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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.

Manuscripts should not exceed 8,000 words and must conform to the REBE's style requirements, which are guided by The Chicago Manual of Style (14th edition). All submissions must include a cover sheet explaining the scope of the article, and including the authors' names and affiliations, telephone and e-mail address. The text should be single-spaced. References are cited with parentheses using the author/date/page style. *Example:* (Marcus, 2005, p. 74). Authors should use footnotes, not endnotes to add only short comments. Bibliography should include only references cited in the text, in the alphabetical order of authors. An abstract of no more than 200 words should be included.

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TRENDS IN RETAIL COMMERCE

Elisabeta Andreea BUDACIA¹

Abstract:

In the present context of the economic reality in Romania, the problem of production and offer, on the one hand, should be viewed as the mirror image of trade and consumption, on the other hand. New trends regarding digitalisation, human resources, ecotechnologies have an impact on trade itself, but also on commercial management. Managerial activity, as operational modality based on knowledge, needs a new foundation, based on a model that is durable and accessible to commercial firms, a management that is able to clarify continuously and especially anticipate the place and fate of the enterprise in the new contexts of the knowledge-based society and sustainable development. Therefore, managerial activity has new characteristics and the necessity of the permanent growth of its efficiency is a priority.

Key words: trade, commercial management, digitalisation

Introduction

By analysing the trends in e-commerce, the clients' expectations and the challenges that retailers will face, three main elements emerge²: the fact that the client's wish will influence even more retail commerce, that the tendency to try out new products grows more and more, and that quality is a key factor of the decision to purchase.

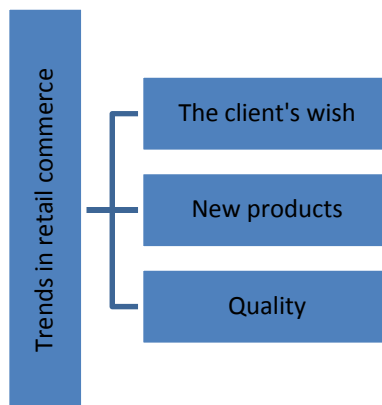


Fig. 1: Major trends in retail commerce

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² Doug McMillon, the CEO of Walmart, in an article posted on the World Economic Forum [site](#).

1. The client and the shopping experience

Clients and especially satisfying their needs and wishes have always been the retailers' priority. Today, there is much talk about the clients' shopping experience. On the other hand, digitalisation will be more and more present in the business called commerce; the internet, mobile phones, data analyses will help merchandisers to know their client better.

The influence of technology grows bigger and bigger in retail commerce and this determines certain changes regarding the clients' expectations who want to gain time, money and satisfaction through the shopping process. "In the future, commerce will have to be fun and offer the possibility to explore stores both offline and online, through virtual reality³".

Similar trends can be seen in Romania:

➤ the growing preoccupation for organic products, although there are major discrepancies between what is happening on the Romanian market and on the external market⁴:

- consumers in Romania are less informed on this subject;
- the ethics of conventional non-organic producers, who, in many cases, lie to the consumers;
- the consumer's profile is different; in developed countries, organic products are consumed by families, whereas in Romania they are consumed rather by children or by adults with health issues;
- the lack of a national sentiment in Romanians, who prefer import products;
- major discrepancies regarding the household income in Romania and abroad.

➤ new experiences in the store; the chain of Carrefour stores has a new service: "Your cash register – self service", the first cash register where clients can scan the products themselves and pay them⁵;

➤ the necessity of being informed and knowing aspects concerning the supply source, which determined the chain of Carrefour stores to sustain a production cooperative in the county of Giurgiu, Varasti locality⁶;

➤ the increase of online transactions; for example, the amount spent by Romanians on online shopping was 2,5 billion €, the average price of a transaction being of 60 € and the main categories of products were IT&C and fashion⁷;

➤ the growing interest for domestic products;

³ Doug McMillon, the CEO of Walmart, in an article posted on the World Economic Forum [site](#).

⁴ www.revista-piata.ro/ 16.10.2016

⁵ Article, in National/ 25.08.2017

⁶ Article, F. Budescu, in Romania Libera / 25.04.2017

⁷ Article, D. Ivan, in Jurnalul National / 22.09.2017

- the chain of Carrefour stores promotes the cultivation of Romanian vegetable varieties through the project “Cultivated in Romania, Romanian food”;
- the chain of Selgros stores has numerous collaborations with local fruit and vegetable producers from Braila, Buzau, Bacau, Iasi, Alba-Iulia etc⁸.

2. The trend regarding new products

“Human society is in a constantly dynamic evolution, involving the development and diversification of economic and social phenomena. Scientific and technical performance have increased the quality and quantity of goods and services, a change in the conditions of overall existence, an increase in the complexity of relations in all areas⁹.”

Novelty is one of the dominants of the beginning of this century, no matter the activity branch, the economy is changing fast due to new, revolutionary technologies and materials, and markets are rapidly invaded by new products which are realised according to a new concept, in new organisational structures, in line with new organisational strategies, through new ways of distribution and commercialisation, all these being meant to satisfy the consumers’ tastes and exigencies, which are also continuously changing, and even to anticipate new ones, but also to ensure competitiveness and greater profits for innovative firms.

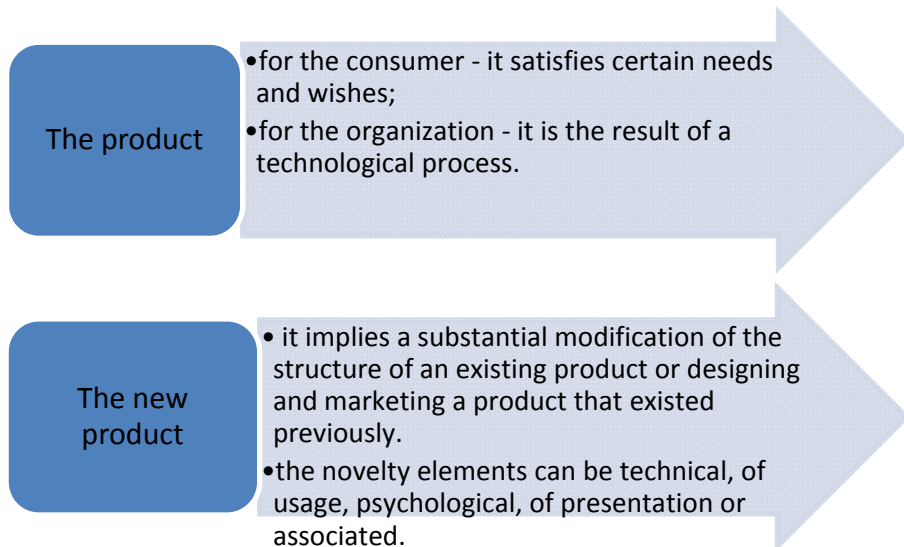


Fig. 2: Comparison between a *product* and a *new product*

⁸ Article, F. Budescu, in Romania Libera / 25.04.2017

⁹ M.F. Busuioc, Theoretical Aspects of Development Strategy, articol publicat in Romanian Economic and BUSINESS Review - Special Issue, Winter 2014, ISSN 1842 – 2497, pag. 39.

Studies have shown that new products resist less time on the market because of certain factors, such as¹⁰:

- the ease with which producers can launch new products by introducing new ingredients, varieties, designs or packages with minimal changes in the production process;
- the buyers' wish to test new products which are advertised and their tendency to rapidly abandon them if they are not satisfied;
- gaining clients by the new brands determines the affected competitors to try to win them back by launching new brands;
- the allocation of space in supermarkets, especially for new products, intensifies the competition for the occupation of shelves.

Doug McMillon, the CEO of Walmart, underlines the fact that people from all over the world are connected to information, they can see what products are being consumed in other countries and they want to benefit from the same things.

The preference trends for new products can also be noticed in the food industry and a good example is the dairy industry. "Given the fact that 60% of the consumers, on a global scale, are willing to experiment more often different flavours and ingredients, the producers should consolidate the points of differentiation of their product range in order to survive the competition and increase their sales. Offering new sensory experiences will attract 64% of the consumers who "always" or "often" experiment new types of food or flavours when they consume dairy products, but also 72% of those who experiment different flavours in yoghurts. Despite the huge popularity of fruit flavours from the yoghurt category, the consumer gradually tends also towards other delicious combinations etc¹¹.

3. Quality

Due to the increased competition between producers and the consumers' exigencies, services that are complementary to the products and the service have developed. Today, we talk about the goods – services duality which is very clear in the commerce sector.

¹⁰ Ph. Kotler, F. Trias de Bes, *Lateral marketing*, 2004, p.42-53

¹¹ www.roaliment.ro/stiri-industria-alimentara/tendinte-industria-lactatelor-2017

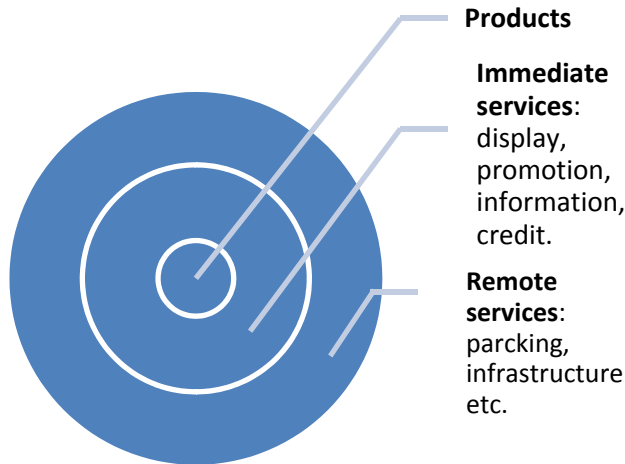


Fig. 3 The goods – services duality in commerce

Quality is requested not only by clients, but also by the whole community, practically the commercial business is designed to bring benefits to the industrial management, the clients, the employees, the local community and the state in an equal measure. “Our clients want our employees to be content and they want to see that in their attitude and in the services they provide¹².”



Fig. 4. The beneficiaries of the commercial business

¹² Doug McMillon, the CEO of Walmart, in an article posted on the World Economic Forum site.

A few conclusions

The tendency to limit traditional commerce and to expand the modern one online will continue to grow in Romania. On the other hand, the near-by small shops will occupy quite an important place given the consumers' lack of time for shopping, but also because of the poor infrastructure.

The Romanians' taste for organic and traditional products is only just forming, therefore there is a huge potential market in this segment.

The development of online commerce will entail the escalation of online payments, which will generate new banking products or, at least, the diversification of the banks' offer.

The necessity of a professional provision in commerce is growing; the involvement of the big chains of stores in the educational system, in order to train specialists, is not only necessary, but also desirable.

Although not appealing, rural commerce can be a point of attraction for investors in the distant future.

PROFESSIONAL COMMUNICATION – CREATING A DICTIONARY FOR HOTEL OPERATIONS

Mariana Coancă¹

Abstract

The paper analyzes subject matters like professional communication, professional needs, documentation, terminography, and translation and how they interconnect to give a comprehensive insight about the terminology of a broad area of social relevance – hospitality industry. The second part of the paper deals with the importance of creating a dictionary of hotel operations, taking into account that the average language user relies on a dictionary as authoritative source of information. The third part of the paper provides an overview of the Dictionary of Hotel Operations in English-Romanian-Italian, specifically the process of dictionary compilation and its structure, after identifying the needs and skills of the target user.

Keywords: *communication, terminology, compilation, dictionary, hotel operations.*

1. Introduction

Professional communication takes place in all professional contexts and encompasses written, oral, visual and digital communication. Nistor (2006) describes the features of professional communication as follows:

a) *Its predominantly pragmatic nature.* In professional activities, the practical function of language is dominant as the individual aims to produce a change in the behavior or attitude of the person he/she works or interacts with. Some of the purposes of professional communication are: the transmission and obtaining of information, the control over the fulfillment of delegated tasks, the evaluation of the employees' performances, hiring the best candidate for a job, motivating and training the subordinates or partners (colleagues), etc.;

b). *The concern for efficiency.* Efficiency implies that the communication process takes place with as little resource consumption as possible; therefore, the communication has to be concise, precise, with direct reference to the topic in question;

c) *Crafting messages according to the needs of the audience.* In professional communication, it is considered that the encoder has the task of making the message easy to understand.

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d) *Promoting the image of the company*. It is paramount that the businessperson/professional in a specific area must create a good impression on the interlocutor about himself/herself, about his/his organization, products, etc.

(Nistor, 2006:19-20).

2. From Language for Professions to Languages for Specific Purposes

The aspect of language for professions was analyzed by Ehlich (1991) who argues that professionalization means a highly specialized type of linguistic socialization which has major impacts on the structures of society's common knowledge. Moreover, a theoretical foundation for the analysis of languages in the professions could be found:

- by making a clear distinction of the categories text and discourse,
- by referring to a theoretical framework which offers analytical tools for an integrated treatment of linguistic, mental, and instrumental aspects of linguistic action,
- by making a clear distinction between form and function, in combination with the analytic reconstruction of their interrelationship,
- by integration of the concept of linguistic action into a theory of communication.

(Ehlich, 1991: 27-28).

In a changing environment characterized by globalization, technology, internationalization, greater student and worker mobility, English maintains its top position as *lingua franca in all business areas*. As reported by James Lane in the Babel² magazine, English is spoken by 1.75 billion people around the world and is synonymous with opportunity and a better quality of life. The author emphasizes the fact that the relative ease with which English can be acquired (compared with Chinese) and the pervasive soft power of US culture mean that English will continue to dominate the world stage. Moreover, the field of English for Specific Purposes has shaped new teacher and learner roles in this digital era, not ignoring the definition of English for Specific Purposes (ESP) by Dudley-Evans and St. John (1998).and its *absolute* and variable *characteristics*:

- ESP is designed to meet specific needs of the learner;
- ESP makes use of the underlying methodology and activities of the disciplines it serves;
- ESP is centered on the language (grammar, lexis, register), skills, discourse and genres appropriate to these activities.
- ESP may be related to or designed for specific disciplines;

² Babel is a language learning app and e-learning platform.

- ESP may use, in specific teaching situations, a different methodology from that of general English;
- ESP is likely to be designed for adult learners, either at a tertiary level institution or in a professional work situation. It could, however, be used for learners at secondary school level;
- ESP is generally designed for intermediate or advanced students. Most ESP courses assume basic knowledge of the language system, but it can be used with beginners.

(Dudley-Evans and St. John, 1998: 4–5)

Likewise, the field of Languages for Specific Purposes (LSP) which has its origins and main impetus in English for Specific Purposes (ESP) is evolving in a globalised and technological context which provides teachers and students with greater opportunities to access different discourse communities and tailor courses to students' genuine needs and practices (Arnó-Macià, 2014: 4-5).

3. The Role of Dictionaries in Improving Professional Communication

In order to be successful in a changing world, students need the ability to select information, understand the correlation between the pieces of information, place new ideas and knowledge in different contexts and grasp concepts that are connected to their future jobs. Ehlich predicted that the demand for training members of the society in order to enable them to participate in professional communication was permanently increasing in quantity and in complexity (Ehlich, 1991: 27-28). If terminology studies the ways the terms are formed, their linguistic behavior, their relations with the signification, terminography deals with the collection, management and dissemination of terms. Thus, it has an applicative aspect, aiming at creating databases for different purposes such as: specialized vocabularies, glossaries, dictionaries, databases, etc. (Pitar, 2004: 1)

Dictionaries are used for linguistic purposes and extra-linguistic purposes. From a socio-cultural point of view, the extra-linguistic goals of dictionaries are much more important, as dictionaries target the majority of the population. Thus, the problems solved with the help of dictionaries are currently related to the most varied fields. In the learning of language skills, dictionaries may provide assistance on two levels: indirectly by transmitting knowledge about the native, foreign or special-purpose language's vocabulary and grammar in connection with the systematic study of the language in question; and directly by providing information that can be used to solve specific problems in the actual process of communication – in connection with text reception, text production, and translation (Fuertes-Olivera and Tarp, 2011: 150).. In a later study, Fuertes-Olivera (2014) points out the study conducted by Laufer and Melamed (1994) that demonstrated the effectiveness of bilingual and monolingual dictionaries through the combination of the monolingual

information which contains a definition and examples with a translation of the new word into the learner's tongue. At the beginning of the study learners were split into unskilled, average and good dictionary users and were tested on their comprehension of unknown words and production of original sentences with these unknown words in different conditions.

In my opinion, if a language instructor creates a specialized dictionary with the support of professionals from a specific field, the dictionary will become a reliable teaching and learning material which tailors students' genuine needs and practices in contexts that involve communication and collaboration across borders.

4. Creating a Dictionary for Hotel Operations

Hospitality Industry is considered a broad group of businesses that provides services to customers. Mackenzie and Chan gave a contemporary explanation of *Hospitality* indicating the relationship process between a *guest* and a *host*. When talking about the "Hospitality Industry", they referred to the companies or organisations which provide food and/or drink and/or accommodation to people who are away from home (Mackenzie and Chan, 2009:1). In the article "The Most Important Quality of a Leader: Communication,"

Daniela Ciobotar presents a 2016 study of 195 leaders from 15 countries that placed clear and effective communication in the top 10 skills needed in leadership alongside flexibility, ethics, openness and the ability to improve the performance of those around them.

