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GLOBALIZATION AND THE NEW MEDIA ORDER

Emre Vadi BALCI[1]

Abstract

The concept of globalization and the connections between media issues, the change of mass media in this process, associating it with modernity in today's conditions and reflecting it as universal values are explained. In the study, besides the globalization issues that have been studied extensively in recent years, the concepts about media structures and the changes on the media effects of globalization are discussed. The formation processes of the global media are examined.

Keywords: *Globalization, Media, Global Media, New Media.*

[1] Assistant Prof. Dr / Uşak University Communication Faculty New Media and Communication Department, Turkey, emre.vadi@usak.edu.tr

1. INTRODUCTION

Social scientists, who heralded the end of ideologies in the 1960s and drew attention to the liberating potential of the end of the nation-state in the 1980s, express the feeling of absolute insecurity of the end of the century, claiming the end of democracy in the 1990s. On the one hand, the cultural conflict of the nation-states and the environment of tension, on the other hand, the fact that they started to take place in a homogeneous global network in terms of international trade, an environment dominated by the phenomenon of globalization, which forces integration and uniformity, triggers insecurity (Üstel, 1999: 12).

The process of restructuring the world, which has occurred as a result of changes in the economic, political, social, legal and cultural fields in recent years, is called globalization. It is said that globalization is both an irreversible process that affects all of us in the same amount and in the same way (Bauman, 2010: 7). With globalization, there have been changes in political, economic, cultural and legal fields among countries. Globalization also causes the disappearance of borders between countries in the fields of politics, economy, culture and law.

As the trigger of these developments, it will be possible to express the rapid and important developments in information and communication technologies, which are the result of great changes and developments in the economy. Along with all these developments, the development and change in the world markets cause the country's economies to expand and grow universally. It will be possible to talk about a universal economic order.

2. GLOBALIZATION AND ITS EFFECTS

Although the concept of globalization began to be used in 1980 as a concept that affects countries and people economically, politically, legally and culturally, the foundations of this concept go back to previous years. It started to gain momentum with the end of the period known as the Cold War years and the collapse of the Socialist Bloc. One of the most important factors driving the acceleration of globalization is the awareness of new goods and services and the increase in income level in various regions around the world. The increase in the level of welfare in countries after the 1970s has significantly increased the amount of income for new products. In addition to these, the income level has increased, albeit at a low rate, in many mature markets in some developed countries (Tağraf, 2002: 39). The processes that are influenced and directed by the great advances in technology and communication are tried to be explained with the concept of globalization. Increasing international circulation and sharing of information, raw materials, goods and services is one of the important developments of the 20th

century (Erbay, 1996: 3).

After the Cold War ended in 1989, the world has entered a period of rapid change. Three main points are important in this process. First; These are the developments based on the enrichment that emerged as the West turned to new overseas discoveries, trying to get rid of the darkness of the Middle Ages, which ended with the conquest of Istanbul by the Ottomans in 1453. The second fundamental transformation point was the industrial revolution that started in 1890. The developments that emerged in Continental Europe, which started to experience the industrial revolution, have reached other parts of the world in various ways and have greatly influenced humanity. Globalization reached its third point of departure in the 1990s, and after 1990, it revealed its plan to make the West the only economic and political power in the unipolar world around the concept of the new world order (http://www.ekodialog.com/Makaleler/kuresellesme_paradoks_1.html).

Although it is not possible to talk about a common definition on the phenomenon of globalization; first as a concept; It started to be used in important American universities such as Stanford, Columbia, and Harvard in the 1980s, and it was brought to the forefront by economists who came out of these circles (Timur, 1996: 7). The concept, which is used as the Turkish equivalent of globalization, has emerged with an economic content (Tezcan, 1996, 187).

Anthony Giddens sees modernity as a total effort of production and control with four main dimensions of industrialism, capitalism, industrialization of war and surveillance of all aspects of social life, thus presenting a strongly integrated image of modernity. According to Giddens, globalization emerges as a result of modernization (Giddens, 1994: 62). Robertson, on the other hand, sees globalization as a concept that both symbolizes the shrinking of the world and refers to the strengthening of the consciousness of the world as a whole (Özyurt, 2005: 22).

According to Timur, globalization is defined as the new name of contemporary imperialism, which has become widespread since the 1980s and presented to the world as a single and inevitable phenomenon after the collapse of the Soviet system, and expresses globalization as a new stage of capitalist capital accumulation (Timur, 1996: 69). Boratav, on the other hand, defines globalization as imperialism itself. He describes globalization not as a new phenomenon, but as a new term (Boratav, 1997: 22).

Globalization; It is defined as the worldwide spread of some common values in economic,

political, social and cultural fields by crossing local and national borders (Güvenç, 1998: 318). Through globalization, it is possible to achieve an unprecedented integration between the economies of countries. An information revolution is taking place and markets, companies, organizations and their managements are becoming international (Öymen, 2000: 26).

Globalization is seen as a stage in the development of capitalism, it means the growth of markets on a world scale, going beyond national borders, and the world becoming a single market (Saylan, 1999: 14). Accordingly, globalization is the worldwide economic, political and cultural integration, the use of ideas, views, practices and technologies at the global level, the universalization of capital circulation, the emergence of new forms of relations and interactions that go beyond the borders of the nation-state (Kaçmazoğlu, 2002, 49).

Supra-state political units and international organizations are expected to take and implement decisions based on human rights and the rule of law. In this context, political globalization defines the shrinking of the world with the emergence of the global society (Keyman, 2000: 24).

Globalization is experienced through images and symbols. It is cultural globalization that is effective in the world and this means that different cultures flow globally (Aslanoğlu, 2000: 335). The acceleration of the globalization of culture is the technological developments and the economy (Aslanoğlu, 2000: 337). Cultural globalization symbolizes the conflict between cultural homogeneity and cultural heterogeneity and defines the form of this conflict (Keyman, 2000: 3).

It is stated that the globalization process includes two types of cultures: First, a certain culture spreads all over the world and other different cultures are integrated into this dominant culture. The most important feature of this culture, also called global mass culture, is homogenizing. The second type of culture is the culture formed by the mutual interaction of cultures that were separate from each other until globalization.

From this point of view, globalization is expressed as a concept that deeply affects the 21st century and offers new possibilities. While globalization offers these new opportunities, it has positive effects on some segments and negative effects on others. For this reason, while explaining the concept of globalization, it is necessary to focus on the points of uncertainty and insecurity (Bozkurt, 1996: 172).

Regardless of the perspective, technological developments, economic and ideological factors can be mentioned among the main factors of globalization. The cheapening and

widespread use of information technologies accelerated the flow of information, changed the perception of time, space and distance, and paved the way for the formation of global values by accelerating the acculturation process (Yurdabakan, 2002: 63). In the context of the effects created by the process, it is possible to list the positive and negative effects of globalization as follows (Bilhan, 1996: 179-183; Tezcan, 1996: 192-194).

- With globalization, the boundaries of time and space have expanded step by step over the centuries, and everything that happens in the world has begun to be attributed to all humanity.

- Concepts such as human rights, freedom, justice and equality

has become widespread.

- The life expectancy of people has been extended and the opportunities for a healthy life have expanded with the cooperation of countries in the field of health,

- Free movement of diversified workforce between countries has been ensured and competition has increased in production and consumption.

- New and communal lifestyles began to emerge among people.

- National states, which had to integrate with powerful states in the globalizing world, were exposed to the open influence of great states in economic, political and cultural terms.

- While globalization societies became closer and integrated, they were put into a process of fragmentation with ethnic nationalism.

- Globalization has accelerated the distribution of poverty as well as the distribution of wealth.

- The number of people participating in the education process in the world has increased.

3. GLOBALIZATION AND INFORMATION

With globalization, the importance of information has increased, and rapid developments in information technologies have begun to change both society and the economy (Drucker, 1994: 66). The knowledge economy is based on the power of knowledge. In the knowledge economy, which has an internal dynamic based on the power of knowledge, the knowledge produced by an institution can instantly affect the activities of other institutions (Davidow and Malone, 1995: 58). The knowledge economy has a dynamism that has no borders, is open-ended and has endless options. In this framework, the internet eliminates the difference of time

and space; it brings individuals and institutions closer to each other in a virtual universe and almost creates a global interlocking (Düren, 2000: 59).

The effective use of information has begun to give information technologies a strategic importance. In the process of globalization, information technologies now affect every field and institution; it structurally changes everything from politics to war methods, to the organization of work (Düren, 2000: 60-62). Information technologies have begun to affect the life of the individual, and therefore the structure of society, in a revolutionary way that is not seen in other technologies. The developments following the industrial revolution gradually gained momentum and brought the technological accumulation to an explosion point, leading to the emergence of the information revolution and the information society as a result (Ceyhun and Çağlayan, 1997: 4).

The main feature that distinguishes the information society, which is being shaped based on information technologies, from the industrial society is production of information. In the information society, the fact that information can be produced continuously and increased, can be transported in communication networks, and can replace labor, capital and land and provides important advantages (Erkan, 1994: 96-98).

4. GLOBALIZATION AND NEW MEDIA

After the collapse of the USSR, in the unipolar world's efforts to impose the "New World Order" as a single thought in every field from politics to ideology, culture and art, "global media" has been as effective a weapon as capital markets. It is possible to define the global media as the media system and approach that the New World Order, and neoliberalism in the political and economic fields, and the only thought in the ideological field, are trying to spread around the world (Duran, 2001: 8). The increase in information technologies with globalization has also increased the capacity to circulate information. Globalization also invites intellectuals to interpret traditions and styles in a new global environment of multiculturalism (Küçük 1996: 152-158).

It should be seen that the mass media are important in terms of globalization (Suğur, 1995: 56). As a process accelerated and encouraged by the emergence of new production methods, the change in the economic basis of newspapers has laid the foundations of long-term accumulation and concentration in the media industries (Thompson, 2008: 243). In the globalization process, while the areas where the existing mass media are used are expanding, the articulation of new tools to the old ones creates new areas of use. From this point of view,

it is observed that the development in mass media has gradually increased and a new phase called media has been started (http://www.dorduncukuvvetmedya.com/arsiv/akaya.htm).

While the traditional media, which decided to merge with the big companies of the culture industry and capital in the 1980s, became a part of the giant holding companies, they met in the new media. These mergers brought together companies related to TV, cinema, magazines, newspapers, books, databases, computers and other mass media (Kellner, 2010: 41-42). This unification process experienced is the rapid growth of mass media institutions and the reaching of ever-expanding buyers of symbols that have become goods through communication networks (Ilgaz, 2000: 31). In this new process, traditional media companies have become a large communication sector with the new possibilities created by new communication technologies, and mergers and acquisitions have intensified significantly.

It is known that many media organizations broadcasting internationally today do business in certain areas before globalization. The privatization of broadcasting throughout the world and the use of new communication methods such as satellite, cable and internet have reduced the gap between industries in the field of communication (Kaypakoğlu, 2002: 125). Thus, an integration process began to be experienced in the field of communication and giant multi-media groups started to form with the growth and groupings, acquisitions, company mergers, agreements, and withdrawal of small-scale companies from the market in the 1980s (Sayılgan, 2005: 119). With globalization, it is possible to reach wider masses through internet, cinema and similar mass media, apart from newspapers, radio and television. Capital owners expand the range of communication tools, on the other hand, they attach importance to specialization (Çaplı, 2001: 253).

Media is an indispensable and must-have tool for multinational companies. As a matter of fact, since the 1980s, many companies have gone into a great monopoly in the media sector. Like all capitalist enterprises, the media, which works for profit, has also become the most important weapon in terms of maintaining the capitalist order and guiding the masses in this regard (Akbulut and Balkaş, 2008: 72). Along with the change in the ownership structure of the media, the entry of capital owners to the press, and the monopolization of the press with globalization, the impartiality of the media has started to be discussed as well as its multidimensional but monophonic (Tılıç, 1998: 48). It is observed that the media, which constitutes the technical infrastructure of globalization, has also become a global consent producer of liberalism, lowering the quality of publications, as well as an ideological war against value judgments such as public consciousness, civil rights and freedom issues (Girgin,

2000: 135).

Giant media groups formed in the global arena, spread to many countries of the world in order to grow even more, address world history, politics, economy and business circles through the same communication channels. Thus, they provide the greatest impact on globalization in every field (Sayılgan, 2005: 122). Therefore, the target audience has ceased to be a reader or spectator and has begun to be characterized as a consumer. The most important aim of new media companies, which act with the logic of profit and competition, is to deliver their products to the widest possible consumer mass (Morley and Robins, 1997: 29-30). David Morley and Kevin Robins define the most important purpose of global media companies, which act with the idea of profit and competition, as delivering their products to the widest possible consumer mass (Morley and Robins, 1997: 32).

The current situation of the media in terms of the shape it has taken in the globalization process coincides with the discourse of the Frankfurt School. Horkheimer and Adorno, one of the most well-known theorists of the Frankfurt School, define the culture industry for the media and see the mass media as tools that kill and pacify people's perceptions (Tılıç, 1998: 50). Individuals turn to mass media for reasons such as obtaining information about the world, getting advice in solving problems, satisfying curiosity and interest, educating themselves, and reinforcing individual values (Mcquail, 1994: 76-78). It will be possible to summarize the positive effects of globalization on communication as follows:

- The spread of communication on a world scale has brought societies closer to each other and accelerated cultural exchange.

- The increase in the number and variety of mass media has made it easier to have information.

- The technological development of mass media along with the globalization process has brought freedom of choice.

- Technological development has removed individuals from being passive individuals who only read or watch in front of media organs.

- The use of mass media in the education of individuals has accelerated with the global process.

- With the developing mass media, it has become possible to work from home without going to work.

- Mass media has also changed the shopping habits of individuals (Uluç, 2003: 300).

Perhaps the most criticized aspect of the media in the globalization process is that the media has become a market in which everything is indexed to profit in national environments, with the influence of the global media (Arhan et al., 1998: 30-31).

5. CONCLUSION

Since the 1860s, the environment that emerged with the rapid increase of globalization and capitalism has also removed geographical barriers with the development of fiber cables, telegraph systems, railways and steam ships. Although the trade between the continents has started to be mentioned, new regulations and developments have started to come into question in this field. With the new concepts emerging in this development environment, a new value system has started to form all over the world. With these developments, great changes have taken place in the capital structure, technology, cultural structures, languages and even people.

At this point, it is necessary to mention that the changes arising from the capital structure and the changes in technology and circulation affect people due to their cultural structures. With globalization, people have begun to encounter new elements outside of the rules that are generally valid for their own culture, and for these reasons, they have begun to introduce new elements into their lifestyles. With the development of technology, this change has started to come into question with the changes that have taken place in the field of internet and transportation. With these tools, the communication environment between people has expanded and even started to become unlimited.

With the great increase in communication technologies, it is possible to talk about a change in the connection between the masses. With the phenomenon of cultural change, which is the result of this change, a cyber environment has been created between distant masses. Again, with the media groups that emerged in this period, the effect on the masses began to be consolidated. Multinational companies have started to shift their structuring and capital to communication fields since these years. News agencies established in those years, such as Reuters and Havas, are the first examples of global media in the world.

With technology, the most important factor of globalization, a single world environment has been tried to be created. At the same time, an increase in the speed of mass communication was achieved by creating a fast communication environment. With this rapid communication, spatial distances between the masses have been eliminated and spatial convergence has been achieved. It will be possible to talk about temporal partnerships as an effect of spatial

convergence. Temporal partnership, on the other hand, enables different societies to act together in different locations in the same time period or to enter into the same mentality.

The infrastructure of an economic and cultural transformation has been prepared with technology. With the economically stronger groups, cheaper and faster production started to be made in farther points, and an environment of manipulation for the people living in these places began to be created. Media empires began to emerge in order to enable the masses to move towards economically strong structures. With this media structuring, the proven effect of communication tools, which are accepted as an effective propaganda tool all over the world, on the masses has started to be used even more strongly.

As stated in the study, globalization is a multidimensional and intersecting multi-cause phenomenon. In all studies on the subject, it is mentioned that globalization is related to the economic, political, technological and cultural relations of power. With the connections and developments in all these fields, it is tried to create a single world culture by providing transformation in many areas from people's mentality to their culture, from technological developments to the economy. It would be correct to say that media organizations are the most important tool to ensure this cultural change. Change in media technologies is of central importance. With this change, the power of the tool used in reaching and directing the masses has increased and even started to take an unlimited shape. With globalization, the media has begun to settle as integrated and inseparable phenomena.

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LBIS Conference (9-10-11 September 2021)
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UNDERSTANDING SENIOR WOMEN ENTREPRENEURSHIP: A CONCEPTUAL APPROACH*

Yusuf Alparslan DIBEK[2] **Erhan AYDIN[3]**

Abstract

This study aims at demonstrating a short literature review on entrepreneurship and senior women entrepreneurship. We aim to create a conceptual perspective for senior women entrepreneurs by considering age, gender and entrepreneurship. In order to achieve this aim, this study highlights the concept of entrepreneurship, career stages of individuals, the role of gender differences in entrepreneurship by considering assigned social roles. For future research, we will adopt a qualitative method and conduct semi-structured in-depth interviews with senior women entrepreneurship. In the Law, Business and Innovation Studies Conference, we present an early version of the literature review

Keywords: *Senior Entrepreneurship, Gender, Age, Entrepreneurship.*

[2] Master Student, Graduate Education Institute, Usak University, Usak, Turkey, alparslandibek@outlook.com
[3] Assoc. Prof. Dr., Faculty of Economics and Administrative Sciences, Usak University, Usak, Turkey, & IPAG Business School Paris, France, erhan.aydin@usak.edu.tr
* This paper is derived from the master thesis of Yusuf Alparslan Dibek at Usak University, Turkey

1. INTRODUCTION

Studies regarding entrepreneurship mostly focus on young consumers since they have financial supports from governmental and non-governmental institutions (Namal et al., 2018). For instance, Sonmez and Toksoy (2014) and Aydemir (2019) studies demonstrate that young entrepreneurs are the dominant sample groups in scholarly literature and government policies. Also, the entrepreneurship literature does not focus on gender differences. For this reason, such a perspective creates a dearth of research on entrepreneurs who are women and older than 45 years because older entrepreneurs (hereafter senior entrepreneurs) and women have disadvantages in society since both senior entrepreneurs do not have enough support from governmental and non-governmental institutions in comparison to young entrepreneurs. Moreover, women have been assigned social roles in the patriarchal social structure, such as cleaning and child care.

For this reason, in the present study, we focus on senior women entrepreneurs, and we aim to create a conceptual approach to understand their challenges and existing situations. In order to achieve this aim, we critically analyse the literature review. We will design a qualitative research model for our forthcoming study to explore the challenges and benefits of being a senior woman entrepreneur in the Turkish context.

