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POSSIBILITIES OF QUANTITATIVE STUDY OF SOME QUALITATIVE PROCESSES IN ECONOMY

Cristina COCULESCU¹

Aura-Marilena DIN²

Abstract:

Qualitative variables have a big importance in economy, being associated to a big number of economic processes and phenomena. In economic-mathematic modeling process, the main problem which needs to be solved is to express numerically the level of such variables, especially if their importance is big, or if qualitative effects worth to be considered. Measuring of qualitative variables give the chance of input them in quantitative kind models that would help mostly to reduce the degree of indetermination and therefore, to a fuller explanation of the evolution of economic phenomena.

In this work, we'll refer to the opportunities to measure qualitative variables encountered till nowadays in dedicated literature, giving examples for several cases through processes and phenomena frequently encountered in economic practice.

Key words: qualitative variables, quantitative modeling, economic processes

JEL classification: C1, C5.

1. INTRODUCTION

Qualitative or attributive variables refer to characteristics, qualities and categories etc. whose dimension are expressed using attributes or names about categories (classes, cases). In economy, these variables have a big importance, being associated to a big number of economic processes and phenomena. Therefore, the demand is conditioned not only by the size of income, price etc. but also by the degree of buyer's satisfaction or his/her thoughts etc. for a given

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product. In what concerns the offer, it depends on numerical variables (budget, number of wage earners etc.) and also on the degree of production management, stimulation politics, level of wage earners' training (qualification), their creative capacity, social climate etc.

In economic-mathematic modeling process, the main problem that is set on is to numerically express the level of such variables, especially if their contribution is important or if qualitative-kind effects are interesting. After measuring problem is solved, it appears the chance of putting qualitative variables in quantitative-kind models, which would mainly contribute to the diminution of indetermination degree and, thus, to a more complete explanation of the development of economic phenomena.

2. QUALITATIVE PROCESSES “REPRESENTED” BY NUMERICAL VARIABLES

Measuring level of variables is a criterion of classification of them, of a big importance for statistic study. We can consider four measuring levels (nominal, ordinal, of interval or of rapport), depending on three criteria:

- the chance to arrange variable values;
- the equality of intervals between the values of the variable (the existence of an measure unit);
- the existence of a “reference point” of the variable or, with other words, of an “absolute zero” [1].

Nominal measuring level supposes classification of attributes, characteristics, phenomena etc. in categories that must be different, mutual exclusive and exhaustive. This kind of variables (i.e. the scales used for measuring) shows only that there is a qualitative difference between studied categories but not the range of this difference. At the limit, we can consider these variables as typologies [9]. Some examples of variables measured at nominal level are: human's working status (peasant, wage earner, small businessman, unemployed etc.), religion (Orthodox, Romano-catholic, Greco-Catholic etc.), nationality (Romanian, Hungarian, Gipsy etc.), residence environment (rural, urban etc.) etc. The values of this kind of variables can't be arranged or, with other words, there is no hierarchy (but possibly considering intrinsic criteria) and therefore, “distance” problem and small values interval

one, can't be considered. So much the less we can approach the existence of an "absolute zero".

Ordinal measuring level implies not only the classification of the elements in categories but also the chance of arranging them from minimum to maximum. However, at this level of measuring, no information is given about the "distance between the values of measuring scale". Otherwise saying, the difference between first value and the second one can be different from that between forth value and fifth [3]. Examples of variables measured at ordinal level are scholar marks (having the values: "insufficient", "sufficient", "good" and "very good"), the satisfaction about certain aspects (having the values: "very unsatisfied", "unsatisfied", "satisfied", "very satisfied") etc.

Interval-level measuring gives additionally to prior level (that ordinal) also information about the distance between scale values and it is characterized by the existence of equal intervals. However, at this level, of measuring there is no absolute zero, bat better said, a conventional one [1].

Measuring at rapport level incorporates all the features of prior levels (arrangement and equal intervals) and the existence of a "reference point" or absolute zero. This thing allows building sentences containing proportion terms (rapports between). Examples of variables measured at this level are: age, weight, height, distance, number of children for a house etc.

The correct identification of used measuring level is very important for the choice of statistical procedures of analysis. As how we can view in above description, for each level there are allowed mathematical operations and not allowed ones. Thus, at first level, that nominal, there are allowed neither arrangement nor addition/subtraction nor multiplication/division. At ordinal level, only arrangement is allowed, at the interval one, are additionally allowed addition/subtraction operations and finally, at the last level, that of rapport, all operations are allowed. Depending on measuring level, we'll speak about variables measured at nominal level, at ordinal level etc. or, shortly, nominal variables, ordinal ones, of interval and of rapport variables [2, 9].

Reducing the four classes to two, we can tell about qualitative variables (nominal and ordinal level) and quantitative ones (interval and rapport). Grace of "hierarchic" and cumulative character of measuring levels (from many restrictions to no restriction about allowed operations or from "qualitative" to "quantitative") we'll be always able to consider a variable from an "upper" level of measuring as how would have been measured at a "lower" level. Now, grace

of the development of new techniques of analysis, especially conceived for “qualitative” measuring levels, there are more and more frequently the cases when a variable of a “lower” level is considered as one “upper” situated in hierarchy [10].

The expression using numbers of the presence of qualitative variable can be often indirectly made, using a basic numerical variable or a variable wherewith it is strongly linked to. This evaluation method, frequently used, supposes the replacement of qualitative variable with a representative one.

The existence of a variable which can be considered only with two aspects which are excluded each other, as existence / non-existence, acceptance / refusal, urban / rural, masculine / feminine, make possible the transfer into numerical space using the size 1 for one of the cases and 0 for the other. The encoding of the values of such variable, with 0 and 1, brings to a variable which practically measures the presence or the absence of studied feature. Such cases are generally frequent both in economy and in social domain (the success of a development program, intention to vote etc.) [5].

Either they refer to a given case (see above mentioned alternatives) or they are the result of the kind wherein the problem is set on, or they refers to a dichotomy generated by a past event, dichotomist or binary variables, i.e. the variables with only two possible values are very useful in statistical analysis practice. In these conditions, it is important to know how numerical characteristics are computed, especially the average and standard deviation of these variables.

If we start with computing formula of the average for grouped data, then we'll have:

$$\bar{X} = \frac{\sum_{j=1}^k f_j x_j}{N} = \frac{f_0 \times 0 + f_1 \times 1}{N} = \frac{f_1}{N} = p$$

where f_0 is absolute frequency of rising for 0 and f_1 is absolute frequency for the apparition of.

With other words, the average of a dichotomist variable is right relative frequency of getting the value 1 (the number of observations which gave the value 1 divided to the total number of observations from data series) that is, relative frequency (marked here as p) of the cases wherein studied characteristic is shown [10].

If the analysis is made for a population, not for a sample then we say that average of a dichotomist variable is even the likelihood of rising studied feature (but only if that variable is encoded 0/1).

The same as the demonstration for average case, we can show that the formula of standard deviation for a dichotomist variable is:

$$\sigma = p(1 - p)$$

where p is relative frequency of the presence of studied feature.

We discern the following cases:

a) *one-factorial case, wherein the variable x is of binary kind* (“dummy”)

As example, in the linear case:

$$y = \hat{a}_0 + \hat{a}_1 x + u$$

where: y = investments;

x = property form, having the possibilities:

- state ownership (1);
- particular property (0).

b) *two-factorial case wherein explanation variables are binary*

For example, in the case of linear model:

$$y = \hat{a}_0 + \hat{a}_1 x + \hat{a}_2 z + u$$

where: y = national income;

x = kind of economy

- centralized-planned (1);
- of market (0);

z = the status - of peace (1);

- of war (0).

c) *The case wherein the model contains a qualitative factor and a numerical one*

For example, in the case of the model:

$$y = \hat{a}_0 + \hat{a}_1x + \hat{a}_2z + u$$

where: y = computer demand;

x = income;

z = environment

- urban (1);

- rural (0).

In this case:

$$\text{- for } z = 0 \Rightarrow y = \hat{a}_0 + \hat{a}_1x + u_1$$

$$\text{- for } z = 1 \Rightarrow y = \hat{a}_0 + \hat{a}_1x + \hat{a}_2 + u_2 = (\hat{a}_0 + \hat{a}_2) + \hat{a}_1x + u_2$$

That supposes that between the two cases, only differences in what concerns starting point can be reached, i.e. in the first case, this is \hat{a}_0 and in second case, it is $(\hat{a}_0 + \hat{a}_2)$, the slope measured by the parameter \hat{a}_1 being the same. Graphically, the case is drawn by two parallel lines [6].

$$y = \hat{a}_0 + \hat{a}_1x + \hat{a}_2z + \hat{b}xz + u$$

In this case:

$$\text{- for } z = 0 \Rightarrow y = \hat{a}_0 + \hat{a}_1x + u$$

$$\text{- for } z = 1 \Rightarrow y = (\hat{a}_0 + \hat{a}_2) + (\hat{a}_1 + \hat{b})x + u = \alpha + \beta x + u$$

The comparison between the case when $z = 0$ and that when $z = 1$ marks both the different starting level (\hat{a}_0 if $z = 0$, $(\hat{a}_0 + \hat{a}_2)$ if $z = 1$), and that the lines have unequal slopes. ($\hat{a}_1 \neq \beta$), the case of parallelism observed before, being not again.

A kind of model global checking, when besides an explanation numerical variable we reach one or several binary variables, can run the stages of test F , case when $F_{computed}$ results from:

$$F_{computed} = \frac{\frac{\sum u_x^2 - \sum u_{x,s}^2}{s}}{\frac{\sum u_{x,s}^2}{n-k}} \geq F_{\alpha;s;n-k}$$

where:

$\sum u_x^2$ = sum of the squares of errors in the case $y = f(x)$;

$\sum u_{x,s}^2$ = sum of the squares in the case when we include besides x one or several binary variables;

s = number of input binary variables;

$n-k$ = number of cases minus number of parameters, in the case that includes the binary variables.

The model is confirmed for $F_{computed} > F_{\alpha;s;n-k}$.

d) *The case when the effect variable is binary kind.*

For example, in the model:

$$y = \hat{a}_0 + \hat{a}_1 x + u,$$

where: y = family equipage with a car;

x = family income.

In this case, we distinguish the situations:

- for $y = 0$, the family has no car, it results: $-\hat{a}_0 - \hat{a}_1 x = u$;
- for $y = 1$, the family has a car, it results: $1 - \hat{a}_0 - \hat{a}_1 x = u$,

That implies perturbation heteroskedasticity, whereat there is added that its repartition isn't normal. In consequence, the evaluations for parameters, especially for small samples, are outside the possibilities of usual checking [8].

3. NUMERICAL EXPRESSION OF MULTI-VALUES VARIABLES

When qualitative variable has more than two possibilities, we give them marks or, depending on the case, numbers of order, respective to their status wherein they act. We discern the following cases:

- 1) *Qualitative variable has a lot of states, without imply an arrangement of them respective to intensity.* Such variables are: nationality, religion, category, season etc. In such cases, we can proceed the same as in the case of binary variable, to giving equal distance values: 0, 1, 2, 3 ... for the different possibilities.
- 2) *Qualitative variable has different intensities, in a gradual shape of action, reason wherefore numbers of order are set to them, or the computing of proportional marks to intensity is done.* Such cases are on, especially in marketing studies, sociology, politology, wherein the opinion, satisfaction, confidence, training etc. can differ in intensity [9].

Giving values for some of variables is released because observation unity is framed in a category respective to training level, value of results, equipage, generation etc. So we meet: persons who passed a learning step, computers of a certain generation etc. In such cases, giving ordinal numbers which to follow the arrangement of categories wherein observation unity is framed would represent a solving of quantization problem. The lapse consists of that the values so given are step-by-step, that doesn't always correspond to the distances between categories of quality [4].

In what concerns the intensity of the dependence for such variables, using range (ordinal numbers) correlation quotient is recommended that can be get so (Spearman choice):

$$r_s = 1 - \frac{6 \cdot \sum d_i^2}{n \cdot (n^2 - 1)}$$

where:

d_i = difference between the ranges of variant "i" of the behavior of analyzed variables.

We remark that so quotient, computed for absolute values $|u_i|$ corresponding to x_i , is also useful for checking the hypothesis about equal error spreading and error independence respective to x . So, if r_s is unimportant respective to t test, the hypothesis is verified as true. In the case of signification, we say that heteroskedasticity is present.

4. QUALITATIVE VARIABLES JOINING

In practice, many times the problem of checking the existence of a link between two qualitative variables is considered. First step we must made for getting answer to such challenge, is building a two-input table, also named contingency table wherein the values of one variable are on columns and the values of second one appear on rows. Within the cells of such table, we can have four kinds of information [9]:

- a) absolute frequencies (number of elements from each cells and also the total number of elements that are included in different categories of variables);
- b) relative frequencies on rows (which show what percent from the category which defines a row is also of the category which defines the column);
- c) relative frequencies on columns (which show what percent from the category which defines a column is also of the category which defines the row);
- d) relative frequencies from the whole (which show us what percent of the amount of analyzed types simultaneously belong to row category and column one).

Such a table gives information about two kinds of distributions; edge distributions and conditioned ones. Edge distributions are practically frequencies distributions of variables. Comparing conditioned distributions to edge distribution, we can have a first view about the relation between the two variables. When conditioned distributions are much different from marginal ones, we can expect to have an association relation between the two variables.

In the following part, we'll see how we can check the existence of such relation. The test χ^2 of independence, used for testing if two variables are or are not linked each other, give only information about the existence/non-existence

of linking relation between two variables but not about the intensity of this relation when it exists.

For answer to the question “How strong is the association relation between two variables?” we need specific measures. Two of these we’ll be shown in the followings.

In the case of nominal variables, the (lambda) quotient is used. As how it is build, this quotient can be situated only between 0 and 1 (0 meaning the absence of any relation between variables, that is, independence and 1 meaning maximum intensity of association, that is strong association). The advantage of this quotient consists of relatively easy and intuitive computing kind. The main lack of this measure is that when a category of a variable has a big number of types, λ can be 0 even if the two variables are not independent [6, 8].

In the case of ordinal variables, there is the chance of arranging the values of variable and in consequence, there is the possibility to give ranges to types, depending on the values that they have for one variable. In consequence, in the analysis of this kind of variable we’ll be able to tell about a sign of association (or the sense of association). The measures of association of ordinal values can have values between -1 and 1. Generally speaking, a measure of linking between two ordinal variables, we’ll be positive if a type having a big range for X variable aim to have a big range also for variable Y , and the persons having small ranges on X variable, also have small ranges on Y . Negative association appears when the types having big range for variable X tends to have small ranges for Y and at reverse. If a measure of association between two ordinal variables takes the value 0, that we say that the two variables are independent. The more a linking relation between two ordinal variables will be stronger, the better association measure will be bigger in absolute value (nearer to 1)[9]. All the properties which evaluated values of a regression model have them, are also preserved when one or several independent variables are dichotomist (variables which take two values). The consequences of this property are important because they allows not only the evaluation of the effects of some variables that are usually dichotomist over the dependent variable and also the incorporation in a regression analysis of some nominal or ordinal variables that have more than two categories. This thing is possible after turning a variable having n categories into $n-1$ dichotomist variables.

CONCLUSIONS

The systemic concept in approaching economic processes and phenomena demands the study of all factors categories, which through several kinds of connections, are present in the results of economic activity. Qualitative factors are those of the same kind as analysis object, differing from phenomenon through extension degree. Quantitative factors are the material wearers of those qualitative, the basic and absolutely necessary condition for the action of those qualitative. The factors establish the shaping and changing of an effect, of a result. They run, as a rule, not alone but interdependently, jointly in a solid system of links. Their finding need the exact knowledge of shaping way for the result, of causal or inside links if result as analyzed phenomenon.

The whole measuring of the action of every factor over analyzed result (effect) has the role to give end of size and sense for causal links, to put in evidence the factors having more important action over the results and to appreciate the measure wherein internal resources have been used.

Quantitative methods that can be used in economic-mathematic modeling vary depending on the aim of analysis, on the information sources and on the kind of causality relations between factors. In using quantitative methods of analysis basing on certain models, there is necessary to care about the contradictions which made these methods not to give whole satisfaction in knowledge economic phenomena: between essential and phenomenological, between causal and stochastic, between rational and empirical.

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LEGAL REGIME OF PROSTITUTION IN THE FAR EAST

Claudiu Andreescu¹Cristian Giuseppe Zaharie²**Abstract**

"Specific for Asia is the blatant discrepancy between the national legal rules and the factual situations applied in practice."³ This phenomenon is more evident in the northern, eastern and southern Europe. For example, in Thailand, this profession is forbidden, but the practice is almost totally tolerated by the society and authorities, and in China, the prostitution, although prohibited by law, is ubiquitous in the big cities.

Key words: prostitution, Far East, tolerance, social phenomena

JEL Classification: E01, E20, Y20

The rule of law in Asia is the criminal punishment of prostitution. Exceptions: Kazakhstan, Kyrgyzstan, Israel, Singapore, Hong Kong, Turkey, Lebanon, Bangladesh. In the last three countries, the prostitution is regulated as method of development. Other states moderately sanction some unacceptable forms of this practice (such as India, where the prostitution is legal within certain limits), and in other countries, although the phenomena is outside law, is often tolerated by authorities (such as, Thailand or the PR of China).

Pandering, the establishment of brothels, child prostitution and human trafficking for sexual exploitation, although are prohibited by law and criminally punished, frequently occur as social crimes.

As a rule, for prostitution, the applicable sanctions are of criminal kind, but some states apply a more tolerant legal regime, instituting sanctions for some forms of manifestation of the prostitution phenomena, when they are not

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³ [Http://www.wikipedia.en_prostitution and the law](http://www.wikipedia.en_prostitution and the law).

involving criminal groups or children. The provisions from the Asian regulations may seem the opposite of the laws from Northern Europe. Specific for Asia is the legal and moral discrimination between man and woman, the man having the right to use the services of the prostitutes, but the women practicing this are subjected to legal sanctions and public opprobrium.

A serious issue raised by the Asian prostitution a phenomenon is represented by the high number of children prostitutes, developing this activity especially in countries from the southern and eastern parts of the continent. The most worrying issue appears in the South-East Asia, *"where the children prostitution phenomenon reaches high levels (e.g. in Mekong Area 35% from the total number of prostitutes has an age between 12 and 17 years)"*⁴

In Japan, the legislation has a narrowed vision on the practice when it defines it in order to criminally sanction it. According to this, the prostitution is *"the act of sexual intercourse with any person in return for payment"*.⁵ The object of the offence is represented only by the normal sexual relations.

Although criminally punished, the prostitution develops in Japan as a major social phenomenon, often disguised in different practices. One of the features of the social phenomenon is that in the practice of prostitution, although performed by many Japanese women, is included an intense contribution of the women came from abroad, part of them victims of human trafficking for sexual exploitation, and other practicing willingly this profession.

The Japanese State Police appreciated that from over 250.000 prostitutes in Japan, more than 150.000 are from abroad. For example, in 2007, from the total number of retained and registered prostitutes from Japan, 43.5% are from China and 15.3% from Thailand, 7.2 from Taiwan and 7% from the South Korea. It should be mentioned that Japan *"is one of the main countries of destination for women trafficking for sexual exploitation. The trafficking victims are from various states of the world: East Asia (China, South Korea), South-East Asia (Thailand, Taiwan, Bangladesh, and Vietnam), South and North America (Brazil, Mexico) and East and North Europe (Russia, Ukraine, Belarus Republic, Poland, Romania, Bulgaria, and others)"*.⁶

⁴ Deena, Guzder, **UNICEF: Protecting Children from Commercial Sexual Exploitation**, Pulitzer Center on Crisis Reporting.

⁵ <http://www.search.japantimes.co.jp/cgi.bin/>.

⁶ **United Nations High Commissioner for Refugees, Report 2009**, on http://www.wikipedia_Prostitution_in_Japan.

In Japan, the legislation has a narrowed vision on the practice when it defines it in order to criminally sanction it. According to this, the prostitution is *"the act of sexual intercourse with any person in return for payment"*.⁷ The object of the offence is represented only by the normal sexual relations. Although criminally punished, the prostitution develops in Japan as a major social phenomenon, often disguised in different practices. One of the features of the social phenomenon is that in the practice of prostitution, although performed by many Japanese women, is included an intense contribution of the women came from abroad, part of them victims of human trafficking for sexual exploitation, and other practicing willingly this profession.

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According to the National Police Agency, in year 2000 there were authorized *"908 massage and fashion salons, 5425 Spa Centers, according to the Law on the regulation of entertainment centers for adults."* In such places, *"it is frequently practiced oral and anal sex and other types of abnormal sexual services that are not subjected to the provisions that incriminate prostitution,"*⁹ seen by the legislator as a normal remunerated normal relation. In the same year, 1225 people were arrested or retained for prostitution acts or for some related acts. *"But this is only the top of the iceberg. The studies conducted by Yokohama Bank on the state of the underground economy in Japan, for the tax year 1998, found the existence of incomes resulted from prostitution, estimated to around 945 milliards Japanese Yens"*.¹⁰

⁷ <http://www.search.japantimes.co.jp./cgi.bin/>.

⁸ **United Nations High Commissioner for Refugees, Report 2009**, [pehttp://www.wikipedia_Prostitution_in_Japan](http://www.wikipedia_Prostitution_in_Japan).

⁹ Hiroshi, Matsubara, **Prostitution Testing Bounds of Culture, Business**, Japan Times, Mar. 16, 2002.

¹⁰ Hiroshi, Matsubara, **Prostitution Testing Bounds of Culture, Business**, Japan Times, Mar. 16, 2002.

Thailand does not allow the practice of prostitution, but the Thai laws, due to the manner of drafting the law texts, implying numerous interpretations and half measures, allows its practice in numerous cases. Although at the beginning of the 20th century, the prostitution was allowed, this “*was taken outside law by successive regulations in 1928, 1960 and 1996*”.¹¹

The law regulating prostitution in Thailand (no. 2539 issued in 1996) defines prostitution as being “*any act made for satisfying the sexual need of a person, in return for money or other material benefits, if made in a promiscuous manner*”.¹² The Thai legislator has not followed the Japanese model of regulating, choosing to sanction also the remunerated abnormal sexual relations. It should be also noticed that the Thai law for the regulation does not define what it is understood by “*promiscuity*”.

The sexual services are explicitly illegal, but the punishment of the fact is left to the appreciation of the public order authority, called to appreciate the “*promiscuity*” of the fact”. The application area of the legal definition is narrow and tributary to the appreciation made by the police agent, and, in my opinion, this might lead to encouraging the lack of uniformity in appreciating the situations, in litigations and even corruption. For maintaining this evasive regulation is contributing also the existence in the Thai society, in the last 10 years of some proposals for the permissive regulation of this activity.

Establishing or holding a prostitution house, the street pandering and women and children trafficking for sex exploitation, are punished with imprisonment. The prostitution is “*a ubiquitous part of the Thai society, mutually tolerated and accepted. It can be met in brothels, in the rural area, in (...) massage salons. The industry of paid sex is assessed (in 2003) to 3 percent from the economy of Thailand or to 4.3 milliards US dollars per year*”¹³ Socially, the country is characterized by the large number of reported practitioners (from the '60) considering the population size. As evolution, the situation presented by some local sources offer the maximum data (officially considered exaggerated by the administration).

¹¹ [Http://www.prostitution.pro/con.org/sourcefiles/Thailand](http://www.prostitution.pro/con.org/sourcefiles/Thailand).

¹² Fox Jon, **Sex Laws in Thailand Part 2: Laws Regulating Commercial Sex and Entertainment Places**, Thailand Law Forum, Nov.2009.

¹³*****Thailand Holds Debate On Legalizing Prostitution**, Taipei Times, Bangkok Nov. 28, 2003 address <http://www.taipetimes.com/News/world/archives/2003/11/28/2003077555>.

According to the estimations of the Thai police, in the last years it has increased the phenomenon of women trafficking for sexual exploitation, and more and more foreign prostitutes are identified. In 196, there were identified over 5 thousand prostitutes from the Russian Federation, trafficked by the Russian criminal organizations. The criminal groups are an extension of the mafia structures from Vietnam.

