% both for the personal income and that of corporations. Later that system was followed by two other regional countries like Leetonia and Lithuania. The Russian case was very meaningful, where the flat tax was applied towards the personal income in a low considerable level, 13%. The tax income was doubled within three years considering this reform as one of the most positive one.

The fiscal system of West Balkan Countries in the aspect of progressive or not are presented in table 5:

The discussing on the progressivity of the tax or no to is more related to the personal income tax. In fact it is seen that corporate tax is the same. The differentiation of this tax has to do more with the incentives for separate activity.

Table 5: Direct Tax rate in West Balkan Countries (%)

	Albania	Bosnia & Herzegovina	Croatia	Kosovo	Macedonia	Monte Negro	Serbia
<b>Income tax rate</b>	10%	10%	15% - 45%	4%-8%-10%	10%	9%-15%	10%-12%-15%
<b>Corporate tax rate</b>	10%	10%	20%	10%	10%	9%	10%

*Source: Fiscal package in respective Countries 2010.*

### Personal Income Tax

Considering personal income tax, four countries like Albania, Bosnia and Herzegovina, Macedonia, and Monte Negro apply the flat tax. This tax for Albania has been applied since 2007 by replacing progressive tax which went up to 30%. At the same time Macedonia has passed into flat tax since 2007. Monte Negro applies the flat tax 9%, from 12% in 2009. But here it is applied also the surtax on personal incomes which is paid by historical cities, respectively 13% and 15%.

Two other countries, Croatia and Serbia, apply progressive tax. This tax is more characteristic for Croatia by escalating from 15% to 45%. In Serbia the basic rate is 10%, but the self-employed pay 12% and the individuals with incomes higher as six times than the approved average salary, pay 15% of their personal income.

Hence, a general characteristic of West Balkan Countries, with the exemption of Croatia and to some extent of Serbia, is the setting of the systems the flat tax.

The flat tax in West Balkan Countries has almost been the same for all kinds of personal incomes<sup>6</sup>. From its nature, as is emphasize above, the flat tax is considered like a tax which stimulates the saving and investment. But in fact for the Balkans Countries it hasn't been the main aim of implementing this tax. This tax has been used more because of its simple calculation and administration.

Considering the personal tax income and if we compare the results of the flat tax with those of progressive tax, typical is the case of Croatia. As it is mentioned above this is the only country which used income progressive tax. Table 4 indicates that incomes from this tax are only 0,5%, which is at the same time the lowest percentage in the analyzed countries.

### **Corporate tax.**

The corporate tax (profit tax) is one of the most important one among the direct taxes. From this tax are realized about 47,6% of direct tax revenue, or 1,9% GDP for all Balkans Countries. Croatia has the highest rate tax 20%, and the revenue from this tax in comparison with GDP for is higher than other countries 3,1% (table 4). The comparative corporate tax analysis is important to see what stimulating policies use different countries for the inciting of separate economic activities.

Which are some of these policies which have been applied by different Balkans Countries?

- Albania stimulates small business. If the annual income of a company is between 2-8 million AL (about 14-57 thousand Euro), then the company pays so called "simple profit tax". While if the turnover is less than 2 million AL, then business taxed in the same way as the personal income.

- Bosnia and Herzegovina through the corporate tax aims to incite both imports and exports in the country. Thus, the companies which reach 30% of their turnover from export are excluded from profit tax for that year. At the same time the companies which can invest for 5 years in succession 20 million BAM (nearly 1 million Euro) are excluded from profit tax for 5 years starting from the first investment year, (the investment in this year should be at least 4 million BAM).

- Croatia stimulated investment and employment. This depending on the size of investment and the number of workers, the firms can reduce profit tax from 10% to 0%. At the same time it is stimulated the scientific work for research and development (R&D), in this case the company has the right to reduce from profit tax the twofold of expenses made for R&D.

- Macedonia stimulates investments in the free market areas, "Technological Industrial Development Zone (TIDZs)". Concerning the profit tax, companies which exercise their activities in these areas, are excluded from profit tax in a period of three years.

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<sup>6</sup> The mainly exemption are concerning with rent's incomes.

- Monte Negro aims to encourage development in less developed areas. So the new companies in these areas excluded from the profit tax for a period of three years.
- Serbia intends to incite development in less development areas. Thus the new companies are excluded from the profit tax for 10 years of time, if they make an investment of about 6 million Euros and employ not less than 100 people. At the same time companies are also excluded from the tax in the case of investments for exploitation of certain natural resources (for 5 years), as well as investment in no developed areas (in this case they are excluded for 2 years).

### 3. Indirect taxes: Value Added Tax.

Which are some of the main characteristics of fiscal systems of West Balkan Countries considering the aspect of indirect taxes and especially that of value added tax (VAT)? Which tax facilities are applying and what economic policies intend to achieve these systems?

Indirect tax on products and services play the most important role in the budget revenue of West Balkan Countries, they constitute on average 13,4% of GDP (table 4) where the VAT constitutes the greatest part with 10,2%. Table 6 presents standard tax rate of VAT for the West Balkan Countries:

Table 6: Value Added Tax in West Balkan Countries (%)

Value Added Tax	Albania	Bosnia & Herzegovina	Croatia	Kosovo	Macedonia	Montenegro	Serbia
Standard norm	20%	17%	22%	16%	18%	17%	18%
Preferential norm	NA	NA	10%	NA	5%	7%	8%

Source: Fiscal package in respective Countries 2010.

The value added tax is considerate as a consumption tax because it is paid by the final consumer. Its advantage is a good way of administration, a thing which is explained also by the revenue levels being provided by this tax. In the point of stimulated of economics policies, the question related with escalation of the tax, whether that should be in the same level, or differentiated. View on this angel, VAT in the same level is theoretically criticized by considering it as a regressive tax because all the consumers pay the same tax rate. Thus individuals with lower incomes will relatively higher taxes than the individual with higher incomes. On the other side, the VAT with a level means the preserving of neutrality from the tax would not influence in the allocation of resources in supplementary way.

What kind of taxes applies different countries and what kind of exemptions do they predict?

- In Albania the tax rate is 20%. Except for the know cases like for exports, international transport and financial services, the legal exceptions are very limited. Such legal exceptions are for instance the ones that are related to medicines, books, magazines, newspapers; the research and exploitation of hydrocarbures. For some goods there are implemented special schemes of VAT payment, for example for the

import of machineries and equipments, farmer's compensation, etc. As it is seen from table 6 tax rate (20%) is one of the heights of the region.

- Bosnia and Herzegovina applies the tax 17%. The exceptions from the tax payment, besides the known cases, are the ones for health services, social security's and sport and educational services. Special payment schemes are applied for the farmer's activities, touristic agencies, works of art, etc.

- Croatia applies standard rate 22%. A reduced rate of 10% is used for touristic services and respective agencies as well as the magazines and periodical newspapers. On the other side for the goods of the first need like bread, milk and a certain part of educative publications and some health services, the tax level is 0%.

- Kosovo applies the tax standard rate 22%. The exceptions from the tax (despite of general cases) are the ones of health goods and those of services in public education.

- Macedonia has the standard rate 18%. While the most preferable rate is 5% and it is applied in a wide range of products where the most important are: food products, various publications, agricultural machineries, pharmaceutical products and health services, machineries and programs that are related with automates processes.

- Monte Negro applies the standard rate 17% and the preferable one of 7%. The preferable rate is applies for food products like bread, milk, oil and sugar as well as the medicines, including the veterinary ones and for the health services.

- Serbia applies the standard rates 18% and the preferable one of 8%. The preferable rate is used for goods and services of the first need and some food products like: fruits, vegetables, educational text books, medicines, personal computers, newspapers, etc.

In general, we can say that three countries like Albania, Bosnia and Herzegovina and Kosovo apply a unique rate of VAT. While other countries like Croatia, Macedonia and Serbia use two levels, the standard and the preferable rates. The preferable rates mainly intend to provide lower prices for the necessary goods of the primary needs, to help the strata of population with lower incomes. At the same time all the countries expel from the tax, medicines, periodic press and different publications.

Concerning the VAT, it is important the analysis of limit of registration of the subjects which should be included in the business that is submitted to this tax (table 7). Albania, Kosovo and Serbia have the highest level of VAT registration. Probably this is the reason of the lower percentage of the revenues from this tax in proportion to the GDP of these countries (table 4).

Table 7: Registration for Value Added Tax

	Albania	Bosnia & Herzegovina	Croatia	Kosovo	Macedonia	Monte Negro	Serbia
Turnover / Year (EURO)	57,225	NA	11,660	50,000	21,138	18,000	40,000

Source: Fiscal package in respective Countries 2010.

#### 4. Comparison among countries: the simplicity and the efficiency of fiscal systems.

Firstly I would like to present shortly the evaluation of west Balkan Regions concerning the weight of taxes in economic activity of these countries. In fact this evaluation is based on the reports of World Bank “Doing business – 2010” for West Balkan Region. In these reports, the indicator which is related to the content of this paper is the one of the percentage of the total tax revenue, concerning profit of the firms<sup>7</sup> (table 7).

Table 7: Total tax rate (% profit)

		Albania	Bosnia & Herzegovina	Croatia	Kosovo	Macedonia	Monte Negro	Serbia
Total tax rate (% profit)	2009	50.5	44.1	32.5	28.3	18.4	31.8	34.0
	2010	44.9	27.1	32.5	28.3	16.4	28.9	34.0
Rank	2009	145	155	33	49	28	139	126
	2010	138	128	39	50	26	145	137

Source: “Doing Business 2010” for respective Countries,- World Bank

From the table can underlined some features: First, Albania and Serbia have the highest tax percentages in proportion to the profit, while the lowest one is for Macedonia. Thus, while in Albania, tax payment is about 44% of the profit, in Macedonia this percentage is about 16,4%.

Secondly, some countries like Bosnia and Herzegovina, Albania, Macedonia and Monte Negro have decreased the tax load toward business in 2010, compared to 2009.

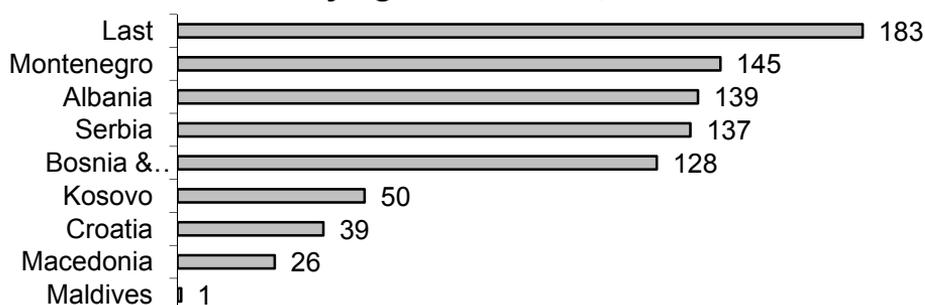
Third, many of the countries like Monte Negro, Albania, Serbia and Bosnia and Herzegovina, occupy a low place in the general order of 183 countries, concerning tax payment (according to three criteria taken in the study) –graph 3.

Probably the data cannot be used to compare the countries with each other, but nevertheless they indicate that the percentage of firms which think that the tax rate is the main constrain for their business in West Balkan Countries, (except for Bosnia and Herzegovina), is smaller than the percentage of all 121 countries taken together in the study 36%, and it is absolutely lower than that of West and Eastern Central Europe, 40%<sup>8</sup>.

<sup>7</sup> The rank is determinate taking in consideration also two other factors: number of tax payments per year and the hours for payment of the tax, spent from firm in the year.

<sup>8</sup> In the Enterprise Surveys, West Balkan Countries are included in Eastern Europe & Central Asia Region.

### Paying Taxes - Rank, 2010



Graph 3

Table 8: Valuation of tax rate as major constraint (%)

	Albania	Bosnia & Herzegovina	Croatia	Kosovo	Macedonia	Monte Negro	Serbia	Region	All Countries
% of Firms Identifying Tax Rates as Major Constraint	28.8	37.8	34.4	12.0	26.6	7.6	28.4	40.0	36.4

*Source:* Enterprise Surveys performed by World Bank and International Finance Corporation (IFC)

Beyond this general conclusion, we can pass to the comparison of fiscal system of the countries. Here we can base on three taxes, which we dealt with, PIT, CIT and VAT.

The level of these taxes according to the different countries is presented in issues 2 and 3 and the above in the table 7, is given the evaluation of fiscal weight towards the respective business. In this point of view, we will try to make an evaluation that how these taxes are related to the simplicity of their application, and on the other side, how efficient they are, which means what interference do they bring in the efficient allocation of economic resources. It should be underline that both these characteristics depend on the nature of the each tax.

Personal income tax (PIT). As criteria of the tax simplicity it would serve, whether the tax would be progressive or flat tax. As it was indicated above, a flat tax is simpler in administration. The criteria of efficiency can be seen in two aspects: first, how would the tax serve to the social aspect and secondly how the tax would support the economic growth. In social aspect, a progressive tax rate would be more positive (point A in table 9). While in aspect of economic growth, the progressive taxes favor more the consumption, and the regressive ones favor more the saving and investments, that is economic growth (point B in table 9).

Corporate income tax (CIT). Here as criteria for the simplicity of administration it would be taken if the tax rate would be the same or not with the tax rate of personal income tax. While as criteria of efficiency would be taken, first, tax level (point A in table 9) and second, how many exceptions are allowed for separate

activities (point B in table 9). The tax level, if it is low or high, means how do the tax interferers not in the market mechanism for the efficient allocation of resources. The lower the tax level, exp. under 10%, the more efficient is considerate the tax. On other side, the exception and differentiations in tax application for various activities, although they distort the market mechanism they are instruments for application of certain economic policies. In this point of view, the tax rate differentiations to the corporate can be considered positive.

Value Added Tax (VAT). The simplicity here would be linked with the rate differentiation, so a tax with the same level (rate), would be easier to be administrated.

While the efficiency could be seen in two aspects: first, in the social aspect as tax of same level would favor the consumption of the products of primary needs, would be considered more efficient (point A in table 9). Second, even here the tax level would determine its efficiency. For example a lower level under 18% would normally incite the consumption, so the production, as well (point B in table 9).

Starting from these criteria, even the tax treatment in issue 3 and 4 according to various countries, there has been an evaluation which should be made for the West Balkans Countries concerning the simplicity and efficiency of be signed (+), if the tax meets the above mentioned criteria, and (-) if it does not meet these criteria.

Table 9: Simplicity and Efficiency

	Simplicity			Efficiency					
	Personal Income Tax (PIT)	Corporate Income Tax (CIT)	Value Added Tax (VAT)	Personal Income Tax (PIT)		Personal Income Tax (CIT)		Personal Income Tax (VAT)	
				A	B	A	B	A	B
Albania	+	+	+	-	+	+	-	-	-
Bosnia & Herzegovina	+	+	+	-	+	+	+	-	+
Croatia	-	-	+	+	-	-	+	+	-
Kosovo	-	-	+	+	-	+	+	-	+
Macedonia	+	+	-	-	+	+	+	+	-
Montenegro	+	+	+	-	+	+	+	+	+
Serbia	-	-	-	+	-	+	+	+	-

It is necessary to point out that the evaluation remains subjective, because the fulfillment of a certain criteria might be in different levels and can't be separated with (-) or (+). In this aspect the evaluation can be made only for one kind of tax and for a certain criteria and it would be meaningless to be made for all taxes criteria taken together.

### *Conclusions*

- 20 years after democratically changes, the fiscal system in West Balkan Countries is stabilized and based on three main taxes: personal income tax, corporate tax and value added tax. Tax revenue provides about 93.4% of budget revenue, or 17.1% of GDP.

- The main tax revenues are collected from indirect tax, and particularly from VAT. For all countries in West Balkans, indirect taxes provide about 69.0% of total tax revenue, where VAT takes about 75.0%, or 10.2% of GDP. Direct tax revenue provides only 2.0% of GDP, which means difficulties of administration of these kinds of taxes.

- Most of the countries: Albania, Bosnia & Herzegovina, Macedonia, and Monte Negro, used a flat rate of personal income. That system offer more simplicity and neutrality of the tax. Above all, the flat tax systems are considered more stimulating of saving and economic growth. The flat tax of these countries is 10%, except Monte Negro with 9%.

- Regarding corporate tax, except Croatia (20%), all the other countries applying a low standard rate 10%, (Monte Negro even 9%), which is the same as a flat rate of personal income. In this concern, the fiscal system in these countries becomes more transparent and simple to administrate. Whatever, the revenue from this tax is in the low level and take average only 1.9% of GDP, (Croatia 3.1%).

- Different countries applying a different incentives regarding corporate tax. Most of them intend to stimulate new investment, employment and exports. It is also to underline that, as more as corporate tax provide exemptions and incentives, as more the system becomes a instrument to support different economic policy, but in the mean time the system loss its neutrality and simplicity.

- Value Added Tax is a main tax, concerning tax revenue. As a consumption tax, VAT has a significant impact in social aspect in the taxation in general. In this point of view, most of the countries, as Croatia, Macedonia, Monte Negro and Serbia, applying different VAT tax rates, which take in consideration particularly needs for foods, health and education. On the other point, VAT with a single rate, as for example Albania preserves the neutrality of the tax, means it would not be influenced in the allocation of economic resources.

- The impact of VAT in tax system in general, depends not only from the level of tax rate, but also from the limit of business registration in the VAT system. As example, Albania has the high VAT tax rate (20%, without a preferential rate), but the limit for registration in VAT system is also too high (about 57.225 Euro), therefore for this country the percentage of VAT to GDP is one of the lowest of the region (8.6%). On the other side, Monte Negro has a low rate of VAT (standard 17%), but limit of registration is also low (about 18.000 Euro); in this country VAT revenue takes about 14.3% of GDP.

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**BENCHMARKING EVALUATION OF SME SUPPORT PROGRAM:  
CASE OF CONSULTING SUBSIDIARY GRANTS IN SLOVENIA AND  
FYROM**Jaka Vadnjal<sup>1\*</sup>**Abstract**

*SMEs need external business support, in particular during the early development stage. Government agencies have developed a number of initiatives and voucher system is targeted at counselling combined with information and training. A pilot program started in two small regions and the program is scheduled to cover the whole territory, relying on the network of local enterprise centres. In 2006 the know-how for the system was transferred into Former Yugoslav Republic of Macedonia. This paper presents the fundamental concept of the voucher system and the rules for a comprehensive approach, discusses the organizational structure and functions of different stakeholders. The assumptions for an effective system are analyzed and comments from evaluations are discussed. The potentials for further development of the system in FYROM on the basis of the know-how from Slovenia are assessed. An innovative outcome of the study is development of the framework for bench-marking based policy measure evaluation.*

**Keywords:** Support to SMEs, policy measures, government, transition economy, market failure, counselling, consultants, local enterprise centre, small and medium-sized businesses, performance, voucher system, satisfaction level,

**JEL Classification:** H25, L26, L88

**Know-how Transfer of Public Support Programs for SMEs From Slovenia to FYROM****1. Introduction**

Within developed market economies, first in the USA and later in Europe, there has been a renaissance in the small business sector in the sense of contribution to innovation, improved business performance and competitiveness (Beaver and Prince, 2004). The majority of enterprises employ less than ten employees and small businesses have become a major contributor to private-sector employment, output and innovation. The wave of entrepreneurship reached transition countries with some time-lag, and Slovenian economy has been characterized during early 1990's with an outburst in the number of new small companies and sole proprietors (Glas and Drnovsek, 1998). Similar process was followed in Former Yugoslav Republic of Macedonia (FYROM) after a couple of years.

