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A VIEW ON TWO DIMENSIONS OF INFLUENCE ON EVA® IN CZECH COMPANIES

IVANA KRAFTOVÁ¹

ABSTRACT. The Economic Value Added belongs to the most important investors' decision criteria. Companies are interested in its maximisation thus they need to influence this indicator really effectively. A question comes on offer: there is a conjunction between economic value added and indicators of operational and financial leverage? This article deals with two ways how to affect the EVA – a position of expenses/revenues rate in relation to a break factor ψ , and force of financial leverage in dependence on its direction and intensity. Both factors reflect two decisive scopes of Czech companies' economy – operational a financial management.

1. Introduction

(An) Obtaining a survey about possible results of their activities is very important for companies' management. [Goldberg, 2001]

The EVA, as an indicator which reflects the rate of capital valuation for owners/investors, is partly connected with the profitability of the company, and partly with the way of financing. Both the aspects of the company's management can be implied mathematically in a simplified way. We can recommend to companies' management to orientate to:

- the proximity/distance of expenses/revenues rate to the break factor ψ on one hand,
- the connection with a force of the financial leverage on the other.

A rate of investment valuation is the main criterion of investors' decision. Its shape can be expressed differently, but one of the known and most widely used is the Economic Value Added according to Stern Steward & Co's definition [Steward, 1992]. In short, EVA has been constructed as the net operational profit after taxation less the average costs of capital multiplied by the companies' book value of equity and debt. There, often, exist problems in companies that actually try to implement EVA. [Cagle, Smythe, Fulmer 2003] As a result, EVA mixed accounting parameters (profit, equity and debt book value) [Kraftova, Pilar, 2001] with market parameter (weighted average costs of capital) [Fernandez, 2002]. This easy expression [Brealey, Meyers, 2000] includes considerable difficulties in it. For example M. Marik [Marik, 1999] has corrected total capital this way: equity plus those debts only which interest is paid on. Thus the balance equation has the following format: (fixed assets + current assets – debts without interest) = (equity + debts with interest). Because of these partial problems, performance, productivity, and valuation of all factors, all economic resources stay in the centre of attention of investors and entrepreneurs as the most

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relevant impulse of their activities. Indicator EVA tells them that a company works with a loss unless it presents profit which exceeds costs of its capital. [Goldberg, Godwin, 2001] Peter F. Drucker even says [Drucker, 2000] that until the value of EVA is higher than zero, firm won't create economic wealth; by contrast it will subvert it.

Investors are interested in enhancing company's EVA, of course. Thereby, managers look for ways how to enhance it. The other authors explain that EVA is identical to residual income. [Keys, Azamhuzjaev, Mackey, 2001]

As mentioned above, EVA joins an operational scope (ways and approaches of profit managing), as well as a financial scope of management, especially effects of financial leverage [Kraft, 2002].

2. Methodology

The EVA according to Stern Steward & Co is considered to be the main investors' criterion in the following formula:

$$EVA = NOPAT - WACC * C \quad [1]^2$$

NOPAT equals net operational profit after taxation. Its relation to earnings before interest and tax are paid (EBIT) and EAT (earnings after taxation) is obvious, i.e.

$$NOPAT = (EBIT - I) * (1 - t) \quad [2]$$

As well

$$NOPAT = EAT + I * (1 - t) \quad [3]$$

Based on the content specification of used indicators, a relation among the indicators of efficiency – return on revenues, return on expenses and expenses / revenues ration - is deduced. Mathematical deduction issues from the usual conditions of companies' economic practice. Quantitative impact of applying the first dimension of influence on EVA is illustrated with two situations as an example – in part 3.

The second of the significant elements which are included in the subtrahend of EVA are weighted average costs of capital. The formula is used here as follows:

$$WACC = \left[\frac{EAT}{C} * \frac{E}{C} + \frac{I}{D} * (1 - t) * \frac{D}{C} \right] \quad [4]$$

This conception makes possible to express the relation between EVA and financial leverage relatively easily. However, it is necessary to mention that different authors use different expression for financial leverage – more precisely force of financial leverage – it is sometimes expressed as total capital to equity, sometimes as debt to equity. This difference (value 1) can be omitted in some cases, but we must be aware of it.

A deduction of a well-known relation among return on equity and return on assets and structure of capital is shown when the second dimension of influence on EVA is analysed. Nevertheless, connections among force, direction and intensity of

² All used abbreviations are explained in a table at the end of this article.

effects of financial leverage are emphasized at given premises. A mathematical deduction of relation between force of financial leverage (in the conception of total capital to equity) and EVA follows. The result is illustrated with an example.

3. The break factor ψ between indicators of efficiency

The first indicator which EVA [1] is calculated from is called NOPAT (as mentioned above i.e. net operational profit after taxation or earnings before interest is paid and after taxation) [2] or [3].

The EAT is very important part of EVA it is a basic indicator when profitability is calculated, e.g. of return on equity. Let's focus on simple indicators: EAT expenses (Ex) and revenues (R) which describe company's annually economic activities. In spite of the fact that EATs are calculated as revenues less expenses, we can expect that certain quantitative relationships between profitability indicators exist. Their knowledge can be successfully used in management of company's profitability [Kraftova, Votavova, 1999].

Let's presuppose applicability of this formula

$$EAT = R - Ex > 0 \quad [5]$$

Therefore

$$R > Ex \quad [6]$$

Simultaneously

$$EAT < Ex \quad [7]$$

(We deduce from usual practice where profit margin does not exceed amount of expenses).

Thus

$$\frac{EAT}{Ex} < 1 \quad [8]$$

Let's contemplate now when the quantitative relations between above mentioned indicators can be described by a system of inequalities regarding presumptions [5] and [7] or their consequences [6] a [8].

$$1 > \frac{Ex}{R} > \frac{EAT}{Ex} > \frac{EAT}{R} \quad [9]$$

We are solving a problem when – under what conditions – the marks of inequality occur. It is purposeful to resolve this system into particular inequalities.

$$1 > \frac{Ex}{R} \quad [10]$$

$$\frac{Ex}{R} > \frac{EAT}{Ex} \quad [11]$$

$$\frac{EAT}{Ex} \succ \frac{EAT}{R} \quad [12]$$

(It is necessary to emphasize again that all indicators - i.e. EAT, Ex and R - have a positive value.)

Under presumption [6], the validity of inequality [10] is obvious. Hence it follows, $R \succ Ex \Rightarrow 1 \succ \frac{Ex}{R}$. It means if expenses are lower than revenues, an Expenses/Revenues Rate is lower than 1.

Similarly, the validity inequality [12] flows from presumption [6] immediately: $R \succ Ex \Rightarrow \frac{EAT}{R} \prec \frac{EAT}{Ex}$. That means if revenues are higher than expenses, return on expenses (EAT/Ex) is higher than return on revenues (EAT/R).

Let's focus now on finding out what values $\frac{Ex}{R}$ the expression [8] has validity for. If we change $EAT = R - Ex$ [see 2] in relation to [8], we get

$$\frac{Ex}{R} \succ \frac{R - Ex}{Ex}, \text{ i.e. } \frac{Ex}{R} \succ \frac{R}{Ex} - 1.$$

And as a result

$$\frac{Ex}{R} \succ \frac{1}{\frac{Ex}{R}} - 1$$

And then

$$\frac{Ex}{R} - \frac{1}{\frac{Ex}{R}} + 1 \succ 0.$$

This inequality is multiplied by a positive expression $\frac{Ex}{R}$. (In spite of positive feature 'Ex' as well as 'R', $\frac{Ex}{R}$ cannot be negative.) And so we get quadratic inequality for quantity $\frac{Ex}{R}$:

$$\left(\frac{Ex}{R}\right)^2 + \frac{Ex}{R} - 1 > 0 \quad [13]$$

Roots of this quadrate equation are:

$$\left(\frac{Ex}{R}\right)_1 \cong 0.6180339, \quad \left(\frac{Ex}{R}\right)_2 \cong -1.6180339.$$

The presumption $\frac{Ex}{R} > 0$ has been used in these contemplations, and we are interested in the validity of the inequality [11], thus we will now consider only values $\frac{Ex}{R}$ from the interval $(0.6180339, +\infty)$.

Anyway, $\frac{Ex}{R} < 1$ according to [10], and it means: the whole expression [9]

is valid for $0.6180339 < \frac{Ex}{R} < 1$.

An equation quantity $\frac{Ex}{R}$ with number 0.6180339 is critical for the validity [8] and for the whole expression [9] as well. It is called as a **break factor** and inscribed with a symbol ψ .

For a simple example:

Situation 1:

R = 1000, Ex = 620

Then:

EAT = 380

Ex/R = 620/1000 = 0,628 0

EAT/Ex = 380/620 = 0,612 903

EAT/Ex < Ex/R is true in this case.

Situation 2:

R = 1000, Ex = 610

Then:

EAT = 390

Ex/R = 610/1000 = 0,610

EAT/R = 390/610 = 0,639 344

EAT/Ex > Ex/R is true in this case.

It means – expressed in words – if the Expense/Revenues Rate is situated in the open interval from zero to ψ ; the rate is exceeded by return on expenses as the most rigorous (the most precise) indicator of efficiency.

The following chart No 1 shows considerable distances between values of Ex/R and the break factor ψ in Czech companies at the present time.

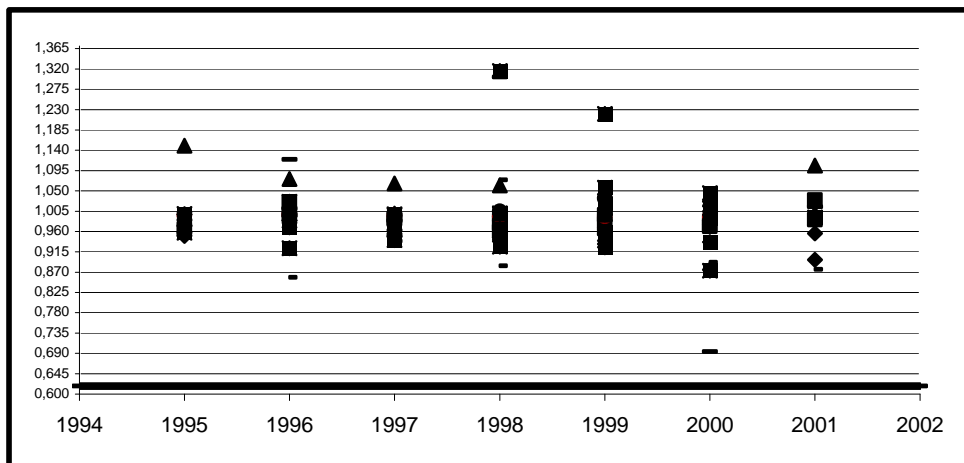


Chart 1: **Comparison Ex/R with value of break factor ψ**
(in the analysed Czech companies in 1995-2001)

$\psi=0,6180339$

The value of Ex/R is situated in the interval (0,919; 1,050) in most cases, very far from $\psi=0,6180339$. This fact is for Czech companies very dangerous, because it means that Czech companies are not able to create a sufficient volume of profit as a part of potential equity.

4. Financial leverage in relation to EVA

The financial leverage is one of very important indicators of financial management. The expression of its force (i.e. $FL = \frac{C}{E}$) can be found in the Du Pont model - briefly:

$$\frac{EAT}{E} = \frac{EAT}{S} * \frac{S}{C} * \frac{C}{E} \quad [14]$$

and in the Higgins's formula of a sustainable growth rate [Higgins, 1997] as well:

$$g^* = (1 - PR) * \frac{EAT}{S} * \frac{S}{A} * \frac{A}{E} \quad [15]$$

The force of financial leverage has evident meaning in a relationship between ROA and ROE.

If $ROA = \frac{EAT}{C}$, then $ROE = ROA * F_{FL}$, because

$$ROA * F_{FL} = \frac{EAT}{C} * \frac{C}{E} = \frac{EAT}{E} = ROE .$$

Furthermore, the financial leverage brings another dimension into the financial management as well. Particular attention must be paid to direction and intensity of its effect on firm's finance. The direction and the intensity of the financial leverage effect results from the following formula:

Now, let's suppose as new presumption:

$$1) ROA = \frac{EBIT}{C}$$

2) The company uses debt.

3) Let's use the force of financial leverage in its simpler form, as $F_{FL} = \frac{D}{E}$

$$(\text{Otherwise written: } \frac{C}{E} = \frac{D+E}{E} = \frac{D}{E} + 1).$$

$$4) EAT = (EBIT - I) * (1 - t)$$

We can elicit:

$$\begin{aligned} ROE &= \frac{EAT}{E} = \frac{(EBIT - I) * (1 - t)}{E} = \frac{EBIT - i * D}{E} * (1 - t) = \frac{EBIT}{E} - \frac{i * D}{E} * (1 - t) = \\ &= \frac{EBIT}{C} * \frac{E + D}{E} - i * \frac{D}{E} * (1 - t) = \left(\frac{EBIT}{C} * \frac{E}{E} + \frac{EBIT}{C} * \frac{D}{E} - i * \frac{D}{E} \right) * (1 - t) = \\ &= \left[\frac{EBIT}{C} + \left(\frac{EBIT}{C} - i \right) * \frac{D}{E} \right] * (1 - t) \end{aligned}$$

Expressed in a different way:

$$ROE = \left[ROA + (ROA - i) * \frac{D}{E} \right] * (1 - t) \quad [16]$$

The direction of the financial leverage effect follows from the relation between return on assets and interest ratio as a price of debt, i.e. $(ROA - i)$ see [16]:

- If $ROA > i$, the financial affects increase the value of the return on equity.
- But, if $ROA < i$, the financial leverage acts negatively, the used debts decrease the value of the return on equity, and in addition, it increases financial risk, and existential risk as well.
- It is necessary to mention that the financial leverage acts neutrally (it does not increase or decrease the value of return on equity) if $ROA = i$.

Anyway, the next dimension of financial leverage effect is connected with its intensity. The intensity of financial leverage depends on variance in rates of 'ROA' and 'i', and of course, on the value of force of financial leverage in the

feature $\frac{D}{E}$, i.e. on two elements in [16] $(ROA - i) * \frac{D}{E}$.

Therefore, companies should use debts only when they achieve bigger earnings thanks to debts, or rather if there is room for increasing sales, and thereby increasing turnover of assets, too. Companies' aims should be to valorise their debts more than they cost externally. The financial leverage effect equates the difference between return on assets and interest rate of debt.

A question comes on offer: there a conjunction between economic value added and financial leverage?

The economic value added tightens up the valuation of company's performance considering accounting parameters (profit, equity and debt book value) together with the market parameter (WACC) [Fernandez, 2002].

We can say the NOPAT in formula [2] represents evaluation of efficiency of production operations, and the costs of capital influence as efficiency rate of financial operations.

In order to simplify it, let's presuppose the following considerations:

1) EAT is the same in reality as EAT required (i.e. real ROA = demanded ROA)

2) A firm uses debts in its financing of assets and interest rate equals I/D .

3) EVA can be inscribed using [1] and [2]

4) Costs of capital are $WACC * C$ according to [4], where the growth of ROA is not considered or we can expect that EAT/C contains the required growth of net earnings.

Then, a formula can be written down:

$$EVA = EAT + I * (1 - t) - \left[\frac{EBIT * (1 - t) - I * (1 - t)}{C} * \frac{E}{C} + \frac{I}{D} * (1 - t) * \frac{D}{C} \right] * C \quad [17]$$

Using an algebraic arrangement we arrive to the following formula:

$$\begin{aligned} EVA &= EAT + I * (1 - t) - \left[\left[EBIT * (1 - t) - I * (1 - t) \right] * \frac{E}{C} + I * (1 - t) \right] = \\ &= EAT + I * (1 - t) - \left[(1 - t) * (EBIT - I) * \frac{E}{C} + I * (1 - t) \right] = \\ &= EAT + I * (1 - t) - (1 - t) * (EBIT - I) * \frac{E}{C} - I * (1 - t) = \\ &= EAT - (1 - t) * (EBIT - I) * \frac{E}{C} = EAT - EAT * \frac{E}{C} = EAT * \left(1 - \frac{E}{C} \right) = \\ &= EAT * \left(1 - \frac{1}{\frac{C}{E}} \right) \end{aligned}$$

As a result, the formula of EVA [14] can be expressed as follows:

$$EVA = EAT * (1 - \frac{1}{F_{FL}}) \quad [18]$$

It is obvious –considering the given presumption - that a value of economic value added depends on EAT (directly proportionally), and on the force of financial leverage (indirectly proportionally). It is necessary to mention again that [18] does not include the direction and intensity of influence of the financial leverage.

Now it remains to determinate consequences of non-interest debts (liabilities).

If a part of total debts are non-interest debts, the indicators of creditors' risk (D/C) will enhance. And as a result, the interest rate of company's debt can be increased/increases (enhancing the risk rate brings decreasing of return), thereby the EVA value decreases simultaneously.

Anyway, the above mentioned considerations may be illustrated by the following example:

Initial situation of a Czech company:

items	value in mil CZK
total capital	81 980
debts	44 730
from this: long term bank loan with i=18,5% p.a.	18 600
short term bank loan with i=15 % p.a.	2 350
trade liabilities (non-interest)	9 580
other short term liabilities (non-interest)	14 200
equity	37 250
earning after taxation	12 300
tax rate	0,35

If we calculate single indicators, we will obtain:

coefficient of equity cost	$12\,300 / 81\,980 = 0,150\,036\,59$
interests	$0,185 * 18\,600 + 0,15 * 2\,350 = 3\,793,5$
coefficient of debts cost	$(3\,793,5 / 44\,730 * (1 - 0,35)) = 0,055\,125\,75$
WACC	$0,150\,036\,59 * 37\,250 / 81\,980 + 0,055\,125\,75 * 44\,730 / 81\,980 = 0,098\,251\,26$
WACC*C	$0,098\,251\,26 * 81\,980 = 8\,054,638\,14$

Hence it follows:

$EVA = EAT + I * (1 - t) - WACC * C$	$12\,300 + 3\,793,5 * 0,65 - 8\,054,638\,14 = 6\,711,136\,86$
$EVA = EAT * (1 - 1/(C/E))$	$12\,300 * [1 - 1/(81\,980 / 37\,250)] = 6\,711,136\,86$

Apparently, calculation of EVA according to [1] and [3] reaches the same result as the calculation according to [18].

Shares of debts in whole capital resources of the sample of Czech companies are presented by the chart No 2. We can see the most number of this companies use debts as the main financial resource. This fact is comprehensible in connection with their low ability to create adequate amount of profit.

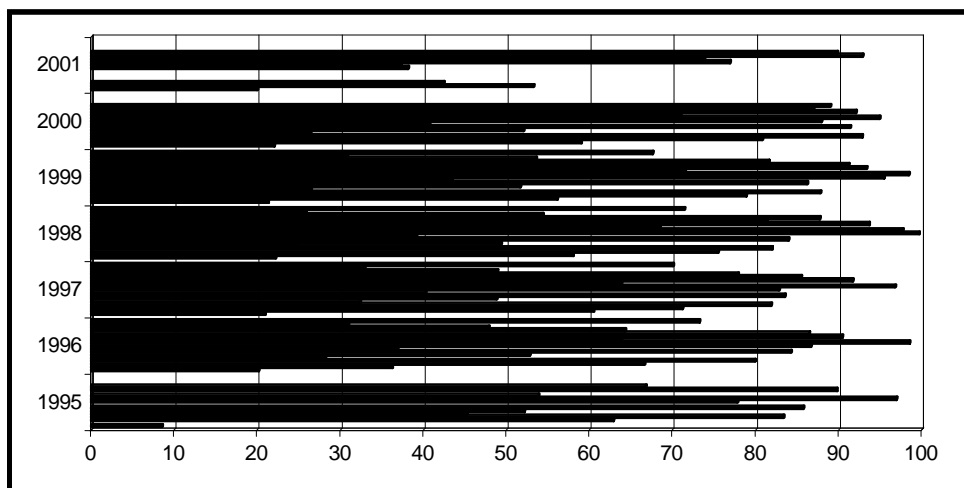


Chart 2: **Share of debts in capital in %**
(the analysed Czech companies in 1995-2001)

The situation in a scope of the influence of financial leverage in Czech companies affects adversely on their EVA-value (calculated according to [18]). Table No 1 shows values of rate EVA/E (not absolute values of EVA) in analysed Czech companies because of the higher predicative capability of the relative indicator.

Table 1
Rate of equity improvement by EVA in the analysed Czech companies

	1995	1996	1997	1998	1999	2000	2001
EVA/E (1)	0,0037	0,0011	0,0017	0,0111	0,0141	0,0275	0,0163
EVA/E (2)	.	0,0022	0,0393	0,0642	0,0652	0,0756	0,0402
EVA/E (3)	-0,1920	-0,1122	-0,1208	-0,1496	-0,1529	-0,1290	-0,0745
EVA/E (4)	0,0095	0,0039	0,0115	0,0076	-0,5513	-0,8189	.
EVA/E (5)	0,0458	0,0444	0,0414	0,0362	0,0257	0,0766	.
EVA/E (6)	0,0049	0,0035	0,0058	0,0074	0,0124	0,0140	.
EVA/E (7)	0,0039	0,0079	0,0459	0,0755	0,1010	0,1107	.
EVA/E (8)	.	0,0295	0,0134	0,0231	0,0085	0,0197	0,0198
EVA(E (9)	-0,8650	-0,7227	0,2324	-64,0115	0,8918	7,8971	-0,0084
EVA/E (10)	0,1679	0,3796	0,6082	0,1191	0,2747	0,6466	0,3623
EVA/E (11)	0,0960	-0,1027	0,0443	0,1581	0,0144	0,1294	-0,1892

	1995	1996	1997	1998	1999	2000	2001
EVA/E (12)	.	0,0370	0,0166	0,0000	0,0483	0,0424	0,0269
EVA/E (13)	0,3491	0,1788	0,1163	-0,0052	-1,1865	0,3774	0,2688
EVA/E (14)	0,0231	-0,0151	0,0284	-0,9541	-0,4668	-0,0524	.
EVA/E (15)	.	0,0008	0,0176	-0,0066	-0,0463	.	.
EVA/E (16)	.	0,3094	0,3289	0,2585	0,3080	.	.
EVA/E (17)	.	0,0055	0,0080	-0,1418	0,0013	.	.

We can see the improvement rate of equity in analysed Czech companies is low; even it reaches a negative value in some cases.

5. Concluding remarks

As described above, the expenses/revenues rate has to be considered not only from the point of control of profitability but also from the point of control of EVA-value.

Nevertheless, if value of this rate is put before the value of break factor ψ (in region of positive numbers), the value of return on expenses will reach a higher value then the expenses/revenues rate. A company will achieve better economic result.

Furthermore, if a company uses positive influence of financial leverage (the return on assets is higher then the interest rate of debts), the increase of financial leverage is advantageous. The both dimensions of influence on EVA should be judged together, because increase of financial leverage - which often corresponds with simultaneous increase of total assets – will bring prosperity only if the performance based on enhancing return on expenses grows up, too. The practical positive fact is that the separation of the operational management and the financial management is not rational, because a company can lose a synergy effect which their combination could bring, namely by management of Economic Value Added, i.e. indicator that points at company's rate of wealth formation.

The – already known - knowledge about EVA and its connections can be completed, at the managerial control and search for solution options, with a relatively easy assessment of the profitability dynamism rate (by the position of expenses/revenues rate vs. the break factor ψ , i.e. vs. value $\psi=0,618$), and with an assessment of the force influence rate of the financial leverage on the EVA (by a substitution in the formula [18], where $F_{FL} = C/E$).

Managers try to simplify their managerial work justifiably in order to accelerate decision processes. Exactly and concisely mathematically formulated relations can help them in this way.

Table of abbreviations

EVA	Economic Value Added	Ex	expenses
NOPAT	net operational profit after tax	R	revenues
WACC	weighted average costs of capital	ψ	break factor
C	capital	FL	financial leverage
EBIT	earnings before interest and tax	S	Sales
I	interest	g^*	growth rate
T	tax rate	PR	payment ratio

EAT	Earnings after tax	A	assets
E	equity	ROA	return on assets
D	debts	ROE	return on equity
I	interest rate	F _{FL}	Force of financial leverage

REFERENCES

1. BREALY, R.A., MYERS, S.C.: Principles of Corporate Finance. In Czech edition: Teorie a praxe firemních financí. Praha: Computer Press, 2000
2. CAGLE, L., SMYTHE Jr., T., FULMER, J. Implementing EVA®: One company's story. Journal of Corporate Accounting & Finance 3 (14), 65-70, 2003
3. DRUCKER, P. F.: Výzvy managementu pro 21. století. (Management Challenges for the 21st Century.) Praha: Management Press, 2003
4. FERNANDEZ, P.: Valuation Methods and Shareholder Value Creation. New York: Academic Press, 2002
5. GOLDBERG, S. R.: Economic value added: A better measure for performance and compensation? Journal of Corporate Accounting & Finance 1 (11), 55-57, 2001
6. HIGGINS, R. C.: Analýza pro finanční management. (Analysis for Financial Management.) Praha: Grada Publishing, 1997
7. KEYS, D. E., AZAMHUZJAEV, M., MACKEY, J.: Economic Value Added®: A critical analysis. Journal of Corporate Accounting & Finance 2 (12), 65-71, 2001
8. KRAFT, J.: Firma v makroekonomickém prostředí. (A Company in Macroeconomic Environment). Ústí nad Labem: Acta Universitatis Purkynianae, 2002
9. KRAFTOVÁ, I., PILAŘ, J.: EVA – investorské kritérium hodnocení firmy: Vybrané problémy praktické aplikace u českých podniků, E+M Ekonomie a Management 1(IV), 34-38, 2001
10. KRAFTOVÁ, I., VOTAVOVÁ, M.: Zlomový faktor ψ mezi ukazateli rentability. E+M Ekonomie a management 2 (II), 31-33, 1999
11. MAŘÍK, M.: Vazba mezi plánovaným způsobem financování podniku a jeho výnosovou hodnotou. Účetnictví 3(XXXXVI), 34-36, 1999
12. STEWART, G.B.: The Quest for Value. The EVA Management Guide. Harper Business. Stern Stewart, 19991

THE NEW TRENDS OF ADMINISTRATION (AS MANAGEMENT) IN THE SELF-GOVERNMENT

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ABSTRACT. This article presents a new point of view on the public administration. Modern goals must be understood in the conformity with new methods, which reflect three economic dimensions and ethical dimension. Quick quantitative and qualitative changes concerning an operation of the public administration together with a loading new managerial method must be under review not only from an economic perspective but also from an ethical perspective.

Preface

During the last decades in the western European countries and in the present times also in the CEE countries, the public administration is a subject to transformation which means that it is gaining qualitatively a new form under the rules of the various reform programs. Lots of these programs tend to turn the public administration to the public management. This tendency has occurred also in Slovakia. The reform of the Slovak public administration is based on two storey posts. On the one hand, it is the decentralization however on the other hand, it is a modernization. As for that modernization, according to the Concept of Decentralization and Modernization of Public Administration which was approved by the Slovak Government in 2000, it is defined as a preparation of superior legislation; a clear division of the powers, competences, and accountability; a raising performance; an insistence of high professional standards, and an observance of the rules and ethical norms by the public as well as civil servants within the frame of their reference to the citizens. The mentioned requests have to express themselves in all present methods of the public administration and in all its component parts – in a state service, self-government, and the corporations governed by public law too. The main goal of this paper is to show an importance of the public management's methods in term of their objectives.

Ethical dimension of modern management of public administration

Public administration as a science has been formed in an Anglo-Saxon literature, which emphasizes an importance of ethical independence idea. (Cox III, Buck, Morgan 1994, 16) These authors also emphasize that the public and civil servants' acts are as ethical as the political affairs. Lovaš (2002), quoting Lane and Anders, refers an ethical principle³ as one of the public administration sub-paradigm,

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³ Besides this sub-paradigm, there are some other important sub-paradigms: a political approach – the public administration as an executor of policies; a managerial approach / the public administration as an instrument which helps to achieve social and organizational performance; a legal approach – the public administration as an instrument for the exercitation of a constitution, and legal acts; an integral (complex) approach; historical approach, etc.

which sees public administration as a carrier of democratic values like a freedom, fairness, and human dignity.