In the following section, we present a literature review on analyzing senior women entrepreneurs in management research. Thus, this perspective helps us to create a conceptual understanding for the senior women entrepreneurs by considering their role in society.

2. LITERATURE REVIEW

The concept of entrepreneur refers to a person that explores new opportunities, creates new business models or shapes existing business models (Wong et al., 2005; Gast et al., 2017). Based on the definition of Karadal and Saygın (2016), an entrepreneur is a person who can realise new opportunities in the market and use them in order to produce goods and services. However, even though such conceptualisation of entrepreneurs has a generic perspective, it does not consider the role of gender in entrepreneurship. For this reason, there is a need to consider the differences amongst gender in entrepreneurship since patriarchal social structure creates inequalities between men and women.

The literature demonstrates a dominance of young men entrepreneurship, and the rate of women participation in the entrepreneurship practices is too low (Levent et al., 2003). One of the reasons for the exclusion of women entrepreneurs stems from the funding bodies that do

not consider gender differences in terms of supporting women that has disadvantages because of the social roles in comparison to men (Ahl and Nelson, 2015; Ojehag-Pettersson, 2017; Coleman, 2019). Such situations can create obstacles for the tendency of women entrepreneurship. For instance, the study of Wang and Wong shows that women have a low tendency for being an entrepreneur. However, they can take more risks in comparison to men. From a societal perspective, such situations come from social roles and duties that are assigned by society (Bakici and Aydin, 2019). Social structures can be seen in various ways in the countries. For instance, the principal duty of a woman can be seen as childcare and cleaning in South America (Sekarun and Leong, 1992). In the Philippines, the social structure creates barriers for women to hold senior management positions since society expects them to have a family. For this reason, women do not have enough experience to create a business (Epstein, 1993).

The literature demonstrates three stages of entrepreneurship. They are (i) early career period (less than 40 years old), (ii) middle career period (between 40 and 50 years old), and (iii) late-career period (50+ years old) (Gibson, 2003; Greller and Simpson, 1999; Cohen, 1991). The differences amongst these periods are accepting failures and the tendency to be entrepreneurship. In the early career period, it is possible to be accepted the failure of a person by society. However, this situation is not the same for the other periods. Also, a person in the late-career period can consider entrepreneurship as an alternative way to work (Bau et al., 2017). For this reason, their tendency to adopt entrepreneurship practices are high (Super, 1957).

Even though there is a high tendency to operate a business in the late-career stage, a critical issue in the literature needs to be highlighted. The issue is regarding the differences amongst gender in senior entrepreneurship. Based on the literature review, two questions need to be answered. First is “What are the differences between young and senior entrepreneurship in terms of understanding the impact of experiences on their success?” and second is “What are the differences between young and senior women entrepreneurs in terms of understanding the challenges and benefits of age differences?”

3. CONCLUSION

We provide a short literature review for the full paper proceedings book in this conference. The extended version of this paper will be planned to publish in a journal. For this reason, we do not provide all information regarding the literature review. For future research,

we will focus on designing qualitative research that is semi-structured in-depth interviews with senior women entrepreneurs in the context of Turkey. The main reason for choosing this country comes from two features. First, the country is a bridge between east and west. Therefore, there is a cultural plurality in Turkey. Second, research access is more accessible than in other countries in terms of researchers' location.

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EXAMINATION OF ITALIAN AND TURKISH TAX ADMINISTRATIONS AND TAX SYSTEMS

Betul HAYRULLAHOGLU[4]

Abstract

Taxes are the most important income sources for providing public services. For this reason, the structure of the tax systems and tax administrations of the countries have importance. This study aims to examine the structure of tax administrations in Italy and Turkey and the taxes that constitute their tax systems. As a result, the tax systems of Turkey and Italy show us there are many common taxes in both countries. In general, it is possible to say that the tax rates applied in Italy are higher than the tax rates applied in Turkey. While the digital service tax, which is still very new for both countries, is 3% in Italy, it is determined as 7.5% in Turkey, which is considerably higher than Italy. In fact, this rate applied in Turkey is one of the highest rates applied in the whole world. In addition to the existence of common taxes in the Italian tax system and the Turkish tax system, the legal arrangements for the elements of the taxes are largely the same. At this point, the Italian tax system differs from the Turkish tax system with taxes levied on income at the regional level. Another difference for both tax systems is the special consumption tax, which is of great fiscal importance for the Turkish tax system. In Italy, the products that are subject to this tax are regulated one by one. Although there is a similar regulation in Turkey, the fact that the scope of luxury products, which is the subject of this tax, is extremely wide, causes this tax to be frequently criticized.

Keywords: *Taxes, Tax System, Italy, Turkey, Tax Administration.*

[4] Res. Assist. Dr., Usak University, Faculty of Economics and Administrative Sciences, Department of Public Finance, Usak-Turkey, betul.hayrullahoglu@usak.edu.tr

1. INTRODUCTION

Italy, a member of the G7 and one of the founding countries of the European Union, has the status of a developed country. Turkey, on the other hand, is included in the class of developing countries. Turkey, a member of the G20, has been a candidate country for the European Union since 1999.

The development of countries is closely related to the strength of their economies. For a strong economy, a strong tax system is important. Taxes that constitute the tax systems of countries can be classified in various ways depending on different criteria. According to their sources, taxes are classified as taxes on income, taxes on expenditures and taxes on wealth.

It is also important to understand the structure of the tax administration in understanding the tax systems of countries. In this context, the study, which aims to compare the tax systems of Turkey and Italy, first explains the structuring of tax administrations. The following part explains the taxes that constitute tax systems briefly. Conclusion part discusses all similarities and differences.

2. HISTORICAL BACKGROUND AND FUNDAMENTAL ORGANS OF THE REPUBLICS

With the referendum held on 02.06.1946, the Italians went to the polls to choose between the Republic and the Monarchy and to elect the deputies of the Constituent Assembly, who would be responsible for the preparation of the new constitutional statute (Presidenza della Repubblica, n.d.). This institutional referendum sanctions the end of the monarchy and the birth of the Italian Republic (Umsoi, 2018).

Italy is a member of the G7, originally the G8, which has brought together the leaders of the world's leading industrial countries since 1975 (European Commission, n.d.) and a member of the G20 which is the international forum that brings together the world’s major economies since 1999 (G20 Indonesia, n.d.). Italy is also one of the six founding countries of the European Union (European Union, n.d.).

Today's Republic of Turkey, on the other hand, was established with the opening of the Turkish Grand National Assembly in Ankara in 1920. In 1922, with the abolition of the sultanate, the Ottoman Empire, the monarchy, came to an end. Finally, with the proclamation of the Republic in 1923 Turkey has become the Republic of Turkey.

Turkey, like Italy, is a member of the G20 but not an EU member. In 1999, Turkey's candidacy for the European Union was officially approved and the process continues (Republic of Turkey Ministry of Foreign Affairs Directorate for EU Affairs, 2020).

Italy has a parliamentary system. In Turkey, with the constitutional amendment made in 2017, the transition from the parliamentary system to the presidential system was made.

In both countries, "The Principle Separation of Powers" is accepted.

The constitutional system in both countries provides for the following separation of powers (Gubitosi et al., 2021):

Parliaments have the legislative power.

The governments have the executive power.

The independent jurisdictions exercise their judicial powers.

3. TAX ADMINISTRATIONS IN ITALY AND TURKEY

The main tax authority in Italy is the *"Ministry of Economy and Finance (Ministero dell' Economia e delle Finanze)"*. The Ministry fulfills its duties and responsibilities in the fields of economic, financial and tax policies of the State and budgeting. In addition to these, it carries out all activities related to the coordination and surveillance of public expenditures, planning of public investments, public financial management, public debt management and supervision and surveillance of State stocks (Ministero dell'Economia e delle Finanze, n.d.).

The Ministry comprises 4 main departments: *"Department of the Treasury, State General Accounting Department, Department of Finance and Department of General Administration, Personnel, and Services"* (Ministero dell'Economia e delle Finanze, n.d.).

The Department of Finance carries out the functions of overall direction and direction of the national tax system and implements the directives of the Minister in tax matters. Its activity is aimed at planning and coordinating tax policy strategies, verifying their application and evaluating the effects (Dipartimento delle Finanze, n.d. a).

Italy's Department of the Treasury is responsible for providing the necessary technical support to develop national economic policy, ensuring sustainable growth. It also ensures market stability and security by managing public debt effectively and transparently (Department of the Treasury, n.d.).

Operating since January 1, 2001, the Revenue Agency (Agenzia Centrate, n.d. a) is a non-

economic public agency operating to ensure the highest level of tax compliance. It is mainly responsible for collecting tax revenues, providing services and benefits to taxpayers, and conducting assessments and inspections against tax evasion (Agenzia Centrate, n.d. b).

In the Revenue Agency, besides the General Coordination, Legal Affairs and Internal Auditing departmens, there are also the Taxpayers' services and Taxpayers' Compliance and Enforcement departments evasion (Agenzia Centrate, n.d. c).

In Turkey, the Ministry of Treasury and Finance consists of central, provincial and foreign organizations and affiliated, associated and related institutions. The central organization of the Ministry consists of 21 units. One of them is the Tax Inspection Board Presidency which works directly under the Minister (Republic of Turkey Ministry of Treasury and Finance n.d.).

Among its duties and powers; to conduct tax inspections, to carry out inspections, examinations, audits and investigations given by the Minister, to conduct research on developments in the field of tax evasion and tax avoidance and the methods to reveal and prevent them and to monitor and evaluate the results of inspection and auditing (Tax Inspection Board, n.d.).

The Revenue Administration of Turkey, one of the affiliates of the Ministry of Treasury and Finance, was restructured in 2005 and took its current form. Among the duties of the Presidency; implement the income policy with fairness and impartiality; collect taxes and other revenues at minimal cost; to ensure the voluntary compliance of taxpayers with tax; It is to take the necessary measures to easily fulfill their obligations by providing high quality service by observing the rights of the taxpayers (T.C. Resmi Gazete, 2005).

In the central organization of the Revenue Administration; there are 11 service units such as the Taxpayer Services Department, the Revenue Management Department and the Collection and Disputed Affairs Department (Gelir İdaresi Başkanlığı, 2019).

Finally, the provincial organization of the Presidency consists of tax office directorates directly affiliated to the center and tax offices that operate in places where no tax office directorates are established, and that have the duties and powers given to the Head of the Tax Office (Gelir İdaresi Başkanlığı, 2019).

As can be seen, apart from minor differences, tax administrations in Turkey and Italy show similar structures. In both countries, the Revenue Administrations are under the ministry. In Italy, Finance and Economy is under the same ministry and the Treasury operates as a

subordinate unit of this ministry. In Turkey, operating under the Prime Ministry, the Treasury merged with the Ministry of Finance after its reorganization in 2018.

4. TAX STRUCTURES IN ITALY AND TURKEY

4.1. Taxes in Italy

It is possible to examine the taxes in the Italian tax system in four categories. These are taxes on income, taxes on expenditures, taxes on wealth, and other taxes.

4.1.1. Taxes on Income

In the Italian tax system, taxes on income are regulated in “the Consolidated Law on Income Tax (Testo unico delle imposte sui redditi)” No. 917 dated 22.12.1986 (Documentazione Economica e Finanziaria, n.d.).

4.1.1.1. Personal Income Tax

The Consolidated Law on Income Tax first regulates personal income tax known as "Imposta sul Reddito delle Persone Fisiche". In the next part, the Law regulates the Corporate Tax called "Imposta sul Reddito delle Societa".

The main income tax levied on individuals is personal income tax called as "Imposta sul Reddito delle Persone Fisiche (IRPEF)". A prerequisite of the personal income tax is the possession of income in cash or in kind falling within the categories indicated in art. 6. (Art. 1) These are; property income; capital income; income from employment performed in the territory of the State; income from self-employment; business income, different income (Art. 6).

Taxable persons are natural persons, resident and non-resident in the territory of the State. (Art. 2). For the purposes of income tax, persons are considered residents who for most of the tax period (Min 183 days in a year) are registered in the registers of the resident population or have their domicile or residence in the territory of the State pursuant to the Civil Code. (Art. 2).

According to the worldwide principle, tax resident individuals have to pay the Italian personal income tax on their income wherever produced. So, tax residents are responsible to pay personal income tax on foreign incomes get from outside of Italy. On the other hand, non-resident individuals are subject to personal income tax for just their incomes produced in Italy. Therefore, the foreign incomes are not subject to personal income tax in Italy (Lucarini, 2021). This situation is the same in Turkey.

Under these regulations, the tax is applied to the total income, made up for residents of all income possessed net of the deductible charges indicated in Law and for non-residents only from those produced in the territory of the State. (Art. 3).

The tax is due for calendar years (Art. 7). And the total income is determined by adding the income of each category that contributes to forming it and subtracting the losses deriving from the exercise of arts and professions. (Art. 8).

The gross tax is determined by applying to the total income, net of the deductible charges indicated in article 10, the following rates for income brackets (Art. 11):

a) up to € 15,000, 23 %;

b) over 15,000 euros and up to 28,000 euros, 27 %;

c) over € 28,000 and up to € 55,000, 38 %;

d) over 55,000 euros and up to 75,000 euros, 41 %;

e) over 75,000 euros, 43 %.

4.1.1.2. Corporate Income Tax

The main income tax levied on corporates is corporate income tax called as "Imposta sul Reddito delle Persone Societa' (IRES)".

As with personal income tax, a prerequisite of the corporate income tax is the possession of income in cash or in kind falling within the categories indicated in art. 6. (Art. 72) These are; property income; capital income; income from employment performed in the territory of the State; income from self-employment; business income, different income (Art. 6).

The taxpayers of corporate tax are listed one by one in Article 73 as;

- *"the joint stock and limited liability companies, the cooperative companies and the mutual insurance companies, the European companies referred to in regulation (EC) n. 2157/2001 and the European cooperative companies referred to in Regulation (EC) no. 1435/2003 resident in the territory of the State;*

- *public and private entities other than companies, as well as trusts, resident in the territory of the State, which have as their sole or main object the exercise of commercial activities;*

- public and private entities other than companies, trusts that do not have as their sole or principal object the exercise of commercial activity as well as collective investment schemes resident in the territory of the State;

- companies and entities of all kinds, including trusts, with or without legal personality, not resident in the territory of the State".

A company is resident if its legal center, place of effective management, or principal office is in Italy at least 183 days (Deloitte, 2021). While resident companies have to pay taxes on worldwide income; non-resident companies only have to pay taxes on incomes in Italy (Deloitte, 2021).

The tax period is constituted by the exercise or management period of the company or body, determined by the law or by the articles of association. If the duration of the financial year or management period is not determined by law or by the articles of association, or is determined in two or more years, the tax period is constituted by the calendar year (Art. 76).

Total income is determined by adding to the profit or loss resulting from the income statement, relating to the year ended in the tax period, the increases or decreases resulting from the application of the criteria established in the Law. (Art. 83).

The corporate tax (IRES) rate is 24% (Art. 77), plus the regional tax on productive activities (IRAP, 3.9% overall). The corporate tax rate for banks and other financial institutions is 27.5%. Certain companies that make losses or whose endorsement is less than a certain percentage of the value of the various asset classes are called "inactive companies". Tax rate for "Inactive" companies is 34.5% (Deloitte, 2021).

4.1.1.3. Withholding Tax

Employers who pay remuneration, including in the form of profit sharing, must make a withholding tax of 20% as an advance on income tax upon payment of natural persons, with the obligation of recourse (Agenzia Centrate, n.d. d). The withholding tax is 30 % for the self-employed person who is not resident in Italy (Agenzia Centrate, n.d. e).

The rates according to the type of payment and the person to whom the payment is made are differ.

Table 1. Witholding Tax Recipients and Rates

Type of Payment	Recipient and Rates (%)			
	Residents		Nonresidents	
	Company	Individual	Company	Individual
Dividends	0%	26%	1,2%/26%	26%
Interest	0%	12,5%/26%	0%**/12.5%/26%	12,5%/26%
Royalties	0%	0%	22,5% (30% rate on 75% of gross royalty)	22,5% (30% rate on 75% of gross royalty)

Source: Meulepas, 2021

4.1.2. Taxes on Expenditures

The value added tax (imposta sul valore aggiunto, IVA) is a general tax on consumption in Italy.

VAT affects, with a general character, imports, transfers of goods and the provision of services carried out in the exercise of the activity of businesses, arts and professions. It is a tax imposed on the final consumer, which affects only the added value determined in each phase of the production cycle, calculated on the occasion of each single exchange of goods or services and applied to the overall turnover achieved in a given period of time (Dipartimento delle Finanze, n.d. b).

The general rate is 22% while the reduced rate is 10%. In addition, some goods and services are subject to the super-reduced rates of 4% and 5% (IBFD- Tax Research Platform, n.d.).

The general tax rate of IMU is 0.86%, but the municipality in which the real estate asset is located may increase it up to 1.14% or decrease it even to 0% (IBFD- Tax Research Platform, n.d.). The Normally, for the main residence of the IMU doesn't apply. However, there are some exceptions. TARI rates also differ by local authorities (Deloitte, 2021).

4.1.3. Taxes on Wealth

These are; “real estate tax”, “inheritance and gift tax”, “motor vehicle tax” and “net wealth/worth taxes”.

Property owners, even if they are not resident in Italy, are taxpayers for property tax for buildings and land owned in Italy. The tax comprises two different elements: “Wealth Tax (IMU) (Imposta Municipale Propria)” and “Tax on Refuse (TARI) (Tassa sui Rifiuti)” (Deloitte, 2021).

A new property tax has been introduced on marine platforms (Imposta Immobiliare sulle Piattaforme Marine) (IMPI) effective from 2020. IMPI is taken on the ownership of qualified oil platforms located in Italian territorial waters and replaces other property taxes previously applied. The rate is 1.06% and the tax base is calculated largely according to the rules applied to the IMU (IBFD- Tax Research Platform, n.d.).

The inheritance and gift tax on inheritance and donations was reinstated in October 2006, after five years of abolition (Lucarini, 2021).

For individuals, the taxable amount is usually represented by the value of inherited assets and rights. Depending on the relationship between the deceased and the beneficiary, the rates are 4%, 6% or 8%. An exemption of up to 1 million Euros can be applied for wills made to close relatives (Deloitte, 2021).

The regional governments have been implemented the vehicle tax in Italy since 1999. Vehicle tax or car tax "bollo auto", called "tassa di circolazione" (road tax), is a local tax. The tax on cars and other motor vehicles registered in Italy is paid in the region of residence (European Parliament, 2014).