The need to stimulate the development of the small business sector has been confirmed in the EU countries in the effort to change the dynamics of structural

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changes, new technologies, products and services. A number of policy initiatives have been developed and introduced by numerous agencies. They should compensate for the market failure since the free market mechanism does not adequately support the flow of new ventures. On the other hand, many important efforts have been input into creating an entrepreneurial climate in support of SMEs (Gibb, 1999).

The importance of entrepreneurship counselling for successful venture initiation and venture growth is widely acknowledged in the entrepreneurship textbooks however, its impact on business performance has been so far neglected by academic research leaving a scarcity of knowledge in the field (Lambrecht and Pirnay, 2005). Entrepreneurship is a process of change that needs a more supportive environment to sustain it. Because business advisory, counselling and information services may not be affordable for SMEs, they can be offered for free and/or for a (reduced) fee. There is an on-going debate among policy makers, practitioners and academics that most services can be provided at a low-cost for start-ups through business service providers. Instead of subsidizing individual entrepreneurs, subsidies should be oriented towards developing service products/activities rather than institutions. The voucher counselling system (VCS) can be identified as an innovative type of subsidy which is targeted towards developing services.

The VCS was developed and implemented in Slovenia in 2002. The main objective of the VCS is to offer consulting services to SMEs through a number of government supported intermediaries following the following three rules: (1) subsidized and controlled prices of consulting, (2) recruitment system for consultants in order to ensure quality of services and, (3) geographical spread in order to make services available throughout the country. After several years of successful operation (Drnovšek, 2005) the VCS know-how was transferred to FYROM within the bilateral cooperation between the two national SME support agencies: Small Business Development Centre (SBDC) from Slovenia and Agency for Entrepreneurship Promotion (AEP) from FYROM. Similar as the know-how for the VCS operation, also the methodology from Slovenia was applied to make the first evaluation of the VCS in FYROM in 2008. The objective of the paper is to compare findings from evaluation done in 2006 in Slovenia and the mentioned one in FYROM.

The structure of the paper is as follows: first the theoretical background of government's assistance to SMEs is presented. Following, the rationale is discussed and basic concepts underlying development of the VCS; then findings from a service quality survey in Slovenia are briefly presented. The development of the VCS in FYROM is presented and several comparisons based on qualitative data obtained in the two countries are discussed. Some implications and future challenges for development of the system in both countries are discussed. In the end, some possibilities for development of benchmarking based evaluation methodologies are proposed.

## 2. Theoretical Framework

Although it is clear that entrepreneurs and managers develop small businesses, government can have a certain effect on how firms, particularly small ones, operate. Indeed, government policy and its influence on the institutional environment has become a key focus of efforts to help to improve how small firms develop and economies compete. As a result, almost all European and several other countries have active policies for improving competitiveness of their SMEs. Unfortunately, these policies often base on 'mythical concepts' and ignore findings of academic research (Gibb, 2000). The main three dimensions of the government role are: regulator (enabling competition fair), economic agent (assisting in entering new, foreign markets) and, as strategic planner and promoter with objective to have more people interest in pursuing entrepreneurship career on the longer run (Bennet, 2006).

The need for government action for SMEs has been justified by three main arguments: (1) the market failure which inhibits small business development, (2) there is a great public interest in SMEs because they create jobs and, (3) government can develop a strategic vision for the economy which individual SME cannot (Storey, 1993). One of the common components of the market failure argument has been that SMEs are less aware of advice, information and other business services that may be supplied on the market (Gibb and Dyson, 1984). They are also sceptical about the value of services and are not willing to pay for them, which lead to the unwillingness to seek external support (Storey and Westhead, 1996). This argument is frequently used to justify government advice and information programs for SMEs. While this might have been true in 70's and 80's, there is little evidence that this is still a case today (Bennet and Robson, 2000). An extensive survey of the small firms using external advice, consultancy, training and other business services suggest that small firms are just that likely to use these services as any other firm with the possible exceptions of start-up and early stages of growth (Ramsden and Bennet, 2005). The cornerstone of the start-up process is the support to entrepreneurial idea which is a basis to create and exploit opportunity and create value (Van der Veen and Wakkee, 2004). By convincing potential employees, customers, suppliers and investors of the legitimacy of the idea, the founder, with a possible back-up by the outside assistance, is able to mobilise the resources that these stakeholders possess on behalf of the developing firm (Delmar and Shane, 2004) which may be crucial element of the survival probability during the start-up phase. Unfortunately, too many of all newly started firms die within the first two years of their operation (Audretsch et al., 2000).

Probably, the most important issue of market failures for small firms is that they face specific barriers and unequal treatment which government should help to remove (Bannock and Peacock, 1989). Larger firms find it easier to gain advantages of economies of scale in examples such as purchasing larger quantities, economies in administration, affordability of outside expertise etc. Unfortunately, it is often government itself, which creates disadvantages for small firms thus, raising their average cost of compliance with regulatory and administrative issues which tend to be two to ten times higher in smaller firms comparing to larger counterparts (Cressy, 2000).

The co-operation process between SMEs and external providers of services is often described with the lack of market transparency, problems in the search phase, a lack of co-operation targets and evaluation criteria as well as deficits in the co-operation during the transfer phase lead to a considerable number of SMEs which are disappointed with the services delivered. This problem can be met by the development of new forms of assistance and services. In this context, new learning technologies can be used to foster co-operative learning and networking (Kailer and Scheff, 1999).

The usage of business consulting services in SME sector has not been researched extensively yet. There is some evidence about more general outside assistance (Chrisman, McMullan, 2004) however the use of various types of business advice is not explored in depth although there are several arguments that show the positive impact of using outside advice and other support services on survival likelihood of the new ventures (Delmar and Shane, 2004). Also, the issue is not very well researched in transition economies with a couple of recent exceptions like Bulgaria (Baltov, 2005), Czech Republic (Bohatá and Mládek, 1999), FYROM (Nikolovski and Stojčev, 2008), Lithuania (Urbonavičius and Dikčius, 2005) and Slovenia (Drnovsek et al., 2004).

One of the modestly addressed research questions so far has been, how different types of business consulting services influence SME growth in terms of sales volume and employment. This is the most common (Birley and Westhead, 1994) but, rather simplified measure of SME growth and success (Murphy et al., 1996), but sophisticated measurements have their own imperfections (Abouzeedan and Busler, 2004). Growth in relation to small businesses represents a complex matter and is multidimensional in scope and character (Keasey et al., 1994). It includes a spectrum of owner-manager ambitions, intentions, and competencies; internal organizational factors; region specific resources and infrastructure; and external influences (Morrison et al., 2003). Many influences are relatively well discussed (Rodríguez et al., 2003), but the use of business consulting services is poorly included into analyses.

The impact of the support measures to the performance of SMEs has been the subject to many pieces of partial research (Huang, 2001) with reasonable concepts reliably tested only in fields like education, training and research (Davidsson and Klofsten, 2002), hard infrastructure (Heydebreck et al., 2000) but, research opus falls short investigating the possible positive influence of information, advice, counselling and, mentoring (Young and Perrewé, 2000) provided in the form of public policy support measure.

Flaws in research design and analysis, abuse of academic credibility, and structural pressures towards producing research for career management purposes rather than for satisfying curiosity or meeting societal needs may lead to do more harm than good from academic research for the purpose of support policy application. However, through various routes scholarly knowledge does reach practitioners, and by making abstracted sense of successful entrepreneurship practice,

scholars in entrepreneurship can speed up the diffusion of good ideas within a domain (Davidsson, 2002). Thus, academics, policy makers and practitioners should aim to integrate solutions which serve as evaluation methodologies to assess the various scope of impact of policy measures (Chandler and Lyon, 2001).

### **3. The Voucher System of Counseling (VCS)**

#### ***3.1. Introduction in Slovenia***

The VCS in Slovenia was inspired by the self-employment program in Slovenia and by number of best practices from other countries. The self-employment program offered a combination of advisory services, information and training, together with modest financial assistance. Foreign practices referred to include the system of Small Business Administration in the USA, the voucher scheme in Catalunya (Spain), along with experiences from Austria and the United Kingdom. The system has to be built on a comprehensive scheme with a SME development strategy/policy, delivery mechanism and well-designed programs (Glas, 2000).

The VCS provides basic ‘soft’ support on favourable terms to different groups of beneficiaries in all localities across the country in order to ensure the equality of opportunity to start and develop one’s own business. However, it is differentiated for the various phases in the growth cycle of the new venture. The need for support was clearly identified by research on SME development in Slovenia (Glas and Drnovšek, 1998). The VCS in Slovenia was regularly evaluated with the last evaluation done in 2005 (Drnovšek, 2005). There has been an on-going debate on indicators of the success of the scheme. However, no methodological approach has been so far adopted which would enable a “*ceteris paribus*” assessment of effectiveness and efficiency of the VCS which is based on a large number of small amount assistances to SMEs.

#### ***3.2. Transfer of VCS know-how to Macedonia***

The VCS in FYROM is modelled closely after the Slovenian VCS. It engages business support organizations on behalf of the AEM which is the managing authority for the implementation of the VCS. The pilot phase was implemented from November 2005 to January 2006 in cooperation with two Regional enterprise centres (REC). The delivery system for the VCS was established during the pilot phase and entailed the preparation of initial documentation, selection of implementing partners, design of IT support, recruitment of consultants-counsellors, and promotion of the VCS to the target group (Hase and Nanevski, 2006).

The VCS was further strengthened in 2007 through technical inputs from the EU. A solid foundation has been laid for the VCS to operate efficiently, and the scheme has achieved positive albeit modest results. On the downside, the scheme’s outreach, scale and impact is fairly negligible due to the fact that the initiative has been under-resourced and there are still shortcomings in organization, governance and competencies. A key question is why the scheme was not adequately funded by the government, after it was successfully piloted and strengthened via donor assistance. Furthermore, although various donors have expressed interest in

financially supporting the VCS, without evidence of strong government endorsement and/or significant financial contribution from the state budget, donors have opted instead to support other initiatives (Hase and Nanevski, 2006).

The interest shown in the VCS from SMEs and from individuals and the uptake of the vouchers offered so far, demonstrate a need for such assistance which takes into account the different demand for services depending of the life-cycle position of particular SME (Baltov, 1999). The design of the delivery system was successfully adapted to the conditions in the country during the pilot phase. As for synergy with other programs and/or organizations, AEM has an extensive network of contacts in the local donor and economic development community, as well as in other countries in the SEE region such as Slovenia (Dunn, 2007).

#### **4. Methodology and propositions**

The methodological approach in Slovenia used qualitative and quantitative research techniques. First, face to face structured interviews were conducted with the target groups in the system: entrepreneurs included in the system and who had already used its services, and local co-coordinators and consultants to SMEs. The qualitative data provided by key informants was used in developing self-reporting questionnaires which were sent to all entrepreneurs participating in the system in the past and business consultants who actively participated in the system (Drnovšek, 2005).

The findings in this study are based from the survey done in April 2008 in FYROM. Questionnaires were translated from Slovenian to Macedonian language by a Macedonian native speaker who spent many years working with companies and Slovenia. After the translation had been finished it was checked by the author and tested by a group of eight entrepreneurs and a small number of changes were made to increase the clarity of the questions. In total, there were around 100 questions, majority of them being of the multiple choice type and no open ended question except the invitation for possible final comments. The survey was mailed to all the clients who participated in the VCS from its launch until the time of the survey and were 194 in total. The Regional enterprise centres (RECs) were encouraged to do follow-up and get the number of returned questionnaires as high as possible. In the end 96 questionnaires were returned by SME clients. A 49.5 % response rate was achieved which is high, but not surprising, because the questionnaires were well target. Except the anonymity promised in the cover letter, there were no other assurance of confidentiality. The following propositions which were derived mainly on previous Slovenian experience (Drnovšek et al., 2004; Drnovšek, 2005; Vadnjal, 2008):

**P1.** Entrepreneurs in FYROM generally receive their first experience with outside assistance through the VCS. The RECs are the most important distribution channel.

**P2.** The level of satisfaction with different aspects of VCS in FYROM is significantly higher in FYROM comparing to Slovenia.

**P3.** There is high level of similarity in perceived importance of certain aspects of VCS in FYROM and Slovenia.

**P4.** The entrepreneurs generally value less the services by RECs comparing to those supplied by consultants.

**P5.** The opportunity for development of benchmarking evaluation methodologies for public policy measures is feasible enough to be further elaborated.

The particularity of listed propositions is that they are not based on presented literature study but, are derived from experience in Slovenia with basic assumption that the evaluation in Slovenia (Drnovšek, 2005) was designed in a manner that left space for possible replication in other environments and provided opportunity for benchmarking analyse of results from two or more countries. One of the ambitions of this paper is therefore to contribute to the increase of knowledge on public policy evaluations with a special dedication to the evaluation of programmes which have been transferred within different economies.

Common statistic tools were used to analyze the possible differences in means (t-test) for variables within the sample in FYROM and to compare with some data from Slovenia where 97 responds were collected (Drnovšek, 2005) so the sample sizes were comparable. Kendall's tau ( $\tau$ ) was used to analyze differences in rankings of importance between the two samples.

## 5. Results and discussion

### 5.1. *Some demographic data*

Young companies (1 to 2 years were represented with 15 %, older companies of 10 years and more with 38 %, while 3 – 5 years old companies accounted for 23 %, and 5 – 10 years old companies for 18 % of the total sample) mainly participated in the study. As much as 67 % of companies regarded themselves as family business, which is quite expected for a transition economy. Respondents were in majority (82 %) whether owners managers or founders of the company. Most of them were in their middle age (72 % in the range between 30 and 50 years). Only 15 % of participants were women which may indicate that they are neglected in the entrepreneurial activities. The SME participants were well educated (49 % having university degree or higher). Although there is no evidence on the level of education of entrepreneurs in FYROM on can suspect that, in average, it would be much lower then in the sample. This finding can be interpreted that higher educated entrepreneurs would have higher preferences to seek useful information and find assistance for their business challenges. Interestingly, 56 % of respondents had most experience in marketing and sales, followed by those with manufacturing experience (26 %) and managerial experience (13 %). In average, participants had 16 years of working experience.

Two thirds of the researched companies were dealing with some kind of manufacturing activity (mostly metal, wood and plastic processing) and 28 % were in construction business. Less than half of the companies reported more than one activity they deal with. Close to 60 % of respondents were servicing both, households and other businesses. 26 % of them are entirely in the business-to-business market while 8 % were in retailing market. None of the respondents was supplying to the government or public institutions. Among 96 participating

companies, almost three quarters of the respondents are quite optimistic about their business future and believe they will manage to expand their operations. As mentioned, there is no comparable comprehensive study on SMEs in FYROM available which would provide comparable and systematically collected data which would enable an opportunity for an in-depth analyse of possible sample biases.

### 5.2. Different aspects of the VCS

The company had a development project and this was the main reason for 38 % to get involved in the VCS. There was 33 % of the clients were encouraged by consultants and 26 % of participants needed professional help because their businesses dealt with some growing issues. It can be evaluated as positive that majority of the clients joined the VCS for some development orientation reasons rather than just problem-solving. The majority of respondents received between 11 and 20 hours of counselling within the VCS. This amount can be evaluated as appropriate for some not very demanding consulting assignments.

It was 95 % of participants who remembered the consultant's name, which they had to put it down in the survey. This finding may be interpreted as a promising sign of possible future co-operation between the two parties. The consultant was recommended by friends and business colleagues in 28 % of studied cases. In 28 % of cases, the consultants were recommended by the RECs. In 13 % the consultant was picked up from the consultants' register and in another 13 % consultants approached clients with business proposals. There were only 3 % of other channels involved. Word-of-mouth and RECs appear to be the most important distribution channels for the VCS. Regarding the aid from other external sources, 59 % of clients have never used any other external assistance to solve their problems besides the VCS. Only 23 % have already had some experience with outsourcing assistance while 18 % are not sure how to answer this question. Out of these opinions it may be concluded that P1 can be regarded as confirmed.

**Table 1.** Reason for enrolment into the VCS (1-highly disagree, 5-highly agree)

Rank	Issue	Overall mean: 3.95	Mean
1 <sup>st</sup>	I enrolled because I believed it would be useful for my business.		4.88
2 <sup>nd</sup>	I wished to prepare a long-term strategic development plan.		4.58
2 <sup>nd</sup> last	I felt the lack of entrepreneurial skills and knowledge.		3.15
Last	I wanted to be ready on time for challenges of e-business.		3.00

Source: Own research, 2008

The most frequent demand for different consulting services was for different feasibility studies and business plans (16 %) and issues regarding production (13 %). The largest proportion of clients used the subsidiary between 330 and 410 Euro. 69 % of participants think they know about all the services within the VCS while, 10 % think they don't. Participants were asked to evaluate 19 different possible reasons for enrolment into the VCS. In order to keep the relevant data more transparent it was

decided to present only two most and two least important issues in table 1. The same principle was followed also in tables from table 2 to table 6. As shown in table 1, the most frequent reason for getting enrolled into VCS is for a general belief that this may be useful. However, the preparation of development plans was the second most frequent reason. As shown in table 2, participants evaluate most their technical expertise (which is expected, because they mostly experienced technical or engineering background), second ranked valued is their customer relationships (which is in a way surprising) while they least value their knowledge on European issues and accounting. The European issues can be understood to outcome as a wish of FYROM to enter EU once in the future, while accounting can probably be linked to the common aim of tax optimisation among SME people.

**Table 2.** Level of knowledge possessed (1-very low, 5-very highly)

Rank	Issue	Overall mean: 3.97	Mean
1 <sup>st</sup>	Technical expertise from the area of business		4.67
2 <sup>nd</sup>	Customer relationships		4.55
2 <sup>nd</sup> last	European Union issues		3.43
Last	Accounting		3.32

Source: Own research, 2008

As far as business performance is concerned, the participants value highest the quality of their products and services and personal freedom and autonomy which they are entitled by working on their own. While personal freedom and autonomy are classical postulates of entrepreneurship the quality of products/services is often perceived as key competitive advantage in transition economies, but, unfortunately, often its importance and real value is subjectively overestimated. On the other hand, respondents are least happy with profitability and their personal revenues as shown in table 3. This may be interpreted that their expectations about financial gains from the businesses tend to be more ambitious in the future. Again, 17 different issues were offered to be evaluated by the respondents but it was decided to present only most and least important in the table 3.

**Table 3.** Performance of the business in the last year (1-very low, 5-very highly)

Rank	Issue	Overall mean: 4.30	Mean
1 <sup>st</sup>	High quality of products and services		4.61
2 <sup>nd</sup>	Personal autonomy and freedom		4.41
2 <sup>nd</sup> last	Profitability of the company		4.18
Last	Financial revenues from the company		4.00

Source: Own research, 2008

More than 80 % of respondents spent no or very little money on education and training: 28 % spend nothing and 55 % spend less than 8.3 Euro per year. The majority of the responses (almost 80 %) were linked to formal education and about

10 % to multi-day and one-day trainings and educations. The most frequent answer (82 %) was that education and training is not expected to be practical and therefore useful which tends to be consistent with some older research findings (Gibb and Dyson, 1984; Storey and Westhead, 1996).

