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CONTENTS

REPRESENTATION OF KNOWLEDGE AND ALGORITHMS FOR ECONOMIC SYSTEMS

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Abstract: *The paper presents the representation of knowledge and algorithms for economic systems that ensure the right way to solve various problems. An economic system is a complex software program that must answer to the requirements of the inside environment of an economical society and the outside environment which provides inputs for these types of systems. A complex problem requires a different approach such as an algorithm derived from artificial intelligence that can process representations of knowledge. The new techniques of the AI have solved complex tasks, which in the past could not be solved or were much more difficult - costly. Intelligent activity is determined by the human interaction with the external environment, where feedback occurs, closed through the sensory system. In the inner world, reasoning, which determines action decisions, is based on external data, obtained through perception, but also on the basis of an "internal" model of the world. A economical system is considered to have the intelligence property, whether if it can adapt itself to new situations, has the ability to reason, that is, to understand the links between facts, to discover meanings and to recognize the truth. Also, an intelligent system can learn, in other words, improve its performance based on experience. At this point, such economical systems implements high levelalgorithms such as backtracking methods that applies to problems where the solutions can be represented as a vector containing different variables.*

Keywords: *Representation of knowledge, business environment, programing algorithms, information systems, artificial intelligence.*

JEL Clasification: C23, C26, C38, C55, C81, C87

1. Introduction

Expert systems are a field of artificial intelligence, the branch of information technology that aims to develop intelligent programs and applications. What is remarkable for expert systems is the wide range of applicability, which has already covered many areas of activity.

An expert system consists of the following main components:

– Knowledgebase - serves for storing all knowledge elements (facts, rules, methods, solving, heuristics) specific to the application domain, taken from human or other sources.

– Inference engine - is a program in which the knowledge of control, procedural or operative is implemented, which exploits the knowledge base for making judgments in order to obtain solutions, recommendations or conclusions.

– User Interface - allows user dialogue during consultation sessions as well as access to basic facts and knowledge for adding or updating the database.

– The Knowledge Enrichment Module - helps the expert user to introduce new knowledge in a form that is supported by the system or to update the knowledge base.

– The explanatory module - is intended to explain to users both the knowledge of the system and its rationale for obtaining solutions during consultation sessions.

Explanations in such a system, when properly designed, also improve the way the user perceives and supports the system (feedback) [2], [4].

Chronologically, the first applications of artificial intelligence have been their expert systems. They emulate (imitate) human reasoning for specific tasks and in small areas and were well received by companies.

2. Artificial Intelligence and Knowledge Based Systems

Intelligence can be defined as the ability to sense certain relationships between objects and phenomena. This sensation can be sensory (in animals)

and in this case it is due to conditioned or intellectual reflexes (in humans), and here the language and concepts interfere.

Researchers in the AI field have sought to define intelligence from a perspective that then allows for the definition of AI. For example, researchers show "that a system is considered to have the intelligence property, whether it can adapt itself to new situations, has the ability to reason, that is, to understand the links between facts, to discover meanings and to recognize the truth. Also, an intelligent system can learn, in other words, improve its performance based on experience. "Other scholars appreciate that intelligence appears to be an amalgam with many properties of information representation and processing. In this form, the definition on the one hand shows us the difficulty of specifying this notion, but also the proximity to the field of computers. They, through their programs, represent and process the information. From here, it can be said that AI is a discipline that deals with computer programming. This assertion takes into account the fact that programs have the property of representing the most different situations through symbols and logical operations. Other definitions of IA are based on the concept of intelligence, using this notion as such.

In general, AI is defined as a field of computer science that aims at conceiving intelligent computing systems, ie those systems that show properties that we usually associate with intelligence in human behavior (understanding of language, learning, solving problems). So IA can be understood as a way to simulate intelligent behavior on different technical systems [1], [5].

In addition, there is another conception that no definition of intelligence can be given because it can not be isolated and defined as a stand-alone concept. Instead, intelligence can be researched on the basis of the following.

a) Only behavior can be observed and appreciated qualitatively. Thus, the intelligence of humans or beings in general can only be deduced from their behavior or communication. From here we can say that intelligence is a hypothetical construction. Can not build one its measure without measuring the behavior of the subject for which we want to emphasize the intelligence.

Intelligent activity is determined by the human interaction with the external environment, where feedback occurs, closed through the sensory system. In the inner world, reasoning, which determines action decisions, is based on external data, obtained through perception, but also on the basis of an "internal" model of the world.

This is a model of the external world, which man fictionally carries out actions in an inner world, making a kind of simulation. Based on such a

scheme, an important conclusion was reached for AI, which of the necessity of introducing into the computer a model of the world, called in the AI model of knowledge representation. Hence, one of the most important sub-domains of AI has been derived: representation of knowledge - representation of reality that can be implanted into a computing system.

b) Intelligent behavior is relative. We can not have an absolute measure, but only one obtained by reporting. For example, intelligence tests give a score that reports the subject to an average behavior.

c) A smart manifestation taken in isolation does not provide intelligent behavior in general. If a subject has intelligent behavior in a particular situation, we can not draw the conclusion of his intelligence in general. Under this aspect, AI is still far from the natural intelligence, as it is currently manifesting itself in particular situations.

d) In order to measure intelligence, we must have a measure of the complexity of the task that the subject solves. If we had such a measure - there is no single metric of complexity, universally accepted by all fields of activity, then we can say about a behavior that is smarter, the more complicated the task to solve.

If we take these four aspects into account and use them as criteria for defining computer intelligence, AI, we obtain:

– The intelligence of a program can only be deduced from its behavior.

–The intelligence of a program is always relative.

– Intelligent behavior of a program must occur in as frequent and varied situations.

– In order to appreciate the intelligence of a program, we need to measure the complexity of the input task.

Based on such criteria, one can conclude that programs now have only a primitive level of intelligence. In this respect, the current AI systems would not pass the Turing test. It was proposed by Alan Turing in 1950 and consists of interrogating a person and a computing system by a human evaluator. If he / she fails to discriminate between computer responses and those of the person, then it means that the AI has been obtained. Current systems can not pass the Turing test, and then there is the question of whether "artificial intelligence" exists. How in some approaches intelligence is equated with thinking and how, following the aforementioned test or other criteria in the field of physiology, it can be concluded that the current technical systems do not think, it follows that AI is a combination of metaphoric terms. Even in such a vision, AI remains

important today because of the techniques useful for the practice that were created "trying" to obtain artificial intelligence.

The new techniques of the AI have solved complex tasks, which in the past could not be solved or were much more difficult - costly. Therefore, the following definition of IA can be proposed: IA is a branch of computer science that studies the development of advanced programming techniques to solve complex tasks [2], [6].

According to this definition there is a rapprochement between AI and the classical field of informatics. In the classical part there is a program that can use a model to process according to an algorithm. Instead, if in the case of classical computer science the database contains the information organized in a particular form, related to the algorithm used and to serve it, in knowledge bases are stored not only facts but also relations that exist between them, and rules, that is, ways to prefigure what will happen in the outside world as a result of actions. The second important difference is that in an AI program instead of the algorithm, usually deterministic in the problems addressed in the classical programming, a heuristic method appears guiding the solution. Heuristic is a method based on rules derived from experience, introducing in many situations a degree of uncertainty. Unlike the algorithm, it is often not guaranteed to obtain the solution. Even so, heuristic methods are frequently used in AIs as they can determine solutions in situations where an algorithm does not exist or is inefficient to implement.

2.1. Logical reasoning

Logical reasoning or symbolic reasoning is based on classical logic-mathematical theory and analyzes how new knowledge can be derived from existing ones, deductively, based on inference rules. As a preparatory course for the AI study, a computational logic course is recommended. Applications such as Lisp, Prolog, and Clips automated theorem demonstration systems.

2.2.Representation of knowledge

It is a fundamental area of AI because it studies the ways in which real world knowledge can be expressed and symbolized for computational manipulation. The optimal choice of the knowledge representation method is an important step in building a fair and efficient knowledge based system. Representation of knowledge means the description and encoding of objects (entities) belonging to a particular field of application of a form of artificial

reasoning. The definition refers to two complementary aspects of knowledge representation, expression and manipulation of knowledge.

Knowledge is expressed in a formal language, called the language of description of knowledge. The language has a syntax that includes a set of valid expressions in terms of language and a semantics that attributes the meaning of the syntactic formulas used in a particular context. Manipulating knowledge consists in applying procedures for the organization and use of formally represented knowledge.

The main families of formal (formalism) knowledge representation methods, now considered sufficiently theoretically consolidated to allow the development of complete Knowledge Management applications, are:

- Semantic networks,
- Terminological logic,
- Object-oriented representation,
- Conceptual charts.

Each of these formalisms proposes concrete mechanisms of formalization (expression and manipulation) of knowledge.

2.3. The perception

It examines the representation in a computationally accessible form of stimuli that cause reactions in human sensory organs, such as visual perception and auditory perception. For example, Smart Optical Character Recognition can print or handwriting recognition.

2.4. Evolutionary calculation. Genetic algorithms

It studies how the solution can be found through mechanisms inspired by biological evolution processes, from the so-called natural calculation. In general, any abstract task to be accomplished can be regarded as solving a problem, which in turn can be perceived as a search in the space of potential solutions. Because, as a rule, we are looking for the best solution, we can view this process as an optimization process. For reduced spaces, classical exhaustive methods are sufficient; for larger spaces, special IA techniques can be used.

Methods of evolutionary computation are among these techniques; they use algorithms whose search methods have as a model some natural phenomena: genetic inheritance and struggle for survival.

The best known techniques in the evolutionary class are:

- Genetic algorithms,
- Evolutionary,
- Genetic programming,
- Evolutionary programming.

There are other hybrid systems that incorporate the different properties of the paradigms above; moreover, the structure of any evolutionary calculation algorithm is largely the same. Genetic algorithms occurred around 1950, when more biologists used computers to simulate biological systems. The results of the work came after 1960, when at the University of Michigan, under the guidance of John Holland, the genetic algorithms appeared in the form they are known today. As the name suggests, genetic algorithms use principles of natural genetics. Several fundamental principles of genetics are borrowed and artificially used to build search algorithms that are robust and have the great advantage of asking for minimal information about the problem. Genetic algorithms were invented using the adaptive process model. They mainly operate with binary strings and use a recombination and mutation operator.

2.5. Neural Networks

Neural networks are based on the analogy with how the human nervous system is organized for the implicit storage of knowledge and for processes of learning and generalization in incomplete or affected information by reception disturbances. They are parallel systems, distributed, with the ability to learn by example. Neural networks characterize assemblies of simple, strongly interconnected and parallel processing elements that seek to interact with the environment in a biologically-related and learner-like manner. There is no generally accepted definition of these types of systems, but most researchers agree with the definition of artificial networks as a network of simple elements strongly interconnected by means of links called interconnections through which numerical information is propagated [3], [5].

The origin of these networks must be sought in the study of neural network's bioelectric networks and their synapses. The main feature of these networks is the ability to learn on the basis of examples, using previous experience to improve their performance. Although it resembles functioning with the human brain, neural networks have a different structure than the brain. A neural network is much simpler than the human correspondent, but like the

human brain, it is composed of powerful computing units, much inferior to the human correspondent, the neuron.

2.6. Game theory

It studies the strategies that two or more competitors whose interests do not coincide should follow in a confrontation with well-defined rules. In virtual examples imagined by various theorists, gameplay means a situation involving two or more decision-makers, called players who are faced with the situation of choosing a strategy to maximize the rewards received as a result of their own actions reported to the moves of others.

In these games, players have opposite interests, wholly or partly, this aspect causing a certain behavior and strategy in approaching the game. Strategies or combinations of player strategies are rewarded with a certain score. At the end of the game there is a comparison of the results and their correlation with the strategies made.

2.7. Automatic learning

Machine learning is a core area of the IA, which deals with the development of algorithms and methods that allow an information system to learn data, rules and even algorithms. Machine learning is focused on designing and developing algorithms and techniques that allow computers to "learn" by inductive or deductive methods. Inductive learning machines extract rules and shapes from massive data blocks.

The most important applications for machine learning are:

1. Processing natural language;
2. Syntactic recognition of forms;
3. Recognition of objects;
4. Search tools;
5. Medical diagnosis;
6. Bioinformatics;
7. Detection of computer fraud;
8. Electronic voice;
9. Robot movement;
10. Games etc.

Automatic learning implies, first of all, identifying and implementing a more efficient way to represent information in order to facilitate search, reorganization and change. The choice of how to represent these data lies in both the general conception of how to solve the problem and the characteristics of the data that is being worked out.

2.8. Intelligent agents

A smart agent is an autonomous entity (program, robot, etc.) that acquires and acts on and based on data and knowledge. Intelligent agents are adaptive and autonomous programs that can be used to create software that resolves tasks in the name of a particular user, based on explicit or implicit instructions. Smart agents can facilitate human-computer interaction by:

- Hiding the complexity of difficult tasks,
- Performing laborious tasks,
- Conducting transactions on behalf of the user,
- Training and learning,
- Helping certain users to collaborate,
- Monitoring events and various procedures.

Intelligent agents operate within a software environment such as operating systems, databases, or computer networks. Technology behind intelligent agents is a combination of IA techniques and system development methodologies such as object-oriented programming that allows programs to learn from and react to the environment. Intelligent agents interact with the environment they are part of through rule-based data selection criteria. An intelligent agent develops appropriate rules through explicit user instructions, imitation of the user, positive or negative feedback received from the user, and instructions obtained from interacting with other agents [2], [4].

