

## STRENGTHENING THE SUSTAINABILITY OF PUBLIC FINANCES BY MEANS OF FINANCIAL LAW FOCUSED ON THE CONTROL AND AUDIT EXERCISE

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### Abstract

*The activity to prevent embrittlement sustainability of public finances should manifest itself permanently, regardless of economic circumstances - national or European. This, more so as it was set by the Stability and Growth Pact (SGP), which introduces new rules on fiscal policy. Regulations and exercise adequate of financial control and public audit are intended to give certain guarantees on landing approach this topic (most on enhancing sustainability of public finances). Therefore, our approach aims to reveal some aspects of fiscal consolidation by means of financial law focused on exercise fiscal control and public audit. Our references aim the current regulatory of this important organization and functioning rule of law activities and results reported.*

**Key words:** *financial law, tax audit, fraud control, the Fiscal Procedure Code, sound financial management, internal audit, Court of Auditors.*

**JEL Classification:** *JEL Classification: E61, E62, E63, E64, E65, E66*

### I. ADDRESSING SUSTAINABILITY OF PUBLIC FINANCES (PFS) IN THE CONTEXT OF FINANCIAL THEORY AND TAX LAW NORMS

According to literature (Blanchard, 1990), through sustainable fiscal policy we mean "those policies that do not lead to the explosive growth of indebtedness of the state, or after which no action is taken to increase taxation to curb public spending, the monetization of the budget deficit or public debt repudiation". In Romania, the legal framework applicable for fiscal budgetary responsibility when it comes to sustainability of public finances (SFP), stipulates that it (Romanian Parliament, 2010) "requires that, in the medium and long term, the Government should be able to manage risks or situations unexpected without having to make significant adjustments to expenses, income or deficit destabilizing effects of economic or social". Obviously any time SFP is the priority objective of any state, in this context the focus is on keeping public debt under control. In this regard, we record but a "rising public debt at a rate higher than economic growth" (ex.: 2706 Euro / person at the end of 2012, 3.314 Euro / person at the end of 2014, indicating a increasing by 22.4% government debt to GDP is 44.1%, tending to an effective 66 bn. Euro) (Court of Accounts, 2015); however, are below the alert threshold of 60% laid down in the Maastricht Treaty (TEU, 1992). The estimated level of gross government debt to the end of 2015 (MPF, 2015) is 38.8% of GDP and the medium term (2016-2019) will be less than 41.0% of GDP in the medium term and will not exceed 35.0% of GDP. What can be remembered is that sustainability of tax policies could be an appreciable if, as stated in some papers (Stoian, 2013) "the public debt to GDP does not grow faster than the spread between real interest rate and the actual rate growth". According to recent analyzes (Brateş, 2015), the current level of government debt is considered "sustainable, but was approached in a brisk critical level (calculated Romania as from 40 to 45% of GDP)". Exceeding 45% of GDP level may adversely affect economic growth and further borrowing capacity under suitable conditions. However, we have to show that the trend found in Romania's case is common to many countries, making amplify concerns to ensure SFP. In countries of the European Union, those concerns, resulting in the activation of public policies are based on the overall strategy of the EU, aiming at reducing public debt, increasing productivity and employment, and reforming pension systems (Court of Accounts, 2015). Hence the need for medium-term budgetary objectives by which to ensure a downward trend in public debt, applying strict budget discipline rules.

#### **Quadrant I. Regulations in fiscal policy established at EU level (MFP, 2015)**

*Stability and Growth Pact (SGP), as regulation adopted at European Union level, introduce new rules on fiscal policy, budgetary developments in perspective regarding structural and not just in terms of nominal deficit. The preventive*

*arm of the SGP basis under Regulation (EC) from 1466 to 1497, is given the medium-term objective (MTO) "every MS should be differentiated by medium-term objectives for their budgetary position. These OTM specific to countries may deviate from the requirement of "close to balance" or position "in surplus", while providing a safety margin in terms of budget deficit limit of 3% of GDP. This provides some flexibility in the budget, taking into account the needs of public investment of SM ". In 2011 was introduced a second amendment to the PSC - "The package of six legislative measures on economic governance" and the tax treaty (Treaty on Stability, Coordination and Governance in the EMU), applicable from 2013, complete PSC with clear rules that Requests the Contracting Parties to ensure convergence towards the MTO specific to the country, as defined in the PSC, with a lower limit of a structural deficit of 0.5% of GDP (1.0% of GDP for countries with a debt ratio significantly below 60% of GDP) . These changes are designed to ensure: (a) accountability in budgetary allocations; (b) gradual surveillance (for euro area countries that have big deficits or debts) to limit contagion effects through preventive measures and early warning; (c) correction of macroeconomic imbalances.*

