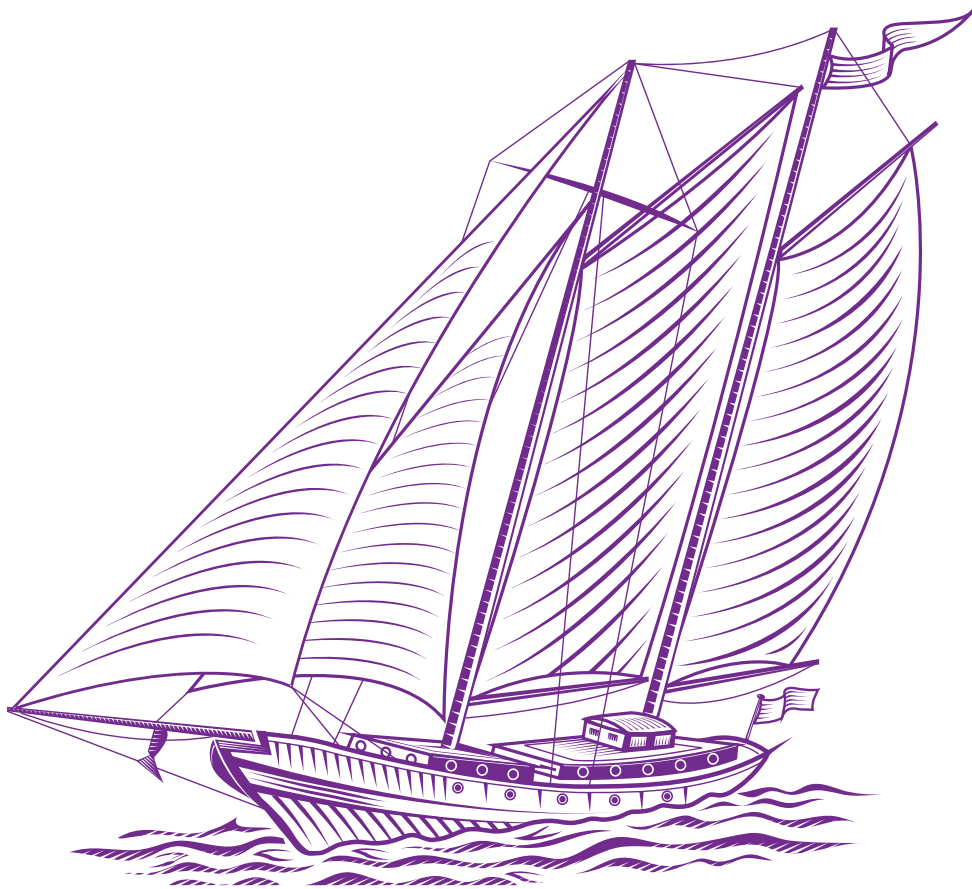




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SUMAR - SOMMAIRE - CONTENTS - INHALT

GRZEGORZ GÓRNIIEWICZ, The Problem of External Debt in Post-Socialism Countries (The Case of Eastern Europe).....	3
THOMAS M. FITZPATRICK, The Social and Economic Impact of Corruption on Nations and Multinational Corporations.....	13
RADU N. CATANĂ, Legal Transplants in Romanian Corporate Law seeking for Success	35
CORNELIA POP, The Financial Crisis of 2007 – 2008 a Review of the Timeline and of its Causes	55
CLAUDIU MORGOVAN, SMARANDA COSMA, STELIANA GHIBU, MARIUS BOTA, CĂLIN BURTA, CONSTANTIN POLINICENCU, A Study on Anti-Diabetic Drug Delivery from Pharmacies	75
VALENTIN TOADER, MAGDALENA VORZSAK, CARMEN MARIA GUT, Analysis of Travel Agents Performances during the Economic Crisis - Case of Cluj County, Romania.....	89
CRISTINA SILVIA NISTOR, Swot Analysis of the Romanian Public Accounting System	103
ALINA HAGIU, EMILIA CLIPICI, The National and the European Union Business Environment in the Context of the Knowledge-Based Economy	119
MELINDA PLEȘCAN, MARIUS GAVRILETEA, The Impact of the Global Financial Crisis on China's Tourism	139

THE PROBLEM OF EXTERNAL DEBT IN POST-SOCIALISM COUNTRIES (THE CASE OF EASTERN EUROPE)

GRZEGORZ GÓRNIWICZ¹

ABSTRACT. In the present paper, apparently the most heated problem of modern international finances, i.e. external debt of post-socialism countries has been taken under the spotlight. The primary purpose of the paper was to point at the reasons for the occurrence of external debt and the measures taken for the sake of fighting it so far. The case of Eastern Europe will be considered in greatest depth.

Keywords: external debt, international finance, debt crisis

Introduction

At the beginning of the twentieth century, the global scale of external debt of developing countries took the greatest proportions so far. The debt crisis appeared to be without precedents in the area of world economy.

The straight reason for emerging of external debt was the augmentation of in commodity exchange between well developed countries and the countries which are regarded as developing. That phenomenon happened mostly thanks to loans passed from the richer countries to the less developed countries; yet, it is noteworthy that it was also well developed countries that ran into debt.

Not only Latin-American, African, Asian countries but also European post-socialism countries were included among debtors. The external debt of Eastern Europe² countries is a big affliction to their economies and thus the author of the present paper got interested in that very issue. Within the context depicted here, particularly the possibilities of solving the issue are the most essential.

All references are expressed in Polish or English language respectively.

1. The scale of external debt

In the group of Eastern Europe countries, the greatest external debt is attributed to the biggest country- Russia. At the end of 2007, the debt exceeded 356 mld USD. From 2000 on, the debt increased twice as much and from 1990- almost

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² According to the division used by United Nations Statistics Division, Eastern Europe comprises the following countries: Belarus, Bulgaria, Czech Republic, Hungary, Poland, Republic of Moldova, Romania, Russian Federation, Slovakia and Ukraine. <http://unstats.un.org/unsd/databases.htm>

6 times as much (look at table 1.). The dynamic growth of external debt is connected with the Russian economy opening itself after the collapse of the Soviet Union in 1991. It is to be underlined that the external debt of the former Soviet Union was relatively low; in 1986, it amounted only to 26 mld USD. The low external debt resulted mostly from political reasons (that is, separating the Soviet Union from the credits from capitalistic countries).

The close second concerning the aspect of the amount of external debt of Eastern Europe countries is Poland (almost 170 mld USD). In the whole analyzed period, the external debt of Poland systematically rose. The great dynamism of the increase of external debt was observed in the seventies, which resulted from the opening of Polish economy with the policies undertaken by E. Gierek. The next decade showed the systematic, yet slower increase of the external debt resulting from Poland not wholly discharging the duties attributed to it. The advent of the transformation of the form of government triggered off the reduction of Polish external debt; yet, on the turn of XXI century, the debt dynamically increased again. The increase was mainly due to Polish enterprises and foreign banks running into debt. It could all be attributed to the fact that the conditions of taking credits were more favorable abroad than in Poland³.

The third place is occupied by Hungary (over 125 mld USD). The history of the country accumulating external debt bears some resemblance to Polish process of accumulating debt.

Table 1.

Total external debt USD (expressed in million USD)

COUNTRY	1971	1980	1990	2000	2007
Belarus	-	-	-	-	7,3
Bulgaria	0,7	3,5	10,8	10,0	34,9
Czech Republic			8,0	21,2	74,7
Hungary	1,1	12,9	21,2	29,4	125,9
Poland	0,9	25,5	49,3	63,5	169,8
Republic of Moldova	-	-	-	-	3,3
Romania	1,2	10,2	1,1	10,2	74,5
Russian Federation	-	-	59,3	160,3	356,5
Slovakia	-	-	2,0	11,1	36,3
Ukraine	-	-	-	12,1	69,1

Source: own lay-out on the basis of Global Development Finance 1998, Country Tables, The World Bank, Washington 1998, pp. 1-12; http://devdata.worldbank.org/wdi2005/Table4_16htm; Statistical Yearbook United Nations, New York 1985, s. 332-333 and www.cia.gov

³ G. Górniewicz, Konsekwencje międzynarodowych przepływów kapitału dla gospodarki światowej ze szczególnym uwzględnieniem Polski, Wydawnictwo Uniwersytetu Kazimierza Wielkiego, Bydgoszcz 2007, s. 81-82.

THE PROBLEM OF EXTERNAL DEBT IN POST-SOCIALISM COUNTRIES

The forthcoming places with respect to the amount of external debt are occupied by: Czech Republic (almost 75 mld USD), Romania (over 74 mld USD) and Ukraine (about 69 mld USD). The case of Romania is exceptionally interesting, which country unprecedentedly reduced its debt in the eighties, thus expending huge cost not only economically but also socially- all relating to the policy conducted by N. Ceausescu. However, on the turn of the twenty first century, the external debt of Romania dynamically increased. That phenomenon is caused mainly by the opening of Romanian economy, stemming directly from the needs for governmental system transformations and the integration with the European Union.

Next places in the presented classification are occupied by Slovakia (over 36 mld USD) and Bulgaria (almost 35 mld USD). The Republic of Moldova- being one of the poorest among European countries- enjoys the lowest external debt (slightly over 3 mld USD). Also, Belarus is burdened with the low external debt (7 mld USD).

Table 2.

The main indicators describing external debt (data derived at the end of 2007)

COUNTRY	External debt (% of GDP)	External debt per capita
Belarus	7,1	1.793
Bulgaria	40,2	8.458
Czech Republic	29,7	1.411
Hungary	65,7	12.200
Poland	27,2	4.927
Republic of Moldova	33,8	543
Romania	30,2	1.354
Russian Federation	17,0	2.500
Slovakia	33,2	6.788
Ukraine	21,2	709

Source: www.cia.gov.

The indicator demonstrating how strongly a given country is afflicted with the external debt comes in the form of the relation to gross national product (GNP) (look at table 2). Considering the situation from the perspective of that criterion, Hungary and Bulgaria are the worst-off. Another indicator confirming the affliction with debt is external debt per capita (look also at table 2). Assuming that criterion, also Hungary is decisively the worst-off. On average, each citizen is burdened with the external debt amounting to 12 000 USD. The second place, similarly to the former classification, is occupied by Bulgaria (almost 8,5 thousand USD of external debt per citizen).

2. The reasons for the occurrence of the issue of external debt in Eastern Europe Countries

The situation of each of debtor countries is distinguished by its specific character. Because of that, it is unfeasible to list all the factors giving rise to the occurrence of the phenomenon of external debt⁴. The original reason for taking external loans is definitely the considerable lacking in one's own capital as well as the eagerness for development, consumption and expansion. Running into debt can be mainly attributed to the level of the development of a country; so, the reasons for running into debt are different for well-developed countries and for developing countries respectively. Having considered the main aim of the paper, only the latter reasons will be taken under the spotlight.

In spite of multifarious differences, some common causes, which are typical of developing countries, may be distinguished. Embarking on the most general classification, and external (independent of the debtor country) sources of external debt should be separated and the internal (dependent on the debtor country).

External causes (independent of debtor countries) of the occurrence of external debt include:

- unfavorable terms of trade and the requirements of liberalizing trade predicted in international agreements,
- protectionist policy on the market of developed countries,
- wavering interest rates,
- changes pertaining to terms of crediting and the decreasing foreign capital influx.

The internal sources (dependant on the policies followed by debtor countries) of the occurrence of external debt include:

- investment policies and liberal import norms,
- budget and finance policy and currency policy,
- national capital flight⁵.

Despite the fact that the above-mentioned reasons are typical of the majority of countries, in the case of analyzed countries, one can point to a certain characteristic. The characteristic is traceable to the former belonging of Eastern Europe countries to socialistic block. That belonging was connected with the reasons of paradigmatically internal character. The economies of Eastern Europe countries were then wholly dependent on political nomenclature. Market was de facto not operative, and competition was totally eliminated. The observation of long-term processes of economic growth under the conditions of a system of

⁴ The main cause of the occurrence of external debt was the increase of values of contracted credits having its roots in oil crisis.

⁵ B. Jasiński, J. Kulig, K. Stańczak, Międzynarodowe zadłużenie a skuteczność polityki dostosowawczej. Raport, Centrum Badań na Zadłużeniem i Rozwojem, Uniwersytet Jagielloński, Kraków 1988, s. 11.

permanent deficiencies, which are the reflection of continuous lack of balance, allows for noticing the permanent increase of economic disproportions, which must have resulted in the acute social-economic crisis. Apart from them, the governmental system and planning national economy, and disadvantageous agricultural policy bore some influence on the occurrence of crisis.

Having taken loans, the governments of respective countries intended to assure the means for rapid and wide-ranging modernization of their economies. It was assumed that the loans will be repaid with commodities produced due to imported investment goods. The concept of “self-repayment” of loans was promoted. In then nomenclature, such loans were regarded as equivalent to “free-of-charge” loans. The successful results from the starting period prompted the continuation of the program of rapid growth and the accelerated investment efforts. However, in the forthcoming years, the depreciation of the starting period reformations took place because the resources of producing potential were exhausted. The concept of accelerated economic growth involving introducing great social organizations and opening the economy to the foreign countries terminated as a fiasco. External debt was transformed from the factor accelerating the economic growth into the barrier to economic development⁶.

Unfortunately, in professional literature, there is a lack of complete information pertaining to the exploitation of external credits by Eastern Europe countries. Yet, it is beyond the shadow of a doubt that the exploitations were highly inappropriate. In the case of Poland, according to the estimate data, only 20% of credits received in the seventies were devoted to financing investments and enhancing producing potential. Their main part (about 65%) was used to import raw materials and materials for production. The remaining part was used to finance buying consumption articles - particularly agricultural articles – because national nutrition production could not overtake the consumption growth. Due to extremely ineffective economy of real socialism in a country of the huge agricultural potential (about 30% of citizens were occupied with agriculture) basic agricultural products were missing.

The very exploitation of investment credits by Poland also proved to be a big misfiring. The best example is probably buying the license from the company Massey - Ferguson - Perkins (400 mln USD) which was supposed to lead to the development of tractors' industry and the production of combustion engines. The company was then on the verge of bankruptcy and would have certainly gone bankrupt but for the buying of license⁷.

The eighties were the period where external debt of Eastern Europe countries underwent further increase. The increase resulted not so much from

⁶ G. Górniewicz, *Zadłużenie zagraniczne. Polska a kraje rozwijające się*, Wydawnictwo Akademii Bydgoskiej im. Kazimierza Wielkiego, Bydgoszcz 2002, s. 81 – 82.

⁷ *Ibidem*, s. 83

taking new credits but mostly from paying liabilities on time. Because of penalty interests, the external debt continued to rise.

The beginning of the new decade became a breakthrough not only economically (commencing of reformations within the so-called government transformation) but also politically. The disintegration of the Soviet Union caused the emergence of new countries (Belarus, The Republic of Moldova, Russia and Ukraine). Czechoslovakia divided itself into two separate countries (Czech Republic and Slovakia). Bulgaria, Poland, Romania and Hungary remained in an unaltered shape.

On the turn of the new century, external debt of the mentioned countries underwent the dynamic increase caused by many factors. The main of them include:

- new credits connected with government system transformation, entering or preparing to enter European Union
- the improvement of rating and thus, easier access to credits not only by the government, self-governments but also by companies and banks
- the decrease of dollars' rate of exchange, in which external debt is expressed.

To summarize, the general conclusion can be stated. It was mainly the lack of its own capital needed to reform relatively lagging economies that caused the increase of Eastern Europe countries' external debt. Probably, in the forthcoming years, because of the progressing processes of European integration and globalization, the discussed phenomenon may take even greater proportions.

3. Some methods used to reduce external debt

When confronted with the serious difficulties of discharging the debt liabilities, a given country can react in three possible ways

- 1) not discharging the defaults operative within,
 - a) repudiation- making the obligations conferred upon the debtor invalid at some time and the utter resignation from paying debts, this could trigger off oppressions by creditors
 - b) moratorium- appealing for the renegotiation of the terms of the original credit contract
- 2) carrying on paying debts at any possible cost
- 3) restructuring the debt⁸.

Due to the title of that section of the text, the most important factor is the restructuring of debt. Sticking to the nomenclature adhered to by International Monetary Fund, the terms refers to the changes in conditions of repaying debts. Restructuring takes the forms of rescheduling or refinancing. Rescheduling assumes the form of a formal procrastination of payment in virtue of debt-operating

⁸ G. Górniewicz, Metody redukcji zadłużenia zagranicznego, Acta Universitatis Nicolai Copernici, *Ekonomia* XXIX, Wydawnictwo UMK, Toruń 1999, s. 55.

and coming to a consensus to pay the debt of determined sums later. Refinancing of debt connotes the protraction of crediting period pertaining to payments being in effect or superseding the present or future payments in virtue of debt operating by means of a new medium-term credit. Restructuring can also be a hybrid of both forms relating to overdue and future payments in virtue of debt-operating⁹.

Due to a great number of government and commercial creditors, it is unimaginable to execute the negotiations asunder concerning the solution of external debt puzzle with all the creditors. That is the reason why governmental affairs of creditor countries are expressed by Paris Club and the affairs of commercial banks, where unguaranteed credits were taken, are sketched by London Club.

As from 1978, a large number of debt-restructuring operations were executed¹⁰. Restructuring methods became the fundamental means of resolving external debt problems of underdeveloped countries. The afore-mentioned methods have their pros and cons. One of the pros is the fact that they allow the debtor to "take breath" at least within the period of procrastinating with payments. On the other hand, one of the cons is postponing the issue of debt payment and thus, not allowing for the proper conditions for debt operating in the future to emerge. All in all, restructuring agreements basically serve little purpose but to postpone the problem of payments. Furthermore, if a debtor country fails to give its economy the proper stimulus and vigor to gain proper surplus in current account balance, then-within the span of time when the date of operating procrastinated payments comes-the stalemate situation appears, in which already restructured debt craves for restructuring again. All that implicate some cost assuming the form of additional margins of profit and bank commission. Yet, in spite of all that, the distinctive quality of restructuring debt is that there is proneness for continuous improvement of debtors' conditions. Despite the very proneness, restructuring debt turned out to be inadequate to resolve the issue of global debt.

Global debt arose from unrestrained expansion of international finance system. Creditors eventually came to the conclusion that that it is not only world economy but also global political situation that should be alarmed. Keeping it in mind, , at the conference of the so-called Group of Five (including France, Japan, Germany, United Kingdom and United States of America¹¹), they validated the plan pertaining to 15 debtors whose total debt equaled 437 million dollars altogether. The plan was proposed by the American Secretary of State, James Baker, on 8

⁹ Recent Multilateral Debt Restructurings with Official and Bank Creditors, Occasional Paper No 25, International Monetary Fund, Washington 1983, s. 23.

¹⁰ M. Watson, International Capital Markets. Developments and Prospects, IMF, Washington 1988, s. 79 and M. Watson, International Capital Markets. Developments and Prospects, IMF, Washington 1991, s. 75.

¹¹ E. Chrabonszczewska, Międzynarodowe organizacje finansowe, Studia Finansowo - Bankowe, Szkoła Główna Handlowa, Poltext, Warszawa 1991, s. 85.

October 1985 during the yearly meeting of International Monetary Fund and World Bank in Seoul.

Putting Baker's plan into practice fell flat. Though World Bank raised the amounts of credits, from which the group of countries the plan was devoted to benefited, quite much, commercial banks unfortunately failed to meet the expectations. The failure can be mainly attributed to negative evaluation of credit capacity of debtor countries¹².

10 March 1989, then Secretary of State, Nicholas Brady came up with the important proposal pertaining to the problem of solving external debt of developing countries being in the possession of moderate state revenue¹³. Due to the structure of a debt owed by these countries, Brady's concept is valid only when referring to private banks. Brady's idea presupposed making financial means (originating from both the institutions mentioned thereafter and from some industrialized countries-mainly Japan) accessible to the debtor countries which try to implement the programs of economic reforms with full correspondence to International Monetary Fund and World Bank. The pecuniary means would be potentially used to finance the operations of debt reduction and debt-operating.

The essential innovation of Brady's idea was coming to terms with the necessity of the remission of some debts by resorting to the so-called marked - based menu approach. The very approach includes:

- 1) debt for equity swaps - D/ES,
- 2) debt for bond swaps,
- 3) debt buy-back,
- 4) debt for exports swaps,
- 5) debt for nature swaps,
- 6) debt for local currency swaps¹⁴.

To sum up, it should be stated that the methods whose aim was the reduction of the external debt failed. In spite some sort of success, the methods only served to survive crisis periods or to postpone potential crisis in the future. However, in previous decades, many a bank would have proclaimed their insolvency, had the afore-mentioned programs not come in handy. Probably, in the forthcoming years, creditors may agree on further compromise just to reassure just theoretical solvency of developing countries.

Summary

The basic reason for the occurrence of external debt on the part of Eastern Europe countries proved to be industrialized countries opening themselves and their economic expansion. Poorly developed countries did not manage to join the

¹² W. R. Cline, *The Baker Plan. Progress, Shortcomings and Future*, The World Bank, Washington August 1989, s. 10 – 28.

¹³ "IMF Survey" 1989 March 20, s. 90

¹⁴ W. Berger, *Financial Innovations in International Debt Management*, Gabler, Wiesbaden 1990, s. 48.

functioning of capital market according to the same rules as adhered to by best developed countries. External credits- whose task was to accelerate the development of poorly developed countries and lead up to the elimination of considerable discrepancies of economic levels- became to the great extent the future restraint to the expected development (bearing the negative influence on the economic situation of a country). Eastern Europe countries remained at the positions of beneficiaries who cannot afford to launch the capital expansion and even to repay the loans on time. The reasons for the failure are to be found both within debtor countries and outside of them.

External debt of Eastern Europe was characterized by the similar increase rate as the external debt of developing countries. On the other hand, Eastern Europe has some specifics resulting from its former belonging to the group of real socialism countries. Contracted credits were not taken advantage of effectively because they did not undergo market verification. Furthermore, social realism countries were characterized by having the economy of permanent deficiencies with all their negative consequences. Taking external credits became a temporary to soothe the barrier for development; yet, long-term, it caused the occurrence of even greater deficiencies.

The external debt of post-socialism countries is not only the problem of debtors but also creditors'. One can point at the occurrence of the so-called "debt dialogue" between both Parties resulting from the resultant interdependence. The very interdependence stems from the fact that when debt is small, it poses problems only to a debtor country; yet, when debt takes bigger proportions, a creditor is interested to solve the problem. Many a time, a creditor takes more care for debt to be repaid than a debtor does. The banks of well-developed countries are so implicated in giving credits to developing countries that, in their own interest, they support the paying capacity of developing countries so that developing countries should not go bankrupt.

In the forthcoming years, debt repayments will systematically increase. Apart from repaying long-standing liabilities, Eastern Europe countries will definitely contract new credits for the development of transforming economies, integration needs and alleviation of financial crisis consequences.

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4. www.cia.gov.

THE SOCIAL AND ECONOMIC IMPACT OF CORRUPTION ON NATIONS AND MULTINATIONAL CORPORATIONS

THOMAS M. FITZPATRICK¹

ABSTRACT. This paper focuses on the social and economics impact of corruption on national economies and multinational corporations. The paper addresses the importance of eliminating corruption from the standpoint of its macro economics effects on gross domestic product, foreign direct investment and entrepreneurial activity within an economy. It also examines the impact that corrupt business environments have on multi national corporations and their abilities to compete in such environments.

Keywords: corruption, social impact, economic impact, national economies, corporations

Importance of Corruption

“Corruption is like cancer, retarding economic development.” (James Wolfensohn, President of the World Bank, 1996)

The issue of governmental corruption has been a topic of discussion, perhaps since one man began the process of governing another and reached its zenith since the advent of the modern nation state and the Weberian treaty on the bureaucratic system. Corruption has been the source of innumerable scandals, edicts, laws and has brought more than one government down in the aftermath of such scandals. “Current headlines suggest that corruption is rampant throughout the world, whether it is the bribery scandal of the 2002 Winter Olympics, the sleaze of the European Parliament, or the extreme malfeasance in corporate America” (Davis and Ruhe, 2003, pp. 275-288).

Effects of Corruption

The World Bank estimates that 5 percent of the value of exports to developing countries, some \$50 billion to \$80 billion a year, is paid to corrupt officials (Moss, 1997, 26). Transparency International reports that the global impact of corruption is estimated at \$600 billion including governmental contracts, arms procurement, drug trafficking, and bribes to politicians (Mukherjee, 1997, 24). In Pakistan economists have begun to track corruption as a contributor to

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GDP reporting it at 2% in 1988 and growing to 5% by 1993, according to Dr. Mahbuhul Haque, ex-minister of finance” (Haque, 1995, p. 2). “In Italy over 4800 Italian businessman and bureaucrats were arrested in 1992, in a major crackdown on corruption in the construction and pharmaceutical industries. By the end of the investigation in 1997 magistrates had traced over \$390 million in illegal kickbacks or payoffs. In a survey in 1997, 85% of Italian businessmen acknowledge that bribes had to be paid to secure public sector contracts” (Economist, 1994, 61). In the developing world corruption leads to project cost overruns, misappropriation of funds, and economic projects that benefit the few at the expense of the many. Anecdotally, while teaching in a Mediterranean country, one student, the son of a prominent ocean freight company owner, recounted tales of pallets of U.S. aid dollars being shipped by corrupt African leaders to Swiss bank accounts in the 1990’s (Fitzpatrick, 2000). “In Africa, hydro-electric plants sit idle in the middle of a desert; highway projects in Pakistan experience cost overruns of 300 percent—construction of a motorway that should have cost \$8.2 billion rupees cost over \$24.2 billion rupees to complete” (Haque, 1995). In the United States corruption is euphemistically called “pork barrel politics”—an example being dead-end interstates in West Virginia (ala Senator Byrd) or enormous cost overruns of the now infamous decade long “Big Dig” in Boston. In 1999, the International Monetary Fund suspended a \$300 million economic development loan as a response to high levels of corruption in the Kenyan government.

One of the more succinct analyses of the importance of corruption is offered by Vito Tanzi, the Director of the International Monetary Fund’s Fiscal Affairs Department, who states that “corruption in government has numerous adverse economic consequences. It distorts the allocative role of government by favoring certain taxpayers, applying rules and regulations arbitrarily, allocating government contracts based on connections and bribes, and ignoring fair and objective criteria in making hiring and promotion decisions. Corrupt practices also distort government’s redistributive and stabilization roles. Furthermore, it prevents government from correcting market failures because it has weak control over the policy instruments that should be used to address imperfections in the market” (Tanzi, 1995, p. 24).

“While the prevalence of corruption varies from country to country, most studies recognize that corruption is detrimental to society and business as well. The Gallup International 2000 Millennium Survey of 57,000 people in 60 countries found that where corruption is at its worst, disillusionment with democracy is at its highest. This suggests that the democratic gains of the past decade are quite literally at risk (Transparency International, 2000). Among the effects are the misallocation of resources that disrupts economic development, the distortion of public policy, and the degrading of the integrity of the business system” (Davis & Ruhe, 2003, pp. 275-288). Revelations of corruption have brought down the governments of Indonesia, Italy, Brazil, Pakistan, and Zaire. “Earlier in the 1990’s

corruption shook the governments of South Korea, Thailand, Bulgaria, India, Russia, Nigeria, Taiwan, and even Britain's conservative government" (Davis and Ruhe, 2003, pp. 275-288). More contemporarily and proximate, New England experienced the venality of Dennis Koslowski, the CEO of Tyco International, and now the impeachment and imprisonment of the Governor of Connecticut for corrupt acceptance of gifts for his summer lake cottage.

Arvind K. Jain (2000) offers his review of corruption; "Corruption is of direct concern to the public at large and investors. First, corruption can directly affect how business is conducted when bribery or other forms of corruption interfere with specific transactions. Since operating within any system requires some familiarity with the "*rules of the game*" a corrupt system may discriminate against outsiders. Second, and more importantly, recent studies on the impact of corruption indicate that its effects tend to reverberate throughout an economy rather than remain limited to specific transactions that may have been influenced by corruption. Corruption can affect economic growth through its impact on a host of economic variables. These variables may include the level of investment (see Fitzpatrick and Dakhar's study of corruption's impact on FDI, 2001), entrepreneurial incentives, and a design or implementation of rules or regulations regarding access to resources or assets within a country. In addition to economic growth rates, corruption can influence the income distribution within a country."

Empirical Evidence

At this juncture, it would be beneficial to review some of the more important empirical studies that have been conducted to assess the significance and the impact of corruption. Dr. Johann Graf Lambsdorff provides an initial review in his paper "Corruption in Empirical Research—A Review," published by Transparency International, 1999. "This study reviews a large variety of studies on the consequences and causes of corruption. It includes research on the impact of corruption on investment, GDP, institutional quality, government expenditure, poverty, and the international flow of capital goods and aid" (Lambsdorff, 1999). The Lambsdorff review while comprehensive provides the launching platform for a discussion of the state of the research literature on corruption. It will be augmented where needed by the inclusion of a review of articles by authors like Shang Jin Wei (1998, 1998, 2001), Vito Tanzi (1995), Daniel Treisman (1999), Susan Rose Ackerman (1977, 1999, 1999), Paulo Mauro (1995, 1998), and a host of others.

Economic Impact

"The first investigation on the impact of corruption on investment in a cross-section of countries was undertaken by Mauro (1995). The author finds in a sample of 67 countries, corruption negatively impacts on the ratio of investment to GDP. He claims that if Bangladesh was to improve the integrity of its bureaucracy to that of Uruguay, its investment rate would increase by almost five percent of

GDP.” A similar study by Keefer and Knack employed corruption and other variables into a single index of institutional quality and their findings indicated that corruption significantly reduces the ratio of investment to GDP. Brunetti and Weder also found in their sample of 60 countries that corruption has a significant and negative impact on the ratio of investment to GDP” (Lambsdorf, 2003).

Shang Jin Wei’s article (1998) examines the “effect of corruption induced uncertainty on foreign direct investment. His measure of uncertainty is based on unpublished responses by individuals to a survey on levels of corruption in “host countries.” The result is striking—the effect of uncertainty on FDI is negative, statistically significant, and quantitatively large. An increase in the uncertainty level from that of Singapore to that of Mexico, which at the average level of corruption in the sample, is equivalent to raising the tax rate in multinational firms by 32% points” (Wei, 1998). Wei in an earlier study used a “data set of bilateral foreign direct investment from fourteen source countries to forty-one host countries and found clear evidence that corruption in host countries discourages foreign direct investment. Using the point estimates in the paper and the BI-corruption ratings he calculated that if India could reduce its corruption level to the Singapore level, its effect on attracting foreign investment would be the same as reducing its marginal corporate tax rate by 22 percentage points.

The nature of the uncertainty encountered by firms in corruption prone environments is evaluated by studies by Wedeman in his article, “Looters, Rent-Scrapers and Dividend-Collector 1995) and a World Development Report that quotes an entrepreneur who contends that “there are two kinds of corruption. The first one is where you pay the regular price and get what you want. The second is where you pay what you agreed to pay and you go home and lie awake every night worrying whether you will get it or if someone is going to blackmail you.” In a study conducted by the World Bank a sample of 39 industrial and developing countries was employed and the results showed that for a given level of corruption, countries with more predictable corruption have higher levels of investment” (Lambsdorf, 1999). Mauro found that if Bangladesh reduced its corruption to that of Singapore, “its average annual per capita GDP growth rate over 1960-1985, would have been higher by 1.8 percentage points. Assuming its average annual growth rate was 4% a year, its per-capita income by 1985 could have been more than 50% higher” (Wei 1998, p. 10). Mauro (1995) further finds that “a one-standard-deviation increase (an improvement) in the corruption index is associated with an increase in the investment rate by 2.9% of GDP” (Mauro, 1995, p. 694). Furthermore, Mauro found that bureaucratic efficiency and corruption were significantly and inversely correlated to one another and that as corruption levels increase the level of bureaucratic efficiency decreases. This finding by Mauro was also borne out in a similar study of corruption and bureaucratic efficiencies in a working paper by Fitzpatrick.

The impact on governmental expenditures or the allocative function of government agencies is assessed by a study conducted by Tanzi and Davoodi to determine the impact on public finance. "Tanzi and Davoodi carried out a systematic study on the effect of corruption on government's public finance. They found several important findings: 1.) Corruption tends to increase the size of public investment (at the expense of private investment among other things) because many items in public expenditures lend themselves to manipulations by high officials to get bribes. 2.) Corruption skews the composition of public expenditures away from needed health and education funds, because these expenditures relative to other public projects, are less easy for officials to extract rents from. 3.) Corruption skews the composition of public expenditures away from needed operation and maintenance towards expenditure on new equipment. 4.) Corruption reduces the productivity of public investment and of a country's infrastructure. 5.) Corruption may reduce tax revenue because it compromises the government's ability to collect taxes and tariffs" (cited in Wei, 1998, p. 11). Wei actually found that from a practical standpoint that an "increase in corruption reduces the quality of roads, increases the incidence of power outages, telecommunication faults and water losses. He specifically found that an increase in corruption from Singapore level to the Pakistan level would be associated with an extra 15% increase of roads in bad condition" (Wei, 1998, p. 11).

The rent seeking activity of corrupt politicians and bureaucrats has the effect of redirecting the allocation of budget to "less manipulatable" but high social value projects like education and health care to construction projects and defense contracts where the lack of transparency allows for bribes to occur. So the old maxim that the "poor get poorer" and the "rich get richer" may be true in nations where corruption and poverty converge. In a study by Gupta, Davoodi, and Alonso-Terme that examined the impact of corruption on inequality in 37 nations, "significant positive impact was found. It was concluded that a deterioration of a country's index of 2.5 points on a scale of 0-10 is associated with the same Gini coefficient as a reduction in average secondary schooling of 2.3 years. The authors found further evidence that corruption increases inequality in education and land distribution. Additionally, they examined the income growth of the bottom 20 percent of society and found that corruption exerts a significant and negative impact on this variable. They also were careful to test various instrumental variables to ascertain whether or not the relationship between corruption and inequality is a case of reverse causality; it was not (cited in Lamsdoorf, 2002). Gupta, Davoodi, and Alonso-Terme conclude that high and rising corruption increases "income inequality and poverty, lowers economic growth, biases the tax system to favor the rich, lowers social spending, reduces access to education for the poor, and increases the risk of investment by the poor" (cited in Lamsdoorf, 2002).

Corruption: Positive--Negative--or Neutral

It has been suggested by some scholars over the years that corruption actually may contribute to economic growth and bureaucratic efficiency. "Corruption can be like "grease" speeding the wheels of commerce" (Wei, 1998, p. 3). This perspective on corruption has been offered up in various writings as early as the 1960s by Leff and Huntington and in the late 1980s by Liu. These authors suggest that corruption increases economic growth through two mechanisms. "First, corrupt practices such as "speed money" would enable individuals to avoid bureaucratic delay. Second, government employees who are allowed to accept bribes would work harder, especially where bribes act as a piece rate system of compensation" (Mauro, 1995, p. 1). Liu argues that corruption has positive benefits acting as an allocative auction of bureaucratic services where different economic agents (firms) that are more effectively managed offer larger bribes to lower governmental "red tape. "Bribery then, like an auction, would result in license and contracts being awarded on the basis of bribe size, could achieve Pareto-optimal allocation" (41, Scott, page 33).