There are two types of intelligent agents:

• Simple Agent: The most common agent variety is the agent that is built to learn and process permanent routine or repetitive tasks of the user. Such an agent can recognize, for example, that the user constantly ignores the emails from a particular sender and automatically deletes such an e-mail when it arrives (the user does not even know that he has received such a e-mail, and he is not retained in Inbox).

• Fire-and-forget agent: A user can instruct an agent to find specific information and then send it to search for that information. For example, the intelligent agent so trained can be launched on the network, and he can route his way to a computer system to research / ask if and where to find the information he is looking for. The user is thus freed from the laborious task of searching the Internet for the information he is interested in, which is done by his intelligent agent who, after some time, perhaps even a few days, will provide him with the search result. During this time, the user can focus on creative issues. Routine tasks will be controlled and performed by such an agent. Other operations that a "fire-and-forget" smart agent can do is: scheduling appointments, making purchases in the electronic markets, reporting the emergence of certain opportunities (where the user is interested) and alerting, and possibly automatic troubleshooting of software issues.

From the point of view of an agent's mobility abilities, there are also two categories:

• Static agents: they can not leave their place and can not cross the network to reach other servers and can not communicate with agents in the same environment;

• Mobile agents: they are formally characterized as objects possessing behavior, status and location. In order to accomplish the task assigned to it, an agent in this category may leave the site for which it was created and can navigate the network at any point in identifying itself through a particular location (the site it reached) a certain behavior (the task he / she performs in that situation / condition) and the corresponding condition[1], [4].

3. The main components of an algorithm for intelligent agents

The backtracking method applies to problems where the solution can be represented as a vector – x = (x1, x2, x3, …xk,… xn) € S, where S is the set of solutions and the problem S = S1 x S2 x… x Sn, and Si are finite sets with s elements and xi € si , (¥)i = 1..n. For each problem there are relations between the components of vector x, which are called internal conditions; the possible solutions that satisfy the internal conditions are called solutions. The method of generating all possible solutions and then determining the resulting solutions by checking the fulfillment of the internal conditions takes a long time.

The backtracking method avoids this generation and is more efficient. The elements of the vector x get values in ascending order of the indices, x [k]

will only get a value if values of elements x1 .. x [k-1] have been assigned. Upon assigning the value of x [k], the fulfillment of continuation conditions relating to x1 ... x [k-1] is checked. If these conditions are not met at step k, this means that any values we assign to x [k + 1], x [k + 1], x [n] will not reach a resulting solution. The backtracking method builds a solution vector progressively starting with the first component of the vector and going to the last with eventual returns to previous assignments.

The source program is the following:

```
Private Sub Button1_Click()
 cit_n „n = „, n
 back_perm
End Sub

Sub back_perm()
 Dim k As Integer
 k = 1
 While k > 0
  Do
   succesor am_suc, st, k
   If am_suc = True Then
    valid1 ev, st, k
   End If
  Loop Until (Not am_suc) Or (am_suc And ev)
  If am_suc Then
   If solutie(k) Then
    tipar_r
   Else
    k = k + 1
    init k, st
   End If
  Else
   k = k - 1
  End If
 Wend
End Sub

Sub valid1(ev As Boolean, st As stiva, k As
Integer)
 ev = True
 For i = 1 To k - 1
```

```
  If (st.ss(i) = st.ss(k)) Then
   ev = False
  End If
 Next
End Sub

Sub tipar_r()
 Dim i As Integer, b As String
 b = „ „
 For i = 1 To n
  b = b + Str$(st.ss(i)) + „,”
 Next
 MsgBox b
End Sub

Sub succesor(am_suc As Boolean, st As stiva,
k As Integer)
 If st.ss(k) < n Then
  am_suc = True
  st.ss(k) = st.ss(k) + 1
 Else
  am_suc = False
 End If
End Sub
```

Backtracking routine:

```
k:=1; CALL init(1,st);
while k>0
 do
  CALL succesor (as, st, k) ;
   if as then CALLvalid(ev,st,k) then
    loop until (not as) or (as and ev) ;
    if as then
     if solutie(k) then
      CALL tipar
     else
      k:=k+1;
      CALL init ( k, st );
     end;
    else
 k:=k-1
wend
```

Stack k + 1 must be initialized (to select the k + 1 elements in order). Initialization should be done with a value (in the order of order considered for the Ak + 1 set) before all the possible values in the set. For example, to generate the permutations of the set {1,2 ..... n}, any stack level will take values from 1 to n. Initialize a level (any) with 0 [2], [6].

4. Conclusions

Logical reasoning or symbolic reasoning is based on classical logic-mathematical theory and analyzes how new knowledge can be derived from existing ones, deductively, based on inference rules. As a preparatory course for the IA study, a computational logic course is recommended for applications, such as Lisp, Prolog, and Clips, or automated theorem demonstration systems [1], [3]. Intelligent agents operate within a software environment such as operating systems, databases, or computer networks. Technology behind intelligent agents is a combination of IA techniques and system development methodologies such as object-oriented programming that allows programs to learn from and react to the environment. Intelligent agents interact with the environment they are part of through rule-based data selection criteria. An intelligent agent develops appropriate rules through explicit user instructions, imitation of the user, positive or negative feedback received from the user, and instructions obtained from interacting with other agents. The logical reasoning and itelligent agents may help to implement the business logic and the economic rules for enterprise applications.

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THE DEBT ASSIGNMENT. MANNER OF EXTINGUISHING THE OBLIGATIONAL LEGAL RELATION IN THE CURRENT PERIOD

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Abstract: *It is well-known that the commercial operations are characterized by expediency. Still, the expediency principle can only be respected if the debtor of the price payment obligation has sufficient liquidities available. In the contrary case, there is a risk of major disturbances of the economic operations. In order to surpass such obstacles, the debtor of the payment obligation has at his disposal a series of legal institutions, known in the doctrine under the name of legal forms of payment, by means of which he can extinguish the initial pecuniary obligation.*

Thus, in the category of legal forms of payment, among others, is included the assignment of the debt, which makes the object of our analysis.

Keywords: *payment, assignment of debt, legal forms of payment, contract, creditor, debtor, assignor, assignee, assigned debtor*

JEL Clasification: F34, K40, H6

The debt assignment is that onerous title contract[2] by virtue of which the creditor transfers the liability right he has with respect to a person, into the patrimony of another person. The parties of this legal relations, having as effect the assignment of a debt, are called *assignor*, *assignee* and *assigned*

1 The author is *university lecturer* within the Athenaeum University of Bucharest and attorney in the Bucharest Bar;

2 In commerce, all operations performed by professionals are presumed to be onerous. It is true that in the civil law legal relations the debt assignment contract may also be with free title;

debtor. The assignor is the person remising the debt, the assignee is the person receiving it, and the assigned debtor is the bearer of the payment obligation.

Following this legal operation, the debt assigned remains unchanged, preserving both its character and its guarantees and accessories, in existence at the moment of concluding the debt assignment contract[3]. What changes is only the initial creditor, who is now replaced with the assignee in the debt assignment contract.

Considering that in the international trade relations there is the possibility that a series of commercial contracts were concluded for medium or long term, before the date of 01 October 2011 – date of entering into effect of the new civil code, contracts whose duration was subsequently extended, they remain subject – if the law governing the contract is the Romanian law - to the Civil Code of 1865. Therefore, hereinafter, we shall analyze the debt assignment both from the regulatory perspective of the old, and of the new, civil code.

Thus, the Romanian Civil Code of 1865 regulated the assignment of debt in art. 1391-1398 and, respectively, art. 1402-1404. As can be seen, the debt assignment was regulated by the lawmaker in Title V, called "About sales", fact which makes the regulation expressly target only the assignment by onerous title, as a sale-purchase operation[4]. Still, the assignment can also be performed by means of other legal operations by onerous title, such as the contract of exchange, of life annuity etc., but also through contracts with free title, such as the case of donation.

In what concerns us, considering the specific of our research, we shall consider only the debt assignment contract by onerous title.

In this sense, we mention that even though the main function of the debt assignment contract is to transfer the liability into the patrimony of another person, in the French doctrine and jurisprudence[5] at the end of the 20th century and the beginning of the 21st century it was stated that *a debt assignment contract can also have the function of payment of a debt* that the

3 L. Pop, op. cit. page 223;

4 The debt assignment is regulated in the French law also under sale, art. 1689-1701; In the German law, also at sale, art. 398, 404, 407-412; In the Austrian law, it is handled at the novation by changing the creditor, art. 1392. The institution of the debt assignment is regulated in the Anglo-Saxon legal system (common law) under the formula of the assignment of rights;

5 Ph. Malaurie, L. Aynès, Ph. Stoffel-Munck, *Cours de droit civile. Les obligations*, Cujans, Paris 1999-2000, page 728;

primary creditor (the assignor) has towards the assignee, who thus becomes the new creditor of the debtor from the initial legal relation, called assigned debtor, *thus extinguishing the debt that the assignor had towards the assignee*.

At the same time, the debt assignment, in certain situations, may also have the function of guarantee of execution of a liability right[6], in the sense that the liability being assigned by the assignor originates from another obligational legal relation, in which he has the capacity of creditor towards a third party and it is destined to guarantee the execution of the liability right that the assignee has towards the assignor. Such an assignment is performed without receiving anything else in exchange and without the intention to gratify the assignee[7].

Practically, by means of such an operation (debt assignment), the debt that the assignor has towards a third party is made unavailable until the moment of payment of the debt he has towards the assignee.

Validity conditions of the debt assignment. Given that the debt assignment is a reciprocal and consensual contract, in principle, a sale-purchase contract[8], it must fulfill all validity conditions of a sale-purchase contract, respectively, of substance and of form, such as valid, uncorrupted and freely expressed consent, the legal capacity of the assignor and of the assignee, a determined object, a licit and moral cause, and the form required by law, *ad validitatem*.

All born debts, both pecuniary and of another nature – *with the exceptions established by law*[9] - can make the object of the assignment contract. Still, in the doctrine, the issue of future and possible debts was raised, in the sense of their making of the object of such a contract. The majority opinion[10] expressed

6 In the French law, the operation is called fiduciary assignment. See, in this sense, Cl. Witz, *La fiducie en droit privé française*, Economica Publishing House, Paris, 1981;

7 L. Pop, *Tratat de drept civil. Obligațiile*, vol. I Regimul juridic general, C.H. Beck Publishing House, Bucharest, 2006, page 225;

8 C. Hamangiu, I. Rosetti-Bălănescu, Al. Băicoianu, *Tratat de drept civil român*, vol. II, All Publishing House, Bucharest, 1996, pag. 484-516; B. Starck, H. Roland, L. Boyer, *Droit civil. Obligations 2. Contract.* Litec, Paris 1989 pag. 55-346;

9 F. X. Licari, *L'incessibilité conventionelle des créances*, Revue de jurisprudence commerciale, février 2002, page 66; Thus, the parties to the legal relation from which the debt is born can stipulate that the debt cannot be assigned, in the conditions when a patrimonial or moral interest is justified. Still, in commercial matters, any clauses temporarily forbidding the debt assignment are null; in this sense, Ph. Malaurie, L. Aynès, Ph. Stoffel-Munck, op. cit. page 731; Cass. Civ. I, decision of 20 March 2001, in M. D. Bocșan, in P. R. no. 2/2001, page 201;

10 In the French doctrine and jurisprudence, such debates occurred;

in the sense that the object of the debt assignment can also be composed by future or possible liabilities, related to the provisions of art. 1130 para. 1 of the French Civ. C., which has as correspondent art. 965 of the Romanian Civ. C. (1865), according to which *future things can make the object of an obligation*.

As a consequence, from the perspective of the substance of the contract, the debt assignment being a consensual contract, it is validly concluded by the mere agreement of will of the parties, respectively, of the assignor and assignee. The consent of the assigned debtor is not necessary because he is a third party to such a contract. In what concerns the conditions of form of the debt assignment contract, they are taken over from the contract through which the debt assignment is performed.

Thus, when the debt assignment is usually a sale-purchase contract, reciprocal and consensual, the conditions of substance and form are taken from such a contract. However, if we are in the presence of a debt assignment by free title, we are in the presence of a liberality, situation when the substance and form conditions of the contract are those from the donation contract.

Opposability to third parties. According to the legal dispositions, the debt assignment produces effects between the assignor and assignee from the moment of concluding the assignment contract. Still, the operation presents interest both for the assigned debtor, who is part of the initial legal relation, but he is a third party in the debt assignment relation, as well as for the assignor's creditors (unsecured creditors), who see their guarantee diminished with the removal of the assigned debt from the assignor's patrimony.

Therefore, for opposability to third parties, according to art. 1393 of the civil code of 1865, the debt assignment[11] must be notified to the assigned debtor or the debt must be accepted by him by means of an authentic document.

In what concerns the first manner of publicity of the debt assignment, respectively, the notification, the law does not establish a term within which the notification of the assigned debtor must be performed. However, it is in the assignee's interest – the person who gained the debt at the moment of concluding the assignment contract – to notify the assigned debtor regarding the taking over of the liability by assignment, in a term as short as possible, in order to be able to satisfy his debt before any other person.

11 Art. 1393 Civ. C. (1865) The assignee cannot oppose his right to a third party until he has notified the assignment to the debtor. The acceptance of the assignment, made by the debtor in an authentic document, will have the same effect;

The notification is usually made at the home of seat of the assigned debtor or of the person having the duty to perform the payment of the debt[12]. In case of plurality of debtors, for opposability, the notification of the assignment must be made to each of them, separately.

