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JURIDICAL TOOLS OF GOVERNMENTAL NATURE USED TO MITIGATE VARIOUS DIFFICULTIES OF THE FINANCIAL AND BUDGETARY SYSTEM

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Abstract

The lack of supervision and thorough regulation of the financial system, by virtue of the exercise of the principle of laissez-faire, is likely to lead to imbalances with destructive consequences on the standard of living and savings of the population. The global crisis which started in 2007 is the most illustrative example in this regard. This has highlighted the inability of the regulatory and supervisory institutions to adapt to the realities of the market. As a result, nowadays authorities are still concerned with restoring the balance between the freedom of the markets, firms and financial products and their appropriate regulation. The anticipated result: the installation of the sustainable growth. This requires the existence of a more transparent financial system, with severe rules in accounting/accounting reporting of assets and a mechanism for ensuring the integrity of the financial markets. We must assert that lately there has been a certain intensification of the intervention of the executive authority/government by juridical means (government ordinances and decisions) in the economic and business system, due, as we will show, to the deterioration of the financial problems. Therefore, in this paper we seek to emphasize the specific manner in which the national executive authority was involved in the direction shown. Obviously, we address the topic from the perspective of the economic and financial legislation, also considering the budgetary aspects and, to some extent, certain elements of impact. To this end, we used the most recent law and economic/financial bibliography, reports issued by prestigious specialized institutions and also the substantiation notes drafted by the governmental factors when adopting normative acts of the type described above, as the issue in question concerned us over the last five years.

Keywords: financial/fiscal laws; budgetary resources; economic and financial crisis; national legislation; governmental acts; European Union; macro-stabilization; the "bridge bank" enactment

JEL classification: E63, O23

1. SOME CONSIDERATIONS ON THE INTERVENTION OF THE STATE IN THE ECONOMY

For a long time it was considered that the evolution of the economy and of the businesses is much more favourable and healthy when the state authority is not involved. Adam Smith (1904), whose name is linked to the principle of laissez-faire in economics,

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argued that since the markets operate freely and promote competition, private and individual actions, motivated by selfish interests together, they contribute to the welfare of the society. In this context, the interference of the state is minimal (Maşca *et al*., 2011), the only role it plays is in establishing the fundamental rules which allow the unhindered action of the firms. Obviously, over the time, the economies of several countries have experienced periods of prosperity, promoting the pure liberalism and non-intervention of the state. We point out that once the recessionary phenomena emerged, especially the lasting ones, it was felt the need to harmonize the private interests with the public interest, involving the state authority, affirming that the financial policies (fiscal and monetary) „must necessarily be oriented towards ensuring the long-term stability of social and economic systems" (Oprea *et al*., 2013). The topic in question has generated numerous theoretical controversies (Adsera and Boix, 2002; Popescu, 2000; Spengler, 1949; Wolfram, 2008; Chandan, 2009; Smith, 1904), but simplifying, we bring the discussion to a pragmatic level in the context of the last crisis. On this occasion, we note that the phenomenon of the state involvement was highly visible. Thus, "the US and European countries achieved by guaranteeing loans or securities issued by the banks, to recapitalize the financial institutions, to buy shares in banks facing difficulties and to coordinately reduce the interest rates, all in order to prevent the chaotic collapse of the large interconnected companies and improve the liquidity within the system (...). These measures affected the level of the expenditures of the state budget, increasing the share from the domestic production redistributed through the budget" (Isărescu, 2009). In the case of the EU Member States, the problem of the intervention of the state is associated with the interference of a supranational authority (Maşca *et al*., 2011). So, since in the European area, the European Union acts as a supranational authority which by its requirements can influence the budgetary policy implemented by the Member States, the policy of each of the states concerning the extent to which it intervenes in the economic and social life or the size of the public budget cannot be conducted independently by the regional policy. What we want to state is that our approach takes into account only the intervention of the state during the stage that followed the onset of the last crisis, referring to the regulation activity, by means of legal instruments such as ordinances and decisions which targeted directly to solve the problems in the financial - budgetary system. So, next, we stop over the involvement of the Executive in the elaboration of rules, as far as the European legal framework allows it, and not over the discussion about other hypotheses and means of the state intervention in the economy. We mention that an approach of this particular kind (legal and economic, with extensive reference to both theory and legislation, but also to actual economic data) has not been encountered in the specialty literature, yet we noted the existence of several papers - scientific articles, mostly - which deal with the issue either exclusively from the legal perspective (Tec, 2011; Nedelea, 2009; Ninof, 2009) or only from the economic perspective (Marinaş, 2010; Popa, 2013; Totir and Dragotă, 2011; Munteanu, 2009; Burghelea, 2011; Bal, 2009; Croitoru, 2011, 2014). Also in Europe, most authors treat things from the perspective of economics (Kumm, 2013; Almunia, 2012; Poladian, 2013; Jackson, 2009; Watt, 2008; Braşoveanu and Obreja, 2011; Gust and Voiculeţ, 2013; Gust, 2011; Diacon *et al*., 2013), as well as at the international level (Caporin *et al*., 2013; Lindhout and van den Broek, 2014; Mossoux, 2010; Popa, 2013; Trifu, 2010; Soros, 2008; Longstaff *et al*., 2011; Lazaroiu, 2009; Marinescu *et al*., 2009; Krugman, 2009; Minsk, 2008; Lane, 2010, 2012; Blundell-Wignall *et al*., 2008; Boyer, 2008). It can not be overlooked the fact that this strong crisis affecting the Union and, in particular, the Euro area, represents the biggest challenge for the European integration process, from the creation of EU to the present. To overcome the current economic difficulties, EU representatives must establish their priorities and according to them, adopt the decisions necessary to solve the identified problems affecting over 500 million European citizens.