**Table 4.** Satisfaction with different views of VCS (1-highly disagree, 5-highly agree)

Rank	Issue	Overall mean: 4.87	Mean
1 <sup>st</sup>	The consultant was very skilled and professional.		4.92
2 <sup>nd</sup>	The content of consulting was very up-to-date for the needs of the company.		4.90
2 <sup>nd</sup> last	General impression about the consulting process is positive.		4,84
Last	Consulted had impact on better performance of the company.		4.75

Source: Own research, 2008

As shown in table 4, entrepreneurs were most satisfied with the skills and professionalism of consultants and with the content of consultant which was very up-to date for the need of the company. In total, eight issues on different issues of the VCS were offered in the questionnaire. On the other side, the least two value issues which are general impression about the consulting process and the impact on performance may be interpreted as, that clients do not foresee the real direct impact of the consultancy delivered, however, they still believe it was useful. The expected results of the consulting project were met by 77 %, while 18 % think that results cannot be evaluated yet. Generally, 58 % of participants believed that usefulness of the VCS is whether high or very high. The level of satisfaction with consultants' skills and knowledge has proved to be very high as shown in table 5. The levels of satisfaction with both, the VCS and consultants are surprisingly high. Therefore, a certain bias of responding more in favour of the system rather than realistically is suspected. On the other hand, this high level of satisfaction can be interpreted as a gratefulness of the respondents which in majority of cases received their first state-aid subsidiary through the VCS so they wanted to show their appreciation of this fact with giving higher grades.

**Table 5.** Satisfaction with consultants' skills and knowledge (1-highly disagree, 5-highly agree)

Rank	Issue	Overall mean: 4.75	Mean
1 <sup>st</sup>	Having enough time and patience to listen to the client		4.94
2 <sup>nd</sup>	Interpersonal skills		4.92
2 <sup>nd</sup> last	From the client he/she expect to use the suggested solutions and recommendations.		4.50
Last	He/she knows how to terminate the cooperation when the assignment is finished.		4.33

Source: Own research, 2008

The expectations about the impact of the counselling are expressed to be quite optimistic: three thirds of participants think that benefits will come out very soon – within some months, while 18 % think that they may show within one year time. Other respondents expect longer time periods for benefits.

Regarding the performance of REC, the respondents evaluated nine different issues. Their ability to give general advice and information received the highest appreciation together with the advice on procedures to establish new companies. On the other hand, entrepreneurs valued the least the information about the financial initiatives for SMEs (probably because widespread financial assistance is simply not available) and office working hours of RECs (table 6). This may be interpreted as a consequence of possibility that some of the RECs may have already started to introduce unpopular administrative patterns of behaviour which are not appreciated by business people. In competing to consultants, the overall mean score for RECs is significantly lower than for consultants ( $t=4.18$ ,  $df = 9$ ,  $p = 0.002$ ) which makes P4 confirmed.

**Table 6.** Satisfaction with cooperation with REC (1-highly disagree, 5-highly agree)

Rank	Issue	Overall mean: 4.69	Mean
1 <sup>st</sup>	General advice and information received		4.91
2 <sup>nd</sup>	Advise and procedures on establishing a company		4.87
2 <sup>nd</sup> last	Information about financial initiatives for SMEs		4.54
Last	Availability at official working hours		4.50

Source: Own research, 2008

There are 31 % of participants that claimed to ‘actually always’ use the consultant’s recommendations and 56 % of those who used it very often. Only 8 % of clients have never used advises from the consultants after the consultation process within the VCS had been finished. Almost 90 % of the participants promised to come back and uses the services of the VCS while others are not sure. It is important that no respondent rejected the possibility to re-enter the VCS in the following year. As far the overall level of satisfaction with the VCS is generally high, with expressed opinion for the need to spread entrepreneurial climate (table 7).

**Table 7.** Satisfaction with service within VCS (1-highly disagree, 5-highly agree)

Rank MK	Issue	Mean MK N=96	Mean SLO N=97	Rank SLO
1	The organizer-consultants are highly trained regarding the VCS.	4.90	4.51	1
2	The VCS is highly needed for spread of entrepreneurial climate in the country.	4.67	4.42	2
3	The VCS has positive contribution to the local and regional development.	4.67	4.38	3

4	The services within the VCS result in better business performance.	4.66	3.98	8
5	For enrolment into the VCS the geographical proximity of consultant is of a key importance.	4.63	4.17	5
6	In general, I am very satisfied with the service provided within the VCS.	4.58	4.20	4
7	Administrative procedures in the VCS are short and efficient.	4.38	4.11	6
8	Entrepreneurs in the VCS also get access to new contacts and networks.	4.31	4.01	7
9	The entrepreneurs often get opportunity for networking while they are in the VCS.	4.31	3.87	9
10	The services within the VCS are very well described in official publications.	4.17	3.72	10
<b>Overall mean</b> (t = 3.46, df = 10, p = 0.006) Kendall $\tau$ = 0.78, n = 10, p < 0.05		4.61	4.14	

Source: Own research, 2008 and Drnovšek (2005)

As one can see from table 7, the evaluation given in FYROM was significantly different in comparison to the one in Slovenia in 2005 (t=3.46, df=10, p=0,006). On the other hand the comparison of rankings of importance reveals a high level of correlation between the rankings of level of satisfaction with different services (Kendall  $\tau$  = 0.78, n = 10, p < 0.05). This may be interpreted as possibility that the VCS was in a way successfully mirrored from one economy to another which partly confirms propositions P3 and P5.

**Table 8.** Impact of counselling (1-not useful, 5-very useful)

Rank MK	Issue	Mean MK N=96	Mean SLO N=97	Rank SLO
1	Increase of practical experience in entrepreneurship	4.64	3.54	6
2	Better possibility to grow the business	4.57	3.61	5
3	Increased quality of products	4.31	3.25	8
4	Faster responding to changes in environment	4.26	3.87	1
5	Increased theoretical knowledge in the business	4.25	3.84	2
6	Access to new orders and customers	4.21	3.11	10
7	Companies which cooperate with consultants enjoy higher level of reputation within society	4.20	3.18	9
8	Access to new contacts and networks	4.18	3.64	4
9	Improved financial performance	4.03	3.32	7
10	Easier hiring of key employees	3.91	2.87	11
11	Successful tender applications	3.76	3.73	3
12	Counselling does not bring in direct financial impact	3.03	2.45	12
Overall mean (t=5.51, df=12, p=0,0001) Kendall $\tau$ = 0,21, n = 12, p = 0.3753		4.11	3.37	

Source: Own research, 2008 and Drnovšek (2005)

As in table 8, the expectations about possible impact from the VCS were significantly different in FYROM in comparison to the one in Slovenia ( $t=5.51$ ,  $df=12$ ,  $p=0,0001$ ). However, the comparison of rankings of impact expectations reveals a low level of correlation between the rankings in the two countries (Kendall  $\tau = 0.21$ ,  $n = 12$ ,  $p = 0.3753$ ). The possible interpretation of this finding may be that because of different level of entrepreneurship and SME sector development in the two countries, the level of expectations about the outcome and longer-term impact of business support processes among which business counselling is discussed in this case. However, these differences cannot contribute to the confirmation of the proposition P5. On the other hand, from the discussion below, P3 cannot be confirmed.

## 6. Conclusions and implications

The most likely sign-in sources into the VCS were formal channels such as chambers and local entrepreneurship centres, creating opportunities for popularization through both the more credible channel of personal networks and the more efficient channel of the Internet. By joining the program entrepreneurs mostly expected help with practical goals such as winning public tenders, getting loans, standards certificates etc. The program is hence currently more oriented to consulting than educational training, which is primarily determined by the approach of individual consultants. Instead of such a one-course-menu service, a more proactive and long-term stance would be better for them. Evidence from the past shows there is more demand for consulting services that meet the short-term objectives of a company, for instance the preparation of business and investment plans, designing applications for public tenders, meeting standards required by new legislation, financial restructuring etc.

Only a small proportion of the services have focused on the long-term development of a company. Strategic and marketing plans, human resources development plans, business plans to attract equity capital, feasibility studies for inventing a new product or services have so far been rare. Therefore, a mechanism should be introduced to attract companies to become more involved in long-term thinking. One possibility is, of course, to stimulate the supply side of the consulting service market in FYROM.

The survey among existing customers of the VCS shows that the current contents of offered services meet entrepreneurs' requirements. However, in the future the system should more actively involve programs to support a shift from the traditional technical orientation of entrepreneurs to a more conscious marketing orientation. This can only be done through the more active implementation of practical education programs and workshops. This is also very closely tied to the quality of service offered in the system. From the investment point of view, the development of conceptual metrics of returns on investments in the system is demanded. These metrics will be needed in future negotiations to ascertain appropriate budget financing.

Finally, on the demand side customer re-targeting is an important objective. So far, the system has been in both studied countries used more by micro companies, lifestyle businesses, small family businesses and similar rather than companies that should be by its definition responsible for economic growth: fast growing dynamic enterprises, hi-tech companies, spin-offs from research institutions etc. Certainly one reason for this is that the annual limit therefore, an increase in that amount should be considered in the future. The other reason may be found in the lack of consultants who are truly able to understand the very specific needs of more ambitious and growth-oriented entrepreneurs and their companies which is again the case for the both studied countries.

One of the possible shortcomings of the presented study is by no means that no contingency analyses was made to explore the impact of context factors like size of company, age of company, gender of entrepreneur on satisfaction indicators. This has been a rational decision for the two main reasons: (1) relatively small sample which makes sub-samples even smaller and difficult to compare and (2) the main objective of the paper which was finding the answer to the question whether the replicated study on a VCS would bring similar and comparable results. There is also no systematic comparison between the successes of the scheme in the two countries analysed, because of the mentioned lack of adopted common methodology to evaluate this type of public policy schemes. Thus, it is also difficult to provide evidence of success of the scheme in the FYROM and the level of satisfaction of beneficiary is the only realistic measure that is available. Therefore, the statement that the VCS has been successfully transferred is based on subjective and anecdotic paradigm to a certain level.

The transfer of the know-how of a best-practice type of a business support service is likely to have many important meanings for the future activities. (1) Being one of the first cases of this kind, the story of a successful know-how transfer of the VCS from Slovenia to FYROM may become a role model for the future activities of this type. Implementing a well proved business support scheme may directly reduce the development costs and give governments opportunities to allocate more resources for the active phase of the scheme and make more resources available for the final beneficiaries. (2) Publicly funded scheme needs a regular system of evaluation (Johnson et al., 2000). For the case of FYROM, this evaluation which has been so far done through an EAR funded technical assistance project, may be in the future partly based on the benchmarking procedure done on the comparison with the evaluation findings, achieved in Slovenia with possible comparative development of the key performance indicators which may become a part of the longitudinal evaluation process. (3) The state of the art of the development of the VCS in FYROM may be estimated as to be three years behind Slovenia, measured in the time framework. However, the speed of the future development of the VCS in FYROM may be substantially increased by implementation of the already tested protocols from Slovenia. (4) When Slovenia became full time member of the EU, the VCS was one of the very few schemes, specialized in the SMEs support which was

financed from the EU structural policy measures funds. This may be a good opportunity also for FYROM, once this country may become eligible for this source of EU finance.

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## **E-COMMERCE OFFENCES IN THE CURRENT FINANCIAL CRISIS - A ROMANIAN REALITY**

Ioniță Gheorghe-Iulian\*

### **Abstract**

*Technological progress and the opportunities provided by the Internet have triggered transformations in the entire society, influencing all walks of the economic, social and cultural life.*

*At the same time, these facilities also benefited those who aim to reach a high living standard by avoiding the legal means necessary to do so.*

*Infringements related to the issuing and use of electronic payment instruments and the use of identity data for financial operations tend to become a routine, and this situation has a negative impact upon customers' confidence in electronic payment instruments and e-commerce*

*This study presents the trends of this phenomenon and of the field legislation.*

**Keywords:** e-commerce, electronic payment instruments, offences, legislation

**JEL Classification:** G01, G20, H20, H26, K14, K20, K42

### **1. Introduction**

E-commerce has appeared in Romania relatively recent, but it has continually expanded. Even if we are still in a transition period and we have to overcome the financial crisis accompanying it, „the Romanian e-commerce market reveals encouraging signs of improvement” (Underclick.ro, 2010).

During the last few years, for young persons (usually) who use the Internet intensively, online shopping has become a habit.

Unfortunately, not all such persons comply with the rules that govern these relations and the infringement thereof is increasingly frequent, which turns thus into a genuine phenomenon.

Under the circumstances, there are serious concerns, which are fully justified, as regards the confidentiality of personal data, the safety of transactions etc.

### **2. Trends of e-commerce offences in Romania**

According to the data supplied by the Directorate for Investigating Organized Crime and Terrorism of the Prosecutor's Office attached to the High Court of Cassation and Justice (DIOCT, 2011, p. 37-38), the assessment of disorganized criminal groups operating in the field revealed a number of features, such as:

- a general specialization, but also the micro-specialization of groups with independent cells meant to carry out specific criminal activities (e.g. in order to design skimming devices, “specialists” in plastic materials, molding, electronics, item

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procurement, the procurement of original items as models, special encryption software, credit card data uploading/downloading, processing, “runners”, “financers” are used).

- the recruitment by leaders of traditional criminal groups of young people skilled in using new computers and technologies;

- the transnational character, either given by the location of the offences or the localization of the victims;

- recruitment through increasingly sophisticated “arrows” and through the specialization thereof so as to suit the needs (opening bank accounts, the transport of various amounts etc.);

- the set up of money laundry networks made of Romanian and foreign citizens.

As regards the areas with criminal potential, the counties Olt, Prahova, Bacău have known a development of infringements related to the issuing and use of electronic payment instruments and the use of identity data for financial operations, as compared to the counties Argeş, Vâlcea, Teleorman, which are known for offences against data confidentiality, integrity and availability. The counties Vâlcea, Argeş, Constanţa, Teleorman, as well as Bucharest, continue to make themselves known for both categories of offences.

As opposed to the previous years (DIOCT, 2010, p. 28-36), the novelty in 2010 was an orientation of criminal groups towards the forgery of electronic payment instruments on Romania’s territory, with IT support ensured by other criminal organizations operating outside national borders.

### **3. Registered and investigated casuistry in Romania during the last years**

In order to sketch an overview of this phenomenon, it is necessary to emphasize some of the important causes already solved during last year by the Directorate for Investigating Organized Crime and Terrorism of the Prosecutor’s Office attached to the High Court of Cassation and Justice (DIOCT, 2011, p. 40-45).

I. Under public prosecutor’s charge no. 267/D/P/2009 (DIOCT - Central structure) decided on the arraignment of C.N. s.a. accused of the offences of setting up an organized criminal group, as stipulated at art. 7 and art. 2 letters a and b point 18 of Law no. 39/2003, the forgery of electronic payment instruments as stipulated at art. 24 paragraph 1 of Law no. 365/2002, the circulation by any means of false electronic payment instruments or the possession thereof for the purpose of using them as stipulated at art. 24 paragraph 2 of Law no. 365/2002, the manufacturing or possession of equipment, including software or hardware, for the purpose of forging credit cards and making cash withdrawals, through the use of electronic payment instruments (cards) without the consent of the account holders.

The case was sent for settlement to the Court of Bucharest.

II. Under public prosecutor’s charge no. 252/D/P/2009 (DIOCT - Constanţa Territorial Division) decided on the arraignment of a number of 9 defendants, for offences stipulated at Law no.39/2003, Law no.161/2003 and Law no. 365/2002 on

fraudulent financial operations with POSs belonging to banks in Romania and installed throughout Constanța.

Through the criminal sentence no. 426 of 22.12.2010 given by the Court of Constanța in file 14220/118/2010 the defendants were punished with imprisonment, the execution of which was suspended conditionally or under probation.

III. Under public prosecutor's charge no. 123/D/P/2009 (DIOCT - Craiova Territorial Division) decided on the arraignment with detention under remand of defendants T.D.R. s.a., for the offences stipulated at art. 7 point 1 of Law 39/2003, art.42 paragraphs 1, 2 and 3 of Law 161/2003, Title III, art. 26, Criminal code and art. 46 paragraph 1 letters a and b of Law 161/2003, Title III, art. 24 paragraphs 1 and 2 of Law 365/2002.

In fact, the defendants were gathered in an organized criminal group coordinated by T.D.R., whose purpose was the artisanal manufacturing of skimming devices, their installation on ATMs abroad, especially in Italy, the forgery of electronic payment instruments and fraudulent withdrawals from ATMs both in Romania and in Italy, France and Germany.

The electronic part of the skimming equipment was made by the defendants in Bucharest and the mechanical part was made in Craiova, being used both directly by the defendants and sold to other persons outside the organized criminal group.

The damage was Euro 32,265.67 and RON 53,614.82.

The case was sent to be solved by the Court of Dolj.

IV. Under public prosecutor's charge no. 23/D/P/2009 (DIOCT - Ploiești Territorial Division) decided on the arraignment of 14 defendants, out of which 11 in detention under remand for the offences of setting up an organized criminal group, illegal access to information systems, possession of equipment for the forgery of electronic payment instruments, the forgery and circulation of electronic payment instruments, illegal cash withdrawals.

In fact, in the period 2008-2010, the members of the above-mentioned organized criminal group acted on the territory of several EU countries and Australia and, using illegal devices for the copying of electronic data, came into the possession of a significant number of data they recorded on magnetic media of blank cards and made illegal cash withdrawals, the amount of the incurred damage being approximately Euro 600,000.

The group was coordinated by the defendant B.N., one of the lieutenants of I.C. and M.N.C.

The case was solved with the help of the competent judicial authorities in the Czech Republic, the Netherlands, Belgium, Greece, Portugal and Australia.

With a view to recovering the damage incurred by the European and Australian customers, the insurers applied distraint upon property (buildings and plots) and luxury vehicles and significant amounts were thus recovered.

The case was sent to be solved by the Court of Prahova.

#### 4. The practice of Romanian courts of law

According to the decision no. 5288 of September 15th, 2006 of the High Court of Cassation and Justice - The Criminal Section (HCCJ, 2006),

I. the fact of installing on an ATM a device used to read card magnetic bands is an offence of illegal access to a computer system by breaching the security measures stipulated at art. 42 paragraphs (1) and (3) of Law no. 161/2003, since the ATM is a computer system in the meaning of art. 35 paragraph (1) letter a) of this law, and the installation of the device of magnetic band reading breaches the ATM security measures, which aims to ensure the secrecy of the account number and operations performed, as well as the prevention of the fraudulent use of the cards.

II. the deeds of forging electronic payment instruments, such as cards, to possess such false instruments and to withdraw cash with the help thereof are the offence stipulated at art. 24 paragraph (1) of Law no. 365/2002 referring to the forgery of the electronic payment instruments stipulated at art. 24 paragraph (2) of the same law referring to the circulation of false electronic payment instruments or the possession thereof for circulation purposes, since the circulation of false electronic payment instruments may be done by withdrawing cash and it is not necessary to transmit the possession of false electronic payment instruments to other persons.

To motivate its decision, the supreme court retains:

“Criminal sentence no. 21/2006 of the Court of Hunedoara sentenced the defendants C.C., G.M., T.I. and I.F. for offences against the confidentiality and integrity of electronic data and systems stipulated at art. 42 paragraphs (1) and (3) of Law no. 161/2003, for the offence of forging electronic payment instruments stipulated at art. 24 paragraph (1) of Law no. 365/2002, the offences of forging electronic payment instruments stipulated at art. 24 paragraph (2) of Law no. 365/2002, the offence of making fraudulent financial operations as stipulated at art. 27 paragraph (1) of Law no. 365/2002 and the offence of aggravated theft stipulated at art. 208 paragraph (1), art. 209 paragraph (1) letters a) and e), Criminal Code, all with the application of art. 41 paragraph (2), of art. 33 letters a) and b) and of art. 34 paragraph (1) letter b), Criminal Code.

The Court retained that, in May 2005, the defendants C.C., G.M., T.I. and I.F. agreed to use readers of card magnetic bands and a minicamera which they had purchased before in order to obtain the data necessary to clone several cards and to withdraw cash.

For this purpose, in the case of several data, the defendants went to various cities, installed magnetic card readers and the minicamera on several ATMs and obtained the data from the cards used with these ATMs which they downloaded and stored in a computer at the residence of the defendant I.F.