Regarding the second manner of publicity, respectively, the acceptance of the debt by the assigned debtor, we agree with the opinion expressed in the doctrine, according to which, the expression "acceptance of the debt" has, in reality, the meaning of "recognition" of the debt assignment contract[13].

In what concerns the form of the document by means of which the debt is recognized, even though the law[14] uses the expression *"authentic document"*, the doctrine and jurisprudence have unanimously accepted that the debt assignment can also be recognized by means of a document under private signature or even tacitly[15].

Still, in the situation of recognizing the assignment by means of an authentic document, it is opposable to all interested parties, while in case of recognition through a document under private signature or tacitly, the opposability refers only to the assigned debtor. In the same direction is the viewpoint of the doctrine and jurisprudence, which maintained the exigency of the legal dispositions of the authentic document by means of which the debt assignment is recognized, in order to be opposable to third parties[16].

In what concerns the publicity of the debt assignment contract, starting with year 1999, in the national legislation[17], a regulation was adopted, for the completion of the legal regime applicable to security interests.

According to this legal text, the collateral was constituted by means of a contract in written form, which had to be subjected to publicity by registration

12 Fr. Terré, Ph. Simler, Yv. Lequette, *Droit civil. Les obligations*, Dalloz, Paris, 1999, page 1189;

13 L. Pop, op. cit. page 229;

14 The Civil Code of 1865;

15 T. R. Popescu, P. Anca, *Teoria generală a obligațiilor*, Stiințifică Publishing House, Bucharest, 1968, page 388; Fr. Terre, Ph. Simler, Yv. Lequette, op. cit., pag. 1119-1120; Supreme Tribunal, civil section, *decision* no. 1421/1962, in C. D. 1962, page 343;

16 J. Flour, J. L. Aubert, Yv. Flour, E. Savaux, *Droit civil. Les obligations 3, Le rapport d'obligation*, Armand Colin, Paris, 1999, page 213;

17 Title VI of Law no. 99/1999 on certain measures for the acceleration of the economic reform. The provisions of this regulation produced effects until the date of entering into effect of the new Civil Code, date on which, through art. 230, letter u) of Law no. 71/2011 for the enforcement of the new civil code, they were abrogated, as a consequence of their inclusion in Title XI of the new civil code, called "Privileges and collateral";

in the Electronic Archive for Secured Transactions, which is an electronically archived data- and information base.

According to the provisions of art. 2 of Title VI of Law 99/1999, all debt assignments were subjected to registration in the Electronic Archive for Secured Transactions, even if the assignment did not have as purpose the guaranteeing of the fulfilment of an obligation.

With the entering into effect of this normative act, the provisions of art. 1393 of the Civ. C. (1865) were not abrogated, neither implicitly, nor expressly, reason why the provisions of these two regulations should have been corroborated in the matter of the publicity of the debt assignment contracts.

Thus, from the analysis of the two legal texts we referred to, it is derived that the publicity of the debt assignments could be performed through any of the regulated modalities, respectively, its notification or acceptance by the assigned debtor, or by registration in the Electronic Archive.

Still, we believe that the text of art. 99 of Law no. 99/1999 presents importance only in the hypothesis when the debt was successively assigned to others, because it established the priority order or the rank of the assignments.

Thus, if some of the assignments were notified or accepted by the assigned debtor and others were registered in the Electronic Archive, the registered assignments had priority, and, among them, priority rank towards the third parties was given to the assignment that was registered first.

Still, whenever we are in the presence of a debt assignment whose purpose was that of security interest, Law no. 99/1999 established, for its opposability, the obligation of notifying the assignment to the assigned debtor, by the assignee.

In other words, in order to ensure the opposability of the assignment of such a debt to the assigned debtor, it was necessary that he was notified by the assignee, by means of one of the manners indicated in art. 85 of Title VI of Law no. 99/1999.

Debt assignments excepted from the publicity formality

Even though the publicity of the debt assignment established by the civil code is imposed for opposability both to the assigned debtor and to third parties, there are, still, exceptions from this rule.

Given that these exceptions refer to assignments of both civil nature, mentioned by art. 1394 Civ. C. (1865), and of commercial nature, considering our research, we will only refer to those of a commercial nature [18].

Thus, in the matter of the *credit instrument*, the regulation in the matter brought forth simplified forms of transferring the debt incorporated therein. As known, characteristic to credit instruments is the fact that the document establishing them incorporated the afferent debt right, reason for which the legitimate holder of the instrument is also the holder of the debt right incorporated in the instrument.

As effect of this indissoluble link between the liability right and the instrument in which it is incorporated, other characteristics are derived, specific only to the credit instruments, respectively, literality and autonomy.

Literality refers to the existence, extent and nature of the liability right incorporated in the instruments, as well as to the correlative debt, by means of the mentions existing in the document establishing the instrument. At the same time, literality also represents that capacity of the instrument by virtue of which priority is given to the declared will of the parties, recorded in the instrument, and its content cannot be modified, but only completed with those elements referred to in the content of the respective instrument.

The *autonomy* of the instrument refers to its capacity by virtue of which each holder gains an own right, autonomous from the right of the predecessors, reason why to the right gained by the legitimate holder cannot be opposed the exceptions which could be invoked in relation to the prior holders.

According to the manner of circulation, the debt instruments are divided into three categories, respectively bearer, nominative and to order instruments.

The bearer instruments are characterized by the fact that in their content are indicated the debtor and the extent of his obligation and the assignment is performed by the simple remittance of the instrument.

The nominative instrument is that credit instrument in the content of which the name of the creditor is mentioned and its transfer by assignment presupposes the registration of the new holder on the instruments, as well as in the register of the issuer, accompanied by the remittance of the document establishing the title of the assignee.

18 In the meaning of the new civil code, the commercial legal relations were called relations between professionals;

The instrument to order is that document establishing a debt, characterized by the fact that it is transferred through endorsement from the assignor to the assignee, respectively, the assignor's signature on the overleaf of the instrument, concomitantly with mentioning the name of the assignee on the same side of the instrument, followed by its remittance to the new holder.

This procedure of assignment of debts, by endorsement, is specific both to the bill of exchange and the promissory note, as well as to the cheque and the warrant.

In the French law, apart from the usual debt assignment, a simplified manner thereof is also seen, regulated by the "Dailly" Law of 02 January 1981, modified by the Bank Law of 01.24.1984, according to which an entrepreneur (professional), legal entity or individual, can assign the debts he has against its customers, in favor of the bank, in order to obtain a loan[19].

The procedure by means of which such assignment is performed consists in the assignor transferring to the assignee of the list containing a series of mandatory mentions, such as the name of the bank, the individualization of the amount, signed by the assignor and dated by the assignee. The effect of giving the list to the assignee is the transmission of the debts to the assignee, of full right, with all their accessories and, at the same time, the assignment becomes opposable both to third parties and to the assigned debtor.[20]

Still, as security measure, the assignee can always notify the assignment to the assigned debtor.[21]

In the situation of a possible conflict between the assignees of the same debt, preference will be given to the one whose gaining, according to the list, is the oldest.

The effects of the debt assignment. Effects between the parties

As any contract, the debt assignment produces, mainly, the effects of the contract whose character it gained, such as the sale-purchase, giving

19 In what we are concerned, we believe that nothing can oppose a proposal of *ferenda lex* in this sense in our country also, in the current conditions, when the need of liquidities of the economic operators is stringent, and the assets which to be assigned to guarantee bank loans are either missing or insufficient;

20 Chr. Larroumet, *Droit civil, tome 4, les obligations. Regime general,* Economica Publishing House, Paris 2000, pag. 318-336;

21 Art. 1690 of the French Civ. C., to which corresponds art. 1393 of the Romanian Civ. C. (1865);

for payment etc., but it also has specific effects, which must be analyzed, on the one hand, between the assignor and the assignee, and, on the other hand, towards third parties, also considering the assigned debtor.

Thus, the main effect between the assignor and the assignee is represented by the transfer of the debt right from the assignor to the assignee, with all accompanying accessories. Therefore, following the assignment, no new obligational legal relation is created, but the creditor in the original legal relation is replaced by the assignee.

Hence, unlike the subrogation in the rights of the creditor by means of paying the debt, when the subrogated takes over only the debt part corresponding to the value paid, in the matter of the debt assignment, the assignee takes over the entire liability, regardless of the amount paid as price thereof.

Still, according to the will of the parties, respectively the assignor and the assignee, there is a possibility that the assignor wishes to assign the debt only partially, situation when the assignor and the assignee will coexist as creditors of the same debtor, each for his part of the debt. Still, such a situation must be nuanced, in the sense that, even though, in principle, both creditors have equal rights to achieve their debt, if, by means of the assignment contract, the assignor expressly guarantees the part of the assigned debt and the solvency of the assigned debtor, priority is recognized in favor of the assignee. In the same way, by means of the partial assignment contract, the assignor may reserve the benefit of the guarantees, going to have priority in relation to the partial assignee.[22] In other order of ideas, we mention that, according to art. 1396 Civ. C. (1865), by means of the debt assignment contract, to the assignee's patrimony are transferred both the debt, at its nominal value, and its accessories, respectively, the guarantees, such as mortgages, privileges or bonds, or the accompanying interest.

With respect to interest, we must mention that the assignee is entitled to collect from the assigned debtor both the interests and all other incomes from the debt, which became due at the moment of the assignment, as well as those whose due date was before the assignment date, but have not been collected by the assignor, except for the case when the assignor reserved the latter for himself, through the assignment contract[23].

22 L. Cadiet, *Transport des créances et autresdroits incorporels, Jurisclasseurcivil, fascicule 20*, 1996, page 3;

23 Fr. Terré, Ph. Simler, Yv. Lequette, op. cit., page 1198;

In what concerns the legal actions available to the assignor, until the assignment date, regarding the assigned debt[24], they are fully transferred to the assignee, by virtue of its capacity as intervening party in the obligational legal relation, concluded between the assignor and the assigned debtor[25].

The situation is similar in what concerns the arbitration clauses inserted in the original contract concluded between the assignor and the assigned debtor, except for the situation when such a clause that a *intuitu personae* character.[26]

Basically, according to the provisions of art. 1391 Civ. C. (1865), the debt assignment contract generates an obligation to do, in the burden of the assignor, who is thus obligated to remit to the assignee the establishing document of the debt, when such a document was drafted. In the absence of fulfilling this obligation by the assignor, the assignee is entitled to refuse the fulfillment of his own obligation, respectively, of paying the contract price.

Still, we consider that, given the consensual character of the assignment contract, the debt is transferred from the assignor to the assignee with the agreement of will expressed by the assignor to this effect. Therefore, the remittance of the debt instrument by the assignor to the assignee is only an obligation to give and not a condition for the valid conclusion of the debt assignment contract.

The only condition established by law, which affects the validity of the debt assignment contract, is given by the obligation of rightful guarantee of the debt, regulated by art. 1392 Civ. C. (1865), according to which the assignor has the obligation to guarantee the valid existence of the debt in his patrimony, at the moment of selling it to the assignee. At the same time, the assignor also guarantees for the partial non-existence of the debt or for its nominal value, which, in reality, could be lower than that mentioned in the assignment contract.

Thus, the assignor's obligation to guarantee the valid existence of the debt refers only to the moment of concluding the assignment contract. Therefore, any causes occurred after this moment, such as force majeure or the

24 It is a matter of the action in claims, guarantee, indirect, Paulian, in nullity of the original contract or for its resolution;

25 P. Vasilescu and team, *Cesiunea de contract. Repere privind formarea progresivă a contractelor*, Sfera Juridică Publishing House, Cluj Napoca, 2007, pag. 271-303; Fr. Terré, Ph. Simler, Yv. Lequette, op. cit., page 1198; L. Cadiet, op. cit., page 4;

26 E. Loquin, *La cession d'une créance emporte transfert de la clause d'arbitrage*, Dalloz, no. 3/2002, page 254;

fault of the assignee, which had as consequence the destruction of the debt and accessories, does not enter the sphere of its legal guarantee.

The situation is similar also in what concerns the fulfillment of the limitation period during which one can ask in court the execution of the debt, even if the term started passing before the moment of the assignment. The argument is constituted by the fact that the assignee had the possibility to fulfill certain acts to interrupt the course of the limitation period.

In other words, the assignor does not guarantee the solvency of the assigned debtor or his guarantors or the efficiency of the other guarantees accompanying the debt, but only the valid existence of the debt in his patrimony, at the moment of selling it to the assignee.

The reasoning of the regulation in art. 1397 Civ. C. (1865) is derived from the speculative nature of the debt assignment, by virtue of which the assignor sells the debt for a price lower than the nominal price, as a consequence of the doubts he has regarding the full execution thereof, and the assignee purchases without having the certainty that he will obtain the full payment of the debt.[27]

In other words, the assignee can act against the assignor only in the situation when the debt does not validly exist in the patrimony of the latter, at the moment of the sale. In such a situation, the assignee has available the action in resolution of the assignment contract, the assignor being held to refund the price of the assignment and compensation, up to the covering pf the damage, which can be composed of the price actually paid for purchasing the debt and the difference to the nominal value of the debt, if it is proven that the assigned debtor was solvable.

A particular situation is represented by the partial non-existence of the debt right, in the assignor's patrimony, at the moment of the assignment. In such a situation, the assignee is entitled to request the resolution of the assignment contract only if he proves that he would not have contracted, had he known the reality. In the contrary case, he only has available the redhibitory action, by virtue of which he can only request and obtain the proportional reduction of the assignment price.