2. CONDUCTING THE GOVERNMENTAL REGULATORY ACTIVITY

The Romanian Government adopts two types of acts: decisions and ordinances. Article 115 of the Fundamental Law stipulates, by virtue of what we call “legislative delegation” that the Parliament has the authority to adopt a special law enabling the Government to issue ordinances in fields outside the object of the organic laws (The Constitution of Romania, 2003). The authorization law will necessarily establish the field and the date by which ordinances can be issued. The government is able to adopt emergency ordinances only in exceptional cases, when the regulation can not be further postponed, being under the duty of justifying the urgency of the act. These can not be adopted in the field of the constitutional laws, or affect the status of the fundamental institutions of the state, the rights, freedoms and duties stipulated by the Constitution, the electoral rights, and can not introduce measures of forced transfer of assets to public property. As regards to government decisions, they are issued to support the application of the laws (Law no. 90, 2001). Currently, the members of the Government may propose draft decisions and ordinances; they can also present bills to the Government, to exercise its right of legislative initiative. The government adopts decisions and ordinances in the presence of a majority of its members, by consensus, signed by the Prime Minister and countersigned by the Ministers who are bound to implement them. In this paper we focus especially on one important aspect of the mentioned assembly, addressing the economic and financial content of the particular legislative instruments which introduce and justify the fore-cited legislative acts. Obviously, our micro-analyzes consider just a few such Ordinances and Government Decisions (GO/ GD), substantiated and issued during the recent years - on the anti-crisis issue, which we hope are illustrating when it comes to addressing this particular branch of the Law (Drosu-Şaguna and Tofan, 2010; Drosu-Şaguna and Şova, 2012; Roş, 2010; Bostan, 2008; Costea, 2013) – the Financial and budgetary law. As jurists know - and, we believe, not only them – the explanatory memorandum (EM), the substantiation note (SN) and the approval report (AR) represent instruments of presentation and justification, developed to assess the impact of draft legislation on social and economic fields and on the environment, on the general consolidated budget, as well as to ensure legislative consistency (GD no. 1361, 2006). These are mandatory for both the bills proposed by the Government, for the draft ordinances and emergency ordinances (EGO), as well as for the draft decisions of the Government which have an impact on the specified areas. Their standard structure grants them logic and facilitates the deployment of the phases and legislative steps downstream. Mentioning just a few, more representative items we show that, for example, after Section 1 – “The title of the draft normative act” should follow Section 2 - "The purpose for issuing the normative act". That section refers to “The description of the current situation” and “The expected outcomes”. Therefore, mentions should be made of: (a) the envisaged field, indicating the problems to be solved through the draft legislation; for the issues related to the main macroeconomic and socioeconomic indicators, a description of the business environment will be compiled; b) the effecting normative acts and the insufficiently regulated fields; c) the conclusions of studies, analyses etc. For the emergency ordinances, the objective elements of the extraordinary situation are distinctively presented, the regulation of which can not be postponed, and the consequences in case of failure to adopt the draft normative act urgently. If the presentation and justification instrument is attached to the normative act drafted in accordance with Law no. 590/2003 regarding treaties (Law no. 590, 2003), the current section must contain the information referred to in article 23 of the above-mentioned law. When it comes to “The expected outcomes”, a brief overview of the purpose and content of the draft normative act is required, followed by references to the complete or partial resolution of the identified problems. Section 3, “The social and economic impact of the draft normative act” refers to the macroeconomic impact on the businesses, social sector and environment. At this point, if the macroeconomic impact takes into account elements such as those related to the influences on the volume of the output of goods and services, the level of prices, the imports and exports, the employment rate and the competitive environment, the impact on the business environment requires mentions of the expected direct/indirect benefits, the simplified administrative procedures and direct/indirect costs of the economic operators. Another section (the 4th: “The financial impact on the general consolidated budget”, both on short term as well as over the next 5 years) includes the amendments of the budget revenues and budget expenditure, plus/minus. Based on all of these, as they appear highlighted in the official documents of the Romanian Executive, we try to reveal the manner of substantiation of various GO/ EGO/ GD issued during the recent years, targeting the “anti-crisis” area and having special impact on the subject of our observations, published - in a first phase - in the economic media or in other works (Bostan, 2014). As it (hopefully) will be noticed, that specific manner deeply reflects the economic and financial issues related to the crisis, brought before the Government to be solved, who then came up with certain more or less balanced/effective settlements.