There are two main net wealth taxes in Italian tax system. First wealth tax is for the financial investments owned outside of Italy by an individual. This tax is called “Imposta sul valore delle Attivita` Finanziarie detenute all` Estero” (IVAFE) levied at 0.2% of the market value of financial assets (ie bank accounts, affiliates, etc.) held abroad by residents (Deloitte, 2021).

For bank accounts, the tax is a fixed amount equal to 34.20 Euro per each bank account for savings more than 5,000 Euros (Lucarini, 2021).

Another wealth tax is for real estate properties owned outside of Italy by an individual. This tax is called “Imposta sul valore degli immobile situati all’estero” (IVIE).

Immovable property owned by a resident outside of Italy is taxable at 0.76% of the original cost or market value of the property. A lower rate of 0.4% may apply for main residences (Deloitte, 2021).

4.1.4. Other Taxes

There are also some other taxes in Italian tax system. These are; regional income tax at a tax rate ranges from 1.23% to 3.33% and depends on the region of residence, the municipal income tax rate ranges from 0% to 0.8% and depends on the municipality of residence (Lucarini,

2021), the Regional Tax on Productive Activities (Imposta Regionale sulle Attività Produttive) (IRAP) at a rate for manufacturing/trading companies is 3.9% and 4.65%for banks and other financial institutions/companies and 5.9% for insurance companies (Deloitte, 2021), the digital services tax at a rate 3% as of financial year 2020, excise duty (for energy products, alcohol and alcoholic drinks, tobaccos and electric power) (Lucarini, 2021) and finally stamp duty on legal and banking transactions (Deloitte, 2021).

4.2. Taxes in Turkey

It is possible to examine the taxes in the Turkish tax system in three categories. These are taxes on income, taxes on expenditures, taxes on wealth.

4.2.1. Taxes on Income

In the Turkish tax system there are two main income taxes; “personal income tax” and “corporate income tax”.

4.2.1.1. Personal Income Tax

The main income tax levied on individuals is personal income tax called as "Gelir Vergisi (GV)". As in Italy, a prerequisite of the personal income tax is the possession of income in cash or in kind falling within the categories indicated in personal income tax law. These are; business profits, agricultural profits, salaries and wages, income from independent personal services, income from moveable capitals, income from immovable property and other income and earnings.

Persons residing in Turkey and Turkish citizens residing in foreign countries due to the works of the said offices, establishments, establishments and undertakings affiliated to official offices and establishments or establishments and enterprises headquartered in Turkey are taxed on all of their earnings and revenues in and out of Turkey (Art. 3). Natural persons who are not resident in Turkey are taxed only on their earnings and revenues in Turkey (Art. 6).

Income is the net amount of earnings and revenues earned by a natural person in a calendar year (Art. 1).

The rates applied to the revenues of 2021 are as table 2:

Table 2. Personal Income Tax Rates

Income Tax Brackets	Tax Rates (%)
up to 24,000 TL	15 %
3,600 TL for 24,000 TL of 53.000 TL, more	20 %
9.400 TL for 53.000 TL of 130.000 TL, (9.400 TL for 53.000 TL of 190.000 TL in wage incomes), more	27 %
30,190 TL for 130,000 TL of 650,000 TL, (46,390 TL for 190,000 TL of 650,000 TL in wage incomes), more	35 %
212,190 TL for 650,000 TL of more than 650,000 TL (207.390 TL for 650,000 TL of more than 650,000 TL in wage income), more	40 %

Source: Gelir İdaresi Başkanlığı. 2020

4.2.1.2. Corporate Income Tax

The main income tax levied on corporations is corporate income tax called "Kurumlar Vergisi (KV)".

In the event that the income elements listed in the Income Tax Law are obtained by the institutions, taxation is applied to the legal persons of these institutions (Presidency of The Republic of Turkey Investment Office, 2019). Corporate taxpayers defined in the Art. 2 of law are as; "capital companies, cooperatives, public economic enterprises, economic enterprises owned by associations and foundations and joint ventures".

The corporate tax rate is 20%. However, it levied on business profits is 25% for 2021, and 23% for 2022.

4.2.2. Taxes on Expenditures

In the Turkish tax system, revenues from taxes on expenditures constitute approximately 65% of total tax revenues. The most effective taxes in this result are “Value Added Tax (VAT)” and “Special Consumption Tax (SCT)”.

The value added tax (Katma Değer Vergisi, KDV) is a general tax on consumption in Turkey. There is also a special consumption tax called “Özel Tüketim Vergisi (ÖTV)” in Turkish tax system.

According to the Value Added Tax Law, delivery and services in Turkey and imports of all kinds of goods and services constitute the subject of value added tax (Art. 1).

The statutory rate of tax is 10%. However, the President has the authority to make changes on this rate. The generally applied VAT rates are 1%, 8%, and 18% (Presidency of The Republic of Turkey Investment Office, 2019).

The VAT is applied on each delivery and services. Unlike the VAT, the SCT is applied for only one.

There are four main products which are subject to SCT at different tax rates. These are; *"petroleum products, automobiles and other vehicles, motorcycles, planes, helicopters, yachts, tobacco and tobacco products, alcoholic beverages and luxury products"*.

Other expenditure taxes in the Turkish tax system are; Banking and Insurance Transaction Tax, Special Communications Tax, Gaming Tax and Stamp Duty.

In Turkey, the digital services tax at a rate 7,5% as of financial year 2020 has started to be implemented.

4.2.3. Taxes on Wealth

There are three kinds of taxes on wealth in Turkey. These are; *"Property Taxes"*, *"Motor Vehicle Tax"* and *"Inheritance and Gift Tax"*.

Buildings, apartments, and land owned in Turkey are subject to real estate tax in Turkey. Property tax rates vary from a minimum of 0.1% to a maximum of 0.6%, depending on the type of item to be taxed, i.e. residence, workplace, land or field.

Motor vehicle taxes are levied on the basis of fixed amounts and calculated depending on the age, engine capacity, type of vehicle and seat, weight of the vehicles each year.

Finally, inheritance or donations are subject to inheritance and gift taxes in Turkey. Tax rates are differ 1% to 30%.

5. CONCLUSION

Italy has a parliamentary system. On the contrary, as a result of the constitutional amendment made in 2017 Turkey abandoned the parliamentary system and adopted the presidential system. Both countries accept "The Principle Separation of Powers".

As can be seen, apart from minor differences, tax administrations in Turkey and Italy show similar structures. In both countries, the Revenue Administrations are under the ministry.

The main tax authority in Italy is the Ministry of Economy and Finance. On the other hand, the Ministry of Treasury and Finance is the main tax authority in Turkey. In both countries, there are revenue agencies operating under the Ministry, mainly responsible for collecting taxes and increasing tax compliance.

In Italy, taxes on income are regulated in a single law. In Turkey, there are separate laws

for each tax. In both countries, taxes on income are personal income tax, which taxes the income of natural persons, and corporate tax, which taxes the income of legal entities.

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Both personal and corporate income tax rates in Italy are higher than the rates applied in Turkey. Another difference regarding these tax rates is that while there is a fixed corporate tax rate in Turkey, different rates are applied in Italy. Personal income tax rates are applied progressively in five different tax brackets in both countries. However, in Turkey, the amounts differ in favor of wages in the third, fourth and fifth tax brackets.

Value added tax, which is a general consumption tax, is levied on expenditures in Italy. The standard rate is 22% while the reduced rate is 10%. Also, some goods and services are subject to the lower rates of 4% and 5%.

Value added tax is also applied in Turkey. The statutory rate of tax is 10%. However, the generally applied VAT rates are 1%, 8%, and 18%. In both countries, the subject of tax is imports, transfers of goods and the provision of services.

Another important tax applied in both countries is the special consumption tax. The subject of tax in Turkey is *"petroleum products, automobiles and other vehicles, tobacco and tobacco products, alcoholic beverages and luxury products"*. In Italy, only "*energy products, alcohol and alcoholic drinks, tobaccos and electric power"* are subject to this tax. In both countries, there are different taxes apart from these two taxes on expenditures.

Finally, there are three kinds of taxes on wealth in Turkey. These are; *"property taxes, motor vehicle tax and inheritance and gift tax"*. In Italy, there are four types of taxes on wealth; *"real estate tax, inheritance and gift tax, motor vehicle tax and net wealth/worth taxes"*.

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CONTRACTUAL LIABILITY IN ROMANIAN CORPORATE LAW

Maria CĂZĂNEL[5]

Abstract

The conclusion of a contract entails the will of the parties to acquire exactly what they are entitled to and to fulfill exactly the obligations they have assumed. When this desideratum is not realized, the contractual creditor has at his/her disposal a multitude of legal actions that he/she can resort to in order to obtain what he/she is entitled to, a diversity which can be explained by the variety of legal situations encountered. If the debtor does not execute his/her obligations, his/her co-contracting party can formally put the debtor in default. If he/she prefers to maintain the contract, the creditor can request that he/she be forced to execute the obligation in kind or may request that he/she or a third party be authorized to execute the obligation incumbent on the debtor. As well, the creditor could want the debtor to enforce the obligation by equivalent, can invoke the exception of non-performance of the synallagmatic contract or can request the court to pronounce a judgement to replace the execution of an obligation by the debtor. Art. 1516 of the Romanian Civil Code stipulates that when, without justification, the debtor does not execute his/her obligation and is in default, the creditor can, of his/her choice and without losing the right to damages, if he/she is entitled to them: to claim or, after case, to proceed to the forced execution of the obligation; to obtain, if the obligation is contractual, the termination or rescission of the contract or, as the case may be, the reduction of his/her correlative obligation; to use, where appropriate, any other action provided by law for the exercise of his/her right. The research would like to examine the remedies for non-performance of the contract in Romanian corporate law, meaning the rights that the creditor has in case of non-execution of the contract.

Keywords: *Obligations, Creditor, Debtor, Contractual Liability.*

[5] Lecturer PhD, "Ovidius" University of Constanta, Romania, maria.cazanel@gmail.com

1. INTRODUCTION

Any discussion about contractual liability starts from the premise of the existence of a legally binding contract, but which has not yet been executed through the fault of the debtor. Otherwise, the type of liability for the non-performance of the obligation will be tort liability.

If in this case we are dealing with a unilateral judicial act or a legal form that cannot be subsumed under the contract category, the only liability that can be incurred is tort liability. Contractual liability is incurred only between the parties to a contract.

The reasons for the enforcement of a contract are numerous, without being limited to the existence of sanctions (Chitty, 2004) They can have intrinsic value, such as morality, honor, and the need to not deceive another one's trust. The contract can be enforced simply because the party has an interest, materialized in the legal idea of the case. Sometimes the friendly, familial, or social external constraint can intervene.

2. CONTRACTUAL LIABILITY IN ROMANIAN LAW

Article 1530 of the Romanian Civil Code, which establishes the creditor's right to compensatory damages, also outlines the conditions in which the creditor is entitled to compensatory damages: the creditor has the right to compensatory damages in order to repair the damage caused by the debtor and which is the direct and necessary consequence of the non-performance of the obligation without justification or, as the case may be, wrongfully. In other words, for the contractual liability to be incurred, **the following conditions must be met**: the existence of a damage to property; a tort consisting in the violation of a contractual obligation; the causal relationship between the deed and the damage; the existence of the debtor's fault.

For contractual liability to operate, two special requirements must be met: the debtor must be in default and a non-liability clause in favor of the debtor must not be stipulated.

2.1. Wrongful Act/Tort

To incur contractual liability, the act causing the damage must consist in the non-performance of a contractual obligation. The non-performance can be total or partial, it can relate to a main or an ancillary obligation, the obligation can be essential or secondary. It might be total non-performance or defective, inappropriate performance, or a delayed performance. The quantitatively or qualitatively inappropriate performance or a performance which differs from the one established between the parties are not excluded either. All these alternatives are subsumed under the notion of "non-performance" of the contractual obligation, given that,

according to art. 1516 of the Romanian Civil Code, the creditor is entitled to the full, exact, and timely fulfillment of the obligation.

According to art. 1551 of the Romanian Civil Code, compensatory damages can be awarded even for "minor non-performance".

Within the contractual liability proceedings, the creditor-plaintiff must prove the commission of the tort, in other words the non-performance of the contractual obligation. Specifically, the probative activity will differ, given that the object of the non-performed obligation consists in giving, doing, or not doing (Stătescu and Bîrsan, 2008, pp.153-157).

If the debtor undertook an obligation to do, the difference will be made according to whether the obligation was of result (determined) or of diligence (of means). In the case of obligations of result, the creditor must prove that the debtor did not provide the promised result. On the other hand, if the obligation is of means, the creditor must prove that the debtor did not try hard enough to reach the promised result. The diligence that the debtor must apply in the performance of his obligations, and in relation to which the fulfillment or non-fulfillment of his obligation will be assessed is the one that a good owner exercises in the administration of his property. It is possible that the law or the contract stipulate other reference criteria regarding the diligence that had to be exercised by the debtor of the obligation of means. For example, in case of obligations inherent to a professional activity, diligence will be assessed by considering the nature of the activity performed by the debtor (Brașoveanu, 2013, pp.144-145).

In the case of obligations not to do, the creditor is required to prove the results of the debtor's action from which he/she had to refrain from doing, being impossible to prove the abstention per se, but only its consequences.

Regarding the non-performance of an obligation to give, the nature of the property will be considered. If it is immovable/real property subject to registration into the Real Estate Registry, the creditor of the obligation will be required to prove that the debtor did not consent to the articles of incorporation or to the transfer of real estate registration rights, which he had previously agreed upon with the debtor. In the case of a movable/personal property and not subject to any formality (advertising or administrative), the creditor will be able to claim only the vesting in possession, given that the obligation to give was met *solo consensu*, according to art. 1273 of the Romanian Civil Code.

2.2. The Guilt (Fault) of The Debtor

Voluntary non-fulfillment of the obligation must be culpable, i.e., it can be blamed on the debtor, who has no justification for his non-performance.

Guilt is the psychic attitude of the perpetrator of the unlawful and prejudicial deed towards the respective deed and towards its consequences.

The Civil Code qualifies the intention to cause harm as deceit/fraud (which can be direct or indirect), and the unintentional error, as fault (in the form of recklessness and negligence). Characterized by the intention to cause harmful consequences, deceit is more serious in relation to fault.

The deed is committed with intent (direct or indirect) when the perpetrator wants and agrees with the consequences of his deed to be produced.

Fault through recklessness exists when the perpetrator foresees the possibility of producing the damaging result of the tort, but unjustifiably considers that it will not occur.

Fault through negligence exists when the perpetrator of the deed does not foresee the result of his conduct, although he had the obligation and the possibility to foresee it.

The seriousness of the fault, in our law, has no influence on civil liability. The obligation of reparation exists regardless of whether the basis of the tort is deceit or fault, with all its degrees. The fault can be gross/grave/serious (*lata*), common/ordinary/less serious (*levis*) and slight (*levissima*). For incurring the liability of the debtor, the form of guilt is not important. Civil liability is incurred for the slightest fault.

The concept of guilt includes two elements: intellectual and volitional.

From an intellectual point of view, man cannot be responsible unless he is aware of the consequences of his harmful act. He is guilty of misconduct, which conflicts with the rule of law. Even if the perpetrator was not aware of the illicit nature of his conduct, but in the given circumstances he should have been, he is civilly liable. Fault entails the representation of the consequences of the conduct.

The volitional process implies the perpetrator's deliberation and deciding. His will must be free, unaltered.

Contractual liability remains subjective, being based on the guilt of the debtor, even if it is legally presumed. This fact results from the provisions of art. 1547 of the Romanian Civil

Code: "The debtor is obliged to repair the damage caused with intention or through his fault". Moreover, art. 1530 of the Romanian Civil Code stipulates the right of the creditor to compensatory damages in case of non-performance "of the obligation without justification or, as the case may be, wrongfully". The hypothesis of "non-performance without justification" of the obligations refers to all the cases of justified non-performance regulated by art. 1556-1557 of the Romanian Civil Code. Non-performance without justification is also a wrongful performance. We also include here the situations in which, without having a proper fault, we have an assigning of the consequences of the non-performance to the debtor by the legislator - legal imputability. Typical cases are the warranty against hidden defects of the property sold or the warranty against eviction. There are also situations in which the fault condition is not necessary, such as in the situation of the non-conformity of the sold product. Proof of guilt is not necessary in contractual matters, the legislator establishing some presumptions in this regard. Thus, according to art. 1548 of the Romanian Civil Code, "The fault of the debtor of a contractual obligation is presumed by the simple fact of non-performance". However, applying this presumption depends on whether the non-performed obligation is an obligation of result or one of diligence.

The element of guilt or fault is not found in the fortuitous case or force majeure hypotheses, as the latter two are defined by art. 1351 of the Romanian Civil Code. That is why compensatory damages are an inapplicable remedy in case of the fortuitous non-performance of the contract. If the act of the third party or of the victim meets the conditions of force majeure or, sometimes, of the fortuitous case, it can remove the contractual liability, according to art. 1352 of the Romanian Civil Code.

The creditor's task is only to prove that there is a contractual obligation, what its content is, and the debtor will have to prove whether he has fulfilled his obligation. He will be able to prove, for example, that the non-performance is due to external events that are not attributable to him/her. Such external events are: the force majeure, the fortuitous case or even the fault of the creditor (Larroumet, 2001: 543-545).

2.3. The Damage

According to the provisions of art. 1530 of the Civil Code, "The creditor has the right to compensatory damages in order to repair the damage caused by the debtor (...)". In the absence of damage, the claim for the payment of damages is unjustified.

By damage we mean the harmful results, of a patrimonial or moral nature, consequences

of the violation or harm of the legitimate rights and interests of a person.

The damage must exist, because in its absence any tort civil liability is excluded. The legislation, doctrine and judicial practice use the notions of damage, loss or injury, the terms being synonymous. The damage must be the direct and necessary consequence of non-performance.

a) The direct character of the damage results from the content of art. 1533 of the Civil Code, according to which the compensatory damages include only what is the direct and necessary consequence of the non-performance of the obligation.

In order to be direct, the damage implies the existence of a causal relationship between the tort and that unjust damage caused to the victim.

Admitting indirect damages would allow the existence of unlimited liability. The jurisprudence has always stipulated that the damage be a direct consequence of the tort, in this case of the non-performance of the contractual obligation.

b) The damage must be certain. It is a condition stipulated by art. 1532 of the Civil Code. This character considers both the existence of the damage itself, and the possibility to establish its extent. To be subject to repair, the damage must be sure, i.e., certain, which is always the case with the present damage. The future damage is also subject to repair if there is the certainty of its production, as well as sufficient elements to determine its extent.