Still, given the residuary nature of the provisions of art. 1392 Civ. C. (1865), the contracting parties can modify the legal regime of the legal

27 B. Starck, H. Roland, L. Boyer, *Droit civil, vol. II, Obligations 2. Contrat*, Litec, Paris, 1989, page 29; R. Cabrillac, *Droit des obligations*, Dalloz, Paris, 1996, page 262;

obligation of guaranteeing the debt, situation in which they may insert clauses for the aggravation or restriction, or even exclusion, of the legal guarantee.

Still, even with the residuary nature of art. 1392 Civ. C. (1865), the legal clauses for the aggravation of the assignor's liability – by means of which, apart from the valid existence of the debt at the moment of the sale, also the obligation to guarantee for the solvency of the assigned debtor is established – have two limitations, regulated by art. 1397 and art. 1398 Civ. C.

Thus, according to art. 1398 Civ. C., if the *assignor indebted himself specially to guarantee the solvency of the assigned debtor*, his obligation of guarantee extents only to meeting the assignment price.

Hence, in case the assignment was performed for a price lower than the nominal value of the debt, even if the assignor guaranteed the solvency of the assigned debtor, the assignee cannot claim from the assignor the full value of the debt.

The second limitation, established by art. 1398 Civ. C. (1865) takes into account the situation when the *assignor undertook the obligation to guarantee the solvency of the assigned debtor.* According to this, the obligation refers only to the solvency of the assigned debtor at the moment of the debt assignment and not his future solvency, unless the parties agreed to the contrary.

Thus, in the absence of an express stipulation in the assignment contract, the assignor undertakes to guarantee the solvency of the assigned debtor, at the moment of the assignment. Still, if the assignor expressly undertook to guarantee the solvency of the assigned debtor, such as obligation puts the assignor in the situation of a guarantor of the assigned debtor.

Still, such a guarantee, assimilating the assignor to a guarantor[28] of the assigned debtor, will commit the assignor's liability for the debtor's insolvency only to the due date of the debt assigned and without the possibility that the assignor will be targeted by the assignee before he targets the assigned debtor. Such a condition regarding the targeting of the assignor recognizes in his favor a real discussion benefit.

In what concerns the clauses for the restriction of the legal guarantee, they refer to the situation when the parties agree that the assignor guarantees only the existence of the debt at the moment of the assignment, or only the existence of the accessories of the debt.

28 In French law, such a clause is called *clause de fournir et faire valoir*; J. Flour, J. L. Aubert, Yv. Flour, E. Savaux, op. cit., page 217;

In the same way, the parties may agree through the assignment contract the removal of all legal guarantees regarding the assigned debt. In such a situation, the assignor guarantees neither the valid existence of the debt in his patrimony, nor the existence of the guarantees or accessories of the assigned debt.

The existence of such an exclusion clause protects the assignor from paying damages, being held only to refund the assignment price to the assignee. Still, according to art. 1340 Civ. C. (1865), the assignor has no obligation to refund the price of the assignment, both in the situation when the assignee knew the cause for the non-existence of the debt at the moment of contracting, and in the situation when he contracted exclusively at his own risk.

However, even if in the assignment contract a clause for the limitation or exclusion of the legal guarantee was stipulated, the assignor always remains the guarantor of his own personal deeds concerning the debt, such as, for instance, the situation of collecting it from the assigned debtor prior to concluding the assignment contract.

Effects towards third parties

According to the dispositions of art. 1393 Civ. C. (1865), the debt assignment produces effects towards third parties only from the moment of fulfilling the publicity formalities, consisting of the notification made by the assigned debtor or the acceptance of the assignment by the latter.

Through the term *third parties* are designated all persons except for the assignor and the assignee, as well as their successors in rights. Still, the debt assignment presents interest only for a restricted category of third parties, such as *the assigned debtor*, *the assignees of the same debt*, in case of successive assignments and the *creditors of the assignor*.

With respect to the *assigned debtor*, the analysis sees his situation both before and after fulfilling the publicity formalities.

Thus, before performing the publicity of the debt assignment, according to the legal provisions, the debt assignment produces no effects to the assigned debtor. In such a situation, he remains the debtor of the assignor, and the payment made to him is considered discharge of liabilities. Thus, the validity of the payment of the debt depends on the date on which the assigned debtor made the payment and not on the moment of the assignment, provided that it was performed prior to its notification by the assignee or to the acceptance made by the debtor through an authentic document.

In this matter, the French jurisprudence recognized to the assignee a series of rights. Thus, he can perform acts for the interruption of the course of the term of the limitation period before notifying the assignment or he may ask payment from the assigned debtor, if he has no reasons to refuse, or he can ask the cancelation of the payment made by the assigned debtor to the assignor, if he proves that a fraudulent agreement had been concluded between them.[29]

After performing the assignment publicity, the assigned debtor remains obligated only to the assignee, reason for which any payment made to the assignor has no character of discharge of liabilities, the debtor being held to make payment to the assignee, as well. At the same time, the assigned debtor cannot oppose to the assignee the compensation for a debt born after the performing of the publicity formalities.

Through the effect of the debt assignment contract the debt is transferred from the assignor to the assignee in the condition it is at the moment of the assignment, accompanied by all positive attributes, such as the guarantees and the accessories, but also by the negative ones, such as the exceptions and the means of defense that the assigned debtor could have opposed to the assignor until the moment of publicity.

At the same time, we underline that the assigned debtor may oppose to the assignee, apart from the exceptions he could have opposed to the assignor, also the defenses born after the moment of the publicity of the debt assignment, such as the limitation period, the compensation for a debt of the assignee towards him, the total or partial debt remittance made by the assignee, the novation by changing the debtor or the delegation.

In other order of ideas, we mention that in the situation in which we currently are in the presence of a debt assignment incorporated in a credit instrument, the exceptions which the assigned debtor could oppose to the assignee are solved according to the text of the special law and not to the common law in the matter, which is the civil code.

In the light of the previous regulation, the debt assignment produced its effects to the interested third parties only after the fulfillment of the publicity obligation, according to the legal provisions, respectively, its notification to the assigned debtor or its acceptance by the latter, through authentic document, or its registration into the Electronic Archive for Secured Transactions.

29 Yv. Buffelan-Lanore, *Droit civil, Deuxiemme annee*, Armand Colin, Paris 2002, page 132;

Thus, until performing the publicity in the forms stipulated by the law, the debt assignment made by the assignor debtor of third parties, is not opposable to the latter.

In the same direction, we state that the moment of performing the publicity obligation is very important in the situation of the successive debt assignments. Thus, if the same assignor assigned the debt to several assignees, each of them becomes third party to the assignments of the others.

In such a situation, solving the conflict between the assignees if performed considering the date or the moment in the day when the publicity was performed. Thus, assignee of the debt will be the person who first notified the debt, obtained the acceptance from the debtor or registered it into the Archive. In the situation when the publicity of the assignments was performed on the same day, by notification of acceptance by the debtor, the capacity of assignee is gained by the person who mentioned the hour when the publicity was performed. If neither publicity modality indicates the hour, all assignees of the debt with identical calendar data of publicity are creditors of the assigned debtor, and they will distribute the debt among them, equally.

Under the old regulation, a particular situation was constituted by the publicity by means of registration in the Electronic Archive for Secured Transactions, in the sense that, between the publicity of the debt assignment performed by notification or acceptance by the assigned debtor and the one registered in the Electronic Archive for Secured Transactions, priority was given to that registered in the Archive. However, if there was a concurrent registration by the assignees of the same debt, whose publicity was performed through registration in the Archive, the assignment registered first had priority rank, according to art. 99 of Title VI of Law no. 199/1999.

In the light of the current legislation[30], the debt assignment was regulated, distinctly, in art. 1566-1592 N. Civ. C., without being included anymore in *sale* and it comprises two sections. A first section, comprised on articles 1566-1586, refers to the debt assignment in general, and the second, mentioned in art. 1587-1592, to the assignment of debts established through nominative, to order or bearer instruments.

Still, paragraph 3 of art. 1567 of the N. Civ. C., stated that in the situation of an assignment by onerous title, the dispositions regarding he debt assignment are completed by those applicable to the sale-purchase contract,

30 The New civil code, entered into effect on 01 November 2011;

or, as the case may be, to the legal operation by means of which the parties agreed the transfer of the debt.

Thus, even though, under the current legislation, the debt assignment was no longer regulated under sale, as traditionally done in the European continental civil law, mainly, to the assignment contract are applicable the legal dispositions regarding the sale.

In other order of ideas, we consider that the provisions of paragraph 2 of art. 1566 din N. Civ. C., on the inapplicability of the legal dispositions regarding the debt assignment to the debt transfers performed via universal transfer or with universal instrument or to the securities and financial instruments, except for the provisions of art. 1587-1591, are excessive.

We support this view because, also under the rule of the old regulation, the legal dispositions regarding the debt assignment were not applicable to the universal succession transfers or with universal transfer[31], or to the reorganizing of the legal entities by merger or division and, even less to the transfer of securities or financial instruments, which were and remain regulated through special laws.

In principle, according to the new regulation, any debt can make the object of the assignment, regardless of its object, with the limitations imposed by law.

Thus, according to art. 1569 N. Civ. C., the debts declared non-transferrable by law, such as those derived from aliment contracts, cannot make the object of the assignment; to these we consider must be added the *intuitu personae* contracts; also, debts having as object a performance other that the payment of an amount of money, cannot make the object of the assignment, provided that through the effect of the transfer the obligation does not become more onerous; or those declared non-transferrable by the parties to the original obligational legal relation, on condition that there is a legitimate interest in this sense.

Still, in what concerns the last category of non-assignable debts, respectively those declared as such through the legal document establishing the initial obligation, there is a series of exceptions making inoperable the conventional prohibition of the assignment, regulated by art. 1570 para. 1 letters a) to c) of the N. Civ. C.

31 The regulation comprised in art. 1566 para. 2 N. Civ. C. must not be confused with the assignment, by means of acts between the living, of a universality of debts, expressly established in art. 1579 N. Civ. C.;

According to the legal text stated, the conventional non-assignability clause of the debt does not produce effects in the situation when the assigned debtor consented to the debt on a date after that when he initially agreed to the inalienability; the prohibition of the debt assignment was not expressly stipulated in the document establishing the debt and the assignee could not have known about the existence of the interdiction at the moment of concluding the assignment contract.

The third exception from the principle of debt assignment is not a true exception because it refers to the interdiction to assign debts which have as objects amounts of money. Or, in this matter (of assigning pecuniary debts), the principle of the free assignability of debts only knows legal limitations. *Per a contrario*, it means that the conventional prohibition of the assignment of the pecuniary debt does not operate[32].

Even though in the texts regulating assignment its functions are not reflected, in the doctrine[33] it was underlined that such a legal relation fulfills a series of functions, such as: a) *translative*, by means of which the debt transfer is performed; b) *payment instrument*, by means of which the assignor's debt to the assignee is extinguished; c) *credit instrument,* as effect of the due date with suspensive term, until the execution of the debt afferent to the liability; d) *guarantee*, speaking of the so-called *trust-assignment,* which presupposes the immobilization of the debt in the assignee's patrimony until the execution of the obligations undertaken by the assignor to the assignee.

Considering that in what concerns the substance and form conditions of the debt assignment there are no differences from the previous regulation, we will not stop to analyze them.

What distinguishes the current regulation of the debt assignment from the previous one is its publicity.

Thus, if, according to the old regulation, for the opposability of the debt assignment, the assigned debtor had to accept the assignment through an authentic document, in the meaning of the new civil code, the acceptance of the assignment by the assigned debtor is valid and opposable through a document with certain date[34].

32 Still, the assignor will be held liable to the assigned debtor, for breaching the prohibitive agreement;

33 P. Vasilescu and team, *op.cit.*, page 150;

34 Art. 1578 para. 1 letter a) N. Civ. C.;

At the same time, compared to the previous regulation, which indicated as manner of publicity of the debt assignment the written notification sent by the assignor or assignee to the assigned debtor, the new civil code establishes expressly the support of the communication, respectively paper or electronic format, as well as the minimal mentions of the notification, respectively the identification of the assignee, of the debt and the request of payment from the assigned debtor, and in case of the partial assignment, its extent[35].

As under the old regulation, the notification sent by the assignor of the assignee to the assigned debtor produces similar effects under the norms of the current regulation, in the sense that the notification sent by the assignor to the assigned debtor forces the latter to directly execute the obligation to the assignee, from the date of communication, and in the situation of the communication being sent by the assignee, the assigned debtor has the right to request the written proof of the assignment (the sending of the assignment contract), at the same time, being entitle to suspend the execution of the payment until the moment of receiving the proof of assignment[36]. Hence, the effects of the assignment notification by the assignee are suspended, de jure, until the moment of sending the written proof of assignment to the assigned debtor[37].

As previously mentioned, when we spoke about the publicity modalities of the debt assignment regulated by the old civil code, completed with those of Law no. 99/1999, the current regulation also stipulates, for opposability to third parties, the registration into the Electronic Archive for Secured Transactions of the assignment of a universality of current or future debts[38].

As in the previous regulation, the registering of the assignment contract into the Electronic Archive, even though opposable to third parties – and the assigned debtor is a third party to the assignment contract – is not opposable to the assigned debtor, unless it is notified to him or it is accepted by him, in the conditions of the law.

