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**Covering Risks in the Public Administration – an In-Depth Analysis of the
Regulatory Changes in Romania**

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Abstract: The paper aims at analyzing in a trans-disciplinary manner the institutional and functional changes of the public administration under crisis. The current analysis looks in depth of the financial, economic, and, more importantly, social crisis in relation to the reforms imposed by both the internal and external stakeholders. The decision-makers have not taken into account the risk factors, triggering legislative incoherence and instability due to the challenging and approval as non-constitutional of many such normative acts by the Romanian Constitutional Court. The research **objectives** search to clear up the measures' coherence in the context of a declining public budget and a negative growth period, when the shrunk public funds need to be properly allocated. Therefore, the answer that our research is looking for should pertain to the following concern: can the government's actions be considered solutions to the problems raised by the current context? The answers shall aim at both restoring the legal and economic balance, as defined in the working hypothesis. The lax fiscal policy of the expenditures brings about an involuntary fiscal contraction in the event of an economic downturn (Rosen and Gayer, 2010), as it was the case in Romania. Those lack of prudence shall be addressed in our analysis, with specific reference to the already established literature explanations involving the decision-makers trust in the „good days shall be around forever”, which triggers a belief that the expenditures' expansion can be permanent. Regarding the **paper methodology**, this study is proceeding via bibliographical research, so that the reasoning behind the paper is clearly underlined as this research is actually triggered by the radical changes made by both legislatures and practitioners as a response to crisis. Further, the manuscript makes use of direct observation and legislative analysis and extensive documentary research of national tax policy and statistics relevant for the timeframe 2009-2010. Further, a comprehensive analysis of several interviews made with top officials of the Romanian Central Bank and the Romanian Government is to be taken into account.

Keywords: regulations; risks; resource allocation; decisions of Constitutional Court

1 Introduction

The frequent legislative changes as well as the lack of coherence of the normative acts generated by their challenge to the Constitutional Court and the provisions' ruling as unconstitutional creates organizational and functional instability, both on the central public administration level and on the local level.

In our analysis, we take into account the legislative changes made due to both Romania's international agreements and to the observance of the principle of ensuring the balance between the social dynamics and the national legislative framework.

2 Situation Analysis

In functional terms, Romania's economy is a critical entity because its components (blocks) have poorly interacted, have not interacted, or have had contrary trends. The neo-monetary philosophy of the Washington Consensus, a major political option at the beginning of the transition, stressed out the declutching of the symbolic economy from the real one: the measures of macroeconomic pegging, a priority of the political decision, left the real sector to act on its own. The domestic production of goods not only rapidly dropped, but it was affected by the dissolution of some sectors or branches, the disappearance of products and loss of sale markets. From the very first years of the economic transition, the economy has non-functionally layered in the following manner: the legal inertial layer of the underground economy, the layer of the substitute economy (arrears) and the layer of the subsistence economy. The Romanian economy knows all the three forms of inefficiency: allocative, productive and organisational. The feature of the weak structuring of the economy is set by adaptive expectations and is resistant to the long term objectives, relatively high inflation, decapitalisation due to the monetary policies, the feud around the budgets, the lack of predictability of the evolutions as a consequence of the legislative and institutional chaos, the inconsistencies in defining the property right, the political control of public economy etc. The economic crisis, a world phenomenon that is structurally affecting the Romanian economy, enforces the adoption of some exceptional measures that, through the efficiency and promptness of their application, would lead to a reduction of its effects and would create the premises for the national economy re-launch. Also, these measures must ensure the fulfilment of certain obligations resulted from the Memorandum of Agreement concluded between the Romanian Government and the European Commission and the Stand-By Arrangement concluded between Romanian and the International Monetary Fund.

Growth perspective remains uncertain. The economic situation has become worse since the last IMF evaluation in January 2010 and the team has reviewed the GDP growth prognosis from +0.8 percent to -0.5 percent. Nevertheless, the high frequency indicators suggest that the recession is moving towards the end and the expectations are aiming at a positive growth for the remained period of time.

The unsatisfactory performance in the 1st quarter of 2010 required the adoption of supplementary adjustment measures. The fiscal deficit target was not reached for a small margin as well as the ceiling of the internal overdue debts. Without a supplementary adjustment the team estimated an increased deficit of 9.1 percent of GDP until the end of the year, as opposed to the 5.9 percent target. In order to take into account the cyclical deterioration of the economy, the IMF team and the national authorities have agreed to reviewing the deficit target for the Stand-By Arrangement to 6.8 percent of GDP, and the national authorities have chosen a **measures' package** that includes the expenditures' reduction with approximately 2 percent of GDP in order to reach the new deficit target.

The fiscal reform progress has been resumed. The Fiscal Responsibility Law has been passed. The Government is working on the amendments to the Local Public Finances Law in order to improve the financial control upon local governments, as well as other reforms aiming at combating tax evasion. The legislation on the reform of the pensions' system has been approved by the Government and submitted to the Parliament for emergency debate and approval. All the same, a supplementary fiscal

consolidation is necessary in the years to come in order to sustainably reverse the imbalances that allowed Romania's vulnerability in the crisis. (IMF, European Department, 2010: 5)

3 Legal Documents' Review

In this regard, there are a number of legal documents on the reorganization of certain authorities and public institutions, rationalisation of public expenditures, supporting the business environment and fulfilling the framework-agreements with the European Commission and the International Monetary Fund, which propose numerous solutions.

In order to clarify the setting that triggered certain measures, we must keep in mind certain general aspects of Romania's Stand-By Arrangement with IMF (IMF, European Department, 2010: 13):

- Access: 11,443 billions SDR.
- Duration: 24 months.