David Osterfeld argues that in a heavily regulated economy, one can find two distinct types of corruption: expansive corruption, which involves activities that improve the competitiveness and flexibility of the market, and "restrictive corruption," which limits opportunities for productive and socially beneficial exchanges. Most public sector corruption falls in the restrictive category and involves illegal appropriation of public resources for private use (e.g. outright embezzlement by a civil servant) or the illegal use of an individual's public position for his own personal enrichment. Public sector corruption hinders the proper functioning of the market system, retards economic growth, and thus is restrictive corruption. As examples of expansive corruption, Osterfeld (1992, pp. 212-217) mentions the bribing of judges, politicians, and bureaucrats by members of the private sector. The payment of bribes to the right officials, he argues, can help mitigate the harmful effects of excessive government regulation and improve economic participation (cited in Mbaku, 1996, p. 3). Margaret Goodman on the other hand finds that contrary to Osterfeld's finding of the facilitating nature of corruption that "corruption in the Yucatan did not ensure new groups or entrepreneurs opportunities to enter the market. Instead, corruption allowed the old and more established groups to totally dominate and monopolize markets" (cited in Mbaku, 1996, p. 3).

Victor Dike succinctly reviews the argument of corruption as positive or neutral and its impact on society in his article, "Corruption Nigeria: A New Paradigm for Effective Control"--"Despite the immoral and pernicious effects of corruption, some scholars have argued that corruption can be beneficial to political development or "political modernization" (Nye, March 1965, pp. 1-19). Political modernization or development means growth in the capacity of a society's governmental structures and processes to maintain their legitimacy over time

(presumably in time of social change) by contributing to economic development, national integration, and administrative capacity, and so on (Nye, 1967). One could get entangled with different scales used for measuring political development. Nevertheless, Max Gluckman opined that scandals associated with corruption sometimes have the effect of strengthening a value system of a society as a whole (cited in Dike, 2002). This is probably true in the case of Nigeria. The scandals associated with the Abacha era (looting of the treasury and human rights violations) have given the nation food for thought. Nigeria is still perplexed and preoccupied with the issues of how to strengthen the nation's essential government structures to avoid a reoccurrence of these kinds of looting and atrocities in the future. In addition, some writers have noted that corruption may help to ease the transition from traditional life to a modern political life. Some have argued that the vast gap between literate official and illiterate peasant, which is often characteristic of the countryside, may be bridged if the peasant approaches the official bearing gifts or their (corrupt) money equivalent. In this respect, McMullan points out that a "degree of low level corruption" can soften relations of officials and people (July 1961). And Shils notes that corruption can "humanize government and make it less awesome" (1962). These observations are common occurrences in Nigeria where communities pay political visits to their Governors, Commissioners, and top civil servants with cows, wine, cola nuts, and money stuffed in 'Ghana must go' (bags) in order to get them to attend to their local problems. The apparent benefits of corruption notwithstanding, the overriding concern is with the evils of corruption. Any right thinking person in Nigeria where ubiquitous corruption has ravaged the society will find it impossible to agree that corruption is beneficial, no matter how plausible the argument (Dike, 2002, pp. 4-5).

The contrarian's perspective on the beneficial nature and effects of corruption while necessary to examine can be dispensed with by the writings of Mauro, Treisman, Wei, and a host of other scholars that find to the contrary that rather than acting like "grease on the wheels" corruption acts more like "sand in the gears" of progress and effective government. Kaufman and Wei find that corruption leads to excessive regulation in order to increase the potential for more rent collecting behavior. (Anecdotally, one thinks of the importer that must obtain 37 individual signatures before his shipment can be released--each signature being a rent-seeker.) Wei and Kaufman also find that firms that pay bribes must engage in wasteful interaction with the rent seeker during the process of the transaction and paying of the bribe. "Johnson, Kaufman and Zoido-Lobaton suggest in their study that "corruption sands the wheels by negatively impacting on the smooth operation of the official economy" (Lamsdoorf, 2002). Kaufman and Wei further underscore this finding by determining that corruption increases the "the burden of government regulations on business competitiveness" (Lamsdoorf, 2002). The paying of bribes for better access or improved bureaucratic process creates an asymmetrical competitive environment that favors larger more established firms

and disadvantages smaller entrepreneurial firms. “Cumbersome and dishonest bureaucracies may delay the distribution of permits and licenses, thereby slowing down the process by which technological advances become embodied in new equipment or new productive processes” (Mauro, 1995, p. 1).

Shang Jin Wei offers a story published in the *China Youth Daily* that “is representative of how bureaucratic corruption and extortion can kill a small business. Huang Shengxin, a 36 year old former soldier and recipient of a Class III military medal, was a private business owner in Guangxi Province’s Fangchenngang City in Southwestern China. He left the army in 1982; he thought he would go into the restaurant business. Through his and his family’s long hours of hard work, his “Changxin Restaurant” had developed a good reputation and even won an official honorable designation from the county government. Huang himself was designated a National Outstanding Private-Sector worker in recognition of his success in business. This was when the trouble began. Bureaucrats and their relatives loved the restaurant. They paid countless visits over the years, sometimes in the name of work inspection. The problem is that they did not pay the bills. Hy Huang’s account, by February 1997, the County Government of Tanying, where the restaurant was located, owed him 80,665 Chinese yuans in unpaid bills or just under \$10,000. On May 20, 1997, burdened by his inability to return the restaurant to its profitable past, Huang sadly folded “Changxin Restaurant” (Wei, 1998, p. 9). The “sand in the gears” ground Huang’s entrepreneurial dream to dust and without a doubt the bureaucrats are now dining at another successful restaurant. As illustrated by this story, the debate of corruption as “grease” or “sand” may continue but only in narrow academic circles as the weight of reality and needs of society outweigh the value of the discussion.

Significance of Corruption to Multinational Corporations

Multinational corporations have a significant stake in the business environments that they operate within internationally and corruption has a variety of macro and micro impacts upon their performance and opportunities in international markets. Corruption creates a variety of issues for multinationals ranging from asymmetrical competitive relationships, increased cost of products, distortion of government contract allocation process, increased levels of uncertainty reduce investment opportunities, reduced GDP and GDP growth rates, reduced per-capita income levels, increased nominal “tax” rate, and a competitive environment that favors nations without a law comparable to the Foreign Corrupt Practices Act.

Detailed below are the macro and micro impacts of corruption on multinational corporations as reflected in the literature.

➤ Corruption creates asymmetrical relationships in foreign markets with new entrants to the market competing against local competitors with established bureaucratic “relationships.”

- Corruption increases the cost of products exported around the globe and makes imported products more expensive and thereby less competitive (15 to 20% increase in the cost of goods according to the 1997 World Development Report).
- Corruption distorts the allocative process of government spending and reduces spending in health care, education and similar social programs (World Bank Report, p. 1).
- Corruption reduces or inhibits new business start-ups and favors existing larger firms, so economic growth is stunted. Seventy percent of firms in developing countries have foregone investment because of corruption (World Bank Survey, 1997, p. 37). BEEP survey finds in a cross sectional analysis of 22 countries that small firms pay twice as much of their annual revenue in bribes than larger firms.
- Corruption reduces inward flowing foreign direct investment as the uncertainty and cost of corruption deters multinational interest in foreign markets. Investment in countries with high corruption levels averaged 12% of GDP compared with 21% for those countries with lower levels of corruption (World Development Report 1997).
- Corruption reduces GDP and GDP growth rates and consequently reduces markets for imported products (Mauro, 1995).
- Corruption reduces per capita incomes and inhibits the development of a consumer middle class.
- Corruption increases the time that senior executives spent in “negotiation” with bureaucrats to complete a project (DFID Anti-corruption, p. 3).
- Corruption acts as a tax and increases the cost of doing business (Wei).
- Corruption reduces managerial control—how does management really know how clandestine “fees” are actually being spent and how are they explained to the shareholders of the firm (Aibel, 1996, p. 3).
- Corruption allows the sale of obsolete or defective goods to developing markets but what is the residual impact upon research and innovation of the firm and its competitive posture in developed markets (Aibel, 1996, p. 3).
- Corruption has a corrosive effect on managerial discipline, transparency and trust in the organization by creating double standards for domestic managers and international managers (Aibel, 1996, p. 3).
- Corruption places firms headquartered in countries with strong anti-corruption legislation (Foreign Corrupt Practices Act) at a significant disadvantage when competing with firms without similar legislation governing their conduct abroad.
- Corruption or the disclosure of corruption has its most significant effect on the global reputation of the firm. Public disclosure of bribery and corruption can lead to the loss of contracts, property, and the paying of financial

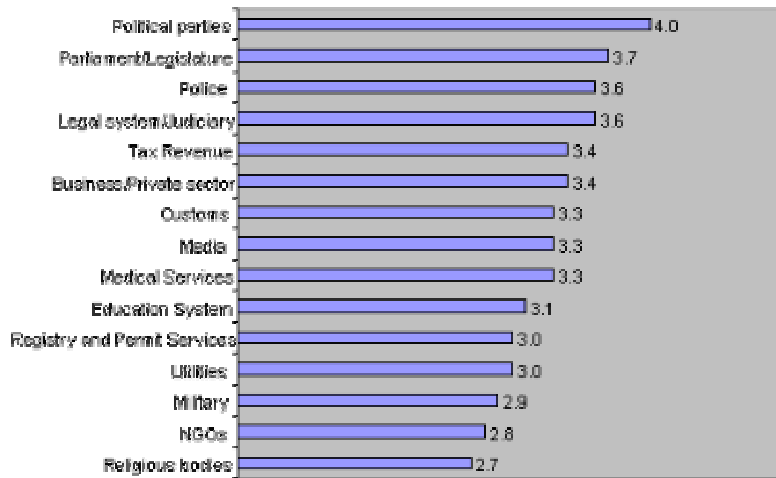
finances (Aibel, 1996, p. 3). Additionally, the scandal can affect the firm's financial performance both from a revenue and capitalization standpoint.

Micro and Macro Aspects of Corruption

The tables presented below are the results of a recent survey initiative by Transparency International to address the micro level impacts of corruption in each nation. This barometer provides a metric by which countries can assess the issues of corruption sector by sector in their societies. It is also becomes apparent by examining the sectors that are represented in this table that multinationals would have an interest in the manner in which transactions would be conducted across the majority of these sectors: legislature, legal system, judiciary, taxation, customs, registry and permit systems, utilities, educational system and the business and private sector. Each of these dimensions clearly would have an impact on the business environment that a multinational would be operating within.

Table 2.2.

Global Barometer of Corruption Perception in Societal Sectors



Source: Transparency International Global Corruption Barometer 2004

(A table listing each of these sectors by individual nation is available in the appendix along with accompanying notes explaining the results.)

Table 2.3 below provides an insight into the perceived effect on specific spheres of life in a country. Examining the business environment the impact of corruption ranges from a small extent, to moderate and large with corresponding

scores of 19%, 30%, and 33% for a total of 82% of those surveyed indicating that corruption has an impact on the business environment. It should be noted that 66% of those surveyed viewed the impact as moderate to large. For the political sphere 85% believe that corruption has an impact on the political operations of their nations. Finally, in the personal and family sphere the survey finds that 66% view corruption as having an impact on their nation.

Table 2.3.

Effect of corruption on spheres of life in a country

	Personal and family life	Business environment	Political life
Not at all	32%	13%	11%
To a small extent	23%	19%	15%
To a moderate extent	23%	30%	26%
To a large extent	20%	33%	44%
Don't know/ no answer	3%	6%	5%

Source: Transparency International Global Corruption Barometer 2004

Table 2.4 below depicts the impact of corruption at the most micro level of economic and political analysis. It affords the opportunity to examine the frequency with which corruption influences the daily lives of the citizenry of different nations. It is important to note that this survey is administered on a household basis so the impact can be considered far greater when countries are reporting that 20 to 50% of their households have had to pay bribes over the past 12 months.

Table 2.4

Corruption Impact on Households

Experience of bribery Question – In the past 12 months, have you or has anyone living in your household paid a bribe in any form? Answer – Yes	More than 50%	Cameroon
	41% - 50%	
	31% - 40%	Kenya, Lithuania, Moldova, Nigeria
	21% - 30%	Albania, Bolivia, Czech Republic, Ecuador, Ghana, Philippines, Romania, Russia, Ukraine
	11% - 20%	Bosnia and Herzegovina, Brazil, Costa Rica, Egypt, Greece, Guatemala, India, Indonesia, Kosovo, Latvia, Mexico, Pakistan, Peru
	5% - 10%	Argentina, Bulgaria, Croatia, Estonia, South Korea, Georgia, Macedonia (FYR), Poland, Turkey, Uruguay, Venezuela

	Less than 5%	Austria, Canada, Denmark, Finland, France, Germany, Hong Kong, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Malaysia, Netherlands, Norway, Portugal, Singapore, South Africa, Spain, Switzerland, Taiwan, UK, USA
<i>Source: Transparency International Global Corruption Barometer 2004</i>		

It is reasonable to assume that corruption has a variety of macro and micro level impacts upon performance and opportunities in international market places for multi-national firms and that multinationals would logically be concerned about corruption as an environmental business factor.

Concluding Commentary

Thus, a nation looking for a policy that would have the most significant and desirous affect on the levels of corruption would elect to free the economy of governmental burdens and allow free market mechanisms to increase transparency and reduce corruption in the nation. “In trying to alter a climate of conduct, it is encouraging to bear in mind the fact that each vicious circle entails a virtuous circle if the direction is reversed” (Sen, p. 278).

Governmental Reforms

Daniel Kaufman’s list would be an excellent place for any government to begin freeing their economies by reforming, reducing or eliminating the:

- Issuing of licenses, permits, quantitative import restrictions, passports, customs and border crossing documentation and bank licensing.
- Implementing and enforcement of price controls
- Blocking of new firms and investors from entry to markets and providing monopoly opportunities to existing firms.
- Awarding public procurement contracts.
- Granting of subsidies, soft credits, tax exemptions, inflated pensions, and allowing tax evasion.
- Imposing foreign exchange controls resulting in multiple exchange rates, over invoicing and the flight of capital.
- Allocation of real estate, grain storage facilities, telecommunications and electrical power contracts outside of free market mechanisms.
- Selective enforcement of socially desirable regulations such as those that apply to public health, education and the environment.
- Maintaining of obscure or secret budgetary accounts, or otherwise facilitating “leakages” from public accounts to private accounts.

Role of Multinationals in Reducing Corruption

Multinational corporations have a significant role to play in encouraging governments to adjust their economic policies to allow for greater free market activity. The resulting improvements in human development will increase the propensity of the nation to embrace transparency. Firms should establish the following internal policies (Sullivan, Center for International Private Enterprise, 2001, p. 5).

Internal Policies:

- Codes of ethics and procedures for dealing with the solicitation of bribes.
 - Strong and independent board of directors with significant consideration given to the issue of “conflict on interest”.
 - Accepted standards of financial accountability and transparency within the firm.
 - Independent auditing using internal and external agents for this process.
 - Honest and fair dealings with all elements of the community.
- Firms should support the following external policies.

External Policies:

- Domestic reforms that will increase democratic and free market processes that contribute to increased transparency.
- Efforts of a free press that protect the interests of a society as a whole.
- Trade associations in their efforts to reduce corruption.
- Non-governmental “watchdog” organizations in their efforts to reduce corruption.
- Grass-roots capitalism by supporting micro-lending programs throughout nations that they have commercial activity.
- Passage of the United Nations Convention on International Corruption, 2004.

Corruption should no longer be viewed by corporations or nations as a “polycentric” or idiosyncratic feature of doing business in developing nations but rather as a systemic impediment to global commerce. Corporations represent the agents of change in both the economic structure and to some degree the political and social structure, as well, and as such should bring their influence to bear on issue of corruption.

The international battle with corruption will be won as the citizens of nations across the globe have the opportunity to embrace democracy and democratic capitalism as the guiding precepts of their socio-organizational design.

***“Dico tibi verum, libertas optima rerum.
Freedom is best, I tell thee true, of all things to be won.***

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LEGAL TRANSPLANTS IN ROMANIAN CORPORATE LAW SEEKING FOR SUCCESS¹

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ABSTRACT. The last period has seen an enormous investment in legal reform efforts in many transition and developing economies, much of it involving the importation of legal models from mature market economies. As a growing body of economic and legal literature shows, legal reforms in transition economies were largely grounded on transplants.

The challenges raised in the legal transplants process can be revealed by reuniting two major approaches. The substantial approach is meant to present the results of legal transplants by taking into consideration their compatibility with the pre-existing Romanian corporate norms. Recent reforms of Romanian Corporate Law transplanted concepts and institutions referring to: a clear separation between the management and the control functions of the Board of Directors; introduction for the 1st time of the German two-tier administration; directors' fiduciary duties; directors' dismissal for righteous cause; enhanced shareholder democracy; new shareholders remedies. These transplants commonly raised problems related to their implementation and effectiveness in the recipient system.

The procedural approach develops and exemplifies the limits of legal transplants efficiency by underlying the manner in which the legal transplants were chosen to be incorporated within the Romanian Company Law by the way of European Law implementation. The transposition of the *acquis communautaire*, prior and after the accession to the European Union (EU), revealed procedural problems concerning the legislative technique of the European Company Law implementation.

The success of the legal transplants depends on the possibility of the foreign models to be adapted to the social, economic and legal performances of the recipient system.

Keywords: legal reform, legal models, legal transplant, Romania

Introduction

The last period has seen an enormous investment in legal reform efforts in many transition and developing economies, much of it involving the importation of legal models from mature market economies. As a growing body of economic and

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legal literature shows, legal reforms in transition economies were largely grounded on transplants³. Naturally, the success of such operation depends on the possibility of the foreign models to be adapted to the social, economic and legal performances of the recipient system.

The exportation and importation of norms represents the main instrument of legal integration in a globalize economy. On one hand, the main legal systems entered into a sharp competition, with a view to impose themselves on to developing countries legal systems (especially those from Central and Eastern Europe, East Asia and Russia). It is well known that the export of law implies the export of culture and particularly the export of the legal system. Consecrated legal systems are constantly looking for exporting there laws, concepts and institutions, by facilitating the creation and development of a virtual place that we can call "international legislative market". The actual result is reflected in numerous studies published after 1999 with a view to reveal the quality and efficiency of national and regional business law⁴. The national legal systems are nowadays studied by taking into consideration their assignment to a consecrated traditional legal system (e.g. Common Law, French Civil Law, German Civil Law), based on the significance of their reliance on a specific legal model and expertise.

On the other hand, as for the developing economies, starting from the 1990 there was an enormous demand of high-quality legal reforms. As studies and practice conducted to the possibility to assess qualitatively, the relative superiority of one legal family related to another developing country had tendency to encourage legal transplants from the most efficient consecrated business systems, without necessarily taking into consideration to borrow norms from countries and systems within the same legal traditional family. The theoretically superior solution transplanted to foreign soil created a gap between the law on books of the exportation system and the law in action in the recipient system. In addition, obviously it is not enough to translate and transpose a good black letter law, if the recipient legal system cannot assure the instruments to enforce efficiently the imported law.

³ C. Walsh, *The "law" in Law and Development*, in *Law in Transition*, EBRD, 2000, p. 7; K. Pistor, M. Raiser, S. Gelfer, *Law and Finance in Transition Economies*, CID, Harvard University, Working Paper 49/2000, www.cid.harvard.edu/cidwp/049.htm; P.H. Rubin, *Growing a Legal System in the Post Communist Economies*, Cornell International Law Journal, no. 27/94, p. 1.; A. Watson, *Legal Transplants and European Private Law*, Electronic Journal of Comparative Law, vol. 4.4, 2000, <http://www.ejcl.org/44/art44-2.html>.

⁴ The corporate law studies concerning the global market of legal systems and ideas started with the famous LLSV model: R. Laporta, Fl. Lopez de Silanes, A. Shieifer, R. Vishny, *Law and Finance*, in *Journal of Political Economy*, no. 6/1998, p. 113. The criteria and variables proposed by the authors in order to evaluate the quality and efficiency of shareholders rights and protection against the management in different legal systems and cultures were subsequently revisited by the same authors (2003) and partially grounded the results of the World Bank "Doing Business" Annual Reports. The most comprehensive analysis of legal change in the protection of creditors and shareholders rights in the transition economies and its impact on the propensity of firms to raise finance is K.Pistor, M. Raiser, S. Gelfer (2000), quoted above.

The enforcement of the transplanted law depends on at least three factors.

First, the resistance to change of the recipient system is generated by its cultural path dependence related to the legal family the recipient is traditionally attached to⁵. For example, although the Romanian Private Law has a history of 200 years of French Civil Law influence, recent reforms (2006) were highly influenced by German and American legal transplants, which generate an interrogation whether such imitation is a viable option.

Second, the transplant's efficiency is conditioned by the economic development of the recipient system⁶. The imported norms are samples taken from legal systems already operating under a developed mature economy and they are binding on the legal systems belonging to develop in progress countries.

Third, there could be no efficient legal transplant without a proper judicial reform and without adequate legislative solutions and techniques (appropriate options concerning procedures and institutions are needed to support the transplant's enforceability). According to recent analysis of shareholder rights in transition economies, rapid improvements in the quality of law on the books was found to have little positive impact on the availability of corporate finance, unless their were parallel improvements in the effectiveness of legal institutions and procedures to support enforcement of the reforms⁷.

Romanian Corporate Law naturally fits within the same framework and facing the same challenges.

Following the above-mentioned dependences, the issues raised in the legal transplants process can be revealed by reuniting two major approaches. The substantial approach is meant to present the results of legal transplants by taking into consideration their compatibility with the pre-existing Romanian corporate norms, concepts and institutions (in other words, "which" were the legal foreign institutions borrowed by the Romanian legal system). The procedural approach develops and exemplifies the limits of legal transplants efficiency by underlying the manner in which ("how") the legal transplants were incorporated within the Romanian legislation.

I. The Substantial Approach

The Romanian Company Law no. 31/1990 (republished 2004) generally used to follow the French model: initially, the Company Law from July 1996 and the Civil Code concerning the companies as amended in the '80s; and lately the

⁵ L. Bebchuk, M. Roe, *A Theory of Path Dependence in Corporate Ownership and Governance*, in *Stanford Law Review*, vol. 52, no. 1/1999, p. 127; M. Roe, *Path Dependence, Political Options and Governance Systems*, in K. Hopt, E. Wymeersch, *Comparative Corporate Governance: Essays and Materials*, DeGruyter, Berlin, 1999.

⁶ D. Berkowitz, K. Pistor, J. Fr. Richard, *Economic Development, Legality and Transplant Effect*, in *European Economic Review*, vol. 47, no. 1/2003, p. 165.

⁷ K. Pistor et al., *supra*, note 1.

French reforms concerning the commercial companies as integrated the French Commercial Code (2000). However, the last important reform of the Romanian company law (2006) had a significant German and Common Law (American) influence.

Late November 2006, the Legislator passed Law no.441/2006 with the intention to bring Romanian legislation in line with all EU Directives, to improve the corporate governance regulations and to enhance the shareholders right and remedies in order to offer a modern frame for a competitive economy. Numerous of the proposed amendments arose from a study financed by the World Bank and USAID, and were guided by recent European Commission reports on Romania's accession progress and the World Bank's Report on the compatibility of Romanian legislation with OECD Principles of Corporate Governance (as outlined by the PAL II Program – the Programmatic Adjustment Loan of the World Bank). The draft focused on OECD principles regarding the rights of shareholders and the responsibilities of the board, and the guidelines established by First and Second Council Directives. Since much of the Company Law was already in line with these principals and directives, the proposed amendments have mostly targeted specific matters rather than general areas requiring change.

Some of the key amendments represent **relevant examples of legal transplants** while others are literal imitations generating "parachuting norms" from legal systems Romania was never related to.

a.) A clear separation between the management and the control functions of the Board of Directors

For sixteen years after its enactment, the Romanian Company Law (as legal text and legal doctrine) ignored the contemporary international preoccupations concerning the improvement of the corporate governance as a way to organize efficiently the Board structure and functions.

The Board of Directors was conceived as a management body without any concern related to a clear regulation of the control within the management body and to the distinction between the executive and the non-executive members of the Board.

After 2006 Reform, the Romanian Company Law provides that in case in a joint-stock company takes place the delegation of the management powers to the executive managers, the majority of the members of the Board shall be formed of non-executive directors. This reform also introduced the concept of "independent director"⁸, completely ignored by the Romanian legislation by that time. According to article 138², the constitutive deed of the company or the general meeting of shareholders may provide or decide that one or more members of the Board must be independent. Using an independent director is optional also for the public listed companies and those who benefit for a special regulation (such as credit institutions, insurance companies or intermediaries on the capital market). Unlike

⁸ D. C. Clarke, *Three Concepts of the Independent Director*, in *Delaware Journal of Corporate Journal*, vol. 32, p. 73-111.

international corporate governance codes (e.g. UK Combined Code on Corporate Governance), the Code adopted in 2008 by the Romanian Stock Exchange does not provide an exception from the general legal provisions and keeps the nomination of an independent director as optional for the listed companies.

The same recent reform introduced the possibility of the Board of Directors to create consultative committees formed of at least two Board members entrusted with the conduct of investigations and the elaboration of recommendations for the Board in fields such as audit, remuneration, nomination of candidates for management positions. At least one member of such committee must be an independent non-executive director (except for the audit committee and remuneration committee, which must be formed exclusively of non-executive administrators).

Almost three years after the company law reform, these three new concepts are still far from finding their way to a successful implementation. The non-executive Board members were formally introduced in order to comply with the regulation of the Board structure. However, they do not have efficient instruments and procedures to assure the control over the directors empowered with management functions and do not benefit from a separate regime of civil liability to encourage them for assuming specific decisions and position within the Board. They were imported from the legal systems where one-tier administration system is fully compatible with corporate governance regulation and principles, but they did not find a prolific ground on the Romanian practice.

The same conclusion could be raised concerning the independent director concept, which is in practice almost unused. One of the reasons is the ownership structure of most of the Romanian joint-stock companies, which are subsidiaries of the international corporations and groups. The latter do not manifest particular interest in using independent members in Romania, as they prefer to use this concept only in the mother company's Boards.

b.) Introduction for the 1st time of the German two-tier administration (optionally)

As some of the foreign consultants having assisted the Romanian Government in preparing legislative reforms on the company law were German, an intense debate raised in the Romanian business environment around the proposition to introduce for the first time in the Romanian Company Law the German tradition⁹ of the two-tier administration system (Supervisory Board and Directorate).

Finally, the two-tier system was adopted as an alternative to the one-tier system (Board of Directors). However, the success of the transplant of this German traditional model is put under question, as in practice only the Romanian subsidiaries of the most important German and Austrian joint-stock companies

⁹ K. J. Hopt, P. C. Leyens, *Board Models in Europe. Recent Developments of Internal Corporate Governance Structures in Germany, the United Kingdom, France, and Italy*, European Corporate Governance Institute (ECGI), Law Working Paper no. 18/2004, p. 4.

(especially banks and insurers) are actually using this system. The Romanian ownership seems reluctant to the two-tier system as the function, structures and operations of the two management bodies are considered to reduce of the shareholders' control over the management and the information flux within the management body.

c.) Fiduciary Duties

It is commonly known that the Anglo-American legal doctrine traditionally delimits the right and responsibilities of directors and managers vis-à-vis shareholders by using the core-concept of fiduciary duties. These are a set of specific obligations and standards of conduct derived from the principle according to which the relationship between shareholders and directors is based on trust and confidence. The most widely accepted obligations derived from this concept are the duty of loyalty and the duty of care. In U.S., these obligations have risen out from the judge-made law, while in U.K., they are codified in The Companies Act (2006). The boundaries of managers' obligations to shareholders are inherently difficult to circumscribe exhaustively, being considered as a residual concept including factual situations that no one could foresee and categorize¹⁰. These characteristics represent qualities in a legal system based on a judge-made law, but in the same time may be extremely difficult to transplant to other legal systems (especially those based on codified law), because the meaning of the fiduciary duties can not easily be specified in a detailed legal document.

Among the alternative strategies which could be used by countries wishing to develop the institutional framework for substantial and effective enforcement of the fiduciary duties¹¹, the Romanian Lawmaker choose a structural transplant of these duties by completely allocating their implementation to the black letter company law.

Romanian Company Law (as amended late 2006) provides that the members of the Board of Directors shall exercise their functions with the care and diligence of a good administrator. The members of the Board shall also exercise their term of office with loyalty, in the company's interest. They are not allowed to disclose confidential information and business secrets of the company, to which they have access in their capacity of administrators. This obligation shall also devolve on them after the termination of the term of office of administrator, according their management contract. These legal provisions are meant to codify textually the duty of care and skill¹², the duty of loyalty acting to the company's best interests and the duty of confidentiality, as the core structure of the fiduciary duties.

¹⁰ R. Ch. Clark, *Corporate Law*, Little Brown & Co., Boston, 1986, p. 141.

¹¹ K. Pistor, C. Xu, *Fiduciary Duty in Transitional Civil Law Jurisdictions. Lessons from an Incomplete Law Theory*, ECGI, Law Working Paper no. 1/2002, p. 5.

¹² The standard of appreciation of fault is medium, *in abstracto*, considering a careful and conscious manager.

This reform should bring a salutary added value to the Romanian corporate law for two important reasons: (i) it has conceptualized some duties that have been deduced before 2006, through a flexible and extended interpretation of the Romanian Civil and Commercial Code provisions concerning the good-faith principle, the mandate agreement and other similar civil law institutions (*negotiorum gestio*); (ii) it has offered to the courts of law an express legal reference to ground on their decisions. Before 2006, the ignorance of the law practitioners and the reticence of the Courts to conclude and enforce an obligation without a legal or express contractual provision generated an almost complete absence of grounding actions against directors on this basis.

Nevertheless, the Romanian Lawmaker chose to transplant also the complementary principle known as "business judgment rule", by literally importing it from the very definition given by the U.S. Delaware Supreme Court. According to this rule, the administrator does not break its duty of care if, at the time when he makes a business decision, he is reasonably entitled to consider that he acts in the company's interest and based on certain adequate information.

The Romanian Lawmaker was not cautious enough to the interpretation given by the American courts to the business judgment rule, which reflects the doctrine of the non-interference of courts in the business decisions. American courts simply do not hold directors liable for wrong business decisions made without conflict of interest, unless those decisions are completely irrational! The American court law takes into consideration rather constrains that lead most company managers to work hard of their jobs (market competition, incentive compensation, managerial culture etc), that the prejudicial effect of their business decision. This great tolerance of the business judgment rule does obviously not fit with the need of the Romanian legal order to impose an efficient system of duties and liabilities to the company's directors and managers. In these circumstances, the advantages brought by the new black letter law will face the risk of not coming into force, because of the application of the exoneration rule by inexperienced courts. It is doubtful that the Romanian jurisprudence will have the necessary instruments to apply the business judgment rule, as from the legal text it does clearly result which exactly is the principle: the director liability for lack of care and diligence, or his exoneration of liability for his business judgment. Once again, a well-intentioned legal transplant risks not becoming a success story.

d.) Directors' Dismissal for Righteous Cause

The Company Law Reform from 2006 also marked a significant evolution concerning the shareholders control over the directors.

Prior to the reform, it was accepted, widely and incontestably, that the shareholders had the right to dismiss the directors any time for any reasons without a notice, based on the *ad nutum* revocation principle, which governs the *intuitu personae* mandate relationship according to the Romanian Civil and Commercial Codes. The dismissal by "a show of hands" was diffidently challenged by a part of

the legal doctrine and jurisprudence, based on the acceptance of the French practice concerning the abusive dismissal, when the director is revoked under circumstances characterized by vexation or unlawful refusal of the possibility to defend.

The new legal provisions specifically entitle the directors and managers to claim damages in case the dismissal supervenes for unjustified reasons. Although these new provisions are inspired from the widely accepted doctrine of good faith, one could reasonable expect this transplant shall reduce the enforceability of the free revocation traditional principle, which represents the highest form of expression of the shareholders control over the management. Given the well-known practice of establishing significant compensation clauses in favor of directors revoked in advance, the expected effect of these new legal constrains will increase the costs of electing managers and will decrease the anti-director rights of the shareholders. Both of these effects are not well seen in a developing market economy, where the ownership culturally prefers to keep the highest control to the business.

e). Enhanced shareholder democracy by voting

Concerning the voting right, Romanian corporate law is generally situated at the top the EU legal exigencies and boundaries. For instance, it offers a proper "one share - one vote" rule without any possibility to grant more than one vote per share (unlike France or Netherlands), but with the option to limit the number of voting rights to shareholders detaining more than a certain threshold of the capital or number of shares.

Voting by proxy also benefits of a liberal approach¹³. Any shareholder is entitled to participate to the general meeting and to exercise its voting right, without any restrictions concerning the number of shares it owns. Any person can have the mandate to vote on behalf of a shareholder. The only significant limit consists in the exigency that the proxy (mandate, procuration) must be submitted to the company's general meeting secretary at least 48 hours prior to the meeting, under the sanction of loosing the right to vote.

The possibility of electronic voting is legally granted without any formalities or restrictions, if the company's articles of association allow such procedure.

After the reform from 2006, voting agreements benefit of a relaxed regulation. The shareholders are free to agree on the sense of their voting, as long as they do not oblige to exercise their vote according to the instructions given or the proposals formulated by the company or its management. Such agreement would be considered null and void.

Since November 2006, Romanian corporate law probably provides the lowest conditions of quorum and majority in order to adopt in a legally manner a resolution of the general meeting of shareholders. The present form of the Romanian Company Law requires the shareholders' attendance which of at least

¹³ For details see, C. Duțescu, *Drepturile acționarilor [Shareholders Rights]*, 2nd Edition, C.H.Beck, Bucharest, 2007, p. 274.

one fourth of the total number of rights to vote, for both ordinary and extraordinary meetings of shareholders. For the second convening of the extraordinary general meeting of shareholders, it requires the attendance of the shareholders holding at least one fifth of the total number of rights to vote.

The simple majority of the votes held by the present or represented shareholders shall make the decisions, for both ordinary and extraordinary meetings. The extraordinary decision to change the main scope of business, to reduce or increase the registered share capital, to change the legal status, of merger, division or dissolution of the company must be passed with a majority of at least two thirds of the rights to vote held by the present or represented shareholders.

The articles of association may stipulate higher requirements of quorum and majority.

These provisions may be seen as a significant improvement of shareholder democracy by decreasing the legally required quorum and majority for adopting the general meeting of shareholders' resolutions. In addition, the new requirements are meant to facilitate the decision-making and avoid the supplementary costs generated by the necessity of any future convening. Nevertheless, the decrease of the legal quorum has the adjacent disadvantage of not assuring a necessary representative formation of the company's legal will, as well as increasing the risk of simultaneous general meetings, especially in companies with a dispersed ownership and conflictive board.

f.) Shareholders remedies: from the black-letter law, towards its enforceability

The most significant remedy granted to shareholders is the possibility to claim the cancellation of the general meeting of shareholders' decisions. In principle, the decisions made by the general meeting of shareholders are compulsory for all the shareholders, even for those who did not attend the meeting or voted against the decision. However, the decisions of the general meeting, which are contrary to the law or to the constitutive deed, can be sued for cancellation by any shareholder who did not attend the meeting or voted against and requested his vote to be noted in the assembly's minute.