3. JURIDICAL INSTRUMENTS OF THE NATURE OF GOVERNMENT ORDINANCES AND DECISIONS TARGETING THE PUNCTUAL SOLVING OF CERTAIN PROBLEMS IN THE CONTEXT OF THE FINANCIAL CRISIS

Next, our approach takes into account the intervention of the Romanian executive authority during the stage that followed the onset of the last crisis, referring to the regulatory activity by way of juridical instruments such as Government Ordinances and Decisions aiming to solve punctually the problems occurring within the financial and budgetary system, such as:

- Overcoming certain difficulties in the context of “tranche no. 5” from the EC and the need to avoid reputational risk;
- The need to supplement some normative acts on credit institutions (the “bridge bank” enactment);
- Reducing the budget expenditure by restricting the purchases of cars in the public sector;
- The Insolvency of the administrative-territorial units;
- The reorganization of the National Agency for Fiscal Administration (NAFA);
- Adjusting tax accessories;
- A more efficient compensation of the obligations of the State with those of various budget creditors.

3.1. Overcoming certain difficulties in the context of “tranche no. 5” from the EC and the need to avoid reputational risk

The opportunity to sign a new stand-by financing agreement, as well as the need to send a positive message to foreign investors, financial markets and institutions asks - from the Executive – for a series of practical provisions. During the IMF / European Commission (EC) / World Bank (2011) joint mission, even undergoing the effects of the crisis, the fulfilment of the specific conditions attached to the fifth tranche of the loan (EU) was revealed. Its value was 0.15 billion Euros, intended to finance the budget deficit and public debt. The amount seemed modest, but it followed a series of four previous tranches with higher values: (1) 1.5 billion Euros, accessed on July 27th, 2009 at an interest rate of 3.125%; (2) 1 billion Euros, March 11th, 2010, 3.375% interest; (3) 1.15 billion Euros, September 22nd, 2010, 2.375% interest and (4) 1.2 billion Euros, March 24th, 2011, 3.25% interest (SN-GEO no. 5, 2011). The actual access to “the 5th tranche” by the MPF remained impossible without the adoption of Public Debt Management Strategy for 2011-2013 and of the Law on the independence of the regulatory authorities in the financial non-banking sector (Law no. 289, 2010). Just as important was the amendment of GO 39/1996 on the regulation of the Deposit Guarantee Fund in the banking system as well as the introduction of certain legislative amendments which clarified aspects in the line of compensating/refunding the creditors of the banks placed under special supervision. All this were observed by referring them to the recently amended legislation concerning the dissolvent of the credit institutions facing financial difficulties, related primarily to GEO no. 131 of December 28th, 2010 amending and supplementing the GEO no. 39/1996 on the setting up and the operation of the Deposit Guarantee Fund in the banking system (GR, 2010). In such circumstances, the opportunity (actually, it was mandatory) to see the state of things in terms of specific economic policy criteria could not have been missed. These are reduced to a series of actions implemented through measures of fiscal consolidation and structural reforms. The findings, based on the budgetary execution, prefigured the fall (“if major adverse events will not occur”) in a budget deficit of 4.4% of GDP in cash terms (below 5% of GDP in ESA terms) and provided an appropriate framework for the achievement of the consolidated budget deficit target (2012) of below 3% of GDP (ESA). Then, nor with regard to maintaining the public sector wage expenditure, in 2011, up to 39 billion Lei (without the social insurance contribution SIC of the military, of 1.6 billion Lei, according to new Law on pensions) there were no premises to exceed the target parameters. At the same time, the conditions attached to the release of the 5th tranche, approved by the 3rd addendum to the Memorandum of Understanding signed with the EU, remained tied to the: approval of the co-payment system in the healthcare sector, the issue of the local authorities arrears and restructuring plans of the state companies. The completion of the second phase of the functional review of the public administration and the adoption of certain measures to increase the absorption of the structural funds required an equally high priority. Also, the government had to keep in view avoiding the recurrence of arrears in the healthcare sector and the transmission of a multi-annual performance agreement between the Ministry of Transport and the implementing agencies, consistent with the fiscal strategy. As a result, by a single article (GEO no. 43, 2011), the Supplementary Memorandum of Understanding (the 4th addendum to the Memorandum of Understanding) between the European Union and Romania signed in Brussels on April 8th, 2011 and in Bucharest on April 1st, 2011 was ratified, in addition to the Memorandum of Understanding between the