Stages: 4.37 billions SDR were made available after the agreement has been approved by the Executive Committee on 4th of May 2009 and the second tranche of money of 1.718 billions SDR has been made available after the completion of the first evaluation in line with the Stand-By Arrangement on 21 September 2009. The third and fourth tranches of money of 2.175 billions SDR were released after the combined evaluations 2 and 3 on 19 February 2010. The fifth tranche of 2.412 billions SDR is conditioned by the outcome of the following quarterly evaluations, starting from the second half of September 2010, second half of December 2010 and second half of March 2011.

- Conditionality

Quantitative performance criteria

- a. A ceiling for net external assets' variation
- b. A ceiling of the internal overdue debts of the consolidated budget
- c. A ceiling for the cash balance of the consolidated budget
- d. A ceiling of the consolidated budget 's guarantees
- e. Non-accumulation of arrears on the external debt

Quantitative target guideline

- a. Current primary expenditures of the consolidated budget
- b. The operational balance of the 10 state owned enterprises with the greatest losses

A consultation margin around the consumption prices' inflation for a 12 months period

Preliminary actions

- Approving the fiscal measures agreed for 2010 (described below in accordance with the Letter of Intent). *Preliminary actions targeted by the Board in the 4th evaluation.*

Structural reference criteria

- a. Passing the fiscal responsibility law until *31 March 2010*
- b. Approving the amendments to the legislation on banks and banks' liquidation until *31 March 2010*
- c. Approving the fiscal administration's reforms Aprobarea reformelor administratiei fiscale until *30 April 2010*
- d. Legislative modifications on improving the monitoring and control of the state enterprises until *30 June 2010*

- e. Approving the reforms in the field of local public authorities' finances until *30 June 2010*, with proposal to dealy until *30 September 2010*
- f. Approving the reviewed legislation on pensions until *30 June 2010*
- g. Approving the legislation for implementing the law on public sector payment system until *30 September 2010*
- h. Reform measures for the financing regime of the Deposit Guarantee Fund with a proposal until *30 September*
- i. The methodology reform of the fiscal administration on high-income individuals
- j. Integrating the accounting reporting system with the Treasury payment system with a proposal until *31 March 2011*

In accordance with the above presented agreement and with the paper's aim, actions were taken by the Romanian Government and Parliament, which took the form of legal documents, as follows:

In the **fiscal field**¹, the actions taken were the following (IMF, European Department, 2010: 98-104):

A main objective is to strengthen Romania's commitment with regard to sustainability of public finances through the fiscal deficit limitation and its credible reduction on medium term. In this regard, the 2010 budget was set to reach a deficit of almost 6% of GDP, with approximately 1.5 percentages of GDP lower than in the previous year. Unfortunately, more factors have threatened this objective. Firstly, the downward revision of the estimated GDP means that the initial targets will lead to a budgetary deficit as GDP percentage higher than the initial one. Secondly, the economic recovery under expectations has reduced the revenue collection and has increased the expenditures for the employment aid, especially in the first quarter. Thirdly, there seem to be problems of tax evasion growth, as the revenue collected is very low for more important taxes (especially duties and VAT). The cumulated fiscal revenue is considerably low in comparison to the anticipated one (with 0.8% of GDP at the end of April). The 2010 budget foreseen non-fiscal revenue of 2.4 billions RON coming from the reimbursement of the credit given to Rompetrol (oil company). However, the actual payment is uncertain. The negotiations on the reimbursement chart will be completed until the next evaluation. Finally, though the expenditures of the general consolidated budget have been maintained far below the programmed levels in view of reaching the fiscal targets agreed with the IMF and EU for the 1st quarter, the existent pressures on the current expenditure side continue to grow, especially on the pensions' side, social transfers and goods and services. These pressures have determined the overdue debt of the consolidated budget to exceed and have generated a low availability of resources for investments. All these factors threaten the achievement of the budget deficit target in 2010. In a basic scenario, without policy changes, the fiscal deficit would reach 9% of GDP until the end of 2010, with approximately 3 percentages of GDP higher than the estimated one.

Considering the uncertainties on the international markets and the need to prove Romania's firm commitment for a sustainable budgetary policy, the government shall undertake further difficult measures, but necessary to reduce the fiscal deficit to 6.8% of GDP (corresponding to 6.5% of GDP before its revision). On the expenditures side, the Government, through the Letter of Intent, signed on the following no later than June 1st : (i) a 25% reduction of salaries, benefits and other quasi-salary payments for all the public sector employees (1% of this year's GDP); (ii) a 15% reduction of pensions and social transfers (1% of GDP) - below the consequences of this commitment are commented in the Triggered Risks chapter; (iii) the reduction of the transfers to the local authorities (0.3% of GDP) and (iv) the further reduction of the heating subsidies (0.03% of GDP). Further savings

¹ Provisions expressed in the Letter of Intent to the IMF, 16 June 2010

shall be made through the temporary freezing of early retirements, strict controls on newly granted invalidity pensions and through the improvement of a new system that regulated the “incentives” payment (non-salary payments granted to certain ministries). The number of the budgetary sector employees has already been reduced with approximately 20,000 persons in 2010 and it shall be further reduced in the months to come. The structural changes from the health system, pensions, education and local public finances will also generate savings. In order to increase the budgetary revenue, the following measures are to be taken: (i) enlargement of the tax base for the revenue tax and the social contribution base (as it is stated in the Technical Memorandum of Understanding); (ii) the introduction of a clawback (tax on turnover) for the medicine distributors. Applying these measures on expenditures and the measures for the tax base enlargement will be a preliminary action for the evaluation’s completion. Also, in the following months further actions shall be taken for the reduction of the number of public sector employees. Should these actions prove to be insufficient for reaching this year’s deficit target, further measures shall be taken, including measures on tax increase depending on the needs.

