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CONSIDERATIONS REGARDING COLLECTIVE BARGAINING IN ROMANIA. A THEORETICAL AND PRACTICAL APPROACH

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Abstract: *This study will analyze the situation of collective bargaining in Romania. Collective bargaining has a special role to play in ensuring social peace within society. Good collective bargaining able to secure state consensus between employees and employees is a decisive factor in social progress. Advantages concern both the business environment and those who work. In Eastern Europe, given the influence of multinational companies, the social rights legislation has suffered a regress, as evidenced by the small number of collective labor contracts concluded over the last 7 years, and from the time of the major change in labor law. The present study includes the theoretical and practical analysis of the current situation in the field of social dialogue, while presenting alternatives for improving the legislation on collective bargaining, ensuring a real image of the situation in this field within a representative state in Eastern Europe.*

Keywords: *collective bargaining in Romania, social rights, collective labor contracts, labor legislation.*
JEL Classification: K31, J01

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1. Introduction

The negotiation represents an essential component of the social life, being closely related to one of the main characteristics of the human being, namely the sociability. The negotiation is always present in each person's life, being used both to fulfil persons' individual goals and to regulate aspects of common interests (e.g. votes for the parliament laws or other legal acts which determine the norms by which the company runs, which are often the result of negotiations between the political factors).

Along with the development of international relations, negotiation has acquired a greater role in the geopolitical matter, the destinies of international societies represent largely the result of negotiation between the world`s great powers[2]. Regarding the labour relations, the collective negotiation has established itself as an essential tool in social dialogue, having a significant function for social peace building[3].

The social dialogue is defined by the legislator in art. 1 letter b) of Law no. 62/2011 (of the Social Dialogue)[4] as being the "voluntary process by which the social partners inform, consult and negotiate to each other in order to establish agreements in matters of common interest". The social dialogue can be bipartite (when it occurs only between trade unions or trade union organizations and employers or employers organizations) or tripartite (when in the social dialogue are involved the public administration authorities too).

The social dialogue can be achieved through information, counseling and collective negotiation. Law no. 62/2011 (of the Social Dialogue) defines in art. 1 letter b) (iii) collective negotiation as "negotiation between the employer or employers association and trade union or employees' association, as appropriate, which seeks to regulate the labour or employment relations between the two parties, as well as any other agreements in matters of common interest ". A successful collective negotiation results with the signing of the collective labour agreement, which confirms the effectiveness of social

2 See in this sense R.Ş. Pătru. (2014). *Contractele şi acordurile colective de muncă*. Bucharest: Hamangiu Publhing House, p. 43-44.

3 Term of collective negotiation is of British origin and it was first used by Beatrice Webb at the end of XIX century. See also B. Vartolomei. (2016). *Dreptul muncii, Curs universitar*. Bucharest: Universul Juridic Publishing House, p. 40.

4 Law no. 62/2011 (of Social Dialogue), republished in the Official Gazetteno. 625 from 31st August 2012 pursuant to art. 80 Law no. 76/2012 to implement the Law no. 134/2010, regarding the Civil procedure code (Official Gazette no. 365 from 30th May 2012).

dialogue. Effective social dialogue results in the achievement of social peace, which can be defined as a state of understanding (harmony) between the main social parts in the society[5].

In Romania, collective negotiation was first regulated in the Law on employment contracts in 1929. Later, this concept was found in Labour codes of 1950 or 1973, but being thus marked by the restrictions specific to socialist society[6]. After 1989, by Law no. 13/1991 regarding the collective labour[7] contract, we can see a revival of collective negotiation, as well as the entire collective labour law, which is specific to the transition to a market economy.

Law no. 130/1996 regarding the collective labour agreement[8] represented an important moment of collective negotiation legislation in Romania, being considered as the best regulation on the matter after 1989, this is being confirmed by the number of collective labour agreements concluded by unit groups and activity branches, but also by the Collective labour agreement at national level for the years 2007-2010.

2. Collective negotiation under the Law no. 62/2011 (of Social Dialogue)

Year 2011 was a very important year for labour legislation, mainly due to the entry into force of Law no. 40/2011 and Law no. 62/2011 which have largely reshaped the provisions of labour legislation. Law no. 40/2011 amending and completing the Law no. 53/2003 – Labour Code[9], brought important changes especially in the legal regime applicable to the employment contract. By Law no. 62/2011 (on the Social Dialogue) was achieved a division in the regulatory area between the individual and collective labour law, which are currently regulated separately. Thus, the Labour Code remained mainly a code of employment contract, while the aspects regarding the collective labour law were taken up by Law no. 62/2011 (of the Social Dialogue). Moreover, by the Social Dialogue Law a number of important institutions of collective

5 See also Georgeta Codreanu.(2017). *Dialogul social şi pacea socială*. Bucharest: Tribuna economică Publishing House, p. 27.

6 In that period, the collective negotiation followed by the conclusion of collective labour agreements had a formal role, and some rights belonging to the collective labor law, such as strike could not be exercised.

7 Published in the Official Gazette no. 32 on 9th February 1991.

8 Published in the Official Gazette no. 184 on 19th May 1998.

9 Published in the Official Gazette no. 225 on 31st March 2011.

labour law have been amended. Further on, we will present the main changes introduced by Law no. 62/2011 concerning the collective negotiation:

1. Since 2011, the law authority has not allowed the conclusion of collective labour agreement nationally. Thus, art. 128 par. (1) of Law no. 62/2011 stipulates the following: "the collective labour agreements can be negotiated in units, unit groups and activity sectors". The social partners are thus deprived of an important negotiation level which in proved its efficiency the past, mainly by the provisions of Collective labour agreement at national level concluded for the period 2007-2010[10], which included a series of relevant provisions.

Note that the Romanian Constitution, art. 41 par. (5) establishes that "The right to collective negotiation in terms of labour and the mandatory aspect of collective agreements are guaranteed" without adding and extension "according to the law", which means that this right should be exercised by the social partners no restriction, at all possible levels. That was just one of the reasons why the Law no. 62/2011 was disputed in the Constitutional Court in 2011. The Court answered by a controversial decision by giving constitutionality to the contested provisions[11]. Given the mandatory characteristic of the Constitutional Court decisions, the contested provisions remained in force being applied today.

2. Another important change is about the representativeness of trade unions established at unit level, which gained representativeness only if the number of members represents half plus one of the employees in that unit. The old provision of Law no. 130/1996, the trade unions had to have a representation threshold of 1/3 of the number of employees. This provision was judicious, setting a reasonable threshold for the trade unions. In the current regulation, given the degree of unionisation in Romania, for trade unions it is difficult to achieve representativeness regarding the number of employees, this clearly makes harder the collective negotiation.

Moreover, the legislator's option to establish a single trade union representative for the unit is in contrary to the principle of trade unions

10 Published in the Official Gazette, Part 5 no. 5 on 29th January 2007.

11 Decision no. 574 on 4th May 2011 regarding the unconstitutionality of the provisions in Law on Social Dialogue as a whole, as well as, especially art. 3 paragraphs. (1) and (2) art. 4 art. 41 par. (1) Title IV regarding the National Tripartite Council for Social Dialogue, title V on the Economic and Social Council, Art. 138 par. (3), art. 183 par. (1) and (2) art. 186 par. (1), Art. 202, art. 205, art. 209 and art. 224 lit. a) of the law, published in the Official Gazette no. 368 on 26th May 2011.

pluralism[12]. Also, there is a risk of so-called "homemade" trade unions, true to employer's interests that the new regulation negotiates to conclude collective labour agreement with just one trade union and not with 3 as in the old legislative provided[13].

Provisions of Law no. 62/2011 (of the Social Dialogue) on the representativeness of trade unions for units were contested at the Constitutional Court. The Court, by the Decision no. 1089/20123[14] and Decision no. 24/20134[15] rejecting the pleas of unconstitutionality regarding laws on the representativeness of trade unions for units, establishing thus that the contested law texts are constitutional.

However, the Constitutional Court's approach on the matter is not protected from critics. Constitutional Court's reasoning was based on the following arguments[16]: 1) trade unions have a discretionary right to participate in collective negotiations and the conclusion of collective labour agreement, to establish the conditions related to the exercise of these rights is the prerogative of the legislator; 2) also, the legislator has the right to set the threshold of representativeness to be achieved by the trade unions, this is therefore a legislator's policy; 3) legal provisions do not affect the trade unions function, on the contrary they will have a stronger representation in front of employers; 4) the legal provisions are intended to equalize the employees' representation with employers, because in cases of multiple trade unions there is a risk of contradiction of opinions within the trade union representatives, this being anachronistic.

