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FOREWORD

In the context of Romania's preparation for accession to the European Union, an important part of the research coordinated by the European Institute of Romania is dedicated to the impact assessment studies. The aim of these studies is to support the decision-making process in Romania in the context of our country's integration in the European Union, to provide the public sector with an objective assessment of the impact of adopting and implementing Community rules, regulations and policies.

Since 2001 the European Institute of Romania has launched almost 40 impact studies, which tackled different policy areas, such as: the monetary and banking sector, the agricultural issues, state aids and preparation for the structural funds, migration phenomenon, security and defence policy, legislative and institutional issues, all related to the concrete steps of Romania's preparation to become full member of the EU. The studies go beyond the academic approach, providing thorough policy recommendations for the decision-makers.

Closing the negotiations for accession at the end of 2004 represents only a stage in an ongoing process of European integration. In the context of accession to the European Union, a substantial amount of work remains to be done. In most cases, the studies resulted from these research projects need to be complemented by further analysis and debates, if detailed policies are to be formulated. The European Institute of Romania intends to involve itself also in this exercise of further consolidating the policy support.

In this issue of the Romanian Journal of European Affairs, we have the pleasure to present to our readers some reflections from several authors of the pre-accession impact studies, on some specific areas, such as: the migration phenomenon, the insolvency issue, the state aids and the evaluation of the costs and benefits of Romania's accession to the European Union. We also benefit from the experience and contribution of Professor Jacques Pelkmans, who agreed to offer us an objective insight into the overall benefits of accession to the European Union.

The editor takes this opportunity to thank the authors for their contribution and expresses the hope that the articles in this issue will constitute an interesting and useful documentation for our readers (all the impact studies can be found on the website of the European Institute of Romania, at the address "http://www.ier.ro").

The Editor

ACCESSION IS, ABOVE ALL, ABOUT BENEFITS

Jacques Pelkmans*)

Abstract. *Accession is about prosperity and, in this context, all candidate countries should be confident in their opportunities in the process of becoming full members of the European Union. It is crucial that decision makers of such countries dispose of profound and analytically respectable 'impact studies' on horizontal and sectoral subjects. Such studies should aim to clarify analytically what the acquis implies for sectors or broader themes and attempt to build models or scenarios helping to understand the nature and magnitude of short term and longer term effects of adjusting to the acquis or indeed exploiting its opportunities to the full.*

1. The importance of EU impact studies

Romania has made great progress in getting ready for membership of the European Union. The European Commission has recognized this in its October 2004 Regular Report on Romania. The country's strategy with respect to European integration is, of course, to an important extent politically determined. Nevertheless, the main focus is bound to be on economic integration. As I have noted on a number of occasions[1)], the processes of pre-accession and early years of EU membership are tantamount to very deep, long term reform programmes which in ordinary circumstances no country with three or four successive governments could bring off consistently and with such speed and depth, even less so when coming out of 'transition' with its social shocks and transformations. For Romania this is no different than in the cases of other recent or present candidate countries. Nevertheless, the market processes and adjustments bringing about these very long run benefits of sustained "catch-up growth" over several decades are to some degree dependent on context, economic structures at the outset and local endowments that differ from country to country. Moreover, national government policies, regulations and consistency do matter a great deal, even if the EU 's systemic influence becomes more and more intrusive in all kinds of markets. Thus, the credibility and quality of national public administrations and the design of policies at the national level remain an important factor for the nature and speed of catch-up growth.

Therefore, it is crucial that the country at large, and the decision makers first of all, dispose of profound and analytically respectable 'impact studies' on horizontal and sectoral subjects. Such studies should aim to clarify analytically what the acquis implies for sectors or broader themes and attempt to build models or scenario's helping us to understand the nature and magnitudes of short term and longer term effects of adjusting to the acquis or indeed exploiting its opportunities to the full. The considerable room for national policy making that exists under the acquis, dependent from case to case of course, can be used best when a good insight exists in the expected impacts of alternative policy scenario's for the short and

*) *Revised version of an address at the Conference "The Impact of Romania's Accession to the European Union", launching the Pre-Accession Impact Studies II, Bucharest, 7 & 8 October 2004, organized by the European Institute of Romania. Jacques Pelkmans is Jan Tinbergen Chair and Director of the Economic Studies Department at the College of Europe in Bruges, and WRR Council member in The Hague.*

1) *Pelkmans, 2001; Pelkmans, 2002; Pelkmans & Casey, 2003.*

the long run, under the accepted constraint of the acquis in the relevant area. In such impact studies one may introduce, as well, lessons from other 'new' Member States, whether negative or positive. Impact studies and debates on them have the further advantage that information and knowledge spreads throughout the country, facilitating higher quality debates while helping to debunk simplistic and often instinctive popularism.

Like in many accession countries (and sometimes old Member States), the public debate is often superficial, if not twisted by very incomplete or biased information. It is also routine to observe, in a number of countries of Central Europe, a curious combination of a blind confidence in the heavenly 'goodies' which will fall like 'manna from heaven' once EU membership is accomplished, and a deeper grassroot sense of scepticism that the EU is there for the elite, or for big business but not for the ordinary people in the street, desperately seeking a better life, more certainty, a better working market economy and properly working institutions. Impact studies and the day-to-day painstaking progress of pre-accession will make clear that, of course, the EU does not bring heavenly goodies (but if you are very poor and observe the prosperity in the western part of the Union, this is perhaps what you might be led to believe) and, of course, the EU does not deserve the cynicism so rampant in Central Europe, more often than not borne out of frustration with their own politicians and hence projected onto the 'imported 'democracy and acquis of the EU which leaders advocate in speeches.

Impact studies are part and parcel of the complex processes that pre-accession brings about. The EU is no joke. One has to be well-prepared and not merely transpose the acquis but truly "own" it in domestic rules, enforcement, market conduct and accompanying domestic policies or additional liberalisation. Only then will the acquis engender its longer run effect of accelerating and propelling catch-up growth, via market dynamics, better policies and institutions, and, more generally, the imposition of the rule of law for the economy. This overall, intricate process based on credible implementation and well-working markets and rules is the main gateway for the ordinary people in the streets of Romania to reap the long run benefits of European economic integration. The scepticism about one's own politicians may or may not be justified, and the credibility of their policies does matter (as noted above), but it is equally important for Romanians to realize that the EU mechanisms to discipline and stimulate Romanian policies and good rule making and, to some extent even institutions and public sector reform, are very deep, and multitudinous. The Union does not accept fake responses and too easy rebuttals. Once a country is inside the Union, a government can even be disciplined by business or individuals in local court cases, and in some cases with damage compensation, too. Before that happens, a series of informal and formal monitoring and disciplinary mechanisms can be and are used, dependent on sectors or issues. The upshot of all this is perhaps insufficiently explained in Romania: your compliance, voluntary or eventually enforced, is, in general and ignoring a few exceptions, highly beneficial for the Romanian economy as a whole. Indeed, it is very largely the Romanians themselves who harvest the long-run benefits of their EU membership.

2. Accession is largely about domestic benefits

European integration is far more 'domestic' than is often realized. It is worthwhile to elaborate on this point with the help of the Impact Studies published today by the European Institute of Romania.

For perhaps as many as ten out of the twelve Impact Studies[2)] , a striking feature of the studies is the emphasis on and elaborate treatment of domestic aspects. And rightly so. European integration is not solely, indeed not even primarily anymore, about the peculiarities of foreign trade. Romania may be out of transition, what pre-accession and EU membership prompt the country to do is to assume the full consequences of organizing itself as an advanced market economy, with social and democratic institutions. The Union has a very large number of processes and channels of influence that put these matters forward, in ways and with a vigour and consistency, Romania could hardly be expected to bring off, with due respect to the government and its citizens. The Union does that via public and private law enforcement, via market incentives (especially, liberalisation), pro-competitive prohibitions to Member States, pro-competitive policies at EU and national level, via subsidies, via free external trade in industry and (too high) protection in agriculture (but, at least, with powerful productivity incentives), via direct laws, via coordination, soft and hard. However, this is not the only set of mechanisms. Another series of mechanisms could presumably be characterized as an 'undercurrent' of European integration, yet a highly influential one. The EU also stands for the ways their countries live, their civil societies work (and interact with other ones in the 'Brussels circuit'), for the press and its effectiveness and factual independence, the NGOs, the routine comparisons between Member States – literally, every day on almost every imaginable topic - , their policies, successes and failures, as well as political and ethical standards. This invisible yet real aspect of European integration need not be regarded as a threat to one's identity. Quite the contrary, the EU is not Brussels and the 'Brussels' circuit must always include all its tentacles in national capitals, and perhaps beyond! The Union consists of its Member States and its citizens, its businesses, the national (and not only the EU) institutions, formal and informal. The Member States and the many cultures they harbour are diverse in size, style, history, language, traditions, mentality, and nevertheless their unspoken, hard-to-define degree of commonness would appear to gradually augment over time. Diversity in the Union is fascinating as well as enjoyable, and it can constitute a source of strength, unique identity and, sometimes, competitiveness based on specific qualities. However, not all and everything a country has been doing or avoiding is automatically to be protected or maintained, and not all of it is benign or productive. European integration tends to intensify learning processes amongst the peoples, opinion leaders and policy-makers of its constituent members. The do's and don't's of countries get gradually exposed, via business contacts, exchanges, cooperation and in numerous other modes as well as in the Council and the European Parliament when it comes to harmonisation or liberalisation.

Ordinary Romanians, pre-occupied with day-to-day 'trivial' issues which matter most to them, may not easily be convinced of the innumerable

[2)] *With the exceptions of the foreign policy study, and the compatibility with the EU acquis study.*

influences of European integration, especially not if the promises are further into the future and blended with many domestic processes, some of which are painful in the short run. The tale of deep and wide benefits will not be easy to communicate for leaders, academics and journalists. Yet, the Impact Studies entail a common message about European integration that is too rarely conveyed: the 'goodies' of EU membership are mostly to be found in countless "domestic" areas that are less recognizably "EU". Romanian pensions, bankruptcy practices, waste landfill practices, open-ended fiscal arrears and explicit state aids for non-viable companies, the widespread presence of zero-productivity agriculture, financial control systems, (properly functioning) regional institutions capable of developing sensible development plans and handling the large money flows correctly, a Central bank which cannot be at the mercy of vote-hungry politicians with a very short time horizon and taking refuge in 'inflation targeting', can all be seen as domestic issues Romania has to tackle anyway ! But these are exactly the very subjects of the Impact Studies. Indeed, the fact that the EU does a number of things in common, via soft and hard procedures, does not make your accession tasks less domestic, not less urgent, not less involving. What the EU does is (a) pre-empt disparate solutions if these would cause barriers in the internal market, or (b) seek the 'best-practice' solutions in view of overall growth, or high social standards in Europe, or, for the sake of the euro as an invaluable asset. This does not change the fact that the overwhelming part of European integration remains domestic. The Romanians have to do it and, for the most part, the Romanians will reap the benefits from it. That is why the EU begins and ends at home, and why Brussels serves merely as a mid-way station with a relatively short stop. And this is how it should be. Of course, one cannot turn the proposition around: there are also many domestic issues that never reach Brussels because of subsidiarity, and that, too, is how it should be. But for those connected to Brussels, the true meaning lies largely at home.

3. The costs and benefits and their proper place

Impact studies should aim to incorporate benefit/cost analysis, not only for a fuller understanding for all involved but also for the appropriate sequencing of the measures to be taken over time. But it has to be realized that benefit/cost analysis is much better fitted for specific, well-identified measures or (say) single directives than for large subject areas, with a range of requirements under the acquis and a long time horizon. It is even less appropriate to apply benefit/cost analysis, in the strict sense, to the overall benefits and costs of EU membership at large. Impact studies are often based on terms-of-reference that ask exactly that. The advantage of imposing this on the researchers is that, even if the analysis is incomplete or shows the manifold problems of undertaking such an exercise, it may nevertheless help policy makers to grasp much better the implications and hidden questions of the implicit reforms or implied economic adjustments. In rigorous research, however, the problems will inevitably come to the fore and start dominating the exercise. One likely result is that the costs tend to attract more attention and analytical coverage than the sometimes elusive or (more) long run benefits. Indeed, some benefits are unpredictable (although one might speculate from experiences of other Member States) or become

apparent only from the later ingenuity of market players over time.

I do not suggest that the costs should not be identified and studied. Of course, they ought to. But costs must be given their proper place! And that is not what normally happens. Also, in the Impact Studies published today, one discerns a tendency to emphasize the costs while underrating or ignoring some of the manifold benefits. This is not just regrettable. Its effect may be magnified in the subsequent policy process that displays an unfortunate propensity to focus more on the costs than on the benefits anyway. Let me explain this briefly.

There is too much talk about **costs of** (pre)-accession, either without the benefits, or without enough emphasis on benefits or without the priority of benefits. For politicians or the Romanian negotiators, extra difficulties are created once costs rather than benefits are articulated in impact studies or other analytical work. In the everyday political economy, those concerned with costs already have the upperhand for at least five reasons (often, not in the overall public interest of Romania!):

- → the loudest lobbies always scream about the costs *to them;*
- → costs are usually identifiable more easily than benefits;
- → costs are usually immediate (hence, politically sensitive) and benefits spread over the future;
- → costs are articulated not only by lobbies but by general fears; such perceived costs have to be confronted with serious impact studies about identifiable costs, juxtaposed by careful and detailed expositions of the benefits;
- → beneficiaries never demonstrate in the streets and few spokesmen appear on the TV news on behalf of the benefits; decision-makers rarely meet the lobbyists for the 'benefits' unless the latter are very specific.

We know from theories of collective choice that beneficiaries often tend to be very large, diffuse parts of society who cannot organise effectively for the benefits.

That is why – in the overall public interest of Romania - politicians and negotiators have to be helped by benefit studies, with due but limited attention for the (often temporary) costs.

4. The impressive economic benefits of accession

The benefits of EU integration are many, and they are impressive. Unfortunately, more often than not, the benefits are claimed in highly general terms, with the specific costs arising up-front. Let me remind you of how rich and long the menu of economic benefits of accession is, without having any illusion of being anywhere near complete.

i. Benefits are both economic and non-economic.
ii. The economic benefits, in turn, are numerous, and it is by no means sufficient to present the EU as yielding only marginal static welfare benefits in a simple, partial equilibrium in a microeconomic graph. I gladly refer to Impact Study n° 12.
iii. Indeed, the analytical hurdles for appropriate benefit analysis of EU pre-accession and membership are truly enormous. If politicians want a single figure for the 8 o'clock news, please be

responsible and disappoint them; a single figure can never represent the nature, diversity, different time frames and quality aspects of European integration, and even (narrow) model results cannot be understood by means of single figures.

iv. The economic benefits of EU accession are numerous and many of them can be cumulative. Static benefits (trade creation over trade diversion, economies of scale; X-efficiency gains, so important for Romania); dynamic, pro-competitive effects (variety & competition; combining optimal firm size, competition in the Internal Market and its deepening), other dynamic effects (R&D competition, investment; mergers and acquisitions and their synergy effects and the menace effect to management); induced policy effects (no or less state aids; less shelter in services and public utilities; free foreign direct investment and capital flows; common intellectual property rights over more than 25 countries, etc..) and free external industrial trade (hence, exposure to world quality and price effects, to innovation elsewhere, to the challenge of meeting world standards for your own exports, etc..).

v. One should also focus on EU regulation which in and by itself induces beneficial impacts, benefits which precede the emphasis on costs. Regulation must imply ranking the benefits first, why otherwise do it??

So, EU environmental rules are often costly, but for a good reason. NOT having them has hidden, undisclosed costs – either as immediate externalities or costs to future generations - and that is exactly why an open, democratic society does not want to forego environmental laws! Such a responsible, free society should set a standard, based on cost/benefit impact assessment, and then pass the law.

In so doing, the benefits ought to be **explicit,** the regulation is "owned" by society, and justified by democratic legitimacy, and hence the benefits will be dear to us.

vi. Many other forms of harmonisation or joint EU regulation have to be judged on the basis of their benefits first. If benefits are trivial or absent, there is regulatory failure and we should do away with the regulation. EU regulation is often justified by substantial benefits in overcoming costly market failure, although the means of pursuing the objectives are not always least-cost (e.g. the so-called 'old' approach). Nowadays, there is much more EU attention for cost minimisation, without touching the benefits! So, health & safety rules (20 % of the acquis, if not more), consumer protection rules, rules overcoming asymmetry of information in services markets, are only there because they have two types of benefits

→ the economic and non-economic benefits of overcoming market failures and other undesirable consequences of free markets

→ the joint benefit of doing it together so that no barriers emerge in the Internal Market, or, so that existing barriers, caused by such laws, disappear.

As the work of the old 1988 Cecchini report[3], the more recent 1996/1997 Monti reports[4], and many specialised papers show, it is not easy to demonstrate and quantify such benefits, with

[3] *See, especially, European Economy, 1988, n° 35, The Economics of EC-1992, and Cecchini, 1988.*
[4] *See, especially, European Economy, 1996, December, on The Single Market Review, and Monti, 1996.*

reasonable degrees of certainty. Still, these benefits ought to be considered, and presented as precisely as possible. Furthermore, the recent emphasis on regulatory impact assessment is a forceful recognition that EU regulation is about (net) benefits to the European Society[5].

vii. Yet, other benefits exist, most prominently in the **macro-economic** field. If you wish to appreciate such benefits, just remember the monetary 'mess' in the 1970's/ first half of the 1980s in the EU, and the high costs of exchange rate crises, much too high interest rates, protectionist and highly restrictive measures by authorities to protect their currencies (with barriers in the Internal Market), etc…

And consider what the EU has achieved today. All EU-15 countries have price stability, and the eurozone does not even remember what an exchange rate crisis is! Nevertheless, 30 years ago the recent fall of the US dollar would have prompted one or more exchange rate crises in the Union! The only thing that now makes headlines is the Stability and Growth Pact, but it is easy to show that, in fact, the Pact's objective is not under threat at all. The Pact's ultimate objective is to avoid undue political pressures on the ECB to loosen monetary policy. Such pressures might arise from high stocks of debt and the related heavy burden on annual budgets. Also, debt, once very high, may prompt negative spill-overs among euro countries. Both issues are simply not at stake in the debate on the Pact. Thus, the quarrelling is not essential to the mission, perhaps it is part and parcel of the **'politics of fiscal discipline',** whether domestic or European. Note that the financial markets do not react to the quarrelling at all!

viii. Would that end the long list of identified benefits? By no means! There are also, what I want to call, the **neglected benefits.**

I shall provide three examples. First, pre-accession creates a preoccupation with the regulatory and institutional acquis, because the Commission's Regular Report is about the scores in these areas. However, this tends to cause a neglect of benefits from the invisible acquis, namely, **free movement and establishment.** This creates the opportunities, but equally the competitive exposure! Free movement & establishment is the driver of European economic integration, NOT the regulatory acquis. A related example consists in the almost complete absence in Central Europe of a discussion on the benefits of 'mutual recognition'! (see Pelkmans, 2002b)

A third example consists in the best practices and 'peer review' in the Lisbon process. Weak, yes, but working gradually via exposure of the rankings in domestic politics.

Mutual Recognition does not have a place in the famous 1995 White Paper on the internal market acquis for pre-accession (except a few lines in Ch. 11). This is a serious omission by the Commission. Consider briefly the ingenuity of mutual recognition:

- it does keep regulatory objectives;
- combined with free movement;
- but **without** EU directives.

Mutual Recognition is proving difficult for the new Member States and, for the old ones, it proves hard in **services.**

There are still enormous economic benefits to be reaped here!

ix. Finally, there are benefits-to-come. Even today, some dossiers are stuck, but sooner or later the EU will overcome the resistance of some in the Council. One painful example

[5] *See EPC, 2001; European Commission, 2002; Pelkmans, Labory & Majone, 2000 ; Pelkmans, 2003; Radaelli, 2003.*

consists in the EU patent, its absence being very costly for Europe, both in terms of transaction costs and in terms of a discouragement of innovation. Another cumbersome issue concerns the removal of obstacles to free intra EU labour migration! As Romanians you will think of the temporary bans or quotas for new Member States' workers but that is *not* what I refer to. I rather refer to obstacles such as cross-border portability of pensions, double tax problems, eligibility of health services, housing issues, diploma recognition, etc… A greater exposure of national labour markets to intra-EU competition of other EU-workers (but based on minimum regulatory standards) would be highly beneficial for the economy as a whole.

5. A final note on EU transfers as a 'benefit'

In Romania the Regional and Structural Funds are always placed on top of the benefit list! In Study n° 12, no less than 2,5 % growth every year is attributed to it. This would be higher than any cohesion country has experienced thus far. I contend, however, that you should not equate the Funds with European integration for you!

I have tried to clarify why! It is the deep quality improvement of the Romanian market economy, with regulatory benefits, with macro stability, and political and legal trust, that engenders the benefits of EU integration. That is what it is all about!

On top of that, of course, there are the Funds, and they can help. I presume Romania is conscious of the tough requirements before such transfers work institutionally. But what is usually forgotten or ignored is that transfers also require 'deep' economic integration before their growth potential can be tapped. So the Romanian 'domestic' EU agenda is critical for the Funds to prompt the growth you hope for. Without good EU homework, the Funds are a complete waste.

Ireland shows this in the extreme. But even Greece does! Greek growth never took off despite huge funding from Brussels, until it changed domestically (around the mid-1990s) and Brussels became insistent on compliance. Look at Greece today, with growth rates for eight years consistently in 3%-5% range.

The EU is there for you to harvest a lot of benefits for decades to come. Thus, you **gain,** first of all at home, and this does imply some temporary **pain.** View it in this order, it is that plain.

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THE MIGRATION PHENOMENON FROM THE PERSPECTIVE OF ROMANIA'S ACCESSION TO THE EUROPEAN UNION

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Abstract. *This work represents a brief version of the research devoted to the migration phenomenon in the context of Romania's accession to the European Union, as Study no. 5, included in the PAIS II project.*

The complexity of such issue has necessarily induced an inter-disciplinary approach that mainly includes an institutional-legislative dimension, a sociological dimension and an economic-statistical dimension, the last one representing the paper's distinctive note, since it particularly contributes to the identification of the possible and necessary objectives of migration policies, based on the present and future realities.

1.Introduction

Within population flows, the labour force movement increased both in number and intensity.

Globalising and internationalising markets generates new migration attitudes, an increased fluidity of the regional movements, in which temporary migration phenomena have got a special importance. Tomorrow's Europe cannot be created unless an agreement regarding international migration is established, unless a common migration policy is elaborated. The awareness regarding real migration flows, their characteristics and dynamics allows defining and regulating the stability in the economical and social field. Migration can no longer be considered an instantaneous, unpredictable phenomenon, as population movements have got multiple, historic, behaviour, economical and social aspects.

Emigration is no longer important by the freedom to live and work in a different area; it represents just a variant/option for permanently/temporarily changing the residence. Furthermore, working abroad can or cannot imply the travelling to the working place. E-work can be appreciated as a form of migration on the purpose of working.

In future, migration will become a more and more appreciated source of compensating for the labour force deficit in the developed countries. The EU members, already affected by demographical ageing and who are focused on attracting young well trained and competitive labour force, will be able to diminish the effects of the demographical ageing that tend to become dramatic, and to defuse a possible social bomb (Denuve, 2002, Leger, 2002), (Fricken, Primon, Marchal, 2003).

Migration is increasingly associated to economical advantages/disadvantages. Each of

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those who are affected by migration flows will record benefits as well as losses, their dimensions and intensities depending on the quality of the incoming/outgoing flows.

Nonexclusively, the aspects that have already been mentioned change the perspective on migration. It becomes an instrument of economic and social policy out of a random and objectionable phenomenon. This implies a different attitude towards the east-west and south-north migration flows: on the one hand, an openness policy for the east-west migration in order to make up the deficit in low-skilled workforce, on the other hand increasing temporary/permanent brain drain in order to facilitate progress by means of high technology, that is high-skilled workforce.

As far as the first category is concerned, according to the dimensions of the deficit certain quantitative barriers will exist, as contingent flows by qualification and profession.

As for the second category, the competition between the recipient states will increase, for attracting staff in order to cover the high competence deficit, which represents a condition for the furtherance of the development of EU member-countries, and not only for them. But these flows will be limited on long and medium term, on the one hand because of the increased demographical ageing processes in east- European countries and on the other hand because of the labour force deficit increase in the countries of origin. In spite of all these economic gaps, the income differences between nations, between the different occupational categories will maintain their character of powerful motivation of the migration processes.

In the outlined context, this paper concentrates on the key issues of migration phenomenon in the perspective of Romania's accession to the European Union, namely legislative–institutional framework, the social-cultural dimension and behavioural challenges, the existing and predictable quantitative and qualitative features of immigration and emigration as well as the policies required for migration management.