In order to protect the more vulnerable members of the society, the minimum salary and pension will remain the same, and no salary or pension shall be reduced under this level (please see the Triggered Risks chapter for the comments on this decision). At the same time, the social assistance programs shall be reformed in view of improving their efficiency and for them to better target the poor and destitute. In this context, the Guaranteed Minimum Income scheme, which is one of the best targeted programs, shall be excepted from the 15% cut-off, while other less efficient programs shall be reduced with more in order to accomplish a complete expenditures reduction. More specifically, the single-parent allocation and the complementary children allocation shall be reduced or better directed, as it was agreed with the World Bank. At the same time, other flaws in the Guaranteed Minimum Income program shall be corrected, as well as in other social programs in order to increase their impact on poverty reduction.

Fiscal Reforms

Law on fiscal-budgetary responsibility¹: a major reform of the budgetary process

The current budgetary process in Romania limits the Government’s capacity to carry on a prudent fiscal policy. The budgetary process is mainly build on unrestricted expenditures and it is annual. The fiscal result control is not strong enough, with an unsatisfying prognosis on revenues and expenditures, the absence of a mandatory and credible expenditures’ ceilings and a large number of budgetary revisions during one year. The Government uses a national framework for medium-term expenditures because the budgetary process starts from zero each year, without giving the necessary importance to the forecasts for the previous year’s expenditures in order to set the ceilings and make the proposals. Also, often during the year additional budgets are approved (five times in 2008), through which resources are usually transferred from capital expenditure to current expenditure, leading to even greater deficits.

The Fiscal Responsibility Law was approved by the Parliament at the end of March 2010 and is meant to strengthen the fiscal discipline, provided that there is a political commitment in this regard. The law will contribute to the improvement of medium term planning, of budget design and execution, budgetary process transparency and accountability, through the following key elements:

¹ Law no. 69/2010 of 16 April 2010, published in the Official Gazette no. 252 of 20 April 2010

- **Fiscal rules implementation.** The fiscal rules as well as the expenditure ceilings and the fiscal balance margin will help the government in the expenditures' budget design process. Therefore, the government must agree to the expenditures' prioritization process, especially if an upward revision is desired. Also, during the economic cycle, the fiscal balance must be positive or zero, thus forcing the government to a prudential fiscal policy during good times that can compensate the deficit during the recession periods.
- **Request for supplementary budgets.** With two supplementary budgets per year, the budget planning and execution should be improved. The first budgetary revision can be forwarded no later than July of each year, without having to increase the total budget.
- **Improving the reporting requests and increasing the responsibility.** The reporting requests will allow the Government to analyse the implementation of the fiscal policy with a proper policy adjustment, as well as the transparency and responsibility. In the current form, the data are collected and presented, but the analysis is missing. The semi-annual and annual reports on the economic and budgetary perspective should provide a platform for the evolutions' analysis and changes' proposal, should they be necessary. The establishment of an independent Fiscal Council should contribute to the responsibility growth.

There is a firm commitment to implement the Fiscal Responsibility Law approved by the Parliament at the end of March 2010. The Fiscal Council is in the process of establishment. Also, the Fiscal Strategy for 2011-2013 has been drafted and it is being presented to the Parliament. This strategy shall comprise the objective of reaching a fiscal deficit target of no more than 4.4% of GDP in 2011 and shall eliminate the 13th salary paid to the public sector employees. The salary fund shall be limited to 39 billions RON in 2011 and a limit of 1.290.000 public sector employees shall be set for the beginning of 2011. In order to encourage the budgetary discipline, the priority based hierarchy of the projects and the efficiency increase the Ministry of Public Finances shall set guiding expenditures' limits for the main credits' ordinator for the Fiscal Strategy process design. A connection between the Fiscal Strategy and the annual budgetary process shall be established and a Analysis Team shall be gathered in order to support the Chamber, which will analyse the budget proposals coming from the ordinating ministries, and push these ministries for the improvement of their proposals and the productivity growth, improving the quality of the provided services and of the regulations in accordance with the requests of the Fiscal Responsibility Law, and drafting a report on reducing the efficiency generating expenditures that shall be embodied in the 2011 budget.

In order to improve the fiscal discipline of the local authorities and to maintain the macro-fiscal stability the local public finance law must be amended. The amendments shall include: (i) changes of the juridical definition of the balanced budget, from a definition based on *budgeted* revenues and expenditures to one based on *accomplished* revenues and engaged expenditures; (ii) designing a single law for all the regulations on contracted loans on a local level and introducing further prudential limits like the debt stock margin and the condition of having a surplus in the years before contracting the loan; (iii) approving the multi-annual limits for the loan and for the investments' transfers from the state budget, in view of improving the multiannual capital budgeting; (iv) introducing relevant sanctions from the Fiscal Responsibility Law (structural performance criterion for the end of September 2010). In order to be in line with the Unitary Salary Law we shall establish limits for the salary fund in accordance with the personnel standards on the local authorities level.