The solution brought by the Constitutional Court is objectionable because it is mainly based on formal, procedural analysis of the aspects regarding the representativeness of the parties, and not on substance analysis. It is true that the legislator establishes the conditions under which the trade unions get representativeness and may participate in collective negotiation and in the conclusion of collective labour agreement, but the Court had to decide on how the legislator has exercised that right, and more specifically, if the legislator has not violated other provisions setting a high representation

12 See I.T. Ştefănescu.(2014). *Tratat teoretic şi practic de drept al muncii – ediţia a III a revăzută şi adăugită.* Bucharest: Universul Juridic Publishing House, p. 160.

13 *Ibidem*, p. 159.

14 Published in the Official Gazette no. 75 on 5th February 2013.

15 Published in the Official Gazette no. 82 on 7 February 2013.

16 See also I.T. Ştefănescu, *op.cit.,* p. 160.

threshold (e.g. pluralism principle of trade union) or concerning the risks arising from a threshold so high (difficult collective negotiation)[17].

3. Law no. 62/2011 (on the Social Dialogue) replaced the branch activity with the activity sectors, which, in the original law form, were established by a government decision[18]. Currently, according to Law no. 1/2016 to amend and complete Law of social dialogue no. 62/2011[19], activity sectors are established by the National Tripartite Council for Social Dialogue and approved by government decision.

The legislator established in the art. 143 par. (3) of Law no. 62/2011 that "in case of contracts negotiated at activity sectors, the collective labour agreement will be made at that level only if the number of employees in the members units of the signatory employers' associations is greater than half the total number of employees in the business sector. Otherwise, the contract will be registered as a contract of group of units." This explains the small number of collective labour agreements signed at activity sector under the Law. 62/2011 (the Social Dialogue).

4. The legislator has expressly established the fact that the provisions of collective labour agreements signed at group and activity sectors units applies only to the contracting parties. Thus, art. 133 par. (1) of Law no. 62/2011 (of the Social Dialogue) provides the following: "The clauses of collective agreements have effects as follows: a) for all employees in the unit, in case of collective labour agreements signed at this level; b) for all employees occupied in units which are part of the group of units for which the collective labour agreement was signed; c) for all employees occupied in the business sector units for whom the collective labour agreement was signed and who form part of the signatory employers association of the contract." For collective labour agreements signed at sector activity, the legislator established for the first time the institution to extend the collective effects of all units in the sector (art. 143 par. (5) of Law no. 62/2011)

5. It was introduced, as new, the possibility that the social partners could conclude other contracts, conventions and agreements, other than collective labour agreement. In this respect, art. 153 of Law no. 62/2011 (of the Social Dialogue) determines the following: "according to the principle of mutual

17 See also I.T. Ştefănescu, *op.cit.,* p. 160.

18 Government Decision no. 1260/2011, published in the Official Gazette no. 933 on 29th December 2011 established the activity sectors.

19 Published in the Official Gazette Part I, no. 26 on 24th January 2016.

recognition any legally constituted trade union may celebrate with an employer or an employers' association or any other types of contracts, conventions or agreements, written, and that represents the parties' law and whose provisions are applicable only to members of the signatory organizations."

It's about labour law contracts signed by the union trade organisations constituted legally, but unrepresentative and which applies exclusively to signing parties[20]. It should be mentioned that, regarding their conclusion, these contracts, conventions and agreements are not applied provisions on collective negotiation, and in case of disagreements between the parties concerning the termination or their execution are not applicable legal provisions concerning labour disputes and strike.

The mentioned legislative changes significantly influenced the process of collective negotiation. The legislator has established as central point in collective negotiating the unit level, the dissolution of the collective labour agreement nationally, without encouraging the collective negotiation at this level, mainly by tightening the legal conditions by gaining representativeness of the trade unions established at unit level[21]. It should be stated that the current regulation gives increased rights to the employees' representative in relation to the trade unions, which is in conflict with the relevant provisions of the International Labour Organisation.

Given the background, the collective negotiation has not conducted satisfactorily, resulting a small number of signed collective labour agreements As example, there are currently in force 5 collective labour agreements at the level of groups units, and at the level of the sector of activity no collective labor agreements are concluded It is a small number of collective labour agreements, which requires certain modifications in legislator's view that would lead to the revival of collective negotiation which is so important to for the society.

In this respect, the doctrine considered that the regulatory scope reserved for collective labor contracts tends to be reduced, being used (as a defensive tool) only to supplement the legally established rights[22].

20 For the detailed analysis of these contracts, conventions and agreements, see R.Ş. Pătru, op.cit., p. 266-273.

21 See information in this sense R.Dimitriu, *Reflecţii privind actuala legislaţie a muncii – Interviu realizat de redacţia R.R.D.M.* in R.R.D.M. nr. 3/2013, p. 17.

22 See R. Dimitriu. *Dreptul muncii. Anxietăţi ale prezentului* (2016). Bucharest: Rentrop&Straton Publishing House.

The same author asserts in a judicious way that the effects of this are devastating[23]

3. Mandatory requirements in governing collective negotiation

To improve the legal regulation of collective negotiation, we consider that the legislator should refer to the following mandatory requirements:

1. Regarding the national sole collective labour agreement

As previously shown, the legislator quit using the national sole collective labour agreement by breaking a tradition of regulation started shortly after Romania had switched to market economy. By this legislator's decision, also made due to the pressure of multinational companies, we have lost an important legal employment institution. Furthermore, the National sole collective labour agreement concluded for the years 2007 - 2010 which contained a series of important provisions for labour relations, it could not be renewed and thus, those dispositions became inapplicable.

Given the background, to improve the collective negotiation in relation to matters concerning national sole collective labour agreement, it is mandatory that the legislator proceeds either to instate it in the Romanian legislative sector or to include it in the labour legislation of the relevant provisions of the contents of the latest collective labour agreement signed nationally, namely for the years 2007-2010[24]. If reintroduction of national sole collective labour agreement in the Romanian legal system is an inexhaustible source of disagreements between the social partners, the second solution appears to be equitable for both sides.

It is therefore about taking over the old sole collective bargaining agreement to a national level of the relevant provisions which complemented labour legislation and their inclusion in the labour legislation. The most important provisions were matters of wage (the most important provisions of the sole collective bargaining agreement mentioned before), in the matter of disciplinary liability (appointing a discipline commission as in case of public clerks), concerning the evaluation of employees for professional inadequacy

23 *Ibidem.*

24 To include the provisions of National sole collective labour agreement for 2007 – 2010 see also I. T. Ştefănescu, *Repere concrete rezultate din recenta modificare şi completare a Codului Muncii,* in "Revista Română de Jurisprudenţă", no. 1/2011, p. 26.

(where a disciplinary committee was usually appointed), regarding the dismissals (defining the phrase "due time", establishing social criteria to be considered for employees' collective dismissal, who, after being tested for performances, are tied)[25]. The mentioned provisions, which contributed significantly to establishing a balance within the labour relations are the result of collective negotiation conducted nationally. Their introduction into the labour legislation would approve on one hand the importance of collective negotiation, and on the other hand the aspects negotiated and agreed mutually by the social partners would still find applicability.

2. Regarding the representativeness of trade unions

Another mandatory requirement necessary for an efficient collective negotiation is to establish a reasonable threshold for the representativeness of trade unions at unit level. Currently, as we have shown, the representation limit is very high, this affects both collective negotiation and trade union movement generally.

The present legislative episode was also found in the previous regulation, the legislator originally established by Law no. 130/1996 the collective labour agreement a limit of half plus one of the employees for acquiring the representativeness of trade unions at the unit level. Being aware of the danger arising from such provision for collective negotiation, the legislator returned the following year by Law no. 143/1997 for the amendment and completion of Law no.130/1996 regarding the collective labour agreements[26] and established the limit of 1/3 in the number of employees, a provision that was maintained until the entry into force of Law no. 62/2011 (of the Social Dialogue).

Currently, we are in the same context as the starting point of the entry into force of Law no. 130/1996, so that the intervention of the legislator in terms of reducing the threshold for representation of half plus one of the employees at 1/3, appears as an mandatory for the purposes of collective negotiation.

3. Regarding the collective labour agreements concluded at activity sector level.

It is obvious that in order to improve the collective negotiation at activity sector, the legislator must waive the excessive condition of art. 143 par. (3) of

25 For the detailed analysis of these aspects, see R.Ș.Pătru, *op.cit*., p. 226 – 234.

26 Published in the Official Gazette no. 172/28th July 1997.

Law no. 62/2011 (of Social Dialogue), so that the level of negotiation should be functional and have concluded as many collective labour agreements as possible in the activity sectors.