Most of the Russian criminal organizations use former KGB agents, as paid assassins (...). Following the collapse of the communism in the Soviet Union in 1991, the former KGB was replaced by a new professional agency, called RVS or the State Intelligence Office. RVS was modeled based on its occidental equivalents, CIA and MI-6 (...). But, home, in Russia, this reorganization meant that over 200.000 workers lost their working places. They are the people used by the Russian Mafia anywhere in the world, for "special missions" (...). Through the Vietnamese branch, in Thailand entered the underworld and ten of thousands of prostitutes, the number of the Russian visitors growing in this country from 3-4 hundreds in 1989, to 24.000 in 1993, 31.000 in 1994 and over 50.000 in the following years. (...) The Russian Mafia from Vietnam collects millions of dollars each month for protection for their compatriots that want to open a business in this area from the Far East, where the Russian had a power of influence for years."¹⁴

After 2000, thousands of prostitutes were brought in the ex-Soviet area, China, Korean Peninsula and South-East Asia, through the Chinese criminal organizations, the prostitutes being placed in brothels, hotels, massage salons, saunas, beauty centers, clubs, casinos, and others. Once placed, the prostitutes are involved also in the drug trafficking and placement, these triads asking protection taxes from the owners of such business.

To the extremely interpretable legal regulation there are added many accusations from the NGOs and unfavorable reports of the US State Department concerning the tolerance, inefficiency, protection and abuses of some Thai Police agents. For example, "in 2008, 459 people died in detention or arrest (the authority invoking natural causes), other 34 being killed in police actions. (...) The corruption of the Royal Police of Thailand remained widely spread among the police agents. Sources from the police suggested that the low salaries determined the bribes. Some people complained that the police tortured, beat them

¹⁴ Bertil, Lintner, **The Russian Mafia in Asia**, Rev.Tokio, 3 February, 1996.

and some women, detained or arrested, were sexually abused. There were also, reports that some police officers were involved in the facilitation and protection of prostitution and women and children trafficking."¹⁵

In Indonesia, the prostitution and the acts of organizing, facilitating and obtaining material benefits from this practice, if committed in certain conditions and places, are not sanctioned by law, at the national level. The deliberative competence concerning the legal regime applicable for prostitution and its organization is held by the local authorities. *"In most of the administrative-territorial units it is approved and regulated the functioning of brothels, the so-called "lokalisis".*¹⁶

The poverty, lack of education and social perspectives, the legal tolerance and also the sexual tourism lead to the wide practice of prostitution into the Indonesian practice, despite breaching the local religious rules. The economy of this country is dependant on tourism and the sexual tourism has a significant share on market. This form of tourism developed especially in the big cities and in Batam and Karimun Islands. Worse is that *"around 30% of the practitioners are under 18 years old, and this is a specific feature for South-East Asia".*¹⁷ *"Child prostitution reaches high levels (over 1/3 of the market) in Bali and Batam regions".*¹⁸ The exact number of child prostitutes is not known, an estimation being difficult to be made, but it is appreciated by all sources that the phenomena of child prostitution and children trafficking for sexual exploitation are extremely wide. Many girls are forced to practice prostitution, following kidnapping or treats, or after they, personally, or a member of their family contracted a usurious loan that they will never be able to pay, the amount resulted from interests being daily increased. The Indonesian social landscape of the prostitution phenomena is grim, being well highlighted in a report of the US State Department:

¹⁵ **United States, Department of State, Bureau of Democracy, Human Rights, and Labor**, 2008 Country Reports on Human Rights Practices, 2008 Human Rights Report: Thailand, <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119058.htm>, 2009.

¹⁶ Journeyman Pictures **Paedophile's Paradise - Indonesia** http://www.youtube.com/watch?v=Iw_e-E00e-8&feature=related.

¹⁷ According to UNICEF estimations. See <http://www.humantrafficking.org/countries/indonesia>.

¹⁸ <http://www.indonesiamatters.com/1464/bali-sex-tourism/>.

"-marriages of girls with the age between 10-14 years old, marriages that further lead to the introduction of the young girls on the prostitution market, the underage married girl being assimilated as an adult person;

- the state bodies (police, justice) treat the victims of prostitution, normally, as people that committed a crime, not as victims of the organized crime;

- the corrupt public agents issue identity cards for the underage girls, facilitating their entry on the prostitution market as adult persons;

- there are recorded numerous cases of sexual exploitation of child boys; for many years, the foreign pedophile networks had the benefit, due to the poor control of public order, of the possibility of sexual abuse of minors, in Bali being recorded even the existence of some international networks of people that were performing or facilitating the commitment of the acts of pedophilia;"¹⁹

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IMPORTANCE OF THE EUROPEAN BANKING UNION NEW DIRECTIVES

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Abstract

European Banking Union has set new rules on monetary market especially for credit institutions and for financial banking groups in general. Economic and monetary union requires accomplishment of political and monetary union and democratic control of the European institutions on a single financial market. In this respect through its management organisms, EU has designed a series of unique mechanisms of financial union and called for a fiscal union. Union of European financial market is possible through a new regulation of the markets. In this project, monetary union of the EU member countries is possible by implementing single mechanism of supervision (Single Supervisory Mechanism) and single mechanism of resolution (Single Resolution Mechanism). European Banking Union may be made by monitoring of a single banking supervisor based on a common system for managing and resolving banking crises and a uniform system of protecting people's savings. Romania opted for these unique mechanisms of macro-prudential supervision of the financial system. And by performing the real convergence criteria of integration, Romania will have all conditions of integration in the „euro area“.

Keywords: Banking Union, Single Supervisory Mechanism, Single Resolution Mechanism, bank resolution

JEL Classification: E58, G33

1. Introducere

Since 2012 the European Commission proposed a banking union based on new principles to overcome the financial crisis and not to involve governments in saving credit institutions within of financial crises

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To achieve the goals set by "the new directives" of the European Banking Union, credit institutions in 'euro area' and the states that have decided to enter the banking union, will made a greater financial effort. This is the case the Romanian state, that, first need to fulfill the convergence criteria to be able to enter in "euro basket."

The Romanian Constitution enshrines that the Romanian State is a national, sovereign, independent, unitary and indivisible. According to the principle of sovereignty, Romanian Constitution belongs to the Romanian people and are exercised through their representative bodies.

But, on conditions that, the fundamental law of the Romanian state has not been changed, those who leading the monetary policy founded solutions on that financial institutions must it fits and respects European Union recommendations.

Romania's EU accession has meant loss a part of financial sovereignty and alignment with EU legislation. Regulations that governing the financial market in our country are inspired by European institutions procedures that oversees European financial market. Unitary character of national regulatory of financial market has been aligned to the European legislation. Under EU legislation in terms of difficult economic situation, Romania has a great responsibility to fulfill the convergence criteria required for entry in the "euro area".

Although the Romanian economy has not yet found the cadence of sustainable development, however, the factors that determine monetary policy decided Romania joining to the European Banking Union, among European countries who want a single bank resolution mechanism, a unique mechanism of supervision and other single financial mechanisms.

In April this year The European Commission has adopted the two directives that create the framework for the Union of Banking: Directive on bank recovery and resolution and Directive on deposit guarantee schemes.

In Romania, through the two directives of banking union takes place, on the one hand protecting of the public money and on the other hand also protecting of depositors and in general of the "bank customers".

2. Objectives of Banking Union

We believe that the objectives of Banking Union are directed to give greater stability to the banking system and to regain public confidence in banks.

European monetary policy is one of the most important factors of development and growth of the European economy. Although not all developed countries of the world have rallied to the recommendations of Basel III, banking financial groups from the EU countries shall ensure regularly that are performed at least the capital requirements.

Efficient management of bank crises, credit institutions salvation on the shareholders money and less on public funds, guaranteeing common of household deposits, the mechanism of resolution and single mechanism of banking supervision is one of the objectives of single financial banking system.

Fiscal deficits and problems that have occurred in the banking sector have created major economic problems. Many investors have withdrawn money from some European countries afraid that governments do not honor international obligations which led to a crisis of the exchange rate and thus, sudden declines of the national currency or the euro in the country concerned.

The financial crisis in the last years, which began in the autumn of 2007 and not over yet, prompted that some EU governments to help financial banks with problems, which caused many "discontentment" in financial markets. But many "players in the business world" do not "approved" governments intervention to "rescue" the "important" institutions of financial system.

Why? The answer was simple. For the fact that credit institutions are companies and in "chase them" for profit primarily performing "banking business". Those who err in business "unless open their eyes open their bag." Businesses of all kinds, in general takes place between two parties of which one always wins more, and another can lose.

Although "things" are more complex in "money creation", however European authorities wish to prevent "situations" that can cause governments to intervene.

According to EU directives (CRD IV and CRR IV) financial banking groups have taken measures that were required by the new regulations of the European financial markets.

The European Banking Authority (EBA), the European System Risk Board (ESRB), the European Securities Authority (ESMA) and the European

Insurance and Occupational Pensions Authority (EIOPA) has developed regulations and will require unitary procedures for all countries who want be integrated in a monetary union as a major part in a single financial market, on Europe.

Although Romania is not in the "euro area financial" representative bodies of the state have decided to participate in the construction of economic and monetary union at all costs. Unique mechanisms of regulation and banking supervision will strengthen the European banking system and hence the Romanian banking system.

Single European financial supervision system is monitored by the Executive Committee of the Board Single Financial Market It includes representatives of the ECB / EBA / ESMA / EIOPA / ESRB.

Unique mechanism of resolution (MUR)³ is responsible for the work of about 6,000 credit institutions of the EU countries, except England and Sweden. Besides those two states, against the monetary union and the fact of giving full regulatory powers ECB, objected both Czech Republic and Poland that have solid banking systems and do not want to expose at banking risks manifested in many European countries such as Greece, Spain or Italy.

By " *Single Board of Resolution* " from MUR shall establish measures to address the resolution of banking financial groups in difficulty and monitor how agencies established with the ECB or national financial supervisory authorities implemented procedures for resolution and resolution plan approved the European Commission.

According to the " *Directive on bank recovery and resolution* "Single Board of Resolution bear all responsibility of saving banks from bankruptcy , the Council and the European Commission involvement in the resolution is minimal.

"*Single Board of Resolution Single*" as a young institution in the EU, includes representatives of the ECB , European Commission, national authorities and manages the Single Fund of Resolution. The establishment of this fund requires more effort from countries that have good financial stability and are not included in the " euro area".

By the amount offered by the Single Fund of Resolution may recapitalize banking financial group that was in a reorganization (due to financial

³ European Commission proposal of July 10, 2013

difficulties) or special measures are established to absorb losses. According to the decisions taken by the "Board Resolution Single " the Fund may pay certain debts to creditors, can provide guarantees , loans, equity participation or be granted compensatory amounts of shareholders.

In the management of bank resolution authority using a series of specific operations. Among them we can mention : partial sales of assets , acquisitions assisted or forced merger of operations " bridge banks ".

The European Commission has proposed the establishment of a single authority that will have the power to decide when credit institutions in Europe will be saved or closed. With new regulations for banking resolution, in Romania, Co Blvd insolvency is not applicable bankrupt banks.

In May this year, Romania will take the decision to sign the agreement on transfer and mutualisation the contributions on Single Fund Resolution.

The unique resolution Banking Union would complement the unique mechanism of banking supervision and is a further step towards banking union, which aims to break the link between the banking crisis and the debt crisis. If a bank in the euro zone will face serious financial difficulties, the ECB, as supervisor, will pull the alarm. At this point, the board resolution make recommendations to the Committee, who will decide whether to implement the procedure in force resolution bancară.

Intrarea single resolution mechanism is provided for 2015, but the laws under which creditors would establish order if the bank rescue will not be operational only in 2018.

"Banking Union will contribute to restoring confidence in the banking sector and, therefore, the economic recovery in EU. These rules on financial stability will help to restore banks' ability to grant loans on real economy and for our SMEs," said the European Parliament plenary, Corien Wortmann-Kool Member European Parliament, one of the main supporters of the Single Mechanism of Resolution.

Under the new EU banking union people who will realize "process of resolution" are called resolution authority. They can be finance ministries, national financial supervisors authorities, central banks and other public administrative authorities. In addition to single resolution fund financing bank resolution process can be ensured by the deposit guarantee scheme.

"Directive on deposit guarantee schemes" underlying European banking union forcing each of the 28 EU states to submit in advance certain amounts, established procedurllly for a period of 10 years. Deposit Guarantee Schemes are developed based on risk assessments. Methods of calculating the contribution to the fund established by the European Banking Authority is based on the risk profile of individual banks.

By "Directive on Deposit Guarantee Schemes" confirming the coverage of 100 thousand euro / depositor / credit institution and the repayment term is gradually reduced from 20 to 7 days until 2024. During this period of 10 years target coverage was 0.80% of covered deposits.

Besides the unique mechanism of resolution and deposit guarantee scheme third pillar of the Banking Union is Supervisory unique mechanism.

European Central Bank with the European Banking Authority shall develop procedures for the operation MUS until November 2014.

The activity of "group of the European Banking inspectors ", implementing the procedures laid down by Single Supervisory Mechanism (MUS) will start for the first 600 credit institutions operating in the European Union.

By entering Romania among the states in the "euro area" for the construction of European Banking Union, the central bank as a national authority will be organized under ECB regulations as "close cooperation agreement" signed by the two institutions.

In Romania "Regulation on MUS" developed by the ECB reinforces the independence of the central bank, which will be visualized in the institutional organization, staff establishing (Governor, Senior Deputy Governor, Deputy Governors-executive members of the Board of Directors) and setting its budget.

Romania did not have banks in difficulties, the banking sector is stable, although the economy has been affected by "import of instability" of the European countries. Supervision by the authorities of European banking financial groups from Romania has some advantages. Although we did not have credit institutions with financial problems caused by the crisis, however, some financial banking groups do not have taken account by the recommendations of

national authority on supporting economic development through a lending activity and other reasonable banking services. In the new conditions of banking union, banking financial groups will be subject to unique mechanism of resolution and institutions with problems will benefit from the amounts available from the the fund that will be constituted, of 55 billion euros.

By Regulation of MUS, ECB has supervisory powers over the banking financial groups and on some large credit institutions. In MUS work program enter and financial holding companies, mixed financial holding companies, from participating Member States and branches on participating Member States belonging to credit institutions established in non-participating Member States that are significant and that will be monitored throughout by the ECB .

NBR will be responsible for supervising until now like financial institutions that are less significant. BNR will facilitate ECB staff to monitor credit institutions monitored by the central bank and, when it is necessary to decide the consistent application of standards for monitoring

Supervision of so called "second-class institutions" by national authorities, will open the doors for them to support the development of "national economic programs" competing with banking financial groups enshrined on financial market.

3. Conclusions

Romania is a member of the banking union with full rights and obligations, by the competent national authority, as of the end of 2014 after the Single Mechanism Banking Supervision is put into operation.

Banking resolution is basically a new form of reorganization of a financial group or a credit institution that are in the "verge of bankruptcy". Through the measures taken in the MUR aims to revitalization credit institution continued supply of products and banking and financial stability.

By achieving banking resolution aims to:

- ensuring continuity of critical functions by credit institutions in difficulties;
- protecting depositors, investors and public funds;
- avoid adverse effects on financial stability.

Will be avoid bank failures within a new financial crises and compensation to depositors and other creditors shall be made only by

resolution fund. Compared to insolvency legislation, "Directive on Banking recovery and resolution" by the specific instruments allow to effectively treat the situation of a credit institution in difficulty with considering the public interest.

By that directive was introduced obligation to present "standard form" with useful information to depositors and explicitly excluding from the recapitalization of banks with deposits guaranteed.

On the new European Banking Union, objective of central bank's, member of ESCB remains unique - keeping price stability, but will bring new additions its own state, will further curing central bank independence and autonomy.

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APPROACHING THE WORLD: MAIN LARGEST HOTEL GROUPS STRATEGIES

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Abstract

In 2009, the world hotel market reached a saturation level, having too many hotels opened in a short time interval. Beginning with 2010, the number of tourists started increasing again, exceeding 1 billion in 2013. Emerging countries began gaining more and more foreign tourists. All these changes are taken into consideration by the international hotel chains having a significant role in the economies of the countries hosting their hotels. The most often used strategies to penetrate a foreign market are the franchise and the management contract. However, quite often, the penetration into a foreign market can contain a mixture of strategies, rather than only one. The purpose of the paper is the identification of predominant strategy of penetrating a foreign market for top 10 largest hotel groups in the world, finding of main strategy for every hotel group and analysing of the dynamics for the strategy of penetrating a foreign market in every hotel group under analysis for the interval 2002-2013. The research reveals that 70% of the hotel groups under investigation use mainly franchise strategy. Hotel groups owning a large number of hotels (over 3500 hotels worldwide) and which coordinated large service distribution networks prefer a strategy that involves an average level of financial involvement, average risk and operational control.

Key words: international hotel chains, penetrating strategies, hotels groups, foreign tourism market

JEL Classification: L83, M31

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1. Introduction

Tourism represents a very important sector of world economy and tourist destinations attract more and more people every year. In 2008, before the onset of the world crisis, the overall number of international tourists reached almost 929 million, while one year later, in 2009, it dropped to 894 million. Beginning with 2010, the number of tourists started increasing again. Thus, in 2012, it exceeded 1 billion (1.035 million), to which, in 2013, 52 million (a total of 1.087 million) more are added (http://dtxtq4w60xqpw.cloudfront.net/sites/all/files/pdf/unwto_barom13_01_jan_excer_pt_0.pdf; http://dtxtq4w60xqpw.cloudfront.net/sites/all/files/pdf/unwto_fitur_2014_hq_jk_2pp_0.pdf; retrieved on 28.02.2014, hour 12.45).

According to a survey conducted in 2011 by the journal *"Hotels, The magazine of the worldwide hotel industry"*, in 2009, the world hotel market reached a saturation level, as a consequence of having too many hotels opened in a short time interval. Most hotel companies added to the world market "stock" not only hotels but also other forms of accommodation and the market seems to have been unable to absorb all of them, up to 2009. The number of hotel linked buildings reached a maximum level by 2009, while the strong financial and economic world crisis in 2008-2009 led to stagnation for hotel companies, too (www.marketingandtechnology.com/repository/webFeatures/HOTELS/2011_HOTELS_325.pdf; retrieved on 24.04.2014, hour 11.40).

2. Insights from international hotel chains market

If one takes into account the regions and areas where most foreign tourists are met, we find Europe on the first place, followed by Asia, Africa/ Middle East, North America and Latin America (http://mkt.unwto.org/sites/all/files/docpdf/unwtohighlights11enhr_3.pdf; http://dtxtq4w60xqpw.cloudfront.net/sites/all/files/pdf/unwto_barom12_01_january_en_excerpt.pdf, date 28.02.2014, hour 15.50). What is actually very interesting is that the number of Europe - visiting tourists started decreasing since the 90's, while the numbers for Asia and the Pacific areas has an upward tendency. In 2008, the latter areas mentioned had only over 185 million tourists, but figures went up and in 2013 they reached over 247 million. In North America, less tourists go and numbers have decreased during the last 20 years. Latin America remains with a constant number of tourists, Africa/ Middle East record a slight increase

in time (http://dtxtq4w60xqpw.cloudfront.net/sites/all/files/pdf/unwto_barom14_01_jan_excerpt.pdf, retrieved on 26.05.2014, hour 9.47).

Other important influence factor for tourism is given by the type of economy the countries have - developed or emerging related to the number of tourists visiting them. Emerging countries began gaining more and more foreign tourists and the trend remains valid for 2014, too (http://dtxtq4w60xqpw.cloudfront.net/sites/all/files/pdf/unwto_fitur_2014_hq_jk_1pp_0.pdf; retrieved on 28.02.2014, hour 13.53).

All these changes are taken into consideration by the international hotel chains having a significant role in the economies of the countries hosting their hotels.

In 2010, the international hotel chains from the entire world could not increase their portfolio much. Year 2011 marks an increase in the number of hotels owned by large international hotel companies, not at an aggressive rate, rather cautiously and the trend went on. The dynamics of the hotel numbers is the following at world level: in Europe and America, though new hotels appeared with 2010, the increase is very small compared to preceding years. This rule does not apply to Asia and Pacific, where the increase is very large compared to the rest of continents. Thus, in Asia and Pacific, in 2010, the number of newly built hotels increased by 16%, compared to year 2008 (www.marketingandtechnology.com/repository/webFeatures/HOTELS/2011_HOTELS_325.pdf; retrieved on 24.04.2014, hour 12.35).

Table no. 1 Top 10 largest hotel groups in the world in 2012

No.	Company	2012		
		Number of countries in which it is present	Number of rooms	Number of hotels
1	InterContinental Hotels Group	100	675.982	4602
2	Marriott International	74	660.394	3800
3	Hilton Worldwide	90	652.957	3966
4	Wyndham Worldwide	66	627.437	7342
5	Choice Hotels International	35	538.222	6725
6	Accor	92	450.487	3516
7	Starwood Hotels & Resorts Worldwide	100	335.415	1134
8	Best Western International	100	312.467	4050
9	Carlson Rezidor Hotel Group	83	166.241	1077
10	Hyatt Hotels Corp.	46	135.144	500

Source: adapted from http://www.marketingandtechnology.com/repository/webFeatures/HOTELS/h1307_Special_Report_325_iPad.pdf (retrieved on 02.06.2014, hour 9.20)

This new trend, making international hotel groups to focus upon specific geographic areas in the world, leads to visible changes in the ranking of international hotels every year (www.hotelsmag.com, retrieved on 24.04.2014, hour 12.55). The ranking of the largest hotel groups (Table no.1) considers the number of rooms made available by individual hotel chains, and not the number of hotel building owned by these companies.

Besides this issue that points out the value of the geographical area, international hotel groups become aware of the significance of the brand and its contribution to the enlarging of the number of hotels under the umbrella of an international hotel brand. At present, two thirds of the hotels in the world represent direct investments, the majority being small and average size enterprises (SMEs). In Europe, particularly, the hotel industry relies on small companies to a very large extent, where companies either own the hotels or manage them, using various strategies for foreign market penetration (Leidner, 2004; Johnson & Vanetti, 2005; Holverson & Revaz, 2006). If in 2010, only 38% of the worldwide hotels belonged to international brands, it is estimated that by 2020, the figure will go up to 45%, and by 2030, even to 50% (http://www.ihgplc.com/files/results/prelims11/downloads/prelims11_slides.pdf; retrieved on 20.04.2014, hour 22.30).

The most significant hotel brands belong to the biggest worldwide international hotel groups. However, changes in the ranking of world level international hotel groups appear every year.

This is the reason for which the theoretical and design of own strategies for penetrating various foreign markets has become a necessity. As they were able to adapt to the new conditions provided by new locations and as they were able to implement efficient strategies international hotel groups could spread so widely. Last but not least, they kept their top position for a long time also keeping the large number of available rooms.

There are more strategies used by hotel chains to penetrate a new market (a new country): *the green field investment, hotel or hotel company take over from an internal market; joined company, franchise, management contract, strategic alliances, consortia (voluntary chains)* etc. (Cristureanu, 2006).

The internationalisation strategies chosen by hotel chains vary related to the amount of financial involvement wanted to be made by the chains, to the level of desired operational control and level of assumed risk (Table no. 2) (Chen & Dimou, 2005; Cristureanu, 2006; Lupu & Țigu, 2006). Another

criterion hotel chains take into account when penetrating a foreign market is the host country level of development (Graf, 2009).

Table no. 2 Internationalisation means

	Operational Control	Financial involvement	Potential risk
Direct foreign investment	High	High	High
Franchise	Average	Average	Average
Joined company	High	Low	Low
Management contract	High	Low	Low
Strategic alliance	Low	Low	Low
Consortiums	Low	Low	Low

Source: adapted from Contractor F. J. & Kundu S. K., *Modal Choice in a World of Alliances: Analyzing Organizational Forms in the International Hotel Sector*, *Journal of International Business Studies* (Vol. 29, Nr. 2, pp. 325-358) and Cristureanu, *Strategii și tranzacții în turismul internațional* (București, Editura C.H. Beck, 2006, p. 324)

The most often used strategies to penetrate a foreign market are the franchise and the management contract (Erramilli, Agarwal, Dev, 2002; Guillet, Zhang, Gao, 2011). However, quite often, the penetration into a foreign market can contain a mixture of strategies, rather than only one (Fleșeriu & Fleșeriu, 2011: 295-302).