In determining the compensatory damages, future damages are considered, when they are certain. The future damage should not be confused with the potential damage, because the latter is uncertain.

The damage that would be caused by the loss of a chance to obtain an advantage can be repaired proportionally to the probability of obtaining the advantage, considering the circumstances and the concrete situation of the creditor. The damage whose amount cannot be established with certainty is determined by the court.

c) The damage should be predictable. The debtor is liable only for the damage that he has foreseen or that he could have foreseen because of the non-performance at the moment of concluding the contract, unless the non-performance is intentional or is due to his gross fault.

Even in the latter case, the compensatory damages include only what is the direct and necessary consequence of the non-performance of the obligation. In this situation, it is considered that, in terms of civil liability, one passes from the contractual realm to the tort

realm.

d) The personal character of the damage. It is the consequence of the principle that without interest the right to action cannot be born. Only the natural or legal person who has suffered a loss can request its repair. However, we must not understand that the right to action regarding damages is related to the person (Căzănel and Calafus, 2018: 301).

The right to action can be exercised, in accordance with the law, by unsecured creditors by means of an oblique action; the right can also be exercised by the heirs of the victim, when it has a patrimonial content.

On the other hand, a loss can harm not only the main victim, but also other people (for example, those who were dependent on the victim).

e) The material or moral character of the damage. The material damages are the consequence of affecting a patrimonial interest, and the moral damage is the consequence of injuring a non-patrimonial right. Material damage means, for example, the destruction of property, the killing of an animal, etc. Moral damage can consist, for example, in damages to personality, to physical health, or body injury/incapacitation/impairment generated by the defective performance of a medical contract, etc.

Material damage consists of the patrimonial loss (a decrease in the active values of the patrimony) and the unrealized benefit (hindering the enrichment of the patrimonial asset, which would have taken place if the tort had not been committed).

According to art. 1531 para. (3) of the Civil Code, the creditor also has the right to the repair of the non-patrimonial damage, and according to art. 257 of the Civil Code, the non-patrimonial rights of the legal person are defended equally with those of the natural person, including by awarding damages.

As compensatory damages are the expression of the debtor's liability for the non-performance of an obligation, it is natural, when the default is not attributable to him/her, for the compensatory damages to be reduced or removed.

Article 1534 of the Civil Code, with the title "Damage imputable to the creditor", expressly stipulates the faulty act of the creditor as the cause of the reduction (or removal) of liability, without the act of the creditor having the characteristics of force majeure: "If, by his wrongful act or omission, the creditor contributed to the occurrence of the damage, the damages due by the debtor will be reduced accordingly". This provision also applies when the damage

is caused in part by an event whose risk had been assumed by the creditor (Piperea, 2012: 125).

In addition to this specific stipulation of the wrongful act of the creditor, as an exonerating liability cause, the Romanian Civil Code also contains a provision which aims to reduce the extent of the debtor's liability, i.e., the institution of a general obligation borne by the creditor to take measures to limit the extent of his own damage. Thus, para. (2) of art. 1534 of the Civil Code states that "the debtor does not owe compensation for the damages which the creditor could have avoided with a minimum of diligence". To the extent that the creditor does not fulfill this obligation, the compensatory damages to which he is entitled will be diminished. Such a principle, applicable in case of default in fulfilling other obligations than the pecuniary ones, will have no implications in case of default in the performance of a pecuniary obligation. In case of default in the performance of a pecuniary obligation, the provisions of art. 1534 of the Civil Code could be invoked by the debtor in his defense only when his obligation to cover the entire damage would be requested, in order to diminish the value of the compensatory damages corresponding to the coverage of this damage.

Proof of damage. The creditor is obliged to prove the existence of the damage. The Civil Code establishes legislatively the necessity of fulfilling this requirement in art. 1537: "Proof of non-performance of the obligation does not exempt the creditor from proof of damage, unless otherwise stipulated by law or by an agreement between the parties." One of the situations derogating from this rule is that of the default in the performance of pecuniary obligations, article 1535 para. (1) of the Civil Code expressly granting this benefit to the creditor: "the creditor has the right to moratory damages, (...), without having to prove any damage".

2.4. The Causal Relationship between The Deed and The Damage

It is the link that must exist between the non-performance of the contractual obligation and the damage claimed by the creditor as repairable. In order to establish the existence of the causal relationship, the criteria established by the legislator in the tort liability matter will be applied, since in the contractual matter there is no reference to the elements needed in order to do this.

The existence of this condition is underlined by art. 1530 of the Civil Code, which shows that the damage, in order to be repaired, must be the direct and necessary consequence of the non-performance.

The current Romanian Civil Code does not contain a provision similar to the one in art. 1082 of the old Civil Code, which establishes a legal presumption of causality between the

damage and the non-performance of the contractual obligation. As a result, the creditor will have to effectively prove the link between the damage he suffered and the non-performance of the contract, otherwise his claim for reparation will be rejected.

The creditor who claims that the non-performance of the conventional obligations to which the debtor was bound caused him/her a loss, will have to prove the constitutive elements of the contractual liability. If one of these is missing or cannot be proven, the debtor is exempt from liability.

The exonerating causes of contractual liability are analyzed in principle just as in the matter of tort liability, but with some nuances. However, external events have an exonerating effect – they remove the causal relationship between the non-performance of the obligation and the damage - but also the justifying cases - which annihilate the illicit effect of the non-performance of the contract (Terré et al., 2018: 887).

External events with an exonerating effect are the force majeure and the fortuitous case, the deed of the victim and the deed of a third party.

In contractual matters, the distinction between the force majeure and the fortuitous case is not needed, given that the debtor is shielded from liability in both situations.

The deed of the victim is the deed of the creditor, which may lead to the diminution or removal of the debtor's liability, the cases being regulated by articles 1534 and 1517 of the Romanian Civil Code.

The justifying causes from tort liability, also applicable to contractual liability, are the state of necessity and the authorization or the order of legal nature, the legitimate defense being difficult to be adapted to the contractual relations between creditor and debtor. The state of emergency must be distinguished from the unforeseen circumstances, which may even lead to the termination of the contract, in the absence of any guilt of the debtor.

2.5. Placing The Debtor in Default (Additional Term for The Execution of Obligations)

Placing the debtor in default is not nominated among the legal actions the creditor may resort to, listed in art. 1516 of the Romanian Civil Code - The rights of the creditor, except as a precondition for invoking the other remedies. "The creditor has the right to the full, exact and timely execution of the obligation. When, without cause, the debtor does not execute his/her obligation and is in default, the creditor can, of his/her choice and without losing the right to

damages, if appropriate: (...) ".

However, from the wording of the legal text it follows that before resorting to any other legal action to obtain the benefit he/she is entitled to or to sanction the debtor, it is necessary for the debtor to be put in default.

According to common law, the mere maturity of the obligation is not enough for the debtor to be in default in the legal sense. For the default to generate legal consequences, it is necessary for him/her to be formally put in default, i.e., to be notified by the creditor that his/her debt is enforceable and that he/she must execute his/her obligation.

If the creditor has not expressly requested the debtor to execute the obligation, it is assumed that this default does not affect him/her. By placing the debtor in default, the creditor expressly states his/her will to collect his/her claim. When he/she requested the enforcement, as required by law, i.e. when he/she put the debtor in default in compliance with the legal or conventional conditions, all the legal effects that the law relates to the fulfillment of this formality are produced: the non-performance of the contractual obligation is officially ascertained, thus setting the conditions for engaging the debtor's liability; in the property transfer contracts, the transfer from the alienator to the acquirer of the risk of fortuitous loss of the asset and of bearing the risk of impossibility of fulfillment of the obligation, etc. take place (Cărpenaru, 2014: 176).

Placing the debtor in default is regulated by the provisions of art. 1521-1526 of the Civil Code. According to Law no. 71/2011 on the implementation, the provisions of art. 1521-1526 are applicable in the case of obligations generated after the date of its entry into force. The debtor can be in default ipso jure in the fulfillment of the obligation, or he/she can be put in default upon the request of the creditor.

Formally, placing in default is a notification that the creditor gives to the debtor by which he/she reminds him/her about the existence of an enforceable obligation, with the invitation to pay the due obligation.

Substantively, placing in default is a legal act by which the creditor expresses his/her will in the sense that he wants the execution of his/her claim by the debtor and that his/her default causes damage which the debtor will have to repair.

Placing in default can be achieved either by a written notification or by a summons.

The notification can be communicated to the debtor by a judicial officer or by any other

means which ensures the proof of communication, except for the situation whereby law or by contract a special means of communication of the notification is stipulated.

By notification, the debtor must be granted a deadline for the execution (additional deadline for the execution), considering the nature of the obligation and the circumstances. If no such deadline is granted by notification, the debtor can execute the obligation within a reasonable time, calculated from the day of notification.

The summons formulated by the creditor, without the debtor having been previously put in default confers to the debtor the right to execute the obligation within a reasonable time, calculated from the date when the request was communicated to him/her. If the obligation is executed within this term, the court costs lie upon the creditor (Guyon, 2003:98).

The effects of placing in default. From the date of placing in default:

- the debtor owes to the creditor moratory or compensatory damages,

- the fortuitous non-performance of the obligation risk is transferred, except for the situation where the fortuitous case releases the debtor from the execution of the obligation itself,

- the proof of the non-performance of the obligation until that date and the prerequisite conditions for requesting the termination of the contract are created: judicial, unilateral and commissoria lex,

- the creditor can suspend the execution of his/her own obligation, invoking the exception of non-performance of the contract, until the expiry of the limitation period, but he/she cannot exercise the other rights - the right of termination - unless otherwise stipulated by law. The creditor can exercise these rights if the debtor informs him/her that he/she will not execute the obligations at the deadline or if, at the expiry of the term, the obligation has not been executed,

- placing in default the party favored by the limitation can merit the interruption of the limitation course, if he/she is summoned within 6 months from the date of his/her being put in default, according to art. 2540 of the Civil Code,

- according to art. 1526 of the Civil Code, in the case of joint obligations, the notification by which the creditor puts in default one of the joint co-debtors also produces effects on others. The notification made by one of the joint creditors also produces effects on other creditors.

The debtor is not in default, i.e., he/she avoids all these adverse consequences for him/her if he/she offered, when appropriate, the due benefit, even without complying with the formalities provided in Art. 1510-1515 of the Civil Code - regarding placing the creditor in

default or with those related to escrow - but the creditor refused, without just cause, to receive it (Pop et al., 2020: 246-271).

The effects of placing in default cease when:

- the obligation has been executed,

- the debtor resorts to escrow,

- the creditor clearly refuses to receive the payment,

- the creditor has given up, expressly or tacitly, the right to invoking the effects of placing in default,

- in the action addressed to the court, the creditor gave up, or the expiration intervened,

- there was a novation of the obligation,

- the creditor has granted the debtor a new deadline for the execution.

The partial execution of the obligation does not constitute giving up on placing in default.

3. CONCLUSION

The contracting parties must act in good faith both at the conclusion of the contract and throughout its execution. When these obligations are breached, the debtor will be obliged to pay damages to the creditor.

Therefore, if there is a valid contract concluded, to give birth to contractual civil liability it is necessary to meet the four conditions of civil liability: wrongful act/tort; the guilt (fault) of the debtor; the damage suffered by the creditor and the causal relationship between the deed and the damage.

When these conditions are met cumulatively, the contractual debtor has the obligation to financially repair the damage caused to his creditor by non-execution, improper execution, or delayed performance of its contractual obligations.

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NULLITY OF CONTRACTS IN ROMANIAN CIVIL LAW

Maria CĂZĂNEL[6]

Abstract

Nullity of contract is a civil sanction consisting of the cancellation with retroactive effects (from the date of its conclusion) of the contract concluded by breaking legal provisions (substantive and of the form). Such a contract, concluded by breaking the law, cannot produce legal effects.

Any contract concluded by breaking the legal requirements for its valid conclusion is subject to nullity unless another law provides for another sanction. Nullity applies to any contract. If under the old regulation nullity could only be judicial, i.e., it could have been ascertained or declared only by the court, at present nullity can also be amiable. Thus, according to article 1246 of the Romanian Civil Code, unless otherwise provided by law, the nullity of a contract can be ascertained or declared by the agreement of parties. Amiable nullity can also represent a means of defrauding the law, given its retroactive effects. By the agreement of parties, no cases of absolute or relative nullity can be instituted or suppressed. Any contrary convention or clause is considered unwritten. In order to save the contract, the Romanian Civil Code provides the following: clauses contrary to law, public order or morality that are not deemed as unwritten trigger the nullity of the contract as a whole or only if they are, by their nature, essential or if, in their absence, the contract would not have been concluded. If the contract is kept in part, the null clauses are replaced de jure with applicable legal provisions. These provisions also apply to clauses that contravene mandatory legal provisions and are considered unwritten by law. The purpose of this analysis consists in presenting the novelties to the regulation of the nullity of the contracts in the context of the adoption of the New Romanian Civil Code.

Keywords: *Contract, Law, Nullity, Effects, Damages.*

[6] Lecturer PhD, "Ovidius" University of Constanta, Romania, maria.cazanel@gmail.com

1. INTRODUCTION

Nullity is a civil sanction consisting of the cancellation with retroactive effects (from the date of its conclusion) of the contract concluded by breaking legal provisions (substantive and of the form). Such a contract, concluded by breaking the law, cannot produce legal effects.

Any contract concluded by breaking the legal requirements for its valid conclusion is subject to nullity unless another law provides for another sanction. Nullity applies to any contract.

2. NULLITY OF CONTRACTS IN ROMANIAN CIVIL LAW

The contract is the most important source of obligations. The main effect of a valid contract is to generate, modify or extinguish obligatory relationships whose content consists of contractual rights and obligations.

When talking about the effects of contracts, first, its obligation in relation to the contracting parties is taken into consideration, but also in relation to the court or to some third parties.

One of the principles governing the effects of contracts is the principle of compulsory force, provided by article 1270 of the Romanian Civil Code: “The contract that was validly concluded has the power of law between the contracting parties”. In other words, the contract is the law of the parties. The article resumes this in a form that is quite like the one from article 969 of the old Civil Code, i.e.: “legally made conventions have the power of law between the contracting parties”.

A consequence of the binding power of the contract is represented by the irrevocability of the contract. The binding power of the contract means that neither party can modify it unilaterally. The revocation of the contract shall be possible only by the agreement of the will of both parties. However, the principle has some exceptions. Thus, it is possible to unilaterally denounce a contract, except for the cases provided by law. This is also provided by article 1270, paragraph (2) of the Civil Code: “the contract is modified or terminated only by the agreement of parties and for causes authorized by law”.

The establishment of the sphere of the persons connected by obligations, as well as the problem of extending this connection to other persons, shall be addressed within the relativity principle regarding the effects of the contract. According to this principle, provided by article 1280 of the Romanian Civil Code, the contract produces effects only between the contracting

parties, unless otherwise provided by law. It neither benefits nor damages those who did not participate in the conclusion of the contract (Adam, 2014: 117-120)

In article 1281, the New Civil Code provides for the opposability principle regarding the effects of the contract. According to the law, the contract is opposable to the third parties, which cannot affect the rights and obligations arising from the contract. Third parties may stand on the effects of the contract, but without having the right to request its performance, except in cases provided by law. In other words, although a contract does not generate rights and obligations for third parties (as provided by the relativity principle), the latter cannot ignore the reality that the conclusion of a contract generates and which they are bound to observe. Moreover, if they wish, they can invoke in support of their rights the newly created situation because of the concluded convention.

If under the old regulation of Romanian Civil Code nullity could only be judicial, i.e., it could have been ascertained or declared only by the court, at present nullity can also be amiable. Thus, according to article 1246 of the New Romanian Civil Code, unless otherwise provided by law, the nullity of a contract can be ascertained or declared by the agreement of parties. Amiable nullity can also represent a means of defrauding the law, given its retroactive effects.

By the agreement of parties, no cases of absolute or relative nullity can be instituted or suppressed. Any contrary convention or clause is considered unwritten.

2.1. Absolute Nullity

This occurs when a legal provision established for the protection of a general interest has been violated upon the conclusion of a contract. The contract is affected by absolute nullity in certain cases provided by law, as well as when the law makes it clear that the protected interest is a general one.

The cases where absolute nullity operates are the following:

a) the contract is missing one of the essential, structural elements (consent, object, cause) or the object or cause is illicit or immoral, in certain situations. Regarding consent, absolute nullity shall operate only by the intervention of an error-obstacle or if, simply, the consent would be completely absent.

b) the contract was concluded by a person with no use capacity or violates a legal prohibition to contract established for public reasons or interests.

c) the contract was concluded without observing the solemn form provided by law for its

validity (*ad validitatem*).

d) the contract was concluded by breaking the law. The fraud consists in the intentional violation by the parties, by fraudulent means, of imperative legal provisions, when concluding a contract. Thus, it is possible to resort to law circumvention (which consists in the deliberate circumvention or avoidance of the observance or application of normative provisions when concluding the contract) or to illicit simulation (when pursuing an illicit purpose for defrauding the law or the state interests).

Absolute nullity can be invoked by any person who has a protected legal interest. Besides the contracting parties, their successors and creditors may also invoke absolute nullity; the court may also invoke it, *ex officio*.

Unless otherwise provided by law, absolute nullity may be invoked at any time, either by way of action or by way of exception (Terré et al., 2018: 572)

A contract affected by absolute nullity can only be confirmed in cases provided by law. The parties cannot validate such a contract by mutual agreement.

2.2. Relative Nullity

The contract concluded by breaking a legal provision established for the protection of a particular interest is void. The contract is void when the legal provisions regarding the exercise capacity have been disregarded, when one of the parties' consents has been vitiated, as well as in other specific cases provided by law.

Examples of relative nullity are illustrated by the following situations:

a) the consent expressed upon the conclusion of the contract was vitiated by error, deceit, violence, or lesion.

b) the contract was concluded by persons without exercise capacity or by persons with limited exercise capacity, who acted without observing the legal provisions regarding the substitution or completion of their capacity. The contract that was concluded by the minor under the age of 14, by the mentally ill or by the mentally retarded person, under court restriction of their legal capacity, as well as by their legal representative without the approval of the guardianship court - if such an approval is required by law, is affected by relative nullity. The same sanction shall also apply to contracts concluded by the minor who turned 14, without prior approval of the guardianship court, when required by law.

c) the contract breaches the legal prohibition to contract established for the purpose of

protecting some personal interests.

d) lack of cause unless the contract was wrongfully qualified and may produce other legal effects.

Relative nullity can only be invoked by the party, or the person protected by the legal provision violated upon the conclusion of the act. Relative nullity cannot be invoked ex officio by the court.