We have to emphasize in compliance with afore said that the public administration without the ethical dimension or more precisely with a marginal position of it would not be able to complexly fulfill its functions, which belong to it in a social life. A deeper concern over the ethical dimension of the public administration and a corresponding discussion came to light in the late last century. Derlien (2000) says that the mentioned discussion has related to some ethical standards of the specific professions, especially in the public administration area. The most important problem which has being solved by that discussion is a topic of corruption. (Cox III, Buck, Morgan 1994, Derlien 2000). According to Dvivedi and Olowu (1988), a discussion concerning an ethics in public office has started significantly later because a bureaucratic morality⁴ was in the centre of observation in 1988.

The discussion about the ethical problems in the public administration has, according to Derlien (2000), its own regional dimension (however, he thinks of country in which the discussion takes place). Such discussion has started in the USA and has been exported to other countries later. The US government and the civil servants lost their credit in public by several outbreaks of the various scandals, for example a Vietnam War data falsification, Watergate, etc. That loss was a result of an ignorance of ethics in the political and administrative activities. We can say that such an unethical conduct was a reason of public's distrust upon government and its activities. In the connection, Etzioni (2002) claims that the unethical conduct or behavior has to be in generally turned down because it is non-acceptable.

An important instrument in a negative behavior control is an education. However, we have to emphasize in this point, that the ethical questions form an integral part of large political, social, legal, organizational, and technological problems – it is necessary to safely go through a minefield of social conditions where the ethics is just one of them. Etzioni (2002) says that none master of business administration student can complete his/her study without a knowledge of the ethical standards. An intermediation of ethics has to be obligatory part of every educational event.

A requirement of an ethical approach in the public administration is declared also by the important international organizations, like European Union (EU)⁵ or Organization for Economic Co-operation and Development (OECD). They emphasize necessity to suppress the corruption in the public administration as one of the most negative socio-political phenomena. The corruption, according to Derlien (2000), is a classical theme. The corruption in public service is a phenomenon which can be evaluated, in term of international conditions, only very difficult. A broad area of activities which can be marked as corrupt or associated with corruption contains the illegal, unethical, or inadequate actions. Although the corruption contains many activities, we can find some general attributes of corruption. In a study of OECD, the corruption is defined as a misconduct or misapplication of the public office or public resources for the private purposes (material or another). (OECD 1996, 13)

⁴ John Rohr deals with the conflicts within the decisions in the second edition of *Ethics for Bureaucrats*. Richard Chapman published a conference volume *Ethics in Public Office* in 1993. This period was fault because later there have been published many books and articles about this topic.

⁵ The Council of Europe passed the Codex of Behavior of the Public Servants in May 2000.

By reason of lingering the corruption, OECD fixes in its codification effort on an area of the financial corruption especially in the developing countries as well as the CEE countries (SIGMA 1998). In the centre of attention, there is a question: "Do we need a new ethics in the public administration?" (Löffler 2000) which occurred in every OECD country. As emphasizes Böhm (2000), OECD understands the ethics in the public service as a system or rules, which help to enforce the central values of public administration in daily life. On the other hand, he also requires 1) a covering the potential delinquencies in the offices, 2) a recovery of a public trust in public administration and its potentialities, and 3) a new formulation of a desired behavior in the public service.

The ethics in the public administration is closely associated with an organization and management of the public administration in the broadest sense of the word. Therefore, it is meaningful to define some rules of behavior for the individual situations. It is necessary to implement the modern values of public service in the public administration because it could help to bring the public administration closer to the citizens, and provide for its efficiency as well as transparency. The discussion about the ethics in the public administration is a response to its economization and a consistent loading of the new form of management too. However, it does not mean that the corruption as well as some other negative phenomena has backed out of the area of public administration. The odds are that the changes in this area mean its new quality in the context of an interaction between public and private. The characteristics of the private sector are implemented in the mentioned area constantly in a higher degree. However, it does not mean that the ethics dribbles out of the public administration. On the contrary, it has to become a meritorious area also in the new management of the public administration.

Modern administration (as management) and its objectives

In the present times ditto the actual theme is the effectiveness of the public administration assurance. It relates to the whole area of the public administration, especially that which regards the self-government. We can imagine it like a huge set of problems because the permanent changes which occur in the public administration bring with themselves also some new problems. And these problems must be solved along a provision of a regular operation of organization.

The problem is that there are not available any systems procedures and instruments which could be able to monitor the effectiveness of the applied resources. In general, we can define the effectiveness as a proportion of the outputs and inputs in some process. It presents a degree of a gaining the goals and aims. The area of public administration is a little bit different because its goals result from the laws as well as a public interest straightforward the public needs or demand. If we deal with the effectiveness, we have to also deal with a reply to a question: "What are the inputs and outputs in that process?" The inputs are all the applied resources, both material and immaterial, which will take a share in the outputs. By a simplification, we can express those ties in a diagram:

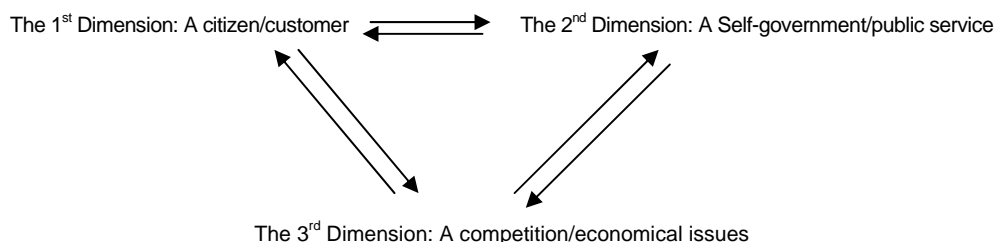
Inputs.....Realization Process.....Outputs
Functions and Goals		Benefits and Products

Every function has its own mold with these attributes:

- It should satisfy the citizens' needs.
- It should be concrete in order to determine the organization's goals and some potential benefits.

The inputs are easily measurable, especially by the own costs. As for the outputs, they are the results of the self-governing processes. It means that they are also considered the products. Rektořík (2002) calls the outputs benefits whereby the benefit is a rate of the product user's satisfaction, which is measured by two criteria – a performance and quality. The benefit in public administration is co-ordinate through a public choice or choice which is reinitiated by a mutual utility. Every organization must establish a system of indicators which will represent a degree of an accommodation needs. Y. Strecková (1997) says about a complicity in regard to a measurability of the outputs because there do not exist any maximization of profit linked with the delivering public services. The final product of the public services can have various forms because the output is not the same as the consumption. Adamaschek (2000) defines a relationship output – product as follows: It is an enclosed working outcome of some organizational unit which has its own material competence flowing from the law and it usually involves some fractional actions and operations.

If we want to evaluate the outputs we have to look for some applicable indicators by which the output will be defined as the performance containing three dimensions:



The managerial methods of modern administration

In the present times, a reply to question concerning a public sector and self-government functioning can be represented by the public management, or more precisely a management by objectives. A basic orientation to the costs and outcomes is reflected in a tendency to change a setting of budget. The public management is not expressly defined by some indicators however on the other hand, an important task belongs to its methods: a definition of main goal, a performance measuring, a setting of budget, a transfer of a scope of supervision from the processes to results, etc. One of the most important of these methods is the management by objectives however a task management operates in the self-government on the present. We can compare these two kinds of the mentioned methods in a figure (figure no. 1).

Figure No. 1

The differences between the management by objectives and the task management.

Activities	Methods of Public Management	
	Management by objectives	Task management
Base	creativity and initiative	directive decision (directions)
Objectives	decomposition	Directive
Formulization of objectives	initiative participation	superior unit
Concretization	subordinated units	superior unit

By the figure no. 1 we can see the differences between two kinds of managerial methods. Within the management by objectives, the objectives are not specified by some directive decisions. They are specified by the top-down decomposition. Each unit of the self-government independently looks for own way which provides a reply to question: "How to take part in the final objective?" The creation of objectives (within the management by objectives) means an initiative co-operation among the self-governing units. That co-operation leads up to a formulization of the objectives which are derived from the general primary objective. While the task management has many terminations, the management by objectives solves a time factor according to external as well as internal elements.

In addition to the decomposition of the objectives, there exist several other characteristics of the management by objectives, for example the specification of the objectives is not any one-way process, an existence of a bottom-up feedback, and a participation of the subordinate officers in the process of the formulization of the objectives.

During a realization of the mentioned objectives, a bigger place is given to the units of realization which can choose some own ways and activities toward a gaining objectives. The accepted objectives are the objects of supervision which is aimed at the variation. This supervision is called SMART⁶.

We have to emphasize that the new methods of the public management must be supported by the different setting of budget. In the connection we can say that a program-controlled setting of budget is able to replace a classic setting of budget – an expense setting of budget. The differences are in a figure No. 2.

Figure No. 2

The present situation in the area of setting of budget and the potential goal-directed change.

Indicators	Present situation	Goal-directed change
Approach to setting of budget	expense (offering) setting of budget	expenditure (query) setting of budget
Budget methods	financing of institutions - incremental approach	following the objects and performances
Receipts	brutto – setting of budget	netto - setting of budget

⁶ S – specific, M – measurable, A – agreed/accept, R – realistic, T – traceable.

Indicators	Present situation	Goal-directed change
Expenditures	supervision of processes	audit of the results and performances
Time horizon	short-term	long-term
Management	centralised and the performances oriented	decentralised and the relationship input - output oriented
Opportunities of supervision	ex post control	preliminary, ex ante control
Providing for services	systemless approach	pluralism and the mixture of all possessive forms

The insufficiencies of the expense (offering) setting of budget:

- The ultimate criterion for financing is an institutional aspect which means that the institutions are financing without a reply to question concerning a sense of existence of those institutions, or an effectiveness of its outputs if we compare them with the inputs.
- The absence of a cross connection between the receipts and expenditures in the sense of necessarily effective disposal of the resources.
- The absence of a system cohesion among the individual budget priorities within the context of the political decision-making and resources too.
- The administrators of the individual categories of budget prepare their proposals regardless of the other segments and general social priorities of the public sector.

As for the mentioned changes, it seems very probably that one of the most important changes has to concerning a transition from a bottleneck quantitative thinking to a qualitative thinking which will result in a different awareness of the self-government.

At the end we must emphasize that the quick quantitative and qualitative changes concerning an operation of the public administration together with a loading of the new managerial methods (like the management by objectives) has to be under review not only from an economic perspective but also from an ethical perspective. This is the main goal of the near self-governing future in Slovakia.

REFERENCES

1. ADAMASCHEK,B.: Efektivita vo verejnej správe. Bratislava: Verlag Bertelsmann Stiftung 2000. ISBN 80-968308-3-X.
2. BÖHM, W.D.: Brauchen wir eine neue Ethik im öffentlichen Dienst? In:Verwaltung Heute. Zeitung für Führungskräfte im öffentlichen Dienst. Beilage Wiener Zeitung Nummer 34/ September 2000.
3. DERLIEN,H.U.: Sozialwissenschaftliche Anmerkungen zur Ethik-Diskussion. In: Adalbert Hofmeister (Hg). Banberg: Bamberger Verwaltungswissenschaftliche Beiträge 2000. ISSN 0935-073 X.

4. COX III, W. R., BUCK, S. J., MORGAN, B. N.: Public administration in theory and practice. New Jersey: A Paramount Communications Company Englewood Cliffs 1994. ISBN 0-13-739384-9.
5. ETZIONI, A.: Die Erziehung der Unternehmensführer (The Education of Business Leaders). <http://www.dekomnetz.de/e2/e66/etzioni-businessleaders.html>.
6. Koncepcia decentralizácie a modernizácie verejnej správy. Bratislava: Úrad vlády Slovenskej republiky, 2000.
7. LOVAŠ, L.: Otvorené otázky viacnásobnej identity verejnej správy: Verejná správa ako praktická činnosť, vedná disciplína a študijný odbor. In: Zborník príspevkov z vedeckej konferencie Teória a prax verejnej správy (Ed. L. Lovaš). Košice: Univerzita P. J. Šafárika, Fakulta verejnej správy, 2002. ISBN 80-7097-519-9.
8. LÖFFLER, E.: Ethikdiskussion und Korruptionsbekämpfung im öffentlichen Sektor der OECD Mitgliedsländer (Referentin in der Abteilung für öffentliche Verwaltung (PUMA) in der OECD). In: Brauchen wir eine neue Ethik in der Verwaltung? (Hrsg. Albert Hofmeister) Dreiländertagung in Lugano. Schriftenreihe der Schweizerischen Gesellschaft für Verwaltungswissenschaften (SGVW). Band 40. Bern: Verlag SGVW 2000. ISBN 3-908128-40-4.
9. OECD (1996) Ethics in the Public Service. Current Issues and Practice. PUMA Occasional Paper No.14. Paris.
10. REKTOŘÍK, J.: Organizace neziskového sektoru. Praha: EKOPRESS, s.r.o. 2001. ISBN 80-86119-41-6.
11. SIGMA (OECD), with respect to MOE-5 countries speaks of Institutions for EU Membership, p.21) also OECD 1998. Recommendations of the Council on Improving Ethical Conduct in the Public Service (Document c(98)70, siehe auch <http://www.oecd.org/puma/gvrnance/ethics/>).
12. STRECKOVÁ, I., MALÝ, I.: Verějná ekonomie. Praha: Computer Press 1998. ISBN 80-7226-112-6.

THE FUTURE OF THE EUROPEAN UNION

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ABSTRACT. The future of European Union and its citizens – what might happen? The quality of life for the Europeans is influenced by different areas. This paper concentrates on the possible human and political consequences of the enlargement. It deals with the future of the euro zone and its economic management, and it describes other policy issues and areas.

The enlargement of European Union opened the door, firmly, to a partial and provisional immediate reform of the Community's institutions. It also gave new impetus to the deliberations of the European Convention.

Alongside these developments, the proposals made by NGOs on the quality of life in the future, tend to create a new framework for the future for Europe's citizens.

Consequently, I shall attempt to assess Europe's future in some of the following quite different areas:

- the quality of life for Europe's citizens — our rights, hopes, and realities
- the question of energy;
- the real implications of the enlargement process;
- the future of the euro zone and possible changes in the economic and monetary policies for the euro, notably for the Stability Pact;
- possible changes in other policy areas, and;
- the place of the European Union in the world — notably (but not exclusively) with regard to the United States, and above all the type of Union we can expect — federation, governmental co-operation or confederation?

Nothing could be more important to European citizens than the quality of life. As you may have observed on numerous occasions, Europeans (through, of course, the taxes they pay) expect to have access to: free education, free health care, and lots of free time. To this list, could be added the fact that - in many countries - the citizens also expect to have access to affordable housing.

Despite the laudable nature of this list, there are other policy issues that have an important effect on the quality of life of our citizens. Probably no area influences the quality of life more than energy, and the policies associated with its production and use.

In this connection, the energy crisis of the 1970s was a heaven-sent opportunity for the Europeans. Overnight, we were forced to save on energy consumption: thereby, helping to protect the environment. We decided, also, to become more self-sufficient in the field of energy production. Now, at the time of writing, a number of crises and price elevation have entered the picture.

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The scandalous and criminal break-up of the oil tanker, misnamed the Prestige, on the coast of Spain, and the criminal irresponsibility of the Spanish government in November 2002, demonstrated the grave inadequacy of European laws to protect our coastlines. It also demonstrated the danger of dependence on oil supplies. Equally, it places the European Union (and, indeed, China, India and other countries) in an unenviable position with regard to the United States, which appears to have an insatiable appetite for oil imports. Thus Europeans are faced with a number of options:

- they may consume less energy, and/or
- they may seek different (and hopefully more reliable) sources of oil and other forms of energy, and/or
- they may seek different renewable and more environmentally friendly sources of energy.

It is, therefore, of particular importance what Romano Prodi, the former President of the European Commission, have stated in October 2002: that the Union had set a goal of obtaining 22 % of its electricity and 12 % of its energy from renewable sources by 2010. To this end, the Commissioners convened a meeting of senior executives from major oil and automobile companies to advise the Union on the development of hydrogen fuel cells.

In a different but parallel area, in November 2002, the Commission published a major research agenda – including financing issues - to improve aircraft safety and reduce noise levels over the next 20 years. These acts done by the Commission suggest that there is an effort to improve the quality of life for Europe's citizens.

The agreement reached at the European Summit in November 2002 finally opened the door to the 'first wave' of ten candidate countries. It is not possible to emphasize enough the historic importance of this momentous decision. When, for decades, most of these countries suffered under the Communist yoke, few of them dared to dream that, within years of the fall of the Berlin Wall, not only would they become eligible for membership of the European Union, but that some would also join NATO! These are, then, glorious times, which nevertheless present both opportunities and challenges. I shall concentrate on the possible human and political consequences of enlargement.

The human consequences of this process cannot be emphasized enough. On one hand, we are about to welcome back citizens into their right full historic place in the European family; fellow Europeans who, in general, possess high levels of education. But on the other hand, we are running the risk of cutting off some Europeans from their traditional neighbors with whom they have had, for centuries, regular contacts. Here I refer to the traditional links between Poland and the Ukraine and Belarus. Clearly, on humanitarian grounds alone, some special arrangements should be made for these countries. Indeed, Poland has already gone so far as to suggest that a special protocol should be added to the accession treaties, similar to that given to Spain and Portugal in the case of Latin America.

So, how do we see the future? There will be costs — we are not absolutely sure of the real extra costs for the CAP² and Regional Policy due to the enlargement

² CAP – Common Agriculture Policy of the European Union, the most costing one, currently takes approximately half of the EU budget.

process. Some of the candidate countries (especially Poland) were not satisfied with the accession conditions (notably, for CAP payments). Somehow, these concerns will have to be met. But on the positive side we shall dramatically increase the diversity and therefore the human wealth of Europe. Also, the diplomatic presence of the EU in the world will be increased. This, in turn, should give a greater impetus for the creation of a Common Foreign and Security Policy.

In all this, the question of Turkey's possible membership of the European Union has taken on greater urgency with the new government in that country possessing a clear parliamentary majority. Furthermore, Turkey's strategic importance led (in November and December 2002) the EU to put pressure on its accession into the Union. Also, to emphasize his country's strong commitment to join the EU, the Turkish Prime Minister passed laws through the Parliament, which he hoped would satisfy the Union's political and human rights criteria. I believe that once this important country has fulfilled all the Copenhagen criteria for membership, it should be admitted — thus strengthening the Union's strategic importance.

Portugal, Greece, Germany and France have been examined by the European Commission for their non-compliance with the 3 % GDP budgetary deficit rule. It was also somewhat bizarre in that Germany, the original architect of the Stability Pact, was criticizing its inflexibility. All these observations simply reinforced the critics on the Pact who had opposed the idea of "one model for all EU members". Thus, what should be done? Can the Stability Pact be made more flexible?

Without simply rehashing all the arguments, the present situation does emphasize once again the observations that the European Union — or rather the euro zone — does not possess an automatic fiscal stabilizer policy, with automatic fiscal transfers. Thus, whilst waiting for this rather federal style evolution, what can and might happen at this moment?

Although, perhaps rather rudimentary, when examining the Stability Pact, one observes that countries may - so to speak - have made steps toward the reduction of their fiscal deficits. They could, for example, be given more time to do so. Also, probably of much greater importance, where a recession is imminent, countries could be allowed to use fiscal deficits for capital investment projects.

Looking, however, at the more international environment for the euro, it is going to expand, other countries are going to accept euro and join euro area. A number of the new EU members and candidate countries would eventually join.

The euro is already an attractive alternative to the US dollar. Furthermore, as the euro zone expands - and inside it a good economic, fiscal and monetary management is present - combined with the economic growth, the diplomatic strength of the EU will also grow.

Five policy areas are of immediate concern to us, all of which are currently undergoing changes, with longer-term modifications likely to be on the cards. These policy areas are:

- the CAP,
- competition policy,
- immigration,
- regional policy, and,
- the Single European Market (SEM).

Proposals for the reform of the CAP are still on the table. In 1991, the Council rejected - out of hand - Ray MacSharry's proposals for reform of the CAP, only to accept them a year later as the Community budget ran out of funds. If, therefore, as money runs short due to the enlargement process, proposals for reform will have to be contemplated.

In contrast with the CAP, there is much movement in the area of competition policy. As a gesture to silence his critics, Mario Monti, the former Commissioner for competition policy, has already decided to delegate (or to return) some responsibility for policy to the EU Member States. However, the new Commission will be much more strict in its, already, strong controls over cartels. It will, henceforth, empower their inspectors to search the homes of company employees for evidence where cartels are being investigated.

In recent years, immigration has been a very hot issue in most West European countries. Fears about migrants have been heightened by the rise of extreme right wing parties in a number of countries. These fears, however, contrast with basic facts concerning the advantages of immigration, and the shortage of skilled workers in some countries, and static or even falling birth rates in some parts of the Union. And it is this shortage of skilled workers which is prompting some governments to issue temporary work visas for nationals of non-EU Member States. In view of the shortage of such workers, this policy is likely to continue.

The Union does, nevertheless, have a common policy regarding legal migrants. In the case of illegal migrants, the Commission made strong proposals for the adoption and implementation of a common policy in the field. These efforts are likely to continue. In all this, the accession of the candidate countries, with - in many cases - their educated and skilled citizens, will prove to be a much-needed injection of new blood for the Community.

Changes in regional policy are necessary in light of the immediate prospect of enlargement. But in December 2004 there were still no immediate signs of profound proposals for policy changes. However, once enlargement is a *'fait accompli'*, some changes have to be made. Once again, in the absence of changes in the mode of calculation for eligibility for regional aid, the Union will face two options — to give less to some current EU Member States (for example, the Republic of Ireland) and/or to increase the budget for regional aid. The latter proposal is unlikely to be accepted by, for example, the Netherlands and the UK.

In all this, it is essential that the EU makes more progress in completing the Single European Market (SEM).

It was finally agreed that the energy markets would be opened up in 2007. But, in contrast, the situation with the telecommunications market is unsatisfactory. The same applies to the completion (or lack thereof) of the European Financial Market and monetary unification. Furthermore, EU Member States are dragging their feet in applying SEM directives. The completion of the SEM will surely improve the standing of the EU as an international economic and financial powerhouse.

Finally, we come to two issues, which, to a large degree, are at the very basis of the European Convention:

- the place of the European Union, and,
- the type of Union we can look forward to — federation, confederation, with a possible right to secede, or union of co-operation between Member States?

I look forward to the European Union — '*par la force des choses*' — assuming a greater role in the world. In the economic and trade field, there are only two major players, the USA and the EU. In the social field, the Union is a beacon of light and hope for all.

As already observed, the euro — and its wider use at international level — will confer an even more important currency status on the Union. Likewise, the enlargement will give the EU greater strength in the international trade arena. Of increasing importance is the Union's acceptance of a greater military role for itself in Europe.

The EU itself has, now, agreed to create its own RDF (Rapid Deployment Force), and Messrs Chirac and Schroeder made additional proposals for the further enhancement of the EU's military procurement, although this last proposal was rejected by Mr. Blair. In all this, one most important factor in the military equation has frequently been overlooked, that is, Turkey's possible membership of the EU.

As the most important military power in Europe (in manpower terms) and as the most strategic bridge between Christian and Muslim Europe, the Turkey potential importance for the Union's future diplomatic and military role in the world cannot be overestimated.

But the Union's future role as a beacon of light and hope in the areas of human rights and social policy is its most enviable asset. The European Union, with its diverse cultures and peoples and the attractive policies, mentioned before, will be an example for attempts of regional integration in other parts of the world.

But, most important of all, it would (and already does) offer an alternative to the disgraceful 'cowboy' capitalism of Russia, the more easy-going capitalism of the United States, the Communism of North Korea, and the rampant corruption existing in 50 many other parts of the world. It is no wonder, then, that post-apartheid South Africa, with its glorious new constitution (the most liberal in the world) has sought help and inspiration from the European Union. We Europeans are indeed fortunate!

REFERENCES

1. Theo Hitiris: European Union Economics, Prentice Hall, Harlow, England, 2003
2. Ali M. El-Agraa: The European Union Economics and Policies, Prentice Hall, Harlow, England, 2003
3. Madeleine O. Hosli, Adrian van Deemen, Mika Widgren: Institutional Challenges in the European Union, Routledge, London, United Kingdom, 2002
4. Roger Levy: Implementing European Union Public Policy, Cheltenham, United Kingdom, 2003
5. www.europa.eu.int

THE DEFLATION POLICY

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ABSTRACT. The paper below describes two methods for inflation reduction in modern economies: the “orthodox” way - through which government tries to persuade the market that it is ready to cut the demand at any cost; and the market expectations on inflation evolution. Each method is analyzed and presented with its weaknesses and strengths. In conclusion, the authors try to answer to the next question: “Which method is the best?”

The deflation represents the process of inflation reduction.

The economists are conscious that the monetary policy generating “surprises” has real effects, while the monetary policy realized in harmony with protagonists’ expectations has not such effects. This means that if it succeeds to persuade the economic protagonists about the policy success of the inflation reduction, the deflation will not have real effects and will not be followed by losses in production.

Generally, the deflation policy is oriented on the reduction of the expectations on inflation.

From the cost of deflation point of view, the most important is the persuasion method:

1. the “surprisingly” reduction of the demand, when the sellers realize, from their failures, that they have been establishing to higher prices;
2. the protagonists’ “gradually learning”, with others instruments, about the fact that the demand, and the inflation too, will diminish. As this “learning” is more convincing, the production losses will decrease.

1. The demand policy

The demand reduction can be realized through budgetary/ fiscal policy or through monetary policy.

1.1. *The effects of fiscal policy on demand*

The appreciation of budgetary balance will cause the reduction of the demand. The government expenses are a part of the total demand, and the taxes affect the demand by modifying the disposable income of market protagonists.

One of deflation effect is a drop on demand which would trigger a decrease in sales and would force the vendors to cut prices.

Such an explanation seems to be logical and simple, but it has to be adapted to generate the idea that the inflation is a monetary phenomenon, which can be modified only by the variation of the broad money.

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The budgetary balance is not equal with the broad money because the deficit may be financed also from public borrowing. If the national bank does not react to this phenomenon by decreasing the broad money, the inflation will not decrease. One clear conclusion: the reduction of government expenditures has effects on inflation only if it is accompanied by the slow-down of broad money growth.

What are the effects of budgetary balance appreciation? First, the reduction of interest rates, which could stimulate the investments and the domestic consumption, would engender increases of the domestic demand, covering the reduction of government expenses. In this manner, the effect of budgetary policy is neutralized.

Second, the national bank can maintain the initial level of interest rate by selling T-bonds and the domestic demand remain unchanged. As a result, the amount of broad money decreases, the demand decreases also, and the deflation process is triggered.

We may conclude that the appreciation of budgetary balance, through fiscal policy, allows monetary policy to reduce the amount of broad money without an increase in interest rate.

We emphasize that the deflation process based on the demand reduction is linked to the "unexpected". If this process was already predicted by the market, it could lead, at most, to structural alterations. This is the case of government expenditures. An expected increase in taxation level will not lead to a demand reduction because the people will be already adapted to this change. For example, if the companies know that in a town a subway will not be built, they would not developed constructions capacities connected to subway and their activity will be based on the domestic demand from other fields of activity.

Whereas the requirement of "unexpected" modification of demand is realized, it is difficult to talk about the inflationary or deflationary effect of the demand maintaining a certain level of budgetary balance. This does not mean that the budgetary balance do not play a significant role in the deflation policy. Its role is emphasized by the impact on the balance of payments and on the protagonist expectations, not on the demand effect.

1.2. The monetary restriction

The second instrument for the demand reduction is the monetary policy - the policy of modifying the amount of broad money.

On the long term, the broad money gives the level of prices. As a result, by modifying the broad money, on the foreseeing future, the deflation policy will be efficient.