3. Material and methods

There are three major objectives to be followed in this research:

- Objective 1: Identification of predominant strategy of penetrating a foreign market in the hotel industry;
- Objective 2: Identification of main strategy of penetrating a foreign market for every hotel group;
- Objective 3: Identification of the dynamics for the strategy of penetrating a foreign market in every hotel group under analysis.

In order to get the information required for the present research both exploratory and descriptive research methods were used. The first ten world level hotel groups were analysed (see Table no. 1). The main research method consists in the analysis of secondary data. Data from various sources were found, among which: annual reports, websites of hotel groups, statistical studies and analyses published until present day. These documents were used to find specific details that could lead to common issues as well as differences. For

every individual hotel group, publicly made documents were studied to identify the strategies they used to penetrate a foreign market previously, at present and to see their plans for the future. From every annual report published, data necessary for the study were identified, collected and processed and then they were synthesised in a material for all the ten hotel groups. The second research method lies in an in-depth telephone interview with the Hilton hotel group, to get data for years 2012-2013. Mention should be made that this hotel group did not publish its annual reports for the period 2007-2012, and it is not listed with the stock exchange.

4. Results and discussions

This part makes an analysis of the situation of the first ten hotel groups worldwide during the last 12 years. The exception is the Accor group, where 17 years were taken into discussion because of the available data and Hyatt where data are missing and only the interval 2006-2013 is investigated.

I. IHG (InterContinental Hotels Group) is a hotel company that holds the largest number of guest rooms in the world, with over 4600 hotels in 100 countries (<http://www.ihg.com/hotels/us/en/global/about/company-overview>; retrieved on 19.06.2014, hour 12.37). The group runs its activity based on four strategies of penetration into a foreign market: the franchise, management contract, leasing contract and direct foreign investment. The most frequent means of foreign market penetration are the franchise, followed by the management contract. Figure no. 1 shows the evolution in time of this situation.

II. Marriott International, Inc. is the second hotel group in the world considering the number of rooms, as a criterion.

The Marriott International group owns more than 3900 properties in 72 countries and territories (www.marriott.com/marriott/aboutmarriott.mi; retrieved on 18.06.2014, hour 20.05). The hotels are franchised under the brands Marriott, JW Marriott, The Ritz-Carlton, Renaissance, Residence Inn, Courtyard, TownePlace Suites, Fairfield Inn, SpringHill Suites and Bulgari. The hotel company has its own holiday resorts under the brands Marriott Vacation Club, The Ritz-Carlton Destination Club and Grand Residences by Marriott offering leasing and management contracts under the residential brands comprising The Ritz-Carlton Residences, JW Marriott Residences and Marriott Residences. The group also holds Marriott Executive Apartments and conference centres.

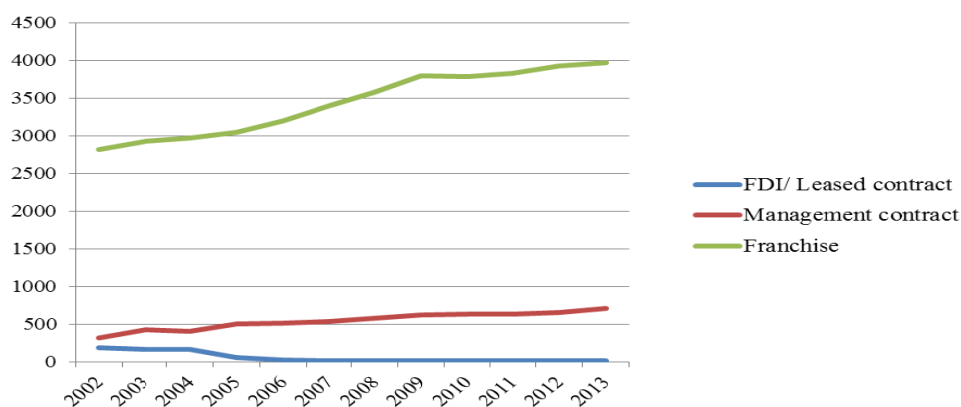


Figure no. 1 Types of strategies used by the IHG hotel group to penetrate a foreign market (2002-2013)

Source: produced by the authors on the basis of IHG group annual reports for the interval 2002-2013, <http://ihgplc.com/index.asp?pageid=56&data=Reports> (retrieved on 20.06.2014, hour 13.10)

The Figure no. 2 highlights the most frequently used foreign market penetration strategy, namely the franchise, followed by the management contract.

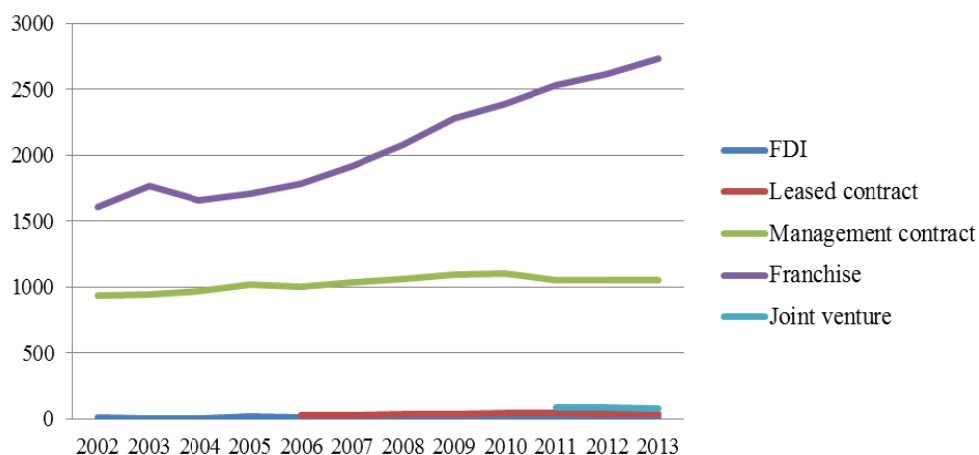


Figure no. 2 Types of strategies used by the Marriott hotel group to penetrate a foreign market (2002-2013)

Source: produced by the authors on the basis of Marriott group annual reports for the interval 2002-2013, <http://investor.shareholder.com/mar/reports.cfm> (retrieved on 20.05.2014, hour 13.10)

III. Hilton Hotels Corporation is situated on the third place in the world, with respect to the number of rooms hold. The company has 4115 hotels, in 91 countries, in the form of franchise, management contracts, leasing contracts or direct foreign investments, belonging to several best known hotel brands: Waldorf Astoria Hotels & Resorts, Conrad Hotels & Resorts, Hilton Hotels & Resorts, DoubleTree by Hilton, Embassy Suites Hotels, Hilton Garden Inn, Hampton Hotels, Homewood Suites by Hilton, Home2 Suites by Hilton, Hilton Garand Vacations (http://ir.hiltonworldwide.com/files/doc_financials/Hilton_2013_AR.pdf; retrieved on 20.05.2014, hour 14.28) (Figure no. 3).

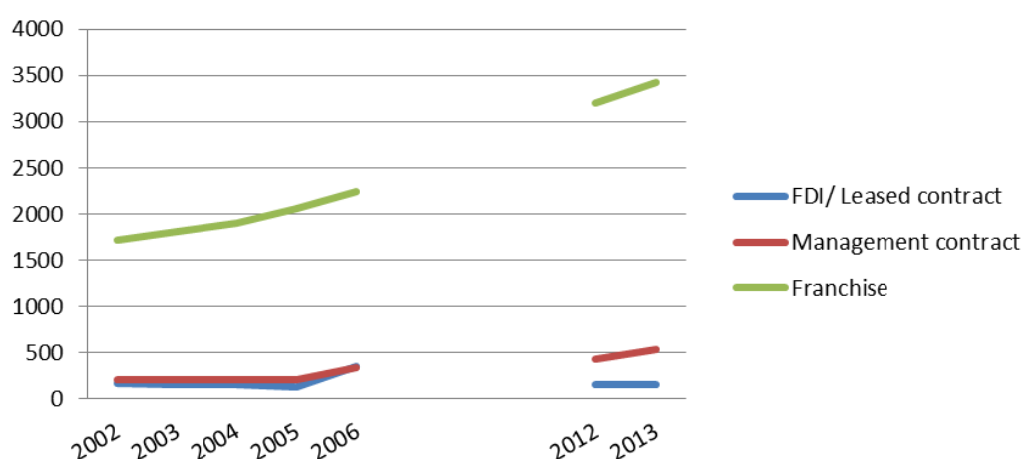


Figure no. 3 Types of strategies used by the Hilton hotel group to penetrate a foreign market (2002-2006 and 2012-2013)

Source: produced by the author on the basis of information received from Hilton Hotels Worldwide and http://ir.hiltonworldwide.com/files/doc_financials/Hilton_2013_AR.pdf (retrieved on 20.05.2014, hour 14.50)

The franchise represents the predominant foreign market penetration strategy of the Hilton hotel group (over 80%, less in 2006, when 76%). Though on the second place is the strategy of management contract, its weigh is still very low (between 9% and 13%).

IV. Wyndham Hotel Group is the largest franchiser as well as the largest hotel group in the world, if one takes into account the number of hotels owned (approximately 7500 in 65 countries worldwide) (www.wyndhamworldwide.com/

about-wyndham-worldwide/wyndham-hotel-group; retrieved on 20.06.2014, hour 15.20). The group has more hotel brands: Days Inn, Super 8, Microtel Inns & Suites, Howard Johnson, Travelodge, Knights Inn, Ramada, Baymont, Wyndham Hotels and Resorts, Wingate by Wyndham, Tryp by Wyndham, Hawthorn Suites by Wyndham, Night and Dream. They all use the franchise as a foreign market penetration strategy. The Wyndham Hotel Group implements a direct franchise model. In the direct franchise, the franchisor gives the franchised the option of managing only one franchise and even when the owner holds more franchised hotels, the franchisor draws an individual franchise contract for every separate hotel (Riesterer, 2001:41). The group introduces its brands through individual hotel owners.

V. Similar to the Wyndham Hotel Group, the *Choice Hotels International* implements the franchise as a penetration strategy. The group has ten different brands (Comfort Inn, Comfort Suites, Quality, Sleep Inn, Clarion, Cambria Suites, Main Stay Suites, Suburban, Econo Lodge and Rodeway Inn) in 6700 hotels, found in over 35 countries (<http://www.choicehotels.com/en/about-choice/aboutchoicehotels>; retrieved on 20.06.2014, hour 15.50).

No graphs were made for the hotel groups in positions 4, 5 and 8, because they use only one strategy to penetrate foreign markets.

VI. *Accor* is a world group, with a significant share in the hotel domain and a world leader in services provided to corporations and public institutions. Accor runs activities in 92 countries (www.accor.com/en/group/accor-worldwide.html; retrieved on 11.04.2013, hour 16.45).

As a very large group and with a vast portfolio, Accor defines its strategies for penetrating foreign markets relative to the target segments and country development level (www.accor.com/fileadmin/user_upload/Contenus_Accor/Finance/Documentation/2012/EN/2011_registration_document.pdf; retrieved on 11.04.2013, hour 17.01). Hence, in mature markets, the group favours the management contract and less the franchise. The only segment where the franchise is not implemented is the luxury one. The leasing contract is also used for middle and economic segment hotels. In emerging markets, the main strategy is the management contract, exclusively used for the luxury and upscale segment, though it can also be found in the rest of the segments. For the middle and economic segment, other strategies in place are: the joint-venture, the

leasing contract and the franchise ([www.accor.com/fileadmin/ user_upload/ Contenus_Accor/Finance/Documentation/2013/UK/2012_registration_document.pdf](http://www.accor.com/fileadmin/user_upload/Contenus_Accor/Finance/Documentation/2013/UK/2012_registration_document.pdf); retrieved on 18.06.2013, hour 16.17) (Figure no. 4).

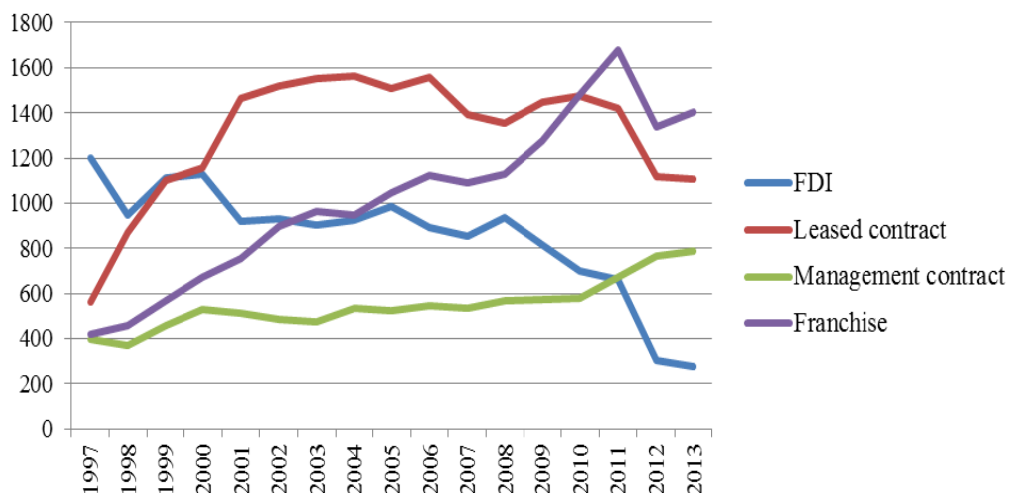


Figure no. 4 Types of strategies used by the Accor hotel group to penetrate a foreign market (1997-2013)

Source: produced by the authors on the basis of Accor group annual reports for the interval 1997-2013, www.accor.com/en/finance/financial-library/annual-and-half-yearly-information.html (retrieved on 20.06.2014, hour 15.30)

There is a trend in the strategies implemented by Accor worldwide. Thus, for the interval under investigation there is a low number of direct foreign investments, the management contracts number was kept relatively constant, that of leasing contracts underwent an increase followed by decrease and the franchise number has increased. One can state that the Accor group wants to diminish in the future the number of rooms running on direct foreign investments and fix-leased ones while enlarging the number of franchises, management contracts and variable leasing.

VII. Starwood Hotels & Resorts Worldwide is a hotel group situated on the seventh place in the top of the largest hotel groups. The group has almost 1200 hotels in 100 countries. The group foreign market penetration strategies for the brands owned (St. Regis, The Luxury Collection, W, Westin, Le

Méridien, Sheraton, Four Points by Sheraton, Aloft and Element) are: direct foreign investment, management contract, leasing contract and franchise (<http://www.starwoodhotels.com/corphourte/about/index.html>; retrieved on 20.06.2014, hour 15.50) (Figure no. 5).

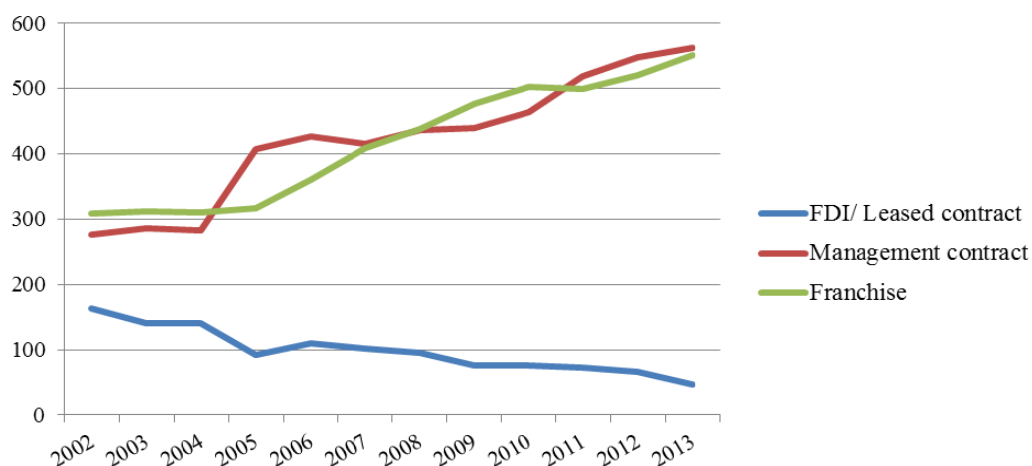


Figure no. 5 Types of strategies used by the Starwood hotel group to penetrate a foreign market (2002-2013)

Source: produced by the authors on the basis of Starwood group annual reports for the interval 2002-2013, <http://www.starwoodhotels.com/corphourte/about/investor/reports.html> (retrieved on 20.06.2014, hour 16.10)

One can notice the main utilisation of two alternative strategies for foreign market penetration. In 2013, 48% of the hotels operated on management contract, 47% were in franchise, the rest up to 100% being run on direct foreign investments and leasing contracts.

Though the franchise and management contract are almost equally used, for the general evaluation the data favour the management contract as the main approach.

VIII. Best Western International represents a hotel brand on the fourth place in the world, considering the number of owned hotels and position eight for the number of rooms provided. At the end of 2013 the group had over 4060 hotels operating independently, in 100 countries worldwide

(www.bestwesterndevelopers.com/membership/worldwide-development.html; retrieved on 20.06.2014, hour 16.30).

Best Western International relies on a very simple concept: there are independent owners of hotels joined together to promote their properties and to make profit. The hotel group is regarded as an association. Hotels belong to owners, they have an independent activity. Every member possessing a hotel has a strong opinion in so far hotel management is concerned and consequently, the hotel chain uses a common and single penetration strategy with application to the singleness of the respective hotel. Though not regarded as an integrated hotel chain and though not seen as a voluntary association too, the strategy to penetrate foreign markets in Best Western is the franchise.

Best Western is placed on the first position in Top 50 Brands by "Hotels, The magazine of the worldwide hotel industry" (http://www.marketingandtechnology.com/repository/webFeatures/HOTELS/h1307_Special_Report_325_iPad.pdf; retrieved on 21.06.2014, hour 9.27).

IX. The *Carlson Rezidor Hotel Group* was established at the end of 2011, from the partnership between the Rezidor hotel group and Carlson Hotels (division of the Carlson group, a hospitality and tourism company). In 2010 the Carlson group was ranked on the ninth position considering the number of rooms, in the top of worldwide hotels. Today, the group has preserved the same nine place, and holds the following brands: Radisson Blu, Radisson, Radisson Red, Park Inn by Radisson, Park Plaza, Country Inns & Suites by Carlson and Quorvus Collection (http://www.carlsonrezidor.com/our_brands-cis.php; retrieved on 20.06.2014, hour 16.47). No statistical data are available about the hotel chains belonging to the Carlson group but there are data about the Rezidor.

The Rezidor group has a long-term approach regarding penetration strategies: the leasing contract and the franchise lose ground in front of the management contract (Figure no. 6). Rezidor wants to decrease the number of hotels using for internationalisation the leasing contract and to increase the number of hotels operating on management contract, until 2015.

X. Hyatt Hotels Corporation, established in Chicago, holds 548 hotels, in six continents, in 47 countries, belonging to the brands: Hyatt, Park Hyatt, Andaz, Grand Hyatt, Hyatt Regency, Hyatt Place, Hyatt House, Hyatt Zilara and Hyatt Ziva. The strategies of foreign market penetration used by this hotel group are the franchise, management contract, leasing contract and direct foreign investment (<http://investors.hyatt.com/phoenix.zhtml?c=228969&p=irol-irhome>; retrieved on 20.06.2014, hour 17.15). From the Figure no. 7 one can notice that the predominant penetration strategy used by the Hyatt group is the management contract. However, the number of hotels using this option decreases (from 81% in 2006 to 61% in 2013) favouring the increase of the number of hotels having a franchise contract (from 13% in 2006 to 34% in 2013).

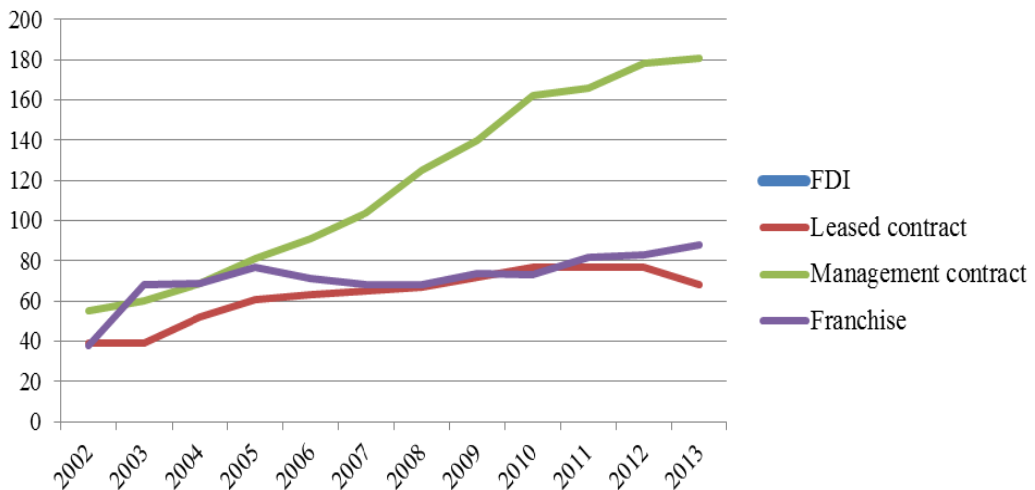


Figure no. 6 Types of strategies used by the Rezidor hotel group to penetrate a foreign market (2002-2013)

Source: produced by the authors on the basis of Rezidor group annual reports for the interval 2002-2013, <http://www.rezidor.com/phoenix.zhtml?c=205430&p=irol-library> (retrieved on 20.06.2014, hour 16.52)

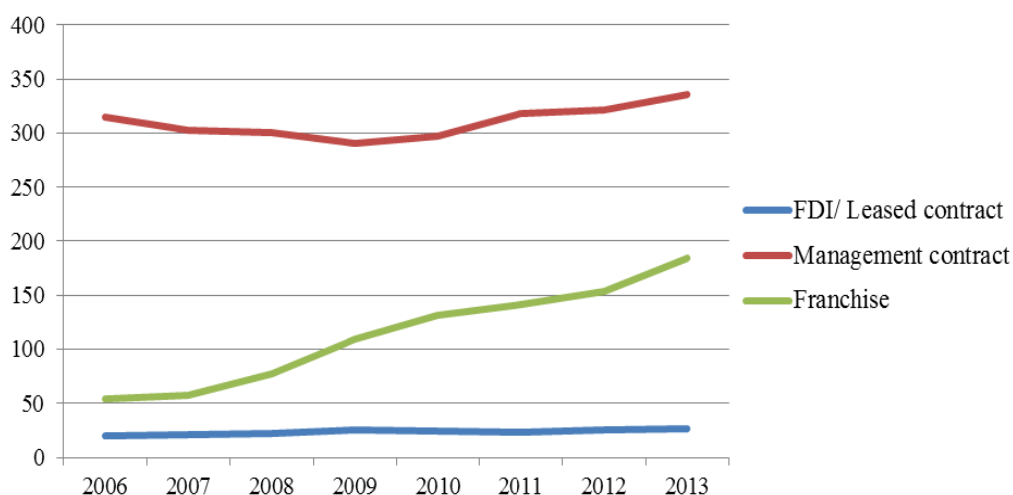


Figure no. 7 Types of strategies used by the Hyatt hotel group to penetrate a foreign market (2006-2013)

Source: produced by the authors on the basis of Hyatt group annual reports for the interval 2006-2013, <http://investors.hyatt.com/phoenix.zhtml?c=228969&p=irol-reportsannual> (retrieved on 20.06.2014, hour 17.50)

The synthesis of the data found for every individual hotel group reveals that seven out of ten hotel groups prefer the franchise as a predominant foreign market penetration strategy (Table no. 3).

Table no. 3 Main penetration strategy

No.	Company	Penetration strategy
1	InterContinental Hotels Group	Franchise
2	Marriott International	Franchise
3	Hilton Worldwide	Franchise
4	Wyndham Worldwide	Franchise
5	Choice Hotels International	Franchise
6	Accor	Franchise
7	Starwood Hotels & Resorts Worldwide	Management contract*
8	Best Western International	Franchise
9	Carlson Rezidor Hotel Group	Management contract
10	Hyatt Hotels Corp.	Management contract

*closely followed by franchise

Source: *produced by the authors*

Out of the three groups using predominantly the management contract, Starwood Hotels & Resorts Worldwide also makes use of the franchise almost equally (the difference is only one percent), while Carlson Rezidor Hotel Group and Hyatt Hotels Corp. mainly address to upscale luxury segment of tourists. The result is not surprising if considering the penetration strategy for an upmarket target where the management contract is more efficient (Cosma & Fleşeriu, 2010).