2. Legislative – institutional framework regarding migration

Legislation regarding the migration phenomena at the level of the EU. The legislation influencing the migration phenomena in the EU is tackled in Chapter 2 Freedom of Movement of Persons and Chapter 24 Cooperation in the field of Justice and Internal Affairs. Within the two chapters, the types of legislation that influences the migratory phenomena in Europe are related to laws in three major fields:

a. legislation regarding migration (direct influence on migration)

b. legislation regarding the labour market (direct and indirect influence on migration)

c. legislation regarding mutual recognition of degrees and qualifications (indirect influence on migration).

a. Legislation regarding migration in EU

For a long period of time, the right to enter and live on the territory of an EU Member State was governed by national laws drawn up by each Member State. One could enter and live on the territory of a state based on an entry visa and a residence visa, which were granted by each state. Only in 1999, EU Member States decided the formulation of a common policy regarding migration and asylum to become effective by 2004

the latest. The common policy regarding migration includes aspects such as: free movement of persons, external border control and the granting of visas, asylum, immigration and the protection of third party nationalities' rights and legal cooperation on civil matters. The common policy in the field of migration and asylum has in view the adoption of a joint position of the EU member states, towards the applications for asylum coming from persons from third party countries, as well as the control of illegal human trafficking.

b. Legislation regarding the labour market in the EU

The legislation and the regulations in the field of the labour force interest us in the contest of migration in terms of two aspects: first being that of recruiting labour force from outside EU and second being the manner in which the legislation regarding the labour force in the EU may influence east-west migratory flows once the applicant countries in Central and East Europe become EU members.

The recruitment of labour from outside EU countries' border and outside the EU is the manner through which the European deficit in labour force may be covered where there is such deficit. In this sense there are regulations that have considered the recruitment of labour force from outside the EU, which encourages replacement migration[1]. Replacement migration in the EU focuses on two major categories of personnel: on the one hand – highly qualified personnel which are deficient in the EU countries and on the other hand the unskilled workers which are required for the replacement of the local labour force, that do not want to perform any such works (in agriculture for example). The replacement migration through recruitment from outside the EU is not regulated at the level of the European Union, each member applying its own policy.

The freedom of movement and equal treatment by banning any restrictions regarding labour force for Member States citizens that may apply to Central and Eastern Europe states after joining to the EU, generate fear from the existing Member States of massive migration flows of labour force traveling from east to the west, seeking better salaries and better working conditions. This is why, separate agreements are negotiated regarding the movement of the workforce after joining to the EU with each of the applicant countries, requesting a certain period of transition for the liberalization of the work force movement. The transition period will generally range from 2 to 5 years and by no means can it exceed 7 years.

c. Legislation regarding mutual recognition of degrees and qualifications

Ensuring the free movement of persons and workers requires the recognition of the degrees and professional qualifications. The most important regulations in this sense, at the level of the EU, are a group of directives creating the premises a General System for the Recognition of Degrees and Qualifications and another group of directives regulating the recognition of qualifications of various professions[2].

It is being considered a new directive (a fifth directive) intended to remain the single directive, which would simplify the acquis established in the

[1] *Replacement migration refer to migration based on work force recruitment from outside the European Union for qualifications that are deficient within the Union and for jobs and qualifications that are not sought by the local people.*
[2] *Among those the main are: Directive 89/48/CEE, Directive 92/51/CEE, Directive 1999/42/CE and Directive 2001/19/CE.*

previous directives. It is being considered the application of the principle of automatic recognition of degrees and degrees' recognition based on coordination of minimum training conditions. In order to facilitate degree recognition processes two information networks have been set up at the level of the EU, namely: ENIC (European Network of Information Center) and NARIC (National Academic Recognition Information Centers).

Legislation regarding migration in Romania. Harmonization with the European acquis communautaire. The first initiatives for the creation of a new legislative framework in the field of migration took place in Romania at the beginning of the 1990's. Subsequently, with Romania's application for joining to the European Union, this activity has intensified so that, in the past three years, there have been adopted many laws and normative acts intended to ensure the adoption of the acquis communautaire. For most directives within the two negotiation chapters that include legislation influencing migration (chapter 2 and chapter 24), Romania has started adopting the corresponding legislation.

Remarkable progress has been made by the Romanian legislation regarding the regime of foreign persons in Romania, the regime of the refugees and their social protection and the prevention and combating of human trafficking. On the labour force market there has been regulated the granting of work permits. Thus, according to the principle of free movement of persons, EU citizens and members of the their families may work on Romania's territory without requiring to obtain the work permit, unlike other categories of foreign citizens.

There are some aspects, where the Romanian progress was smaller: it is believed that there still exists a discrimination between EU and Romanian citizens owing to the fact that Romanians are given priority when being employed. Also as far as mutual recognition of professional qualification, Romania's preparations are thought to be at an early stage.

Box no. 1 presents the main legislation regarding migration from Romania.

Progress was also reported with chapter 24. This way, immediately after the issuance of the 2003 Country Report, the National Office for Refugees has issued and submitted a draft amendment for the Government Ordinance no. 102/2000, eliminating all inconsistencies between domestic legislation and the documents included in the acquis in force to date and the continuation of the monitoring and analysis of the evolution of the acquis for the preparation of draft laws and their initiation on time. In addition to such measures, G.O. no.102/2001 was also amended through Government Ordinance 43/2004, updating the definitions of the forms of protection, eliminating differences in the treatment of the refugees and those receiving temporary protection, confers the National Office for Refugees the capacity to take part in trials regarding asylum applications, and well as other aspects.

As far as the achievement of the objectives related to the European Union accession is concerned, all requirements for closing negotiations on Chapter 24 have been met, except for aspects related to the implementation of Dublin mechanisms and the EURODAC system in Romania[3)].

[3)] The Dublin mechanisms refers to a set of norms based on which it is appointed the member state responsible for processing asylum application in the situation where a person has transited more than one member states and has submitted an asylum application. Generally the state where that foreign persons has entered the European space is responsible. For such purposes, there have been established an European database with fingerprints of all persons that have illegally entered, are illegally staying or apply for asylum in the member states – EURODAC. This database prevents the submission of several asylum applications successively or concomitantly in many member states. In this situation, the respective person, being also identified based on the Dublin mechanism, is returned to the member state that have implemented for the first time the fingerprint of the respective foreign person.

BOX NO. 1

The evolution of the legislation regarding migration in Romania (modifications, amendments, updates)

- Law regarding the aliens regime in Romania L. no. 123/2001 replaced by Emergency Government Ordinance 194/2002 approved with amendments by L. 357/2003
- Law regarding work permits L. 203/1999, amended by Government Decision 343/2000 regarding the methodology for the work permit issuance/cancellation process
- Law regarding the status and regime of refugees L. 15/1996 replaced by Government Ordinance 102/2000 regarding the status and regime of refugees in Romania, modified and amended by L. 323/2001, Ordinance 13/2002, Emergency Ordinance 76/2003 and Government Ordinance 43/2004.

Following the remarks of the European Commission, Government Ordinance 43/2004 aligns Romanian asylum legislation to the European acquis by: amending the definition of the refugee from Government Ordinance 102/2000 with the Geneva Convention definition of 1951, redefining terms for a subsidiary protection, eliminating differences in the treatment of refugees according to 1951 Geneva Convention and persons that have received a form of protection, introducing the possibility for the National Office for Refugees to defend asylum cases in court, introducing the principle of non-return …as minimum guarantee in the procedure determining the refugee status.

Other normative acts amending the regime of refugees are: Decision 1191/2001 regarding the approval of the special program for the socio-professional integration of foreign persons that have acquired the refugee status in Romania, Ordinance 213/2002 regarding the establishment of a common procedure for the settlement of an application granting refugee status to family members of the person obtaining the refugee status in Romania, Law 75/2001 for the ratification of the European Agreement regarding the lifting of visas for refugees (STE-31), concluded at Strasbourg April 20 1959, signed by Romania on November 5 1999, Law 88/2000 for the ratification of the European Agreement regarding the transfer of responsibilities regarding refugees, adopted at Strasbourg on October 16, 1980.

As a result, the Romanian legislation is at present fully harmonized with 1951 Geneva Convention regarding the refugee status and the 1967 New York Protocol, eliminating the possibility to withdraw any form of protection for reasons of national security and public order.

Institutions involved in the management of migration in Romania. Various institutions can be involved in the monitoring and performance of the migratory phenomena, playing different roles. Taking them into account within the framework of international migration reveals that they carry out their activity at different levels, as show in table no. 1.

For instance, at supra-national level, among state institutions involved in performing and monitoring migration there is the European Union, and among voluntary ones there is the International Organization for Migration.

Table nr. 1. Institutional actors involved in international migration

O = origin; D= destination

Level/Type of institution	State authorities	Private companies	Voluntary organizations	Informal transport and mediation networks
Supra-national	European Union	Corporations (headhunting, legal, transport)	International organizations (IOM, ILO,UNCHR*)	Transnational communities
National	Governments (O/D)	Mediation companies (O/D)	Voluntary organizations (D)	Migrants' associations (D)
Local	Local authorities, governmental agencies	Mediation companies (O)	Voluntary organizations (D)	Migrants' associations (D)

Source: Lăzăroiu S. (2002) „Migraţia circulatorie a forţei de muncă din România. Consecinţe asupra integrării europene" – "Circulatory Migration of the Labour Force in Romania. Consequences on the European Integration", www.osf.ro

** IOM = The International Organization for Migration; ILO = International Labour Organization; UNCHR = United Nation High Commissioner for Human Rights*

At national level, in Romania, the main governmental institutions involved in the migratory processes are the Ministry of Administration and Interior, the Ministry of Labour, Social Solidarity and Family, the Ministry of Foreign Affairs and the Ministry of Education and Research. The main migratory policies in Romania are implemented through many agencies within or independent of the above mentioned ministries, agencies whose activity is difficult to coordinate. For instance, the emigration and immigration phenomena are dealt with by different institutions, an in case that the same institution is handling both aspects of the migratory phenomenon, they are undertaken by different, specialized departments.

There are also a number of non-governmental institutions involved in running or gathering information on migration, such as: private companies mediating labour contracts abroad, the local office of the International Organization for Migration in Romania, the representative office of the United Nation High Commissioner for Refugees in Romania, the Foundation of the Romanian National Council for Refugees, the Romanian Forum for Refugees and Migrants, and others.

It has been noted that a large part of such institutions carry out their activity helping refugees and immigrants in Romania. An explanation would be that measures taken by the Romanian state have been considered insufficient in his field due to financial difficulties on one hand (Romania is itself going through a developing period) and because there is still a large difference between the legal provisions and what is in fact achieved by the Romanian state (IOM, Migration Trends, 2003). On the other hand, the low number of immigrants targeting Romania (around 200 persons per year) makes it difficult to test the legislation in the field at a large scale.

3. The social-cultural dimension of the current migration phenomenon in Romania

The international experience in migration administration and monitoring demonstrates **the close relationship between the legislative-institutional dimension and the social-cultural one.** The elaboration and adoption of laws, the creation of institutions, the development of corresponding strategies and policies represent major components of this process, but their success cannot be separated from the manner in which the involved actors–governmental institutions, non-governmental organizations, mass-media, communities, individuals – respond to the so-called "behavioural challenges", related to participation, communication, mentalities and attitudes.

The migrant's profile. Considering the migration a social phenomenon that directly affects a significant part of the population and has complex implications on the entire society, it is vital to know and to emphasize the migrant's profile – the profile of the emigrant from Romania and of the immigrant to our country. That will enable an accurate development of the measures related to the administration of migration phenomenon and of the support provided to the migrants.

Within the dominant national tendency – namely labour migration, the most representative category is currently represented (according to a CURS survey from June 2003) by young men (18-35 years old), with an average education level, as skilled workers from the big cities of Romania and Bucharest, its capital.

The villages' migration potential should not be ignored either; relating to this issue Dumitru Sandu has suggested the metaphor of the "hydrographical network" ("community represents the spring of migration) and the transition from the

factorial approaches to the structural and typological ones, that makes possible to identify types of villages based on the dominant cultural profile and the experience regarding the international circulatory migration (Sandu, 2004).

Various studies have also stated a series of hypotheses regarding the selective migration flows, according to which the minority ethnical or religious groups show a higher mobility level than the one of the majority Orthodox Romanian population (Sandu, 2000, Diminescu, Lăzăroiu, 2002).

Even if at present Romania distinguishes on the background of international migration as an emigration country, with a labour market less attractive to the immigrants, being more interesting in terms of transit possibilities to the developed countries (briefly, «More 'Out' than 'In' at the Crossroads Between Europe and Balkans», according to the suggestive title of an IOM country report from the autumn of 2003), is expected that the attractiveness of Romania will increase due to the EU integration perspective and thus Romania will become even an immigration country.

Up to now, the immigrant's dominant profile – a refugee, an asylum seeker, an immigrant for labour, study or business purposes – is based on men's preponderance (as it happens with the asylum seekers who have proven to be especially young men, aged between 21-30 years). Yet, when the total number of immigrants is taken into account, the gender-based structure is quite well balanced.

Aspects regarding the integration within the host country society. The migrant's dominant profile – an emigrant/immigrant from/in Romania – involves a series of specific aspects regarding the integration within the host country society.

In general terms, for an immigrant the integration consists in the knowledge of the language spoken in the host country (reading, writing skills), the access to the educational system and to the labour market within the respective country, the opportunity of increasing professional mobility by attending to a higher level of education and professional qualification, equity in front of the law, cultural and religious freedom, the respect towards the laws and the traditions of the country he/she lives in. At the same time, for the host society the integration of the migrants supposes tolerance and openness, the consent of welcoming the immigrants, the understanding of the advantages and challenges of a multicultural society, providing an unrestricted access to information related to the advantages of integration, tolerance and intercultural dialog, respecting and understanding the status, tradition and culture of the immigrants, as well as the respect towards the immigrants' rights (IOM, 2003a).

As far as the particular case of Romania is concerned, given the lack of previous expertise in this field, the still low number of immigrants and refugees and the limited financial resources, it has been noticed that the services and the assistance for integration are not fully satisfactory, despite the diligence within the last years for the alignment to the international standards.

A special issue envisages the vulnerable groups, especially the non-accompanied minors, for whom a reconsideration of the interviewing procedures and an adequate training of the civil servants are necessary, since malpractice could have major traumatic effects.

Besides the integration of the immigrants, a multiple faced challenge for the Romanian society is represented by the reintegration of the Romanians who return to their home country after an external migration experience. It focuses on certain specific categories, such as the Romanian students and graduates from foreign universities, the Rroma people, the victims of trafficking in

human beings, the unaccompanied Romanian minors, the repatriated people, etc.

On the whole, the issues related to the reintegration of the Romanians who come back to their home country vary according to the educational level, their qualification, family status, duration of their stay abroad etc., complex social and psychological aid oriented programmes being necessary, so that re-emigration be not the sole solution to such people (Lăzăroiu, 2002).

Finally, besides the integration/ reintegration on its territory, Romania must also care for certain aspects related to the integration of Romanian emigrants within the host countries. In this context the role of Romanian authorities should consist in the contribution to promoting and increasing of an accurate, objective image on the entire Romanian Diaspora, that may represent a valuable share to the enrichment of the scientific and cultural patrimony of the host countries, as well as in preserving the connection between the Diaspora and the mother- country. A special aspect refers to the support that the Romanian state must grant and that it actually grants to the large Romanian groups living outside the country's borders due to historical reasons (in the Republic of Moldova, as well as in Ukraine, Hungary, Bulgaria, Yugoslavia) who need, besides the support for the preservation of their cultural identity, support at international level, regarding the recognition of their rights within the respective countries.

The public opinion and mass-media. The Romanian public opinion perceives the migration phenomenon mainly as labour migration. A large number of people believe that migrants earn money from a paid job and only a small part of the public opinion think that they obtain money from theft and begging. Yet, the results of the opinion polls mentioned in this study reveal a wrong perception – in some points - of the negative aspects that accompany the Romanians' external migration, which proves that the public opinion finds it difficult to distinguish between certain objective hardships related to the travel within the Schengen space and the violation of the law, between the groups performing illegal activities and the affiliation to a social, ethnic or religious minority, which leads to the creation of stereotypes, to attitudes that feed delinquency, intolerance and xenophobia. This perception could be set right by means of joint, coherent efforts of mass media, public administration and civil society.

Up to present, one cannot say that mass-media has brought its necessary contribution to the accurate rendering of external migration phenomenon, with all its aspects and to the creation of an adequate social behaviour with respect to both migration itself and the integration/ reintegration process. It has been remarked that migration is not systematically rendered and assessed, in its entire complexity, the emphasis being put on the narration of certain negative, sensational facts and less on the orientation of the migrants within an universe that makes them face numerous risk and uncertainty components, on the prevention and combating delinquency, clandestine travelling and corruption related to visa granting. To a considerable extent, the partial and sometimes wrong coverage of the migration phenomenon by mass media is the result of the shortage of specialized journalists in this field; therefore is highly recommended the organization of training courses with respect to the investigation and assessment of migration.

Our study appreciates and supports the proposals converged in various documents regarding migration (especially the IOM's) with

reference to the introduction in the academic curricula of subjects specialized on the study of the migration phenomena (labour economics, law, medicine, health policy, sociology, education sciences, etc.), as well as the creation of a national migration research center (to be set up by the Romanian Government in partnership with IOM, UNCHR and other international organizations), of some faculties or departments of inter-disciplinary studies on migration, so as to build up the necessary expertise in public policies, social assistance, human resources and migration management.

4. Brief global quantitative characterization

At worldwide level, one out of 35 persons is a migrating person (IOM, 2003a), while the annual flows comprise 5-10 million persons.

In Romania, the ratios are a lot lower, yet difficult to estimate on their whole (there are partial statistical data). If we take into account only the effective amount of coming ins /immigrants- going outs/emigrants (the final migration), during 1991-2003, it has reached the amount of almost 25 thousand persons on a yearly basis.

Total emigration rate (per 1000 inhabitants) decreased from almost 2 migrants/ 1000 inhabitants to almost 1 in 1999 and to 0.64 within the last considered year. One has noticed two stages of significant cut down: the first one during 1991-1993, when the migration have focused on the return to the native areas (Germans, Hungarians, Jewish); the second one between 2000 and 2003 (and beyond) when the final migration has lost of its importance, since the temporary migration has been favoured (this period also corresponds to the deregulation of the Romanians travelling within the Schengen territory).

The migration's contribution to the total population dynamics and to the Romanian labour potential can be highlighted by a comparative and combined analysis of the natural increase and of the migration increase.

According to the available data, during 1991-2002, 2.87 million children were born, while 3.2 million persons died. The diminishing of the total population amount by almost 330 thousand individuals was amplified by the migration flows that were negative throughout the entire period. The annual evolutions are negative and decreasing, in terms of migration increase, while they seem to be oscillating and far more significant as far as the natural increase is concerned.

The population's spatial mobility, as a factor for the adjustment of the labour market demand and for the rebalancing of the labour market on the territorial level has been rated as being a low one. Romania's population (out of tradition- inertia based reasons, but also out of financial reasons) would rather commute and/or favour the temporary circulatory migration, than transfer/changing its domicile/residence.

Within the country's territory there were almost 6.7 million persons who have changed the residence at least once in their life, while during 1992-2003 there were almost 252 thousand persons who have emigrated abroad. The annual flows were decreasing (almost 10 thousand persons on a yearly basis). The external balance (emigrants - immigrants), throughout the period, is a negative one, that is 180 thousand persons. The only exception is the year 2001, when the number of immigrants exceeded by 429 persons the number of emigrants (10350 as compared to 9921).

Thus, from the emigration viewpoint, the loss of population of less than 10 thousand persons on a yearly basis, even if it has not been

"compensated" by the immigration does not represent a significant quantitative factor influencing the dimensions of the national labour market. On the other hand, the pressure induced by such amount of emigrants on the receiving countries (and implicitly on their labour markets) is rather low, engendering long-term positive effects.

The comparative analysis of the natural and of the migrating increase (final migration) allows us to draw up the following remarks:

- The total population is reduced especially due to the negative dynamics of the natural increase, rather than to the migration increase;
- The losses accumulated on the whole period do not exceed 3% of Romania's population, recorded at the latest census;
- From the qualitative point of view, the negative migration increase is more "expensive" to the society than the natural one, since the investment in the human capital (by education etc.) enforced until the emigration time and the pendant labour potential are cost free transferred to the destination country, thus adjusting on a long term the growth of the national economy and sustainable human development.

5. Immigration perspectives in Romania

For the time being, Romania is not confronted with major problems as far as immigrants, refugees and the people of foreign citizenship are concerned. This assertion is valid both in comparison to the developed countries, which have been and will always be the main destination of such migratory flows, but even in comparison with other countries that have been subject to similar transition processes and that have similar geo-political positions.

Unlike repatriation, that constituted the main component of the permanent legal immigration, the main motivation of illegal immigration is the intention of transit, having as destination one of the developed countries in Western Europe. But there are enough reasons to conclude that it will no longer be possible to consider the problem of Romania-heading immigration as a collateral, unimportant one:

- Romania's accession to the European Union will end up, sooner or later, in lowering the still important gap against the developed economies, as far as living standard is concerned; but automatically the difference from the less developed countries will increase, so that this fundamental type of "push factor", that up until now has proved to be an inhibitor factor, will definitely squeeze action;

- even in the current conditions, in recent years, only the legal part of the immigration has almost managed to equalize or to exceed (in 2001) the one of the emigration (also legal);

- the information offered by the Ministry of Administration and Interior leads to the conclusion that, in the absence of an adequate border security, the number of the permanent and/or transitory immigrants in Romania would have been much larger than the one actually registered (up to 7-8 times bigger, taking into account the number of persons returned from the frontier, cross passing illegally etc.);

- Romania will have to assume the role of eastern frontier of the European Union; it is well-known the fact that, at the world-wide level, at least from the demographical point of view, but also considering the economic distress, Asia is considered the major migratory reservoir of the 21st century, and we are connected to this continent by a green frontier, relatively easy to

penetrate, where flexible routes of legal/illegal migration, able to adapt to the changing environment, have already been established.

After the accession, an essential issue will become the way in which the community level migration policy will be synchronized. For example, the 1990 Dublin Convention, completed by the Council Regulation no. 343/2003, establishes the criteria and the mechanism of establishing the „responsible state" regarding the solving of the asylum applications handed in by the citizens of some third countries.

In conformity with these, when is proved that an asylum seeker has illegally passed the frontier to enter on the EU territory, the „responsible state" for solving his or hers application is the one on whose territory the trespassing took place[4)], even if the asylum application is handed in to another member state. In this situation, the applicant is in the care of the responsible state, which is obliged to receive him once more and to grant him the necessary assistance and solve the case.

From this point of view, the main goal of the immigration policy has to be, in addition to strengthening border security, also to best adapt policy regulations in this field, both the internal ones (restrictive conditions for granting visas, bilateral and international agreements with the main source countries etc.), and the EU-level ones (harmonising EU migration policy, the negotiating certain special conditions for border countries, such as Romania, sharing the financial and logistic effort in providing security of the borders and solving of the asylum applications, the common administration of the refugees' problem etc.), in order not to come to the situation in which Romania, as a border state, should be forced to provide by itself a great part of the illegal immigrants afflux who try to enter the EU territory.

At present, it is appreciated that the worldwide flow of migrants varies between 5-10 million persons annually, including both the legal and the illegal parts of the migration. Only a part from the number of this flow has as destination the developed countries. In 1965, their share was of 36.5%, in 1990 of 43.4% and in 2000 40%. If we consider that these characteristics will remain the same in the future, the result is that the developed countries of the world can expect to receive further on a significant number of immigrants, comprised between 1.8-4 million of persons annually (we excluded from our calculations the share registered in 1990, because subsequently significant modifications took place in the migration regulations in the majority of the receiving countries, especially in EU, which strongly influenced both the illegal and especially the legal part of immigration).

Not all emigrants will go towards the European Union. To assess, even approximately, what their number will be, we can use two reference points:

- on one hand, as a limit that can be considered maximum, a share of 50% in the framework of the developed countries (taking into consideration that, in the total of the arrivals of foreigners in OCDE countries, EU25' share was 45.8% in the period 1990-1994, 39.9% in the period 1995-1999, respectively 43% in 2000);

- on the other hand, as a minimum limit, the current share of Europe in the world-wide stock of migrants, which in 2000 was of 32.1%.

By combining the previous assumptions, there would result an annual afflux of immigrants (legal and illegal) in the European Union of 0.6-2 million

[4)] In Germany, for example, in a period when this country provided also the role of external border for EU, the number of those apprehended when crossing illegally the frontier varied between 54,298 persons in 1993, 27,024 persons in 1996, respectively 40,201 persons in 1998.

persons, numbers that do not contradict the different national and/or international estimates in this field.