After all data were stored in the computer, the defendant purchased blank cards and stuck on each of them a self-sticking label where they wrote the PIN code or codes previously read by the minicamera, the computer of the defendant I.F. being equipped with an electronic marking device, with the help of which the defendant

G.M. marked the magnetic band of each blank, with the account previously copied corresponding to the PIN written down on the label.

On June 28, July 7, July 8, July 11 and July 21 2005, the defendants withdrew cash with the help of cards cloned from the ATMs of several banks.

Through decision no. 197/A of June 22nd, 2006, the Alba Iulia Court of Appeal, the criminal section, accepted the defendants' appeals, changed the legal category of the offences stipulated at art. 27 paragraph (1) of Law no. 365/2002 and art. 208 paragraph (1), art. 209 paragraph (1) letters a) and e) of the Criminal Code, with the application of art. 41 paragraph (2) of the same code, into one offence stipulated at art. 27 paragraph (1) of Law no. 365/2002, with the application of art. 41 paragraph (2) of the Criminal Code convicted the defendants based on these texts of law and reduced the punishments applied to them.

The appeal declared, among others, by the defendant C.C., where he invoked the cassation file stipulated at art. 385<sup>9</sup> paragraph (1) point 12 Criminal procedure code, is ungrounded.

As regards the request of the defendant C.C. under which he asks for his acquittal based on art. 11 point 2 letter a) as compared to art. 10 paragraph (1) letter d) of the Criminal procedure code, for the offences stipulated at art. 42 paragraphs (1) and (3) of Law no. 161/2003 with the application of art. 41 paragraph (2) of the Criminal code and art. 24 paragraph (2) of Law no. 365/2002, in the variant of the circulation of forged electronic payment instrument, with the application of art. 41 paragraph (2) of the Criminal code, is deemed ungrounded.

The provisions of art. 24 paragraph (1) of Law no. 365/2002 stipulate that the forgery of an electronic payment instrument is sanctioned with imprisonment from 3 to 12 years and the interdiction to enjoy any rights, and art. 24 paragraph (2) of the same law incriminates the circulation, by any means, of forged electronic payment instruments or the possession thereof for circulation purposes.

The objective analysis of these facts reveals that there are two distinct offences, the former on the forgery of electronic payment instruments and the latter, the circulation or possession for circulation purposes of forged electronic payment instruments.

The circulation of electronic payment instruments was possible through cash withdrawals, since it was necessary to transmit the possession of false cards to other persons.

But the deeds of the four defendants who, under the same criminal sentence, forged approximately 200 electronic payment instruments, are deemed an offence of forging electronic payment instruments, as stipulated in art. 24 paragraph (1) of Law no. 365/2002, with the application of art. 41 paragraph (2) of the Criminal code.

The deeds of the defendants who, under the same criminal sentence, held for circulation purposes and used forged electronic payment instruments, meet the elements of the offence of forging electronic payment instruments, as stipulated at art. 24 paragraph (2) of Law no. 365/2002, with the application of art. 41 paragraph (2) of the Criminal code.

The provisions of art. 42 paragraph (1) of the Law no. 161/2003 incriminate the illegal access to a computer system, which is punished with imprisonment from 3 months to 3 years or with a fine, and paragraph (3) of the same article stipulates that, if the deed at paragraph (1) is made by breaching any security measures, the punishment is imprisonment from 3 to 12 years.

It is worth mentioning that the ATM is a means to collect, process and transmit electronic data, represented by the holder's account number, which is stored on level 2 of the black magnetic band.

On the other hand, the installation of the reader of the card magnetic band („skimmer”) in the ATM where the card is inserted and the magnetic band of each card is read, storing the information thus obtained, breached the security measures which aimed to ensure the secrecy of the account number and the operations performed, as well as the defense against usage of such cards by another person for fraudulent purposes.

But the file evidence reveals that the defendants accessed a computer system illegally, breaching thus the security measures.

Therefore, the deeds of the defendants who, under the same criminal sentence, installed on various ATMs a device for reading the card magnetic band, as well as a minicamera, accessing thus illegally, through breach of the security measures, the ATMs which are an electronic system under the law, meet the elements of the offence of confidentiality and integrity of electronic data and systems, as stipulated at art. 42 paragraphs (1) and (3) of Law no. 161/2003, with the application of art. 41 paragraph (2) of the Criminal code.

Since, in this case, the deeds of the defendant C.C. meet the elements of the offences stipulated at art. 42 paragraphs (1) and (3) of Law no. 161/2003, with the application of art. 41 paragraph (2) of the Criminal code and art. 24 paragraph (2) of the Law no. 365/2002 on e-commerce in the variant of the circulation of forged electronic payment instruments, with the application of art. 41 paragraph (2) of the Criminal code, there are no grounds for his acquittal in this meaning”.

For these reasons, the defendant's appeal was rejected.

## **5. Analysis of the infringements related to the issuing and use of electronic payment instruments and the use of identity data for financial operations, both applying and to be enforced**

### **A. Forgery of electronic payment instruments**

*According to Article 24 („Forgery of electronic payment instruments”) of the Romanian Law no. 365/2002,*

„(1) The forgery of electronic payment instruments shall be punished with imprisonment from 3 to 12 years and the banning of rights.

(2) The same punishment shall be applied for issuing on the market, in any way, of forged electronic payment instruments or owning them in order to put them into circulation.

(3) The punishment shall be imprisonment from 5 to 15 years and the prohibition of rights if the facts mentioned on paragraph (1) and (2) are carried out by a person who, by virtue of his/her job:

a) performs technical operations necessary to issue electronic payments instruments or to perform the

types of operations mentioned on Article 1 point 10; or

b) has access to the security mechanisms involved in issuing or using electronic payment instruments;

or

c) has access to the identification data or the security mechanisms involved in carrying out the types of operations mentioned on Article 1 point 10.

(4) Any attempt shall be punished”.

***According to Article 311*** „The forgery of credit titles or payment instruments” ***of the future Criminal Code***

“(1) The forgery of credit titles, titles or instruments used to make payments or any other similar titles and values is punished with imprisonment from 2 to 7 years and the interdiction to exercise any rights.

(2) If the deed stipulated at paragraph (1) concerns an electronic payment instrument, the punishment is imprisonment from 3 to 10 years and the interdiction to exercise any rights.

(3) Attempts are also punished”.

## **B. Owning equipment for the forgery of electronic payment instruments**

***According to Article 25*** („Owning equipment to forge electronic payment instruments”) ***of the Romanian Law no. 365/2002***,

„The manufacturing or the owning of equipment, including hardware and software, to be used to forge electronic payment instruments shall be punished by imprisonment from 6 months to 5 years”.

***According to Article 314*** (“Holding instruments for the forgery of values”) ***of the future Criminal Code***

“(1) The manufacturing, reception, possession or transmission of instruments or materials for the purpose of forging the values or titles stipulated at art. 310, art. 311 paragraph (1) and art. 312 are punished with imprisonment from one to 5 years.

(2) The manufacturing, reception, possession or transmission of equipments, including hardware and software, for the purpose of forging electronic payment instruments are punished with imprisonment from 2 to 7 years.

(3) The person who, after committing any of the deeds stipulated at paragraph (1) or (2), before the discovery thereof and the beginning the forgery, hands over the possessed instruments or materials to the judicial authorities or informs such authorities on the existence thereof, is not punished”.

### **C. False statements in view of issuing or using electronic payment instruments**

*According to Article 26* („False statements in view of issuing or using electronic payment instruments”) *of the Romanian Law no. 365/2002*,

„The inaccurate declaration, made by a bank, credit or financial institution or any other legal person authorised, under the conditions of the law, to issue electronic payment instruments or to accept the types of operations mentioned by Article 1 point 10, in order to issue or use an electronic payment instrument, for himself/herself or another, when, according to the law or the circumstances, the declaration serves to issue or use that instrument, shall be punished with imprisonment from 3 months to 2 years or with a fine”.

*According to Article 326* (“Misrepresentation”) *of the future Criminal Code*

“Misrepresentation of the truth made to a person such as those stipulated at art. 175 or to a unit where such person performs his activity with a view to producing a legal consequence, for oneself or for another, when, according to the law, the statement helps produce the said consequence, is punished with imprisonment from 3 months to 2 years or with a fine”.

### **D. Performing financial operations fraudulently**

*According to Article 27* („Performing financial operations fraudulently”) *of the Romanian Law no. 365/2002*,

„(1) The carrying out of one of the operations provided in Article 1, point 10, by using an electronic payment instrument, including the identification data that allow its use, without the consent of the owner of the respective instrument, shall be punished with imprisonment with 1 to 12 years.

(2) The same punishment shall be imposed upon performing one of the operations mentioned in Article 1, point 10, to the unauthorised use of any identification data or by using false identification data.

(3) The same punishment shall be imposed to the unauthorised use, by another person of any identification data in order to carry out any of the operations mentioned in Article 1, point 10.

(4) The punishment shall be imprisonment from 3 to 15 years and the prohibition of the rights if the facts mentioned in paragraphs (1) - (3) shall be carried out by a person who, by virtue of his/her job:

a) performs technical operations necessary to issue electronic payment instruments or to perform the types of operations mentioned on Article 1 point 10;

or

b) has access to the security mechanisms involved in issuing or using electronic payment instruments;

or

c) has access to the identification data or the security mechanisms involved in carrying out the types of operations mentioned on Article 1 point 10.

(5) Any attempt shall be punished”.

***According to Article 250*** (“Fraudulent financial operations”) ***of the future Criminal Code***

“(1) The performance of any operation of cash withdrawal, uploading or downloading an electronic instrument or fund transfer through the use, without the holder’s approval, of an electronic payment instrument or identification data is punished with imprisonment from 2 to 7 years.

(2) The same punishment is applied to any of the operations stipulated at paragraph (1), for the illegal use of identification data or false identification data.

(3) The unauthorized transmission to another person of any identification data with a view to performing any of the operations mentioned in paragraph (1) is punished with imprisonment from one to 5 years”.

***According to Article 313*** (“The circulation of forged values”) ***of the future Criminal Code***

“(1) The circulation of forged values stipulated at art. 310-312, as well as the reception, possession or transmission thereof for circulation purposes is sanctioned with the punishment stipulated by the law for the offence of forgery.

(2) The offence of using the forged values mentioned at art. 310-312 made by the author or a participant to the forgery offence is sanctioned with the punishment stipulated by the law for the offence of forgery.

(3) The recirculation of any of the values stipulated at art. 310-312 by a person who noted, after entering the possession thereof, that it is forged, is sanctioned with the punishment stipulated by the law for the offence of forgery, whose special limits are reduced by half.

(4) Attempts are also punished”.

**E. Accepting financial operations performed fraudulently**

***According to Article 28*** („Accepting financial operations performed fraudulently”) ***of the Romanian Law no. 365/2002***,

„(1) Accepting any of the operations mentioned in Article 1, point 10, knowing that it is performed by using a forged electronic payment instrument or using an electronic payment instrument without the consent of the owner, shall be punished with imprisonment from 1 to 12 years.

(2) The same punishment shall be given for accepting one of the operations mentioned in Article 1, point 10, knowing that it is performed by the unauthorised use of any identification data or by using unreal identification data.

(3) Any attempt shall be punished”.

***According to Article 251*** (“Acceptance of fraudulent financial operations”) ***of the future Criminal Code***

“(1) The acceptance of an operation of cash withdrawal, uploading or downloading an electronic payment instrument or fund transfer, knowing that it is

carried out through the use of an electronic payment instrument forged or used without the holder's consent, is punished with imprisonment from one to 5 years.

(2) The same punishment applies to the acceptance of any of the operations stipulated in paragraph (1), knowing that it is carried out through the unauthorized use of any identification data or the use of false identification data”.

### Conclusions

As can be noted, such incrimination provisions stipulated in the special law have been processed more or less faithfully as well in the future Romanian Criminal Code.

The core problem is not settled yet, since the existence of a legal framework is not capable to ensure what is needed, namely the confidentiality of personal data, the safety of transactions and the increase of confidence in electronic payment instruments and e-commerce.

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## MANAGING IT INFRASTRUCTURE FOR INFORMATION SOCIETY DEVELOPMENT. THE ALBANIAN CASE

Ermelinda Kordha,  
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### Abstract

*Information has become an important element without which society cannot achieve its objectives. The term “information society” is increasingly used nowadays, instead of the terms “production” or “consumption society”, because of the importance and necessity of information in today's dynamic environment. Since IT became commercial in the early 1990s, it has diffused rapidly in developed countries but generally slowly in developing ones. The ICT development requires preparation, largely in the form of investment in network infrastructure, skills and regulatory frameworks. So the physical infrastructure of information systems is one of the important components of the information society.*

*The aim of this paper is to identify ICT infrastructure indicator and to find what factors Albania need to take in consideration for managing ICT infrastructure to compare with other countries for building an information society. Many technological changes have brought new developments in IT infrastructure, such as data and digitalization, packet switching and broadband networks, as well as increased role of wireless and Internet. Albania, as a developing country have tried do benefit in maximum from these developments, focusing in the IT infrastructure management as one of the elements for building information society.*

**Keywords:** ICT, physical infrastructure, e-readiness, IT services.

**JEL Classification:** O33, L86

In many industries nowadays, the existence of an organization depends largely on the effective application of information and communication technology (ICT). Organizations are increasingly seeking to apply information and communication technology to support existing business, and to create a competitive advantage. IT also significantly changes corporate behaviour and organisation structure, which should increase productivity (Brynjolfsson and Hitt, 2000).

Since these trends happen to bring visible benefits, ICT are more and more used by individuals and companies. Every month, a lot more people become mobile-phone users, for example, and the phones themselves are increasingly powerful data devices. The Internet—now a ubiquitous platform for commerce, entertainment and

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communication—has generated a thriving industry. Global monthly Internet traffic in 2010 is two-thirds higher than one year ago, according to Cisco, a network equipment provider. The capacity of the world's international optical fiber cables—which carry all this traffic—doubles every 18 months, based on estimates by Telegraphy, a telecommunications research firm. This demand is being driven by increasingly sophisticated usage of Internet-enabled services: video accounts for more than 50% of global Internet traffic today, and the data generated by Facebook, a social networking site, is estimated to surpass that of all the world's e-mail.

These figures show how the today society has realized the benefits of using ICT and their importance, and for that reason, begins to use them more and more, becoming so an information society. Information society refers to a society in which the creation, dissemination and manipulation of information has become the most significant economic and cultural activity. Along with the information society is born the information economy. It is the economy in which knowledge is the main source of value.

Republic of Albania, in its efforts to build a sustainable economic growth, evaluates the impact of information society, considering ICT as an essential tool for its construction. Despite the challenges that are facing Albania and other developing countries, computer technologies and other ICT have a tremendous potential to help overcome them. For the purpose of building an information society, ICT infrastructure is one of the important factors to be considered. So, this paper would try to identify the ICT infrastructure state of the art in Albania, as an important indicator of Information society. To do so, the research questions raised and tried to be answered in each paragraph below, are:

1. What is the meaning of ICT infrastructure and its importance for the information society?
2. How links the concept of ICT infrastructure with ICT services?
3. What are the developments in ICT infrastructure which help the emergence of new services and the developing of existing ones?
4. What is the state of the art of ICT infrastructure indicators in Albania, using the service data?
5. How does ICT infrastructure in Albania compare with other countries similar in economic and development conditions?

### ***1 Information society and information technology infrastructure***

Information has become an important element without which society cannot achieve its objectives. The term “information society” is increasingly used nowadays, instead of the terms “production” or “consumption society”, because of the importance and necessity of information in today's dynamic environment. Western countries are convinced that the information society will result in economic and social benefits (Audenhove 2000). Organisation for Economic Cooperation and Development, notes that information infrastructures are expected to stimulate economic growth, increase productivity, create jobs, and improve on the quality of

life( Gichoya 2005) . National economies are increasingly tightly tied together globally by ultra high–speed information networks (Jun-Hwan Kim 2000). Heeks (2002) observes that there is a big difference between ICT implementation and use between developed and developing countries. However, Westrup (2002) observes that similarities can also be expected. The difference is how problems are addressed in different countries.

It can be argued that, with their adequate resources and advanced technology, the Western countries have an easier way of implementing ICT projects than DCs. Most developing countries are characterised by limited computer applications in the public sector, inadequate infrastructure and shortage of skilled manpower (Odedra 1993).

Since IT became commercial in the early 1990s, it has diffused rapidly in developed countries but generally slowly in developing ones. This led to a widening IT gap, the so–called *digital divide* between the two groups. The IT gap among developing countries is also increasing.

To overcome these problems, governments of developing countries are focusing their efforts in planning and implementing national ICT strategies to build the information society, in order to benefit from using ICT effectively in sectors of strategic importance to the economy. The ICT development, on the other hand requires preparation, largely in the form of investment in network infrastructure, skills and regulatory frameworks. The notion of preparation lent itself to the term “e-readiness”. It shows the extent to which, a given society, social group or organization, is aware, customized and prepared to use new information and communication technologies. E-readiness was generally defined as the extent of readiness in access to network infrastructures and technologies. It can also be seen as the degree to which a society is prepared to participate in the digital economy with the underlying concept that the digital economy can help to build a better society.

However, e-Readiness can be a relative concept and it could be defined differently depending on each country’s priorities and perspective. In most countries including developing countries, it goes beyond this generic definition to include various other factors. This evolves from the importance given to basic infrastructures in the eighties and nineties to more emphasis on the socio-economic dimensions of technologies today (Avegrou and Walsh 2000).

ICT implementation success affects ICT facilities quality and information system quality (Westrup 2002). In turn ICT facilities quality and information systems quality affect the perceived benefits. An ICT project implementation can only be perceived to have succeeded if the perceived benefits are realised. ICT facilities quality can be assessed after careful evaluation of the infrastructure to determine technical functionality.

From this perspective, the basic infrastructure as well as the related services, are object of the first assessments of the e-readiness in different countries. Another reason is that Receiving information requires information producers (e.g. data services and consulting), information disseminators, physical infrastructures to

convey information, equipment (e.g. PCs and monitors) to display it, literacy of recipients to read/understand it and ultimate application of the information to productive activities (Lihtenberg F.R. 1995). So the physical infrastructure of information systems is one of the important components of the information society. Over the last five years, the DC governments have implemented some capital investment towards set up and installation of ICT infrastructure. The revolution in IT has itself been brought forth by a company of innovations in telecommunications and informatics, made possible by cheaper new lightweight materials (e.g. optical fibres) transmitting information faster. Information flows faster and less expensively throughout the globe, but it will take substantial time to reach full digitalisation given the youth of IT.

### ***1.1 Information technology Infrastructure meaning and components***

Information technology infrastructure underpins the distributed operational and administrative computing environment. Hidden from the application-based world of end-users, technology infrastructure encompasses the unseen realm of *protocols, networks, and middleware* that bind the computing enterprise together and facilitate efficient data flows. Yet information technology infrastructure involves more than just the mechanics of data systems; it also includes people providing support and services. Information technology infrastructure is a distributed technical framework in support of user and enterprise computing.

Information technology infrastructure should be seen in both public and firm level.

A firm's information technology portfolio is its total investment in computing and communications technology. The IT portfolio thus includes hardware, software, telecommunications, electronically stored data, devices to collect and represent that data, and the people who provide IT services.