When the action claiming the cancellation is grounded on relative nullity reasons¹⁴, the general meeting decisions must be sued within 15 days period from its publication to the Romanian Official Journal and the quality to claim to cancellation is only granted to the shareholders. In case of absolute nullity reasons are invoked the right to sue is imprescriptibly and the request may be formulated by any person which justifies a legitimate, real and actual interest (including third party)¹⁵.

¹⁴ E.g. the convening notice was not published in due time; the legal quorum and majority were not attended; the mandatory legal information and documents were not disclosed to the shareholders in due time prior to the meeting.

¹⁵ E.g. the decision in adopted by breaching an imperative norm protecting a general interest; there is no convening notice; there is no minute of the general meeting.

Along with bringing the action for cancellation, the plaintiff may request the court to adjourn the carrying into effect of the decision that is being sued, by presidential ordinance¹⁶. The consent of the courts' of law president to adjourn can force the plaintiff to pay a bail.

Another important remedy is the possibility given to a category of shareholders in case of fraud on the minority or abusive minority behavior. This remedy was inconsistently proposed by the legal doctrine and jurisprudence following the French pattern of *abus de majorité / abus de minorité*¹⁷. The reform of the Company Law in 2006 expressly brought into Romanian legislation the principle according to which shareholders have the duty to exercise their exercise in good faith, by respecting the rights and legitimate interests of the company and of the other shareholders. This new element should offer a significant legal ground for claims rising from fraud and abuse and is expected to indirectly grant a legal base for the cancellation of general meetings and Board of Directors' resolutions, as reparation in kind of the prejudice beard by the abused shareholders.

However, the legal practice shows the Romanian shareholders are rather inactive and less persistent in defending their rights, especially in front of an abusive majority. The reduced number of cases brought into courts' attention could be explained by cultural psychology specificities generated by the free mass privatization system and the lack of liquidity on the financial capital market. The low degree of shareholder activism can also be explained by the lack of preventive procedures granted by the Romanian law. In many cases, the cancellation of a general meeting resolution is obtained after months or years of litigation, long time after these resolutions produced their effect to the business environment. For this reason, the late cancellation of the resolution or the belated procurement of compensation is useless for the claimant.

This is the reason why any reform concerning the shareholders' remedies should be oriented toward the implementation of particular procedural instruments to offer an *ex-ante* efficient protection to shareholders who can prove *prima facie* the company's resolutions and decisions shall be adopted by a breach of law or the articles of the association. In other words, what Romanian Corporate Law needs are procedures like the injunction or summary judgment, which would allow to a claimant to efficiently block the carrying into effect of a decision over which persists a reasonable doubt of illegality.

¹⁶ According to the Romanian Civil Procedure Code, the *presidential ordinance* is a special procedure, which allows the court of law to dispose temporary measures in urgent situations in order to prevent an imminent damage, which could not be repaired, or to preserve a right whose exercise could be affected in case of delay.

¹⁷ J-L. Rives - Langes, *L'abus de majorité*, Revue de Jurisprudence Commerciale, no. spec. 1991, p. 65; Ph. Merle, *L'abus de minorité*, Revue de Jurisprudence Commerciale, no. spec. 1991, *La loi de la majorité*, p.81.

g.) Relevance of Corporate Governance Code and auto regulation

Following the example of all respectable capital markets, the Bucharest Stock Exchange (BSE) drafted its official Corporate Governance Code in late 2008¹⁸. The Code keeps its commonly accepted nature of set of principles and recommendations, with a clear follow of the OECD principles.

The Code's provisions are considered additional to legal norms, as suppletive rules, willingly assumed by the list companies and any close companies opting to adopt the Code. The document combines all international tendencies by expressly providing a balance between the promotion of the *shareholders interests* (shareholder value), *shareholders rights* (shareholder democracy) and *employees interests* (the latter appears because of the social responsibility requirement, rather than as result of the codetermination system)¹⁹.

The company's administration is in the center of the Code's visions and provisions (Boards functioning, management control, internal and external control, accountability to shareholders, monitoring rights of shareholders, etc.).

Like in other Eastern and Central Europe countries, the compliance with the Code of the listed corporations is voluntary, followed by the well-known "comply or explain" rule. The issuers adopting wholly or partially the Code have to yearly disclose to the BSE a Corporate Governance Compliance Statement, by which they will specify the recommendations of the Code they have actually implemented and in what manner. If the issuer fails to implement one or more recommendations, it has to supply adequate information with regard to the reasons non-observance of the Code. The BSE confines itself to disclose publicly when a company did not observe the Codes' provisions.

The most important issue concerning the Corporate Governance Code is its enforcement difficulties. Except for the faculty to disclose the company's which did not observe the Code recommendations, BSE is not vested with enforcement powers and the market does not provide any independent or governmental authority to sanction the misconduct of the companies. In other words, the Code does not surpass its limit as auto-regulation. Inaccurate corporate governance disclosures are difficult to detect or they may have hidden implications that are difficult to uncover. For this reason, even if an authority were given the power to report irregularities and impose sanctions, it would still not have sufficient means to carry efficiently put its task²⁰. In Romania's case, without an authoritative

¹⁸ The first draft of a Corporate Governance Code for the companies listed to BSE dated back 2004. It was merely a scholar-type project and was never institutionally adopted.

¹⁹ For a detailed presentation of the three models of corporate governance: Stilpon Nestor and John K. Thompson, *Corporate Governance Patterns in OECD Economies: Is Convergence Under Way?* Available on: <http://www.pfsprogram.org/file.php?id=Three+Models+of+Corporate+Governance+-+January+2009.pdf> *Three Models of Corporate Governance from Developed Capital Markets*, available on: <http://www.oecd.org/dataoecd/7/10/1931460.pdf>.

²⁰ P.U. Ali, G. N. Gregoriou, *International Corporate Governance after Sarbanes - Oxley*, Wiley and Sons, New Jersey, 2006, p. 471.

interpretation, there cannot be a unitary perception regarding compliance and the non-compliance explanations risk not to exist or, in the best-case scenario, to become insignificant or uninformative.

As a conclusion, purely voluntary codes assorted with a weak "comply or explain" principle, do not offer a cure for the lack of normative authority and the Romanian company's will follow code recommendations and report accurately on corporate governance, solely if it is in their own interest. However, without imposing a unique model, the Code could be considered to fix a number of "points of control" in relation with which one could verify the national normative root²¹.

II. The Procedural Approach

While the legal transplants of the substantial norms imported from the legal systems of developed countries, commonly raised problems related to their implementation and effectiveness in the recipient system, the transposition in the Romanian Law of the *acquis communautaire*, prior and after the accession to the European Union (EU), revealed procedural problems concerning the legislative technique of the European Company Law implementation.

As regards the application and transposition of the *acquis communautaire*, there are two different periods of time that we are going to take into consideration: (i) until becoming a Member State, based on the Association Agreement, Romania was legally beholden to harmonize its newly issued legislation with the *acquis communautaire*; (ii) after Romania had become a Member State, based on the Treaty Establishing the European Communities (Treaty on European Union), Romania was legally beholden to apply the direct applicable and mandatory EU enactments (such as Regulations) and to transpose the EU Directives into the national legislation (according to article 249 of the Treaty).

For the first period, a specific internal mechanism was developed - the "National Program for Romania's Accession to the European Union" - including a special component meant to ensure the Romanian legislation's consistency with the European one. This Program should have been carried on from 2002 to 2005. It contains clear responsibilities for each of the involved institutions and firm deadlines. Starting from 2003, this mechanism has been replaced with a new one, called the "National Legislative Priorities Program for Integration in European Union", which may be seen as an internal programmatic document. However, the purpose of each of these programs was the same: to transpose the *acquis communautaire* into Romanian legislation.

On July 22, 2000, the Romanian Government passed its *Position Document on Chapter 5 - Company Law*. It was modified on November 24, 2000. According to the latter version of this document, "Romania accepts the whole *acquis communautaire* as effective on December 31st, 1999, does not solicit a transition period or a waiver

²¹ See C. Gheorghe, *Dreptul pietei de capital [Capital Market Law]*, CH BECK, Bucharest, 2009, p. 273

and also declares that it will be able to apply the entire *acquis communautaire* at the date of its accession to the EU". By the same document, Romania "engages to realize the total harmonization of the internal legislation which concerns company law until December 31, 2004."²²

At that date, Romania acknowledged that six Directives and one Regulation were adopted regarding the company law (*stricto sensu*).

The Romanian Company Law was represented - at the time when the Position Document was issued and is still represented now, after numerous modifications - by Law no. 31/1990, which comprises the relevant provisions on company law and also the common rules applicable to all Romanian companies. The general framework is completed with Law no. 26/1990 concerning the Trade Registry.

As of the date of the above mentioned Position Document, the Romanian Government had appreciated that the provision of Law no. 31/1990 and Law no. 26/1990 were almost entirely harmonized with the relevant EU legislation (some of the EU Directives provisions were envisaged since 1990, when the first version of the Romanian Company Law was adopted).

For the Company Law, the relevant *acquis communautaire* consists of:

- First Council Directive 68/151/EEC²³;
- Second Council Directive 77/91/EEC²⁴;
- Third Council Directive 78/855/EEC²⁵;
- Sixth Council Directive 82/891/EEC²⁶;
- Eleventh Council Directive 89/666/EEC²⁷;
- Twelfth Council Directive 89/667/EEC²⁸.

²² The document was elaborated by the General Secretariat of the Romanian Government. Romanian version is available on: http://www.sgg.ro/docs/File/integrare_eu/NegociereRO.pdf

²³ First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community

²⁴ Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.

²⁵ Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies.

²⁶ Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies

²⁷ Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State.

²⁸ Twelfth Council Directive 89/667/EEC of 21 December 1989 on single-member private limited-liability companies, published in Official Journal, L 395, from 30.12.1989.

Fifth Directive was meant to coordinate the safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of article 58 of the Treaty, as regards the structure of *sociétés anonymes* and the powers and obligations of their organs²⁹. It remained only a proposal. Ninth directive on affiliated undertakings, i.e. under law relating to groups of companies, has not even reached the proposal stage. For obvious reasons, this proposal and this initiative were never taken into consideration as relevant part of the *acquis communautaire*.

Within the last month of 2006, Law no. 31/1990 (Romanian Company Law) suffered significant modifications. These changes were meant to increase the compliance level of the Romanian Company Law with EU legislation, especially EU Directives. Moreover, a so-called "yellow flag" was attached to this issue by the European Commission³⁰. We remind here that, at that time, Romania was one month before its EU accession.

Thus, the urgently needed Company Law legislative reform was adopted by Law no. 441/2006³¹. The main amendments concerned:

- revision of the constitutive deed's mandatory clauses, by reducing their number (according to First Council Directive 68/151/EEC);
- revision of the causes that lead the company's nullity (according to First Council Directive 68/151/EEC);
- new provisions on the liability resulting from the failure to fulfill the requirements concerning the publicity of the company's incorporation and/or the necessary publicity during the company's existence (according to First Council Directive 68/151/EEC);
- creation of the premises for establishing the Trade Registry's electronic archive, which shall be able to provide information from the Trade Registry in electronic format and for company's electronic incorporation (according to First Council Directive 68/151/EEC);
- a new approach on contribution in kind evaluation (according to First Council Directive 68/151/EEC);
- enactment (for the first time in Romanian Company Law) of the "authorized share capital" concept (according to Second Council Directive 77/91/EEC);

²⁹ See COM (72) 887 final, 27 September 1972. Bulletin of the European Communities Supplement 10/72.

³⁰ As results from the "National Legislative Priorities Program for Integration in European Union" (as per second semester, 2006), as of 13 February 2007, *Section A - Priority Drafted Laws* - which are already in parliamentary procedures in order to be adopted and which have to be finalized until 30 December 2006. Romanian version of this document available on: http://www.mie.ro/_documente/armonizare/Program_legislativ_semII_2006_ro.pdf

³¹ Law no. 441 from 27 November 2006 amending Law no. 31 - Company Law - and Law no. 26 concerning the Trade Registry, was published in the Romanian Official Gazette no. 955 from 28 November 2006. The Law was enforced from December 1st, 2006.

- clarifications on the concepts of "own shares buying"; "own shares subscription", as well as new fluent provisions concerning this matter (according to Second Council Directive 77/91/EEC);
- legal definitions for merger and spin-off (according to Third Council Directive 78/855/EEC and Sixth Council Directive 82/891/EEC);
- revision of the mandatory clauses of the merger/spin-off plan and new provisions meant to a better protection of the shareholders/partners and third parties (according to Third Council Directive 78/855/EEC and Sixth Council Directive 82/891/EEC);
- clarification of the concepts of "division by acquisition" and of "division by formation of new companies" - both known as "*desprindere*" in Romanian legal terminology (according to Sixth Council Directive 82/891/EEC);
- improvement of the legal provisions concerning the functioning of the Romanian (national) company's branches and establishment of a new legal framework for the functioning of the branches belonging to companies (other than a Romanian companies), which distinguishes the legal regime applicable to the branches belonging to a EU company from the legal regime applicable to the branches belonging to a non-EU company (according to Eleventh Council Directive 89/666/EEC).

Before becoming a Member State, Romania *transposed some* of the EU Regulations. It is not extremely accurate to affirm "Regulations were transposed", but since Romania was not a Member State, the only way to apply the EU legislation was to enforce by internal legislation the correspondent and incident EU legislation. This manner was also seen as a method of preparing the Romanian legal framework for the European accession. With regard to Company Law, we mention Regulation no. 2137/85/EEC³² on the European Economic Interest Grouping (EEIG), which was assumed by Romania under Title V of Law no. 161/2003³³, and Regulation no. 1346/2000³⁴, which was "*transposed*" by Law no. 637/2002³⁵.

After the date of its accession, *Romania was confronted with the problem of double enforced regulation on the same matter.*

³² Council Regulation 2137/85/EEC of 25 July 1985 on the European Economic Interest Grouping (EEIG) was published on Official Journal, L 199 from 31.07.1985.

³³ Law no. 161 from 19 April 2003 concerning some measures ensuring transparency in the exercise of public dignities, public functions and in the business environment, and for the prevention and sanction of corruption was published in Romanian Official Gazette no. 279 from 21 April 2003.

³⁴ Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings was published in Official Journal, L 160 from 30.06.2000.

³⁵ Law no. 637 from 7 December 2002 concerning the regulation of the legally private international relationships in the domain of insolvency was published in Romanian Official Gazette no. 931 from 19.12.2002.

It is well-known that the Regulation is an EU act, which does not require transposition into a national legislation. It can be directly applied by all Member States. From this point of view, it is absolutely obvious that there is no need for a similar internal act on the same matter. Moreover, this fact could cause a non-unitary administrative and judicial practice, which may lead to the unfulfillment of the obligations assumed by Romania as a Member State (according to article 10 of Treaty on EU). As such, Romanian Government passed an Emergency Ordinance in order to solve this problem. GEO no. 119/2006³⁶ partially repealed Law no. 161/2003 (Title V) and Law no. 637/2002 as well. Within the same GEO were amended the regulations concerning EEIG and legally private international relationships regarding insolvency.

The Thirteen Directive 2004/25/EC³⁷ on takeover bids is also one of the most important European Company Law Directives. It is well-known that Member States are free to decide upon the methods for achieving the goals established by EU Directives. In this way, Thirteen Directive 2004/25/EC was transposed into Romanian legislation by the National Securities Commission's Regulation no. 31/2006³⁸, which explains some of the terms used by Law no. 297/2004 (Romanian Capital Market Law).

After January 1, 2007 (when Romania became a Member State), Romania has constantly harmonized its legislation with the *acquis communautaire* on the base of the Treaty Establishing the European Communities (Treaty on European Union), which legally obliges the Member States to transpose and/or to apply the European legislation.

The *acquis communautaire's* transposition into Romanian legislation was structured on two basic components: (a) transposition of the amendments of already adopted Company Law Directives; and (b) transposition of the newly adopted Directives concerning Company Law.

In 2007, Romanian Government passed an *Emergency Ordinance* (GEO) in order to amend the Law no. 31/1990 (Romanian Company Law). In fact, GEO no. 82/2007³⁹ was necessary because the late 2006 reform created some inadvertences in the company's law legal framework, which needed to be immediately reclaimed. For instance: references to the repealed articles were made; no legal terms were

³⁶ Government Emergency Ordinance (GEO) no. 119 from 21 December 2006 regarding some necessary measures for the application of some EU Regulations from the date of Romania's accession to European Union was published in Romanian Official Gazette no. 1036 from 28.12.2006.

³⁷ Thirteen Directive 2004/25/EC of European Parliament and Council of 21 April 2004 on *takeover bids*.

³⁸ National Securities Commission (NSC) Regulation no. 31 from 2006, for completing the NSC regulations for implementing some of the European directives provisions, approved by Order of the NSC's President no. 106 from 14 December 2006, which was published in Romanian Official Gazette no. 5 from 04.01.2007.

³⁹ Governmental Emergency Ordinance (GEO) no. 82 from 28 June 2007, for the amendment of Law no. 31 - Company Law - and for the amendment of Law no. 26 concerning the Trade Registry was published in the Romanian Official Gazette no. 446 from 29 June 2007.

established for fulfilling the new requirements - such as concluding management contracts between the joint-stock companies and their directors and more others.

*Council Directive 2001/86/EC*⁴⁰ supplementing the Statute for a European company with regard to the involvement of employees, was *transposed by Government Decision* (GD) no 187/2007⁴¹.

In 2008, significant amendments of Law no. 31/1990 (Romanian Company Law) were passed by the Romanian Government. The same legislative procedural way was chosen - a *Governmental Emergency Ordinance*. Thus, GEO no. 52/2008⁴² was enacted in order to transpose Tenth Directive 2005/56/EC⁴³ on cross-border mergers of limited liability companies. This modification of Company Law by GEO was considered necessary because Romania was on delay: the deadline for transposing this Directive (December 15, 2007) was already exceeded. The Company Law was amended by inserting the new legal provisions provided by this Directive directly into the Law's text⁴⁴.

Considering that another intervention on Company Law should be needed in the future for transposing Directive 2007/63/EC⁴⁵, the deadline of which is at the end of 2008 (December 31, 2008), the Romanian Government decided that was better to complete the Company Law within a single amendment. By the same GEO, was eliminated the requirement of an independent expertise report in case of merger or spin-off, for some of the joint-stock companies, under the reserve that all shareholders and all security holders decide in this specific manner.

The Parliament approved GEO no. 52/2008 and also made some small amendments by Law no. 284/2008, which was meant to transpose Directive 2006/68/CE⁴⁶, as regards the formation of public limited liability companies and

⁴⁰ Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.

⁴¹ Government Decision (G.D.) no. 187/2007 was published in Romanian Official Gazette no. 161 from 07.03.2007.

⁴² Governmental Emergency Ordinance (GEO) no. 52 from 21 April 2008, for the amendment of Law no. 31 - Company Law - and for the amendment of Law no. 26 concerning the Trade Registry was published in the Romanian Official Gazette no. 333 from 30 April 2008.

⁴³ Tenth Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 *on cross-border mergers of limited liability companies*.

⁴⁴ Articles 251² to 251¹⁹ were added to Chapter III (named *Cross Border Merger*) on Title VI (named *Winding-up, Spin-off and Merger of the companies*).

⁴⁵ Directive 2007/63/EC of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies Official Journal, L 300, from 17.11.2007.

⁴⁶ Directive 2006/68/EC of the European Parliament and of the Council of 6 September 2006 amending Council Directive 77/91/EEC as regards the formation of public limited liability companies and the maintenance and alteration of their capital was published in Official Journal, L 264/32, 25.09.2006.

the maintenance and alteration of their capital. Once again, Romania transposed this Directive with a little delay, because the deadline was April 15, 2008.

The so-called Fourteenth Directive, if it ever comes into effect⁴⁷, will make possible for companies to transfer their registered offices – their legal headquarters – to other location in the EU. Until now, such an action was either not possible at all or required for the company to be wound-up in its country of origin before it could be re-founded with its registered office in the new country⁴⁸. The Romanian business environment is expecting this Directive with low interest. Until this moment, there have been no discussions related to this topic in Romania.

After becoming a Member State, Romania has constantly been concerned with the application of the *acquis communautaire*. For such reason, as regards the Regulations affecting Company Law, the Romanian legislation was receptive to the newly adopted EU legislation.

We mention here Council Regulation (EC) no. 2157/2001 on the Statute for a European company (SE)⁴⁹ and Council Regulation (EC) no. 1435/2003 on the Statute for a European Cooperative Society (SCE)⁵⁰. By GEO no. 52/2008⁵¹ were enforced several national provisions that are considered able to facilitate the application of the Regulation regarding SE (new title VII¹ of the above-mentioned GEO) and Regulation concerning SCE.

As a conclusion, Romanian encountered a procedural problem with regard to the legal transplants concerning the *acquis communautaire* on Corporate Law. Romania transposed EU Directives by the way of Governmental Emergency Ordinance. This represents a fast procedure passed by Romanian Government in order to fulfill in due time its obligations provided by the EU Treaty for all member states. After the new EU Law is formally incorporated into Romanian legislation, following the national legislative procedure, the Emergency Ordinance is discussed in Romanian Parliament and all the necessary adjustments are operated. Only in this phase, after the transposed norms are in force and have already produced legal

⁴⁷ See also European Parliament Resolution of 10 March 2009 with recommendations to the Commission on the cross-border transfer of the registered office of a company.

⁴⁸ The Directive, if brought forward, would provide a legal framework for companies registered in the EU to transfer their registered office from one Member States to another. The Directive would make it possible, for example, for a German GmbH or Romanian SRL to transfer its registered office to the UK and at the same time transforms itself into a UK Ltd. That means that after the transfer of the registered office the company is organized by UK company law and no longer by German or Romanian company law.

⁴⁹ Council Regulation (EC) No 2157/2001 of 8 October 2001 on the *Statute for a European company (SE)* was published in the Official Journal, L 294, from 10.11.2001.

⁵⁰ Council Regulation (EC) No 1435/2003 of 22 July 2003 on the *Statute for a European Cooperative Society (SCE)* was published in the Official Journal, L 207, from 18.08.2003.

⁵¹ Governmental Emergency Ordinance (GEO) no. 52 from 21 April 2008, for the amendment of Law no. 31 - Company Law - and for the amendment of Law no. 26 concerning the Trade Registry was published in the Romanian Official Gazette no. 333 from 30 April 2008.

effects, the European legal transplant is naturalized with the Romanian business environment and linked to the autochthon legal framework.

* * *

The aim of this paper is not to underline or even measure the dependence of the Romanian legal culture and law on the Western legal systems, including American Law. The dependence is so complete, that one could metaphorically alleged the Romanian Corporate Law is a Lilliputian one, facing the competition with the great exporting legal systems. This fact engenders a specific cultural instability in the Romanian society and business environment, because the authorities use the foreign law to force the change and not to preserve the existent social and economic environment.

On one hand, this adaptability and availability toward the legal transplant proves the tolerance and openness of the Romanian legal culture. This endorses the attractiveness of the Romanian Corporate Law for the foreign and multinational enterprises, by giving them more chances to integrate, legally and culturally, within the domestic business environment.

On the other hand, given the pressure imposed by the globalization, the reception of foreign law transforms itself too often in a "parachuting of norms" from a system, which is not necessarily related to the Romanian one. This may generate sometimes failure in the implementation and lack of effectiveness of the imported law.

The lecturer may refer to the above given examples.

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THE FINANCIAL CRISIS OF 2007 – 2008 A REVIEW OF THE TIMELINE AND OF ITS CAUSES

CORNELIA POP¹

ABSTRACT. The present paper tries to present the main events which marked the financial crisis of 2007-2008 in a timeline of crisis development, without making any additional comments on them. In the second part, the paper reviews the most recent papers on the causes of the crisis and tries to give an integrate explanation for the root causes of the crisis, as presented by the reviewed authors. The paper is the first in a series of an extensive investigation regarding the development and the evolution of the current financial crisis.

Keywords: financial crisis, causes, subprime mortgages, structured finance products

Introduction

The term ‘financial crisis’ can describe a variety of situations associated – in general – with a limited supply of money/ financial resources, compared with the demand for money/ financial resources, while liquidity becomes a problem for all the actors in the market.

Usually, a (financial) crisis is anticipated by the existence of a speculative bubble in one sector or several connected sector of the economy, generated usually by the herd behavior of investors. The beginning of any (financial) crisis is signaled by the ‘burst’ of the bubble – often due to the abrupt halt of the prices rising trend(s). The climax of the crisis is perceived when the negative effects of the lack of liquidity generate the collapse of financial institution and a general mistrust in the financial system (until 2007-2008 now at national or regional level). The financial crisis of 2007-2008 – due to its extent and the way it was transmitted, revealing the complex and hidden connections between the financial institutions at the world level – brought the mistrust in the financial system at global level. Any climax is followed by the transmission of the financial crisis toward various sectors of the economy or to the economy as a whole, depending on the severity of the crisis and the capacity of taking rapid actions to correct the course of events. Another phenomenon which follows the climax of a crisis is a massive and radical

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change in regulations, usually taking shape in the space of several years. The end of the financial crisis usually marks the beginning of an economic crisis.

While current opinions and developments consider that the financial crisis is still in place during 2009, in the present paper the attention is given to the events of 2007 and 2008 (when the financial crisis reached its climax). From the point of view of this paper, in 2009 the transmission of financial crisis effects in several economic sectors, like construction sector and car manufacturing, are obvious, marking the end of the financial crisis and the beginning of the economic crisis – which includes elements of financial crisis.

The timeline of the financial crisis of 2007-2008

Data	Events	Media news
2007		
April 2, 2007	New Century Financial Corporation (US Company), a leading subprime mortgage lender, files for Chapter 11 bankruptcy protection.	
June 7, 2007	Bear Stearns informs investors that it is suspending redemptions from its High-Grade Structured Credit Strategies Enhanced Leverage Fund (<i>hedge funds with large holdings of subprime mortgages run into large losses and are forced to dump assets</i>). The trouble spreads to major Wall Street firms such as Merrill Lynch, JPMorgan Chase, Citigroup and Goldman Sachs which had loaned the firms money.	
Aug 6, 2007	American Home Mortgage Investment Corporation (US Comp) files for Chapter 11 bankruptcy protection.	
Aug 9, 2007	BNP Paribas, France's largest bank, halts redemptions on three investment funds.	
Aug 28, 2007	<i>German Sachsen Landesbank faces collapse after investing in the sub-prime market. The bank is rescued by its competitor Baden-Wuerttemberg Landesbank.</i>	
Sept 3, 2007	<i>German corporate lender IKB announces a \$1bn loss on investments linked to the US sub-prime market</i>	

THE FINANCIAL CRISIS OF 2007 – 2008 A REVIEW OF THE TIMELINE AND OF ITS CAUSES

Sept 13, 2007	<i>The BBC reveals Northern Rock has asked for and been granted emergency financial support from the Bank of England, in the latter's role as lender of last resort. Northern Rock relied heavily on the markets, rather than savers' deposits, to fund its mortgage lending. The onset of the credit crunch has dried up its funding.</i>	
Sept 14, 2007	<i>Depositors withdraw £1bn from Northern Rock in what is the biggest run on a British bank for more than a century. They continue to take out their money until the government steps in to guarantee their savings. The Chancellor of the Exchequer authorizes the Bank of England to provide liquidity support for Northern Rock, the United Kingdom's fifth-largest mortgage lender.</i>	
Dec 19, 2007	<i>Ratings agency Standard and Poor's downgrades its investment rating of a number of so-called monoline insurers, which specialize in insuring bonds. They guarantee to repay the loans if the issuer goes bust. There is concern that insurers will not be able to pay out, forcing banks to announce another big round of losses.</i>	
Jan 11, 2008	Bank of America announces that it will purchase Countrywide Financial in an all-stock transaction worth approximately \$4 billion.	
Feb 17, 2008	Northern Rock is taken into state ownership by the Treasury of the United Kingdom.	
Mar 16, 2008	Bear Stearns is bought by J.P. Morgan Chase in a deal orchestrated by and backed up by the U.S. government following a sharp decline in shares and a collapse in the confidence in the company.	
Mar 24, 2008	The Federal Reserve Bank of New York announces that it will provide term financing to facilitate JPMorgan Chase & Co.'s acquisition	

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	of The Bear Stearns Companies Inc. A limited liability company (Maiden Lane) is formed to control \$30 billion of Bear Stearns assets that are pledged as security for \$29 billion in term financing from the New York Fed at its primary credit rate. JPMorgan Chase will assume the first \$1 billion of any losses on the portfolio.	
July 11, 2008	<i>American Federal regulators seize IndyMac Bank after it succumbs to the pressure of tighter credit, tumbling home prices and rising foreclosures. IndyMac is the largest thrift ever to fail in the United States.</i>	<i>Barrel of oil hits a record price of \$ 147.5.</i>
July 13, 2008	The Federal Reserve Board authorizes the Federal Reserve Bank of New York to lend to the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), should such lending prove necessary.	
July 14, 2008	<i>Financial authorities step in to assist America's two largest lenders, Fannie Mae and Freddie Mac. As owners or guarantors of \$5 trillion worth of home loans, they are crucial to the US housing market and authorities agree they could not be allowed to fail.</i>	
July 15, 2008	The Securities Exchange Commission (SEC) issues an emergency order temporarily prohibiting naked short selling in the securities of Fannie Mae, Freddie Mac, and primary dealers at commercial and investment banks.	
Sept 7, 2008	The Federal Housing Finance Agency (FHFA) places Fannie Mae and Freddie Mac in government conservatorship. The U.S. Treasury Department announces three additional measures to complement the FHFA's decision: 1) Preferred stock purchase agreements between the Treasury/FHFA and Fannie Mae and Freddie Mac to ensure the GSEs positive net worth; 2) a new secured lending facility	

THE FINANCIAL CRISIS OF 2007 – 2008 A REVIEW OF THE TIMELINE AND OF ITS CAUSES

	<p>which will be available to Fannie Mae, Freddie Mac, and the Federal Home Loan Banks; and</p> <p>3) a temporary program to purchase GSE MBS.</p>	
Sept 11, 2008	<p><i>Lehman Brothers announces it is actively looking to be sold after reporting \$ 4 billion in losses.</i></p>	
Sept 15, 2008	<p>Bank of America announces its intent to purchase Merrill Lynch & Co. for \$50 billion.</p> <p><i>Bank of America agrees to a \$50 billion rescue package for Merrill Lynch. Lehman fires for bankruptcy and thousands of its employees are told it's all over. This is the largest bankruptcy filing in the history of the United States, \$ 639 billion.</i></p> <p>Lehman Brothers Holdings Incorporated files for Chapter 11 bankruptcy protection.</p> <p><i>US. officials agree to put together a \$20 billion lifeline bid for insurance giant AIG.</i></p>	<p><i>Shares in European stock exchanges plunge. FTSE 100 closes almost 4% lower at 5,202.4, a 210 point drop.</i></p> <p><i>The Dow Jones Industrial Average plunges 504 points to close at 10,917.51.</i></p>
Sept 16, 2008	<p>The Federal Reserve Board authorizes the Federal Reserve Bank of New York to lend up to \$85 billion to the American International Group (AIG) under Section 13(3) of the Federal Reserve Act.</p> <p>The net asset value of shares in the Reserve Primary Money Fund falls below \$1, primarily due to losses on Lehman Brothers commercial paper and medium-term notes.</p> <p><i>The U.S. government announces it will give AIG \$ 85 billion to keep it afloat, in return for an 80% equity stake in the company.</i></p>	<p><i>FTSE 100 falls 178.6 points to close at 5,025.6. The Dow Jones closes 141.5 points up at 11,059 after zigzagging all day.</i></p>
Sept 17, 2008	<p>The SEC announces a temporary</p>	<p><i>Libor hits a seven-year high as</i></p>

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	emergency ban on short selling in the stocks of all companies in the financial sector.	<i>the panic escalates. FTSE closes below 5,000 for the first time since May, 2005, down 113.2 points at 4,912.4. The Dow Jones sheds 449 points to close at 10,609.</i>
Sept 21, 2008	The Federal Reserve Board approves applications of investment banking companies Goldman Sachs and Morgan Stanley to become bank holding companies.	
Sept 22, 2008	<i>Morgan Stanley and Goldman Sachs give up their status as investment banks and become traditional commercial banks that accept deposits from ordinary people and businesses, marking a dramatic change in the make-up of Wall Street.</i>	
Sept 25, 2008	The Office of Thrift Supervision closes Washington Mutual Bank. JPMorgan Chase acquires the banking operations of Washington Mutual in a transaction facilitated by the FDIC.	
Sept 26, 2008	<i>America's biggest savings and loan company, Washington Mutual, is seized by federal regulators and sold to J.P. Morgan for \$ 1.9 million in a deal that sends shockwaves through Wall Street and Main Street alike. WaMu thus becomes the largest thrift failure with \$ 307 billion in assets.</i>	
Sept 29, 2008	<i>Citigroup agrees to acquire Wachovia.</i>	
Oct 4, 2008	<i>Wells Fargo ends up acquiring Wachovia.</i>	<i>In Paris, the leaders Europe's largest economies (France, Germany, Italy and the United Kingdom) meet to discuss the crisis.</i>
Oct 8, 2008	The Federal Reserve Board authorizes the Federal Reserve Bank of New York to borrow up to \$37.8 billion in investment-grade, fixed-income securities from American International Group (AIG) in return for cash collateral.	<i>The FTSE 100 closes down 238.5 points at 4,366.7, a 5.2% declines and its lowest level since 19 August, 2004. Dow drops 189 pints despite global interest rate cuts. It has fallen for six successive days, losing 14.7% of its value.</i>

THE FINANCIAL CRISIS OF 2007 – 2008 A REVIEW OF THE TIMELINE AND OF ITS CAUSES

Oct 11, 2008		<i>The G7 finance ministers and the IMF meet in Washington and put together a five-point plan, which includes spending billions of taxpayers' money to rebuild the global banking system and reopen the flow of credit</i>
Oct 13, 2008	<i>The 15 members of the Euro-zone, led by Germany and France, unveil large, coordinated plans along British lines to provide their banks with capital funding. The prospect of governments at both sides of the Atlantic injecting money into the financial system increases investor confidence resulting in stock rising.</i>	<i>The Dow Jones rockets by 936 points to 9,387, the biggest one-day gain by points. It closes up 11%, the largest daily jump in percentage terms since 1993.</i>
Oct 15, 2008	<i>American banks J.P. Morgan and Wells Fargo reported big falls in profits, and retail sales in the US suffered their biggest fall in three years, with the decline in car sales hitting 3.8%.</i>	<i>The FTSE suffered its fifth biggest fall in history, closing down 7.16% at 4,079.5 (a 315 point fall) more than wiping out all of Tuesday's gains. Meanwhile, in New York, the Dow Jones drops by 7.8%.</i>
Oct 16, 2008	<i>In Switzerland, UBS received a capital injection from the government, taking hits of more than \$ 13 billion to cover liabilities arising from the credit crunch.</i>	<i>The Dow Jones Industrial Average makes strong gains of 401 points. Japan's Nikkei suffers its worst fall since 1987 and the FTSE 100 index slumps to 3,861.</i>
Oct 21, 2008	<i>BayernLB bank of Germany became the first to seek help from the federal government Tuesday under a massive financial sector rescue plan, with a senior official saying it would seek up to €5.4 billion in aid.</i>	
Oct 24, 2008	<i>Stock markets around the world plummeted. Investors fear that governments, central banks and finance ministers will not be able to stop the deepening of a global recession.</i>	<i>Dow Jones opened with a drop of almost 490 points (5 percent drop). Before opening Dow futures dropped 550 points, triggering a temporary trading halt in stock futures contracts in an effort to slow the decline. Over night, the Japanese Nikkei dropped 9.6 percent. Germany's DAX index plunged as much as 10.8 percent, France's CAC40 slid 10 percent and Britain's FTSE 100 shed 8.7 percent.</i>

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Oct 28, 2008	<i>Dutch insurance company Aegon gets 3 billion euros from the Dutch government. In Belgium, KBC bank receives a capital injection of 3, 5 billion euros.</i>	<i>Dow Jones Industrial Average index surges by 11 percent.</i>
Nov 10, 2008	<i>The US Treasury announced investment of 40 billion dollars in preferred stock of AIG, adjusting the terms of the existing credit line and its amount. Total exposure, including equity and debt, is now 150 billion dollars. Funds were drawn from the Troubled Asset Relief Program which was not available at the time of the original bailout of AIG.</i> <i>The Federal Reserve Board approves the applications of American Express and American Express Travel Related Services to become bank holding companies.</i>	
Nov 18, 2008	<i>Executives of Ford, General Motors, and Chrysler testify before Congress, requesting access to the TARP for federal loans.</i>	
Nov 20, 2008	<i>Fannie Mae and Freddie Mac announce that they will suspend mortgage foreclosures until January 2009.</i>	<i>The Dow Jones Industrial Average plunged another 445 points in the last minutes of the trading session, closing at 7,552. This is its lowest point in six years.</i>
Nov 23, 2008	<i>Citigroup is bailed out in an asset-relief package worth \$306 billion and a further \$20 billion recapitalization (on top of an earlier \$25 billion).</i>	
Nov 26, 2008	<i>Bank of America will control roughly 11.9% of the nation's deposits following its acquisition of Merrill Lynch, the Federal Reserve said Wednesday in its regulatory order approving the deal.</i>	
Dec 2, 2008	<i>Around 10,000 savers are to be rescued by a UK compensation scheme after London Scottish Bank became the first British bank in the current economic crisis to go into administration.</i>	<i>Markets around the world dropped Tuesday, a day after the Dow Jones Industrial Average dropped 7.70 per cent, the fourth-largest point loss in history.</i>

THE FINANCIAL CRISIS OF 2007 – 2008 A REVIEW OF THE TIMELINE AND OF ITS CAUSES

Dec 3, 2008	The SEC approves measures to increase transparency and accountability at credit rating agencies and thereby ensure that firms provide more meaningful ratings and greater disclosure to investors.	
Dec 13, 2008	<i>Belgium's government will push to proceed with the sale of Fortis assets to BNP Paribas SA even after the country's appeals court froze the deal because it didn't have shareholder approval.</i>	
Dec 19, 2008	The U.S. Treasury Department authorizes loans of up to \$13.4 billion for General Motors and \$4.0 billion for Chrysler from the TARP.	
Dec 30, 2008	The Federal Reserve Board announces that it expects to begin to purchase mortgage-backed securities backed by Fannie Mae, Freddie Mac and Ginnie Mae under a previously announced program in early January 2009 (see November 25, 2008). The U.S. Securities and Exchange Commission (SEC) releases a report that recommends against the suspension of fair value accounting standards. The report was mandated by the Emergency Economic Stabilization Act of 2008 (EESA).	