We hereunder presume that, during the next years, these Charts will not be significantly modified. Concomitantly to Romania's join to the European Union, a part of those who choose this destination will cross our country's border in order to enter EU. If, as the legal part of immigrants is concerned, it is most likely that the overwhelming majority should choose one of the economically developed member countries, the illegal part will automatically came under our country' responsibility. It is extremely difficult to estimate which will be the share or the total number of these persons, if we take into discussion either the legal immigrants, or the illegal ones. That is exactly why, for taking every possible precaution measures, we have resorted to three variants:

• the first one takes into account that the economic development gap between Romania and other member countries will still continue to exist even many years after enlargement, which leads to the idea that the EU immigrants' preference to settle down in our country will be extremely low: 1%; that is why we can consider that as a minimum variant;

• the second one resorts to the demographical criterion, presuming that the newcomers are uniformly distributed between the member countries, correspondently to the share of each one in the total population of EU; according to this reasoning (in fact enough simplistic and easy to contradict), Romania should house approximately 4.4% of the EU immigrants;

• the third variant gives a greater importance to the illegal immigration and to the position that Romania has within a widened Union, namely the one of external border; the fact that the terrestrial border is easier to be crossed is also taken into account; furthermore, in comparison with other countries from the eastern extremity (the Baltic countries), Romania is closer to the central core of the richer member countries; for obtaining a maximum limit of the possible evaluations, even with the risk of being accused of "catastrophic" exaggerations, we shall also resort to this variant, considering that 10% of the immigrants will enter EU by crossing Romania's border.

A wide range of possibilities (no less than 24 variants) result from grouping the last three assumptions with the previous evaluations regarding the annual Charts of EU immigration. The lower limit, resulted under the most restrictive/non stimulating terms/factors of immigration, reaches an annual number of immigrants of 5.9 thousand persons, a bit less than the actual reports of the year 2002. But the upper limit of 200,000 persons annually (obtained, we emphasise once more, on the grounds of some extremely permissive assumptions and leaving aside the other limitative factors) exceeds to a large extent the amount that Romania is prepared to and/or accustomed to administrate in the migration field.

From the total of 24 variants, 21 exceed the annual amount of 10,000 persons, and 17 present values bigger than 20,000. In five cases, the annual immigration in Romania exceeds 100,000 persons and in 12 situations it comprises between 20,000-100,000 persons. The average of all 24 variants is of 60.5 thousand immigrants per year.

Even if Romania will absorb only 1% of the total EU-heading immigration, it is still possible to be forced to deal with an afflux of persons much bigger than the one we have been confronted with until now: triple, by comparison with the year 2002, respectively double, by comparison with

the years 2000 or 2001. The variants that may be characterised as moderate forecast a yearly contingent of immigrants amounting to a number of 25,000-60,000 persons. Considering that the immigrants' flow will change not only in number but also in its structure, showing, unlike the last decade, an increased share of asylum applicants, if all of the latter ones were granted the non reimbursable aid provided by Ordinance 102/2000, the financial effort of the Romanian state (having in view the current level of the national minimum wage) would amount to EUR 10.5 – 37.8 million annually.

Romania will have to put in force a complex immigration management system, providing, inclusively or totally from its own funds, means of accommodation and of subsistence, social and economical integration services etc. Only the financial effort that is implied by the interim housing of the refugees and of the asylum applicants until their claims are solved – that represents just a small part of the total expenses occasioned by the administration of this process – can reach significant[5] values. This kind of situation must be prepared in advance, especially because, unlike emigration, where losses/returns are measured mainly in terms of comparative costs (which would be the gain/loss of the country following permanent/temporary emigration, how much the state looses in terms of returns in human capital investment etc.), immigration implies foremost financial costs that are immediate, concrete, that can not be reprieved[6].

6. Main tendencies and implications of emigration

Emigration during the transition period had an oscillating evolution with a tendency of progressively reducing the total numbers. The general tendency was that of converting from migration on ethnic reasons with certain origin and destination concentration centres, to a more motivationally diverse migration, of a larger distribution on territory, associated with the destination preferences changing as well.

Thus, from the emigration viewpoint, the loss of population of less than 10 thousand persons on a yearly basis, even if it has not been "compensated" by the immigration does not represent a significant quantitative factor influencing the dimensions of the national labour market. On the other hand, the pressure induced by emigrants on the receiving countries (labour markets) is rather low, engendering long-term positive effects. The number of emigrants is decreasing, while the number of immigrants is increasing. Total emigration rate (per 1000 inhabitants) decreased from almost 2 migrants/ 1000 inhabitants at the beginning of transition to almost 1 in 1999 and to 0.64 in2003. After 2000 the final migration has lost of its importance, since the temporary migration has been favoured (deregulation of the Romanians travelling within the Schengen territory). Romania's population (out of tradition- inertia based reasons, but also out of financial reasons) would rather commute and/or favour the temporary circulatory migration, than

[5] *In Greece for example, in one of the housing centres, the daily cost that reverts to an assisted person was in 1999 of approximately 9 EUR; considering that nowadays the minimum salary in Romania is not bigger than 2.9 EUR for a normal working day, it became obvious that our country will not afford to allot to these objectives – only through its own effort – comparable founds, especially in the conditions of a growing immigration.*

[6] *Also as an example, in 1999, Finland spent for 3106 asylum seekers and refugees more than 33 millions EUR, meaning almost 10,000 EUR annually per one assisted person. At a unitary cost even ten times lower, in Romania would also result total amounts that cannot be neglected, by comparison with the national budget possibilities. If only 10% of the immigrants estimated on our calculation entered in the category of those who claim for assistance, the expenses could come to 0.6-20 millions EUR, the medium variant having a correspondent sum of 6 millions EUR annually.*

transfer/changing its domicile/residence.

A hierarchy of the counties of departure according to the number of the emigrated persons during 2002 allows us to make the following remarks:

- Bucharest is the main source of emigration: 17.3% from the total emigrants,
- Braşov, Timiş, Cluj and Mureş have provided, each of them, approximately 6 % of the total emigration, Suceava , Sibiu, Bihor 4% each and Neamţ, Satu Mare and Arad approximately 3 %, the rest of the counties having lower contributions.
- From the total number of emigrants, the Jews represented 0.3%, the Germans 0.8% and the Hungarians almost 6%. The departure areas of the ethnic population are: Bucharest, Cluj, Iaşi and Botoşani for Jews; Cluj, Timiş, Arad, Braşov and Sibiu for Germans; Cluj, Mureş and Harghita for Hungarians.
- There is no direct and intense connection between the number of emigrants and the unemployment rate. For example, in 2003 comparatively to the previous year the first five counties with a ratio of emigrants of over 5% of the total recorded a decrease in the unemployment rate (Bucharest, Timiş, Cluj, Sibiu, Braşov). Out of the emigrants of 2003, 41.65% departed from these areas, and the number of the unemployed at the end of the year accounted for 14.65% from the total.

The favoured destinations have changed too. During the first years the most important flows headed for Germany (about half of them), Hungary and Austria (approximately 10%), whereas in 2002-2003 the preferred destinations were USA, Italy, Germany and Canada, with approximately 15-18% each

During 2002-2003, most of the Romanian citizens who emigrated in the EU area established their domicile in Italy (4233 persons) and Germany (3646). Less than 1000 people emigrated to Austria and France and a little over 100 people emigrated to Greece and Sweden. (I.A.M., 2004).

A reorientation of the flows can be noticed on large geographical areas, from Western Europe (EU area) at the beginning of the 90s to Northern America. In 1990-1995 over 60% of the emigrants choose as their destination a EU member state and only 15-17% of them left for America. Starting with 1996 the ratio of those who headed for Europe progressively reduced and the flow towards America grows significantly, the tendency being that of equalizing ratios. Approximately 40% still prefer the EU areas and almost 35% head for Canada and USA.

Quality features of the emigrant population. According to a*ge groups, those who tend to leave are the people with the biggest opportunities of professional affirmation:*

- A significant and increasing ratio of the 26-40 year old emigrants, (51% in 2003), already trained persons, with the highest working and innovation potential, who are the most adaptable and the most mobile.
- graduates or attending their last school year , with certain perspectives and labour and creative potential (13.4% in 2003).
- 11% of the emigrants are between 41 and 50 years old and that they represent an active labour force, whose productive potential can be still used.

While in the case of Romania emigrants represent a net loss, as a proof of the still reduced capacity of the economy and of the society to

generate proper labour and remuneration opportunities, they are for the destination countries labour force that can accomplish high performances, a competitive labour force for the periods to come.

From the professional groups related to which statistic data exists, especially after 1995 the group of engineers and architects is registering increasing values, (12-13% in 2003), teachers and economists, (3-5%), technicians, doctors, chemists (2-3%). Compared to the 1995-1999 period, the ratio of the emigrant artists has been reduced to half (0.5-0.6% in 2002-2003).

The fact that emigration at the present moment is more influenced by criteria of professional affirmation and more advantageous incomes, that the brain drain phenomena are valid for the flows with increased research potential countries has been confirmed by the most recent evolutions. Thus, at the level of 2002, most emigrants that went to Canada and USA were university graduates and the preponderant age group was that of 30-34 years old. Regarding the people who left for Germany, although they were mostly secondary- school graduates, their age varied on average between 25-29 years old, fact that can be categorized as emigration with the aim of accomplishing school education and/or with the aim of employment in high qualification domains (computer science etc), in which case younger ages can be noticed.

Migration for work has got a *temporary* character, its duration varying within large limits (from a few weeks/months to a few years) and it does not imply the permanent change of residence.

Those who are part of the legal and/or contingent migration movement are usually part of three big labour force categories:

a) *highly qualified* labour force with *competences validated in top domains of science and technology,* as well as in certain *services,* like education and health.

b) labour force with a medium level of qualification and specialisation, as:
   - *constructors* - labour force category with a long tradition in working abroad, highly appreciated on western labour markets (Germany, Israel);
   - the *para-medical personnel* (nurses), (Italy, USA, Canada, Switzerland etc);
   - personnel in hotel and restaurant industry;

c) *unqualified or semi-qualified* labour force for agricultural activities (during harvesting periods), in sanitation, constructions, etc. (Spain, Portugal, Greece).

In the relation with the EU member states, the number of persons for which labour contracts are intermediated and the domains are different from one year to another depending on the demand on the labour market from the destination country. The labour contracts by gender are also variable depending on the activity domain and respectively on the requested professions.

In 2003, 43,189 persons were placed for labour abroad on the basis of bilateral agreements, recording a significant increase in comparison with 2002 (Germany, Spain, Switzerland, Hungary, Luxembourg, e.g. in agriculture, constructions, hotels, restaurants and tourism, the medical and social assistance -nurses and assistants for the elderly).

Young persons are preferred, with good working capacity, motivated by the income they can earn, more easily adaptable to new cultural patterns, civilization standards etc. Therefore, almost half of the persons who have worked/work

in Germany in the last two years are included in the age group 26 – 35, less than a forth the persons from the ages group of up to 25 years and between 36 – 45 years and merely 7% - 8% are more than 45 years old. In Spain and Switzerland younger persons are by far more numerous, of ages between 26 – 35.

There is also a very powerful migrating movement for uncontrolled labour, both in the country of origin (Romania) and in the destination country. An important part of these people work temporarily, for unspecified periods of time, more often without legal documents, on the black labour market of the destination country. The working and living conditions granted and accepted are not the best, they are by far inferior to those granted to the local labour force. Firms accept this method of employment because of the reduced labour costs while the contribution of these employees to the increase of competitiveness within the firm is a significant one.

The *accentuated annual variability* does not allow a correct estimation of the outgoing flows for working purposes. Because of the incertitude of a labour agreement abroad, those who want to work there choose an alternative solution: they either seeking for jobs on the labour market in Romania until contract possibilities occur, or they try to find a job abroad by their own (even by going to the destination country or remaining there after the expiration of the previous contracts). *As a tendency during the last years, a more reduced annual oscillation and a relative stabilization of the labour force contingent were registered, at approximately 20-27 thousands persons per year.*

As far as the *tendency of temporary migration* is concerned the following remarks are necessary:

- especially in the last years, in most of the cases, as a rule, *the Romanian supply of human capital exceeds the demand of the foreign employers,* the pre-selection, the selection and the employment becoming more and more severe and even discriminatory;
- the demand of activities that require labour force with medium qualification is predominant, or even labour force with *lower qualification/ semi-qualification,* but with great working power, generally young people and workers who are no older than 40.

The liberties granted to the labour force after 1990, the intensification of regulating the labour abroad activity through bilateral agreement *did not generate massive movements from the Romanian labour market to the labour market of the EU countries.* Contrary to the warning and the fear of many of the authorities from EU countries or even of Romania, "the exodus, the explosion" of the labour migration did not take place and such an amplitude of the phenomenon cannot be expected. The Romanian specialists assess that even if the labour supply abroad is relatively high, from the quantitative and qualitative point of view, the contracts that will be concluded depend on the situation of the labour markets from the destination countries and not on the desire of the Romanian workers. An increase of the number of the Romanian workers who work abroad after accession is expected, but only to the extent to which the member states will promote a policy of openness.

Remmitances – a form of partial "recovery" of the possible losses caused by outgoing migration. The analysis of the money transfer balance, respectively of the ratio ingoing/outgoing amounts, has led to following remarks:

- In the case of the incomes from work – additional contracts monitored by the

authorized institutions-, the ingoing flows, respectively the transferred sums from abroad in Romania are prevalent. These are superior to those of outgoing, the biggest difference being registered in 2002 when 146 mil. $ USA went in and only 6 mil went out by this way.

- In the case of other money transfers – that we consider that comprise in the most part Romanian residents' incomes from working abroad-, the balance is also positive, and the ratio ingoing/outgoing is 5-6 times lower, respectively in 2002, 1228 mil. $ USA in comparison with 227 mil., and in 2003, 1419 mil. exits in contrast with 240 mil.
- The ratio between the ingoing flows from money transfers and those from work is flatly in the favour of the first category. But the authors consider that in reality, the money flows from work directed towards the beneficiaries from Romania, via the banking system or especially outside of it, are clearly superior to other incomes categories – from donations, inheritances, etc.

In conclusion, *the ingoing currency amounts by remittances have seriously increased in the last years. The transfers from private sources are predominant.* After 1999, the incomes transfers from work are maintained to a reduced value, partially because of the fiscal policy, especially global income taxation.

Even in the conditions in which, through remittances, the current losses resulted from working abroad would be monetarily recovered, the balance of these labour relations would be on medium and long term negative for the country of origin owing to the following reasons:

- the investment in human capital made by the initial educational system and, eventually by the subsequent one (CVT) in the working process is (partially) lost;
- the competitive advantages to export is more reduced both as higher costs (less productivity of the remained one) and as the incorporated technical progress (inventiveness etc.) that is relatively more reduced.

Recent estimates appreciate the remittances around 1.5 –2 thousand millions Euro annually. The illegal transfers are comparable with the legal ones. *The development potential of these sources is huge, and provided the necessary instruments for the stimulation of the banking system for transfer, for long term disposals and/or for productive investments will be made, important positive consequences for the national economy can arise:* the monetary flow increasing, the payment balance improvement and the currency reserve rising, the money cost and the interest rate are reducing, the life standard of the consumers/households and implicitly the internal demand or goods and services increasing.

7. Concluding remarks

Migration represents *an ever more important element* of the contemporary society, a factor stimulating market globalization and an instrument for adjusting balances on regional/local labour market. *Labour migration (associated or not with territorial mobility) now represents the most dynamic form of movement of persons (active potential).*

Apart from the economic, social, demographic implications, migration phenomenon in the perspective of Romania's accession to the EU brings about specific requirements regarding the establishment of a new legal and institutional

framework for migration management. Our study has demonstrated that as migration mechanisms Romania - EU change, legislation gets rapidly in line with the acquis communautaire, whereas its implementation via involved institutions is slower, but progressive.

An important progress has been recorded after 2000 in legislation regarding the foreigners' regime in Romania, the status and the regime of refugees, preventing and combating the trafficking in human being, work permits, whereas lower progress occurred in the legislation envisaging the mutual recognition of degrees and qualifications, discrimination of EU citizens as compared the Romanians in getting a job in Romania by giving priority to the Romanian citizens.

The elaboration and adoption of laws, the creation of institutions, the development of corresponding strategies and policies represent major components of this process, but their success cannot be separated from the manner in which the involved actors –governmental institutions, non-governmental organizations, mass-media, communities, individuals – respond to the so-called "behavioural challenges", related to participation, communication, mentalities and attitudes. Relating to this issue, the accurate understanding of the social-cultural dimension and of its implications on the migration management policies implies the reference to the multiple sides of this phenomenon, so as to provide answers to a series of key questions, such as: which is the migrant's profile, how are the migration flows – emigration, immigration – perceived in Romania and in the destination/ origin country, how is the integration of migrants carried on, what is the attitude towards the return oriented migration, especially in the case of certain special categories, etc.

In another register, a global quantitative characterization shows that the annual evolutions are negative and decreasing in terms of migration increase, while they seem to be oscillating and far more significant as far as the natural increase is concerned. In general terms migration increase accentuates the population decrease, leading to demographic ageing. Natural decrease – of approx. 330 thousand people in 1991 – 2002 was amplified by the negative migration flows (emigrants – immigrants = approx. 180 thousand people in the same period).

As regards the two distinct components – emigration and immigration, they have recorded specific changes, both in quantitative and qualitative terms.

Thus, unlike emigration, which, despite restrictions by means of political constraint, had manifested during the previous regime as well, for the first time we can talk about immigration in Romania after 1990. If, in the case of legal permanent migration, the main component consisted in repatriations, the major reason of illegal immigration remains that of transit, heading for one of the developed countries of Western Europe.

In the last decade, Romania has become a much more interesting destination (for business purposes, studies, and other reasons) for foreign citizens, and *Romania's features as immigration country are more and more clearly defined*.

In the future, and especially after the accession date, the level and dynamics of immigration in Romania will depend on domestic factors to a much lower extent (the national migration regulatory framework, state policy in the field, the evolution of the Romanian economy and Romanian society on the whole etc.), while external factors will have a significant role. In other words, immigration in Romania can be

estimated and explained only if we are considering the regional migratory phenomena, at EU level, Europe as a whole and even at the worldwide level.

Under the new circumstances Romania will have to put in force a *complex immigration management system,* providing, inclusively or totally from its own funds, means of accommodation and of subsistence, social and economical integration services etc. This kind of situation must be prepared in advance, especially because, unlike emigration, where losses/returns are measured mainly in terms of comparative costs, immigration implies foremost *financial costs that are immediate, concrete that cannot be reprieved.*

Emigration during the transition period had an oscillating evolution with a tendency of progressively reducing the total number. The reasons for migration were different, as well as the territorial distribution of the main flows. The general tendency was that of converting from migration on ethnic reasons with certain origin and destination concentration centres, to a more motivationally diverse migration, of a larger distribution on territory, associated with the destination preferences changing as well.

The assessment of the perspectives in the evolution of population flows from Romanian heading for the EU is differentiated according to the period we are referring to, that is the pre-accession period, the post-accession but control period (maximum 7 years) and the free movement of the labour force, after 2014.

An increase in the number of the Romanian workers who work abroad after accession is expected, but only to the extent to which the member states will promote a policy of openness (bilateral agreements for 5-7 years for work abroad). Special attention will have to be paid to the social protection of Romanian labour force working abroad accompanied by a decreasing dimension of illegal labour migration.

For external migration from Romania to represent a stimulating factor of the national economy development is necessary for the policies in the field to find an area of balance between the employment on the national market and labour migration taking into account the costs, the benefits and the risks, as well as national and EU interests.

In a wider context, the idea that, "based on careful thinking and proper management, the national migration policy may become a major catalyst, able to enhance a new economic prosperity in Romania" (IOM, 2004) has got an important support.

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A PERSPECTIVE ON INSOLVENCY PROCEDURES IN THE ROMANIAN ECONOMY[1)]

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Abstract. *In the process of EU integration, the key criterion[2)] Romania has to meet is the economic one, which presupposes a functioning market economy. Even though the concept of functioning market economy is rather ambiguous and judgmental, there is a wide consensus that market exit constitutes one of the main characteristics of a market economy, in the sense that there should not be any legal, administrative, and political or other type of barriers to market exit for the loss-making companies. The market exit process is mainly defined by the institution of bankruptcy, which plays an important role in the reallocation of resources and the improving of the business environment. Starting from the perspective of Romania becoming an EU member, and from the need to develop a healthy domestic economy, this study makes an attempt to evaluate bankruptcy procedures. It tries to explain the current situation and to suggest possible developments that may contribute to upgrading the competitiveness and the functionality of the Romanian economy.*

Introduction

The methodology of this article is tailored to cover an analysis of the bankruptcy legislation, at both the national and the international level. In addition to the interpretation of legal texts, this study also provides an economic perspective on bankruptcy and insolvency, based on a comparative analysis of the bankruptcy procedures at regional and international levels.

The article has three sections. The first section analyses the economic implications of bankruptcy, explaining the economic rationale for this procedure, describing how to increase its effectiveness, and evaluating the potential impact of bankruptcy.

The second section draws upon the experience of transition countries in a few key aspects related to the field of insolvency.

The third section is focused on the case of Romania. Apart from discussing the legal aspects, which give the juridical and procedural framework, the emphasis is placed on the state's role and involvement in the bankruptcy procedure, and on the consequences this state policy has on the market exit process. A particular attention is being paid to the EU harmonized provisions.

Last but not least, the forth and final section will summarize the main ideas and draft a few possible recommendations for improving the bankruptcy institution in Romania.

[1)] *This article is based on the Study "Features of bankruptcy in the Romanian economy", commissioned by the European Institute of Romania as part of the Pre-accession Impact Studies programme - PAIS II.*

[2)] *According to the accession criteria set in Copenhagen, in 1993*

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I. THE ECONOMIC IMPLICATIONS OF BANKRUPTCY

Principles and goals

The concept of bankruptcy has been studied by commercial law specialists and by economists with increasing interest for the last two decades. This analytical effort resulted in a considerable amount of works, theoretical and empirical, devoted to the efficacy of bankruptcy procedures and to the reform process in the area of insolvency. Despite a vast number of works and approaches in the relevant literature, there are premises for reaching a consensus regarding the goals of bankruptcy and the most important characteristics of an effective bankruptcy procedure. Yet, there is no single, harmonized system, to be recommended as „best practice" for any country.

It has to be emphasized, from the very beginning, that the reform of the bankruptcy procedure should not be regarded separately, but in the larger context of other juridical and institutional reforms, such as educating the judges, improving the corporate governance, consolidating the banking and financial sector, observing laws in general.

Regarding bankruptcy, the first question that needs to be asked is why we need to institutionalise such a complex procedure. The economic agents end up indebted for various reasons. Maybe the most important reason is the capacity to obtain financial resources in the present by anticipating their future revenues. If the anticipation process is misjudged, or from whatever other causes, one may reach the situation of incapacity of payment – in other words, insolvency. The latter must be distinguished from the liquidity crisis, which regards only the temporary shortage of the means of payment. The bankruptcy legislation is mainly built to address the problems generated by insolvency.

In the absence of a bankruptcy procedure, the creditor has two alternatives (Hart, 2003). He can forcefully execute the assets used as collateral, in the case of a guaranteed loan; and he can ask in court to sell the debtor's assets, in the case of a loan without guarantees. The second option to collect debts is nevertheless ineffective when there are more creditors and when the debtor's assets do not cover his liabilities. Under such circumstances, the creditors would compete one against another to have the debts repaid. Such a race between creditors may however lead to the partition of the debtor's assets, which at its turn may result in a drastic decrease of the aggregated, functional value of assets, having a negative effect on other creditors' chances to get their money back.

Therefore, it is in the collective interest of creditors that the debtor's assets are executed in a regulated and effective way, through a bankruptcy procedure.

Shall the necessity of a bankruptcy procedure do not need to be further demonstrated, it is still not easy to establish the fundamentals of such a regulation. Stiglitz holds that there is no national legislation of bankruptcy that would be clearly the best solution for all interested parties in a society, which means there is no Pareto-optimal[3] bankruptcy legislation. Still, it can be agreed that there is always legislation better than the other existing alternatives, under the given circumstances, from the viewpoint of a national economy. Different bankruptcy legislations impose different informational costs and risks' allocations, part of which might prove ineffective.

Although the bankruptcy regime is not universal, and neither is the respective legislation, the goals of bankruptcy are nevertheless generally accepted worldwide. The World Bank, within its

[3] *A Pareto optimum describes the situation in which the resource allocation at the level of the entire society is undertaken in such a manner that no other alternative resource allocation could give someone a welfare gain without producing a welfare loss to someone else.*

initiatives to develop an international cooperation in the area of insolvency, and to set a series of general principles and recommendations, suggests three fundamental goals attributed to bankruptcy (World Bank, 2004).

The first goal is the maximization of the total value distributed to creditors, shareholders, employees, and to the other interested parties. The respective firms can be reorganized, sold or liquidated – whatever maximizes the total value.

The second goal is the rehabilitation of the viable businesses and the closure of the non-viable ones. The bankruptcy legislation should be neither too harsh on companies that may have a future, nor too gentle with companies that only have a past.

The third goal is the prioritisation of creditors' claims in a simple, predictable way: secured creditors must be paid first. In this manner, the institution of credit is consolidated and the costs of crediting are significantly diminished.