5. Conclusion

Further on, international hotel groups and chains will go on wishing to increase the number of owned hotels as there still exist geographical areas that have not been exploited to their maximum potential.

The international hotel chains have always defined future plans and objectives based on development strategies. Today, such plans are justified only in so far UNWTO gives a positive prognosis for the number of tourists and the geographical areas of tourist destinations. One can see that, besides Europe, an area much loved by tourists, areas of Asia and Pacific have strong possibilities to develop further. The Americas will also witness development in the years to come, though not so spectacular as the first three areas previously mentioned. The areas that will attract the smallest number of tourists, represented as weigh of the total number of tourists, will be Africa and Middle East. Though with less tourists, the investors of international hotel chains still want to strengthen the advantage of the first comer in those areas.

The analysis made here reveals that the favoured distribution form for the hotel industry is the franchise, 70% of the hotel groups under investigation using mainly this extension strategy. It is also revealed that hotel groups owning a large number of hotels (over 3500 hotels worldwide) and which coordinated large service distribution networks prefer a strategy that involves an average level of financial involvement, average risk and operational control.

As far as the evolution of the strategy within every hotel group the investigation data show a decrease of direct foreign investment concomitantly with more franchise and management contract implementation. One can state that hotel groups act in a globally consolidated market, where those forms of cooperation that diminish financial involvement and business risks are given priority.

The analysis of the data regarding years before the economic and financial crisis beginning in 2008 reveals that the hotel industry was one of the worldwide industries least affected by the crisis. The difficult economic situation has not prevented hoteliers to develop. Moreover, hotel groups have used internationalisation as a means to balance business during crisis affected time.

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SOME ASPECTS CONCERNING THE ENFORCEMENT PROCEEDINGS ON SANCTIONS

Cristian Giuseppe Zaharie¹

Abstract

Among the most important aspect in the sanction practice, there are recorded the difficulties on enforcing the sanctions with fines for the offences provided by Law no. 61 from 1991 concerning the sanctions on breaching certain rules of social cohabitation, public order and peace.

Key words: enforcement, sanction, fine, procedure

JEL Classification: E01, E20, Y20

Some of the most important issues from the administrative practice are represented by the difficulties on enforcing the fine sanctions for the offences provided by Law no. 61 from 1991. In this case, we make reference to the amendment rules from art. 25-29 of the Government Order no. 2 from 2001. Presented in brief, the procedure is as follows: if the offender was sanctioned with fine, along with the minute it will receive also the payment notification. In the payment notification it shall be mentioned the obligation to pay the fine and by case, the compensation, within 15 days from the notification.² If the inspector applies the sanction and the offender is present on concluding the minute, this will receive a copy of it. The offender will sign for reception. In case the offender is not present or, although present, refuses to sign the minute, the notification thereof and also the inspector's payment notification shall be performed in term of a month, at most, from the conclusion date. The minute and the payment notification shall be sent by mail, with reception confirmation, or it shall be displayed to the offender's domicile. This can pay immediately or in term of 48 hours from the minute conclusion date, half of the minimum fine provided by law, the inspector mentioning this possibility in

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² Art. 25 para. (3) of **Government Order no. 2 din 2001 on the legal regime of contraventions.**

the minute. The fine payment shall be made to the inspector, the Romanian Savings Bank or to the public finance treasury, and a copy of the receipt shall be delivered by the offender to the inspector or shall be sent by mail to the competent authority.³

Unlike the provisions of Law no. 32/1968, in the current regulation on the common law applicable for offences, the rule for paying half of the minimum fine is represented by the express provision of this possibility in the special sanctioning rule, as it happens also for Law no. 61 from 1991.

It is appreciated that *“an issue that art. 28 of the GO no. 2/2001 and any other text of the order does not exclusively solve, although it has a significant practical importance, is represented by the legal nature of the term of 48 hours with the consequent possibility to suspend it, or in certain situations to reinstate it in the timeframe. In our case, we believe that this would be a procedural period of interruption or reinstatement in the timeframe. Thus, to the extent that within the term of 48 hours the offender addresses a claim against the minute, this will be ceased, following to run again from the communication date of the first instance sentence, or along with the delivery of the decision of the Court of Appeal, obviously, only in case the claim was dismissed. Also, shall the offender be in the impossibility to pay the fine within the term of 48 hours, it can ask the court, based on a claim having as subsidiary object the cancellation of minute, or by appeal on enforcement, the reinstatement in term for being able to pay the debt, paying the fine based on this reduced amount.”*⁴

Against the finding minute of contravention and application of sanction it can be addressed a claim in term of 15 days from the date of its notification. The claim suspends the enforcement. The suspensive effect of the claim shall be applied only on the term for paying the fine and not for the term of 48 hours within which it can be paid half of the minimum agreed fine, if the special rule provides expressly this possibility.

According to *“Law no. 293/2009 for the amendment of the Government Order no. 2/2009 on the legal regime of sanctions”*,⁵ if the offender does not pay the fine (...), *“the Court will replace the fine with the sanction of the obligation to render community work”*. In the old regulation, the Government Order

³ Art. 28 from the same law.

⁴ Ovidiu, Podaru, Radu, Chiriță, **Government Order no. 2/2001 on the legal regime of sanctions, commented and annotated**, Sfera juridică Publishing House, Bucharest, 2006, p.156-157.

⁵ Law no. 293/2009 for the amendment of the Government Order no. 2/2009 on the legal regime of sanctions was published in the Romanian Official Gazette, Part I no. 645 from October 1st 2009.

no. 2/2001, it was stipulated that “*the Court can replace the fine with community service, only with the offender’s approval*”. At the moment, the Court can oblige the offender to the community service for a maximum term of 50 hours, and for children, 16 years old, to 25 hours. Also, *Law no. 294/2009*⁶ amends the Government Order no. 55/2002 on the legal regime of the sanctions by community service”⁷ in the same meaning, namely the elimination of the requirement concerning the offender’s approval.

Based on the amendment of the legal deed it results that the court will apply the community service sanction, if it shall consider that the application of fine is not sufficient or if the offender does not have the material and financial means for its payment. The legal amendment was necessary due to the accumulation of debts not paid to the IRS by the people sanctioned with fines by the public order bodies, competent in field. In fact, by the accumulation of contravention fines, applied systematically, it was reached in some cases the conclusion of a high number of finding minute of contravention, lacking the finality aimed by the legislator and the accumulation of some record amounts owned to the state, debts that will never be executed and on which it will act the prescription. As an example, I mention that “*in Bucharest, an offender sanctioned repeatedly for prostitution, owed in January 2011 to the IRS over 1.118.000 lei, and another offender from Bacau County, sanctioned for the same anti-social facts, should pay over 300.000 lei*”.⁸ In this meaning, it should be mentioned that “*ten of the Bucharest prostitutes received together for the period 2006-2010, over 6.000 fines*”. The national record for this period is held by a person “*that practiced prostitution for 27 years, from Ramnicul Sarat, who had to pay 796 fines*” starting with July 2006 until 2010.

Thus, it can be shown that “*in the first eight months of 2009, there were recorded over 14.000 minutes*” by which there were applied fines for prostitution, and “*during the similar period of 2008, there were recorded only around 10.000 similar minutes*”. In principle, I appreciate as beneficial the legislative amendments brought by Law no. 293/2009 and Law no. 294/2009,

⁶Law no. 294/2009 for the amendment of the Government Order no. 55/2002 on the legal regime of community service sanction, was published in the Official Gazette part I no. 645 from October 1st 2009.

⁷Government Order no. 55/2002 on the legal regime of the community service sanctions was published in the Official Gazette no. 642 from August 30th 2002.

⁸<http://www.antena3.ro/romania/statul-roman-ar-castiga-100-de-milioane-de-euro-anual-daca-ar-legalizaprostitutia-117068.html>

made in order to avoid the accumulation of outstanding debts towards IRS by the practitioners.⁹

But, it is arising an issue that the aforementioned normative acts do not clarify: what kind of legal liability attracts the failure to fulfil the community service and how will this person answer? In Romania, the labour enforcement is not admissible, and we are not either in any of the circumstances provided to art. 42 paragraph 2) letter c), b) and c) of the Constitution, the sanction of imprisonment¹⁰ being eliminated, and the solution to retransform the community service in debt to the IRS is not opportune, because it would lead to the continuation of the vicious circle. “*The Government Order no. 55/2002 on the legal regime of the community service sanction*” allows the court to return to the referral of the mayor and to dispose the replacement of the community service sanction with the fine, but in such case, it is only reached a vicious circle of law, which is usually out to the satisfaction of the offender and damages the state by the prescription on the execution of the fine sanction.

There is, of course, the practically reduced possibility that within the term of 2 years for the prescription of the fine sanction enforcement, the offender to obtain goods or incomes executable by the IRS. A solution, in my opinion, beneficial for insuring the efficient functioning of the legal system, like the sanction by the criminal law means for the unfulfillment of the community service established by the decision of the law court. Practically, this person

⁹Liviu Giurgiu, Cristian Giuseppe, Zaharie, Some theoretical and practical aspects concerning the sanctioned offences that affect the social and public order rules, in the Journal of Public Law no. 1/2010.

¹⁰ The provisions of letter d) of paragraph 2) of art. 5 of *Government Order no.2/2001 on the legal regime of sanctions that were providing the sanction with prison were abrogated by the provisions of art. I paragraph 1) of the Emergency order no. 108 from October 24th 2003 on the elimination of the contravention prison, deed published in the Official Gazette no. 747 from October 26th 2003.*

Also, by the provisions of paragraph 2), 3) and 4) of art. I of the same law, for the application of the constitutional amendments from 2003, there were abrogated all the provisions contained by the Government Order no. 2/2001 which were regulating the sanction of contravention prison.

The provisions concerning the contravention prison, included in this act became clearly unconstitutional after the enforcement of the amended Constitution, in 2003. In paragraph 13) of art. 23 of the amended Constitution, it was provided that the “sanction of privative freedom can be only of criminal nature”. Hence the unconstitutionality of the legal provisions that were regulating the administrative – contravention prison sanction. The sanction based on which the offender is due to render the community service does not determine an effective deprivation of freedom for such person. From the constitutional text results that the prison sanction can be applied only for committing crimes, and in no case for a contravention or a disciplinary on the military regulations. For the cases when the court should have applied the prison sanction, it will apply the obligation of the offender to the community service.

refuses to apply a legal order. But, this solution might come in contradiction with the Romanian criminal policy, because it leads to taking into the criminal sanction system the ill will offenders and bad payers, further hampering the functioning of the procedural and criminal prison system with prostitutes, beggars, troublemakers, street consumers of alcohol, gambling practitioners, wall designers, traders and unruly drivers, etc.

Another aspect that I notice is represented by the amendment provisions of art. I of *Law no. 294/2009 for the amendment of the Government Order no. 55/2002 on the legal regime for community service sanctioning*, according to which *“the court will establish the nature of the community service activities, based on data communicated by the City Mayor”* where the offender has its residence or domicile, taking into account *“its physical and mental capacities, and also the level of professional training.”*

Also, for the same purpose, the Government Order no. 55/2002 on the legal regime of the community service sanction provides to art. 17 paragraph 1)-5) that *“the mayor has the obligation to fulfil the enforcement mandate; on establishing the activity that follows to be rendered as community service by the offender, the mayor will take into account its professional training and health state, certified with documents issued by law”*. Also, *“it is forbidden to establish for the offender the community service in underground, in mines, subway or other such places with a high level of risk in rendering the activity and also in dangerous places, which, by their nature, can determine physical accidents or might damage the person’s health; the sanction of community service is executed by complying with the labour protection rules”*. In addition, *“it is forbidden to oblige the child to render an activity that might have risks or it is susceptible to effect its education or to damage its physical, mental, spiritual, moral or social development.”*

Given that the people for who it is imposed the application of these sanctions are, normally, sanctioned for breaching some rules of social life, public order and for other similar facts, by grounds it arises the question which are generally *“their physical and mental capacities, the level of professional training and health state?”* Because those that are in such situation, of course along with the street prostitutes, are: usually the beggars, the hazard and shell game players, the destroyers of other’s goods, the pimps that are not criminally sanctioned, the homeless people that stay in parks and the heat system and the street consumers of alcohol, to which there are added several categories *“not*

lower than these". Hence, the difficulties for the practical application of these legal provisions.

In regard of these "*special*" groups, from their ranks may come two categories of people that "*block*" the procedure of applying the contravention sanctions: the people refusing to present their identity card, although they have them with, and the people without identity. For the first case, the inspector, by case, will request according to art. 18 of the Ordinance, the assistance of an agent from the public order bodies (policemen, gendarme) that according to art. 48 of the Code of Criminal Procedure will have the right to retain the offender, the refuse to present the identity documents representing by itself an offence sanctioned by *Law no. 61/1991*, to art. 3 paragraph 31). For the second case, given that such person will fail to pay the fine, it is less probable that the sanction procedure will have the effect desired by the legislator. The practical solutions are doubtful, being proposed: the identification of the offender with witnesses, the commencement of the legal procedures in order to establish an identity or the attempt to establish an identity.¹¹

Another aspect that I notice in the Government Order no. 2/2001 is the imperative references to the legal regimes or administrative procedures still unregulated.

I will present such example related to the prostitution actions. Art. 3 point 6 of *Law no. 61/1991* sanctions "*the attraction of people, in any kind, committed in places, parks, streets or in other public places, in order to have sexual relations with them and in order to obtain material benefits, and also encouraging of forcing, for the same purpose, of a person to commit such facts.*" Art. 3 point 7 of the same legal act sanctions on its turn "*accepting and tolerating the practice of the offences provided to point 6) in hotels, motels, campgrounds, bars, restaurants, clubs, pensions, discotheques or in their annexes, by the owners or administrators or managers of such places.*" Art. 4 paragraph 3) of the same law text provides also that "*in case of committing the offences provided to art. 3 point 7 (...) it is disposed the measure of suspending the activity of the public premises for a period between 10 and 30days.*" "*The measure of suspending the activity of the local premise*" is, in fact, under the common law in matter, a complementary civil sanction. *Law no. 61/1991*, special rule for such cases, does not provide regulatory provisions

¹¹ See for this Ovidiu, Podaru, Radu, Chiriță, **Government Order no. 2/2001 on the legal regime of sanctions, commented and annotated**, Sfera juridică Publishing House, Bucharest, 2006, p.124-125.

with procedural character in matter, thus, we will apply the procedural dispositions of the common law for sanctions, namely the provisions of the Government Order no. 2/2001. These provide, mandatory, that “the execution of the complementary sanctions is made according to the legal provisions”. But these do not exist! If the minute by which it is disposed the application of the principal and complementary sanction is issued by the same public authority that issued also the functioning permit of the place (normally, the Local Council of the municipality, city, commune or district of Bucharest), this will operate by itself the suspension of the authorized functioning of such place. Since normally, the two aforementioned administrative deeds are issued by the same public authority, I appreciate that the sanction authority shall notify the complementary sanction to the issuing authority of the functioning permit, the latter having the implicit obligation to notify the sanctioned person about the suspension of the functioning permit, for a period of 10 up to 30 days. Shall the issuing authority of the authorization comply the sanctioning authority will be able to start the action in the contentious administrative department, based on art. 1 of Law no. 554/2004 on the contentious administrative,¹² (with a possible hierarchic way), obliging the first authority, based on a final legal order on the issuance of the deed, only if this solution has as final effect the proof on the inefficiency of applying the aforementioned complementary sanction for the private law offending person.

Otherwise, art. 24 of the Government Order no. 2/2001 provides the possibility to seize the goods (which in the sanction practice is interpreted as including the notion of money) resulted from committing the offence. In terms of facts sanctioned by law related to prostitution, this consists in seizing the money received from the client, but also of other goods that the prostitute has on her (such as, means of protection against the STD transmission, like condoms). Leaving aside that the seizure of the protection means corroborated with the lack of prostitutes’ responsibility may lead to the further infection of others, the application of the measure of goods’ seizure should not be performed by the offence finding minute, but only to be ruled by the law court, the inspector performing only the retention and preservation of the goods, and the seizure procedure to be ruled by the law court, notified in term of 15 days after the retention of goods by the authority of which the agent is employed,

¹² Law no. 554/2004 on the administrative contentious was published in the Romanian Official Gazette no. 1154 from December 7th 2004 and was enacted on January 7th 2005.

which “(...) represents an at least unfortunate choice of the legislator that should have ruled this competence on the law court, in order to assure the perfect compatibility of the national laws with ECHR provisions”. By art. 1 of Protocol no. 1, the deprivation of property is prohibited unless it is executed for a cause of public interest and the measure is provided by law.¹³ By the notion “provided by law”, ECHR does not understand any national law provisions, but only those provisions that leave certain guarantees against arbitrage.¹⁴

Or, according to the found jurisprudence of the European Law Court, the main guarantee against arbitrage is that a privative measure on rights is not ruled by an executive body, as it is disposed to art. 24 from the Government Order no. 2/2001. A perfect harmonization with the ECHR jurisprudence would have imposed that the seizure measure to be ruled by any law court, but the inspector to be able to take only the measures of preservation for the seized goods.¹⁵

Personally, I am reluctant on the practical use of the amendment of the provisions of art. 24 paragraph 1) of the Government Order no. 2/2001, because for establishing the seizure by the inspector can be appealed in term of 15 days after notification, in front of an independent and impartial court, and the attribution of disposing the seizure under the exclusive competence of the law court would lead to their agglomeration.

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3. Law no. 294/2009 for the amendment of the Government Order no. 55/2002 on the legal regime of community service sanction, was published in the Official Gazette part I no. 645 from October 1st 2009.
4. Government Order no. 2 from 2001 on the legal regime on sanctions published in the Official Gazette no. 410 from July 25th 2001.

¹³ Ovidiu, Podaru, Radu, Chiriță, Government Order no. 2/2001 on the legal regime of sanctions, commented and annotated, Sfera Juridica Publishing House, Bucharest, 2006, p.146.

¹⁴ See mutatis mutandis ECHR, **Decision Klass and others**, quote on www.echr.coe.int; **Decision Malone**, quote on www.echr.coe.int.

¹⁵ Ovidiu, Podaru, Radu, Chiriță, op.cit. Sfera juridică Publishing House, Bucharest, 2006, p.147.

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[Http://www.antena3.ro/romania/statul-roman-ar-castiga-100-de-milioane-de-euro-anual-daca-ar-legalizaprostitutia-117068.html](http://www.antena3.ro/romania/statul-roman-ar-castiga-100-de-milioane-de-euro-anual-daca-ar-legalizaprostitutia-117068.html)

VULNERABILITIES IN THE MANAGEMENT OF TOURISM ENTITIES

Traian-Ovidiu Calotă¹

Abstract

This theme is consistent with the opinions frequently expressed in the business environment but also in the specialty literature on vulnerability of tourism businesses. Therefore, the post-doctoral research envisages a personal approach of such issues, identification of vulnerabilities by tourism management, submitting this approach to the debate of the academic and business environment.

Keywords: tourism, offer, information, competitiveness, quality, price, facilities, vulnerabilities, alternatives, decisions, occupancy rate, management, tourism services and products

JEL Classification: H32, L20, L21, M41, Q28

1. Introduction

The development in optimum conditions of the activities in a tourism entity depends to a great extent also on the management capacity to identify and counter the vulnerabilities generated by a couple of elements. Therefore, our approach is aimed at identifying the vulnerability-generating mechanisms which, designed on the processes of development of tourism activities give us the possibility to see the ways in which management is able to act.

In order to do so, we revealed in chapter 2 the consulted specialty literature reflecting the level of expertise in this domain, and in chapter 3 we developed, from our own point of view, the way to approach the topic of vulnerabilities in a tourism entity. Finally, we sum up some conclusions regarding the specific nature of management selection and monitoring by investors.

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2. Literature review

The topic being object of our endeavor was treated in various approaches by many authors of the specialty literature.

Therefore, Rodica Minciu, in *Economia turismului - Tourism economy* (2004), treats the sizes of the tourism phenomenon, the issues related to organization, functioning and technical and material basis of tourism. She also approaches the elements determining the economic and social efficiency of tourism.

Michael Morris, in *Cum sa devii manager - How to become a manager* (2002), treats the theme of goods and services management, the issue of human resources but also the role of management in company survival.

Gabriela Stanciulescu and Gabriela Tigu, in *Tehnica operatiunilor de turism - Technique of tourism operations* (1999), debate in detail the practical activity of tourism business agents and provide models, case studies and informational circuits in tourism.

Rodd Wagner and James K Harter, in *Elemente ale managementului performant - Elements of performing management* (2009), develop issues related to what is necessary in order to be a performing manager and the essence of managerial performance.

Emil Maxim, in *Calitatea si managementul calitatii - Quality and quality management* (2007), defines the quality parameters in economics, describes the modalities for measurement of quality, for assessment and certification of quality.

Bogdan Bacanu, in *Managementul strategic in turism - Strategic management in tourism* (2009), describes the internal resources of the tourism organization and the competitive advantage, external environment and decision in tourism.

Sever Gabriel Bombos, in *Raspunderea manageriala - Managerial liability*, (2003), talks about legal, criminal, material and tort liability of managers.

3. Scientific contents

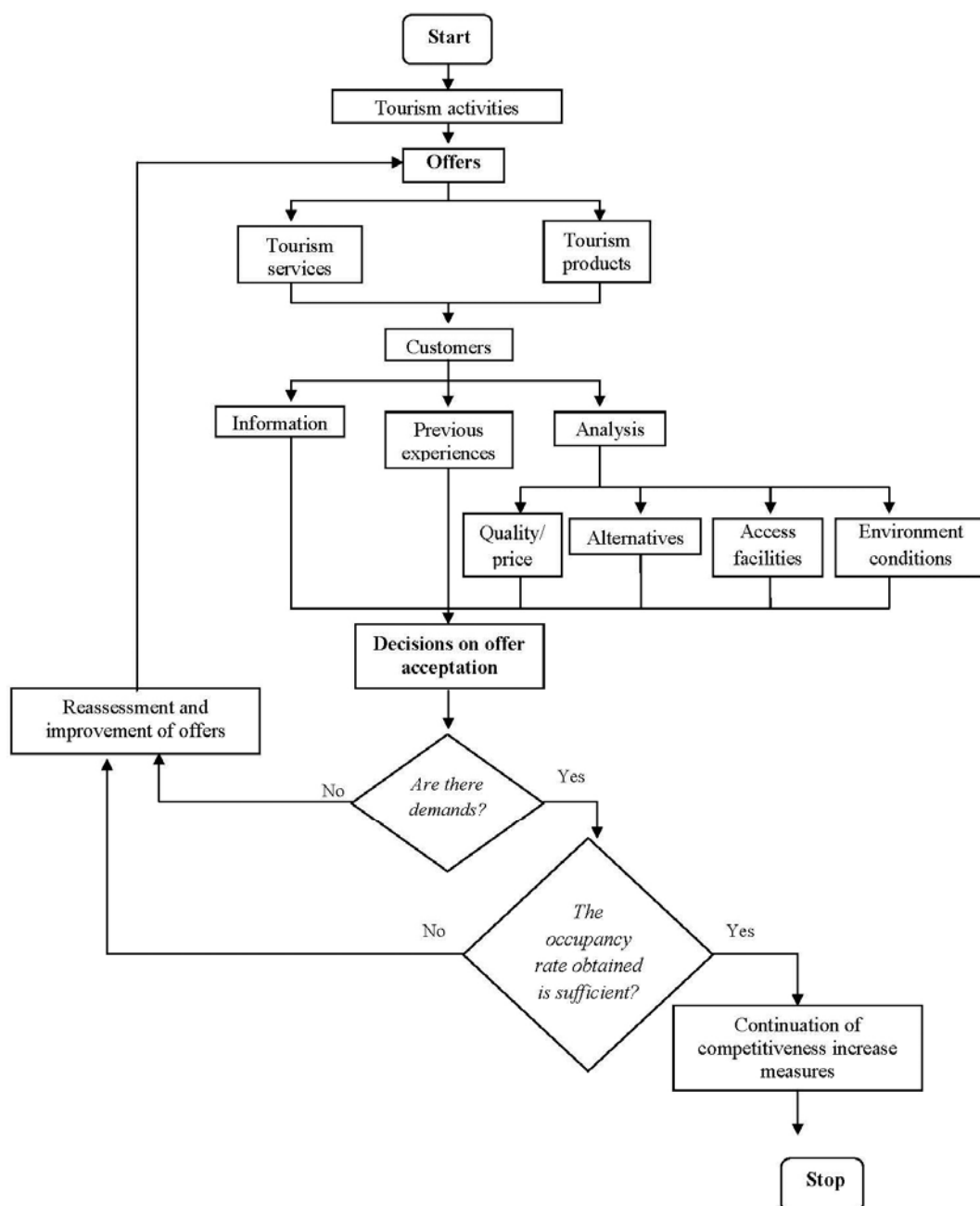
We will start in our endeavor from the controversies existent at the level of the Romanian business environment in terms of appropriateness and profitability of investments in tourism activities. In our opinion, many of such controversies are based on false premises and don't consider enough the huge potential of this economic branch in Romania. First of all, it is about the fact

that there are favorable conditions for the development of the seaside, mountain, cultural and therapeutic tourism, practically the entire Romanian territory is proper for organizing this type of business, of course taking into account certain limits we will discuss later.