Such a way of thinking is a logical one, but it is not enough because it does not say anything about the short term. It is not use to know the target if the way of reaching it is impracticable.

What does happen in the "transition" period, when the market still not accepts the deflation target? Is it capable the monetary policy, through "demand surprise", to force the deflation before the great reduction of demand? The great reduction of the demand can bury the economy and the society will consider the deflation costs too great.

The monetary policy does not establish the broad money directly; it uses the bonds market through open-market policy. The buying and selling operations on the bonds market influence the interest rate or the exchange rate, but the effect on the broad money demand depends on the reactions of the other players on the market. The difficulty is represented by the fact that the inflationary expectations depend on these instruments.

Their decrease of broad money or at least, the neutral effect of it shows only that the expectations on the interest rate evolution or exchange rate evolution are favorable.

Let's see which the effects are when the national bank raises the interest rate through T-bonds issues. The rise of T-bonds interest rate will decrease the aggregate demand (due to the fact that the actual expenses are "more expensive" than their level in the future, so the actual demand decrease). This is happening if the expected inflationary content of the interest rate does not grow enough to neutralize the augmentation effect of the interest on the real interest rate.

The increase of interest rate by the national bank can be received by the market in two ways:

a) in a *favorable* manner considering that the interest rate is higher because the national bank decreases the money supply by selling bonds. In this case, the market considers that the increase of interest rate is not inflationary and its effect is to slow down the prices. If the process of price adjustment is instantaneous, theoretically, it is no need that the increase of interest rate take place, because it is enough a rumor that the national bank has the intention to reduce the broad money with the intention to cut prices and money demand. The decrease of money demand is compensated by an increase for T-bonds demand which could balance the money supply of the national bank.

b) in a *negative* manner considering that the interest rate is higher due to an expectation of higher inflation in the future, and the prices will rise. If the price adjustment needs time, then, temporary, the real interest rate would rise, but, finally the inflation reach a higher rate and the real interest rate does not change. The deflation trial has an opposite effect.

In reality, the both explanations may materialize, but the final conclusion is that the success or the failure of deflation policy depends on what the market thinks about it (how the market perceived it – as a positive phenomenon or as a negative one).

2. The demand policy, equilibrium rapport and credibility

The people expectations may be influenced in other ways, also.

The dimension of interest rate can influence the value of the real interest rate, which, on the short term could reduce the real demand, but on the long term the inflationary pressure of the market rises.

In Romania, the general opinion is that the economical policy tries to solve the social tensions through inflation. As a result, a fall in demand which generates the real price deformation is risky because it increases the expectations on inflation. It is possible to neutralize completely the effect of demand reduction or even to pass it under the effect of rising inflationary expectation, as a secondary effect. So, in the case of deflation policy based on the demand restriction it is possible that the final value of the inflation to be greater than the initial value.

How is it possible to appear structural disproportions between the relative prices and demand? For example, if the case of interest rate increase is not used in connection with government expenses constriction and with other factors which are unfavorable from the point of view of market expectations, under the effect of the real interest rate increase the investments are decreasing and the foreign currencies are over valued. Even if the public demand decrease, there are some fields of activity in the economy which are not affected by the demand reduction. In the adjustment period, the export expenses do not drop at the same pace with the incomes, as follow the balance of current payments is depreciating and the country debt increases. During this period of time, the expectations on inflation are not necessary the same. If the differences are confirmed and their effects are visible, the market appreciates more and the more that the government is not consequent with the deflation policy, the inflation expectations are growing.

The deflation can be sustained only if the demand continues to decrease. It become visible a race between market expectations and the economic policy of the government. The winner depends on the government capacity to convince the market that it would change its behavior and instead of a flexible policy, which used the inflation like instrument to reach economy stability, would use economic policy which targets the inflation reduction. If the government actions fail, the deflation will not be realized. But, if they are successful, the deflation reached its goal, but is not sure that it worth the imposed sacrifices.

What is the difference between the policy dilemma and the decisional situation from Friedman – Phelps model?

In the case of Friedman – Phelps expectations the market persuasion has no influence the expectations. The deflation costs, theoretically, can be calculated on the basis of past data, because the lost output will be identical with the positive output caused by inflation. It must decided if the “gain” realized by inflation worth to be the sacrifice to reestablish the level of prices and if the people want to bear this loss once at a time or gradually, during a long period of time.

In a more complicated hypothesis of expectations the deflation costs can not be calculated from the inflation data from the past. Of course, the past has an important role in establishing the credibility of the actual economic policy, but from here we can not deduce the inflation expectations of the market, because in the present the market is not supposed to react to the economic policy in the same way like in the past, waiting for substantial changes.

3. The unmediated influence on the expectation

Ideally, the deflation can be realized without costs. It is enough that the government establishes its policy target: how much does it want to reduce the inflation. If all market participants would believe that the inflation target would be reached, the deflation will be realized without sacrifices and costs. But, something like this must be done through market persuasion. The credibility depends on a variety of factors and, off course, on the economic policy.

3.1. *Equilibrium and historical conditions*

The obtained credibility belongs to the past: the market evaluates the economic policy through its “achievements”. From this point of view, the deflation policy starts with a disadvantage: a deflation policy is not necessary, if inflation did not exist before. The market conviction has to be based on a change.

The central idea of the credibility is that the inflation causes social tension annihilation. If the market opinion is that the economic policy tries to reduce the tensions through inflation, than they must eradicate the tensions. Here, by "tensions" we mean the alteration of some proportions which on the long run must be realized. For example: the income-price ratio inside economic sectors (wages, profits, exchange rate and the domestic level of prices), the budget balance or the external or internal debt.

It is expected that – in Romania - any correction produce inflation. More the correction is necessary, the higher will be the expectation on inflation and as consequences the deflation actions will lose their reliability. The balance of payments depreciation highlights the under-valuation of national currency, the financing of budgetary deficit through monetary supply, and the increase of the relative prices instability can "prevue" a faster increase of prices in other sectors "left outside inflation phenomenon", and all these would determine a rise in inflation rate.

The economic stability and the economic national development have another role, too. A deflation target may be credible only if the expectations on inflation are not confirmed. If it seems that the policy is realized "against the market will", than the resistances are not useful and the expectations accept the target.

If the policy can convince the market that it can bear any cost in order to achieve the target, it becomes acceptable, and by paradox, it will not be necessary to carry these costs. But, such a situation can be realized only with a consistent policy "reserve".

If the pace industry growth is high, the unemployment is at low level, the budgetary deficit and the external debt are low, too, and than in this case it is easy to believe that the policy is able to make any sacrifices to accomplish the deflation target.

The setting and the successful achievement of a modest inflation target at the beginning may prove to the market that the policy is capable to reach more ambitious targets in the future.

3.2. The anchors: budgetary policy, exchange rate policy and income policy

An important role in the market persuasion is the fact that the policy pre-establishes some nominal values (prices, wages, expenses), at levels which try to prove sobriety in reaching targets.

These values can be the inflation's anchors, because their stability forces the economic sectors to reach them. The anchors influence the protagonists' expectations, convincing them that if they do not establish the prices according to the anchors, they would have a lot of chances to fail. A protagonist sets up the right prices if he can preview exactly the majority's choice: if all of them cut prices and he is the only one increasing them, than he will be eliminated from the market. If the minority is convinced that the majority reduces the inflation, pursuing its self interest, the minority will do the same thing.

For example, if the government schedules its expenses according to the inflation target, this will prove enough severity and determination, because the budget crash represents a serious loss of prestige. A price policy based on an agreement between government and utility companies owned by the state may play the anchor role.

The wages are the most important anchor. The wages and the prices have the same economical content, the wage being the price of the labor force. Although the wages do not appear in the price indices, throughout the expenses they “determine” approximately $\frac{2}{3}$ from the prices’ value. This means that $\frac{2}{3}$ from incomes are used for paying wages. As a result, the reduction of the $\frac{2}{3}$ from the “price” will not represent the final price reduction, but it would generate an increase of $\frac{1}{3}$ in income gains. The income gains are determined by wages, and not by the inflation expectations.

A main role in deflation without costs process is attributed to the centralized wages negotiation process. This can be realized only in those countries where the labor unions have an important role in wages negotiation. Here, the unions have a monopolist position of monopoly in salaries negotiation. For example, inside France, the unions represent the interests of 10 – 15 % of the employees, a share considered big enough to use wage negotiation as an anchor for the whole economy.

In France, in the inflation reduction process, during 1980s, the government income/ budget policy had an important role: the synchronization between salaries negotiations and inflation targets.

In Romania, the role of centralized wages negotiation process is ambiguous. Of course, if it is functional, and this instrument might be an efficient economic policy in the attempt of inflation reduction.

The use of the anchors presented above, include a considerable risk: if the past experiences and the equilibrium hypothesis are absent or the demand policy does not support them, the credibility of deflation policy drops off. If an ambiguous goal is established for the exchange rate, while the situation of the imports/ exports is an unfavorable one and the domestic demand is reduced, the stability of the commercial balance can be ruined. This will deteriorate the credibility and may lead to an unaccomplished inflation target.

4. Points of view of the strategically change

The key of the deflation policy is the market persuasion about its success. As we saw, this conviction can be realized in two ways.

The first strategy is the “orthodox” way, which runs according to the Friedman – Phelps model: we persuade/ convince the market that we are ready to cut the demand at any cost and, if it is necessary, we maintain the interest rate at a high level and/or we use the over valuation policy for the national currency. The persuasion takes place through demand reduction, but if the intentions regarding deflation are credible, a modest reduction of the demand it will be enough and the expectations will follow the intentions.

The second strategy targets directly the expectations and starts from the hypothesis that not only the majority determines the expectations on inflation, but the market behavior, too. If it is true, why the market expectations can not generate a deflation? It is necessary to built progressive the market trust in the economic policy. The market confidence along the economic stability would create a positive trend which could reduce the inflation. We arrive to this conclusion if we analyze the inflation in the former socialist countries, during 1980s. It is not sure that inflation was generated by a rising in demand. It is possible that a negative psychosis

started as a result of the transition to the market economy. The lack of confidence in the economic policy collaborated/ correlated with this negative psychosis lead to a rapid increase in prices. If this was possible, why we could not attempt to use the "other face of the coin"?

Which is the best strategy? The answer depends on the initial conditions: the society resistance capacity to this strategy, the price of assumed risks, and the credibility of the economic policy. These conditions are different from country to country and from period to period.

If the strategy which aims the expectations fails, its costs are low: the only "cost" is the fact that the deflation does not appear. On the other side, in the traditional strategy, the failure will produce not only the loss of the credibility, but also an increase of production costs. The effect can not be predicted. The costs fluctuate between zero and infinite: all depends on the policy credibility. As a fact: the "orthodox" strategy is more risky and it is implemented only if the economy has the capacity to support the failure costs.

The strategy built on the "expectations" is free, but because it is oriented only on one of the two factors which determine the inflation, it is expected to have low level of efficiency.

But if initially, the economy credibility is low, it is normal to choose this strategy rather than the "orthodox" one, which has high costs and their amount are in inverse ratio with the credibility of the economic policy.

REFERENCES

1. Burda, M.; Wyplosz, Ch. – Macroeconomie. Perspectiva europeana, Ed. All Beck, București, 2002
2. Frisch, H. – Teorii ale inflatiei, Sedona, Timisoara, 1997
3. Hardwick, Ph.; Langmead, J.; Khan, B. – Introducere în economia politica moderna, Polirom, Iași, 2002
4. Sahay, R.; Vegh, C. – Inflation and stabilization in transition economies: A comparison with Market economies, IMF, WP nr. 95/8January, 1995
5. Suján, I. – Role of macroeconomic policy in the process of economic stabilization in Central Europe, in World economy, July, 1994

EUROPEAN UNDERTAKINGS OF COLLECTIVE INVESTMENTS IN TRANSFERABLE SECURITIES

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ABSTRACT. Comparative to American mutual funds, the European investment funds are less known and less understood among individual investors. The present papers presents the main features of European investment funds market and its perspective for the future and a brief comparison with the American mutual fund market is included.

1. Regulations concerning UCITSs

The term "mutual fund" is not frequently used in Europe by professional, or by investors. Instead, the term "investment fund" is much more common due to the great variety of investment fund types scattered all over Europe.

Before 1985 it was difficult to include various European investment fund types in a category or in other, due to every European country particular situation, despite the presence of FEFSI – Federation Européenne des Fonds et Sociétés d'Investissement⁴ – founded in 1974 in Brussels, Belgium.

The year 1985 marked the beginning of "pan-European investment fund history"⁵ with a directive 85/611/EEC designed to help the creation of a single European market for open-ended investment funds through harmonization of laws, regulations and administrative provisions regarding those funds.

The directive 85/611/EEC is known as "UCITS – undertakings of collective investments in transferable securities - Directive". The UCITS Directive was amended with the following directives:

- No. 88/220/EEC of March 22, 1988;
- No. 95/26/EC of June 29, 1995;
- No. 2000/ 64/EC of November 7, 2000;
- No. 2001/107/EC of January 21, 2002; it is known as the "Management company" Directive;
- No. 2001/108/EC of January 21, 2002; it is known as the "Product" Directive.

UCITS Directive was, also, completed with two recommendations in 2004:

- No. 2004/383/EC of April 27, 2004 concerning the use of financial derivatives for UCITS;
- No. 2004/ 384/EC of April 27, 2004 concerning the simplified prospectus.

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⁴ The European Federation of Investment Funds and Companies; the web site: www.fefsi.org. Romania is not a FEFSI member.

⁵ FEFSI – Investment funds explained.

The UCITS Directive - with all amendments included – considers UCITS to be "undertakings the sole objective of which is the collective investment in transferable securities and/ or in other liquid financial assets of raised capital from the public and which operates on the principles of risk-spreading" [85/611/EEC, art.1(2) amended].

Further, art.1(2) develops the idea: UCITSs" units are, at the request of holders, re-purchased or redeem, directly or indirectly, out of those undertakings" assets.

So, under the UCITS directive, UCITSs are – by definition – *only open-ended investment funds* marketed to the public under the following forms:

- ✗ as common funds managed by management companies, under the law of contract;
- ✗ as unit trusts, under the trust law;
- ✗ as investment companies, under statute.

Some authors [13] consider that UCITS definition mirror the US definition of mutual funds.

We consider that the UCITS definition create a distortion from the "classical" American definition mainly through the corporate investment funds presented below.

The investment funds" forms mentioned above needed further explanations. FEFSI develop the subject further by breaking the UCITSs in two broad categories⁶:

- **contractual funds** – include *common funds* and *unit trusts*; the main features of these funds are:
 - ✓ they are constituted either under the law of contract or under the trust law;
 - ✓ these funds do not have legal personality;
 - ✓ every fund issues units and its investors are called unit holders;
 - ✓ the funds are pools of money and are run by management companies; a management company is responsible for all matters regarding the fund; its management activities must pursue the sole interests of the investors/ unit holders;
 - ✓ the presence of a depositary is compulsory; the depositary is charged with the safekeeping of fund's assets and monitors the management activities;
 - ✓ the unit trusts are specific for UK and Ireland, based on trust law; broadly speaking, the trustee – the independent person who holds the assets of the investment fund for the benefit of the underlying investors – is associated to the depositary of the Continental Europe.
- **corporate funds** – described also as *investment companies*; in French speaking countries their main form is: SICAVs⁷; in UK and Ireland these funds are known as OEICs⁸; their main features are:
 - ✓ these funds do have legal personality and are structured like a company;
 - ✓ they issue shares; the investors are – simultaneously – the shareholders;

⁶ FEFSI – Investment funds explained.

⁷ SICAV stands for Societe d'Investissement a Capital Variable.

⁸ OEIC stands for Open-Ended Investment Companies.

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- ✓ the investment company usually delegates the investments and administration tasks to a management company;
- ✓ the presence of the depositary is compulsory in most of the cases; its responsibilities are the same as for a contractual fund.

An overview of UCITSs legal forms across Europe is presented in table number 1.

Table no.1

FEFSI" members	Contractual form – common funds	Trust form	Corporate form
1. Austria	- Kapitalanlagefonds; - Spezialfonds	Not permitted	Not permitted
2. Belgium	- Fonds Commun de Placement (FCP); - Fonds d'Epargne – Pension	Not permitted	SICAV
3. Czech Republic	- Otevreny podilovy fonds (OPF)	Not permitted	Not permitted
4. Denmark	- Not permitted	Not permitted	Investeringsforening
5. Finland	- Sijoiturahasto	Not permitted	Not permitted
6. France	- Fonds Commun de Placement (FCP)	Not permitted	SICAV
7. Germany	- Spezialfonds - Publikumsfonds	Not permitted	Investmentaktiengesellschaft
8. Greece	- Investment (mutual) fund	Not permitted	Portfolio Investment Company
9. Hungary	N/a	N/a	N/a
10. Ireland	- Not permitted	Unit Trusts	OEICs
11. Italy	- Fondi Comuni di Investimento	Not permitted	SICAV (Società d'Investimento a Capitale Variabile)
12. Liechtenstein	- N/a	N/a	N/a
13. Luxembourg	- Fonds Commun de Placement (FCP)	Not permitted	SICAV
14. Netherlands	- Not permitted	Fonds for gemeenerekening	Beleggingsmaatschappij
15. Norway	- Verdpapirfonds	Not permitted	Not permitted
16. Poland	- Stowarzyszenie Towarzystw Funduszy Inwestycyjnych w Polsce (STFIwP)	Not permitted	Towarzystwa Funduszy Inwestycyjnych – Spółka Akcyjna
17. Portugal	- Fundos de Investimento Mobiliario	Not permitted	Not permitted
18. Spain	- Fondos de Inversion Mobiliaria (FIM)	Not permitted	Sociedades de Inversion Mobiliarias de Capital Variable (SIMCAV)
19. Sweden	- Vaerdepapirfonders	Not permitted	Not permitted
20. Switzerland	- Effektenfonds	Not permitted	Not permitted
21. United Kingdom	- Not permitted	Unit Trusts	OEICs

Source: FEFSI – Investment funds explained.

As the table no.1 shows, the UCITSs industry across Europe is dominated by common funds, organized under the law of contract. They are very similar with the American open-ended mutual funds.

The corporate form of UCITSs – permitted in 12 of 21 countries – can create confusion, because they can easily be leveled with the American closed-end mutual funds.

Due to the fact that both unit trusts and corporate investment funds are considered UCITSs, or open-ended investment funds, we kept them included in the data used for the present analysis.

The UCITS Directive was issued as a product-directive and tried to create a common language and a common platform for open-ended investment funds all over Europe, mainly in European Union member states. All over Europe, it is clear that UCITS Directive cover those investment funds fulfilling the following conditions:

- are domiciled in an European Union member state;
- are publicly offered;
- are repurchased or redeemed at their net asset value on unit holders' requests;
- are invested in transferable securities and money market instruments;
- are operated on the principle of risk-spreading;
- entrust their assets to a depository.

For the investment funds fulfilling the above conditions, UCITS Directive had and has the following objectives:

- ✓ to create similar competitive conditions for UCITS at European level; this objective could be achieved through – what was considered in 1985 – minimal harmonization of national legislations; later it was realized that all European Union member states should establish regulatory schemes regarding:
 - investment policies;
 - public disclosure;
 - structure and control.
- ✓ to ensure an effective and uniform protection of UCITS investors all over European Union; the idea of this objective was a very good one, but was difficult to be put in practice; only since 2002 concrete steps were made in this direction, as follow:
 - to ensure investment diversification and risk-spreading; a special directive was issued in 2002 regarding the use of financial derivatives by UCITS to prevent a risk concentration;
 - to offer comprehensive information for investors; the effort of introducing uniform simplified prospectus started in 2002;
 - to ensure effective supervision and control of UCITS and their management companies; the separation of UCITS management and UCITS assets safekeeping is considered crucial, with the depository supervising the management company activities.
- ✓ to simplify cross-border marketing, advertising and sales of UCITS inside European Union; to achieve this objective, the UCITS made a big step forward imposing the mutual recognition of authorizations; the UCITSs under this directive receive an "European passport" and could be freely marketed across European Union; but any UCITS need to register in

the host-country and must comply with its laws and regulations; the UCITS Directive insist that – as in home-country – the UCITS" management company should ensure:

- the payments to unit holders;
- the repurchasing or redeeming of the units;
- the necessary level of disclosure;

in host-country too.

The ideas promoted by UCITS Directive are excellent, but their implementation was and still is very slow. As the FEFSI Regional Report on Europe shows, on September 9, 2003 parts of UCITS directive were implemented as framework regulations or subordinated measures **only since 2002**. This delay was, partly, due to the fact that only the UCITS Directive"s amendments issued in 2002 – through the "Product" Directive and "Management company" Directive were clear enough and were accepted by the European Union member states.

The "Product" Directive expanded the UCITSs coverage to: funds of funds⁹, index funds¹⁰ and derivative funds¹¹ and clarified the idea of money market funds. Despite these amendments to UCITS Directive, the following problems occurred:

- some countries do not include the funds of funds under the UCITS umbrella;
- the exchange traded funds¹² have no regulation and the European Union member states already developed their own approaches on these funds [10];

⁹ The funds of funds – as the 5th edition from 1998 of Barron's Dictionary of Finance and Investment Terms reveals - are mutual funds that invest in other mutual funds. These funds are able to move money between the best funds in the industry, increasing investors' returns and offering them a higher level of diversification.

The Oxford Dictionary of Finance from 1993 describes the funds of funds are unit trust belonging to an institution in which most of its funds are invested in a selection of other unit trusts owned by that institution. This investment instrument is designed to give maximum security to the small investors by spreading the investments across a wide range of other instruments.

Both definitions reveal the same idea: of pool of money being invested in other mutual/ investment funds – usually managed by the same company.

¹⁰ An index fund - as the 5th edition from 1998 of Barron's Dictionary of Finance and Investment Terms reveals – is a mutual fund that has a portfolio matching that of a broad-based index. The idea behind this type of fund is: it will keep the pace with the index being tracked and the costs of managing an index fund are lower due to the passive form of administration.

¹¹ The derivative funds developed during 1990s. They are fund based on derivative instruments and are a highly speculative type of investments. These funds are exposed to a great fluctuation than other funds due to the sharp price evolution of derivative instruments. The elements of this definition are from www.bve.ch/glosasry.

¹² An exchange traded fund (ETF) is a cross between an individual stock and an index fund. Short-term traders treat ETFs as stocks that have the characteristics of index funds. The US Securities and Exchange Commission regulates ETFs as mutual funds that have characteristics of stocks. Like individual stocks and closed-end funds, ETFs can be bought and sold continuously through a trading day. ETFs represents an entire index. This definition is presented by A. Richard Jr in All about Exchange Traded Funds, McGraw-Hill, 2002.

- the index tracking funds have difficulties to be recognized cross-border at pan-European level without a regulatory recognition of indexes [10]. This is a difficult problem due to the fact that at European level there are 22 national indexes and a bigger number of sub-indexes.

The "Management company" Directive tried to generate uniform regulations on the authorization and supervision of management companies, to introduce the same capital requirements and to impose the idea of simplified prospectus. By the beginning of 2004, the European Commission should issue new recommendations regarding the simplified prospectus and its implementation. The capital requirements are different, depending on national regulations which are a big problem for a UCITSs pan-European market.

Other problems UCITS Directive has to face are:

- ✗ the depositary; in this respect for 2004-2006 it was establish that further cooperation is necessary [12]:
 - to solve the problem of conflict of interest;
 - to clarify the extend of depositary"s liabilities;
 - to ensure the convergence of prudential requirements;
 - to enhance the transparency and the quality of information offered to investors;
- ✗ the corporate governance at UCITS and management companies level; this problem occurred in the aftermath of Enron scandal and produced some enhancement of regulations on [3]:
 - responsibility of the board, being the highest authority and coordinating the UCITS activities;
 - the duties of directors, reflecting the more important role of independent directors and their responsibilities in monitoring the portfolio performances in connection with the fund"s objective; this is a new approach, in the past the role of independent directors was overlooked.

With all these problems to be solved, it is easy to understand why the UCITS Directive implementation has such a slow pace and would need more time than expected to achieve a single European market for investment funds.

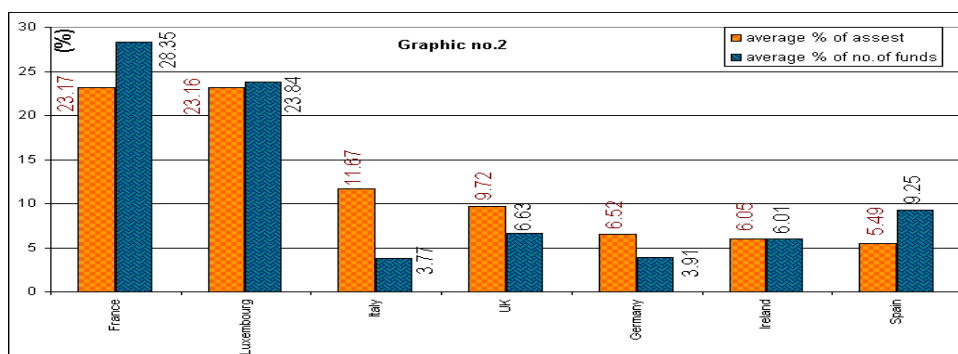
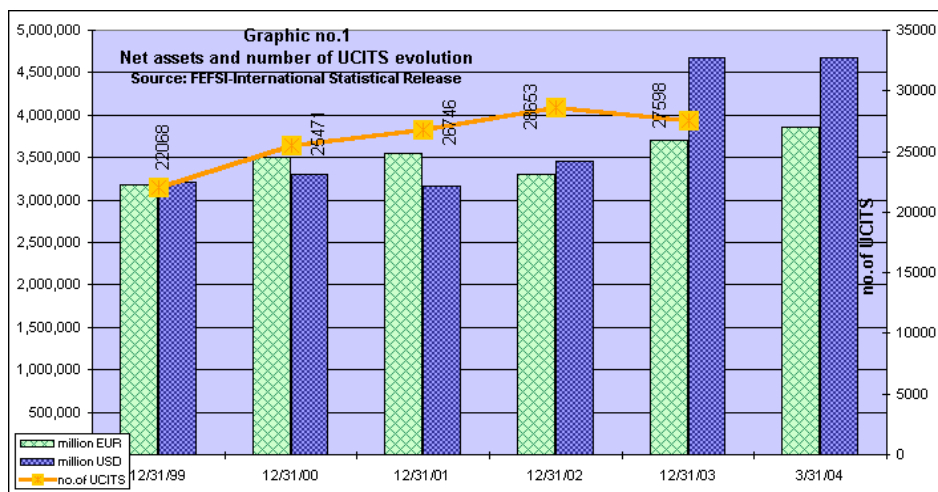
2. European investment fund industry evolution

Since 1999 the UCITS industry al European level had a positive evolution, as graphic no.1 shows. A small decrease – in euro – was registered in 2002 due to the decreasing trends of the European capital markets. The number of investment funds of UCITS type grew also with over 5000 between the end of 1999 and the end of 2003 which is a positive evolution with respect to the product diversification.

The UCITS European market is dominated by France and Luxembourg, as graphic¹³ no.2 plots. On the third place Italy is present. UK and Germany are situated on surprising fourth and fifth places despite the fact that these two countries have the most developed capital markets in European Union, London Stock Exchange dominating Europe by far.

¹³ For this graphic the average percentages over 5 years (1999, 2000, 2001, 2002, and 2003) were used.

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This situation does not show a strong correlation between the UCITS development and the national capital markets on what concern the first five places.

The French capital market is relatively small one, but the France domination of UCITS markets can be explained by:

- ✗ over 30 years of management expertise in the investment fund industry;
- ✗ an innovative range of product structures, combined with the creative combination of retirement products;
- ✗ highly effective control and supervision of investment funds;
- ✗ a very good corporate governance monitoring programme at investment funds" level.