The foundation of the information technology portfolio is the firm's longer term information technology infrastructure, which in turn is linked to external industry-based infrastructures such as bank payments systems, airline reservations systems, and automotive industry supply chain networks, and to public infrastructures such as the Internet and telecommunications networks. The combination of the internal and external information technology infrastructures make up the firm's information technology infrastructure (Brancheau et al, 1996). The technology components are converted into useful *shared services* by a human information technology infrastructure composed of knowledge, skills, standards, and experience. The services notion of information technology infrastructure is very powerful. It also provides more certainty to the provider as to their responsibilities, and allows for more precise planning. The infrastructure services often include telecommunication network services, management and provision of large-scale computing (such as servers or mainframes), management of shared customer databases, research and development expertise aimed at identifying the usefulness of emerging technologies to the business, and a firm-wide intranet. These emerging

technologies are the bases for bettering ICT infrastructure and developing new services which in turn will help in building better information systems and networks in an information society. But let us take a deeper look in these new developments.

## ***2 Technological changes as incentives for new ICT services and Infrastructure development***

ICT technology is continuing to develop rapidly. Five key areas of technological change are having a significant effect on the structure of ICT markets, and will continue to do so for the foreseeable future. They are:

### ***2.1 The shift from analogue to digital***

Human beings use analog techniques for listening to and viewing content. Historically, technologies for communication have also used analog signals (for example, conventional telephony, music cassettes and records). Substantial operating efficiencies accrue when a network can aggregate traffic going in the same direction, and transport it all over a single “pipe”. Modern digital networks can simultaneously transport bit streams representing many different types of communication (such as data, text, audio, video, and voice).

### ***2.2 Data replaces voice***

While voice services are still dominant in revenue terms (in many cases voice accounts for more than 80 percent of company revenues), the importance of voice compared to other information services appears to be declining. The need to replace voice revenue is behind the drive for innovation in data services (Brown 2010). Demand for information services and data transmission is continuing to grow steadily. In addition to digital services, much voice traffic is now digitized, for at least part of the transmission circuit. The shift from voice to data has important consequences for network design.

### ***2.3 Packet switching replaces circuit switching and new waves in networking***

In response to growing demand for data and digital voice, ICT networks are shifting from circuit switching to packet switching. Circuit switching does not work well for data communications such as Internet traffic, because it cannot handle bursts of high throughput, and cannot provide switching and routing for other users when the initial parties have a temporary pause in communications. Configuring a voice line for Internet access ties up a line for the duration of the call even though the data communications requirements may make up only a small portion of the total time.

Packet switching is a superior, more efficient, way to manage data traffic (Gitchoya 2004). The network breaks traffic down into small packets that can be routed over any available network link. The digital nature of packet switching means that a single network can handle a variety of different packet-based services including voice, data, text, images, sound, and video. Optical circuit switching ... offers significant advantages in the core of the network (Dan et al 2009). A further consequence of the shift from voice to data services is a shift from narrowband

networks to broadband networks. Data services typically require broadband networks. Broadband networks are able to transmit more information, faster.

#### ***2.4 Intelligence Migrates from the Core to the Edge***

In conventional circuit-switched telephone networks the “intelligence” is located centrally on telephone company premises. User devices are generally quite simple (for example telephone handsets). The hierarchy of switches in the telephone network provides the intelligence to route calls, generate billing information, and provide additional services (such as caller identification, voice mail, and so on).

Stoica and Zhang (Stoica 1999) provide an investigation of provision of grades of service using edge routers and core routers. Centralized intelligence is efficient where most users have similar requirements, as in a telephone network. However, this approach offers limited opportunities to customize services, and optimize the network, for individual user requirements. The architecture of the Internet moves intelligence from the core network to users operating at the edges of the network.

#### ***2.5 The Increasing Role of Wireless and Internet***

Consumers have readily and quickly embraced wireless telecommunications. Wireless service removes the need to be “tethered” to the network, and provides greater mobility for users. Wireless connections are often easier to install and can involve lower capital expenditure than wired ones. Wireless networking is a particularly interesting development because it provides

community groups, municipalities and individuals with a relatively simple and affordable

mechanism for internet service delivery (Middleton et al. 2006). Wireless local area networks (WLANs) can be established using unlicensed spectrum to share internet connectivity (Galperin, 2005; Lehr & McKnight, 2003; Mackenzie, 2005; Sawhney, 2003). In many rural and remote areas, wireless provides a cost-effective alternative for achieving universal service. Some of the traffic growth in wireless networks is due to customer migration from wireline networks, (rather than from new telecommunications customers), as wireless and mobile services become increasingly effective substitutes for wireless services.

The Internet provides a platform for new information services, and an alternative delivery mechanism for existing services. Initially a medium for traffic associated with research and education, the Internet now delivers a wide range of information services.

These new technological developments have changed the way ICT infrastructure services are offered, contributing so in a significant development in overall ICT infrastructure. So, new uses of telecommunication services are strongly associated with the introduction and diffusion of these new technologies (Antonelli 1996) on the other hand new innovative uses of telecommunication services based on an array of innovations introduced since the mid-eighties, have made an important step in the evolution of ICT toward a technological system (Antonelli 1996).

So we can use the ICT services as a good indicator to show what technological change have brought and will bring in regard of ICT infrastructure, which in turn will help in building Information society.

### ***3 ICT infrastructure in Albania, problems and opportunities compared with the region***

Actually, some of the countries in South East Europe (SEE), a group of countries where Albania is part, are not subject to a consistent and systematic evaluation of e-readiness, which is one of the most important indicators for the existence of information society in a country. There is no government institution actually committed to this process. Some external evaluations such as the Global Report on Information Technology, which covers 1000 states, covers only Croatia, Macedonia and Serbia from the group of SEE, but there are still no data for Albania. Also, the Report of e-Readiness rankings of 2008 of “The Economist” does not include any of the SEE countries, even Albania.

The status report of ICT sector performed by eSEE initiative, established by the Special Coordinator of the Stability Pact for Southeast Europe, supported by UNDP, also generates data and analyses about the existing policies and strategies that affect among other things the ICT infrastructure services, while ICT infrastructure is one of the core elements of this evaluation.

#### ***3.1 ICT infrastructure and services***

Basic infrastructure that must be evaluated includes:

- Fixed telephony
- Mobile telephony and networks
- Internet access

A comparison with the same indicators in the region is shown in the table 1

Indicator	Albania	The lowest value	Country	The highest value	Country
Fix telephony penetration	39%	26,90%	Kosova	>95%	BhZ, Serb, KRO,
Number of operators in mobile networks	3	2	te tjeret	3	BhZ,
Number of national ISPs	25	2	M ZI	70	Moldavia

*Tab. 1 ICT infrastructure indicators in Albania, in comparison with SEE countries*

It is seen that the general state of Albania's fixed telephony is not good compared with other countries. Thus the level of penetration is slightly greater than the country ranked last in the area of SEE, Kosovo, and is far from the countries with a very good penetration level of over 95% of the population with access to fixed telephony (Serbia, Croatia, Macedonia, BHZ). Main lines penetration is around 9% which is the lowest in the region.

While the indicator of the spread of mobile telephony has more or less the same development, with 2-3 operators who display almost the same degree of competition and, therefore, will have the same spread of infrastructure between countries.

Albania has a considerable number of ISPs taking into account the small area of the country, compared with Moldova, which has the greatest number. On the other hand there are countries which are worse than Albania, as Montenegro about competition in this subsector, which will promote a better distribution of ICT infrastructure.

Even though, data do not show anything about the quality of services. Fixed phone operator is in a monopolistic situation and quality of services varies. Mobile phone networks and Internet service providers are in expansion throughout the area.

A typical situation is that the telephone operators mainly state-owned, control also the largest ISPs, which often means that these ISPs have better position on the use of infrastructure. This market is still not well developed; the prices are relatively high, so very often the situation represents a major obstacle to Internet penetration.

In relation to Internet access and use, some data are found according to SouthEastern Europe Telecommunications & Informatics Research Institute (INA). Internet hosts in the country are 856. Number of domain names is 830. Dial up subscribers are 25 000, while DSL are only 2100, reflecting so not a good status of quality in access to networks and Internet. The Internet subscribers in the data of 2007 are 27 780 (There are no data that can show the growth of this indicator), while the Internet Users can be compared through Global Information Technology Report (2007), tab 2.

Country	Internet users /1000 persons	Mbps / 1000 persons
Albania	6010	0
BHZ	20640	0.240
Croatia	31880	3.190
FYrom	7860	0
Moldavia	9520	0.42
Serbia/Mzi	18610	0.87
Danimark	52550	348.210
USA	63000	33.060

*Tab 2 Comparison of countries according to Internet users*

Source:<http://www.weforum.org/en/initiatives/gcp/Global%20Information%20Technology%20Report/index.htm>

The analyses continues with some figures that show the growth of ICT indicators in time. Even though some data are missing, and it is a problem with the statistics in almost all SEE countries, the table 3 shows this trend.

Years	2002	2003	2004	2005	2006	2007	2008
Total investments in Infrastructure by companies in telecommunications					337.666	1.622.203	1.322.202
Number of telephone subscribers ( fixed lines)	197.496	228.858	256.000	231.264	238.141	259.637	295.146
Number of mobile phone subscribers	370.000	800.000	1.150.000	1.259.200	1.530.000	1.769.100	2.095.000
Number of leased lines					515	811	946
Number of Internet users	2500	30000	37500	46900	58600	75000	471000

*Tab. 3 The growth of ICT infrastructure indicators in years*

### Conclusions and further research opportunities

Different authors show the importance of ICT infrastructure in building information societies. But the ICT infrastructure depends on technological changes which in the last decades have been numerous and significant. They have helped in emerging of new services and developing existing ones, which in turn can help in bettering ICT infrastructure. The paper gathered secondary data from different sources to show the ICT infrastructure indicator for information society in Albania, a developing country. The comparative analyses with other SEE countries showed that Albania stays behind other countries, in most of the indicators, such as Internet users and Internet use (Mbps/1000), fixed telephony penetration or competition in telecommunications ( fixed and mobile). Number of ISPs in fact is in an average level compared to others. While most of market indicators for ICT infrastructure are increased, while investment in infrastructure have decreased.

Further research must be focused on the investigation of relationships between the market evolution of services and their technology infrastructure on one side and their use of the new technologies identified in the literature review. IT services, competition, innovation and investment in infrastructure are factors that must be considered further from in depth quantitative analyses.

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**A PRAXEOLOGICAL AND ETHICAL CHECK-IN FOR THE  
ALLEGED VIRTUES IN STATESMANSHIP**Octavian-Dragomir Jora  
Mihaela Iacob\***Abstract**

*This paper starts from the faith and conviction that the intellectual adventured in the social sciences who is not supported by a logically consistent and naturally realistic (political) “philosophy”, a logically consistent and naturally realistic “ethics”, will enter “unarmed” the arena of scientific knowledge, while he will enter, if interested, the political arena with an entire “rack” of vicious judgments. If praxeology (the pure logic of human action, as developed by L. Von Mises, the “dean” of the modern Austrian School), as the master-matrix of economics, helps us identify “absurd virtues” (that is virtues against the nature and logic of human action), property ethics (as the arguably sole rational ethics, passing simultaneously the Kantian universalisation test and serving to orderly frame the work of society, following the Austrian-libertarian Rothbardian phylogeny acquis) might help us test the alleged plenitude of otherwise good-oriented actions. The ethical test may help to discern between all virtue’s work and its fake work: if “virtues” (e.g., those claimed by the political healers of nations – egalitarianism & Co.) fail the minimal ethical test, meaning if the concrete means used for their exercise are inconsistent comparing to the principle of non-aggression, of non-initiation of violence against a fellow in the City, defined by his own person and property, then, immediately, the alleged “virtue”, purportedly served by it, becomes incomplete, and the moral supporting it becomes lame. If the otherwise praxeologically meaningful virtue of altruism – conceivable, for instance, as democratic charity for those in great need – is preceded by seizure of private property, it cannot remain a true virtue. So, the institutions of political power cannot per se be reliably used for virtue related goals. Those included in the logics of State’s political apparatus, either having been elected as leaders, declared heroes, or proclaimed good intellectuals, cannot be systematically deemed candidates for becoming workers of all virtue, or strong guides, or true masters, in their wish, although righteous and generous, to make the nations, as, once, Benjamin Franklin sincerely told us, “less corrupt and less vicious”.*

**Keywords:** morality, rational ethics, economics, politics**JEL Classification:** A11, A13, B53, K11

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**Methodological prolegomena and paper's thesis. *The minimum justice first, and only then the entire virtue***

Among the multiplicity of epistemological treatments applied to the *sciences-about-man* – the “social” ones, in other words, the sciences different from those analyzing his physical nature –, there is a happy singularity named *praxeology*. This *general theory of human action*<sup>1</sup>, which includes *economics* just as a subset<sup>2</sup>, as conceived by Ludwig von Mises, regained the trust in the capacity of human reason and judgment to analyze the laws governing the personal action and interactions, that is what we call “social phenomena”. The “human action” became a fundamental axiom for a theoretical construction having the same infallibility as the Aristotelian logics<sup>3</sup>. *Homo agens* had the chance to be taken out of the historical pictures (where historicism kept it in refuge) and out of the social engineering laboratories (where positivism, unfortunately still present, arrested it), and be studied under its natural *onto-logical* structure. And recovering reason did not stop there.

While the *economic theory* (as subset of *praxeology*) was gaining its philosophical and methodological foundations thanks to Mises – brilliant ones despite the periphery position granted to them by the *academic democracy* of *mainstream economics* – the same Mises, as a strict “value free” economist, was going, on the other hand, to exclude, right from the start, the possibility of an *objective ethical theory*, anchored in *praxeology* and having its epistemic strength. However, *misesian praxeology* was not going to be totally useless for ethics: it remained extremely useful for deconstructing fake ethical and moral positions (Rothbard 2009, pp. 1297-1327). The idea would be that, if we may prove that X is an impossible *praxeological* goal, and, by consequence, an absurd goal, it results that any attempt to approach X becomes also absurd (see the attempt to have “morality by force” – a contradiction in terms – or the “egalitarian” goals – contradictory to *human nature* itself). Murray N. Rothbard, a disciple of Mises who followed the *praxeological* line, but also who criticized the limits of the *Misesian utilitarian defence*<sup>4</sup> of the voluntary social cooperation, freedom

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<sup>1</sup> On *praxeology*, see extensive treatments “from the source” in Mises (1998; 1981; 1978). Other extremely valuable insights, in Rothbard (1997, pp. 58-77), Hoppe (1995), Hülsmann (2003, pp. ix-iv).

<sup>2</sup> “*Praxeology* handles it by a division of labour between the theory of value and the theory of the market economy. The latter one deals with phenomena such as profit and loss that can only come into being in a context in which economic calculation is possible. The former deals with human decision-making in general, whether aided or unaided by calculus” (Hülsmann 2003, p. xxv).

<sup>3</sup> „The truth of this cognition [that man acts] is as self-evident and as indispensable for the human mind as is the distinction between A and non-A” (Mises 1978, p. 6).

<sup>4</sup> Mises’ standing in favour of freedom and property is however a *utilitarian* one. Implicitly, the case for liberty and property, in all great economic works written by Mises, could be synthesized as follows: private property is the foundation for meaningful economic calculation in terms of monetary prices emerging from contracts between property owners, the calculation is the basis of the rational allocation of resources in society, and the rational allocation of resources is the foundation for general welfare; ergo, private property is the foundation for general welfare, ergo, property is a good social institution, ergo, everything that comes against it, is not. An interesting debate about absolutism in economics and relativism in utilitarian ethics, in Mises (1960) and in Rothbard’s reply (1960).

and property, acknowledged the necessity of an ethical system to round out the “value free” economic science. Drawing on the natural rights theory, as it was formulated by the Scholastics and, especially, on the work of John Locke, Rothbard (2002a, pp. 21-45; 1998, pp. 28-157) built-up a *scientific* ethical system – the libertarian one –, based on the principles of *self-ownership* and, respectively, *original appropriation of unowned natural resources through homesteading*. Moreover, he demonstrated that an ethical construction built upon opposite premises is completely unable to be considered an *ethical system equally applicable to all individuals as human beings*, since following it *ad litteram* would suppose, at the limit, the extinction of the species (that being in contradiction to the very purpose of an ethical standard – to guide the human *life*<sup>5</sup>).

The above digression is important for our thesis. We are going to propose hereinafter *an ethical test applied to (allegedly) exercising virtue*.

First of all, we will distinguish between *ethics* and *morality*, in other words, between *justice* and *virtue*<sup>6</sup>. We will name *ethical* behaviour “the limited meaning of justice” – “don’t take the other’s right” –, meaning non-aggression and the “sacred” respect of private property, and *moral* or *virtuous* behaviour “the comprehensive meaning of justice”, respectively – “work all virtue”. When saying *virtue* we will choose the meaning attached to it in the Christian tradition, pointing that, without any other further inquiry in “comparative moral religious systems”, there is an evident *common denominator* in moral traditions across cultures, isolating a common core of virtues – e.g., in the following discussion, we will often speak about the universal virtue of altruism.

If praxeology helps us identify “absurd virtues” (that is virtues against the nature and logic of human action), *property ethics* might help us *test* the alleged *plenitude* of otherwise good-oriented actions. The *ethical test* may help to discern between *all virtue’s work* and *its fake work*: if “virtues” (e.g., those claimed by the political healers of nations) fail the minimal ethical test, meaning if the concrete means used for their exercise are inconsistent comparing to the *principle of non-aggression*, of non-initiation of violence against a fellow in the City, defined by his own person and property, *then*, immediately, the alleged “virtue”, purportedly served by it, becomes incomplete, and the moral supporting it becomes lame. If the otherwise praxeologically meaningful virtue of *altruism* – *conceivable, for instance, as democratic charity for those in great need* – is preceded by seizure of private property, it cannot remain a true virtue. Actually, our pleading is oriented towards setting forth that the institutions of *political power* cannot *per se* be reliably used for virtue related goals. Those who are included in the logics of State’s political apparatus, either having been elected as leaders, declared heroes, or proclaimed *good* intellectuals, cannot be systematically deemed candidates for

<sup>5</sup> If using a *resource* (human body or any other physical thing) would require the prior consent of a *second comer* whose consent would depend, on its turn, on the consent of a third comer and so forth we would be stuck in non-action and finally in death. Moreover, for an intellectually sane person, such a position cannot be argued at all because in the absence of property over your own body or things needed to keep it alive, there cannot take place any *argumentation* at all (Hoppe 1989: ch. 7; 1993: ch. 10).

<sup>6</sup> On this distinction, common in the *libertarian* line of thought, see Block (1994, pp. 119-128).

becoming workers of all virtue, or strong guides or true masters in their wish, although righteous and generous, “to make”, as once Benjamin Franklin told us, “the nations less corrupt and less vicious”.

### About good as “truth of the justice” both in scientific area, as well as in “political agora”

This paper starts from the faith and conviction that *the intellectual adventured in the social sciences* who is not supported by a logically consistent and naturally realistic (political) “philosophy”, a logically consistent and naturally realistic “ethics”, will enter “unarmed” the arena of scientific knowledge, while he will enter, if interested, the political arena with an entire “rack” of *vicious* judgments. Preparing the discussion about which virtue is worth validate and wish, we will summarise the announced two investigative levels connected by a logical order of *inclusion*: ethical level and moral level. Based on this relationship, *ethics/justice* becomes a tester for *morality*.

I. Just/ethical level: The ethics of liberty and private property succeeds to give a rational answer to the question “when is physical violence *allowed* from a social point of view? (*Not advisable! Forgiveness still exists.*)”. The answer is: only for legitimate defence of the person or the property against physical aggression, or for the purpose of obtaining due remedies further to such aggression, and only from the aggressor, and only for the victim or their agents. The ethics of non-aggression, freedom and property is *the only ethical position which may be universalised and which is non-contradictory when applied*.