Therefore, provided that the requirements in terms of the existence of capital are met, the organization and operation of a tourism entity depend to a great extent on a performing management. Such management, while carrying out its functions (prevision, organization, coordination, training and control) should take into account a couple of internal and external factors, which represent at the same time vulnerabilities. Therefore, without being exhaustive, we will consider the reference point to be the occupancy rate in tourism entities, represented under the form of logic scheme structured in Picture 1.

We notice that the offers of tourism services and products determine the customers, in order to make the decision, to search for information, to resort to previous experiences, and after that, to analyze them very carefully, from at least four perspectives: quality/price, alternatives, access facilities and environment conditions. As a matter of fact, the occupancy rate of tourism entities depends on the way in which the requirements of each potential customer are met. Obviously this issue must be considered in its dynamic, in the sense that the decisions to accept the offers depend on a continuous process of harmonization with the customers' growing requirements, but also on ensuring competitiveness on the tourism market.

Therefore, the management of the tourism entity in charge with its organization, operation and management will always face new situations, the achievement of the core goal which is profit maximization depending on their correct and proper settlement. But such situations which are permanently changing have their origin in the two environments, the internal and the external one. Therefore, starting from the hypothesis that the said management meets all the requirements imposed by the investors, in terms of targets, tasks and professional capacity, then we can say that the business success will depend, to a great extent, on the identification and counter of vulnerabilities. In order to understand it better, we explained in picture 2, under the form of a logic scheme, the main elements generating vulnerabilities for management.



Picture. 1. Logical schema version of the process of ensuring occupancy rate in tourism

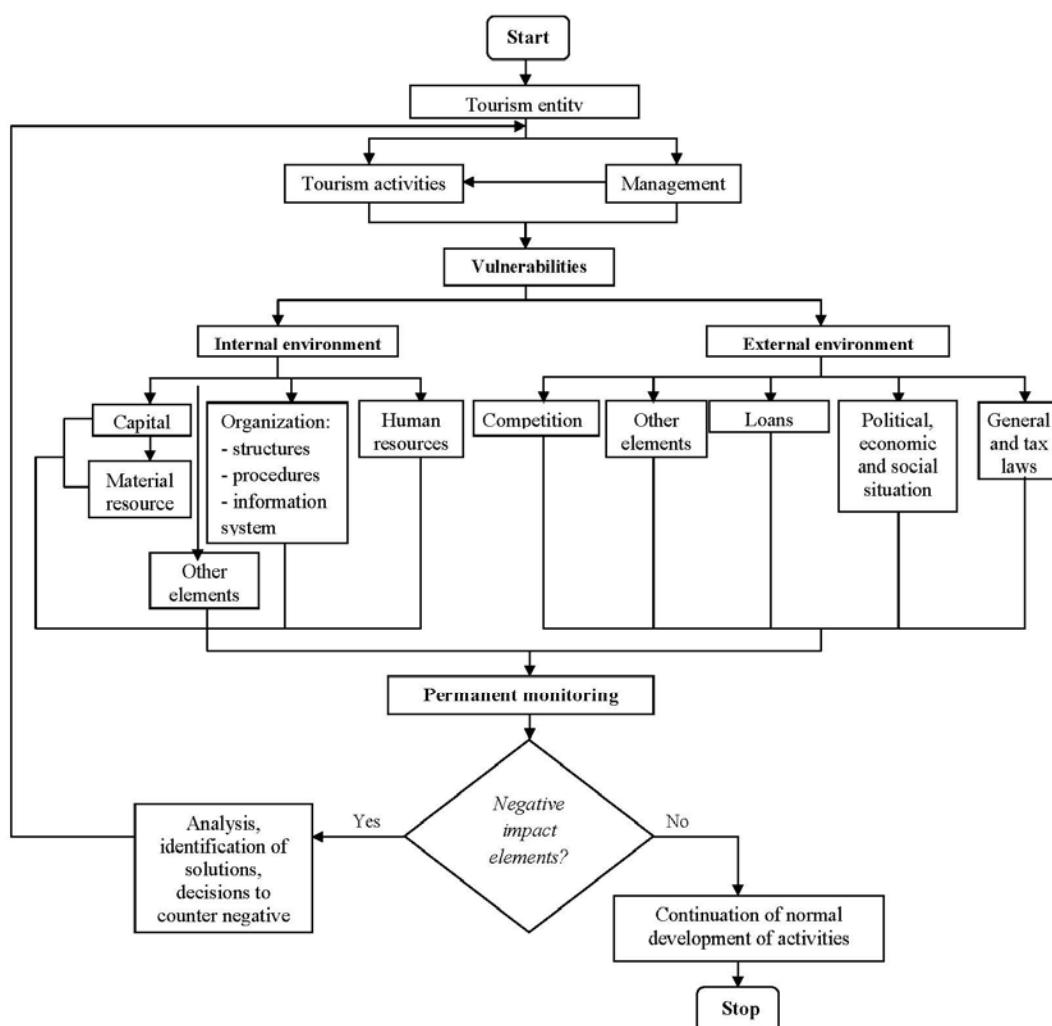


Fig. 2. The main elements of vulnerability management generating tourism entities

In terms of internal environment, the main vulnerabilities can be generated by the existence and structure of the available capital and material resources, the achievement of an adequate structural organization, whose functionality is provided by efficient procedures and by a performing information system, but at the same time by hiring personnel having a high professional training and being adequately motivated. In synthesis, management vulnerabilities generated by the internal environment can be classified into four categories: financial, material, organizational and human. From this perspective, generally valid for any type of economic entity, the management of tourism

activity will particularize for such activities each element mentioned above. Therefore, structural organization, procedural and information systems must be conceived not only in consideration of the specific character of tourism activities but on the basis of the specific character of the said entity, of the environment in which it operates but also of the available capital. According to the same considerations, the necessary personnel will be selected, hired and trained, identifying at the same time other vulnerability-generating elements. In terms of the internal environment, we can conclude that most vulnerability-generating elements can be foreseen, as they are at hand of the manager who directly decides upon them.

Things are totally different in case of the external environment. Therefore, in our opinion, competition is one of the most important elements, as vulnerability generator, which is why the management skills to have an adequate approach of the five forces of competition which form Michael Porter's model (power of suppliers, power of customers, rivalry of industry, threat of new entries and threat of substitutes), is decisive in order to ensure competitiveness. At the same time, the capacity of the entity to be eligible in order to contract loans, the political, economic and social internal and international situation and the general laws, but especially the tax laws, are also sources of potential vulnerabilities. Also, as we are talking about tourism, a significant place is held by customers' sensitivity, infrastructure (access roads, land, air and maritime), abundance of the means of transportation, weather conditions etc. These are elements which might have a major impact on the efficiency of businesses in tourism.

4. Conclusions

The management of tourism entities is permanently facing vulnerabilities, of an objective and/or subjective origin. In our opinion, unlike other types of businesses, tourism depends in a greater extent on certain objective factors, as environment and law (taxation) but also subjective, related with the customers' sensitivity, competition forces, procedural and information systems etc.

Therefore, tourism management must be more carefully selected and monitored by investors, because the errors made in the management of tourism entities have an immediate and decisive impact on customers, with the most unpredictable consequences. For these reasons it is necessary to have a professional management and also to secure the business by resorting to tax and

management consulting, in order to prevent the potential errors generated by the complexity and outage of tax laws.

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THEORETICAL ASPECTS OF MODELS FOR CONCEPTUALIZING THE ECO-SUSTAINABLE TOURISM DEVELOPMENT

Daniela Ruxandra Andrei*

Abstract

Currently, in the context of operating tourism activities on the impact of protection, conservation and regeneration of environmental resources, of ecological, research, establish and applying models is a necessity in terms of sustainable development.

The evolutionary process of performing tourism activities allow a clearer definition of some applicable model types that will lead to deep perception of tourism phenomenon on eco-sustainable development path.

The circumstances created around the concept of eco-sustainable tourism development leads to emphasize on models for operating and forecasting tourism activities; such as assessment of its economic impact.

These objectives established and achieved during the article outlined the premise of a research that can constitute a starting point for the future approaches of models, that will lead to their comprise in the practical plan of strategies for eco-sustainable development of tourism.

Keywords: tourism, eco-sustainable development, models, modeling tourism activity

JEL Classification: L8, Q01

Introduction

The study is part of a research¹ aimed to highlight the interdependencies between tourism, ecology and sustainable development.

The objectives aimed in this paper are oriented towards highlighting the interdependence aspects within the perimeter of theoretical-operational models. Modeling process is presented as models that aims developing tourism activities,

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¹ Andrei Daniela Ruxandra, PhD thesis – Tourism and eco-sustainable development pg.52

and then of models for their forecasting and not least of models for economic impact assessment that this field has on that development, implicitly on economic one at Romanian level. In the economic system, Zaharia and Gogonea² stresses that the tourism industry forms a subsystem with multiple interconnections cyber economic, social, cultural and beyond.

The natural environment in the context of sustainable development should be studied with growth patterns covering essential aspects: as a source of natural resources (minerals, biological) necessary to conduct economic processes as a reservoir for waste disposal generated by socio - economic processes with a limited capacity to absorb these residues and self-regeneration of environmental factors, the impact on tourism.

Applying the methods of eco-sustainable patterns of tourism development in the context of eco-sustainable is inevitably followed by the appearance of specific aspects of designing programs that explicitly address space problems of local communities. Thus, can be mentioned, carrying out a process of gradual implementation of the measures to be taken on potential protection and prevention of his degradation, of scientific and rational exploitation of resources involved in running them.

Modeling tourism activity

Models on operating tourism activity in eco-sustainable development conditions

Tourist process modeling towards protecting and preserving the environment is influenced directly or indirectly by the result of economic growth and sustainable impact.

There are models that attempt to express or describe quantitatively evolution of processes material flows and of polluting residuals flows under the influence of socio - economic processes and especially under the influence of the production development as a whole and tourism in particular. Also, they try to evaluate the activity of anti-pollution, to internalize the current economic one, using the expression in physical units by value prices.

² Zaharia M., Gogonea R. 2006. Tourism implication in Economic Growth. A Cybernetic Approach, in *International Journal of Computer, Communications & Control*, Year 2006, vol. 1, Supplementary Issue p. 492-496.

The trend to a clearer characterization of the main types of models aims a deeper understanding of tourism phenomenon, in order to target him on eco-sustainable path.

□ *Models of complete systems* so named because include inter-networking feature of components of the touristic system analyzed. In this category stands Wolf³ model considered the most complete, which joins the one of Mathieson and Wall⁴ which study tourism under three aspects:

- dynamic (demand and trip)
- static (stay at the destination and its sequel)
- impact

How the approach of models is performed in concurrence of tourism development trend from the sustainability perspective, Leiper⁵ design a larger model that includes the environment in the context of interdependences.

□ *Models and theories on tourist behavior* include motivational and behavioral elements highlighting the close relationship between the natural and socio-psychological.

If in 1981 Mayo and Jarvis, with Pearce⁶ develops the model regarding the needs of the natural authenticity and its perception, while Fridge⁷ studies environment psychology through experiences on trips, like Clawson and Knetsch.

The models and theories approach on tourist behavior is presented as an overview of tourism packages consumer behavior problems associated with purchasing decision⁸.

Tourism requirements can be identified and evaluated through general models and theories of consumer behavior associated with the purchase decision, given their main utility highlight the connections between key factors that influence the behavior.

³ Wolfe R., 1964 - *Perspectives on outdoor recreation: a bibliographic survey*, The Geographical Review, vol 54

⁴ Mathieson A., Wall G. 1982 – *Tourism economic physical and social impacts*, Logman, London

⁵ Leiper N., 1981 - *Towards a cohesive, curriculum in tourism the case for distinct discipline*, Annals of tourism Research, vol 8, nr1

⁶ Mayo E., Jarvis L., 1981 – *The psychology of Leisure Travel*, CVI, Boston and Pearce P. , 1982 – *The social psychology of tourist Behaviour*, Pergamon, Oxford

⁷ Fridge J., 1982 - *Environmental psychology and tourim*, Annals of tourism Research, vol 9, nr1.

⁸ *Tourism Principles And Practice*, fourth edition Pearson education: England, 2008; p.55

Differentiation of purchasing decision in tourism, due to the types of products offered brings the shape of theories and methods from the premise that tourism is a service.

Development theory has known through time three periods that characterize consumer behavior:

1. – *modern empiricism stage*, from the 1930s until the late 1940s, characterized by empirical research in the promotion field. These studies have highlighted through attempts to identify the effects of distribution, advertising and promotion decisions. The base on these models, derived primarily from economic theories held by the company.

2. – *motivational research period* during the 1950s, was one in which stress was attributed to Freudian concept, and those related to it, the orientation being directed toward depth interviews, panels, theme tests of perception and other projective techniques.

3. – *development stage* in 1960, which are the years of modeling formative of tourism consumer behavior.

Over time, it was noted that, known theorists interested in the choice process on tourism have developed "great models" of consumer behavior and they used or transformed appropriately to particularities of this field.

Engel, Blackwell and Miniard (1986)⁹ conducted a classification of models, according to the measure of searching or problem-solving by the consumer:

1. *Limited problem-solving models* are applicable to banal or repeated procurement and have a low level of consumer involvement.

2. *Extensive problem solving models*, applicable for procurement which have a high level of knowledge of the risk involved and where information search and alternatives evaluation plays an important role in the purchase decision, category in which enters tourists behavior models.

One of the first attempts to show understanding in case of purchasing behavior in tourism, is found in the work of Wahab, Crampon and Rothfield (1976)¹⁰. These authors showed that consumer behavior is determined and designed his or her purchase, in terms of uniqueness purchasing decision:

⁹*Tourism Principles And Practice*, cited paper, p.56

¹⁰*Tourism Principles And Practice*, cited paper, p.56

- non-return of investment;
- considerable costs relative to income;
- acquisition is not a spontaneous or a caprice;
- expenditure involves saving and preplanning

Schmoll's model is built on the motivations, desires, needs and expectations, those being social and personal determinants factors of consumer behavior, influenced by travel stimuli, confidence of traveller, destination image, previous experience, and temporal and financial constraints. The model has four fields, each exerting an influence on the final decision - according to Schmoll (1977)¹¹: "The final decision (choosing a destination, time travel, accommodation type, type of agreements related to travel, etc.) is actually the result of another process involving a series of successive fields."

- Field 1: Travel stimulus. These include external stimuli in the form of promotional announcements, personal and commercial advices.

- Field 2: Social and personal determinants factors. They define customer preferences in terms of needs and desires, expectations, objective and subjective risks that may be related to travel.

- Field 3: External Variables. These include potential passenger confidence in service provider, the destination image, experience, and financial and time constraints.

- Field 4: Destinations characteristics. They consist of features related to destination or services relating to the decision and its consequences.

The model (except for changes that include the word "travel" in titles and the location of previous experience in the field 3) was taken directly from the "great models" already mentioned. In Schmoll's model there is no feedback or stimuli in terms of behavior and values, therefore, it is difficult for us to look at the model as dynamic one.

However, Schmoll highlights many of the features of decision-making by travelers which, although are not unique, influence tourism demand. We can include here the decisions on choosing a mix of services that define the product: high cost, destination image, the degree of risk and uncertainty, the need to plan ahead and difficulty in obtaining complete information.

¹¹*Tourism Principles And Practice*, cited paper, p.57

While it highlighted some of the features associated with the problems resolution in terms of travel, Schmoll simply repeat the determinants factors of cognitive processes of decision-making.

In the work of Schmoll, is again highlighted the importance of image, which plays an important role in terms of demand.

The Mayo and Jarvis model (1981) is also inspired by the great models of theorists, retrieving the strategy regarding decision making process, where the solution of the problem is considered extensive, limited or turned into routine. The two continue the theory, describing the decision-making process as extensive, being characterized by a visible need for information and extension of decision-making process.

Finding and evaluating information is presented as the main component of the decision-making process so that the consumer moves from general concepts to specific criteria and to opt for alternatives.

Mayo and Jarvis claimed about the journey that represents a special form of consume behavior, which involves the purchase of intangible and heterogeneous existential product, but after, they have failed to develop a fundamental theory.

The Mathieson and Wall model (1982) presents a travel decision behavior, divided into 5 stages. They are influenced by 4 relationships factors:

1. Tourist profile (age, education, previous experience and motivation);
2. Measures on the trip (the image of facilities and services that are based on source credibility);
3. Characteristics and resources destination (attractions and features destination);
4. Characteristics of the trip (distance, time travel and possible risks of the visited area).

In addition, Mathieson and Wall admit that holidays is a product characterized by intangibility, perishability and heterogeneity which, in one way or another, affect the consumer's decision. In any case, except highlighting the fact that assessment and consumption will occur simultaneously, their model bases consist of the above. You cannot say that the model reflects the depth of the understanding level of models; on the contrary, it only incorporate the idea that aims consumer aims information search and the importance of external factors.

The model omits important aspects of perception, memory, personality and information processing aspects that are the basis of traditional models. The model offered by them focuses more on a perspective based on the product and less on consumer behavior.

The Woodside and Lysonski model (1989) consider two types of stimuli:

1. Marketing of the product, promotion, place and price as key external stimuli;
2. The internal variables of the tourist, which include experience, socio-demographic variables, lifestyle and values.

The model seeks the tourist vigilance in terms of destination or product, from initial state to the state of choice and purchase decision. Woodside's and Lysonsky's contribution lies in factorization in the model of feelings associated with selecting the destination, that tourists can classify probability purchasing decision options, and variables such as the environment.

Tourist options classification is divided into the following categories:

1. – arguably package - destinations or products that have a good chance of being sold. Woodside and Lysonsky states that this package varies between 3 and 5 options.
2. – unavailable package - destinations or products not likely to be sold. This package includes "inept destinations" refused, let's say, because of the lack of tourism attractions.

The Moscado model (1996) provided a different approach of consumer behavior, by emphasizing the importance of the activities, highlighting about them that represents a very important link between travel and destination choice.

They claim that motivation generates for tourists the wish to conduct activities, destinations being the providers of those activities. In this model, Moscado offers a number of useful practical procedures in using models by marketers. Also, they claim that the segments based on tourist's activities can be associated with destination activities, through product development and communication strategies.

Forecasting models for tourism activity and sustainable development

Implementation of strategic thinking in tourism activity towards sustainable development requires the application of planning and forecasting models.

Systematic orientation of operational valences lead to practical validation of model application results, in terms of clarifying assessment tools or action corroborated with defining a clear methodology appropriate to the context of touristic activity operation.

Linking theoretical and operational methods have as result the application of models channeled on estimation and / or forecasting tourism activity, among the most significant are:

➤ *Regression model* that allows the evaluation of the correlation significance between variables applicable in tourism, validation of the model for estimating and extending analysis results. Using the Fisher test leads also to measuring the factors influence on outcome variable variation. However, this model enables forecast of a touristic phenomenon on medium term through the method based on the linear model.

➤ *The model for measuring seasonal variation*

Applying the model of measuring seasonal variation is the result of significant concentration of tourist flows in certain periods of the calendar year, as a result of natural conditions and of specific manifestation of offer and demand. The appearance of seasonal fluctuations which is affecting the carrying out tourism activities require, in time, the use of this model to soften the seasonality phenomenon, as require in the planning and forecasting touristic activity.

The model is based on the methodology for determining the seasonality coefficients and indices, the traffic intensity coefficients.

➤ *Assessment model of the tourism demand concentration*

This model consists in determining the spatial concentration degree of demand for tourism products based on the distribution of tourist arrivals in the various forms of spatial distribution from places, areas, regions, countries, etc. for a period of at least two years.

➤ *Tourism demand elasticity model*

Given the higher order needs that must be satisfied after the basic ones, through the model is estimated the influence of incomes on tourism demand. However, this model expresses the sensitivity of tourism demand from the variation of prices and tariffs applied to tourism activities.

➤ *The Boston Consulting Group Model* consists in analyzing the product portfolio of the tourism company or travel agency through group activities in

four categories, taking into account two criteria: growth rate of the product or service market and relative market share.

➤ *The Belson model of tourism market segmentation* involves applying market segmentation process by quantifying the absolute differences between real values, resulting from the research and theoretical values corresponding to null hypothesis that is required to be established. The conclusion takes into account the difference between the two types of values which, the higher level it register it requires a more efficient market structure analysis.

➤ *The attractiveness assessment model* includes an evaluation of attractiveness elements of market segments after specifying the motivation of practicing forms of tourism for each segment and preparing a worksheets and / or a test with 10 questions.

Most applicability in forecasting have *econometric models*¹² that include specific regression analyzes. They are determined in relation to the behavior manifested in the context of carrying out tourism activities, correlation being "key" element model development. From this point of view is an interesting approach highlight of Zaharia, Oprea and Gogonea¹³ in the evolution of the analysis on demand and offer of accommodation in camps for children of school age and under.

On cyclical periods can be analyzed a touristic phenomenon through *simple method of trends extrapolation*, so, based on a function transfer a variable to be used to predict another in terms of travel, by applying *Box-Jenkins*¹⁴.

Also significant results can be obtained using data mining techniques in the development and analysis of behavior of economic agents¹⁵ in various fields, including the tourism industry, these methods allow multifactorial analysis of large data volumes.

¹² Loeb P, 1982- *International travel to the United States, an economic evaluation. Annals of tourism Research*, vol 9, nr1

¹³ Zaharia M., Oprea C., Gogonea R.M. Econometric analysis on the evolution of the demand and offer of accommodation in camps for children under and of school age, in Jurnal of Tourism, nr.7/2009, "Stefan cel Mare" University, Suceava, Romania, p. 35-40

¹⁴ Wandner S., Van Erden J.1980 - Estimating the demande for international tourism using time series analysis , George Washington University

¹⁵ Oprea C., Zaharia M., *Using data mining methods in knowledge management in educational field*, in *Annals of the Oradea University. Fascicle of Management and Technological Engineering*, Volume X (XX), 2011(1), pp. 5311-5320. Oradea, Romania

Regardless of the models applied the need to estimate and/or forecast tourism activity remains an important asset in the strategic decisions implemented for sustainable tourism development.

Models for assessing the economic impact of tourism

Essential in research on tourism development is the aspect that targets possibilities of measuring the causal mechanisms that materialize through models that identify also the impact of tourism on the environment, from the natural to economic.

The *multiplier effect* of tourism highlights both direct and indirect effects, as well as those induced of tourism on other sectors of the economy manifested in close correlation.

Y.Tinard considers that "multiplier measures the changes in income levels, results, employment and balance of payments - caused by travel expenses change.¹⁶"

Many specialists are dealing tourism multiplier of expenses or income in various aspects, outlining in time his presentation in these types¹⁷.