Currently, only two collective labour agreements are into force at activity sector level, which confirms that collective negotiation is actually non-existent at this level.

As shown before, by Law no. 1/2016 the necessary skills to establish the activity sectors were decided by the National Tripartite Council for Social Dialogue. This aspect gets the current regulation closer to the previous provisions which established that the activity branches (as they were called previously) were established by collective labour agreement at national level.

Moreover, the recent doctrine it states that "the definition of identity and affiliation to activity sectors is the attribute of the national collective labour agreement and that only under its terms the Government, by decision, is entitled to certify activity sectors"[27].

The solution suggested would, in authors' view, a capitalisation of the subsidiarity principle in the European Union, under which the directives validate agreements between the social partners at European level. Similarly, in the national law, the government decision issued by the state would validate the agreement of the social partners described in the collective labour agreement nationally[28]. Finally, it is considered that if no collective labour agreement is concluded nationally, the activity sectors should be established by written agreement by the trade union confederations and employers' associations nationally[29].

4. *Regarding the agreements, conventions and arrangements set in art. 153 of Law no. 62/2011 (of the Social Dialogue).*

The agreements, conventions and arrangements of art. 153 of Law no. 62/2011 appear as alternatives to collective labour agreements for trade unions legally constituted but unrepresentative.

27 Al. Athanasiu, A.M. Vlăsceanu, *Propuneri de lege ferenda cu privire la negocierile colective şi conflictele de muncă,* in the Book of National Conference *Propuneri de lege ferenda privind perfecţionarea legislaţiei muncii din România*, Sibiu, 10th October 2014, published by Universul Juridic, Bucharest, 2015, p. 137.

28 Al. Athanasiu, A.M. Vlăsceanu, *op. cit*. p. 138.

29 *Ibidem*.

However, the legislator has not regulated judicially these new institutions, allowing them only an article that does not explains entirely the practical issues raised by these new institutions. Mainly, the legislator did not clearly separate these agreements, conventions and arrangements, in terms of content of collective labour agreements. Given this background, the question was whether such agreements may have the same content as the collective agreements.

Although we have previously expressed our belief that in the content, the conventions, agreements and arrangements celebrated in art. 153 of Law no. 62/2011 and collective labour agreements do not differ in the way that they can establish the same clause, however this aspect should be regulated by legislator[30]. Also, the legislator should establish expressly if these agreements, conventions or arrangements may be signed and if there is an applicable collective labour agreement[31].

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30 See R.Ș. Pătru, *op.cit.* p. 277. R.Ș. Pătru, *Clarificări necesare, doctrinare şi legale cu privire la art. 153 din Legea nr. 62/2011 (a Dialogului Social)*, in Book of National Conference *Propuneri de lege ferenda privind perfecţionarea legislaţiei muncii din România*, Sibiu, 10th October 2014, published by Universul Juridic, Bucharest , 2015, p. 174 – 176.

31 R.Ș. Pătru, Contractele şi acordurile colective….op.cit. p. 277 . See also I.T.Ştefănescu, *Tratat teoretic şi practic,* p. 193.

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IMPUTATION OF PAYMENTS – LEGAL STATUS OF PAYMENT WAY OF SETTLEMENT OF THE LEGAL COMPULSORY RELATIONSHIP BETWEEN THE CONTRACTING PARTIES

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Abstract: *It is generally recognized the expediency principle defining the commercial obligations. However, one can talk about this principle only where pecuniary liability debtor has got sufficient liquidity to cover all debts. However, to avoid paying penalties, in case the debtor of payment liability hasn't got sufficient liquidity to cover the entire debt, it may agree with the creditor on which debts shall be settled by successive payments or, in the absence of a consensus, each of the parties to the legal compulsory relationship may establish- within certain limits – which debts shall be settled or the issue was left to the statutory provisions. So, the debtor of the payment liability has been made available a legal institution known in the doctrine as part of the legal forms of payment, by means of which it can extinguish the most expensive pecuniary obligations, as well as those interest-bearing liabilities or with collaterals, known as the imputation of payment . Thus, imputation of payment is subject to our analysis below.*

Keywords: *payment, imputation of payment, legal forms of payment, contract, creditor's imputation, debtor's imputation, legal imputation.*
JEL Classification: L14, F34, J33

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Imputation of payment

It is known that any debt is extinguished by full payment thereof towards the creditor. There are also situations where a debtor has several outstanding debts to the same creditor and payment made by the debtor is not sufficient to extinguish them all. In such a circumstance, it is a question of determining liabilities to be settled by such payment. In other words, it is necessary to determine on which of the debts is made the imputation of payment. Settlement of such problem presents practical interest especially if those debts are interest bearing or they are guaranteed because, in the debtor's point of view, those debts generating the most of interest are deemed paid off, or those having collaterals established on the debtor's movable or immovable property, while the debtor is interested to pay off those debts without collaterals or those who are not interest bearing[2].

It is understood that, in compliance with the old Civil Code of 1864, imputation of payment was made according to the provisions of Art. 1110-1113, under which imputation of payment was both *conventiona,l* in the way that it worked following the agreement of the parties of the legal compulsory relationship, as well as *legal,* under the laws, operating under the law *(ope legis*). Regarding *conventional imputation* of payment, one can say that, taking into account that it is a convention, it operates only if the parties have so agreed, by the consent between them or by a separate document.

However, even if the parties to the legal compulsory relationship have not agreed in relation to the imputation of payment, it can be done by the debtor's or the creditor's unilateral will. Thus, in compliance with the provisions of Art. 1110 of the old Civil Code (1864), the debtor who has got several debts has the right to declare, upon payment, which of them is eligible to be extinguished by means of such payment. However, the debtor's right to make imputation of payment knows several limits, as follows:

a) debtor can not impose the creditor a fractional or partial payment; he is thus bound that, by the payment asserted by it to be made, to fully cover the debtupon which the payment is due;

2 F. Terre, P. Simler, Y. Lequette, aforementioned paper, page 1258; C. Larroumet, aforementioned paper, p. 28.

b) where the debtor has two debts affected by a suspensive term stipulated in favor of the creditor, but only one of them became due, it can not imputen payment on debt not yet due;

c) At the same time, the debtor can not impute payment on a debt under suspensive clauses, if it has another pure and simple debt to the same creditor[3];

d) also if the debtor has to pay an interest bearing debt (*capital*) and fails to cover both the debt, as well as the interests by the payment made, it can not impute payment on the capital without the creditor's consent.

The latter solution is also incidental if the debtor has two or more interest-bearing liabilities, when payment is imputed on interests first, because the creditor can not be held to receive payment of the capital prior to being paid the related interests[4]. As concerns the creditor, it is entitled to make imputation of payment only if the debtor has not made it so before[5]. Given that the debtor does not oppose, the creditor can make unlimited imputation of payment and the debtor is required to comply with it, unless it can prove its non-opposition following the vitiation of consent[6].

Regarding the *legal imputation of payment*, we can say that if the parties to the legal compulsory relationship have not agreed on the imputation of payment, it can be made under the law, in accordance with Article 1113 of the old Civil Code (1864), as follows:

a) when a debt became due and the other debts due to the same creditor are not outstanding, payment made by the debtor is first imputable on the debt due even if the debtor would be interested in paying off the most costy of them, but which has not become due yet;

b) moreover, if several debts fall due, imputation is made on the one which the debtor wants to pay off with priority. Debtor's interest debtor to extinguish debt with priority may be different. In a certain situation, it is interested in extinguishing the most costy debt and in another situation, the one accompanied by the most collaterals[7];

c) also, if debts are of the same nature, they are as costy as those and at their maturrity, payment will be offset against the oldest of them. Age of

3 D. Alexandresco, aforementioned paper, vol. IV, p. 532.

4 D. Alexandresco, aforementioned paper, vol. IV, p. 533-534.

5 L. Pop, aforementioned paper, p. 486.

6 Art. 1112 of the Old Civil Code.

7 F. Terre, P.. Simler, Y.. Lequette, aforementioned paper, p. 1260.

the debt is determined according to the date of arising the legal compulsory relationship and depending on its maturity[8];

d) where all debts have the same length, imputation of payment is made proportionally on each of them. This legal provision is likely to infringe the principle of indivisibility of payment, because the creditor shall receive a partial payment for each of its debts.