In this context, relatively briefly described, we could claim that, at a national lever, public financial control regulations and their implementation play a significant role. Moreover, based on a definition of public financial Law, which states that it represents (Costea, 2015) „the ensemble of judicial regulations that dictate, in the context of public law, the constitution, management and use of public institutions' financial resources, as well as financial control of public interest (highlight ns.)”, we can notice that the question hereby approached pertains to this branch of the judicial knowledge. It is nonetheless true, as demonstrated in the papers of other specialists (Anitei, 2011a, 2011b; Balan, 1999, 2008; Costas and Minea, 2015a, 2015b; Drosu-Şaguna and Tofan, 2010) and our own as well, published in recent years (Bostan, 1999, 2003a-b, 2005, 2007, 2008, 2010a-e, 2014; Grosu and Bostan, 2010; Tinică et al., 2010; Bostan and Grosu, 2010, 2011), that interdisciplinary nuances are multiple, making the interrelations between Financial Law, Economics and public Finances evident. Analysing the fiscal component of public financial Law, we remark that the special verification procedures, which belong to NAFA (National Agency of Fiscal Administration), are extremely important in reference to the increase of the taxpayers' conformation degree, the decrease of tax evasion and fraud etc., ultimately leading to the increase of budgetary income collection rate and, subsequently, its quantum. On the other hand, when it comes to financial law regulations referring to public audit – internal, concerning public entities, as well as external, pertaining to the Romanian Court of Auditors -, once implemented (but also suitable for ulterior improvements), they are meant to lead to the management of budgetary resources in an effective manner. It is our opinion that we have therefore sufficient arguments to state that, through better employed financial control/audit regulations, PFS can be indisputably consolidated, which is why, in the following lines we address the regulation of the incident institutions' structure and functionality from the point of view of the latest legislative alterations in the domain and of the inherent results.

## II. RECENT REGULATIONS AND THE IMPLICIT RESULTS IN MATTERS OF FISCAL CONTROL

Tax evasion is one of the complex socio-economical phenomena of utmost importance that nations have to confront and, as much as possible, diminish its negative consequences. Fighting this phenomenon, which at present generates significant budgetary losses, with vast implications at a social and economical level, represents a constant preoccupation in Romania, which must systematically and effectively implement measures to prevent and limit tax evasion (Romanian Government, 2010). In addition, in the particular case of our country, the tax evasion phenomenon has been defined as a threat to our national security by the Decree no. 69/28.06.2010 of the Supreme National Defence Council (Romanian Parliament, 2011), in accordance with the stipulations of art. 3 lit. f from Regulation no. 51/1991 (Romanian Parliament, 1991). There is little descriptive literature or regulations about the phenomenon as such, as well as about the means to confront it. The statement is valid for both the period of time before Romania's adhering to the European Union, as well as after. The financial and judicial landscape has changed, however the goals, certain interests etc., have remained virtually the same. After the multitude of published books and articles which explain the issues concerning fraud/evasion and sanctions/penalties, we consider that it can not be unknown that evading taxes and other amounts owed to the state's budget entails certain responsibilities (Bostan, 2015). The mere refusal of the taxpayer to present the documents containing accountancy is punishable by up to six years in jail (Romanian Parliament, 2005). In spite of this, in 2013 in Romania, tax evasion amounted to 16.2% of GDP (ANAF, 2014), meaning that it significantly impacted Romania's fiscal income, while simultaneously affecting the economical activity of the national market through the appearance of money flow unaccountable for and through the introduction on the internal market of goods at unjustifiably low prices (Romanian Government, 2010).