More fiscal administration efforts are necessary in order to combat the issue of the collected revenue decrease during the recession period. In the first stage, the efforts shall be focused on fraud and non-

observance of the law on VAT, through a better growing fiscal overdue debts' management and through increasing the great taxpayers' control; the regulation framework necessary to support these efforts was approved by the Government in April 2010. In the second stage, a focus shall be put on taxpayers – individuals with large revenues and methodologies of direct control shall be developed that will complete the existent control techniques in view of identifying the undeclared revenues. Primarily, the Fiscal Code and the Fiscal Procedure Code shall be amended as follows: (i) giving the National Agency for Finances Administration the right to access the bank evidences and tertiary parts' evidences, after proper notification and subsequent process following, so to allow the proper revenue setting; (ii) revising the definition of the revenue in order to allow the imposition of revenues from any other source non-exempted by law; (iii) strengthening the obligation to declare the income; (iv) strengthening the control right in view of identifying the undeclared income (structural performance criterion for the end of November 2010). A special service shall be established that will have to coordinate the fiscality aspects of the high income individuals and to develop the initiatives and identification projects, quantification or improvement of conformity for the high income individuals.

In order to fight the tax evasion and the smuggling and to improve the tax collection, certain measure had to be taken:

- With regard to VAT (i) common minimum standards for the registration and removal of taxpayers who are carrying out intra-community operations, especially goods' purchasing, and (ii) a registry of the intra-community operators is to be established;
- Collateral guarantees for the intra-community procurements of high fiscal fraud risk products;
- The regime of operators' authorisation who are carrying out activities involving goods under a suspensive duties' regime shall be revised by introducing stricter conditions including the establishment of a mandatory collateral guarantee for these goods' production, processing and storing;
- The transfer of the social parts/actions in the companies shall be revised, as well as of the regulations that govern the administrators' accountability, and that of the stake-holders and third party individuals in view of combating the risk of fraud;
- The legal framework governing the trade of duty-free goods, also by setting a quantity margin for certain goods subjected to duties, by strengthening the surveillance of duty-free shops through the introduction of the obligativity to label the goods subjected to duties traded in the duty-free shops, by strengthening the authorisation terms for the duty-free shops and those for keeping the authorisation already granted, by revising the facts that trigger the authorisation revoking and the increase of the operating charges.
- The improvement of the legislation concerning the use of electronic registers houses;
- The improvement of legislation concerning the organization and conduct of gambling, and
- The strengthening of the legal provisions to secure greater legal protection for public sector employees in performing their duties in good faith.

Progress has been made in the field of monitoring and controlling the state-owned companies that generate the biggest losses. Nevertheless, there is still a need for further action in terms of their budgetary costs and their overdue debts. Therefore, the Government shall aggressively activate its privatisation program, especially in the following fields: industry, energy, transport, tourism and agriculture.

- The unitary payment law was approved and it is enforced¹; its results can already be seen in terms of the reduction of the pressures to increase the salary expenditures through the bonuses' elimination and ceiling- setting. The legislation for the implementation of this law, namely the implementation of the new unified salary scale for the entire public sector. The International Financials institution shall be informed in advance, before the law reached the Parliament at the end of September 2010 (structural reference criterion).
- The law on pension's reform will generate significant savings in the years to come, helping to bring the pension system to a more sustainable financial statement. However, in the recent months the pension costs have increased due to a surge in the number of people who have early retired and due to the disability pension applications. Recipients of disability pensions is about 4 ½ percent of the workforce, and this number has increased rapidly in recent years. It is anticipated that the increase in demand for retirement pension will increase the budget deficit this year with over ½ percent of GDP, reaching over 2 ¼ percent of GDP. In order to restore a better control of the system's financial situation on short-term, legislation must be approved allowing the granting of new disability pension if they have previously been approved by medical evaluation teams from the Ministry of Labour. On immediate term, the early retirements are also to be banned until the entry into force of the new law on pension reform in 2011.

4 Triggered Risks

In June 2010, the provisions of the Law on measures needed to restore budget balance were attacked in the Constitutional Court by a number of 30 senators and 60 deputies, thus Decision nr.874 of 25 June 2010 was adopted on the complaint of unconstitutionality provisions of the Law on measures needed to restore budgetary balance but also by the High Court of Cassation and Justice - United Divisions requesting the Constitutional Court to rule on the constitutionality of provisions of the Law on measures needed to restore budget balance being adopted Decision Nr.872 of 25 June 2010 relating to the objection of unconstitutionality of provisions of the Law on measures needed to restore budgetary balance.

The object of the constitutionality control is described in the provisions of the Law that, in essence, provides:

I. Decrease by 25% of the following budget expenditure:

1. gross amount of salaries/ allowances / monthly employment benefits - but not below the minimum threshold of 600 RON - as well as other salary type rights in the public sector;
2. amount of duty / care costs, medications and dentures;
3. lump sum payment of entitlements for people employed in the offices of parliamentary deputies and senators;
4. measures in item 1, 3 also apply to the personnel of the National Bank of Romania, the National Securities Supervisory Commission of Private Pension and Insurance Supervisory Commission;
5. amount of state support for clerical staff salaries and neclerical;

¹ Framework Law no. 330/2009 on the unitary payment of personnel paid from public funds was published in the Official Gazette, Part I, no. 762 of 9 November 2009.

6. monthly allowances provided for in Article 12 par.(1) of the Law no.45/2009 on organization and operation of the Academy of Agricultural and Forestry Sciences "Gheorghe Ionescu-Șișești and the research and development system in agriculture, forestry and food industry ;
7. amount of allowances granted to members of the Romanian Academy, members of the Academy of Scientists from Romania, members of the Academy of Medical Sciences of Romania and members of the Academy of Technical Sciences of Romania.

II. The 15 percentage decrease of the following budgetary expenditures:

1. unemployment aid, social benefits from the state aiming at encouraging the unemployed to find a job;
2. pensions, as well as the benefits for companion-persons for the 1st degree invalid retirees (article 9 of the Law). That text has the following content:

"(1) From the entering into force of the present law, the gross percentage of the earned pensions or those in the process of being payed, as well as the benefit for the companion-persons for the 1st degree disabled retirees is decreased by 15%.