Facilitating effective communication in the hospitality industry is done by: welcoming guests, interacting with guests, assisting guests throughout their stay, handling complaints, accepting different opinions, encouraging discussion, providing feedback, timing, adapting communication to the guest's level of understanding, etc. Also, the empathic component is very important because the hospitality industry employees must respect and care about the guests' feelings. Communicative user situations occur when people need help in connection with ongoing acts of communication. Thus, dictionaries must be designed to meet certain types of user needs by carefully selecting data and specifying the options for accessing the data so that the answers to users' questions match their needs in a number of different contexts (Fuentes-Olivera and Sandro Nielsen, 2014: 219).

The "Dictionary of Hotel Operations" has been compiled and published to promote the development of two Romance languages (Romanian and Italian), with regard to the terminology of a broad area of social relevance - *hospitality industry*, by making a comprehensive source of information for the operations performed in hotels internationally.

The starting point was to collect terms in English that represent the complex *area of hotel operations*, taking account of: the dominant role of English in most

areas of economic and social importance, a large number of students who get a job in the hospitality industry abroad, and students' interest in aspects of specialized communication and translation. Cabré (1999) considers the terms as units of the lexicon with a precise meaning in a given domain, showing the specialized information of that domain. Therefore, terms will appear in all the texts of their specialized scope. When analyzing *terminology* and *translation*, the same author points out that specialized translation inevitably needs terminology to produce an adequate text and the term extraction from original texts instead of translated texts is a priority in the process of elaboration of glossaries.

After investigating a corpus of online didactic texts, textbooks, glossaries, hotel websites, and electronic dictionaries, I collected the lexical units in close collaboration with specialists in the field of hospitality. The selected texts underwent a critical analysis of the hotel operations area, the key activities of hotel departments such as Front-of-House Department, Housekeeping, Maintenance, Accounts, Food & Beverage Department and the key competences of the hotel operations staff. By applying the onomasiological and semasiological principles, I managed to select terms that designate activities in the areas mentioned above and terminology terms/phrases in the specialized texts to identify their meaning.

The dictionary provides 1,800 entries. The headword of each entry consists of a single word or multi-word unit in English, followed by its abbreviation or the specification British English/American English when needed. The dictionary provides the equivalents of headwords (single word or multi-word) in *Romanian* and *Italian* and their grammatical category: For abbreviations and jargon, I included definitions and quotations from specialized texts in all languages of the dictionary, and disambiguation by short contexts to facilitate comprehension, as exemplified below:

Grievance ³ (BrE)
<i>ro</i> Plângere (s.f.)
<i>it</i> Reclamo (n.m.)
Grooming standards
<i>ro</i> Norme de igienă și de îngrijire personală (s.f.)
<i>it</i> Norme di igiene e di cura personale (n.f.)
Gross Operating Profit (GOP)
<i>ro</i> Profitul operațional brut (s.n.)
<i>it</i> Reddito operativo lordo (n.m.)

³ “A complaint or a strong feeling that you have been treated unfairly” <http://dictionary.cambridge.org/dictionary/english/grievance?q=GRIEVANCE>

Gross Operation Profit Per Available room (GOPPAR)
<i>ro</i> Profitul operațional brut pe camere disponibile (s.n.)
<i>it</i> Reddito operativo lordo per camere disponibili (n.m.)
Group rate
<i>ro</i> Tarif pentru grup de persoane/turiști (s.n.)
<i>it</i> Tariffa di gruppo (n.f.)
Guaranteed booking
<i>ro</i> Rezervare nerambursabilă (vb.)
<i>it</i> Prenotazione non-refundable ⁴ (vrb.)
Guest
<i>ro</i> Client (s.m.)
<i>it</i> Cliente/ospite (n.m.)
Guest balance report
<i>ro</i> Raport privind bilanțul clienților (s.n.)
<i>it</i> Rapporto di bilancio degli ospiti (n.m.)

This dictionary is a theoretical and practical support for the translation of texts with application in tourism, professional communication, hotel operations, and customer service.

Concluding remarks

Language in the professions is a major concern in present-day linguistics and a very quick growth in the field of linguistics for professional communication which was determined mainly by external factors (Ehlich, 1991: 9). Specialized dictionaries have already become paramount in ESP training. The demand for training members of the society in order to enable them to participate in professional communication is permanently increasing in quantity and in complexity. (Ehlich, 1991: 27-28).

To conclude with, acquiring communication skills in foreign language contributes to the creation and evolution of professional cultures that impact the students' role in a future organization. By creating the Dictionary of Hotel Operations, I identified a set of core language needs of learners and adopted teaching materials and practices that facilitated learners to grasp the special vocabulary of hotel operations.

⁴ Viene garantita dalla fase della prenotazione attraverso il prepagamento, o il rilascio dei dati della carta di credito del cliente.

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IDENTIFYING OF THE MIGRATION PHENOMEN FROM FOCSANI BY MEANS OF THE PILOT SURVEY

Elena Raluca Cristian,
Laura Georgeta Bărăgan,
Răzvan Șerban Mustea¹

Abstract

This research general scope is to identify the perception of the Focsani inhabitants as regards the amplitude, evolution and effects upon society that the migration might have.

The micro region of Focsani study has been conducted starting with identifying of the persistent problem of the primary young population labor migration force to Italy and Spain, with extremely complex effects (psychological, social and economic).

Keywords: migration effects; the determinants; pilot survey; external migration.

JEL Classification: F22; J61; J62

1. Introduction:

The labor force migration in Romania is centered on a series of psychological, social and financial migrant's reasons to increase their income and improve their life conditions in another country. In this article we started from the premise according to which the migration exodus is based on a series of causes: economic, financial and social; these being; on their turn, influenced by a series of determinants (economic, political, cultural, social and religious).²

In order to analyze the economic, social and cultural causes, a pilot survey has been conducted in Focsani, on a group of 90 persons, between the months of October and December 2016.

The micro region study has been conducted starting with identifying of the primary young population of Focsani labor migration force to the main destination countries: Italy and Spain. The migration effects upon the migrants and their

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² Cristian, Elena, Raluca; Moise, Elena; Dârzan, Mihaela, 2013, *A Contemporary Approach on Migration*, Vol.8, Special Issue 3.1 Review (REBE), Editura Pro Universitaria, Bucuresti., pp.10-11.

families are extremely complex, with strong implications of psychological, social, economic and financial nature

2. Consequences of Push & Pull Factors

In the literature, the determinants influencing the external long-term migration are known as Push & Pull factors. The *Push & Pull* factors are of: economic, demographic, political, religious, and socio-cultural nature. These determinants of *Push & Pull* factors lead the migrants from their place or country of origin to new territories or country regions, favoring, in this way, the immigration „exodus”. The Push & Pull model is, at its core, a static model in which it is not specified how migration affects the structural, economic and social conditions from the destination country. The Push & Pull model focuses on the premise that the rejection and attraction factors from the destination country are in a relationship of close conditionality. An example of this is the one of big wages from the migrant’s destination country considered as attraction factors, whereas the small wages from the migrant’s country of origin are considered dominant impulse factors.³

From the Push factors highlighted in the economic literature, one can enumerate: the low labor productivity in various fields (construction, infrastructure, transportation, light industry and food), high unemployment rate from different parts of the country, poor financial conditions of the population in different regions; the absence of any real economic opportunities and vocational training in the migrants country of origin, especially for those who achieved undergraduate and post-graduate education.

The Pull factors are the ones considered as attraction for the foreign migrants that arrive to different countries which determine them to leave their country of origin for a period of time.

The Pull factors are the factors of attraction from a certain region, such as: professional opportunities, larger wages, a series of facilities (economic, social, professional) and better working conditions.

3. The objectives of the pilot survey

In order to identify a perception of the migration phenomena in Vrancea County, a pilot survey has been conducted having as main scope the perception of the Focsani inhabitants as regards the amplitude, evolution and effects upon society that the migration might have.

Between the migrants, the term *acculturation* is used more and more frequently, by this meaning a group of migrants from different countries, from

³ Cristian, Elena, Raluca; Baragan, Laura, Georgeta.,2015, *Identification of main economic and social causes of Romanian migration*, ECOFORUM, Suceava, Volume 4, Issue 2 (7),p.165.

different cultures that enter into a primary form of contact with the local population. As a result of this social contact, both cultures entwine and lend each other different basic elements: colloquial expressions, gestures, preferences, a taste for different types of service, products, bringing visible alterations in each and every participant's to this process behavior.

The pilot survey's objectives consist identifying the determinants influencing the labor force migration, respectively following some aspects:

- a. The migrants personal experience regarding the labor force mobility;
- b. The connection between the migrant's personal and social satisfaction and its decision to leave and work abroad;
- c. Verifying the intention to leave in the near future;

The group was made of 90 persons aged between 19 – 38 years old, of male and female gender, residents of the Focsani.

In order to collect and interpret the information, during the survey, a standard interview technique of 6 questions has been used.

3.1. Analysis of the pilot survey from Focsani

The interview method was made by means of a quantity research based on a questionnaire made in the same period of time (October-December 2016), monitoring: the respondent's financial situation; locality of domicile; present working place; accessibility to finding a working place in Focsani; the experience regarding immigration, the interviewed respondent's intention to immigrate; the migration effects upon society; verification of the Romanian migration „beaten path” theory.

The „beaten path” model considers that the ones remaining home will soon become future emigrants as long as within their entourage or in their families there are people who emigrated and experienced, for a period of time, the migrations phenomena.

In regards of perceiving the Focsani respondent's present situation, to the question „How satisfied are you with the way in which you and your family live?” the answers were as it follows:

Table 1. Distribution of the interviewed people function of the personal satisfaction degree

Variant of answers	Number of people
Very satisfied	15
Not so satisfied	37
Not at all satisfied	29
I do not know/it is of no interest to me	9
Total	90

Source: Own data processing

The personal satisfaction degree, for the Focsani inhabitants is presented like this, from the 90 respondents of the pilot survey, there were declared:

- Not so satisfied – 37 respondents
- Not at all satisfied – 29 respondents

The answers to this question are mostly due to the fact that Focsani does not offer financial and professional to its inhabitants, especially to the young undergraduates and post-graduates.

To the question (How satisfied are you with the accessibility in finding a working place in the Focsani from Vrancea County?)

Table 2. Distribution of the interviewed people from Focsani function of the accessibility in finding a working place

Variant of answers	Number of people
Working places are relatively easy to find	17
I am not so satisfied with the working places	21
There are not enough opportunities for the young people	47
I do not know/ this aspect is of no interest to me	5
Total	90

Source: Own data processing

On the other hand, a series of private companies from Focsani were not satisfied with the fact that there is an existing deficit of labor force due to the migration of a significant number of people fit for work, with secondary and undergraduate education studies

One of the proposed objectives of the pilot survey conducted in Focsani was to identify the migration or working force mobility experience degree of the residents, respectively verifying the „beaten path” theory. In this scope, we moved on to the question („How often did you went abroad, alone or with your family in the past 10 years?”).

During the pilot survey we have identified, from the 90 respondents a group of 18 people with domicile and residence in Focsani who immigrated to another country and that returned definitely and for good, to town.

As regarding traveling with friends and family during the holidays, 56 answers from the pilot survey respondents have been registered, on the opposite 7 respondents being situated, who, due to their financial situation have never left Romania, respectively, Focsani.

Table 3. Distribution of the interviewed people from Focsani function of their leaving the country in the past 10 years

Variant of answers	Number of people
I have never left the country	7
Only a few times during the holidays with the family	56
On occasion, travelling with work	9
I was abroad, but I have returned for good	18
Total	90

Source: Own data processing

Most of the respondents from Vrancea County have chosen to spend their holidays or to visit the countries where they have relatives/friends/acquaintances established abroad from quite some time.

The scope of this questions being to verify the „beaten path” theory model among the future emigrants from Focsani and, at the same time their predisposition regarding the degree of influence that the ones gone abroad have on the ones that remain at home.

It may be observed that, from the 90 answers, 57 of the pilot survey respondents declared that they have relatives/friends/acquaintances that immigrated to another country for a better living.

The „beaten path” model considers that the ones remaining are or will lately become future emigrants as long as within their entourage or family there are people who emigrated and experimented, for a period of time, the migrations phenomena. The decision to emigrate is not taken spontaneously or in relatively short period of time. From the studied literature it has been observed that the decision to emigrate in the near future is taken on long term, this being conditioned by many factors: ⁴

- The family left at home (children, parents, close relatives);
- Marital status of the emigrants or involved individuals;
- Age and professional training;
- Professional situation and occupational status on the labor market;
- The financial situation of its family;
- The existence of some relatives or close friends in another country.

⁴ Hein de Haas (2009), *Migration transitions. A theoretical and empirical inquiry into the developmental drivers of international migration*, International Migration Institute, University of Oxford, pp.5-7.

Table 4. Distribution of the interviewed persons function of existing relatives/acquaintances/friends who emigrated to another country

Variant of answers	Number of people
Yes – I know	57
No / I do not know anybody	18
I do not know/ this aspect is of no interest to me	15
Total	90

Source: Own data processing

For the question (Do you know that the migration of the temporary labor force has any effect upon the society or the ones remaining at home?), the respondents from Focsani have answered like this:

- Going to work abroad has a series of positive effects on the ones remaining at home– 42 persons;
- The social/financial discrepancy between the ones remaining at home and the ones working abroad deepens -28 persons;

On the opposite, 7 respondents declared that, in their opinion, migration does not influence in a positive manner the situation of the ones left at home, its effects not being shown on short and long terms.

Table 5. Distribution of the interviewed people function of some existing migration effects

Variant of answers	Number of people
Positive effects for the families of the ones working abroad	42
The social/financial discrepancy between the ones remaining at home and the ones working abroad deepens	28
No main effect	7
I do not know/ this aspect is of no interest to me	13
Total	90

Source: Own data processing

For the question („If given the possibility, have you ever thought to emigrate abroad in the near future?") that had as main scope verifying the future intention to emigrate, the following answers have been registered:

- 38 respondents have declared that they have in their personal plan to emigrate to another country;
- 23 persons have declared that the decision to emigrate is strongly connected only to their and their family's future financial situation;

- 18 persons that experimented the migrations phenomena and that returned to the county do not intent to emigrate too soon;
- 11 persons from the interviewed ones declared that they are not presently interested in the subject.

The decisive and final role in stopping the migrations phenomena must be of the states involved in the migrations process. These are constrained by or have to take a series of measures in order to stop the migrations phenomena:⁵

- Social politics adequate to the local labor force;
- Creating of new working places
- Encouraging national and foreign investors;
- Stimulating labor productivity;
- Increasing of the income and consume of the population.

4. Conclusions:

Many of the emigrants choose to live in other countries for better jobs, financial and professional significant opportunities, a lifestyle above the one from the own country. Migration is often linked to the economic and social situation in the country of origin of the emigrant.⁶

Regarding the behavior adopted by the Romanian emigrants in the moment of their return to the country, it has been observed that they spend a lot and diversely: they invest in real estate (buying lands or different real estate properties), they build and furnish their houses, have fun with friends and family in the country during vacations.

Unfortunately for the states involved, the migrations phenomena does not present only benefits for the origin and destination country, the negative effects are felt at macro-economic level for each country affected by this phenomenon.

Migration causes competition of the labor market, causing social conflict between the streams of migrants and the native population of the host country.

An aspect to be taken into consideration is that the number of immigrants that do not have a working place and that are in the official registers of the state or host country lead to the „thickening” of the unemployment rate.

The main scope of explaining the causes that have determined or that continue to determine the migrations act is mainly given by the desire for accumulating a considerable income abroad and to transfer the eventually accumulated capital (remittent income), to the country of origin, this having

⁵ Cristian, Elena, Raluca; Baragan, Laura, Georgeta.,2015, *The Impact of the „Beaten Path” model on Romanian Migration*, ECOFORUM, Suceava, Volume 4, Special Issue 1,p.256.

⁶ Cristian, Elena, Raluca; Moise, Elena; Bărăgan, Laura, Georgeta, 2013, *The Emigrant Identity in the Current Global Context*, Analele Universitatii Ovidius,Seria: Stiinte Economice,p.474.

different destinations (personal income, small real estate investments and the education of the remaining at home children).

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TAXATION TRENDS IN THE LAST COUNTRIES WHO JOINED EUROPEAN UNION: ROMANIA, BULGARIA AND CROATIA

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Abstract

The main purpose of this paper is to see the taxation trends in the last three countries who joined the European Union. Starting with the main features of the tax system (from the moment of accession) focusing on direct and indirect taxes and continuing with an analysis of the evolution of the structure and level of taxes, the paper reveals through comparison the diversity of the fiscality and it's trends in Romania, Bulgaria and Croatia. In the end, it's relevant to note the level of tax pressure, the factors that influenced the pressure in this countries and it's evolution.

Keywords: tax burden, duties, social contributions, fiscality, direct taxes, indirect taxes

JEL Classification: H24, H25, H27

1. Introduction

While the taxation is an important part of our lives, this paper aims to reveal the taxation trends in the last three countries that joined the European Union: Romania (2007), Bulgaria (2007) and Croatia (2013), starting from the year that they joined. In the first part it's presented the main features of the tax system that shows a classic fiscal system in Romania and Bulgaria and a classic and progressive taxation for Croatia, through the principals taxes. The paper ratter aims to provide a qualitative evaluation of the trends, so the analyze of the taxation level evolution, not only reveals differences in all three countries, but also shows that the fiscal policy measures promoted by the tax authorities has influenced both the level and structure of revenues. Also, the economic situation that all three countries faced in the years after the joining moment influenced.

So, all the three countries faced some legislative modifications from the moment of accession to the European Union (i.e. Croatia started a fiscal reform from January 2017). From this point, the tax pressure analyze it's important in terms of financial, economic and even social.

The paper integrates statistical analyses and concludes with qualitative evaluation of major trends.