II. Moral level: The actions are here divided into *moral (virtuous)* and *immoral (vicious; non-virtuous)*. The essential dissimilarity with ethical conduct occurs due to the fact that the moral level supposes some virtually *unlimited* means to work virtue (defined from the religion or philosophy point of view, in accordance with a personal *Weltanschauung* as assumed or accepted by the community), possibilities that go from the minimum threshold assigned by the ethical level (do not transgress your fellow’s freedom and legal area – in other words, the legitimate private property) up to the maximum limit of self sacrifice for the other’s sake. Immorality includes in-ethics, but is more comprehensive. The differential between non-virtue and aggression may be strictly sanctioned by non-aggressive opprobrium (e.g., the indecency manifested within the strict limits of the *property* of the indecent person deserves no more than “blame & shame”).

Two mentions (see Topan 2009, pp. 222-6): (a) a virtue<sup>7</sup> which would breach the non-aggression principle becomes self-contradictory because it ruins exactly its own completeness. (b) given the *unlimited* nature of virtue, of the moral facts in the most comprehensive meaning, to include some moral elements at the ethical level would

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<sup>7</sup> Taking into account the inner wish towards good – “the fulfilment of being” (Wild *apud* Rothbard 1998, p. 13) –, we may say that *virtue* is just one. But because life’s necessities and the human relations are numerous and various, it is natural that also *virtue*, which guides the human life’s necessities and relations towards good, takes several appearances and thus we *pluralise* the aspects under which we imagine it.

be equivalent to giving a blank check to those invoking the said principle on all those they had in view as not enough virtuous and “therefore” punishable. If the entire *virtue* becomes *duty* (to be extracted even by force if necessary) towards third parties, it may reasonably bring the question of claiming the supreme sacrifice of someone for our sake. To generalise this possibility results in unimaginable consequences for the right order (which would be anything but order). As – like a world in which the presumption of guilt would be valid instead of the presumption of innocence – everybody would be permanently guilty. Because who would pass and elude brilliantly the test of having done “everything” under a given circumstance?

Another piece of attention should be paid to certain mind-twisting cases against “lack of virtue”. For instance, is *lie* a non-virtue? There is a relative agreement according to which lie is invariably *immoral*. It is immoral to deceive. But a lie that limits an evil which someone endures undeservedly it is not to be blamed. For instance, a lie used against an aggressor in order to alter their plans. In front of evil every defence that is proportionate and thoughtfully targeted is allowed. Steinhardt tells in the *Diary of Happiness*, remembering an interrogation he underwent in a Romanian prison during the philo-Stalinist era:

“If I admit it was broken [a glass – n.n.], I tell the truth (the objective truth) and, once I utter the truth I must continue and admit everything and also that Nego [a cell mate – n.n.] has spoken with hate. [...] Lie. A skilful and peaceful lie. That’s what remains for me [...] be a clever peasant and a deceitful suburban man. Calm and firm. At their height [of the torturers – n.n.] [...] Not higher. I don’t remember, and that’s that. And I don’t know. And I don’t say a word. And I become mute. I don’t admit. I don’t give up. I don’t know, man.”

Two more ideas (Topan 2009, pp. 222-6): (a) who brings into question the conflicts settlement in this world of scarcity, brings into question implicitly the property, either one admits so or not. Then, (b) Rothbard or Hoppe’s obsession does not have an impersonal goal – *idolatry of property rights* – but it rises from the mere necessity to *effectively* value *human being* – *human person*. Thus, it’s no use someone would say to value human being if they are not preoccupied in the same time to put into operation the concept of being – in other words to *delimit* the being (and implicitly beings from one another) in a manner that may be applied *hic et nunc*. For Rothbard, the domain of legitimate private property is important in itself only for the fact that it represents *operational explanation* of the idea of being.<sup>8</sup> To assert the valuation of being in the same time with the rejection/failure of clarifying operationally the legal limits of its influence area represents in fact the lack of any

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<sup>8</sup> Because human being is not self-sufficient at the biological organism level and it must, for a complete manifestation, make necessarily use of material world (the earth on which it stands; the food it eats for not dying with hunger, etc.) its material property becomes its material expression, as a natural continuation. The entire expression of the being becomes the being in a restricted meaning (body/soul) plus the material property acquired through legal ways (that is non-aggressively).

valuation/failure to really value the human being.<sup>9</sup> Finally, the valuation of the human being is the beginning of a definition of virtue as an exercise assuming a good which is common to spirit.

Given this pleading for reasonability in aspiring to the work of virtue (the more-than-the-minimum-justice-of-non-aggression) and the exercise of the minimum justice, we are going to analyse hereinafter the case of an entire social institution living right from making the ethics and moral ambiguous, according to a double social standard (privileged and vulgus), based on intellectual lie and, finally, on institutionalised aggression.

The emphasis will be put, due to the leitmotiv of *common sense science* in our paper, on the *moral and material betrayal* of “some intellectuals”, either by moral negligence, or by obvious fault, or by despise (savant-utilitarian or not) for the idea of genuine justice. The “Bodyguard of the Political Establishment” and the “Political Establishment” itself are called on duty in the name of common sense. Their claim of virtue is to be checked. And conclusions are to be *reasonable* and *intelligent*, at least as a form of moral *restitutio*.

### **About state, state’s idea of justice – or where virtue should be carefully sought**

Our world is currently represented almost invariable as State-centred.

*The history is, especially, the history of the vertebrate communities of State structures.* For Hegel, maybe the most important theoretician related to the idea of State-as-a-necessity-in-historical-order, things are clear: “universal history cannot talk but about those nations having a State existence”. In other words, the nation which is not included in the State list cannot exist in History as such. *According* to the philosopher, the State is “the combination between subjective will and rational will”, “the ethical unity”, “the reality where the individual finds his own freedom and enjoys it”, but only because it is in the same time the “science, faith and will of the common” (Hegel 1997, pp. 34-35). And the architects of State are the heroes, “great people of the history” whose particular own goals include that substance which is “the will of the universal spirit” (Ibid. p. 35). Finally, for the enthusiastic scholars of State, we may say that the State is no more and no less than *the Rousseauian “social contract” kept in custody by great people, namely the Hegelian “heroes”*<sup>10</sup>. Similarly, the economy is mainly a *national one*, meaning all wealth and productive processes on a State’s territory (and as a study matter, *economics* is the science which offers solutions to the Governments

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<sup>9</sup> For instance, Immanuel Kant in *Metaphysics of Morals* argues that in order to preserve the moral integrity of each individual, every individual should behave as though every other one was an “end”: “Act as if you were through your maxim a law-making member of a kingdom of ends” (Kant 1797, p. 74 *apud* Bowie 2004).

<sup>10</sup> „Hero-worship is strongest where there is least regard for human freedom” doubts Spencer (no year (1850), pt. 4, ch. 30, sect. 6.), seeing the danger of decreeing „ontological ranks” in society. Idolatry was always a stratagem to move the attention of the masses from the effective exploitation suffered from their *hero-look-like-leaders*.

about their good management)<sup>11 12</sup>. Then, *law is mainly legislation*<sup>13</sup>, meaning a product of a centralised legislative system (a power in State), rather “created” by the law-makers and coercively implemented by it<sup>14</sup> than naturally discovered, non-intrusive, reparatory. Education<sup>15</sup> and health are especially public goods, products of certain national systems. Last but not least, *charity, mercy, solidarity are first of all the results of some public welfare systems, operated by the “State apparatus”*.

But the healthy feeling of the *State unnaturalness* has, on the other hand, Biblical roots.

<sup>11</sup> He said, "This is what the king who will reign over you will do: He will take your sons and make them serve with his chariots and horses, and they will run in front of his chariots. <sup>12</sup> Some he will assign to be commanders of thousands and commanders of fifties, and others to plough his ground and reap his harvest, and still others to make weapons of war and equipment for his chariots. <sup>13</sup> He will take your daughters to be perfumers and cooks and bakers. <sup>14</sup> He will take the best of your fields and vineyards and olive groves and give them to his attendants. <sup>15</sup> He will take a tenth of your grain and of your vintage and give it to his officials and attendants. <sup>16</sup> Your menservants and maidservants and the best of your cattle and donkeys he will take for his own use. <sup>17</sup> He will take a tenth of your flocks, and you yourselves will become his slaves. <sup>18</sup> When that day comes, you will cry out for relief from the king you have chosen, and the Lord will not answer you in that day" (Samuel 8:11-18).

The man who accepts State – “with goods and bads” – is automatically and unfortunately worshipping what we may call the “fecundity of evil” – “the evil which gives birth to good”. The “fecundity of evil” is the dangerous *case* pleaded by those who *cannot see* “the State’s bads”, but also *cannot accept the idea that no evil – as initiation – must be necessary*. For example, let’s talk about three classic texts (from Sophocles, Plato and Machiavelli) “reread” by Liiceanu (2006) in his essay “On lie”. The “lie”, in Liiceanu’s work, should be read as “evil”, the *social evil, but having the function of public good*, the “fecundity of evil” or what the author calls the “moral of second resort”.

Once, in a Sophocles tragedy (*Philoctetes*), Odysseus explains to the young son of Achilles, Neoptolemus, that only lying he will be able to obtain Philoctetes bow and, therefore, the victory over Troy. We discover here two existential and moral “equations”: that of Achilles (founded on a code of honour, on truth) and that of

<sup>11</sup> On the “modern economist”, accustomed to tell Government what to do instead of saying what is necessary for Government to abstain from doing in Marinescu (2009).

<sup>12</sup> And this even though the State’s presence means a series of severe dislocations of the market’s process for the allocation of resources, which make appear in the entire social structure of the production some oases of “calculation chaos” (Rothbard 2009), of impossibility to reasonably decide what is worth doing and what is not (due to the absence of profit-private criterion and its replacement with the absurd, sterile, cynical criterion of cost-social benefit).

<sup>13</sup> On legislation and the discovery of law in a free society, see Kinsella (1995).

<sup>14</sup> The State creates different contradictions, being in the same time the guarantor of property, and also its invader through taxes, regulations, inflation.

<sup>15</sup> On the role of the Government in education, from an allegedly free market liberal, see Friedman (1995). On the higher education and its trans- or mal-formation in State’s hands in Kimball (1990).

Odysseus, which is more cynical and more proficient, founded on the verbal ruse. But delivered as being at the service of a “just cause”.

Then, in Plato’s case, with his *Hippias Minor*, written several years later than Sophocles play, the dialogue (between Socrates and Hippias from Elis) is centred on the idea that “the more a man knows about a subject, the better position he will be in to lie about it”, so he may skilfully master the mechanisms of evil and may use them against evil. Being prepared both for truth and for its obstruction, he is above the sincere ignorant. In the post-heroic/Homeric “political” area (extensive meaning), this would be the “right rule” of operation, notices Liiceanu (Idem p. 39).

Finally, Machiavelli in *The Prince* makes, according to Liiceanu, who “processes” Pierre Manent’s *Intellectual History of Liberalism*, a double revolution in the political thinking: he relieves it from the burdens: i. the “ethical and metaphysical burden related to the inner good, which the Hellenic citadel was compelled to produce according to Aristotle’s *Nicomachean Ethics*” (Idem. p. 45), ii. the “ethical and theological burden, related to the transcendental good which the medieval citadel was held to produce according to the Church. Machiavelli, placing evil in his rights, is not a distorted villain, but a realistic adapter of good thinking in the current social pragmatics. Just for the reason that his thinking is freed from two essential moments of tradition – Aristotle and Church – he is the first modern political philosopher in the full meaning of this word” (Ibidem.).

What can we say, from a property-ethical point of view, about the “social function of evil”?

Under property logics, we may suspect Neoptolemus of committing more than one lie (*pseudos*). He commits (*dolos*), which is a fraud that in its essence represents an aggression form. He takes Philoctetes property, by *mystifying* his own counter-performance. His contractual part is not fulfilled, so the contract may be terminated as not being performed. Philoctetes would have not given him the bow *otherwise*. He is not expropriated by force, but he is cheated. In the second text, Socrates tries to persuade Hippias about the *superiority* of the person who *knows to do good and evil*, because *knowing* he may *defeat evil with its own arsenal*. The remark would be harmless if the *ethical criterion* is observed (as for example, if *evil* is, let’s say, violence, the person who is expert in the skills related to it, and does never initiate it, and, yes, is in advantage should he uses it in a defensive – restitution-like manner, is also *superior de facto* according to the survival logics, is all right also from an ethical point of view, and therefore is at least minimum virtuous). Within an aggressively institutionalised framework (State politics), such remark is no longer harmless. It cynically announces the identikit picture of the modern politician (who *may defeat as easily the good with the evil’s arsenal*). The “competitive” politician can *lie* and *manipulate* democratically or within the support-oligarchy (instruments, which *strictly ethical*, are not imputable), but he does it in order to get afterwards a position where he *may* aggress (which is benefit of privileges – instruments that ethically cannot be validated). Well, he might not aggress, but, as a rule, he cannot survive *politically* unless he “fulfils” a part of the lies *by aggressing* or aggressing despite these (he will apply taxes in order to redistribute,

will grant privileges by formulating regulations, will constrain all those opposing him). The mechanism of natural selection in politics may bring to the top “the best”. Meaning, using absolute terms, *the vilest*. Finally, Machiavelli’s Prince, as a prototype, definitively personifies the modern social–engineering thinking. “In all men’s acts, and in those of princes most especially, it is the result that renders the verdict when there is no court of appeal” (Machiavelli 1981, pp. 63-64). Freed from the anchors of natural justice and of Christian moral, he already divides justice pragmatically, in a utilitarian manner<sup>16</sup>, keeping always also the “commission” for administrating it (the difference between theft and redistribution).

A scientific case is impossible to be built in favour of the State. The contempt for natural order, for natural justice, cancels any claim of *better* and economic and ethic and moral. It is not an order, it is a coercing system, a system obtained by force and sustained with a real intellectual forceps: we are used to believe that *it is right for us what results from “calculations” to be better for most of us*. We remain masters only of what remain from the person and property as left us by the “society” – in fact by its “divine”/ “chosen” representatives, finally the *rulers’ class*. Their concern is only as regards the relevant majority of the society, which under dictatorship must be kept away from revolting, and under democracy, kept away from changing their mind. Tyrannical or democratic, defined as a privileges’ system based on imposition and the final word as regards the laws, the State may be collocated with an Orwellian Big Brother<sup>17</sup>.

What is the conclusion we can draw about those populating it (the State apparatus)? That even if they are not strict aggressors, they do not pass the test of *the virtue worked till the end*. Even if they do not harm (e.g., teachers or physicians do not apply taxes to society, and their services are *productive*, useful in absolute terms<sup>18</sup>, comparing to those of the Governmental bureaucrats who are paid according to his “productivity” in messing the real productivity!). Education or health could be demanded and produced also in a strictly private order, being universal goods. The work of the employee as tax collector is “productive” as the taxes and fees are “productive”! But those working with the State, although they are really productive,

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<sup>16</sup> Put in other words: “For when the safety of one’s country wholly depends on the decision to be taken, no attention should be paid either to justice or injustice, to kindness or cruelty, or to its being praiseworthy or ignominious.” (Machiavelli 1983, p. 515)

<sup>17</sup> “State is not only the big brother, duller actually, but which keeps us under severe observation because wishes us well. It is a Big and Mean Brother because what is good for it, it is bad for the others. The tax consumers are parasites for the payers of taxes (although we cannot superpose the categories of net tax payer and net tax consumer on those of victims and aggressors, respectively). And the regulations, the limitation of freedoms are acceptable for some in exchange of the others’ dissatisfaction and material damages. State is a perverted big brother, which comes against life, it is an evil and it is not necessary.” (Smirna et al, 2004)

<sup>18</sup> The price of the public good – we repeat, that which is really useful (nor the issuing the authorisation X or processing the fiscal form Y) – no one can say whether is “correct” or not, as long as this is not settled voluntarily along with the final consumer, but with the State as intermediary. In this way, teachers or physicians may be considered expropriators for the counterfactual difference (the price of their services in, respectively, in the absence of a free market).

they do not do all the good they would be able to. They have at hand the escape off the tutelage of Big Brother, but are too weak to do it. *Obey the State, give Caesar what “belongs” to him, but do not cooperate, do not work for it.*<sup>19</sup>

This being said on State’s poisoned presence in terms of material and moral welfare, we will discuss hereinafter about a particular category of public domain servants. We will talk about a possible character that apparently has the best of intentions, but on the other hand is at home in the State’s strict entourage. We will talk about the character that, even with only the intuition of minimum justice, we identify as not making much disorder (being often disliked for this, somehow for his fault of not doing *democratically* enough!).

We will talk about the *intellectual who is liberal oriented* (according to the classical meaning of this word<sup>20</sup>), who finds minimum goals for the State, and finds besides these, in the same time, its own minimum goals in serving it. *Minimum, but not null.*

We will talk about him as the intellectual who remains as liberal as his consciousness allow him, being amended by the “necessity” to answer punctually and pragmatically to the democratic needs. We will talk about the intellectual who says “do not demand redistribution,... but if you do, let’s have a small one,... and if someone has to do it,... then let me because I know the measure of things”. We will talk about the virtues of the liberal intellectual who indeed accepts the State, indeed, from the position of a minarchist, indeed, used to have a dialogue with him and, indeed, not excluding being *part of the Government*. Will he be able to prove that he is working *all virtue*, is he able to be a true master?

### **About state, “liberals” and liberals and a place where, once sought, virtue may be found**

We have settled up to this point that, *scientifically* speaking, the exercise of virtue needs i. man’s natural possibility to *act* towards it (*praxeological test*) and ii. once the praxeologically possible *virtue/set of virtues* is found, it needs ethical consistency (*the more-than-minimum-good work must therefore include the minimum good, meaning the non-aggression*). We have also implicitly suggested that if the *order of private property* is the necessary (but not sufficient) premise of the work of virtue in society, the State is diametrically opposite, and people who materially depend on it cannot claim the virtue and cannot inspire the virtue all the way. Moreover, people *operating* the State system are not deemed as virtuous because they are *the very* “organization [that]

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<sup>19</sup> “First of all, at individual level and looking to eternity, we have the trust that if we are good, after death, we will go to a world where evil cannot enter. Then, at social level and in a close temporal plan, if we take into account the fact that parasite group must necessarily be less numerous than the group affected by parasites, we understand that Big Brother’s power is finally ideological” (Smirna et al, 2004).

<sup>20</sup> Classical liberalism believes that the provision of negative freedom constitutes liberty and is therefore a strictly laissez-faire philosophy. Social liberalism, however, sees a role for the State in providing positive liberty for individuals, because not doing so infringes the possibility of acquiring true freedom. For a brief account on the modern alteration of senses regarding both “liberal” and “conservative” concepts once socialism entered the scene, see Patapievici (2005, p. 419-431).

provides a legal, orderly, systematic channel for the predation of private property; it renders certain, secure, and relatively <<peaceful>> the lifeline of the parasitic caste in society” (Rothbard 2000, p. 55–88). The case in favour of the “illuminated leaders” seems to be lost. The State stigmata do not leave unmarked any character which is lost around it. Not even the case of the classical liberals, of the *laissez faire* and the natural right disciples, who have trusted probably with sincerity that they were able to fight from inside with “the organization of the political means [...] [of] warlike robbery” (Openheimer 1975, p. 11-13).