(2) For the establishment of the gross percentage of pensions, as well as the benefit for the companions of the 1st degree disabled retirees, which will be established or granted starting with the date when the present law enters into force, the value of the pension point used is 622.9 RON."

3. the state's obligations resulted for the collective labour contracts as a result of the lay-offs through collective lay-offs;
4. the allowance for child care, yet not below the 600 RON threshold;
5. the percentage of the allowance granted to the descendents of the members of the Romanian Academy, members of the Scientists Academy of Romania;
6. monthly aid granted to the surviving
7. merit allowance provided by Law no. 118/2002 on the establishment of merit allowance;
8. the allowances provided by the Law on the gratitude towards the martyr heroes and fighters who contributed to the victory of the Romanian revolution in December 1989 no. 341/2004.

III. According to art. 17 par. (1) of the law, the measures for expenditures' decrease are to be applied until 31 December 2010. Also, par.(2) of the same legal text states that *"(2) starting with 1 January 2011 social and personnel policies are to be applied so that to ensure their integration at the level of budgetary expenditures resulted after the application of the reduction measures adopted during 2010, under Framework-law no. 330/2009, as well as respecting the provisions of the state budget law and of the state's social insurances for 2011"*.

The constitutional provisions allegedly in breach are those of article 1 par. (5) on the Constitution supremacy and the obligativity to respect the laws, those of article 11 on the international right and domestic law, article 16 par (1) on the equality, art. 20 on the international treaties on human rights, art. 53 on restricting the exercise of a right or freedom and of art. 56 par. (2) on the fair establishment of taxes. At the same time, international acts are considered to be in breach¹.

¹ - The Human Rights Declaration, namely art. 17 on the right o property, art.23 p.3 on the right to a fair remuneration and social protection and art.25 p.1 on the right to a decent living standard;

In support of the unconstitutionality objection the following arguments have been brought:

The law on certain necessary measures for the reestablishment of the budgetary balance are, in fact, as a regulatory objective a series of constraints of the exercise of certain fundamental rights, as it follows: a restriction of the right to work, due to the restriction of the right to salary – through the 25 percentage decrease; a restriction of the right to pension, due to the 15 percent decrease of pensions; a restriction of the right to unemployment aid due to the 15 percent decrease of the unemployment allowance, as well as a restriction of the right to social assistance measures due to the denial of aids or allowances on retirement and due to the 15 percent decrease of the allowances granted through the Government Emergency Ordinance no. 148/2005 on family support for child care. Through Law no. 329/2009 on the reorganisation of certain authorities and public institutions, rationalisation of public expenditures, supporting the business environment and fulfilling the framework-agreements with the European Commission and the International Monetary Fund, published in the Official Gazette of Romania, Part I no. 761 of 9 November 2009, by invoking the same crisis situation, the Government has appealed to the provisions of art.53 of the Fundamental Law in order to restrict the exercise of the right to work. Also, by ignoring the Decision of the Constitutional Court no.1.414 of 4 November 2009, published in the Official Gazette of Romania, Part I, no. 796 of 23 November 2009, the same reason is been invoked – the economic crisis – aiming at restricting for the second time in the past 6 months the exercise of certain rights granted by the Constitution. Or, the systematic restriction of certain rights' exercise, which tends to be a pattern in the behaviour of the public authorities adopting this measure, is outside the constitutional framework designed by the provisions of art.53 of the Fundamental Law.

The temporary character that the restriction of certain fundamental rights' exercise must embrace is not clear from the provisions of art.17 of the Law on certain measures necessary for the reestablishment of the budgetary balance. Thus, while art.17 par. (1) stipulates the restriction of the right to labour, pension, unemployment allowance and other measures of social assistance applicable until 31 December 2010, par.(2) of the same article stipulates that “from 1 January 2011 there shall be applied social and personnel measures that ensure the observance of the budgetary expenditures' level resulted from the application of their reduction measures adopted during 2010, under the Framework Law no.330/2009, as well as the observance of the provisions of the state budget and the state social insurance budget for 2011”. Therefore, the provision of art.17 par.(2) not only breach the temporary character of the measure, but allow the restriction of the exercise of all these rights to continue also after 1 January 2011, turning from a temporary restriction to a permanent restriction that loses its constitutional legitimacy. In this context, the ambiguous wording of the provisions of art.17 par.(2) are in breach of the demand for law predictability and accessibility and do not allow the recipients of these provisions to know the way in which they shall benefit of human rights like the right to work, the right

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- art.2 of the International pact on civil and political rights – on the recognition by the signatory states of all rights guaranteed by the Pact for the persons situated on their territory;
 - art.6 for the Treaty of the European Union on the recognition of rights, freedoms and principles resulted from the Charter of Fundamental Rights of the European Union;
 - Charter of fundamental rights of the European Union, namely art. 1 on human dignity, art.17 par.(1) on the right to property, art.25 on the elderly people rights, art.34 par.(1) on the social security and social assistance and art.52 par.(1) on the length and interpretation of rights and principles;
 - art.15 on derogation in case of an emergency and art.18 on the limitation of the use of rights' restriction from the Convention on Human Rights and Fundamental Freedoms, as well as art.1 par.(1) of the additional Protocol to the Convention on Human Rights and Fundamental Freedoms on the protection of property;
 - The Social European Charter, namely art.1 p.2 and 4 on the right to work, art.4 on the right to a fair payment, art.20 on equal opportunities for workers, art.23 on the elderly right to special protection, art.24 on the workers' protection in case of dismissal and art.F from the Vth part on the derogations in case of war or public danger.

to pension, the right to unemployment aid and the right to measures of social assistance after 1 January 2011.