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2. Main Features of the tax system in Romania, Bulgaria and Croatia and the analyze of the taxation level evolution in these countries

The economy of these three countries is still struggling to recover after the crisis. Another fact is that the fiscal legislation suffered a lot of modification in the past years in all this countries. The tax system in all countries was changing after the accession. So as it can be seen in Table no.1, now Romania and Bulgaria presents a classical system, while Croatia features a classic and progressive taxation. Even if Romania and Bulgaria reveals a classical system, in terms of level of rates are some differences. Bulgaria, since 1th of January 2017, adopted some changes in tax legislation, in terms of corporate and personal taxation, social contribution, VAT or excise duties.

According to [K. Nightingale (2002/2003)], “taxation has exist since the birth of early civilizations, and it could be said that it is part of the price to be paid for living in an organized society.” This price it’s paid different from one country to another (table no.1).

Table no. 1 Main features of the tax system in Romania, Bulgaria and Croatia

	Croatia		Romania	Bulgaria
Fiscal system	Classic and progressive taxation		Classic	Classic
Corporate tax rate	18% *		16%	10%
Personal income rate	Monthly taxable earned income, HRK	Rate within brackets, %	16%	10%
	Up to 17.500	24		
	Over 17.500	36		
Employer contribution	17.2%		22.75% - 23.45%**	31.7%-32.4%
Employee contribution	20%		16.5%	13.3%
VAT	General tax rate: 25% Reduced tax rate: 13% and 5%		General tax rate: 19% Reduced tax rate: 9% and 5%	General tax rate: 20% Reduced tax rate: 9%

Source: www.mfin.hr, www.mfinante.ro, www.minfin.bg, <http://taxsummaries.pwc.com>

Notes:

*- for taxpayers with annual income under HRK 3 million the corporate tax rate is 12%

** - 22,75% it’s calculated for the minimum risk of 0.15% on “Work accidents, risk insurance, and professional disease fund”. The contribution for this fund it’s between 0.15% and 0.85% depending on the category risk. With the maximum category risk the social contribution rate paid by the employer it’s released at 23.45%

Corporate tax is levied at of a flat rate in all three countries. Bulgaria reveals the lowest level of taxation at 10% (not only from the analyzed countries, but from all the EU countries), while Romania and Croatia stick to a higher level of 16% and 18%. A difference here is that in case of taxpayers from Croatia with annual income under HRK 3 millions the corporate tax rate is 12%. In Romania, for the entrepreneurs with a micro enterprise, the tax rate is between 1% and 3% depend on some certain conditions. Another difference is revealed in case of Romania, where the tax for gambling or nightclubs operations is either 16% of the taxable profit or 5% of the total revenues obtained from this activities, whichever is higher².

In Romania and Bulgaria (the country with the lowest level of taxation on personal income), the countries who joined EU in the same year, there is a classic system, with a flat-tax rate of 16% and 10%. In Romania, this classic system is from 2005³, 2 years before de accession and generally applies to income from many sources (independent work activity, royalties, rents, etc). In Bulgaria, is from 2008, one year after the accession, when the reform start, and switched from a four-bracket system to flat tax.

Ivica Urban (2006) says that, in Croatia“personal income tax in its current form has existed since 1994, and since then numerous changes have taken place”, but all this chances faces the progressive type of the system. Nowadays, Croatia still features a progressive taxation of earned income, with two tax brackets: up to HRK 17.500 – 24% and over HRK 17.500 – 36%.

Social security contributions are paid both by employers and employees in all the analyzed country. For the employer contribution, Bulgaria reveals the highest rates while Croatia the lowest⁴. Employer contributions, in Bulgaria, are paid for social security (13.56% to 14.26% - depending on contribution paid to the “Accident at Work and Occupational Illness Funds”, which vary from 0.4% to 1.1%) and for health insurance (4.8%). In Romania, the employers pay contributions for pension fund (15.8%, 20.8% or 25.8% depending on working conditions), for health fund (5.2%), for medical leave: (0.85%), for guarantee fund (0.25% of the salary fund), unemployment fund (0.5%), work accidents, risk insurance and occupational disease fund (0.15% to 0.85% - depending on the risk). In case of Croatia, employers pay contribution for health (15%), for health protection while at work (0.5%) and unemployment (1.7%).

For the employees, Bulgaria reveals the highest rates, while Croatia the lowest⁵. The employee pays contributions for pension (10.14% - Bulgaria; 10.5%

² According to the Law 227/2015 Fiscal Code, Title II, Chapter I, Article 18

³ Is interest to note that before 2005 there was a four-bracket system, with tax rates ranging from 18 % to 40 %

⁴ Croatian employers aren't subject of pension contribution.

⁵ Croatian employee are not subject of health or unemployment contribution, only pension contribution.

- Romania; 20% - Croatia), for health (3.2% - Bulgaria; 5.5% - Romania) and unemployment (0.5% - Romania).

In terms of VAT, there is a standard rate: 19% in Romania, 20% in Bulgaria and 25% in Croatia. Beside the general tax rate, there are reduced rate in all the analyzed countries, applied from books or admission to cultural services through pharmaceutical products or medical equipment, depend on the country.

2.1. Analyze of the taxation level evolution in Romania, Bulgaria and Croatia

This analyze reveals some similarities, but some differences also. The first common is that, regarding the structure of revenues and by level of government, the countries have the same structure. Another common is that, the share of indirect taxes in total revenue is higher than the share of direct taxes. Romania has the lowest share of indirect taxes, while Croatia has the highest one. Still in these two countries, the trend was increasing from 12.5% to 13.4% in Romania and from 18.2% to 19.7% in Croatia, while in Bulgaria presents a decreasing trend: from 16.2% to 15.5%. Even in Romania the overall trend is increasing, there was a drop from the moment of accession to 2010, which also is the year with the lowest numbers. For Bulgaria this year is 2011.

VAT in Romania had a constant trend exception from this makes the 2009-year, when we had a drop of 1.5 p.p. In 2010 we have an increase of 1 p.p. due to the change in the VAT rate from 19% to 24%. In Bulgaria, the VAT had a good year in 2008, but after that decreased continuous with 1.4 p.p. from 2008 to 2015 and 0.8 p.p. from 2007 to 2015. Croatia, the country with the highest rate of VAT, is the only country with an increase so high, from 11.9% in 2007 to 13% in 2015. In case of Croatia it's interested to note that from the start point of the analyze to the year of accession (2013) the trend was almost constant and after this moment there was an increase of the share of VAT. Regarding the tax rate on consumption, Bulgaria is the only country for which the numbers shows no decrease in 2008 after the crisis hit.

Direct taxes show commons, revealing almost the same share in GDP in all countries analyzed. Romania reveals a constant trend, while Bulgaria and Croatia a decrease. In case of Bulgaria from 7.7% to 5.6% which represents a drop of 2.1 p.p. and in case of Croatia from 7.3% to 6.0%, a drop of 1.3 p.p. In both countries, the reason for this decrease is the revenues from the corporate tax.

Another common is that in all countries the share of both personal and corporate income is the same, but in case of Croatia the personal income has a higher share than the corporate one, through the progressive system. The trend for personal income is the same in all countries. The difference come regarding the corporate income where all the countries present a drop: Romania from 3.0% in 2007 to 2.3% in 2015, Bulgaria from 4.1% from 2007 to 2.1% in 2015 and

Croatia from 3.1% in 2007 to 1.9% in 2015. The business climate it's not favorable in any of these countries.

Table no. 2 Structure of revenues in Romania

	Romania								
	2007	2008	2009	2010	2011	2012	2013	2014	2015
A. Structure of revenues	% of GDP								
Indirect taxes	12.5	11.8	10.8	11.9	10.0	13.2	12.8	12.8	13.4
VAT	8.0	7.8	6.5	7.5	8.6	8.2	8.1	7.6	8.1
Taxes and duties on imports excluding VAT	0.3	0.2	0.2	0.4	0.5	0.5	0.4	0.4	0.4
Taxes on products, except VAT and import duties	3.7	3.2	3.5	3.4	3.4	3.8	3.6	3.9	4.0
Other taxes on production	0.6	0.5	0.6	0.6	0.6	0.7	0.7	0.9	0.9
Direct taxes	6.7	6.6	6.2	5.7	6.0	5.8	5.9	6.2	6.6
Personal income	3.2	3.3	3.4	3.2	3.3	3.4	3.4	3.5	3.7
Corporate income	3.0	2.9	2.4	2.0	2.3	1.9	2.0	2.1	2.3
Social contributions	9.8	9.3	9.3	8.6	9.0	8.7	8.6	8.5	8.1
Employers	6.2	5.9	5.8	5.4	5.6	5.5	5.6	5.5	5.0
Employees	3.6	3.3	3.5	3.1	3.4	3.2	3.0	3.0	3.1
Total	29.0	27.6	26.3	26.2	28.1	27.7	27.3	27.5	28.0
B. Structure by level of government	% of total taxation								
Central government	62.4	63.1	60.9	63.2	64.0	63.5	64.0	64.4	66.7
Local government	4.0	3.2	3.5	4.0	3.8	3.6	3.7	3.6	3.4
Social security funds	33.2	33.2	35.2	32.5	31.9	32.5	32.0	31.7	29.5
EU Institutions	0.4	0.5	0.4	0.3	0.3	0.4	0.3	0.3	0.3

Source: *Taxation Trends in the European Union, 2017 edition; ec.europa.eu*

Social contributions do not show significant differences, can be noted that in the case of Romania percentage decreased in 2015 compared to 2007 with 1.9 percentage points, while in Bulgaria and Croatia remained constant. In case of Romania, the drop comes from the point of view of the employers, where we have a decrease from 6.2% to 5.0%, through the business climate and the legislative modification, but through the migration and decrease in number of working population. It is interesting to note that Croatia is the only country where the share of employers and employee contributions is almost the same. In Romania and Bulgaria the share of employers contribution is double than the employee contributions. It can be seen that only in Romania the share of employee contribution decrease – from 3.6% to 3.1%, in Bulgaria increase with 0.7 percentage points and in Croatia with 0.2 percentage points.

Table no. 3 Structure of revenues in Bulgaria

	Bulgaria								
	2007	2008	2009	2010	2011	2012	2013	2014	2015
A. Structure of revenues	% of GDP								
Indirect taxes	16.2	17.0	14.4	14.2	13.8	15.0	15.4	14.9	15.5
VAT	9.8	10.4	8.5	8.6	8.1	9.0	9.3	8.9	9.0
Taxes and duties on imports excluding VAT	0.3	0.3	0.2	0.1	0.1	0.2	0.2	0.2	0.2
Taxes on products, except VAT and import duties	5.6	5.8	5.3	4.9	5.0	5.1	5.2	4.9	5.5
Other taxes on production	0.4	0.5	0.5	0.5	0.5	0.8	0.8	0.9	0.9
Direct taxes	7.7	6.3	5.5	5.1	4.8	4.9	5.3	5.7	5.6
Personal income	3.6	2.8	2.8	2.8	2.7	2.8	2.9	3.2	3.1
Corporate income	4.1	3.0	2.4	1.9	1.8	1.7	2.1	2.0	2.1
Social contributions	7.7	7.4	7.2	6.6	6.7	6.8	7.4	7.9	7.9
Employers	5.3	4.6	4.3	4.2	4.3	4.0	4.5	4.8	4.7
Employees	2.4	2.8	2.9	2.4	2.4	2.8	2.9	3.1	3.1
Total	31.6	30.7	27.2	26.0	25.3	26.7	28.2	28.4	29.0
B. Structure by level of government	% of total taxation								
Central government	72.4	72.2	70.1	71.1	70.0	71.1	70.2	68.8	69.5
Local government	2.6	2.9	2.8	2.9	3.0	2.9	3.0	3.0	2.9
Social security funds	24.4	24.1	26.6	25.6	26.5	25.6	26.4	27.7	27.1
EU Institutions	0.6	0.8	0.5	0.4	0.5	0.4	0.5	0.5	0.5

Source: Taxation Trends in the European Union, 2017 edition; ec.europa.eu

Regarding the structure by level of government, there is a similarity that can be observed. In all these countries the share of central government revenue forms more than half of the total, while local government revenues are marginal, consisting in a percentage 5%, exception is Croatia with a percentage over 11%. The revenues of the social security funds, in percent of GDP, in case of Romania and Croatia, have a share of 30%, while Bulgaria reveals a share above 30%.

Table no. 4 Structure of revenues in Croatia

	Croatia								
	2007	2008	2009	2010	2011	2012	2013	2014	2015
A. Structure of revenues	% of GDP								
Indirect taxes	18.2	18.0	17.2	18.0	17.5	18.3	19.0	18.9	19.7
VAT	11.9	11.8	11.2	11.6	11.3	12.3	12.7	12.5	13.0
Taxes and duties on imports excluding VAT	0.5	0.5	0.5	0.5	0.5	0.5	0.4	0.2	0.1
Taxes on products, except VAT and import duties	5.0	4.8	4.5	4.9	4.6	4.5	5.0	5.2	5.5
Other taxes on production	0.8	0.9	0.9	0.9	1.0	1.0	1.0	1.0	1.1
Direct taxes	7.3	7.1	7.1	6.4	6.2	6.1	6.3	6.1	6.0
Personal income	3.9	3.8	3.9	3.5	3.5	3.7	3.9	3.9	3.6

Corporate income	3.1	2.9	2.6	1.9	2.3	2.0	2.0	1.8	1.9
Social contributions	11.5	11.7	12.1	11.8	11.6	11.5	11.3	11.8	11.9
Employers	6.2	6.3	6.5	6.3	6.2	6.0	5.7	6.2	6.3
Employees	5.4	5.4	5.6	5.5	5.4	5.5	5.5	5.6	5.6
Total	37.1	36.8	36.4	36.1	35.2	35.9	36.6	36.8	37.6
B. Structure by level of government	% of total taxation								
Central government	57.3	56.3	54.6	56.0	55.5	56.1	56.8	55.3	56.7
Local government	11.6	11.9	12.2	11.4	11.6	12.0	12.3	12.3	11.4
Social security funds	31.1	31.8	33.2	32.6	32.9	31.9	30.8	32.1	31.7
EU Institutions	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

Source: *Taxation Trends in the European Union, 2017 edition*; ec.europa.eu

3. Tax pressure in Romania, Bulgaria and Croatia

The fiscal policy in Romania, Bulgaria and Croatia featured some transformations with the accession to the European Union and the economic and financial crises. Also, the level of taxation known significant differences in these countries. One explanation it seems to be the factors that influence. According to [Goode (1981)] there are some internal factors (the progressivity of tax rates or the taxable matter) and external factors (GDP per capita, the level of taxation in other countries, state priorities regarding public revenue, the nature of public institutions, the level of development of the countries), which influences the level tax burden.

Even if all the three country analyzed features a pressure above the EU media, the taxpayers feel aggressive taxation. This can be assumed from the point that in all countries the GDP per capita is lower than in other countries more developed. Also, in these countries there are a large number of taxes, special tax, fees or mandatory contributions, which emphasizes the perception of a high tax pressure.

According with table no. 5, Romania maintains a constant trend after the accession, while Bulgaria felt a dropped over 5 percentage points. Croatia presents a higher pressure than Romania and Bulgaria, probably due to the progressivity of the fiscal system and it's the only one which has a constantly increase of the tax burden.

All the analyzed countries reveals a GDP per capita lower that in the develop countries of the UE also, the multiple legislative changes, that were made after the accession, excessive bureaucracy, errors in law, the large number of tax and extra tax obligations, drove them to the results that all of us can see and feel.

Table no. 5 GDP compulsory levies pressure in EU, during 2007-2015 (%)

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2015/ 2007 (+/-)
Romania	29.4	28.0	27.7	26.9	28.3	28.3	27.7	27.5	28.0	1.4
Bulgaria	34.2	33.3	29.0	26.0	27.2	27.9	27.8	28.4	29.0	5.2
Croatia	-	-	-	36.1	37.1	35.7	36.6	36.8	37.6	-
EU28	39.8	39.3	39.7	38.4	40.0	39.4	39.9	40.0	40.0	0.2

Source: own processing data based on Eurostat

3. Conclusion

In terms of economic, financial and social, all the countries paid special attention the issue of taxation, for the main reason that the rate of taxation shows what percentage of GDP is concentrated of the disposal of the state (through taxes, fees and contributions).

The last countries who joined European Union features a lot of differences in terms of taxation. While Romania and Bulgaria have a classic system, Croatia the last country who joined has a progressive system. The differences came from the structure of revenues, also. Even if all these countries show differences from the point of taxation, they have a common: they are not developed like other countries in EU.

The economical situation all these countries faced after the acesion and the multiple legislative modifications come with this step, reveals the lower level of GDP, which provides lower coverage of public needs. So, if a developed economy leads to a tax burden that leaves room for savings, in these countries, the low level of economy leaves room for overwhelming taxation.

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SOME SHORT OBSERVATIONS ON THE APPLICATION OF MATHEMATICAL MODELS

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Abstract

One of the essential features of the huge development of modern science is, without any doubt, in the research activity, the link between various scientific disciplines and mainly between mathematics and the other sciences of nature and society. This interrelation between various fields of science relies on the unity of the material world and the connection between phenomena pertaining to both nature and society; this connection is precisely the transfer of phenomena from a scientific discipline into another and the order of such transfers which eventually leads to mathematics. Therefore, the development of contemporary science makes us try and determine the role and position of the “model” in the process of human knowledge.

Keywords: mathematical models, coding, probability.

“Mathematics is what begins, as the Nile, in humbleness and ends in magnificence”.