- *Results multiplier*, quantifies the additional outputs obtained on account of an additional unit of travel expenses;
- *Transactions multiplier*, which measures the additional turnover generated by an additional unit of expenditure;
- *Income multiplier*, which expresses the additional domestic revenues, generated by an additional unit of travel expenses;
- *Employment multiplier*, which highlights the increasing of jobs number, in equivalent to the total time, due to an additional unit of travel expenses;
- *Government revenue multiplier*, which measures income (revenue), net additional created by an additional unit of travel expenses;
- *Imports multiplier*, which expresses the value of imported goods and services, caused by an additional unit of travel expenses.

The process of determining the multiplier effect in tourism is based on an instrument for establishing tourism expenditure and the influence they have on the economy. However, the value of the multiplier effect is determined by the

¹⁶ Tinard Y., 1995 – Le tourisme. Economie et Management, 2^e ed. Ediscience Millan Press Ltd., London

¹⁷Minciu R., 2000 – Tourism economy, Uranus Publishing House, București ; p.

degree of economic development of the region or country. This value decreasing it can be observed that with the reduction of productive economy sub-sectors, it is necessary to call for external resources to meet the needs of tourists.

EGC model is the latest "innovation" in the economic impact of tourism. The major advantage of this model is that it can simulate also the impact of various policy changes on tourism, allowing greater flexibility than input - output analysis. Was presented a wide range of areas where tourism impact is analyzed with this model - globalization, EU accession or as a consequence of the September 11 attacks in the US.

Applying of Computable General Equilibrium model (CGE) for Romania was done partly by presenting some elements of general equilibrium based on equations analysis and regression for tourism in our country. Were revealed, thus, four regression functions¹⁸:

1. production of hotels and restaurants sector based on the influence factors, number of employees and amount of tangible assets.
2. production volume by hotels and restaurants sectors through influencing factors GDP per capita, infrastructure represented by the length of the highway and volume of tangible assets.
3. function comprising the dependent variable GDP per capita and independent variables overnight stays in tourist accommodation and employment function that puts in functional dependency the number of overnight stays with influencing factors real average net monthly earnings and inflation.
4. function that puts in functional dependency the number of overnight stays with influencing factors real average net monthly earnings and inflation.

Conclusion

In conclusion, the presentation of models to characterize the tourism system envisages that tourism development is predominantly oriented to design and development based on planning sustainability processes of environmental issues.

However, the interdependence between development - research - modeling occurs at fairly low levels which led to a new way of approaching the issue. This approach takes into account the movement guidance and touristic action

¹⁸ http://evectur.incdt.ro/index.pl/egc_ro

from support and amplification to national assessment. Simultaneously requires dealing the issue which shall include also costs, benefits from tourism, due to the application of self-control solutions or establishing limits in different plans.

Tourism development should be oriented to development planning and economic impact concern of by the research process, modeling, establishing clear and concrete objectives. They must complete directly, wholly development plans and projects.

Application of sustainable tourism development projects starts in early design stages in order to harmonize with the environment, the local community and other economy sectors, continuing in the status of the activities regarding services.

Development projects phases can and should be pursued and encouraged by authorized bodies. They have the quality to determine strategies to solve the deficiencies encountered during their performance.

The constant assessment process and recovery of future directions should lead to development of a development process more adaptable to touristic system changes. It is still necessary to organize so as to orient much better to a better capacity to forecast unpredictable changes facing the touristic system. It requires in the future for a sustainable tourism development a functional combination of research with the planning process.

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http://evectur.incdt.ro/index.pl/egc_ro

**THE EVOLUTION OF ESTABLISHMENTS
OF TOURISTIC RECEPTION, IN THE CONTEXT
OF REGIONAL DEVELOPMENT IN ROMANIA
DURING 2000-2014**

Daniela Ruxandra Andrei,
Rodica-Manuela Gogonea,
Marian Zaharia*

Abstract

Tourism comprises activities that in interdependence with other industries, leading to economic growth with positive impact on the regional development of Romania.

The studies of the evolution of tourist accommodation structures highlight their tendency during 2000-2014 and structural changes which they register at the regional level, but also on the types of units.

The findings are based on the results obtained as a consequence of the changes made from one period to another or from one region to another or on the types of units, aimed to formulate and implementing regional development strategies leading to the elimination of regional disparities.

Key words: tourist accommodation structures, evolution, structural changes, areas of tourism development, regional development strategy

JEL Classification: L8

Introduction

The study is mainly focused on the analysis of evolution of tourist accommodation structures in Romania. The evaluation is done both over time,

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in 2000-2014 period and space, in the eight development regions of Romania, whilst taking into consideration the types of tourist accommodation structures.

Linking tourism activities with those of other areas determines an orientation of tourism development through a balanced expansion of tourist accommodation structures so as not to emphasize existing territorial disparities.

In this context, the results established following the research development of tourist accommodation structures in developing regions of Romania may be significant in relation to the Strategic Concept of Territorial Development, Romania 2030 (SCTD), prepared by the Ministry of Development, Public Works and Housing (MDPWH).

Since the 2030 SCTD in Romania seeks asserting the identity of regional-continental, its role in the region, increasing spatial cohesion, competitiveness and sustainable development of Romania, we can create the necessary structures to ensure their integration in the EU through the continued process for mitigation of territorial disparities.

Defining Romania's territorial development framework enable triggering and continuation of the increase or decrease in the number tourist reception structures from one region to another in order to lead to a territorial division as balanced.

Research methodology

The research methodology approached include theoretical concepts, methods and techniques, processing methods, calculation of indices and indicators (from the average indicators to the structure indicators) obtained based on information taken from official data provided by the Romanian National Institute of Statistics (NIS).

Given the homogenization process of territorial units for statistics EU regional, Eurostat has developed and included in the database REGIO Nomenclature of Territorial Units for Statistics (NUTS). In the context of Romania's accession to the EU, the main levels are NUTS: NUTS 1: 4 macro, NUTS 2: 8 and NUTS 3 regions: the counties in each region (Regulation (EC) No 176/2008, Regulation (EC) No 1059/2003) they presenting as follows:

- NUTS 1
 - ✓ macro 1: with North-West and Center regions
 - ✓ macro 2: with North-East and South-East regionns
 - ✓ macro 3: with South-Muntenia and București-Iflov regions

- ✓ macro 4: with South-West Oltenia and West regions
- NUTS 2 comprises eight regions and NUTS 3 comprises the counties of each regions as follows:
 - ✓ North-West: Bihor, Bistrița-Năsăud, Cluj, Maramureș, Satu Mare, Sălaj
 - ✓ Center: Alba, Brașov, Covasna, Harghita, Mureș, Sibiu
 - ✓ North-East: Bacău, Botoșani, Iași, Neamț, Suceava, Vaslui
 - ✓ South-East: Brăila, Buzău, Constanța, Galați, Tulcea, Vrancea
 - ✓ South-Muntenia: Argeș, Călărași, Dâmbovița, Giurgiu, Ialomița, Prahova, Teleorman
 - ✓ București-Ilfov: București , Ilfov
 - ✓ South-West Oltenia: Dolj, Gorj, Mehedinți, Olt, Vâlcea
 - ✓ West: Arad, Caraș-Severin, Hunedoara, Timiș

Establishments of tourist reception with functions of touristic accommodation ¹ are defined by NIS “any building or settlement which permanently or seasonally provides the tourists with accommodation and other specific services”. They have faced many changes in terms of their classification as types of tourist establishments specified in National Institute of Statistics publications, as follows:

- ❖ in 1990 the main tourist accommodation structures were: hotels, inns and motels, cottages and chalets, camping, school and preschool camps;
- ❖ in 2000 were presented statistical data on establishments of tourist reception of type of: motels for youth, motels, bungalows, holiday villages, tourists halting places, tourist lodges, tourist boarding houses, agrotouristic boarding houses, accommodation spaces on river and sea ships;
- ❖ since 2004 have added data on apartment hotels.

The trend of tourist reception structures on the timeframe 2000-2014 is analyzed in terms of average indicators which characterize the time series (average increase, average index). Regional structural changes or by type of units are highlighted by the results obtained as a result of determining the relative size of the structure.

Regardless of the indicators used, the results are those which give weight and highlight the information necessary in the formulation of regional development strategies.

¹ NIS - Tempo-online database

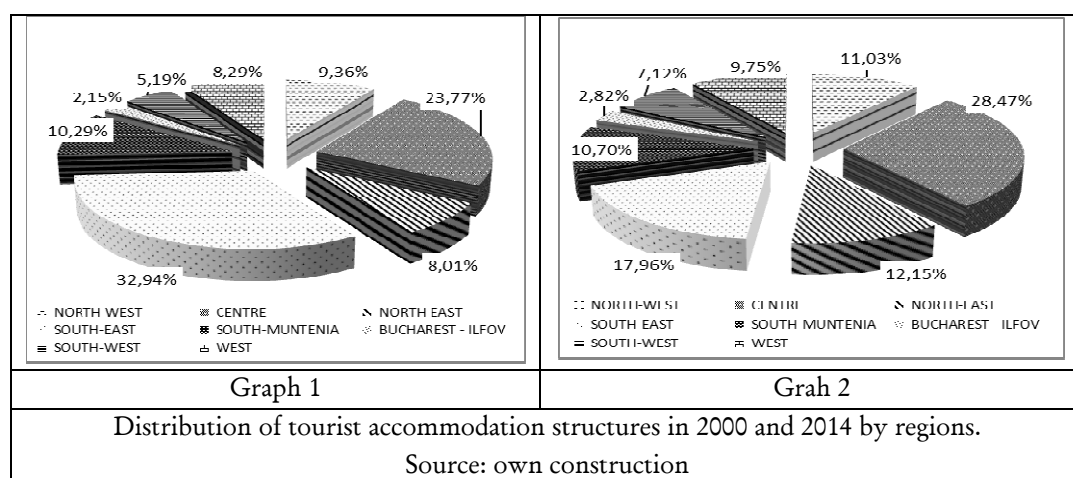
The trends of tourist accommodation structures in the developing regions of Romania

An Overview

Integral part of strategic regional development can be considered and analyzing of tourist accommodation structures from developing regions of Romania. The results form an overview of their distribution in the territory.

Given that, in Romania, during 2000-2014, there was an average increase tourist reception structures with about 215 units a year, representing an increase of 4.94% relative average per year, may be specified that in each region, was determined absolute and relative average increases oscillating between maximum and minimum values leading to a fluctuation of approximately 66 units per year, i.e. 7.62 percentage points annually.

The oscillatory trend from one region to another is evidenced by significant evolutionary differences more clearly shown by determining the number of tourist reception structure by regions in 2000 and 2014 (Chart 1 and 2).



Places I and II are disputed between the South-East and Central regions. Thus, if in 2000 the South-East region ranks first with 32.94%, gradually it will be like in 2014 only to return 17.96% (second place), while Central region will return 28.47% (2014) when it is on the first place, compared to 23.77% for the year 2000, when it ranked second. South-Muntenia region remains in third place in both 2000 and 2014, with percentages of 10.29% and 10.70%.

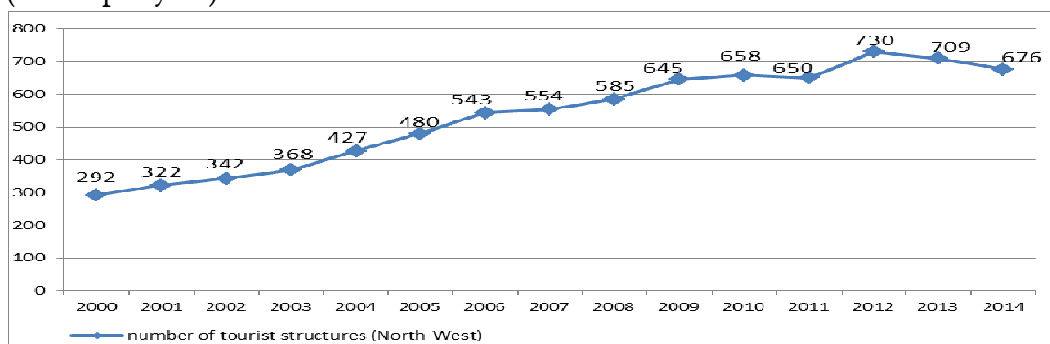
The last two places, in structural terms, in terms of territorial distribution of tourist accommodation structures are occupied West region with 5.19% in 2000 and 7.12% in 2014, respectively Bucharest-Ilfov region with values fluctuating between 2% and 3% (2.15% in 2000 and 2.82% in 2014).

Significantly for shaping regional strategic decision is the result of analysis of the evolution of tourist accommodation structures in each region during 2000-2014, depth by highlighting the structural distribution by type of tourist facilities.

Clearer presentation of the target has led to highlighting the results of the 4 macro with interpreting the results from the 8 regions.

Macro 1

In the first macro, it places the North West region, in whose territory the number of tourist reception establishments is quite low. Number of tourist reception establishments vary during the analysis (Graph 3) between a minimum of 292 units in 2000 and a maximum of 730 units in 2012, in the context of establishing an absolute average increase of about 28 units per year (6.18% per year).

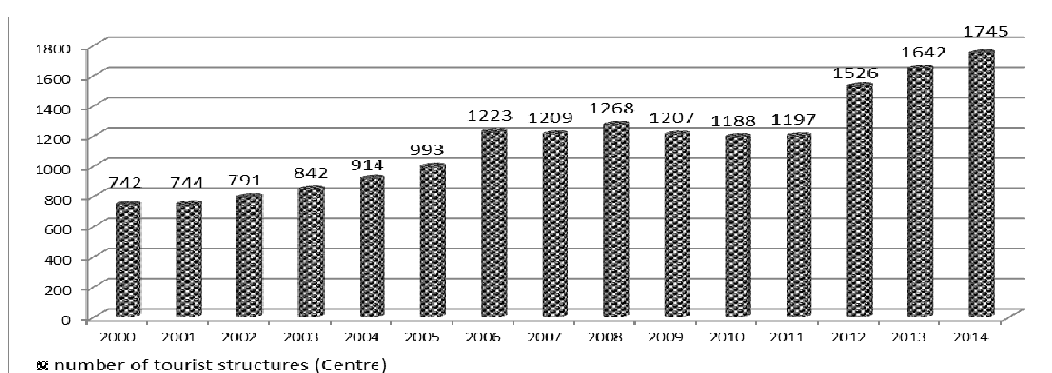


Graph 3 - Evolution of tourist accommodation structures in the North West region over the 2000-2014 period. Source: own construction

A significant impact is determined by the types of existing units in the region. Thus, if in 2000 the first three places were occupied by hotels which accounted for 23.37%, followed by touristic villas, and agrotouristic boarding houses with 15.75% and 11.99% in 2014, agrotouristic boarding houses will be placed in the lead with 33.43%, followed by hotels, with 23.37%, and tourist boarding houses, with 20.26%. Structural changes reported are the result of setting up several agrotouristic boarding houses, due to changes in tourism

demand in recent years, tourism-oriented practice as close to nature in the context of increasing urban agglomeration and stress. Touristic halting places represent the type of units that were established within this region later, reaching as 2014 to 0.15%.

Regarding the distribution of tourist accommodation structures in the Central region, can be seen in chart 4 general trend of increase on average by 6.30% per year, an average absolute increase by about 72 units annually. It should be noted that this region has the highest average absolute increase compared to the other seven.



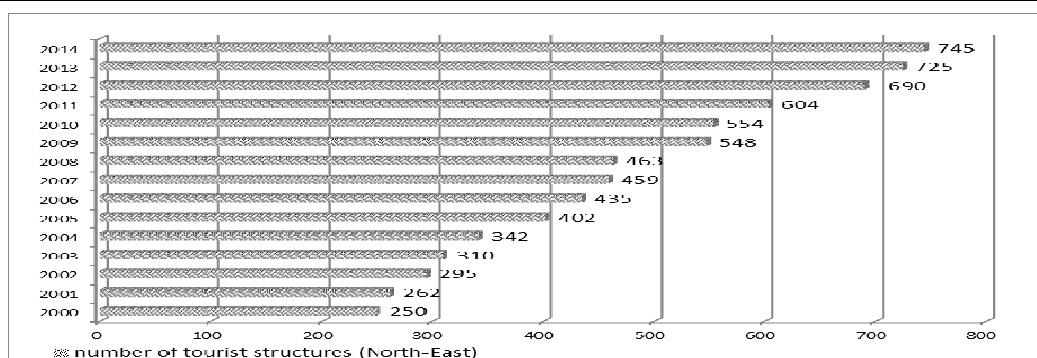
Graph 4 - Evolution of tourist accommodation structures in the Center region over the 2000-2014 period. Source: own construction

The structure of tourist accommodation structures on their types in the Center, in 2000, puts the top three agrotouristic boarding houses (32.62%), tourist villas (25.74%) and hotels (14.82%) while, in 2014, second place will be occupied by tourist boarding houses with 27.74%, the other two maintaining the same place, but with slightly higher percentage of 37.98%, and respectively 14, 56%.

If in 2000, is registered, in this region, the existence of halting touristic places and apartment hotels, in 2014, they accounted for 0.23% and 0.11% and touristic inns which in 2000 accounted for 0.27%, gradually disappear.

Macro 2

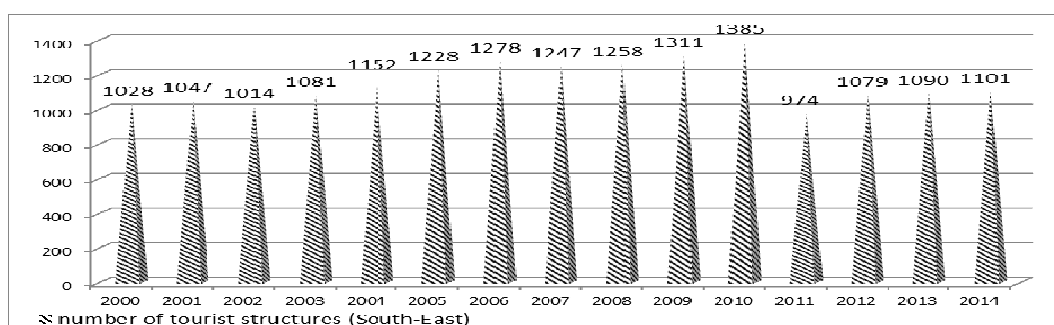
Trend of tourist accommodation structures in the North-Eesti, the first in macro 2 is still increase, as the other two belonging to the first macro.



Graph 5 - Evolution of tourist accommodation structures in the North-East region over the 2000-2014 period. Source: own construction

Compared with the other seven regions, it recorded the most significant increase relative average with 8.11% annually. In absolute terms, this process is represented by the average increase about 35 units per year. The territorial distribution by types of institutions highlights the same competition for the first three places. It should be noted that signaled a slight change in ranking in 2000 when hotels ranked first with 25.20%, followed by agrotouristic boarding houses (20.40%) and touristic villas (13.20%).

Although, overall, and the second region, of macro 2 (South-East) also recorded a growth process, signaled by an average increment absolutely, only 5 units per year, relative to 0.49% annually, however, the graph 6 shall notify reduce their numbers since 2011, when the decrease is significant (with 411 units).



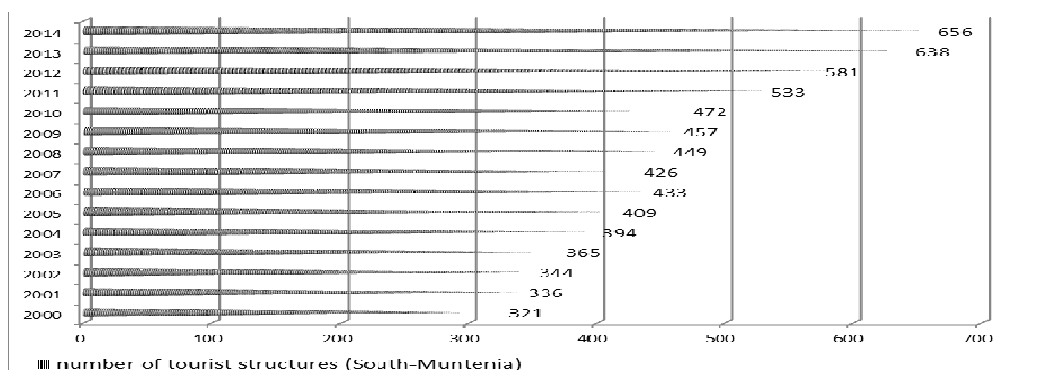
Graph 6 - Evolution of tourist accommodation structures in the South-East region over the 2000-2014 period. Source: own construction

Along with touristic villas (32.49%) and hotels (31.81%) in the top of a ranking of the region in 2000 placed bungalows, with 18.77%, maintaining their

dispute, and in 2014, when he changes only the position of the first three hierarchical levels (hotels, with 35.34%, touristic villas, with 26.97%, and bungalows, with 13.08%). Touristic halting places and ships accommodation spaces, in 2000, ranked last, with 0.10% in the context of the region's territory is not reported the existence of apartment hotels,

Macro 3

Within the macro 3, South-Muntenia region recorded a growth over the period, an average of approximately 24 units per year, relative to 5.24% annually.



Graph 7 - Evolution of tourist accommodation structures in the South-Muntenia region over the 2000-2014 period. Source: own construction

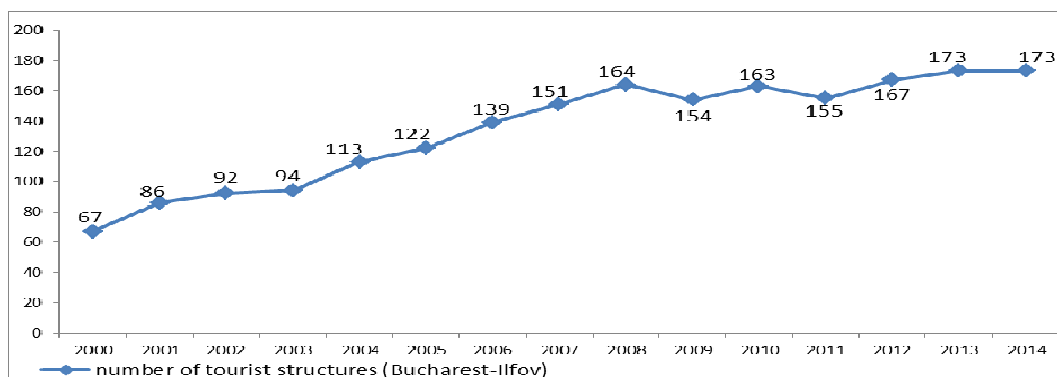
For this region distribution analysis by type of tourist reception establishments units in the region, translated into percentages, shows that, in 2000, the first two places are occupied by touristic villas and hotels, with 30.84%, respectively, 21.18% for the other types revert to low percentages ranging from 0.31% for hostels, tourist houses, and 9.35% for touristic boarding houses, given inexistence of apartment hotels.

In 2014 structural changes brought to the forefront also for this region, boarding houses agrotouristic, with 26.52%, and touristic boarding houses, which account for a significant percentage of 22.71%, placing it third, the second place being occupied by hotels with 23.62%.

Compared to all seven regions, within the region Bucharest-Ilfov, the number of tourist reception establishments is lowest due to its surface and potential.

Although the situation is not very favorable, in relation to others regions, as shown in Graph 8, the process of increase are almost continuous. On average

this development is placed around about 8 units per year and the average increase percentage is 7.01%.



Graph 8 - Evolution of tourist accommodation structures in the Bucharest-Ilfov region over the 2000-2014 period. Source: own construction

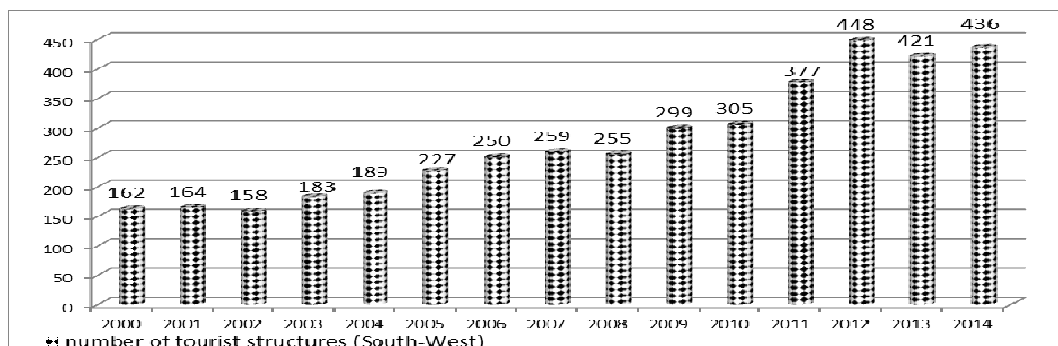
Considering the nature of Bucharest registers 53.73% percent (2000), respectively, 70.52% (2014), corresponding to hotels, and 29.85% for touristic boarding houses in 2000. In 2000 territorial distribution of unit records percentages between 1.49% and 5.97% distributed among bungalows, boarding houses agrotouristic, tourist houses, motels, tourist villas. Compared with 2000, in 2014 do not appear registered units of type of tourist houses, but appear the structural percents for apartment hotels, hostels, The minimum value belonging for touristic halting places (0.58%) and maximum for boarding touristic houses (7.51 %).