It is clear that the idea of natural elite (entrepreneurial or intellectual) dilutes within State framework. The usual elites are those politically allowed, only after they have been tested as acceptable. Mises and Rothbard are not quite parts of the intellectual elite *democratically established*, due to their unfriendly opinions regarding the State. As opposed to Krugman or Stiglitz, who are. The *adverse selection* in the politicised areas changes the place of the intellectual from the library of truth to *boards of advisers* or to *those* universities preparing students for the “democratic values”, and of the entrepreneur from the consumer to the office of election campaign of X. If the entrepreneur is submitted to taxes and regulations (ideally in such manner so that it does not become Laffer-non-responsive), the intellectual cannot be “tithed” by his neurons or restricted to think only in a certain direction. But as liberal democracy is more profitable than dictatorship, and under its regime the prison camp or the insane asylum cannot be current destinations for incommode people, for the intellectual the *carrot* must be bigger than the *stick*. Politician’s calculation is simple. He needs the intellectual for the ideological mantra which makes the *management* seem a *relaxation walk* to vulgus. He needs as much of them as possible in order to eliminate the systematic dissidence. He rises /educates them in public schools and then hires them directly or indirectly. The intellectual becomes a good produced by the State-owned consumption cooperative. The intellectual also needs the State because market demand for intellectual services is not, historically proven, exactly high and stable.

The weak intellectual is doomed to betray Society for the State. The philo-socialist, even if not admitting this stance, the planning-minded, empiricist, positivist, relativist, nihilist intellectual betrays more rapidly and with less regrets than the honest liberal. But the latter one does it with traces that are more dramatic for society. He was the *alternative*. Once he is absorbed, the system cannot be questioned as regards its *nature*, but *tuned* in degree.

In its condition of *principle*, “Liberalism is the politic ethics of physical or visual non-conflict, coextensive with the social harmony of the civilisation of peaceful interpersonal dialogue, and its economic accords are an important corollary” (Comănescu 2002a). But in the *political* order, liberal creed falls into palliative. Raising the liberal-classic question has debuted in agora with an error and logics, and strategic (Spiridon 2004). Briefly put, the world in which the classic liberal acts, which he *accepts*, although he tries to change it, looks as follows: Government is invariably in the centre of society. Its right to make any decision is *acknowledged*. It is a *datum*.

Various suggestions for changing the political regime, different solutions for settling the issues that the society faces at a certain moment, are directed towards this bastion. The liberal is launching too its own solutions towards the State. The difference would be that absolutely accidental he may be relevant. If he is consistent, he recommends the Government to limit the governance, the politician to depoliticise, the bureaucrat to eliminate bureaucracy. But if he is consistent, he is lost, along with his ideas. The *consistent liberal* is scarcely *dialoguing* with the State. The exact place of the liberal is in *society*, outside the State and against the State.

“That is why I am not a liberal, because I don’t believe that entrusting honour in the hands of those interested in plundering represents an intelligent solution” (Spiridon 2004).

Raising the liberal-classic question from uninspired becomes virtueless when the classic liberal becomes *pragmatic* and *goes to govern*. State liberalism is filled with “sins”: “using utilitarian criteria in order to justify the decision of economic and social policy; accepting the minimal State, namely the “minimal” breach of property, equivalent to the abandon of freedom principle; unifying with the nationalist trend and with the democracy supporters, and the fatal result is the elimination of the capital distinction between the net payers of taxes and the net beneficiaries, namely between the exploited and the exploiters” (Idem).

Let’s see the virtue of *altruism*. We suppose that the classic liberal intellectual exits the private order and enters in dialogue or entirely in the State system due to his altruism. Because of his kindness towards the people he feels as robbed by the catastrophic dynamic of the *economic interventionism* (a spiral noticed by Mises, of the *nonsense of policy necessary to hide the effects of some previous nonsense* a.s.o.). He wants to stop the deterioration. He suggests the liberalisation, knowing that is unable to offer *market freedom*. His unsolvable moral issue is that although he materially supports the society to reasonably grow, he does it by perpetuating the moral of second resort, which inherently maintains a latent aggression. The altruism capital of the liberal entered into the politic apparatus and of those inspired by him, starts to diminish even if he has the illusion of development. It’s like a malinvestment.

“I think the strictly economic discourse teaches us only that, although neither the property nor the State settles the issue of the minimum “altruism” necessary for the social order, the property has the advantage of “saving” the existing altruism capital, while the State misspent it. How is the altruism “produced” and whether any kind of liberalism is compatible with its (re)production remain separate issues, questions to which the politic economy does not give an answer, as the Manent-like politic philosophy (which authorises the idea of fecundity of evil) does not too” (Comănescu on Mises Romania Blog Nov 7, 2007).

As an example, we will present the story of the impossibility to be in the State and also against it, in other words to be entirely altruist, with the help of two stories of two liberal classic intellectuals (both of them deemed “too liberal” for their times): *Milton Friedman* and *Václav Klaus*.

Friedman is considered as “the most influential economist of the second half of the 20th century...possibly of all of it” (*The Economist* 2006). In the folk culture of the laissez faire liberalism, he is thought to have wakened the political economy from the Keynesian sleep. His views on the monetary policy, taxation, privatization and deregulation have opened the eyes<sup>21</sup> of governors on different meridians during the neoliberal revolution that was carried simultaneously by Margaret Thatcher in Britain, Ronald Reagan in the US, Brian Mulroney in Canada, Roger Douglas in New Zealand, Davíð Oddsson in Iceland, Augusto Pinochet in Chile, and (after 1989) in many States in Eastern and Central Europe.

Friedman saw the liberal idea like *primo non nocere*.

“I start...from a belief in individual freedom and that derives fundamentally from a belief in the limitations of our knowledge, from a belief...that nobody can be sure that what he believes is right, is really right...I’m an imperfect human being who cannot be certain of anything, so what position...involved the least intolerance on my part?...The most attractive position...is putting individual freedom first” (*apud* The Free Library).

But he did not experience it at its home, in society, outside the State, against it. “If he is such a genuine liberal, how come he is the favourite of the political establishment?” As advisor of Nixon, and an Establishment *favourite critic*, he armed himself like many other intellectuals with the *moral of second resort* and entered into the liberalism vertigo existing here and there.

“Difference between me and people like Murray Rothbard is that, though I want to know what my ideal is, I think I also have to be willing to discuss changes that are less than ideal so long as they point me in that direction” (Doherty 1995).

The reply came to a criticism which was not at all condescending, that Rothbard always addressed him:

“in many spheres, he has functioned *not* as an opponent of statism and advocate of the free market, but as a technician advising the State on how to be more efficient in going about its evil work. (From the viewpoint of a genuine libertarian, the more inefficient the State’s operations, the better!). He has opposed tax exemptions and “loopholes” and worked to make the income tax more uniform” (Rothbard (2002b, p. 40).

This is Friedman or an *altruism not-continued to its end*.

Then, somewhere in Central and Eastern Europe, in full transition from the *socialist* economy, *planned upon order* behind the *Iron Curtain*, to market economy of the EU, *socialist by harmonisation, regulation and worshipping the knowledge, environment and growth&jobs*, a character exists. Called the Professor by his friends, Václav Klaus, the

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<sup>21</sup> According to Paul Krugman or Naomi Klein, too abrupt and brutal for the “democratic sensibilities”, read either *dogmatic banality* (market fails. full stop - Krugman), or without having the *propriety of terms* (the transnational corporations abused the citizens of those worldwide economies, made vulnerable by the neoliberal policies and hasty economic openings – Klein; although, do not confuse the free economy with the economic corporatist fascism, the alliance State – business related on a minimum *propriety of terms*).

current President of the Czech Republic, is one of the few politicians in Europe and worldwide who learned “free market economics” and taught others from its source (he was well educated in Mises, Hayek,... Friedman). This before he was compelled to forsake more than “three times” the liberal idea and “socialise” in order to have a firm authority.

Within European political circles, Klaus is seen as a bugbear. He is the “lunatic” who is sceptic as regards the “orthodoxy” of the idea that the prosperity of half billion EU citizens will depend on the European political continual centralisation, or that the global warming has to be settled by giving more powers to the State-cooler, or that the current financial crisis is not the product of deregulation of market but, *horribile dictum*, of the error of project within the modern monetary and banking establishment and that it could be remedied by do-nothing-policies. When he came to give a speech in front of the European Parliament in Brussels (on 19 February 2009)<sup>22</sup> about the risks of Europe indulging on the thought of political and economic centralisation, he was *booed by the Union representative democracy*.

The reforms inspired by the liberal readings of Klaus have helped him assist the transition to the market economy in Czech Republic in the ‘90s as member of the Government: elimination of the administration of prices and currency exchange rate, privatisation, property restitution (although it is applied with some problems). But, as everywhere in case of transitions, the poison pawn was transformed into a queen: “Government special part”. Pursuant to this dangerous concession, Klaus-the pragmatist has often sabotaged Klaus-the orator: i). the control of rents; ii) the *universal* principle of property restitution was amended by the citizenship principle; iii). delays in reconstructing the army based on voluntary actions; iv). delay in eliminating the monopoly in telecommunications field; v). inconsistent discourse about European Union and NATO, both problematic and inefficient superstructures, and in the same time indispensable for the nation’s future; vi). absurd interdiction for the Czech population to hold bank accounts abroad, such measure having for purpose the protection of the weak national banking system, at that time (but not even he observed such regulation!) and several other minor sins of socialist-altruist nature that may be reduced to “private-property attacking, freedom-of-exchange-restricting, individual-rights-violating and legislation-stock-piling, EU-style welfare state” (Sima and Stasny 2000, p. 175).

The lesson of Klaus story is identical to that of Friedman story:

“This story should also give you pause before you get too excited the next time you hear someone talking like Mises introduce himself as a politician.” (Sima and Stasny 2000, p. 176).

In other words, without any hard feeling, but just with realism: if the goal towards which the *non-aggressive liberal, supporter of generalised interpersonal dialogue*, is the

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<sup>22</sup> “We must say openly that the present economic system of the EU is a system of a suppressed market, a system of a permanently strengthening centrally controlled economy” (Vaclav Klaus, European Parliament, Brussels, 19 February 2009).

political relevance and the power of political exercise of the liberal idea, then what are we going to *realize in effect* in the order of virtue will be “sadly small”.

So, it is absolutely against nature to believe you can go governing and elaborate liberal work. Be liberal all the way would mean, in terms of positive law, to be *unconstitutional*, to breach the “positive” rights, the historical outstanding debts of a social category towards the remaining society. According to democratic logics, virtue is impossible for the liberal. For remaining an altruist (that is to come back to the virtue as a foundation for the long-lasting society), the liberal must keep the civil cloths (strictly in the civil society). When he sees that the *reason’s fruits – his knowledge about freedom, propriety and prosperity* – have no longer power, the liberal may chose to resist the temptation to be “pragmatic” and thus to lose the principal/principle-based fight: *of the uncompromised idea and of the unaltered personal example*.

Thus, virtue cannot be defied in the political agora, but taught with modesty and only where the society is present under its natural expression: in family, in the authentic school, in the respectable mass-media, in the true church. And not where their contraries emerge: not in the “forced family” of the “politicians-designed-nation” where all people are bound to offer me support; not in the school where the heretic ideas are not to be allowed (such as the State would not be the only form of non-conflicting closeness); not in the mass-media tamed to take part to the campaigns of brainwashing and brain cleaning made in the spirit of hypocritically humanist political correctness; and unfortunately not in that church devoted to the State, under its doubtful cassock.

The question regarding the virtue - *as social relation and referential* – resides strongly enough in the order of human nature, which as told can be discovered by reason (both “positively” and “normatively”), as a necessary condition, but might remain intelligible and, therefore, fully liveable only under another register.

Before the end, a superb comment, from the many on the theme of moral between reason and faith belonging to Dan Cristian Comănescu (2002a; 2002b; 2005).

“To summarise, the culture and spirituality *subjacent to perpetual liberalism* are proved to be coextensive to the world of one incarnated God, who tells to all <<What you are doing to the youngest of My brothers, you are doing to Me!>>, offering *in addition* to the dilettantes also the practical method to go on an appropriate life path, embellished by the needs of redemption under this eschatological horizon. Indeed, the others will join them: the interpersonal altruism indispensable to conviviality in this world and the renunciation to the most hedonistic self (Tocqueville could say <<democratic>>), which feeds the <<legitimacy>> of mutual exploitation and the related intellectual <<errors>>” (Comănescu 2005).

Being so rounded-up by the moral anchor of *beyond reason*, the authentic liberal program presents itself as antonym to the understanding and Machiavellian practice of life in the City (politics). Using common sense, naturally, in a Christian way after all, and living it without abatement may be the real and sole way and strategy to defend the *social harmony based on personal virtue*. We do possess for this a few strong

instruments: first, the minimal but rich proofs, which may be discovered by means of reason, of the non-aggressive freedom; then, for the chosen ones in the City, those of the God's gift. "And the reward of such [virtuous] life is not to have sculptures in parks, not laurel wreaths, nor support granted by the State, but eternal life" (Saint John Chrysostom).

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**THE CONCEPT OF THE TRUST IN ROMANIAN LAW**Luminița Tulească<sup>1</sup>**Abstract:**

*The trust, a unique institution, specific for the English-Saxon legal system - common-law- has been constantly rejected by the European continental legal systems (civil law).*

*As a trend imposed by the requirements for strengthening the Single European Market, the well known segregation of the law in common law and continental civil law, has been diminished in time thus, during the last decade, the transformations occurred in the two legal systems, in the context of Europeanization and globalisation of businesses and implicitly of law, have managed to lead to the expected mixture, modification and acceptance of ideas, theories and fundamental legal institutions of these legal systems.*

*By the New Civil Code, the Trust is also regulated in Romania under the name of "Fiducie", and it shall be further used and developed in both the relations between the individuals as well as in the business environment.*

*This paper, first of this series, intends to analyze the meaning of Trust in the light of the Romanian law, but also from the view of its traditional meanings as established in England and the United States of America and, last but not least, from the perspective of the regulatory trends in this direction, existing at the level of the European Union.*

**Keywords:** Trust, Fiducia, Internal Market, New Romanian Civil Code, Common Law, Civil Law, Equity.

**JEL Classification:** K10, K22, K33

**I. Globalizing the Trust**

The trust, institution characterizing the English-American law (part of the property law), occurred in response to the need to find solutions and to protect promises which had no binding effect, but which should have been complied with according to the equity principles: good-faith and respecting one's word.<sup>2</sup>

In its original form, the trust is unfamiliar for most of the legal systems of Roman-Germanic tradition, in the so called continental legal system or civil law.

The economic and legal advantages offered by the trust and the need to unify the substantive law of the EU member states have started the assimilation process of this special institution of the English-American law into the continental law countries, including in Romania.

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<sup>2</sup> See: Donovan Waters, Q.C., F.R.S.C., "The distinctive characteristics of the Anglo-Saxon trust", STEP France Conference, June 13<sup>th</sup> -14<sup>th</sup>, 2007, unpublished;

The first major step in "globalizing" the Trust institution has been achieved by adopting the Draft of the Hague Convention applicable to Trust and its acceptance on 20<sup>th</sup> of October 1984, within the International Private Law Conference in The Hague.

Under these conditions, in 1985, the first three countries: Italy, Luxembourg and The Netherlands, have officially signed the Convention on the Trust Applicable Law and its recognition (further referred to as the Hague Convention)<sup>3</sup>.

The Convention entered into force on January the 1<sup>st</sup>, 1992<sup>4</sup> and, even if 12 contracting states apply it<sup>5</sup>, it is not considered to be substantive law, lacking the power to indirectly regulate the trust in those states that have no applicable law for this institution.

However, the Hague Convention has been a milestone in accepting the "international" trust and its traditional significance also in jurisdictions belonging to the continental legal system<sup>6</sup>, in states such as: Italy, France, Switzerland, Luxembourg.

In practice, the Hague Convention has been considered as a perfectly sustainable substitute of the internal regulations of the Trust, obviously, in lack of such regulations.

In this sense, in Italy, by starting from the controversy generated by the contents of the article 6 of the Hague Convention: "*The trust shall be governed by the law chosen by the settlor*", under the aspect of recognition or non-recognition of the trust in the countries not regulating this institution, the Professor Maurizio Lupoi had successfully reasoned the fact that, there is no need to regulate the Trust by means of internal laws in Italy as long as the Trust concluded under the Hague Convention is recognized, applying the relevant applicable law, which is, in most of the cases, the English law<sup>7</sup>. This opinion has been constantly confirmed by the Italian courts.

This approach has been adopted in Switzerland<sup>8</sup> as well as in Luxembourg, until the legal regulation of the trust in this later state, achieved under the Law on July 27<sup>th</sup>, 2003 on Trust and fiduciary contracts.

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<sup>3</sup> International Commercial Law, Source Materials, Selected by Willem J.H.Wiggers, Kluwer Law International, Hague, 2001;

<sup>4</sup> Hiroyuki Watanabe, "Trust without Equity" and Prospects for the Introduction of Trusts into European Civil Law System", available at: <http://www.globalcoe-waseda-law-commerce.org/activity/pdf/23/20.pdf> (last visited on May 30th 2011);

<sup>5</sup> Until March 2011, according to the Hague Conference regarding the International Private Law, there were already signatory states of the Hague Convention on the trust applicable law and recognition, such as: Italy, Luxembourg, The Netherlands, (European area), Malta, Monaco, United Kingdom of Great Britain and Northern Ireland, France, Luxembourg, Cyprus, Canada, Australia, United States of America; statute available at: <<[http://www.hcch.net/index\\_en.php?act=conventions.status&cid=59](http://www.hcch.net/index_en.php?act=conventions.status&cid=59)>> (last visited on May 29<sup>th</sup>, 2011);

<sup>6</sup> Adair Dyer, "International Recognition and Adaptation of Trusts: The Influence of the Hague Convention", Vanderbilt Journal of Transnational Law, Vol. 32, 1999;

<sup>7</sup> Maurizio Lupoi, "Il Trust quale legittimo strumento di Tutela del Patrimonio" - Stutturazione dei Trust di protezione patrimoniale- Convegno, 13 marzo 2003, palazzo di Giustizia di Torino, aula Fulvio Croce, available at:<< [www.associazioneavvocati.it/biblioteca/lupoi.doc](http://www.associazioneavvocati.it/biblioteca/lupoi.doc) >>;

<sup>8</sup> See: Luc Thevenoz, "Trusts in Switzerland. Ratification of The Hague Convention on Trusts and Codification of Fiduciary Transfers", Centre d'etudes juridiques europeennes, Geneve, Ed.Schulthess,

Even in France, the state with the highest doctrinaire resistance against the regulation of Trust, influenced by the mighty European trend, adopted the Law no. 2007-211 /February 2007 on the introduction of Trust, by which the institution of trust has been introduced in the French Civil Code<sup>9</sup>.

The requirements of the business environment have brought into discussion the need to regulate the trust by means of an European law achieving both a amalgamation of the trust significance as provided by the existing laws and a uniform law in the matter of trust, the result of such being materialized by the Principles of European Trust Law<sup>10</sup>.

By these Principles the international group of experts reunited under the Centre for Business and Law Research of the University in Nijmegen have established 8 principles of the trust law meant to facilitate the transactions between the various jurisdictions in Europe<sup>11</sup>, allowing the states to acknowledge the potential to develop of the new legal concept and to offer support for developing these ideas depending on the different social, economic and legal contexts.

Few years later, in 2004, the Centre for Business and Law Research of the Nijmegen University has remade and expended the group of international experts that worked on the drafting of the Principles of European Trust Law, for preparing the way for a new law of "protecting the funds " in the European Union, based on various National Reports, explaining the legal provisions and the consideration of transposing the directive on funds protection in the national laws<sup>12</sup>.

At its turn, the European Parliament has adopted resolutions on the possibility to harmonize the substantive private law, first in certain areas of the private law, as an essential condition for strengthening the Internal Market.