European Community and Romania, signed in Bucharest and in Brussels on June 23rd, 2009. Concerning the decision of privatizing the management of the state companies, which appeared necessary in the context of the relationship with the IMF, we must recall that in March 2011 the Romanian authorities decided to extend the agreement with the Fund through a stand-by precautionary agreement worth approx. 3.5 billion Euros, respectively 300% of the Romanian share in the Fund. At that time, the IMF has provided us a first tranche of 67 million Euros. The new agreement with the Fund was accompanied by a 1.4 billion Euros precautionary support from the European Union and a 400 million Euros loan from the World Bank (IMF, 2011).

3.2. The "bridge-bank" enactment

After receiving favourable opinions from three ministers (Finance, European Affairs and Justice) and with the endorsement of the governor of the National Bank of Romania, a set of mandatory rules for an extremely important sector of the economy - the credit institutions - was introduced by Government Emergency Ordinance (GEO no. 1, 2012). In fact, it was intended the amendment and supplement of several normative acts concerning banking, the goal being represented by the achievement of financial stability. We emphasize that the obligation to amend the institutional framework has been assumed in the context of a Stand-by Agreement with the IMF (The Letter of Intent dated September 14th, 2011). Referring to the legislation of the Deposit Guarantee Fund in the banking system (DGFBS), this is where the abilities to set up the bridge-bank were to be comprised, as an instrument in the control of the supervisory authority. The *bridge-bank* instrument consists in the set up of a temporary credit institution, in the purpose of taking over the assets and liabilities of a credit institution which is subject to stabilization measures to ensure the continuity of the banking services and the premises of the sale of the bridge-bank (or its assets and liabilities) to an eligible private investor. This is how the access of the depositors to the banking services is ensured, further generating the cash flow for the business environment. At the same time, it prevents the emergence of the withdrawal of the deposits (SN-GO no. 1, 2012). Obviously, the bridge-bank also needs to be authorized by the NBR, which also provides the supervision activity. In this context it is necessary to distinguish between the procedure of special administration of the banks and the procedure of the implementation of the measures to stabilize the banks facing difficulties. After the German model (and also the British one) the DGFBS appears as sole shareholder, in terms of financing the setting up and operation of the bridge-bank, financing the transfer of assets and liabilities from the bank that is subject to bank stabilization measures to the bridge-bank, and also as a delegated administrator or shareholder of a credit institution, with the purpose to implement measures to stabilize the banks. In fact, the administration of the bridge-bank is regulated to be organized in a dualistic system, the NBR appointing the members of the Directorate and the DGFBS receiving the responsibilities of the supervisory board. This type of bank is exempt from the initial contribution to the DGFBS, respectively from paying the annual contributions to the Bank Restructuring Fund if the authorization was issued after the payment of the annual contribution by the credit institution whose assets and liabilities are transferred (similar to credit institutions undergoing merger processes). From a fiscal perspective, since the DGFBS does not perform acts of commerce and is not - according to the Tax Code - registered for VAT, the sale of the bridge-bank and the sale of the shares held by the Fund will be exempt from VAT. In terms of financial-banking law, the adoption of the measure consisting in the transfer of assets and liabilities to the bridge-bank, by decision of