Unlike the previous regulation, the new civil code states that the opposability of the debt assignment to the assigned debtor is also achieved

35 Art. 1578 para. 1 letter b) N. Civ. C.;

36 Art. 1578 para. 3 and 4 N. Civ. C.;

37 Art. 1578 para. 5 N. Civ. C.;

38 Art. 1579 N. Civ. C.;

through the petition to call to court of the latter[39], even though we cannot speak of a distinct publicity modality of the assignment.

In what concerns the opposability of the assignment to the other third parties assimilated to the assigned debtor, respectively his guarantors, art. 1581 of the new civil code established, as the previous regulation, the need to notify each of them or their acceptance of the assignment, in the same conditions as the debtor.

A last publicity modality of the debt assignment, stipulated in the new civil code, refers to its noting into the land register[40].

Even though at first sight it would be believed that this modality of publicity of the debt assignment would represent an alternative to that established by art. 1578-1581 N. Civ. C., still, in case of concurrence between them, priority is given to the one registered in the electronic archive[41], fact which makes the writing in the land register have a subsidiary nature. Given that the effects of the debt assignment contract both between the parties and between them and third parties, are similar to those in the previous regulation, we will not insist upon them. Still, we cannot conclude the analysis of the debt assignment before examining the regulations of the new civil code on the assignment of the debts established through nominative instrument, established by art. 1587-1592 N. Civ. C.

It is well known that the expression *nominative instruments* comprises a wide variety of documents seen in the commercial relations, which confer their bearer or the legal holder the right to request either a pecuniary payment, as is the case of the bills of exchange, promissory notes, cheques; or ownership over the merchandise, as is the situation of the warrant, bill of lading etc.; or company-related rights, such as the situation of the shares or bonds.

Or, as it is known, their legal regime is established through special regulations, in favor of which functions the principle of law expressed by the Latin addagio *specialia generalibus derogant*, even though the writers of the new civil code have attempted to transform it in a true regulation with

39 Art. 1580 N. Civ. C.;

40 Art. 902 para. 2, point 6 of the N. Civ. C.;

41 V. M. Nicolae, *Strămutarea ipotecii în cazul cesiunii de creanță în temeiul Codului civil*, Dreptul no. 12/2014, page 66;

constitutional character, however, contradicted by the multitude of special regulations[42] to which reference is made in its content[43].

Thus, according to art. 1587 of the N. Civ. C., two main rules are regulated in what concerns the circulation of these liabilities, respectively, in the matter of nominative, to order or carried instruments, it was established that they cannot be transferred through the simple agreement of will of the parties and in what concerns them a circulation regime is instituted, established through special laws.

Still, art. 1588 N. Civ. C. refers to a series of general rules applicable to the assignment of securities, taken from the special regulations. Thus, in the matter of nominative instruments, it was established that the assignment s mentioned both on the respective document and in the issuer's register. It is well known that the regulation refers to the closed companies, not listed on the stock exchange.

Also, in case of instruments to order, for the validity of the assignment, it is necessary to apply the approval or to endorse the instrument, operation consisting of indicating the name of the assignee, the date and the subscription of the operation. At the same time, in the matter of bearer instruments, it was established the need for their material remittance to the assignee, specifying that any contrary stipulation is considered unwritten.

In this last situation, for the validity and opposability of the assignment – *institutions which superimpose in this situation* – to the freely expressed consent of the parties is added the formality of the instrument remittance, which makes this category of instruments have an acausal nature, of the essence of which is only the freely expressed consent[44], while the remittance represents

42 As example, we refer only to art. 1587 N. Civ. C.;

43 The most eloquent example in the direction of our claim, is **art. 1** of the N. Civ. C., according to which "**Sources** of law are the law (T.N. in the sense of regulation), the customs and the **general principles of law**";

44 The reasoning considers practical situations, according to which the assignment of bearer shares is agreed, but, at the moment of the assignment (of negotiation and the agreement of will of the parties), the assignor invokes to the assignee the turning over of the shares on a date subsequent to the agreement of will, motivated by the fact that he would not have them on his person at that moment. In such a situation, the assignee is entitled to establish a proof of the assignment, either by mentioning it into the company's shares register, under the signatures of the assignor and the assignee, or by concluding a document establishing the debt assignment (assignment contract) recognized under signature by the assignor and the assignee, which unequivocally proves the validity of the assignment.

only an obligation to turn over (to remit) the instrument transferred through the assignment.

Regarding this condition imposed by art. 1588 para. 3 of the N. Civ. C., on the valid transfer of the debt incorporated into an instrument to order conditioned by the material remittance of the instrument, we believe it to be excessive, if we consider *the assignment of bearer shares*, issued by a closed company, not listed on the stick exchange. We claim this because the provision is of a nature to give the assignment contract between the parties a real character.

Or, both the old and the current civil codes stipulated that *in the category of real contracts are included* the deposit contract; the commodatum (free lease) contract; the loan contract; the lease contract; the farming contract and the guarantee contract with dispossession.

Moreover, we consider that the disposition comprised in para. 3 of art. 1588 of the N. Civ. C., according to which the assignment incorporated in a bearer instrument is sent through the material emittance of the instruments and any contrary stipulation is considered unwritten, must be corroborated with the provisions of art. 1574 para. 1 of the N. Civ. C., with respect to which the assignor has the obligation to remit to the assignee the document establishing the debt, in his possession, as well as any other documents proving the right transferred, situation in which it is derived that only the freely expressed consent of the parties is essential for the validity of the assignment of bearer instruments.

In the same order of ideas, we claim that the final thesis of art. 1588 para. 3 of the N. Civ. C., according to which any contrary stipulation is considered unwritten, is contrary to the provisions of art. 1587 para. 2 of the N. Civ. C., according to which the circulation of the debts incorporated in nominative to order and bearer instruments, as well as of other securities, is established by special laws, and only adds to the provisions of a special regulation, such as the one comprised in art. 99 of Law no. 31/1990, as subsequently modified, which does not impose any condition on the assignment of bearer shares. Or, this last legal disposition, respectively, art. 99 of Law no. 31/1990, as subsequently modified, is the one which must have enforcement priority compared to the provisions of art. 1588 para. 3, of the N. Civ. C., *related to the provisions of art. 1, final thesis of the new civil code*, which stipulated that the general principles of law – of which the principle *specialia generalibus derogant* is part– are sources of civil law.

In another order of ideas, we consider that the main trait of the securities is that the right incorporated in the instrument cannot be contested except within certain limits. Thus, once presented for payment, the assigned debtor must make the payment, without being able to invoke an exception afferent to the substance of the obligational legal relation[45], such as the relative nullity of the original contract which generated the payment obligation.

Still, the Romanian lawmaker established a series of exceptions or defenses in favor of the assigned debtor, in art. 1589, such as the invoking of: *a)* the absolute nullity of the instrument, for the situation when the original obligational legal relation would be found as absolutely null; *b)* any defenses derived from the content of the instrument, such as the lack of observance of formalism, afferent to the absence of a compulsory mention or the non-observance of the conditions afferent to transferring the title by endorsement; *c)* personal exceptions he could oppose the assignee, such as the compensation, prescription or nullity of the legal act which generated the payment obligation; *d)* gaining the instrument by defrauding the debtor, with the obligation to prove the fraud; *e)* putting the instrument in circulation without his consent or against his will. In such a situation, the assigned debtor will not be able to refuse the payment to the good-faith holder of the debt instrument[46].

Still, the only possibility of the debtor de-possessed by his instrument without the observance of the legal provisions for the avoidance of payment, is to obtain a court order in the procedure of the Presidential Ordinance and its communication to the holder of the instrument[47].

In conclusion, we can say that the debt assignment is one of the modalities of extinguishing the pecuniary obligational legal relation, which does not require the use of the debtor's liquidities.

45 L. Pop, I. F. Popa, S. I. Vidu, *Curs de drept civil. Obligațiile*, Universul Juridic Publishing House, Bucharest 2015, page 431;

46 Art. 1591 N. Civ. C.;

47 Art. 1592 N. Civ. C.;

EUROPEAN TRENDS IN SPLIT VAT

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Abstract: *The paper analyses the methods through which split VAT (split-payment mechanism) has been implemented in Bulgaria and Italy, as well as the intended methods through which Poland and Romania wish to implement the system in 2018, with the goal of examining the similarities, problems, and possible improvement paths. The efficiency of the system is still being contested by the taxpayers, because of its costs and complexity.*

In order to improve tax collection efficiency and fraud prevention, the paper suggests a variety of other methods including a real-time VAT collection system. Generally, there are two main options for reforming the VAT system: keeping voluntary tax compliance with modern enforcement measures in place, or eliminating voluntary compliance in a return-free system, in which taxpayers must comply.

Keywords*: Value added tax, Fraud, split TVA, European Union.*

JEL Classification*:* H25; H26; K34

1. The significance of Value Added Tax

The value added tax (VAT) is a general indirect tax on consumption. It is calculated using the tax credit method: liability is obtained by subtracting VAT on a firm's purchases from VAT due on its sales.

VAT was first introduced in France in 1954 and was later adopted by the countries of the European Union in 1967, making it a major source of income

for the national budgets of EU members. Currently VAT is the predominant form of consumption tax around the world.

The taxation system has undergone changes according to the states' financial policies and the fluctuations of the economy.

The recent economic crisis and the longer-term shift towards indirect rather than direct taxation made multiple European countries increase their VAT rates. In the UE, VAT is the most important type of tax on production and imports.

In 2016, in the EU-28, revenue from taxes on products accounted for about 83 % and VAT for around 52 % of the total taxes on production and imports[1].

The highest ratios of taxes on production and imports relative to GDP were recorded in Sweden (22.6 %), Croatia (19.6 %), Serbia (19.8 %), Hungary (18.3 %) and Denmark (16.5 %).

The lowest ratios of these indirect taxes were recorded for Ireland (8.7 %), Slovakia (10.8 %), Germany (10.9 %) and Switzerland (6.0 %).

The taxation system will have to be further adjusted based on a series of factors such as population aging, the evolution of the labor market, the level and structure of public spending, and the changing patterns of savings and consumption. In its 50 years of service, the system has become more complex, difficult to apply to the common market, expensive and inefficient.

The complexity of the current VAT system leads to burdens for businesses and high VAT compliance costs. This has led to the need for special programs that reduce the administrative burden of applying the normal VAT rules for small enterprises (such as exemptions from VAT for businesses with an annual turnover below a certain threshold).

The level and collection costs vary from one country to the other, and the current taxation mechanism is based on the key role of businesses in collecting VAT. Administrative procedures vary and can significantly impact the compliance burden.

VAT system reform, based on the new changes in economy and technology, as well as the reducing the operational cost to taxpayers and tax administrations are necessary in every country but also to the EU as whole.

1 https://ec.europa.eu/taxation_customs/sites/taxation/files/study_and_reports_on_the_vat_gap_2017.pdf

The evolution of the VAT system has been slower than that of the economic and technology mediums. The rapid shift in business models, globalization, and usage of new technologies require a profound rethinking and reformation of the VAT collection system, in order to reduce the burden on businesses and VAT losses. The VAT gap is a major problem for the administrations of European countries

The VAT gap represents the gap between the VAT total tax liability and the amount of VAT actually collected. In nominal terms, in 2015, the VAT Gap in the EU-28 Member States amounted to EUR 151.5 billion (a loss of 12% of the total expected VAT revenue).

However, the VAT gap has been declining in most countries, with the exception of Belgium, Denmark, Ireland, Greece, Luxembourg, Finland, and the UK. In 2015, half of the EU-27 Member States recorded a Gap below 10.8 %. The smallest have been recorded in Sweden (-1.42 %), Spain (3.52 %), and Croatia (3.92 %), while the largest Gaps were registered in Romania (37.18 %), Slovakia (29.39%), and Greece (28.27 %).

A change in VAT rules in 2015 was the expansion of the reverse charge mechanism across several countries such as the Czech Republic, Italy, Hungary, Poland, and Slovenia.

The reduction of VAT fraud necessitates complex and costly actions by each state's administration.

The way VAT is collected has changed over time, but it is based on a preliminary self-assessment by the taxpayer followed later by audits by the tax administration.

2. VAT split payment mechanism

The idea of a blocked VAT account was introduced in 2003 and was called a "VAT trust account" (Sinn et al., 2004). A blocked VAT account can only be used for incoming and outgoing VAT payments, as well as settlement of net VAT liabilities at the end of the reporting period.

A VAT account yields additional transaction costs in the form of payment orders, account-keeping fees, transaction fees, etc.

VAT compliance costs for small businesses are relatively higher than for big companies, particularly when they conduct business across the EU.

Split payment mechanisms, sometimes referred to internationally as 'tax withholding' mechanisms, have been implemented in Bulgaria and Italy.

2a. Bulgaria VAT split payments

Between 2003 and 2007, Bulgaria has implemented a split VAT payment system in order to increase its collection efficiency.

The VAT amount had to be paid to a supplier's VAT account. Once the accounts were launched, however, a firm that paid at least 80% of the VAT on its transactions through the VAT accounts could obtain a refund within 45 days, irrespective of whether or not it was undergoing an audit (Pashev, 2007).

The abandonment of split VAT in 2017 proves that its benefits have been low, with VAT fraud still occurring and numerous compliant taxpayers filing legal cases against the tax administration for refund denial.

According to Pashev (2007), using cash in the economy leads to fraud, and split VAT is not efficient in this case. Additionally, the most affected by this mechanism were the small and medium sized businesses, due to the high costs of implementation and the reduction of cash flow.