Basically, from the analysis of Art. 1113 of the Civil Code, it follows that, as regards the imputation of payment, establishes two rules, a general and a specific one[9]. According to the *general rule*, in case of two debts of the same nature, both due, imputation of payment is made on the most costy one, and if they are similar in terms of amount, on the oldest and under the *special rule,* applying only to pecuniary debts, where such debt is interest bearing, payment is first imputed on them and only the difference, to be imputed to the outstanding capital[10].

Regarding the **New Civil Code,** regulation of payment imputation is similar to the previous one. Thus, Art. 1506 of the New Civil Code establishes the rule of conventional imputation of payment. However, if the parties have not agreed on the order of debt extinguishment, the debtor is entitled, in accordance with Art. 1507 of the New Civil Code, to make imputation of payment, being obliged to charge payment only on debt due, unless agreed that it can make prepayments. If paying by bank transfer, imputation of payment is made by written instructions by the paying debtor, on the payment order.

However, if a debtor has multiple debts to the same creditor, makes a payment and does not specify on which of the payment obligations it is imputable, the latter (creditor), pursuant to Art. 1508 of the New Civil Code it may, *after receiving payment*, to indicate to the debtor such debt upon which payment is imputable. However, the creditor can not claim payment of an undue or a litigious debt. If the creditor submits to the debtor a discharging receipt for the payment made, he is required to mention which debt has been extinguished by such payment. Given that none of the parties to the legal compulsory relationship made any mentions regarding imputation of payment, the provisions of Art. 1509 of the New Civil Code shall apply, under which the imputation is made in the following order:

8 Terre, F. P. Simler, Y. Lequette, aforementioned paper, page 1261.

9 O. Căpățână, B. Ștefănescu, aforementioned paper, page 55.

10 O. Căpățână, B. Ștefănescu, aforementioned paper.

a) debts due;

b) unsecured debts or debts with the least collaterals;

c) more onerous debts for the debtor;

d) older debts if all are due and as onerous and guaranteed;

e) proportional to the amount of debt, provided that all fall due, are similarly old, onerous and guaranteed.

In any of the above circumstances, in compliance with the provisions of the second paragraph of Art. 1509 of the New Civil Code, unless the parties agree otherwise, imputation of payment will be made first, upon the court charges and legal debt collection fees, then upon the interest rates and penalties, starting with those having the oldest maturity[11] and finally, upon the capital of each of the debts. In the specialized literature[12], it was considered that payment imputation rules prescribed by the Civil Code do not apply in commercial matters. As far as we are concerned, we consider that under the old regulations, the provisions on payment imputation also apply in commercial matters under the provisions of Art. 1 of the Commercial Code, under which, in trade issues, in the absence of special regulation, the provisions of the Civil Code shall apply.

At the same time, under the rule of the new civil code, the provisions regarding imputation of payment are fully applicable to commercial legal relations (or *between professionals, as they are called by the New Civil Code*) unless indicated otherwise. The solution is also shared by famous experts[13] of national law doctrine of international trade and it is supported by arbitral practice, extending the provisions of Art. 1110-1113 of the Civil Code (1864) to the international trade agreements[14], as well.

However, the solution set out previously is also provided and the UNIDROIT principles[15], according to which, if at the time of payment, the debtor is bound by several debts to the same creditor, it may indicate debt deemed to extinguish, indicating that the payment is first imputed always upon expenses, then upon interest due and finally, upon the capital. In terms

11 I. Turcu, aforementioned paper, p. 430.

12 T. Popescu. (1983). *Dreptul comerțului internațional (International Trade Law),second edition*, Bucharest: Ed. Didactică și Pedagogică, p. 58.

13 O. Căpățână, B. Ștefănescu, aforementioned paper, p. 54; D.A. Sitaru, aforementioned paper, p. 708-709.

14 S. Deleanu, aforementioned paper, p. 201.

15 Art. 6.1.12 of the UNIDROIT Principles.

of imputation of payment, we can state that the provisions of the UNIDROIT principles are identical to those of Art. 1509 of the New Romanian Civil Code.

We also assert that the UNIDROIT principles[16] have similar solutions in the field of imputation of payment, both with those contained in the old Civil Code of 1864 and those of the new civil code of 2009, regarding non-imputation of payment by the debtor, in which situation the creditor is granted the possibility of payment imputation. However, the regulations provided by the UNIDROIT Principles[17] is also similar to the Romanian legislation in terms of imputation of payment provided that the parties of the legal compulsory relationship either have not agreed on imputation of payment, or they have not used their unilateral rights to make imputation of payment.

Last, but not least, the UNIDROIT Principles[18] provide that where none of the above circumstances are applicable in the legal compulsory relationship between the parties, imputation of payment is to be made pro rata upon all debts, the solution being the same, both as regards the provisions of Art. 1113 of the Old Civil Code and those of Art. 1509, first paragraph, letter e) of the current civil code. Moreover, we mention that the solutions provided by the UNIDROIT Principles can be also found in Art. 109 of the Principles of European Contract Law Project[19].

In conclusion, we can say that, basically, the parties of the legal compulsory relationship may agree as regards the debts to be paid off by a partial payment. However, in the absence of such an agreement, the debtor is entitled to indicate, once with making a partial payment, which debt is being extinguished. Otherwise, after receiving payment, the creditor is entitled to inform the debtor which debt was extinguished by such payment.

However, if none of the parties indicated which debt is extinguished by payment made by the debtor, both the national and the European legislature have established a certain order of the debts to be extinguished.

16 Art. 6.1.12, second paragraph of the UNIDROIT Principles.

17 Art. 6.1.12, second paragraph of the UNIDROIT Principles.

18 Art. 6.1.13 of the UNIDROIT Principles.

19 R. Vartolomei, aforementioned paper, p. 30.

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THE SOCIAL RESPONSIBILITY & CORPORATE GOVERNANCE

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Abstract: *The term of social responsibility is widely discussed in the international economy, besides that, corporations become concerning more on the economic performance and the social development. In the industrial countries appears a high collaboration among three important parties: state, corporations, and community; due to that, state and corporations are collaborating to serve community.*

The concept of social responsibility relates to corporate governance, which is considered a modern term discussed as a comprehensive solution after financial scandals. In the light of that, what is social responsibility and what is the relation with corporate governance.

Keywords: *corporate responsibility, corporate governance, shareholders, governance concept.*

JEL Classification: M4, M2, M11

1. Introduction

The corporations have been developed comprehensively and dynamically in their traditional perspectives to add social responsibility to their good-will, maximization profit, good financial situation and the interests of their shareholders. The community starts to have a different vision to be more complex in responding to the developed environment of international business

and the modern IT. The financial scandals forces concerned institutions and academicians to include other perspective to reflect their awareness toward their communities. Social responsibilities are highlighted during those asking corporations to share the responsibilities with the state regarding community and society. Even though, social responsibility is still weak due to the lack of acknowledgement about it, in addition, this responsibility is switched from the state to be shared with corporations. These corporations implement corporate governance that includes social responsibility.

Going back during the last century, social responsibility became an interesting topic to be discussed between academicians; Prof. Theodore Kerbs at Stand ford economic school issued a term called social audit (ISO Advisory 2004) and later during 1953, it was developed by Howard Bowen in his book; Business social responsibility and he defined social responsibility as the obligation that forces businessmen to respect social values in their strategic and policy (Bhattacharyya 2008).

2. Corporate governance

Corporate governance as a term is spotlighted in the recent decades, and many efforts of specialists exert to define this new term. Some of the experts describe it as good governance or prudent management, and others define it as institutional control. International Finance Corporation (IFC) defines corporate governance as that system used to manage corporations and control their activities. Besides that, the Organization for Economic Co-operation and Development (OCDE) defines it as the system to direct corporations and monitoring their activities through issuing management structure and determining responsibilities among directors and executives to enable corporations to achieve their objectives and auditing officials. Therefore, corporate governance includes comprehensive monitoring over financial and non financial activities. The governance mechanisms help corporations to find the possibilities to maximize profit and add value in the long term. Due to that, corporate governance sets certain regulations to organize the relationship among stakeholders; shareholders, state, employees, community, etc.