The Luxembourg particular position is generated by its sophisticated and highly flexible legal environment, dominated by laws favorable to bank secrecy. Luxembourg is, also, considered as a tax heaven and many UCITS and management companies prefer to establish there they domicile. The UCITS domiciled in Luxembourg are almost exclusively designed for cross-border distribution, inside European Union mainly. Neighboring countries UCITS industries like Germany and Switzerland are influenced by the Luxembourg special situation, these countries loosing domiciliated

investment funds to Luxembourg, especially Germany whose banks have a large presence in Luxembourg.

The UK fourth place can be explained by the massive presence of institutional investors on unit trusts market.

For the other 16 countries, the dimension of UCITS industry is in concordance with the dimensions of their capital markets.

The situation is presented in table number 2, where the dimension of UCITSs" industry is calculated using through the net assets average percentage in the total of 21 reporting countries for the period between December 1999 – March 2004.

Table no.2

Country's place	Country	UCITSs' industry dimension
1	France	23.15%
2	Luxembourg	23.14%
3	Italy	11.62%
4	UK	9.70%
5	Germany	6.50%
6	Ireland	6.03%
7	Spain	5.46%
8	Netherlands	2.52%
9	Switzerland	2.26%
10	Belgium	2.10%
11	Sweden	2.05%
12	Austria	1.81%
13	Denmark	1.02%
14	Greece	0.84%
15	Portugal	0.54%
16	Finland	0.46%
17	Norway	0.44%
18	Lichtenstein	0.13%
19	Poland	0.10%
20	Hungary	0.07%
21	Czech Republic	0.06%

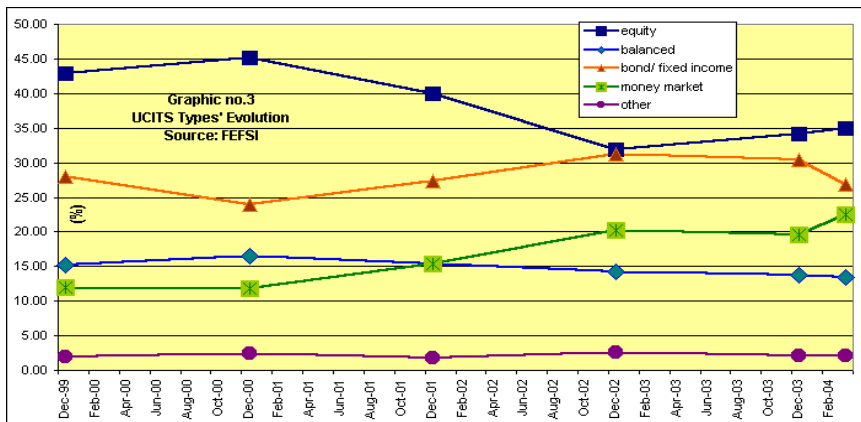
Source: FEFSI data

The main UCITS categories – using the fund main investment objective - in Europe too are considered the following:

- equity funds;
- bond/ fixed income funds;
- money market funds¹⁴;
- balanced/ mixed funds.

¹⁴ As some studies reveals [8], the money market funds were launched in USA during 1970s decade as a response to the regulatory restrictions which prohibited US banks from paying market interest rates on their retail deposits combined with the high inflation of that period. These funds invested and invest their pool of money in money market instruments. The removal of those regulations did not reverse the investor preference for money market funds, due to their flexible characteristics which allow a 'retreat' for investors' money when the equity and bond markets take a turn for descending trends. In Europe, these kind of restrictive regulations concerning the interest for deposit were less severe and less obvious, so the money market funds are less popular.

Their evolution – as percentage of total UCITS assets – is plotted in the graphic no. 3.

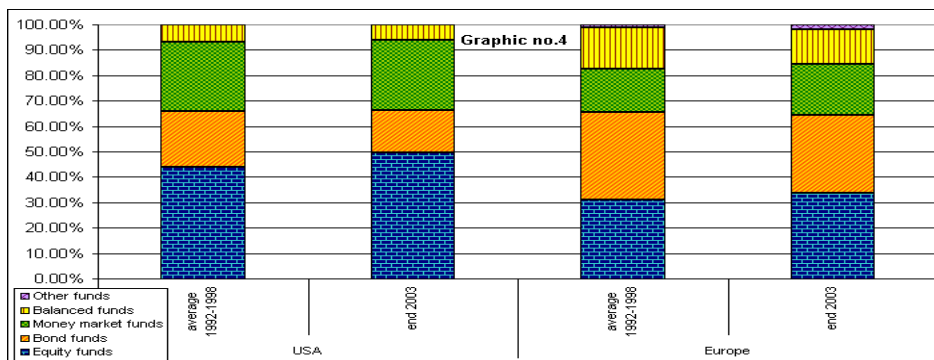


3. The investment style and the performances of the European UCITSs

As the graphics no.3 and no.4 show, the equity funds and bond funds are present – in average - in almost the same proportion to European level. But at country level, the some clear differences appear:

- ⇒ in UK, Sweden, Belgium the equity funds are dominant, representing – by the end of 2003 – over 60% of UCITSs; these countries are followed by Norway, Liechtenstein and Germany, where equity funds represented – by the end of 2003 – over 40% of UCITSs; only in UK, Sweden and Norway the preference for equity funds was presented before 1998; for the other countries – mainly for Belgium and Germany - there was a shift in preferences toward equity funds since 1999; this situation is consistent with the findings of study [8] which consider that European equity funds were – compared to American mutual fund industry – underdeveloped due mainly to the low risk tolerance of European investors; the dominance of equity funds in UK, Sweden, Norway and Germany support the idea formulated by [8] regarding a stronger equity funds presence on those countries where the equity secondary market is strong, liquid and efficient, offering a greater supply of securities;
- ⇒ the UCITSs market of Denmark, Hungary, Austria and Poland is dominated by bond funds – over 60% of UCITSs by the end of 2003, reflecting a weakness of local equity market and a preference for fixed income instruments [8];
- ⇒ money market funds are preferred in Greece, Czech Republic, Portugal and France with over or around 40% of UCITSs by the end of 2003; as the study [8] reveals, the strong presence of money market funds has been stimulated by the tight restrictions imposed on interest rates that banks could pay for retail deposits; a special case is UK with a very small presence of money market funds (less than 1%); the

cause of this situation was the fact that UK banks and building societies¹⁵ have been free from restrictions on the interest rates paid for retail deposits [8].



A study from 1997 [2] highlighted the UCITSs' managers preference for bonds. This result is supported by the average structure of UCITSs for 1992-1998 and plotted in the graphic no.4.

Since 1999, with the introduction of the euro, the investment styles were expected to change from a country approach to a sector approach at pan-European level, due to the disparition of currency risk among most European Union countries. But "old habits die hard" and five years later the UCITSs' managers still prefer to invest in home country markets, where they know very well the characteristics of the investment instruments and all the regulations. The country oriented investment style is completed with the managers' preferences for equities, bonds or money market instruments depending on these instruments availability and the capital market development, as shown above.

The investment style is influenced also by the use of financial derivatives. UCITS Directive tried to impose limits in the use of financial derivatives for UCITS portfolio protection. This kind of protection could stimulate the abandon of country oriented portfolios, but the financial derivative markets at European level have a lower level of development and sophistication compared with the American markets, LIFFE (London International Financial Futures Exchange) is an exception. The European financial derivative markets are still "recovering" after the introduction of euro through introduction of new derivative products, their "specialization" was the currency risks and the disparition of 15 European currencies was difficult to cover.

¹⁵ A building society is a financial institution in UK traditionally offering a variety of saving accounts to attract deposits which are used to fund long-term mortgages for house buyers or for house improvement. Since 1986 due to the Building Societies Act, these institutions have been able to widen the range of services they offer, including personal finance planning services. This is the definition presented by Oxford Dictionary of Finance, 1993

To evaluate the UCITSs performances through rates of return at pan-European level proved to be almost impossible. The main factors which – for the present moment – limit the possibilities to assess the UCITSs rates of returns are:

- ✎ the absence of indexes – general and sector indexes too – at pan-European level, for the equity markets¹⁶ and bond markets; without these indexes, there is no benchmark for rates of returns comparisons;
- ✎ the absence of a true single European capital market; despite all the efforts, the national capital markets made alliances but not true mergers took place; this situation generate a fragmented capital market at European level and its influence on UCITS market is crucial;
- ✎ the huge number of investment funds, the 21 to 24 reporting countries and the various treatments applied at national level to those funds, especially to funds of funds and index tracking funds;
- ✎ the various investment styles too much country oriented.

For the years to come, at pan-European level, some objectives could be:

- ✓ the revision of performance measurements;
- ✓ the unification of performance measurement standards;

due to the growing importance of performance in selling UCITSs to investors all over Europe.

A big step in this direction was made in June 2003 when the first ever pan-European guidelines on performance track records were published, but these standards are only available for the investment fund management companies.

The FEFSI suggestion on performance measurement for UCITSs at European level is the growth rate for the UCITS net asset values. Using this suggestion, the following results emerged¹⁷:

Table no.3

	1992-1998 - average -	2000/ 1999	2001/ 2000	2002/ 2001	2003/ 2002
Net assets growth rate/ year	17.7%	2.89%	-3.80%	9.02%	35.14%

Source: Study [8] for 1992-1998 and FEFSI for 1999-2003

The average growth rate per year for 1999-2003 is 10.81%, and is lower compared to the 17.7% average for 1992-1998, reflecting the oscillated evolutions of capital markets and the difficulties UCITSs face to expand cross-border at pan-European level, indicating that growth within countries almost reached its limits.

4. Distribution channels and complementary services

In Europe, the main distribution channels are represented by the bank networks (including savings banks). The banks' presence as distributors is very strong:

✗ in Spain¹⁸ (92% in 1998 and 93% in 2003);

¹⁶ For the equity markets at European level two indexes are calculated: FT-SE Eurotop 100 and Dow Jones Euro Stoxx 50, which cover only the top European companies. These two indexes are not enough to establish comparisons benchmarks and they are not recognized by all European managers.

¹⁷ The rate of growth was calculated using the net asset values in USD.

- ✗ in France (74% in 1998 and 70% in 2003);
- ✗ in Germany (74% in 1998 and 64% in 2003).

This situation is due to the fact that the universal banking is a dominating feature at European level, and the vast majority of individual investors and/ or households make all their financial operations through banks. But this situation has a downside [13]: the presence of insured deposits which can create a false sense of security in UCITSs sector, if the products are mixed and not clearly explained to investors.

In those countries dominated by banks as UCITSs distributors, the insurance companies come on second or third places due to their selling networks degree of development.

The presence of independent financial advisors is very strong in UK and Switzerland with over 50% domination over other distribution channels. This situation can be explained by the investors' habits and culture, not dominated by bank services in UK especially.

The UCITSs acquisitions directly from management companies through brokerage networks come to the last places. This reveals the fact that the European investors are not accustomed to these distribution channels.

By the end of 2001, some data centralized by FEFSI revealed the negligible proportion of Internet sales, with exceptions in Scandinavian countries (Finland, Norway and Sweden) and in Netherlands.

A larger variety of distribution channels could have a positive influence on the growth of UCITSs market, but some any distributor must take into consideration the following elements [18]:

- ⇒ the market environment is increasingly complex and only the performance is not enough to sell UCITS units; the UCITS structure and strategy, along with the quality of managers and management are increasingly important;
- ⇒ the investment advice, combined with the information supplied to investors;
- ⇒ the product range is important, adapted to the cultural particularities of every European country and/ region.

Complementary services offered by UCITSs are not clearly revealed in any study. If the banks are the main distributors, the complementary services derive from the complex services offered by banks. A similar situation can be considered if the distributors are the insurance companies. But these situations can create – again – confusion: the banks/ insurance companies can be identified with the UCITSs they are selling or the UCITSs could be identified with the traditional products banks are offering.

Conclusions

For the years to come, the European Commission has to deal with:

- the problem of 'passport' for UCITSs at pan-European level which remains unsolved due to the regulations at national level; the UCITSs selling process all over Europe remain difficult because every UCITS must be registered in every host country where it would be sold and the requirements of every European member state have the tendency to be different in

¹⁸ The sources of data: for 1998, FEFSI and for 2003 the study [18].

setting the marketing and disclosure requirements¹⁹; the introduction of simplified prospectus tried to solve a part of the problem, but no visible results emerged yet;

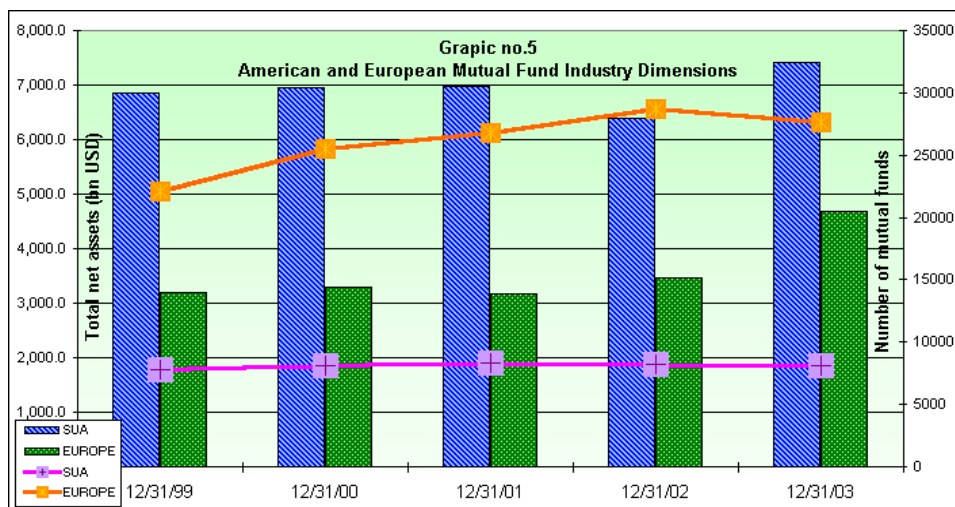
- the 'crazy quilt' of regulations, similar to American situation before 1996 [9]; before 1996 the US mutual funds too were subject to duplicative regulations issued by SEC and by securities commissions in 50 American states; in 1996 the National Securities Improvement Act came into force and single continent-wide market was created; in Europe, the present situation is not so easy to solve due to the fact that European Union member states are established nations and the regulatory bodies do not want to give up too easy their powers in favor of a pan-European security commission;
- the capital markets concentrated at national level which create another barrier for a single market for UCITSs at European level; this capital markets fragmentation generates needs for very special and/ or particular products at each European country level, raising further barriers for a single market;
- the dominance of few domestic national groups, mostly bank centered, on several UCITS national markets which can imply a possible low level of competition and a stronger resistance to introduction of UCITS Directive [16];
- discriminatory tax barriers imposed to foreign UCITSs revealed by a joint FEFSI & PricewaterhouseCoopers report in June 2001; the most significant barriers were present in France, Germany and UK; a new FEFSI survey on taxation published in 2004 revealed that only a small progress was made in 16 of 21 reporting countries and this is not enough to support a single UCITS market across Europe;
- the restrictive attitude toward the presence of individual pension plans on UCITS markets; some European Union countries have implemented or are considering policies that restrict the types of UCITS that could be used by pension plans, imposing special fees and restrictive investment objectives; this protective attitude is generated by an exaggerated concern for the individual investor/ employee protection; one main reason: the European authorities consider that the investors' protection is the key to gain their trust; due to this attitude, an important factor that can stimulate the UCITS markets to grow is put on hold;
- the European Union enlargement, and the process are not over yet.

All these problems should be solved before a single UCITS market can emerge at European level.

¹⁹ Study [9] exemplifies that UK and Germany take different approaches to the historical period over which the information on performance should be presented. In other cases some European Union member states permit UCITSs prospectuses to discuss the effects of inflation, other member states forbid this.

Comparing the American and European mutual fund industries, the following results are evident – presented in graphic no.5 too:

- the American mutual fund industry is almost twice as big as the European, if the net asset values are compared;
- the number of European mutual funds (UCITSs) is three times bigger than the number of the American mutual funds, but the size of an European UCITS is – average for 1999-2003 – of USD 136.6 millions, and the size of an American mutual fund is – average for 1999-2003 – USD 851.6 millions;
- the management costs of American mutual funds are lower than European UCITSs and the American mutual funds have a broader investment style than their European counterparts [9].



The main factors responsible for these differences are:

- the regulations, much more clear and uniform at American level after 1996; this created a mutual fund market without inside barriers;
- the capital markets, more developed in USA and fragmented in small national market – except London Stock Exchange and Frankfurt Stock Exchange;
- the massive presence of pension plans on the American mutual fund market; the USA mutual funds have become the investment of choice for individual retirement savings plans and these have an important role in the growth of American mutual fund industry; at pan-European level the presence of individual pension plans on UCITS markets is scarce due to the European regulators restrictive attitude and due to the massive presence of pay-as-you-go schemes on the European pension sector;
- the European investors profile; the European investors are much more risk averse than the American investors; the European investors particular needs are reflected by the over 27000 UCITSs registered at European level;

- the various barriers present at European level – as presented above – which slower the growth and extension of UCITSs market all over European Union.

The European UCITS market is divers – responding to a great variety of demands and customs expressed by the individual and institutional investors. The creation of a pan-European market must take into account the diversity of European investors and their needs and a harmonization in these conditions is a very difficult process as the past 20 years showed. The European UCITSs would be less flexible and adaptable if the ‘crazy quilt of regulations’ would be kept in place and the pan-European passport for these instruments would remain a formal one.

REFERENCES:

1. Barron's Dictionary of Finance and Investment Terms, 5th Edition, 1998
2. Brausch, Alfred F.;1998, The Europe and the European Mutual Fund Business, NICSA Annual Operations Conference
3. Deloitte & Touché, Global Regulation, 2nd issue, 2003
4. FEFSI – A FEFSI Survey: Taxation of UCITS, The Principles, 2004 Update, www.fefsi.org
5. FEFSI – International Statistical Release – Worldwide Investment Funds Assets and Flows (full year 2003), www.fefsi.org/statistics
6. FEFSI – Investment Funds Explained, www.fefsi.org/Unrestricted_Area/About_Investment_funds/FAQs/Faqs_22.htm
7. FEFSI Press Release, 2004, Investor trust is the key, June 24 www.fefsi.org
8. Fernando, D; Klapper, L; Sulla, V; Vittas, D; 2003, The Global Growth of Mutual Funds, World Bank Policy Research Working Paper 3055, May 2003
9. Fink, Matthew P; 2000, Comparing the US and European Mutual Fund Industries – What Is Next for Europe?, European Mutual Fund 2000 Conference, Seville, Spain, April 10
10. Freshfields Bruckhaus Deringer, 2002, Funds – A Single European Markets, Revised Edition, November 2002, www.freshfields.com/practice/fig/publications/pdf/4042.pdf
11. Investment Company Institute, 1996, Mutual Fund Fact Book, 36th Edition, www.ici.org
12. IP/04/430, 2004, Investment Funds: Commission Proposes Plan to Bring National Rules on UCITS Depositories Closer to a Line, March 31, <http://europa.eu.int/rapid/pressReleasesAction.do>
13. Khorana, A.; Servaes, H.; Tufano, P.; 2003, Explaining The Size of The Mutual Fund Industry Around The World, working paper, <http://207.36.165.144/Zurich/Papers/530212.dcf>
14. Oxford Dictionary of Finance, 1993

15. Matthias, S.; 2003, FEFSI Regional Report – Europe, October 6, www.fefsi.org
16. Otten, R.; Schweitzer, M.; 1998, A Comparison Between The European and The US Mutual Fund Industry, Limburg Institute of Financial Economics, Maastricht University. Processed
17. Otten, R.; Bams, D.; 2002, European Mutual Fund Performance, European Financial Management Review, volume 8, issue 1, 75-101
18. Palmer, G.; Lantz, M.; Segui, C.; 2004, Overview of The European Funds Industry with a Focus on Fund Distribution, www.nicsa.org/archives/download/AC04
19. PricewaterhouseCoopers & FEFSI, 2003, Discriminatory tax barriers facing the EU funds industry: A progress report, June, 2003
20. Richards Jr., A. – All About Exchange Traded Funds, McGraw-Hill, 2002
21. Silved, D.; 2001, The Investment Company Act of 1940: At The Frontiers, A Major Issue Conference: Securities Regulation in The Global Internet Economy, Washington, November, 14-15
22. Tassel, T.; 2003, The Influence of The Market and The Manager, Financial Times Fund Manager, June, 9
23. www.fefsi.org/Unrestricted_Area/Invworld/Europe

PENSION REFORM IN ROMANIA

CORNELIA POP¹, ADINA CALUGARU²

ABSTRACT. The first steps toward a real pension reform were made in 1997. Since then until the end of 2004, the launching of funded pension schemes (as second pillar) and of occupational pension schemes (as third pillar) remained an open question. By the summer of 2004, the law on occupational pension schemes was issued and in October 2004 the law on funded pension schemes was issued too. The present paper investigates the main reasons which generated the postponement of the Romanian pension reform through second and third pillars and the perspectives for these pillars of being really implemented in Romanian economy.

The main steps made for a pension reform in Romania

1993 – a White Book concerning the need of pension reform and the crisis public pension system will have to face, was published. It revealed the problems inside the public pension system. The most important of them were:

- ✓ the public pension system was a pay-as-you-go (PAYG) one; the benefits/pensions depended on workers' medium wage; the PAYG system had all the downsides highlighted for such a system by scholars and practitioners;
- ✓ the main public pension system was 'completed' with other – over 8 [Toma, Danila 2004] – independent pension systems organized on occupational criteria; the most important were those for farmers/ agricultural workers and for military; all the independent system were of PAYG type;
- ✓ the relative low retirement age: 55 years for women and 60 years for men; in 1990 the law introducing the low retirement age was very popular (as a reaction to former communist system) and almost no one thought at consequences; this low retirement age was used to hide unemployment for the year group 55-60 or plus and to ease the potential social pressure;
- ✓ the relative ease to obtain early retirement pensions – mainly in the work groups with high risks – that lower the retirement age with approximate 4 years.

Nov. 1996 – just before the general elections, the government – a social democrat one – submitted to Parliament a law project on pensions. Almost no public discussion was organized concerning this law project; it silently made its way to Parliament.

Dec. 1996 – the new elected government – a coalition one, formed mainly of conservators, liberals and moderate democrats – withdrew the law project on pension from Parliament. The reason: it must be improved and the new conception on pension reform based on 3 components/ pillars (a public one, a private one with compulsory contributions and a private one based on voluntary contributions) had to be integrated.

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1997 – a White Book on implementation of funded pension schemes was issued. The Ministry of Labor and Social Security obtained external nonrefundable financial resources in order to elaborate the White Book and the regulation drafts on funded pension schemes. An auction was organized for the elaboration of regulation drafts and the non-governmental organization Pro Democratia won the auction.

1998 – The non-governmental organization Pro Democratia provided the regulation drafts for the following laws:

- ✓ the law concerning the universal pension funds, with private administrators; in the future contributions to these funds would become compulsory for all working people; it was considered the second component/ second pillar of the intended pension reform (sometimes referred to only as pillar II or component II);
- ✓ the law concerning the optional pension schemes - including occupational pension schemes; it was considered the third component/ pillar of the intended pension reform (sometimes referred to only as pillar III/ component III);
- ✓ the law on additional benefits – this draft tried to solve the problem of pension amounts for present pensioners and for those who would not be included in the second pillar, when this should be launched.

1999 – the law draft on universal pension funds was discussed and improved; two conferences were organized in Bucharest in an attempt to assure further dissemination; but those conferences gather mostly specialists and the large public was left behind; the most important outcomes of the two conferences were: the highlight of the problems confronting the universal pension funds and the presentation of other European countries experiences on the pension reform.

2000 – the Law no.19/ 2000, March 17, on public pension system and other social security rights was approved. It had to replace the old law on public pension system starting April 1, 2001. This law enforcement was considered the first step on pension reform in Romania.

Between February and June 2000 the new law draft on universal pension funds was again under debate. Then – after the Parliament summer holiday – the law draft was put on hold due to the future general elections.

Foreseeing the problem, the minister of labor proposed to transform the law draft in a draft for a government ordinance – much easier to be enforced. The draft for the government ordinance was discussed three times between August and October 2000. By the end of November, the government approved the ordinance and issued it under the number 230/ 2000. The government ordinance was published in December 4. It was an attempt to enforce the second component of the pension reform while the coalition government still held the power.

Another government came into force in December – a social democrat once again, due to the general election results. The new government considered the enforcement - in such a hurry - of this important component of the pension reform as a hazardous action, and consequently voids the regulation by the end of December 2000. The main reason for this step back was: the government ordinance did not consider and did not specify the resources needed to finance the projected deficit on the social security budget.

2001 – April 1 – the Law no.19/ 2000 became operational for the public pension system in Romania.

During 2001 the government – its position was considered unclear toward the pension reform, mainly concerning the second and third pillar – made promises that the regulation drafts would be reviewed and improved. The new minister of labor highlighted once again that the introduction of universal pension funds depends upon the availability of resources available for financing the social security budget deficit.

A new draft on the law for the universal pension funds was issued on October 2001.

By the fourth trimester, the government published its program on pension reform, too.

2002 – the discussions on regulation draft on universal pension funds continued, but without concrete results. By the end of 2002, no final regulation draft on universal pension funds was available. For 2002 the government set another objective: a complex project on information dissemination regarding the pension reform, mainly on funding pension schemes. The expected outcome: a positive attitude of Romanian population concerning the pension reform. This objective also was abandoned – no effective actions took place and the silence covered the pension reform.

2003 – in November the government submitted a law draft on optional pension schemes to the Parliament. The same silence and secrecy surrounded this draft.

2004 – in June, the Law no.249/ 2004 on occupational pension schemes were issued. It should be enforced starting January 1, 2005.

In October, the Law no.411/ 2004 on private (universal) pension schemes were issued. It should be enforced starting July 1, 2006.

Several observations concerning the public pension system

The Law no.19/ 2000 had to solve the most evident problems of the existing PAYG system. Besides the problems mentioned in the first page, others were added during the years:

- ✓ the black market for labor grew rapidly; one of the main reason was the cost of labor force; any employer had to pay 25.5% of the employee gross wage to the pension public system; the employer was also responsible for the retention and the transfer of the employee contribution to the public pension system, representing 12% of the employee gross wage; the total contribution represented: 37.5% in 2000, compared with 14% in 1990;
- ✓ the increase of unemployment rate and the decreasing number of contributors to the public pension system;
- ✓ the increased number of bankrupt companies; those companies neglected to pay their contributions and their employees contributions to the public pension system;
- ✓ the lack of fiscal discipline, even good companies postponed all the time to pay the money to the public pension system;
- ✓ due to political involvement, a great number of exceptions – pensioners with high pensions – were created, generating a higher pressure on the PAYG system, already in deficit;

- ✓ the ease of getting early retirement, with no evident penalties; the early retirements continued to be encouraged to avoid an increase of the unemployment rate;
- ✓ the problem of free-lancers who were not included in any public pension system;
- ✓ the lack of transparency, mainly concerning the calculation of benefits/pensions and the exceptions;
 - ✗ the direct and hidden emigration; every year Romania lose several tenth of thousand young persons who emigrate in US, Canada, European Union, Australia or New Zealand; other hundred of thousands try to get temporary jobs abroad, mainly in Italy, Spain, Israel and Serbia; their situation is unclear³, most of them leaving Romania as tourists;
 - ✗ another problem arise in 2004; being an election year, promises were made regarding the increase of pensions' quantum and the decrease of the contribution to the public pension system; for those involved in politics, no promises has a too high cost if it could lead to a winning position.