Premises for the effectiveness of an insolvency regime

The implementation of the bankruptcy legislation requires strong, independent institutions, able to resist political interventions. Another prerequisite would be a proper and functional legislation on debt collection, banking prudential rules and tax laws In particular, an effective debt-collection system maximizes bankruptcy's effectiveness. Otherwise, no legislation on bankruptcy will manage, acting independently, to solve out the problems in an economy where the culture of non-payment prevails. Therefore, the bankruptcy legislation is merely a part of the transition to a functional market economy, and it cannot act effectively without strong institutions and a harmonized legislative framework.

Bankruptcy implementation does not depend on strong institutions and related legislation alone. Another determinant factor is the economic philosophy chosen by governments. The Asian countries implemented an active industrial policy, which meant significant state aid and resistance to closing down large enterprises. This policy was supported by import substitution and a more permissive competition policy that sheltered domestic firms. Even at the heart of Europe there are countries with a history of massive state aids. France is an example, among the well-known cases of state aid being Renault (automotive industry), Thomson (defence), Bull (IT), and more recently Alsthom. Italy is another example; Parmalat is just a case from a more extensive list including corporations like FIAT, which were supported in times of financial distress.

Systemic bankruptcy

The bankruptcy legislation, aiming at regulating individual cases, cannot act efficiently when a large part of the economy faces major financial distress. Hence, a distinction has to be made (Stiglitz, 2003) between the individual bankruptcy and the systemic bankruptcy.

When a single company goes bankrupt, that company has probably made a mistake that other companies have not (e.g. bad management, too large debts). When many companies fail to pay their debts, the wrongdoing is not individual anymore, but it pertains to the system. Many well managed companies in the advanced economies would probably go bankrupt the next day after the interest rate reaches the levels at which it has been in many emergent economies for the last decade (and it still is in some cases, Romania included).

Furthermore, when there is systemic financial distress, ascertaining the net worth of a firm, or

indeed valuing many of the financial claims, becomes difficult. This is because many of the assets of a corporation may be claims on other firms that are themselves bankrupt.

Maybe the most important aspect of the systemic bankruptcy refers to its macroeconomic consequences: mass unemployment, shortage of financial flows in the banking system, an entire vicious circle including production cuts and, in the end, slowing down the economic growth or, if it is the case, deepening the economic recession. The efficiency of the judicial system, and hence that of the designated administrators for bankrupt firms, is also low when a systemic bankruptcy occurs.

Within systemic bankruptcy, and the environments encouraging systemic bankruptcy, loss-making state enterprises play a major role, in particular in those economies where the state still holds a large share of total assets. The bankruptcy of state enterprises in transition economies has a series of macroeconomic implications more serious than a simple case of insolvency; Johnson (1999) details some of them.

If the state is the owner, the debtor, and the creditor at the same time, then the normal incentives and trade-off solutions are distorted. When the state uses debt forgiveness to avoid the liquidation of his assets, the financial system runs an additional risk, and the banks and other credit institutions implement additional prudential measures leading to higher credit costs. A second macroeconomic implication is the potential moral hazard. A debt forgiveness policy may stimulate other debtors, state and private alike, not to pay their commercial or fiscal debts. However, without debt forgiveness, the enterprises facing financial distress usually continue to make losses.

Another macroeconomic implication is the unemployment – we mentioned earlier that bankruptcy affects third parties. When state enterprises are at stake, the employees often have a better negotiation position and they can slow down the needed restructuring. On the other hand, even if the restructuring goes along with job cuts, the problem of labour market absorption appears. In many transition and emerging economies the absorption capacity is reduced, especially because working for years in loss making firms and in downsizing sectors, the new unemployed are less qualified for the booming sectors. These redundancies put further budgetary pressures.

In theory, bankruptcy, as a market exit mechanism, frees resources that are then transferred to more productive uses. In the reality of economies facing systemic bankruptcy, markets may not be capable to absorb new resources. The net effect is that either the assets lose value in the liquidation process or while waiting for a potential buyer to pay their nominal value, or the assets are sold for only a fraction of their nominal value. One of the bankruptcy's goals, that of maximizing the total distributed value, can no longer be attained in the case of systemic bankruptcy.

The systemic bankruptcy concept has been developed around the big financial crises, and particular attention has been paid to it after the 1997-1998 Asian crisis. Nevertheless, that Asian crisis was rather a liquidity crisis, than a systemic one. An argument in this direction is that most of the countries affected recovered very fast. The systemic bankruptcy concept is better fit to describe the situation of the Central and Eastern European transition economies that started economic transformations with an inherited "structural strain" (Daianu, 1996) which was a determinant and negative factor influencing systemic bankruptcy.

In Romania, the systemic crisis was combined

with a liquidity crisis (the latter had a number of episodes, among which 1991 and 1999). This situation has not yet been fully reversed. Almost half of the total assets in the economy are still state owned, and they continue to accumulate debts. Moreover, one can find in the Romanian economy most of the set of specific elements (Johnson, 1999), which undermine the efficient redressing of the state enterprises' financial difficulties in transition economies, namely:

- political involvement and conflict of interests;
- weak financial systems; after the banking sector crisis in 1998-1999, the National Bank introduced proper prudentially measures, but their effectiveness is yet to be proven;
- the domestic capital market is underdeveloped; the level of financial intermediation is very low (non-governmental credits represented about 14% of GDP in 2003), the Stock Exchange capitalization is very low (about 7% of GDP in 2003), the spread between the active and the passive interest rates is still too large (more than 10 percentage points);
- corporate governance is thin; a non-compulsory regulation introduced by the Stock Exchange and a Government ordinance mentioning some corporate governance principles for state enterprises and regies autonomes are still too little and rather too late;
- the business environment does not provide for enough competition and some entrepreneurs may find it hostile. State aids are widespread, and in some sectors the first comers (by privatisation deals) got market power inducements that allowed them to behave detrimental to the final consumers. Moreover, the quasi-fiscal arrears, another widespread practice, are in fact a way to take rents from the state.
- the legislative framework has witnessed frequent changes and it has not been yet fully implemented.

II. TRANSITION COUNTRIES' EXPERIENCE IN THE FIELD OF INSOLVENCY

An important feature of the market system is the dynamic selection mechanism by which new products and process are replacing the old ones. Some entrepreneurs and some firms cannot face the competitive pressure and they leave the market, allowing for a more efficient resource reallocation. The Schumpeterian concept of "creative destruction" integrates this dynamism. The establishment of new systems in the transition economies has enhanced the selection process, which got a higher importance than in the more mature economies.

The main goal of the bankruptcy law (or of the insolvency procedures) is to regulate the selection process.

In the transition economies, the insolvency process is linked to other two fundamental processes: restructuring and privatisation. Restructuring requires the change of the former state owned enterprises to market-oriented firms, by changing the passive administrative unit behaviour into independent economic agents, capable to make their own decisions with the aim of profit maximizing.

On the other hand, the privatisation process (which is also of paramount importance for the systemic transformation) emphasized the dilemma of indebted companies that could not be privatised. The bankruptcy law provided a solution

for the problems of arrears and insolvency; it also fastened the privatisation of bankrupt companies (e.g., special liquidation procedure).

Apart from those already said, the bankruptcy law plays an important role for the process of transformation itself: it gives credibility to changes, telling companies that they must face the competition alone, in order to survive on the market.

Although the governments in most transition economies have adopted modern bankruptcy laws, they were not coherent in the implementation of the basic insolvency procedure. After more than a decade of experience, many of these countries have not yet came to terms with the fact that not all former state companies can survive in a market economy, either because the demand suffered dramatic changes, or because their inner inefficiency. Instead of allowing these large enterprises to go bankrupt, and hence to provide for the transfer of assets to more efficient owners, the governments in some transition economies excluded these companies from the normal bankruptcy procedure and wasted financial resources (which were insufficient anyway) for inefficient subsidies. In many cases, the real motifs of such a policy were rather of a political, than of an economic nature.

The recurrent debt forgiveness and the non-implementation of the bankruptcy law during privatisation are examples of such behaviour. In some countries, the so-called "strategic enterprises" were moved under the authority of a restructuring agency supporting their financial recovery. They were ruled out from insolvency procedures and were not included in the privatisation program. The results were often negative: the state subsidies were used for prolonging their inescapable bankruptcy.

The lesson of the more advanced transition economies and the experience of the laggards, is that the insolvency process must be the same for all firms, in order to: (a) signal government's commitment to systemic transformation; (b) determine companies' managers to change their attitude and to engage in massive restructuring; (c) fasten the reallocation of resources from the insolvable firms from old sectors to the new firms in the new sectors.

The table below presents the range of the insolvency procedures in some selected transition economies (Germany is included for its Eastern lands). They indicate that, while none of these countries has solved the problem of customers' insolvency, in some countries the state has reassumed additional powers and it has imposed a variety of exceptions and extra-procedural measures. Addressing insolvency is a private law issue and all firms should be treated equally, at least in principle.

Next, we will present a comparative analysis of the legal and administrative framework regarding the insolvency in the transition countries, starting with several essential benchmarks of the market exit process.

Table 1: The enforcement of the insolvency procedures in selected transition economies

Country	Individuals	Legal persons: exemptions and special rules
Bulgaria	Commercial agents only	Some sectors have preferential rules (non-commercial juridical persons)
Croatia	Commercial agents only	Juridical persons in the military and defence sector are exempted only on approval from the Defence Ministry; farmers and private pension funds are exempted
Czech Republic	Commercial agents only	Political parties are exempted during the electoral campaigns; farmers are exempted between April and September
Germany	Consumers' insolvency/ minor procedures	None
Hungary		Private pension funds are exempted
Poland	Commercial agents only; other entrepreneurs, non-registered, especially farmers, are excluded	Following are exempted: sickness funds; institutions and organizations created by Parliament laws; a number of six state enterprises
Slovakia	Commercial agents only	Farmers are exempted from April to September; "strategic" suppliers are also exempted

Source: Balcerowicz et al., 2003

The commencement of insolvency proceedings

The first essential benchmarks of insolvency proceedings are given by the definitions of trigger mechanisms through which the insolvency is opened, as well as by ascertaining the responsibilities for declaring the insolvency status.

The criteria for opening the insolvency proceedings must be clear, objective and easily to be verified. In transition countries, three such criteria are used: the lack of liquidities criterion, the over-debt criterion and the imminent insolvency criterion.

The first criterion, the incapacity of paying the real, liquid and due debts is the most frequent. Normally, a combination of several criteria is used as trigger mechanisms.

The over-debt criterion is based on analysing the balance sheet, the document reflecting the financial situation of a company. Theoretically, the balance sheet analysis should offer a better perspective over the existence of

Table 2. Criteria for opening the insolvency proceedings

Country	Lack of liquidity	Over-debt	Imminent insolvency
Bulgaria	✔	✔	-
Czech Republic	✔	✔	✔
Hungary	✔	-	-
Poland	✔	✔	-
Slovakia	✔	✔	-
Romania	✔	-	✔

Source: Balcerowicz et al., 2003

an insolvency situation than the default, maybe accidentally, of payments. This mechanism is successfully used in Germany for opening the proceedings. However, in the transition countries, and not only in their case, a major problem remains the evaluation of the assets. The evaluation process is difficult because of the differences between the accounting value and the market value of the assets.

The imminent insolvency criterion appeared recently in legislation dealing with insolvency. This criterion encourages the debtor, more exactly the manager of the debtor, to take measures before reaching the default of payments. Therefore, the chances of saving the enterprise and of re-enter the market are considerably are bigger compared to a company which already has the insolvency status.

Liquidation vs. reorganisation

Following the opening of the insolvency proceedings, accepted by the Court, the debtor has two main options – liquidation or judicial reorganisation. In general, both the debtor and the creditors state their option, but the final decision is given by the Court. Either liquidation or reorganisation, the debtor's credits are suspended for ensuring a fair treatment for all creditors, classified by the priority of their credits (in the case of liquidation) or for preparing a successful reorganisation plan (in the case of reorganisation).

The developed countries and the international institutions[4] suggest that the reorganisation should be preferable, as the revitalisation of debtor firms would lead to achieving better results for the creditors and for the economy. Even if the liquidations are a faster process, it can be sometimes premature.

For transition countries, reorganisation can be a better solution as the financial difficulties of the debtors may be due to the external business environment and not to the internal management of the company. The important volume of inter-enterprises systemic arrears[5] makes the viable enterprises to be in default of payments because of the clients who, at their turn, did not paid the their debts.

On the other hand, in transition countries one can observe the distort effects of the emphasis put on the reorganisation. The reorganisation can be an excuse for prolonging an incompetent management or the life of inefficient enterprise (especially in the case of own-state enterprises).

Another essential element of the reorganisation proceedings is the decision to change or not the management of the debtor enterprise. On the one hand, if kept in charge, the managers have the advantage of knowing the enterprise, from inside, better than an out-comer. Moreover, maintaining the management encourages the managers' preventive behaviour, co-interested in the success of the reorganisation process. Poland and Hungary chose such a modality, inspired by the USA model.

On the other hand, the experience demonstrates that the managers of debtor enterprises have the tendency to opt for desperate measures, often affecting the debtors. This is the reason for which in the Czech Republic, as well as in Germany and other developed European countries, accepting the insolvency status automatically leads to replacing the managers with outside experts – liquidators or administrators.

[4] *e.g. IMF, the World Bank or the European Commission;*
[5] *mostly public, but also private;*

Allocation of assets as a result of the insolvency status

If the reorganisation is not possible – the plan proposed is rejected by the creditors or the solutions for saving the enterprise are unrealistically – the insolvency process leads to liquidation. An efficient liquidation process has to accelerate the allocation of the assets, but also to find the best way to value the existing assets. One of the most important aspects of liquidation is the payment of debts, on priority criteria. For example, the real creditors or the secured creditors have priority compared to other categories of creditors. Prioritisation of the secured credits is based on the idea that the guarantees subscribed have exactly the role to facilitate collecting the debts, as well as to encouraging the credits.

In transition countries, the privileges for secured creditors are not similar to those from developed countries. For example, in Poland and Hungary, the privileges are not strictly respected. In both countries, the state's credits are privileged even if they are not secured. The main problem in respecting the secured credits is related to the fact that, by paying them, the enterprise can lose the key assets. Therefore, the option for reorganisation is negatively affected.

In transition countries, the state has still an important word to say concerning the recuperation of budgetary arrears, passing out all the other secured credits.

Insolvency institutional framework in transition countries

Insolvency proceedings cannot be efficient without market economy institutions. For example, the legal system has to function excellent so that the insolvency declarations could be justly processed in due time.

The involvement of Courts in the insolvency process brings all the legal problems in transition countries. Important barriers are still persisting in various juridical systems from Central and South-Eastern European countries.

In the Czech Republic, some experts state that the more important implication of Courts slows down the insolvency proceedings. The judicial systems still face problems linked to their administrative capacity. Observing the lack of specialised personnel and the lack of minimal technical equipment, one can assert that the Courts from transition countries are overwhelmed and cumbersome.

One of the possible solutions is to involve more third-party neutral bodies, to deal with the procedural details. The first body is formed of insolvency experts, who can facilitate the Courts' obligations.

III. ROMANIA: WHERE DO WE STAND?

The regulatory framework of bankruptcy

Romanian legislation regarding bankruptcy has suffered many substantial changes after 1989. Presently the regulatory framework is provided by Law No. 64/1995 regarding the proceedings of judicial reorganization and bankruptcy, with the subsequent additions and modifications, of which the most important are: Law No. 99/1999, Law No. 82/2003 for the approval of GO 38/2002 and Law No. 149/2004.

In fact, the last main regulatory modification is has been enacted recently: the Law No. 149/2004 is in force since May 12th 2004[6]. This law has been anticipated for quite a while, as it is the result of the approved law draft (PL 322/2003), which

[6] *Published in the National Gazette of Romania No 424 May 12th 2004*

was forwarded to the Chamber of Deputies by the Ministry of Justice in 2003.

The debates concerning bankruptcy are related to several EU accession negotiations chapters, such as Free movement of services, Competition Policy and Enterprises Law.

Consequently, if we want a dynamic view of the legislative development regarding insolvency and bankruptcy in Romania it would be useful if we refer to three legislative reforms:

- the legal framework until 2002, provided by the old version of Law No. 64/1995, consolidated and republished in 1999 after the approval of Law No. 99/1999;
- the legal framework during 2002-2004, which contains the modifications introduced in 2002/2003 by GO 38/2002 (approved by Law No. 82/2003);
- the current legal framework defined by the modifications introduced by Law No. 149/2004.

The methodology for the analysis of the legislation regarding bankruptcy is not concordant, but there are similar research fields among insolvency law experts, similarities that produced important foundations on which the investigation of the efficiency of a certain legal framework can be based. In the following we will refer, in a more or less random order, to the key aspects of bankruptcy legislation, but this time by way of direct explanation of legislation in Romania.

Insolvency, bankruptcy and the role of the state

The first question that arises when we analyse the bankruptcy legislation in Romania is undoubtedly connected to identifying the purpose of this type of legislation from the point of view of public policies. The European Bank for Reconstruction and Development (BERD 2003) recognized three possible instruments for bankruptcy legislation.

1. The policy of the new beginning – which allows the honest but bankrupt entrepreneur to restore his business, by cutting back his liabilities due to the misfortunes encountered by his previous affairs

2. The policy of equity – which promotes the even distribution of the bankrupt debtor's possessions among creditors.

3. The rescuing policy– which disposes the restructure and rehabilitation of an enterprise in order to preserve the employment, reimburses creditors, bring profit and produce value.

Although Romanian legislation secures the de jure framework for the fulfilment of these three economic policies purposes, the previous experience shows that the practice of bankruptcy in Romania has been focused more towards the rescuing policy, concerning particularly the fate of recently insolvent state enterprises.

This focus proved to be rather counterproductive, as it implied an unequal treatment of firms. As a result, public firms were protected by special laws, thus becoming immune to regular market exit regulations.

A key point that in this analysis of insolvency and bankruptcy in Romania is the investigation of the State's behaviour as a shareholder and/or creditor. In a transition economy, such as the Romanian economy, the state partnerships and liabilities are mostly related to the privatisation process and the restructuring of public enterprises, as we already noticed in the analysis on the transition countries.

On one hand, there is a number of enterprises that are non-competitive, that cannot be privatised and constantly produce losses as they are kept

floating by state support. The political decision to keep some enterprises in public hands, because of their strategic importance or in the hope of a future restructuring and privatisation deal has direct consequences on the avoidance of initiating proceedings of insolvency.

On the other hand, the enterprises that have been privatised sometimes encounter difficulties, generating post privatisation pressures so they still receive support or even be bought back by the state. In all these situations the enterprises register important debts to the state, debts that at a macroeconomic level are translated into significant arrears.

The avoidance of bankruptcy through the artificial preservation of enterprises in the business environment is the result of the weak budgetary constraint policy that has contributed to the overall lack of fiscal discipline in Romania. Besides the negative consequences on the business environment, proved by disloyal competition between the honest entrepreneurs that pay their debts and those that create arrears, there are negative consequences at the macroeconomic level too, particularly regarding the budgetary deficit, the fiscal collection process and external deficits.

The ambivalence of the state's policy as a creditor is puzzling. The State either plays the part of the benevolent parent, accepting the errors and the lack of competitiveness of some enterprises and overlooking their debts or suddenly flexing its muscles in order to prove that the state's objectives come first by emphasizing the importance of immediate return of public debts.

Unfortunately, this *Ianus Bifrons* type of policy, in other words the one where the state changes its appearance according to political and social circumstances or as a result of external institutional pressure, entails negative consequences that transform the state in a special market player that does not obey common law.

In other words, it is enough for the State to decide that an enterprise must not go bankrupt in order for this enterprise to be rescued without any economic motivations and without a transparent proceeding that might be applied to other similar future events. We deal here with a discretional selection, meaning that the choice of saving enterprises is made on an individual basis and does not follow any distinct objectives of an economic policy.

Just the same, at the other end, when the state is the creditor, the law that applies is an exceptional one. The Romanian bankruptcy legislation does not differentiate between particular creditors and the state as a creditor. Bankruptcy is a common proceeding with a syndic judge acting as an arbiter and seeking to reimburse creditors according to their liabilities. But, if the State is one of the creditors, it creates an exceptional position for itself, defending itself from the other creditors using the two agencies APAPS and AVAB recently united as AVAS to create regulations that go beyond the judicial framework settled by The Ministry of Justice.

Bankruptcy initiation

In Romania, the criteria for opening the insolvency proceedings are the lack of liquidities and the imminent insolvency, allowing both the creditors and the debtor to take the initiative.

In the first case, the creditors may start the procedure by filling in a petition in one of the following situations:

- creditors have not been paid for at least 30 days;
- the commercial agent's debts that arise

from work or civil actions are larger then six national average wages as determined by law;
- the commercial agent's debts that arise from commercial activities exceed 3000 euros[7].

As regards the imminent insolvency, this criterion was introduced in 2002[8] and it is found in the Art 25, Paragraph 2[9], stipulating that a debtor threatened by insolvency may open the procedure, in conformity with the law. The formulation is vague and it does not objectively define the notion of "threaten". Although, the amendments adopted in 2004[10] bring some light through the Paragraph 4 of the same article, stipulating that the "premature introduction and in bad-will by the debtor of a request to open the proceeding brings along the debtor's patrimonial responsibility […] for the caused prejudices". This way the potential abuses are limited.

It is worth mentioning that until 2004, Romanian legislation stipulated the patrimonial responsibilities of managers in the case of declaring "too late"[11] the insolvency status. It is bizarre that by amending the law in 2004, this provision disappears, although the obligation of declaring the insolvency status, with 30 days before, still exists. Obviously, it is a lack of the present legislation, reducing the incentive of applying the law.

It is important to mention that Romanian legislation does not contain legal premises for the automatic initiation of bankruptcy, similar to other European countries that had or still have such stipulations. In Romania the proceeding begins only on the premises of a petition forwarded by the debtor or creditors. As a result, there is no over-debt criterion to act as a trigger.

As we have explored earlier, several transition countries have decided to add this criterion as an additional instrument enabling the opening of the bankruptcy procedure.

Liquidation vs. Reorganization

Another part of the analysis of the legal framework regarding insolvency and bankruptcy is the choice between liquidation and judicial reorganization. As we earlier anticipated, this choice may be founded on different economic policy priorities. In conclusion, it is important to achieve a balance between protecting creditors' interests and supporting the reorganization, favourable to employees.

The European and international trend is to modify the bankruptcy legislation towards encouraging the judicial reorganization process[12]. In Romania, proposals seem to be oriented exactly the opposite way, encouraging the creditors. The explanation of these proceedings is based on our country's previous experience, which shows that the practice of judicial reorganization has not been a success solution in many cases. On the contrary it transformed itself in a very strong barrier to market exit, with negative implications on both creditors and structural reforms.

According to the last regulatory changes introduced by Law No. 149/2004, the maximum period for carrying out the judicial reorganization, in the event of its approval, has been shortened from three to only two years. At the same time, a greater control is secured over the liquidators and

[7] The minimum amount of commercial debts that can get the bankruptcy proceeding started has been recently reduced by Law no 149/2004 from Euro 5000 to Euro 3000. This is a welcomed change, in the sense that it will impose either a greater severity in the payment of obligations, either it will lead to the more rapid market exit for agents that cannot pay their debts;

[8] GO 38/2002;

[9] Law 64/1995 amended and republished after adopting the Law 149/2004;

[10] Law 149/2004;

[11] According to Art. 25, paragraph 4

[12] One of the reasons behind this world-wide reorientation is the fact that through reorganizations certain intangible assets, that in the case of bankruptcy would have disappeared, can be kept (Hart, 2003)

administrators in order to avoid abuses and uneconomic behaviour.

Beyond current or future procedural regulations, it is important to emphasize the fact that through liquidation, non-competitive commercial agents that due to business cycles or to their own managerial deficiencies are not able to perform a lucrative activity are removed from the market. Liquidation plays a role in the improvement of the market economy and the smoothing of commerce, something that for the Romanian economy's present stage and also in view of European integration is not only necessary, but indispensable for a good development of its market economy. In these circumstances the role liquidation plays must be properly understood and must be separated from any negative connotations that our society might have imposed on it.

In the context of Romania's likely EU accession (2007), we can appreciate that the tendency to prefer liquidations, in the detriment of judiciary reorganization, could prove to be a mere transitory phenomenon. The trend could reverse when the legal system will be more efficient, administrators and syndic judges more competent, the institutions authorized to intervene stronger – in order to re-establish the trust in the proceeding of judicial reorganization. More so, it is not stated that the reorganization has to be enacted at all costs, it must not allow the rescue of untenable companies – and in Romania there still is a large number of such companies.

In addition, Romania is in the process of adapting to the UE procedural standards (EC Regulation1346/2000), and, as the legislative reform at the community level progresses, if it will take place, it will probably try to adapt to the new practices in adjacent fields, for example, corporate auditing.

Insolvency institutional framework

We should remark that Romanian insolvency experts established a professional organisation (UNPRL) playing a role in a new profession self-regulation – reorganisation and liquidation expert.