Note:

For the constructions of this timeline **two sources** were used:

The Federal Reserve Bank of St.Louis material '*The Financial Crisis: A Timeline of Events and Policy Actions*' and the material of Mauro F. Guillén '*The Global Economic & Financial Crisis: A Timeline*' (events in italic writing).

The causes of the 2007-2008 financial crises

The event that triggered the financial crisis of 2007 – 2008 was the decline in prices of residential properties (houses) in USA (Blanchard, 2009) at the end of 2006 and the beginning of 2007. The prices' decline generated first a subprime mortgage crisis in USA where – mainly starting with 2003/ 2004 – an important amount of mortgages were issued to subprime borrowers at an adjustable rate. When the decline in prices began, it became more and more difficult to refinance those mortgages. In the same time, the adjustable-rate mortgages were reset to higher

rates. Those two factors combined generate a wave of repayment problems for the subprime borrowers followed by foreclosures. As a direct consequence, the value of residential properties and mortgages issued for declined even further. In the months to come, the decline in residential properties in US was followed by a similar evolution of residential property prices all around the world through a transmission mechanism described by Blanchard (2009) which be presented later on.

The subprime mortgages were pointed out as the first obvious cause of the financial crisis of 2007-2008.

While the first signs of distress affecting the financial system were present since February 2007, when (Feb 7th) HSBC announced losses linked to US subprime mortgage (Guillén, 2008) and (Feb 27th) when Freddie Mac (Federal Home Loan Mortgage Corporation) announced that it will no longer buy the most risky subprime mortgages and mortgage relate securities (FED St.Louis, 2009).

In May 17th, 2007 the Federal Reserve Chairman, Ben Bernadeke, said: ‘the growing number of mortgage default will not seriously harm the US economy’ (Guillén, 2008).

The momentum gather force and the securities (structured finance products or structured finance or structured-credit products) which were backed with subprime mortgages declined sharply in value starting with July 2007 (Wall Street Journal, July 2007) when investors starting to lose confidence in the value of mortgage backed securities (MBSs) and collateralized debt obligations (CDOs). These financial products, along with credit default swaps (CDSs) grew in popularity also since 2004 (Blundell-Wignall et al., 2008, fig.1). While they were created to refinance (risky) assets and to spread the risk among an important number of investors, in times of distress they only act as a catalyst in ‘spreading the fire’ in the entire financial system due to the webs of connections which were built between the financial institutions all around the world due to the globalization process. It was the logical step to point out structured finance products and credit derivatives as the second obvious cause of the financial crisis of 2007-2008.

It became obvious during 2008, that the warnings expressed in September 2006 by regulators ‘that some of the complex financial instruments conjured around the lending and borrowing may sow the seeds of the next financial crisis’ (The Economist, Sept.23rd, 2006) and by International Monetary Fund (IMF) in its September 2006 Global Financial Stability Report that ‘such structured credit products were one of its main concerns, especially if financial markets take a turn for the worst and liquidity dries up’. Both warnings have as a central point the same problem: that the knowledge level regarding the behavior of structured-credit products in unusual conditions was limited or next to zero, due to the fact that those products were developed in a decade when interest rates have been low, appetite for risk was high and liquidity ample (The Economist, Sept.23rd, 2006).

The following heat map created by IMF and presented in its April 2009 Global Financial Stability Report confirms the ideas expressed above: the two

obvious causes of the financial crisis were the subprime mortgages and the subprime residential mortgage backed securities decline in value.

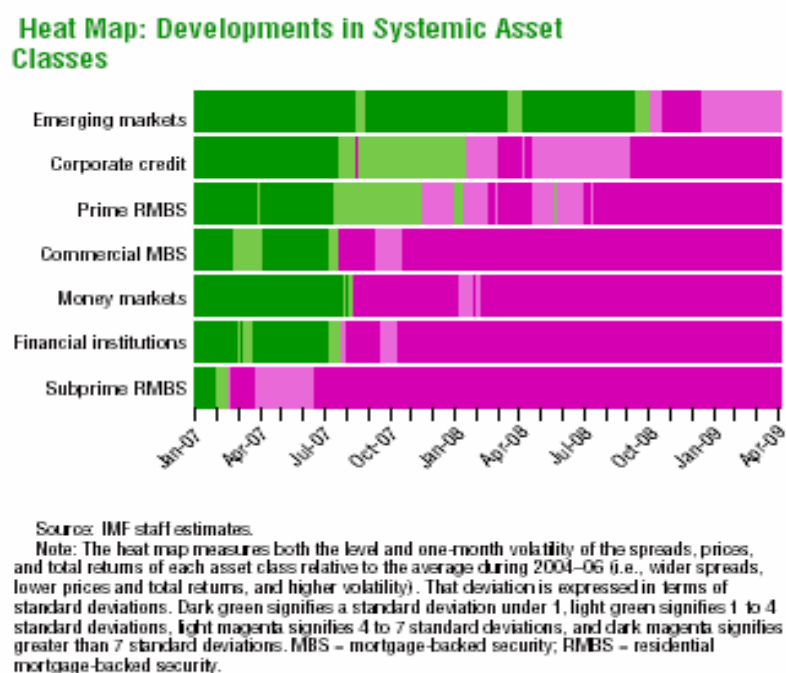


Figure 1. IMF Heat Map

Source: Global Financial Stability Report, April 2009

The 2 obvious causes for the crisis of 2007-2008 did not take shape from thin air. As in any crisis, they have their roots in other causes, more profound. Three recent papers on the financial crisis of 2007-2008, wrote by Blanchard (2009), Brunnermeier (2009) and Blundell-Wignall et al. (2008), point out the deeper causes of the crisis, as follow:

1. the high leverage of the financial system as a whole (Blanchard 2009) with banks increasingly financing their assets with shorter maturity instruments (Brunnermeier, 2009)
2. the change in the business model of banks which switched from the traditional lending model to equity culture (Blundell-Wignall et al., 2008), a

change that led banks to move their loans off-balance sheets through an ‘originate and distribute’ model (Brunnermeier, 2009)

3. the opacity of the structured finance products that resulted from the process of risk transfer and an important underestimation of risks contained in these new products (Blanchard, 2009)

4. the high level of connectedness/ interdependences between the financial institutions (Blanchard, 2009)

All these causes (including the 2 direct causes mentioned above) have their roots in the benign economic environment that existed during the 2000s (Blanchard, 2009) enhanced by global macro policies affecting liquidity (Blundell-Wignall et al., 2008) and by a poor regulatory framework (Blundell-Wignall et al., 2008).

Subprime mortgages explained

As Blanchard (2009) highlights, benign economic environments often lead to credit boom, to the creation of marginal assets and the issuance of marginal loans. The issuance of subprime mortgages was encouraged mainly starting with 2004 by the fact that Bush Administration ‘American Dream’ zero-equity mortgage proposal became operative (Blundell-Wignall et al., 2008), helping low-income families and/ or individuals to obtain mortgages while having a low credit rating.

This situation induced the explosion in residential mortgage backed securities (RMBSs) after 2004, from around 500 billion USD in Aug 2003 to over 1000 billion USD in June 2005 and reaching a peak over 2000 billion USD around April 2007 (Blundell-Wignall et al., 2008).

While it should have been obvious for anyone that subprime mortgages bear an important amount of risk, the perception of this risk was distorted by two factors:

a) the interest rates were low – the federal fund rate was 1% in 2003/2004 following the bust of dot.com bubble and the weakening of US dollar in 2002 (Blundell-Wignall & Atkinson, 2008)

b) the housing prices had increased every year since 1991 until the second half of 2006, and they continued to grow even during the recession of 2001, generating the phenomenon called by Calomiris (2008) ‘the plausible deniability’ or the fact that the (housing) prices would never go down.

Due to these two factors, the marginal lending represented by subprime mortgages seemed less risky while generating relatively high rates of return.

The situation developed further through the use of CDSs (credit default swaps) – while used as an insurance instrument for a variety of risks, they were also used in connection with the subprime loans. For a premium (relatively low in amount) any company and financial institution could insure themselves against the risk of default of the loan originator. CDSs issuers accepted the low premia – and sold a growing number of this credit derivative, as the demand increase – because

they assumed that the probability of having to pay out the assumed obligations/liabilities was nearly negligible (Blanchard 2009); the situation was connected with the ‘plausible deniability’ briefly described above.

High level of leverage explained

The high level of leverage for financial institutions was generated by the abundance of liquidity available for borrowing at (relative) low interest rate. As a study made by Barclay Capital, and cited by The Economist of September 23rd 2006, since 2003 ‘the after-tax cost of raising debt has been much lower than the cost of issuing shares, even in the more expensive high-yield (securities) market’. If between 2000 and 2002 the after-tax cost of raising capital through high-yield securities was almost equal with the similar operation using equity – 7% to 8%, while investment grade debt after-tax cost was between 4% and 5%, since 2003 (until 2006) the after-tax cost for equity increased at 8% to 9%, high-yield securities dropped to 6% and then to 5%, while investment grade debt was available at rates between 3% and 4% (The Economist, Sept 23rd 2006). The same source also mentions the fact stated by bankers that ‘the competition to offer credit is so fierce, however cheap it is’ (The Economist, Sept 23rd 2006), which generated a lowering in credit standards.

As was pointed out by several sources, the resources for lending were available not only from banks, but also from (The Economist, Sept 23rd 2006):

- hedge funds which entered the loan market where they could borrow money relatively cheap from banks and invest those money through structured finance product – mainly in tranches of debt with higher risk of default - in order to increase their yields,
- private equity funds which borrow the (cheap) money for private deals – leverage buy-out operations, foreign takeovers and debt-funded buy-back shares from stock markets – through which they bought public companies and remove them from the stock markets; through these deals, the number of public listed companies decreased, generating a narrower selection base for investors interested in stock exchange listed companies
- pension funds also entered the credit market in order to buy long-term assets needed to match their payout commitments;
- mutual funds chose to enter the credit market in order to diversify their portfolio and to increase their returns
- insurance companies became players in the credit market for similar reasons as the mutual funds.

Another category of major players which entered the credit market, mainly as borrowers, was represented by investment banks. The situation has its roots also in 2004 when, as highlighted by Blundell-Wignall et al. (2008), SEC agreed to allow investment banks voluntarily to benefit from regulation changes to manage their risk using capital calculations under the ‘consolidated supervised entities

program'. Before 2004, the regulation for broker-dealers (including investment banks) allowed them to have a debt to net equity ratio of 15:1. Under the new regulation, investment banks could agree voluntarily to SEC consolidated oversight and which allow them to increase their leverage ratio as high as 40:1 in some cases (Blundell-Wignall et al., 2008).

The sources for the abundant liquidity were multiple. The economic growth pace of 2002-2007 increased the level of household savings, mainly in emerging economies – among which China was the largest. Also, the economic growth increased foreign reserve accumulation and sovereign wealth funds (SWFs) growth – mainly in Asia and OPEC countries (Blundell-Wignall & Atkinson, 2008). All those funds were entering mainly USA and UK financial markets in search for yield and diversification on the two leading markets, considered to be transparent and relatively safe. As expected, the pressure induced by the abundance of liquidity generated the creation of marginal assets with higher risk and high yield, as highlighted earlier by Blanchard (2009).

The change in banks' business model

Blundell-Wignall et al. (2008) consider that banks changed their business model giving up the traditional one, based on the 'old-fashioned spread on loans' and reflecting their assets in balance sheet, but which did not allow banks to become 'growth stocks'.

Under the pressure of shareholders' demands and the pressure generated by the competition of investment banks (mainly in US after Glass-Steagall act was removed in 1999), banks started to focus more on 'faster share price growth and earning expansions' (Blundell-Wignall et al., 2008). Consequently, banks changed their strategy toward trading income and fees via securitization, which enable them to achieve two goals: growth of their earnings combined with economy on the needed and required capital under Basel II agreement (Blundell-Wignall et al., 2008).

While the pressure of the investment bank competition was in place starting with 2000, this did not generate an increased involvement of banks in securitization and structured finance transactions. The shift came in 2004, when Basel II accord was published; it was announced that will be effective starting with January 1st 2007 in Europe and under implementation in US. Basel II tried to implement capital charges based on asset ratings. However, banks saw the opportunity, highlighted by Brunnermeier (2009), Blanchard (2009) and Blundell-Wignall et al. (2008), to reduce their capital charges by pooling loans (mainly mortgages) in off-balance sheet vehicles – either through securitization, in special conduits/ trusts or in special purpose vehicles or entities (SPVs or SPEs), or through structured finance in so called structured investment vehicles (SIVs). Because of the reduction of idiosyncratic (nonsystematic) risk through diversification, the assets issued by the above mentioned vehicles received better

ratings that any individual security included in the pool or portfolio transferred to them (Brunnermeier, 2009).

Through these operations, banks could increase the return on their capital, without increasing significantly the capital amount. On the other hand, banks reduced their risks – mainly the risk of financing mortgages – through the model ‘**originate** the loan **and distribute** the risk through securitization, structured finance and credit derivatives’. Unfortunately, the model ‘originate and distribute’ led to insufficient monitoring by the loan originators (Blanchard, 2009) and got out the control of regulators (Blundell-Wignall et al., 2008).

The securitization, the structured finance and the opacity of the process

While the securitization and structured finance products were used mainly by institution like Fannie Mae and Freddie Mac – involved in mortgage lending/refinancing - in order to (re)finance their activities, both (securitization and structured finance) changed pace and scale during 2000s, mainly starting with 2004. One of the reasons was presented above, in the precedent paragraph; it is the change in banks business model.

Another reason, which add momentum, was also highlighted by Blundell-Wignall et al. (2008): in 2004 the institutions that regulated Fannie Mae and Freddie Mac, the Office of Federal Housing Enterprise Oversight (OFHEO), imposed a greater capital requirement and combined this with a tighten balance sheet control on the two government sponsored enterprises. In this situation, the banks that were selling the mortgages toward Fannie Mae and Freddie Mac in order to refinance them faced both a revenue gap and a potential interruption of their earnings. As follow, the solution (highlighted by Blundell-Wignall et al., 2008) toward their turn was to replicate the operation of refinancing through structured finance, creating SIVs and launching – through SIVs – CDOs and CDO²s.

Blanchard (2009) argued that through securitization and structured finance major improvements occurred in risk allocation², allowing the shocks to be absorbed by a large set of investors instead of a limited number of financial institutions, two aspects were ignored (Blanchard, 2009):

a) with the complexity came the opacity; for the mortgage backed securities (MBSs) it was easier to asses the mortgage pools that backed them; but it become more difficult to assess the value of derived tranced securities (CDOs) and their second derivation, CDO²s. As follow, the problems of the original

² Timothy Geithner, president of the Federal Reserve Bank of New York, in a speech he gave in September 14th 2006 in Hong Kong, highlighted the fact that ‘the innovations in credit instruments strengthened the efficiency and the resiliency of the entire financial system’. However, Mr. Geither also gave the following warning: ‘the same factors that have reduced the probability of future systemic events, however, may amplify the damage caused by, and complicated the management of, very severe financial shocks’ (The Economist Sept 23, 2006).

(mainly in the case of subprime) mortgages were translated into a larger uncertainty regarding the value of the derived securities.

b) the structured products were held by a large set of financial institutions, which implied that the uncertainty would influence a large number of balance sheets involved in the chain of structured finance.

In order to have an idea about the complexity of securitization and structured finance, below are presented two figures.

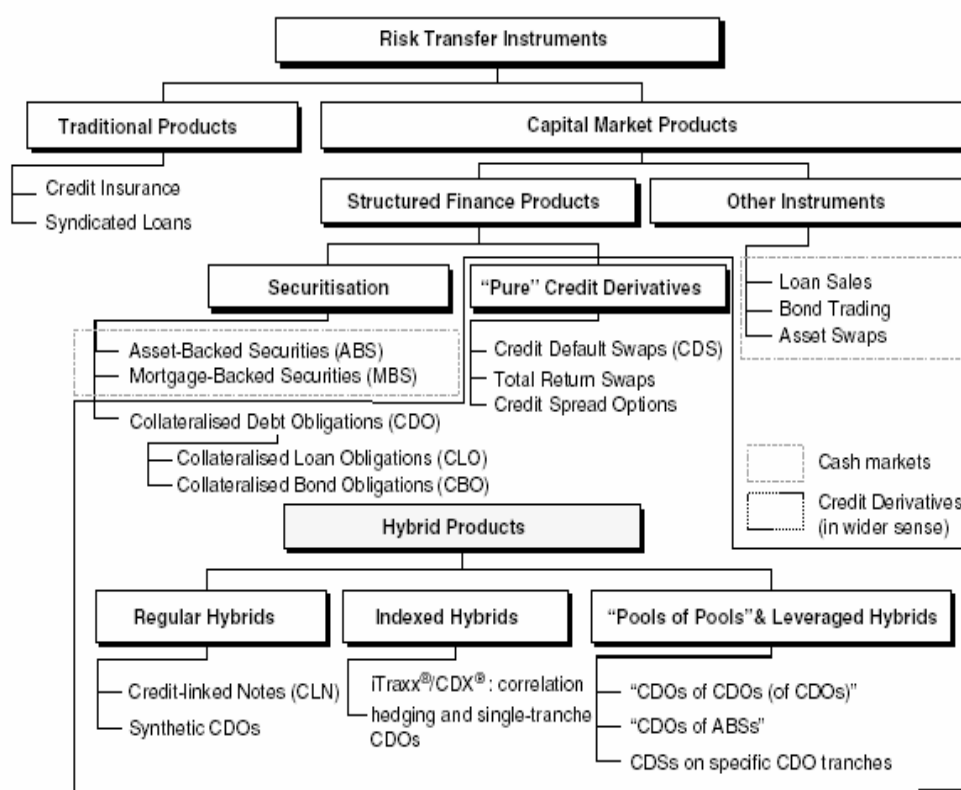
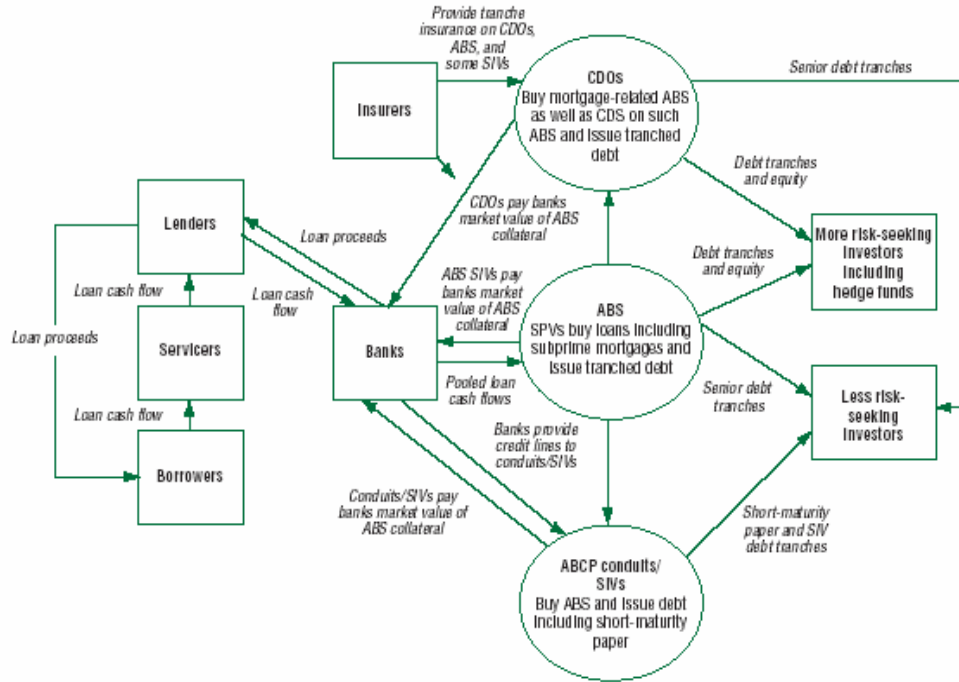


Figure 2. An overview of risk transfer instruments

Source: Jobst (2007), pg.202

Mortgage Market Flows and Risk Exposures



Source: IMF staff estimates.
 Note: ABS = asset-backed security; ABCP = asset-backed commercial paper; CDO = collateralized debt obligation; CDS = credit default swap; SIV = structured investment vehicle; SPV = special purpose vehicle.

Figure 3. IMF: Structured Finance Products and their flows

Source: Global Financial Stability Report, October 2007

To this complexity it must be added the fact that the rating agencies used the same rating symbols for the tranches inside the structured finance products as for the ‘single-name’ securities, as highlighted by Coval et al. (2008). While the rating for the ‘single-name’ securities is well known, to expand the model in the structured finance field would have require at least new criteria for the same symbols, or a new rating scale to avoid confusion among investors. But this situation did not happened because the issuers of the structured finance products wanted to have those product rated on the same scale as bonds, so that investors subject to rated-based constrains would be able to purchase the structured products; this way was created the illusion of comparability with existing single-name securities and provided access to a large pool of potential buyers for what

otherwise would have been perceived as very complex derivative securities (Coval et al., 2008).

Rating agencies did not react to these demands because structured finance activities grew to represent a large fraction of their revenues: in 2006, Moody's Corporation reported that 44% of its revenues came from rating structured finance products, compared with the 32% of its revenues which emerged from rating corporate bonds (Coval et al., 2008)

To the relative opacity of structured finance products and credit derivatives, another factor should be added: those instruments were traded only on OTC (over the counter) markets, where the absence of a clearing house made impossible to follow the exposure of market participants to these instruments. The accumulation of important positions in structured finance products and credit derivatives, while profitable for a short period of time, proved to be deadly for an important number of financial institutions.

The interdependences explained

The idea expressed by Blanchard (2009) – based on direct facts derived from the current crisis – reveals that: the securitization (and structured finance, must be added) increased the connectedness across financial institutions, while the globalization increased the connectedness of financial institutions across countries. These interdependences between the financial institutions were not visible for a long period of time due to the fact that structured finance products were handled through conduits/ special purpose vehicles and structured investment vehicles (considered to form 'the shadow banking system' which used the resources gathered by hedge funds, private equity funds, investment banks etc.).

The connections surfaced only when the value of the primary assets (in the case of the current crisis, the subprime mortgages) started to decrease, generating uncertainty up to the chain of structured products that were created based on their value. The financial institutions that face the decrease in their asset value, and a lower capital, need to improve their capital ratio either to satisfy regulatory requirements or in order to decrease the risk of insolvency (Blanchard, 2009). The financial institutions which announce those kinds of problems unusually face difficulties in raising capital, even if the level of liquidity is good in the market, due to the fact that assets which are difficult to value are rejected by outside investors. As Blanchard (2009) points out: the only option available to these financial institutions is to sell a part of their assets. However, under the pressure to sell the assets, the phenomenon of 'fire sale prices' (prices below the expected value of the payments on the asset) occurs; this kind of sale by one institution will influence the value of similar assets held by other financial institutions and reducing the value in their balance sheets accordingly; this can be seen as the amplification mechanism that contributed to the global dimension of the current financial crisis (Blanchard, 2009).

Conclusions

The financial crisis of 2007-2008 evolved in the economic crisis of 2008-2009, when the credit squeeze (or credit crunch) started to transfer its effects in the production and other services sectors. Its effects on the global economy are severe and no one is able to estimate how long they will last. The financial crisis of 2007-2008 and its effects are compared with the Great Depression of 1929-1934 and a series of similarities are obvious and reflected in a vast body of literature. Thus, a lot of differences exists, among the most important should be mentioned the concentrated and concentrated efforts of central banks all over the world in order to avoid the traditional runs to the banks and their interventions to inject liquidity in the system when needed. However, the effort of regulators is only beginning, similar to their colleague almost 90 years ago. They had the difficult task to find the balance between more comprehensive supervising processes, while keeping the innovating environment in place.

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A STUDY ON ANTI-DIABETIC DRUG DELIVERY FROM PHARMACIES

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CONSTANTIN POLINICENCU⁶

ABSTRACT. During 2004-2006 anti-diabetic drug delivery was done through centralized procedure, national auction just through hospital pharmacies. Starting with October 1st, 2006, their delivery has decentralized through community pharmacies. The present study was carried out through 100 questionnaires in pharmacies in 6 counties from the North-Western part of Romania. The study shows that both urban and rural pharmacies delivery both oral anti-diabetic drugs and insulin's. Aspects such as: preferred distributors, time of delivery, the most requested products, collaboration between physicians and pharmacists, pharmacists' grievances, communication with patients etc have been identified.

Keywords: antidiabetic brands, drug delivery, pharmacy channel

Introduction

The questionnaire is a tool used for identifying various problems, determining the clients' degree of satisfaction as well as for correlating the various market data resulted from different studies. Currently, the delivery of hypoglycaemic drugs is done through urban or rural open-circuit pharmacies. This system of delivery, which has been into practice since 01.10.2006 for OADs (oral

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antidiabetics) and respectively 01.05.2007 for insulins, provides the patient with a wider access to medication.

The starting point of this study was the idea that by questioning pharmacists, essential information on the main anti-diabetic drugs, their supply, collaboration with physicians and pharmaceutical stores as well as the pharmacists' main complaints on their delivery can be obtained. The target was the North-Western part of the country which was to be covered as significantly as possible.

Materials and methods

This stage implied the designing of a questionnaire for pharmacists acting in the network of open-circuit pharmacies, a questionnaire structured in four parts:

A) General information on the city and the length of service of the questioned pharmacist (questions 1-2);

B) Drugs delivered at the work place (questions 3-7);

C) Collaboration with distributors and problems in drug acquisition (question 8-11);

D) Identifying the extent to which the patients are informed (question 12-13).

The questions were of open type (free answer), closed (multiple choices) or mixed (free answer and multiple choices).

Sampling

The sample chosen for questioning was represented by 100 pharmacies from 33 cities of 6 counties from the North-Western part of the country: Bihor, Bistrița Năsăud, Cluj, Maramureș, Satu Mare și Sălaj. According to the data presented in Table 22, these counties represent approximately 13% of the Romanian population (2.74 millions inhabitants) and approximately 13% of the patients suffering from diabetes in Romania (51,000 patients). The average prevalence of diabetes in the population of these counties is of 1.87% (similar to the one on the national level): Bihor (2.51%), Bistrița Năsăud (1.01%), Cluj (2.19%), Maramureș (1.46%), Satu Mare (1.66%), and Sălaj (1.63%).

These six counties were chosen on the basis that drug distributors have a regional organization and the chosen area could represent the area of coverage of one or more important distributors on this segment. Moreover, the 640 pharmacies in contractual relationship with the Health Insurance National Board represent approximately 15% of the pharmacies in Romania. [1-6] There is a symmetrical spread of the population in the chosen area (3 big counties and 3 small counties). There are also two university medical and pharmaceutical centres (Cluj-Napoca and Oradea). The number of questionnaires distributed in the territory was as follows:

- Bihor: 27;
- Bistrița Năsăud: 10;
- Cluj: 27;

- Maramureș: 16;
- Satu Mare: 13;
- Sălaj: 7.

The questionnaires were handed between 15 January and 20 February 2008 and were answered in a proportion of 65%. The sample is not representative for Romania but because of the high rate of answer is representative for the area in question. The present research was also qualitative and not quantitative.

Question number 4 was a check point for the questionnaires' validation.

The used method was investigation on questionnaires and the descriptive statistical analysis of the results was carried out in Microsoft Excel.

Results and discussions

According to the data from the sites of the Health and Social Insurance County Boards (Bihor, Bistrița-Năsăud, Cluj, Maramureș, Satu Mare și Sălaj), the number of pharmacies in contractual relationship with the questioned area at the date of the study was of 640. [1-6]

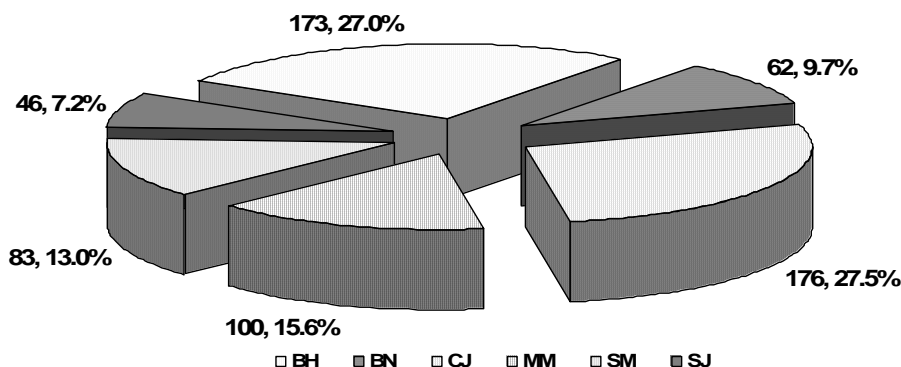


Figure 1. The number of pharmacies in contractual relationship with the Health Insurance County Boards (n= 640)

The number of questioned pharmacies was of 65, meaning 10.2% of the total number of pharmacies in the area.

A) General information on the city and the length of service of the questioned pharmacist (questions 1-2);

The answer to question 1 showed that out of the total number of places, 33% are rural areas (11 out of 33) and the percentage of pharmacists in the rural areas was of 20% of the total questioned (13 out of 65).

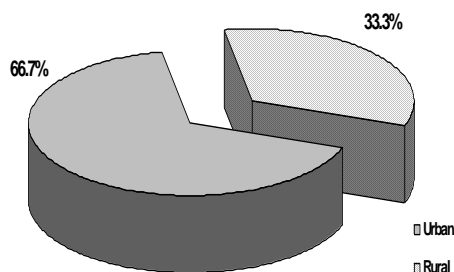


Figure 2. The percentage of areas (n = 65)

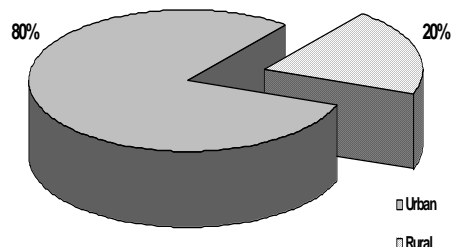


Figure 3. Classification of pharmacists according to area (n = 65)

The answer to question 2, *Your experience in the pharmacy* proved that:

- The majority of the questioned pharmacists have a length of service higher than 5 years (81,5%);
- 11 pharmacists (16,9%) have between 1-5 years experience in pharmacies;
- 1 pharmacist (1,5%) has an experience < 1 year.

B) Drugs delivered at the work place (questions 3-7);

The first question of this questionnaire was meant to identify the percentage of pharmacies which do not delivery any anti-diabetic drug as well as the ones that do not delivery insulins and their repartition according to the area.

All the pharmacists deliver oral anti-diabetics and only 78.5% deliver insulins too. Out of the ones that do not deliver insulins 9 (64.3%) come from urban areas and 5 (35.7%) from rural areas.

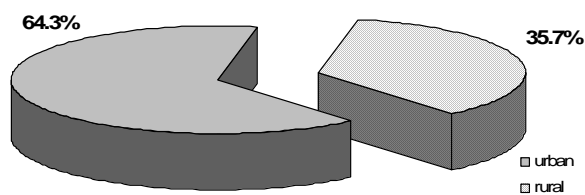


Figure 4. The origin of pharmacies that do not delivery insulins (n = 14)

If in urban areas the percentage of pharmacies that do not delivery insulins is of over 82% (43 pharmacies), in rural areas this is of only 61.5% (8 pharmacies),

which can be seen as a hitch in the patients' access to medication. As all the pharmacies delivery oral drugs, the absence of insulins from pharmacies can be accounted for by the fact that patients get the insulin from other pharmacies, especially the ones located in urban areas or the questioned pharmacies do not benefit from appropriate insulin storage conditions.