The action for annulment is subject to the extinguishing prescription. Relative nullity can be invoked by way of action only within the limitation period established by law. However, the party to whom the performance of the contract is requested may at any time invoke the relative nullity of the contract, even if the limitation period of the right to the action for annulment has ended.

Relative nullity may be covered by confirmation (express or tacit) by the person entitled to invoke it. As far as the parties are concerned, the effect of confirmation is that nullity disappears with retroactive effects. When the confirmation can be made by several persons and only one of them confirms the cancellable contract, the confirmation made by this party does not operate regarding the others, who remain entitled to invoke relative nullity. As far as third parties are concerned, relative nullity shall produce future effects (Malaurie et al., 2005, pp.153-157)

If the nature of nullity is not established or does not clearly emerge from the law, the contract is voidable.

2.3. The Effects Entailed by The Nullity of Contracts

The contracts affected by absolute nullity or canceled are considered to have never been concluded.

The main effect of absolute and relative nullity is that the cancellation of the contract is done retroactively.

According to the law, the termination of the contract entails the cancellation of the subsequent acts concluded under it.

If the contract was not performed between the moment of its conclusion and the moment of its cancellation, the situation is simple, because it is considered that the parties are in a situation identical to the one in which they would have been if they had never concluded the respective contract.

If the contract is terminated, each party must return to the other, in kind or by equivalent, the services received, according to the provisions of articles 1639-1647 of the Civil Code, even if they were performed successively or had a continuous character.

The services that were performed based on the act affected by nullity shall be returned, the parties being restored in the situation prior to the conclusion of the contract (restitutio in integrum), with some exceptions.

As far as third parties are concerned, the nullity of the contract has the same retroactive effect, as it is considered that the parties could not transfer more rights than they had (*nemo plus juris ad alium transferre potest quam ipse habet)*. By dissolving the rights of the contracting party, the rights of the acquirers are also abolished (*resoluto jure dantis resolvitur jus accipientis*). There are also several exceptions from this rule.

In case of violence or deceit, the person whose consent is vitiated has the right to claim for damages, besides cancellation, or, if s/he prefers to keep the contract, s/he has the right to request only a reduction of his/her performance equal to the value of the damages to which s/he would be entitled (Stătescu and Bîrsan, 2008: 212-215)

As far as the contracts affected by lesion are concerned, the party whose consent was vitiated by lesion may request, at his/her choice, the cancellation of the contract or the reduction of his/her obligations equal to the value of the damages to which s/he would be entitled. Therefore, the victim of the lesion is not obliged to terminate the contract, but s/he can choose to keep it, entailing the reduction of his/her own obligations.

In all cases, the court may keep the contract if the other party equitably offers a reduction of his/her debt or, if appropriate, an increase of his/her own obligations. In this situation, the rules from the adaptation of the contract shall apply.

Except for the lesion to a minor, the annulment action is admissible only if the lesion exceeds half of the value that the performance promised or performed by the injured party had upon the conclusion of the contract. The disproportion must last until the date of the cancellation application.

Regarding the cancellation or nullity of the contract concluded in an authentic form for a nullity cause whose existence results from the text of the contract itself, the damaged party may request the public notary to repair the damages incurred, under the conditions of tort liability for his/her own deed.

Article 1266 of the Romanian Civil Code regarding the interpretation of contracts stipulates that this is done according to the parties' concordant will, and not according to the literal meaning of the terms. When establishing the concordant will, account will be taken, among other things, of the purpose of the contract, of the negotiations carried out by the parties, of the established practices between them and of their behavior after the conclusion of the contract (Pop et al., 2020: 168).

As far as doubtful clauses are concerned, article 1268 of the Civil Code shows that those clauses susceptible of several meanings are interpreted in the sense that best matches the nature and object of the contract. They are interpreted considering, among others, the circumstances in which it was concluded, the interpretation previously given by the parties, the meaning generally attributed to the clauses and expressions in the field, and to practices.

The contract includes only the thing on which the parties have proposed to contract, no matter how general the terms used are. The clauses that are intended to exemplify or remove any doubt about the application of the contract to a particular case do not restrict its application in other cases that have not been expressly provided.

Article 1269 of the Romanian Civil Code established subsidiary rules of interpretation: if, after the application of the interpretation rule, the contract remains unclear, it is interpreted in favor of the obligor; the stipulations entered in adhesion contracts are interpreted against the one who proposed them.

The ways in which a contract struck by nullity can be saved are the following:

a) Partial nullity. In order to save the contract, the Civil Code provides the following: clauses contrary to law, public order or morality that are not deemed as unwritten trigger the nullity of the contract as a whole or only if they are, by their nature, essential or if, in their absence, the contract would not have been concluded. If the contract is kept in part, the null clauses are replaced de jure with applicable legal provisions. These provisions also apply to clauses that contravene mandatory legal provisions and are considered unwritten by law (Reghini et al., 2013, pp.287-290).

b) Nullity of plurilateral contracts. Regarding the contracts concluded between more parties – such as the memorandum of association – where the performance of each party has in view a common purpose, the nullity of the contract with respect to one of the parties does not entail the termination of the contract in its entirety, unless the participation of the respective party is essential for the existence of the contract.

c) Restoration of null contracts. Null contracts can be restored, in whole or in part, in compliance with all the requirements provided by law at the date of its restoration. In all cases, the contract restored shall only have effects for the future and not for the past.

d) Contract conversion. A contract affected by absolute nullity shall nevertheless produce the effects of the legal act wherefore the substantive and form requirements provided by law are fulfilled. These provisions do not apply if the intention to exclude the conversion application is provided in the contract affected by nullity or if it clearly emerges from the purposes pursued by the parties upon the conclusion of the contract.

e) Validation of null contracts. The contract affected by a nullity cause is validated when the nullity is covered. The nullity can be covered by confirmation or by other means provided by law. The confirmation of a cancellable contract results from the express or tacit will to renounce the right to invoke the nullity. The will to give up this right must be certain. The confirmation produces its effects from the moment of the conclusion of the contract and entails the renunciation to the means and exceptions that could be invoked, but subject to the rights acquired and kept by the third parties of good faith.

f) Adaptation of contracts. If one party is entitled to invoke the cancellation of the contract for error, but the other party declares that it wants to perform or performs the contract as understood by the party entitled to invoke cancellation, the contract is deemed to have been concluded as understood by the latter party. In this case, after being informed about how the party entitled to invoke cancellation understood the contract, and before the approval of its cancellation, within no more than 3 months from the date it was notified or from the date when the request for summons was communicated to it, the other party must declare that it agrees with the performance or must perform the contract without delay, as understood by the party in error. If the declaration was made and communicated to the party in error within the previous term or if the contract was performed, the right to obtain the cancellation of the contract is extinguished and the above notification is considered to have no effect (Cărpenaru, 2014, p.150)

3. CONCLUSION

The contract struck by absolute nullity or canceled is considered to have never been ended.

Benefits performed under the contract declared void or canceled are subject to refund in nature or equivalent, whether they were executed successively or continuously. The new conception on nullity provides for the restoration to the previous situation and in the case of

contracts with successive execution.

The annulment of the contract due to nullity entails the annulment of the subsequent acts concluded on its basis.

The null contract can be renewed, in whole or in part, in compliance with all conditions provided by law on the date of restoration. The renewed contract will take effect only for future.

In view of these considerations, knowing the conditions and effects of nullity helps us to clarify very important aspects related to the validity conditions that a contract must comply with multidisciplinary implications related both to the form of the contract and to its substantive conditions.

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FORWARD THINKING ON RECOVERY: COVID-19 PANDEMIC RESPONSES IN EMERGING MARKETS

Paula LAZAR[7] **Elena-Mirela NICHITA**[8]

Abstract

Governments around the world have responded to the COVID-19 crisis differently, but with enough strength to boost the economies into going back to their pre-pandemic development? Most countries have used and are still using fiscal policy to boost public expenditures, such as healthcare, education or welfare payments. Even though the fiscal stimulus is necessary for a speedy and healthy recovery, often this results in abruptly increasing the public debt and public deficit which, in return, will end up slowing the so wanted economic growth recovery. Our analysis is aiming to understand, analytically investigate and underlining the responses to the COVID-19 crisis in emerging markets from Eastern Europe - European Union member states, but not members of the Eurozone – Romania, Croatia, Poland and Hungary. The paper will critically analyse the responses to the COVID-19 crisis by comparing the *actions* and *reactions* across selected emerging markets, complemented with an examination of current actions in reference to historically analogous situations – like the global financial crisis. Furthermore, the paper will show the medium and long-term risks associated with increased levels for public debt and public deficits and will emphasise the acumen of fiscal policies and consolidation associated with it.

Keywords: *COVID-19 Crisis, Global Financial Crisis, Emerging Markets, Fiscal Policy, Macroeconomics Variables, Recovery.*

[7] Lecturer, Bucharest University of Economic Studies, Romania, paula.lazar@fin.ase.ro
[8] Associate Professor, Bucharest University of Economic Studies, Romania, mirela.nichita@cig.ase.ro

1. INTRODUCTION

The COVID-19 crisis and its generated economic downturn advanced a colossal challenge for many countries' political and institutional systems and their economic capacities. As economic literature emphasises, the crisis highlights the noteworthy role of national fiscal policies in boosting employment levels, raising the living standards of people, and maintaining social equity and economic development (Cottarelli et al., 2014).

Comparing the 2019 COVID-19 pandemic and the global financial crises, Strauss-Kahn (2020) pointed out that three main similarities emerge: the role of uncertainty, the extent of initial financial and economic collapses, and the massive reactions by governments; additionally, some remarkable differences arise: the banks are part of the solution and not the problem, the speed and expected shape of the recession, the apparent margins of plan, versus the actual implementation of policies, and the deficiencies in international coordination.

Many writings address the impact of financial and COVID-19 crisis in developed economies (e.g. Shahzad et al., 2021; Hauser et al., 2020; Norouzi et al., 2020; Tang and Aruga, 2021; Zongyun et al., 2021) but this does not mean that emerging markets and developing economies are out of danger. The worldwide coronavirus pandemic is likely to hit these economies harder than economies in richer countries (Greene and Klein, 2020).

To our knowledge, currently, the literature on the impact of the COVID-19 pandemic on key macroeconomic variables in emerging markets is limited, therefore, the paper proposes the following research questions: What were the COVID-19 pandemic responses in emerging markets from Eastern Europe? How this crisis does differ from the 2009 financial crisis or maybe the 2 are more similar than it seems at a first glance? What is the correlation between economic growth and the fiscal policy response, the budgetary policy response and the monetary policy response in the emerging markets from Eastern Europe? The analysed emerging markets are all part of the European Union and should follow, more or less, the same pattern of actions as a response to the COVID-19 pandemic. Even though the current broad-base crisis started as a health crisis we hope to find a pattern in actions and reactions with the 2009 financial crisis. We propose a cross-country panel of data for the 2000-2021 period aiming to ascertain the correlation between economic growth and a series of macroeconomic indicators (collected volume of fiscal incomes, public expenditures; public deficit, foreign direct investments flow, volume of exports, volume of imports, inflation rate and the interest rate) by developing a comparative analysis between countries. We postulate that both the global

financial crisis and the COVID-19 pandemic had a powerful impact upon the economic growth. Which factor had the most powerful impact and how is this factor linked with the states' responses to the current crisis? Does the post COVID-19 economy recovery depend mainly on this factor? What should the new compass for tracking growth be?

The findings of the study have great decision-making and policy implications, since, one of the motivations of this study is to assess the impact of COVID-19 on key macroeconomic variables for emerging markets, EU members, but not members of the Eurozone: Romania, Croatia, Poland and Hungary. Based on our findings, the governments would be able to ensure public safety and bail out the economy where the businesses jumped up to its normal level in a specific time. Complementary, it is interesting to assess the response of the key macroeconomic variables during the outbreak and their comparative performance versus to global financial crises.

To answer to our research question, the paper is organized as follows: literature review highlights the most recent deductions regarding the macroeconomic policies adopted by countries in overcoming the crisis, either global financial crisis or COVID-19 pandemic; the methodology and data section describes the macroeconomic framework of selected countries (Romania, Croatia, Poland and Hungary) and macroeconomic indicators used in regression model; the results and discussion paragraph analyses the similarities and differences obtained after running the certain statistical tests. The paper ends with conclusion, limitations of study and suggestions for future works in field of comparison between global crises.

2. LITERATURE REVIEW

In time of crises, the efforts to stimulate the economy need to take advantage of the process of "creative destruction" (Schumpeter, 1942) to accelerate operational shifts towards a stronger and more reasonable economic future. Commonly, the crises claim an immediate response by governments to avoid a collapse of the economic systems and limit the its effects. Market economies have historically been disposed to fluctuations (booms and collapses) in aggregate activity over time. These fluctuations, or long waves, were brought to international attention by Kondratiev in the mid-1920s. Although many analysts accept that economic fluctuations happen, there is less agreement as to their causes. Some researchers attribute fluctuations to the innovations, others link fluctuations to the collapse of aggregate demand, others view the recurrent upswings and downturns as an inherent feature of the market system or, for other academics, the over-capacity leads to a crisis of declining profitability, business

failure, rising unemployment, and declining consumption (e.g. Keynes, 1930; Schumpeter, 1942; Valášková and Klıeštık, 2015).

Worldwide economies are pushing back and looking forward to regain their pre-COVID-19 boost and in doing so, they are engaging into this "fight" with all they have "at hand" – a mix of policies targeting to regain control over the economic growth. In this light, the fiscal and monetary policy response had been decisive, massive and swift (Schwab and Malleret, 2020). Thus, sometimes, due to the lack of similar experiences, the fiscal response might end up too expansive and of the wrong form (Makin and Layton, 2021), but what we know for sure is that worldwide economies, whether classified as advanced, emerging or developing, have shown the same capacity of recovering after a financial crisis (Foo and Witkowska, 2016) and this current crisis might have started as a healthcare system crisis, but emerged as a financial crisis. It is without doubt that this time around, governments should focus on encouraging and stimulating the private sector actions and innovations, envisioning that the economic growth will be even stronger in the *new normal* status quo (Taylor, 2021).

With high levels of public debt and additional pressures induced by the pandemic on all major sources of development finance, low- and middle-income countries may struggle to finance their public health, social and economic responses to COVID-19. Early observations point to massive debt and equity outflows from developing economies that accompany a drop in remittances, and ripple effects on domestic finance already solicited by the unfolding public health and economic crises (OECD, 2020).

OECD (2020) recommended fiscal policies designed to assist different sectors across countries. At the early stage, COVID-19 was considered a health crisis, therefore, the fiscal policies were adopted to provide financial support and make health-related efforts to significantly reduce the impact of this health crisis. Governments have responded to the pandemic using a wide variety of fiscal policy tools (Cavallo and Cai, 2020). The role of fiscal policies mainly focuses on changing taxes or fiscal spending on various programs or projects being correlated with each countries' fiscal capacities, the severity of the pandemic, the economic, institutional, and economic conditions.

Consequently, this investigation discusses the unpredictability, actions and reactions inherent in the current disrupted macroeconomic environment created by COVID-19 pandemic and the governments' performance in response to the COVID-19 pandemic for a sample of emerging markets, EU members, but not members of the Eurozone: Romania, Croatia, Poland

and Hungary. Additionally, a comparative analysis between global financial crises and COVID-19 pandemic is performed, in order to offer insights for endorsing appropriate actions and reactions to help economies in their recovering process.

3. METHODOLOGY AND DATA

We are embarking in our study by analysing the macroeconomic frame for the countries included in our database. We will focus upon the fiscal policy, the budgetary policy and monetary policies by breaking down the selected variables related to each policy. Unlike other studies which are constructed on a large sample of observations from 170 countries as Chen et al. (2021), or data for European countries as Oncioiu et al. (2021) and Popescu et al. (2021), our aim is to draw attention on fiscal and monetary policies adopted by the selected emerging markets: Romania, Croatia, Poland and Hungary, which have the same structure and have similar macroeconomic backgrounds.

3.1 Fiscal Policy

The fiscal policy is one of the first macroeconomic policies to respond in case of a crisis and maybe the easiest intervention tool that a state has at its disposal.

Table 1. Descriptive statistic related to fiscal policy

	Indicators	Average %Total revenues	Average %GDP	Min value / Year	Max value/ Year
Romania	**Current taxes**	17,97	5,92	2803,3/ 2002	11401,1/ 2017
	Indirect taxes	35,66	11,76	4840,3/2000	23975,8 / 2021
	Social contributions	30,55	10,06	4645,2/2000	27761,39 / 2021
Croatia	**Current taxes**	14,4	6,5	1.406,5 / 2000	3.597,0 / 2019
	Indirect taxes	41,56	18,7	4.646,4 / 2000	10.957,8 / 2019
	Social contributions	26,59	12	3.133,6/ 2000	6.385,2 / 2019
Poland	**Current taxes**	17,94	7,16	12.058,1 /2003	42.933,3 / 2021
	Indirect taxes	34,11	13,59	24.089,4 / 2000	78.496,3 / 2021
	Social contributions	33,68	13,43	26.025,4/2000	78.945,7 /2021
Hungary	**Current taxes**	18,24	8,05	4.930,3 / 2000	11.104,9 / 2008
	Indirect taxes	38,23	16,93	8.462,0 / 2000	26.208,5 / 2019
	Social contributions	28,62	12,67	6.725,9 / 2000	17.163,4 / 2019

Romania is a member stat of the European Union since 1st January 2007.

The fiscal policy in Romania is centred on indirect taxation and social contribution – so consumption and labour force. Thus, during the financial crisis the indirect taxes have took a plunge of 22.32% in 2009 face to 2008. As a response, in order to increase the collected taxes, the VAT standard rate was increase by 5pp from 19% to 24% in 2010. Furthermore, during the financial crisis the government has adopted a pro-cyclical policy by increasing taxes and cutting or freezing public expenditures.

According to the IMF fiscal monitor (IMF, 2021) during the COVID-19 pandemic we can notice a change in the approach. Nowadays the fiscal policy seems to be countercyclical by proving relief to the economy throughout additional funds for the healthcare system, covering partially the wages of parents staying home for the period the schools are closed, measures to support businesses including covering in part the wages of self-employed and workers in danger of being laid off, partially subsidizing the wages of those returning to work, deferral of utilities payments for SMEs, bonuses for corporate income tax payments or grants for the businesses, etc.

Croatia is a European Union member state since 1st of July 2013.

The fiscal policy trend is focused upon indirect taxes and social contributions, thus towards consumption and labour force.