The principles of corporate governance were issued in 1999 by Organization for Economic Co-operation and Development (OCDE) and to be adapted in 2004. These principles concerns on ensuring an effective corporate governance framework; corporate governance should encourage transparency

and market efficiency in accordance with the local legalizations. In addition, assuring the rights of shareholders: their rights must be respected besides providing equality among shareholders to save their rights in corporations and to monitor the performance of directors and executives. Corporate governance secures the interests of stakeholders in order to bring sustainability and add value in the long term. Transparence and disclosures are also included in corporate governance concerning on financial activities to offer information used by different parties and here it appears the responsibilities of management council to monitor and audit the performance of executives and directors. In the light of that, the characters of corporate governance are discipline through following and implementing moral codes, transparence by reflecting the reality, also, independence is an important element assuring directors' and executives' independence from shareholders power. Responsibility and justice are essential elements in order to determine the responsibility and bring justice in public and in front of all stakeholders, in according with that, all these principles formulate as a result social responsibility.

3. Social responsibility and organizational models of corporate governance

Shareholder model and stakeholder model, due to the first model, the main objectives are to maximize the profit per share and to add value for shareholders invests. The second model has a comprehensive vision to include internal and external stakeholders. Therefore, the margin of responsibility becomes bigger with stakeholder model to include social responsibility instead of responsibility toward shareholders. Shareholder model concerns on the interests of shareholders even it can be on the account of community. In another side, stakeholders model concerns on the interests of shareholders besides the interests of employees, creditors, clients and communities besides other stakeholders.

Definitely, corporations adopt shareholder model during and after the industrial revolution, which leads to maximize the corporations' profit and human tragedies but that did not resist in front of the financial scandals which forced corporations to switch to stakeholders model. The first beneficiary is employees through issuing labor organizations which improves the working conditions ensuring security and health standards, also, many concerned entities do researches to propose the positive relationship between productivity

and the rights of employees, and that increases the profitability serving the interests of shareholders. The size of corporation becomes bigger and the production technology is developed on the account of environment, and the financial crisis becomes more seriously to threat the life of each body in a certain corporations; all stakeholders, due to that; environment responsibility and social responsibility. The social responsibility is a continued obligation for corporation toward shareholders, employees, communities, suppliers and other stakeholders.

4. Social responsibility dimensions

Until nowadays, the social responsibility does not have clear dimensions to explain the possibilities that enable corporations to achieve this responsibility but there are certain sets that clarify this responsibility issued by Business foundations and institutions such as Organization for Economic Co-operation and Development (OCDE). In generally and due to social responsibility, corporations should concern on the following points:

a. Enhancing environment protection and reducing pollution besides wisely using the natural resources.

b. Safety production place and offering healthy production .

c. Enriching environment and community.

d. Respecting human rights in working place and respecting related international regulations.

e. Assuring moral management codes.

f. Integrating in communities through adopting local developing program and communicating with different groups of stakeholders.

g. Joining the environmental international standards ISO 1400 besides social international standards.

Even though, until now there is not a common understanding to determine the measurements for social responsibility but some researchers try to set certain measurements after doing specialized analyses. These measurements are:

- The conditions of working place.
- Studying markets to determine customers' behaviors, and to measure the loyalty and the satisfaction of customers.

- Integration degree in the community, and contributing in the domestic economic development.
- Respecting human rights.
- Concerning on moral rules.

Besides that, the activities of corporations affect the dimensions of corporate governance and the role of shareholders has an important influence over it. Due to Carroll, the social responsibility includes four core elements: economic, ethical, legal and philanthropy. Therefore, the understanding of these elements enables to determine a right channel between corporations' performance and stakeholders' interests. In the light of that, the following diagram explains the dimensions of social responsibility:

Fig. 1. Dimensions of social responsibility

Accordingly, social responsibility is important for the corporation and for the community as well. For corporations: social responsibility improves the image of corporations in front of communities where they are performing. That reflects positively ion suppliers and clients besides other stakeholders in the community. Enhancing philanthropy activities affects on the working environment and it strengthens the collaboration among internal stakeholders and establishes a good relationship with external stakeholders.

For community: social responsibility brings the social solidarity to a higher level through gaining the loyalty of certain category of citizens with special needs. In addition, it brings social stability through providing social

justice and improving the quality of life, also, political development will be accomplished since politicians will be aware about the needs of different stakeholders including corporations and citizens, and that will open the door for a new responsibility called environment responsibility.

5. Corporate governance and social responsibility

This relationship will be formulated due the governance theory; due to stakeholder theory, corporations are obligated to include in their concerns the interests of stakeholders' groups besides the interests of shareholders. That leads to a big discussion to determine which groups of stakeholders should be concerned.

Both corporate governance and social responsibility have economic features besides legal regulations, which is related to socio-economic processes to bring the competition to another level. Besides that, both are strongly related to the market force but the frame work of social responsibility bases on free-form manner whereas the frame work of corporate governance bases on well-defined structures. The roles, rights and responsibility of directors and executives are vital. Particularly, the board of directors is the most appropriate body that sets policies enabling the management to fulfill its responsibility in front the society and from this point corporate governance is born, accordingly, in the marketplace, corporate governance is an old factor comparing with social responsibility which is considered a really new factor.

Due to the stakeholder theory, corporate governance entails mechanisms to enable directors and executives to accomplish their responsibilities in front of stakeholders. In this turn, social responsibility is presented in corporations, which are the core element in this complex structure of stakeholders' relationship. The internal dimension of corporate social responsibility forces companies to work hard to fulfill their responsibilities to the internal stakeholders addressing certain issues such as workplace safety, working conditions, equal rights, human rights and so on, in the light of that, corporations assure accountability, transparency and compliance. Therefore, social responsibility affects the regulations of corporate governance, and these regulations are public codes, self-regulations and co-regulations. The most affected one is self-regulation, since it depends on the feedback of corporate social responsibility toward internal stakeholders. Also, this relationship is

closely because the objectives of corporate governance and corporate social responsibility are similar due to their nature.

6. Conclusion

Due to business approach, corporations have several roles in society and that can be summarized by the word of Friedman; "there is one and only one social responsibility of business to increase the profits and business of business is business. Moreover, social responsibility is widely adopted by corporations nowadays since its objectives are similar to corporate governance and which are important to increase profitability and add value to shareholders. In addition, stakeholder theory of corporate governance paves the way of corporate social responsibility, which has different dimensions serving the interests of internal and external stakeholders.

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FINANCIAL NETWORKS AND GLOBAL FINANCIAL RISK

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Abstract: *Network risk (RRT) takes concrete forms of action, manifestation, forms typically determined by network characteristics that are affected by decoupling, distortion, phase-out, distortion, debilitating the strength of a financial network feature. Obviously, these forms refer to the radiant impact of the institutional characteristic of the network, embodied in norms, bodies, rules, structures, etc. on the interactive features of the network. The institutional grid of the network is the force, the ability of the network's interactive feature to negatively influence the performance of the components.*

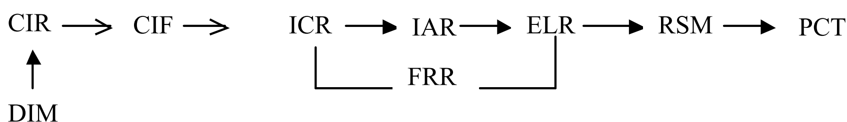
Based on these considerations, the global financial network risk must be assessed in the current context of the financial networking functionality challenges.

Keywords: *financial network, currency and sustainability.*
Jel Classification: G10, G23

Introduction

The complex relationship in which the network risk acts on the performance, the goals, the functionalities and the potentialities of the network is presented in figure 1, in the form of a momentum.

Figure 1: Impulse relationships between risks and performance



The meaning of the symbols is as follows:

- DIM = institutional deficiencies of the financial network;
- CIR = the institutional feature of the network;
- CIF = interactive features of the network;
- ICR = network interconnections;
- IAR = network interactions (interactive flows;
- ELR = network elements;
- FRR = network risk forms;
- RSM = risks specific to the financing network;
- PCT = losses and costs.

Methodology of scientific research

To substantiate the funding model for innovation, we used observation and examination tools, research methods based on the basic principles of scientific research, and we also created procedures based on factual analysis as a result of a significant practical experience and of intensive documentation at the level of national and international literature.

Research results

The forms of network risk are as follows:

The credibility risk is the essential form of risk of the financial network, mitigating or distorting the trust of the economic subjects in the currency, in the financial instruments, the financial-monetary institutions, due to the malfunctions, directly or indirectly induced by contagion, , with a temporal lag, all the specific risks and, first of all, the risk of depreciation of the currency.

Financial networks are irreducible for purely economic reasoning centered on profit-oriented economic interest, monetary transactions, operations

and financial flows, based on the trust of entities, economic subjects in the financial network, the transaction network, the fiduciary dimension being vital to the reproducibility of networks and for their continuity over time. Trust is an integral part of maintaining interconnections and interactive financial flows, especially taking into account the uncertainty and complexity of transactions.