Even if the activity of reorganisation and liquidation experts is only at its beginnings in Romania, it is not unlikely for liquidators to have a more and more important role in the insolvency proceedings, going that far to be able to predict the difficult situations of enterprises and to have prerogatives in the anticipated commencement of the insolvency procedure.

Insolvency, bankruptcy and state-aid policy

An important aspect of our case on bankruptcy in Romania is the situation of public enterprises that prove to be non-competitive and become insolvent. In various such situations, the government has intervened through state support schemes in order to keep those companies on the market.

In general, we can easily notice that the state-aid volume is very high in Romania, (up to 6% of GDP (2001)). Moreover, it seems to rise in both absolute and relative numbers, in other words it evolves in the exact opposite direction to the European integration process.

Regarding the nature of state support, it seems that the portion of income concessions, such as deductions and discounts has substantially increased. Indirectly this shows a chronic incapacity of payment of long overdue debts. In a functional market economy these companies would already face liquidation proceedings. On the Romanian market, though, they persist despite the macroeconomic consequences: contribution to budget and current account deficit, hidden unemployment, negative example and unlawful competition.

The rescue and restructuring state-aid measures are accepted in the EU only in a few very specific situations, and only as an exception (not as a rule). In Romania, the most disregarded rule is probably the one referring to the single occurrence of state-aid: far from being granted only once, there are numerous cases in which the state-aid has been recurring – for example, failed privatisations, in which facilities like cancellation of debts and debt-for-share swaps were offered at the beginning of the privatisation process, the state finding itself anew as a majority shareholder (the most recent case is Rafo Oneşti); or granted on a regular basis – as it is with the perpetually loss-making public companies.

But the rescue-restructuring aid is not the only field in which Romanian practices are out of line with the EU norm. Table 3 reflects other discrepancies.

considering both direct support (budgetary subventions) as well as indirect assistance (rescheduled debts, etc).

- as part of state-aid, the relative weight for rescue and restructuring is increasing, rather than decreasing. This situation is indicative of a possible mass-bankruptcy phenomenon in several sectors. From here derives the fear of many companies of the rigorous implementation of competition policy;
- as part of state-aid, the relative weight of penalties exemptions and reductions is increasing, showing a generalized inability to pay the long-overdue debts (premise of bankruptcy);
- as part of state-aid, the pro-active ones, encouraged by the EU – such as aid for research and development, and career training, are quite neglected in Romania.

Table 3: State-aid characteristics, comparison between Romania and the EU

	Romania	EU 15
% of GDP, yearly average 1998-2001	4.5	1
Trend 1998-2001, total aid	Increasing	Decreasing
Trend 1998-2001, aid for manufacturing, absolute volume/number of employees	Increasing	Decreasing
Priority objectives (excl. agriculture)	Sectoral	Horizontal
As part of horizontal objectives, greatest weight represented by:	Saving-restructuring	SMEs and research and development

Romania's situation, although unsatisfying, is not unique; other transition countries, such as Poland for instance, are faced with similar problems. In the context of the approaching final negotiation with the EU, the following realizations are of great concern:

- state-aid, instead of being a decreasing phenomenon, is increasing[13]. Although it should be mentioned that here we are

These trends need to be reversed in a short time-span and, as this reversal takes place, more and more companies, particularly public ones that do not restructure, are threatened by bankruptcy.

Even the EU finds itself in a situation in which it is rethinking state-aid. Simultaneously with the expiration of the CECA agreement, in 2002, the rescue and restructuring aid for the metallurgic industry became illegal. More so, at the end of

[13] *Although estimation techniques may seem doubtful, because both historic and present liabilities are being weighed.*

2003, when the current regulations expire, the EU will reform the state-aid policy in an even more restrictive direction, aiming to provide, at a European level, a single definition of a company in difficulties, and how the efficiency of the compensatory measures can be evaluated; on the other hand, companies that are part of a group may become eligible for state-aid.

We have to mention that although the Commission argues in favour of state-aid reform, there are Member States that practice active industrial policies; either for saving various companies that are considered to be of strategic importance (Bull, Alsthom in France; or banks in Germany), either to promote 'national companies', seen as examples of excellence in the process of economic development (Nokia, in Finland). In these situations, sometimes the Commission becomes more lenient, avoiding conflicts with Member States, particularly with the more developed ones (France, Italy, Sweden, Finland etc).

This double standard is observed even in the rough treatment applied by the Commission in the relationship with the new member states. For example, on May 19th 2004, less than a month after the accession of Poland, the European Commission has decided to investigate whether or not the state-aid for the restructuring of the steel-plant company Huta Czestochowa SA has violated EU regulations. It is the first such investigation in any of ten new member states. The Commission believes that the liquidation of the company was avoided by convincing the creditors to accept a restructuring plan (until 2006) and by cancelling some of the debts.

The same stringent conditions will be applied in Romania, and there will be serious problems in this field if Romania does not accelerate the reform of the manner in which the state supports economic development. In particular, this reform is related to the implementation of the regulations regarding insolvency and bankruptcy, to the formulation of the clearest possible criteria for direct state-aid (budgetary subventions) as well as for the cases in which the state can allow the postponement of budgetary obligations.

Harmonisation of Romanian legislation with EC Regulation regarding insolvency

The main benchmark at the European Union level for bankruptcy area is given by Council Regulation (EC) 1346/2000 of 29 May 2000 concerning insolvency proceedings. The Regulation is already applicable to all Member States, being in force since 31 May 2002.

Seeing that entrepreneurial activities have more and more cross-border components, the European Union had to regulate, at Community level, more and more aspects related to business environment. As the market-exit proceeding can affect the Internal Market, it was necessary to adopt a Community act in order to coordinate legal provisions related to assets of insolvent debtors. It is also obvious the fact that, if the assets management would be different among Member States, it will lead to transfers among EU countries, infringing the principles of common market.

The above mentioned EC Regulation is the outcome of over 40 years of analysis and practice and by its 47 articles enforces the international jurisdiction of a court from one Member State, aiming at opening the insolvency procedure, automatic recognition of proceeding in the other Member State, as well as at cross-border acknowledgement of "liquidator" rights.

The main objective of the EC Regulation

regarding insolvency is to be contained by a Community law measure, generally applicable, biding for all debtors, whether the debtor is a natural person or a legal person, a trader or an individual. As an exception, the insolvency Regulation does not apply in the case of financial institutions[14] (Wessels, 2003).

The Regulation establishes the juridical framework regarding the law that should be applied, replacing the common provisions of private international law.

The EC Regulation regarding insolvency proceedings is an important step ahead in establishing a juridical framework in order to facilitate interactions and harmonisation of different systems of insolvency in the EU. Given the diversity of bankruptcy legislations it is clear that their harmonisation at Community level for creating a unique bankruptcy proceeding would be totally unpractical.

The aim of the Regulation is to replace the various bilateral agreements of mutual recognition of bankruptcy proceedings, and not to standardize a type of proceeding.

But the Regulation has also some weak points. Despite the fact that the Regulation is binding effect, being directly and unconditionally applicable to Member States, most of them have to amend the internal law of insolvency in order to implement the provisions of the Regulation. The need for these amendments denotes that we cannot yet discuss of a total and veritable harmonisation in the insolvency area at Community level. Member States do not show much interest to bring into line their insolvency legislations, following their own policy in the field.

Furthermore, the territorial limit of Regulation applicability – only at Community level – it is an important shortcoming, especially in the context of business globalisation. Therefore, a global regulation for cross-border insolvency is desirable. Six years ago, a world standard was developed in cross-border cooperation field, called UNCITRAL Law Model for cross-border insolvency. Even if the Law Model does not have a binding character, it has as main objective to stimulate the harmonisation process of national insolvency laws.

The implementation of UNCITRAL Law Model is supported by international institutions, such as the World Bank, the IMF or the Asian Bank for Development. The solutions provided by the UNCITRAL Model seem to be optimal for the present circumstances. According to Art. 3 of the Law Model, the international obligations of the states adopting this law are respected, which means that the provisions of the EC Regulation are still applicable, while the juridical framework proposed by UNCITRAL would regulate the system of relations between the EU Member States and third countries.

The Romanian legislation was mostly harmonized with the provision of EC Regulation no. 1346/2000, by adopting Law no. 637/2002 regarding the international law practices in the insolvency area and by the recently adopted Law no. 149/2004 regarding judicial restructuring and bankruptcy.

Law no. 637/2002 defines the applicable law in international civil law relations for insolvency, proceedings to be followed in such cases, as well as cooperation proceedings between Romanian authorities and the international one in order to solve international and European insolvency cases.

[14] *Insolvency proceedings for insurance companies are stipulated by Parliament and Council Directive 17/200 (OJ L 110, 20/04/2001), and for credit institutions regulations are given by Parliament and Council Directive 24/2001 (OJ L 125, 05/05/2001). Unlike the regulations, the directives should pass through a legislative implementation in each Member State of the EU. The deadlines for implementing these Directives were 20 April 2003 for insurance companies and 5 May 2004 for credit institutions.*

Recommendations of good practice in European insolvency field

In March 2000, Lisbon European Council established as strategic objective for European Union to become until 2010 "the most competitive and dynamic knowledge-based economy in the world". In this context, the European Commission was given the mandate to initiate an open cooperation for helping the Member States develop their own economic policies. The methodology of the cooperation process establishes a series of recommendations at European level, in order to reach specific objectives within the deadlines, recommendations to be transposed in regional and national laws customized to local conditions.

Thus, at the Feira European Council, in June 2000, the Charter of Small Enterprises was adopted. It emphasis the importance of market-exit process for economic competitiveness and it considers necessary an evaluation of national bankruptcy legislations for underlining the good practices, as model to be followed.

Enterprises Directorate – General from the European Commission created a methodology known as the "best procedure", based on coordination process mentioned above. The proposed methodology consists in analysing the elements identified as essential for reaching the objectives of Lisbon Agenda and in defining the benchmarks& performance indicators, actual status and operational targets for improving the present situation.

In this context, in 2002, in the field of insolvency and bankruptcy was launched a project named "Restructuring, Bankruptcy and a Fresh Start", aiming to evaluate the way to be followed for optimising the market-exit proceedings at European level.

The project was finalised in September 2003 and it resulted in a series of recommendation and observations. They are not binding but they could be considered part of the so-called soft acquis, meaning that the recommendations should not be ignored in order to reach the common goals of the acquis itself[15].

Mainly, the recommendations mentioned above aim four broad action lines:

1. Early warning;
2. Legal system;
3. Chance for a new beginning;
4. Social attitude.

Regarding the early warning, the main recommendation made by the experts reunited under the aegis of Enterprise Directorate – General of the European Commission was to create mechanisms or institutions to counsel entrepreneurs, for early prevent the bankruptcy. At the same time, it is very important to have transparent information on alternatives to be followed in financial crises.

The recommendations regarding the legal system aims to streamline and speed up the insolvency proceeding, so that the entrepreneurs not to be discouraged by the idea of bankruptcy. Obviously, in possible, a grater stress should be put on judicial restructuring which would save the firms temporarily found in difficulty.

Also, the recommendations highlight the importance of giving a new chance to those entrepreneurs which gone bankrupted due to a general unfavourable context and not to intentional prejudices. As a result, it is recommended to eliminate any barriers which can lead to discrimination between entrepreneurs gone bankrupt in their trial to start a new business. A study asked by the European Commission and done by

[15] *Romania has signed at Maribor the European Charter for Small Enterprises and it is interested in preparing in advance for the Lisbon Agenda, in the view of becoming a Member State in 2007*

Boston Consulting Group shows that the entrepreneurs with a bad experience in terms of bankruptcy have more success in second business than the entrepreneurs having their first business.

Last, but not least, the recommendations sustained by the European Commission illustrates the necessity of eliminating the social stigma related to bankruptcy. Therefore, the market-exit through bankruptcy should be regarded as a normal step in the life of any economic agent, being a good act for the market and for the economy, as it makes available resources that re-enters in a short time in the economic cycle and they could be used in a more efficient way.

For each of these action lines, specific measures are proposed. They are, more or less, defined in concrete terms, but they are sustained by examples of good practice from the EU Member States.

For Romania, the study coordinated by the European Commission suggests that there should be taken action in the following domains:

i. Entrepreneurs information regarding the bankruptcy proceeding and its implications, as well as the access to counselling, in acceptable conditions, for financial difficulties and ways to be followed;

ii. Transparency of accountability information and of financial data that would allow signalling the financial health of firms;

iii. Through available trainings, to promote the new beginning for entrepreneurs gone bankrupt, to change the negative mentalities at the address of economic agents involved bankruptcy processes;

iv. In the final decision of the syndic judge, it should be mentioned the "pardonable behaviour" of entrepreneurs bankrupted due to external causes, and not due to their detrimental behaviour.

IV. MAIN IDEAS AND RECOMMENDATIONS

The analysis of bankruptcy institution supposes, on one hand, the evaluation of legal and procedural framework of insolvency regulations and, on the other hand, the investigation of implementation process's efficiency of the proceeding thus enforced. Concerning the legal framework, one can observe that there is not a universal bankruptcy code, a unique law applicable at worldwide level. National laws regarding bankruptcy are still, in a large measure, an adaptation of each country's specificities. Yet, there are basic principles[16] in mostly all legislations regarding the insolvency proceeding which are based on the logic, the basic aims of bankruptcy. Moreover, several good practices in the field are accepted for their role in reaching more easily the aims of the bankruptcy proceeding.

In the last few years, insolvency legislations, at international level, were constantly renewed, changes being caused by two important factors: pressure of legislation harmonisation and adjustment at national specificity. The harmonisation trend in the insolvency field is the result of institutional cooperation at regional and international level, as well as the result of informal pressures from partner countries. In the last years, a series of international institutions (IMF, World Bank, UNCITRAL[17], European Commission etc.) drawn up recommendations, conventions, consultancy mechanisms or other cooperation agreements, in order to establish common practices for bankruptcy proceeding. These institutional mechanisms aimed the bankruptcy field in a direct way, as well as indirectly through regulations and linked

[16] *The "golden" principle is that structurally non-viable firms must exit the market. Another principle is the existence for all competitors of equal (symmetric) conditions;*
[17] *UNCITRAL – United Nation Commission on International Trade Law;*

agreements in fields such as competition policy.

The most advanced exercise of harmonisation has been achieved in the field of cross-border cooperation on insolvency problems. For this specific case, at European Union and international level, compulsory and, respectively, voluntary regulations, have strengthened the international cooperation regarding the bankruptcy.

In transition economies, the insolvency proceeding is linked to two fundamental processes: reorganisation and privatisation. The reorganisation presupposes the change of former state enterprises into market-oriented firms, capable to take their own decisions to maximise the profit and to take responsibilities for their management decisions. If the enterprises are taken out from the protector shield of the state, their capacity to take radical measures for reorganisation in order to survive on the market is more reduced. It is the same for the privatisation process, where the firms must prepare for the market competition, and not to wait for the investor to miraculously fix the disastrous result of several years of inefficiency. Romanian legislation regarding bankruptcy is harmonised with the acquis communautaire in the field of cross-border insolvency. Moreover, the legislation in force is in accordance with UNICTRAL recommendations, which have not only a regional perspective, but also a universal one of cross-border cooperation in the insolvency area.

Concerning the general legal framework of insolvency proceeding in Romania, it mostly respects the regional and international guidelines and principles. Through the new adopted regulations, Romanian insolvency legislation corrects a series of uncertain or inefficient features.

The present trend to relatively favour liquidation against judiciary reorganisation may be considered as one of the few elements of divergence with the international trend, but this could be only a transitory stage. This option can be reversed when the juridical system would become more efficient, the administrators and syndic judges would become more skilled, institutions able to intervene would become stronger – in order to ensure the trust in the judicial reorganisation proceeding. At the same time, the reorganisation should not be done regardless its cost. It must not permit to safeguard the firms without any chance to become competitive.

Concerning the implementation of regulations regarding the insolvency, Romania's track record is rather poor. The failures in the implementing process could be explained by a series of hindering factors.

The judicial system is not fully consolidated, obstacles hindering the fluidisation of juridical proceeding. These obstacles are related to human and material resources within the system, as well as to general mentality regarding the state of law. Moreover, the expertise in commercial area is relatively small. Related legislation in commercial area is sometime ambiguous, leaving ways opened for interpreting the law, which corrupt, procedural and juridical, the decisions taken.

State involvement has reduced the application area of the general insolvency law only to the private sector. The public sector received a character of exception, being separately regulated for avoiding mass bankruptcy and the potential negative consequences at economic and social level.

Avoiding the bankruptcy of firms through artificial support from the state is the result of a soft budgetary constraint policy, supporting the lack of fiscal discipline in Romania. Apart from negative consequences on business environment brought by unfair competition between truthful taxpayers and those creating arrears, there are negative consequences at macroeconomic level especially regarding the budgetary deficit, the process of fiscal collection and external deficits.

State-aid policy is affecting, in a direct way, the insolvency and bankruptcy field. In Romania, in the total amount of state aid, the aids for safeguard – reorganisation were growing in the last years, instead of decreasing. This observation shows that we are facing, in reality, with a frequent insolvency in important areas of public sector, and even of recently privatised enterprises. Thus, the risk of mass bankruptcy in some sectors of the economy is still present. The amount of aids for erasing, reducing and re-phasing the debts and penalties is growing, which demonstrate an aggravation of payment incapacity for long outstanding debts. Moreover, passing from direct subsidies to support through exemptions and re-phasing, leads to a reduced transparency and to the fact that the state cannot plan in advance the amount of state aid[18]. This fact is in obvious contradiction with the acquis communautaire. The state aid should be redirected from the category of safeguard measures to the areas of measures encouraged by the European Union, such as the research and development, vocational training etc., fields which are in the present time neglected in Romania.

After the recent efforts to improve legislation regarding insolvency, in the case of Romania, defining the insolvency legal system (legal provisions, priorities, characteristics) is less important than the effort required for implementing the system.

The field of bankruptcy should not be regarded stricto sensus, only from the point of view of legal proceeding. Measures for improving the market-exit process should be taken in others domains too, such as financial and banking sector, competition, entrepreneurs and public opinion education, respect for the law etc.

Bankruptcy policy in Romania should take into account the EU' recommendations for informing entrepreneurs concerning bankruptcy proceedings, for ensuring a counselling framework regarding the situations of financial difficulty and ways to follow, for creating of a more transparent framework regarding accounts information and financial data, allowing warning alarms about financial health of enterprises, for promoting a new start for bankrupted entrepreneurs, as well as for changing the negative mentality at the address of firms which became insolvent only for conjuncture reasons.

State aid policy should be re-thought, in order not to prolong the existence of firms not able to face the market competition pressure and having no chance of recovering.

On the other hand, we cannot apply ad literam, in all cases, the community rules in the field of competition; it is not the case to be "more catholic than the Pope" when we deal with social and economic exceptionally situations. The important thing is that the state aid for safeguard – reorganisation to really become the exception which confirms the rule and not an instrument used for postpone unpopular decisions.

Strengthening the judicial sector is necessary, through an appropriate endowment and through judges' education, specialised in bankruptcy field, within the framework of the new commercial courts, stipulated in the law project regarding the judicial reorganisation.

Creation of a veritable guild of professionals in liquidation and reorganisation is another important priority, in order to relieve the judicial sector of additional burdens related to bankruptcy proceeding. Liquidation and reorganisation expert must focus the necessary economic and judicial expertise in order to find efficient solutions for insolvency situations.

[18] *Because the state cannot foresee the exact level of future arrears.*

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Legislation:

• Law 64/1995 regarding judicial reorganisation and bankruptcy procedure, republished in 1999;

• Law 82/2003 approving GO 32/2002 amending Law 64/1995;

• Law 149/2004 modifying and complementing Law 64/1995 regarding judicial reorganisation and bankruptcy procedure and other legal acts with impact on this procedure;

• Law 637/2002 regarding international law relation in insolvency area;

• Council Regulation (EC) 1346/2000 of 29 May 2000 concerning insolvency procedures.

STATE AID TO THE ROMANIAN STEEL AND COAL SECTORS: ISSUES RELATED TO ACCESSION*

Isabela Atanasiu, Gheorghe Oprescu**

Abstract. *This article aims to offer to the non-specialist reader a concise introduction to the main elements of the state aid acquis, and inform on what lies ahead of Romania in the accession process in relation to state aid control, based on the precedent of the 2004 enlargement. It also discusses the current state of affairs in Romania in the domain of state aid control, with a particular view to the situation of the steel and coal sectors. Section I covers the legal concept of state aid, the substantive rules applicable to state aid – the general ban and exemptions from it, the Commission's control and monitoring powers, and the regime currently applicable to coal and steel aid. Section II relates the experience of the countries that joined the EU in May 2004 in the negotiation of state aid issued under the Competition Chapter, discusses the notion of "existing aid" (i.e. state aid given in the candidate countries previous to accession but which continues to produce effects after accession) in the context of enlargement, and overviews the agreed transitional arrangements. Section III turns to the legislative and institutional context for the control of state aid in Romania, and to topical issues related to state aid in the context of the negotiations on the Competition Chapter.*

Introduction

At the time of writing this article, a Romanian team of negotiators is preparing to fly to Brussels for a new round on the Competition Chapter. This, together with Justice and Home Affairs, are the two remaining open negotiation chapters, which Romania hopes to conclude very soon so as to be able to sign the Accession Treaty in Spring 2005. The pending issues under the Competition Chapter are related to state aid. One is that Romania still cannot prove a "credible enforcement record" in the field of state aid - while this is one of the essential criteria for closing negotiations on competition, along with the adoption in full into national legislation of the state aid acquis and the establishment of an adequate administrative capacity for implementing it. The other is state aid for the restructuring of the Romanian steel industry.

State aid control is therefore one of the hot issues of the moment in Romanian political, institutional and business circles, as well as for the press. It remains, however, one of the areas of EC law that is least known and understood by the public. One of the purposes of this article is offer an accessible guidance to the non-specialist reader as to the main elements of the state aid acquis. The other is to inform those directly interested (academics, but also institutions involved in the granting of state aid and the business community) about what lies ahead in the accession process in terms of state aid regulation – based on the precedent of the countries that joined the EU in the 2004 enlargement – and on the current state of affairs in Romania in the domain of state aid control, with a particular view to the situation of the steel and coal sectors.

** This article draws on a study carried out in the context of the Pre-Accession Impact Studies II program of the European Institute in Romania. See Gheorghe Oprescu, Isabela Atanasiu, Mariana Papatulica and Petre Prisecaru (2004): State Aid Control in the Sensitive Sectors – Coal, Steel, Shipbuilding, Motor Vehicles (English and Romanian versions available at http://www.ier.ro).*

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The article is structured as follows: Section I is an introduction to the EC state aid control system, covering the following aspects: the elements defining the concept of state aid; the structure of the substantive law applicable to state aid – the general ban and exemptions from it; and the procedures according to which the Commission reviews and monitors state aid granted in the EU. In addition, this section overviews the regime currently applicable in the EU to steel and coal aid. Section II relates the experience of the countries that joined the EU in May 2004 in the negotiation of the Competition Chapter - state aid issues in particular, and explains the mechanism adopted for the review of "existing aid", i.e. aid given in the candidate countries previous to accession but which continued to produce effects after accession. Section III briefly describes the legislative and institutional context for the control of state aid in Romania, and includes some comments on the remaining topical issues related to state aid in the context of the negotiations on the Competition Chapter. Section IV concludes by summarising the main findings.

I. THE STATE AID ACQUIS

General notions

1.1. Definition of state aid

The EC notion of state aid goes beyond what is commonly referred to as "industrial subsidies", to cover a variety of state measures and transactions that confer support to industrial or service firms in so far as having anticompetitive consequences. Aid measures are singled out according to their effects, rather than objectives, form or content. This effects-based approach in the application of EC state aid rules allows the European Commission to exert control over a wide spectrum of anticompetitive measures undertaken in the Member States, ranging from economic regulation to transactions between the state and individual firms. This approach is at the same time somewhat challenging for those directly involved in the aid operation - aid donors and beneficiaries, for a good understanding of the EC notion of state aid is required in order to determine whether a support initiative falls under the scope of EC state aid rules, especially when support is indirect. In Romania, similar to the case of other transition economies that have recently joined the EU, indirect aid instruments are often preferred over the 'classical' direct subsidies, due to the existent budgetary restraints. Therefore, a good understanding of the conditions under which indirect support measures may be qualified as involving state aid is furthermore important.

What follows is not an exhaustive discussion of the legal definition of state aid,[7] but a concise introduction to the subject for the readers of this publication who are less familiar with EC competition law.

The Treaty itself does not offer a straightforward definition of state aid. Article 87(1) EC prohibits "any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods […] in so far as affecting trade between the Member States […]." (emphasis added) The European Commission and EC courts have interpreted this provision to indicate four cumulative conditions

[7] For a more detailed discussion on the legal definition of state aid, see e.g. Carl Baudenbacher (1999): A Brief Guide to European State Aid Law, London: Kluwer Law International; Malcolm Ross (2000): "State aids and national courts: definitions and other problems", Common Market Law Review vol. 37, pp. 401-423; European Commission (2003): Vademecum – Community Rules on State Aid (available at http://europa.eu.int/comm/competition/state_aid/others/Vademecum/Vademecumen2003_en.pdf); for a discussion on the legal definition of state aid and the soft budget phenomena arising in transition economies, see Isabela Atanasiu (2001): "State Aid in Central and Eastern Europe", World Competition vol. 24, no. 2, pp. 257-283.

under which a state measure or a transaction involving the state is qualified to involve state aid. ***These are as follows:***

- transfer of state resources;
- the conferring of an economic advantage to the beneficiary firm(s);
- selectivity of the measure; and
- cross-border distorting effects.