In the preface to his book *Dynamic Programming*, R. Bellmann makes a highly interesting interpretation of the role of mathematical models in scientific knowledge, namely: “The researcher’s goal is to become aware of surrounding phenomena which he analyses in order to prove that he is thoroughly familiar with such phenomena; he must be capable to foresee their progress and, in order to do so, he needs quantitative measures. For the purpose of making satisfactory quantitative estimates, a device is needed which leads to figures, for which a mathematical model is necessary. It is only natural to assume that, the more accurately it mirrors the real world, the more precise the indication. But the real world is highly complex and if we try to include too many facets of reality into our mathematical model, we will end up with highly sophisticated equations. Therefore, since no mathematical model can provide a comprehensive description of reality, we have to content ourselves with any attempts to know the real world using increasingly complete model rows”.

The famous physicist A.S. Eddington has a very poetic representation of the entire model dialectics: “In short, the physicist draws a detailed plan of the atom and then gradually deletes each detail. What is left is the very atom of modern

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physics!” This image illustrates the ongoing dynamics of models based on the fundamental contradiction of shaping: the model does not coincide with the object, but serves to make it known, knowledge which is impossible to grasp in a single vision, but through permanent improvement of the models, through the dialectic negation of a model by a more complex one.

Drafting mathematical models in various sciences leads to the idea of object approximation due to a row of models (instead of a single approximation, which comprises the entire complexity of the object), and each of such models stands for an intermediary which indicates how objective reality is reflected by human thinking. The fact that such a model is short-lived represents precisely the existence of dialectic knowledge, organized on stages, each stage representing a step further as compared to the previous one.

Any model which is replaced by another transfers many of its features, a process which characterizes the dialectic progress of knowledge, thus taking us a step closer to absolute truth, which is impossible to grasp in its entirety. On the other hand, the fact that some mathematical models have a shorter life is somehow sad, but encouraging at the same time, because the need to constantly design new models boosts mathematical progress in the meaning that such new models generate new theories which break away from the mathematical content from which they originated, and become independent mathematical disciplines. Suffice it to mention the information theory and the game theory, which are general and abstract and may widely be used in various fields of activity.

The role of mathematics in scientific knowledge is illustrated by mathematical models which, due to their content, belong to other sciences and not mathematics per se.

Failure to understand the dialectics of mathematical progress starting from mathematical models in various fields leads to conclusions such as those formulated by physicist E.P. Wigner: “The miracle of the appropriate mathematical language for the formulation of physics laws is a wonderful gift, which we neither understand, nor deserve”. This conclusion is natural if mathematics is seen as a game, as an arbitrary construction driven by esthetic purposes. Here is how the above-mentioned physicist continues in the same context: “One may say that mathematics is the science of interesting operations with concepts and rules invented precisely to this end... The largest part of the more advanced mathematical concepts... was invented so as to become adequate topics in relation to which the mathematician may prove his creativity and the sense of formal beauty... The mathematician may formulate few interesting theorems without defining concepts which are beyond those used in axioms which would allow him to design creative logical operations to lead to highly general outcomes”.

These observations reflect the total ignorance of the permanent relationship between mathematics and objective reality, and of the occurrence of mathematical

theories derived from the transfer of mathematics to various other fields, of the dialectics of mathematical progress based on its own internal laws stemming from reality.

Mathematics “applies” to the outer world precisely because it derives from it, because it expresses a part of the relationships existing in the material world.

In respect of the applications of mathematics in economy, one may claim that they have an old tradition, since the mathematical modelling of economic laws based on quantitative features is all but well known. Mathematical modelling offers numerous opportunities to find solutions to solve economic synthesis issues, but also the settlement of ordinary tasks of production organization.

Economic laws, which express the essential internal relations of economic phenomena, the main features and trends of economic development, require a quantitative establishment of all the processes and correlations which they mirror.

In setting the quantitative aspects of economic laws, a significant part is played by mathematical models whose value is given by the hypotheses generating them, by the principles according to which essential links are selected during the drafting process, by the extent to which hypotheses and simplifications reflect reality. For these reasons, it is necessary, before an economic law is modelled, to perfect the system of collection of data necessary for the economic and mathematical analysis, so that any proposed methods be used with maximum efficiency. Well-organised, oriented and real economic information, the accurate qualitative analysis of economic categories, are the factors which fully dictate the selection of various methods of mathematical processing of initial data. Therefore, in order to sketch theoretical models, the starting point is the adequate reflection of real and complex data referring to the phenomenon which is to be modelled.

Models take the form of one or several relationships between two or several variables; the selection of variables resulting from the analysis of the said phenomenon is of outmost importance. This selection is usually difficult, since the behaviour of a phenomenon is influenced by a number of variables, both dependent and random. We have to opt for one or several sizes which, in connection to the variable under analysis, are deemed determining for the level and behaviour of the variable itself.

Since the probability field is a global measure used to identify the determination corresponding to a given phenomenon, the probability theory has become the background upon which one of the most revolutionary scientific models, i.e. information transfer, relied.

We will illustrate how the intuitive reality information concept is turned into mathematics; this concept represents the basis of all modelling processes relying on the mathematical information theory.

Let us consider a real phenomenon which can be modelled with the help of a finite probability field “X” with the probabilities of its elementary events $p_1, p_2\dots$

p_n . We start from the assumption that everything we know about this phenomenon is the above-mentioned probabilistic model, and we expect that, during an experiment, an event with a higher probability will occur, but we do not know for sure which elementary event will take place. By knowing this elementary event (which actually took place), certain additional information is obtained on the phenomenon under study, which can be quantitatively characterized. We will mark I_k the quantitative value of the additional information obtained when, during an experiment with the phenomenon under study, elementary event k takes place. The average value $\sum_{k=1}^n p_k I_k$ of this random variable $(I)_k \{1, 2, \dots, n\}$ which we do not know yet and which we do not know if it actually exists (i.e. if the concept of average information can be mathematically shaped) is called an entropy.

Assuming that such entropy exists, it should naturally check the following hypotheses:

1) entropy is a function which depends on n variables: $H(p_1, p_2, \dots, p_n)$ defined for all (p_1, p_2, \dots, p_n) positive number systems, so that $\sum_{k=1}^n p_k = 1$, $n \in \{2, 3, \dots\}$.

2) function $H(p_1, p_2, \dots, p_n)$ is continuous and symmetric in its arguments.

3) if $n \geq 3$ and $q = p_1 + p_2 > 0$, then:

$$H(p_1, p_2, \dots, p_n) = H(q, p_3, p_4, \dots, p_n) + q H\left(\frac{p_1}{q}, \frac{p_2}{q}\right)$$

If the justification of hypotheses 1) and 2) is obvious, hypothesis 3) requires some explanation. Let us assume that an experiment was conducted, and the average of the amount of information obtained through the awareness of the elementary event (which actually occurred) is done as follows: first of all, we become aware that there was an occurrence of an event of the following index $k \in \{3, 4, \dots, n\}$ or that no such event took place. Thus, on average, we get the amount of information $H(q, p_3, \dots, p_n)$, because we actually deal with a probability field whose elementary events have the following probabilities: q, p_3, \dots, p_n .

Secondly, if no event of the index 3, 4, ..., n took place, we will find out which $k \in \{1, 2\}$ occurred, in which case there is a probability field whose elementary event have the following probabilities $\frac{p_1}{q}, \frac{p_2}{q}$, therefore we obtain an average of additional information equal to $H\left(\frac{p_1}{q}, \frac{p_2}{q}\right)$. Therefore, in this latter case, we obtain a total average information amount of:

$$H(q, p_3, \dots, p_n) + H\left(\frac{p_1}{q}, \frac{p_2}{q}\right).$$

The former case has the probability $1-q$, in the latter case the probability is q , therefore on the whole, the average information amount, i.e. $H(p_1, p_2, \dots, p_n)$ is $(1-q) H(q, p_3, \dots, p_n) + q [H(q, p_3, \dots, p_n) + H\left(\frac{p_1}{q}, \frac{p_2}{q}\right)] = H(q, p_3, \dots, p_n) + q H\left(\frac{p_1}{q}, \frac{p_2}{q}\right)$ in other words, hypothesis 3).

Hypotheses 1, 2 and 3 are a mathematical modelling of the intuitive information concept, with the help of which the following are deduced mathematically:

$$(*) H(p_1, p_2 \dots p_n) = -c \sum_{k=1}^n p_k \log_a p_k$$

(usually $c=1$ and $a=2$).

The fact that this determination of the information amount is reflective is undoubtedly obtained. Indeed, by using mathematical methods (using the (*) formula) a series of entropy properties are obtained which have natural intuitive interpretations. The relevance of the entropy is mainly given by the essential role it plays in many other mathematical models. An example would be self-decoding encodings, in which entropy has a vital part. Here is what it is: may X be a finite group, and each $x \in X$ must contain a word c_x made up of two letters (we encoded X with an alphabet made of two letters). This encoding can decipher itself: if $c_x \neq c_y$, for any different $x, y \in X$, and if no c_x can be the initial of another word c_y . This means that if we have a sequence of words, this last sequence is determined, therefore in a "text", the words come by themselves. Therefore if $X = \{1, 2, 3\}$ and $c_1 = (1)$, $c_2 = (01)$, $c_3 = (001)$, then in the sequence 10101111010010101 we must have $c_1 c_2 c_2 c_1 c_1 c_1 c_2 c_3 c_2 c_2$

If we note with n_x the length of the word x , i.e. the number of letters contained in this word, then the necessary and sufficient condition for a self-decoding code (of two letters) for x is:

$$\sum_{x \in X} 2^{-n_x} \leq 1$$

If $(p(x), x \in X)$ is an X probability field, the average L length of the code (supposedly self-decoding) is: $L = \sum_{x \in X} n_x p(x)$

In case of self-decoding encoding of the Cartesian product $X \times X \times \dots \times X$ (n times) and L_n is the average length of this (supposedly self-decoding) code, then $\frac{L_n}{n}$ is the average length of the code as referring to X .

If $L(X) = \frac{L_n}{n} \inf.$, $n \in \{1, 2, \dots\}$, for all X -related self-decoding codes, $L(X)$ is the average minimum length through which X probability field can be encoded (through repetition), and FANNO's fundamental theorem sets the equality: $L(X) = H(X) = - \sum_{x \in X} p(x) \log_2 p(x)$

Therefore, the average minimum length through which Z probability space can be encoded is precisely the entropy of X .

The conclusion is that the large class of real processes and phenomena which can be modelled within the mathematical information theory reveals that synthesizing mathematical models are not arbitrary constructs of the human mind, but genuine Roentgen machines used to study reality.

THE STRATEGIC DIAGNOSIS OF THE INDUSTRY AND THE CONSUMPTION OF TOURIST SERVICES IN ROMANIA

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Waqar Badshah*

Abstract

Romania has rich and varied natural and anthropogenic resources that represent a chance in the development of tourism. Economically, tourism is a factor in the progress of the country's economy, with broad and positive implications for the development of the entire society, acting in the direction of introducing tourism resources into the economic circuit. Every enterprise in the tourist complex must constantly demonstrate its ability to compete and adapt, attract new customers and keep old ones, upgrading new services, implementing development strategies, and gaining a larger market share. The aim of this paper is to analyze the consumer satisfaction of tourism market in Romania and I considered that one of the most relevant methods of analyzing the Romanian tourism vision is the method of survey. Research is based on an analysis of social, psychological, economic, managerial and cultural aspects. The purpose of applying this questionnaire was to determine how it can contribute to achieving performance in the development of Romanian tourism by knowing the peculiarities of the motivation of tourists to choose the local tourism, starting from the idea that the permanent implementation of new development strategies is the secret of an efficient management.

Keywords: Tourism, Development, Strategic management, Consumer satisfaction.

Jel: M14, M30

Introduction

Tourism is one of the industries that must be involved in sustainable development, as a resource industry, dependent on the endowment of nature and the cultural heritage of each society. (Stănciulescu G., Emilian R., Țigu G., Nistoreanu P., Diaconescu C., Grofu M., 2000)

The tourist market can be defined as the set of transactions (sales and purchases) the object of which is tourism products, viewed in connection with the relations it generates and the geographic space in which it takes place. (Daniela, Turcu, Janeta, Weisz, 2008).

The tourist market becomes the seller's market during the tourist season (when demand is high) and the buyer's market - in the off-season (when supply

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exceeds demand) justifying differentiated product, price, distribution and promotion policies to optimize the activity of tourist units. (M. Bucur, 1994)

In this context, strategic management occupies an important place being the process by which managers establish the organization's long-term direction, set specific performance objectives, develop strategies for achieving these objectives (taking into account internal and external circumstances) and undertake the execution of the chosen action plan. (Dan Anghel ,Constantinescu, Ana Maria, Ungureanu, Adina, Ghenciu, Mirela ,Dimofte, Emilia, Breban, 2000).

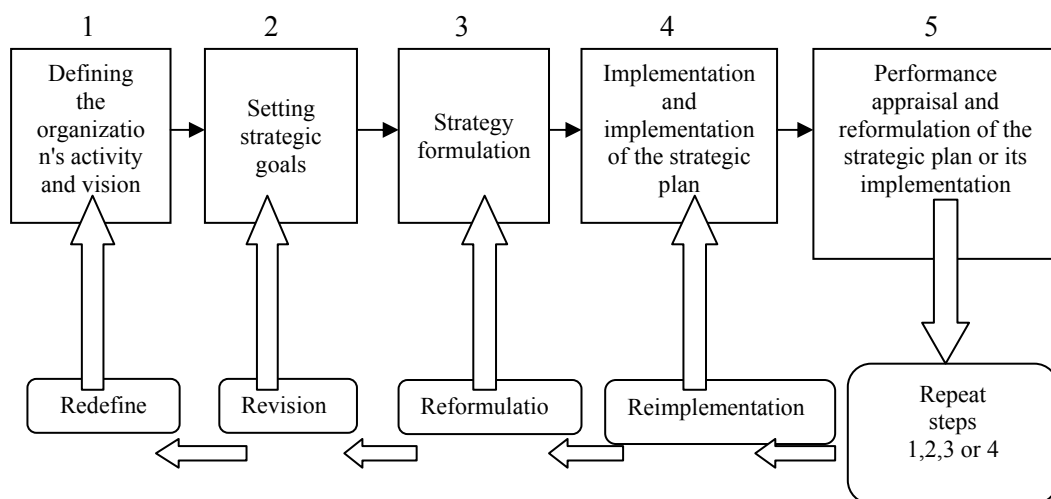


Figura 1. The model of strategic management proces

Sursa: Dan Anghel ,Constantinescu, Ana Maria, Ungureanu, Adina, Ghenciu, Mirela ,Dimofte, Emilia, Breban – *Strategic management, National Colection, București, 2000*

In terms of services, several approaches to defining them have been attempted. In an economic sense, the service is defined as follows:

- As an activity of the result of which is non-material and does not concentrate on a product with its own existence (M. Ionciă, 2002);
- The service within the national economy can be defined as the transaction of a non-material asset organized with the participation of the beneficiaries, a transaction which is addressed to a diverse but segmented audience with a personalized offer. (Diaconu Mihaela, Micu Cristina, 2010, pp.11).

The economic agents in tourism are divided into direct agents of tourist services and intermediary agents between economic agents direct providers of tourist services and tourists whose role is to promote and commercialize tourist arrangements. (Diaconu Mihaela, Micu Cristina, 2010, pp.26) Agents providing

tourist services has a great diversity of economic activities with character total or partial tourism. (Drăghici C., Mihai D., 2007). The development strategy is based on the market strategy that represents the key elements and defines the attitude of the organization towards its customers, but also to competitors, suppliers and distributors. (Ionică M., 2004)

In relation to customers, the criterion of structuring management strategies is the structure of the market according to which differentiated, undifferentiated or competitive strategy can be applied. The most commonly used is the differentiated one. If you are considering the position towards the client, you can apply the strategy of attraction, maintenance, recovery or indifference strategy. (Olteanu V., 2005)

There is a link between tourist demand and supply that leads to the formation of market relations between the production of services and their consumption, viewed from the point of view of consumers and tour operators. In order to observe the fluctuations of the number of tourists from one year to the next, the following two graphs were constructed, which show the number of tourists in Romania's areas registered by the tour operators and the sales companies.