The Law no.19/ 2000 managed to solve several of the problems mentioned above:

- ✓ it created an unique public pension system, integrating the majority of former independent systems; the only system left aside was the pension system for militaries;
- ✓ the new system integrated the free-lancer too;
- ✓ an independent public institution was created to coordinate and manage the public pension system; this institution name is: Casa National de Pensii si Alte Drepturi de Asigurari Sociale (CNPAS) – National House for Pensions and Other Social Security Rights;
- ✓ the retirement age must rise from 55 to 60 years for women and from 60 to 65 for men until 2014; due to this stipulation, in 2004 the retirement age grew to 57 years for women and 62 years for men;
- ✓ along with the retirement age, the contribution period to the public pension system must increase from 25 to 30 years for women and from 30 to 35 years for men;
- ✓ the contributions' transfer is the employers' responsibility; the contributions must be supported 1/3 by the employee and 2/3 by the employer;
- ✓ the pensions will be calculated based on an announced formula, using points and taking into account the employee's contribution and the contribution period; 1 pension point was equal with 45% from the average gross salary paid in Romania; the PAYG system become a combined one: defined benefits for minimum stage of contribution and defined contribution for the rest;

³ In Romania, those persons can figure either as unemployed or living on social welfare (when it is available), but they work abroad and their potential contribution to the social security system is lost. It is unclear if they pay any contributions abroad, but in Romania they would have low public pension or no pension at all. It remains to be seen if they will decide to become participants to the private pension funds. All these persons have the tendency to ignore the problems they must face when they would reach the age or 65+.

- ✓ it stipulates the introduction of a data base where the employee could be easily identified along with its contributions; also the system allows to detect every employer and if it transferred the contributions or not;
- ✓ it allows the creation of a reserve fund to cover some unexpected situations;
- ✓ it stipulates more restrictive conditions for early retirement;
- ✓ it reduced the working places with high risks from around 1 million to around 200,000;
- ✓ it allows to solve – between 2005 – 2015 – the budget deficit for social security rights;
- ✓ it allowed reducing the contribution for public pension system from 37.5% to 34% (24.5% employer; 9.5% employee) in 2003.

Critics to the Law no.19/ 2000:

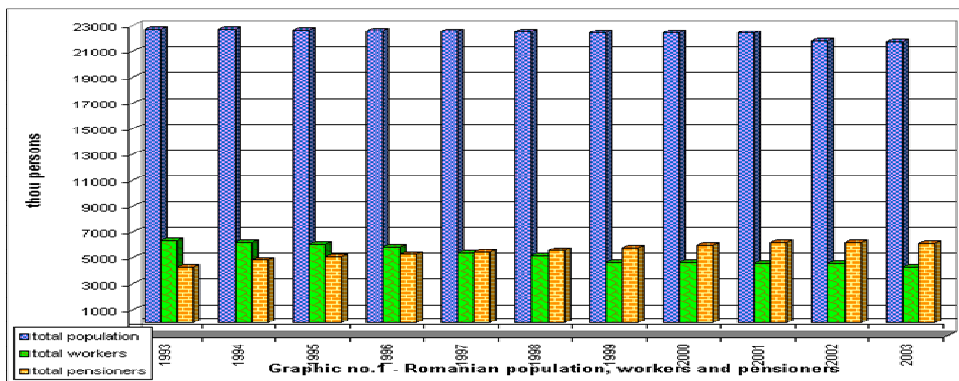
- ✎ it was modified 23 times from March 2000 until December 2004; it is difficult for everyone to keep track of all those changes;
- ✎ it does not solve the problem of sustainability of the present PAYG system; as graphic no.1 shows⁴, the Romanian situation is dramatic;
- ✎ it does not take into account the labor force mobility; those who work abroad and come back to Romania have problems with these contributions to the public pension system; but this is a problem at the European level and it was not expected to be solved only in Romania;
- ✎ it gave up – due to frequent modifications – some of the restrictions preventing early retirement;
- ✎ one pension point value increase from 45% to 50% from the average gross wage paid in Romania;
- ✎ the number of pensioners included in the PAYG system is too big; a more detailed analysis of the pensioners' structure reveals deeper problems [Palagean]:
 - by August 2004 the total number of pensioners was 6.06 million persons; only 3.07 million persons (50.7%) contributed in the past to the public pension system and those persons can be considered as entitled to receive pensions from the public system; 0.9 million pensioners (out of 3.07 millions) retired early;
 - 1.46 million persons (24.1%) represent the agricultural workers; their situation is very peculiar; some of them made small contributions to a former occupational system, integrated in the public system by the Law 19/ 2000; most of them did not pay any contributions and this situation was independent of their will; because there are no other resources available to pay their pensions, the public system supports them (sometimes with ridiculous pension amounts like: less than 10 EUR/month);
 - 0.83 million persons (13.7%) are considered invalids or disabled and unfit to work; but almost ¾ of these persons are included in the second degree of invalidity, meaning they can easily obtain a medical certificate and retire on this reason, even if some of them

⁴ The sources of data were: the information published by Romanian National Bank (www.bnro.ro), for the total population and for active workers; for pensioners: Romanian National Institute for Statistics (www.insse.ro) and Ministry of Labor (www.mmssf.ro).

could still work part-time; most of those persons are working on the black labor market and they cash their pension every month too;

- 0.7 million persons (11.5%) are descendants of deceased workers and they are receiving (until the age of 18) a pension for descendant; this type of pension is similar to an allowance but is paid out from the public pension system resources.

As some researchers pointed out [Palagean], at least the invalidity pensions and those for descendants should be paid from other resources, not by the public pension system. But due to the lack of alternatives, these 1.53 million persons are generating supplementary pressure on the public pension system, influencing both the pensions' amount, and the active workers' contributions.



What will happen with the Law no.19/ 2000 remains to be seen. It needs – at least – to be republished after so many alterations. These alterations are the main weakness of this law – they create a sentiment of uncertainty concerning the public pension system.

In 1998 one idea was to supplement the pensions paid out from the public pension system – in the event of introduction of the second and third component/ pillar – with additional benefits for the existing pensioners and for those who would not be integrated in the second pillar. The additional benefits should be paid from a special fund created by Romanian government using 15% stocks or option on stocks owned by the state in various companies. Every year, 4-10% of assets should be distributed equally among all pensioners fulfilling the conditions, as supplementary pensions, paid once or twice a year.

One suggestion was to organize this fund as a civil company and the idea for splitting the assets in three for three fund administrators – with strong brand names on international markets - was advanced.

Other countries like Poland used money from privatization to supplement the pensions' amount. But in Romania this resource seemed to be out of question due to the lack of transparency regarding the privatization process.

The additional benefits were thus forgotten and between 2000 and 2004 the government seemed to totally ignore the idea. These additional benefits were not included in the government plan for pension reform.

Funded pension schemes – Romanian points of view

The Romanian authorities' vision on the funded pension schemes was inspired by the pension reform in Poland, Hungary and Croatia.

In 1998 – when the first regulation drafts were written – the funded pension schemes included:

- universal pension funds/ private pension funds – the chosen form for the second pillar/ component to complete the public pension system;
- optional pension schemes, including occupational pension schemes – the chosen form for the third pillar/ component to complete the public pension system.

In 2004, after issuing the laws on private and occupational pension schemes, the main points concerning the second and third pillar of pension reform look as follow:

A. Private pension funds

The Law no.411/ 2004 – which should be enforced starting July 1, 2006 – offer the basic frame of regulation in this field. As the numerous drafts anticipated, the law establishes that a private pension fund in Romania is organized as a civil company⁵ and all the participants to such a fund become members and owners of the fund. This type of structure is similar to the Romanian mutual funds.

For every private pension fund member, an individual account would be open, to cumulate its monthly contributions and the returns on investments. Any worker under the age of 35 should become a contributor to a private pension fund. The contributions are optional for the active workers between the ages 36-45. The initial contribution is established at 2% from the gross wage and would increase – with 0.5%/ year - at 6% in the following 8 years. The amount of contributions was a much discussed matter and its amount is so low because the authorities feared a decrease in resources available for the public pension system.

Due to the fact that any private pension fund is a civil company, the law no.411/ 2004 stipulates the compulsory presence of a management company (administrator). The management company should be a specialized one and has the following options:

- to become solely a private pension fund manager/ administrator, responsible for managing the investments for the fund's members;
- to become a fund manager and a pension provider⁶, too.

The management company should work – for distribution – with marketing agents (as the Romanian law calls them) and should coordinate their activities. The marketing agents' main task is to sell the private pension fund to prospective members. The supervising commission should issue detailed regulations regarding

⁵ This type of company – under Romanian law – is a non-commercial one and has no legal liability.

⁶ A pension provider is – under Romanian law – a company specialized in calculation and payment of private pensions; these activities could be combined with those connected with a private pension fund management.

marketing agents' activities and professional conduct, but the law already forbids the use of promises, leading information and financial incentives for attracting new members to the fund. Due to the fact that the marketing is a complex activity, we consider the term 'marketing agents' incorrect; the correct term should have been 'selling agents'.

Another compulsory presence in the life of a private pension fund is the custodian. In Romania, only authorized banks can become custodians. The law allocates an important role to the custodian. It should:

- ◆ keep the private pension fund assets segregated from any other categories of assets;
- ◆ calculates, every day, the net asset value of the fund;
- ◆ keep up to date the individual accounts of fund members;
- ◆ executes the transactions following manager's instructions;
- ◆ provides all the information manager needs;
- ◆ provides all the information requested by the supervising commission.

To avoid any conflict of interest, the law requests the independence of the custodian from the private pension fund's management company, custodian presence as shareholder of the administrator is denied.

The Law no.411/ 2004 settled – at least for the moment – the debated problem concerning the minimum number of members requested for a private pension fund to stay on the market: this number is 50.000 members after 3 years since the private pension fund was launched.

The various drafts stipulated other limits on the minimum number of members:

- in 1998 – the limit was 500.000 members;
- in 1999 – the limit was 200.000 members;
- in 2001 – the limit was 150.000 members.

And, also, the period of time for reaching the limit was only 2 years.

This minimum number of members influences the number of potential private pension funds which can be created on the Romanian market. An analysis made in 2003 revealed that a minimum number of members between 150.000 and 200.000 would create the potential for around 25 private pension funds, a number of funds considered too high in correlation with the real conditions of the Romanian financial market (these conditions would be presented in the following pages). The analysis suggested that the optimal limit would be between 300.000 and 400.000 members.

The Law no.411/ 2004 generated a big surprise, establishing the limit at 50.000 members. This limit would allow the creation of over 30 private pension funds. This high number could mean competition, but the Romanian financial market is not ready to receive such a big number of institutional inventors and the risk of investments would rapidly grow. And the alternative of investing at European level would be made only by brand name companies, with experience in international portfolios' management.

This low level for the limit was decided due to the age structure of the contributors. Combined with the low level of yearly contributions, the pool of money concentrated by a private pension fund would be low and would not attract brand name management companies on Romanian market. From this point of view, the future of private pension fund performances looks gloomy.

For Romanian financial market, the good reputation of management companies for private pension funds was a much debated issue. The causes which generated this issue: the two crisis on the Romanian mutual fund market in 1996 and 2000 and both crisis were connected with fraudulent management of money pooled under three mutual funds' umbrella; the lack of supervising was another cause for those crisis.

In an attempt to avoid such crisis and to attract only responsible management companies, the Law no.411/ 2004 required a minimum capital limit to 5 million EUR⁷. The drafts stipulated much higher – and unrealistic for the actual situation of Romanian economy as a whole and for Romanian financial market – values:

- in 1998 – 40 million USD;
- in 1999 – 10 million EUR;
- in 2000 – 9 million EUR
- in 2001 – 10 million EUR.

For similar companies, in Poland, the minimum limit on capital requirement is 4 million EUR.

Further more, the law requires that the management company should not be a public one, to avoid major changes in shareholder structure and conflict of interests.

The law also requires that the management company for a private pension fund must establish a back-up (reserve) fund to cover situations like the administrator's incapacity to meet the minimum required rate of return or to cover losses. A special regulation must be issued for this type of fund by the supervising commission.

Another fund: the guarantee fund for pensions is required to be created at a national level for extreme situations. This central fund is formed by periodic payments made by the private pension fund management companies. The regulations concerning this fund would become a separate law.

The Law no.411/ 2004 impose that a management company can be in charge only with a private pension fund, but can manage any number of occupational pension funds. Through this limitation, the law tries to limit the financial liabilities for the management company.

Through the authorization process for the private pension fund management companies, the law tried to eliminate the majority of fraud threats. Also, the law imposes very strict disclosure and transparency requirements for a private pension fund's managers.

Other prudential regulations concern the private pension fund portfolio structure. The Law no.411/ 2004 establish the following limits for a private pensions fund portfolio:

- maximum 70% in Romanian T-bills, T-notes, T-bonds; previously there was no limit for using these instruments;
- maximum 30% in municipal bonds;
- maximum 20% in money market instruments issued by authorized banks;
- maximum 50% in shares listed on regulated and supervised capital markets – to Bucharest Stock Exchange and Romanian Electronic Exchange Rasdaq; there is another limit imposed: maximum 5% in shares of one issuing company;

⁷ The equivalent in ROL at the exchange rate communicated by the Romanian National Bank at the date when the management company is registered in Romania.

- maximum 10% in foreign T-bills, T-notes, T-bonds;
- maximum 10% in foreign listed shares and/ or corporate bonds;
- maximum 5% in other financial instruments defined by the supervising commission.

The Law no.411/ 2004 cover the main issues concerning the private pension funds and their management companies. A weakness of this law: the future supervising commission should issue a high number of regulations and any delay would generate problems in enforcing the law starting July 1, 2006.

B. occupational pension schemes

The Law no.249/ 2004 issued in June 2004 provides the main frame of regulations for the occupational pension schemes.

Under this law – as all over the world – the occupational pension schemes are considered facultative/ optional pension schemes proposed either by the employers or by the employers and the unions.

Similar to the private pension funds, any occupational pension fund is organized as a civil company⁸. A difference occurs in comparison with private pension funds: for the occupational pension funds to be established only a minimum number of members is requested: 100 members/ occupational pension fund.

This type of pension funds should be sold and managed only by a specialized management company. Again, this compulsory requirement is similar to that for private pension funds. The only difference: if a specialized management company wishes to administrate only occupational pension schemes, the minimum limit required for capital is 2 million EUR, compared with 5 million EUR requested for those management companies involved in private pension funds.

As in the case of private pension funds, the presence of the custodian is compulsory and its role is identical with the role played in the case of private pension funds.

Being an optional pension scheme, the member's contribution is facultative but is tax exempt to a limit of 200 EUR/ year. Also, the employer's cost connected with every employee's contribution is tax exempt in the same amount: 200 EUR/ year/ employee. These two tax exemptions should stimulate employees and employers participation to an occupational pension scheme. What would happen in the future, remains to be seen.

In an attempt to protect the occupational pension fund members' contributions, here too the Law no.249/ 2004 imposes to management companies to establish a back-up/ reserve fund. Its amount would increase with the number of occupational funds under administration. The law, also, clearly requires that this reserve fund should be invested only in low risk securities.

Here too a guarantee fund for the occupational pensions should be created at a national level. Every management company should contribute to this fund. A special regulation would be issued regarding this fund.

⁸ See footnote no.5.

This law – as the Law no.411/ 2004 for private pension schemes – includes prudential regulations and imposes a general structure on occupational pension fund portfolio. The compulsory limits are the same as those established for the private pension funds, presented above.

As in the case of private pension funds, the law imposes conditions for disclosure in an attempt to generate a reasonable level of transparency, so all potential contributors could make their own decision with enough information in hand.

The Law no.249/ 2004 imposes limits in an attempt to avoid conflicts of interest and to eliminate fraud threats through management companies' authorization process and supervision.

Similar to Law no.411/ 2004, Law no.249/ 2004 cover all the main issues concerning occupational pension funds and their management companies. One weakness of the law for occupational pension schemes is the same as in the case of private pension funds: too many complementary regulations must be issued by the supervising commission, a situation which can generate great delays in enforcing the law. As a matter of fact, the Law no.249/ 2004 should have been enforced starting with January 1, 2005 and it is still not clear if the supervising commission – responsible for this law enforcement – is established and functional.

The idea of independent pension schemes and/ or individual pension accounts was ignored by those people involved in issuing the regulations for Romanian pension reform. Several Romanian commercial banks launched – since 2003 – special savings account for pensions. Almost every Romanian insurance company offers – since 1998, at least – pension products in connection with life insurance policies. Until now, no extensive studies were made on these pension products – mainly due to the difficulties related to information gathering and to the lack of transparency at the providers' level. These kinds of pension products can become important competitors for the occupational pension scheme funds, but some Romanian analysts point out the risk connected with those pension products: it is unclear how their providers would be able to meet future payments if the number of their clients became too high.

Competition could come too from the part of mutual funds existing in Romania, but due to their situation the competition would not be fierce. There was an attempt⁹ to launch a mutual fund for optional pensions in 2001, but the fund collapsed after 3 months due to the lack of investors. No other mutual fund specialized on pension was offered since then.

Discussions

The supervising commission

The experience on supervising Romanian mutual funds which led to two major crisis in four years is not encouraging. Both laws stipulate that from January 1, 2007 the Commission for Pension Fund Supervision must be established. Until then, its role would be played by a department specialized in occupational pension supervision, department included in the Romanian Insurance Supervisory Commission.

⁹ Since 1997 the mutual fund management company responsible for the collapse of the biggest Romanian mutual fund offered a pension fund in 1996. The oddity of this situation itself can generate a paper. Anyway the 'success' of this fund was limited and it is not clear if it still exist.

This commission activities would interfere with the supervision and control activities of:

- Romanian National Bank;
- Romanian National Securities and Exchange Commission – for the capital market.

Its task is a very difficult one due to the fact that since 1998 the Romanian National Bank and Romanian National Securities and Exchange Commission could not find a way to work together in several domains. And the future does not appear any brighter with a third supervising commission in place.

The financial market

More detailed explanations are necessary for the situation of Romanian financial market.

The first threat comes from the mutual fund market. These investment products were launched in 1994, almost two years before the Bucharest Stock Exchange opened for transactions. The lack of investment opportunities on a regulated market drive the fund managers to choose private placement, combined with conflict of interest, with regulations being ignored and with the lack of disclosure created the ideal conditions for the first mutual fund crisis in 1996. The crisis occurred when the Romanian National Securities and Exchange Commission tried to impose a transparent and uniform formula to calculate the net asset value for the mutual funds. Only one mutual fund collapsed, but it was the biggest at that moment¹⁰. The people could no more trust the mutual funds – or at least this was the general opinion.

Two years later, another mutual fund offering very high returns – on paper – managed to attract around 300.000 greedy investors. It seemed that the precedent collapse was forgotten. In May 2000 this mutual fund collapsed too and the estimated fraud was of 300 million USD. The investigations on this fraud continue.

After four years, the Romania mutual funds are struggling to survive due to the lack of investors. During 2003 and the first half of 2004 the mergers become a trend inside this financial sector.

The threat for private and occupational pension schemes comes from similar organizational form proposed. Some people could remember the two collapses and would become reluctant concerning their participation at least to the occupational pension schemes.

The second threat comes from the dimension of Romanian capital market and the opportunities it is offering for investors.

The 'only' problems concerning this kind of portfolio structure are:

- ✍ on Romanian financial market the T-notes and T-bonds are very scarce;
- ✍ T-bills, T-notes, T-bonds are not listed on a secondary market;
- ✍ the credit instrument issued by the banks are not listed on a secondary market;

¹⁰ Until now it is not clear how much money was lost on this collapse. Legal actions are still pending.

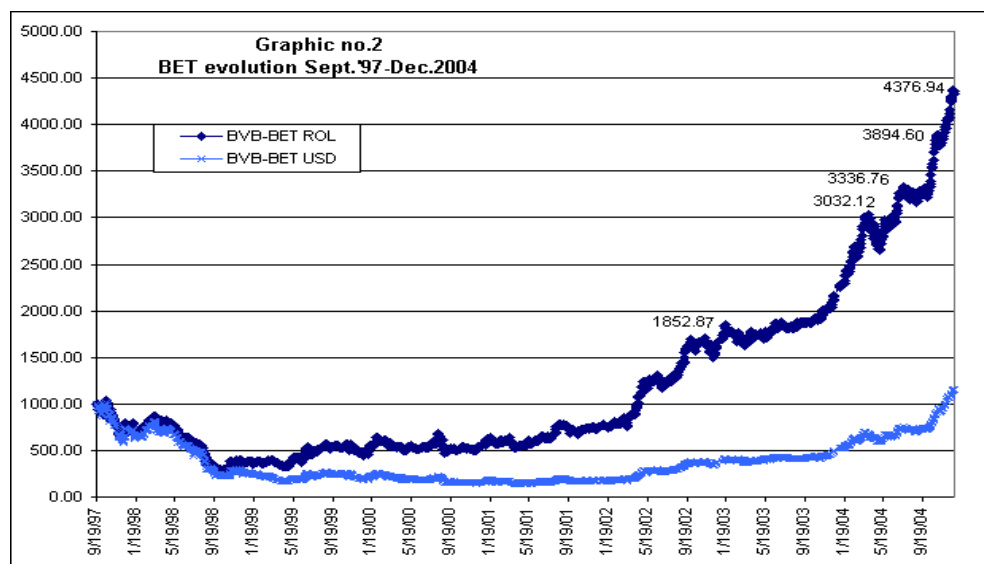
PENSION REFORM IN ROMANIA

✍ the investment alternatives offered by Bucharest Stock Exchange and Rasdaq remain scarce;

✍ the secondary market for municipal bonds is not liquid.

All these problems demonstrate that the Romanian financial market is not prepared for the moment to absorb the pool of money that could be concentrated by pension funds.

Despite the upward trend in the last three years – as graphic no. 2 shows¹¹ – other problems persist.



These 'other' main problems are:

✍ the small number of companies representing good investment opportunities at Bucharest Stock Exchange;

✍ the image of a highly volatile and speculative market associated with the Romanian Electronic Exchange Rasdaq, the OTC market;

✍ the projected merger between Bucharest Stock Exchange and Electronic Exchange Rasdaq – announced in May 2003 – which could generate further incertitude;

✍ the law on Romanian consolidate capital market was issued, but a lot of complementary regulations should be issued by the Romanian National Securities and Exchange Commission; the process is slow and it seems to be a long way until a good regulation package would be in place;

¹¹ The graphic no. 2 plots only the Bucharest Stock Exchange BET (Bucharest Exchange Trading) Index. It is the oldest one and its portfolio includes the best 10 companies. Its correlation coefficient with the BET-Composite and with BET-Financial (for the 5 specialized financial companies) is 0.96. The graphic shapes and the trends for those indexes are similar to those depicted by graphic no. 2.

- ✎ the market for municipal bonds organized at Bucharest Stock Exchange has a very low liquidity; the average daily volume of traded municipal bonds in 2003 was around 2.500; in 2004 the same average was around 1300 traded bond/ day; and the frequency of trades is still very low too;
- ✎ T-bills, T-notes, T-bonds are not listed on a secondary market; since 1998, pressure is put on Ministry of Finance to agree to the T-bonds listing, but this ministry prefer the lack of disclosure; this attitude allows the Ministry of Finance to establish the rate of interest for its bonds without a strategy, but adjusting the interest rate to its needs for financial resources;
- ✎ due to the situation presented above, the absence of the yield curve is almost logic; but its absence does not allow a fair assessment of investment returns on Romanian financial market;
- ✎ no rating is available for any kind of bonds issued on Romanian market; a project for the creation of a rating agency exists, but no real steps followed.

With all these minuses it is difficult to believe that the Romanian financial market could support funded pension schemes' demand for diversified investment. That is why some analysts expect only a limited success for occupational pension funds and raise questions on private pension funds capacity to provide a return above the inflation rate.

To all these weakness other two must be added:

- the lack of actuaries; the contributions to the pension schemes – either private or occupational – should be calculated by those specialist;
- the lack of financial advisor for individual investors; the number of such advisors in Romania is very low and many individuals would take decisions without a good understanding of facts; such a situation is can generate potential momentum for future crisis which could be very dangerous for Romanian pension fund sector.

Conclusions

After the first step of the pension reform – the introduction old Law no.19/ 2000 for the public pension schemes - Romania postponed for too long the next steps. Compared with Hungary and Poland Romania is well behind. Even Bulgarian authorities were more decided in implementing funding pension schemes.

Finally – in 2004, forced by the Romania's perspective to become an European Union member state, the politicians gave up their fears that the launch of funded pension scheme would be an unpopular decision. The laws concerning private and occupational pension schemes were issued and only the specialists and those interested to become pension fund managers reacted. The major part of Romanian working population still ignores this continuation of pension reform and how it would affect them.

Funded pension schemes are at the beginning of their long road on Romanian pension reform. And the road could become even longer and more difficult without a proper campaign for public information. The potential contributors would not understand their rights and their options, wrong decision could be made and – as we shown previously – potential crisis could arise.

After the last elections, the new Romanian government made no declaration regarding the laws concerning the second and third pillar of pension reform. We hope that no radical decisions would be taken.

The funded pension schemes need a stable legal environment. The speed with which the laws and regulation are changed in Romania after their approval and enforcement is was very high. Keeping track of all those changes is difficult and could create a lot of incertitude regarding the frames in which the financial services and products must function. The situation would not change too much, due to the fact that the commission specialized in pension fund supervision would be swamped in work for additional regulations, to complete the two laws. We consider these a major weakness of pension reform.

An important problem must be solved: the Ministry of Finance strategy towards T-bonds issuance to create the conditions for an yield curve existence. Without this, no correct decisions could be taken for pension funds' portfolio management and by pension fund members.

The funded pension schemes do not solve all the problems and can be affected by crisis – the case of Japan – or could fall under too much political influence in the intention to impose prudent investment rules. But – for the moment – it is a reasonable alternative, used by the neighboring countries too, and it must be used to complete and to solve some of the public pension system problems.

REFERENCES

1. Bahrim, Carmen – Aviva, o modalitate sigura, felxibila si care aduce valoare banilor celor care vor investi penstru pensia lor, Piata pensiilor, supliment al revistei Piata Financiara, no.7/ Nov.2003, pag.16;
2. de Menil, Georges – Pledoarie pentru sistemele de pensii private din Europa de Est, Reforma pensiilor, supliment al revistei Piata Financiara, June 2000, pag.3-4;
3. Dobrescu, Smaranda – Fondurile universale de pensii: solutia pentru schimbarile institutionale, Reforma pensiilor, supliment al revistei Piata Financiara, June 2000, pag.16;
4. Dobrescu, Smaranda – Gandind la pensiile viitoare, Piata pensiilor, supliment al revistei Piata Financiara, no.6/ May.2002, pag.4-10;
5. Lazar, Marian – Componenta investitionala a fondurilor de pensii, Reforma pensiilor, supliment al revistei Piata Financiara, June 2000, pag.26-27;
6. Mangan, Gerry – Evaluarea sistemului de pensii din Romania, Piata pensiilor, supliment al revistei Piata Financiara, no.3/ Jun.2001, pag.5-8;
7. Moldovan, Tudor – Alternative la sistemele de pensii bazate pe solidaritate sociala, Piata pensiilor, supliment al revistei Piata Financiara, no.3/ Jun.2001, pag.2-4;
8. Moldovan, Tudor – Planul de actiune al guvernului pentru perioada 2001-2004, Piata pensiilor, supliment al revistei Piata Financiara, no.3/ Jun.2001, pag.16;
9. Palagean, Dan Cristian – Pensii si pensionari, Piata Financiara nr.11/ 2004, pag.10;
10. Riley, Barry – Baby-boom look to their old age, Financial Times Survey 'Pension Fund Investment', May 9, 1997;
11. Riley, Barry – Managers relish the tick of the time bomb, Financial Times Survey 'Pension Fund Investment', May 21, 1999;

12. Seitan, Mihai – Romania trebuie sa accelereze reforma pensiilor, Fondurile private de pensii, supliment al revistei Piata Financiara, December 1999, pag.10-12;
13. Seitan, Mihai – Stadiul reformei pensiilor in Romania, Piata pensiilor, supliment al revistei Piata Financiara, no.4/ Oct.2001, pag.4-5;
14. Seitan, Mihai – Noul proiect de lege privind fondurile universale de pensii (prevederile principale), Piata pensiilor, supliment al revistei Piata Financiara, no.4/ Oct.2001, pag.7-11;
15. Seitan, Mihai – Campania nationala de informare a populatiei, Piata pensiilor, supliment al revistei Piata Financiara, no.5/ Feb.2002, pag.6-8;
16. Toma, Camelia; Danila, Simona – Romanian Pension System, The Second International Symposium 'Economies and Management Transition' Proceedings, Timisoara, 7-8 May 2004, pag.1295-1308;
17. *** - Arhitectura noului sistem de asigurari sociale, Reforma sistemului de pensii, supliment al revistei Piata Financiara, June 1999, pag.7-9;
18. *** - Fondurile universale de pensii, Reforma sistemului de pensii, supliment al revistei Piata Financiara, June 1999, pag.10-11;
19. *** - Dezvoltarea sistemului privat de asigurari de pensie, Piata pensiilor, supliment al revistei Piata Financiara, no.7/ Nov.2003, pag.18-21;
20. *** - Garantii necesare in sistemul de pensii private, Piata pensiilor, supliment al revistei Piata Financiara, no.7/ Nov.2003, pag.11
21. *** - O analiza a stadiului reformei pensiilor in Romania, Piata pensiilor, supliment al revistei Piata Financiara, no.7/ Nov.2003, pag.4-6
22. *** - Pot fondurile de pensii sa vitalizeze pietele financiare?, Reforma sistemului de pensii, supliment al revistei Piata Financiara, June 1999, pag.12-14
23. *** - Principalele prevederi ale proiectului de lege privind fondurile universale de pensii, Reforma pensiilor, supliment al revistei Piata Financiara, June 2000, pag.19-21;
24. *** - Proiectul legii privind organizarea si functionarea fondurilor universale de pensii (scurta prezentare), Piata pensiilor, supliment al revistei Piata Financiara, no.1/ Jan.2001, pag.4-8;
25. *** - Riscuri suplimentare in implementarea unei reforme a pensiilor, Piata pensiilor, supliment al revistei Piata Financiara, no.2/ Apr.2001, pag.23-26
26. *** - Salariatii romani vor munci mai mult pentru pensii mai mici, Capital nr.34/ 2004.
27. *** - Scurt istoric al preocuparilor de reforma a pensiilor, Piata pensiilor, supliment al revistei Piata Financiara, no.2/ Apr.2001, pag.11;
28. *** - Sisteme de pensii bazate pe solidaritate sociala, Piata pensiilor, supliment al revistei Piata Financiara, no.2/ Apr.2001, pag.2-4.