Also, it has been underlined the fact that the provisions of art.1 par.(5) of the Constitution are violated because the measure of reducing the state salaries is equivalent to establishing a new tax that exceeds the area of the taxes expressly regulated by the Fiscal Code. It is being shown that the regulated taxes stipulated by art.2 of the Fiscal Code is limitative, any other tax or charge owed to the state budget or to the social insurance budget could not be established by law. At the same time, it is being argued that this genuine new tax imposed by the challenged law is in breach of art.56 par. (2) of the Constitution, because it is being paid by only a part of Romania's citizens. Therefore, the state employee will pay as tax to the state budget 41 percent of its monthly income, while the other employees only pay a 16 percent share of their salary under this title, and, as a consequence, the constitutional provision of art.16 and 44 are also breached. We consider that the issuance of the challenged normative act did not take into account at all the maintenance of the standards of living of the social layers affected by the austerity measures, so that its recipients are situated under the lower limit of subsistence.

The allocation of insufficient funds for the payment of salary rights and social security benefits and their lack of correlation with the inflation growth is not likely to protect the purchasing power of those who live only on these sources and nor to improve their lives. However, a social marginalization of the population segment covered by the complained law is being reached. The decrease of the amount of rights that make up the concept of decent standard of living directly determine the breach of art.47 of the Constitution. The increase of home maintenance costs as well as of the pay rates on loans contracted represent grounds to support the formulated objection. Also, the salary-setting objective criteria are canceled, meaning that, at the lower level of salaries practically the salary will flatten to the amount of 600 RON.

By examining the claim of unconstitutionality, the Court held that in what regards the unconstitutionality criticism aimed at the unconstitutionality of reducing the salary percentage of the state employees, it is unfounded. Thus, the Court held that the 25 percentage reduction of salary/allowance/benefit, as a corollary of the right to work, is provided by the criticised law and it is imposed for reducing the budget expenditures. Thus, 25% reduction of salaries does not constitute a state budget income, but a reduction of the costs the state must bear. In other words, the state does not pay its financial obligations at their face value to protect the budget, but without establishing a new source of revenue to the budget in the form of tax. Moreover, it appears that, by default, as an effect of reducing expenditures, the state budget revenues also drop, for example, income tax collected by the state suffers. As such, the Court can not retain the breach of article 1 paragraph (5) and art.56 par. (2) of the Constitution.

The Court found that in the explanatory memorandum of the criticized law it is argued that, in accordance to the European Commission assessment, "Romania's economic activity remains weak and, contrary to initial expectations, most likely, the economic growth remained negative in the first quarter of 2010. [...] By the end of 2010, the inflation is being expected to fall further to around 3.75% due to the weak domestic demand and the implementation of prudent monetary policies. The weaker recovery of domestic demand reduced the imports, and is now being forecasted a current account deficit of about 5% of GDP for 2010 compared with 5.5% initially".

It is also shown that "the assessment mission carried out by the Commission services with the IMF and World Bank's experts during April 26 to May 10, 2010, to review the registered progress regarding the specific conditions attached to the third tranche of EUR 1.15 billion in the financial assistance

program, resulted in the fact that, under current policies, the fiscal deficit target for 2010 of 6.4% of GDP, will not be fulfilled due to deterioration of economic conditions, difficulties in collecting revenue and slippages on the expenditure side. The Romanian Government is committed to take additional compensatory measures that must be adopted and implemented before the release by the Commission of the EU's third installment of the loan. [...] It also states that if these actions are not implemented until June 2010 or do not lead to early consolidation additional measures will be implemented to increase budget revenues, including measures to increase rates tax, to eliminate any anticipated budget gap".

As a consequence, the Court found that this threat to economic stability continues to be maintained so that the Government has the right to take appropriate measures to combat it. One of these measures is to reduce spending, a measure related, *inter alia*, to reducing the amount of salaries/benefits/allowances by 25%. Regarding the proportionality issue that caused the restriction, the Court found that there is a proportionality between the means used (25% reduction in the amount of salary/benefit/allowance) and the legitimate aim (reducing expenditures/rebalance the state budget) and that there is a fair balance between the requirements of general interest of society and protection of fundamental rights of the individual. The Court found, however, that the challenged legislative measure is applied without discrimination, meaning that 25% reduction applies to all categories of state employees in the same percentage and in the same way. Referring to the unconstitutionality criticism of reducing the percentage of pensions, the Court found that it is based on the following grounds: Pension is a form of social security benefit monthly paid [art.7 para. (2) and article 90 par.(1) of Law no. 19/2000, published in the Official Gazette, Part I, no.140 from April 1, 2000] by law, inherent and intrinsically linked to the retiree, obtained under a retirement decision, respecting all legal requirements imposed by the legislature. According to the article 1 of Law no. 19/2000, the right to social security is guaranteed by the state and is exercised, under law, through the public pension system and other social insurance rights. It is organized and operates, among others, on the contributivity principle according to which social security funds is based on contributions from individuals and legal persons participating in the public system, the social security benefits being on accordance with the social security contributions paid [Article 2 letter e) of Law no.19/2000]. This means that the pension, as benefit of the public pension system, is under the contributivity principle.

Article 9 par. (1) first sentence of the challenged law regulates the decrease with 15% of the gross amount of pensions in due payment or pending; also, article 9 par. (2) first sentence of that law provides that the value of the pension point used to determine the gross amount of pensions to be determined or granted since the entry into force of the law is 622.9 lei. Therefore, obviously the aforementioned provisions concern the contributory pensions in payment or pending and those to be determined or granted.