### **2.1. The Reformation of the National Agency of Fiscal Administration (NAFA)**

In 2013 Romania has initiated a reformation programme of the tax collection system which intends, in the long run, to significantly increase collected income and decrease the afferent administrative costs. Subsequently, ten years after being created, the National Agency of Fiscal Administration (NAFA), was on the verge of being radically reorganized. Composed of multiple institutions within the Ministry of Public Finances (MPF), specialized in budgetary income management or control (the National Authority of Customs, the Financial Guard etc.), it became over time a slow and ineffective apparatus, as seen by the Government itself (Romanian Government, 2013a). On March 8th 2013 a loan agreement with the World Bank was signed, amounting to 70 million Euro, to be employed in this project of institutional reformation. The goals are to increase efficiency and effectiveness of tax and social contribution collection, of the compliance degree and to reduce the administrative burden for taxpayers. Invoking its intentions to eradicate dysfunctionalities, to strengthen the fiscal apparatus and to better employ its resources, the Executive lists the weaknesses discovered regarding NAFA's activity, which revolve precisely around the low degree of voluntary compliance and the high management costs. The specified costs refer to the existence of „a large number of fiscal authorities, all counties being similarly treated, irrespective of their size or importance to the economical share, number of taxpayers etc.” (Romanian Government, 2013a). Taking all into consideration, it seemed as if the founding of the regional level and the further reduction in the number of operative units in the territory could present as a solution to numerous shortcomings. Undoubtedly, creating the General Regional Directory of Public Finances/GRDPF (with a territorial authority as established in accordance with the regional development – Romanian Parliament, 2004) reduces the number of reports to the NAFA headquarters. In addition, it ensures the improvement of planning and control, the decrease of the collection costs and the making of balanced units from the point of view of economical share and income collection share. NAFA's operational performance and cost collection reduction create the premises for the contraction of the 42 General County Directories (GCDPF) to merely 8 General Regional Directories (GRDPF). Realistically, consequently to the points above approached, when NAFA underwent the complex process of reformation, since 1st of August 2013, the following alterations were implemented (Consiliul fiscal, 2014):

- reduction of the 42 General County Directories (GCDPF) to 8 General Regional Directories (GRDPF);
- the General Directory for Administration of Major Taxpayers (GDAMT) has gained judicial denomination, being subordinate to NAFA;
- the merger and taking over of the activities of the Customs' General Directory and of the Financial Guard by NAFA, the two losing their judicial denomination within NAFA

As of november 2013 the General Anti-Fiscal Fraud Directory (GAFFD) is active, an anti-fraud institution with 8 branches in direct coordination with the NAFA headquarters, process facilitated by the dismantling of the Financial Guard.

### **2.2. Tax Audit and Anti-fraud Control**

According to the Fiscal Council (Consiliul fiscal, 2014), the Romanian fiscal system is also defined by a modest degree of compliance to the main taxes (the ratio between the actual income collected and added to the budget and the theoretical income, which include actual income as well as tax evasion). Overall, the degree of compliance in 2013 was 55.8%, slightly improved compared to 2012, when the minimum degree in the past 12 years was registered. However, according to NAFA (ANAF, 2015), the degree of voluntary compliance to tax obligations (in value) in 2014 was 83.70%, whereas in the third quarter of 2015 it reached 84.50% (ANAF, 2015b). The increase of this indicator is in connection with the exercise of fiscal control. More broadly, the notion of fiscal control includes both tax audit, as defined by the Tax Procedure Code (Romanian Parliament, 2015a) and anti-fraud control. The object of the tax audit consists of (Voinea, 2014a) verifying the legality and compliance of tax returns, correctness and accuracy of fulfillment of obligations by taxpayers, respecting the stipulations of tax and accounting legislation, verification or determination, where appropriate, of the tax base, establishing the differences between payment obligations and related accessories. Tax audit is carried out exclusively, directly and unhindered by NAFA (4,641 inspectors) or, where appropriate, by specialized departments of local public administration authorities or other authorities having legal competence in the administration of amounts owed to the consolidated budget. This activity is regulated by the Tax Procedure Code (Romanian Parliament, 2015; Romanian Government, 2015a), which in Title VII, "Tax Audit", stipulates the manner of conduct in view of the fact that the tax authority verifies the fulfillment of obligations under tax law using more forms of control, even if all have the final purpose of charging the correct amount of obligations due by taxpayers. The rules of fiscal control included in Title VI are extended over several chapters for each particular type of verification, taking into account their objectives. For example, Chapter III regulates "Anti-fraud Control", also seen as a fiscal control procedure. Hereby referring to the results of the tax audit conducted by NAFA, it is shown that in 2014 (ANAF, 2015a) were conducted 70,912 inspections and controls (18.4% less

than in 2013), following which total additional amounts were established (obligations and accessories) to 13,991.1 mln. lei (by 50.7% more than in 2013) and tax loss was reduced by the amount of 1,575.5 mln. lei (1.156,2 mln. lei in 2013). In addition, the control apparatus of business tax inspection of the GDMMT (General Directorate for Management of Major Taxpayers) conducted in 2014 a total of 1,246 inspections, adding to the general consolidated budget further obligations amounting to 2,629.8 mln. lei. Specific actions involving fiscal inspection entities in 2014, were:

- tax audits for the timely resolution of the discounts of value added tax returns with refund option;
- inspection following VAT refund to taxpayers selected based on the level of risk;
- checks to settle claims for refund of excise tax included in the category of high risk;
- free-willing tax inspections of taxpayers with high fiscal risk etc.