Winning economic rationality does not cover the space of trust in the currency, depending on different factors, economic rationality depending on individual, selfish, competing and confronted interests on the market, while trust is conditioned by cohabitation, social, political, cultural, but also economic, trusting reciprocity, while economic rationality implies exclusion through competition (even if the market harmonizes gains through interests).

Trust is an essential property of the coin, an abstract feature of money in general, which does not imply the stability and validity of the concrete forms of the currency, because trust in the stability and validity of a monetary form, a financial instrument, means trust in institutions and rules, and rules directly responsible for the administration of this form of currency. In this respect, the nature of the risks involved in financial transactions, in interactive flows, reflects their unique character in the modern world, namely that they are generated by man-made institutions.

It can be argued that the credibility risk is not associated with trust in money as a social institution, but with confidence in social institutions, ie regulations and organizations, which create and administer specific monetary forms, financial instruments traded on the markets.

The risk of credibility in the financial system is determined by economic, but especially extra-economic conditions, the placement of monetary forms in an environment centered on economic rationality, the dependence of financial transactions, the interactivity of the financial network of interests and economic gain distorts and vices the functions of the currency, its transitive potential, the goals of the network, assuring the concrete forms of the coin of improper, adverse and unfavorable finiteities and functionalities. In this respect, speculative or derivative financial forms, as quaternary, forward-looking currencies, are at the same time extreme forms of risk credibility, generating risk, covering it.

Vulnerability risk is a generic risk of the financial network due to the inadequate, institutionally caused flow of flow and financial network characteristics such as reliability, complexity, integrity, intensity, connectivity, affecting the network considered as a whole but differentiated on elements, interconnections and interactions.

Vulnerability expresses the debilitation of the transitive potential of interactive network flows by favoring, in particular through the channel of inadequacy and inactivation, the emergence of specific risks, such as exchange rate risk, currency depreciation, interest rate risk, market risk.

The organizational inconsistency of the financial network, the inconsistency of the financial instruments, the forms of currency in the financial asset hypothesis, the inadequacy of the financial operations, the rigidization and the temporal or dimensional incongruity of the sources and the destinations of the interactive flows are causal institutional factors of the vulnerability of the network, perceived by network participants by diminishing the reliability of flows that may generate liquidity or solvency risk through volatility of asset prices through the juncture of some network nodes, ie financial institutions or markets, which may ultimately lead to bankruptcy risk and so on.

Institutional causes of monetary network vulnerability may be:

- a compositional incompleteness of entities, for example the lack of necessary entities;
- o insufficient connections, cumulative or distributive nodes;
- o lack of functional loop connectors such as guarantee bodies, trade effects, consultancy entities, and network loops to ensure re-circulation of the inactive, temporary pending currency, such as the locked currency;
- the degradation of operational synapses, such as the transformation of deposits, due to the interactive gap between collection and placement or currency convertibility due to the institutional irrelevance of monetary forms, such as reserves, surpluses, placements.

The risk of vulnerability is therefore, above all, a risk of institutionalization of the financial network and derives from the inadequacy of the network to environmental conditions, to its requirements and needs, and in this respect the direct effect of this network risk, depreciation of the currency in its form transactional, interactive, currency risk, is associated with the degradation of these conditions, with the relation between the internal and the external environment.

The risk of de-synchronization is a risk of the flows, of their interconnection in the network, affecting the interactivity of the network, ie its essence, being formally generated by the institutional regulation of the

network, and thus by the way of network implementation, and functionally by the relation between tasks, ie the activities, responsibilities and competencies of the constituent entities.

Desynchronization refers to the occurrence of some disagreements, of any kind, between network flows, addressing the following aspects: gaps, gaps, defects and incompatibilities.

Time spans between cash inflows and outflows, between the formation of monetary resources, liquidity, and their use, transforming them into placements, increasing the stagnation of the coin as an inactive currency. If some gaps are necessary for financial transactions and interactivity, most are inertial, institutionally determined, often even regulatory, inducing lasting differences, affecting the fluidity of money, circulation and currency conversion, usually leading to liquidity and capital risks.

Dimensional dimensions related to the capacity and length of flows, but also to the extensibility and intensity of the financial network. For example, if there is a discrepancy between the capacity and the length of the collection flows and the placements, the risk of de-synchronization may generate both risk and liquidity risks, and the disconnection also occurs in the case of the gap between network extensiveness and insensitivity, which will primarily affect the effectiveness of the network, causing a risk of financial asymmetry, concentration and rigidisation, associated with the insolvency risk of some financial entities that, through contagion, can affect the entire network.

Flow deviations due to the speed of flow instruments and network velocity, these streams often resulting in bottlenecks, being partly responsible for the risk of network agglutination, affecting network interactivity, resulting in liquidity, rate, and liquidity risk. monetary depreciation, currency risk.

Instrumental incompatibilities, manifested by the inadequacy of financial instruments to achieve certain goals or functionalities of the network, their non-adaptation to transited currency aggregates (blocked currency, reserves, savings, equity, speculative liquidity, etc.), or, generally, insufficient harmonization the supply of financial and monetary instruments (checks, cash, cards, accounts, etc.) and the demand, and especially potential, demand, which expresses the need for economics of tools, perhaps not yet operational, and why not yet unthinkable.

The risk of de-synchronization induces a negative resonance in the network, in the case of an increased de-synchronization, the network may enter into „trepidation", the generic expression of this situation, the risk of vibration,

negative resonance being the fluctuation, the agitation of the exchange rate, the price, the purchasing power of the coin on a trend of chronic depreciation.

The institutional causes of this risk are connected and often dependent on economic, social, political causes (unless we consider monetary policy itself an institution), but it is obvious that the way of building its financial network, its architecture, its dimensions and institutional adequacy, contributes significantly to the emergence and maintenance of this risk.

The agglomeration, agglutination risk associated with the two previous risks is manifested through the abundance, segregation and concentration of the currency forms and of the flow financial instruments in certain areas of the network, by regionalization, polarization and conjucturing, phenomena with various etiologies, but highlighting the institutional inadequacy of the network, creating favorable conditions, especially through the channel of incapacity, for the occurrence of rate, insolvency, and obviously market, price risks, financial assets, and currency risks.

Very often, this network risk is associated with insufficient networking of specific elements of the network, to provide certain services needed for the markets and to contribute to the consolidation of its transparent automata, such as:

- a continuous counting of network flows, highlighting crowded and relatively free routes, for example, the discrepancy between the interbank and the financial or pay-as-you-go, this counting being a potential selective and reorienting role;
- a functional and operational adaptation of flows to the concrete requirements of interactivity, by setting up network adapters, compensation house analogues, transforming financial assets and instruments, and forms of currency in line with market requirements, making these adapters an integral part of financial markets and monetary ones, such adapters being aimed at consolidating the course (currency adapters), liquidity fluidization (factorial adapters), rate compensation (distributive adapters), etc., taking over some of the current market dysfunctions, such as speculative ones, which distorts some of these adaptation attributes , and relaying them to the market, integrating them, strengthening its institutional network automation.

- an instrumental conversion, titrization, trying to achieve this conversion interactivity, the market, as it is conceived and instituted, is not only conversational but marginal or improper, I would say, forcing a little the institutional potential of the network. A conversion market, such as the derivatives market, could be constitutively and institutionally made, in fact anticipating and conditional this conversion, but often in a speculative environment, denaturating the functions of the currency, of monetary forms.

Managing this network risk is principally a matter of institutionalization and functionally a matter of evaluation and supervision because the flexibility of the currency, its fairness of freedom, should also be found in its capitalized, financially instrumental forms, between currency-trust, and economic reasoning, which usually regulates fragmentarily, segregating capital flows, money saved, contradictions, crisis-generating confrontations, which partly reflects the existence of this agglomeration risk with speculative openings.

The risk of detachment and polarization is the specific network risk that suffers from three institutional diseases:

- ignorance in the sense of disregarding or insufficient consideration of the environment, due to the institutional endowment, which gives it a certain form of knowledge and understanding;
- vanity, not in the anthropomorphic sense, determined primarily by the approach of currency, of monetary forms, in terms of earnings-centered economic reasoning, financial entities considering the currency capitalized as a generator of power and not as a binder between the network and the environment, bidders and coin applicants , the bank currency, and its financial form, which produces wealth, denaturing the currency's functions in a great way, perhaps by distorting them to authentic, trust-based forms of currency; obviously, vanity is reactive, not adaptive, and is so proven by financial crises, often induced by financial entities, banking in the socio-economic ensemble.
- esoterism, in the sense of the financial sector, especially the banking sector, being hardly accessible to the uninitiated, the disease being landless, from time immemorial, and partly with constitutive justifications and, we could say, ontological. The coin being

> something very sensitive and omniscient has been told the blood of society, but has now become a sort of pathology of appearances, a pathology commanded, authentic, original esotericism, original, disappearing, remaining an esotericism of complications, of often unnecessarily functional functional diversions mimetic esotericism, but the more sickly and contagious.