Transfer of state resources. Article 87(1) EC stipulates that state aid can be granted "by the state or through public resources". This formulation was interpreted to have two implications. First, the notion of state aid covers both support measures directly implemented by public bodies (government, regional and local administrations) as well as those implemented by private bodies acting on behalf of the state (e.g., a commercial bank offering subsidised loans or loans based on state guarantees, or managing a state-funded SME aid scheme).[2] Second, the notion of state aid covers not only measures involving a direct expenditure from the state's coffers (e.g., direct subsidies or subsidised loans), but also measures implying a loss of revenue for the state (e.g. waivers or postponed payment of public debts, the reduction or postponement of tax and social security contribution payments). For example, in DTM,[3] a case involving postponement for 8 years of the social security payments due by a firm in difficulty (DMT) to the Belgian institution responsible for collecting such payments (the ONSS), the European Court of Justice (ECJ) decided that, as long as social security contributions are imposed by law and administered by the ONSS on its basis, such contributions must be qualified as state resources. In PreussenElektra,[4] instead, the ECJ established that the German law obliging electricity suppliers to purchase German-produced electricity from alternative resources at a pre-established minimum price did not involve state aid, because it did not imply any transfer of state resources.

Economic advantage. ECJ jurisprudence has established from the early years of application of the Treaty of Rome that the notion of state aid comprises "any support measure, whatever its form, that has as an effect the reduction of the expenses normally borne by undertakings, even if it is not a subsidy, but it has the same nature and effects" (emphasis added).[5] This condition is more problematic to verify in the case of indirect support measures, where it is more difficult to identify and measure the effect of reducing the expenses normally borne by a firm. The European Commission has developed an analytical tool for this purpose, known as "the market economy investor principle" (MEIP), which consists of comparing the behaviour of the body implementing the support measure with that of a private investor acting in similar circumstances.[6] Although the MEIP instrument appears to be quite straightforward, in practice it is often difficult to identify the appropriate comparison benchmark. In Alfa-Romeo and ENI-Lanerossi,[7] the ECJ established that, whenever a public institution implements a support measure in the context of a wider economic policy strategy, this behaviour must be measured against that of a holding company seeking to increase its profits in the medium to long-term, rather than that of a company seeking short-term profit. In DMT,[8] the

[2] *See in this sense Joint Cases C-72/91 and 73/91 Sloman Neptun -1993- ECR I_887, Joined Cases C-52/97 and C-54/97 Viscido -1998-, Case C-379/98 PreussenElektra -2000- ECR I-2099.*
[3] *Case C-256/97 Déménagements Manutention Transport SA (DMT) -1999- ECR I-3913.*
[4] *See supra note no. 3.*
[5] *See Case 30/59 De Gezamenlijke Steenkolenmijnen in Limburg v. High Authority §1961ţ ECR 19.*
[6] *For a detailed analysis of the MEIP, see e.g. Giuseppe Abbamonte (1996): "Market Economy Investor Principle: A Legal Analysis of an Economic Problem", European Competition Law Review no. 4, pp. 259-268; for recent developments of the jurisprudence in this area, see Marc Hansen, Anne van Ysendyck, Susanne Zühlke (2004): "The Coming of Age of EC State Aid Law: A Review of the Principal Developments in 2002 and 2003", European Competition Law Review no. 4, pp. 202-233, discussing inter alia the recent Altmark judgment – Case C-280/00 Altmark Trans GmbH et al. v. Nahverkehrsgesellshchaft Altmark GmbH, judgment of 24 July 2003 (not yet reported) – on whether the compensation paid for performing public service obligations contains state aid.*
[7] *Case C-305/89 Italy v. Commission (Alfa Romeo) -1991- ECR I-1603; Case C-303/88 Italy v. Commission (ENI-Lanerossi) -1991- ECR I-1433.*
[8] *See supra note no. 3.*

Court established that the tolerance shown by the Belgian ONSS towards DMT should be compared to that of a private creditor, who may also decide to postpone payments from debtors in financial difficulty for the purpose of allowing them to recover, and thus eventually pay their debts. In Seleco,[9] the ECJ addressed the question of whether the acquirer of assets is liable for the recovery of illegal aid that was granted to the seller prior to the acquisition (a question of high relevance in privatisation contexts). The Seleco judgment establishes that, if the acquirer has paid a market price for its acquisition, it has not received through the transaction any economic advantage that could be considered as state aid, and thus it cannot be considered liable for the repayment of the illegal aid previously granted to the seller.

Selectivity. Article 87(1) EC is applicable to support measures that "favour certain undertakings or the production of certain goods", or in other words, are selective. The selectivity criterion entails a distinction between support measures of a general character, which are available on the same conditions to all firms, irrespective of the economic sector in which they operate or their location within the same jurisdiction, and those that confer an advantage only to certain firms or sectors of activity, and whose distorting potential is presumably higher.[10] Examples of support measures found to be selective are Maribel bis/ter[11] – a Belgian law reducing the rate of social security contributions for manual workers, which favoured manual labour-intensive sectors with respect to others – and CETM[12] - a Spanish law whereby the state subsidised loans for the purchase industrial vehicles by physical persons, SMEs, public institutions and public transportation companies. Admittedly to this date the selectivity condition is not defined very precisely in EC law and jurisprudence. The Commission and the EC courts seem to apply a presumption of selectivity to all measures that do not have a straightforward general character, thus passing the burden of proving the contrary to the Member State where the measure was initiated.[13] Moreover, support measures that apparently have a general character will nevertheless be qualified as selective if the institutions/bodies empowered to implement them enjoy a certain degree of discretion in their application. In Ecotrade[14] and Piaggio[15] an Italian law establishing a procedure for passing large firms in difficulty under the administration of the Ministry of Industry in view of their restructuring was found to be selective because: ***i)*** the criteria for selecting the firms to benefit from this procedure were discretionary; ***ii)*** the Ministry of Industry was given discretion to decide which of the selected firms could continue their activity. In DMT,[16] the Belgian ONSS was in the position to decide in a discretionary way whether and for how long the payment of social security contributions could be postponed for its debtors.

Some specific issues arise in the application of the selectivity test to taxation measures. In a Notice on fiscal aid[17] the Commission indicated that some tax measures normally qualifying as

[9] *Joined Cases C-328/99 and C-399/00 Italian Republic and SIM 2 Multimedia SpA v. Commission (Seleco) -2003- ECR I-4035.*
[10] *See e.g. Case C-241/94 France v. Commission -1996- ECR I-4551; Case C-200/97 Ecotrade -1998- ECR I-7907; Case C-75/97 Belgium v. Commission -1999- EC I-3671.*
[11] *Case C-75/97 Maribel bis/ter -1999- ECR I-3671.*
[12] *Case T-55/99 CETM -2000- ECR II-3207.*
[13] *See Malcolm Ross (2000), as cited in supra note no. l, at p. 406.*
[14] *See supra note no. 10.*
[15] *Case C-295/97 Piaggio -1999- ECR I-3735.*
[16] *See supra note no. 3.*
[17] *Commission Notice on the application of state aid rules to measures relating to direct business taxation, OJ C 348 of 10.12.1998.*

selective might nevertheless be considered not to involve state aid if the selectivity element is "justified by the nature of the [general taxation] system". The distinction between selective tax schemes and those where selectivity is justified in the general context of the taxation system applicable in a given jurisdiction is not very clear. More straightforward is, however, that taxation facilities which are available to all firms, irrespective of sector or location, and on the same terms, and where the fiscal authorities do not enjoy discretion in implementation, qualify as having a general character and therefore fall outside the scope of EC state aid rules.

Cross-border distortion of competition. Article 87(1) EC applies only to support measures that distort competition on a cross-border dimension. The Commission presumes that this condition is met whenever the aided firm operates on a market where there is intra-community trade.[18] Moreover, even if the aided firm is not engaged in exporting, aid is assumed to help maintain or increase domestic production, with the consequence of limiting the possibilities of producers from other Member States to export on that market.[19] In other words, there appears to be an almost automatic assumption that aid to firms operating on a market where there is intra-community trade will harm competition, with the exception of de minimis aid (i.e. cases where total aid received over a period of three years by one beneficiary, irrespective of form and objective, does not exceed 100,000 euro[20]).

1.2. Substantive rules: exemptions from the ban

Article 87 EC establishes a general ban on support measures that qualify as involving state aid according to the above-mentioned criteria, but also lays down exemptions from it. The exemptions from this ban mentioned in Article 87(2) EC – including social aid, aid granted directly to consumers, aid granted to compensate damages resulting from natural disasters and other exceptional occurrences – are automatic, whereas those listed in Article 87(3) EC are applied by the Commission, following an evaluation of the objectives and effects of aid. In particular, the Commission is empowered to approve:

- "aid to promote the economic development of certain areas where the standards of living are very low or unemployment is very high" (Article 87(3)(a) EC); and
- "aid to facilitate the development of certain economic activities or certain economic areas, where such aid does not adversely affect trading conditions contrary to the common interest" (Article 87(3)(c) EC).

The Commission has the discretion to assess whether the conditions for granting the above-mentioned exemptions are met. In order to render the enforcement policy more transparent and provide legal certainty, the Commission issues policy-guidance documents (regulations, communications, notices, frameworks, guidelines and letters addressed to the Member States) explaining the criteria according to which different categories of aid may be approved. What follows is a brief description of how the above-mentioned exemptions are applied to different categories of aid.

Taking into account the policy objectives pursued and the economic situation of the beneficiary firms, we can distinguish two broad categories of aid measures: those aiming at the recovery of inefficient firms, and those aiming to stimulate some sort of investment by profitable

[18] *See the Commission's Vademecum (2003), as cited in supra note no. 1, at. Pp. 3-4.*
[19] *See e.g. Joined Cases C-278/92 and C-280/92 Spain v. Commission -1994 - ECR I-1403, para. 40.*
[20] *See Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid, OJ L 10 of 13.1.2001.*

firms – for example, to attract initial investment into a certain region, or stimulate firms to undertake investment projects that are desirable from a social point of view (R&D, environmental protection, employment, training, etc.). In short, the above-mentioned exemptions apply to the various categories of aid as follows.

Article 87(3)(a) EC is mainly the ground for approving regional aid, namely aid measures aimed to attract/stimulate initial investment in the poorest regions of the Community, where GDP per capita (PPS) is below 75% of the EU average. The methodology for selecting the regions enjoying "assisted area" status under this paragraph, as well as the conditions for approval of investment aid in such regions, are laid down in the so-called Regional Aid Guidelines.[21] In addition, the Commission takes a more lenient approach towards aid for the recovery of inefficient firms that operate in the regions enjoying "assisted area" status under this paragraph. For example, aid aiming at the rescue or restructuring of firms operating in such regions is approved under less strict conditions regarding the reduction of excess production capacities. Moreover, operating aid (or aid reducing the current expenses of firms without being related to the carrying out of a restructuring programme) is exceptionally allowed in such regions, although otherwise forbidden throughout the EU, on condition that it be granted on a temporary basis and gradually reduced. [22] Finally, aid for other types of investment (e.g. R&D, environmental protection, SMEs, employment, training, etc.)[23] in such regions is subject to less strict limitations in terms of total amount allowed.

Article 87(3)(c) EC is the ground for approving: aid for initial investment granted in regions enjoying "assisted area" status under this paragraph – as a general rule, regions affected by industrial decline, and those where the standards of living are lower by comparison to other regions within the same Member State;[24] rescue and restructuring aid granted to firms in difficulty, irrespective of their location;[25] and aid to other types of investment (R&D, environmental protection, employment, training, etc.).[26]

1.3. Control and monitoring procedures

Article 88 EC establishes a system of ex ante control and ex post monitoring by the Commission of aid measures initiated by the Member States. In

[21] *See Commission Guidelines on National Regional Aid, OJ C 74 of 10.3.1998. The current Guidelines are up for revision towards the end of 2005.*

[22] *See Point 4.15 of the 1998 Regional Aid Guidelines, as cited at supra note no. 21. See also cases T-459/93 Siemens v. Commission -1995- ECR II-1675, T-214/95 Vlaams Gewest v. Commission -1998- ECR II-717, and T-55/99 CETM -2000- ECR II-3207, establishing that aid covering modernization costs which must be undertaking periodically by a firm because of the very nature of its activity qualifies as operating aid.*

[23] *For the rules applicable to R&D aid, see Community Framework for state aid for research and development, OJ C 45, 17.02.1996, and Commission Communication amending the Community Framework for state aid for research and development, OJ C 48, 13.2.1998. For environmental aid, see Community Guidelines on state aid for environmental protection, OJ C 37, 3.2.2001. For employment aid, see Commission Regulation (EC) No 2204/2002 of 5 December 2002 on the application of Articles 87 and 88 of the EC Treaty to state aid for employment, OJ L 337, 13.12.2002, and successive amendments. For training aid, see Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid, OJ L 10, 13.1.2001 and successive amendments. For aid to SMEs, see Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to state aid to small and medium-sized enterprises, OJ L 10, 13.1.2001 and successive amendments.*

[24] *See Regional Aid Guidelines, as cited at supra note no. 21. For a detailed discussion on the methodology for selecting the "assisted areas" currently covered by this paragraph, see also Fiona Wishlade (1998): "Competition Policy or Cohesion Policy by the Back Door? The Commission Guidelines on National Regional Aid", European Competition Law Review no. 6, pp. 346 et seq..*

[25] *See Community Guidelines on state aid for rescuing and restructuring firms in difficulty, OJ C 244 of 1.10.2004. For a discussion of the elements of novelty in this recent version of the Guidelines on aid to firms in difficulty, see Hansen, van Ysendyck and Zühlke (2004), as cited in supra note no. 6.*

[26] *See supra note no. 23.*

particular, paragraph (3) of this Article obliges the Member States to:

- notify to the Commission, for control and approval, any plan to introduce aid measures or modify aid measures that were already approved (the notification obligation); and
- not to implement such measure until the Commission pronounces a decision on their compatibility with the Treaty (the stand-still clause).

The detailed procedures according to which the Commission exercises its control and monitoring attributions with respect to state aid were codified within a Council Regulation, adopted in March 1999.[27] The Regulation lays down distinct procedures applicable to four categories of aid measures: "new (notified) aid", "unlawful aid", "misuse of aid" and "existing aid".[28] In what follows we summarise the procedures applicable to each.

New aid. Articles 2 and 3 of the Procedural Regulation confirm the notification obligation and the stand-still clause applicable to "plans to grant new aid" as resulting from Article 88 EC. The notification obligation applies in principle only to support measures that clearly involve an element of state aid according to the four criteria commented above. However, in case of uncertainty as to whether a given support measure involves state aid, the Member States are well advised to notify it to the Commission for assessment. This will spare them the consequences of a possible future qualification of the measure in question as involving "unlawful aid" – which, as we will show below, has important practical consequences, since the Commission has the authority to order the retroactive full recovery of unlawful aid.[29] Following notification of plans to grant new aid, the Commission opens a preliminary examination procedure (Article 4 of the Procedural Regulation), to be concluded within two months from the receipt of the complete notification form. At this stage the Commission may decide either to declare the notified measure as compatible with the Treaty (under one of the exemption provisions commented above) or open a formal investigation procedure (Article 6) if there are doubts as to the compatibility of aid with the Treaty. The formal investigation procedure shall be concluded whenever possible in maximum 18 months (Article 7(6)), and may result in a "positive decision" (declaring aid compatible with the Treaty), or a "conditional decision" (approving aid subject to certain conditions, implying that for the future the Commission would monitor compliance with these conditions), or a "negative decision" (prohibiting the measure in question).

Unlawful aid. Article 1(f) of the Procedural Regulation defines "unlawful aid" as aid that has been put to effect in breach of the notification obligation and stand-still clause. The procedures applicable to unlawful aid are similar to those applicable to new aid, but include some additional instruments, some having provisional effects lasting for the duration of the investigation procedure, others concerning the recovery of unlawful aid from the beneficiary. Thus, during the investigation procedure the Commission may adopt suspension injunctions, ordering the provisional suspension of the measure under inquiry (Article 11(1)), as well as

[27] *Council Regulation (EC No 659/1999 of 22 march 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83 of 27.3.1999.*

[28] *For a detailed discussion of the Procedural Regulation, see Adinda Sinnaeve (1999): "State aid procedures: the reform project", in Bilal Sanoussi and Phedon Nicolaides, eds., Understanding State Aid Policy in the European Community: Perspectives on Rules and Practice, Maastricht: European Institute of Public Administration, pp. 209-230.*

[29] *See Adinda Sinnaeve (1999), as cited at supra note no. 28, in particular pp. 216-217.*

provisional recovery injunctions (Article 11(2)), ordering the provisional recovery of aid already paid on the basis of the investigated measure. Provisional recovery injunctions may be adopted only if three cumulative conditions are met: there are no doubts about the aid character of the measure concerned, there is an urgency to act, and there is a serious risk of substantial and irreparable damage to a competitor of the aid beneficiary. Non-compliance by the Member States with such interim injunctions constitutes an infringement of the obligations assumed under the Treaty. Finally, when the investigation procedure concludes with a negative decision by the Commission (establishing that the measure involves aid incompatible with the Treaty) the Commission can order the retroactive recovery of aid already granted on its basis, including interests on the aid at an appropriate rate fixed by the Commission (Article 14). The Member States are obliged to put to effect the recovery decision without delay, according to procedures available under national law, provided they allow the immediate and effective recovery (Article 14(3)). In practice, however, the recovery of unlawful aid is often delayed by the beneficiaries through initiating proceedings under national law against the Member State that have the effect of suspending the carrying out of the Commission's recovery order. Last but not least, it is worth mentioning that the Commission cannot ask recovery after more than 10 years since the award of unlawful aid (article 15). Aid with regard to which the limitation period of 10 years has expired shall be qualified as "existing aid", with the practical consequences explained below.

Misuse of aid. Article 1(g) of the Procedural Regulation defines this category as aid used by the beneficiary in contravention of the approval conditions established in the Commission's decision. The main practical differences between "misuse of aid" and "unlawful aid" is that, in the case of the former category, during the examination of the aid measure the Commission cannot order the provisional recovery of aid, and the stand-still clause does not apply.

Existing aid. Article 1(b) of the Procedural Regulation defines this concept as covering, inter alia, aid that was put to effect before, and is still applicable after, the accession of Austria, Finland and Sweden to the EU,[30] and aid that at the time when the measure was put into effect did not qualify as involving aid according to the EC legislation in place at the time, but which subsequently became state aid according to the evolution of the common market and EC state aid regulation (an example in this sense is that of fiscal aid measures implemented in certain Member States before the adoption of a tighter discipline on this aid category in 1998). The essential difference between "existing aid" and "new aid" is that the Commission can alter the former category only for the future, meaning that aid amounts disbursed in the past under existing aid measures are protected from retroactive recovery.[31]

2. The acquis for the "sensitive sectors": the case of steel and coal

Due to the strategic importance of the steel and coal sectors in the European economy, state aid granted to (parts of) these sectors were subject to specific, tighter rules than those applicable to other economic sectors under the EC Treaty. Article 4 of the ECSC Treaty prohibited state aid to

[30] *This provision (Article 1(b)(i) of the Procedural Regulation) was amended following the May 2004 enlargement to include, by the same token, aid put to effect before, and still applicable after, the entry into force of the Accession Treaty in the 10 new Member States, without prejudice to Annex IV, point 3 and the Appendix to the said Annex to the Accession Treaty.*

[31] *See Georg Roebling (2003): "Existing Aid and Enlargement", Competition Policy Newsletter no. 1, pp. 33-37.*

steel and coal in any form whatsoever, yet Article 95 of the same Treaty was often used by the Commission and Council to exempt aid granted in the context of restructuring. As a matter of principle, following the expiry of the ECSC Treaty on 23 July 2002, the steel and coal sectors became subject to the general state aid regime (Articles 87-89 EC and the secondary legislation developed in their application). Nevertheless, at present these sectors continue to be subject to more restrictive aid regimes, whose main elements are summarised in what follows.

Steel. The European steel industry traditionally concentrated in few regions, with the local population predominantly employed in activities related to steel production. The structural crisis that affected the sector during the 1970s and 1980s brought about a real subsidy war between the Member States, who sought to support the restructuring of their own steel industry while mitigating the ample social and economic consequences of restructuring at regional level. To keep under control subsidy levels and coordinate restructuring efforts, the Commission implemented a series of successive State Aid Codes, whose common defining element was conditioning the approval of aid on the reduction of excessive production capacities.[32] The last Steel Aid Code, [33] covering the period from 1996 to the expiry of the ECSC Treaty, further narrowed the range of support measures allowed in this sector to R&D, environmental and closure aid. After evaluating the condition of the European steel sector in the late 1990s, the Commission concluded that it was necessary to maintain a stricter state aid discipline even after the expiry of the ECSC Treaty, so as to safeguard the outcome of previous restructuring efforts.[34] In March 2002 the Commission published a Communication on aid to steel firms in difficulty (applicable until the end of 2009),[35] which prohibits rescue and restructuring aid in whatever form to this sector. The same Communication confirms the prohibition of aid for large initial investment projects undertaken in this sector (i.e. projects whose total cost exceeds 50 million euro, or where the amount of aid proposed exceeds 5 million euro) as already established in the context of the regime for regional aid to large investment projects.[36] This prohibition also applies to aid for large initial investment projects undertaken by SMEs, as defined by Article 6 of the Commission Regulation on aid to SMEs (i.e., cases where the total cost of the investment project exceeds 25 million euro or the total amount of aid awarded exceeds 15 million euro).[37]

Turning to the aid categories that are allowed for the steel sector, the 2002 Communication lists types of closure aid that may be granted and the conditions for their approval. These include: compensations for early retirement and for workers losing their jobs (if granted for the first time to each beneficiary, and up to 50% of the total compensation awarded), and aid to compensate the costs of closing production plants (for companies registered and regularly producing

[32] *For a historic overview of the EC Steel Aid Codes and their application, see e.g. Alexander Schaub (1997): "State Aid in the ECSC Steel Sector", Competition Policy Newsletter no. 2.*

[33] *Decision No. 2496/96/ECSC of 18 December 19996 establishing Community rules for state aid to the steel industry, OJ L 338 of 18.12.1996.*

[34] *Communication form the Commission to the Council, the European Parliament and the ESCS Consultative Committee (1999): The State of Competitiveness of the Steel Industry in the EU, COM(1999) 453 final.*

[35] *European Commission (2002): Communication on Rescue and Restructuring Aid and Closure Aid for the Steel Sector, OJ C 70 of 19.3.2002.*

[36] *See European Commission (2002): Multisectoral framework on regional aid to large investment projects, OJ C 70 of 19.3.2002 (amended version of the 1998 text).*

[37] *See supra note no. 23.*

before January 2002, and if this type of aid is granted for the first time; when the firm to be closed is owned or controlled by another steel firm remaining in business, the beneficiary must be legally separated from the owned at least 6 months before the award of aid, and its financial situation will be checked by independent experts appointed by the Commission). In addition to closure aid, steel firms are also allowed to receive regional aid for reduced investment projects undertaken by SMEs (only when the beneficiary SMEs are located in a region enjoying "assisted area" status under Article 87(3)(a) or (c) EC; aid must not exceed 15%, respectively 7.5% of the overall cost of investment),[38] and aid for other types of investment (R&D, environmental protection, employment, training).[39]

Coal. Starting with the 1960, coal extracted in the EC Member States ceased to be competitive with coal imports from third countries. Similar to what occurred in the steel sector, for the past four decades the European coal industry has undergone a long and painful restructuring process. The Member States subsidised the re-dimensioning of production and implemented programs (often co-financed by the EC) offering financial compensations, re-training, re-location schemes for the redundant miners. At present, after four decades of restructuring, only four of the EU-15 countries are still producing hard coal - the UK, Germany, France and Spain – and only the UK extraction units are relatively efficient, while extraction in the other locations continues to be subsidised.[40] Following the expiry of the ECSC Treaty the Council adopted a Regulation on state aid for the coal industry.[41] The Regulation takes into account that, on the one hand, the restructuring and re-dimensioning of the hard coal production in the EU needs to continue (and be supported by the state) beyond the expiry of the ECSC Treaty, and on the other hand, the EU is becoming ever more dependent on imports from third countries of primary energy resources, thus it being necessary to maintain a minimum level of domestic coal production as part of the strategy to ensure security of energy resources. Thus, the Regulation allows the granting of certain categories of aid for hard coal extraction that aim at one of the following two broad objectives: maintaining a minimum strategic level of domestic hard coal production, and alleviating the social and economic consequences of closing the surplus extraction units. In particular, the Regulation allows the following categories of aid:

- ***Operating aid*** covering the losses of extraction units about to be completely closed by the end of 2007 (Article 4). This provision covers extraction units that were notified to the Commission by end of December 2002, and for which the Member States presented a plan for total closing of production by the end of 2007. Aid should not lead to a decrease of prices for hard coal extracted in the EU under the price levels of equivalent imports from third countries.
- ***Aid*** for maintaining a minimum level of domestic hard coal extraction (Article 5). We underline that this provision envisages the granting of either investment aid or operating aid to each specific beneficiary. Investment aid may be granted up to the end of the year 2010, to firms that have

[38] *See Regulation 70/2002 on state aid for SMEs, as cited at supra note no. 23. It is important to note that aid for initial investment satisfying the criteria in this Regulation does not need to be notified for approval.*

[39] *For the exact conditions for the approval of each of these types of aid, see the policy documents cited in supra note no. 23.*

[40] *Report from the Commission on the application of Community rules for state aid to the coal industry, COM (2002) 176 final.*

[41] *Council Regulation No. 1407/2002 of 23 July 2002 on state aid to the coal industry, OJ L 205 of 2.8.2002.*

not received similar aid in the past, and in support of an investment plan of demonstrable viability. The maximum amount of aid in this category granted to each beneficiary cannot exceed 30% of the total cost of the supported investment plan. Operating aid, instead, may be approved for firms included in the national strategic plan for maintaining a minimum level of domestic coal extraction (presented to the Commission before the end of 2002). Aid should not lower the prices of the domestic coal under the level of equivalent imports from third countries.