Macro 4

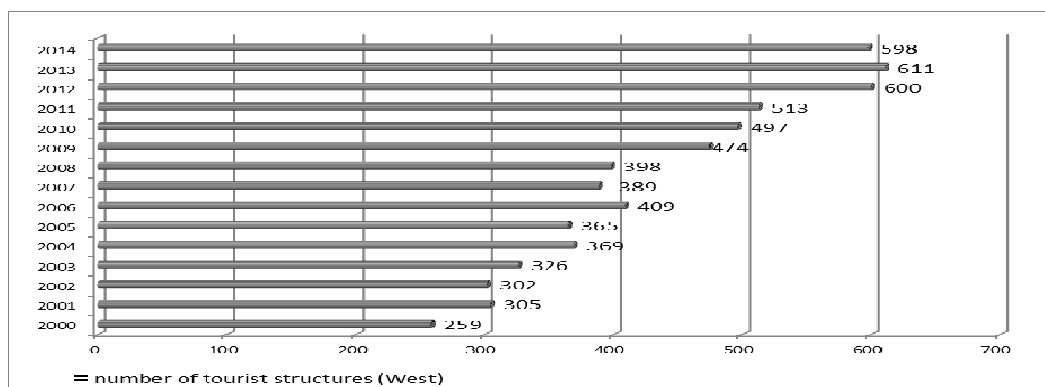
South-West Oltenia region also faces the same process of increasing the number of tourist reception establishments as the other regions. This increase is as absolute average growth of about 20 units per year and relative to 7.33%.

In 2014 compared to 2000, hotels, occupying the first place, were a reduction of 8.93 percentage points as touristic villas (second in 2000) which is more dramatic decrease of 17.67 percentage points. Significant increases are reported in 2014 compared to 2000 for the two types of tourist accommodation: touristic boarding houses, boarding houses and agrotouristic with 19.83 percentage points, 22.3 percentage points.

Last region analyzed in terms of the distribution of tourist reception establishments of the last macro is West region. The growth rate for this region during the analyzed period 2000-2007, is placed alongside the other seven, only that in terms of value set in absolute average increase is about 24 units per year and the relative by 6 16%.



Graph 9 - Evolution of tourist accommodation structures in the South-West Oltenia region over the 2000-2014 period. Source: own construction



Graph 10 - Evolution of tourist accommodation structures in the West region over the 2000-2014 period. Source: own construction

From the structural point of view, the distribution of tourist reception establishments on their types, record significant changes in that, touristic hotels and villas (first and second places in 2000) records the percentage reductions of 2.15 and 14.39 percentage points. These reductions causes a loss for other types of seats held that, with the establishment of a larger number of units, leading to a substantial increase of 22.18 percentage points for touristic boarding houses and 16.7 percentage points for agrotouristic boarding houses.

Conclusions

Overall, across all regions, there is a growing trend of evolution in the number of tourist accommodation structures while from structural point of view, in relation to their type was a pretty uneven distribution thereof. This conclusion would put question marks regarding the process of extended, which should have a balanced territorial distribution, the types of units should vary, offering potential tourists more options in choosing deals.

Synthesis study conducted leads to the following conclusions:

- ✓ all regions experienced sustained growth rates in the number of tourist reception establishments, only favorable situation in terms of quantitative and qualitative uniform expansion;
- ✓ structural top ranking by type of tourist accommodation structures were mainly played between: hotels, tourist villas, boarding houses agrotouristic, touristic boarding houses, which poses problems in terms of their diversity, their territorial distribution.

Presented results from the analysis of the evolution of tourist accommodation structures may represent significant strategic levers in the process of regional development of Romania.

Policies and decisions which may be formulated from the results, and highlighted throughout the article, exceed, a little, the limits and the coordinates previously established, leading to a process of stimulating the collaborations, of joint ventures or of partnerships, that are geared towards balanced territorial development in the future in Romania . At the same time, stimulation of inter-institutional partnerships at regional and territorial, it is necessary to include the promotion and implementation of projects, established itself as the primary goal, in the strategic proposals for regional development.

In this context, regional development priority in relation to tourism aimed at the expansion of tourist accommodation structures directly related to the reduction of regional territorial disparities.

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COMMENT AND ANALYSIS

PATRIMONY BY APPROPRIATION – AN INSTRUMENT IN BUSINESS OPERATION¹

Luminița Tuleașcă²,

Abstract

The patrimony by appropriation represents an instrument in business operation, even the business itself, therefore it is required to regulate it in accordance with the requirements of modern economy.

This paper analyzes and proposes some solutions for the problems of the patrimony by appropriation as instrument by the dint of which a business is operated, as a modern patrimony management technique and as an instrument for limiting commercial entrepreneurs' liability. We consider the full autonomy of the patrimony by appropriation of the traders and their liability limitation for their professional obligations, the companies' possibility of setting up patrimonies by appropriation, and last, but not least, the problem of alienating the "business", i.e. the alienation inter vivos of the patrimony by appropriation, as legal universality.

Keywords: Patrimony by appropriation, limitation of the liability for the professional obligations, securities, entrepreneur, patrimony divisibility, alienation of the patrimony by appropriation

JEL Classification: K10, K20

1. Introduction

The entire issue whose analysis we have undertaken hereby starts from the notion of patrimony and, in the preamble, we will analyze briefly the current legal framework and current opinions on patrimony, its characteristics and forms.

Thus, in the absence of a legal definition, patrimony was defined by the doctrine "as the entirety of rights and obligations of a person, which have or represent some financial or economic value, thus assessable in money"³, with

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³ Hamangiu C., Rosetti-Bălănescu I, Băicoianu Al., *Tratat de Drept Civil Român*, vol. I, Editura All, 1996, p. 522

the following characteristics: patrimony is a legal universality, all people have patrimony, there is no patrimony without a holder, a person can have more than a patrimony.

At the beginning of the 20th century, the field's literature started to question the theory regarding the unity and indivisibility of patrimony, theory based on the metaphysical connection between human personality and its patrimony⁴.

We notice here that the old Romanian law did not fully enact the theory of Mr. Charles Aubry and Mr. Frederic C. Rau, theory which influenced the French law for nearly two centuries⁵, according to which the patrimony is unique, unitary and indivisible⁶. We claim that, provided that the Romanian doctrine which, compared to the Romanian Civil Code of 1864, has considered that the patrimony, although unique, is not always unitary and can be divided into universalities or smaller patrimonies with separate legal regime, this opinion being supported by successive legal regulations of cases when the general patrimony was divided⁷.

Nowadays, a significant step towards the actual divisibility of the patrimony has been made under E.G.O. no. 44/2008 on the economic activities carried out by authorized natural persons (free lancers, self-employed persons), individual companies and family associations⁸, legal regulation regulating the patrimony by appropriation as well. For the first time, the entrepreneurs carrying out economic activities as authorized natural persons, owners of the individual companies or members of a family association (hereinafter natural

⁴ Giacomo Rojas Elgueta, *Divergences and Convergences of common Law and Civil Law Traditions on Asset Partitioning: A Functional Analysis*, U of Pennsylvania Journal of Business Law, vol 12:2, 2010, p. 527.

⁵ Francois Terre, *La personne et ses patrimoines. Des Pepis per milliers*, Revue de Droit Henri Capitant, Nr. 2, 30 june 2011.

⁶ Aubry et Rau, par Etienne Bartin, Cours de droit civil français, 5^{ème} éd., §§ 573 et 574, T. 9, 1917; for the English version of the theory on patrimony of Aubry and Rau, please see: Kasirer, Translating Part of France's Legal Heritage: Aubry and Rau on the Patrimonies, 38 *Revue générale dedroit* 453, 2008.

⁷ Hamangiu, Rosetti-Bălănescu, Băicoianu, op.cit., p. 523; C. Bîrsan, *Drept Civil. Drepturi reale principale*, Editura Hamangiu, Bucharest, 2007, pp. 10-11; Valeriu Stoica, *Drept Civil. Drepturi reale principale*, Editura Hamangiu, Bucharest, 2004, p. 47-96; for the analysis of the history of patrimony theories, please see: Valeriu Stoica, *Patrimoniul de afectatiune – Continuitate și reformă*, Revista Româna de Drept Privat (Romanian Magazine of Private Law) no. 2/2013, pp. 13-23;

⁸ E.G.O. no. 44/2008 on economic activities carried out by authorized natural persons, individual companies and family associations, published in the Official Gazette Part 1 no. 1 328 of April 25, 2008, as further amended and supplemented.

person merchants) can establish patrimony units assigned to carry out some activity, distinctly from the general lien of their personal creditors.

The Romanian Civil Code of 2011 stipulates the principle of the patrimony's divisibility and indicates that it includes all rights and debts of a person, which can be assessed in money (art 31, paragraph (1) of the Civil Code). In this respect, the patrimony can make object of some division or appropriation, but only under the conditions and cases stipulated by the law. Thus, the division of patrimony is possible only in the cases stipulated by the law and the grounds of such division are a legal act or deed in its narrowed meaning.⁹

The patrimonies by appropriation, as regulated by the provisions of art 31, paragraph (3) of the Civil Code as patrimony divisions, are: fiduciary patrimony units, those assigned to carry out a certified profession and other such established patrimonies.

There are opinions, according to which, through the regulation of the divisibility of patrimony and patrimonies by appropriation, the Romanian law has given up the theory of patrimony uniqueness¹⁰.

In our opinion, the current legal framework keeps the patrimony's uniqueness and the legal regulation of the patrimony's divisibility is relevant only in terms of the patrimony's unitary nature¹¹. Moreover, even the wording of art 31, paragraph (1) of the Civil Code: "Any person has a patrimony" indicates the law-maker's decision to keep the unique nature of patrimony.

The patrimony by appropriation appears as "fraction of universality"; it is a legal universality including rights and obligations connected through the purpose of their appropriation, created by the exclusive will of the general patrimony's owner and ascertained by the law.

⁹ Valeriu Stoica, *Drept Civil. Drepturi reale principale, op.cit.*, p. 8.

¹⁰ Gheorghe Piperea, *Drept Comercial. Întreprinderea*, C.H. Beck Publishing House, 2012, p. 60; Roxana-Mariana Popescu, Evelina Oprina, *Fiducia și implicațiile acesteia asupra executării silite*, Revista Româna de Executare Silită (Romanian Magazine of Enforced Execution) no. 4/ 2011, p.72; Radu Catană, *Drept Comercial. În PowerPoint*, Editura Universul Juridic, Bucharest, 2013, p. 97; for the same opinion compared to the Civil Code Quebec, please see: Macdonald, *Reconceiving the Symbols of Property: Universalities, Interests and other Heresies*, *McGill Law Journal*, vol. 39, 1994, p. 776-777, available at website: <http://lawjournal.mcgill.ca/documents/39.4.Macdonald.pdf>

¹¹ Flavius Baias, E. Chelaru, R. Constantinovici, I. Macovei, *Noul Cod Civil*, C. H. Beck Publishing House, 2012, p. 35; Irina Sferidan, *Patrimoniul profesional individual afectat desfașurării unei profesii liberale în reglementarea Codului civil* (Law no. 287/2009), Revista Dreptul (the Law Magazine) no. 7/2012, p. 44; Related to keeping the unitary nature of patrimony, please see: Valeriu Stoica, *Patrimoniul de afecțiune – continuitate și reforma*, op.cit., p. 22;

The entrepreneur has a general patrimony wherein one or several separate units of patrimony can be established, called patrimonies by appropriation and assigned to reach a certain purpose. In such case, the general patrimony (the standard notion) is divided into patrimony by appropriation and personal patrimony (types), both special patrimonies being included in the general patrimony of the entrepreneur-owner.

We are not concerned by the entrepreneur's goodwill because it has no special influence of the entrepreneur's liability towards their creditors. The exclusion of this institution from our field of interest resides in the fact that the goodwill, as (actual) universality of goods¹² assigned by the entrepreneur to carry out their economic activity, and is always part of their general patrimony. Thus, there is a relation between the goodwill and the patrimony by appropriation equal to the relation between part and whole, the whole being the patrimony by appropriation, respectively the general patrimony of the merchant¹³.

2. Methodology and research issues

In the beginning, we will analyze the liability for the entrepreneur's patrimony obligations, operating with and without setting a patrimony by appropriation. We will analyze the following for each of the classes of entrepreneurs: the entrepreneur carrying out an economic activity (hereinafter merchant – natural person, respectively merchant – legal person) and the entrepreneur carrying out a (liberal) certified profession such as: lawyer, doctor, insolvency practitioner, bailiff, etc. (hereinafter - the professional). Afterwards, we will come up with solutions and analyze how, given the amendment of the current regulation of the patrimony by appropriation through its full autonomization, a real limitation of the merchants – natural persons can be

¹² Art. 541, paragraph (1) of the Civil Code defines the actual universality as “*the entirety of goods belonging to the same person and have a common destination set by their will or by the law*”; on the other hand, the goodwill is not a legal universality because legal universalities exist only if they are ascertained by the law and the goodwill does not enjoy such confirmation.

¹³ To the same end, Hamangiu, Rosetti-Bălănescu, Băicoianu, *ibidem*, p. 524; Smaranda Angheni, *Drept Comercial. Profesioniștii – comercianți* (Commercial Law. Professionals – merchants), C.H. Beck Publishing House, Bucharest, 2013, p. 35 and the following; Lucia Herovanu, *Dreptul român și patrimoniul de afectățune* (The Romanian law and the patrimony by appropriation), *Revista de Drept Comercial* (Commercial Law Magazine) no. 6/2009, pp. 75-76; Adverse opinion in: Stanciu D. Cărpănu, *Tratat de Drept Comercial Român, Conform noului Cod Civil* (Treatise of Romanian Commercial Law according to the New Civil Code), Editura Universul Juridic, Bucharest, 2012, p. 95;

obtained as regards professional obligations. The patrimony by appropriation can be a true instrument to alienate, based on documents *inter vivos*, the patrimony by appropriation in terms of the Romanian law and the compared law.

3. Patrimony by approbation and the liability of the entrepreneur for their professional obligations

3.1. General statements on the entrepreneurs' liability. According to the general rule stipulated by art 2324, paragraph (1) of the Civil Code, the person who is personally bound is bound by all their movable and immovable goods, current and future. They serve as joint security of their creditors.

Obviously, there occurs the principle of unlimited liability for debts, the general patrimony representing the joint security, the general lien of creditors, principle also found in the Civil Code of 1864¹⁴.

Among the exceptions from the rule, as per art 2324, paragraph (3) of the Civil Code, the creditors whose receivables arise from a certain division of the patrimony, authorized by the law, must first pursue the goods making object of such patrimony unit. If they are not enough to cover the receivables, the other goods of the debtor can be then pursued.

Therefore, by establishing a patrimony by appropriation – the fiduciary patrimony units, those assigned to carry out a certified profession, as well as other such patrimonies – “the general lien of creditors becomes specialized”¹⁵. In other words, the patrimony by appropriation will represent a general lien only for the creditors whose receivables have arisen in relation to this patrimony (hereinafter professional creditors) and the merchant will be liable towards them with the goods from this patrimony.

Moreover, under the provisions of art 2324, paragraph (3) of the Civil Code, an order of priority is set as regards the pursuit of the goods from the entrepreneur's special patrimonies: (i) first, there are pursued the goods from the patrimony assigned to carry out the professional activity and if they are not enough (ii) the goods from the personal patrimony can also be pursued.

¹⁴Gheorghe Piperea, *Diviziunile patrimoniale și confuzia de patrimonii – noi motive de contestație la executare*, Curierul Judiciar no. 9, 2012, p.562.

¹⁵Baias, Chelaru, Constantinovici, Macovei, op.cit., p. 2274; To the same end, Liviu Pop, Ionuț - Florin Popa, Stelian Ioan Vidu, *Tratat elementar de drept civil. Obligațiile.*, Ed. Universul Juridic, Bucuresti, 2012, op. cit., p. 756.

As exception from this rule, if the patrimony's division is generated by the exercise of a certified profession, the creditors, whose receivables arise from such patrimony by appropriation or related to such profession, are entitled to pursue only the goods of the patrimony by appropriation. This exception, stipulated by art 2324, paragraph (4) of the Civil Code, rules as principle as regards the liability of certified professionals for their patrimony professional obligations, rule confirmed by art 727, paragraph (1), thesis I of the Code of Civil Procedure.

And not lastly, in any of the two cases of exceptions, the personal creditors of the entrepreneur do not have access to the goods from the patrimony by appropriation, the competition between the personal creditors of the debtor over their patrimony by appropriation being excluded. In a brief and concise manner, the doctrine deems as receivables or professional debts those arising from the operation of a company¹⁶, and the distinction between personal and professional creditors is made in connection to this criterion.

Therefore, the patrimony by appropriation is “impermeable” from outside, respectively it is relatively independent from the personal patrimony which preserves its permeability as regards the pursuits of the professional creditors of the merchant – natural person.

We will discuss in the following all types of patrimony by appropriation which may lead to the limitation of the entrepreneur's liability towards their professional creditors: (i) the patrimony units assigned by professionals to the practice of a certified profession, respectively the professional patrimonies by appropriation; (ii) the patrimony units assigned by merchants to carry out an economic activity, respectively commercial patrimonies by appropriation and (iii) fiduciary patrimony units, respectively the fiduciary patrimonies by appropriation.

The patrimony by appropriation is, beyond doubt, a technique to organize the patrimony and, at the same time, a way to limit the owner's liability for their professional obligations. In this last case, the reason behind the establishment of such patrimony by appropriation is to obtain the right balance between the economic or professional activity and the risks involved by such activities and the need to protect the personal goods of the entrepreneur and their family.

¹⁶ Gheorghe Piperea, *Diviziunile patrimoniale și confuzia de patrimonii – noi motive de contestație la executare*, op. cit. 564.

3.2. The patrimony by appropriation and the liability of the merchant – legal person for their professional obligations

It is well known the fact that the company with legal personality – the most representative merchant-legal person – is both “a technique to organize a company, a method to assign goods, capitals, rights and obligations to an activity triggered by its object”¹⁷ and a technique to limit the liability of its shareholders.

On the other hand, not any form of association or company to carry out the activity involves the limitation of the shareholders’ liability, but, as a rule, only the companies which have legal personality. A conclusive example is the limited partnership, entity without legal personality, which has a patrimony, but involves the subsequent and unlimited liability of its shareholders for the obligations towards the company’s creditors as per art 1920, paragraph (1) of the Civil Code.¹⁸ Moreover, in cases strictly stipulated by the law, not even the company’s legal personality removes the unlimited and joint liability of the shareholders for social obligations.

For the merchant-legal person, the patrimony by appropriation is obviously not the main tool to protect and limit their liability.

The field’s literature deems that branches, working points and secondary quarters of the legal person are patrimonies by appropriation¹⁹.

In our opinion, branches, working points and other quarters of a company with legal personality cannot be considered as having the legal nature of some patrimonies by appropriation of the parent company.

We firstly consider the fact that there is no legal provision to regulate the possibility for commercial companies to set patrimonies by appropriation, others than fiduciary patrimony units. The principle is the one according to which patrimonies by appropriation can be set only under the terms and cases stipulated by the law and the provisions of art 31, paragraphs (2) and (3) of the Civil Code are mandatory in this respect.

On the other hand, the Law no. 31/1990 on companies, the special law related to the Civil Code, does not stipulate any provision allowing companies with legal personality to set patrimonies by appropriation.

¹⁷Xavier de Roux, *La creation d’un patrimoine d’affectation*, p. 9, available at website: www.ladocumentationfrancaise.fr/.../0000.pdf (last visit on April 9, 2014).

¹⁸ Gheorghe Piperea, *Diviziunile patrimoniale și confuzia de patrimonii – noi motive de contestație la executare*, op. cit., p.563.

¹⁹ Gheorghe Piperea, *Simularea personalității juridice în Noul Cod Civil*, Revista Română de Dreptul Afacerilor (Romanian Magazine of Business Law) no. 1/2012;

Secondly, considering the secondary quarters of the company with legal personality equal to the patrimonies by appropriation could trigger structural changes in the current legal regime of the branch, namely it will be replaced by the one applicable to the patrimony by appropriation, idea difficult to accept in the current legal framework. For instance, as rule, the creditor of “a branch”²⁰, - in law, the creditor of the parent company – pursuing the parent company for the obligations arising from the branch’s activity cannot be opposed by the benefit of excussion. The company’s creditor cannot be compelled to pursue first the “patrimony” of the branch (the patrimony by appropriation from which their receivable arises) and only if the goods are not enough, to act against the “patrimony” of the parent company. If we support the idea of the branch as patrimony by appropriation of the parent company, we should have grounds to claim the provisions of art 2324, paragraph (3) of the Civil Code, which require the primary pursuit of the goods of the patrimony by appropriation, respectively the branch’s, grounds excluded by the current regulation of branches.

Obviously, the company can set patrimonies by appropriation²¹, but only as fiduciary patrimony units as settlor – legal person, right ascertained by art 776 of the Civil Code related to the provisions of art 31, paragraphs (1)-(3) of the Civil Code.

In such case, the trust’s beneficiary can be any person having business relations with the company, the settlor included.

Basically, by setting a fiduciary patrimony unit, the company will enjoy all advantages offered by the legal regime of the patrimony by appropriation, as legal-economic tool to carry out commercial contracts²².

Firstly, in principle, the goods from the fiduciary patrimony unit can be pursued only by the creditors whose receivables arise in connection with these goods.

Secondly, the company can set a fiduciary patrimony unit to secure its own current or future obligations, usually for the following: (i) to secure a

²⁰We take into account the creditor whose receivables arise from legal documents concluded with the branch which has acted in the name and behalf of the parent company, company with legal personality;

²¹To the same end, Gheorghe Piperea, *Simularea personalității juridice în Noul Cod Civil*, ibidem;

²²For details please see: Reinhart Dammann, *Fiducia – garanție și conflictul de legi*, in *Pandectele Române* no. 6/2013.

loan²³, if the loan is not reimbursed, the fiduciary beneficiary-creditor keeps for themselves the goods received under the trust;²⁴; (ii) the management of any of the business making their object of activity, the settlor has the right to be beneficiary at the same time; (iii) to procure financial resources by using the trust as sale with redemption pact.

It is interesting to notice that if a fiduciary patrimony is set to secure a loan, the “fiduciary creditor is the only one who will cover their receivable from the good or the patrimony unit making object of the security unlike traditional securities which, given their nature, can expose the owner to the competition or even to the superiority of other preferred creditors”²⁵.

The opposability of the trust is secured by recording it with the Electronic Archive of Movable Securities and of the movable rights, including real estate securities, making object of the fiduciary contract, in the land book for each individual right.

3.3. The patrimony by appropriation and the liability of the merchant-natural person for their professional obligations

The issue regarding the impermeability of the personal patrimony of the merchant – natural person must be approached from different perspectives: of the merchant, their creditors, the merchant’s family and not, lastly, from the state’s perspective.

The merchant and their family are interested, in difficult situations, in protecting their personal goods or part thereon from the pursuit of the professional creditors.

The merchant however can protect their personal goods, part of the personal patrimony, based on a unilateral statement of goods’ seizure because the Romanian law, unlike the French law, does not ascertain the validity of such expression of will. The restriction is stipulated in art 2329 of the Civil

²³Details on the possibility to take such trust as personal security in : Ion Turcu, *Se poartă fiduciar*, Revista de Note and Studii Juridice, available at: <http://www.juridice.ro/244256/se-poarta-fiducia.html>

²⁴ Dan Chirică, *Noul Cod civil, Direcții de evoluție*, in Revista Pandectele Române no. 4/2013.