The risk of posting is manifested by the detachment of the financial network from the socio-economic environment, its real markets, including the health, culture, education, financial network, and sometimes the specific evolution of these human domains, how to build up the guiding principles of its configuration and architecture, so that posting induces specific risks in the financial network, such as rate and rate, volatility and real non-speculative-arbitrary overlaps, generating fierce crises at local level, regional, hardly absorbed, with losses and environmental costs, but also liquidity risks, finalized by bankruptcies of the banking entities, as well as non-financial ones.

The risk of bias, power highlights the tendency to create concentration as police, financial centers, officially represented by the central bank, which attributes beyond coordination and regulation becomes, in the name of monetary policy, the market operator, give confidence in currency in its purchasing power, and operative financial centers that focus with currencies, financial instruments, power to influence, to intervene, sometimes disturbing the markets desire to balance targets exist already esoteric or at least selectively beneficial. Polarization is a phenomenon common to all networks, from minerals, natural to the neural and spiritual, but institutionalization polarizing network Financial can be perverse, sometimes unexpected, polarization contributing to a risk network of the network-financial, to the extent in which polarization does not serve the network, the currency, the confidence in the currency, exacerbating, for example, the gain orientation, according to the economic reasoning.

A significant risk of detachment and polarization effect that potential and real, generates specific risks devastating is the expansion of incomparable value financial flows compared to the actual flows, most financial flows grinding idle money, obviously for earnings, for the transfer, rarely converted into real, consuming or investment assets.

Conclusion

The five types of network hazards developed above do not cover the whole range of risk possibilities intrinsic to the financial network, highlighting their existence, their specificity and relevance in the monetary space as well as their institutional determinant etiology. At the same time, the above approach wanted to reveal that the credibility risk is paramount, being the generic network risk, the placement of its currency, its forms and instruments, in a space dominated by economic reasoning, centered on interest and gain, credibility in currency, the ability of the coin to perform its original functions.

The network risk, the five of its types delineated above, are generated by determinant or conditional factors, and in turn generate direct and indirect effects through the specific risks of the financial network, the network risk being placed in a structure of interdependencies, of direct and mediated influences.

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THE ROLE OF INTERNAL CONTROL IN THE GOVERNANCE OF THE UNDERTAKING

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Abstract: *Governance is a key element in increasing economic performance, being responsible for developing development policies and strategies, building the organizational structure with roles and responsibilities, developing and applying ethical principles, promoting values, and implementing internal control. Business governance through established good practice-based management systems responds to the interests of shareholders, investors, creditors and other stakeholders, harmonizes relationships of any type with the environment in which it operates and is responsible for effectively and efficiently delivering organizational objectives.*

Internal control is a function of management, with which it exercises its responsibilities and influence over all other managerial functions. Through control, management ensures that the objectives, credibility of financial reporting, efficiency and effectiveness of operations, compliance with applicable laws and regulations are ensured. The internal control function ensures the company's management the proper and regular performance, efficiency, economy and efficiency of its tasks, fund and patrimony protection, compliance with laws and regulations, as well as the existence of specific, efficient and effective information and reporting systems and procedures.

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Enterprise governance features

Enterprise governance is the set of organizational and operational measures implemented within an organization that match the interests of shareholders and determine the powers of those responsible for governance, the limitations of their decisions, and their attitude. The mechanism is designed and focused on financial discipline and managerial accountability, maximizing efficiency and effectiveness and value for shareholders. Maximizing shareholder value corresponds to maximizing the value of the enterprise's shares and the value of dividends received by shareholders.

Business governance processes include, on the one hand, specific methods and tools adopted for corporate governance and management, including on risk management and internal control, and on the other hand relationships established between management, employees and third parties with interests towards the organization in order to achieve the established objectives.

The way in which the business governance process is organized is country-specific, industry or organization type. It implies specific characteristics, structure, mechanisms and specific objectives, determined according to the size, organization and functioning of the enterprise and the maturity of the enterprise.

The mechanisms of enterprise governance implementation are created both as rules of behavior and managerial control, and as principles to be re-enacted in the managerial act. The rules and principles implemented are dominated by the concentration of the company's capital. Thus, a company's capital concentration in the hands of a limited number of shareholders allows for better control over management and, implicitly, performance. The dispersion of capital into the hands of a wider number of shareholders may have a positive or negative effect on the performance of the enterprise, depending on the culture of the stakeholders and the role of the majority shareholders on the organization.

Taking into account that the efficiency of an enterprise is characterized by the performance and quality of its internal control system, two levels can be distinguished in its description, namely:

- the governance system, characterized by the well-implemented rules and principles of good practice that legitimize the role, decision-making power and management control of the enterprise;
- the control system, characterized by all the devices and measures implemented in order to ensure the achievement of the established objectives and the measurement of the obtained degree of performance.

The governance system and control system of an enterprise are directly influenced by the organizational culture, the concept of enterprise applied, the way of delegating and separating responsibilities, the rights-holders, the various mandates responsible for certain operations or activities of the enterprise.

The persons responsible for corporate governance have the obligation to set up an adequate risk management system in order to identify the threats affecting the achievement of the objectives and to take measures to limit them, as well as a system of control and evaluation responsible for monitoring the setting up and use resources and patrimonial integrity.

In the general context, corporate governance is recognized as the set of management forms and practices implemented at the organization level, ensuring legitimacy and authority in decision-making. Coding forms are the representation bodies (general shareholders' meeting), executive bodies (board of directors, chairman, general manager) as well as control bodies and audit committees.

Internal control - function of enterprise governance

Internal control, as a function of enterprise governance and a function that provides the organization with useful information for making the most appropriate decisions, has a wide scope of action, specific to all management levels and all activities within the organization. Depending on the information it provides to the management, it can perform its responsibilities in terms of forecasting, organization, coordination and control in good conditions.

Internal control is all the forms *of control exercised at the level of the organization, established by management in accordance with its objectives and legal regulations, in order to ensure that the funds are managed economically, efficiently and effectively.*

The implementation of a functional internal control system is characterized by:

- *integrated process* - control tools embedded in the organization's activities;
- *designed by management* - management sets goals, designs and implements internal control tools, monitors and evaluates their functionality;
- *implemented by all staff* - the internal control system is set up by management and implemented by all staff according to the responsibilities and limits of authorization established for each;
- *based on risk identification and assessment* - management identifies and manages the risks they face in achieving the objectives;
- *the provision of insurance* - a reasonable assurance, based on the assessments made, on the degree of functionality of the internal control, and on how well it protects the funds and the patrimony of the enterprise;
- *Achieving the objectives* - through the measures taken to eliminate the malfunctions in the implementation of the activities, the internal control contributes to the achievement of the organizational and individual objectives.

The internal control system is associated with the procedures, means, actions or provisions that need to be issued and implemented by management to carry out the activities. The purpose of implementing an internal control system is to ensure good control, both on the operation of the enterprise as a whole and on the achievement of each activity or operation.

In this respect, internal control is considered to be a dynamic process that has the specific responsibility of protecting property assets and preventing and detecting errors, fraud, loss, abuse and poor management. This process needs to be continually adapted to organizational changes and must provide assurance and trust to management that funds are used appropriately and appropriately managed assets.

By designing and implementing an adequate internal control system, the enterprise can perform its functions, manage the patrimony and organize, guide and carry out the established activities and achieve the set objectives. Also, through the control function, the company's governance can achieve real and preventive information about the activities carried out and thus, in

reality, set deviations from regularity and compliance, as well as inefficiency in the use of resources.

Regarding its role and function of the management, in order to determine the efficiency and functionality of the internal control processes, it is necessary to go through several stages, namely:

- determining and determining the results obtained;
- comparing the results achieved with the objectives and targets set and quantifying deviations;
- identifying the causes of the deviations;
- take the necessary measures by implementing appropriate control devices or measures to correct existing dysfunctions and eliminate the causes that generated the identified deviations.