• ***Aid covering debts*** stemming from the implementation of a restructuring/ rationalization plan, such as the expenses related to the ecological rehabilitation of former extraction fields.

• ***R&D, environmental protection and training aid,*** under the conditions laid down in the corresponding EC regulation.[42)]

II. THE PRECEDENT OF THE 2004 ENLARGEMENT

Accession negotiations

The European Council held in 1993 in Copenhagen established a series of political and economic criteria for the accession of the Central and Eastern European countries to the EU. The economic criteria implied that the candidate countries demonstrate the existence of a functional market economy and the capacity to withstand competitive pressures within the internal market. In the context of accession negotiations on the so-called Competition Chapter, these economic criteria were translated into three conditions to be fulfilled by the candidate countries: adopting the competition acquis in full into their national legislation prior to accession; establishing national authorities empowered to implement this legislation and endowing them with the adequate administrative resources necessary for this task; and establishing a credible enforcement record with respect to state aid. While all 10 countries invited to join the EU in May 2004 succeeded relatively early to comply with the first two conditions, the development of a credible enforcement record in the field of state aid was slower. [43)] Some of the 10 candidate countries started a proper enforcement activity with respect to state aid after the year 2001. By the end of the year 2002, however, it was concluded that all three conditions were satisfactorily complied with.

In the context of negotiations on the Competition Chapter, two categories of aid measures used in the candidate countries revealed to be more problematic: fiscal aid (in particular tax incentives to attract FDI and the establishment of so-called "free zones", tax waivers and deferrals for companies in difficulty) and aid to firms in difficulty from the sensitive sectors, steel and coal in particular.

With respect to fiscal aid, the Commission agreed with the candidate countries some arrangements meant to bring such measures in line with the acquis within a reasonable time period. For example: Hungary agreed to phase out incompatible fiscal aid to SMEs by end 2011, for off-shore companies by end 2005, and incompatible aid granted by local authorities by end 2007; Poland accepted to phase out incompatible fiscal aid for small firms by end 2011 and for medium-sized firms by end 2010, and to modify incompatible fiscal incentives for large investment projects according to the criteria for approval of regional aid in the EU; Slovakia undertook to discontinue fiscal aid to a beneficiary in the motor vehicles sector by end 2008 and to another

[42)] *See supra note no. 23.*

[43)] *See Janne Känkänen (2003): "Accession Negotiations Brought to Successful End", Competition Policy Newsletter no. 1, pp. 24-28.*

beneficiary in the steel sector by end 2009 (or when aid reached a pre-determined total amount).

As to aid for the sensitive sectors, steel in particular, the EU agreed in exceptional circumstances to authorise, in the context of special transitional arrangements, the granting of restructuring aid as a "last opportunity" for restoring the viability of these firms (thereby as an exception from the "one time, last time" rule otherwise applicable to restructuring aid in the EU), conditional upon the achievement of a certain level of productivity at the end of the restructuring process and the carrying out of a pre-determined reduction of excess production capacities. Transitional arrangements for the restructuring of the steel industry were concluded with three candidate countries: the Czech Republic and Poland (in both cases, restructuring to be completed by end 2006), and Slovakia (where fiscal aid to one particular beneficiary shall be discontinued by end 2009). In the cases of Poland and the Czech Republic, the transitional arrangements regarding aid to the steel sector establish a maximum amount of aid to be granted to each beneficiary, the aid being approved conditional upon the fulfilment of certain obligations regarding levels of productivity to be attained following restructuring and the reduction of excess production capacities. Compliance with these conditions is monitored by the Commission on a regular basis. In the case of the Czech Republic, for example, the maximum amount of aid approved for the steel sector was of 413 million euro, to be paid over the period 1997-2003, while a productivity comparable to that of steel firms in the EU should be achieved by 2006.[44)]

Pre-accession aid continuing beyond accession

Equally important during the negotiations on the Competition Chapter was to agree on procedures for the screening of aid granted during the pre-accession period which would continue to be implemented and produce effects following accession.[45)] In the case of the 1994 enlargement (involving Austria, Finland and Sweden), the Accession Treaty stipulated that all aid measures approved by the EFTA Surveillance Authority (ESA) before accession would be treated as "existing aid" following accession. As we mentioned above, this qualification has important practical consequences, because aid disbursed in the past under an existent aid measure is protected from recovery – the Commission can alter it only for the future. The model of the 1994 enlargement could not be transposed ad literam to the case of the 2004 enlargement: ESA, as a supra-national authority modelled on the Commission implementing Community substantive law, represented a guarantee in so far as the "objectivity" of its decisions on aid, whereas the control of state aid granted in the candidate countries during the pre-accession period was exercised by a national authority operating under certain domestic political and legislative constraints. To keep under control the process of approving during the pre-accession period aid measures continuing to be implemented after accession, or having effects after the same date, the Commission proposed a two-tier review system. This system recognised the authority of the national authorities responsible for state aid as a first instance of review, but added a second (lighter) layer of review by the Commission itself,

[44)] *See infra note no. 46.*

[45)] *See Georg Goebling (2003), as cited in supra note no. 31.*

aiming essentially at identifying unlawful pre-accession aid that had escaped review by the national authorities (and therefore not implying a fully-fledged assessment of each aid measure).

According to this system, aid measures put into effect during the pre-accession period and continued after accession would qualify as "existing aid" only if having passed the two-tier review. It is important to note that the two-tier review system was applied also to aid measures that, if awarded within the EU itself, would not have needed to be notified for approval, as being covered by block exemption regulations (applicable under specific conditions to aid for SMEs, employment and training aid).[46] If, by contrast, a new Member State wished to continue an aid measure that was approved by its national authority before accession, but in relation to which the Commission had expressed doubts on the compatibility with the acquis, upon accession it had to notify the measure to the Commission for review as "new aid". In practical terms, this meant that, following notification, the new Member State would have to discontinue the application of the aid measure in question until the Commission pronounced a decision. Breach of this standstill obligation would result in the qualification of the measure as "unlawful aid", with the consequences thereof deriving regarding the retroactive recovery of payments already made.

The two-tier review system did not apply to the following categories of aid measures:

- aid covered by transitional arrangements (including steel aid);
- aid put into effect in the candidate countries before 10 December 1994 – which upon accession was to be treated as "existing aid" per se; and
- aid to the agriculture and transport sectors, which are subject to separate regimes.

Pre-accession aid measures that passed the two-tier test mentioned above were included in a list attached to the Accession Treaty. Since aid measures proposed to be implemented in the candidate countries during the period between the finalisation of the Accession Treaty and the actual date of accession could no longer be included on such a list, a distinct interim procedure was set up for this period.

Under the interim procedure, the candidate countries were requested to notify to the Commission for review any plans to introduce new aid measures. Such notifications were to be supplemented with a list of all existing aid measures already approved by the national state aid authority. If the Commission did not raise any objections with regard to a notified measure within 3 months from the receipt of a complete notification (i.e. a notification containing all the information necessary for the assessment of the case), the aid in question was to be considered as approved. If, instead, the Commission decided to raise objections, this triggered a formal investigation under the Procedural Regulation, investigation that would be suspended until accession.

In 2002 the Commission approved some 222 aid measures under the two-tier review system, which are listed as existing aid in an Annex to the Accession Treaty.[47] Other 278 existing aid measures were approved by the Commission under the interim procedure until September 2004. By the same date, 106 other aid measures were still under assessment – the majority of which were proposed by the Czech Republic and Poland. A significant number of aid measures were

[46] *See European Commission (2004): State Aid Scoreboard – autumn 2004 update, COM(2004) 750 final. For the block exemption regulations, see supra note no. 23.*

[47] *See European Commission (2004): State Aid Scoreboard – autumn 2004 update, COM(2004) 750 final.*

submitted for review under the interim procedure, right to the date of accession. Around 78% of the overall aid expenditure in the new Member States during the period 2002-2003 was earmarked for particular sectors – for example, 56% of the aid expenditure in Poland was directed towards the restructuring of the coal industry, and 35% of the aid expenditure in Slovakia was related to the restructuring of the steel industry.

III. THE SITUATION IN ROMANIA

Legal and institutional framework

Likewise to the countries that joined the EU in May 2004, Romania had previously concluded an Association Agreement with the EU, in the context of which it undertook to apply the acquis communautaire on state aid in full.[48] The Association Agreement foresaw two exceptions in this respect. One was that, for the first five years of implementation of the Agreement, Romania's entire territory would be treated for the purposes of state aid control in the same (more lenient) way as the European regions enjoying "assisted area" status under Article 87(3)(a) EC - with the practical consequences mentioned in Section I above. This status was eventually prolonged until the end of 2005.[49] The second concerned aid to the steel industry. Article 9(4) of Protocol 2 annexed to the Association Agreement made possible the approval of rescue and restructuring aid for the steel sector for a period of 5 years from the entry into force of the Agreement, as long as the following conditions were observed:

- aid should be given in relation to a feasible restructuring plan, restoring the economic viability of the beneficiary;
- the amount of aid given should be limited to what is strictly necessary in order to restore the beneficiary's viability;
- the support to any given beneficiary should be progressively reduced; and
- the aided restructuring plan should include measures of rationalization and reduction of excessive production capacities.

The above-mentioned five-year period was prolonged until the end of 2005 through the signing of an additional Protocol to the Association Agreement (as Protocol 2 did not contain a clause envisaging the possibility of prolongation). This new Protocol takes over the already-mentioned criteria for the approval of aid for the restructuring of Romanian steel firms, and introduces a two-tier review system: aid measures would have to be approved by the Romanian Competition Council and the Commission, and both institutions will also monitor the implementation of the aided restructuring plan. We need to underline that the expiry of this Protocol at the end of 2005 places Romania in a different situation from that of other steel-producing countries which joined the EU in May 2004 (i.e. Poland, the Czech Republic, Slovakia) in the sense that the latter were covered by a similar Protocol on steel aid up to the date of their accession. At the time of writing it is difficult to speculate upon the regime that will eventually be agreed for the period comprised between the end of 2005 and the date of accession. However, in the absence of another prolongation running up to the

[48] *Agreement establishing an association between the European Economic Communities and their member States, of the one part, and Romania, of the other part, OJ L 357 of 31.12.1994. For state aid control, see in particular Article 64 of the Agreement.*

[49] *See Decision No 2/2000 of the Association Council of 17 July 2000 extending by five years the period within which any public aid granted by Romania will be assessed taking into account the fact that Romania is to be treated as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community, OJ L 230 of 12.9.2000.*

date of accession, Romania will not be allowed to grant rescue and restructuring aid to steel firms after the end of 2005. Moreover, even if the Protocol were to be prolonged until the date of accession, Romania would still probably not be allowed to continue payments of aid in this category after the date of accession, unless negotiations on this subject resulted in a transitional arrangement of the kind that was concluded with Slovakia (see above).

The general framework for the control of state aid in Romania is given by Law No. 143/1999, as modified by Law No. 603/2003. This normative act defines the legal concepts relevant in this area of competition law enforcement (the definition of state aid, categories of aid measures, the notions of aid grantor and aid beneficiary, etc.) and empowers the Romanian Competition Council to perform ex ante control and ex post monitoring functions modelled after those performed by the Commission on the EU side.

Article 14(1) entitles the Competition Council to issue regulations, instructions or specific guidelines transposing the state aid acquis. We do not intend to list in full in this context the regulations adopted by the Competition Council in this sense. Suffices it to mention here that a regulation transposing the special regime applicable to steel aid, as resulting from the Commission's Communication of March 2002,[50] has not been adopted to the date of our writing. In the absence of such a specific framework, the legal regime applicable in Romania to steel aid remains somewhat unclear. For example, the Competition Council's Regulation on rescue and restructuring aid[51] stipulates that, when such aid is granted to steel firms, "specific rules will have to be observed with priority", but it does not make any reference where the relevant rules in question can be found. Moreover, the Competition Council could meet procedural difficulties in the attempt to enforce a negative decision in this area based exclusively on the provisions of the Protocol.

In so far as coal aid is concerned, the Competition Council adopted a framework for this sector in July 2004,[52] transposing the principles and provisions of the EC Regulation of July 2002.[53] According to this Regulation, closure aid cannot be extended beyond the end of 2007, while aid for initial investment and operating aid cannot be paid after the end of 2010. Any plans to grant aid for initial investment and operating aid must be notified to the Competition Council for approval by the end of 2004. The notification information must include an accompanying "plan for access to coal reserves" that is compatible with the governmental Strategy for the mining industry during 2004-2010, by the end of 2004.

Critical issues in the negotiation of the Competition Chapter

We conclude this section with a few comments on two aspects relevant to the current debate in Romania on closing the negotiations on the Competition Chapter. It seems that the two remaining points to clarify before finalising negotiations on this chapter are the Competition Council's "lack of credible enforcement record" in the area of state aid (we remind that proof of a credible enforcement record is one of the three conditions to be satisfied for closing negotiations on the Competition Chapter) and state aid for the

[50] *See supra note no. 35.*
[51] *Official Journal of Romania no. 470, part I, of 2.7.2002.*
[52] *Regulation on state aid for coal mining, Official Journal of Romania no. 736, of 16.8.2004.*
[53] *See supra note no. 41.*

restructuring of the steel sector. [54)]

Lack of a credible enforcement record means in this context that probably the number of negative decisions (i.e. decisions prohibiting incompatible or unlawful aid) adopted so far by the Romanian Competition Council is more reduced than estimated in the case of a rigorous application of the state aid law according to the criteria resulting from the state aid acquis. Furthermore, the Competition Council has no enforcement record with respect to the prohibition and recovery of unlawful aid. Leaving aside possible considerations related to the Competition Council's institutional independence, this situation is, at least in part, due to the fact that the Competition Council's enforcement powers, as resulting from Law No. 143/1999 on state aid, are limited on several accounts.

First, the Competition Council does not have the ability to adopt itself interim measures in the course of investigations on unlawful aid (which, we remind, is defined as aid granted in breach of the notification obligation and stand-still clause), such as the information, provisional suspension and provisional recovery injunctions that may be ordered by the Commission on the EU side (see Section I above). According to Article 17(2) of Law No. 143/1999, interim suspension and recovery orders can only be issued by the Court of Appeals, on request from the Competition Council.

Second, in cases of unlawful aid granted on the basis of a normative act, the Competition Council cannot intervene directly for the annulment of the normative act in question and the recovery of unlawful aid already paid on its basis. According to Article 17(1) of Law No. 143/1999, the Competition Council has the possibility to request to the Court of Appeals in whose jurisdiction the aid grantor or the aid beneficiary are located to "annul the administrative act granting the aid" and order the suspension of the measure and recovery of unlawful aid already paid on its basis. To be noted, however, that this provision refers to the annulment of administrative acts by means of which the unlawful aid was paid, and not to the normative act on the basis of which payments are made. Indeed, the normative acts on the basis of which unlawful aid is granted cannot be annulled or modified in the course of administrative contentious proceedings, and on grounds of their being in conflict with the state aid law, which is in its turn a normative act ranking equal with those on which aid is granted according to the Romanian legal hierarchy.

In order to circumvent this legal trap, Article 17 of Law 143/1999 establishes at paragraphs 3 to 6 an informal procedure whose legal effects and consequences are not very clear. According to this procedure, the Competition Council, when learning about unlawful aid, sends notice to the body that issued the normative act on the basis of which it is being granted (the government, in the case of Emergency Ordinances, or the Parliament, in the case of organic laws). The issuing body and the aid grantor are requested to suspend the application of this act within 10 days from receipt of the Competition Council's notice, and to notify the measure to the Competition Council for review within 30 days from receipt of the notice. Finally, the issuing body and the aid grantor are required to "take into account" the Competition Council's eventual decision on the measure if the later requests to amend the normative act in question and recover unlawful aid already paid on its basis. A similar procedure is established at Article 18(1)

[54)] *See Adevarul of 3.12.2004.*

with respect to aid that was prohibited by the Competition Council following notification, but which nevertheless is being granted on the basis of a normative act adopted in disregard of the Competition Council's prohibition decision.

In sum, both procedures seem to rely exclusively on the willingness of the body that issued the normative act in question to act according to the Competition Council's recommendations, as there are no provisions as to how the latter could enforce its decisions against the issuing body (be it the government or the Parliament). Admittedly it is not easy to find the legal and procedural solutions for this problem of conflict between the state aid law and normative acts ranking equal in the Romanian legal order. Possibly one way to circumvent it would have been to amend the Romanian Constitution by introducing an article establishing that freedom of competition is a constitutional principle – the Competition Council could have acted on its basis in order to request directly the annulment of the normative acts conflicting with the state aid law. At any rate, at an advanced stage of the preparations for accession, the problem could be partially overcome through the two-tier review system involving the Competition Council and the Commission (see Section II above), which will probably render the initiators of aid measures more sensitive to competition law considerations.

As to state aid for the steel industry, we already mentioned in the sub-section above that until the end of the year 2005 Romania still enjoys the more lenient treatment resulting from Protocol 2 to the Association Agreement, which allows the granting of rescue and restructuring aid to this sector whereas such aid is currently banned in the EU. In spite of this permitting regime, aid expenditures for the Romanian steel industry were relatively low during the 2000-2003 period (see Table below). An all-time record was reached in 2001, on occasion of the privatisation of Sidex Galati, and remained relatively high over the following two years as the privatisation process was extended to other firms in the sector. The aid expenditure reported below for the period 1993-2002 are exclusively related to restructuring, and mainly took the form of debt write-offs and rescheduling, or debt-equity swaps. These commitments are also reflected in the

Aid to Romanian steel plants during 1993-2002 and forecasts for 2003-2010 (million USD)

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	Total	2003-2010
Ispat-Sidex Galati		34.8	11.5	27.1		19.7	26.2		911.6	14.8	**1045.7**	**233.0**
Siderurgica Hunedoara			8.7	6.0	5,8	13.4					**33.9**	**492.3**
COS Târgoviste		1.8	5.5	13.7		8.4		28.2	2.1		**59.7**	**97.0**
IS Câmpia Turzii			16.2	3.2	0.1	4.5					**24.0**	**91.7**
CS Resita		33.5	2.4	1.3	6.3	2.3				102.6	**148.4**	**93.7**
Gavazzi Steel Otelul Rosu											**0.0**	**62.0**
Siderurgica Calarasi	5.2	6.6	6.0	5.2	1.3	1.0	1.2				**26.5**	
Sidermet Calan			0.4			23,8					**24.2**	
TOTAL	**5.2**	**76.7**	**50.7**	**56.5**	**13.5**	**73.1**	**27.4**	**28.2**	**913.7**	**117.4**	**1362.4**	**1069.7**

Source: *"The Restructuring Strategy of Romania's iron and steel industry for the 2004-2010 period"; Romanian Ministry of Economy and Commerce, April 2004.*

"Strategy for the restructuring of Romania's steel industry during the period 2004-2010", as issued by the Romanian government in Spring 2004, which, together with individual restructuring plans and the Competition Council's decision regarding aid granted to each steel firm, will be analysed by the European Commission and eventually submitted for approval to the European Council. In this respect, a series of specific conditions will have to be met, in terms of the credibility and viability of the plans proposed, proportionality of aid with the costs of the restructuring operation, and proposals for capacity reduction.[55)]

One of the questionable aspects related to the Spring 2004 version of the above-mentioned Strategy was that the payments proposed for the future were not structured by years. This could become problematic particularly considering uncertainty about whether the Steel Protocol to the Accession Agreement will be extended beyond the end of 2005. Another possibly problematic aspect could be the fact that the Romanian Competition Council did not appear to take into account restructuring aid measures that were initiated before the coming into force of Law No. 143/1999 on state aid, but which continued to be applied after that date, when approving restructuring aid measures proposed at the beginning of 2004. Finally, in 2002 the Competition Council approved restructuring aid given in the context of the privatization of Sidex Galati through a decision that was criticised by the Commission for not applying correctly the viability and proportionality criteria resulting from EU legislation.

IV. CONCLUDING REMARKS

Our concluding remarks relate to the following three main aspects: the regime currently applicable in the EU to steel and coal aid; lessons to be drawn from the experience of the countries that joined the EU in May 2004 in terms of what lies ahead for Romania in the area of state aid control; and topical issues for Romania in the negotiation of state aid aspects under the Competition Chapter.

Following the expiry of the ECSC Treaty, the EU implemented special regimes for steel and coal aid, maintaining a tighter discipline on aid with respect to that applicable to other economic sectors. The 2002 Communication on aid to steel firms in difficulty prohibits aid for the rescue and restructuring of steel firms, as well as aid for large initial investment projects undertaken in this sector. Steel firms in the EU may receive, instead, closure aid (if satisfying certain criteria), aid to reduced initial investment projects undertaken by SMEs, and aid for other types of investment (R&D, environmental protection, employment, training). The 2002 Council Regulation on state aid for the coal industry allows, broadly speaking, aid for this sector aiming at one of the following two broad objectives: maintaining a minimum strategic level of domestic hard coal production, or alleviating the social and economic consequences of closing the surplus extraction units. This includes: operating aid for extractions units about to be closed by the end of 2007; investment aid up to 30 % of the total investment cost if related to maintaining a minimum level of hard coal production (aid allowed up to 2010); operating aid for firms included in a national strategic plan for maintaining a minimum level of domestic coal

[55)] Eva Szymanska and Max Leinemeyer (2004): "Guidance for making a steel restructuring program", European Commission, DG Competition, Brussels (mimeo).

extraction; aid covering debt related to restructuring, such as the expenses related to the ecological rehabilitation of former extraction fields; R&D, environmental protection and training aid.

Likewise to the case of Romania, some of the countries that joined the EU in May 2004 faced severe problems related to the restructuring of their steel and coal industries. While no special allowances were made for the coal sector during the pre-accession period, these countries enjoyed, under the Steel Protocols to the Association Agreements, a more lenient treatment towards aid for the steel sectors, including in particular the possibility to grant rescue and restructuring aid. In the context of accession negotiation, the EU agreed to special transitional arrangements on aid for the restructuring of the steel industry in the Czech Republic and Poland (where restructuring should be completed by the end of 2006), and Slovakia (where fiscal aid to one particular beneficiary shall be discontinued by end 2009). With the exception of the case of Slovakia, the steel transitional arrangements concluded by Poland and the Czech Republic exclude the possibility of any aid payments after the date of accession – in practice, the period of time comprised between the date of accession and the expiry of the transitional arrangement covering only compliance with the conditions of viability, productivity and re-dimensioning of production on which restructuring aid was approved in the transitional arrangement. For the case of Romania, where most restructuring aid for the steel industry seems to be granted in the form of fiscal aid, one may envisage of a transitional arrangement of the type concluded with Slovakia. In the absence of such an arrangement, restructuring aid offered in other forms will have to be discontinued upon the date of accession.

Aid covered by transitional arrangements (therefore including steel aid) did not fall under the scope of the two-tier review mechanism, established in order to offer to the Commission the possibility to exert control over aid measures initiated during the pre-accession period but which continued to produce effects after accession. According to this system, aid measures put into effect during the pre-accession period and continued after accession would qualify as "existing aid" only if having passed the two-tier review of the national state aid authority and Commission. By contrast, measures approved the national authority only before accession would have to be notified after accession to the Commission as "new aid". Pre-accession aid measures that passed the two-tier test mentioned above were included in a list attached to the Accession Treaty. For aid measures proposed during the period between the finalisation of the Accession Treaty and the actual date of accession, the Commission established an interim procedure, this time involving the full notification of aid plans to the Commission. If the Commission raised objections, a formal investigation was considered to be triggered, investigation that would be suspended until accession.