²⁵ M. Grimaldi, *L’introduction de la fiducie en droit français in Les transformations du droit civil français*. Universidad externado de Colombia, available at: <http://www.henricapitantlawreview.fr/article.php?id=309>, nr. 11; M. Bouteille, *Les Propriétés conditionnelles*, Presses Universitaires D’Aix-Marseille, 2008, p. 455-456, apud Liviu Marius Harosa, *Scurte considerații asupra fiduciei în reglementarea noului Cod civil*, Revista Română de Dreptul Afacerilor nr. 9/2013;

Code compared to art 617, paragraph (1) of the Civil Code, which allows the confiscation and seizure of an asset only through agreement and will, excluding unilateral legal deeds; even in such situations of exception, the seizure operates only to the advantage of the asset's acquirer.

Apparently, the incorporation of a patrimony by appropriation is foreseen as instrument to limit the liability of the merchant – natural person for their commercial obligations. In fact, this legal construction does not manage to remove the unfairness of the professional merchant's liability with its entire patrimony, moreover both the patrimony by appropriation and their personal patrimony.

We have also pointed out that, according to the law, the merchants – natural persons have the right to allocate a part of their patrimony to carry out an economic activity, establishing a patrimony by appropriation, in any of the forms of carrying such economic activity regulated by the law for them²⁶. The decision to establish such patrimony by appropriation can occur at the beginning of the activity, together with the registration application for the trade registry and the permits for functioning or afterwards, and in this respect the affidavit given especially in this respect and the documents to indicate the payments or the owner capacity.

Following the establishment of the patrimony by appropriation, the merchant can obtain a seizure over the right of the personal creditors to pursue their assets, limiting them to a right of general lien over the personal patrimony even if the goods from this patrimony are not enough to cover their receivables. Therefore, personal creditors cannot have any claims over the goods from the patrimony by appropriation, legal limitation which cannot be removed by the will of the patrimony by appropriation's owner.

The limitation of the right to pursue the patrimony by appropriation does not work as regards the professional creditors of the merchant.

Substantiating their action through the insufficiency of the goods from the patrimony by appropriation, professional creditors can cross the border between special patrimonies, stepping into the personal patrimony of the debtor and pursuing their personal goods. In such case, the personal creditors of

²⁶The case law has ruled in cases having as object the patrimony by appropriation of merchants – natural persons; in this respect, please see: Î.C.C.J., former s.com., decision no. 1072/2009, indicated by Corneliu Birsan, *Drept civil. Drepturi reale principale*, Ed. Hamangiu, 2013, p. 14; Bucharest Court of Appeal, commercial section, Decision no. 3/ January 11, 2010, posted on the website: www.idrept.ro;

the merchant can claim the benefit of excussion against professional creditors until they prove the pursuit of all assets from the merchant's patrimony by appropriation.²⁷

Therefore, for professional obligations, the merchant is bound without limits towards their professional creditors. Unlimited liability has a secondary nature, the merchant being able to claim the benefit of excussion if the legal order of preference is broken when their special patrimonies are pursued.

Thus, *de lege lata*, the merchant cannot protect their personal patrimony from the pursuit of professional creditors.

This situation is improper and unfair because, firstly a different class of the merchant's creditors – their personal creditors – must limit themselves to pursuing the goods from the patrimony from which their receivable arises, infringing thus the principle of creditor quality. On the other hand, the personal patrimony of certified free lancers is untouchable to their professional creditors, the law using, without due reasons, a double standard.

It is necessary to change and supplement the legal regime of the patrimony by appropriation, established by merchants – natural persons in order to establish its independence in connection with the merchant's personal patrimony and the removal of the professional creditors' right to pursue the goods from the debtor's personal patrimony, by "proofing" of the personal patrimony.

Starting from the role of small entrepreneurs in the economy and their needs, the limitation of liability of the merchant – natural person, through the patrimony by appropriation, matches the needs of the practice, is grounded on the legal precedent established by the Romanian law for certified professionals and is already regulated in the legislations of other European states, such as France, Germany and Portugal²⁸.

In France, the protection of the family patrimony of the entrepreneurs – individual merchants is a constant concern and a first step in this direction has been made through a stipulation indicating that the main residence of any individual entrepreneurs cannot be seized. According to the French law of August 1st, 2003 on economic initiative and the statement of the individual entrepreneur regarding the impossibility to seize the main residence,

²⁷Also please see, Liviu Pop, Ionuț-Florin Popa, Stelian Ioan Vidu, *Tratat elementar de drept civil. Obligațiile*, op. cit., p.756

²⁸De Roux, *La creation d'un patrimoine d'affectation*, available on the website: <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/084000716/0000.pdf>

professional creditors lose temporary and partially the right to pursue such main residence in order to recover their professional receivables.

The final step was the French law no. 2010-658 of June 15, 2010 regarding the individual entrepreneur with limited liability. This law stipulates the patrimony by appropriation of individual entrepreneurs and indicates that all individual entrepreneurs can allot to their professional activities a patrimony distinct from their personal patrimony²⁹, without incorporating a legal person and their liability for any professional obligations is limited to the goods from the patrimony by appropriation. Professional creditors have a lien right over the allotted patrimony and not over the personal patrimony of the individual entrepreneur.

In Germany as well, the separation of patrimony – called *zweckvermögen* in BGB – allows a person to have several patrimonies. Obviously, patrimony units are fully independent, “the creditors of a separate patrimony can pursue only the goods from such patrimony and the person intended to be protected based on the separation of patrimonies or who has some interest in the separation of patrimonies, can intervene to reject the claims of the creditors who try to force the boundaries of the separate patrimony, acting against other goods from other patrimonies”³⁰.

The protection of the creditors of the patrimonies by appropriation belonging to merchants – natural persons is ensured through appropriate publicity of their limited liability.

Firstly, merchants should have the obligation to inform their partners, under a proper remark meant to draw attention to their limited liability, for instance: “*John Smith, freelancer with limited liability*”, inscribed on all documents issued and/or signed by the merchant, on all advertising materials, etc.

Such publicity should be completed by publicity with the trade registry, respectively the statement regarding the establishment of the patrimony by appropriation, accompanied by a report for the evaluation of the goods included in the patrimony by appropriation and if immovable assets, movable rights and/or other rights are allotted, deeds or legal reports if related to such properties registered with the land book, it is necessary to register the statement

²⁹According to the provisions of art 14 of the French Law no. 2010– 658 of June 15, 2010, an entrepreneur can have one or several patrimonies by appropriation.

³⁰ Johannes Rehahn, Alexander Grimm, *Country Report: Germany*, The Columbia Journal of European Law Online, vol. 18, 2012, p. 99.

regarding the patrimony by appropriation with the land book³¹. Of course, the publicity regarding the establishment of the patrimony by appropriation must be made by registration with the electronic archive of movable securities when such patrimony by appropriation includes security rights for whose opposability the registration with the archive is required.

The limited liability of the holder will, without doubt, characterize the entire existence of the patrimony by appropriation, including its liquidation, either through voluntary liquidation or by bankruptcy of the merchant – natural person.

The professional creditors of the merchant – natural person could also pursue the goods of their personal patrimony in case of fraud and in cases strictly stipulated by the law, during the procedure of bankruptcy.

3.4. Patrimony by appropriation and the liability of the certified professional for their professional obligations

A type of patrimony by appropriation is the patrimony unit allotted for a certified profession or the professional patrimonies by appropriation. Although the notion of certified profession is not stipulated by the law, “a profession certified by the law is the occupation whose specific qualification is defined by the law and the practice of such profession is done according to the legal requirements”³². It is not the capacity of certified persons to carry out a professional activity, the certified persons to carry out economic activities.

Therefore, certified professions include liberal professions: lawyer, doctor, architect, insolvency practitioner, public notary, bailiff, mediator, etc., professions that require professional qualifications and membership in a professional order recognized by the law³³; they are the professionals who can establish an individual professional patrimony by appropriation.

The establishment of the patrimony allotted for the individual practice of a certified profession is set based on the document concluded by the certified professional, in compliance with the conditions of form and publicity stipulated

³¹In this case, the statement has to be in the form of a notarized authentic document as per art 888 of the Civil Code, the registrations with the land book are made based on the notarized authentic document, the final legal ruling, the inheritance certificate or based on another document issued by the administrative authorities if the law stipulates it. For the same, Lucia Herovanu, op.cit., p. 74; Andrea Annamaria Chiș, *Obiectul cartii funciare în lumina Noului Cod civil – dispoziții speciale privind înscrierea drepturilor tabulare*, Revista Română de Drept Privat no. 3/2012, pp. 58 - 99;

³² Radu Rizoiu, *Garanția comună a creditorilor în Noul Cod civil*, Revista Română de Drept Privat no. 1/2012, pp. 170 - 223;

³³ Irina Sferdian, op. cit., p. 43.

by the law and its further modification is possible under a unilateral legal document, according to the provisions of art 33, paragraph (1) and paragraph (3) of the Civil Code.

As indicated above, according to the provisions of art 2324, paragraph (4) of the Civil Code and art 727, paragraph (1), thesis 1 of the Code of civil procedure, the goods from a patrimony unit allotted to the practice of a profession certified by the law, can be pursued only by the creditors whose receivables arise from the practice of such profession; these creditors cannot pursue other goods of the debtor. In other words: “the debts of a freelancer (lawyer, notary, dentist, etc.) are classified as professional and private and, thus, their goods belong to two distinct units”³⁴

As regards the legal effects of the establishment of the professional patrimony by appropriation, we can notice the full proofing of the personal patrimony of the professionals. Naturally, their professional creditors have a right of general lien only over the patrimony by appropriation, excluding all rights over the goods of the professional’s personal patrimony.

It is the major legal difference between the professional patrimony by appropriation and the patrimony by appropriation of the merchant – natural person.

4. Alienation of the patrimony by appropriation

The full separation of the patrimony by appropriation or its full autonomy and the limitation of the merchant’s liability will allow the regulation of the right to alienate the patrimony by appropriation based on deeds inter vivos.

The holder of the patrimony by appropriation must have the right to create, use and enjoy the patrimony by appropriation, to liquidate it³⁵, including the right to use it freely, in the form and for the purpose of its creation³⁶.

It is obvious that we do not concern the alienation of the goods composing the patrimony by appropriation, respectively the alienation of the

³⁴ Paul Vasilescu, *Drept Civil. Obligații*, Ed. Hamangiu, București, 2012, p. 96;

³⁵ The possibility to liquidate the patrimony by appropriation is mainly regulated by art 33 paragraph (3) of the Civil Code.

³⁶ Henri Mazeaud, Leon Mazeaud, Jean Mazeaud, *Fifteen Lesson: Patrimony and Other Universalities of Rights*, Henri Capitant Law Review, No 2, 2011, observation no. 297, available on the website:

<http://henricapitantlawreview.org/article.php?lg=en&id=304> (ultima vizualizare in 5 aprilie 2014).

goodwill in its entirety, although some authors consider that it is the only way to “alienate” the patrimony by appropriation³⁷.

Equally we consider the transfer, with universal title of a patrimony unit belonging to the merchant – natural person, of patrimony units and the not the universal transfer of their patrimony, which transfer is restricted through documents *inter vivos*³⁸.

Accepting and regulating the creation of patrimonies allotted to a certain purpose, of patrimony units whose existence is indissolubly related to the purpose of their creation, we don't see any impediment in alienating *inter vivos* the patrimony by appropriation.³⁹

The principle of the patrimony's inalienability concerns, without doubt, the patrimony in its entirety, excluding patrimony units⁴⁰.

To support this possibility, we underline that the alienation of the patrimony by appropriation is allowed, without objections, by the German Civil Code and the French Commercial Code, as amended under the Law no. 2010 – 658 of June 15, 2010 on the individual entrepreneur with limited liability⁴¹.

In this respect, art L 526-17 –I- of the French Civil Code expressly provides the transfer, based on documents *inter vivos*, of the patrimony by appropriation, which can occur both under a document of onerous title and under a free of charge document, respectively: sale, donation, contribution to a company's patrimony either to natural persons or legal persons⁴².

The documents regarding the publicity of the patrimony by appropriation's transfer must indicate the rights, goods, obligations and movable securities composing the patrimony by appropriation.

The assignee, donee or the contribution's beneficiary becomes the debtor of the individual entrepreneur's loan, in their place and position, but such replacement/subrogation will not be a novation in terms of creditors.

³⁷ Irina Sferidan, *op. cit.*, p. 50-52;

³⁸ E.g.: Valeriu Stoica, *Drept civil. Drepturi reale principale*, Ed. 2, C. H. Beck Publishing House, Bucharest, 2013, p. 18; Corneliu Bîrsan, *Drept civil. Drepturi reale principale*, 2013, *op. cit.*, p. 16;

³⁹ The same opinion: Valeriu Stoica, *Drept civil. Drepturi reale principale*, 2013, *op. cit.* p. 19;

⁴⁰ Adverse opinion in Irina Sferdian, *op. cit.*, p. 50;

⁴¹ Cagnon, L'EIRL et la notion de patrimoine d'affectation, study published on the website: *Universitatea de Drept, Stiinte Politice, Economie, Gestiune, Educatie, Montesquieu – Bordeaux IV*, 2011, available on the website: http://cerfap.u-bordeaux4.fr/sites/cerfap/IMG/pdf/Cagnon_Mylene.pdf

⁴² The French Civil Code available at: <http://www.legifrance.gouv.fr/> ;

According to the French regulation, the patrimony by appropriation has the same significance as in the Romanian law, representing a juridical universality.

On the other hand, even in the current Romanian legal framework, the law stipulates the possibility to alienate a patrimony by appropriation as juridical universality, the alienation of patrimonies by appropriation and fiduciary mass being allowed by documents *inter vivos*.

The first legislation breach in this respect has been made as regards the reorganization of legal persons, respectively companies allowed to restructure their activities through merger and division. Without discussing about merger and total division of a company to transfer the entire patrimony of the company whose existence will cease following the merger or division, we cannot exclude from these examples the alienation documents *inter vivos* of patrimony units, as juridical universalities, the situation regarding the partial division of companies which remain in existence after this juridical operation⁴³.

According to the law, the partial division of a company is made by the universal transfer of a unit from the legal person's patrimony to the patrimony of an existing legal person or newly-created following the division (art. 250¹ of Law no. 31/1990 on companies).

In the same respect there are the provisions of art 236, paragraph (3) of the Civil Code and art 237, paragraph (2) of the Civil Code regarding the partial division of the legal person, operation consisting of the dismemberment of a part of a legal person's patrimony and the transfer of this part, with universal title, to one or several legal persons existing or incorporated as such.

Returning to the alienation of patrimonies by appropriation by *inter vivos*, we will refer to art 791 of the Civil Code, which regulates the transfer of the fiduciary patrimony from the fiduciary assignor to the beneficiary, as effect of the termination of the fiduciary contract. Under such circumstances, the fiduciary patrimony changes its holder in relation to whose patrimony it keeps its special features, remaining in existence as universality until the payment of all fiduciary debts⁴⁴.

⁴³In this sense, Gheorghe Beleiu, *Drept civil român, Introducere în dreptul civil. Subiectele dreptului civil*, Casa de editura și presa "Șansa", Bucharest, 1993, pp. 403 – 415; Corneliu Bîrsan, *Drept civil. Drepturi reale principale*, 2013, op. cit., p.17;

⁴⁴Baias, Chelaru, Constantinovici, Macovei, op.cit., p. 836.

Also, based documents *inter vivos*, the patrimonies by appropriation of several professionals can be alienated, respectively doctors (art 69, paragraph 2 of Law no. 95/2006 on the health reform⁴⁵), lawyers (art 198, paragraph (4) of the 2011 Statute of the lawyer profession⁴⁶), insolvency practitioners (art 22, paragraph (6) of E.G.O. no. 86/2006 on the organization and activity of insolvency practitioners⁴⁷), etc.

Thus, the forms of lawyer practice can transform into any other form of practice stipulated by the law, without liquidation, separately or along with the reorganization of the lawyer practice through merger, absorption, total or partial division, respectively through the dismemberment of a part of the professional patrimony by appropriation as recorded in the accounting records of the form of practice subject to partial division.

Moreover, lawyers can contribute to the form of practice following transformation with a share of the professional patrimony by appropriation, as recorded in the financial-accounting records of the transformed form of practice and, they will prepare, to this end, the financial-accounting documents for the transfer to the selected form of practice (art 182, paragraphs (3) and (4) of the 2011 Statute of the lawyer profession)⁴⁸.

Therefore, the professional patrimony by appropriation of lawyers can be alienated by documents *inter vivos* and the only temporary impediment concerns the publicity of the transfer deed at the Electronic Registry of lawyers' patrimonies by appropriation⁴⁹, which does not exist at present.

⁴⁵Law no. 95/2006 on the health reform published in the Official Gazette of Romania, Part I no. 372/28 April 2006, as further amended and supplemented;

⁴⁶Statute of the lawyer profession as of December 3, 2011 published in the Official Gazette of Romania, Part I no. 898/19.12.2011, as further amended and supplemented;

⁴⁷E.G.O. no. 86/2006 on the organization of the practice of insolvency practitioners, published in the Official Gazette of Romania, Part I no. 944/22.11.2006, republished in the OGoR, Part I no. 327/May 18, 2010, as further amended and supplemented;

⁴⁸In the same respect there are the special provisions stipulating the legal regime of each for of lawyer practice (art. 192, paragraph (1), art 196, paragraph (1), art. 198, paragraph (2) – (4), art 199, paragraph (2) – (3) of the 2011 Statute of the lawyer profession;

⁴⁹The electronic registry of the lawyer patrimony by appropriation is stipulated by art 180, paragraph (3) of the 2011 Statute of the lawyer profession as amended under the Decision of U.N.B.R. no. 852/2013, republished in the Official Gazette, Part I no. 33/16.01.2014; The registration with the Electronic registry of the patrimony by appropriation is opposable to third parties.

Similarly, there is regulated the possibility to transfer (alienate) the professional patrimony by appropriation of the insolvency practitioners' forms of practice.⁵⁰

In terms of the topic analyzed hereby, the provisions of the law as regards the alienation of the professional patrimonies by appropriation of family doctors are extremely interesting.

The practice of a family doctor comprises the professional patrimony by appropriation, the infrastructure of the office in their property or use, and the clients. The doctor's practice can be alienated by alienating the professional patrimony by appropriation, the takeover of practice from other family doctor if the latter ceases their activity and this is done through the transfer of the professional patrimony by appropriation to the doctor who takes over the practice (art 69, paragraph (3) of Law no. 95/2006).

The law allows for the alienation of the professional patrimony by appropriation of family doctors to take place based on documents *inter vivos*, with onerous title or free of charge and expressly stipulates the legal documents which can deal with the professional patrimony by appropriation. According to provisions of art 5 of the Order of Public Health Ministry no. 1322/November 2, 2006⁵¹, *the object of taking over a practice is the professional patrimony by appropriation and the takeover means can be: sale, exchange, donation, will, rental, commodate, usufruct, share capital contribution*. To perform this legal operation, the special legal stipulation provides special means to make the publicity of the practice's takeover.

The general publicity of the transfer of the professional patrimony by appropriation of family doctors is made both by the doctor-assignor, through specific procedures, and by the new holders, by communicating the deed of transfer to territorial public health authorities, to the agency of health insurances and patients.

It is obvious that there is not justified the strong doctrinaire reserve regarding the possibility to alienate, based on documents *inter vivos*, the patrimony by appropriation, as juridical universality because this possibility is a juridical reality.

⁵⁰Considering the provisions of art 22 of E.G.O. no. 86/2006

⁵¹Order of Public Health Ministry no. 1322/November 2, 2006 on the approval of the norms to set the criteria and methodology regarding the takeover of an existing practice, published in the Official Gazette, Part I no. 929/16.11.2006.

In our opinion the alienation, based on documents *inter vivos*, of the patrimony by appropriation of the merchant – natural person is possible, although complicated, even in the current legal framework.

The issues of such transfer are mainly generated by the obligations of the patrimony by appropriation and the right to pursue of professional creditors. However, the rights of the creditors are not affected by the alienation of the patrimony by appropriation, as they relate to the patrimony and not to its owner. Also, the unlimited nature of the secondary liability of the assignor merchant remains untouchable. It is beyond discussion that the alienation of the patrimony by appropriation cannot generate a change in the rights of professional creditors nor the transfer of unlimited responsibility from the assignor to the assignee. However, we do not exclude the possibility for the assignee to take over this obligation of the assignor under the alienation agreement.

The alienation of the patrimony by appropriation of the merchant – natural person involves the conclusion of the legal document of alienation in compliance with the legal conditions as regards the validity and opposability of all legal operations comprised by this complicated legal document: sale, assignment of receivables, debt takeover, contract assignment, etc.

According to the contents of the patrimony by appropriation and the legal operations involved by its transfer, the deed of transfer will be a document under private signature or a notarized document.

As regards the publicity and opposability to third parties of the deed of transfer for the patrimony by appropriation, it is required to make a registration with the trade registry, to register it with the land book whenever the goods of the patrimony by appropriation include real estate, movable securities and/or other rights, deeds or legal relations related to the real estate properties registered with the land book and the registration with the electronic archive of movable securities, given that the assignment of a universality of receivables is involved (art 1579 of the Civil Code).

Also, related to the opposability of receivable assignment to debtors, it is required to send the deed of transfer to all the assignor's debtors⁵² (art. 1579 of the Civil Code) and for the acceptance of contract assignment, the deed of transfer is sent to co-contractors in order to enforce the provisions of art 1315, paragraph (1) of the Civil Code.

⁵²Including the guarantors of the assignor's debtors as per the provisions of art 1581 of the Civil Code

Beyond these last considerations, as regards the efficient management of the patrimony by appropriation, the lawmaker should enact express stipulations on the transfer between live persons of the patrimony by appropriation of the merchant – natural person.

5. Conclusions

The modern economic theory considers that the economic development starts from the stimulation, on large scale, of the activity of individual entrepreneurs.⁵³

The establishment of a patrimony by appropriation for economic activities can be the ideal tool to manage the patrimony, to limit the responsibility and to protect the personal patrimony of merchants.

The comparative analysis of the legal regime of the merchant-natural person's patrimony by appropriation to those of fiduciary units established by merchants – legal persons and, in particular, to the professional patrimonies by appropriation, reveals significant differences as regards the protection offered to the personal patrimony of certified professionals, to the full autonomy of their special patrimonies.

It is clear that the limitation of liability and, implicitly, of the risk undertaken by the individual merchant, is an issue for which the Romanian law hasn't enacted the most proper solution.

The separation of patrimonies of the merchant – natural person (of the patrimony by appropriation compared to the personal one) is imperfect and the merchant cannot protect their personal patrimony from the pursuit of professional creditors.

We believe that the juridical fragility of the merchants – natural persons, whose professional bankruptcy can mean their ruin and that of their family, independently of the objective reasons of such bankruptcy, requires the change of ideas regarding their liability for professional obligations.

In this respect, there is necessary to generalize the principle of full autonomy of the patrimonies by appropriation, between themselves and compared to the personal patrimony of any entrepreneur by including in the

⁵³ Heywood Fleisig, Mehrnaz Safavian, Nuria de la Pena, *Reforming Collateral Laws to Expand Access to Finance*, The World Bank, Washington DC, 2006, p. 24-26, available at: <http://www.ceal.org/publications.asp>., Apud Radu Rizoii, op.cit.

area of enforcement of such principle, the patrimonies by appropriation of merchants – natural persons.

The effects of “proofing”, of the full autonomy of special patrimonies of the merchant – natural person could strengthen the function of business tool of the patrimony by appropriation by protecting the personal patrimony of the merchant related to the risks inherent to the economic activities and through the creation of circumstances to regulate the right of the merchant to alienate, at any time, by documents inter vivos, their patrimony by appropriation.

Given that the use of the patrimony by appropriation as tool in making business cannot be designed without the possibility to alienate it by documents inter vivos, the Romanian law should, based on a specific means, allow merchants such alienation, having as reference the regulations on the alienation of professional patrimonies by appropriation and the models offered by other European legislations.