TOURIST DESTINATION MARKETING – SOME ASPECTS RELATED TO ROMANIA

SMARANDA COSMA¹

ABSTRACT. The concept of tourist destination marketing is a relatively new topic on the international plan, though its demand made it to be quickly imposed in practice. Romania has started to design its strategy of tourist promotion not long ago (1998) and it did so when the first budget was allotted for this purpose. The way to success is long, but the first steps have been made. The paper presents quite critically the first campaign of promoting Romania as a tourist destination designed by the resort ministry².

Tourists travel towards specific destinations. **Destinations** are physically, similar to islands, or politically bound locations, or can be limited according to the markets set up [2], as it happens with the South Pacific (that comprises Australia and New Zealand) or with the Central America (that includes 7 nations which are generally sold by national tourism offices as a whole).

The need of becoming a well-known tourist destination is quite a difficult challenge for marketing. The promotion of a town that is yet unknown and not challenging raises many problems, but these problems get even more challenging when one speaks about the promotion of a whole country. Tourist destinations do not need spectacular attractive sites to be visited by tourists. The town of Ruili (South-West China) has only 60.000 inhabitants, but ranges among „Top Tourist City” list (a distinction that is granted by the Chinese National Tourism Office). Ruili has spent large amounts of money to build infrastructure (roads) and to advertise some points of interest in this area. As a consequence, 800.000 foreign tourists from neighbouring countries and 850.000 domestic tourists have already seen the places.

Each destination has its own attractions that must be first identified and then advertised so as to finally gather hoards of tourists.

The advantages offered by tourist destinations can be seen in the following aspects:

- The most evident beneficial consequence is the increased number of jobs offered in hotels, restaurants, transport system etc.
- A less obvious benefit comes into the various support industries and professions;
- Tourist spending rate;
- Taxes and fees paid by tourist organisations to the state;
- The local products export is stimulated (especially as souvenirs, gifts or other objects).

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² Tourism is a division of the Ministry of Transports, Constructions and Tourism

The promotion strategy for a tourist destination is a long-term subject. A negative example is the one provided by Bali, where the National Tourism Office stated that: „The marriage between Bali and tourism is not very happy”. Authorities seem concerned that tourism has visibly affected local culture. On the other hand, political instability, violence, natural calamities, environmental issues can also affect destinations.

Besides advantages, there are some **drawbacks**, among which:

- ❑ There is a stringent need for adequate infrastructure;
- ❑ There is a pollution increase in the area;
- ❑ The natural environment can be damaged;
- ❑ The values and local cultural sites can be affected and even destroyed etc.

Designing the **marketing strategy for a tourist destination** implies passing through more stages:

- the analysis of the competition on the tourism market;
- identification and selection of the local existing or potential points of interest and amenities;
- segmenting and identifying target markets;
- coordination between local authorities and tourist organizations;
- developing tourism packages;
- advertising holiday destinations;
- providing for sustainable tourism.

Competition is strong on the holiday-making market. There are already well-known attractive destinations and there is an imminent occurrence of other new places on the map. Each holiday destination has its own life cycle. Until quite recently, Spain, France and Italy used to be the best tourist destinations for an ideal holiday, but now more people turn their eyes to Greece, Turkey, and even the newly discovered sites of Central and Eastern Europe. Similar to other products in tourism, holiday destinations have their life cycles: introduction, growth, maturity and decline. For instance, tourism managers should be sure that during growth, the infrastructure is able to respond to the increased demand for tourism. Quite often, there is a question of restricting the number of tourists to extend the life cycle of a site. Sustainable tourism development means balancing the maximum of the profit got with good preservation of the natural sites and improved residential living conditions.

To attract tourists, destinations must respond to their needs in so far costs, convenience and time are concerned. *Costs* are measured by means of the benefits offered and of the balance between time, effort and resources consumption on the one hand and experience, entertaining, relaxation and nice memories on the other hand. *Convenience* refers to language barriers, state of cleanliness, access to points of interest and entertainment transport to and from the hotel or specific needs solution. *Scheduling* the trip considers safety, sanitary conditions, currency exchange fluctuations, political instability.

Peter Hawes [2] asserts that the decision of spending money for a holiday destination or another is influenced by a number of **psychological factors**:

- ⊗ Prestige: a certain prestige or fame especially in the case of long journeys is attached by tourist to their travelling;

- ⊗ Escape: the desire of evading from the routine is a human need, mainly felt by the dwellers of large cities;
- ⊗ Sexual opportunities: it has both positive and negative aspects as travelling have been an opportunity of meeting people. The ocean liners and the Orient Express train two such examples;
- ⊗ Education: the travels have always been seen as a means of getting experience and learning;
- ⊗ Social interaction: the occasion of meeting and interacting with foreigners and strangers can be a strong incentive;
- ⊗ Family reunions: family meetings represent an important segment of the travel market;
- ⊗ Relaxation: tourist compounds respond to the individual's need to relax;
- ⊗ Self-discovery: for many persons, travels are an opportunity to learn more about themselves.

All these factors can be considered as segmentation variables in the case of the tourism market, besides life styles and demographic criteria.

Identification of the target markets for a tourist destination can be made in two ways:

- 1) Collecting data from actual tourists:
 - Where are they from?
 - Why do they travel?
 - What are their demographical characteristics?
 - What is the extent of satisfaction concerning the services provided?
 - How many of the tourists are loyal to the company?
 - How much do they spend? etc.
- 2) Making an analysis of the points of attraction of a destination and selection the segment of tourists that are interested in these points.

The *usual classification* of the tourists for a holiday destination considers the criterion of travelling *alone* or *in group*. This classification is used by transport companies. According to the institutionalisation and their impact on the destinations, tourists segments can be classed as [2]:

- A. **Organized group tourists:** have a minor influence upon the travel; they simply buy a tour package or another. Usually, they travel in groups, see the sights from the coach and have reserved hotels. The only contacts with the local people occur when they go shopping.
- B. **Individual group tourists:** are much similar to the former group, but they control the itinerary more firmly. For instance, they can rent a car to go sightseeing.
- C. **Explorers:** plan their trip; make their own reservations, though they can use a travel agency as well. Usually they are sociable, eager to interact with the local people.
- D. **Drifters: rarely use traditional hotels:** Usually they stop in youth hostels or camps. They socialise with the lower local population strata, travel in second class trains and are young.

Tourist destination marketing presupposes to develop and maintain the popularity of a certain tourist location. More than often, the focus is kept unfortunately on the tourist destination development rather than preserving the points of interest for the tourists.

In order to create an identity, destinations usually make use of events (festivals, congresses, fairs etc) that are set up, established and developed. The development of a tourist destination depends upon public and private investment at the same time. **Promoting a travelling destination requires the effort of an entire team.**

Terms such as **national tourism organisations** (in short, NTOs) apply to public organisations having responsibilities in promoting national tourism. They can be: ministries, general directions, departments or companies. The government support of the national tourism activity can be found with national tourism offices that are not part of public administration, too.

NTOs role in so far marketing is concerned is presented in brief in the table below:

Abroad [5]	In Romania [7,9]
<ul style="list-style-type: none"> - flow of research data and marketing intelligence; - representation in markets of origin; - organization of workshops and trade shows; - familiarization trip; - travel trade manuals; - support with literature production and distribution; - participation in joint marketing schemes or ventures; - information and reservation systems; - support for new products; - trade consortia; - consumer assistance and protection; - general advisory services for the industry. 	<p>Activities of the Ministry of Tourism (central administration institution that implements the policy related to tourism, according to the Governing Program adopted by the Parliament—see portal):</p> <ul style="list-style-type: none"> - elaborates tourism strategy and development programs; - coordinates, decides and carries out the tourism related privatisation process; - organizes travelling promotion actions domestically and abroad, through the offices of tourism promotion there; - elaborates norms for the tourist activity development; - authorizes educational institutions training specialised staff for the field; - authorizes and gives licenses to companies that offer, trade, sell tourism services and package, and to those creating tourism products on the Romanian territory; - offers specialised assistance and general information on the Governmental strategy and development programmes to companies; - gives technical assistance to the local public authorities in order to develop and promote the national tourist product.

There are about 200 recorded national tourism offices in the world that have approximately 1000 representatives abroad. Out of these, 2/3 is ministries or department within ministries and 1/3 are individual legal entities.

The largest part of the promotion effort of the national agencies and offices aims at the international market, but enormous amounts of money have been spent lately to promote domestic tourism. Developed countries (France, Great Britain, Greece) have their representatives spread throughout the world while developing countries resort to establishing offices in target-markets.

The best data source concerning the activity of the national tourism organisations is represented by the World Tourism Organization (WTO), located in Madrid. WTO is an intergovernmental organisation, to which the majority of states belong and which gathers data in this domain. The annual spending to promote destinations increased to about 1,5 billion dollars at world level. Marketing spending represents between 50 and 66% of the overall budget of the national tourism organisations.

A means of communicating with the potential tourists consists in **package deal offers**, promoted by brochures, videotapes, CDs, tourism agencies or VIPs. Tourism organisations, countries and locations develop attractive packages for the points of interest hoping that such destinations will be covered by tourists. Among the requirements of the packages is the transportation by means of coaches, planes, ships etc. to facilitate access to the area. The concentration of the points of interest, provision of services and facilities on smaller areas represents an incentive for the tourist and develops the spirit of adventure. There is no rule so as to specify the exact number of points of interest that can make a destination a venue. Some favour one point of attraction-destination, others prefer to see more sights in one travel.

On the other hand, the points of interest themselves do not attract tourists, but rather the feeling of higher level value or the pleasant experience are decisive. Such components can be found in the local history, culture and population. New York City is such an instance. One in four tourists is a foreign visitor. Authorities gave a quick answer to statistics, organised city tours, published brochures in many foreign languages and eased the currency exchange system. To conger added value, such packages are based upon the development of a cultural liaison between local inhabitants and foreign tourists.

In designing tourism offers, organisers consider the overall capacity of the resort (residents + tourists). **Sustainable tourism** is a managerial concept that helps anticipating and preventing problems occurring when carrying capacity is exceeded. Sustainable development in tourism depends upon the **analysis of the impact upon the environment**. This analysis covers the following steps [2]:

1. analysis of the social, political, physical and economic environment;
2. tendencies designing and forecasting;
3. establishing objectives;
4. evaluation of the possible alternatives that could lead to fulfilling the objectives;
5. selecting the best choice;
6. developing the best strategy;
7. implementing it;
8. evaluation of the process.

Promoting Romania as a tourist destination*

Theoretical aspects versus practical aspects

Theory	Practice...
<p>Promotion contains all the actions through which a company makes its ideas, products or services known to various public categories, aiming at being accepted or purchased by the public of reference.</p> <p>Promotional mix:</p> <ul style="list-style-type: none"> ✓ Advertising Sales promotion Sales force Public relations Direct marketing <p>Target – present and potential buyers of the company's products and/or services, decision making factors and influential bodies</p> <p>Promotional objectives: Notoriety</p> <ul style="list-style-type: none"> 2) Action 3) Image <p>Evaluation of the mass-media – four important factors:</p> <ul style="list-style-type: none"> 1. characteristics of the media; 2. atmosphere of the media; 3. coverage of the media; 4. cost of the media. <p>Establishing the promotional budget, according to one of the methods below:</p> <ul style="list-style-type: none"> 1. percent of turnover or a fixed amount per unit sold; competitive parity; available resources; 4. objectives and means. 	<p>Simply surprising Romania- program initiated in 2003</p> <ul style="list-style-type: none"> • Customer: the General Direction of Tourism Promotion in the Ministry of Transports, Constructions and Tourism • Advertising Agency: Ogilvy&Mather • Target: informed, 20-55 year-old tourists, having an average income, concerned by new experiences, culture and history • Objectives: <ul style="list-style-type: none"> 1) Presentation of Romania as a tourist destination 2) Change of perception and attitude to Romania, mainly in EU countries and USA • Message: Romania has changed from a tourist's point of view Slogan: "Simply surprising Romania" (60 seconds advertisement) • TV Channels: Euronews, Eurosport, Discovery, CNN, BBC one broadcast per day per TV channel • Overall budget: 52,6 billion lei (about 1,7 million USD dollars) • Period : June-August 2004

* Ministry offices abroad: Great Britain, Italy, Austria, Japan, Belgium, Moldova, The Czech Republic, Switzerland, The Netherlands, France, Russia, Germany, Spain, The United States of America, Greece, Sweden, Israel.

Tourist information points in Romania: Arad, Iasi, Bacau, Miercurea Ciuc, Baia Mare, Ramnicu Valcea, Brasov, Sibiu, Bucuresti, Suceava, Cluj-Napoca, Targoviste, Constanta, Tulcea, Craiova.

Coment

- ❑ The first part of the campaign – a story in which there are inserted the main points of tourist interest
- ❑ The second part of the campaign – the development of concrete tourism offers
- ❑ Is it an image campaign or a tourist product? What could we offer foreign tourists so as to attract them to come and visit us, to choose us ?



Portal of the Tourism Ministry

BIBLIOGRAPHY

1. Buttle, F., *Hotel and Food Service Marketing*, Cassel Educational Ltd., UK, 1994
2. Kotler Ph., Bowen I., Makens I., *Marketing for Hospitality and Tourism*, Prentice-Hall, Inc., SUA, 1999
3. Lazer W., Layton A.R., *Contemporary Hospitality Marketing*, Educational Institute of AH&MA, SUA, 1999
4. Lewis R.C., Chambers R.E., *Marketing Leadership in Hospitality*, John Wiley&Sons, Inc., SUA, 2000
5. Middleton, V.T.C., Clarke, J., *Marketing in Travel and Tourism*, 3rd edition, Butterworth Heinemann, UK, 2001
6. Vorzsak, A. (coordonator), *Marketingul serviciilor*, Editura Presa Universitară Clujeană, Cluj- Napoca, 2004
7. www.romaniantourism.com
8. www.romaniatravel.com
9. www.turism.ro

THE MULTINATIONAL COMPANIES' STRATEGIES IN THE GLOBAL MARKET

NEGRUSA ADINA¹

ABSTRACT. In this paper I intended to present the main international strategies orientation for the multinational companies which can affect differently the development of countries economy. Globalization, in the sense of increased economic interdependence among nations, is a poorly understood phenomenon. This paper focus on the key actors in the globalization process, namely the firms that drive this process. A relatively small set of multinational companies accounts for most of the world's trade and investment. Yet, this paper demonstrates that most of these firms are not 'global' companies, in the sense of having a broad and deep penetration of foreign markets across the world. Instead, most of them have the vast majority of their sales within their home leg of the 'triad', namely in North America, the European Union (EU) or Asia. Finally I tried to identified these companies in our economy and analysis their development here.

Introduction

In the actual process of globalization, multinational companies play an important role. This role, in general is well known. The share of cross/border capital flows accounted for by the foreign direct investment of multinationals has been rising in the last 10 years, particularly for many developing countries for which this investments are the largest type of capital inflow. This investments links financial and product markets across countries. Integration of goods and capital markets, in turn, helps integrate national labor markets.

Dow Chemical serves many local markets by replicating in each of those countries its american production facilities. In a variant of this strategy, Ford and General Motors have production facilities in Brazil and Thailand, building vehicles not just for those local markets but for the broader regional markets of South America and Southeast Asia. In contrast Intel fragments its global semiconductor production: its R&D facilities in USA, waferfabrication plants in Ireland and Israel and microchip-assembly plants in Costa Rica and Philippines. Finally, in many countries, IBM operates whole/trade outlets, which import and distribute goods produced elsewhere.

Theoretical elements

Most recently, international opportunities revolve around gaining operating efficiencies through economies of scale, economies of scope, or cost reductions. On an international level, economies of scale opportunities exist to the extent that firms can standardize their products across global markets (soft drinks) or coordinate

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its functions across global operations (phone companies). Economies of scope present opportunities for operating efficiency when firms invest in critical resources (auto industry) that can be utilized by multiple global operations. Opportunities exist to reduce costs by setting up operations in countries with inexpensive labor markets (shoe industry, customer service).

International growth opportunities are common today when a particular country and/or region is critically important to the development of the global economy. For example, the opening of trade in China presents numerous opportunities for business across numerous industries. Firms may pursue these opportunities to prevent competitors from gaining a positional advantage (first mover strategy) or to follow major competitors into new global regions by learning from their mistakes (close follower strategy).

The process of developing a particular international strategy is called *strategic planning*. It is often the responsibility of top-level executives at home country (HQs) and senior managers of subsidiaries at host countries.

Stages in Strategic Planning Process

Stage 1: Analysis of external and internal environment through SWOT analysis, i.e. looking at each activity of the business and pinpointing key strengths, weaknesses, opportunities and threats.

The goal of external environmental analysis is to identify opportunities and threats that will need to be addressed. The purpose of an internal environmental analysis is to evaluate the company's financial and personnel strengths and weaknesses.

Stage 2: Statement of corporate mission and establishment of corporate objectives. The following questions must be answered to determine the firm's basic mission:

- What is the firm's business?
- What is the reason for its existence?

Stage 3: Specification of overall corporate strategy & establishment of operational plans in line with overall strategy.

Stage 4: Periodic reviews of strategy in terms of objectives versus performance – the use of gap analysis, and subsequent revision of objectives. This is the process of **Evaluation and control of operations**. Progress is periodically evaluated and changes are made in the plan to accommodate changing circumstances and new information.

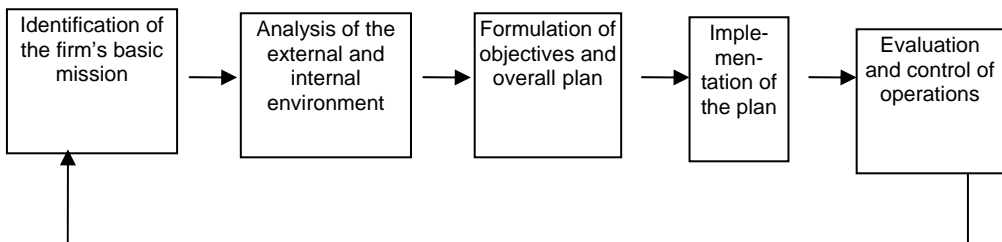


Fig.no.1. Strategic Planning Process

Prahalad and Doz provide the most widely used framework for corporate-level international strategies. They propose that the orientation of these strategies tends to be based on two strategic requirements; 1) global integration and 2) local responsiveness. Global integration is the process through which a firm's international business-level strategies are integrated into a single strategy. Local responsiveness refers to tailoring these strategies to country-specific conditions. From these two requirements, Prahalad and Doz developed the framework presented below three generic types of corporate-level international strategies; multi-domestic, global and transnational.

International Strategy Orientation

(From Prahalad & Doz, 1993)

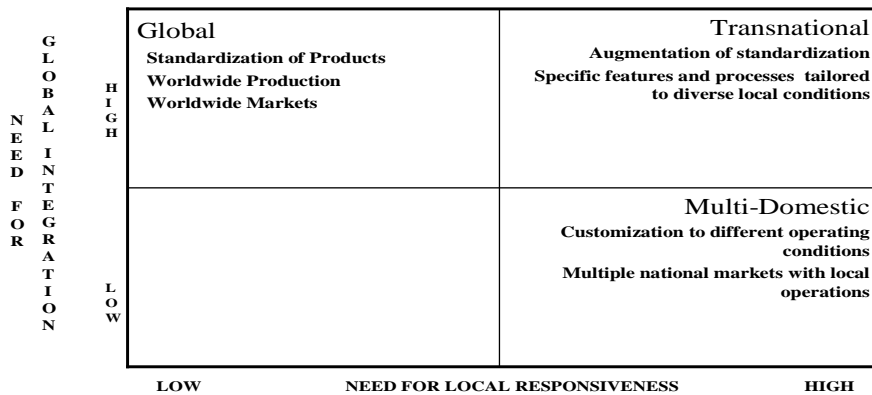


Fig.no.2. International Strategies Orientation²

1. International Strategy

Trying to create value by transferring core competencies to foreign markets where indigenous competitors lack those competencies. It involves the use of 'Ownership' Advantage in a standardised product to supply new markets through local production. There is tendency for centralised control.

2. Multi-Domestic Strategy

It emphasises the need to be responsive to the unique conditions prevailing in different national markets, i.e. firms pursuing a multidomestic strategy tend to customise their product offering, marketing strategy, and business strategy to national conditions.

It is a market-seeking strategy based upon advantages in servicing different markets. Firms respond to local needs through low-cost product modification.

² Doz, Yves, Prahalad, C. K., Managing DMNCs: A Search for a New Paradigm, Strategic Management Journal no.12(Summer),1993.

This approach is effective when:

- there are clear differences among national markets:
- economies of scale in production, distribution and marketing are low;
- cost of co-ordination between the parent company and its subsidiaries is high

Generally, multi-domestic strategy involves decentralised structures, since each subsidiary must be responsive to the local market.

A multi-domestic strategy focuses on decentralized strategic and operating decisions so as to allow each business unit to customize their products/services to the operating conditions of a country. Breweries have utilized this type of strategy to establish a strong presence in specific countries because the industry is both highly fragmented and rapidly growing. Since this strategy assumes that country-specific markets differ across the globe, use of these strategies usually increases market share in a particular country by maximizing the competitive response to idiosyncratic market requirements. On the downside, the differences in market preferences and business-level strategies create more uncertainty for the firm as a whole and prevent them from achieving operating efficiencies across their global operations.

3. Global strategy

It focuses on increasing profitability by reaping cost reductions from experience curve and location economies. It is almost the exact opposite of multi-domestic strategy. Product can be sold world-wide with minimal adaptation, and there are large scale economies to be gained in manufacturing and marketing.

It is more or less an efficiency-seeking strategy with standardised technology-intensive production in few locations. It involves centralised co-ordination of low-cost networks.

A global strategy focuses on integrating the strategies of interdependent worldwide businesses by standardizing products/services and business functions so as to achieve economies of scale and scope. In contrast to multi-domestic strategies, a global strategy tends to reduce the risk to firms as a whole by creating operating efficiencies across global operations while also foregoing growth in country-specific markets because these markets are less likely to be identified as strategically important. Firms with commodity-type products (soft drinks, laundry soap) are most likely than other firms to use a global strategy, even though they may be required to make local adaptations (accessibility to fresh water supply) in order to effectively compete on a global scale.

4. Transnational Strategy

Combining efficiency of product standardisation with local responsiveness to increased competitive intensity. Incorporates a global learning strategy. This involves a simultaneous focus on reducing costs, transferring skills and products, and boosting local responsiveness.

A transnational strategy focuses on both global efficiency and local responsiveness. While it is difficult to successfully implement this type of strategy because it requires both close global coordination and country-specific operating

flexibility, some industries (automotive) tend to have a transnational orientation that emphasizes the augmentation of their standard business formulas with specific products and processes tailored to country-specific conditions.

Recall that corporate strategy focuses on both the product/service scope and geographic scope of a firm's businesses. As such, international corporate-level strategy focuses on the strategic requirements of multinational firms with a geographic scope that crosses multiple national/regional boundaries. This means irrespective of the country of operation these generic types of corporate-level international strategies provide a strategic orientation for international business-level strategies (cost leader, differentiation, focus).

The role of multinational companies in international trade

The internationalisation of production systems has accelerated, as multinational companies from a larger number of countries have increasingly taken advantage of cheaper transportation and new communication technologies to outsource part of their production. This has had important consequences for developments in cross-border transactions. In 1995, trade associated with US multinational corporations – trade involving United States parents, their foreign affiliates, or both – accounted for 62% of all US exports of goods and for 39% of all US imports of goods. A substantial share of the remaining US exports and imports of goods is associated with affiliates of foreign companies in the United States. In 1995, 23% of US exports of goods and 34% of US imports of goods were associated with such affiliates.

The share in total US exports and imports accounted for by multinationals – both associated and intra-firm trade – has changed very little. Associated exports of MNCs declined from 77% in 1982 to 62% in 1995. Associated imports declined from 50% in 1982 to 39% in 1995. The share of intra-MNC-trade as a total of MNC trade is massive, both in exports and imports. Units of multinational corporations buy from each other almost as much as they buy from outside sources.

Of the \$363 billion in exports of goods associated with US multinational corporations, 41% represented trade between US parents and their foreign affiliates (intra-MNC trade), while 59% represented trade with other parties. Of the \$213 billion in trade with other parties, 88% were exports shipped by US multinationals to foreigners other than their foreign affiliates, and 12% were exports shipped to foreign affiliates by entities in the US other than their parent organizations.

Of the \$288 billion in imports of goods associated with US multinational corporations, 44% represented intra-firm trade, and 56% represented MNC trade with other parties. Of the \$163 billion in trade with other parties, 83% were imports shipped to US multinationals by foreigners other than their foreign affiliates, and 17% were imports shipped by foreign affiliates to entities in the US other than their parent organizations.

The role played by multinational companies in international trade suggests that it might be of interest to consider cross-border transactions from the point of view of ownership rather than residence, as is done in standard trade and balance of payments statistics. Such an approach allows a closer assessment of the link between FDI and international trade. However, only a few countries provide data that allow the evolution of imports and exports of parent companies and foreign

affiliates to be traced. It is therefore difficult to establish evidence of structural changes in this area. Multinational companies in all the countries for which data are available are responsible for a large proportion of these countries' total trade, although patterns are different across countries.