By implementing an internal control system within the enterprise, it is intended to ensure that the objectives set are achieved at an appropriate level of quality, resources are established and used in terms of efficiency, effectiveness and economy, and the patrimony is properly managed and protected against loss or fraud.

To achieve a true level of enterprise efficiency and effectiveness as well as for adequate resource use, the control function should be built in such a way that it is largely preventive, and in the case of risk materialization control has a corrective, focused on cause-effect analysis and the ability of management to make effective and immediate decisions.

Internal control is implemented at the level of all the functional structures of the enterprise and is characterized by all the control devices or measures implemented by the management to ensure the functioning and carrying out of the activities under the planned conditions.

Control functions within the enterprise

The control is designed to help, through the information provided, the company's governance to make informed decisions about the achievement of objectives and organizational development. The process, which involves a complex set of theoretical, organizational and methodological measures, is useful and necessary to the organization, grants the patrimonial and financial integrity and ensures organizational development.

The objective of internal control is to assess the compliance, efficiency and effectiveness of the activities carried out by applying various specific methods, techniques and procedures, to identify deviations and malfunctions from the established rules and to take measures to correct and prevent them in the future. This objective can be achieved by performing control functions, namely:

- *prevention and refinement* - prevention prevents the occurrence of some dysfunctions in the carrying out of the activities, and through pre-treatment it ensures the good management of the patrimony, the good organization and management of the activities;
- *finding and correction* - The finding assesses the extent to which the objectives are met and, depending on it, the deviations are identified and corrective actions are taken to eliminate or prevent dysfunctions;
- *knowledge and evaluation* - by knowledge, it is ensured that a demanding analysis of the dysfunctions is carried out in the activity of the enterprise, and by evaluation it is determined, in reality and legality, the patrimonial and financial consequences. With this function a real, complete and exequate quantification of the activities or processes carried out is carried out;
- *education and stimulation* - as internal control through the results achieved and the applied measures becomes a positive, educational and stimulating function for the future, which helps to overcome crisis situations and achieve the expected results;
- *constructive* - according to which future development is estimated, threats are prevented and measures are being taken to improve the activities;
- *regulation* - which ensures the identification of the factors that disturb the activity and maintaining the functional and financial balance needed to carry out the activities.

In addition to these functions, *the internal control is also specific and the functions of measuring the planned deviations, intervention for the solution and prevention of the malfunctions, diagnosis of errors, recovery of the activity, as well as revision of the objectives for the next period in the function of the obtained results.*

Integrated framework of internal control

Internal control is a set of devices set up by management and implemented by managers at all levels to monitor the degree of operation and performance of the activities. These devices provide reasonable assurance that the objectives of the institution are being met.

The company's management is responsible for implementing the internal control system, establishing appropriate control policies and regularly monitoring their effective operation through:

- identify activities that are not working properly and require the implementation of internal controls;
- establishing adequate internal control tools;
- the proper implementation of established control instruments;
- verifying the degree of functionality of control and ensuring that control mechanisms limit and maintain risks at accepted levels.

The internal control devices set up by the management must be constantly adapted to the company's strategy and objectives, to the work environment, activities and organizational structure.

Taking into account that the notion of internal control takes into account the efficiency and effectiveness of operations, the fidelity of the financial statements, compliance with regulations and regulations in force, it can be defined as *the process by the board of directors, management and the entire staff of the organization, to provide reasonable assurance that the organization's objectives are being met.*

In the light of the definition formulated, internal control is a process involving all staff of the organization, following certain rules and principles, which assures the management that the established objectives are met under conditions of regularity, compliance, economy, efficiency and effectiveness.

The integrated framework of internal control implies that the internal control system is structured and defined on certain essential elements, which are in close interdependence with each other. These elements are defined as follows:

- *the control environment*, is the main component of the internal control system, being influenced by organizational culture, leadership style and the value system promoted at the organization level. In the absence of a control environment or under the conditions of an unfavorable control environment,

internal control can not be said. In analyzing and evaluating the internal control system at an organization's level, staff need to demonstrate compliance with the integrity, competence and value system requirements. Their lack prevents the proper and effective functioning of internal control;

- *risk management,* involves performing rigorously defined and organized activities to ensure that the organization's goals are met and the risks associated with them assessed. Risks related to the activities carried out are identified and analyzed on the basis of appropriate plans in order to limit the consequences if they materialize. Awareness of the risks in achieving the goals involves assuming responsibility, however careful the decision-making may be, the risk and uncertainty situation exists and can occur at any time. The implementation of the risk management process ensures overall risk control and allows for an acceptable level of risk exposure to be maintained at a limited cost;

- *the control activity* is represented by the policies and procedures implemented in order to fulfill the management's decisions. Existence of inadequate control systems increases the risk of deviations from established policies and programs, with the consequence that objectives are not met. The complexity of an internal control system is directly proportional to the complexity and difficulty of substantiating and achieving the set objectives. The control policy applied within the organization requires assessments and diagnostics to establish the control objectives, the types of control to be applied, the resources needed to carry out the control, the training of the staff, the improvement of the methods and the control procedures, the evaluation mode of controls. Separation of the duties of the person is an essential condition for obtaining and holding a stable and effective internal control and can be accomplished through the execution of the operational activities by persons independent of those who carry out the financial activities, respectively the initiation activities and the verification activities.

- *information and communication*, are analyzed together, complement the risk assessment and control, and enable the staff of the organization at all levels to collect and process relevant, relevant and appropriate information for managing and controlling the operations of the organization. The types of information required, the content, the quality, the frequency, as well as the sources and their recipients are established and accountable so that the staff of the organization can perform its tasks. The information must be correct, credible, clear, complete, timely, useful and easy to understand.

- *monitoring*, ensuring the proper functioning of internal control through ongoing monitoring of control activities. This can be done by the staff of the organization or by internal auditors, and has the role of identifying errors in the functioning of internal control and taking corrective measures, impacting on the effective and effective achievement of the established objectives. When identifying errors or indications of fraud that may adversely affect the organization's interests, they are reported to the competent control bodies.

These elements of the internal control system form a synergy that provides an integrated system of internal control implementation. This integrated system of intensive control reacts dynamically to changes in the internal and external environment and determines the need to manage the dysfunctions found in order to ensure the continuity of the activity under conditions of compliance and efficiency.

A well-organized and implemented internal control system helps to identify any deviations from established policies and procedures, compliance and regularity, and the possibility of taking appropriate control measures approved at appropriate levels that limit exposures to risk. To this end, the organization's management must monitor the work carried out and ensure the appropriate measures at all times and circumstances.

Conclusions

Enterprise governance provides for the development of an own organizational culture that facilitates understanding of the processes and activities carried out, an appropriate working environment and control, as well as adequate financial, verification and evaluation systems, the implementation of which ensures efficient and effective management.

Corporate Governance Officers create organizational and leadership processes that are specific to and appropriate to the organization, set up internal and external relations tools and systems whose implementation implementation grants go towards achieving the goals. Good corporate governance also involves decentralizing the decision-making process, depending on the levels of management and responsibilities established at each level, as well as well trained staff to put them into practice.

The success of any organizational change depends on how the organization's personnel adapts and responds, because any organizational

change directly or indirectly affects the employee's attitude, attitude or value. A strong organizational culture ensures an adequate organizational environment to achieve the objectives in terms of efficiency and effectiveness and an environment conducive to organizational problems.

Internal control ensures consistency of objectives, identifies malfunctions and communicates to management in real time information on performance and perspectives. Regardless of the internal control system adopted and the characteristics of the organization, the application of adequate internal control implies the application of good practices. Internal control is an integral part of the management process through which the organization pursues the objectives set.

Internal control features:

- it is a process and not a function that decisively influences the managerial act;
- is a dynamic process that adapts its methods and techniques to changes in the organizational environment;
- is a means and not a goal, which confirms the management's expectations;
- it is relative, so how well organized and functioning the organization is exposed to risks and deviations or irregularities;
- it is universal, that is, it is done at all levels by all staff and uses forms, procedures, techniques, policies, manuals.

Implementation of an internal control system is a management attribute that is interested in knowing this phenomenon in order to use it effectively in the development of organizational strategies and policies and in eliminating waste, errors and fraud. This is associated with a collective phenomenon, being accepted in part or in full by the organization's staff.

The overall framework of internal control focuses on reasoning management in designing and implementing control as well as evaluating its effectiveness.

The continually changing control environment determines the approach of differentiated and integrative internal control from one organization to another in relation to the interests of each, by taking into account the organizational structure, leadership style, environmental factors and the risks associated with the objectives established.

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