Question 4, *How often are these types of products requested?* was a check point for verifying the accuracy of the answers through the introduction of the word *never*. If the pharmacies had answered to the previous question with *none* and to this question their answer was different from the above-mentioned one, the questionnaire was no longer valid and had to be eliminated. As there was no such situation, all questionnaires were validated.

The answers were as follows:

- Daily: 31 – 47.7%;
- 2-3 days: 19 – 29.2%;
- Weekly: 8 – 12.3%;
- Monthly: 6 – 9.2%
- Very rarely: 1 – 1.5%
- Never 0 - 0%

The data shown above prove that only 10.7% of the pharmacies occasionally delivery these drugs. This is a proof for the fact that there is an important decentralization of the diabetes sub-programme and a good coverage on the level of pharmacies.

By analysing the data resulted from question 5 it can be noted that just 9 International Nonproprietary Names (substances) – INN, were mentioned (including a fixed combination), and the most frequently delivered ones are *sulfonylureas* (39.8%), *biguanides* (38.8%), *fixed combinations* (19.9%) and in a reduced percentage (0.5%) *α-glucosidase inhibitors*, *glucosidase*, *glinides* and *thiazolidindiones*. From the class of *biguanides*, the only mentioned representative was *metformine*, which indicates its high frequency in medical prescriptions. In the class of *sulfonylureas* just 3 representatives have significant percentages *glibenclamide*, *glimepirid* and *gliclazid*).

By extending the analysed sample to a national level, with a probability of 95% it can be stated that between 15.02 and 64.58% of the pharmacies prefer *sulfonylureas*, between 14.02 and 63.58% *biguanides* and between 4.88 and 44.68% *fixed combinations*.

The request for biguanides and fixed combinations which contain biguanides in a percentage of 58.7% shows the fact that the majority of patients suffering from diabetes and treated with OADs are overweight or obese, these compounds being recommended to this type of patients.

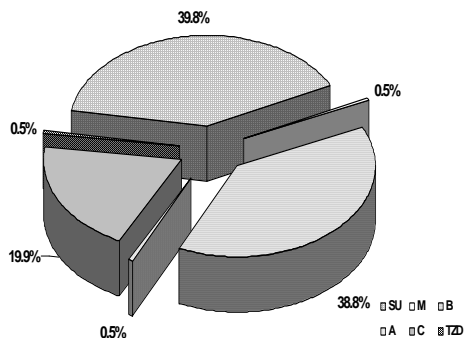


Figure 5. OAD distribution on classes (n = 196)

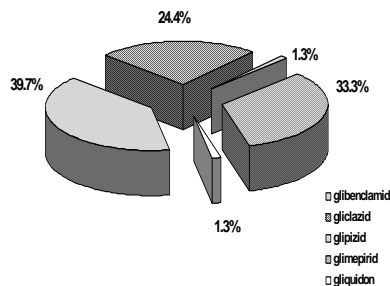


Figure 6. SU Distribution (n = 78)

Besides the above-mentioned facts, the answers to this question give useful information on the most prescribed brands. Thus, just 15 brands were named, out of which the first 5 are 89.8% of the total.

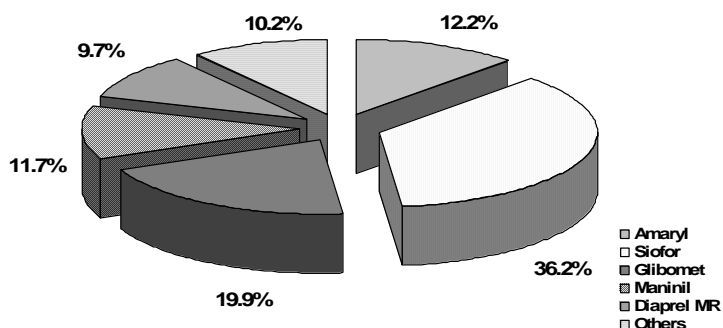


Figure 7. Brands percentage (n = 196)

The results obtained for this question are in accordance with the data provided by the Health Insurance National Board in **Top 50 on drugs quantitative consume in 2007** and respectively **Top 50 on INN in 2007 (according to the value)** for drugs from which the insurants from ambulatories benefited. According to the two tops published on the Health Insurance National Board site *metformine* occupies the 35th position in the value top of the first INNs delivered in 2007. In

the quantitative top of the first 50 drugs, the 5 products presented in Figure 7 were the most frequently prescribed in 2007. (Table 1) [7]

Table 1.

First 5 most widely prescribed OADs in Romania [7]

Product	Questionnaire results (no. of pharmacies)	Position TOP 50	Units	Value of prescriptions (RON)
Siofor	71	6	76,381,677	18,180,404.95
Glibomet	39	26	30,085,812	9,450,471.70
Maninil	23	28	28,581,630	2,613,392.44
Diaprel MR	19	30	23,599,977	11,378,619.51
Amaryl	24	37	19,932,941	10,358,062.23

The only difference between the results of the study and the data presented by the Health Insurance National Board is the reverse positioning of *Diaprel MR* to *Amaryl*, a difference which can be explained through the similar values of both the number of questioned people as well as the number of UTs prescribed according to the Health Insurance National Board. It can be noted that although the two products are on the last positions from the quantitative point of view, they are on the 2nd and respectively the 3rd position from the qualitative one, after *Siofor*.

Another conclusion that can be drawn from the above mentioned data is that just three out of the various producers of OADs on the Romanian market have products with a significant percentage (Berlin Chemie, Sanofi-Aventis and Servier). Moreover, at least one of the three brands of Berlin Chemie (*Siofor*, *Maninil* and *Glibomet*) is present in the answers of all the questioned people and all the three are 67.9% of the total answers.

Besides the above-mentioned information, it can be noted that the results are in accordance with the global tendencies. Thus, in a study carried out in Canada on 41,630 patients and published in 2001 it has been established that *metformine* (the only *biguanide* delivered in Canada) is the most prescribed OAD (65% of patients). [8]

The number of answers to question 6, *Make a top of the first 3 insulins most frequently requested* was 127. Relating this value to the number of pharmacies that release insulins it can be noted that the average number of answers per pharmacies was 2.49. This proves that there are pharmacies that release a small number of insulins.

The figure below shows the presence of insulins in prescriptions according to the producer. The most released insulins are Sanofi-Aventis (37.8%), followed by the ones produced by Eli Lilly (26.8%)

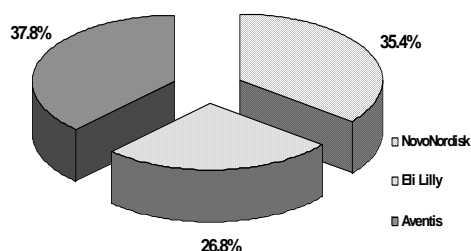


Figure 8. Insulins distribution according to the producer (n=127)

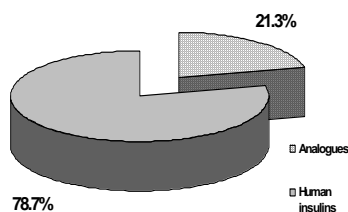


Figure 9. Insulins distribution according to the type (n = 127)

According to the type of insulin, the presence in pharmacies shows that the analogues represent 21.3% of the total answers, the analogue of long effect (*Lantus*) being the most frequently met (14.2%) This result is in accordance with **Top 50 on INN in 2007 (according to the value)** published by the Health Insurance National Board, which shows that human insulins are on the 17th position in this top, with a value of 36,108,588.98 RON, while *glargin (Lantus)*, on the 40th position, registers a value of 17,411,100.14 RON. [7]

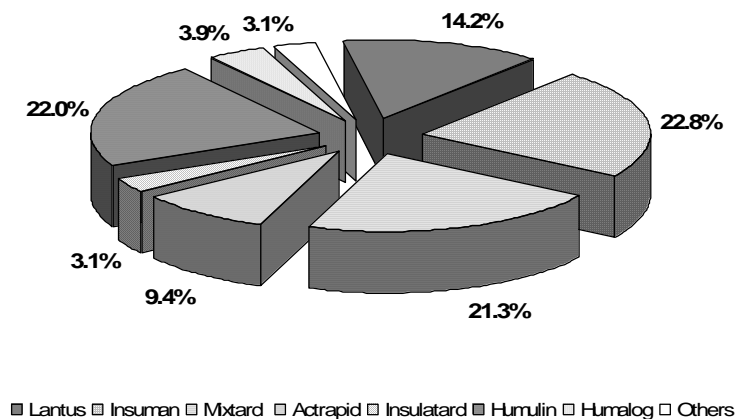


Figure 10. Insulin distribution according to the brand (n = 127)

A STUDY ON ANTI-DIABETIC DRUG DELIVERY FROM PHARMACIES

The human insulins most requested in pharmacies are *Insuman* (22.8%), *Humulin* (22%), *Mixtard* (21.3%) and *Actrapid* (9,4%). The last products belong to Novo Nordisk, which proves a repositioning of the company on the first place in the top of biosynthetic human insulins prescriptions. It must be mentioned that *Insuman* and *Humulin* contain preparates of rapid, basal effect as well as premixed preparates while *Mixtard* is just for premixed preparates and *Actrapid* just for insulins of rapid effect.

Question *Do you collaborate with physicians that prescribe ant-diabetic drugs?* was addressed in order to identify the extent to which the pharmacies collaborate with physicians that prescribe antidiabetics. The present study shows that, unfortunately, over 50% of pharmacists have a very poor collaboration or even no collaboration at all with physicians.

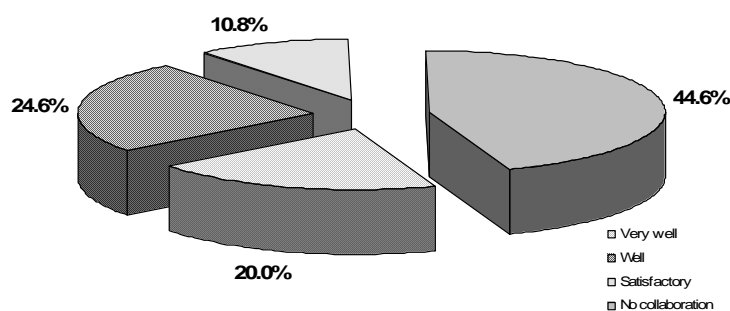


Figure 11. Pharmacist-physician collaboration (n = 65)

C) Collaboration with distributors and problems in drug acquisition (question 8-11);

The results to question 8, *Do you collaborate well with the distributors that have offers on anti-diabetic drugs?* proved that there is a good collaboration on the *pharmaceutical store-pharmacy* segment , just 7.7% of pharmacists mentioning that they have a satisfactory collaboration with distributors.

At question 9, *Which is the insulin and oral anti-diabetic drug distributor you collaborate the best with?*, 8 pharmaceutical stores were mentioned. There were also a few cases in which there was no answer which meant that they had no preference (4.6%).

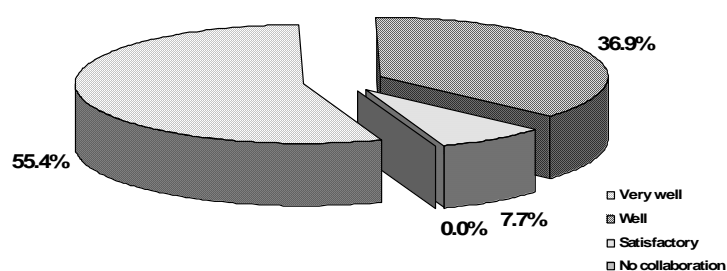


Figure 12. Pharmaceutical store-pharmacy collaboration (n = 65)

Among the preferred ones were Polisano (44.6%), A&A Medical (18.5%) and Mediplus (16.9%). The important distributors on the retail market are less appreciated for anti-diabetic drugs acquisition: Farmexim (3.1%), FarmaNord (3.1%), Montero (1.5%).

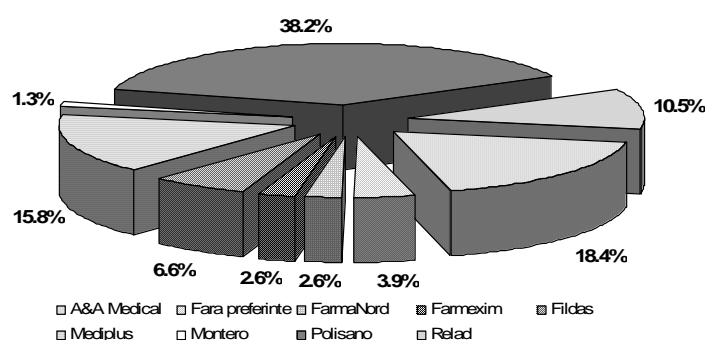


Figure 13. The pharmacies' preferred distributors (n = 76)

The main anti-diabetic drugs distributors in the period in which the contracts following the national auction in 2003 were being executed, namely Polisano, A&A Medical, Relad, Mediplus and Fildas are preferred for collaboration by community pharmacies too. The pharmaceutical stores that provided antidiabetics for hospitals, such as Europharm, Farmexpert and Dita are not mentioned by any of the questioned pharmacists. Moreover, in retail distribution, there are new pharmaceutical stores (Farmexim, FarmaNord and Montero).

OAD distribution to pharmacies is carried out mainly by distributors that have their own networks of pharmacies:

A STUDY ON ANTI-DIABETIC DRUG DELIVERY FROM PHARMACIES

- Mediplus: Sensiblu;
- Relad: CityPharma;
- Fildas: Catena;
- A&A Medical: Farmaplanet;
- Farmexim: HelpNet;
- Polisano: Sibpharmamed;
- Montero: Remedio and Sanifarm.

The first 6 above-mentioned distributors have insulins too in their portfolio.

It can be concluded that experience in the field of antidiabetics and especially insulins distribution as well as having networks of pharmacies are the two main factors that influence the pharmacies' preference for distributors.

The correlation between areas and the distributors' preference shows that just 5 out of the 8 distributors are preferred by pharmacies in rural areas, the percentage of preference on rural pharmacies versus total pharmacies being: Montero – 100%, Relad – 37.5%, Polisano – 20.7%, A&A Medical – 14.3% and Mediplus – 8.3%.

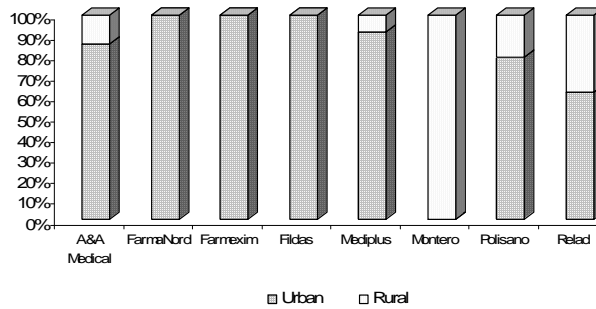


Figure 14. Preferences for distributors according to the area (n = 76)

In order to identify whether supplying is done in due time and whether patients have quick access to medication question 10 was introduced in the questionnaire: *The time in which the anti-diabetic drugs are delivered is...*

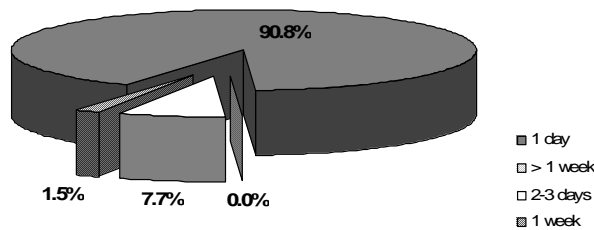


Figure 15. Drugs' delivery time to pharmacies (n = 65)

Over 90% of pharmacies get their antidiabetics in 24h and 7.7% in about 3 days. Just 1 pharmacy answered that they get their drugs delayed (1 week) (figure 15)

It can be noted that patients suffering from diabetes have quick access to medication and that distributors are prompt in meeting the demands.

The degree of pharmacists' satisfaction and the main problems encountered in releasing anti-diabetic drugs were both studied through question 11: *What problems regarding OADs and insulins release do you encounter in pharmacy?*. For this question, fixed answers were given (*financial conditions, payment date, delivery deadline, cashing money from the Health Insurance National Board*) as well as the possibility to answer by *other*. Unfortunately, 14 pharmacists did not answer the question (21.5%) and the number of extra answers was just 4.

Financial conditions (the mark up that pharmacies can practice and the financial discount obtained from distributors) is the main problem raised by the pharmacies that answered (66.7%). This is due to the very low mark up (1.5%) practiced on anti-diabetic drugs and the reduced financial discount (around 5%). The deadline for bills' payment to distributors and the cashing of the money from the Health Insurance National Board are other complaints (51% and respectively 19.6%).

There was only one pharmacist who complained about the impossibility of storing insulins in the situation of an order placed by a patient who refuses to get his medication from that pharmacy. Regarding the release of cartridge insulins and their unpacking by the pharmacy, there were 3 pharmacists who complained. They consider that the receipt should be written on the packing (box X 5 cartridges) or that delivery should be done in cartridges.

D) Identifying the extent to which the patients are informed (question 12-13).

Question 12, *On releasing OADs or insulins, are you requested for further information on the products by patients?* has a closed answer: *Yes* or *No*

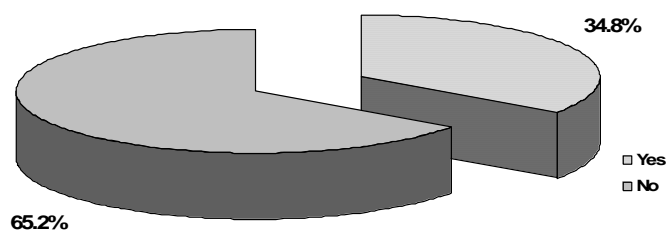


Figure 16. Request for extra information by patients (n=65)

It can be noted that there is a very high percentage (65.2%) of patients who do not request extra information from pharmacists. This can be explained through

the fact that diabetes mellitus is a chronic pathology, patients being used to the new life style and the rules imposed by the illness.

Even if the percentage of pharmacists who are requested extra information is quite low, the variety of answers is big. As formulated, the answers to this last question of the questionnaire, *The information requested by patients regards...*, focus on: way of administration and dosing (61.3%); side effects and contraindications (12.9%); the cost for acquiring insulin syringes (3.2%); insulins maintenance (6.5%); diet (6.5%); glycemia checking (3.2%); insulin pens (6.5%).

The last 3 categories of answers prove the fact that the patient considers the pharmacist a source of complex services, able to provide useful recommendations not only in the strict field of drugs but also regarding ways of improving daily life quality. This is why it is important that a professional pharmacist should have various knowledge, besides the one connected to his profession, obtained through continuous training.

Conclusions

Both urban and rural pharmacies release OADs and insulins and their supply is done mainly by pharmacies with experience in this field.

Most of the pharmacies release drugs within 3 days.

The most requested OADs are *metformine*, *glibenclamide*, *glimepirid* and *gliclazid* as well as the fixed combination *metformine 400 mg+glibenclamide 2.5 mg*.

The most requested insulins are *Insuman*, *Humulin*, *Mixtard* and *Actrapid*, and from analogues *Lantus*.

If on the level of the channel of distribution there is a good collaboration between pharmacies and pharmaceutical stores, the situation is different as far as the relationship pharmacist/physician is concerned.

The main pharmacists' grievances are financial conditions, payment deadline and cashing money from the Health Insurance National Board.

The communication between pharmacists and patients is not that good and the main requests from patients regard way of administration, side effects and drugs' contraindications.

Although most of the questions asked by patients are concerning the drug, there are situations in which the pharmacist has to give information on diet, insulin pens and glycemia check.

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ANALYSIS OF TRAVEL AGENTS PERFORMANCES DURING THE ECONOMIC CRISIS - CASE OF CLUJ COUNTY, ROMANIA

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ABSTRACT. The economic crisis we confront at this moment affects the peoples' lives and enterprises' activity. In this paper we evaluate the impact of economic crisis on the travel agents' activity. The peoples' standard of living and the enterprises' activities has a significant influence on the travel agents' economic performances.

We will base our analysis on two assumptions. Firstly, when the society standard of living is higher its leisure expenditures are higher and the travel agents have more clients. In opposition, in recession the amount of leisure expenditures decrease and the number of private clients of the travel agents is lower. Secondly, in the economic growth times, the number of business clients of the travel agents is rising, while in the recession times the business clients are decreasing.

In order to verify these two assumptions, we will conduct a survey on travel agents from Cluj County, Romania. Using a questionnaire, we will collect the necessary data and by the statistical means we will process and interpret these data. In the questionnaire we will study the evolution of the peoples' leisure expenditure and business clients' expenditures on tourism services as reported to 12 months ago.

Keywords: travel agent, economic crisis, economic performances

Introduction

The current global financial crisis affects all economic sectors, bringing lot of instability and uncertainty. Started from the housing sector, passing to the banking and financial sector, at this moment the economic crisis affects all parts of the real economy. This phenomenon affected also the tourism sector, where the private demand decreased and the number of tourist diminished.

Romanian economy was also affected by the crisis as a consequence of the slowdown in the economic growth of the European Union. The impact on financial and banking sector was limited so far due to a prudent approach of the National Bank of Romania. But, in the real economy, the rise of unemployment and employees union demands accentuate.

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According to the Tourism Minister, at this moment, Romania uses only 30% out of its touristic potential, aspect that determine a 3.5% contribution of the tourism sector to GDP. This is a low contribution but, due to the ongoing crisis, the current evolution of tourism sector might be worse. We sustain our opinion presenting some data extracted from the Monthly Statistical Bulletin of the Romanian Institute of Statistics.

Table 1.

Indicators regarding the tourism sector evolution in Romania			
Indicators (values are reported to the same month of 2007)	October 2008	November 2008	December 2008
Arrivals in establishments of tourist reception	3.3%	-5.5%	-8.6%
Overnights in establishments of tourist reception with functions of tourist accommodation	4.5%	-1.3%	-8.6%
Index of net use of accommodation bed places	-1.0%	-2.1%	-3.5%
Foreign visitors' arrivals in Romania	5.8%	-3.1%	-5.2%
Romanian visitors' departures abroad	18.3%	15.0%	6.4%

Source: National Institute of Statistics, Monthly Statistical Bulletin (October - December)

Looking on these data we can observe the decrease on the touristic demand for the domestic tourism services, while the demand of Romanian tourist for abroad tourism services continues to rise. As a consequence of the trends presented above, from 1 October 2008 until 31 December 2008, approximately 900 persons lose their job in the sector of *transport and auxiliary activities, activities of travel agents* (NIS, 2008).

More than that, the premises for the period February – May 2009 are not so optimistic. The short term indicators evaluated by the NIS in January 2009 present a continuous decline in the Romanian touristic activity (as we can see in Table 2).

Table 2.

Short term indicators regarding the tourism sector	
Short Term indicators	January 2009
Request (demand) of services estimation	-7%
Number of employees estimation	-9%
Price estimation for the next 3 months	-19%
Request (demand) of services estimation for the next 3 months	10%

Source: National Institute of Statistics, Monthly Statistical Bulletin – December 2009

As a result of these evolutions we decided to analyze the effects of the economic crisis on the economic performances of the travel agents from Cluj, Romania.

Methodology

In order to achieve our goal, we conducted a qualitative research, where the travel agents were the subjects of our research. We used different sources of information: primary (the data gathered from the questionnaire and from the interviews) and secondary (articles and news from Internet and from NIS).

The questionnaire applied had 21 questions: 19 closed questions and 2 open questions. Regarding the questionnaire structure, we had 6 questions related to the general effects of crisis on travel agents activity, 5 questions regarding the vacation packages, 5 questions about the air transport tickets, 2 questions related to bus transport tickets, 1 question regarding the other services (rent-a-car, insurance, sights man), 1 question referred to the solution implemented by travel agents in order to ameliorate or to prevent the crisis effects and 1 question about their estimations on 2009 profit. The questions were created in order to verify some assumptions made by the economic specialists from Romania, assumptions that will be verified during the next section.

According to Tourism Ministry, in Cluj county are registered 160 travel agents. From 90 travel agents that we invited to respond to our questionnaire, we received 58 valid questionnaires. These questionnaires were statistically processed.

The majority of travel agents are microenterprises and small enterprises. As we can see from figure 1, 83.3% out of the travel agents are tour operators.

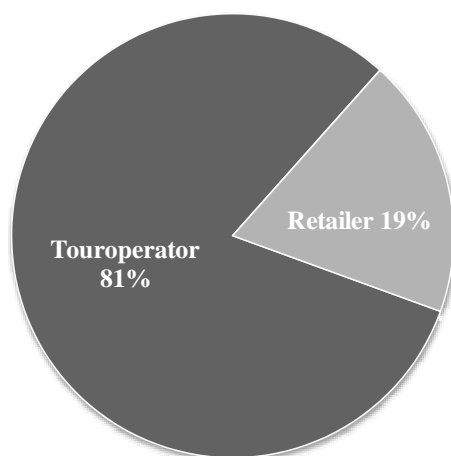


Figure 1. Type of travel agents
Source: authors' research

Result and discussions

The ongoing economic crisis affected until this moment 72% out of the travel agents from Cluj. The effects were multiple, so to find out which are the crisis effects that affected the travel agents activity in Cluj, we selected 6 of them and we asked the respondents to indicate them. In figure 2 we have the frequency of each crisis effect on travel agents respondents.

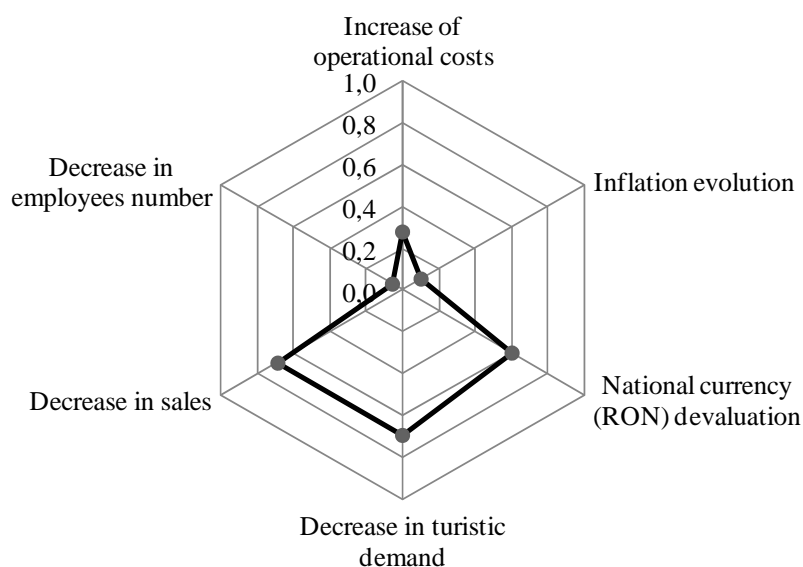


Figure 2. Crisis effects on travel agents activity
Source: authors' research

We observe that the decrease in sales and the decrease in touristic demand represent the main two problems of the travel agents, 69% out of respondents affirming that. The national currency devaluation has also negative effects. We mention that the RON (Romanian Leu) registered a consistent devaluation during the time span we analyze (the average value for the time span October – December 2007 was 1 euro = 3,4441 lei while in the same time span in 2008 the average value was 1 euro = 3,8088 lei). As a consequence, the abroad vacation packages become more expensive.

Even if at the national level, the NIS reported the reduction of employees in this sector, we observe that in Cluj this phenomenon was not so significant. The inflation evolution (the inflation decreased from 7.39% in October 2008 to 6.3% in December 2008 and the disinflationary trend continues) did not have a significant negative effect on travel agents.

The first assumption that we want to verify is that the crisis determined the decrease of domestic vacation packages. Our assumption is sustained by the affirmation made by a travel agent representative: “at whole country [...], the number of vacations sold is with 10 to 20% lower than in 2007” (Ziarul Financiar, 2008). Our analysis showed that the number of domestic vacation packages sold in October – December 2008 as reported to the same period of 2007 decreased in approximately 40% out of the Cluj travel agents (see figure 3).

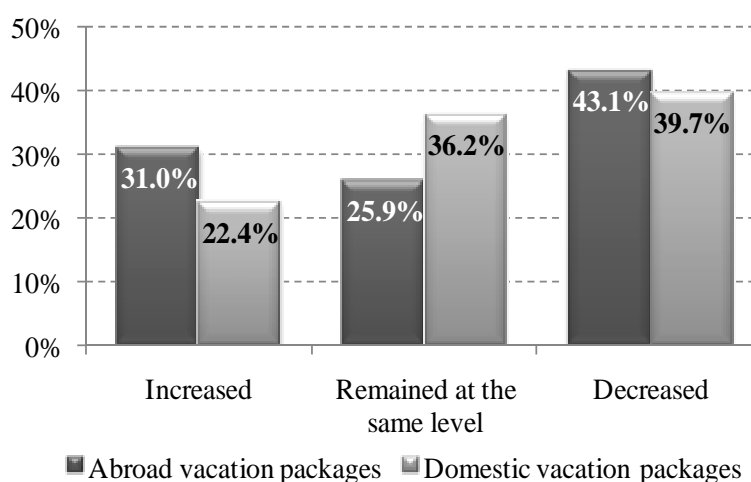


Figure 3. Number of vacation packages sold
Source: authors' research

The minimum decrease in the number of domestic vacation packages sold is 10%, while the maximum decrease is 75%. The mode of the received answers show that the most frequent value for the decrease in the number of domestic packages sold was 10%. The median being 17,5%, we can consider that affirmation made by the previous travel agent representative was verified in our case (54,5% out of the travel agents who experienced decreases in sales of domestic packages affirmed that these decreases are between 10 and 20%).

The situation of abroad vacation packages is similar with the case of domestic vacation packages. As the NIS reported, the value of Romanian tourist going abroad increased slowly than in the previous periods (see Table 1). This situation is verified in the case of Cluj: we had more travel agents that declared the number of abroad vacations decreased than in the case of domestic vacations.

The minimum decrease in the abroad vacation packages is 10%, while the maximum value is 50%. The most frequent decrease value (the mode) was 20%, while the median is also 20%. We consider that the assumption is verified in this

case too, 75% out of the travel agents registering a decrease sustained that this decrease was between 10 and 20%.

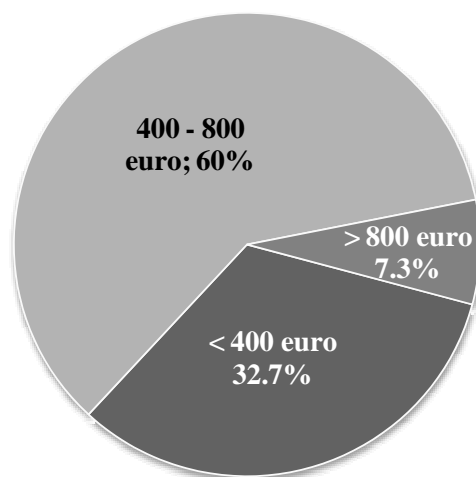


Figure 4. The average budget spent on vacations
Source: authors' research

The average budget spent by the people of Cluj on vacation packages fall between 200 and 1350 euro, with the mean value of 481 euro. We observe that the majority of people spent a medium value on the vacation packages.

The president of the National Association of Travel Agencies in Romania (NATA) declared that in the segment of luxury vacations the crisis will not have effects, while in the segment of medium vacation packages the travel agents will lose clients due to the fact that these will prefer to buy cheaper packages (NATA, 2009). This opinion represents the second assumption we verified.

Looking on the figure 5, we observe that in Cluj this assumption was not entirely verified. The segment of low vacations did register a significant increase due to the clients that changed their preferences to the low vacation segments. In Cluj the greatest decrease recorded the luxury vacation packages: 62.1% travel agencies sold fewer luxury vacations. During the interviews, we found that the sell of luxury vacations was more difficult at the end of 2008 than in previous years: it was harder to convince the clients, some of them choosing, in the end, a medium vacation packages. Other agencies representatives (Wall-Street, 2009) sustained this opinion, adding that luxury packages were available even in December 2008. More than that, they consider that the tourists who could afford in 2007 and 2008 a luxury vacation will have enough money to choose in 2009 the same type of vacation, but for fewer nights.

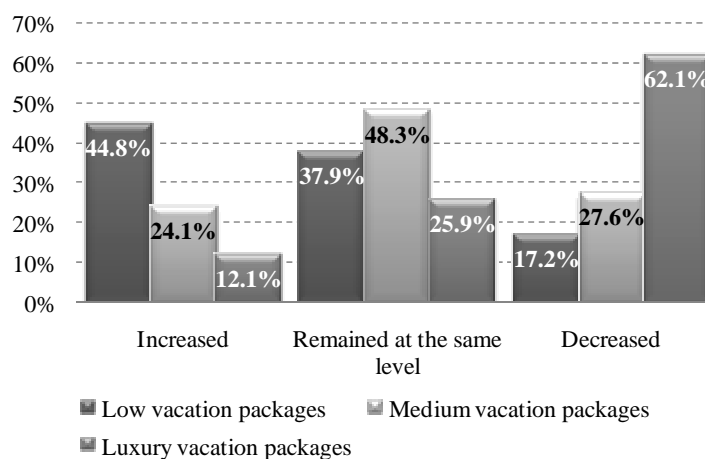


Figure 5. Changes in the type of vacations packages
Source: authors' research

We believe that the persons from the middle class are most stable clients. As we can see from figure 4 they are the majority (this is a normal situation due to the fact that Cluj-Napoca is one of the most economically developed town from our country), while from figure 5 we can see that the demand for medium vacation packages is the most stable.

The third assumption that we verified derive from a NATA communicate (NATA, 2009), which sustains that the first sign of the sales decline in tourism appeared on the plane tickets segment – in November 2008 as reported to November 2007, the sales of plane tickets diminished with 12%. We will evaluate this aspect from the perspective of business and private clients.

Looking on the figure 6, we observe that in the case of standard flights the assumption is verified, the travel agents that reported reductions in the sales of plane tickets being higher that the travel agents that counted increases in that segment. On the other hand, the sales of low cost plane tickets recorded consistent increases for more then a half of the travel agents from Cluj. During the interviews, the agencies explained this situation as a result of two factors:

- firstly, some of the clients that used to chose standard flights changed their option to low cost flights;
- secondly, some of the bus transportation clients decide to use low cost flights. The motivation is simple. If they will by the plane ticket with 2 months (or more) before the flight the price is approximately the same with the bus ticket. For example, if we take the example of Cluj-Napoca to Rome route, a bus ticket for a round trip is approximately 140 euro, while the price of a low cost plane ticket fall between 50 euro (with two months before) to 130 euro (with 2 weeks before). More than that, the plane trip takes 2-3 hours while the bus trip 1 day at least.