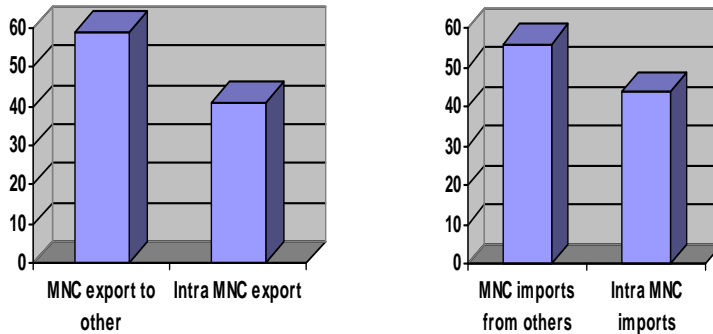


Fig.no.3 The share of multinational companies trade in US export/import volume

Based on an important study³ made in 2003 on the major companies in the world, resulted the following argues about the internationalisation of the world economy. The majority of the world's largest 500 companies are multinational companies, that means, they produce and/or distribute products and/or services across national borders. The 500 largest companies in the world accounted for over \$ 14 trillion of total sales in fiscal year 2001. The average revenues for a firm were \$28 billion, ranging from Wal-Mart at \$220 billion to Takenaka at \$10 billion. From this list more than 380 firms are included in the multinational area, even if they action due to a global strategy or only home-region. Based on their extended sales we could identify 4 types of multinational companies groups:

Home region oriented – from all, 320 firms have at least 50% of their sales in their home region, this means 803%.

Bi-regional - defined as firms with at least 20% of their sales in each of two regions, but less than 50% in any one region. From all only 25 firms have this feature.

Host region oriented – that firms which have more than 50% of their sales in a market other than their home region and from the top 11 firms have this strategy.

Global – defined as firms which have of 20% or more sales in more than two region, but less than 50% in any one region. In this context only 9 firms are defined as global company.

Given the above classification of multinational companies results the following structure of the firms.

³ Rugman, Alan M and Verbeke Alain, A perspective on regional and global strategies of multinational enterprises, Journal of International Business Studies no.35/ 2004

Tabel. no.1.

Example of companies in this multinational structure oriented

Company	Region	Revenue US\$ bn	Percentage intra-regional	Second region of development
Global companies				
IBM	North America	85.9	43.5	Europe
Sony	Asia-Pacific	60.6	32.8	North America
Royal Philips Electronics	Europe	29.0	43	North America
Nokia	Europe	27.9	49.0	Asia-Pacific
Intel	North America	26.5	35.4	Asia-Pacific
Canon	Asia-Pacific	23.9	28.5	North-America
Coca-Cola	North America	20.1	38.4	Asia-Pacific
Flextronics	Asia-Pacific	13.1	22.4	North-America
LVMH	Europe	11.0	36.0	Asia-Pacific
Bi-regional companies				
BP	Europe	174.2	36.3	North America
Toyota Motor	Asia-Pacific	120.8	49.2	North America
Nissan Motor	Asia-Pacific	49.6	49.7	North America
Unilever	Europe	46.1	38.7	North America
GlaxoSmithKline	Europe	29.5	28.6	North America
3M	North America	16.1	46.9	Europe
McDonald's	North America	14.9	40.4	Europe
Michelin	Europe	14.6	47.0	North America
Eastman Kodak	North America	13.2	48.5	Europe
Electrolux	Europe	13.1	47.0	North America
L'Oreal	Europe	12.3	48.5	North America
Lafarge	Europe	12.3	40.0	North America
Host regional oriented companies				
Daimler Chrysler	Europe	136.9	29.9	North America
ING Group	Europe	83.0	35.1	North America
Honda Motor	Asia-Pacific	58.9	26.9	North America
Sodexho Alliance	Europe	10.6	50.0	North America
Home region oriented companies				
Wal-Mart Stores	North America	219.8	94.1	Europe
General Motors	North America	177.3	81.1	Europe
Ford Motor	North America	162.4	66.7	Europe
General Electric	North America	125.9	59.1	Europe
Mitsubishi	Asia-Pacific	105.8	86.8	North America
Mitsui	Asia-Pacific	101.2	78.9	Europe
Allianz	Europe	85.9	78.0	North America
Volkswagen	Europe	79.3	68.2	North America
Siemens	Europe	77.4	52.0	North America
Sumitomo	Asia-Pacific	77.1	87.3	North America
Philip Morris	North America	72.9	57.9	Europe
Carrefour	Europe	62.2	81.3	Asia-Pacific
Duke Energy	North America	59.5	96.5	-

Data are for 2001.

Source: Braintrust Research Group, The Regional Nature of Global Multinational Activity, 2003 (www.braintrustresearch.com).

Firms can utilize a variety of mode of entry into global markets. International expansion and growth opportunities can be accomplished in three ways: exporting, contractual agreements (licensing and franchising), or direct foreign investment (joint ventures, acquisitions and new wholly subsidiaries. Since each of these modes of entry has its strengths and weaknesses, choosing the appropriate entry strategy is essential to superior competitive performance in global markets.

Exporting involves the transfer of goods and services to foreign countries for their sale through a company operating in that country. Most firms begin their international expansion with exporting because it does not require an extended investment a country. Relatively low entry and exit costs provide firms with the ability to quickly and easily establish a presence in a foreign market. On the other hand, the high costs of tariffs and transportation, the loss of control over the pricing and distribution, and the inability to tailor goods and services to local markets makes it difficult to effectively compete in global markets.

Licensing is a contractual arrangement that involves selling the right to produce and/or sell products to foreign markets. Franchising is the counterpart of licensing that focuses on selling the right to use a brand name and/or operating method in order to sell a service to foreign markets. These contractual arrangements are the least costly and most flexible mode of entry into and expansion of global markets since the licensee assumes the risk of investing in the manufacture, marketing, and distribution of the goods and services. On the downside, profits are reduced since returns must be shared with licensee and the risk of the licensee becoming a serious competitor after the agreement expires may occur as they learn the business.

The final mode of entry into global markets is **direct foreign investment**. Direct foreign investment can occur in three ways; joint ventures, acquisitions, and greenfield ventures. Joint ventures are cooperative agreements among two or more firms to pursue common business objectives in a foreign market. These agreements allow firms to share the risks and resources required to expand into global markets and contribute to the development of new organizational capabilities. The two primary reasons for the failure of these alliances are incompatibility of the partners and conflict between the partners.

Increasing foreign direct investment (FDI) by multinational companies has influenced international trade patterns, though in ways that are not always straightforward and that generally result from a series of complex interactions which may vary over time. For example, outward FDI can be a substitute for exports with parent companies setting up affiliates to meet the local demand or to circumvent restrictive trade policies in the host country. On the other hand, foreign investment can also be undertaken in order to take advantage of more favourable conditions in the host countries, such as cheaper labour or lower taxes. It may also be associated with stronger exports in the construction phase of production facilities abroad followed by an increase in imports of finished goods at a later stage. And, finally, it may be a direct complement to exports when firms undertake investment abroad to facilitate and enhance the distribution of their products.

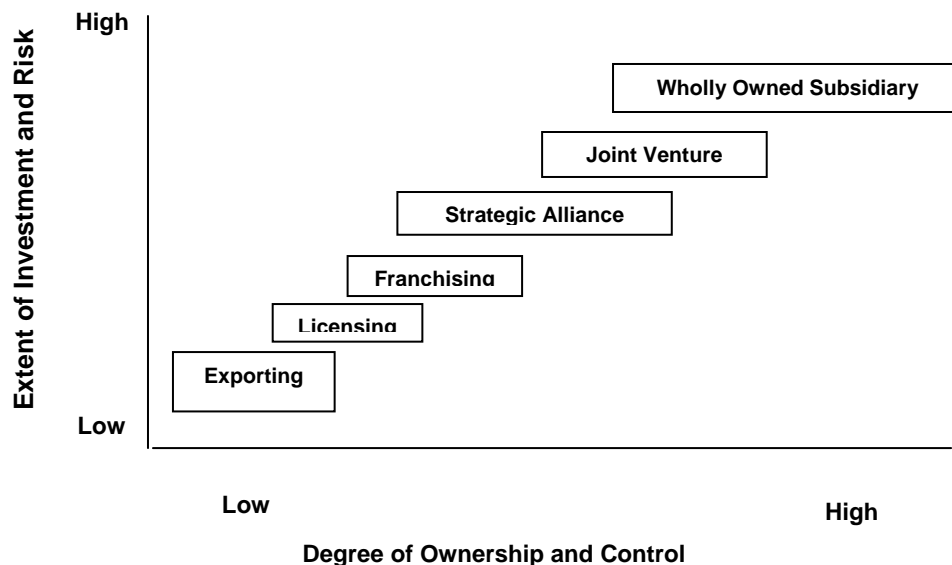


Fig.no.4. Entry modes for international expansion

Multinational companies in Romania

Transnational firms are an important part of the economic domains of the world. They are the main and permanent influential factors in the international arena. Free trade areas and regional common market have provided new opportunities for regional management of multinational companies. As the importance of Multinational Companies (MNCs) in the international economy has grown, so has the opportunity for our country to attract, for grown purposes, inside of the national economy. Macroeconomic indicators show that, over the last years, the Romanian economy has experienced high growth of 5.3% and 4.9% in 2001 and respectively in 2002, 70% of which derives from the private sector.

The foreign flux of investments for romanian economy was not so favorable in the last 12 years. Comparing with the neighbour countries, like Hungary, Czech, Poland and Slovakia, the amount of foreign investments in Romania is less than 6% of all investements in the central – est Europe. The main investments done in our economy are directly related to the privatization process. So, the so called greenfield investments, created in romanian economy without any bases, are not exist. The majority of investments done in our economy was focused only on exports activities, and the resean for creating here this products was in many cases the cost of human resources required.

Foreign trade, one of the top growth factors, now account about USD14 bn. Recent trends in the structure of exports reflect changes in the structure of the economy: the share of machinery, electrical equipment and chemical products has been constantly increasing, dimishing the importance of low value added products.

The stock of foreign direct investments, though, accounted only USD 10,4 mld. at the end of 2003. The top of foreign investors reflects the interest of european countries about our business environment, due to the announcement of future Romanian integration in UE.

Tabel no.2**The structure of foreign investments in Romania**

The country origin of investors	The amount of investments in Romania (USD ml.)	Percent of the total investments in our country
Greece	650	24,15
Holland	297	14.35
Austria	185	8.91
Germany	159	7.66
France	111	5.37
Turky	72	3.47

Many from the foreign brands came in our economy trough greceee companies or greceee affiliates of the multinational companies. In this context in the end of 2003 there are evaluated an total investement from this region, about USD 650 mil. in order to mentain positioning of these brands in the romanian market. Because of the high instabilitz of the market and high factors of risk, the multinational companies prefers to act in the est regions of Europe trough intermediars, due to high potential of the markets from here. The greceee affiliates and companies came in Romania with clasical brands wide world know, like: Coca-Cola, Nike, Lacoste, Toyota, Harley Davidson, Marks&Spencer, Beauty Shop, and based on their success they intend to develop other businesses, Sephora, Starbucks etc.

The main representants of the multinational companies in Romania presented in the above tabel, participate in our economy with important investments and ap lied the specific strategies for this region, East Central Europe. Main part of these companies experinced an exporting relatinos with some firms created in 1991-1996 and after that when the statisstical date about the tendencies of the market were enough challenging created an jointventure businesses or marke strategic merge and aquisition. There are few companies which ap lied an direct investment in romanian economy. For exemple Lafarge, Michelin, Electrolux create theirs main production facilities based on aquisition of old factories with the same domanin of activities. Only Philip Morris, Unilever and Interbrew Efes Brewery ap lied an direct investment in their facilities.

Tabel no.3**The multinational companies in Romania**

Company	Year of register in Romania	Total investment Thous lei	Total revenue in 2003 Thous. lei	Profit Thous lei	Average number of employee in 2003
IBM Romania SRL	1991	53754463	1063832803	207705069	99
3M Romania SRL	1997	19905245	697405864	223798922	36
Philips Romania SRL	2003	16397567	434758613	37458113	66
Nokia Romania SRL	1998	312742	21914122	19908839	12
Coca-Cola HBC Romania SRL*	1991			679879212	
Microsoft Romania SRL	1996	34975113	348033762	178873574	40
Unilever Romania SRL	1999	501110484	1229896996	31217212	255

THE MULTINATIONAL COMPANIES' STRATEGIES IN THE GLOBAL MARKET

Company	Year of register in Romania	Total investment Thous lei	Total revenue in 2003 Thous. lei	Profit Thous lei	Average number of employee in 2003
Unilever South Central Europe SRL	1996	267334965	4302619705	-806456	421
Lafarge Romcim SA	1991	3123892729	4700697453	1460740691	1153
Lafarge Agregate Betoane SA	1991	315093751	573891350	17822088	406
Michelin Romania SA	2002	793327696	3936993161	-284693967	243
Electrolux Romania SA	1992	499468476	4274634778	127738823	1508
L'Oreal Romania SRL*	1995			34441924	
McDonlad's Romania SRL*			1296258265	16640375	1748
Orange Romania SA	1996	18990863386	17197065531	6408563226	1482
Mobifon SA*				6297386495	
Metro Cash&Carry Romania SRL	2001	6702458874	31024846970	821014706	5169
Philip Morris Romania SRL	2000	1750347253	10542194830	245433165	445
Siemens SRL	1995	31599300	535599448	85103646	120
Interbrew Efes Brewery SA	1999	1565342955	1099460044	346444991	140
Renault Romania SA*				266699183	

Note: * data not available

Based on these investements our economy should try to attract and develop other business relationships with multinational companies in order to increase the amount of foreign direct investment and extend the domestic strategic domains of activities, due to a higher rate of internationalization of the world market.

Central and Eastern European countries (CEECs) have become favorite targets for FDI during the 90s. Evidence suggests that Hungary, Poland and Czech Republic have attracted large inflows of FDI since the early 90s. Bulgaria and Romania have registered substantial FDI inflows only after 1996 (World Bank, 1999). However, considering the share of FDI in gross fixed capital formation, the experiences of Bulgaria and Romania after 1993 are comparable to those of other CEECs. In this conditions our country will became more stable and competitive in the global market, multinational companies supporting the market development and technological progress.

REFERENCES

1. Barrel, R. and Pain, N., Foreign Direct Investment, Technological Change and Economic Growth Within Europe, Economic Journal, v.107 (445) 1997.
2. Bartlett, C. and Ghoshal, S., Managing Across Borders: The Transnational Solution, Harvard Business School Press, 1989: Boston, MA.
3. Doz, Y. L., Prahalad, C. K., Managing DMNCs: A Search for a New Paradigm, Strategic Management Journal no.12(Summer),1993: 145-164.
4. Doz, Yves, Prahalad, C. K., Patterns of Strategic Control Within Multinational Corporations, Journal of International Business Studies no.15(2) 1984: 55-72.
5. Ghemawat, P., Distance still matters: the hard reality of global expansion, Harvard Business Review no.79(8)/ 2001: 137-147.
6. Lim, L and Pang, E.F., Vertical Linkages and Multinational Enterprises in Developing Countries, World Development, Vol. 10 No.7 1982: 585-595

7. Melin, Leif, Internationalization as a strategy process, *Strategic Management Journal*, 13(Winter), 1992: 99-118.
8. Portelli, Brian and Narula, Rajneesh, Foreign direct investment through acquisitions and implications for technological upgrading, TIK, University of Oslo, 2003
9. Roth, Kendall, Schweiger, David M, Morrison, Allen J., Global Strategy Implementation at the Business Unit Level: Operational Capabilities and Administrative Mechanisms, *Journal of International Business Studies* no.22(3), 1991: 369-402.
10. Rugman, Alan M and Verbeke Alain, A perspective on regional and global strategies of multinational enterprises, *Journal of International Business Studies* no.35/ 2004 : 3–18.
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A STUDY CONCERNING THE INTENTIONS OF CONFLICT RESOLUTION WITHIN THE LEARNING ORGANIZATIONS

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ABSTRACT. Our study tries to present an empirical research concerning the intentions of conflict resolution within the learning organizations. The compromise and collaboration creates a dominant “coalition” and forms together a “golden mean” for the conflict resolution. On these circumstances, there are created premises for a transformative approach of the conflicts within the learning organizations.

1. UNDERSTANDING THE CONFLICT NATURE AND THE INTENTIONS OF CONFLICT RESOLUTION

To understand the conflict nature, it is helpful to draw the boundaries of its territory through a few definitions given by professionals who have different conceptions regarding it. Stephen P. Robbins defines the conflict as being a process that starts when a party feels that the other party has altered or is going to alter negatively something valuable for the first party (Robbins, 1998). For Pruitt and Rubin the conflict is the perceived divergence of interests, a belief that the parties' current aspirations can not be met simultaneously or the interaction of some interdependent persons/groups which perceive the goals and the mutual interference in achieving them inconsistent (Pruitt & Rubin, 1986).

Robert Callahan and his collaborators use the term conflict to describe also the individuals' emotional states (hostility, anxiety, frustration, and worry), the cognitive states (being aware of the conflict situations) and the behavior states – from the passive resistance to the declared aggression (Callahan, 1986). It is noticeable that the recent studies show that the managers do not distinguish between the emotional and the structural conflicts (Xin & Pelled, 2003). This result leads to the conclusion that the problem lies not in the actual conflict or in its typology but in its unsettlement (Slaikeu & Hasson, 1998).

In a manager's work the presence and the action of the conflict relations proves the necessity of a thorough knowledge in order to improve continually the organizational management. We support the relevance of this statement especially as the most recent arguments suggest that the conflict situations are a good predictor for the organizational performances (Peterson & Behfar, 2003). However, we must not forget that disagreement seem to be found everywhere not only within the working organizations. We can find them in our daily life, at home, between parents and children, between husband and wife, or at the working place between the employer and the employee. After all it is not our point here if there are or are not conflicts in our life, the things we are doing to solve them matter.

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The intentions of conflict resolution are decisions to act in a certain way within a conflict situation. In order to be prepared to react to the other party's behavior, first we have to know its intentions. Many conflicts get into the escalation phase because the other party's behavior does not always reflect a person's intentions. Figure 1 represents the different possibilities of classifying the intentions of conflict approach. It uses two dimensions: the degree of collaboration or the wish of satisfying the others' needs (how cooperative is each party in satisfying the other party's interests) and the degree in which a party tries to satisfy its own interests (how assertive is each party in the pursuit of their own interests). On a practical base, the two dimensions create the distributive and integrative framework of the conflict resolution (Harwich & Barki, 1999).

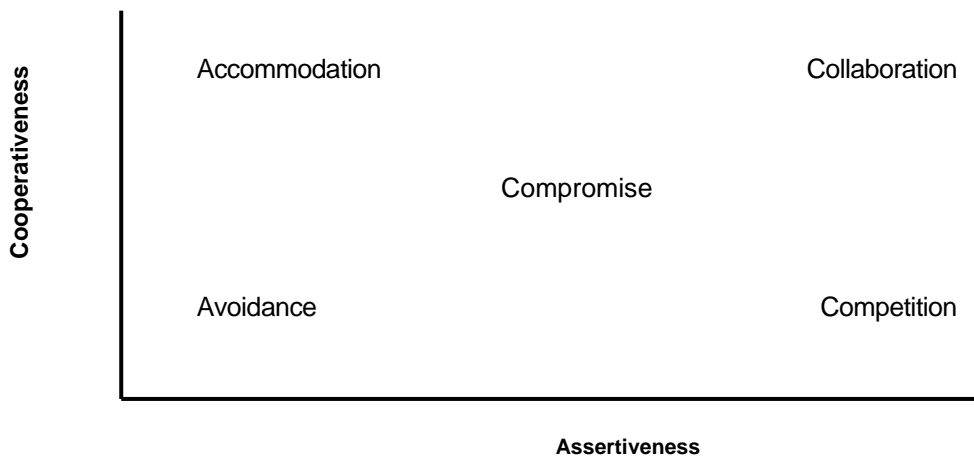


Figure 1. Intentions of approaching the conflict

Source: Thomas, K. W., *Conflict and Negotiation Processes in Organizations* in Dunnette, M. D. & Hough, L. M. (Eds.), *Handbook of Industrial and Organizational Psychology*, 2nd ed., Palo Alto, CA, Consulting Psychologists Press, 1992;

None of these intentions of approaching the conflict is more productive by itself and each of them has its role, according to the situation in which the conflict incident takes place. In fact, this model, named Thomas-Kilman, defines some options of the conflict management that can vary from the point of view of their utility, depending on the usage context. The model must not be seen as a behavior norm, although the authors prove a certain inclination towards collaboration. Susan Schneider and Jean-Louis Barsoux propose the ideal case of a team of managers from all over the world that can manage the conflicts. For example, a manager from a country where there is an imbalanced power distribution (the cult of power) would be tented to *avoid* the conflict and transfer it to the top of the hierarchy where, finally, it could be transformed into *confrontation*. Another manager from a country where there is a relation-oriented culture would be disposed rather to an acceptance of the conflict (Schneider & Barsoux, 1997).

The competitive style describes a tendency to satisfy its own needs without taking into consideration the impact on the other party involved in the conflict – one party is very assertive and it does not respect the effect of its actions on others. In other words, the personal interest is maximized and the other's interest is minimized, the conflict, in this case, fits in the *win-loose* framework. When the power is used there is also a coercive element, the power possession being a determinant of the type of decisions used in solving a conflict. **The collaborative style** shows a situation in which all the parties involved in the dispute try to satisfy totally all the interests. Both the personal interest and the collaboration are maximized in hope of obtaining a mutual agreement. There is a situation of a *win-win* type in which it is supposed that the conflict resolution can bring the both parties in a better situation. **The avoiding style** describes the wish to eliminate a conflict or to withdraw from it. Though the conflict is acknowledged, such a style implies the tendency of withdrawal or the ostrich policy – “hiding the head in the sand”. The efficiency of this style is limited because the basic problem does not change, at most it is postponed. **The obliging style** is a voluntary act of one of the parties which consider necessary to put an end to the conflict by giving to the other party what it needs. We believe that this style is rarely found and it implies the collaboration with the other party against the background of supporting the personal interest – a situation in which one party is willing to sacrifice. **The concessive style** comes when each party is willing to give up something, to make some necessary compromises. In this approach there are no clear winners or defeated because there is a combination of collaboration and personal interests imposing and the parties accept a solution that affects the conflict rationality.

As a conclusion, we can affirm that the intentions are *variable in time*, because the change of the event development can impose other reactions and the situation re-conceptualization. However, we tend to believe that there is some constancy in choosing the intention of approaching the conflicts depending on the individual and situational variables of the organization. The practice proves that in a confrontation some people want to win no matter what it takes, other people want to reach an optimal solution, others are kind and others are pleased if they share, by compromise, the results of the conflict process even if they are not the best ones.

2. THE METODOLOGY OF THE RESEARCH AND THE RESULTS OBTAINED

When we chose for an approach of the intentions of conflict resolution within the learning organizations we had a few reasons in mind: the way in which the organizational conflicts are solved is close related to the organizations' availability to be open to learning. The “closed” organizations are limited, predestinated to failure in contrast with those open to the new, to learning, to a continuing adaptation to changes. When it comes to learning the intentions of the conflict resolution, there are a lot of reasons why the managers and the members of the organization adopt new abilities and practices as sources of surpassing their own intentions. Faced with the dilemmas caused by the conflict situations, the organizational learning offers the best answer to solving them, especially when the external medium forces the organization to do such an effort.

The study was carried out in three economic units from Sighisoara town, Mures County. They were medium-size companies, for the Romanian economy, carrying on industrial, commercial and services activities, having a precarious financial standing. We considered that these economic units were specific to the learning organizations because they were the only ones that accepted continuing education courses carried on through the Training and Improvement Centre of "Petru Maior" University of Tg.-Mures, during the year of 2003, through PHARE RO 0007 02.02.01 program. In our study we chose survey as a research method using the Thomas-Kilmann scale formed by a series of 30 questions. Besides that it is the most used method of research of the social and human phenomena, the survey provided answers to all the questions, a spontaneous collecting of the answers, the observation of the non-verbal behavior and a control of the questions sequencing. The study had as subjects a number of 65 persons, middle-line managers, all participants in the continuing education courses. It is important to be noted that a proportion of 62% of the subjects had college education and the rest of them had university education. We had no refusals in answering the questionnaire and it took about 30 minutes per person. The difficulties met were related only to the explanation of the survey purpose, the subjects' cooperation being remarkable. The data processing was done on an overall level, but to catch all the realities we used also direct observation, which offered supplementary data in supporting the hypotheses put forward.

The approaches most often used in the conflict situations: compromise, collaboration, accommodation, competition and only on the last place avoidance. From the data processing we identified a percent of 53, 4% of subjects that used the compromise strategy in the conflict states, the rest of them using collaboration. This possibility of conflict resolution starts from the supposition that there is always a "golden mean" for solving the disputes, the disagreements being solved by negotiating a compromise solution. Collaboration, preferred by 46, 6% of the subjects as a first choice, is a conflict approach that takes into consideration the legitimate differences between parties, the key of the conflict resolution being the honest acknowledgement of the differences.

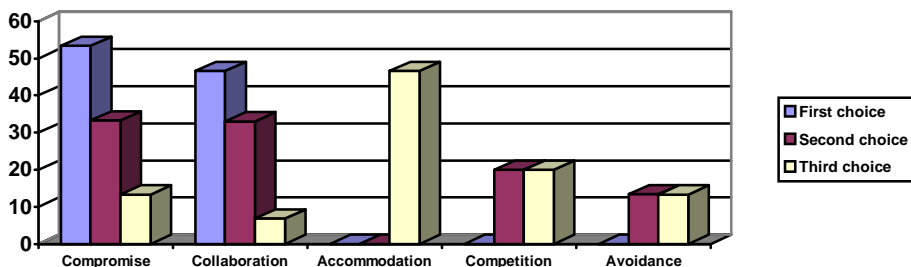


Figure 2. The intentions of conflict resolution

As a second choice, the middle-line managers chose as approaches in the conflicts with the subordinates the following variants: compromise (33,3%), collaboration (33%), competition (20%) and avoidance (13,4%). It is normal that the managers

should be less inclined to satisfy the subordinates' interests (an important element in the accommodation strategy), either to get a credit from the others or because the harmony and the stability is vital for the company.

In this model of relative levels of manifestation (fig. 2) it is noticeable that the compromise and collaboration strategies are dominant and this shows the integrative character of the model. Taking into account the weight of each strategy in the conflict situations, within the learning organization there is a dominant "coalition" between compromise and collaboration. Accommodation, competition and avoidance form a "counter-coalition" much too weak to influence the organizational conflict development. We believe that such a model of analyses offers an objective image on the managers' behavior in the conflict situations within the learning organizations.

3. THE TRANSFORMATIVE APPROACH OF THE CONFLICTS WITHIN THE LEARNING ORGANIZATIONS

In spite of the traditional intentions of conflict resolution presented previously, a new term has appeared within the learning organizations: **the conflict transformation**. Although this notion is found to Johan Galtung, the creator of the Transcend method, who proposes the Conflict Transformation by Peaceful Means (Galtung, 1996), John Paul Lederach describes perhaps in the best way the evolution of this approach that pursuit peace within organizations. The term *transformation* has a large meaning that can be highlighted at different levels. The idea of transformation does not suggest that we simply eliminate or control the conflict, but rather it shows the conflict's dialectic nature – the social conflict passes through certain predictable phases which transform the relations and the social organization (Lederach, 1995). The conflict changes the communication schemes, affecting the relations and the social organization, transforms the self-perceptions, the others' perceptions and the problems involved in the dispute. Lederach's model is based on a participative process which pursues the creation of the transformative schemes of the conflict, including steps such as:

1. **Discovery** – the participants get involved and interact using their own understanding against the way in which the conflict functions.
2. **Acknowledgement and category structuring** – the participants are in the situation to create their own theory based on the previous experience and their understanding, the contribution of the *learning process* being important.
3. **Evaluation** – once the participants have discovered what the conflict is and how it can be solved, they can start evaluating what was of help and what was not in the way they managed the conflict.
4. **Adaptation / Relaxation** – this is the occasion to adapt the current modalities of conflict management or to explore new strategies by analyzing the practices from different cultures and contexts.
5. **Practical Application** – the final phase of learning the conflict resolution implies exercises through which the new ideas and opinions are experimented. The members of the organization are able to use the new knowledge and aptitudes in confrontation situations.