During the global financial crisis in order to compensate for the decreasing of consumption, Croatian government has adopted a series of positive tax rate modifications, i.e. VAT standard rate has been increased from 22% to 23% in 2010 and then again to 25% in 2012, the personal income tax – top statutory tax rate has been increased in 2009 by 3 pp from 53.1% to 56.1%.

Croatia has been greatly affected by the COVID-19 pandemic considering the economy relies mainly on tourism. In order to limit the negative effects the government has adopted a series of measures, such as: deferment of public obligations, free of interest for three months, which can be extended by additional three months if necessary; temporary suspension of payments of selected parafiscal charges (IMF, 2021); beneficiaries of some European Union Structural and Investment Funds will be able to receive larger advance payments, interest free loans to local governments, subsidization of net minimum wages for three months and early refund of taxed to individuals.

Poland is a European Union member state since 1st of May 2004

The fiscal policy is centred on consumption and social contributions and these have been the total government revenues that have decreased during the financial crisis.

So, in order to counter the negative effects of the global financial crisis the government has adopted a series of measures, like: the VAT standard rate has increased from 22% to 23% and the reduced rate is divided into 2 rates from only one reduce rate of 7% to two reduced rate of 5% and 8%. Contrary to the other states, Poland has decreased the top statutory rate for PIT in 2009 from 40% to 32%.

During the present COVID19 pandemic the polish government has adopted a list of measures, out of which we mention here: additional funds for hospital equipment and supplies; wage subsidies for employees of affected businesses and self-employed persons; additional loans for micro-firms, deduction of this year's losses for 2021 tax settlement, an allowance for parents of young children related to school closures, foreign workers permits are extended so they can stay and work in Poland, etc (IMF, 2021).

Hungary is a member of the European Union since 1st of May 2004

As we can see from table 1 the main public revenues are related to indirect taxes and social contributions, thus the Hungarian economy is as well centred on consumption and labour force. The policymakers have decided that in order to counterbalance the negative effects of the financial crisis a series of fiscal policy measures were in order, thus the top statutory personal income tax rate has been increased with 4 pp from 36% to 40% and the top statutory corporate income tax rate with 3.7 pp from 17,6% to 21,3%.

During the COVID-19 crisis on the revenue side, the Hungarian government has introduced a series of measures to alleviate the fiscal burden on businesses, like: employers' social contributions have been lifted in the most affected sectors; the health care contributions have been lowered; the tourism development contributions were temporarily cancelled; media service providers have been given a tax relief for incurred losses of advertising revenue (IMF, 2021).

3.2. Budgetary Policy

Governments have reacted more aggressively and promptly to the COVID-19 pandemic crisis than to the global financial crisis, most probably trying to limit to the maximum the negative effects that were foreseen. Along with the fiscal policy, the budgetary policy is the "to

go tool" when intervening in the economy in order to correct and curb unfavourable fallouts.

Table 2. Descriptive statistics related to budgetary policy

	Indicators	Average %Total expenditures	Average %GDP	Min value /year	Max value/year
Romania	**Current expenditures**	73,67	27,01	11915,5 / 2000	70356,25 /2021
	Gross fixed capital formation	11,58	4,30	1.240,7 / 2001	11.657,5 /2021
Croatia	**Current expenditures**	73,00	35,63	8556,8 / 2000	20633,22 / 2021
	Gross fixed capital formation	10,05	35,63	1.180,1 / 2001	3.294,7 / 2021
Poland	**Current expenditures**	75,39	33,06	64212,6 / 2000	195720,3 / 2021
	Gross fixed capital formation	9,41	4,13	5.378,9 / 2003	25.797,8 / 2021
Hungary	**Current expenditures**	68,13	33,34	16170,9 / 2000	45952,64 / 2021
	Gross fixed capital formation	9,25	4,53	1.825,2 / 2000	9.269,7 / 2021

Source: Authors' processing

Current public expenditures are determined by adding expenditures related to intermediate consumption, compensation to employees, subsidies and social benefits.

Romania

We notice that the trend of the budgetary policy is related to current public expenditures meaning non-productive expenditures. Because during the global financial crisis the state has adopted a pro-cyclical macroeconomic policy current expenditures have either been reducing or "frozen". Thus, expenditures related to the current financial activities have decreased, such as intermediate consumption, compensation to employees and subsidies and expenditures related to social benefits have increased due to increased unemployment rates as a financial crisis fallout.

In order to be proactive and counter back the aftermath of the COVID-19 pandemic crisis the Romanian government had increased public expenditures related to the healthcare system and throughout a series of measures is trying to encourage the business sector to overcome the current macroeconomic frame. Thus, in order to support businesses, the government has allocated funds to cover part of the wages of self-employed persons returning to work, designing grant schemas for businesses, loan guarantees and subsidized interest for working capital and investments for SMEs, etc.

Croatia

The "youngest" member state is presenting the same trend as Romania when it comes to public expenditures, the focus is on current public expenditures. But, as a notable difference, in Croatia the social benefits are a large part of the current expenditure and is has been the focus of concerns regarding its social benefits system efficiency (Stubbs, 2018).

During the global financial crisis, the social benefits expenditures have increased slightly, along with the compensation of employees – but we have to keep in mind that during the financial crisis, Croatia was not a member state. For the 2019 COVID-19 pandemic crisis the measures have been aiming at restoring the economic growth by relocating European funds to micro loans and a new credit line accompanied by measures to facilitate faster disbursements of loans with lower interest rates and larger partial risk guarantees. Again, Croatia is sustaining its economy by increasing public expenditures related to social benefits by insuring a co-financing scheme in order to ensure financial support in all sectors.

Poland

Being an emerging market its self, Poland has an economy centred around current public expenditures as well. During the global financial crisis Poland has decreased all types of expenditures but mainly the ones related to intermediate consumption and compensation of employees. Contrary to Romania and Croatia, during 2010, Poland has increased its gross fix capital formation expenditures by infrastructure investments across local communities. Furthermore, Poland has been one of the European countries that in 2009, when most European countries were wallowing in recession, registered a GDP grew by 1.7% (Reichardt, 2011).

During the COVID-19 pandemic crisis the polish government had reacted by increasing public spending such as: new credit guarantees and micro-loans were approved in addition to a liquidity program for businesses, subsidies that cover, over a three months' period, social insurance contributions, offering a "solidarity benefit" for those who lost jobs after March 2020 for a three months' period, etc.

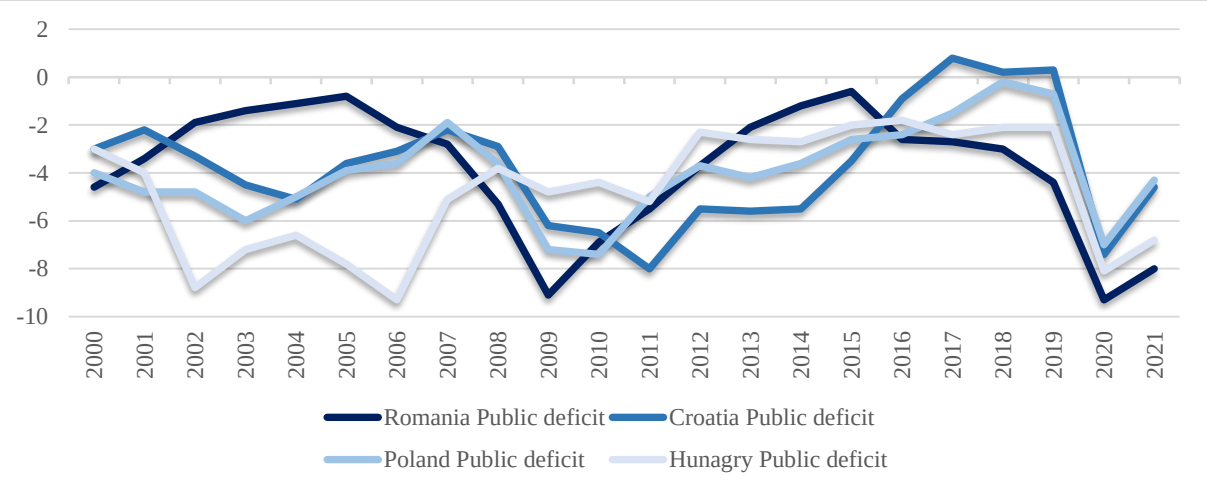
Hungary

Again an economy where the current public expenditures have the highest percentage in total expenditures. Hungary was one the countries that the global financial crisis had hit hard but by improving its economic policies through fiscal sustainability and financial stability, the Hungarian government ensured it would be able to repay future debts and reduce its public

spending in durable way. During the global financial crisis, public expenditures related to social benefits have slightly decrease even if taken measures have aimed at protecting the poor and low-income earners by a targeted scheme to help the needy have access to adequate housing and by creating s social fund to provide temporary relief to those particularly affected by the crisis (Carare, 2009).

As a response to the COVID-19 pandemic crisis the Hungarian government has taken actions estimated at around 1.7% of GDP (IMF, Policy Tracker, 2021) such as: co-financing of fixed costs for SMEs in the industries most affected by the restrictions, continuation of minimum guarantees for SMEs and liquidity guarantees for large companies, co-financing of leasing in the transportation sector, etc.

Figure 1. Public deficits in European emerging markets



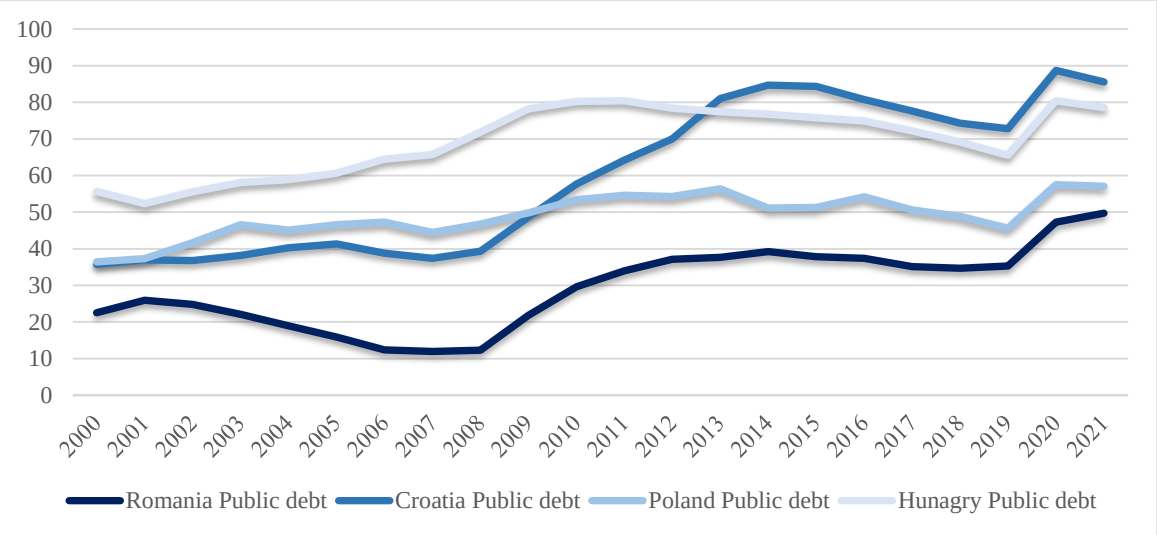
Source: Ameco

Public deficits are annual flows that add to a nation's stock of government or public debt. Because the world wide economies were already in a great deal of debt before the global financial crisis, the current situation has reached historical proportions.

Fig.1 illustrates the evolution of public deficits in all 4 European emerging markets for the period analysed and we can see that both during the global financial crisis and Covid-19 pandemic crisis the deficit levels have ballooned.

In direct link, the levels related to the public debt have also increased because countries need financial resources to re-establish the macroeconomic equilibrium (see Figure 2).

Figure 2. Public debt in European emerging markets



Source: Ameco

Higher levels of indebtedness will create a cyclical response from the states because budget deficits that generate higher public debt will increase the demand for funds which will result in pushing up domestic interest rates (Makin and Layton, 2021).

As is known, a first policy lesson is that a strategy of export-led growth involves greater risks than appreciated previously. The point is not just that global demand is volatile; it is that trade

give the impression to be more elastic with respect to the cycle and more vulnerable in downturns than previously thought. The destabilizing macroeconomic impact is even greater to the extent that a growing share of investment in emerging markets is export linked (Eichengreen, 2009). The data referring to our selected countries shows decreases, therefore, the import and export were seriously impacted by COVID-19 pandemic, due to the fact that all countries shifted from global relationships to internal consumptions and, furthermore, China, the main international trader was in lockdown and the international trade on suspension. In this particular time, the trade between the E.U. and China has decreased, but the major change in demand brought an alteration in commodities structures and the reorientation of Chinese export production (Jindrichovská and Ugurlu, 2021). Looking back in 2008 and 2009, the emerging market trade was particularly hard hit, monthly merchandise export values fell more than 30% during the worst of the crisis, compared with previous annual growth rates of around 20% (IMF, 2010).

3.3. Monetary Policy

Price stability is the best contribution that monetary policy can make to economic growth (ECB). The inflation rate is among the Maastricht treaty criteria and targeting it is a central bank strategy – which will specify an inflation rate as a goal and adjusting monetary policy to achieve that rate. Inflation targeting primarily focuses on maintaining price stability, but is also believed by its proponents to support economic growth and stability. But, inflation targeting can be contrasted to other possible policy goals of central banking, including the targeting of exchange rates, unemployment, or national income. The harmonized consumer price index represents a way of measuring inflation. Considering that 2015 is the base year, in all emerging markets analysed we notice an increase of the harmonized consumer price index in the following years with an accelerated rate starting from 2019 (an average of 2pp for each emerging market per year). After years of strong economic growth, the global financial crisis has frozen emerging markets confronting them with high volatility. National banks have decreased monetary policy interest rates (these rates have been lowered by 300bps on average, IMF, 2010) in order to stimulate consumption and have turned to international financial organization (like IMF) for lending resources. Amid the financial market turmoil at the start of the pandemic, central banks in Croatia, Hungary, Poland, Romania, Serbia, and Turkey rolled out asset purchase programs (APPs), buying up local currency bonds issued by governments but also by the private sector in the case of Hungary (Lindquist et al., 2021). By taking this course of actions, European emerging markets have created liquidity and repaired policy transmission mechanism. Furthermore, in some cases the purchasing programs have been implemented by combination with decreasing monetary policy interest rates i.e. the National Bank of Romania has reduced the monetary policy interest rate by 1.25 pp to 1.25% and the National Bank of Poland (NBP) reduced its policy interest rate by 140 bps to 10 bps, with rate cuts. However, this course of actions might lead to rising inflation and currency depreciation and will arise the need for national banks to intervene by increasing interest rates and limit consumption.

4. METHODOLOGY AND DATA

The current ongoing COVID-19 pandemic is taking its toll upon worldwide economies and the recovery might not be so easy-going in spike of all the restrictions being gradually lifted when a 4th wave of infections, with a new and more resilient form, is starting to spread like wild-fire. The economic growth depends on the characteristic of the country, the conditions of the financial market, the behaviour of governments, private agents, the population and the

multiple functions of growth (Iuga and Mihalciuc, 2020).

Based on the International Monetary Fund Fiscal Monitor (IMF, www.ifm.org) country's classification we are focusing our analysis upon emerging economies, European Union member states – Romania, Poland, Croatia and Hungary.

In order to highlight the historical and present economic image of the selected countries, we are using a comparative and statistical approach. To perform our analysis, we have collected the data from AMECO for the series related to both fiscal and budgetary policies, namely:

a) *Fiscal policy related variables*: total public government revenues – taxes on income and wealth (current taxes - Ct), taxes linked to imports and production (indirect taxes - Tp), net social contributions receivables (Sc);

b) *Budgetary policy related variables:* public expenditures – current public expenditures (intermediate consumption (Ic), compensation to employees (Ce), subsidies (S) and social transfers other than benefits in kind (Sb)) and gross fixed capital formation (Gkf); public deficit, volume for imports (Im) and exports (Ex) for both goods and services and the gross domestic product per capita;

c) *Monetary policy related variables*: long term nominal interest rate; the harmonized consumer price index (HCPI).

The series related to long term nominal interest rate was off set against data available on ECB site, but for Croatia and Romania data was available starting 2005, so we decided to eliminate this variable from further analysis.

Thus, our data base is composed of annual values for the respective variables expressed in billions euro - with the exception of HCPI (%) - from 2000 to 2021. Due to data availability we excluded from further analysis incomplete data, i.e long term nominal interest rate. We have chosen these variables because they have changed significantly from the start of the COVID-19 pandemic and we believe they had an impact upon the economic growth.

In order to test whether the economic growth, measured as GDP/capita, is influence by the analysed variable we have run a correlation test using adjusted data series. Our sample includes a cross-section of 4 European Union countries for the period 2000 -2021 with annual data series.

All the variables are denominated in billion euro with the exception of the harmonized consumer price index which is a percentage (%) so we proceeded in using a logarithm in order

to dispose of comparable variables. We estimate that the economic growth is going to be positively influence by all variables, except the HCPI.

5. RESULTS AND DISCUSSIONS

We started by testing our data series for the unit root and chosen to use a "summery" option in order to get the results for several unit root tests (Levin, Lin &Chu; ADF – Fisher and PP - Fisher).

In all unit root tests the *Null hypothesis* assumes the existence of a unit root and if the p value is less than 0.05 the null hypothesis is rejected, or better said the series will be stationary when the p-value associated with the unit root test is less than 0.05.

Table 3. Unit root test probability

Variable	Unit root test probability – ADF –Fisher	
Ct	Level	0.9974
	1 difference	0.0000
Tp	Level	1.0000
	1 difference	0.0000
Sc	Level	1.0000
	1 difference	0.0000
Ic	Level	1.0000
	1 difference	0.0001
Ce	Level	0.9996
	1 difference	0.0029
S	Level	0.9226
	1 difference	0.0000
Sb	Level	1.0000
	1 difference	0.0005
Gkf	Level	0.9977
	1 difference	0.0000
HCPI	Level	1.0000
	1 difference	0.0202
I	Level	1.0000
	1 difference	0.0000
Ex	Level	1.0000
	1 difference	0.0000
GPD/capita	Level	1.0000
	1 difference	0.0049

Series: LNCt; LNTp; LNSc; LNIc; LNCe; LNS; LNSb; LNGkf; LNHCPI; LNIM; LNEX; LNGDP_CAPITA

Due to the small number of observation – only 84 after adjustments – we have chosen to run a Kao residual cointegration test. The test is run on raw data assumed to be I(1) – integrated of order 1 – and the null hypothesis assumes that there is no cointegration. If the p-value is less than 0,05 the null hypothesis is rejected this meaning that there is a long-run determination between the variables. Thus, we have a long-run relation between all variables and we move to test the correlation between them. So now we know that the series are both stationary and cointegrated and we can perform the correlation test using the adjusted date. In this moment we have 84 observations.