#### *Anti-Fraud Control*

According to tax legislation (Voinea, 2014), anti-fraud control is operative and unannounced and carried out inclusively in order to achieve thematic control operations - that verification which pursues the finding, analysis and evaluation of a fiscal risk specific to one or more economic activities. This activity pertains to the General Directorate of Tax Fraud/GDTF (1579 inspectors) established within NAFA on the 26th of June 2013, through the Emergency Decree (Romanian Government, 2013b), with the primary objective of firmly combating tax evasion and tax and customs fraud (DGAF, 2014). General Directorate of Tax Fraud (GDTF) has turned its attention to goals regarding the increase in the degree of taxpayer compliance, both by ensuring the presence of anti-fraud inspectors in certain areas, and monitoring of activities with high fiscal risk, while tracking and identifying fraud phenomena with significant implications for tax consolidated budget based on risk analysis and information provided by specialized institutions.

Antifraud control activity is regulated by the Tax Procedure Code (Romanian Parliament, 2015a; Romanian Government, 2015a), being considered a tax inspection procedure as well.

GDTF activity results in 2014 (ANAF, 2015a) materialized in the total amount of 3.838,7 million lei (the equivalent of 872.4 mil. Euro) consisting of fines, seizures or prejudice related to criminal complaints.

### **III. INSTITUTIONAL FRAMEWORK APPLICABLE TO PUBLIC AUDIT**

The evolution of public audit activity is in the process of consolidation, having still a few steps until being regarded as decisive in the matter of contribution to consolidating public finances via influencing the sound management of public funds. Both internal and external public audit are completely different from public financial control we referenced above, in that that coercion and punity of the law is replaced with counseling, reflected in the recommendations provided to the managers / officers of budget appropriations. Incidentally, the main way by which audit adds value to the management process is to issue recommendations, having intended to correct dysfunctions and to address their causes, aiming to prevent them in the future. Consequently, in assessing the performance of audit activities we will have less use of quantitative indicators reflecting fines, confiscation, damages etc.

#### **3.1. Exercise of internal audit**

Public Internal Audit (PIA) is an independent and objective assurance and counseling type of activity, which aims to improve the activities of public entities and to add value. Internal audit helps improve the processes of risk management, control and governance of a public entity by recommendations made within the assurance and advisory missions. In Romania, the organization of internal audit in the public sector is done in a decentralized system, public entities are compelled (Romanian Parliament, 2002, 2011; Romanian Government, 2013c; MFP, 2004, 2015a) to organize their own departments in accordance with the regulatory framework.

Internal audit department is mandatorily organized (Romanian Government, 2013c), within each public entity, by decision of its leaders, except small public institutions and subordinate public entities, under the coordination or authority of another entity for which the higher managing unit issued a decision of dissolution of the internal audit department. On a national level, on the 31st of December 2013, there were (MFP, 2013b) 3,287 public entities whose managers were the main credit officers (61 in the local administration and 3226 in the central administration). They had 7,903 public entities under subordination, coordination or authority (1,549 - central administration, 6,354- the local government). Of the 11,190 public entities, internal audit was organized only in 6,530, meaning 58.36%. The causes for lack of organization of internal audit are related to the small size of the entity: low volume and low complexity of the activities and of the size of the associated risks,

fewer staff, closing departments of internal audit by restructuring vacancies, due to reduced personnel schemes, legislative restrictions on personnel recruitment, due to the necessity of cutting personnel expenses etc. In our view, although the PIA, as it was designed and regulated in Romania, could have a major role in terms of contribution to the consolidation of public finances by way of influencing the sound management of public funds, currently, due to the reduced exercise of internal audit in the midst of public entities, we are far from a level that could be considered at least satisfactory. The situation remained virtually unchanged even after the enactment of the cooperative for the implementation of internal audit (which involves the joint partnership of two or more local public entities, to constitute together a PIA department with responsibilities in planning and carrying out specific missions for all members of the partnership entities). However, due to increasing the quality of audit recommendations and the results of the implementation, those responsible for corporate governance (MFP, 2015b) frequently turn to this position to provide various information in order to make the best management decisions, often requiring ad hoc missions and counseling. It is expected that the process of raising awareness of PIA's role is meant to strengthen the internal audit function, thus contributing to a greater extent to supporting the management in making decisions regarding effective use of public funds.