NBR, involves the subrogation by the bridge-bank of all the rights and obligations deriving from the contractual relations associated with the assets and liabilities taken over and the continuous delivery of banking services related to the assets and liabilities until the sale of the bridge-bank to a third party, providing the prerogatives to maintain the confidence of the market in the measure of stabilization. The operational time frame of the bridge-bank may be longer or shorter, as the threat to the financial stability persists or not. Some extensions may be due to the non-completion of the negotiations with the potential buyer of the bridge-bank or be related to the completion of the allocation of the sale proceeds (prior being the repayment of the governmental loans). In any case, at the moment of the transfer of assets and liabilities to the bridge-bank, the authorization of the bank whose assets and liabilities had been transferred ceases its validity and the procedure of administrative dissolution (not bankruptcy) of the residual credit institution starts its course. The succession of operations specific to the administrative dissolution procedure requires the liquidator, under NBR monitoring, to provide the infrastructure and the staff of the residual credit institution in order to ensure the provision of banking services by the bridge-bank.

3.3. Restricting the purchases of cars in the public sector

The lack of any legal impediment - regarding the acquisition of the vehicles by institutions – referring to engine capacity or price, led over the time to auto parks extremely diversified, including both domestic and foreign cars, with 3000 cc engines or even bigger, automatic gearboxes etc. It all depended on the generosity of the budgetary resources and their managers during certain financial years. The norms regarding the costs for the public authorities and state institutions - strictly in this matter - have not been included on any agenda, in order to be revised, for nearly 14 years, more accurately, since September 2001, when the GO no. 80 (2001) (on the establishment of normative expenditures for public authorities and public institutions) was adopted. Not even the lessons received during the years following the present crisis have not seemed to impel to cutting measures in this regard. However, following the negotiations with the IMF and the European Union, a draft emergency ordinance has come to be placed on the agenda of the Romanian Executive (SN-GEO no. 68, 2012) meant to put things right. Obviously, the purpose of introducing certain limitations was to reduce, in the end, the budgetary expenditure in consolidated vision. The GEO concerned (GEO no. 68, 2012) significantly complements Article 5 of the GEO no. 80 (2001) on the establishment of normative expenditures for public authorities and public institutions, approved with amendments by Law no. 247 (2002). First of all, the new GEO firmly regulated not only the aspects concerning the cubic capacity of the engine, but also the “price” aspects. Namely, “it prohibits public authorities and institutions, irrespective of the funding and subordination to purchase cars with engine capacities exceeding 1600 cm^3; also, the price can not exceed the equivalent in Lei of the amount 18 000 Euro - VAT included. Subsequently, it clearly establishes that the restriction does not apply only to public authorities and public institutions, but, normally, also to national companies/ associations, state-owned or partially state-owned companies and autonomous administrations. However, the provisions shown do not apply to the institutions of defense, public order and national security. They can purchase vehicles with engine capacity exceeding 1 600 cm^3 and costing more than 18 000 Euro. The condition for these purchases is, as one can guess/observe, one not very difficult to achieve, namely, to provide sufficient grounds to justify such purchases.

3.4. The insolvency of the administrative-territorial units (and a question of constitutionality)

At the time of the elaboration of the text of the GEO on the financial crisis and the administrative-territorial insolvency (GEO no. 46, 2013), the Government certainly took into account several economic reasons, all equally important. The target was, in particular, to avoid the increase of the arrears recorded by the administrative-territorial units (ATU) and, consequently, to mitigate the danger of the termination of the Stand-By Agreement with the IMF. Then another objective was to avoid the blockage in the activity of the suppliers of goods, services and works which were due to receive from the ATU different sums of money representing arrears. The fact was that the procedure concerning the financial crisis and the insolvency, as foreshadowed in the draft phase of the GEO, seemed to enable the local authorities to improve the economic and financial situation of ATU, in order to ensure the provision of essential services to citizens. Also, by implementing it, the municipalities would be able to fulfil the payment obligations to employees, dealers and suppliers, and also to promote the financial and accounting procedures, the budgetary practices and the taxation practices necessary for the recovery. The cited text states that the mayor is forced to request the insolvency of the local administration which he leads if the unpaid debts pending for more than 120 days exceed half of the annual budget. On the other hand, the appointed administrator can decide inclusively to sale real properties belonging to the local administration.