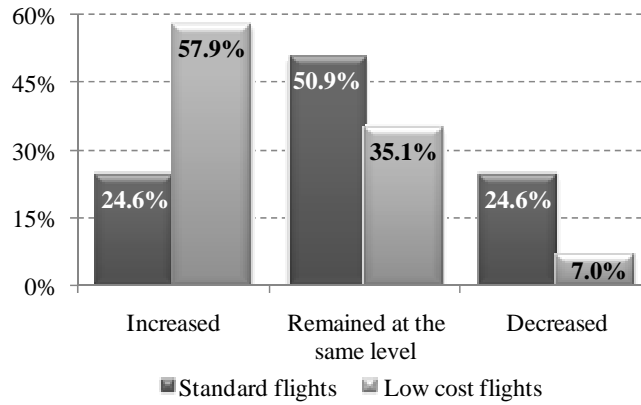


Figure 6. Sales of plane tickets to private clients
Source: authors' research

The most frequent reduction at standard flights on the private segment clients was 10%. We had situations of travel agents that recorded low reductions (the minimum value was 3%), but in the same time we had some travel agents that was seriously affected (the maximum value was 70%). The most frequent increase in the segments of the low cost plane tickets was 20%, while maximum increase was 70%.

From the figure 7 and from the interviews we deduced that the business clients continue to prefer the standard flights even if the crisis is affecting our economy. Moreover, in their case, the number of low cost flights is reduced as compared to the standard flights. The main destinations that recorded decreases in plane tickets sales were the countries were the economic crisis has showed its effects: Spain, Italy, USA and France.

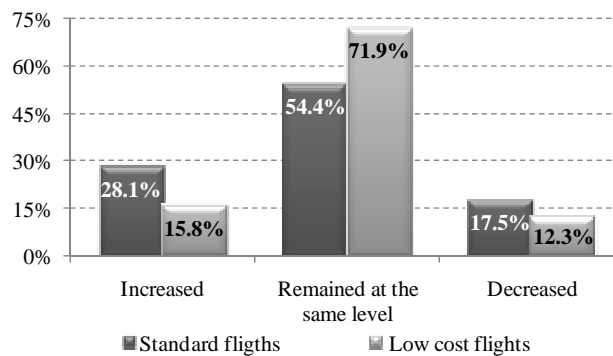


Figure 7. Sales of plane tickets to business clients
Source: authors' research

The bus transportation services registered substantial reductions. Even if the majority of travel agents that sell these services (6.9% out of the interviewed travel agents do not sell bus tickets) did not counted the decline of demand on this segment, some agencies had great loses: the most frequent value of reduction in demand was 50%, while the mean value was 32.4%. As in the case of plane flights, the main destination that recorded decreases in bus tickets sales were Spain, Italy, Hungary, France and Germany.

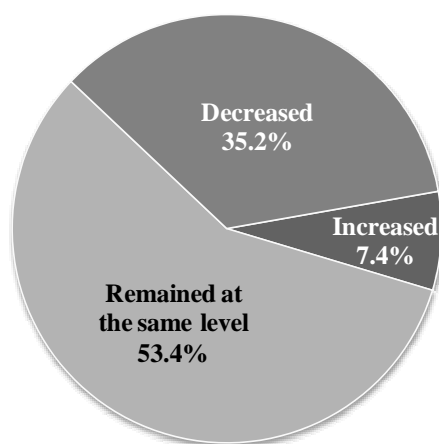


Figure 8. Sales of bus tickets
Source: authors' research

Regarding the evolution of the number of travel agents' clients, the NATA sustained that a part of the Romanians renounced at the New Year holidays, aspect that determined a reduction in sales about 10-15%. As a crisis result, the decrease of the clients' number started from November 2008 (NATA, 2009). This is the fourth assumption that we proposed to verify in this paper.

The figure 9 shows that there are some travel agents that recorded decreases in their number of clients, while we have some other agencies that registered increases in clients' number. All most half of the travel agents declared that they loosed private clients, the amount being between 5 and 85%. The most frequent value was 10%.

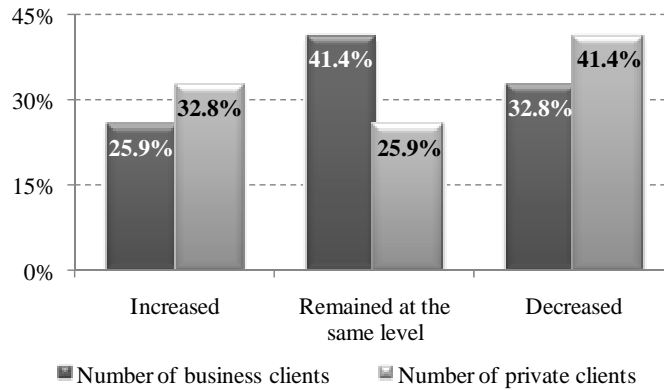


Figure 9. Number of clients evolution
Source: authors' research

In the case of business clients the demand fluctuations were not so high. We have travel agents where the number of clients decreased, the most frequent decrease value being 10%, while the total values range between 5% and 90%. However, we observe that the business clients are more stable than the private clients for touristic services, aspect confirmed by the travel agents during the interviews. In conclusion, we believe that the NATA assumption is verified.

The fifth assumption we proposed to verify in this paper refers to sales evolution. We supposed that in the conditions of the ongoing crisis, the travel agents sales will decrease. As we can see from figure 10, the sales of more than a half of the travel agents decreased during the time span October – December 2008 as reported to the same period of 2007. The reductions in sales ranged between 5% and 90% (which means that we have travel agents with serious problems due to crisis), while the most frequent decrease value was 10%.

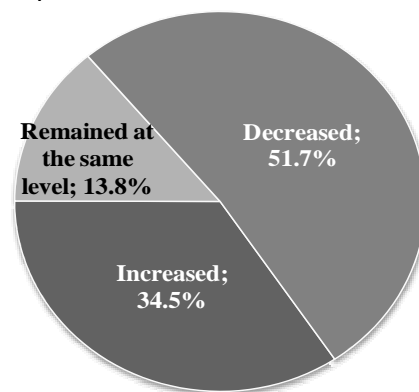


Figure 10. Travel agents' sales evolution
Source: authors' research

On the other part, we have a segment of travel agents that obtained remarkable result in this period. The sales growth in their case ranged between 10% and 150%, the most frequent value being 20%. So, in our view, in Cluj we have to segments of travel agents: firstly we have the agencies that did not face yet serious problems due to economic crisis and secondly the travel agents which were seriously affected by the economic difficulties.

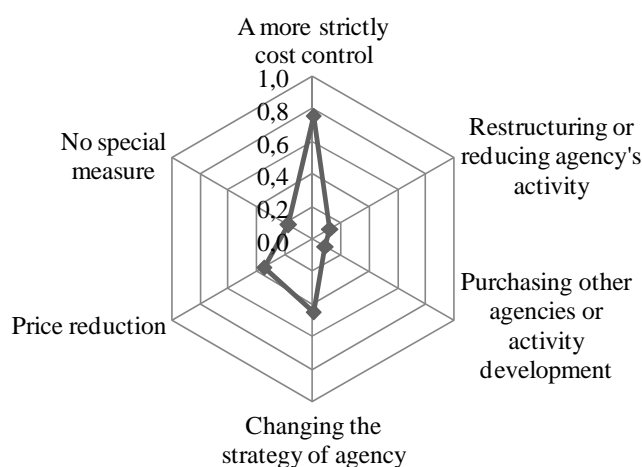


Figure 11. Solutions to pass through the crisis
Source: authors' research

Confronted or not with serious problems or, at least, being worried about their future, the majority of the interviewed travel agents declared that they think about some solutions to pass the crisis. We identified five possible solutions and we required to tell us which measure they intend to use in the future. The figure 11 presents the results obtained.

17.2% out of the interviewed travel agents declared that they do not plan any special measure. Analyzing their situation we found out that their sales increased, remained at the same level as in 2007 or registered low reductions.

A more strictly cost control will be realized by 75.9% out of the travel agents. This is the easiest solution to implement due to the fact that the firm can control its operational costs. During the interviews the agencies affirmed that they plan to cut utilities costs, to reduce dead periods (one possibility is to change the daily schedule), and even to reduce the number of employees. In spite of the fact that some travel agents declared that they take into consideration to reduce the employees' number, during the time span October – December 2008, in only 12.1% out of the travel agents the number of employees decreased (as we can see in the figure 12).

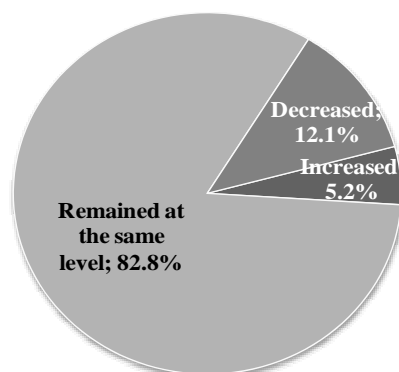


Figure 12. Evolution of travel agents employees' number
Source: authors' research

35.4% out the travel agents declare that will cut tariffs. According to NATA president, the travel agents will cut tariffs up to 30%, while the ongoing crisis will became more acute (Gazeta de Sud, 2008). During the interviews we deduced two sources for price reductions:

- the decrease of accommodation prices. The hotels managers will reduce their prices in order to use more efficiently their resources;
- the travel agents commissions. Some agencies are willing to renounce to a part of their commission in order to keep the clients.

44.8% out of the interviewed travel agents opted for changing the strategy of agency development. Discussing with the travel agents we deduces the following measures:

- in the structure of abroad packages, the agencies will offer more vacations near to Romania. In this case, the transportation cost will be lower and the price of vacation may be lower;
- the reduction of nights' number. The travel agents consider that the people from Cluj are glad to leave the town even for 5 - 7 days and not only for 10 or 14 days. In the current conditions the reduction of the nights' number may contribute seriously to the reduction of price vacation.

Besides these measures presented above, the NATA president propose another measure. He suggest to travel agents to implement for vacations a reservations system similar with the system of low cost plane tickets. That means the possibility of client to reserve its vacation at a lower price with two or three months before. We are skeptical regarding the success of this system due to the fact that in this period the clients are very reluctant. Due to the incertitude determined by the economic crisis, most of the clients prospect the travel agents supply, because they would like to go in vacation. In spite of that, they can not take a

decision yet, because they do not know how will affect the crisis their situation in the following months.

Knowing the problems that the travel agents face at this moment and the solutions they intend to implement in order to pass through crisis, in the end of questionnaire, we requested to travel agents to estimate the evolution of their profit in 2009. The results obtained are presented in the figure 13.

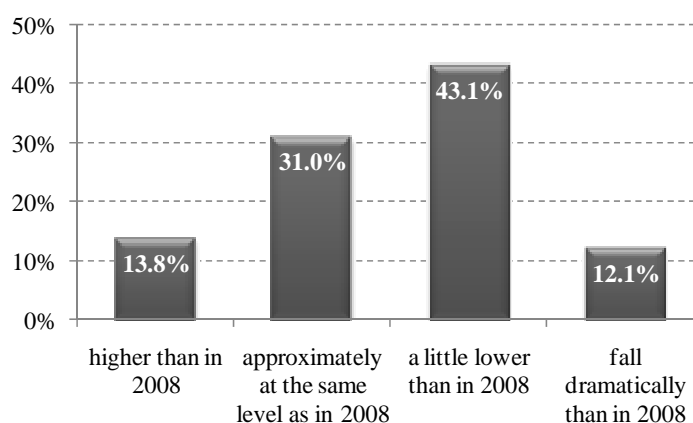


Figure 13. Estimation of travel agents' profit in 2009
Source: authors' research

Conclusions

Analyzing the effects of ongoing crisis on the activity of Cluj travel agents, we deduced that not all the travel agents are similarly affected. We observed that are some agencies where the crisis effects are visible, while other agencies continue to be prosperous.

The decrease of sales and the decline of touristic demand represent the main problems the travel agents are confronted with. National currency devaluation represent from July 2007 (and more accentuated nowadays) a threat for travel agents contributing to price growth.

Over 40% out of the agencies declared the sales of vacation packages decreased with 10-20% as reported to the last three months of the 2007. More than that, the decrease in the sales of domestic vacations is higher than in the case of abroad vacations.

Regarding the type of vacation packages, we find that the clients tend to reduce their spending on vacation packages, substituting the more costly packages with less costly one. This is why we consider that some of the clients of luxury vacation packages (over 60% out of the agencies declared that the sales for this type of vacation decreased) opted for medium vacations (or luxury packages for

fewer nights), while some of the clients of medium vacations chose a low vacation package.

In the context of economic crisis, the private clients chose to renounce to standard flights and to fly with the low cost flights (more than a half of the interviewed travel agents declared the number of low cost plane tickets sold augmented). On the other hand, the business clients did not change considerably their option for standard flights.

The analysis of sales evolution divided the travel agents into two categories: “the prosperous” and “the losers”, the second category being higher. The majority of travel agents, but especially the second category, search solutions to ameliorate the crisis effects. A more strictly cost control, price reduction or changes in agency strategy are the main directions that agencies are following.

In spite of the solution implemented, the perspective of profitability in 2009 is not so good: more than a half of the travel agents are expecting to obtain lower profits than in 2008.

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SWOT ANALYSIS OF THE ROMANIAN PUBLIC ACCOUNTING SYSTEM

CRISTINA SILVIA NISTOR¹

ABSTRACT. As in many other fields, the Romanian public accounting system before and after the adherence to the European Union is characterized by vast change. Under these circumstances, it is mandatory to conduct an organizational assessment through SWOT analysis in order to understand which are the strengths, weaknesses, opportunities and threats of the cash accounting system as a starting point in the public system's, and subsequently the accounting system's, process of transition to accrual accounting, adapted of course to the specific of our country. I consider the findings to be useful to all the users within the public accounting system which are thus capable to envision more easily the advantages, difficulties, benefits and shortcomings of the old accounting system against the new accounting system.

Keywords: public accounting system, cash accounting, accrual accounting, SWOT analysis

1. INTRODUCTION

Any type of change triggers difficulties and uncertainty. This is also the case for the Romanian public accounting system which before the adherence to the European Union was subject to a change process, many times accompanied by incoherence, instability and uncertainty. After the process and the adherence to the European Union were completed the situation became stable and consequent. We wish to test this by conducting a SWOT analysis of the public accounting system in the two periods i.e. the period between 2002 and 2005 which represents the beginning of the transition from a cash basis system to an accrual basis system and the period from 2006 to present day which recognizes accrual accounting as the accounting organization system (Nistor C.S. et al, 2008).

Any system which allocates resources to strategic planning will want at some point to assess its strengths and weaknesses. When these are combined with a stocktaking analysis of the "opportunities and threats" of the system's external environment, one may say that a "SWOT analysis" is conducted: the assessment of

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the current position in accordance with the strengths, the weaknesses, the opportunities and the threats. Its main objective is to facilitate structuring of information to ensure the best alignment between the external environment and internal situation (Mintzberg, 1994)

In fact, through this method the following questions are answered: “Where are we?”, “Where are we going?” and furthermore “How can we get there?”. The public accounting system’s strengths are its internal forces i.e. the values or factors that support its competitive advantage and offer stability, safety and coherence. The weaknesses are those factors or those trends which create obstacles for the development of the accounting system. They can come in different types such as: social, financial, regulatory, operational or other. These can be divided into Weaknesses that can be addressed on the short run, between 3 and 5 years, and Weaknesses which imply a longer time period and are more difficult to address. The Strengths and Weaknesses are considered internal or endogenous factors. The Opportunities and Threats are considered external or exogenous factors. The Opportunities are the external factors which endorse the development of the competitive advantage (Strength). The Threats are the tendencies adverse to external development which lead to the decline of the competitive advantage.

LITERATURE REVIEW

Stanford University's Albert Humphrey led a research project in the 1960s-1970s based upon the United States' Fortune 500. Humphrey led a research project which ultimately developed his Team Action Model (TAM) which is a management concept that enables groups of executives to manage change. SWOT was to have originated from his Stakeholders Concept and SWOT Analysis. It is common for such a prolifically cited piece of research not to have an original definitive publication as its centerpiece. The TAM approach is one of a number that are used by trainers around the World, although for us the crediting to Humphrey as the creator of SWOT cannot be supported. It is a myth supported by open access encyclopedias, and we need to be more objective. (*Tim Friesner, 2008*)

King (2004) also recognized that it was tricky to track down the origins of the acronym SWOT. He cites Haberberg (2000) as stating that SWOT was a concept used by Harvard academics in the 1960s, and Turner (2002) attributing SWOT to Igor Ansoff (1987). Koch (2000) considered the contributions of Weihrich (1982), Dealtry (1992) and Wheelan and Hunger (1998). Again whilst these are the commonly accepted views of thinkers on the topic of SWOT, even the common observer would recognize that Weihrich (1982) was not the originator of the concept but rather an innovator of it. As Koch (2004) comments he recognized that a series of SWOT/TOWS analyses had the advantages of a single arbitrary matrix. Wheelan and Hunger (1998) used SWOT to look for gaps and matches between competences and resources and the business environment. Dealtry (1992) considered SWOT in terms of groups and vectors with common themes and

interactions. Shinno et al (2006) combined SWOT analysis with an Analytic Hierarchy Process (AHP) which ranked and prioritized each element using software. Shinno et al (2006) do not really deal with the obvious limitations of SWOT.

A refocusing of SWOT was offered by Panagiotou (2003). He introduces a telescopic observations strategic framework which in effect maps strengths, weaknesses, opportunities and threats against his suggested acronym - telescopic observations. So, for example T=technological advancements, E=economic considerations, L=legal and regulatory requirements, etc. The most useful aspect of Panagiotou's article is that not only does he recognize the difficulty in finding the origins of SWOT, but he also manages to unearth some interesting alternatives. In contrast to crediting the tool to Stanford University's Albert Humphrey, SWOT is credited to two Harvard Business School Policy Unit professors - George Albert Smith Jr. and C Roland Christensen during the early 1950s. Later in the 1950s another HBS Policy Unit professor Kenneth Andrews developed its usage and application. All professors were specialists in organizational strategy as opposed to marketing. SWOT went on to be developed by the HBS during the 1960s until SWOT became the tool that we use today.

2. MATERIAL AND METHODS

A Strengths-Weaknesses-Opportunities-Threats (SWOT) analysis was conducted, combining both quantitative and qualitative aspects of the public accounting sector's internal and external environment.

SWOT analysis is the basis for establishing strategy, the objectives of its policy and the implied activities when the analysis of the current situation and the relevance of the strategy for the identified need are assessed. The major component of ex-ante assessments is the valuation of economic bases, coherence and accordance to strategy. In this respect the adequacy of the proposed strategy is assessed along with its justification, coherence and potential risks as well as the arguments for establishing priorities, budget structuring, justification of the adopted theme, spatial and financial priorities, complementary of and synergy between priorities and proposed actions. Internal coherence is assessed as well in order to ensure the availability of financial resources within national or regional policy instruments. The assessment of estimated results and impacts analyzes the adequacy of indicators for the proposed objectives, if they are measurable, and their utility in future observations and assessments. The assessment of the proposed implementation system focuses on the quality of the implementation, of the surveillance and valuation commitment and their contribution to an efficient implementation of the new accounting system. SWOT analysis itself is a synthesis of the Romanian public accounting system's current situation's assessment, as it approaches all the key subjects distinguishing between thematic areas and issue prioritization.

SWOT variables include measurable scopes which shape the basis for establishing the strategy and planning of measures. Generally, the adopted strategy, the strategic objectives do not raise questions regarding the relevance of the identified issues, or the potential and defined needs within the analysis of the current situation.

In order to conduct an efficient SWOT analysis the following elements must be taken into account:

- ❖ SO type strategies which resort to all the advantages of the system in order to make complete use of the external environment's opportunities;
- ❖ WO type strategies which surpass the system's shortcomings (disadvantages) in order to make complete use of the external environments' opportunities;
- ❖ ST type strategies which resort to all the advantages of the system in order to avoid/mitigate the threats (dangers) of the external environments;
- ❖ WT type strategies which surpass the system's shortcomings (disadvantages) and avoid/mitigate the threats (dangers) of the external environments.

Comparative analyses have led to the decision of establishing a SO type of development strategy for the public accounting system which will comply at the highest possible level to the performance, synergy-complementary, efficiency, feasible and impact criteria. The established strategy addresses the question "How do we get there?".

The research method is quantitative with qualitative elements and it is based on the analysis of the allotment and uses mechanisms specific to SWOT analysis for public system, followed by the actual conduct of such an analysis and the identification of the strengths, weaknesses, opportunities and threats while comparing the two periods of the public accounting system's evolution i.e. 2002-2005 and 2006-present.

The remainder of the paper is structured as follows. First, we review similar defining elements of SWOT analysis, from theoretical point of view. Second, we introduce a comparative analysis of both public accounting systems, the subject of analysis. Third, we make the segmentation of public accounting system in defining stages of ante and post accession period. Fourth, we achieve effective SWOT analysis in each of two dissertated. Lastly, we discuss these results, outline our conclusions and posit some suggestions for future research.

3. RESULTS AND DISCUSSIONS

3.1 Brief history of the public accounting system's evolution

December 1989 represents for Romania the end of the communist period and the beginning of capitalism. The political, economic and social implications of this transition have been enormous. The fall of the communist regime has meant the opening of new directions in the Romanian accounting system, which started having access and knowing the tendencies at a global level.

SWOT ANALYSIS OF THE ROMANIAN PUBLIC ACCOUNTING SYSTEM

In 2002, because of the Romania EU integration perspective, the public accounting reform and its harmonization with the European and international requirements becomes absolutely necessary. Thus the Public Finance Ministry had to reorganize the budgetary accounting by adding to cash flow accounting the accruals basis of accounting. This project is experimentally implemented in the first semester of 2003, simultaneously with the existing rules, by a number of 13 main chief accountants.

At the issuing of new regulations we start from the principle of accrual basis of accounting and the application of the Financial Regulation provisions afferent to the general budget of the European Union no. 1605/2002 and of the European system of accounts (SEC '95) regarding the moment of accounting registration of the economic-financial operations "on the basis of established rights, respectively at the moment of creation, transformation and disappearing/annulment of an economic value, of a receivable or of a bond".

From an accounting point of view this has to generate the long wanted harmonization between public institution accounting and economic entities accounting. The advantages are important for both the accounting specialists which end up using a common language facilitating better knowledge of the system, the possibility of taking over, transformation, analysis and assessment of some similar operations, events or phenomena which take place within patrimonial units, no matter their nature, as well as for the external users which can assimilate more easily the accounting information and even more, can compare it with the one afferent to other similar institutions or not, according to the analysis carried out.

We can state that the year 2002 was essential for the evolution of public accounting. Major changes start now which will finally determine the shift from cash based accounting to accrual based accounting.

The year 2006 marks at a national level the implementation of the accrual based accounting system in all Romanian public institutions. It is an extraordinary progress for the public sector that follows the World tendency. We can state that even if the course of the Romanian system of public accounting was tough and long, through all these changes, the aim is a positive influence on the Romanian public accounting evolution compared to the European and international one, causing a more multifaceted meaning to the role of accounting as a source of information needed by both internal and external users.

This need for a common language through a unique set of accounting standards was born at least because of the following reason: the whole international financial community recognizes this need; it is a wish shared by all who prepare, examine or use financial statements; it contributes to the assurance of a common basis for accounting and reporting in all the countries, which generates a better and more efficient financial analysis of entities; it contributes to costs reduction because accountants, auditors, financial analysts, investors, and regulatory organisms do not have to convert and reconcile the financial statements from one set of standards to another.

In conclusion, the new public accounting system is based on the European Directives, European accounts system (ESA 95). There accounting and disclosure requirements according to International Public Sector Accounting Standards (IPSAS) are also taken into account.

3.2 Cash accounting versus accrual accounting

The change reform of Romanian public accounting system marks the capitalist period. The transition is realized from the cash basis accounting system to the accrual basis accounting system.

The introduction of accrual accounting internationally is defined by some authors as a reform of financial management and accountability (Scott, McKinnon and Harrison, 2003). Another name was „new public financial management” and was aimed at significant changes concerning the purpose, scale and style of public sector administration and activity (Guthrie et al., 1999 quote by Windels and Christiaens, 2007). The scope was for financial statements of the government or of a public organization to become more easily understood and more extensive through accounting – an important management tool. (Spathis and Ananiadis, 2004).

In Europe, the new financial regulations created a new legal framework regarding the financial management of the European Union’s budget. The European Commission, in order end the transition to accrual accounting, asked for two types of accounts: budgetary accounts, designed for the public authority and based on the concept of cash and general accounts, based on accrual accounting (Spathis and Ananiadis, 2004). Many studies analyzed the adoption of new forms and techniques of accounting and critically evaluated these changes in countries from Western Europe. (Pallot, 2001; Ellwood, 2003 quote by Windels and Christiaens, 2007).

In Romania, at the beginning of the capitalist period (1989-2001), public institutions are the image of cash basis accounting system, and the economic entities are the image of accrual basis accounting system. Comparatively, the situation is presented in Table 3 “Differences between the cash accounting system (public institutions) and the accrual accounting system (economic entities)”.

Table 1.

Differences between the Cash Accounting System (Public Institutions) and the Accrual Accounting System (Economic Entities)

NOTION	CASH BASIS PUBLIC INSTITUTIONS	ACCRUAL BASIS ECONOMIC ENTITIES
ACCOUNTING SYSTEM	Recognizes the transactions and other events at the moment of collection or payment.	Recognizes the transactions and other events at the moment of their occurrence and these are registered in the financial statements of the period to which they refer.

SWOT ANALYSIS OF THE ROMANIAN PUBLIC ACCOUNTING SYSTEM

NOTION	CASH BASIS PUBLIC INSTITUTIONS	ACCRUAL BASIS ECONOMIC ENTITIES
RESULT OF THE EXERCISE	It's a budgetary (financial) result shown based on the difference between the cash received and the cash paid.	It's a patrimonial result, containing the unmet obligations and unpaid debts.
ACCOUNTING NORMALIZATION	All economic entities and the accounting profession comply with regulations elaborated by a state organism.	All economic entities and the accounting profession comply with regulations elaborated by a state organism.
ACCOUNTING INFORMATION USERS	The state acts as the main user of accounting information, this being structured in such a way that exclusively suits the state	Managers in the decision making process; Present and potential investors; (Financial) Staff/Creditors; Suppliers (commercial creditors); Customers (commercial debtors); The Government and public institutions; the public
INTERNATIONAL ACCOUNTING STANDARDS	They are not assumed	The implementation of international accounting standards is being generalized for all large enterprises
ACCOUNTING STATEMENTS	Balance sheet, Budgetary Implementation Account, Budgetary Round-up Analysis Report	Balance sheet, Income Statement, Accounting policies and Explanatory Notes
MANAGEMENT AND ACCOUNTING MANAGEMENT	In double party (excepting village halls which run their accounts/books in single)	In double party
THE GENERAL CHART OF ACCOUNTS	Drawn up in 1984 with different symbols than the ones used by economic entities	Updated in 1994 through the adoption of the French accounting system, with different symbols than the ones used by public institutions.

3.3 SWOT analysis of the public accounting system between 2002 and 2005

Globally, the reform on accounting in the public sector is a component of the economic reform worldwide, based on neo-liberal principles like: anti-inflation monetary policy, fiscal discipline at the macroeconomic level that will lead to balanced public budgets and microeconomic reforms for free trade and extension of the business sector (McKinnon, 2003 quoted by Elwood and Newberry, 2007). All these are used in order to reduce the government's extent and power while developing the business environment. Moreover, because after a long post war period of governments'

expansion that peaked between 1970 and 1980, the relatively large dimension of the public sector in the OECD member countries was seen as one of the causes for economic growth reduction in those countries (Elwood and Newberry, 2007).

According to the reports published by the Organization for Economic Co-operation and Development (OCDE), the European Union Council's decision from Helsinki in 1999 to start the negotiation process for Romania's integration in the EU in 2007, was the starting point of the changes carried on in the public institutions' management system. Thus the efforts to accelerate the economic, social and political convergence to the EU structures became indispensable through the transfer of the „acquis communautaire” into the internal legislation, and also by implementing these legal measures.

This interval is characterized by a cash basis accounting system with incipient elements specific to accrual accounting. These elements were imposed as a result of the Ministry of Public Finance's obligation to restructure the budgetary accounting by supplementing the cash flow accounting with accrual accounting (e.g. the reevaluation and amortization of the public institution's assets, setting up impairments and other elements that define accrual accounting).

SWOT analysis ultimately highlights the advantages, disadvantages, opportunities and threats of the public accounting system between 2002 and 2005, according to Figure 1 “Strengths and Weaknesses of the Two Public Accounting Systems 2002-2005” and Figure 2 “Opportunities and Threats of the Two Public Accounting Systems 2002-2005”, herein.

3.4. SWOT analysis of the public accounting system between 2006 and present day

In the context of ample transformations, a series of international publications like General Trade and Accounting or Bulletin of Accountants analyzed the post communist evolution of Romanian accounting, showing the significant moments of its transformation within the international and national context of their yielding. Calu D. (2005) defines this matter as the starting point of the Romanian accounting system's openness towards the international reality. The completion of these transformations sighted the reach of the European accounting system's level, based especially on accrual accounting having as a support the International Public Sectors Accounting Standards (IPSAS). Implementing the new standards implied simplifying the processes, increasing the productivity level and decreasing the operational costs.

This period highlights the accrual accounting system with its features specific to public institutions (e.g. maintaining the budget rendering account whose content keeps elements specific to cash accounting, showing paid expenses and cashed incomes).

SWOT analysis ultimately highlights the advantages, disadvantages, opportunities and threats of the public accounting system from 2006 until present, according to Figure 3 “Strengths and Weaknesses of the Two Public Accounting Systems 2006-Preset” and Figure 4 “Opportunities and Threats of the Two Public Accounting Systems 2006-Present”, herein.