The Court found that pension is a right preestablished during the individual's active period of life, as he is required by law to contribute to social security budget as a percentage relative to the level of income. Correspondingly, the state's obligation to be incurred during the individual's passive life to pay a pension whose amount is governed by the contributivity principle, as the two obligations are intrinsically and inextricably linked. The pension's aim is to compensate during the passive life period of the insured individual the contributions paid by that person to the state social insurance budget under the contributivity principle and to ensure the livelihood of those who acquired this right by law (contributory period, retirement age, etc.). The state has a positive obligation to take all measures necessary to achieve that objective and to refrain from any conduct likely to limit the right to social security.

Although the amounts paid as social security contributions do not represent a deposit and therefore can not give rise to any right to claim against the state or the social insurance funds (the Constitutional Court Decision nr.861 of 28 November 2006, published in the Official Gazette, Part I, No. 45 of January 22, 2007), they entitle the person who received income and which has paid its contribution to social security budget to receive a pension that reflects the income earned during active life. The amount of pension established according to the contributivity principle shall be an earned right so that its reduction cannot be accepted even temporarily. Through the amounts paid as contributions to social insurance budget, the person basically has earned the right to receive a pension in the amount resulting from application of the contributivity principle: so, the contributivity, as a principle is of essence like the right to pension, and the exceptions, even temporary, on the state's obligation to pay the amount of pension resulting from the application of this principle affect the substance of the right to pension. The Court also found some shortcomings in the wording of the text of article 9 of the law. According to article 9 par.(1) of the challenged law, a reduction of 15% of the due pensions or those in payment, which, in conjunction with article 17 par.(1) of the law, leads to the conclusion that such a reduction is temporary - until December 31, 2010. But on pensions to be determined or granted, even the pension point value was weakened, so corroborating the legal text of the article 17 par.(1) of the Law no longer appears as clear, meaning that for those benefits the legislature should then adopt, after 1 January 2011, a law to bring them to the level of pensions that were paid at the time of entry into force of the challenged law. Otherwise, it would create an impermissible treatment difference between pensions in payment and those to be determined or granted. Furthermore, proportionately, pension point value in article 9 par.(1) of the law would be less than that covered by article 9 par.(2) of the law, which is also unacceptable.

The Court also found that state social insurance budget problems can not be opposed to the right to pension in the negative sense, even temporarily, the amount of pension, the constitutional right to pension cannot be affected by that budget mismanagement by the state. The Court also found some considerations of principle related to the right to pension in the jurisprudence of other constitutional courts¹. Therefore, given the high degree of protection afforded by the Constitution to this right, for the reasons shown above, reducing the amount of contributory pension, regardless of the percentage, regardless of the period, cannot be achieved. Hence, art.53 of the Constitution may be invoked as grounds for restricting the exercise of the right to pension.

In practice, the implementation of the Law on measures needed to restore the budget balance has determined the public sector employees to receive a salary under the minimum amount of RON 600 stipulated by law. Also, in practice, the Central Bank's employees will remain with their full salary because the Government had to amend the law through which their salaries were reduced in order to avoid sanctions from the European Commission (risk overlooked).

The Executive agreed that the law be amended in September, at the beginning of the parliamentary session. Experts from the Ministry of Finance are taking into account two types of changes in the law. A safe manner through which EC sanctions can be avoided is considered, namely the rapid elimination by emergency ordinance of the article which states that wage reduction also applies to the central bank employees. Alternatively, the law must be completed with an article stipulating that the savings from

¹ Thus, the Constitutional Court of Hungary, through the Decision no.455/B/1995 established that pension calculated according to the rules of social security system may be affected, and through Decision no.277/B/1997 held that the unilateral amendment of the amount pensions is unconstitutional, referring to the inability of the legislature to reduce high pensions to increase low pensions. However, the decision no.39/1999 (XI 1.21), the same constitutional court ruled that pension (contributory) is a right earned and purchased a large extent so that changes its nominal amount is unconstitutional. Moreover, similar considerations are found in Latvia Constitutional Court Decision-no.2009 43-01 of December 21, 2009.

reducing wages in the National Bank will not be directed to the state budget, together with a joint letter to the EC by the Minister of Finance and Central Bank governor to show that the decrease was made with the central bank's agreement. According to the supplementary letter of intent to the stand-by arrangement signed by Romania with the International Monetary Fund, the Government is committed to revise the measure to reduce salaries with 25 percent for the National Bank of Romania, the Insurance Supervisory Commission, the National Securities Commission Supervisory Commission and the Private Pension System. European Central Bank also showed in early July that reducing NBR salaries is a direct financing of the budget deficit by the central bank, a situation which contravenes Article 130 of the Treaty on European Union¹, and recommended amending the law.

5 Methodological Aspects

This study proceeded via bibliographical research, so that the reasoning behind the paper was clearly underlined as this research is actually triggered by the radical changes made by both legislatures and practitioners as a response to crisis. Further, the manuscript makes use of direct observation and legislative analysis with regard to the public decision-makers' knee-jerk response to crisis. A qualitative study was used for an in-depth exploration of the announced hypothesis. Following the context analysis, a review study was conducted as it pertains to the targeted legal documents. Based on the outcomes from the review study as well as the evidence from the risk management literature, proposals are made with regard to actions' impact. The proposals are in line with the ISO standards previously underlined. In order to reach our research objectives, we adopted a CAR (Challenge-Action-Result) approach for the six challenges emphasised in the beginning of our manuscript:

- Increasing the probability to reach the objectives;
- Creating awareness of the need to identify and manage the risk on the level of the central and local public administration;
- Improving the threats and opportunities recognition;
- Observing the regulatory legal requirements;
- Improving the financial reporting procedures;
- Efficiently allocating and making use of the resources in order to eliminate the risk factors.