The Bulgarian experience shows that audit and monitoring remain of prime importance even if firms' access to VAT is removed.

2b. Italy VAT split payments

Italy introduced split VAT in 2014 after a complex analysis uncovered a mechanism through which firms that supplied goods and services to the state were committing VAT fraud. This led to a system in which VAT due to firms that supplied public authorities no longer being paid to the supplier, but to a separate and blocked bank account of the tax authorities.

The split VAT system was implemented with the approval of the European Commission through a waiver from Article 206 of the VAT Directive regarding VAT payment, and from Article 226 of the VAT Directive regarding the invoicing rules, which will last until 2017.

The waiver was requested in order to implement a control system that could take advantage of data available via electronic invoicing for supplies to public authorities. The usage of electronic invoicing for supplies to public authorities grants tax authorities access to the information needed for an efficient control of transactions and corresponding VAT amounts.

As of January 1st 2017, in order to increase the rate of compliance, all invoiced issued and received must be communicated to the tax authorities.

In June 2016, Italy presented a report in accordance with Article 3(2) of the Council Implementing Decision (EU) 2015/1401.

According to the report, an estimated €2.2 billion has been recovered annually as a result of the measure. The result was higher than the estimates made at the time of the introduction of the measure, VAT refunds of the suppliers have not been affected, and VAT evasion resulting from the non-payment of the VAT by suppliers to public authorities has been stopped. However, as suppliers under this system do not receive the VAT from their clients, they will more often have to ask for an effective refund of the VAT, in case they cannot offset this VAT with other taxes due in Italy. To avoid a negative impact on these taxable persons, even more so if the suppliers are not established in Italy, it is essential that the refund procedure is functioning properly and timely.

In order to avoid the negative impact, suppliers to public authorities have been given access to a priority procedure in case the period of refund was even shorter than 3 months.

The Italian government wishes to extend the duration of the split VAT mechanism until the end of 2020 and to extend its application in order to combat tax evasion by invoicing transactions with the state and other public bodies. The state wants to extend the mechanism in the next 3 years to companies controlled by central and by local authorities, and to a list of around 40 companies listed on the stock exchange, a total of around 2.400 companies.

2c. Poland's split payment system

The introduction of the split payment mechanism in Poland has been under discussion for the last three years and the law will come into effect on the 1st of April 2018.

The Polish Government hopes that this mechanism will increase the state revenue and have a major impact towards the reduction of the VAT gap.

Split payment will be applied on a voluntary basis, for B2B transactions and only for bank transfers.

The split payment mechanism in Poland requires the VAT payer to establish two separate bank accounts for invoice payments: a company bank account and a VAT account.

Payment for purchased goods or services may be split between these two accounts if the purchaser decides to opt-in to the split payment mechanism; the purchaser would thus pay the value added tax into the VAT account with the remainder net sales value paid to the supplier's company bank account. The supplier would have very limited access to the VAT account and thus, generally, would be unable to dispose of those funds freely.

Those who use the system receive stimulents such as exemptions from sanctions and from joint and several liability, as well as an accelerated (within 25 days) input tax surplus refund deadline.

While the funds accumulated on the VAT account will always be the property belonging to the VAT taxpayer, such taxpayers will have very limited access to the funds collected on their VAT account(s).

VAT taxpayers in Poland will only be able to use their VAT account to make transfers to other VAT accounts and to make VAT liability payments to the tax office.it will not be possible to pay off other taxes using the VAT account.

2d. Romania VAT split payments

The current VAT system is vulnerable to fraud and VAT compliance costs are a major administrative burden for Romanian businesses.

In 2015, Romania's VAT Gap of 37 % remains one of the highest in the EU, although it has been declining in comparison with previous years.

In 2014, the reverse charge mechanism was introduced by the Romanian government for the supply of energy, for green certificates, and in the wood industry.

Split VAT has been in effect since the 1st of October on an optional basis and will become mandatory for all VAT registered traders starting with the 1st of January 2018.

Unlike Poland where the system is automated, Romania has a manual payment system. The manual system requires that payments are divided into two payment orders. This requirement of separating the payments falls to the taxpayers, along with the implementation costs. The split payment VAT system will force all VAT registered businesses to open up a distinct bank account for receiving VAT from clients and paying VAT to suppliers.

The law has been contested by Romanian taxpayers due to the numerous negative effects of blocking off the VAT account:

- cash flow problems and administrative issues,
- additional bank charges,
- increased compliance time
- additional IT costs for adapting the accounting and payment software.

Meanwhile, the Romanian taxpayers are unhappy with ANAF's current practices that have repeatedly led to delayed VAT reimbursements.

The efficiency of the mechanism is being contested due to the form under which it will be put into practice, the lack of preparation time and its mandatory nature for all tax payers.

According to tax payers' reactions, the government is taking into account the introduction of split VAT only for insolvent firms and firms with large VAT debts.

Conclusion

Although the principles of the tax are broadly the same everywhere, the compliance burden on business varies considerably.

The mechanism for split VAT has been applied in different ways with different results.

In Bulgaria it did not provide the desired results, whereas in the first 3 years in Italy it has been considered a success and it will be continued and expanded.

Starting with 2015, VAT evasion in Romania has diminished due to the reduction in VAT rates for food products and collateral measures, such as reverse taxation and the reduction of cash payments. Manual split payments and blocked VAT bank accounts at the level of the taxable person's bank will have to prove their efficiency in 2018. The fight against VAT fraud must continue and will have to be based on the way the ANAF IT infrastructure obtains fiscal information, on obligatory certified software for billing, and on Standard Audit File for Tax.

Numerous measures to tackle different forms of VAT tax evasion are discussed, debated, and implemented by EU Member States and the EC, such as the extension of the reverse charge mechanism, the recapitulative statement of intra EU supplies, and the quick VAT fraud reaction mechanism (QRM), among others.

Other alternative mechanisms have been proposed, such as: Automated split payment in the case of credit card payments; and Credit card VAT payment monitoring.

The introduction of split VAT to B2C online sales made by foreign businesses to UK individuals is being discussed in Great Britain, due to increased VAT fraud. Another option is the application of the mechanism only on sales made by foreign non-EU companies selling their goods in the UK.

Given the high level of VAT fraud, new methods of improving and simplifying the collection of VAT, by means of modern technologies or via financial intermediaries, are required.

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LEASING CONTRACT AND CONTRACTUAL INTERDEPENDENCE

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Abstract: *Leasing (credit-rent) is a complex, original and stand-alone legal operation as a financing technique for commercial companies.*

This transaction, as a whole, typically includes two distinct transactions: the leasing company enters into a sale-purchase agreement with a producer (supplier) through which it purchases the assets to be leased out with a unilateral sales promise, then the leasing company (the borrower) concludes a lease with the user (the borrower) to lease the asset for a certain period of time, with the option of ultimately buying it for a residual price.

In court practice, the question arises whether the lease should be cancelled or terminated for lack of cause if the sale / purchase contract concluded between the supplier and the leasing company was resolved for non-compliance with the user's requirements or for hidden vice that does not work for the intended use. The solution adopted in the French case-law was that the two types of contracts are their mutual cause (one with respect to each other) being in the face of contractual interdependence.

Keywords: *Contract Case; leasing contract; Contractual interdependence.*

JEL classification*:*K12, K19, K40

A separate legal situation illustrating contractual interdependence is the leasing contract. In the case of this contract, as in the case of a sale where the

payment of the price is financed by a loan contracted by the buyer, there is an obvious interdependence between the sales contract and the lease that serve each other as a cause. As such, if the sale of the asset by the supplier to the locating lender (the lender) is cancelled or rescinded, the lease of the property by the locating lender is no longer a cause. Indeed, the lessee's obligation to pay the rent no longer has counterparty and, consequently, the locator-financier is ordered to return the seller's work, but he cannot fulfil his obligation to make available the rented property to the user.

In the Romanian legal system, according to Government Ordinance no. 51/1997, in the framework of a leasing operation, participates as parties: the producer or the supplier, the locator-financier and the user.

The manufacturer is the natural or legal person who produces the asset he sells to a leasing company.

The supplier is a wider concept since it may be: the producer of the good, the manufacturer's representative in an area or a dealer (distributor) who has concluded a distribution contract with the manufacturer. The supplier may also be the constructor of a building, which can be made available to a user either directly by concluding a leasing contract between the constructor and the user (where the builder is a lender-sponsor) or indirectly by selling the property to a sponsor which in turn concludes a leasing contract with the user (where the manufacturer is the manufacturer, the lender is the leasing company, which concludes with the user a loan-lease agreement, the user being a lessee-borrower).

The lender is a leasing company, that is, the legal entity that interposes itself between the supplier and the user, i.e. he buys the goods from the vendor manufacturer to lease them to the user.

The lender may use its own funds to pay the value of the goods purchased from the producer or supplier, or he can obtain these funds by borrowing from a bank. The lender also has the locator, being the owner of the assets that will be leased to the user. According to art. 3 of the Government Ordinance no. 51/1997 the quality of the lender-lender can only be owned by a leasing company. However, we note that it may be a leasing company even if the manufacturer-supplier directly concludes leasing agreements with users, although the legal literature claims the opposite, in the sense that the

producers of the goods cannot be the financier.[1] The user is a natural or legal person who takes over the leased property from the locator-lender (Article 3 of Government Ordinance No. 51/1997, which uses, for the designation of the user, the names of the tenant or beneficiary).

The problem with the case law was to know whether the lease should be cancelled or resolved for lack of cause if the sales contract concluded by the leasing company with the manufacturer or the supplier was resolved for non-compliance of working with what its user (the borrower-borrower) was pursuing or of hidden vice that made improper use for which it was intended. It should be underlined that the resale of the sales contract (concluded between the leasing company and the manufacturer or distributor) for the seller's fault will be given at the request of the buyer (i.e. leasing company - lender-leaser), but at the request of the lessee. This is due to the fact that the user, although not a party to the sale contract, has almost always included in the lease that a clause is that all rights and actions of the lessee (the user) are transferred to the user who undertakes not to resort to an action against the leasing company-lender-leaser), for non-compliance of the work or its hidden vice.

The French Court of Cassation adopted two sets of solutions in that regard, the Chamber considered that the resolution of the sales contract between the manufacturer or the supplier and the leasing company led to the nullity of the leasing contract concluded between the leasing company and the user[2], on the grounds that since the sales contract is terminated, the lease is abolished retroactively as a result of this resolution, being null for lack of cause.

The Civil Chamber, in turn, considered that the rescission of the sale contract would also lead to the rescission of the lease, the rent not having the counterpart[3]. It is noted in the legal literature[4] that this differentiation between the solution of the commercial chamber and that of the civil chamber 1 is formal, the effects of nullity and resolution being the same. It is considered, however, that the solution

1 See D.A. P. Florescu, Monica Rotaru, Mihaela Olteanu, Gabriela Spataru, Adina Dorsecanu, *Leasing Contract*, Juridic Univers, Bucharest, 2013, p. 41.

2 See French Court of Cassation, Chamber of Commerce, decision of 4 February 1980 in "Bull. civ." 1980.4 no. 52.

3 See: French Court of Cassation, Civil Chamber 1, decision of 3 March 1982 in "Recueil Dalloz" 1982.IR.266; French Court of Cassation, Civil Chamber 1, decision of 11 December 1985 in the "Jurisclasseur périodique" 1986.IV.71.

4 See Ch. Larroumet, Civil Droit. Les obligations. Controversy, Volume III, *Economica*, Paris, 2003, p. 491, point 490, footnote 1.

of the Chamber of Commerce is more orthodox due to the fact that, as a result of the retroactive cancellation of the sale contract, the lease is without cause even from the origin, while the resolution sanctions the non-enforcement, imputable to one of the parties, which is not the case, since it is rather an impossibility of execution. However, by way of subsequent decisions, the Chamber of Commerce has made a reversal of the case-law. Indeed, by relying on the fact that, in contravention of the clause of not resorting to an action against the leasing company for non-compliance or hidden vices of the work, imposed against the user, the leasing company transferred to the user his rights and actions against seller, the commercial chamber considered that the obligations the user (the borrower) is not without cause if the sales contract was terminated[5].

It was considered, however, that this solution is not justified if, according to the dominant opinion, a sale followed by a lease is seen in the lease as a result of a unilateral sale promise. Indeed, the transfer of rights and shares of the leasing company against the seller to the user (the borrower) is not sufficient to be characterized as the rent counterparty if the user is deprived of the use of the work and the possibility to buy it at the end of the lease, according to the contract's economy[6]. The user does not achieve its purpose and there is only a white operation. The non-recourse against the leasing company (the borrower) by the user (the borrower) cannot change this situation because the purpose of the lender is not to impose obligations on the leasing company which normally push on such a clause, could not cover the nullity of the contract for lack of cause and consequently prohibit the user (the creditor-lessee) from acting against the leasing company (the borrower) in order to find the cancellation of the contract lease after the resolution of the sale contract. Since the sales contract is resolved and the work is returned to the seller and the price is returned to the buyer, that is, to the leasing company, the rent payment takes place without a counterpart, from which it follows that the cause of the user's obligation (the borrower) because the leasing contract is not economically justified unless the work has been made available to it.

The Mixed Chamber of the French Court of Cassation also argued that the resale of the sale contract would necessarily lead to the termination of the

5 See: French Court of Cassation, Chamber of Commerce, March 15, 1983, in "Bull. civ. "1983.4 no. 103; French Court of Cassation, Chamber of Commerce, decision of 9 January 1990 in "Recueil Dalloz" 1990.IR.46.