FIGURE 1 – STRENGTHS AND WEAKNESSES OF THE TWO PUBLIC ACCOUNTING SYSTEMS 2002-2005 STRENGTHS

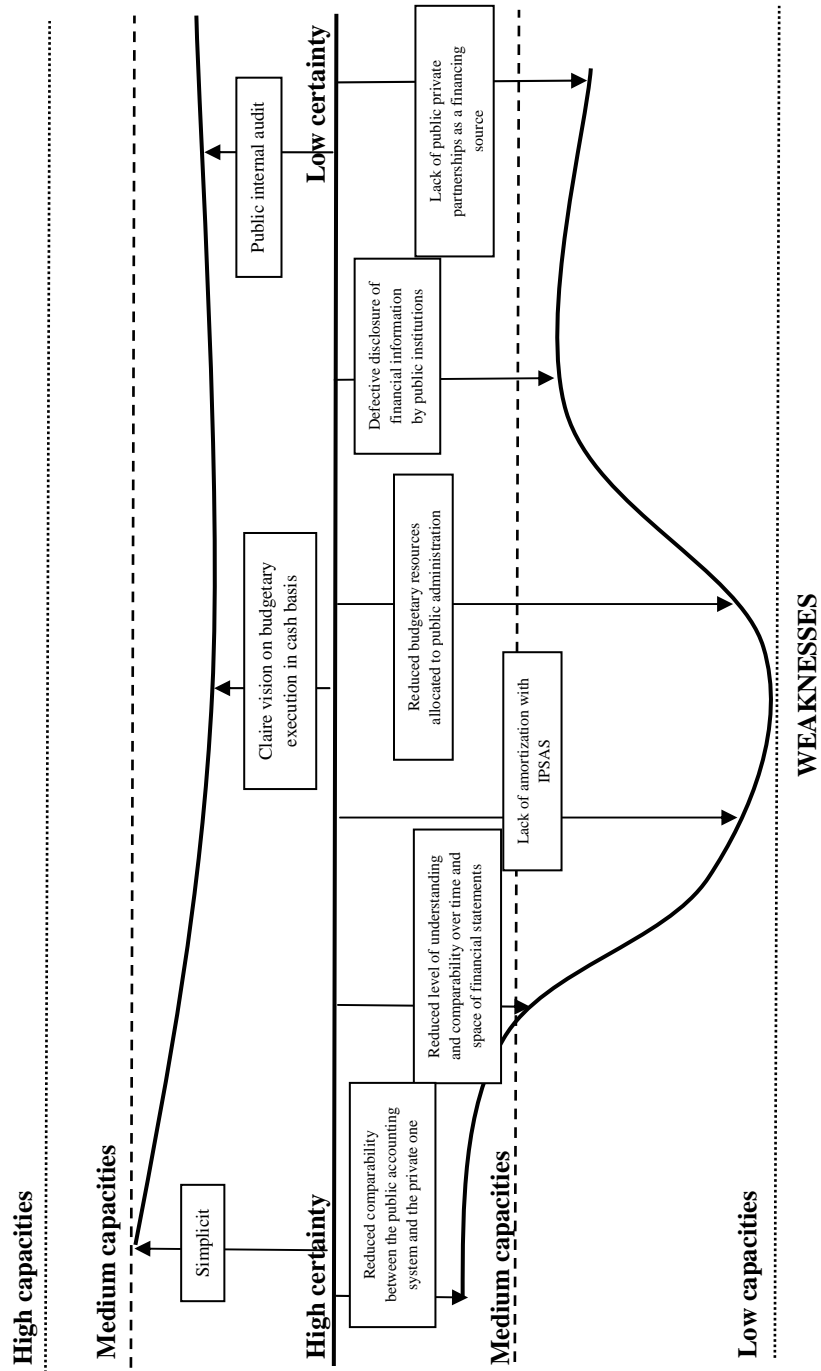


FIGURE 2 – OPPORTUNITIES AND THREATS OF THE TWO PUBLIC ACCOUNTING SYSTEMS 2002-2005 OPPORTUNITIES

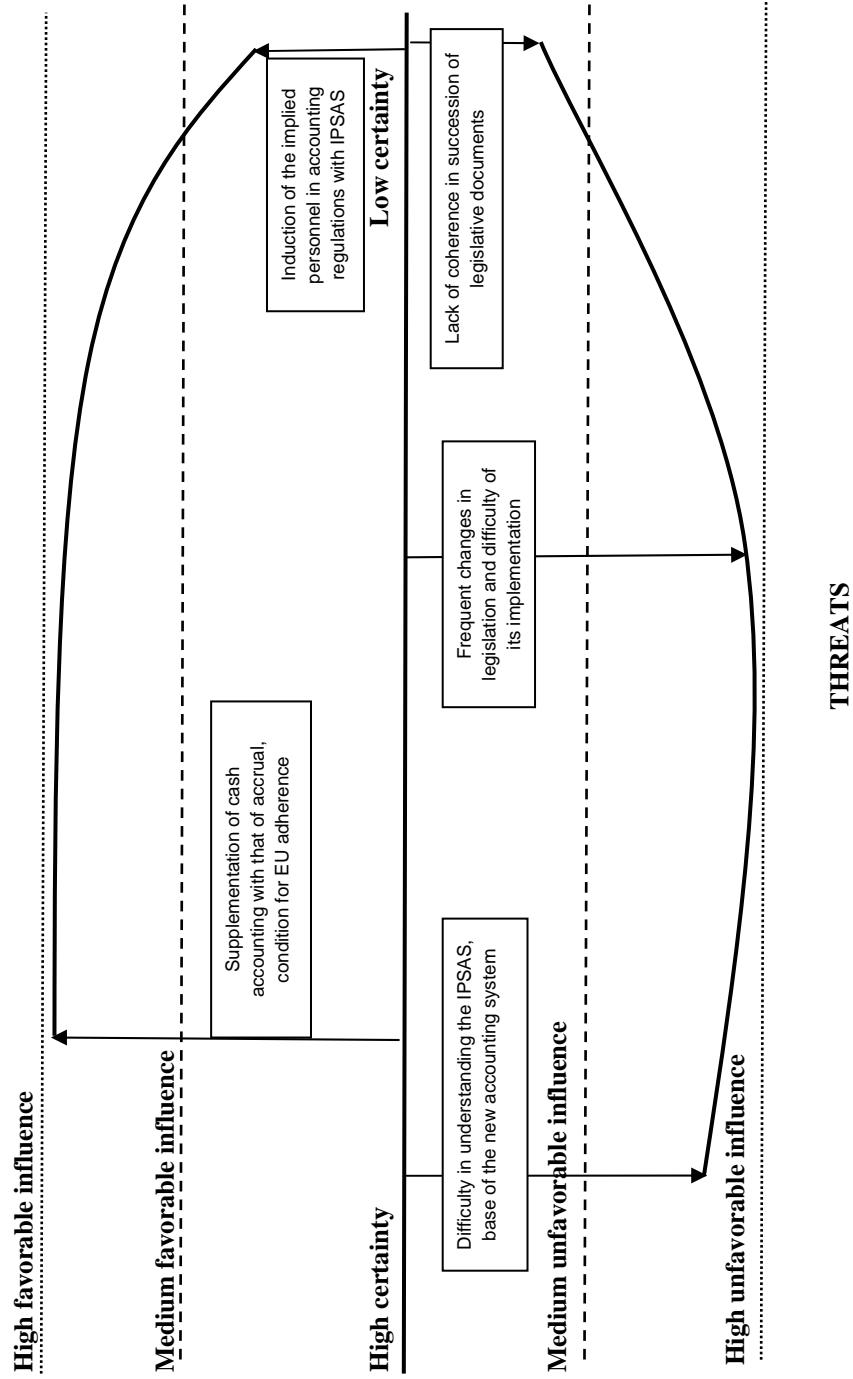


FIGURE 3 – STRENGTHS AND WEAKNESSES OF THE TWO PUBLIC ACCOUNTING SYSTEMS 2006- present

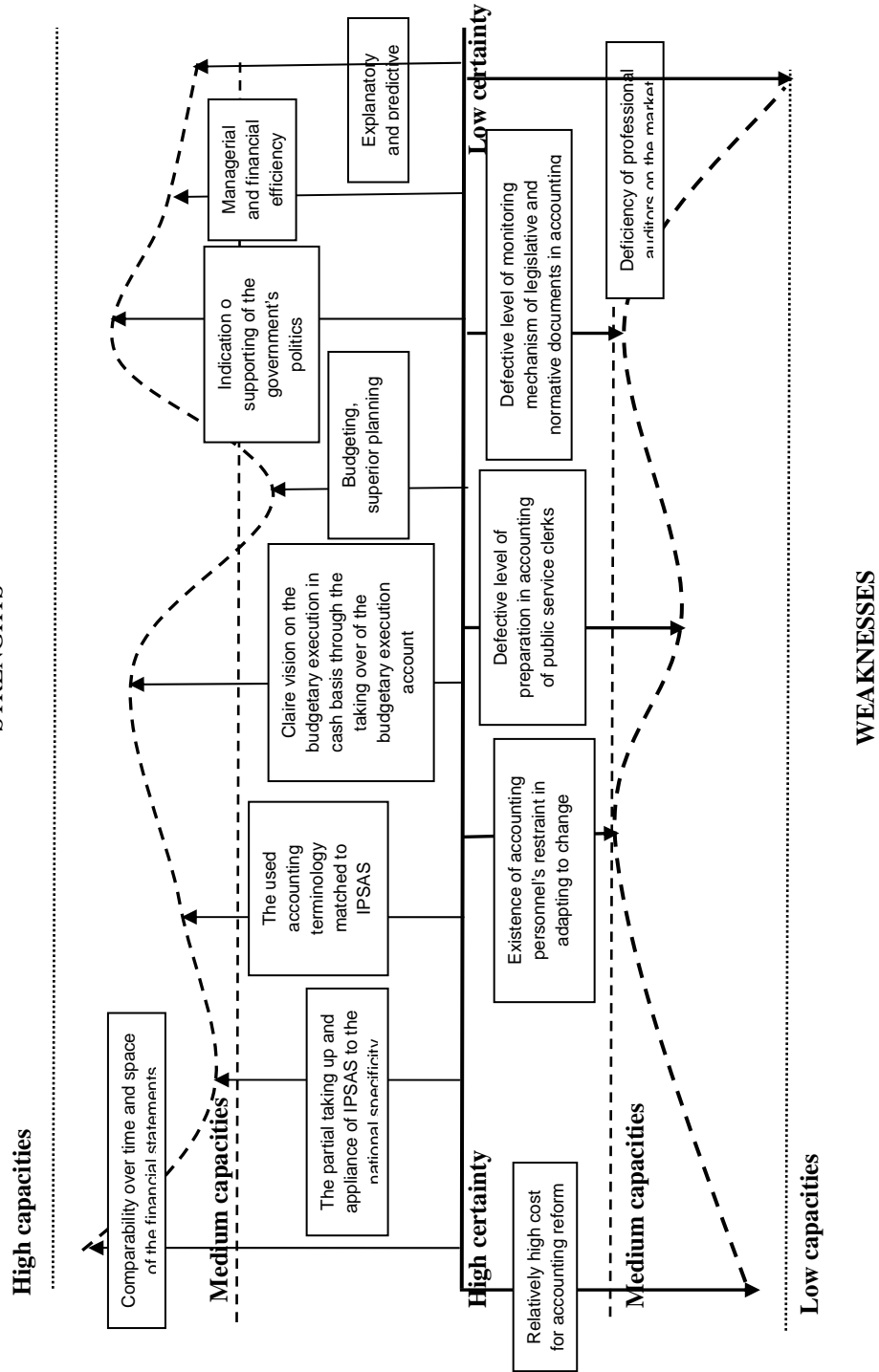
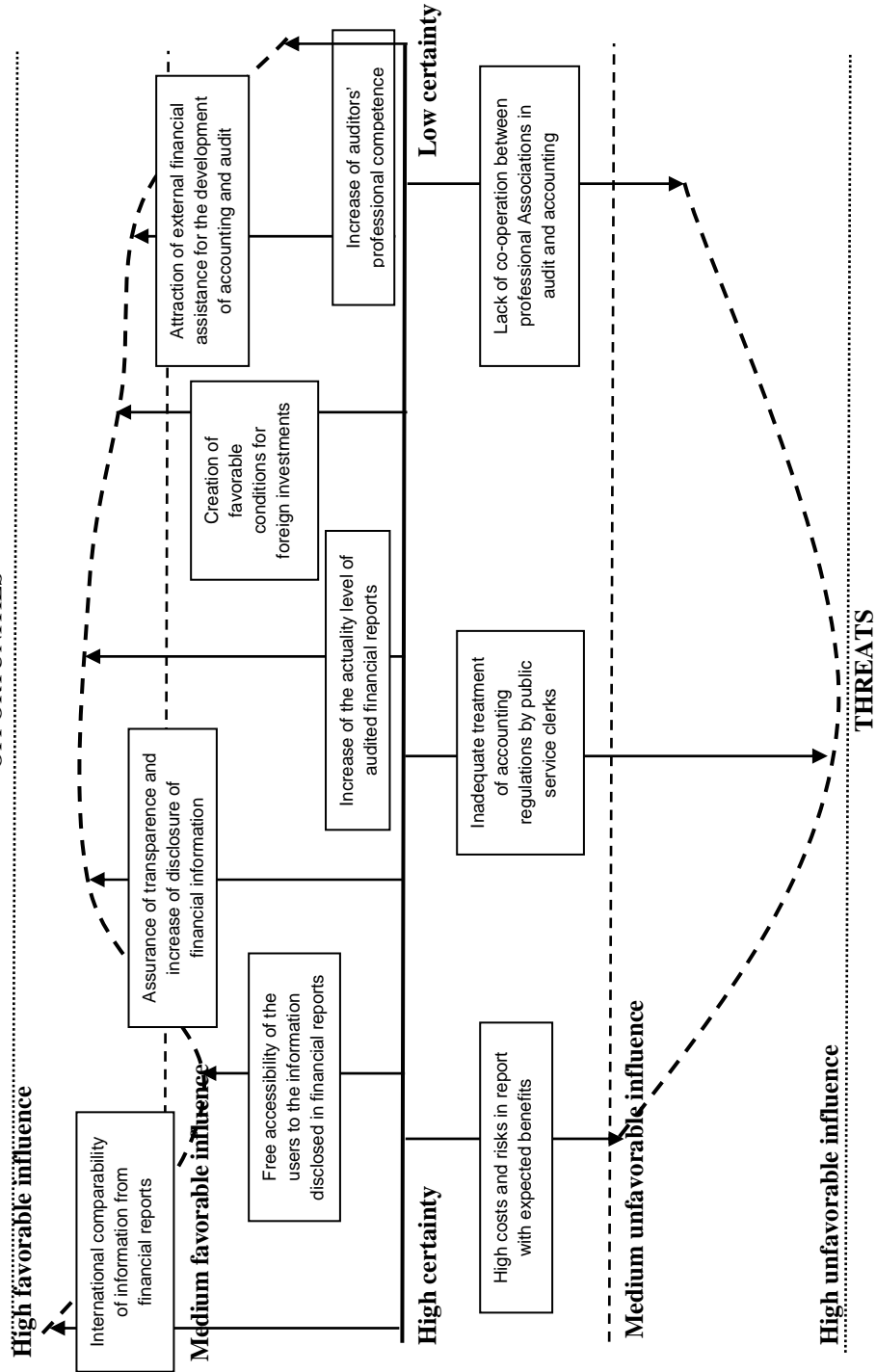


FIGURE 4 – OPPORTUNITIES AND THREATS OF THE TWO PUBLIC ACCOUNTING SYSTEMS 2006 –present



4. CONCLUSIONS

Basically, the SWOT is an acronym for the strengths, weaknesses, opportunities and threats for a public institutes. The strengths, weaknesses are the resource advantage and the inadequacy or paucity respectively in one or more resources relative to competitors. The opportunities and threats are respectively complimentary and adverse or impeding circumstances in the institute's external environment. The SWOT analysis is considered as a structured approach that helps strategists to systematically analyze the issues that may affect the fulfillment of their vision, mission, goals and objectives. In other words, the SWOT analysis is a convenient and concise way to assess past, present and future data to identify internal strengths, and weaknesses and external threats and opportunities. (Pearce II and Robinson Jr. (2000), Rabin et al (2000), Macmillan and Tampore (2000)).

The comparative analysis of the two periods shows that the analyzed elements focused on identifying the two accounting systems specific to the analyzed time periods (cash basis versus accrual basis), regulatory accounting aspects along with the influence of the International Public Sector Accounting Standards (IPSAS) which started to be known and implemented in 2002 once Romania's pre-adherence agreement with the European Union was signed.

We wish to make use of this SWOT analysis in future research as we are looking forward to study the possibility of implementing the Balanced Score Card concept in the Romanian Universities. This is a new concept for the Romanian public university system and we consider that it will bring a significant qualitative increase.

Romanian state universities are being transformed more and more into entrepreneurial companies, in which the current business range is mainly linked to the teaching and research areas. In this context, we believe that the usage of a BSC system is an important step made in the assistance of the Bologna reforms. The BSC instrument should be implemented using all three of its dimensions: a performance measuring system, a strategic management system and a communication tool that involves all academic stakeholders in a new culture of raising awareness to strategy and quality. By "academic stakeholders" we mean students (clients of the higher education institutions), academic and management staff, institutional leaders and the public community.

In this sense, the 9 steps for success methodology will be used. The first step in developing a performance system BSC will aim at: leading an organizational assessment (usually through a SWOT analysis), defining the strategic themes, choosing the perspectives and establishing the objectives, developing a strategic map of the University, defining the performance indicators, developing the initiatives. The second step of the BSC implementation will aim at: gathering and communicating information related to performance, using the scorecard information in order to assess and improve performance.

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THE NATIONAL AND THE EUROPEAN UNION BUSINESS ENVIRONMENT IN THE CONTEXT OF THE KNOWLEDGE-BASED ECONOMY

ALINA HAGIU¹, EMILIA CLIPICI²

ABSTRACT. The paper supposes a systematic research and few pragmatic guidelines in addressing the competitive environment (national and European) in which are operating Romanian companies, because their activity is heavily influenced by the business environment and determined by the factors of it. The business environment is characterized by a special dynamic, due to changes that occur within it, especially under the impact of scientific and technical revolution that has brought to the fore the knowledge as essential element of achieving a high competitiveness. We tried to argue the need for a strategic analysis of business environment in the context of the knowledge-based economy, we made an analysis of current status of the Romanian business environment compared to the other European Union member states following several criteria established at the beginning of the analysis, and finally. We have outlined several measures that should be implemented to contribute to the stability and to improving the Romanian business environment in the actual conditions. At the end of the paper we also realized a short analysis of the Romanian economy position in the international rankings.

Keywords: competition, competitiveness, business environment, knowledge economy.

Introduction

The European and global context requires Romania the necessity to improve the competitiveness of the economy. It is well known that the competitive advantage of an economy no longer relies on products or services, on the presence of natural resources or geographical or historical peculiarities. Competitive advantage is created today through innovation, highly skilled labor force and extensive use of knowledge, in other words through a Knowledge-Based Economy (Knowledge Economy).

Romanian economy is still largely in the industrial era, promoter of products and services that today are hard to compete on international markets and,

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increasingly, on the internal market. It is vital to be understood by all stakeholders the need to act urgently to boost the development of knowledge-based industries, and to eliminate disparities between European countries through the effort of innovation, using new information and communication technologies and increasing public education on new economy.

Stimulation of the emerging of the knowledge-based economy in our country is the primary means to ensure an adjustment of how the national economy will compete on global markets, where world prices of industrial and agricultural classic products will continue to decline. This implies the need for a dynamic equilibrium between international competition based on costs (lower wages, economic incentives, products and services to low value added, based on existing natural resources) and the knowledge-based one (high-skilled labor, research and innovation design, products and services with high added value).

The increasing of complexity and the increasing of the business environment variability in general and of the international business environment in particular, were key issues of awareness of strategic problematic of the international competitiveness of firms and of intensifying efforts to resolve the many and various aspects of it.

Materials and methods

In this paper we will try to analyze the situation of the Romanian business environment, based on information provided by the World Bank's Doing Business Report, The National Commission of Prognosis, National Institute of Statistics, National Bank of Romania, European Commission, World Economic Forum, Heritage Foundation Report EBRD - Transition Report 2008, etc.

The analysis will take into account several criteria considered essential, without claiming that we caught all aspects affecting the business environment. This analysis is only a starting point for future research.

We want to clear from the starts that in the study realized at the level of the EU member states were not included Malta and Cyprus in the absence of sufficient information.

We will also realize at the end of the paper a short analysis of Romania's competitive position in international rankings based on information from: International Institute for Management in Switzerland, World Bank, the World Economic Forum, etc.

The current state of Romanian competitive environment compared to the European Union member states one

Starting a business

When an entrepreneur draws up a business plan and wishes to establish a company, the first obstacles that faces are the procedures to register a new firm. Each country has its own procedures to be followed for the establishment of a

society. In some countries the process is simple and accessible, but in others the procedures are so difficult that entrepreneurs have to bribe officials to speed up the process or may decide to run their business informally.

Romanian business environment ranks 47 in the world. Compared with last year, has not advanced any position, but has not decreased, is shown in the Doing Business report in 2009, developed by the World Bank. This is not surprising if we consider that the reforms were a little off after EU accession.

World Bank analysts have identified that there were 239 reforms worldwide last year, which enabled business to be carried out easier and other 26 - who put the smoke bete entrepreneurs.

Romania can brag with a single reform that has had positive influences on business: was simplified the procedure for implementing judicial decisions, eliminating the need to issue an order to execute the decision. This shortened the waiting period with one month, from 120 days to 90 days.

On top ranking, at the global level, during the past three years, Singapore, thanks to the "friendly" environmental for business and labor law. There fees are small, may be paid quickly, and generally, the technology is applied in any field. A new company can be launched in a few days due to improvements made to the electronic service business in Singapore. The smallest country in Southeast Asia continues to have the best laws in the world to encourage investment and to protect borrowers.

At EU level, in the first place is Denmark, whose economy is the only in the world which allow total free start of a business. However, contractors must demonstrate they have sufficient capital in the bank. Registration lasts six days and requires only four procedures.

With relatively strong laws for creditors and for those who take loans, with legislation that facilitates hiring and firing workers, Denmark is the second consecutive year among the most suitable countries for initiating a business.

Danish reforms of 2007 and 2008 included a reduction of corporation tax, which dropped from 28% to 25%. However, to register a property last rather long, on average 42 days. The six procedures require 69 days to be processed.

The EU countries that rank the leading places in this classification are: Denmark (5), Britain (6), Ireland (7), Finland (14), Sweden (17), Belgium (19), Estonia (22) Germany (25), Netherlands (26), Austria (27), Lithuania (28), Latvia (29), France (31), Slovakia (36), Hungary (41), Bulgaria (45), Romania (47) Portugal (48), Spain (49), Luxembourg (50). The rating follows indicators regarding time and cost to meet government conditions for the establishment, operation, trade, taxation and closure of companies. It is not like pointing the macroeconomic policy, quality of infrastructure, national currency instability, investor perceptions or crime rates.

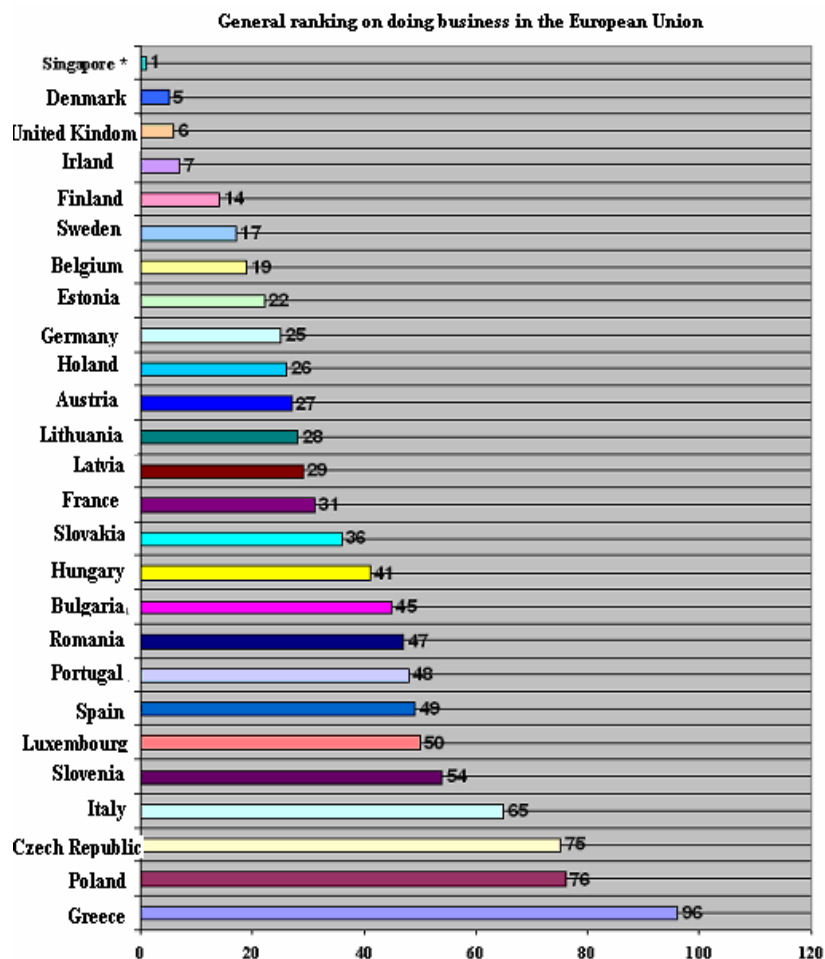


Figure no.1. General ranking on doing business in the European Union

Source: realized by the author based on the dates from the Doing Business Report, 2009.

From the *number of procedures necessary for setting up a company* point of view, Romania is ranked 5, with a number of 6 procedures, along with Italy, Luxembourg, Netherlands, Great Britain, Portugal and Slovakia. Worldwide, are best classified New Zealand and the EU - Belgium.

As regards, the *minimum capital for starting a business*, reported to the situation in the European Union, Romania is ranked fairly well prior to being only: UK, Ireland and France.

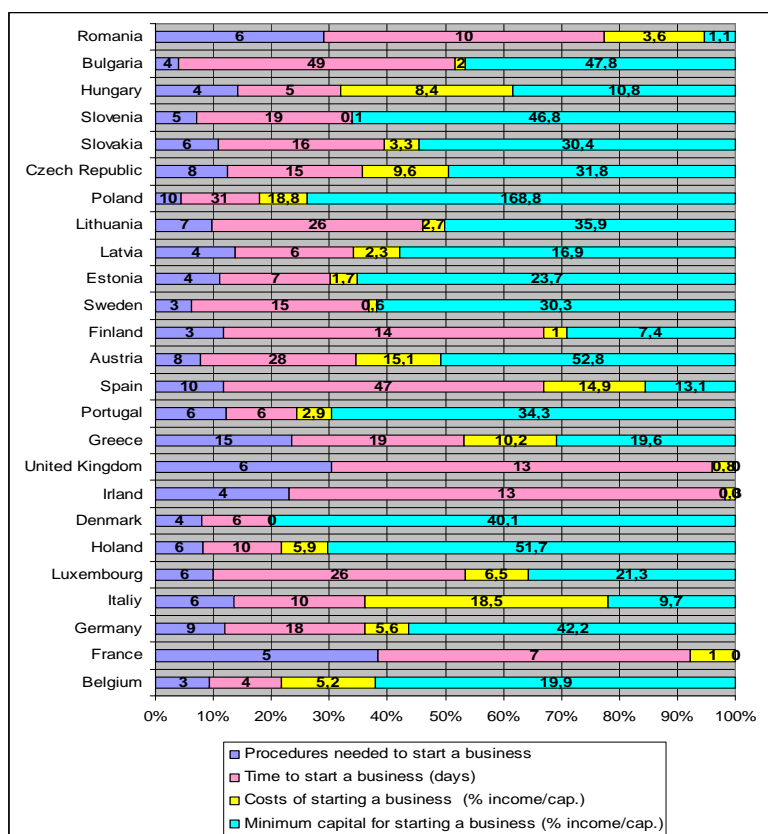


Figure no.2. Ranking on starting a business in the European Union

Source: realized by the author based on the dates from the Doing Business Report, 2009

Registering property

Titles of ownership, promote the transfer of properties, encourage investment and allow entrepreneurs to access bank loans. In developing countries, many properties are not recorded officially. Many governments have recognized this and began intensive processes for the possession, but bringing assets into the formal sector is only a part of the story. The more difficult and more costly is the process of actually transferring ownership from the financial point of view, the greater are the chance that formal titles to become informal again. Eliminating unnecessary obstacles to registering and transferring property is an important element for economic development.

"The number of procedures necessary for registration of a property" criteria, is placing Romania on 8 place, alongside with Bulgaria, Luxembourg and Italy. Around the world, the best is ranked Norway and the European Union - Sweden.

As regards *the time required to record property*, Romania is not ranked very well (83 days), in its wake the only: France (113 days), Czech Republic (123 days), Belgium (132 days), Poland (191 days) and Slovenia (391 days).

On top ranking, the world is New Zealand with only 2 days and in the European Union - Sweden, with the 2 days needed to conduct this process.

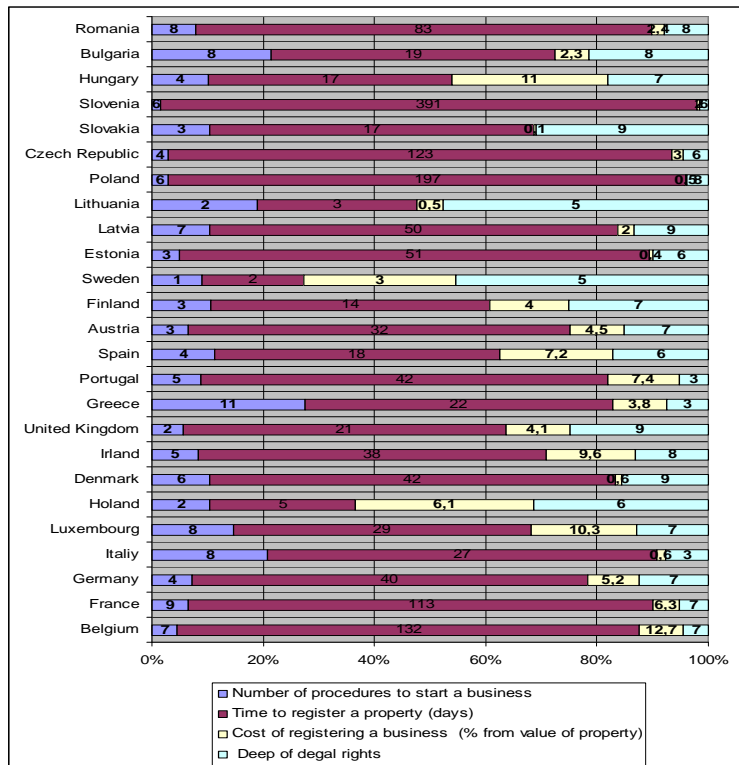


Figure no.3. Registering a property at the European Union level

Source: realized by the author based on the dates from the Doing Business Report, 2009

Regarding the *cost of property registration* as a percentage of value, we see that our country is about halfway ranking with only 2.4%. Arabia Saudi is the best in the world (0%), while in Europe on the top positions are placed: Slovakia (0.1%), Estonia (0.4%), Poland (0.5%), Lithuania (0.5%), etc. At the end of classification is: Ireland (9.6%), Luxembourg (10.3%), Hungary (11%) and Belgium (12.7%).

At the chapter, "*the intensity of legal rights*", Romania is ranked quite well, being quoted with 8 grade, the maximum being 10. Also the 8 grade received Bulgaria, Poland and Ireland.

At the European Union level, no country has received the 10 grade. In contrast with 9, were noted: Slovenia, Latvia, Great Britain and Denmark.

Protecting investments

Companies mobilize capital either by recourse to a bank loan or by attracting investors. Selling shares allows companies to expand without the need to repay bank loans and provide collateral. Investors are thinking about the safety of their funds and seek laws to protect them. Studies show that investment decision is based 73% on the presence of a stable legal framework, to protect investors, and only 27% on the company characteristics. Effective protection of minority shareholders is associated with larger and more active markets. Thus both governments and companies are interested in consolidating reforms regarding "investor protection".

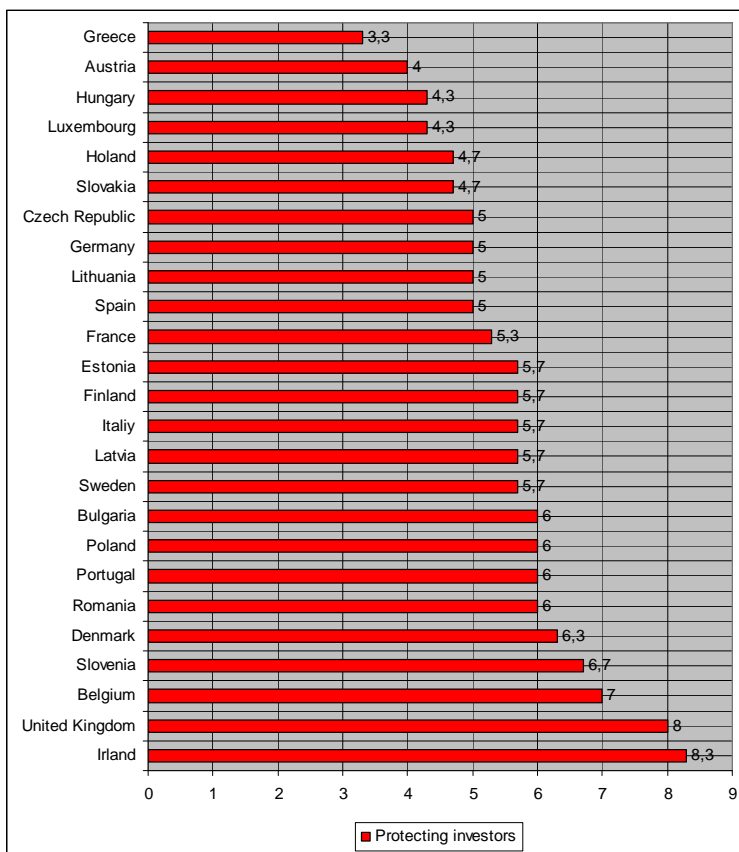


Figure no.4. Protecting investors at the European Union level

Source: realized by the author based on the dates from the Doing Business Report, 2009

Romania received for „*protecting investors*” note 6, but the ranking is better than many EU member countries. Romania has obtained an index of investors protection of 6 from 10, which was higher than that obtained from France, Greece, Germany, Hungary, Netherlands, Spain, Sweden, Switzerland or Italy, as the World Bank report shows. On top ranking is, at the world level- New Zealand (9.7), and at the European Union level - Ireland (8.3). On the opposite side, is ranked: Slovakia (4.7), Netherlands (4.7), Hungary (4.7), Luxembourg (4.3), Austria (4) and Greece (3).

In 2008, the volume of foreign direct investment in Romania reached 9.024 million, registering a 24.4% increase from the previous year (7,250 million). Considering the period 1990-2008, the volume of FDI attracted by Romania last year is close to the peak reached in 2006, with only 36 million less than the value recorded then, 9.060 million. In addition, in 2006, in addition to BCR privatization, foreign direct investment reached 6.900 million, therefore it is justified that 2008 can be considered an exceptional year in attracting foreign direct investment in the Romanian economy.

The structure of FDI in 2008 was as follows:

- Shares in the capital - 2767 (30.7%)
- Reinvested profit: 1756 (19.4%)
- Intra-group credits: 4501 (49.9%).

In 2008 foreign direct investments have financed approximately 53.5% of the current account deficit, compared to 43.5% last year.

In addition, in December 2008, Romania registered an increase of 20.5% of the monthly flow of FDI (593 million), compared with the previous month (EUR 492 million), despite the economic crisis and the experience of previous years which forecast a monthly FDI flow to the lower end of the year.

Payment of fees

Taxes have a major role. Without them there would be no money to provide public services to the community, essential services for the proper functioning of the economy. But, especially for SMEs, they can choose to operate in the informal sector. One way to improve the levy of taxes is to simplify the process of paying taxes for such businesses.

Efficient tax systems tend to have less complex tax regimes. Duties payers in such economies, often get more from taxes. Simplicity of procedures, fast moderate fees, cheap administration, makes the taxes payment less costly for businesses and the collection of more tax revenue and in better conditions by the public administrations. Burdensome tax regimes incentive schemes to circumvent paying taxes.

The worst aspect of the local business environment is the *tax payments*. Here, Romania ranks 146 place in the world, from 181 of savings taken into account.

The situation is caused by bureaucracy and the large number of charges. A Romanian company loses 202 hours per year to complete forms related to payment of taxes, compared to 183 hours as the average OECD member countries.

The trend globally is to introduce electronic forms to facilitate payment of taxes. In this way, companies can send through one-click financial information, without having to interact with civil servants.

Another disadvantage of our tax system is that companies are forced to make an average of 113 payments during a year for paying taxes, holding the world record, according to the World Bank.

Among the best performing countries in this regard is included Sweden, where companies make only 2 payments per year for tax. Also in Norway is necessary only 4 payments, and in Latvia - 7. In OECD countries, the average number of payments is 13 per year, ten times less than in our country.

As regards the *time required for payment of these fees*, Romania is situated approximately at the halfway of the classification (202 hours/year), followed by Greece (224 hours/year), Spain (234 hours/year) Slovenia (260 hours/year), etc.

At the top of the ranking is Luxembourg with only 59 hours/year, and at its end - Bulgaria (616 hours/year) and the Czech Republic (930 hours/year).

All around the middle ranking is Romania as regards *the tax rate* as a percentage of profits (40%). The lowest rate is registered in Luxembourg (21%), and the largest in Italy (73.3%).

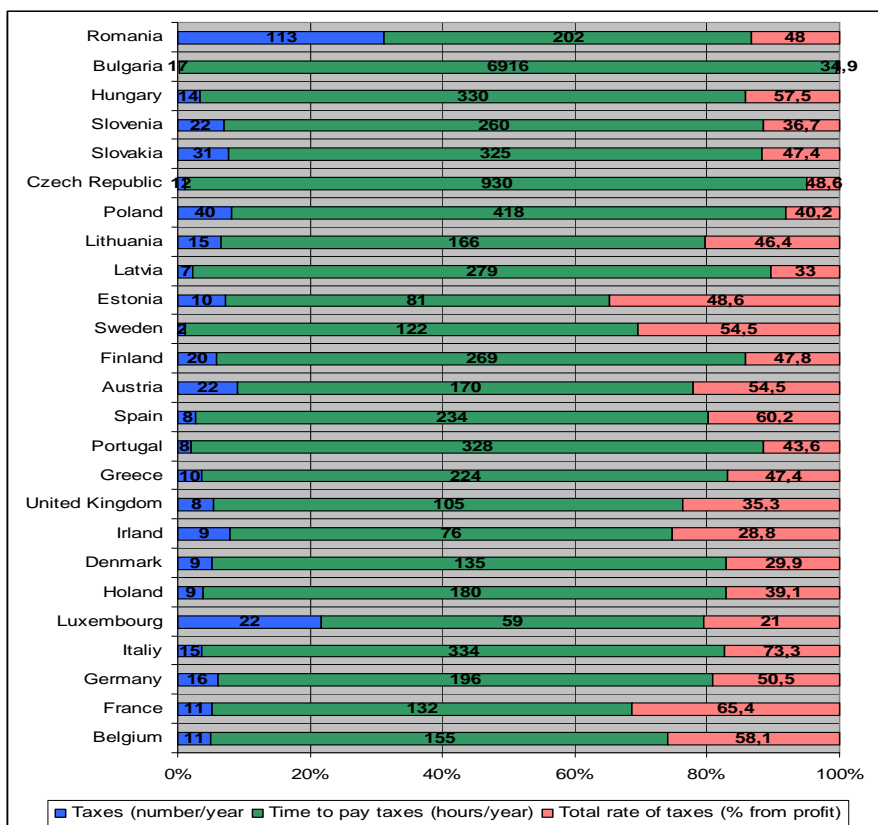
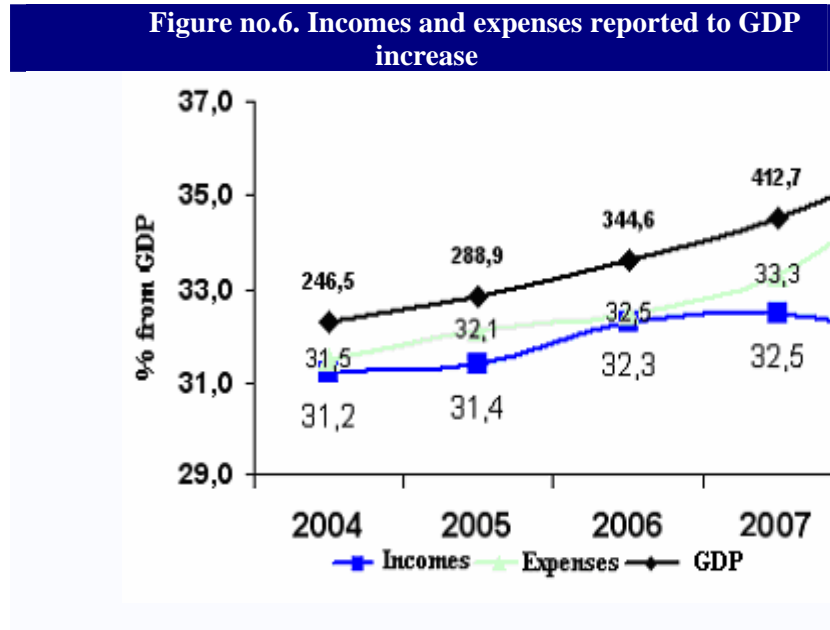


Figure no.5. Paying taxes at the European Union Level

Source: realized by the author based on the dates from the Doing Business Report, 2009

In Romania, despite the economic growth in the recent years, the share of budgetary revenues in GDP stalled around 32% while the share of public spending has increased significantly.