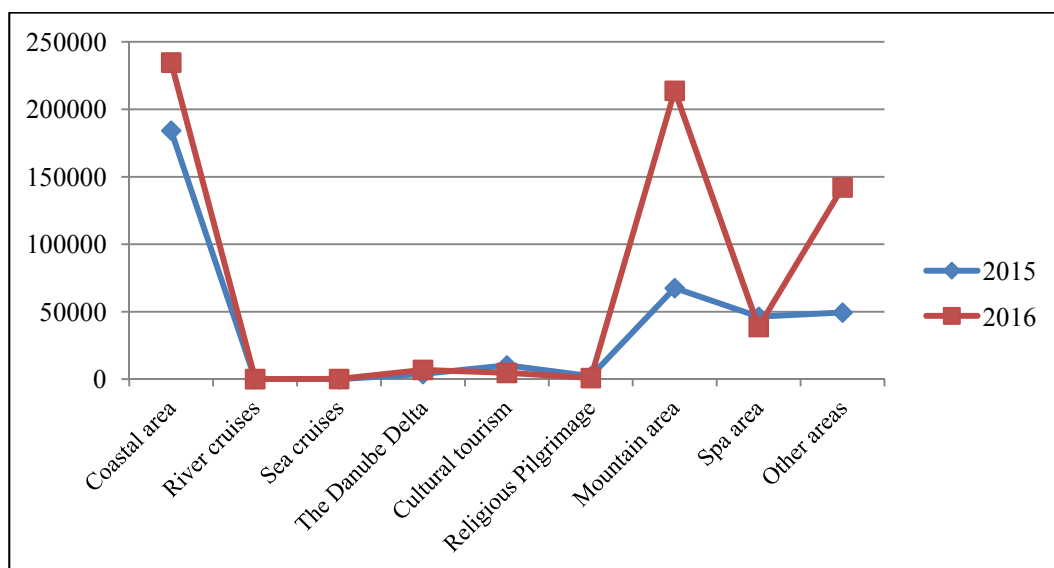


Fig. 2 Number of tourists participating in domestic tourist activities, by tourist areas of tour operators

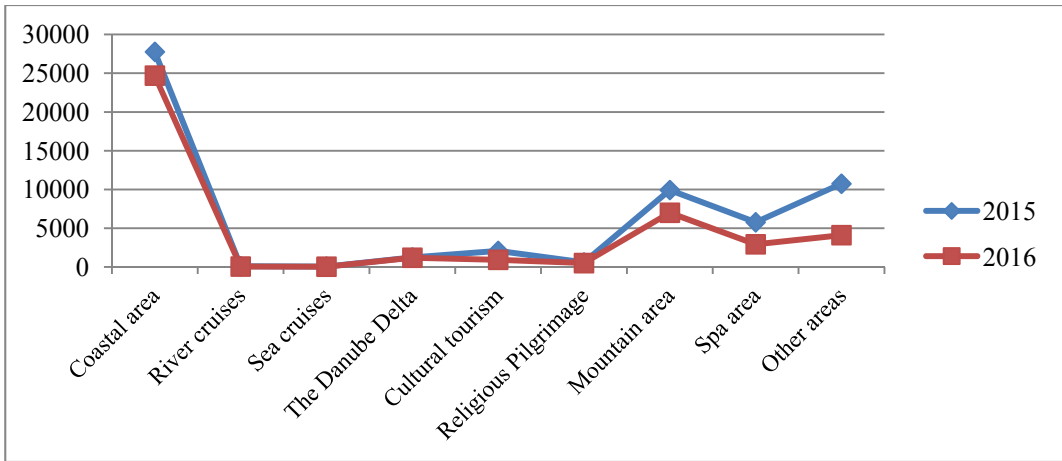


Fig. 3 Number of tourists participating in domestic tourism activities, by tourist areas of agencies for sale

Taking into consideration the very varied tourist potential and favorable climatic conditions, a large variety of types and forms of tourism are met in Romania. Annually, there are a large number of foreign tourists and Romanians who spend their holidays or business trips either in different localities of Romania, or in the seaside or mountainous area, etc. These forms of tourism are divided into areas of: seaside, mountain, balneary, rural and agrotourism.

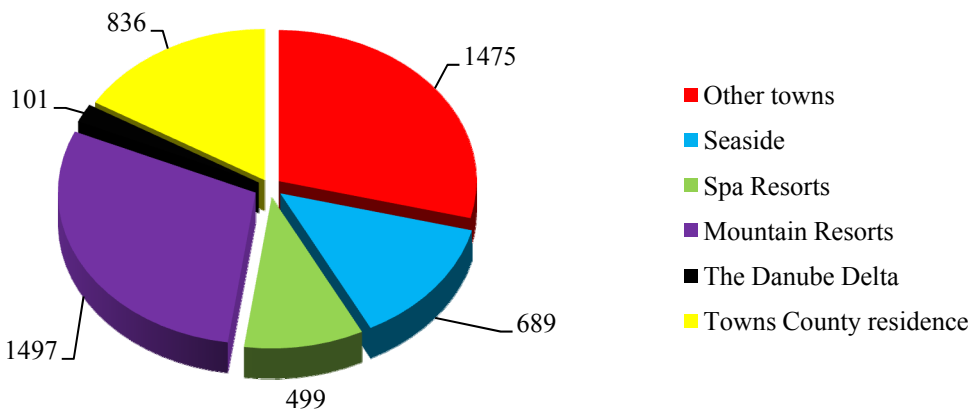


Fig. 4 Touristic reception structures with functions of tourist accommodation (number)

RESEARCH METODOLOGY

The research aimed at highlighting the mechanisms that increase the performance of the economy in the tourism field, as well as the generalization of the current trends.

Objectives:

1. Knowing the opinion of the tourists regarding the perceived reality within the tourist complex in Romania;
2. Identifying the motivating and demotivating factors existing in each form of tourism and generating customer satisfaction;
3. Awareness of social relationships, processes and phenomena that contribute to creating a motivating, competitive and stimulating environment;
4. Implement strategic development management and motivate clients to achieve the performance of organizations in the tourist complex.

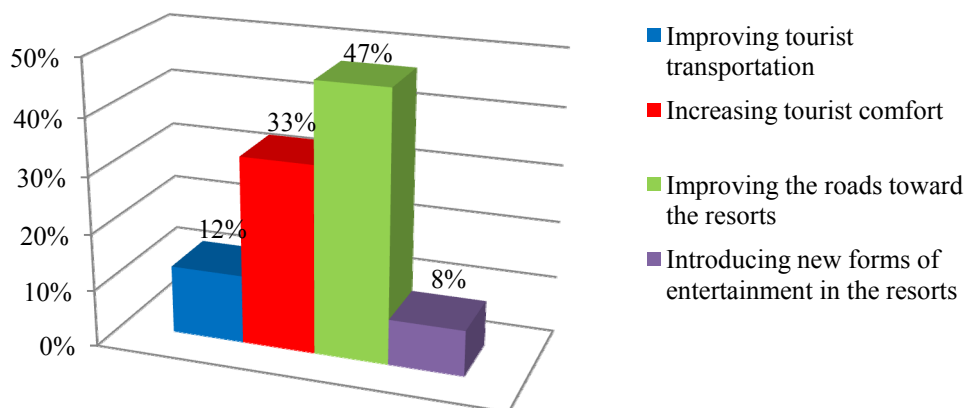
Working hypotheses:

1. The innovative system is the fundamental element that allows for the radical change and transformation of the economic indicators in the tourist complex. In order to cope with current competitiveness, today's tourist accommodation facilities need to invest in both new forms of staff development and in attracting new investment. This process is continuous, and is in a state of permanent change. An important role for achieving appreciable performance is the implementation of effective motivation techniques.
2. There is a direct link between the level of motivation of success with foreign investors and the future performance of a collaboration with them.

The analysis of the motivation of the tourists to choose the Romanian tourism involves the realization of a research at the country level in terms of the general appreciation of the results obtained through the questionnaires administered by the tourists. Thus, it can be highlighted whether Romanian tourists are or not satisfied with the services offered by the enterprises in the tourist complex. The method used for building the sample is random sampling (probabilistic). The questionnaire was applied to a sample of 200 people using the questionnaire survey technique online and is doing so. It has been used as a method of collecting information, quantitative, direct and processed by means of statistical-mathematical methods.

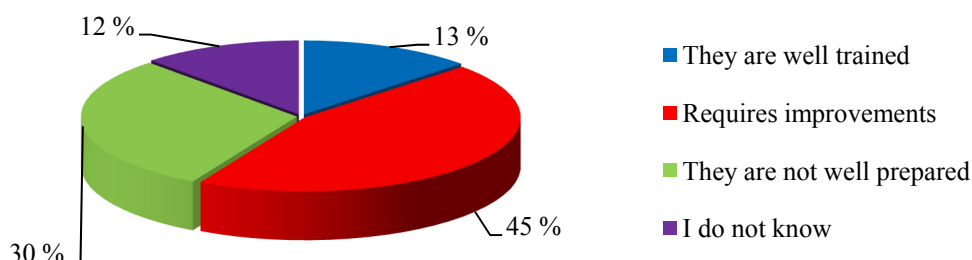
THE INTERPRETATION OF THE RESULTS

1. What changes would you make in Romania tourism?



This first question is intended to perceive the opinions of Romanian tourism and what improvements would be well received for tourists. Thus, 47% of those interviewed believe that improving the infrastructure that lead to resorts should be the first measure that should be taken for tourism development and 33% believe that increasing comfort is a important measure to develop the current tourism. The remaining 12% and 8% are of the opinion that one of the reasons for the decrease in the number of tourists would be caused by uncomfortable tourist transports and the lack of entertainment in the resorts.

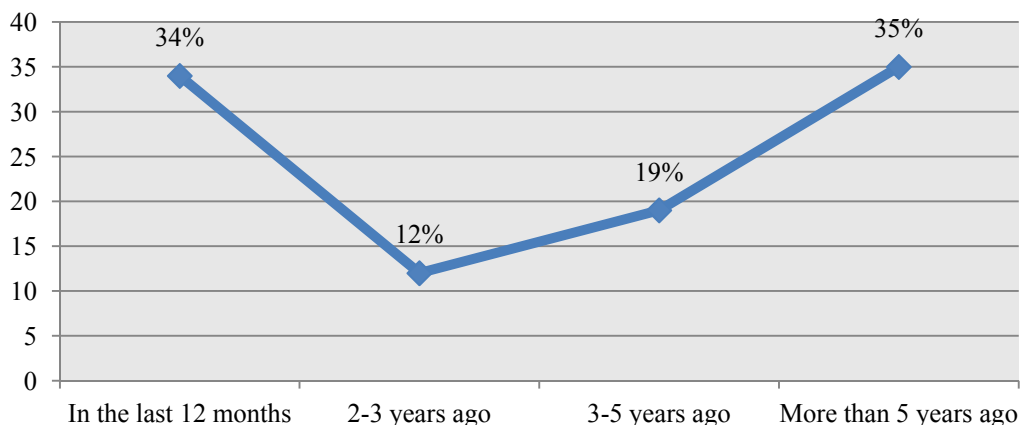
2. Specify the level of training of the Romanian tourism staff:



According to the chart, approximately half of respondents responded with "Necessary improvements", which means that they are not or have not been satisfied with the services provided by businesses in the tourist complex, which is

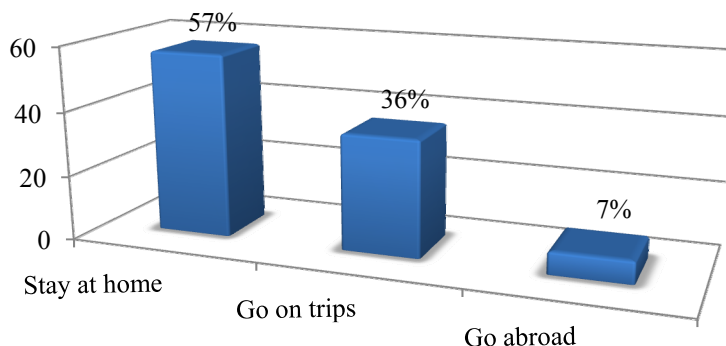
why they register 45%. Another 30% responded categorically to "NO" to this question, arguing that tourism staff were not well prepared and were not satisfied with the services they provided. A very small percentage of 13% responded that they were satisfied with the services they provided, and the remaining 12% did not know how to respond. From the results obtained it can be concluded that the tourists who have chosen the Romanian tourism are not satisfied with the services offered by the tourism enterprises and that they need a change in the degree of satisfaction of the clients' needs.

3. Indicate the time period when you spent the last holiday:



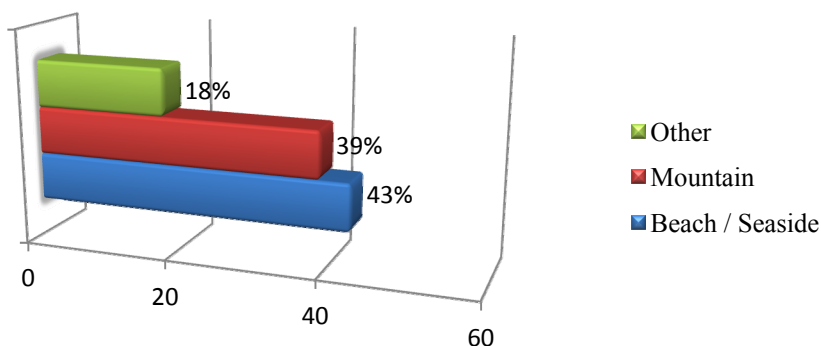
The graph shows the evolution of the data when the potential Romanian tourists spent the last holiday. As you can see, they are grouped into two groups: non-seasonal or occasional tourists and tourists. Those in the non-attendant group or occasional tourists are the ones who spent their last vacation 3-5 years ago (19%) or 5 years ago (35%) who gathered a total of 54% and the others of the tourists category and who have spent their last vacation in the last 12 months (34%) or 2-3 years ago (12%) have a 46% share. Because of the small budget of families in Romania, it can be noticed that not all of them can afford a holiday at the sea side or in the mountains area every year.

4. How do you prefer to spend your holiday / holiday?



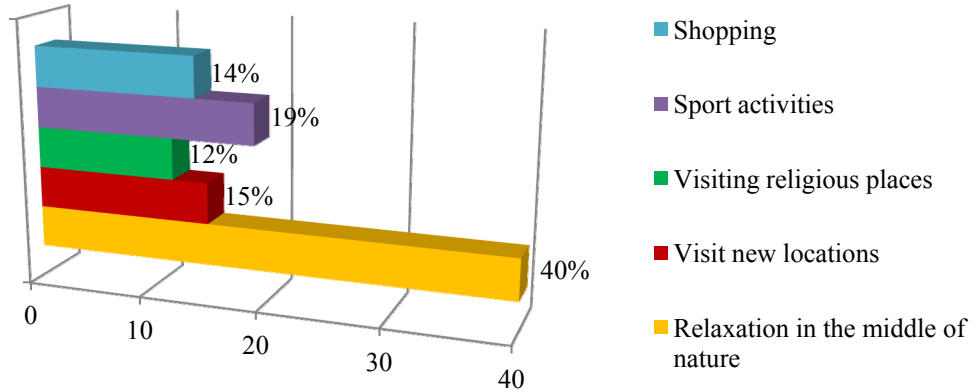
On the chart I have presented the tourists' holiday preferences. It can be seen that more than half, 57% prefer to stay home on their free days. This may be due to several reasons such as lack of money, too high prices, lack of transport and much more. According to interviewees, excursions are welcome both in Romanian families and among young people. It has been found that 36% prefer resting to clean, practicing various sports and visiting scenic spots. The remaining 7% responded that they preferred to go abroad.

5. Where you spend your holiday?



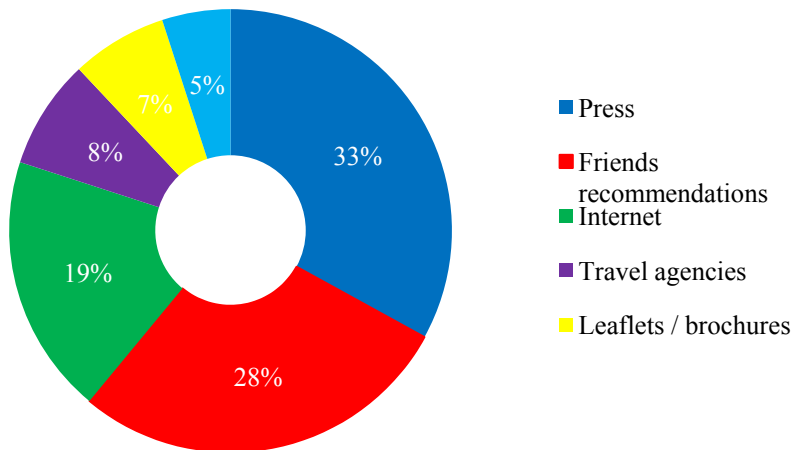
Most tourists already have their preferences when it comes to vacation. As Romania owns part of the Black Sea coast, many tourism businesses operate in its various resorts. 43% of respondents said they prefer to spend their holidays on the Romanian seaside. 39% prefer to spend their holiday in the mountains and the rest 18% have other preferences.

6. *During holiday / vacation what activities do you prefer to do?*



The answer with the highest percentage of 40% is "relaxation in the middle of nature", this being the preferred activity of the interviewed during the holidays. The 19% sports activity is the second activity to be classified in your favorite activities. The rest of the responses were shopping by 14%, visiting religious places by 12% and visiting new locations by 15%.