A question of constitutionality

We only have to see to what extent the adoption of such a normative act does not induce questionable issues. Without insisting on whether or not the local autonomy is violated (in case of the insolvency, the receiver takes over the activities affecting the financial situation and/or assets of the specialized apparatus of the mayor or county council/CC and temporarily exercises the powers conferred by law to the mayor or to the president of the CC, in his name and on his behalf, under the powers established by the syndic judge), we bring into discussion the issue of constitutionality. Although the co-initiators, the Ministry of Public Finance (MPF) and the Ministry of Regional Development and Public Administration (MRDPA), claim in the substantiation note accompanying the GEO (SN-GEO no. 46, 2013) that they have been consulted and have the approval of the representatives of the Court of Accounts, of the Superior Council of Magistracy, of the Ministry of Justice, of the Romanian Academic Society etc., in reality, things were rather different. That's because it was left aside the fact that during the drafting stage of the text, the adoption of a law on the subject was considered (and not a GEO). Or this might just be the weak point which undermined the ATU insolvency regulation in this manner. We consider only the fact that by this GEO attempts to modify an organic law were made, as in the case of the organization and operation of the Court of Accounts - LOOCC (Law no. 94, 1992). That amendment refers to the mandatory stipulation of the approval by the County Chambers of Accounts of the Financial Recovery Plan of the ATU which declared the state of financial crisis. In this sense, this is what stipulated Article 5 (3) “Within 30 days of the adoption of the decision to declare the state of financial crisis, the main credit coordinator, together with other members of the financial crisis Committee prepare a Financial Recovery Plan of the administrative-territorial unit, with the approval of the local Chamber of Accounts”. In fact, this assignment of the Court of Accounts was mentioned also in Article

39, Article 90 and Article 123. As a matter of fact, the latter article brought serious changes to the Law no. 273 (2006) on local public finance. Over the time, in the regulation process of the activity of the Court of Accounts, attempts to alter the applicable institutional framework by normative acts adopted by the Government have been made. In this case, we mention a series of GEO whose provisions – somewhat unconstitutional – aimed various articles from the LOOCC. The final rejection of such normative acts occurred either in the Legislative forum, where they were not adopted, either by declaring them unconstitutional by the Constitutional Court. Mainly, it was considered the legal nature of the Court of Accounts - a "fundamental institution of the state" and the fact that by GEO the legal status might have been affected. And this obviously contradicted Article 73 paragraph (3) letter l) of the Constitution, according to which the organization and operation of the Court of Accounts shall be regulated by an organic law. Therefore, any task given to this particular institution, such as the approval of the Financial Recovery Plan of ATU could only be regulated by an act adopted by the parliament, and not by GEO.