6 See Dijon Court of Appeal, judgment of 2 September 1986, in "Jurisclasseur périodique" 1987. II.20865.

lease (credit-rent), unless the contracting parties had arranged the termination themselves[7].

This solution appears to have been accepted in the French case-law[8], but it has been considered, however, that it would have been more logical to have a nullity in this case[9]. In other cases, it was felt that there should be a resolution that is retroactive[10], not one termination, but it was also appreciated that the termination by sanctioning, like the resolution, the non-fulfilment by a part of its obligations, the lease must be terminated when the exploitation of the property became impossible due to the supplier's deed, the cause of the leasing contract consisting of exploitation, both contracts being thus interdependent.[11] The term of termination allows it to be considered that, to the extent that the user (the lessee) has used the work for a certain period of time, it even corresponds to that use and, therefore, must not be returned to the locating lender[12].

The disappearance of the leasing contract implies, of course, that the sales contract is also abolished. If the consumer (the lessee) complains that the seller (the supplier) has not fulfilled the obligations without relying on the resolution of the sale, he will remain bound to the lender-lender (lender-leaser)[13].

7 See the French Court of Cassation, the Mixed Chamber, the decision of 23 November 1990 in the Recueil Dalloz 1991.121.

8 See, for example, the French Court of Cassation, the Chamber of Commerce, the decision of 22 May 1991 in the "Jurisclasseur périodique" 1991.IV.277; French Court of Cassation, Chamber of Commerce, decision of 15 March 1994 in the "Jurisclasseur périodique" 1994.II.22339; French Court of Cassation, Chamber of Commerce, decision of 25 April 2001 in the "Revue de jurisprudence de droit des affaires" 2001, no. 878.

9 See the Rennes Court of Appeal, judgment of 7 July 1992, in the "Jurisclasseur périodique" 1992.IV.1521.

10 See the Court of Appeal in Paris, judgment of 15 September 1994, in the 'Revue de jurisprudence de droit des affaires' 1995, no. 181.

11 See French Court of Cassation, Chamber of Commerce, judgment of 15 February 2000 in the Recueil Dalloz 2000, 364.

12 See French Court of Cassation, Chamber of Commerce, judgment of 6 April 1993, in the "Revue de jurisprudence de droit des affaires" 1993, nr. 420.

13 See the French Court of Cassation, the Chamber of Commerce, the decision of 7 December 1993 in the 'Revue de jurisprudence de droit des affaires' 1994, no. 550...

However, if the sale was not completed to allow the buyer to rent, the situation is different and it is not appropriate to accept the interdependence between the sales contract and the lease[14].

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9. Curtea de Casație franceză, camera mixtă, decizia din 23 noiembrie 1990, în „Recueil Dalloz" 1991.121.

10. Curtea de Casație franceză, camera comercială, decizia din 22 mai 1991, în „Jurisclasseur périodique" 1991.IV.277.

11. Curtea de Apel din Rennes, decizia din 7 iulie 1992, în „Jurisclasseur périodique" 1992.IV.1521.

12. Curtea de Casație franceză, camera comercială, decizia din 6 aprilie 1993, în „Revue de jurisprudence de droit des affaires" 1993, nr.420.

13. Curtea de Casație franceză, camera comercială, decizia din 7 decembrie 1993, în „Revue de jurisprudence de droit des affaires" 1994, nr. 550.

14. Curtea de Casație franceză, camera comercială, decizia din 15 martie 1994, în „Jurisclasseur périodique" 1994.II.22339.

14 See the French Court of Cassation, Civil Chamber 3, the decision of 30 October 2002, in the "Notarial Repertoire Défrenais" 2003.249 (in this case the resolution of a sale contract that did not involve the termination of the lease agreement with the buyer to rent the previously completed rental).

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CORPORATE SOCIAL RESPONSIBILITY AND MIGRATION: INTEGRATION GOVERNANCE

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Abstract: *The immigration issues become a serious problem that countries are facing affecting their economies and communities. Due to the stakeholder theory, governance through Corporate Social Responsibility is proposed as a part of the solution. Integration and security appear as challenges that are objectives of Corporate Social Responsibility. In addition, adopting governance codes are important to assure smoothly accommodating for migrants in host countries and to avoid conflicts caused of different cultures and backgrounds, therefore, migrants will not only fuel the growth of Western population but will certainly contribute economic growth in the years ahead, if they employed and integrated correctly. Here, understanding of the interpretation of corporate social responsibility amongst migrants and host countries becomes a request to solve immigration issues.*

Keywords: *governance, corporate social responsibility, migrants, immigration issues. Integration governance.*

JEL Classification: M4, M2,M11

1. Introduction

Migrants started to come to Western countries with huge numbers in the last five years besides reasonable numbers before. They put host countries

in front challenges related to integration and economic issues (Dana; 2007). Migrants can be a useful motivation for economic and population growth. Since 1945, the migrants' numbers has increased steadily to certain countries such as industrial countries. Migrants have not only influenced the community and cultural but also demographic and economic activities of these countries and these aspects contribute to the economy (Collins; 2003).

The additional value that immigrants add is contribute to the social capital, creating jobs and increasing export besides other (Rath et al; 2002), but that becomes as challenges at the beginning for these organizations and authorities that support and deal with immigrants such as OIM and immigration departments. Here, corporate social responsibility are requested to be implemented by these organizations and departments in order to establish a communication channel with migrants, the CSR standards issued by them can be implemented by companies with some developments to assure the possibility of taking the maximum advantage of migrants, because these migrants are potential businesses that return benefits on macro level.

There are many researches support this view of migrants' contributions in the economies of host countries (light; 2004) but they did not put a plan; how we can integrate migrants in the new society before focusing on their potential positive contributions. Due to the ages and background of immigrants, the integration period will affected if there is no integrating governance codes. Overall, applications of refugees are radically increase in 2015 in European Union comparing to the last thirty years. The integration of these refugees becomes an issue faced by host countries especially their staying can be for a long time. What makes the situation more complicated is that refugees' gender, before, they were more males but now with the crisis in the Middle East, we have families contenting women and children and that put the thing on another level of integration. In the light of that, governance and corporate social responsibility has an important role to develop long-term- integration programs.

2. Immigration and Host countries

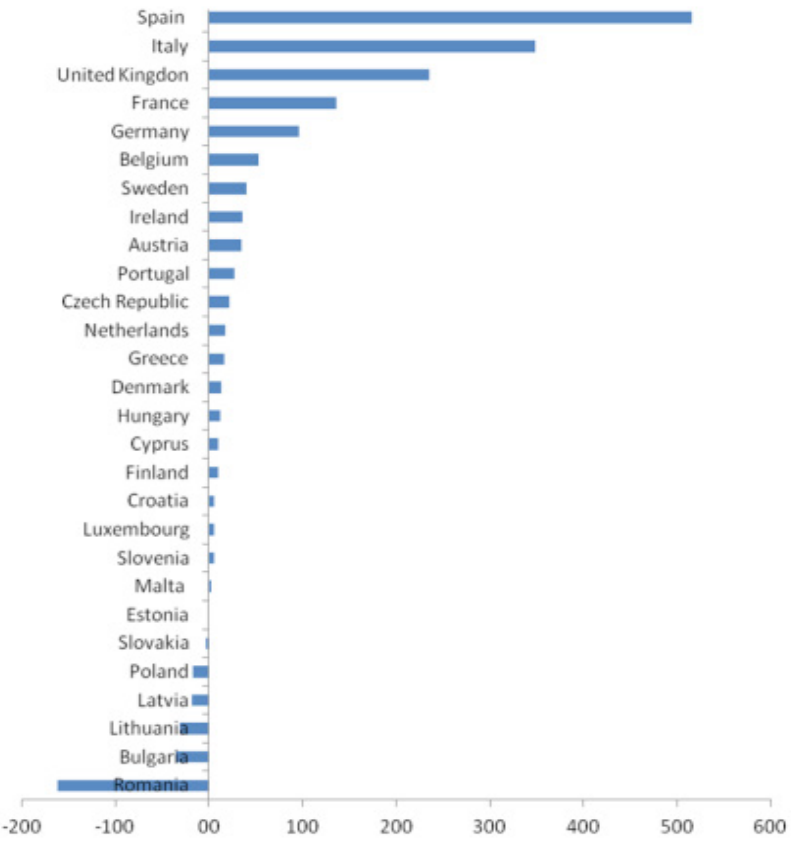
There are many reasons that push people to leave their countries as migrants or refugees. These reasons can be related to poor, improving possibilities of living and war beside others individual reasons. Determining

these reasons are important to understand migrants and refugees and also it helps us to design integration programs, but that cannot be affective since the background of migrants and refuges is not defined. Before ten years, the majority of people have been leaving their countries for educational and financial motivation and they could integrate well in host countries and added value. Basically, these host countries are Western countries including USA and Canada and they issue several immigration programs and possibilities to accept more migrants and refugees, but when the security situation become risky in the last five years they start to use filtering tactics. These programs are collapsed totally in front of the huge numbers of migrants and refugees in certain countries such as Germany, Sweden, Italy, France, and Turkey. This situation put governments and researchers to look for a creative solution that can get benefits from these migrants and refugees without implications on the security situation and public identity of their communities.

Discussing "integration", we find it out in the balancing responsibilities between migrants and residents (natives). From the first moment migrants and refugees arrive in a new community, their basic needs are provided such as medical facilities, homes, schools and jobs. Also, they need to interact with others individuals and groups to know how they use public institutions in host countries. Therefore, policies and regulations greatly appreciate integration and work with integration programs to grant a high benefits for all; migrants and locals, through providing language courses, offering volunteering, help migrants and refugees to be independents and that is to enable them to solve their problems. Due to that, acceptance of migrants and refugees is associated with security but also related to access to the labor market. In addition, the population in Europe is ageing, and fertility rates are fall under two kids per woman. Thus, some host countries such as Germany. In according with that, policies and regulations support migrants and refugees in order to gain them and let them to contribute in increasing the workforce and supporting local budgets and welfares.

Dividing the European countries to clusters, we will find that Western Europe; UK, France, Italy, Spain and Germany; receive the largest number of migrants with a positive net balance 100 thousand people per year. Also as a second cluster, Belgium, Ireland, Denmark, Portugal, Netherland, Czech republic, Hungary, Cyprus, Croatia, Finland, Luxembourg, Malta, Slovenia, Sweden, Austria, and Greece have balance 50 thousand people per year. The Eastern Europe counties; Romania, Poland, Bulgaria, Latvia, Estonia, Lithuania

and Slovak republic have negative balance migrants per yearly certainly during 2001-2011 (Testa; 2014a & Blangiardo; 2014a). The following chart shows the annual contribution of migrants number in host countries:

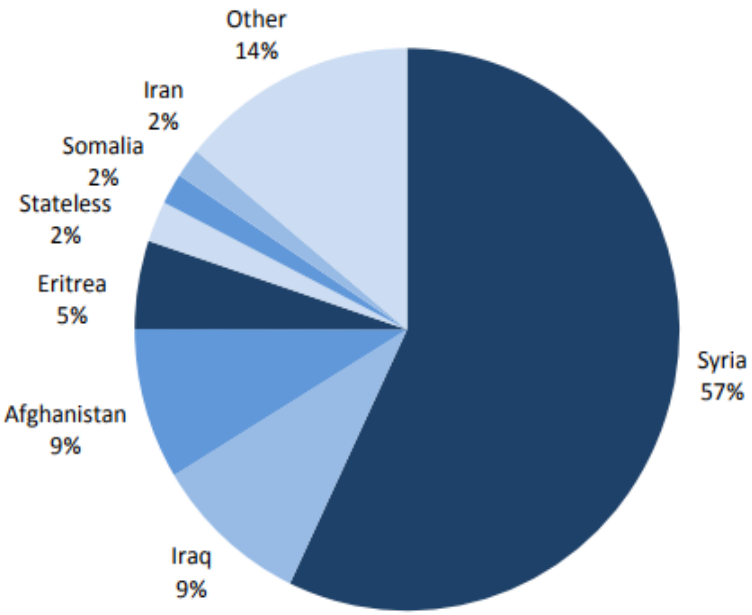


Source: Testa 2014 based on Eurostat data

These migrants as majority are between 15-64 years old, considerably, they increase the workforce in host countries and they may have working experience already. The recent migrants' crisis is related to the unstable situation in the Middle East, where people are educated and they had a stable life in back homes relating to their ages. For examples; Syria and Iraq were considered a stable countries and people live upper of poor line, and the rate of uneducated people is so low, also, the medical services were compared to European standards. That can be considered as an advance factor included in integration programs.

Definitely, there is a historical obligation from the Western countries towards Middle East countries, where they had colonies and the close border with north Africa. That pushes countries such as France, Italy, UK to accept migrants and refugees more than others, and with Germany, the economic function pushes authorization to accept more in order to solve the demographic problem and strengthening the work force.