Source: realized by the author based on the dates from National Bank of Romania and the National Institute of Statistics

Economy taxation is weak and there are still activities which take place outside the market, in households or on the black market. High economic growth during 2005-2008 was accompanied by an increase in the activities of unobserved economy and the expansion of tax evasion. The share of unnoticed economy in GDP increased from 14.5% in 2004 to over 21% in 2008. Gross value added in nominal terms in unobserved economy has tripled in the period 2005-2008. The labor on the black market is the most important part of the unnoticed economy. In the first 9 months of 2008 working on the black market represented 50.8% of the unobserved economy. Tax evasion from payment of VAT in 2008 reached almost 24 billion from 7.4 billion in 2004.

Table no.1.**Revenues in the economy - 2008**

Indicators	Value (mil. lei)	% in total	% From GDP
GDP	513.175		
Total incomes, from which din:	58.116	100,0%	11,3
Black labor	29.556	50,9%	5,8
Tax evasion at VAD	23.815	41,0%	4,6
Informal sector	4.745	8,1%	0,9

Source: Calculations based on data CNP INS

The progress of taxation can be record only in a long perspective:

- Potential budgetary revenue from taxation of unnoticed economy is about 11% of GDP (income tax, social security contributions and VAT).
 - The potential revenue according to the unnoticed economy for 2008 would is approximately 58 billion, of which 29 billion from taxation of undeclared work.
- But tax evasion in VAT in 2008 represented about 5% of GDP.

Closing a business

The economic crisis from 90 years `in emerging countries, has generated concerns about the design of bankruptcy systems and their ability to reorganize viable companies and close the non-viable. In countries where bankruptcy is inefficient, unviable businesses "live" for years, retaining assets and human capital reallocation to more productive purposes. Considered indicators identify weaknesses in the bankruptcy law, as the main procedural and administrative bottlenecks in the bankruptcy process.

In many developing countries, bankruptcy is so inefficient that the parties almost don't use it. In such countries, reform would have to be focused on improving contract enforcement outside bankruptcy. If bankruptcy law is not well established, this may be a strong deterrent to investment. If on the contrary it is very well regulated, this may encourage investors. Freedom to fail and to do so through an efficient process makes the people and capital to be used in the most efficient way possible. The result is a more productive business and more jobs.

In Romania, specific legal rules of bankruptcy procedure are found in Law no. 85/2006 on insolvency proceedings, published in Official Gazette no. 359 in

21.04. 2006, and Romania's Government Emergency Ordinance no. 86/2006 on the organization of insolvency practitioners in the work, published in the Official Gazette no. 944 of 22.11.2007.

The procedure involves the liquidation of a meeting of creditors, which is chaired and convened, whenever necessary, by the judiciary, or, as appropriate, by the liquidator, if the law or syndic judge provides otherwise.

Getting a loan

Companies are constantly declaring that access to credit is one of the biggest obstacles to their development and effective functioning.

To achieve ranking in this regard have been taken into account the following indicators:

- legal right to obtain a credit or legal right index - reflects the degree to which the bankruptcy laws or collateral protects the rights of debtors and creditors, and facilitates the loan;

- index of "information depth on credit" - reflects the extent to which an information system facilitate lending of credit, based on the purpose of the information distributed, the ease of access to information and quality information;

- public registry coverage - reports the number of individuals and firms covered by a public credit registry as a percentage of the adult population;

- coverage of public office - reports the number of individuals and firms covered by a private credit bureau as a percentage of the adult population;

The easiest loans are granted in Malaysia, China and South Africa. Bulgaria ranks 6 in the world, and the United States - position 10.

Countries are ranked according to the legal rights of borrowers and banks, the accessibility and quality of information provided by credit. The study shows that improving these aspects lead to increased lending, banks and taking more risks.

In addition, the existence of a credit bureau makes bad rate to decline. Banks customers become more concerned to avoid arrears, as they will be reflected in credit history, what the future will make access to new loans.

Romanian economy position in international rankings

Competitiveness can be quantified though there is no precise theory of rules for determining the economic performance of nations. Are growth rates of production, exports or employment appropriate to existing resources? In what measure local firms are innovative? Workers are sufficiently skilled? Is industrial infrastructure consistent with the needs of the new economy? In which measure the economy takes part to the know-how flows? These questions can be answered through a comparative analysis, in which the term of comparison is the best result achieved (best practice).

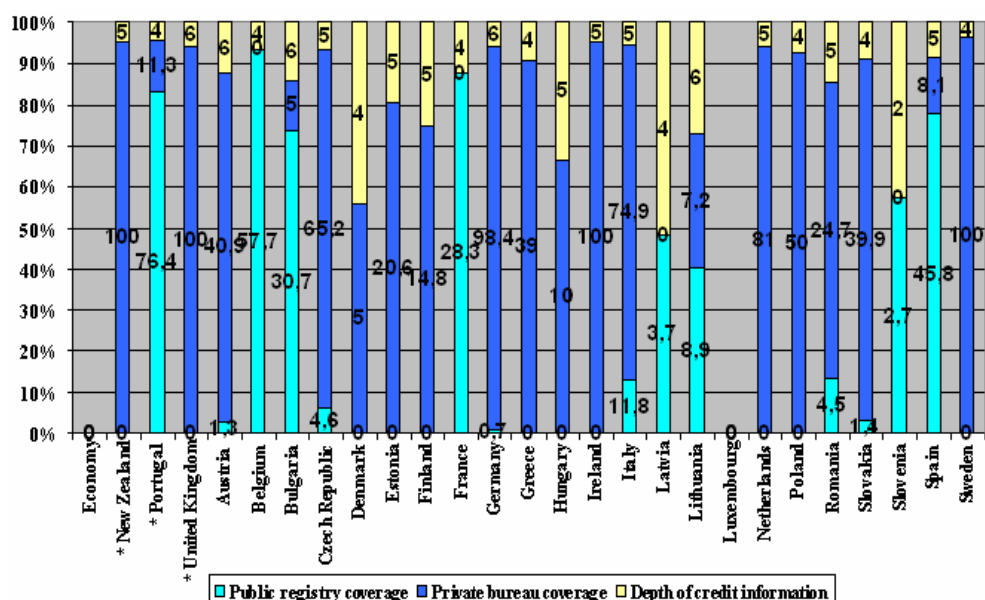


Figure no.7. Getting a credit T the European Union level

Source: realized by the author based on the dates from the Doing Business Report, 2009

There are a variety of indicators used by authorized institutions which have dedicated assessment of competitiveness, such as the International Institute for Management in Switzerland, World Bank, the World Economic Forum, etc. But these indicators differ from one institution to another, whereas many factors taken into account are subjective. However, if we are to compete in the global market, we must take account of these indicators and to take appropriate decisions.

Following we will present only a part of them.

The World Economic Forum in its report on global competitiveness (Global Competitiveness Report), using the index called the Global Competitiveness Index.

Global competitiveness index is a composite of 12 sub-indicators. Some of them are obtained through survey among managers; some are produced by processing of statistical data.

Through this indicator, on international level, the most competitive economies in the world are USA, Switzerland and Denmark. The recent financial crisis in the U.S. and the Denmark entrance into recession raises major problems even for the most competitive economies in the world.

As regards Romania:

- According to the index of global competitiveness, Romania was ranked 68 of 131 countries in a slow growth from the site occupied by a 74 year ago. After the score obtained on a scale from 1 (worst) to 7 (best), Romania recorded 4.1 points, 4.0 points from last year. But Romania remains the EU country penultimate in terms of competitiveness, only outrunning Bulgaria (which was ranked 76).

- For the first time since Romania is in this report (from 2001), the biggest problem for business in Romania is policy instability. A year ago the instability of public of public policies was mentioned only 7 ranks among the obstacles to the business environment. In 2008, the barriers are: the level of taxation (12.8%), the complexity of tax regulations (11.2%), government bureaucracy (10.8%), and inadequate infrastructure (9.7%).

- Romania ranks 76 to macroeconomic stability - rising eight places outrunning Portugal. However, a number of indicators have deteriorated, such as savings rate - the 104 place, down three places, the budget deficit - the 98 place, down 16 places, the rate of inflation - instead of 89, falling 26 places.

- Romania ranks 105 to infrastructure - down five positions, being the last place among countries in the EU. To the chapter of quality of roads, Romania is ranked 126 of 131 countries. How is nevertheless difficult to argue that Romania is ranked after countries as Zimbabwe (88 place) and Burkina Faso (place 104), more relevant comparison is the comparison with other European countries. Germany and France are on the first two places, Hungary on 57, Bulgaria on 95, and Poland on 96.

- Romania is ranked 124 in the transparency of public policies, 113 in favoritism in government decisions, and 111 to waste of public money - which confirms that the way in which policies are made public is the biggest competitive disadvantage of Romania today.

- Romania has made progress in technological indicators, particularly as the number of internet users (instead of 23, rising 28 places) and mobile (place 50), and some progress in private spending on research (instead of 74, up 15 places) and the intensity of local competition (instead of 82, up 4 places).

- Romania has made significant regression in the labor market indicators, especially with regard to wage flexibility policy (instead of 81, down 44 places), redundancy costs (instead of 14, falling 9 seats) and the link between wages and productivity (instead 72, down 13 places).

The level of economic development explains significant and positive the effectiveness of competition systems, but lost as its relevance as countries have experienced greater competition law. In other words, the institutional learning curve supreme long before the GDP per capita. This may explain the ranking of Romanian competition effectiveness after many less developed countries, except Indonesia (first law of competition is in 1999), Jordan (2000), Morocco (2000) or Barbados (2003). Intuitively, it seems reasonable the conclusion that the perceived level of corruption is higher; the effectiveness of competition law implementation is lower. But some tests show otherwise. Interpretation of the two results becomes

interesting. On the one hand, interest groups are those which can support the introduction of competition legislation. On the other hand, effective implementation can be impiedate by other interest groups. A possible explanation is, therefore, the idea that competition law is subordinate to the specific interests of some groups, politicians or firms, and operates as a mechanism to promote real competition in a market. The fact is that the competition is not a remedy against corruption, as sometimes suggested literature, but the legal reform and, in our case, the proper functioning of the National Integrity Agency. The main risk remains that the greatest competition law to be captured by certain interest groups, as opposed to the fundamental principle of defending competition and not competitors.

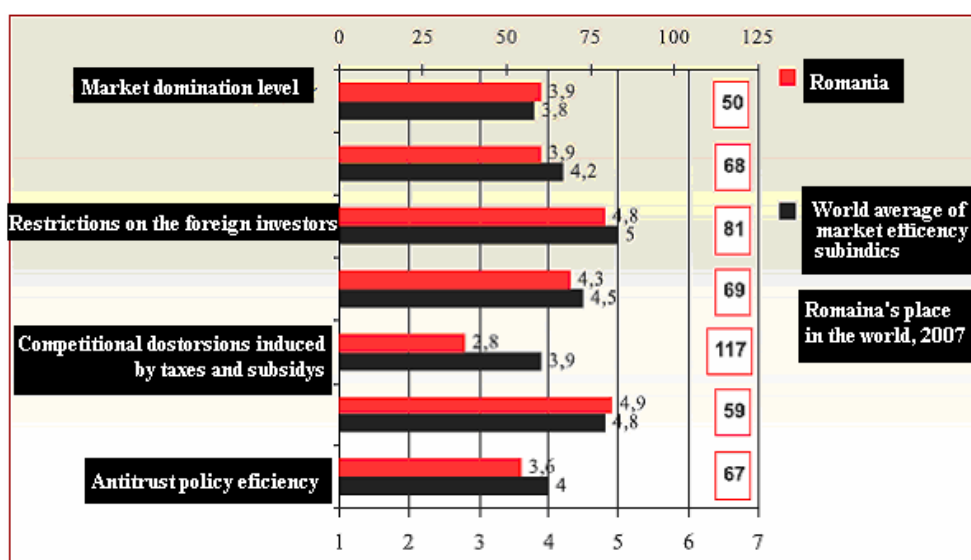


Figure no.8. Romanian relative positioning to the average of market efficiency sub indices, 2007

Source: realized using statistical dates of World Economic Forum: Global Competitiveness Report, 2007.

Heritage Foundation publishes annual report on economic freedom index (essentially, a comparative assessment of the degree of liberalization in all national economies) since 1995.

2009 edition of the publication Economic Freedom Index and evaluate savings from aggregate regional level, throughout the five geographical areas.

At European level, the regional index of economic freedom is 66.3% and Romania ranks 29 (31 in 2007) in all the 41 countries assessed.

Table no.2.

Area	Romania				Europe
	2005	2006	2007	2008	2008
Total medium index	50,8	58,9	61,3	63,2	66,3
Business environment	30,0	74,5	70,9	74,9	76,2
Trade regime	65,4	63,4	74,0	85,8	83,4
Tax policy	80,1	91,7	91,7	87,0	70,2
Budgetary expenses	74,8	74,2	74,9	70,0	47,1
Monetary policy	62,6	66,6	69,7	75,0	77,9
Investments	30,0	50,0	50,0	60,0	64,7
Financial-banking system	50,0	50,0	60,0	50,0	65,1
Property right	30,0	30,0	30,0	35,0	61,3
Corruption	28,0	29,0	30,0	37,0	56,6
Labor force	57,0	59,8	61,4	57,1	60,9

Source: *Economic Freedom Index, 2009.*

Thus, the overall freedom to lead a business (free business environment) is estimated at 74.9 points (above the world average 64.3 points) and is well protected by regulations in Romania. Also, Romania's trade policies are similar to other EU Member States so that free trade of our country is estimated at 85.8 points (as the world average is 73.2 points) and the financial system is in accordance with international standards and has been reinforced by a recent reform and privatizations (assessment for fiscal freedom is 70.2 points, and financial freedom is 50 points, slightly above the world average of 49.1 points).

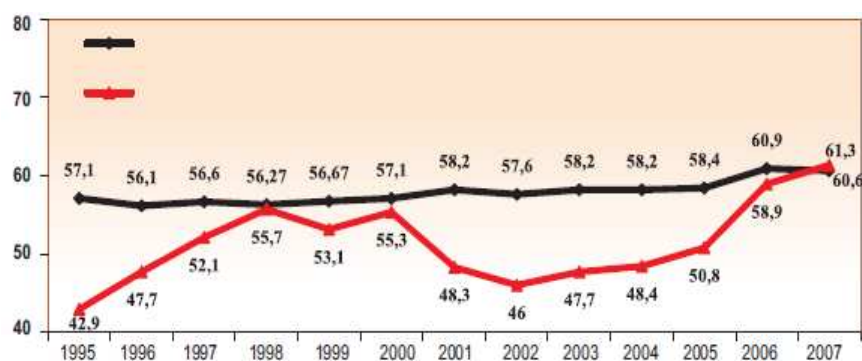


Figure no. 9. The evolution of Economic Freedom Index according to Heritage Foundation forecasting, 1995 - 2007

Source; realized using *Heritage Foundations reports, Index of Economic Freedom, 1995 - 2007.*

Heritage Foundation economic freedom distributed globally on a scale from 1 to 100, the following assessment groups:

- 0-49, 9: economic repression;
- 50-59, 9: economic environment largely restricted;
- 60 - 69.9: moderate economic freedom;
- 70 - 79.9: economic environment largely free;
- 80 - 100: free economic environment.

Comparability in the long term is so vitiated by the increase in the number of countries included in the sample and the inclusion since 2007 of the 10th sub indice work of freedom. During 1995 - 2006 were weighted only 9 sub indices of economic freedom.

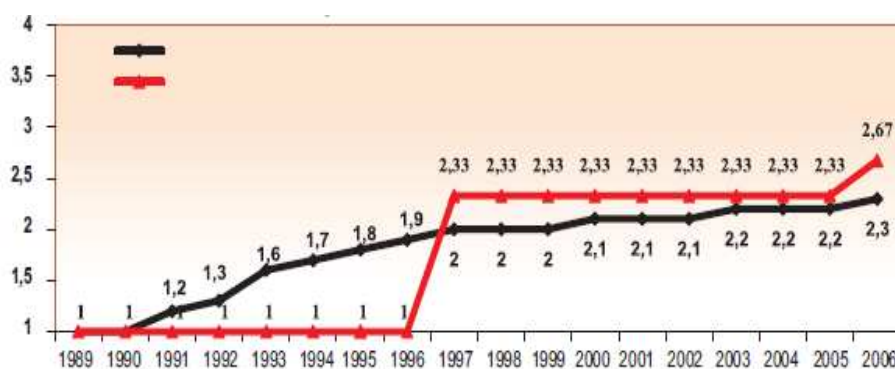


Figure no. 10. The evolution of competition policy index, according to EBRD forecasting 1989 – 2006

Source: realized using EBRD, *Transition Reports*, 1995 - 2007.

In terms of freedom of investment, Romania has a score of 60 points, above the world average of 48.8 points.

Romania stands but not too good with budgetary expenses (47.1 points) and especially to the three chapters on freedom of work (where Romania has a score of 57.1 points below the average of 61.3 points), the enforcement of property and corruption (it is mentioned in particular corruption in justice and administration).

Moreover, in conjunction with analysis of all these last chapters, Heritage Foundation experts stress that the judiciary in Romania remains vulnerable to corruption and inefficiency.

Romanian business environment ranks 47 in the world. Compared with last year, has not advanced any position, but has not decreased, shown in the Doing Business report in 2009, developed by the World Bank. This is not surprising if we consider that the reforms were a little off after EU accession.

Anticrisis measures for the Romanian business environment

In the specialists' opinion, the crisis, which was the beginning of a financial nature, then became one of "liquidity and confidence." Because of the lack of liquidity has increased more system caution and led to a drastic reduction of credit. Hence, a strong reduction of the work and, ultimately, a major reduction in consumption, with all consequences on the entire economic system, and reducing demand, production, closure of economic activity and social instability associated

We grouped these measures into two categories: economic and social measures.

The economic measures include:

- use of state aid to the maximum possible in accordance with the measures taken by the EU to be implemented urgently and in Romania;
- establish road routes for infrastructure works to be carried out in 2009 and which have secured financing and expropriation within 30 days of land for these works;
- cancellation of tax on gains and reinvested dividends;
- immediate pay of the debt that the state has to the business;
- free issue free for a year, of all notices required productive investments;
- support the two state banks - Eximbank and CEC Bank - to play an important role in boosting economic activity;
- also, in conjunction with this measure: establish the counter-guarantee loans to SMEs fund, and the ERC, the funding, not only the counter-guarantee for SMEs.
- WATT payment to be made on receipt of invoices and not the date of issue;
- ensure a reasonable interest rate for mortgage loan application and a system whereby, in the event of payment incapacity, the beneficiary to pay rent for that space, following that the credit payment to resume when the financial position will allow;
- purchase of consumer goods for the state only from Romanian producers;

The social measures include:

- non-taxation of allowances paid by the employer that sent employees on technically unemployed for a cumulative period of three months;
- maintain the 2% social security contributions mandatory funds transferred to the privately managed pension;
- 75% of fees and taxes paid by employers for new jobs to be created to remain one or two years to the local administrations dispositions, in a fund designated exclusively for carrying out works of public interest, required by the business;
- providing once an amount of 1.000-1.500 euros, for the acceptance of a job in an area lacking;
- providing a cash compensation of persons who accept a job at a distance of 300 miles of place of residence and are committed for minimum one year;
- financial support of Euro 1000 after a year of activity;

- exemption from social contributions and income tax for a period of 4 months, employers employing unemployed;
- providing free transport for people in rural areas working in cities located at a distance greater than 20 kilometers from the place of residence;
- organizing training courses in trades in poor rural areas, financed by the state;
- reorganization of vocational education - the arts and trades, for the qualification of workers, the craftsmen and technicians;
- stimulate the involvement of the business environment in the training of pupils and students and their preparation for employment during school studies, university and postgraduate, in order to increase integration in the labor market on completion of studies.

Conclusions

At the current level of development of the Romanian economy, the urgent need for urgent structural reforms tend to need to shadow subtle, but equally important to innovation. While the EU is concerned about social cohesion, for job creation and prioritization of research and development, these measures seem less applicable to Romania, where restructuring (including eliminating jobs), limiting salary expenditure, controlling inflation and improving primary business environment (including the aggregate of payments) are a priority. While integration in the single market without a functioning market economy is not possible, failure to focus sufficient preparation capacity to manage competitive pressures may harm the country's position. On long-term, decisive measures in research-development-innovation (RDI) may be the key to reconciling the two sets of objectives.

Competitiveness is in a large measure a matter of attitude, of mentality.

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THE IMPACT OF THE GLOBAL FINANCIAL CRISIS ON CHINA'S TOURISM

MELINDA PLEȘCAN¹, MARIUS GAVRILETEA²

ABSTRACT. Statistics from the China National Tourism Administration show that China's inbound tourism declined overall in January this year due to the global financial crisis. It is understood that affected by the global economic depression, China's inbound, outbound and domestic travel markets are all in a weak state this year. China's tourism industry experienced a hard time in 2008 due to natural disasters and the global financial crisis. Looking ahead, the structural adjustment will probably show up in market demand of this year, inbound tourism might shrink, while travel agencies focusing on inbound tourism, hotels and scenic spots that mainly depend on inbound tourists will have to reposition the market and to develop new products.

Keywords: financial crisis, China, Travel and Tourism Industry

1. INTRODUCTION

The year 2008 has been a difficult one for the Travel & Tourism (T&T) sector. High oil prices through the summer of 2008, diminished tourism demand due to the international economic crisis, and concerns about terrorism have raised many challenges for the industry. Yet, despite these difficulties, the T&T sector remains a critical one for the world economy, still accounting for a significant share of global gross domestic product and employment, and providing an important opportunity for developing countries to move up the value chain toward the production of higher value-added services.

For the past four years, the World Economic Forum has engaged key industry and thought leaders through its Aviation, Travel & Tourism Industry Partnership Program to carry out an in-depth analysis of the T&T competitiveness of economies around the world. The aim of the Travel & Tourism Competitiveness Index (TTCI), which covers 133 economies in 2009, is to provide a comprehensive strategic tool for measuring “the factors and policies that make it attractive to develop the T&T sector in different countries.”³

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³ The Travel & Tourism Competitiveness Report 2009

2. MATERIAL AND METHODS

The TTCI aims to measure *the factors and policies that make it attractive to develop the T&T sector in different countries*. It is based on three broad categories of variables that facilitate or drive T&T competitiveness. These categories are summarized into the three subindexes of the Index:

- the T&T regulatory framework subindex;
- the T&T business environment and infrastructure subindex;
- the T&T human, cultural, and natural resources subindex.

The data comprise the responses to the World Economic Forum's Executive Opinion Survey conducted in early 2007 and 2008 and range from 1 to 7. The hard data indicators used in the TTCI are normalized to a 1-to-7 scale.

3. RESULTS AND DISCUSSIONS

When discussing the case of Asia Pacific, China, ranked 10th regionally, has seen the largest rank improvement of all countries in 2007-2008, moving up by a remarkable 15 places to 47th overall.

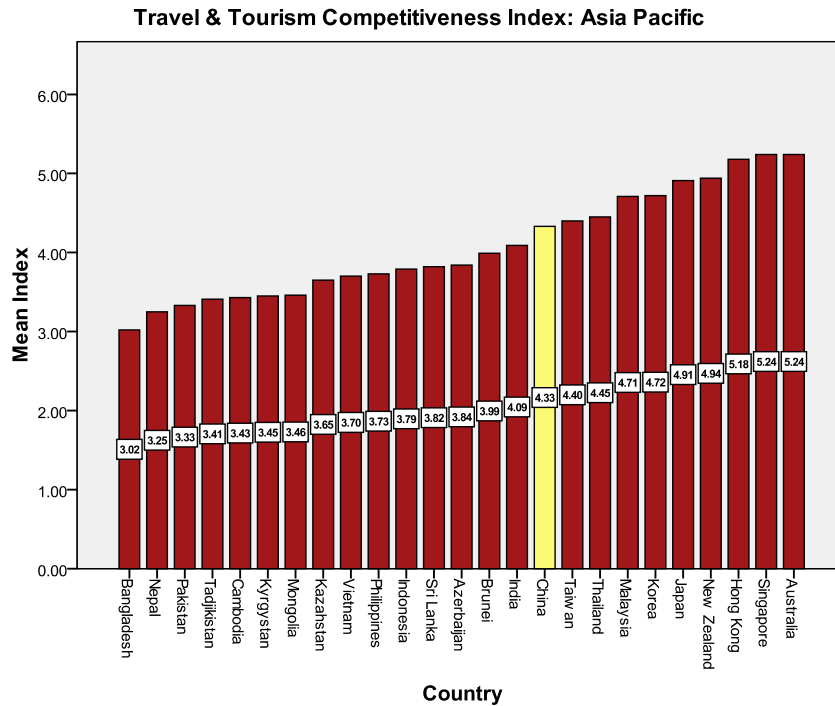


Figure 1. Travel & Tourism Competitiveness Index 2009: Asia Pacific

Source: United Nations World Tourism Organization

THE IMPACT OF THE GLOBAL FINANCIAL CRISIS ON CHINA'S TOURISM

China has been building on a number of clear strengths: it is ranked 7th for its natural resources, with many World Heritage natural sites and fauna that is among the richest in the world. It is ranked 15th for its cultural resources, with many World Heritage cultural sites, many international fairs and exhibitions held in the country, and creative industries that are unsurpassed.

Moreover, the country is ranked 20th in price competitiveness and 28th for the overall prioritization of the sector. In addition, China has a relatively good air transport infrastructure (ranked 34th).

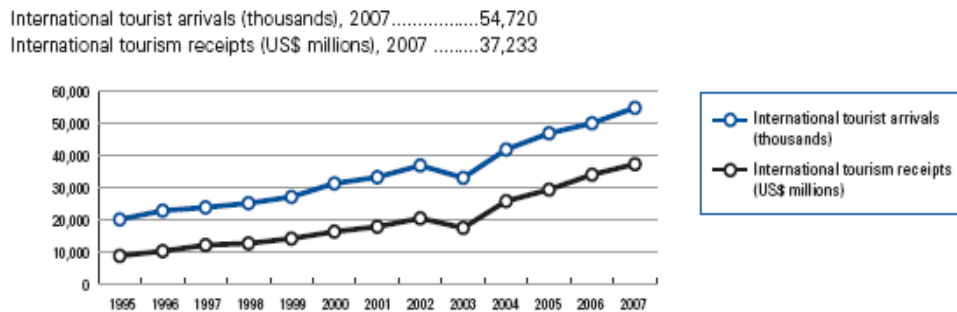


Figure 2. International tourist arrivals in China, 2007

Source: United Nations World Tourism Organization

However, there are some weaknesses pulling the country's ranking down. China has a policy environment that is not conducive for T&T development (ranked 87th), with strong foreign ownership restrictions and visa requirements for most visitors. Furthermore, policies related to environmental sustainability get low marks (105th).

There are also some safety and security concerns (116th) as well as issues related to health and hygiene (91st). These are done with access to improved sanitation and drinking water that is low by international standards. Ground transport infrastructure gets middling marks (55th), and its tourism infrastructure remains underdeveloped (ranked 80th), with few hotel rooms available and few ATMs, although on a positive note tourism infrastructure has seen a marked improvement since last year.

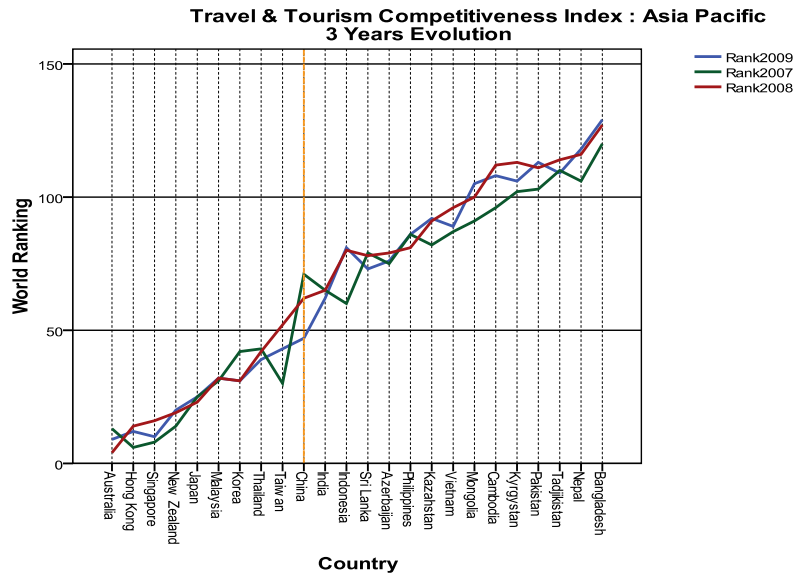


Figure 3. Travel & Tourism Competitiveness Index: Asia Pacific – 3 years evolution

Source: United Nations World Tourism Organization

Since the beginning of 2008, more than 25 airlines have stopped or suspended operations. In late 2008, China Southern Airlines and China Eastern Airlines began to ground aircraft and cut flights because of concerns that the slumping domestic air travel market would not recover quickly⁴

At the end of November 2008 representatives from the hospitality industry and Cornell faculty members met to discuss the trends of the lodging industry in 2009 and agreed of the following:

- Hotel prices will decline by over 25 percent in the short term as a result of the increased cost of debt capital and slower industry growth.
- Owners and operators will likely increase their cooperation in order to get through what everyone knows will be a very difficult period⁵

⁴ Air Transport World Online, <http://www.atwonline.com>

⁵ Cornell partners with National Restaurant Association, Florida Restaurant & Lodging Association on Dean's Leadership Series, <http://www.hospitalitynet.org/index.html>

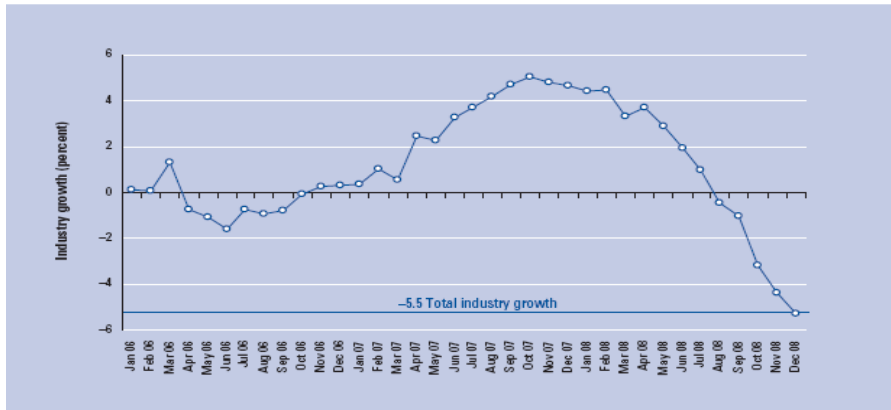


Figure 4. Monthly airline industry growth, 2006-2008

Source: Gonzalez, 2008

4. CONSLUSIONS

Statistics from the China National Tourism Administration show that China's inbound tourism declined overall in January this year due to the global financial crisis.

According to CNTA's data, in January 2009, China received 10.3319 million inbound tourists, which was a decrease of 4.42% compared with the same period of 2008. Of these 3.9244 million were tourists who stayed overnight in China, down 10.82% over the same period of last year. In addition, the countries inbound tourism income declined by 18.99% and dropped to USD 2,769 billion.

It is understood that affected by the global economic depression, China's inbound, outbound and domestic travel markets are all in a weak state this year.

The China National Tourism Administration (CNTA) has announced a number of measures to revive the confidence of the domestic tourism market and develop the tourism economy.

Data published by the CNTA indicates that in 2008 the number of inbound tourists in China decreased markedly. From January to September, the number of inbound tourists in China decreased by 3.53% year-on-years.

As a result of the increasing influence of the global financial crisis and taking advantage of its ability to extend its network through its membership of Star Alliance Air China, one of the largest airline companies in China, plans to reduce its investment on international routes.

In the second half of 2008, Jiangsu (a province located along the East coast of the country) has seen 15 hotel projects, with a planned investment of more than CNY4 billion, either cancelled or postponed.

CNTA will promote a series of major tourism construction projects and will offer more support to Tibet and Qinghai (a province located in the center of the country) for construction of their tourism infrastructure. Some areas including Guangdong (a province on the Southern coast of China) and Zhejiang (an Eastern coastal province) are to promote national tourism and leisure plans to encourage the development of the domestic tourism sector.

The administration will further implement the global tourism promotion of the 2010 Shanghai World Expo, and will enhance promotion in major overseas source markets — taking the short-haul markets as a priority and focusing on keeping the traditional markets in Europe and America.

In 2009, travel agencies should make certain adjustments to their products, which mean they should focus more on domestic tourism and short distance tour products. The rapid development of independent travel will bring more business volume and more market space. CNTA is to refund CNY1.8 billion in travel quality deposits to travel agencies around China to help them increase their current operating capital.

China's tourism industry experienced a hard time in 2008 due to natural disasters and the global financial crisis. Looking ahead, the structural adjustment will probably show up in market demand of this year, inbound tourism might shrink, while travel agencies focusing on inbound tourism, hotels and scenic spots that mainly depend on inbound tourists will have to reposition the market and to develop new products.

The China Tourism Academy concluded that 2007 was the developing year for China's tourism market, after the decline of 2008 and an adjustment in 2009, the industry will make great progress in 2010. Influencing factors of 2009 will be less than 2008. The current downturn is an opportunity for China's tourism industry to make the necessary adjustments to take advantage of the upturn. Currently the industry is still in its traditional development model; if new models don't come out this year, it will be a poor prospect for 2009.

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