### **3.2. External public audit**

In Romania, external auditing activity rests on the Court of Auditors (Bostan, 2011). Regardless of the constitution and the destination of public funds, as the external auditor, this institution controls the correctness of accounting of public funds and whether they are collected and spent according to the law, and if due account is taken of the principles of economy, efficiency and effectiveness (Court of Accounts, 2014a). Since November 2008, when the new law on organization and functioning (Romanian Parliament, 1992), the activity of the Court of Accounts was divided into three levels: control, financial audit and performance audit. Control over the formation, administration and use of financial resources of the public sector is still exercised, but the control function is performed by external public audit procedures set out in their standards. Clear distinction must be made between the term "control" as an activity aimed at verifying and monitoring the degree of abiding to the law on the establishment, management and use of public funds and the notion of "public external audit", comprised of financial audit (activity seeking if financial statements are complete, accurate and in compliance with laws and regulations, thus providing an opinion in the matter) and performance audit (which refers to the independent evaluation of how an entity, program, activity or operation works from the viewpoints of efficiency, economy and effectiveness). Audit / control activity aims at (Court of Accounts, 2014a): correct and effective formation and use of financial resources of the state and public sector, to evaluate the implementation of the approved budget, the strengthening of good financial management, proper execution of administrative activities and informing public authorities and the vast public through objective reports. Once the law is republished law, establishing the regularity of accounts is equivalent to a certificate of compliance to the audited entity. Otherwise, that is to say in situations where there is some deviation from legality and regularity, which have brought damages, they are communicated to management of the audited public entity and determining the extent of damage and layout measures for its recovery are to pertain to that specific leadership. Referring to the results of the inspection / audit exercised by the 1200 auditors in 2014 (Court of Accounts, 2014a), the financial impact of the checks carried out by the Court in 2014 in the 2,501 entities consists of 612,540.000 Euro - injury and 612,540.00 Euro - additional revenue to the consolidated public budget. To these amounts are added those related to the checks carried out at administrative territorial units (Court of Accounts, 2014b), respectively 170.50 million Euro - damage and 106.06 million Euro - additional revenues to local budgets. Recommendations made by the Court of Auditors and the measures ordered by decisions issued by it for the elimination of deviations from the law and of irregularities identified by public external auditors, are meant as tools for public authorities and institutions, tools for improving the activity of management of financial resources and the performance of their use. From what we debated above, we hereby state the view that, unequivocally, the contribution of external audit activity to the consolidation of national public finances is evident, all reports of the Court of Auditors in recent years reflecting it has reached a major goal – to strengthen the sound financial management in the public sector.

## **IV. CONCLUSIONS**

The economic and financial crisis in the EU had budgetary implications and grave social consequences to the Member States (MS), which is why it was necessary that public finances be reviewed in order to support social protection systems and public services, to limit refinancing costs that the state pays for, and to avoid

contagion effects on the rest of the economy (Comisia Europeană, 2013). As is known, by reducing the evasion phenomenon, MS can increase their revenues from taxes, which gives also greater leeway to restructuring their tax systems in a way that would better promote growth. In other words, this is the way to contribute to the strengthening of the sustainability of public finances. As shown in this paper, for Romania, the importance of specific verification procedures, circumscribed to what is generically called "fiscal control", which pertains to NAFA, is increasingly felt in the context of increasing the compliance of taxpayers, diminishing tax evasion etc., eventually leading to the increase in budget revenue collection and thus, its quantum. However, once a budget is comprised, to ensure proper management of public resources (legality and effectiveness of budget expenditure), implies the existence and application of regulations of financial law regarding public audit - both internal one, from the public entities and the external one, that makes for the responsibility of the Court of Auditors. Full implementation of this institutional framework (admitting that there are major weaknesses in the case of public internal audit) is intended to lead to efficient and effective management of budgetary resources, significantly contributing to the strengthening of the sustainability of public finances.

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