The following shape describes the countries of migrants and refugees coming to the European Union as the following:



Asylum seekers granted protection status in the EU by citizenship 2016
Source: Eurostat data

Three main citizenships granted protection status in the EU, 2016

	First			Second			Third		
	Citizens of	#	%*	Citizens of	#	%*	Citizens of	#	%*
EU	Syria	405 620	57	Iraq	65 765	9	Afghanistan	61 820	9
Belgium	Syria	6 605	43	Iraq	3 355	22	Afghanistan	1 490	10
Bulgaria	Syria	1 220	89	Iraq	75	6	Stateless**	20	2
Czech Rep.	Iraq	150	33	Syria	95	21	Ukraine	50	11
Denmark	Syria	5 260	71	Stateless**	560	8	Eritrea	530	7
Germany	Syria	294 710	66	Iraq	48 820	11	Afghanistan	39 270	9
Estonia	Syria	45	37	Iraq	25	19	Ukraine	20	16
Ireland	Syria	150	19	Afghanistan	70	9	Zimbabwe	65	8
Greece	Syria	1 910	22	Bangladesh	1 350	16	Pakistan	1 190	14
Spain	Syria	6 225	91	Somalia	100	1	Palestine	95	1
France	Syria	5 360	15	Afghanistan	3 875	11	Sudan	3 360	10
Croatia	Syria	35	37	Iraq	20	21	Afghanistan	15	17
Italy	Nigeria	4 610	13	Pakistan	4 300	12	Afghanistan	4 000	11
Cyprus	Syria	1 155	81	Palestine	100	7	Iraq	80	6
Latvia	Syria	70	49	Iraq	35	24	Afghanistan	15	10
Lithuania	Syria	140	71	Stateless**	15	7	Russia	10	5
Luxembourg	Syria	535	70	Iraq	100	13	Eritrea	25	3
Hungary	Afghanistan	100	23	Syria	95	21	Iraq	70	16
Malta	Libya	545	43	Syria	360	29	Eritrea	105	8
Netherlands	Syria	13 155	60	Eritrea	3 325	15	Stateless**	1 750	8
Austria	Syria	18 775	59	Afghanistan	4 445	14	Iraq	2 640	8
Poland	Russia	130	33	Ukraine	95	24	Syria	45	11
Portugal	Ukraine	150	46	Syria	60	19	Eritrea	30	9
Romania	Syria	500	61	Iraq	140	17	Eritrea	40	5
Slovenia	Syria	90	53	Iraq	30	17	Eritrea	20	13
Slovakia***	Iraq	150	72	Afghanistan	15	6	Syria	5	3
Finland	Iraq	2 865	39	Afghanistan	1 735	24	Syria	1 090	15
Sweden	Syria	44 905	65	Eritrea	6 120	9	Stateless**	6 005	9
United Kingdom	Eritrea	2 540	15	Iran	2 375	14	Syria	1 850	11
Iceland	Iraq	30	25	Syria	20	16	Iran	15	12
Liechtenstein	Somalia	15	31	China	10	29	Ukraine	5	12
Norway	Syria	7 430	56	Eritrea	1 685	13	Afghanistan	1 555	12
Switzerland	Eritrea	5 780	43	Syria	2 380	18	Afghanistan	1 410	11

Data are rounded to the nearest five. For this reason, parts may not add up to totals.

* Persons with this citizenship granted protection status as a percentage of the total number of persons granted protection in this country.

** A stateless person is someone who is not recognized as a citizen of any state.

*** Data are provisional

3. Integration programs

The concept of integration programs should be recognized against the background of how migrants have been integrated in Europe. On the another hand, Canada and United State of America define themselves as countries built by migrants thus, the concept of integration programs are different and indeed the reaction of migrants toward these programs are different. The Northwest countries of Europe Union started to attract migrants as working hands for their booming economy but on a temporary term. Ideally, each country of the European Union has its own integration programs. Prospectively, legalizations of political and culture dimensions include integration codes and in the light of that there is no need for more regulations when there is a need for social and economic integration.

Due to that, the migration level in European Union is perceived both as an opportunity of economic growth and as a problem in term of security. The term of security is the strongest with 60.30 per cent of all measures in a statistic study, which included 116 EU policy concerns on the introduction of the third pillar in the Maastricht Treaty in 1993-2013 (Heidbreder; 2014a). Even though, all of that does not seem to match the national perspective and the migration policy of the European Union countries but the common thing is that they have developed an explicitly anti-immigration policy with different level of applying. Since migrants and refugees are perceived in certain ways. Since 2001, international political terrorism brought migrants and refugees into concern of a security perspective. Therefore, we can read in the communication "An open and Secure Europe: making it happen" 20014: "*Demographic changes, in the particular the shrinking of the working population in Europe, couple with significant skill shortages in certain sectors (notably engineering, IT and health care) hinder the EU's productivity and thus its economic recovery. Increasing global competition for skills and talents affects labour markets in many Member States and will be a decisive factor for Europe's economic prosperity in the decade ahead. During the past 15 years, the EU has followed a sector-by-sector approach to legal migration. This has resulted in a common legal framework, which regulates the admission of certain categories of persons, recognizes rights and sanctions violations. It has also fostered a shared commitment of Member States on integration and return. It is time now to consolidate all this within a more coherent EU common migration policy that also takes into account the short long-term economic needs*"

The most commonly aspiration of the EU countries is to attract the best and brightest workers. That is to assure the conclusion of EU council 27th June 2014 to remain an attractive destination for the talents and skills and to encourage legal immigration in order to recover the damage of economic crisis, and here there is a communication channel established with the business community. Overall, integration programs concern on employment, working conditions, equal treatment, health and dormitory but also these programs should use filters to avoid migrant brain waste and controlling the match and non-matching between demand and supply in the labor market, also, migrants should be selected due to their skills in order to facilitate their entry into employment.

4. Governance and integration programs

Governance is considered as that set includes mechanisms and formal processes for dealing with a range of issues and conflicts among stakeholders. It operates through different groups to reach at mutually satisfactory decisions throughout negotiation and collaboration helped at managing a certain domain of human activity including behaviors. In addition, governance contains in its definition codes as well as the establishment of regimes and institutions for regulating activities and practicing power within a certain domain (Martinelli; 2014a).

Relating that with immigration and migrants, governance is a descriptive form including institutions, collectives, and individuals at national and international levels. In according with that, at national level, governance works on processes of regulating policies, which are mostly concerning on integration focusing on basic things such as work place, secured life, dormitory, language courses and medical services. At the international level, governance creates connections and set financial channels among international institutions and local foundations deal with migrants and refugees. Here, governance codes and mechanisms assure morality and good attention for helping migrants and refugees to bring benefits for all stakeholders.

Ideally, governance through mechanisms and codes enable integration programs to achieve its purposes and in the meanwhile, governance helps authorities and concerned institutions to build a bridge between migrants and local communities in host countries. Through improving integration policies and give more rights for migrants based on equality and transparency, for

example, governance codes encouraged local regulators to grant refugees the same rights as citizens. In addition, governments allocate more in their budgets for supporting migrants. On the other side independent bodies who implement governance codes morally and practically with migrants at their first step, give an important opportunity to gain the trust of migrants especially when these bodies are dealing with people from different cultures and religions. Moral and religious codes are strongly highlighted since they strengthen the sufficient of integration programs. Limiting integration programs on basic things that mentioned before, become useless in the long term if these programs do not consider the background of migrants. In order to get the advantage of these refugees, we must gain their trust before asking them to integrate correctly. Here, the legalizations in Europe grant the free practicing of any religion since a long time and give increasingly more rights for migrants but also the local government and authorities must prepare their citizens for these refugees. Nowadays, we find that many regulations are issued to support migrants but the general atmosphere in receiving countries is negative. Many events against migrants were considered as a racism crime; in the meanwhile, some of recent migrants misbehave with locals. Here, governance requests from specific institutions and entities to involve such as local community of old migrants and religious institutions. These institutions and entities help migrants spiritually and are willing to understand the concerns of migrants and to determine the best possibilities for helping them. A question we can ask ourselves about the real integration of old generations of migrants and the relationship between the authorities and locals. Migrants and refugees are in need for language courses, medical services and safety place as based needs but also they look for covering their spiritual needs accordingly with the general conditions and laws in receiving countries.

5. Integration governance: corporate social responsibility & immigration

Corporate social responsibility grows fast due to the dynamic development of corporate governance and business world. The Responsible Competitive Index (UK) None-Government Organization Accountability looks at how countries perform for promoting responsible business practices. In 2011, The European Commission's renewed EU corporation social responsibility strategy for 2011-2014 issuing a strategy to redefine corporate

social responsibility to maximize the role of entrepreneurships and to assure the responsible business. The redefinition of corporate social responsibility highlights the benefits to entities of different levels in purpose of enhancing best practices and encouraging communication of responsible business and supply chain in order to bring maximum success for Europe Growth Strategy 2020. In accordance with that, business must integrate ethical, social, human rights and environmental aspects into their business strategies and operations achieving benefits for all stakeholders. Several points are mentioned in the report and we highlight some of them as the following:

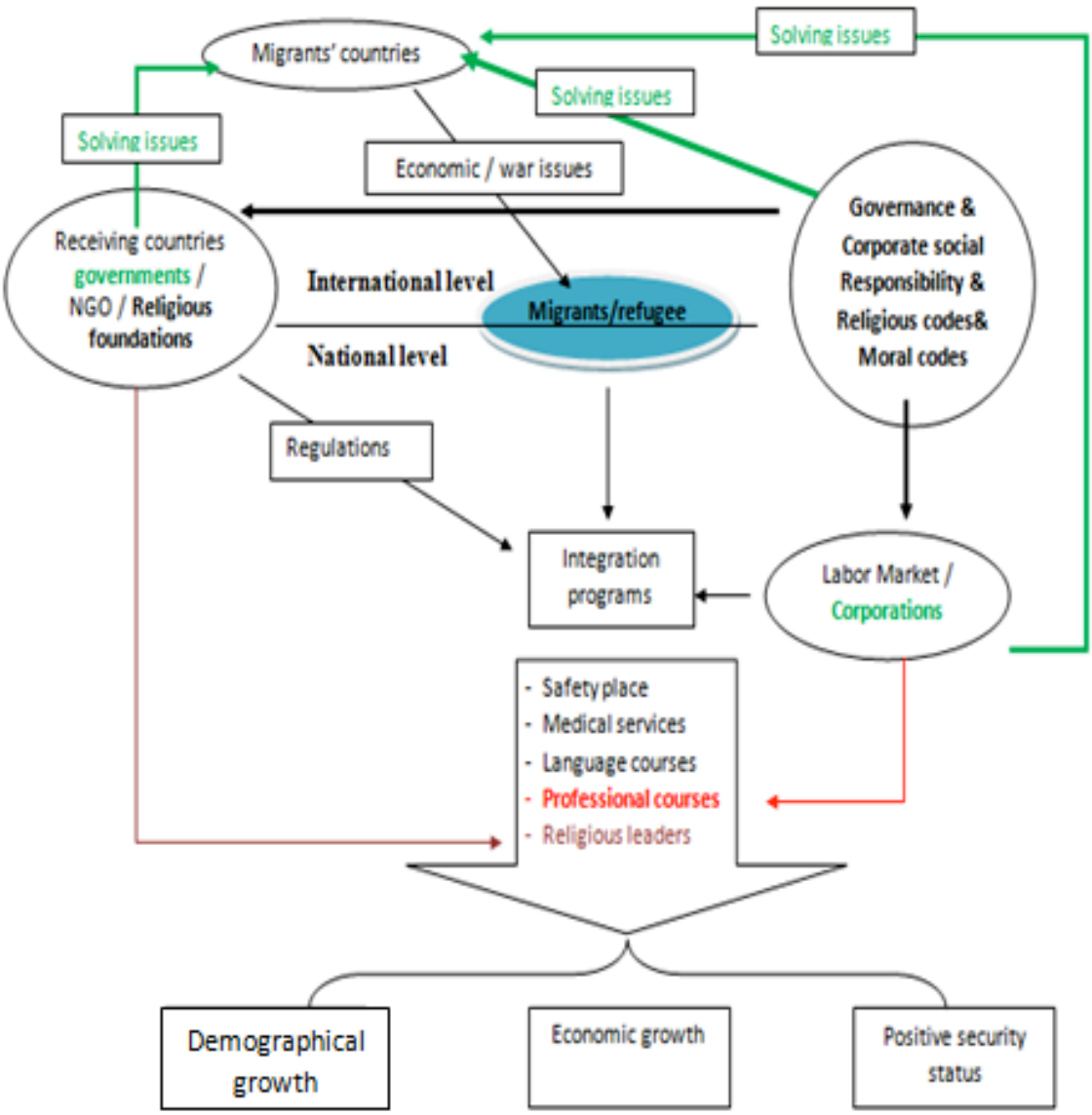
- Assuring the visibility of corporate social responsibility and good practices.
- Developing and tracking the trusts' level in business.
- Enhancing market reward towards corporate social responsibility.
- Adapting self-regulations and co-regulations.
- Improving disclosures regarding social and environmental information.
- More integrating corporate social responsibility in training and education courses.
- Highlighting the importance of national and sub-national corporate social responsibility.

In the light of that, corporate social responsibility pushes companies and different entities to take responsibility in front their community; socially and environmentally. Relating that to migrants and integration programs; local governments should encourage companies and entities to hire new migrants as a part of the integration program and give tax allowances for these companies. Not any type of work help migrants to integrate correctly, there is a need for a stable work that enable migrants to integrate better and add a value on the labor market. In that direction, stakeholder theory of corporate governance and governance codes are sufficient elements in any integration programs. Also, that test the solidity of receiving communities as well the relationship between states and their citizens, and in the meantime, it tests the understanding and acknowledgement of migrants. On the other hand, corporate social responsibility at international level can push governments and multinational

companies to solve the issues of migrants and refugees in their countries before leaving.

6. Conclusion

To explain briefly the relationship between immigration, integration programs, governance and corporate social responsibility, I draw down the following:



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