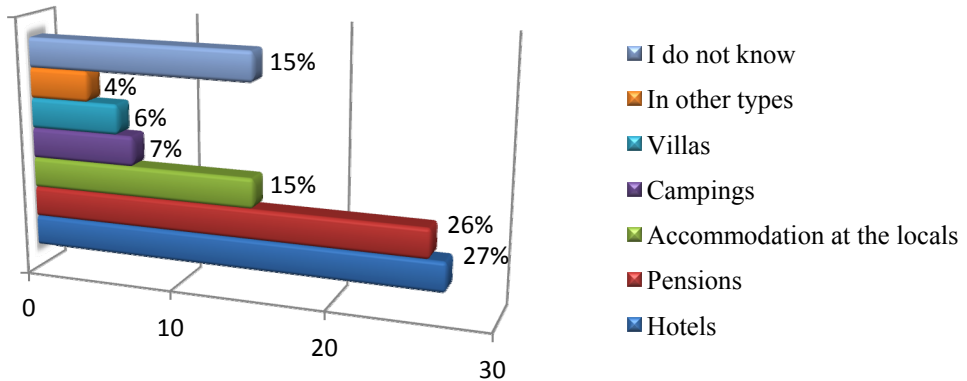
7. *Indicate the source of information on tourist resorts.*



Personal experience or friendship recommendation (28%) are the main sources of information for tourists about how to spend their holidays. According

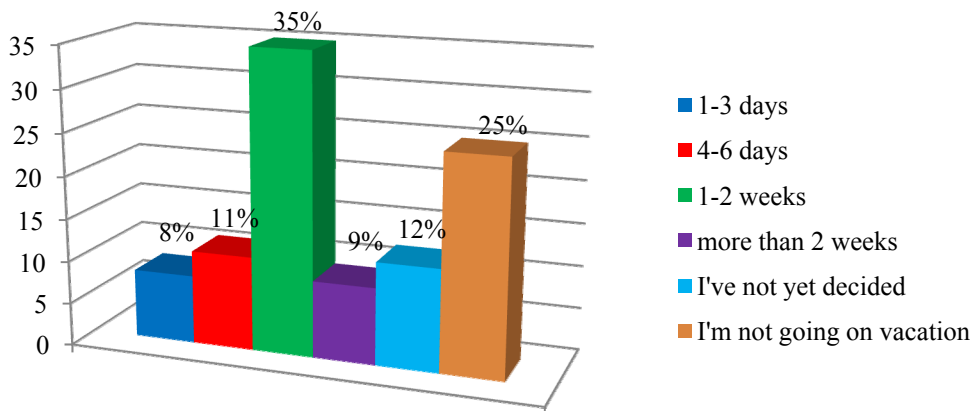
to the answers we can find that the most widespread source of information is the press (33%), after which the internet is classified with 19%. But it was found that the least profitable sources of information are tourism agencies (8%), flyers or brochures (7%) and other ways (5%).

8. *Traveling on holiday where do you prefer to stay?*



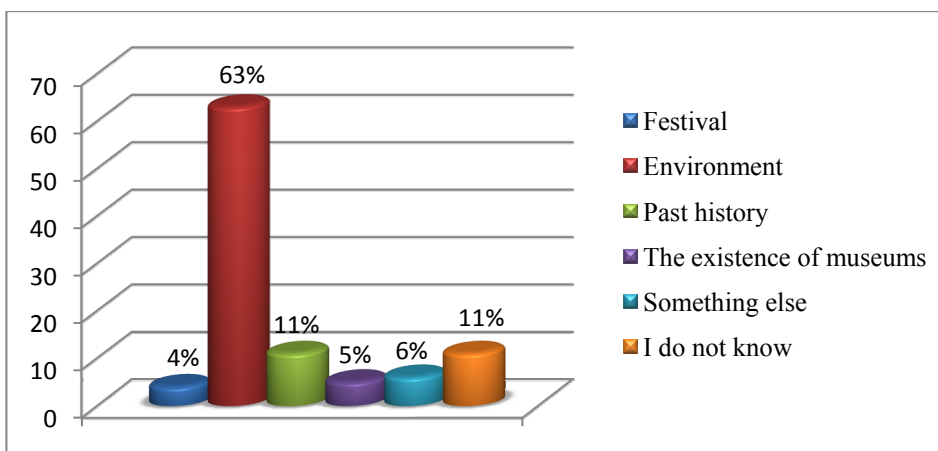
The hotels (27%) and the pensions (26%) are the preferred accommodation units of the Romanian tourists. 15% of the respondents do not know in advance where they prefer to be accommodated, this shows that they choose their accommodation depending on which budget they have allocated for a holiday and prefer to choose it directly at the chosen resort. 15% prefer to stay with locals for financial or other personal reasons. Very few tourists prefer to stay in camps (7%), villas (6%) or other types of accommodation (4%).

9. *What holiday period did you plan for the next year?*



To this question, 35% of the interviewees responded that they planned a 1-2 week holiday period, this is the approximate average of the holiday time for a Romanian. It is noticed that 25% do not go on vacation for various reasons, such as financial or time indispensability. 12% are not decided if they go on a holiday or not. 11% prefer a 4-6 day holiday. 9% prefer a vacation longer than 2 weeks and the rest 8% 1-3 days.

10. What types of tourist attractions influence your choice of holiday destination?



The choice of holiday destination is influenced by different factors or different tourist attractions. For 63% of the interviewed the environment is the decisive factor in choosing the tourist destination. 11% are undecided in the destination choice, and 11% motivate the destination's past history. 6% are influenced by other attractions. 5% prefer those tourist destinations where there are museums or other cultural attractions and for the rest 4% the decisive factor in choosing the destination is the festival.

The age of the respondents is between 18 and 56, the occupation varies (student, employee, retired), the income is between 800 and 3000 Ron, and the gender is 53% females and 47% male.

Conclusions

Romania is trying to develop its defining criteria for recognition at a global level, and the quality of its services offered. According to the Romanian Tourism Development Strategy published by the National Authority for Tourism, this attempt to develop certain criteria is served as the reason why Romania is no longer an attractive tourist destination because of competition, limited supply, infrastructure and inadequate services.

The existing tourist offerings on the Romanian market meet with harsh competition on Western European markets compared to competing destinations offering a much wider range of services and facilities for all categories of tourists.

After the quality-price ratio, Romania no longer represents an attractive tourist market and one of the problems of Romanian tourism have is the lack of a strategy promotion.

Tourism businesses need to adapt their investments to counter threats and capitalize on opportunities. Romania has an essential advantage over other countries, because, thanks to a rich and varied tourist potential, it can offer practically all the required forms of tourism. That is why we need to improve the following actions:

- Increasing the importance of the promotion strategy and of the promotional communication at the level of the tourist unit;
- Important investments in promotional activities of rural tourism;
- Diversifying the supply of tourist products due to the increasing demands of consumers and improving the tourist offer in terms of entertainment;
- The consolidation of the tourist product in those areas that are the best known for foreign and Romanian tourists and where already exists a certain structure;
- Developing and modernizing the tourism product so that Romania is distinguished from other countries of tourist destination;
- Raising the standard of services according to the category of tourist unit and the tariff used;
- The maximum development of the cultural component of the tourist product in the specific area;
- Developing those forms of tourism that address the low income population category;
- Increasing quality and increasing the capacity of tourism development;
- Promoting tourism products with impact on the foreign market;
- Tour operators to be good acquaintances of the tourist routes;
- Creating a strategy for improving the quality of services in hotels and restaurants;
- Collaborating with regional partners to sell multiple destination packages;

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THE TRANSFER OF BUSINESS IN ROMANIA*

Luminița Tuleașcă*

Abstract:

In the specialty literature, the topic of transfer of business was approached tangentially, either from a fiscal perspective, either in the context of the insolvency procedure, as a restructuring method or method to capitalize on the assets of the insolvent debtor, or through its connection with the rights of employees from transferred undertakings.

In this context, we have proposed a complete analysis of this legal concept, namely from the perspective of its meaning and scope, the legal and fiscal advantages it provides, and the existing relation between transfer of business and company restructuring.

Keywords: transfer of business, transfer of assets, goodwill, assignment of activity, transfer of undertaking, fiduciary agreement.

I. Introduction

1. Within the European Union, the matter of business transfer is of particular interest, from the perspective of economic growth and jobs, which is why policies are being promoted for stimulating business continuity through transfer, as an alternative to business liquidation or incorporation, regardless of the business organization form, yet providing a particular attention to enterprise transfer¹.

Economic operators use the transfer of business in various forms, both as a tool for adapting enterprises to the market status and requirements, and for consolidating or expanding the businesses.

The transfer of business is not acknowledged by the Romanian legislation through this designation, but by taking over the essence of the operations through

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¹ See: European Commission Recommendation no. 1069 of 7 December 1994 on the transfer of small and medium sized enterprises and the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 4 March 2006 – Implementing of the Community Lisbon Programme for Growth and Jobs – Transfer of Businesses: Continuity through a new beginning [COM (2006) 117 final – not published in the Official Journal].

which a transfer of business is performed, regardless of the actual designation, the doctrine and jurisprudence constantly identify them as "transfer of business"².

In the specialty literature, the topic of business transfer was approached tangentially, either from a fiscal perspective, either in the context of the insolvency procedure, as a restructuring method or method to capitalize on the assets of the insolvent debtor, either through its connection with the rights of employees from transferred enterprises.

In this context, we have proposed a complete analysis of this legal concept, namely from the perspective of its meaning and scope, the legal and fiscal advantages it provides, and the existing relation between transfer of business and company restructuring.

Our starting point is represented by the legal texts, directly or indirectly related to the transfer of business, regardless of the actual designation used to describe this operation.

Their use will allow us to prove that the transfer of business can be achieved through extremely diverse legal operations, such as: succession, sale or transfer of assets, transfer or sale of goodwill, respectively transfer of activity, assignment of activity, transfer of undertakings³, contribution to the share capital, merger, division and business lease⁴, through the transfer of the patrimony of affectation or through the transfer of the fiduciary assets and liabilities through the fiduciary agreement.

Additionally, from the analysis of the transfer of businesses methods, we shall remove the common elements of these operations and, through this, the definition and identification criteria for the transfer of businesses.

II. Transfer of assets

2. The most well-known regulation regarding the transfer of business is the one established by the Fiscal Code, as transfer of assets, in the sections dedicated to (non)taxable operations, from the perspective of the profit tax and the value added tax.

² See H.C.C.J., Fiscal and Administrative Contentious Section, Decision no. 2748/15 March 2013: "Even though the fiscal legislation does not refer to the notion of "transfer of business", as such an expression is not legislatively established, still, it refers to the alienation of a part of the activity, through the transfer of the assets used within that activity (...)".

³ Related to this, please see: Bucharest Court of Appeal, VII-th Civil Matters and Cases of Labor Disputes Section, Civil Decision no. 3951 of 12 June 2012, submitted, as summary and with approving comment, by Judge Romeo Glodeanu, Romanian Jurisprudence Magazine no. 5/2012, on-line, available on www.idrept.ro.

⁴ The French Labor Code also applies (art. L 1224-1); for the option of qualification a business lease as transfer of business in the French law, see: Francis Kessler, Niloufar Gholami – Babil, *Succession and transfer of businesses in France*, IUSLabor 1/2015, p. 15., on-line, available on: https://www.upf.edu/iuslabor/_pdf/2015-1/CLLD_TRANSFER_OF_BUSINESSES.pdf.

The notion was taken over in the fiscal law from the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax (hereinafter referred to as the Sixth Directive), currently Council Directive 2006/112/EC⁵ on the common system of value added tax of the EU.

For this purpose, in the interpretation of the “transfer” notion from art. 5 par. (8) from the Sixth Directive, the Court of Justice of the European Union (hereinafter referred to as CJEU) determines that it also includes the concept of “transfer of business” in the English variant⁶, respectively “goodwill” in the French variant (CJEU Resolution of 27 November 2003, Zita Modes, C- 497/01, item 40).

The Fiscal Code defines the *transfer of assets* as *the operation through which a company transfers, without being dissolved, the totality or one or several branches of its activity to another company, in exchange for a transfer of the equity interests representing the capital of the beneficiary company*⁷.

In order to determine the actual sphere of legal operations through which a *transfer* of assets can be performed, we shall use the fiscal meaning of transfer, namely: *the sale, assignment or alienation of the ownership right, the exchange of an ownership right for services or another ownership right and the transfer of the fiduciary assets and liabilities within the fiduciary operation* according to the Civil Code⁸.

The essential distinction that exists between a regular transfer and a transfer of assets/business is provided by their subject matter, *the subject matter of the transfer of assets being the branch of activity*, namely *the totality of assets and liabilities of within a division of a company which, from an organizational perspective, represents an independent activity, meaning an entity capable of operating through its own means*⁹.

Thus, an economic activity represents a branch of activity, meaning a division of a company which can be subject to a transfer of assets, if it is characterized by its independence in relation to the transferor company and “the cumulative fulfilment of certain conditions related to: (i) the existence of that branch of activity as an organizational structure separate from other organizational divisions/branches of activities of the transferor company; (ii) the operation of the branch of activity as an independent unit, in normal condition for its related

⁵ Directive 2006/112/EC, on the common system of value added tax, OJ L 347, 11.12.2006, p.1.

⁶ “Having regard to this purpose, the concept of ‘a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof’ must be interpreted as meaning that it covers the transfer of a business or an independent part of an undertaking”.

⁷ Art. 32 par. (1) letter d) Fiscal Code

⁸ Art. 7 item 42 Fiscal Code

⁹ Art. 32 par. (2) letter g) Fiscal Code

economic sector of activity. For this purpose, it is necessary to check the existence of an own clientele, own tangible and intangible assets, own stocks, own personnel, along with other assets and liabilities indirectly related to the transferred branch. The branch of activity could also include own administrative services; (iii) the actual performance of the activity at the time of approval of the transfer operation by the General Assemblies of the two companies, the transferor and the beneficiary, or the effective date of the operation, if they differ¹⁰.

Through the regulation of these requirements in determining the independent nature of the transferred economic activity, the Fiscal Code has taken over the CJEU jurisprudence created in the interpretation of the notion of transfer of assets or business regulated by art. 5 par. (8) first thesis from the Sixth Directive (currently art. 19 first thesis from Directive 2006/112/EC, n.a.), and the notion of transfer of undertakings (we shall return to this in a later section), debating autonomous legal notions of the European Union, which have to be interpreted in a cohesive manner throughout the EU (Schiever Decision, C-444/10, item 22).

Thus, the concept of transfer of assets or part thereof was interpreted by the CJEU “meaning that it includes the transfer of goodwill or an autonomous part of an undertaking, containing tangible and, if applicable, intangible items, which, together, form an undertaking or a part of an undertaking, susceptible of performing an autonomous economic activity, however, it does not include the simple assignment of goods, such as the sale of a stock of products” (see the Zita Modes Decision, C-497/01, item 40, the SKF Decision, item 37, and the Schriever Decision, item 24).

The transfer of assets can be total, in which case the subject matter of the transfer being all of the transferor’s branches of activity, *or partial*, the partial transfer of assets meaning the transfer of all assets or a part of the assets invested in a branch of the economic activity, if they technically form an independent structure, capable of performing separate economic activities.

Thus, the *transfer of assets is not merely a transfer of goods or of a collection of rights and obligations (assets and liabilities)*. Due to its defining characteristics, the transfer of assets (of business) is a ***universal total or partial transfer of goods*** which are ***not approached individually, but as a unit representing an independent business***, for the transferor taxable person, and, subsequently, for the transferee, regardless if the transfer of assets/business is a total or partial transfer.

¹⁰ Art. 34 from the **Methodological Norms of 2016** for the application of Law no. 227/2015 regarding the Fiscal Code, approved through G.D. no. 1/2016 published in the Off. J. no. 22 from 13 January 2016 (hereinafter referred to as Methodological Norms 2016).

It is essential that the set of transferred items or assets is enough to allow the continuity of the economic activity performed through those assets. For this purpose, it could not be relevant whether the transferee of the transfer was to operate (part of) the taken over branch independently or as part of a broader economic activity.

We do not believe that the use of the phrase: “universal transfer of goods and/or services” [art. 270 par. (7) from the Fiscal Code] for defining the transfer of assets/business: total or partial universality of goods/branch of activity/division is the most fortunate option of the Romanian legislator. The taking over of the phrasing from the European legislation is flawed, as the Sixth Directive uses the phrasing: “total or partial universality of goods” in all language versions of the Member States familiar with the notion of patrimony and universal law.

In essence, CJEU has determined the need to examine globally the *de facto* circumstances defining an operation subject to analysis, in order to determine whether or not it can be included in the scope of transfer of assets/business, for the purposes of the fiscal legislation¹¹.

Another important aspect clarified through the CJEU jurisprudence, taken over by the Romanian legislation, is related to the transfer of ownership over the trading estates affected by the performance of the economic activity subject to the transfer of assets. In this direction, in order to classify an operation as transfer of assets or of business, it is not necessary for the trading estate where the economic activity is conducted to be transferred along with that branch of activity or part of a branch of activity; in the cases where the trading estate/real estate property is required for the continuation of the economic activity, it can be leased to the transferee/purchaser/beneficiary from the transfer of assets/business.

Thus, the “transfer of real assets is not a determining factor for classifying an operation as transfer of all assets” (Schriever Decision, quoted above, item 35).

An example of transfer of assets through a sale of business, respectively of a part of a certain branch of activity, without the sale of the real estate properties related to the transferred economic activity, is the operation through which, in August 2015, SC Mega Image SRL acquired total control over certain assets belonging to SC General Nic Import Export SRL.

“SC Mega Image SRL (“Mega Image”) is owned with a 100% share by Delhaize the Lion Nederland BV2, member of the Delhaize Group. The Delhaize Group operates on Romanian territory exclusively through SC Mega Image SRL¹².

¹¹ See the Schriever Decision, quoted above, item 32.

¹² S.C. Mega Image SRL is a Romanian legal entity, having as main object of activity the retail sale in non-specialized stores, with the predominant sale of foods, beverages and tobacco - NACE code 4711.

The Delhaize Group is an international group, present in the US, Indonesia and Europe (Belgium, Greece and Romania) and, along with the Royal Ahold Group, it has published in June 2015 a common press release, revealing to the public its intention to engage in a merger procedure to be completed mid-2016.

The purchased asset items were the following: 1. Cotroceni 2 Store. Dorobanți Store. These stores are assets from the patrimony of the undertaking SC General Nic Import Export SRL which has 3 stores in Bucharest, namely Nic Dorobanți, Nic Cotroceni and Nic Amzei. Mega Image purchases the stores Nic Cotroceni and Nic Dorobanți, while the store Nic Amzei remains under the ownership of SC General Nic Import Export SRL (“Nic”).