3.5. The restructuring of the National Agency for Fiscal Administration (NAFA)

After operating in a relatively stable structural formula (since 2002), through the recent adoption and implementation of several normative acts, the National Agency for Fiscal Administration (NAFA) has undergone a radical restructuration. It was considered that bringing together several institutions of the Ministry of Finance (MF), with competences in managing the budgetary revenues or in monitoring (the Customs National Authority, the Financial Guard, etc.), led, over the time, to a cumbersome structure, seen even by the Government as being scared by "tares and inefficiency" (SN-GEO no. 74, 2013). In fact, the NAFA restructuring was announced in the Memorandum on "Multi-annual Modernization of Tax Administration Program", adopted by the Government on April 18th, 2012, and was a precondition for the implementation of the "Project: Modernization of Tax Administration". For this project a loan agreement with the World Bank with a value of 70 million Euros was signed on May 8th, 2013. Arguing the intention "to eliminate the dysfunctions, to strengthen the fiscal system and to use the available resources to the maximum and in terms of efficiency", the Government indicated several weaknesses detected in the activity of NAFA. They revolve around the low level of voluntary compliance and the high cost of administration. These costs are related to the existence of "a large number of tax bodies, all counties being treated similarly, disregarding the size or importance of each in terms of economic weight, number of taxpayers etc". To these are added, according to the same SN, the "inefficient distribution of staff between the different activities of the tax administration and between different units at the local level, disregarding, from one county to another, the proportion between of the staff number and the number of taxpayers or the amount of administered revenues". As the situation showed, we can conclude that the setting up of the regional level and the further decrease of the number of operational units at the local level is designed to solve many of the existing difficulties. Moreover, the solution was presented to the International Monetary Fund in the Additional Letter of Intent of June 8th, 2012 (GR, 2012). Certainly, the set up of Regional Public Finance General Directorates/ RPFGD (with territorial jurisdiction established according to the set up of the development regions implemented by the Law on the regional development in Romania) (Law no. 315, 2004), may reduce the number of reports submitted to the NAFA central. It was also alleged that it could lead to an improved planning and control activity, a reduced cost of collecting and to the set up of more balanced units in terms of economic weight and percentage of revenue collection. It was considered that things will be different (meaning improved) in terms of operational performance of NAFA and decrease of the cost of collecting, while the central level will operate with only eight RPFGD instead of the 42 RPFGD which previously existed. But the set up of RPFGD causes the support functions and the quality of tertiary credit coordinator to be withdrawn from the county structures. These are transferred to the RPFGD, partially agglomerating the support functions and taking over the budget execution, the inventories, the archives etc. By reducing up to 30% of the management positions, the acceleration of the decisional process and savings in personnel costs are expected to be obtained. The set up of the RPFGD allows the implementation of a new human resources strategy, but in the short term are to be introduced staff downsizing measures. It consists primarily in the significant reallocation of personnel towards the deficient areas (anti-fraud, tax audit, IT, legal, etc.). Then, in case a personnel surplus still persists, it is either redirected to the tax authorities with a high load factor, either dismissed. The process of setting up the RPFGD regulated by GEO no. 74 (2013) actually represents the merger by absorption of other RPFGD in the jurisdiction, including also the county/regional excise and customs operations directorates and the Financial Guard divisions from the same area.

3.6. Adjusting tax accessories

The challenge of increasing the performance of the budget revenue collection against the persistent background of the crisis determined the Government to reconsider certain coercive measures aimed to determine the compliance with the tax obligations. In this respect, the system of the penalties and applied interest under such circumstances was revised. It is known that usually, in case of overdue payment to the public budgets, the penalties serve to discourage the lack of compliance. In this context, the interest is destined to offer protection to the real value of the overdue taxes and contributions payments owed to the general consolidated budget. For this reason, tax law establishes the penalties and the interest as two separate instruments. In practice, the level of the interest must exceed the interest rate of the loans granted by the financial institutions. This is meant to discourage the taxpayers of using arrears as a source to finance their activities. The penalties for the overdue payments represent the sanction for disregarding the due date and are calculated as a percentage on the unpaid amount. Logically, the penalty in question increases in relation to the amount owed and the period of delay. Also, prior to the adoption of the special regulation on some fiscal measures (GEO no. 50, 2013), for exceeding the due date of the payment obligations, after this period, interest and penalties were applied. The interest rate was 0.04% (14.6% per year) and was calculated for each day of delay from the day following the payment deadline to the day of the payment of the owed amount, inclusively. The extent of the penalty was different according to the period of delay. If the debt was extinguished during the 30 days following the due date, delay penalties were not applied or calculated for the extinguished main fiscal obligations. The payment performed between 31 and 90 days after the due date, led to a level of 5% in delay penalties applied to the extinguished main fiscal obligations. If the payment is accomplished later than 91 days after the due date, the delay penalty was 15% of the main fiscal obligations owed. If a taxpayer failed to pay within 90 days the contributions, he came to owe interest for each day of delay and a penalty of 15% of the main fiscal obligations owed. Very briefly, we pause on the novelty in the matter introduced by GEO no. 50 (SN-GEO no. 50, 2013). Regarding the definitions, the Fiscal Procedure Code (GO no. 92, 1993) was significantly amended and supplemented. Article 120 paragraph (1) gets a different content: "(1) The interest represents the equivalent of the prejudice caused to the holder of the fiscal debt as a consequence of the failure to acquit the promises of payment until the deadline and is calculated for each day of delay from the day following the payment deadline until the day of the payment of the owed amount inclusively". Article 120^1 also changes, stating that "the late-payment penalties represent the sanction for the failure to pay the promises of payment until the deadline and are calculated for each day of delay starting from the day following the deadline to the day of the payment of the owed amount inclusively". Another important clarification is the one stating that "(3) the late-payment penalty does not affect the obligation to pay interest". At this moment, the manner of taxation of late-payment penalties is designed to encourage the voluntary compliance regarding the payment of the tax obligations. Therefore it introduces the replacement of the fixed penalty of 5% or 15% with a penalty of 0.02% per day of delay (7.3% per year).