Table 4: Kao residual test

	t-Statistic	**Prob.**
ADF	-6.8650	0.0000

Series: LNGDP_CAPITA, LNCt; LNTp; LNSc; LNIc; LNCe; LNS; LNSb; LNGkf; LNHCPI; LNIM; LNEX

Using the adjusted variables, we have run a correlation matrix. The correlation matrix is a table that shows the correlation coefficients between the set of tested variables. The correlation test is used to measure the strength of the relationship between two variables and it can be either positive or negative. Furthermore, the correlation coefficient can register values between +1 and -1. By using this test each variable can be link to the other variables in the table. We can see that the correlations are not that string between the analysed variables but we are only interested in the positive or negative link between them.

Table 5. Correlation matrix

	dCt	dTp	dSc	dIc	dCe	dS	dSb	dGkf	dHCPI	dIm	dEx	dGDP /capita
dCt	1,00											
dTp	0,85	1,00										
dSc	0,77	0,78	1,00									
dIc	0,78	0,86	0,77	1,00								
dCe	0,72	0,77	0,85	0,86	1,00							
dS	-0,04	-0,10	0,02	0,00	0,08	1,00						
dSb	0,66	0,72	0,81	0,78	0,85	0,14	1,00					
dGkf	0,50	0,63	0,41	0,62	0,51	-0,06	0,37	1,00				
dHCPI	-0,10	0,00	-0,04	-0,01	-0,04	0,01	0,00	0,05	1,00			
dIm	0,80	0,88	0,75	0,76	0,67	-0,28	0,59	0,57	-0,05	1,00		
dEx	0,74	0,81	0,77	0,69	0,62	-0,24	0,65	0,45	-0,09	0,93	1,00	
dGDP /capita	0,17	0,10	0,21	0,15	0,24	-0,04	0,10	0,29	-0,07	0,13	0,09	1,00

Source: Authors' processing

By running the correlation matrix, we found that our assumption was correct with just one exception. The expenditures related to subsidies are negatively linked with the economic growth (GDP/capita) and this can be explained by the fact that subsidies are given in order to correct an economic "failure" and not boost the economic growth. We see the positive link between GDP/capita and public expenditures related to compensation to employees - the higher the compensation the higher the personal wealth, and the negative link between GDP/capita and HCPI – the higher the inflation rates the lower the purchasing power.

6. CONCLUSION

There is an extensive amount of literature reviewing the volatility spillovers in commodity and financial markets to comprehend the cross-market linkages during the COVID-19 crisis (Bouri et al., 2021a; Bouri et al., 2021b; Shahzad et al., 2021), but our examination emphases the impact of fiscal, budgetary and monetary policies adopted by 4 European Union member states, non-members of the euro zone (Romania, Croatia, Poland and Hungary) relating to prospects overcoming the COVID-19 crises.

Governments and central banks around the world have responded to both the global financial crisis and the COVID-19 crisis by implementing a wide range of fiscal, budgetary and monetary measures in order to stabilized economies and limit fallouts. If for the global financial crisis, the responses of governments and of the Central European Bank might have been slower,

for the current COVID-19 crisis, considering past experiences, responses have been sharper, faster and more aggressive. Our analysis was based upon 4 European Union member states, non-members of the euro zone, classified as emerging markets by the IMF – Romania, Croatia, Poland and Hungary. By examining a rage of indicators related to fiscal, budgetary and monetary policies for the period 2000-2021 we found that all emerging markets from Easter Europe have reacted to the global financial crisis and the COVID-19 crisis with mix of policies to best fit their economic profile, but still have followed the same pattern. During the global financial crisis all emerging markets have adopted tax raises – by either increasing tax rate, tax bases or both, by introducing new taxes; have reduced or froze their public expenditures – by decreasing compensations to employees or subsidies; have reduced the monetary policy interest in order to stimulate consumption and re-establish the pre-crisis economic growth. During the COVID-19 crisis a wide range of fiscal stimuli have been implemented – tax cuts, tax reliefs, faster and somehow easier reimbursements; higher transfers, like subsides, have been approved in order to support the business sector; again the monetary policy interest has been decreased to allow an easier access to financial resources. But, if the analysed emerging markets should have learnt something from the global financial crisis is that all these measures will put a supplementary pressure upon the public deficit and public debt which more likely will rise in value in the near future.

In our research, Kao test, which is an Engle-Granger ADF test for cointegration, underlines that there is a long run relation among analysed macroeconomic variables.

With reference to the research limits, it is important to remark the size of the sample (4 European Union member states, non-members of the euro zone) and the lack of data for some macroeconomic variables (e.g. interest rate). The COVID-19 pandemic is still ongoing, therefore the impact of measures reinforced by governments may not be fully rewarded and not included in the selected macroeconomic variables used in this research.

The findings demonstrate similarities in the types and targets of fiscal policy responses and differences in the size of fiscal policy spending depending on the severity of the COVID-19 pandemic and economic conditions. As well, we discover that all considered countries have targeted the health sector, the business sector, and individuals or households, and they prefer to use direct spending to support these sectors.

To conclude, this paper highlights the fiscal, budgetary and monetary policies adopted by governments of Romania, Croatia, Poland and Hungary in response to the COVID-19 crisis and

tries to bring noteworthy contributions to the comparative analysis about the mix of macroeconomic policies during the COIVD-19 crisis.

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OPEN INNOVATIVE PHENOMENA IN SUPPLY CHAIN RELATIONAL NETWORKS

Maria Rosaria MARCONE[9]

Abstract

This paper investigates within the theoretical fields of the resource based view and the knowledge based view the supply chain relationships maintained by manufacturing producers with their suppliers in order to initiate innovative relational processes that improve the competitive performance of companies in the supply chain. Firms can develop supply innovative processes to seek out and transfer external knowledge into their own innovation activities. They can also create channels to move unutilized internal knowledge to other organizations in the surrounding environment. From here: a. the importance of new supply chain relationships in innovative open innovation processes; b. the amplification of the 'supply chain knowledge gap', which open innovation determines. As for the methodology adopted, this is a qualitative analysis of medium-sized business cases. A longitudinal multi-case analysis has been conducted in co-innovation processes of creative firms belonging to Italian technological-manufacturing sectors (machinery, mechatronic, etc.). As transactions have evolved today: on the 'supply side', contractual relationships take place within a network of potential innovative relationships that involve start-ups, innovation communities, young and competitive companies in new sectors, etc. it is clear that transactional relationships are not to be considered as traditional ways of regulating supply chain relationships characterized by consolidated or even mature technologies. Moreover, if a company competes mainly on product-service innovation, the type of relationship could depend on where the innovation is expected to emerge: many types of innovations (and therefore technological assets) emerge outside the usual and close collaborations between suppliers and buyers. From the case analysis still underway, some first results emerge: purchasing relationships in co-innovation linking operational re-design processes; the advent of disruptive innovative technologies in strictly productive activities; the relational dimension of unconventional innovative processes. The paper has the merit of presenting the modern and unusual innovative shedding new light processes on the success

[9] Full Professor on Business Economics, Marche Polytechnic University/Department of Management, Italy, m.r.marcone@univpm.it

factors in modern competitive contexts increasingly anchored to integrated and relational relationships in the supply chains.

Keywords: *Open Innovation, Network Relationships, Collaborative Innovation Challenges.*

1. INTRODUCTION

The purpose of this paper is to investigate within the theoretical fields of RBV and theoretical field of the knowledge based view, the supply chain relationships between manufacturing producers and their suppliers, including new recruits in open innovation platforms (in order to launch innovative processes that improve competitive performance).

We ask ourselves how these innovative processes impact supply chain relationships from a supply side perspective. The work, within a supply chain analysis perspective, assumes strategic openness as involving the engagement of multiple actors distributed across supply chain levels and 'across different supply chains'. We want to investigate the open innovation (OI) that increasingly involves firms belonging to integrated supply chains in the knowledge that limited attention is placed on understanding how firms can efficiently combine and manage different crowdsourcing platforms. More specifically, we know little about the challenges that firms face when implementing external knowledge through crowdsourcing phenomena. The research work, which is still in progress, is based on a qualitative survey and some preliminary results are presented here. In this first period of research, a case study was conducted, relating to non-large companies, the selection criteria of which are reported in the section referring to the methodology.

As regards the structure of the present research contribution, in the first part the theoretical framework of reference is presented, with the enucleation of the hypotheses; subsequently the contents of the methodological approach used are exposed and finally some preliminary summary observations are exposed.

2. THEORETICAL FRAMEWORK

We want to investigate the open innovation (OI)[10] that increasingly involves firms belonging to integrated supply chains in the knowledge that limited attention is placed on understanding how firms can efficiently combine and manage different crowdsourcing platforms (Ruiz and Beretta, 2021). More specifically, we know little about the challenges that firms face when implementing external knowledge through crowdsourcing phenomena.

The analysis of the integration between different entrepreneurial realities, aimed at constituting a single 'supply chain business system', essentially refers to investigating the

[10] Openness has been defined as any content, information or data that people are free to use, re-use and redistribute — without any legal, technological or social restriction (Open Knowledge Foundation, 2021). In our research context concerns the freedom to access, industrialize, engineer, and share knowledge about process/product design.

quality of collaboration between companies in the activation of complex processes that through the production and transfer of products and services at the 'downstream' stages generate value.

This paper investigates within the theoretical fields of RBV and of the knowledge based view, the supply chain relationships between manufacturing producers and their suppliers, including new recruits in open innovation platforms (in order to launch innovative processes that improve competitive performance). Numerous managerial studies have made use of the theoretical framework focused on resources - resource based view (RBT) - to analyse how various forms of integration between actors-companies in the supply chain (SC) impact on their performance (Flynn et al., 2010; Cao-Zhang, 2011; Schoenherr-Swink, 2012). The resource-based approach allows you to estimate the value of the "relational resources" that are developed in the "buyer-supplier" relationships. Many studies have followed on the importance of relationships in SC (Parmigiani e Riviera-Santos, 2011; Cao e Lumineau, 2015; Gölgeci et al., 2018).

The analysis of the supply chain in the relational perspective considers the interdependence that is created between firms and the willingness that they have to initiate and control forms of interaction that increase the degree of integration of the supply chain. Following the research results obtained, it emerged that buyers and suppliers, developing relational skills, favour the profitable circulation of information, which is the basis of cooperation based on mutual trust. Such a strong degree of integration determines the reduction of conflicts and the formation of relational revenues. The integration of supply chain operators or supply chain integration (SCI) is made possible by the ability of firms to cooperate with "critical suppliers and customers" and more and more cooperation involves business managers (intra-organizational collaboration), managers of different firms, but belonging to the same group or to the same multinational (co-operation between home-mother and subsidiary), and managers of completely autonomous firms (inter-organizational cooperation).

Firms utilize relationships for competitive advantage by accessing, integrating, and leveraging external resources (relationships are relevant across a myriad of relationship forms, including alliances, joint ventures, supply agreements, cross-sector partnerships, networks, and consortia). Specifically, one would like to deepen the relationship perspective that is based or could even be better developed with the network-level design of network-type relational structures. Integration is an important theoretical framework and can be analyzed by taking into consideration two different streams apparently opposed to the management of supply chain relationships: the transactional approach, based on exchange and on the market, and the one

that refers to collaborative relationships based on partnerships. The first is essentially based on contracts. The second, long-term, takes into consideration the resource based view. In this context, a third way of investigation can in our opinion be represented by network analysis. Networks are structures that convey information in markets, provide a competitive advantage to some actors over others, and offer opportunities otherwise unavailable. The network analysis allows the scholar to grasp two theoretical frameworks using the main international managerial literature, namely the relational based view and the resource-based view. In agreement with the relational based view, the network perspective sees supply chain as business network, where business units or firms are represented by nodes, and long-term complex interactions between them are represented by links (Håkansson and Ford, 2002). In the context of the resource-based view, academic interests are welcomed, stating that in the prerequisites of business, or strategic networks of success exploitation is much more recent. From a resource-based perspective firms differ in their capability to shape and exploit networks, to extent that their capability to leverage networks has been identified as distinctive.

If firms seek increased operational performance, market performance, innovation and financial performance, they need to develop network specific capabilities. One such critical capability refers to management skills and competencies in developing valid views of networks and their potential evolution, a condition to perceive the opportunities embedded in networks.

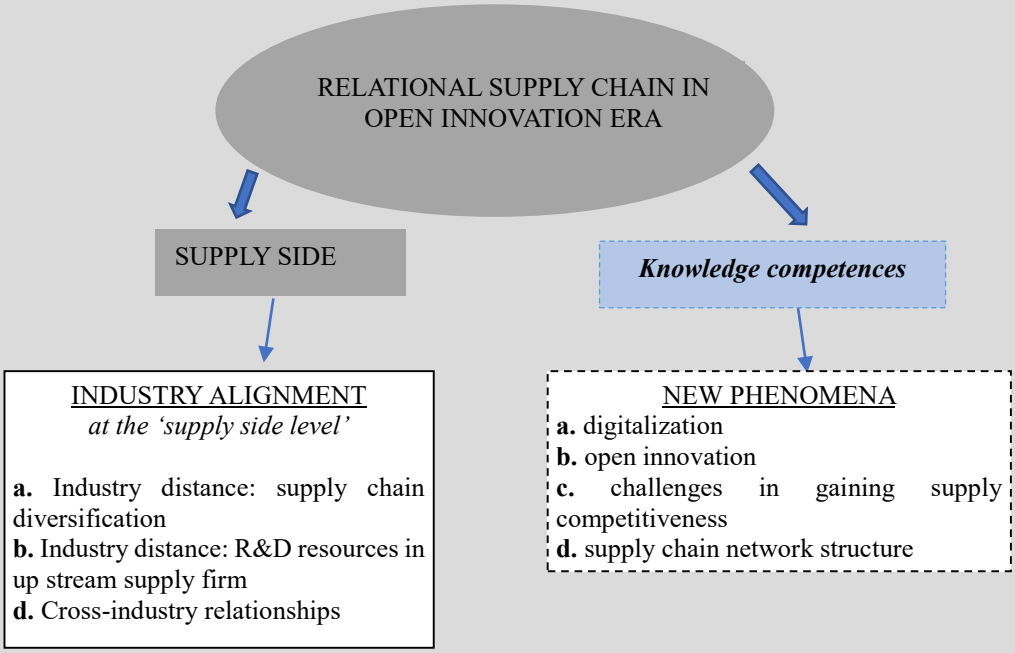
Recent empirical studies refine the conceptualization of network pictures by testing the dimensions of this concept and adopting a dynamic view, focused on the processes through which networks are understood and strategy enacted within them. We hypothesized the following

H 1. The supply integration of the firm's production systems is positively related to higher levels to the ability to efficiently redesign innovative production processes

Although RBV places its emphasis almost exclusively on the benefits of collaborations based on the development of resources that are specific (unique or dedicated) to each relationship, and therefore difficult to imitate, interactions between diversified supply chains are emerging with increasing force in global competition. In practice, the birth of these relationships requires the formation of new relational assets that are the basis of the ability of companies to reposition themselves in the new structures of the offer or supply chain: they are perhaps even more important than those relational assets, traditionally dedicated to maintaining consolidated relationships, as well as identifying and planning new ones.

As highlighted by Chersbrough (2018), innovation and R&D Management will play an important role in firm's competitive context. Moreover, as the results provided by some studies, external knowledge and above all high level openness on the part of entrepreneurs and managers produces strongly positive impacts in an economic context (Ahn et al., 2018). We want to clarify that it is an opening in a modern sense, that is to say a natural and spontaneous opening to unusual forms of innovative paths for medium-small businesses. The goal of the research work is to verify what are the competitive objectives that the analyzed companies aim to achieve by formulating strategic choices based on crowdsourced R&D. (For an analysis of the characterizing factors in a strategic and managerial sense, see figure 1).

Figure 1. Significant phenomena in a strategic and managerial sense



While much research attention has been placed on external crowdsourcing, recent studies highlight that the principals of crowdsourcing require mor structuralised (dynamic) capabilities in R&D and Manufacturing activities: outbound open innovation is based on the principle that innovation involves all managerial activities and all business units within firms (Malhotra et al., 2017). Dynamic capabilities enable firms to propel their performance efforts in the face of surmounting turbulences in the environment by constantly creating/acquiring, combining and/or recombining resources in an agile and improvisational manner, facilitating the generation of new opportunities as well as handling of environmental constraints (Forkmann et al., 2018; von Delft et al., 2019). For this we assume the following.

H 2. Research-based forms of cooperation through the use of open innovation are governed by weak ties.

3. METHODOLOGY

An interpretative, qualitative approach - utilizing selected multi-case study interviews (Yin, 2008) such as the primary data collection method - is chosen because it helps to navigate and understand the complex issues that are associated with the data quality concept, and its relation to the factors involving managerial practices to implement facilities in modern relationships within the international supply chain. 'Oriented case studies' investigate the issue within a real life context, drawing on the reviews of a number of sources, and provides the means to review theory and practice iteratively (Ellram, 1996; Flynn et al., 2010; Hennenberg et al., 2010). Multiple cases ensure that common patterns are identified rather than generalized from what might be change occurrences (Eisenhardt, 1989). We collected our data through multiple sources: semi-structured interviews constituted the primary source of data collection, augmented by different secondary data sources. This was important to increase construct validity and allow for triangulation of the partial results (Yin, 2008). Our data analysis was conducted in an iterative manner, where we constantly compared the emerging cases, and relevant international managerial literature.

We collected our data in the last two years. We conducted 24 semi-structured interviews with numerous area managers of business activities projected on entirely new innovative paths, called innovation process director, research manager, research managers, open innovation manager, director of open innovation strategy, external platform manager, and also with managers (including middle level) of the strictly production area, such as department heads, production managers, industrialization managers (these three professional figures above all for key dimension knowledge).

key dimension knowledge ..., etc.

Then firms are analysed; the prerequisites for their selection are shown below:

- they carry out in-house R&D activities and interact in the innovative processes with suppliers (supply side innovation);

- they carry out product design and also frequent product / processes engineering activities (for each order or, for fashion, at each seasonal collection) both when processing orders and when re-industrializing internal production processes to make improvements to the production

lines;

- they initiate new ways of innovating such as open innovation.

- they have a high export share (close to almost all the cases investigated at 50%) and having the production plants in Italy.

In table 1 it is possible to observe some characteristics of the companies under investigation: the sector to which they belong (in the first column on the left), the type and origin of the innovative resources used (central column), the competitive objectives, declared achievable by the firms thanks to the innovation (right column).