Objectively, the subject matter of the agreement consists of the *clientele and good custom, employees, equipment, use of trading estates related to the two Nic stores*, meaning that the trading estates related to the two locations would remain under the ownership of the Nic company, but would be subject to a long term lease to Mega Image¹³.

Also, in classifying an operation as transfer of assets, it is irrelevant whether the receiver of the assets is authorized or not to perform the transferred economic activity or whether it has in the object of activity the activity being subject to the transfer of assets at the date of the transfer or the effective date of the transfer.

3. In the fiscal area of the law, a distinction is made between the transfer of assets and other company reorganization operations, on one hand, and (total or partial) merger and division, on the other hand, although, from a taxation point of view, they are handled as transfers of assets, if they meet the conditions of the law.

A first explanation for the management identity can be removed from the meaning of transfer of assets found in the content of partial company division, distinctly regulated through letter c) of the same article 32 par. (1) Fiscal Code.

We are taking into account the fact that, from a fiscal perspective, *the partial division* of the legal entity is the operation through which a company *transfers*, without being dissolved, one or several *branches of activity*, to one or several existing or newly incorporated companies, leaving at least one branch of activity within the transferor company, in exchange for the issuing of equity interests to its participants, representing the capital of the beneficiary companies and, if applicable, of the amount, in cash, of up to 10% of the nominal value, or, in absence of a nominal value, of the equivalent accounting nominal value of the equity interests.

Thus, *according to the Fiscal Code, in a partial division, assets and liabilities form a division within the company's patrimony, namely an economic activity, an independent business*. The common definition of the assets and

¹³Decision no. 48/20.10.2015 of the Competition Council, on-line, available <http://www.consiliulconcurentei.ro>.

liabilities subject to the transfer of assets does not have the potential of leading us to a different conclusion¹⁴.

Thus, from a general perspective, comparing the various legal meanings of the partial division of a legal entity, we can see that, unlike the definition of the partial division of legal entities from the Civil Code¹⁵, namely from Law no. 31/1990¹⁶, the Fiscal Code refers to the transfer of one or several branches of activity, and not to the transfer of a part of the transferor company's patrimony.

And last but not least, as we have shown before, due to the goal pursued by all reorganization operations, according to the law, merger and division are always considered, through themselves, without meeting any additional conditions, transfers of assets (of business), according to the provisions of art. 7 par. (8) final thesis of the Methodological Norms 2016.

4. On the other hand, the transfer of assets, as a method to perform the transfer of business, does not involve in all cases a change in the shareholding of the beneficiary company/companies, respectively an increase in its/their share capital and the transfer of equity interests representing the capital of the transferor company.

We appreciate that when the transfer of assets is performed through the sale of assets/business, according to the general rules in the area of sales, this would be done in exchange for a price, unlike other forms of the transfer of assets, achieved in exchange for equity interests to the beneficiary company.

¹⁴ Art. 32 par. (2) letter e) from the Fiscal Code: (...) *"the transferred assets and liabilities - the assets and liabilities of the transferor company which, following the merger, total division or partial division, are transferred to the beneficiary company and which contribute to the generation of profit or loss, taken into account for determining the taxation base for the beneficiary company"*.

¹⁵ Art. 236 par. (3) Civil Code: Partial division consists of the detachment of a part of a legal entity's patrimony, which continues to exist, in spite of the assignment of this part to one or several legal entities, existing or incorporated in this manner.

¹⁶ Art. 238 par. (2) from Law no. 31/1990: Division is the operation through which: a) a company, after being dissolved without entering liquidation, transfers to several companies the totality of its patrimony, in exchange for the distribution to the shareholders of the divided company of shares to the beneficiary companies and potentially for a cash payment of up to 10% of the nominal value of the shares distributed in this manner; b) a company, after being dissolved without entering liquidation, transfers the totality of its patrimony to several newly incorporated companies, in exchange for the distribution to the shareholders of the divided company of shares to the newly incorporated companies and potentially a cash payment of up to 10% of the nominal value of the shares distributed in this manner.

In the case of partial division, a part of a company's patrimony is detached and transferred as a whole to one or several existing companies or companies incorporated in this manner, in exchange for the assignment of shares or equity interests in the beneficiary companies to: a) The shareholders or partners of the company transferring the assets (detachment for the interest of shareholders or partners); b) the company transferring the assets (detachment for the interest of the company) [art. 250¹ from Law no. 31/1990].

III. Transfer of undertaking

5. The transfer of undertaking is the only method to perform the transfer of business specific to the labour legislation, specifically the regulations having the purpose of maintaining employees' rights in the case of a transfer of undertakings from one employer to another.

We can also find isolated notes on the transfer of undertaking in the legislation dedicated to economic competition.

The frequency of the transfer of enterprises in these fields has determined the creation of an interesting European and national jurisprudence, used by the Romanian legislator in determining the identification criteria for the transfer of business, particularly as transfer of assets.

At a European level, Directive 23/2001/EC¹⁷ classifies as ***transfer of undertaking*** any transfer of an undertaking, unit or part of an undertaking or unit (to another employer), as a result of a conventional assignment or a merger.

A *transfer*, for the purposes of this directive, is considered the *transfer of a unit maintaining its identity, understood as an overall organized collection of assets, having the purpose of performing an economic activity, regardless whether that activity is central or auxiliary* [art. 1 par. 1 letter b) from Directive 23/2001/EC].

In essence, we find under transfer of undertaking the most important characteristics of the transfer of assets, namely those related to the subject matter of the transfer, because the undertaking is any *"organized economic entity, respectively an organized assembly of persons and items which allow the performance of an economic activity following an independent objective and having sufficient structure and autonomy"* (The CJEU Decision from 6 March 2014, C-458/12, Lorenzo Amatori, item 9 and the jurisprudence quoted therein).

A decisive criterion for the classification of an operation as transfer of undertaking, for the purposes of article 1 paragraph (1) from Directive 2001/23/EC, is that of the entity in question maintaining its identity after being taken over by the new employer¹⁸ (see the Decision from 6 September 2011, Scattolon, C-108/10, Rep., p. I-7491, item 60 and the quoted jurisprudence).

The fulfilment of the condition of the undertaking maintaining its identity is related to the items transferred within the unit/undertaking, the tangible and intangible assets, their importance in the performance of the economic activity,

¹⁷ Directive 23/2001/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, published in the EC OJ special edition no. 0 from 1 January 2007.

¹⁸ A.M. Laurențiu, A.S. Răzoare, I.R. Laurențiu, *Challenges related to the application of the employees' rights legislation in the case of a transfer of undertaking, unit or part of the undertaking or unit*, in RRDA no. 8/2011, item 3.1.1., on-line, available at: www.idrept.ro (last seen on 8 March 2016).

highlighting the importance of the transfer of clientele and personnel, the actual performance of the post-transfer activity, etc.

On the other hand, the use of the words: “maintaining” or “keeping” the identity of the transferred entity would involve an entity existing before the transfer.

However, CJEU has indicated that the European legislation [Directive 23/2001/EC] does not oppose to a national regulation classifying as transfer of a part of an undertaking, when this part of an undertaking does not represent an autonomous economic entity, from a functional point of view, existing before its transfer¹⁹.

Thus, there shall be a transfer of a part of the undertaking, understood as an autonomous structure, from a functional perspective, of an organized economic activity, including when this is identified as such by the transferor and the transferee at the time of its transfer.

In Law no. 67/2006 regarding the protection of employees’ rights in the case of a transfer of undertaking, unit or parts of the undertaking or unit²⁰, transposing, at a national level, Directive 2001/23/EC, the **transfer of undertaking** is defined in a general, but adequate manner, namely as *the transition from the ownership of the transferor to the ownership of the transferee of an undertaking, unit or parts of them, having as purpose the continuity of the main or secondary activity, whether or not the goal is to obtain profit or not [art. 4 letter d)], when the transfer of undertaking is performed through merger or conventional assignment [art.1 from Law no. 67/2006]*.

Thus, the transfer of undertaking is performed through assignment or merger, in the conditions of the law.

Certainly, the assignment, as a method for a transfer of undertaking, cannot be interpreted restrictively or limited to shares or equity interests assignment contracts.

Thus, *the type of the agreement or measure through which the transfer is performed is not important*, and we shall include in the scope of assignment the transfer (sale) of assets²¹, the transfer of goodwill or the transfer of activity²², along with the beneficial interest or lease of an undertaking²³.

¹⁹ See item 42 from the CJEU Decision issued in the case of Telecom Italy, op. cit.

²⁰ Law no. 67 from 22 March 2006 regarding the protection of employees’ rights in the case of a transfer of undertaking, unit or parts of the undertaking or unit, published in the Official Gazette no. 276/28 March 2006.

²¹ Related to this, please see: Decision no. 944/R – CM from 15 May 2009, Pitești Court of Appeal, Civil Division, for matters related to labor disputes and social insurances and cases with minors and family, on-line, available on www.idrept.ro (last seen on 7 March 2016).

²² For the classification as partial transfer of undertaking of a contract having as object the outsourcing of the distribution services for the transferor’s products, respectively the transfer of a branch of activity, see **Civil Decision no. 6246/R** from 04.11.2009, **Bucharest Court of Appeal**,

The same provisions are included in the jurisprudence of the Court of Justice of the European Union, which has constantly determined that the scope of the transfer of undertaking, for the purposes of Directive 2001/23/EC includes *”in the context of contractual relations, there is a change in the legal or moral person who is responsible for carrying on the undertaking and who incurs the obligations of an employer towards employees of the undertaking”* (see the Decision 20 January 2011, CLECE, C-463/09, Rep., p. I-95, item 30 and the jurisprudence quoted therein)²⁴.

Thus, CJEU does not consider the (actual) transfer of ownership over the economic entity classified as undertaking.

6. As we have shown previously, the legislation on economic competition also contains (marginal) references regarding the transfer of undertaking. We are considering the Instructions of the Competition Council from 2010 regarding the restrictions directly related to and required for the application of economic clusters²⁵.

It is relevant that, also in this area of the law, the total or partial transfer of undertaking is classified as a transfer of business, respectively as a transfer of a (branch) of the autonomous economic activity, including the tangible and intangible assets required for the performance of the economic activity, such as the accumulated goodwill or the know-how developed by the seller.

IV. The transfer of activity or assignment of an activity

7. The secondary legislation dedicated to commercial competition also establishes different forms of the transfer of business, namely the assignment of activity and the transfer of activity.

Thus, the Instructions of the Competition Council from 2010 regarding the commitments in the matter of economic clusters²⁶ regulate the assignment of a viable and competitive activity as a tool (commitment) through which an economic operator can eliminate the risk that an economic cluster raises obstacles against actual competition.

VIIth civil and for matters related to labor disputes and social insurances division, on-line, available on www.idrept.ro (last seen on 7 March 2016).

²³ See art. 2112 par. (5) from the Italian Civil Code, acknowledged in the CJEU Decision from 6 March 2014, C-458/12, Lorenzo Amatori, item 9.

²⁴ Item 29 from the Decision issued by CJEU on 6 March 2014 in the case C-458/12 Telecom Italy, on-line, available on: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=148743&pageIndex=0&doclang=RO&mode=lst&dir=&occ=first&part=1&cid=828187> (last seen on 7 March 2016).

²⁵ The Instructions of the Competition Council from 2010 regarding the restrictions directly related to and required for the application of economic clusters, approved through Order no. 387/2010, published in the Official Gazette no. **553 from 05-Aug-2010**.

²⁶ Chapter 1. “The assignment of an activity to a proper purchaser” from the Instructions of the Competition Council from 2010 regarding the commitments in the matter of economic clusters, published in the Official Gazette no. 1/3.01.2011.

The assignment of activity, by one of the parties within an economic cluster, can be achieved through two methods: by creating a new competing entity or by consolidating the existing competitors.

Basically, the **assignment of activity** is performed: (i) through the sale of a viable and competitive economic activity to a (proper) purchaser or (ii) through contribution to the establishing of a beneficiary company's capital.

The viability of the assigned activity is determined in relation to its autonomy, namely its capacity to operate autonomous from the entire activity of the transferor.

Additionally, according to the aforementioned CJEU jurisprudence, both an economic activity having an autonomy existing before the assignment and an economic activity with an autonomy created at the conclusion date of the assignment contract can be subject to a transfer, as the Instructions of the Competition Council from 2010 regarding the commitments in the matter of economic clusters indirectly authorize both possibilities²⁷.

Certainly, the economic activity being subject to the transfer can take the form of an existing undertaking or a group of existing undertakings or an activity within an undertaking.

In order to avoid any issues in determining the nature of the transfer and viability, meaning the autonomy of the sold economic activity, the assignment contract must include all tangible and intangible assets required for its viable operation, along with the employed personnel related to such activity.

For this purpose, according to item 27 from the Instructions from 2010 regarding the commitments in the matter of economic clusters, in order to achieve the purpose for which the assignment of activity is performed, the assignment contracts must include an accurate description of the characteristics of the transferred activity and of all the elements which are part of such activity.

For instance, "activities related to research & development, manufacture, distribution, sales and marketing, intangible assets, such as intellectual property rights, know-how and goodwill; licenses, permits and authorizations granted for the activity in question by certain bodies; contracts, lease contracts and commitments, such as agreements with the suppliers and clients, for the benefits of the activity intended for assignment; client, credit and other types of files shall be indicated. In the description of the activity, the parties must include, generally, the staff they intend to transfer, including the seconded staff and temporary employees, and provide a list of the main staff, respectively the staff that is critical for the viability of that activity"²⁸.

In practice, the most frequent transfers of businesses through the assignment of the activity occur on the retail market of current consumption food and non-

²⁷ "It is recommended that the activity intended for assignment is an existing autonomous activity" – 2nd thesis of item 32 from the Instructions from 2010 of the Competition Council.

²⁸ Item 27 from the Instructions from 2010 regarding the commitments in the matter of economic clusters.

food products through hyper/supermarkets, discounters and other similar stores.

We can mention the taking over of Billa Romania by the Carrefour Group, operation through which the Carrefour Group takes control over the retail activity operated in Romania under the “Billa” brand of the Rewe Group consisting of Billa România SRL and Billa Invest Construct SRL²⁹. After this taking over, the Rewe Group will also conduct other retail activities in Romania, namely through its discounter stores.

The Competition Council has authorized the economic cluster subject to the compliance with the commitments voluntarily undertaken by Carrefour. “Thus, Carrefour undertook to assign three active supermarkets from the Brăila market, namely two Carrefour Market stores and one Billa store. Also, Carrefour undertook to refrain from any involvement in the assigned activities for a significant period, of at least 10 years. The assignment shall be performed as a *continuous transfer of activity* without the suspension of the activity, for each individual store or for all of the stores together. Also, on a best effort basis, Carrefour shall maintain the economic viability and competitiveness of the activity intended for assignment”³⁰.

The transfers of businesses through the assignment of activity are regular operations on the market for financial services. For this purpose, Banca Comercială Română, member of the Erste Group, also took over the Romanian businesses of its branch, Anglo-Romanian Bank Ltd (ARBL). The transfer of undertaking (based on the continuity of the activity) from ARBL to BCR was performed during the year 2011 and has involved the “taking over by BCR of the ARBL businesses/activity, assets, liabilities, clients, performed through the Bucharest branches and the agencies from Constanța, Timișoara and Sibiu. BCR also took over ARBL’s intangible assets, along with the operational infrastructure, including the software”³¹.

Objectively, in this case, the transfer of business was performed through a *business activity transfer agreement*, signed on 30 March 2011; on the grounds of this agreement, ARBL transferred all its banking and auxiliary activities, along with the non-banking activities in Romania, to BCR SA³².

²⁹Source: Competition Council, Press release, on-line, available on: <http://www.consiliulconcurentei.ro/ro/docs/26/decizii-die/page3.html>.

³⁰Excerpt from the decision of the Competition Council available online at: http://www.consiliulconcurentei.ro/uploads/docs/items/id11193/angaj_carrefour_billaiun_2016.pdf.

³¹<http://www.zf.ro/banci-si-asigurari/finalul-anglo-romanian-bank-erste-preia-afacerile-din-londra-bcr-pe-cele-din-romania-8280779>.

³²The Civil Decision no. 1577/R from 13.03.2014, Bucharest Court of Appeal, VII-th Civil Matters and Cases of Labor Disputes and Social Insurances Section, selection made and commented by Judge Petrică Arbănaș, RRDM no. 8/2014, on-line, available on: www.idrept.ro.

This final case reveals the difficulty of distinguishing the transfer of undertaking and the assignment or transfer of activity, as both are actual methods for performing a transfer of business.

It is worth recalling that, from a fiscal perspective, regardless of the classification provided to the previously analysed operation, these represent a transfer of assets.

V. Transfer of goodwill

8. Another method to perform a transfer of business is the *sale of goodwill*³³.

Frequent references to the transfer of an undertaking's entire goodwill or only a part of it are included in the legislation on commercial competition.

From this perspective, *goodwill* is not just a collection of tangible and intangible assets, but, more accurately, it is a commercial activity present on the market that can be related to a turnover³⁴.

Certainly, we shall be able to identify the goodwill with the branch of activity from the fiscal legal area; in both cases, the subject matter of the transfer is an independent economic activity.

The operation can be exemplified through a transfer of goodwill in the field of pharmaceutical products. Thus, in 2012, SC Sensiblu SRL, pharmaceutical chain in Bucharest (hereinafter referred to as Sensiblu) announced "the acquiring of the direct unique control over the goodwill related to a number of 90 pharmacies belonging to SC News Quality Pharma SRL (hereinafter referred to as "News Quality").