The methodology chosen and the selected legal documents enabled some form of understanding as to how decision makers perceive the concept of risk management. However, it should be taken into consideration that the size of the legal documents' sample was small enough to potentially condition any generalisation of the results obtained. Hence, it would be highly relevant to replicate not only this study on other measures and connected legal documents but also to carry out this study within a cross-state framework so as to be able to make a comparison between different national measures that were actually triggered by the same challenges.

¹ Article 130 of EU Treaty states that in exercising powers and performing their tasks and duties conferred by the Treaties and the Statute of the ESCB, European Central Bank, national central banks or members of their decision may not require or instructions from the institutions, bodies, offices or agencies of the Union, the governments of Member States or any other body.

6 Results' Analysis

a. Preliminary Analysis

From all the principles for managing risks enumerated by ISO 31000 our papers mainly evolves around the following:

Risk management helps decision makers make informed choices. Risk management can help prioritize actions and distinguish among alternative courses of action. Ultimately, risk management can help with decisions on whether a risk is unacceptable and whether risk treatment will be adequate and effective. (Draft ISO 31000, 2008)

ISO 31000 describes voluntary risk management guidelines, as it does not represent a prescriptive compliance requirement, or a legal requirement. This specific standard is not intended for certification. Nevertheless, the public entities often assume activities with a high risk degree that private firms would never take into consideration - from public gatherings to police departments, solutions to disasters and water supplies - without receiving a decent return to offset the risk. In the public sector, for projects that should be go through a formal evaluation, most approaches to risk management continue to be intuitive rather than strictly apply the risk management standards. However, the good thing is that agencies assess the need to adopt a positive approach to effective risk management. While issues such as systematic approach to risk identification, risk assessment, risk prioritization and treatment are approachable, the major problem lies in how different risks are treated, risks faced by the organizations in order to give security (internal and external) to the operation and the results obtained. The real problem is the implementation stage. Our research developed around the public decisions, belonging to different public authorities, namely Government, Parliament or Constitutional Court. No matter the decision-maker, risk management is always an element vital for the decisions' outcome.

There are five key aspects of risk management that has been identified by Bourn (2004) and that our paper is making use of. These key aspects are considered to contribute to more qualitative and efficient public services:

- Risks must be given sufficient time, resources and commitment from management.
- Responsibility and accountability must be clear and exposed to scrutiny.
- Assessments of risk must be based on solid information and the current time.
- Risk management should be applied through distribution networks of government departments.
- Departments should develop understanding of common risks and work their treatment.

b. Testing the Hypothesis

In accordance with the above described reasoning, our paper sought to analyse the risks involved in the decision-making process of the Government, as it pertains to its decisions related to the economic crisis. If the Government were to do it by the book, it should have looked into what is referred to as Consequence analysis. This analysis estimates the impacts upon objectives, assuming that particular events situations or circumstances have occurred. An event may have a range of impacts of different severity and affect a range of different objectives and different stakeholders.

Consequence analysis should:

- take into consideration existing controls to treat the consequences together with all relevant contributory factors that have an effect on the consequences;
- relate the consequences of the risk to the original objectives;

- consider both immediate consequences and those that may arise after a certain time has elapsed, if this is consistent with the scope of the assessment;
- consider secondary consequences, such as those impacting upon associated systems, activities, equipment or organisations. (Final draft IEC/FDIS 31010, 2009)

With regard to how risk assessment will actually affect the internal organisation and management of administrative bodies, our research underlined a number of proposals for restructuring, reorganisation, merging or even dissolution of certain Ministries or public authorities under the Government, not to mention measures affecting the personnel. All these should have occurred after a careful analysis taking into consideration the risk's consequences and the objectives set.

In the most delicate case tackled in the paper, the one of the unprecedented Government decision with regard to the 15 percent pension reduction, the analysis should have been focused on the two aspects:

- Consequences of the risk which refer to both the direct impact of the decision upon the targeted population segment, as well as to its vulnerability in the decisional hierarchy;
- The original objectives which has been set to be pulling out of the state of crisis.

A sharp analysis emphasises what has been also stated throughout the entire paper. There was no search for connection in what regards the two aspects. In particular, for the decision on pension's reduction, no other state who proceeded to income reduction has not argued that the reason lays in the safety and national security concerns. With this type of reasoning, the Government only proves contempt for the law and rule of law, which is reduced to just an executive power. Moreover, the Government did not respect the principle of non-discrimination, as the measure was taken for only a part of the population. At the same time, for the magistrates particular case on pensions, the Government seeks to undermine the judiciary power who in fact is the one protected the safety and national security and not to eliminate the effects of the crisis, as this measure is clearly non-legal due to its permanent and not temporary character, as the state of crisis would require.

What has been aimed through this paper's argument is the fact that the authorities should not rush into criticizing risk management tools but make more and more use of them because with only a brief analysis like the one chosen in our paper the decision's confidence will definitely increase and the hesitation, which led for most of the presented decision to multiple changes or annullments, will disappear.

7 Concluding Remarks

As stated at the beginning of our manuscript, this is a work in progress mainly due to the fact that the selected field of research is constantly changing. The unstable economic environment and the fuzzy decisions taken to try to re-establish balance cannot reach their objective unless they are filtered through certain mechanisms or manipulated with the help of certain tools like the ones proposed in our paper.

Even the hypothesis test cannot be declared complete unless the entire targeted decisions' circle closes. As we speak, this circle grows bigger and probably it will do the same unless the actions taken in view of covering the crisis effects and moreover the requests of the international bodies who joined this circle having the upper hand.

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