In Romania, the Protocol to the Association Agreement allowing the granting of restructuring aid to the steel sector is applicable until the end of 2005. The Competition Council has not yet adopted a regulation transposing the special regime applicable to steel aid as resulting from the Commission's Communication of March 2002. In the absence of such a specific framework, the legal regime applicable in Romania to steel aid remains somewhat unclear. The Competition Council could meet procedural difficulties in the attempt to enforce a negative decision in this area

based exclusively on the provisions of the Protocol. For the coal sector, instead, the Competition Council recently adopted a framework the principles and provisions of the EC Regulation of July 2002. Closure aid cannot be extended beyond the end of 2007. Aid for initial investment and operating aid cannot be paid after the end of 2010. Any notification of a plan to grant aid for initial investment or operating aid must be submitted by end 2004 and include an accompanying "plan for access to coal reserves" compatible with the Strategy for the mining industry during 2004-2010.

On a more general note, the Romanian Competition Council's limited powers to deal with unlawful or prohibited aid granted on the basis of a normative act may in part explain the poor enforcement record so far in this area of competition law. The problem may partly be overcome with the application of the two-tier review system, performed jointly with the Commission, on aid measures to be continued beyond accession. As to the negotiation of a transitional arrangement for restructuring aid to the Romanian steel sector, it is important that the conditions required by the Commission for the approval of restructuring aid under a transitional arrangement in terms of the credibility and viability of the individual restructuring plans proposed, proportionality of aid with the costs of the restructuring operation, and proposals for capacity reduction, be met.

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EVALUATING COSTS AND BENEFITS OF ROMANIA'S INTEGRATION INTO THE EUROPEAN UNION[1)]

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Abstract. *The study „A Cost-Benefit Assessment of Romania's Accession to the European Union", part of the programme Pre-Accession Impact Studies II that was coordinated by the European Institute of Romania, tries to offer a partial image of an evaluation of the qualitative and quantitative impact of Romania's potential integration into the EU in the short, medium and long run. The focus is on the quantification and analyses of the transformations and effects induced by Romania's accession to the European Union in terms of generated costs and benefits. The main cost categories directly associated with the accession to the European Union may be grouped in costs related to the adoption of the European norms and policies, costs related to the conformation with and implementation of the standards, costs of assuming the status of European Union member and costs related to the modernisation of the Romanian economy. The main benefits of Romania's accession to the European Union are generated from supplementation and diversification of the financial resources, from acceleration of reforms and support for the transition through the provision of fundamental elements for the definition of the national economic policies and from the intrinsic status of an EU Member.*

The impact analysis of Romania's integration process has been performed separately for the pre-accession and post-accession periods. Also, the scenarios considered in the impact assessment must be differentially conceived, one considering integration as granted, the other one trying to postpone the moment of foreseen integration into the EU. The study uses both qualitative analyses and quantitative mathematic-economic modelling tools to assess the possible changes at sectorial level, as well as at macroeconomic national level. The findings of these analyses are presented at the end of this document.

The collapse of the communist regimes allowed the states in Central and Eastern Europe, including Romania, to express their firm option to adopt the free market economy model. They all saw in the European Union a support in their potential development, while in the European integration process a chance for a new economic launch. In 1995, Romania forwarded its official Request for Association with the European Union in line with other former communist countries during the same period. To acquire the status of EU member in the foreseeable future was set and still is an absolute priority of the Romanian politics. In the past 14 years, with almost no exception, the governance programs were defined according to the EU accession imperative, based on the

1) This article draws on a study carried out in the context of the Pre-Accession Impact Studies II program of the European Institute in Romania See Study no. 12: Constantin Ciupagea, Laura Marinas, Geomina Turlea, Manuela Unguru, Dorin Jula, Radu Gheorghiu (2004): „A Cost-Benefit Assessment of Romania's Accession to the European Union" (English and Romanian versions available at http://www.ier.ro).

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fulfilment of the Copenhagen accession criteria, while the decisions adopted by the national authorities have significantly influenced the "road map", the date and the conditions for Romania's accession. Following the Helsinki Council decision for the EU to start negotiation with Romania in the beginning of year 2000, Romania came to grips with the circumstances of taking decisions of major importance for its future. The potential "road maps" which Romania follows in its race for efficiency, competitiveness, development and stability were and may be different, and consequently the de facto social-economic evolution has varied, varies and will vary with the road map chosen.

This study tries to offer a partial image of an evaluation of the qualitative and quantitative impact of Romania's potential integration into the EU in the short, medium and long run. The conditions and premises of the Eastward enlargement are completely different from the ones related to any of the previous enlargements. Firstly, the Eastward enlargement supposed accession, in a short period of time, of a very large number of states. Secondly, the profile of Romania and of some of the Eastern countries that joined the EU in May 2004 was a very special one, as full-grown market economy was missing and the experience of a democratic political system with only 14 years of operation was often considered to be insufficient. For this reason and as opposed to the other enlargements, a series of extremely well defined criteria were established to be met by the candidate states in order to become full-fledged members of the European group. Thirdly, it has to be mentioned that the Eastern countries were missing the specific experience of participating to integration groups, based on competitive forces of a free market environment. Fourthly, the basis of this enlargement differed to a great extent from other enlargements as they were prominently of political reasoning.

Romania's as well as the other candidate states' accession is conditioned by the need to conform to the requirements (conditions) imposed by the four accession criteria:

1. Political criteria – to ensure the state of law;
2. Economic criteria – existence of a functional market economy which should allow the candidate state to cope with the competitive pressures and the market forces within the EU;
3. Legislative criteria - to assume the acquis communautaire in force at the date of accession;
4. Administrative criteria – to ensure the stability of institutions and the ability to assume the obligations resulting from the European Union member quality.

Beyond the necessity of coping with the juridical and administrative requirements, it is obvious that the conformation with the accession criteria and, by implication, the accession of Romania to the European Union, implies a series of transformations at economic and political level.

The aim of present study is not an exhaustive stock taking of the transformations and effects induced by Romania's accession to the European Union but rather their quantification and analyses in terms of generated costs and benefits.

It is obvious that the institutional, economic and social adjustments induced by the adoption of the community norms and policies are cost generators. Taking into account the manner in which accession criteria are formulated, the administrative criterion respectively (the state's ability to cope with the requirements of being an EU member), and the manner in which the accession negotiations are progressing (negotiations on the eventual transition periods

	Direct impact	Indirect impact
Economical	- disposal of the trade exchange barriers - implementation of the community provisions regarding competition (with visible effects on the business environment) - implementation of the CAP tools in agriculture - access to the structural funds	- reorientation of the trade flows - industrial and agricultural restructuring - implications at regional level - accession to the convergence criteria of the UEM (Maastricht)
Political	- prevalence of the community law over the national one - direct applicability of the community legislation - modifications of the Constitution and the constitutional statute of the national parliament - representation in and participation to the community decision-making process	- reorientation of the foreign policy (including trade diplomacy) - modifications in the elaboration and implementation manner of the governmental policies

following the factual accession, allocated for the implementation of the acquis communautaire), most of the costs associated with the accomplishment of the Copenhagen criteria will concentrate in the period prior to 2007 (the envisage date for attaining the EU member status). The main cost categories directly associated with the accession to the European Union may be grouped as follows:

1. **Costs related to the adoption of the European norms and policies** (acquis communautaire), in his category being included: costs generated by the institutional building, by the formation of human resources in these structures, costs associated with assuming community objectives of economic policy nature (which, depending on the area's characteristics and/or the time period, may imply high costs on short term, evident in the areas where the short term priorities of the two partners, Romania and the EU, are different) etc. Most of these costs will concentrate in the period prior to the factual accession.
2. **Costs related to the conformation with and implementation of the standards defined by the European norms and policies** – there is an attempt to quantify the efforts required for the compliance with the community provisions in the areas subject of the acquis communautaire. These costs may arise at institutional level (public authorities) and microeconomic level as well. This category includes costs associated with specific areas like: modernization of the transportation infrastructure, labour and social security standards, consumer protection, quality standards, environment standards etc. In this category are also included the costs

associated with the free movement of goods, services, persons and capital.

3. **Costs of assuming the status of European Union member.** These costs will materialize after the accession to the European Union and include the contributions to the community budget, the participation to the community institutions etc. In a small part, these costs may be also marked out prior to the factual accession and comprise Romania's co-financing contributions to the European Union programmes where it is part (ex. Phare, SAPARD, ISPA, Leonardo da Vinci, FP6 program etc.).
4. **Costs related to the modernisation of the Romanian economy.** The costs included in this category are directly related to the modernisation of the production capacities and the enhancement of the Romanian products and services competitiveness in order to face the competitive pressures inside the European Union. To a great extent, these costs are situated, in terms of time periods, prior to the accession date. This cost category includes costs strictly related to the modernisation of the production capacities in the economy sectors (enhancement of the technological level, the quality of products and services etc.). The costs associated with the modernisation of production equipment, in order to ensure the compliance with the production, environment, safety and other standards imposed by the European Union are not included here.

Most of the costs derive from the existing differences between the institutional structures, the priorities and the content of the economic policies at Romania's level, on the one hand, and the defining elements of the community model, on the other hand. Also, from a sector perspective, the greatest part of these costs derives from the low development level of a sector as compared to the EU one, which makes the acquis communautaire to seriously affect the sector's competitiveness and to raise the alignment costs through the liquidation of certain companies or sectors which are not able to financially support the transposition of the acquis communautaire.

The main benefits of Romania's accession to the European Union can be classified as follows:

1. **Supplementation and diversification of the financial resources.** The European Union member status ensures Romania's access to the structural funds and to the cohesion funds. The volume (and implicitly the derived effects) of these fund transfers to Romania can not be currently assessed, the national financial distribution of the structural funds being subject of the new 2007 – 2013 programming period. Part of these benefits can be set off before the accession's date and it reveals the quantum and positive effects of the input of funds through the pre-accession financial instruments or other instruments and programs developed by the EU for the candidate countries.
2. **Benefits resulting from the member status.** These benefits will arise following the EU accession and are the result of the participation to the single market and the economic and monetary union, of the better support of the national interests through the participation in the EU institutions etc.
3. **Acceleration of reforms and support for the transition through the provision of fundamental elements for the definition of the national economic policies.** The transition

from a made to order economy to the market economy has no historical precedent. Under such circumstances, during the whole transition period the EU supplied Romania with a model for the elaboration of its economic policies (in view of the accession criteria and the integration will, in most cases this meant the assumption of the respective community objectives and policies in their whole, or the duplication of certain member states' policies). These benefits are difficult to estimate and may take the shape of an abridgement of the transition period. The technical assistance provided by the EU to Romania in different areas is an example of a benefit in this category.

From the methodological point of view, it is difficult to make a clear difference between the effects of integration and the ones of the transition process. On the other hand, the **winner/loser** dichotomy is a relative one. The identification of a sector as winner or loser in the integration process does not come to the same thing for every company or individual in that sector. Additionally, the sectorial analysis does not necessarily answer to a positive/negative influence on the welfare of the entire society. A losing sector may release resources for other sectors, thus improving the efficiency of the allocation of resources in economy.

The integration assumes the achievement of social-economic convergence targets within the EU, targets that are up-dated periodically with the requirements imposed by the historical moment. From the prospective point of view, convergence is defined through a set of benchmarking indicators mirroring the desired targets. The European Union started a monitoring process of the progress made by the accession countries, as well as by the member states, in their road towards the achievement of the objectives set in the Lisbon Council, with the major goal of "EU becoming by 2010 the most dynamic and competitive knowledge-based economy in the world, maintaining and strengthening social cohesion at the same time". This objective is supposed to be reached through the so-called OMC (Open Method of Coordination), within which monitoring plays a priority role.

The impact analysis of Romania's integration process must be performed separately for the pre-accession and post-accession periods. Also, the scenarios considered in the impact assessment must be differentially conceived. At the level of macroeconomics, one type of analysis will refer to various simulations, temporally situated in the period 2000-2004 (already covered), meant to compare the reality to what could have happened in the Romanian society if the negotiation process would not have been started. The second type of analysis is of prospective nature, comparing various scenarios plausible for the period 2005-2015, where the accession moment will be also included, earlier – 2007-2008 – or later – 2011-2012, depending on the evolution of the pre-accession process and the negotiation one. With a view to the quantification of the integration effects on the Romanian macro-economy, two alternative scenarios have been carried out for each of the two periods (2000-2004 and 2005-2015 respectively).

One of the major impact generating elements is represented by the financial flows transferred between the EU and Romania, which will be net inflows from the EU to our country during the analysed period. Beginning with year 2000, a pre-set program was agreed between the two negotiation partners, stating that the directly transferred financial flows have been or are going to be in compliance with the following financing

scheme for pre-structural funds: ***(million euro)***

Years	The contribution of the European Union				Co-financing of EU funds	Total
	PHARE	ISPA	SAPARD	Total EU		
2000	88	478	151	716	247	964
2001	103	413	151	666	228	894
2002	112	326	151	589	189	778
2004	174	312	161	646	243	889
2005	162	338	161	660	241	901
2006	128	364	161	652	219	872

Following 2007 (with a programming on principle up to 2013), the EU commitments are increasing in terms of financial flows volume, while the budgetary effort of Romania is determined based on the co-financing principles settled trough the European Union methodologies for structural and cohesion funds access, as well as by considering Romania's contribution to the European Union budget. The equivalent payments are clearly set for the first three post-integration years:

The Financial Package for Romania – payments (million euro, prices 2004)

Year	Payments of the European Union	Own budget effort of Romania (payments)
2007	2361	1678
2008	3124	1687
2009	3409	2298
Total	8893	5663

The macro-economic impact related to the financial package cannot be reduced only to the absolute value of the amounts directly allocated to Romania. This statement has its reasoning in the fact that the structural programmes and actions which could be developed with these funds may generate and support a process of durable economic growth, at least in the areas of agriculture, infrastructure and environment. The effect might also benefit on the development of human resources and on the increase in social cohesion, based on rural development and regional equilibrium.

The sectorial analyses presented in the referred study generated certain important findings and conclusions:

1. The economic development will not be homogenous between the economic sectors, in none of the possible development scenarios. There will always be relative losers and winners. One of the fundamental issues for the political decision-makers will be to find the social-economic policy solutions and measures necessary for the reduction of losses (costs) where these arise or are of acute nature, or in the best case, to find methods for transferring all the sectorial differences in a global growth area.
2. The presented figures, disaggregated by

sectors of economic or social activity, show that the possible costs and benefits of Romania's European integration or isolation are not homogenously distributed in time. There are periods when the costs are prevailing in certain sectors or even in the economy as a whole, followed by periods of benefits supremacy. The analyses should be performed for a medium or long term and the results should be discussed based on the trends recorded towards the end of the prognosis period.

3. At the level of macroeconomics, in terms of the corporate sector, the integration costs, excluding the financial ones, will be direct costs, related to the possibility of finding the necessary resources for restructuring and financing the infrastructure investments (in transports and information sector mainly), the impact costs of a higher competition in many sectors of the Romanian economy exposed to the Single European Market (the sectors of chemistry, machines and equipment, non-metallic material processing, means of transportation).
4. Most of the costs related to Romania's accession to the EU, in view of agriculture and agricultural policy, derive from the low competitiveness and development level of the Romanian agriculture compared to the community standards. Given the predominance of the agricultural area over the total arable area, the preponderance of private property and the reduced average dimension of the agricultural exploitations, it may be stated that the Common Agricultural Policy (CAP) will have a significant effect on Romania. The production achieved by Romania in this sector is under the incidence of CAP: in 2002, 57% of the agricultural production was represented by the vegetable production (dominated by cereals) – which represents the main group of products under the incidence of CAP, and 41% by the animal production – entirely under the incidence of the common agricultural policy. So, in the Common position document, which provisionally closed the negotiations (on the 4th of June 2004), there have been identified five strategic areas: rural development, cultivable area for cereals, zoo culture - animal breeding, viniculture sector, agriculture-industry (sugar and milk processing).
5. An essential element in ensuring the long-term and sustainable-durable growth of the Romanian economy will be represented by the programs aiming at the gradual development of the human capital. Evidently, in the short and medium run there are inherent costs implied, which arise outside the educational sector, the research and development one, the health sector and the sector of information infrastructure.
6. It is necessary to increase the costs with education as GDP share. With a single exception in 1998, the public expenses with education, as a percentage of GDP, hang around 3%, despite the fact that the Education Law provides a minimum of 4%. This cost must be complemented with the efforts for the accomplishment of Romania's integration in the European

space of higher education and research, as well as the redefinition of the general framework for education, professional formation and training and the costs related to the personnel retraining and reorientation. Among the benefits implied by the adoption of the Community Acquis with regard to education there are to be mentioned: the increase of the average education level, which creates, at economic level, the premise for the increase in the sophistication level for both the productive activities and demand; the increase in the degree of correlation between the abilities developed by the education system and the ones requested in the labour market, which contributes to an increase in the degree of human potential utilisation; the assurance of an homogeneous framework for the occupational qualifications and standards, which will create the premise for a good order in the free movement of the labour force, with positive effects in respect of adjusting the misbalances existing on the labour market.

7. Relatively to most EU member states, the support given in Romania for knowledge related activities (innovation, research and development, and higher education) is situated at a low level, which affects the flexibility of our economy and population and diminishes the potential of growth in the future. Not accidentally did the Council from Lisbon propose as the EU main target the achievement of the „most competitive economy in the world" status for the EU, and the Council from Barcelona associated this target with the fundamental factor called policies in the research and development area. The costs implied by the achievement of such an objective are unfortunately not just the direct ones, which would mean to reach a level of 3% of GDP for the total expenses in the research and development area, out of which one third governmental expenses and the rest covered by the private sector. The main issue consists in a huge difficulty and high adjacent costs necessary for impelling the private sector to increase the internal investments in research and development, on the one hand, and the huge opportunity cost hidden by the non-achievement of this objective, on the other hand.
8. According to the partial results presented in the previous chapters, the sectors that seem to be holding the winning cards for the next years, due to the specific pre or post-accession processes, are: market services, which will continue the development process stared in 1990, at a higher pace relative to the rest of the economy, agriculture, due to the efforts which Romania will focus on restructuring, with an important financial and know-how support from the European Union, as well as the sectors extremely exposed to international competition, which lived though the initial competitive impact and the diminution of the domestic demand in the first years of transition. The development of imports and exports will continue at a steady pace, which will additionally increase the external competitiveness of these sectors.
9. In the information technology and

communication area, costs are related to keeping under observation the competition on the IT&C market, financing the e-Government programmes and applying the eEurope+ plan, supporting the development of infrastructure, as well as implementing the information technology in the education system. The benefits consist in the tariff reduction for the IT&C services, the increase of the telephony and Internet penetration rates, the participation in the eTen programme, but also in global advantages offered by the development of the information society (reduction in administrative corruption, increase in productivity, and reduction in production prices).

10. The social-economic activity sectors liable to suffer, in the future, at least in the short and medium run, the impact of costs at a higher level than benefits, will be those related to the necessity of restructuring the area of environment protection and the public utilities sectors. The labour market may experience distorting phenomena in the next years, regardless of the scenario chosen by the political decision-makers for Romania's development, before perceiving the beneficial effects of sustainable development among which the generation of new jobs will be mainly mentioned.

In terms of the macro-economic indicators evolution, the analyses comprised in the previous chapters and the prognoses based on the two scenarios proposed to be run on the structure of the LINK-Dobrescu model for Romania lead us to the following conclusions:

1. There is no doubt about the opportunities of sustainable economic growth offered by Romania's integration in the EU as soon as possible. For the considered prognosis period – between 2004 and 2015 - the average yearly growth pace results to be with approximately 2 percents higher in the integration scenario case (4.54% compared to 2.55%). Besides representing a yearly excess of gross domestic product equivalent to around 900 million – 1 billion Euros, this difference allows us to talk about a convergence phenomenon of the Romanian living standard towards the average EU one, in the integration scenario case, while in the delayed scenario case divergences show up at the horizon of 2011-2012.
2. The integration of Romania in the EU in 2007 can generate higher costs compared to an alternative scenario of isolationism or delayed integration in the first period of time, corresponding to the pre-accession and the first two-three years of post-integration in certain sectors of economic activity and for certain groups of economic agents. It is the case of the growth rate of the real average gross wage by economy which seems to be higher in the delayed integration scenario, in the first years of the period of interest, up to 2009-2010. Also, the trade balance deficit is higher in the integration scenario up to year 2010, with values close to 1 billion Euros per year. The unemployment rate presents lower values in the first 5-6 years in the alternative scenario case but is deteriorating towards the end of the prognosis period.
3. One of the main benefits of Romania's integration in the European Union is provided by the openness degree of the economy towards the rest of the world (the weight in GDP of the sum of exports and

imports of goods and services). This is oscillating in the alternative scenario case between 76-80% during the prognosis period, whereas in the integration scenario this is increasing gradually from 76% up to over 100% in year 2015. The opening phenomenon is accompanied by beneficial effects as well as by the increase of foreign investment flows towards the Romanian economy sectors, the increase of the ability to cover the necessary external funding of the internal deficits, the increase of the bilateral flows of labour force between Romania and other EU states and implicitly of the income flows of the production factors, the increase of the labour productivity in the Romanian economy, even in the less-developed sectors like agriculture, as a result of the limited transfers of technology and structural funds for development and of the high competitive pressure of the single European market.

4. Even if it is supposed that the policies adopted in the case of an isolationist scenario would copy the policies of an integration scenario, the results continues to be different and in favour of the rapid integration scenario. This demonstrates that the evolution in economy is not follow the simple rules of arithmetic, but is a system with compensatory feed-back, which makes the positive effects to be amplified through synergies of influence factors like restructuring the system of domestic and external prices, factors of technical progress or development of human capital. The concrete example is offered by the evolution of Romania's economy in the 2000-2003 period, as compared to the results obtained by running two different scenarios, one starting from social-economic policy measures similar to the real ones, the other extending the real hypotheses specific for year 2000 to the entire simulation period, up to 2004 (freezing the social-economic policies at the level of the basic year). The simulations based on the two scenarios offer results inferior to the effective achievements of the real economy, which demonstrates that a model will not be able to reveal both structural and behavioural changes to date in the macro and micro-economy. For the 2000-2003 period, the growth of real GDP cumulated in the simulated isolationist scenario is 7,34% and 12,93% in the integration scenario, whereas, in actual fact the increase in volume of the gross domestic product in Romania was close to 18% in the considered four years. A more detailed picture of the differences between the two above-mentioned scenarios is shown in the table below:

Table - Estimation of macroeconomic consequences of the integration of Romania in the second stage of the process, 2005-2015 (base year – 2004)

- Percentage difference between the scenarios (integration vs delayed-integration) -

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
GDP	0.12%	0.60%	3.18%	6.48%	9.18%	10.51%	13.32%	17.52%	21.49%	26.80%	32.02%
Domestic aggregate demand	0.90%	0.40%	2.57%	5.91%	8.61%	9.65%	12.22%	16.47%	20.40%	25.53%	30.24%
Investment	0.19%	0.43%	4.72%	10.21%	16.53%	20.58%	27.66%	37.01%	46.04%	58.53%	71.78%
Private consumption	0.11%	0.12%	2.44%	5.13%	7.72%	8.75%	11.31%	15.60%	18.91%	24.25%	29.31%
Current account deficit *	0.00%	-0.05%	-0.31%	-0.46%	-0.57%	-0.41%	-0.40%	-0.74%	-1.10%	-1.48%	-1.77%
General consolidated budget deficit*	0.39%	0.18%	0.04%	0.17%	0.20%	0.11%	-0.25%	-0.43%	-0.27%	-0.14%	-0.19%
Employment rate**	1.88%	2.65%	1.73%	1.72%	-0.22%	2.37%	-0.95%	-0.50%	-2.61%	-3.18%	-5.52%
Unemployment rate**	-1.87%	-2.75%	-1.67%	-1.77%	0.26%	-2.57%	1.05%	0.50%	2.64%	3.35%	5.48%
Labour productivity***	0.03%	0.07%	1.22%	2.84%	4.37%	5.30%	5.96%	8.69%	12.16%	16.99%	22.46%
Real wage rate	0.01%	0.05%	0.85%	-1.74%	-1.57%	-0.16%	-0.08%	-0.06%	0.12%	3.11%	5.53%
Inflation**	0.01%	-0.01%	-0.99%	-1.04%	-0.96%	0.05%	-0.43%	-1.00%	-1.50%	-1.02%	-1.03%

*The deficit is expressed as share of GDP and has negative values. The differences presented are to be read as follows: a negative value means a larger deficit in the integration scenario as share of GDP, a positive value represents a smaller deficit in the integration scenario, expressed also as share of GDP.
**Differences between the values registered in the two scenarios.
***GDP per employed population

Guidelines for Contributors

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The ideal length of an article (written in English or French) is from 4 000 to 8 000 words, including a 200-word abstract in English or French and a very brief autobiographical note. Book reviews will be no longer than 2 000 words.

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Jean Monnet

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