The direct control over Sensiblu is held by A&D Pharma Holdings N.V., with registered office in Delft, the Netherlands, and the Company News Quality Pharma S.R.L. was incorporated on 24.11.2011, upon the division of S.C. Hermes Pharma S.R.L.

The transfer of business was performed through a *sale and purchase agreement* having as subject matter the purchasing by Sensiblu of the *goodwill* related to a number of 90 City Pharma pharmacies belonging to News Quality Pharma.

The goodwill refers to the activity, assets and certain liabilities of the Seller related to the pharmacies, which includes the pharmacies (locations), permits, fixed assets, stocks, good custom and clientele, including the database of clients holding loyalty cards, the taking over of certain company debts, within the

³³ Paris Court of Cassation, Social Division from 20 January 1998, n° 95-40.812, apud. Francis Kessler, Niloufar Gholami – Bavi, *Succession and transfer of businesses in France*, IUSLabor 1/2015, p. 16, op. cit..

³⁴ Item 21 from the Instructions of the Competition Council from 2010 regarding the concepts of economic clustering, involved undertaking, complete operation and turnover, published in the Official Gazette no. 553 bis from 05 August 2010.

thresholds of the value of the taken over stocks and the transfer of employees from the taken over pharmacies, the know-how and the brands.

News Quality Pharma did not cease to exist following this transfer of business, initiating software (sale/licensing) solutions supply activities related to the retail of pharmaceutical and/or cosmetic products, through pharmacies and drug stores³⁵.

VI. Transfer of patrimonies of affectation. Fiduciary agreement.

9. The transfer or alienation of the patrimonies of affectation (universal law), as a method to perform a transfer of business, is of particular interest, especially through the (relatively) new nature of the operation.

As an affected division of the general patrimony, the patrimony of affectation can be regarded as a business, as a branch of activity, respectively as an autonomous economic activity, including the assets and liabilities related to that particular activity, and which can be subject to a transfer (of business), *when the patrimony of affectation pre-exists the transfer and also when it is created at the time of the transfer of business.*

We have supported and analysed the option of transferring patrimonies of affectation through deeds inter vivos³⁶, considering the fact that, in essence, the patrimony of affectation is an alienable good.

However, through the definition provided to the concept of transfer, the Fiscal Code only introduces in the scope of this operation the *”transfer of the fiduciary assets and liabilities within the fiduciary operation* according to the Civil Code” (art. 7 item 42 from the Fiscal Code).

The classification of the fiduciary assets and liabilities as a transfer of assets is explained through the characteristics of the fiduciary assets and liabilities, which can represent an independent economic activity, a branch of activity or a part of a branch of activity, and its transfer, a transfer of business. However, unlike the transfer of patrimonies of affectation, *only the assets, and not the liabilities, can be transferred through the fiduciary agreement.*

VII. Transfer of business. Notion and characteristics.

10. According to what we have indicated in the beginning of this study, analysing the actual methods for performing a transfer of business allows us to determine the meaning and characteristics of this legal operation.

³⁵ The information was taken over from Decision no. 17/24.04.2012 of the Competition Council, on-line, available on <http://www.consiliulconcurrentei.ro>.

³⁶ Luminița Tuleașcă, *Patrimonies by Appropriation and the Personalist Theory of Patrimony*, Romanian Private Law Magazine no. 5/2015, p. 180 et seq.; Luminița Tuleașcă, *The patrimony by appropriation - An instrument in business operation*, in the Romanian Business Law Magazine no. 6/2014, pp. 44 – 59.

The boundary between the main methods to perform a transfer of businesses through operations other than merger and division is exceptionally flexible, their essence being shared by all of its actual forms of manifestation.

In all legal operations analysed in this study, through which a transfer of business is performed, we can find the following common elements:

(i) the subject matter of the transfer is an organized, autonomous or independent economic activity representing a branch of activity or a part of a branch of activity.

(ii) after the transfer of business, the transferor undertaking/company continues to exist as a legal person and/or entity and to conduct an economic activity (usually a different one than the transferred activity/activities);

(iii) the transfer of business does not always involve a change in the share capital structure of the transfer of business beneficiary company, purchaser or transferee of the business;

(iv) the ownership/control over the business is taken over by the transferee/purchaser or beneficiary of the transfer.

In conclusion, *the transfer of business is the operation through which one or several branches of activity, respectively organized and independent activities is/are transferred between two companies/entities independent from a legal perspective, regardless of the type of agreement or the designation used by the parties to the agreement: transfer of undertaking, transfer of assets, transfer/assignment of activity, beneficial interest or lease of an undertaking, sale/transfer of goodwill, transfer of patrimony of affectation, fiduciary agreement, merger, division, etc.*

This is the reason why total mergers and divisions shall always include a transfer of business, while atypical or partial divisions, only at the extent at which the transferred assets or part of the patrimony represent(s) an organized and autonomous economic activity.

According to this perspective, the fiscal authorities have classified as transfer of business or of assets the passing of certain assets from the divided company to the beneficiary company within a partial division³⁷.

Certainly, in order to benefit from the fiscal advantages of the transfer of business, the additional conditions determined through the fiscal legislation must be met.

VIII. Fiscal advantages of the transfer of business

11. According to the law, all actual methods to perform a transfer of business represent a transfer of assets and benefit from fiscal advantages from a

³⁷ Related to this, please see: Alin Negrescu, Romana Schuster, *Transfer of business and deduction right for "illegitimately collected" VAT*, Bulletin for International Taxation no. 8/31 August 2010, on-line, available on www.idrept.ro

double perspective: that of the profit tax and of the value added tax, in the conditions of the Romanian law and the European legislation.

For this purpose, it is essential to correctly classify a legal and economic operation as a non-taxable transfer of assets, namely one that is not within the scope of the value added tax.

12. From the perspective of the scope of the value added tax, art. 5 par. (8) first thesis from the Sixth Directive, currently art. 19 first thesis of Directive 112/2006, states that Member States may consider that, in the case of the transfer of all company assets or part of them, regardless whether or not this is done for good and valuable consideration, or as a contribution to a company, no deliveries of goods took place and that the person to whom the goods are transferred is the transferor's successor.

In the interpretation of art. 5 par. (8) first thesis from the Sixth Directive, CJEU determined that “when a Member State has used this option, the transfer of all assets or a part of them, this is not considered a delivery of goods and thus, it is not subject to VAT, on grounds of art. 2 from this directive”³⁸ [art. 1 par. (2) paragraphs 1, 2 and 3 from Directive 112/2006 n.a.].

Thus, the transfer of assets is not considered a delivery of goods and so it is not an operation included in the scope of the value added tax, if the special conditions of the Fiscal Code are met cumulatively.

First of all, the legal operation must meet all the characteristics of a transfer of assets or business, characteristics previously analysed, in item 2 of this study, which is why we shall not return to this matter.

In essence, the subject matter of the transfer of assets is represented by one or several branches of activity or a part of a branch of activity, respectively an independent economic activity.

Additionally, in order to classify an operation as transfer of assets not included in the scope of the value added tax, *the receiver of the assets (business) must prove its intention to perform the economic activity or the part of the economic activity transferred to it*, and not to liquidate that activity immediately and, according to the case, to sell the potential stocks (Schriever Decision, quoted above, item 37, Zita Modes Decision, quoted above, item 44).

The receiver of the assets has the liability to send the transferor an affidavit proving the compliance with this conditions³⁹; however, this statement is only useful

³⁸ The Schriever Decision, quoted above, item 20; see also the mentioned CJEU jurisprudence: Decision from 22 February 2001, Abbey National, C – 408/98, Rec., p. I-1361, item 30; Decision from 27 November 2003, Zita Modes, C-497/01, item 29; Decision from 29 October 2009, SKF, C-29/08, Rep., p. I -10413, item 36.

³⁹ Item 7 par. (8) from the Methodological Norms from 2016 for the application of the Fiscal Code.

for the transferor/seller from the transfer of assets/business. From the perspective of the beneficiary or purchaser of the transfer of assets/business, the intention to continue the purchased activity must be supported by objective elements.

In the operation of determining the transfer of assets, it is irrelevant whether the receiver of assets is authorized to perform the transferred activity or if it has that activity within its object of activity.

These conditions being met, according to the Romanian law, which has used the option provided by art. 5 par. (8) first thesis from the Sixth Directive, the transfer of all assets or part of the assets performed as an effect of a transfer of assets, except for those occurring as an effect of merger or division, does not constitute a delivery of goods, if the receiver of the assets is a taxable person in Romania.

Unlike other methods for performing the transfer of business, the company division and merger operation is always a transfer of assets, regardless of the compliance with certain additional conditions, and does not constitute a delivery of goods, if the receiver of the assets is a taxable person in Romania⁴⁰.

Thus, when the transfer of business constitutes a transfer of assets from a fiscal perspective, we are not in the presence of a delivery of goods, the operation is not subject to value added tax, and the receiver of the assets is considered the transferor's successor regarding the adjustment of the deduction right provided by the law.

13. Regarding the *profit tax*, the transfer of business performed through divisions, mergers, transfer of assets and purchases of equity interests, performed by Romanian legal entities, is handled as *non-taxable transfer, for the difference between the market price of the transferred assets/liabilities and its fiscal value*⁴¹.

We reiterate the fact that, from the perspective of the profit tax, classifying an operation as a transfer of business, respectively a transfer of assets, is exclusively related to the subject matter of such a transfer: one or several branches of activity or a part of a branch of activity, respectively an independent economic activity, the aforementioned special conditions (item 12) being applicable only for determining the scope of the value added tax.

14. The transfer of business (assets) performed as a transfer of fiduciary assets and liabilities occurring through a fiduciary agreement shall benefit from all the fiscal advantages granted by the Fiscal Code from a double perspective, namely from the perspective of the profit tax or income tax applicable to the fiduciary agreement, and the perspective of the value added tax, as the transfer of the fiduciary assets and liabilities can be classified as a transfer of assets and is

⁴⁰ Art. 270 par. (7) Fiscal Code corroborated with art. 7 par. (8) final thesis from the Methodological Norms 2016.

⁴¹ Art. 32 par. (3) Fiscal Code

not within the scope of the tax, in the conditions of art. 270 par. (7) from the Fiscal Code.

Thus, the transfer of the fiduciary assets and liabilities from the founder to the trustee is a transfer subject to profit tax if the founder is also the beneficiary [art. 30 par. (1) letter a) from the Fiscal Code.]. Otherwise, if the beneficiary is the trustee or a third party, the transfer shall be classified as a transfer subject to profit tax.

When the transfer of the fiduciary assets and liabilities occurs between natural persons, the transfer does not generate taxable incomes for the founder and the trustee, the operation is not subject to income tax regarding such parties, if they are taxpayers for the purposes of art. 58 Fiscal Code. The incomes obtained from the transfer of the fiduciary assets and liabilities shall be subject to income tax for the beneficiary, unless the beneficiary is also the founder, in which case those incomes are not subject to taxation⁴².

IX. Transfer of business and insolvency procedure

15. The transfer of business may occur at any time during the company's existence, including within the insolvency procedure, the reorganization procedure or bankruptcy procedure.

In the reorganization procedure, the transfer of business for restructuring purposes is performed through the (pre-packed) sale of profitable assets and secured receivables⁴³ *which are transferred as a business to the so-called SPVs (Special Purpose Vehicles)*.

The operation is expressly allowed by Law 85/2014 regarding the procedures for preventing insolvency and insolvency⁴⁴ (hereinafter referred to as the Insolvency Law), meaning that the reorganization may indicate as a proper measure for its application the “transfer of all or certain assets from the debtor's estate to one or several natural persons or legal entities, incorporated before or after the confirmation of the plan”⁴⁵.

We believe that this transfer of business shall be performed for a price determined in money, unlike the debtor's merger or division, which may occur in this phase, but shall generate the transfer of shares or equity interests in the absorbing or beneficiary company, to the creditors of the transferor debtor company.

Additionally, the doctrine has also provided as a method for performing a transfer of business, profitable for the estate of the insolvent debtor, the lease of

⁴² Art. 63 par. (1) and par. (4) thesis I and II Fiscal Code.

⁴³ See M. Iovu, *Expectations of the business environment from the Insolvency Code*, RRDA no. 9/2014, on-line, available on www.idrept.ro.

⁴⁴ Law 85/2014 regarding the procedures for preventing insolvency and insolvency, published in the Official Gazette no. 466 from 25 June 2014.

⁴⁵ Art. 133 par. (5) letter C from the Insolvency Law.

the business with put option (i.e. after 2 years) or the conclusion of a business transfer agreement with condition precedent⁴⁶.

Also, the sale of the functional subunit⁴⁷, as an independent economic activity, could be assimilated in the transfer of business, and is used both within the company reorganization procedure and in the company bankruptcy procedure.

In this legal area, it is interesting and useful to turn to the legislation of other states and, for instance, in the area of transfer of undertaking, the French law also allows the transfer of business when the (commercial) company is subject to an insolvency procedure. Certainly, in this phase of the company's existence, the transfer of business benefits from a special regime. Thus, through art. L. 1224-2 from the French Labour Code, it is determined that, when the transfer of business occurs during the safeguarding, reorganization or liquidation procedure, the transferor new employer, beneficiary of the transfer of business, is not bound by the liabilities that the old employer had towards its employees.

Also, in Spain [art. 146 bis from the Insolvency Law no. 22/9 July 2009 (Concursal)] and in Italy, the transfer of business is also allowed during bankruptcy or insolvency procedures and, in order to facilitate this type of operation, the law allows the partial transfer of employees⁴⁸.

X. Transfer of business and (commercial) company restructuring

16. In the area of company restructuring, the temptation is that of limiting the scope of this notion to the natural person's reorganization institution⁴⁹ in the definition established through art. 232 Civil Code⁵⁰ and the reorganization methods regulated by art. 233 par. (1) from the Civil Code, namely merger, division and transformation.

However, company restructuring is also performed through operations other than those established through the Civil Code.

In the fiscal area, the notion of reorganization includes the transfer of assets, in all its forms, along with the total or partial merger and division of the legal entity⁵¹.

⁴⁶ Radu Bufan, *Transfer of business. Fiscal Effects*, RRDA no. 3/2015, on-line, available on www.idrept.ro.

⁴⁷ "The functional subunit is a group of assets belonging to the debtor which insures the generation of an independent finished product or allows the performance of an independent activity" – art. 5 item 65 from Law no. 85/2014.

⁴⁸ Vincenzo Ferrante, *Succession and transfer of businesses in Italy*, IUSLabor 1/2015, p. 28., on-line, available on: https://www.upf.edu/iuslabor/pdf/2015-1/CLLD_TRANSFER_OF_BUSINESSES.pdf

⁴⁹ Titus Prescure, *Reorganization of the legal entity from the perspective of the new Civil Code*, RRDA no. 7/2015.

⁵⁰ "The reorganization of the legal entity is the legal operation that can involve one or several legal entities and has the effects of their incorporation, amendment or termination" – art. 232 Civil Code.

⁵¹ Art. 32 par. (3) Fiscal Code: "The transfer of assets and liabilities, performed within the reorganization operations provided under par. (1) ... [art. 32 par. (1) Fiscal Code]; Art. 32 par. (6)

We find this vision in the Insolvency Law, which includes in the field of the (judicial) reorganization of the legal entity debtor all the restructuring types, namely operational and/or financial restructuring of the debtor and corporate restructuring, by changing the structure of the share capital⁵².

On the other hand, even mergers and divisions, classic company reorganizations, have the purpose of resettling the business' financial and operational structure, respectively the corporate and operational restructuring of the participating companies. For instance, in all cases, merger also involves the transfer of one or several businesses. Also, total or partial division may also include the transfer of business. For this purpose, the jurisprudence acknowledges by analysing the cause of a partial division project that "the purpose of (the partial A/N) division, inserted in the project, was that the company can transfer without being dissolved two branches of activity, to the four newly incorporated companies."⁵³

Thus, the transfer of business, regardless of its actual execution method, represents, in all case, an operational restructuring of businesses and, in certain cases, a corporate restructuring, through a change in the structure of the share capital of the companies involved in the operation, particularly the beneficiary companies of the transferred business.

XI. Conclusions

17. In conclusion, we shall witness a transfer of business when one or several branches of activity or a part of a branch of activity, respectively organized and independent economic activities, is/are transferred between two companies/entities independent from a legal perspective, regardless of the type of agreement or designation used by the parties of the agreement: transfer of undertaking, transfer of assets, transfer/assignment of activity, beneficial interest or lease of an undertaking, sale/transfer of goodwill, transfer of patrimony of affectation, transfer of fiduciary assets and liabilities, merger, division, etc.

At the extent at which the transfer of business also complies with the additional conditions enforced by the fiscal legislation, it shall also be classified as a transfer of assets, with the consequence of the application of the related fiscal advantages.

Last but not least, the transfer of business, regardless of its actual execution method, represents, in all case, an operational restructuring of businesses and, in

Fiscal Code: In the case of the reorganization operations provided under par. (1) [art. 32 par. (1) Fiscal Code] the following rules apply (...)

⁵² See art. 5 item 54 from the Insolvency Law.

⁵³ The High Court of Cassation and Justice, Commercial Division, Decision no. 162 from 18 January 2011, published in RRJ no. 4/2011, on-line, available on www.idrept.ro.

certain cases, a corporate restructuring, through a change in the structure of the share capital of the companies involved in the operation.

De lege ferenda, Law no. 31/1990, along with GEO no. 44/2008 regarding the performance of economic activities by registered sole traders, sole partnerships and family owned businesses, should regulate in an adequate manner the transfer of activity or business, in order to eliminate any difficulties in classifying such operations, but particularly as an incentive for small business transfers.