Table 1. Characteristics of the sample's firms

supply side (up-stream) attention	Innovative resources	competitive-objective choices
Healthcare	External: acquisitions	Increase the productivity of the supply chain
Automotive	Multilocalized (owned) teams in the world	Control of all the innovative principles of the cars of the future
Electric micro-mobility.	Internal. Multilocalized R&D activities that welcome the open innovation	Re-shoring and re-design of the supply chain 'supply side'
Healtcare	Internal R&D, start-up in the USA, open innovation	Supply chain design in digital healthcare
Mechanics(for automotive)	R&D, technological windows in the USA, start-ups in the world, open innovation	supply chain design of components in the electric automotive sector
Precision agriculture	Creation of a digital agricultural community, it is part of national and foreign accelerators	designing digital and sustainable services for agricultural operators
Mechanics(smart tractors)	Internal R&D; platform for precision agriculture creation	Smart and sustainable agriculture
Mechatronics	Start-up and multilocalized R&D (internal and technological windows in the world)	digitalized manufactured solutions: innovation in packaging machines and cable cabling machines
Knitwear	Collaboration with innovation communities and use of crowdsourcing *. Design of a new production line	Diversification of fashion collections and technological heritage
Machinery	Digital development of the remote service	Deep learning and co-creation value

Source: Our Elaboration

Our study provides a contribution to up-stream innovation research field addressing recent calls for how crowdsourcing is implemented within firms and its impact on the competitive improvement of R&D firm's activities.

Various interviewees highlighted that it was unclear to participants who was in charge of manging their ideas and how their ideas were evaluated. Certainly, firm saw that it is crucial to involve all operators in the R&D and manufacturing areas in the role of integrators of both internal and external ideas: this is because the actions, although defined by the business strategy, are carried out by the know-how that is most on actual expertise rather than on governance drives.

4. SOME PRELIMINARY FINDINGS

In recent years, many openness innovation projects have emerged in which numerous and diversified economic operator of developers-users-contributors are active subjects in manufacturing products by sharing knowledge in an collaborative and open way. After all, it has been stated that companies can improve resilience through the adoption of a diversification strategy whereby supply chains at the supply level become less dependent on a few supply markets (located in one or a few countries-regions). and made up of a cluster of suppliers). Belonging to multiple supply chains that are distinct, and some of which are newly created or developed, increase supply chain fluidity and would transform the break-down of one supply chain from a problem of 'restoring operations' into opportunities for growth. of production capacity in manufacturing processes similar but independent in upstream stages or pieces upstream of the supply chain.

It is found that the forms of research-based cooperation through the use of open innovation are governed by weak ties (contract - network) and also that, as stated in the managerial literature, open innovation amplifies the knowledge gap in international supply chain. however, the greater the knowledge gap, the greater the opportunities for manufacturing companies, finding this advantage also for Italian MSFs.

Crowdsourcing represents an unfamiliar evolutive technological path for most firms, especially for those of medium-small size, having limited experience with these platforms.

During the empirical survey, it was noted that, especially in recent years, medium-sized manufacturing firms belonging to a supply chain formulate strategies that make them variously interdependent with different supply chain stages.

MSFs operating in international business markets become economic actors in stages complementary to those to which they traditionally belong and are consequently included in interdependent “supply chains”.

The MSFs therefore open up to the beneficial effects on innovative business processes (growth of technological assets, experimentation with new frontiers of information technologies) and on market performance (micro-segmentation of international business markets, leadership in market shares), generated by the multiple buyer-supplier relationships in which they operate.

The ability to engage in the production and co-development of product-processes innovative strategies determines one's vertical and horizontal positioning in the international offering structure.

Finally, it emerges that in the Italian innovative MSFs, precisely in the operation area, a knowledge system is established that makes use of a manufactured-based R&D activity. It is found that the knowledge system settled in the operation area and the applied research activities are the basis of the ability of not large creative companies to prefer open innovative phenomena that are radically new.

Regarding the criticality for the future, it can be observed that there is a false ambidexterity of the transactional and relational study approaches (or partnership relations): both approaches (I believe we are referring to relational-TCE and network analysis) allow us to verify how they are in today's modern reality focused on creating value for the entire supply chain affected by open innovation phenomena. As for the third way, the myopia network must be avoided. Since transactions have evolved today: on the 'supply side', contractual relationships take place within a network of potential innovative relationships that involve start-ups, innovation communities, young and competitive companies in new sectors, etc. it is clear that transactional relationships are not to be considered as traditional methods of regulating supply chain relationships characterized by consolidated or even mature technologies. Moreover, if a company competes mainly on product-service innovation, the type of relationship could depend on where the innovation is expected to emerge: many types of innovations (and therefore technological assets) emerge outside the usual and close collaborations between suppliers and buyers.

Indeed, it is increasingly common for firms to gather innovative product design and innovative manufacturing redesign through the innovative business model implementation making use of the crowdsourcing. Limited attention is placed on understanding how firms can efficiently combine and manage different crowdsourcing platforms (Ruiz and Beretta, 2021). More specifically, we know little about the challenges that firms face when implementing

external knowledge through crowdsourcing phenomena. Crowdsourcing represents an unfamiliar evolutive technological path for most firms, especially for those of medium-small size, having limited experience with these platforms. The use of these platforms requires firms to reengineer business product-processes and to undertake new technological paths. Given these attributes, open and collaborative innovation projects can be conceptualized as a particular type of open innovation where the innovation processes are open along up stream supply chain and innovation outcome is achieved by the individual players in the supply chain which ends up increasing the value generated within of the supply chain (it is assumed, even if it is not the subject of this study, that end-to-end operators can also be benefited) (Badway, 2011; Huizing, 2011).

5. FURTHER RESEARCH FIELDS

A further field of research analysis is also to understand how the current innovative phenomena (production re-engineering, digitalization, etc.) generate business strategies that lead to the reconfiguration of supply chain business models that have the form of open innovation networks. Indeed supply repositioning suggests that there might be open relationships in innovative and recently established international production chains.

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THE INSOLVENCY OF A COMMERCIAL COMPANY DUE TO THE COVID-19 PANDEMIC AND THE DUTIES OF COMPANY DIRECTORS IN THE PORTUGUESE LEGAL SYSTEM

Maria de Fátima da Silva RIBEIRO[11]

Abstract

Following the corporate crisis caused by the pandemic, the Portuguese insolvency legislator had a late and, in our opinion, insufficient intervention. Until November 2020, it was limited to the suspension of the duty to file for insolvency imposed on directors when companies are in a state of current insolvency. On that same date, a new pre-insolvency proceeding for corporate rescue (PEVE: processo extraordinário de viabilização de empresas) was created[12], exclusively accessible to companies whose difficulties originated in the crisis generated by the Covid-19 pandemic. The regulations establishing access requirements to this proceeding generated great interpretative difficulties and uncertainty, which is one of the main reasons why recourse to the PEVE has been almost non-existent. In addition, the mere suspension of the duty to file for insolvency does not seem to remove the responsibility of the directors in continuing to operate a company that, in all likelihood, offers no prospects of viability. Furthermore, the duty of care that must inform the actions of a company's directors becomes particularly complex in the context of a company crisis. This is due to the need to weigh in the interest of the company's creditors. This paper aims to answer the question of how should a judicious and orderly director act when the company they manage is in a state of insolvency due to the pandemic crisis, while critically analysing Portuguese legislation on this matter.

Keywords: *Insolvency, Pandemic Crisis, Directors' Duties.*

[11] Associate Professor, Porto Faculty of Law, Universidade Católica Portuguesa, Portugal, mribeiro@ucp.pt
[12] Cfr. Law n.º 75/2020, from the 27th november of 2020.

1. INTRODUCTION

In Portugal, as in almost every country in the world, the pandemic crisis has brought a significant proportion of companies into insolvency, particularly by rendering them unable to pay their debts (the so called state of *Zahlungsunfähigkeit*).

Those companies' directors have the duty to act with care, in order to avoid their personal liability towards the company and its creditors. The intervention of the Portuguese legislator may have raised the risk of those directors, as we shall analyse.

2. THE LIABILITY BASED ON WRONGFUL TRADING

In an insolvency proceeding, the liability of the companies' directors can be based on wrongful trading and in Portuguese legislation it is rather easy to achieve such an outcome. If it is proven that any faulty acts of a director (including a shadow director) have led to the state of insolvency, or have deepened it, and that those acts have taken place in the 3 years prior to the insolvency proceeding, he or she will be held responsible for all the debts the insolvent company isn't be able to pay through the liquidation of its assets (cfr article 186 1 Insolvency Code).

Several legal presumptions of fault and wrongful trading are still present in Portuguese legislation. I would point out the presumption of wrongful trading in article 186 2.g.: it is necessarily wrongful trading when a director carries on the activity of the company, knowing or having the duty to know that this will mostly probably lead to insolvency.

Furthermore, there is a legal presumption of fault whenever a director does not file for insolvency of the company in due course – he or she has the duty do so in the 30 days subsequent to the moment he or she knows, or should have known, that the company was in a state of current insolvency. In this case, the director will most likely be condemned for wrongful trading.

Considering this legal framework, we can understand the implications of the suspension of the duty to file for insolvency in the Portuguese law: companies' directors are not obliged to file for insolvency since March 2020. But does this mean that they are no longer liable for wrongful trading?

3. THE SUSPENSION OF THE DUTY TO FILE FOR INSOLVENCY

Let's examine the law that suspended that duty. First of all, it did not limit its applicability to situations where the current insolvency is due to the pandemic crisis, unlike what was

stipulated in other European legislations[13]. So, it seemingly includes companies that became insolvent due to other causes, which doesn't make any sense.

Also unlike what happened in other European legislations, there wasn't the concurrent suspension of that ability to the companies' creditors, meaning that any creditor can still, if they want to, file for the insolvency of a company, even if the situation of current insolvency is exclusively due to the pandemic crisis. Consequently, the suspension of the duty to file for insolvency does not protect a company that becomes insolvent due to the pandemic crisis: it still can be declared insolvent by the court as a result of a creditors' motion.

But there is another aspect that has to be considered in relation to this law: the fact that the company's director can not, in any event, apply for a restructuring proceeding unless the company shows solid prospects.

In fact, since November 2021, a company can access a restructuring proceeding even if it is in a current situation of insolvency (which was strictly forbidden before then, because this possibility was restricted to companies in a situation of likelihood of insolvency or in difficult economic situation). It can access a RERE (out of the courts) or a PEVE, the new restructuring proceeding exclusively accessible to companies whose difficulties originated in the crisis generated by the Covid-19 pandemic.

4. THE REQUIREMENT TO ACCESS A PEVE

But to access a PEVE it is mandatory that:

a) one proves that at the end of 2019 the assets of the company were greater than its liabilities;

b) the company's director states that the insolvency situation is due to the pandemic crisis;

c) the company's director states that the company will recover if the measures included in the plan are approved or, in other words, that the business is viable;

d) the company, before filing for the PEVE, gains approval from creditors representing a(n) (un)certain percentage of the company's liabilities; which means that:

e) the directors negotiate with the creditors without any protection, all the while those creditors can still file for the insolvency of the company, judicially enforce the company to pay

[13] Cfr. the analysis of Madaus, S./Javier Arias, F. (2020) Emergency COVID-19 Legislation in the Area of Insolvency and Restructuring Law *European Company and Financial Law Review*, 318-352, pp. 324 ff., and Enriques, L. (2020) Pandemic-Resistant Corporate Law: How to Help Companies Cope with Existential Threats and Extreme Uncertainty During the Covid-19 Crisis *European Company and Financial Law Review*, 257-273, pp. 258 ff..

its debts, and suspend the supply of any essential goods or services; surprisingly, the company will benefit from the individual enforcement actions only after the negotiations are concluded, the creditors have signed the proposed restructuring plan and the judge has received it and controlled that all requirements are met; in addition, the debtor is not assisted, during the negotiations, by a practitioner in the field of restructuring; and

f) the restructuring plan is signed by that (un)certain number of creditors.

Let's dive deeper into why I am referring to an uncertain number of creditors. The law that enforced the PEVE does not state exactly how many creditors have to sign the plan in order for it to be accepted by the judge. It makes reference to another law, the Portuguese Insolvency Code, in specific to the norm that states the percentage of votes needed for the approval of a restructuring plan in a creditors' meeting under another restructuring proceeding.

As in that case the norm is about voting in a meeting, it demands that a certain percentage of the debt is represented in the meeting, as well as that a certain percentage of those creditors approves the plan. Therefore, in this set-up it is impossible to predict the exact percentage needed for approval – it depends of the percentage of debt represented in the meeting.

Since in that proceeding the minimum percentage required to be represented in the meeting is one third of the debt, and the plan is approved if more than two thirds of the creditors represented in the meeting give their agreement, one can conclude that in a worst case scenario, the plan can be approved with the agreement of creditors that represent at least about 22,3% of the companies' total debts.

There is an another possibility though: the plan is also considered approved if, in the meeting, creditors representing more than 50% of the total amount of debts give their approval.

To convert these rules, established for a voting process in a different restructuring proceeding, to apply them to the signature process in this proceeding results in a terrible mess. There are several different opinions on how that law should be adapted and applied in this proceeding.

Some authors say that only the alternative of the majority of the credits is applicable, since there is no voting proceeding, so they claim that the plan must be presented to the court with the signature of creditors that represent more than 50% of the total debt[14] – which is obviously very difficult to achieve, specially in the circumstances described above.

[14] Cfr. SERRA, C. (2021) *Lições de Direito da Insolvência*, Almedina, pp. 129 ff..

Others propose that the plan has to be signed only by creditors that represent one third of the total debt – the percentage required to attend the meeting in order to proceed to the voting phase in the other restructuring proceeding; although not so demanding, that percentage is still superior to the one required in that other proceeding[15].

And others say that there is no reason to demand more in the PEVE than in other restructuring proceedings, so about 22,3% of the total debt should suffice[16].

Which leads us to conclude: a company's director can't even know for sure how many creditors' signatures he or she needs in order to file for this restructuring proceeding, unless he or she decides to gain signatures representing the majority of the total debt amount, which is almost impossible.

Still, even if this difficulty did not exist, another one is presented: in order to access this special restructuring proceeding, it is mandatory that the company, in all likelihood, has substantial prospects of viability if the plan is confirmed. In the context of a pandemic this was, and still is, particularly difficult to ascertain. In addition, if the director certifies that the company shows substantial prospects of viability, the plan is confirmed, and later on it is proven that the directors' assertion was false, he or she can be held liable for wrongful trading in an insolvency proceeding. Also, the judge is obliged, in this specific proceeding, to refuse to confirm a restructuring plan that has no reasonable prospect of preventing the insolvency of the debtor or ensuring the viability of the business.

5. THE DUTIES OF THE COMPANIES' DIRECTORS IN THE ABSENCE OF A PEVE

Let us now examine the situation of a company's director whenever he or she did not or could not file for this restructuring proceeding – or did file for it but the judicial authority did not confirm the plan.

Article 19 of the DIRECTIVE (EU) 2019/1023 states as follows: *Duties of directors where there is a likelihood of insolvency.* Member States shall ensure that, where there is a likelihood of insolvency, directors, have due regard, as a minimum, to the following: (a) the interests of creditors, equity holders and other stakeholders; (b) the need to take steps to avoid

[15] Cfr. Vasconcelos, M. P. (2020) O novo processo extraordinário de viabilização de empresas (PEVE). Análise e proposta de reforma *Revista de Direito Comercial*, 2105-2142, p. 2122; Martins, A. S. (2021) Mais vale tarde do que nunca: a Lei 75/2020, o PEVE e outras novidades (com o cair da folha) *Direito das Sociedades em Revista*, 13(25) 37-55, pp. 45 ff..
[16] Cfr. Ribeiro, M. F. (2021) Deveres dos administradores da empresa em crise: as perspectivas de viabilidade e o recurso ao PEVE *Revista de Direito Comercial*, 1229-1254, 1240 ff..

insolvency; and (c) the need to avoid deliberate or grossly negligent conduct that threatens the viability of the business.

Furthermore, as we have seen, in Portuguese insolvency law there is a presumption of wrongful trading when a director carries on the activity of the company, knowing or having the duty to know that it would most probably lead to an insolvency situation, or, in other words, that there is no reasonable prospect of preventing the insolvency of the company or ensuring the viability of the business.

So, despite of the current legal suspension of the duty to file for insolvency (in the context of the pandemic crisis), we cannot conclude that a company's director is never obliged to file for insolvency, even if the situation of the business is exclusively due to the pandemic crisis. If the business has no more reasonable prospects of viability, the only possible action required to its director is filing for insolvency in order to avoid personal liability for the company's debts in an insolvency proceeding – which still can be filed by any company's creditor[17].

But, of course, one has to note that in deciding about the breach of the director's duties, the court should consider the particular circumstances of a pandemic crisis like the one we are living – the extraordinary unpredictability businesses have to face makes it particularly hard to take the best decisions in a short period of time. Perhaps it would be reasonable to consider in this case the application of a form of the business judgment rule when determining the director's fault[18].

6. CONCLUSION

After having analysed the Portuguese insolvency law we can reach the conclusion that the legal suspension of the duty to file for insolvency does not remove the responsibility of the directors in continuing to operate a company that, in all likelihood, offers no prospects of viability – in that case, they are still always obliged to file for insolvency, even when the crisis of the company is exclusively due to the Covid-19 pandemic.

[17] In this sense, considering the spanish and german pandemic insolvency legislation, cfr. Gómez Ascenso, C. (2021)Los deberes preconcursales de los administradores sociales *Revista de Derecho Concursal y Paraconcursal* 34, 155-172, pp. 156 ff.; Römermann, V. (2020) Insolvenzantragsplicht ausgesetzt – ein kurzes Gesetz mit weitreichenden Folgen *GmbHR* 10, R148-R149, p. R148 ff.; Bitter, G. (2020) Aussetzung der Insolvenzantragspflicht und Einschränkung der Organhaftung – eine Zwischenbilanz nach vier Monaten COVInsAG" *GmbHR* 15, 797-807, pp. 803 ff.. That's the reason why some authors propose a new approach to the definition of the insolvency situation. Cfr. Minervini, V (2020). Il (necessario) ripensamento delle procedure concorsuali dopo il "lockdown": dal concetto di "insolvenza" a quello di "risanibilità"? *Il Diritto Fallimentari e delle Società Commerciali*, 5, 965-989, pp. 976 f.

[18] Cfr. Ribeiro, M. F. (2021). Os deveres dos administradores na crise provocada pelos efeitos da pandemia Covid-19 e a suspensão do dever de apresentação à insolvência *Revista da Ordem dos Advogados*, 81, 263-288, p.