In the sense of the two main aspects of these issues related to the legal nature of the European instrument and its contents, the European Commission has set up a group of experts<sup>13</sup> for studying the sustainability of an instrument of European contracts law and for assisting the Commission in the activity of selecting the parts of

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Zurich, 2001, available at: < [http://cms2.unige.ch/droit/cdbf/IMG/Trusts\\_in\\_Switzerland\\_EN\\_.pdf](http://cms2.unige.ch/droit/cdbf/IMG/Trusts_in_Switzerland_EN_.pdf)>; last visited on May 27<sup>th</sup> 2011;

<sup>9</sup> French civil code [C.civ.fr.] Title XIV "De la fiducie" (Fr.), available at [http://www.legifrance.gouv.fr/affichCode.do;sessionId=FBC68F48F6A9BEB85B0C96661DCE886.tpdjo13v\\_3?idSectionTA=LEGISCTA000006118476&cidTexte=LEGITEXT000006070721&dateTexte=20101009](http://www.legifrance.gouv.fr/affichCode.do;sessionId=FBC68F48F6A9BEB85B0C96661DCE886.tpdjo13v_3?idSectionTA=LEGISCTA000006118476&cidTexte=LEGITEXT000006070721&dateTexte=20101009); last visited on May 29<sup>th</sup>, 2011;

<sup>10</sup> David J. Hayton, S.C.J.J. Kortmann, H.L.E. Verhagen, , Principles of European Trust Law, Law of Business and Finance, Vol.I, Ed.Kluwer Law International, 1999;

<sup>11</sup> For drafting the Principles of the European Trust Law there have been used the reports of the project's members in: Scotland, Germany, Switzerland, Italy, France, Spain, Denmark, and The Netherlands - see: Hiroyuki Watanabe, op.cit., p.189;

<sup>12</sup> Hiroyuki Watanabe, p.cit., p.192;

<sup>13</sup> The decision of the Commission on April 26<sup>th</sup> 2010 for setting up the Group of Experts for a common frame of reference in the field of European contracts law, published in JO L 105, 27.4.2010, p.109, available also at < <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:105:0109:0111:RO:PDF>> (last visited on January 23<sup>rd</sup> 2011);

the Principles, Definitions and Model Rules of European Private Law<sup>14</sup> that are directly or indirectly applicable to the contracts law as well as in restructuring, reviewing and completing the contents selected from the common reference frame project, having, also, in mind other research papers in this area of expertise, as well as the EU acquis. The CoPECL Network - Common Principles of European Contract Law, has finished and presented the European Commission the Draft of the Common Frame of Reference (hereinafter referred to as DCFR).

DCFR dedicates the entire X Chart – to the detailed regulation of the Trust, after rethinking and conceiving institutions such as patrimony and property thus as to be adequate for allowing the trust reception, in previous charts.

Due to the evolution of the Trust regulation at the European level during the last 20 years and due to the obvious tendencies of including it in the national laws of the member states of the European Union, Romania had to take the necessary steps for modernizing its law and, by the adoption of the new Romanian Civil Code, the trust can be used under the name of “Fiducia”.

## II. The essential conceptual premises in approaching the Trust

Seen as a vehicle for property mastering or managing we consider that the most adequate significance of the trust, by its conciseness and its proximity to the content of the English-Saxon trust, is the one achieved by the art. 2 of the Hague Convention, according to which, the trust *"is the understanding created inter vivos or for mortis causa – by an appointed person, settlor, who transfers assets to the control of a another person called trustee, for the benefit of a beneficiary or for an indicated purpose"*.

Therefore, the trust involved three parts: the "settlor" – the one transferring the property to a "trustee", entrusted with the obligation of property administration for the benefit of a "beneficiary". Any of these positions can be held by more than one person.

From this perspective the characteristics of the trust are born from the fact that: a) the assets forming the object of the trust represent a separate fund and are not part of the estate, patrimony of the trustee; b) the holder of trust's assets is the trustee or a different person, acting in the name of the trustee; c) The trustee has the power and duty that he is held responsible to comply with it, to manage, to hire, and to dispose of the estate according to the provisions of the trust and to the special obligations provided for the trustee under the law.

It is interesting to notice the fact that, from the point of view of its cause, in the English-American system, the trust is regarded more like: "essentially a gift, projected

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<sup>14</sup> Principles, Definitions and Model Rules of European Private Law, Draft Common Frame of Reference (DCFR), outline edition, Prepared by the Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Group), Based in part on a revised version of the Principles of European Contract Law, Edited by Christian von Bar, Eric Clive and Hans Schulte-Nölke and Hugh Beale, Johnny Herre, Jérôme Huet, Matthias Storme, Stephen Swann, Paul Varul, Anna Veneziano and Fryderyk Zoll, 2009, Sellier. European law publishers GmbH, Munich., available at: <[http://ec.europa.eu/justice/policies/civil/docs/dcfr\\_outline\\_edition\\_en.pdf](http://ec.europa.eu/justice/policies/civil/docs/dcfr_outline_edition_en.pdf)>, (last view: 30th May 2011);

on the plane of time and so subjected to a management regime "<sup>15</sup>. This conception of the trust as "gratuitous transfer" is contradicted by the reality, considering that, most of the estate under trusts is subjected to the business deals and have nothing to do with gratuitous transfers.

An essential aspect of the English-Saxon Trust consists in the fact that, in the English common law (but not in the Scottish law, too) there is a distinction between the legal property (de jure) and the equitable one, differentiation standing at the base of the Trust institution: The trustee becomes owner at law and the beneficiary owner in equity<sup>16</sup>.

In its original form, the Trust represents a major form of dividing the property right between the trustee and the beneficiary, such segregation being not among the enumerated forms of division permitted under the civil law<sup>17</sup>.

The possibility that an estate is the property of two persons in the same time and the essential distinction between the owner at law and the owner in equity of an asset or an estate owned under a Trust, have determined the rejection of this concept in the civil law, as the fundamental principles of the same where inconsistent with this perception.

The main obstacle consisted in the fact that in the continental law-governed countries there has been embraced a certain theory of the ownership right unity, based on which all the rights related to the ownership right over an asset, must remain with only one person and not divided in partial rights split between two or several persons. Only a limited number of exceptions are permitted<sup>18</sup> from this principle (numerus clausus). The partial ownership rights, that are not included in the limited exceptions, are not recognized. In other words, the parties are not allowed to establish other forms of rights over the property.

Therefore, the existence of the principle numerus clausus (specific to the Romanian law, too) has been considered to be an obstacle in accepting the almost infinite varieties of the Trust provided by the English-American legal systems<sup>19</sup>.

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<sup>15</sup> Bernard Rudden, John P. Dawson's Gifts and Promises, 44 MOD L.REV. 610, 610 (1981), quoted by de John H. Langbein, "The Secret Life of the Trust: The Trust as an Instrument of Commerce" (1997), Yale Law School, Faculty Scholarship Series, Paper 503, available at: < [http://www.law.yale.edu/documents/pdf/Faculty/Langbein\\_Secret\\_Life\\_of\\_Trust.pdf](http://www.law.yale.edu/documents/pdf/Faculty/Langbein_Secret_Life_of_Trust.pdf)>, last visited at 26th May 2011;

<sup>16</sup> For further details on the forms of property in the law of land, please see: Real Property Law and Procedure in The European Union, General Report, European University Institute (EUI) Florence/European Private Law Forum, Deutsches Notarinstitute (DNofI) Wurszburg, 31.05.2005, p.13, available at: <<http://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/RealPropertyProject/GeneralReport.pdf>>, last visited on May 28<sup>th</sup>, 2011;

<sup>17</sup> Henry Hansmann, Reinier Kraakman, "Property, Contract, and Verification: The Numerus Clausus Problem and The Divisibility of Rights", p.373, Journal of Legal Studies, vol.XXXI (June 2002), The University of Chicago, available at:< [http://www.law.yale.edu/documents/pdf/Faculty/Hansmann\\_Contract.pdf](http://www.law.yale.edu/documents/pdf/Faculty/Hansmann_Contract.pdf)>, last visited 29 May 2011;

<sup>18</sup> Rights of way, mortgages, a.s.o. represent exceptions from the principle of "ownership right unity"

<sup>19</sup> Stathis Banakas, "Understanding Trust: A Comparative View of Property Rights in Europe", Revista Para El Analisis Del Diritcho, vol.323, No.1/2006, p.3, available at:< [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1400130](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1400130)>, last visited May 28th 2011;

### III. The significance of Trust in Romania

The main obstacles in accepting the Trust in the countries using the continental law have been raised by: a) the lack of concept of property division in ownership by law (right enjoyed by the trustee) and ownership in equity (right enjoyed by the beneficiary) and, therefore, by the existence of the principle according to which there must be only one owner at the time; and b) by the seeming impenetrability of the theory of singleness of one person's patrimony. For a good understanding of this last obstacle, we mention that, the theory of patrimony singleness, has been laid with Charles Aubry and Frederic C. Rau, can be presented by its three main ideas: 1) each person has a patrimony; 2) each patrimony belongs to someone; and 3) one person has only one patrimony. By reference to trust, its trustee has two patrimonies: his own and the one formed of the assets composing the trust<sup>20</sup>.

The introduction of trust in our country has not been influenced by the legal meaning of the ownership right whose content remained unchanged.

Thus, in the Old Romanian Civil Code, "*the ownership is the right of a person to enjoy and dispose of one asset, exclusively and absolutely, but within the limits established by law*" - (art. 480 of the Old Civil Code) and, by the New Civil Code the private property is defined as: "*the holder's right to possess, use and dispose of an asset exclusively, absolutely and perpetually, within the limits established by law*" (art. 555 of the New Civil Code).

Considering this concept of property, regarded as an exclusive right, of one single person, it is impossible to accept the original idea of trust.

However, we are certain that, with the future legislative amendments to occur at the European and domestic level, the idea of trust, in its original sense, considering also the meaning established in the specialized literature according to which, "when we say that the beneficiary of the Trust in the English law has an "interest"<sup>21</sup> in property ("proprietary interest"), in the estate forming the object of the trust, we only say that it has an ownership right according to the English notion of the term. We do not say he/it has an ownership right according to the notions of the civil law"<sup>22</sup>.

The experts working on the New Civil Code project have not been concerned with the introduction of the English-Saxon concept of trust but with the perceiving

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<sup>20</sup> Valerio Forti, "*Comparing American Trust and French Fiducie*", The Columbia Journal of European Law Online, vol.17, 28 (2011), p.32, available at: < [http://www.cjel.net/online/17\\_2-forti/](http://www.cjel.net/online/17_2-forti/)>, last visited 26th May 2011;

<sup>21</sup> "The term of interest is a term largely used in the English – Saxon is a widely generic term describing a right, a claim, a title, or a fraction of a right acknowledged by the law. In particular, in the sphere of proprietary relations, it has the significance of a right to accrue, to harvest, an advantage from any legal report or any asset; any right deriving from the property nature, except for the ownership title " - Catalin Tripon, "*Trust / Fiducia, the result of the interference of two great legal systems: the Continental civil law and the English – Saxon law. The concept, the ranking, the evolution and the validity conditions of the trust (in Romanian fiducia)*", in the Romanian Magazine of Private Law no. 2/2010, p.167 and the quoted source: Henry Campbell Black, Joseph R. Nolan, Jacquelin M.Nolan-Haley, Black's Law Dictionary, sixth edition, West Publishing Co., USA, 1990, p.812;

<sup>22</sup> Hiroyuki Watanabe, op.cit., p.196; Paul Matthews, "*La collocazione del trust nel sistema legale: contratto o proprietà?*", in Trusts Trimestale di apprendimento scientifico professionale, n.4-2004, Milano, p.531-532;

of that idea of trust already known in the legal system of many European states, trust involving only the acceptance to modify the concept of patrimony, without the idea of dividing the ownership right between two persons.

Even if, for a long period of time, the theory of the patrimony singleness of an individual or a legal entity had also characterized the Romanian law, this incompatibility with the regulation of the trust institution, has been eliminated prior to the adoption of the New Civil Code, by the significant and final amendment of the substance of the singleness patrimony theory, by the G.E.O. no. 44/2008<sup>23</sup> that legally establishes the notion of „the special-purpose patrimony” a special-purpose patrimony (in Romanian *patrimoniu de afectatiune* - affected to the fulfilment of a special purpose and which has the trustee as the owner).

We find this notion in the specialized literature, under the theory of special-purpose patrimony encountered when establishing the legal nature of the goodwill, not retained as incidental with the theory of legal universality<sup>24</sup> which, in its turn, did not impose either, due to the fact that the legal universality had no legal support<sup>25</sup>.

According to the legal definition, the special-purpose patrimony represents the “*totality of assets, rights and obligations of the authorized individual, of the holder of the individual undertaking, or of the members of the family undertaking, affected for the purpose of exercising an economic activity, set up as a distinct fraction of the patrimony of the authorized individual, of the holder of the individual undertaking, or of the members of the family undertaking, separate from the general pledge of his/their personal lenders*” – art.2 let. j) of the G.E.O. no. 44/2008.

The authorized individual, member /members of the individual undertaking and of the family undertaking can decide the set up of a special-purpose patrimony that will have the *advantage of protecting their commercial undertaking of the personal lenders - civilians, who will not be entitled to claim and pursuit the assets and rights assigned by their debtor for carrying out of the commercial activity. If the legal regulation of the special-purpose patrimony would not be understood as such, the logics of such an institution would fail to exist*<sup>26</sup>.

As a justified continuity, the New Civil Code establishes the fact that, any individual or legal entity is the holder of a patrimony that can form the object of a division or special purpose, in the cases and under the conditions provided by law,

<sup>23</sup> G.E.O. no. 44/16.04.2008 on the undertaking of the economic activity by the authorized individual persons, individual undertakings and family undertakings, Published in the Of. M., Part I no. 328 on 25.04.2008;

<sup>24</sup> By which it is established the existence of an independent patrimony, with rights and obligations distinct from the civil rights and obligations;

<sup>25</sup> For further details see: Stanciu D.Carpenaru, Dreptul comercial roman, Ed.a VIII a, revazuta si adaugita (Romanian commercial law, revised and updated), Ed. Universul Juridic, Bucharest, 2008, p.120-121; I.L.Georgescu, Drept Comercial Roman, Vol.I (Romanian commercial law, Volume I), Ed. All Beck, 2002, p. 468-471; C.Hamangiu, I.Rosetti-Balanescu, Al.Baicoianu, Tratat de Drept Civil Roman, Vol.I (Treatise of Romanian Civil Law, Volume I), Ed. All, Bucharest, 1996, p.523-525;

<sup>26</sup> For a detailed and updated presentation of the characteristics and principles governing the patrimony, please see: I.Turcu, Tratat teoretic si practic de drept comercial, Vol.I (Theoretical and Practical Treatise of Commercial Law, Volume I), Ed. C.H.Beck, Bucharest, 2008, p.277-303;

the fiduciary patrimony (in Romanian *masele patrimoniale fiduciare*) being established under the law, as special-purpose patrimonies.

Based on these grounds, the introduction of trust in the Romanian law – as the first breach of the institutions specific to common-law in the Romanian civil law – has been achieved by the New Civil Code, under a moderate and common form: *Fiducia*.

Thus, according to article 773 of the New Civil Code, *the fiducia is the legal operation whereby one or more grantors (in Romanian constitutori) transfer(s) various patrimonial rights or a group of such patrimonial rights, present or future, to one or more trustees (in Romanian fiduciari), who administer those with a given purpose, to the benefit of one or more beneficiaries (in Romanian beneficiari). These rights constitute an autonomous patrimony, separate from the other rights and obligations in the fiduciary's own patrimony.*

Having thus defined the *fiducia*, the Romanian law places itself among in line with the modern regulations existing at the level of the European Union and with the main European state.

Thus, in the text of the Book X - Trusts, from the Common Principles of European Contract Law, the Draft of the Common Frame of Reference, *the trust is considered as being an understanding, by which a trustee must administer or dispose of one or several assets (trust fund) for the benefit of a beneficiary or for the advantage of advance public benefit purposes.*

In the Principles of European Trust Law, the trust is defined in a less usual manner, but having the same meaning, from the point of view of its main characteristics. Thus, *in a trust, a person called "trustee" owns assets segregated from his private patrimony and must deal with those assets (the "trust fund") for the benefit of another person called the "beneficiary" or for the furtherance of a purpose.*

The French Civil Code, the obvious source of inspiration of the Romanian legislator, regulated the *fiducia as the operation by which one or several grantors transfer the assets, rights and guarantees, or a group of rights and guarantees, present or future, to one or several trustees who, holding it separately of their own patrimony, shall administer it for a determined purpose or for the benefit of one or several beneficiaries (art. 2011 Fr. civil code).*

No doubt, the *fiducia* from the Romanian law is a complex contract which, by its structure, involves two or several expressions of contracting parties' will (in the *negotium* sense): the grantor, the trustee and the beneficiary, agreement connected among them by a common economic purpose, resulting from a distinct legal entity, with its own legal regime: *fiducia*.

A major effect of the trust, which, in fact, represents its characteristics, encountered in all the regulations considered in this paper, consists in the fact that the trust fund is and must be regarded as a distinct patrimony of the trustee own patrimony and of any other patrimony belonging to or managed by the trustee.

The trust fund continues to represent the ownership of the grantor, being a distinct part of his patrimony but, in the relations with the third parties, it is

considered that the trustee has full powers over the fiduciary patrimony, acting as a true and sole holder of the rights in question (art. 784 para.1 of the New Civil Code).

And last, but not least, the *fiducia* (trust) can be established by contract and by law, under the interdiction of alienating it as an indirect gift (*animus donandi*) for the benefit of the beneficiary, under the sanction of the trust nullity.

Considering that, the New Civil Code requires the execution of the gifts solely by means of donation or legacy comprised in the will, we consider that, the above-mentioned interdiction refers to both the *fiducia* occurred *inter vivos* as well as to the *fiducia* set up for the *mortis causa*, thus establishing a damaging and unjustified limitation of its meaning, role and functions.

From this point of view, the Romanian law eliminates essential characteristics of the trust as an instrument for achieving gifts for the interest of the beneficiary in disagreement with the traditional purposes of the trust, with the provisions of the Hague Convention, of the Principles of the Trust European Law and, especially, with those of the Common Principles of European Contract Law – Draft of Common Frame of Reference, that will stay on the foundations of the European contracts law, most probably by means of an optional but binding instrument, such as the Regulation.

None of the above-mentioned examples prevents the use of trust or *fiducia* for making a direct or indirect gift in the favour of the beneficiary.

For these reasons, it is highly probable that the Romanian law shall suffer some amendments imposed not only by the pressure of the specialized doctrine and business environment, but also by the need to harmonize the European contracts law.

#### **IV. Conclusions**

The analysis of the Trust significance in the light of the Romanian law, but also from the perspective of its traditional meanings established under the law in England and in the United States of America, and last but not least, from the perspective of the regulatory trends existing in this direction at the level of the European Union, shows the importance trust or *fiducia* has, as essential legal and economic instruments.

Stepping further away from the meaning of the English-Saxon trust but, in agreement with the main current trends from the civil law, the *fiducia* represents a contract by which a trustee (*fiduciar*) is forced to administer or to dispose of one or several assets of one grantor, for the benefit of a beneficiary or for the furtherance of a purpose.

In this conceptual framework, the *fiducia*, just like the trust in the form adopted by the continental law states, is a special modality of assets management and not a means of transfer and acquisition of ownership over certain assets.

Undoubtedly, beyond its inconsistencies, the regulation of the trust institution under the name of *fiducia*, shall generate the modernization and significant development of the law and of the economic activity, thanks to the obvious

advantages of using this institution, advantages that will be further analyzed in a different paper.

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