3.7. The efficient compensation of the obligations of the State with those of various budget creditors

The mutual obligations between the state and some individuals/companies often occur in the area of public financial relations. The number of court decisions which sanction certain institutions, as representatives of the state to the awarding of damages is appreciable. Not complying with them on a voluntary basis is a reason for initiating the stiff and costly foreclosure procedures. The implications can be deduced, affecting, sometimes seriously, the activity of the debtor. On the other hand, we should not neglect the fact that we are dealing with an increase in court fees and enforcement costs. Obviously, the solution may seem simple: since the discussion is about mutual obligations, certain, liquid and contingent, both qualities, of creditor and debtor, being assumed (by the state and other entities) the obligations should be directly and immediately extinguished by compensation. Except that the rigors of the management regulations of the state budget do not allow the implementation of this mechanism. The bureaucratic system assumes the existence of certain resources allocated to the expenditure account in order to complete the compensation operation stipulated by law. And the actual allocation requires a certain time, in addition to the actual existence of the resources. The operation of the budget actions inherent to the compensation, given the fact that a court order decided upon the existence of a payment obligation for which, at the moment of the enforcement, the necessary budgetary allocation did not exist, required the design of a special budgetary mechanism. This should allow both the increase of the state budget revenues with the amount subject to compensation as well as the supplement of the expenses of the institutions or public authorities which support the corresponding obligations. We note that in this sense there have been introduced the recent regulations on the "legal compensation of the payment obligations of the Romanian state, deriving from court orders/arbitrary decisions of national/international courts, with the obligations of creditors/their assignees in regard to the state budget". Retrieved from the content of a GEO on the implementation of some fiscal-budgetary measures (SN-GEO 113, 2013), these are meant to solve technically the completion of the compensations in all the situations. Now as Article IV paragraph 5 (GEO no. 113, 2013) states, clearly and simply, "the compensation is achieved by cutting some revenue accounts opened on distinct types of budgets, *revenues from the damages compensation claims* and by crediting the accounts of contributions, taxes, fees, and other incomes owed to the general consolidated budget". What we want to emphasize is that this adaptation of the norm to the realities of the budget execution required a period of ten years during which the difficulties previously-described have occurred. During this period, when significant costs have been generated by the impossibility of paying the compensations, the obstacle was represented by an (ordinary) article (116) from the Fiscal Procedure Code (GO no. 92, 1993), which presented (exclusively) the devious solution to operate on the revenue accounts of the state budget.

4. CONCLUSIONS

After 2008, Romania registered the largest budget deficits due to the consequences of the financial crisis and the pro-cyclical fiscal policy conducted in the years prior to the crisis, which caused major risks to the economic growth and stability. In this context, the Government, assuming the task to implement the European financial-economic regulations and to develop and implement various (national) normative acts, in an attempt to achieve more rapidly the economic macro-stabilization and to strengthen the business environment, became much more involved - by comparison to other periods - in the economic and business environment through legal means. Considering the most representative legal means, as Government Ordinances, which the Government used to directly intervene on the economic and national business environment and on the sustainable development framework, we have developed and included in this approach several (micro-) analyses, focusing especially on their financial substantiation and suitability to the conditions of the real economy. To a large extent, their implementation has led to considerable progress in reducing the macroeconomic imbalances, the structural reforms based on legislative adjustments which we referred to in the paper, contributing significantly to maintaining the financial stability. We should only remember that in 2013, Romania (GR, 2014) was released from the *excessive deficit* procedure. However, Romania still faces numerous obstacles that affect the business environment and the economic development (EC, 2014): problems related to the fiscal consolidation, tax non-compliance, reduced participation in the labour market, high levels of poverty and social exclusion, inefficient and poor healthcare, ineffective public administration, high levels of corruption, low competition and efficiency in the field of energy and transport. To these, we can add the low administrative capacity, causing delays in the implementation of the necessary reforms and in the absorption of the EU funds. Therefore, given the situation of the prolonged global economic crisis, the Government should focus more on strengthening the economic recovery measures leading to the increase of the competitiveness of Romanian companies.

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