The fact that within the learning organizations the compromise and the collaboration creates a dominant "coalition" in the conflict resolution makes us believe that the transformative approach will be applied faster in the organizations of this type than in the "closed", limited organizations. The key objective within a process of conflict resolution based on a transformative approach is an agreement that brings mutual satisfaction and improves the both parties' *situation*. In the transformative approach the main objective is the parties' "change for the better". Practical, the transformative approach is successful when the parties experience the success both in their capacity of improving themselves and in their capacity of relating with others. In other words, the parties get authorization and recognition (Bush, Baruch, Folger, 1994). The learning organizations are the first in knowing the positive effects of authorization process that gives back the individual's self-value and the power of developing the capacity of problem solving.

The conclusion of our study is that the efficient resolution of the conflicts takes place rather within the organizations open to learning. In the domain of conflict resolution practices, these organizations can produce learning, too. We say that because learning influences clearly the situations of taking, processing and application of successful models or positive experiences of conflict resolution from other organizations.

REFERENCES

1. Bush, R., Baruch, A., Folger, J., *The Promise of Mediation*, Jossey-Bass, San Francisco, 1994, p. 84.
2. Callahan, R. E., Fleenor, P. C., Knudson, H. R., *Understanding Organizational Behavior*, 1986, p. 283.
3. Crawley, J., *Constructive Conflict Management*, Nicholas Brealey Publishing, London, 1992, p. 10.
4. Crum, Th. F., *The Magic of Conflict*, Simon and Schuster, New York, 1987, p. 29;
5. Galtung, J., *Peace by Peaceful Means: Peace and Conflict, Development and Civilization*, Sage, London, 1996, p. 89-101.
6. Hocker, J & Wilmot, W., *Interpersonal Conflict*, Dubuque, IA: William Brown Press, 1991, p. 12.
7. Lederach, J. P., *Preparing for Peace: Conflict Transformation Across Culture*, Syracuse University Press, 1995, p. 17.
8. Peterson, R. S. & Behfar, K. J., *The dynamic relationship between performance feedback, trust, and conflict in groups: A longitudinal study*, *Organizational Behavior and Human Decisions Processes*, No. 92, 2003, p. 102-112.
9. Pruitt, D. G. & Rubin, J. Z., *Social conflict: Escalation, stalemate and settlement*, Random House, New York, 1986, p. 4.
10. Quinn, R., Faerman, S., Thompson, M., McGrath, M., *Becoming A Master Manager*, John Wiley and Sons, New York, 1990, p. 223-224.
11. Robbins, S. P., *Organizational Behavior*, McGraw Hill, Boston, 1998, p. 921.
12. Schneider, S. C. & Barsoux, J-L., *Managing Across Cultures*, Prentice Hall, New York, 1997, p. 200-201.
13. Simons, T. & Peterson, R., *Task conflict and relationship conflict in top management teams: The pivotal role of intra-group trust*, *Journal of Applied Psychology*, No. 83, 2000, p. 102-111.
14. Slaikeu, K. A. & Hasson, R., *Controlling the Costs of Conflict*, Jossey-Bass Publishers, San Francisco, 1998, p. 4.
15. Xin, K., R. & Pelled, L. H., *Supervisor-subordinate conflict and perceptions of leadership behavior a field study*, *The Leadership Quarterly*, No. 14, 2003, p. 25-40.

THE ROMANIAN BANKING SYSTEM AND THE PRIVATISATION

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ABSTRACT. The article dwells upon the complex issue of the privatization of the Romanian banking system in the 90's with its well-known hesitations and delays which influenced this process. The article identifies the most important aspects of the banking privatization and shows the debates which took place upon them: choosing the most appropriate investors and the most propitious moment of privatization. The Romanian banking privatization is being dealt in close correlation with the development of this process in the geographical area in which our country is being located in Central and Eastern Europe.

As a financial power, the Romanian banking system is a frail one – “the value of the assets of the Romanian banking system totals at the given moment approximately 10 billion \$, while the largest European bank owns assets that are 60-70 times higher”, thus the vice-governor of the Romanian National Bank, Mihai Bogza, in November 2000. In fact, the internal banking capital has been deprived of a consolidation and concentration for a very long period of time – during the years of communism. Under these circumstances, it can in no way compare itself to the capital and respectively the assets from southern or western Europe, if Europe is the only part of the world we are talking about. On the other hand, the Romanian banking system started to attract capital: French capital, with the largest contribution to the capital of a Romanian bank (BRD - Groupe Société Générale), as well as Dutch, American, Greek capital.

Practically, according to the analysis undertaken by Moody's (January 2001) in entire Central and Eastern Europe, banking systems are being characterised by a high fragmentation level, having a large number of small-sized institutions, most of them without a powerful image and without major financial reserves. A middle-sized Western – European bank, even a bank outside G7, owns balance assets ranging between 70-100 billion \$, without mentioning the European bank giants. Deutsche Bank, UBS, BNP-Paribas, Barclays own balance assets ranging from 300-600 billion \$.

Vulnerability was a label as undesirable for the Romanian banking system as its frailty. Rumours were able to shaken the Romanian banking system, the carelessness damaged the consolidation of the banking system in the case of many bankers. A widely-spread phenomenon in 2000 was the “isolation” on the inter-bank market of some banks affected by rumours about alleged financial difficulties those banks were supposed to be going through. Due to the fact that these rumours can induce system crises if affecting an important percentage of the assets of the banking system, commercial banks convened to consolidate their cooperation on the inter-bank market, by granting liquidities and loans guaranteed by the Romanian National Bank to those banks which were isolated in the system and which needed money, especially if their situation had turned worse as a result of rumours.

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After 1989, a series of changes like the emergence, development and consolidation of the private property, the increase of the number of economic agents, the increase of the demand for diversified banking services, had as a result the development of the banking system.

In order to do this, the banking system needed to be reformed and restructured. If we take the figures into consideration, the restructuring of the Romanian banking system followed the tendency of the countries from our geographical area, which spent, without exception, more than 10% of their GDP. Although the process of bank restructuring has not been completed yet, "the costs paid up to the present moment total over 7% of the GDP, that is 2.5 billion \$" stated by the end of the year 2000 Mr. Theodor Bufta, counsellor of the governor of the Romanian National Bank According to the estimation of other specialists, even bank managers, the percentage is of approximately 10% (1).

Step by step, the National Bank became again the central bank of the Romanian banking system. Obviously, this task was not easy to complete after decades of degradation of its essential attributions, re-learning them is as difficult as walking for somebody who needs to learn to go again after having been bound to the wheelchair for years.

The landscape of the unique bank from the period of centralised economy ceased to exist, by the structuring of the banking system on two levels – the central bank and the commercial banks on one hand and the emergence of private banks on the other hand.

As a matter of fact, during the 14 years of transition economy, the Romanian banking landscape suffered adjustments and re-adjustments which were concretised in the emergence of some banks and the disappearance of others.

The juridical framework of the banking activity has been continuously improved, even if there are many voices which vehemently and, in fact, righteously accuse a lot of aspects concerning banking activities which still need to be legislated. In April 1991, the Romanian Parliament ratified the law concerning banking activities (Law no. 33/1991) and the Law on the Status of the Romanian National Bank (Law no. 34/1991). These laws sanctioned *de iure* the creation of a new, market-oriented banking system. The new judicial framework encouraged the development of private-capital-financed banks and granted the national banking market free access to foreign financial institutions. Banks were authorized to operate as universal commercial banks, having the possibility of delivering a large series of banking operations on the entire national territory, under the reserve of respecting the measures of precaution issued by the central bank, the latter one being the banking supervising authority. Since 1994, due to the publication of the legislation concerning movable assets and stock markets, banks can no longer operate directly on the capital markets, specialized branches in the form of brokerage societies being necessary in this respect. During the first part of the year 1998, banking legislation has been considerably modernised by the ratification of three new banking laws by the legislature: The banking law no. 58/1998, the law no. 101/1998 concerning the Status of the Romanian National Bank and the law for banking insolvency. (Law no. 83/1998). In the years to come, the banking legislation regulating the banking activity has been improved by emergency decrees, in order to obtain an as high as possible compatibility degree with similar European regulations and the best international practice.

The important step in the reforming of the Romanian banking system, the privatisation process of state-owned banks, together with its specific stages, has not been fully completed yet. This issue has always been an item on the agenda of the governments after December 1989 and on the agenda of international financiers.

The privatisation process must be strictly correlated with a series of economical, social, political and educational factors. The speed and the volume of privatisation depend essentially on the evolution of these factors; the lack of correlation is able to give birth to phenomena like social tensions or the impairment of the economical medium, which leads to the annihilation of the superiority characteristics of the private property.

We must state the fact that the privatisation of state-owned banks is not a purpose in itself; it is a purpose only as far as this is the only way to avoid that the banking system be exposed to political pressures and to the pressure of interest groups.

Romania launched this process later than most of the countries in Central and Eastern Europe. By the end of June 2001, there were four banks with state-owned capital in the system, which owned together approximately 55% of the entire capital of the banks and approximately 46,4% of the entire assets (later, the Agrarian Bank was privatised). At the same time, foreign-capital banks owned 33,2 % of the capital.

A major role in the increase of this percentage was played by the privatisation of Banc Post and the Romanian Bank for Development.

Yet, the relatively slow progress of an extensive privatisation of the Romanian banking system must also be regarded in the close context of the also slow dynamics of the restructuring of state-owned enterprises, a fact that can be explained not only by the more prominent structural rigidities of the Romanian economy, but also by the prevailing political option, which placed the short-term social costs into the centre of the policy of economical restructuring.

1. The legal framework of banking privatisation: The ratification of the most suitable legal framework for the privatisation of banks has already its own history. During the first years, the options of the specialists were focused upon two main variants of legal framework projects. One option was that privatisation should be the object of a common law. The promoters of this idea considered that the differences concerning the organic law would be too insignificant and that the Parliament would be faced with voting for five nearly identical laws.

The other option, the one of different privatisation laws for each bank, was supported by those who pleaded for the national importance of each of these banks, while the differences between them imposed different privatisation techniques.

There were also supporters of the idea that there would be no need of a law for the privatisation of the banks and that the existing legal framework would be enough.

The dispute about the privatisation of the banks also became more active in our country after the emergence of the first legal framework in 1997. There was an intensification of the opinion according to which, between 1996 - 1999, in Romania, the number of private banks which encountered problems (up to bankruptcy) had

been larger than the number of state-owned banks. It is obvious enough that the mere comparison of financial institutions by using the criteria of the property is not enough and that it can be even deceitful: the performances of a bank cannot be exclusively and directly explained according to the state-owned or private capital. To put it in other words, "problem" banks were confronted with difficulties not so much due to the fact that they were state-owned or private ones, but rather because of the fact that the executive councils of those banks did not know or were unable to impose discipline and strictness in the operating mode of the bank, because of the fact that the shareholders did not make proper use of their right to monitor the management, preferring in some cases to abuse their position in order to obtain unjustified advantages from the bank, due to the fact that the monitoring and controlling authorities of the Romanian National Bank were sometimes hesitating and thus they were overpowered by the situation or ultimately due to the fact that the evolution of the Romanian economy lead unavoidably to the restriction of banking activities.

While the bankruptcy of a private bank is limited in its effects, ultimately affecting some creditors and the shareholders of the bank (who are supposed to have anyway taken the risk of the investment, being fully aware of the facts), the bankruptcy of a state-owned bank affects the public resources, transferring the risk upon the average citizen. This differentiated risk-exposure of the shareholders of a private bank, compared to the relatively protected position owned by the state as a shareholder of a bank also triggers different types of behaviour: although both categories of shareholders could show the tendency of abusing their position in order to dispose of the resources of the bank, the risks private shareholders are exposed to compels these to be more cautious. In fact, there is no economical justification for the keeping of a state-owned bank.

The state can perform the necessary financial operations by dint of private banks even if we are talking, for instance, about preferential credits for certain sectors. But such operations must be financed accordingly through the budget, thus becoming completely transparent. The "advantage" of state-owned banks is that they can finance in an invisible way certain activities, sectors, enterprises etc. without the necessity for these financing to be passed through the budget until after maybe years, when the problem of covering losses accumulated by state-owned banks emerges. The existence of a "more understanding" bank in what the needs of the state are concerned, is absurd and at the same time a certain network of inefficiency.

On the other hand, nobody can guarantee that lack of skills and dishonesty will be eliminated by the mere transfer of property from the state to private persons. In order to minimize the risks, it is preferable to privatise state-owned banks with powerful strategic investors, interested in long-lasting profits as a result of viable businesses.

Quick and complete privatisation, with strategic investors, seems to be the most suitable solution in order to ensure a healthy and competitive banking system, which should be able to support long-term economic growth. This is one of the most important lessons of transition in Europe.

2. The identification of the investors: concerning the investors, the following categories were identified:

2.a.- foreign strategic investors, especially financial institutions;

Finding strategic investors would imply multiple advantages:

- an additional and considerable capital injection, that would allow firms to meet the Western - European requirements of capital adjustment;
- the reduction of the budgetary costs for the recapitalization of banks;
- the transfer of technical and managerial experience;
- a solid image of the purchased bank, which is extremely important for the so frail and vulnerable Romanian bank market;
- the quicker modernization of the respective bank;
- facilities in obtaining foreign loans;

In this category of necessary and interested investors in the whole of Central and Eastern Europe, Moody's rating agency was identifying three categories of investors:

- i global banks, like Citigroup, ING or ABN-AMRO, which are generally interested in emerging markets;
- ii banks operating in countries like Austria, Sweden, Finland or Germany, to which Eastern European states represent an extension of the markets of their home countries;
- iii institutions to which the strategic involvement in the region, although well justified, represents a priority at the present moment, some examples in this respect being Unicredito, KBC, GE Electric;

2.b. – domestic and foreign institutional investors (portfolio investors);

2.c. – bank employees

3. Choosing the ideal moment for privatisation. The success of privatisation, to be more precise, the money incurred as a result of the privatisation, and even more important, the beneficial long-term effects of privatising some banks for the entire banking system and the economy of the country also depends on the establishing of the date and of the time interval when state-owned banks should be privatised. In this respect, there were some opinions in our country that the privatisation of a state-owned bank should be immediately followed by other privatisations, because otherwise, there could be the risk that the first privatised bank attract the customers of the other banks and that this could seriously affect the market value of the other banks to be privatised, the process itself running the risk of being compromised.

Concerning the privatisation of the Romanian state-owned banks, there were also some voices which considered that there were some aspects that will create important changes on the future banking system and, by involvement, on the entire national economy:

A. First of all, concerning the privatisation procedures stated in law no. 83/1998, at article 2, a, b and c, one can consider that the selling procedure of state-owned shares in banks will be preferred, because on one hand, it will trigger an effective transfer of the property upon the banks in the private sector of the economy and on the other hand, a surplus for the state budget, which is so necessary in order to cover the deficit.

The disadvantage of the procedure consists in the fact that selling the shares has a minor impact upon the capital, the transactions taking place with shares that already exist.

B. The privatisation of the banking societies has taken place in a moment where the rest of the national economy was declining, the decline being more acute in the case of the activity of economic agents with state-owned majority capital. Loss-suffering economic agents were supported in the 1990's almost exclusively through financial measures and this by dint of the commercial banks with state-owned capital.

To put it in other words, by the privatisation the task of closing the state-owned enterprises which are losing money is passed to the banks.

C. Generally speaking, banks are financial institutions with worthy assets and due to the fact that their privatisation, by any procedure, is subject to auctions, the access to purchasing shares will be restricted to economic entities or natural persons with financial power. Due to the low degree of capitalization in Romania, the beneficiaries of this selling modality of the shares of banking societies will be foreign financial banking societies which will thus become an even stronger competitor on the internal banking market.

D. The privatisation by selling shares (which are elements of the capital) will determine the passing of the assets and bank liabilities from state property to private property, at a price under their real value. In this respect, selling by auction is an advantage, the final purchasing price being able to cover the value of these assets and bank liabilities to a larger or lower extent.

In our country, electoral reasons, together with the lack of knowledge or intuition from the part of the governors of the financial burden to the budget and the citizen, triggered a "sine die" postponement of the privatisation of the banks, while the worsening of their status has been ignored throughout the years. Concerning the possibilities that the first privatised bank also attract the customers of other banks, it is true that the Romanian Bank for Development succeeded in enlarging its customer network by the customers of the former Romanian Foreign Trade Bank, but on the other hand, it was unable to reach the leader status in what the assets of the Romanian Commercial Bank are concerned. – even more than a year after privatisation, the Romanian Commercial Bank owned on the 31st of December 2000 32% of the Romanian legal persons' bank assets, in comparison to 18% owned by the Romanian Bank for Development - Groupe Société Générale (2).

There are certain voices claiming that the privatisation process must be extended on the horizontal for about 10-15 years – a period of time during which the Romanian banking system should be able to show a mixed system, being also characterised by the existence of some banks with majority state-owned capital.

The need of this mixed system for another 10-15 years could be explained by the following facts:

- *-Romania is an undercapitalized country with a weakly represented domestic capital.

Under these circumstances, keeping the national character on a segment of the banking system can be achieved only through state-owned capital. Even under the circumstances of globalisation, the national character of the banking system is necessary in order to ensure a certain degree of independence in the elaboration and enforcement of the government's economic and social policies.

- -*The negotiations in progress in order to join the European Union require the enforcement of restructuring or resizing policies of certain branches and sectors through special crediting policies by dint of the programmes supervised on government and NGOs level;
- -*Under the circumstances of the instability of the economic climate and of the banking system frailty, Romania's external credibility – from the point of view of relations on the capital markets – will not be effective without the state's guarantee.

In order to choose the proper time, so that the market value of the banks be the highest possible, one also has to take into account the international economic situation, of the banks to be privatised in neighbouring countries as well as the country's rating and the banking system, in order to avoid privatisation when ratings are falling. The decrease of the market value of some banks like the Romanian Foreign Trade Bank and the Agrarian Bank incurred first of all as a result of crediting some branches of the economy due to political orders, this causing a continuous deterioration of their balances, a phenomenon that was stopped much too late, when their capitals already recorded negative values.

REFERENCES

1. Piața Financiară magazine, issue no. 11/2000, page 54
2. Piața Financiară magazine, issue no.3/ 2001, page 47

THE LONG-LASTING LEADER IN A COMMERCIAL FIELD

MARIUS BOTA¹, VASILICA IULIANA PRUNĂ²

ABSTRACT. The paper below presents an analysis over the main domains of the global economy. In this article, I try to show that over the years the same companies through their brand have dominated the global market. The brand that holds the best position in a domain- the leader – is not always the best for a qualitative point of view. The law of the first – in says that what matters is to be the first in a domain, which leads to becoming the leader in that domain.

*“Ilie Năstase was the first world No. 1 in tennis (ATP).
Who was the second?”*

*“Nadia Comăneci was the first 10 in gymnastic,
in Mont Real 1976. Who was the second?”*

Following an analysis over the main domains of the global economy it has been noticed that over the years the same companies through their brand have dominated the global market.

For the grate majority of people this may seem strange or rather spectacular. The image of the companies and of their brands is formed on the basis of the consumers' opinions.

There are the ones who have the necessary force to propel a company or, on the contrary, to make a brand disappear.

The image is the totality of beliefs, ideas, and impressions that a person has formed with respect to a certain thing. People's attitudes as well as the way in which they act towards a thing are influenced by the image they have formed with respect to that thing.

It is said that each consumer that the company has contact with already has an image as to that company. The success of a company and, implicitly, of a brand, depends very much on the consumer's image on that company. The consumers are those who form the leaders and who maintain them on top.

The brand that holds the best position in a domain- the leader – is not always the best for a qualitative point of view. The law of the first – in says that what matters is to be the first in a domain, which leads to becoming the leader in that domain.

It is much easier to impose oneself as a leader in a domain when one has no competitors than to try to demonstrate one's superiority on the competition is high.

It is common knowledge that the first man to set foot on the moon was Neil Armstrong. The question is whether there is anybody who knows who he second one is. Certainly, the great majority of the people everywhere do not know this. The first aviator who flew over the Atlantic was Charles Lindberg. It is almost unknown that Bert Hinkler, who was the second, pilot to fly over the Atlantic, did this in a shorter time than Lindberg and consumed less fuel.

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It is not enough to be the first in a domain from a chronological perspective; one has to be the first to remain in the consumers' memory. Tan eloquent illustration in this respect is IBM considered by its consumers as the first producer computers. Actually, things are different: the first computer in the world was MTS Altair 8800. When IBM entered the computer market, Remington Rand had already launched the UNIVAC computer.

Nevertheless, by employing a brilliant marketing campaign, IBM succeeded to impose itself in the mind of the consumers as the first in this new and highly dynamic domain - computers. As the leader in worldwide e-business, IBM is the largest and most advanced source of information technology, hardware, and software and services anywhere. IBM will also help you to use these technologies to improve your business and your life. Thanks to the birth of the IBM Personal Computer or PC, the IBM brand began to enter homes, small business and schools and this is the beginning of a new era in computing.

In order to make this analysis more concrete, we will give as illustration one of the most representative brands which is leader in its domain due to the very fact that it was one of the first to gain recognition in this domain.

Brand	Brand value \$ Millions	Country of ownership	Description
Coca-cola	67.394	U.S.	It is enjoyed each day by millions of people around the world
Microsoft	61.372	U.S.	Its logo pops up on 400 million computer screens worldwide.
IBM	53.791	U.S.	The leader in worldwide e-business
Disney	27.113	U.S.	Long the gold seal in family entertainment
McDonald's	25.001	U.S.	It is the biggest and best-known quick service chain of restaurants in the world
Marlboro	22.128	U.S.	The No.1 in cigarettes
Gillette	16.723	U.S.	The king of blades still reigns
Ford	14.475	U.S.	The most popular car in the world
Nescafe	11.892	Switzerland	It is still the world's favorite instant coffee
Xerox	5.231	U.S.	The first copy maker in the world

As it was already stated it is not important to offer the best quality in order to be leader in a domain. The following example is illustrative. In the US, the producers of refreshments have considered that they could beat their competitors on taste grounds. To this purpose, Coca Cola has performed 200.000 taste tests for their New Coke product. The result of the test showed very clearly that New Coke tasted better than Pepsi Cola, and that Pepsi Cola tasted better than Coca Cola Classic. These tests were not relevant at all for the consumers as Coca Cola Classic turned out, against all odds, to be the first preference of the consumers followed by Pepsi Cola, while the favorite according to the tests are only ranked 3 far from the 2 leaders.

When the brand is used as generic name for the category of goods and services it belongs to, it means that the mind of the consumers makes confusion between the brand name of that product and that of the category it belongs to. Accordingly, one asks for "Xerox Copy" even though the copier is not a Xerox but a

Cannon; one uses "scotch" as an adhesive tape even if it may be produced under another brand; one buys "adidas" even though the sport shoes bear another brand. These are only 3 examples of very powerful brands that managed to dominate a category. We may as well continue to provide such examples because many similar associations have occurred in the mind of the consumers over the years. These confusions, which help very much spreading the brand name of the company that it is being confused with the generic name of the category belongs to, have been possible due the fact that the respective companies were the first or among the first to say an important word in the domain.

A company will never succeed in imposing its brand name as generic name for a category by beating the market leader. Pepsi will never become a generic name for the cola category even if it sells better than Coca Cola, which is already a current fact in certain parts of the world for a number of years now.

The history of the Coca Cola brand is very interesting and well known. For the refreshment, which is enjoyed each day by millions of people around the world, it all began in 1886 when John Pemberton, a war veteran and pharmacist from Atlanta who liked to play with formulas invented one afternoon a drink while trying to find a remedy for headaches. He took a jar of the new drink to Jacobs's drugstore to be tested. The result of the test was excellent; soda was added by mistake or on purpose to the syrup (it is not known for certain) and was sold for 5-cents/ glass.

The drink was mentioned in the documents by the drugstore's accountant as Coca Cola as it was considered that the two "C's" "will catch on in advertisements. The name of the drink has been written in the same way until these days. Doctor Pemberton never realized the potential of the drink he had created and in 1891 he sold the company to a businessman from Atlanta named Candler for 2300 USD. Candler became the first president of the company and the first to have a constructed vision over the business and the brand.

The US Patent Office registered Coca Cola as a trademark in 1893, but it had already been used on the market since 1886. Starting with 1895 it was sold of the entire territory of the U.S.

Pepsi-Cola is the main competitor for Coca Cola; the two giants dominate authoritatively the global market of soft drinks.

The fast food field continues to be dominated by McDonald's. **McDonald's** is the biggest and best-known quick service chain of restaurants in the world, operating over 30.000 restaurants in 121 countries. The vision of the McDonald's brand is to be acknowledged as the quick service restaurant offering the best experience to its clients. Being the best means attaining and maintaining high quality, service and cleaning standards (QSC) so that each client that enters the restaurant smile and feel good.

It all started in 1948 with the two brothers Mac and Dick McDonald, in their restaurant of San Bernardino, California. They followed their correct intuition that by limiting the menu, dropping the prices and systematizing procedures for preparing the products in the kitchen, they could serve more clients in shorter time. They used this idea until they manage to serve each client rapidly and efficiently.

The company, as it is today, was not founded by the above-mentioned brothers, but by Ray Kroc. In 1954, when Ray Kroc met the McDonalds in San Bernardino, he was impressed by how well and rapidly they could serve an impressive number of hungry drivers. The cars drove in; the clients ordered the

food and then left. Ray Kroc's conclusion was clear: "the clients need quality. This means a good service, but, most importantly, a rapid one. People search for an alternative to the traditional way of eating."

Then, by exploiting the potential he had guessed, Ray Kroc negotiated an agreement with the McDonalds, which allowed him to use their sale system and the name of the company. One year later, Ray Kroc adopted McDonalds' principles in his first restaurant opened in 1955 in Des Plaines, Illinois.

McDonald's continues to overcome its main competitors: Pizza Hut, Burger King and Kentucky Fried Chicken. The fight for supremacy is tough in this field; too as new markets appear in various parts of the world. Eastern and Central Europe meant new sale market on which all the competitor wanted to take advantage.

In order to benefit the advantage of the first in, many companies rushed to enter the Romanian market before others. McDonald's applied the same strategy when entering the Romanian market in 1995. Even the first years did not bring the expected success; it continued to invest in Romania managing to maintain a lower price level than that of its significant competitors in Romania (Burger Ranch, Sheriff's and Kentucky Fried Chicken).

Ford is a one hundred year brand. The famous American engineer Henry Ford (1863-1947), the father of industrial management, is rightly considered the father of the modern car whose life and activity identified with the most preferment and representative car manufacturing industrial group - Ford Motor Company (FMC).

H. Ford and a group of 12 shareholders set up Ford Motor Company on 15 June 1903 in a small wagon factory in Detroit. In the following five years Henry Ford started, as chief engineer and later as president, to coordinate a global production program which aimed at changing the old capacities, developing manufacturing and diversifying the car types from S model – with 2,4 or 6 cylinders. H. Ford's basic idea was that the company's future should be based on the production of cheap cars for large market meant the masses. In this spirit, due to H. Ford, the company launched on 1 October 1908, the T model – considered as a "universal car" – the symbol of the efficient means of transportation with low costs.

Once H. Ford had retired, one of his nephews, H. Ford II became president on 24 September 1945, who, immediately after the war, embarked on his vision to build an entirely new car company. In this period after war, on 7 April 1947, the great H. Ford died in full process of extending and diversifying the production just as the model Ford 1949 was being launched which marked a new stage in the future of car design by integrating the body of the car and its wings as well as other innovation and technologies having a great impact in the world industry of cars.

New car families have been produced in US and Europe during the 20th Century owing to the innovating initiatives promoted by H. Ford and his team of engineers who were the pioneers of the technology and management of the research, planning and engineering of production systems for high quality cars.

The field of car producers is one in which the competition is probably tougher than in any other field. Important brands such as Ford, Toyota, Mercedes, BMW, Honda, Volkswagen, which are to be found in the first fifty most powerful brands in the world are trying to divide and share this market "Toyota the Japanese auto maker is on track to overtake Ford in worldwide sales"

Nescafé is still the world's favorite instant coffee. The beginnings of Nescafé can be traced all the way back to 1930, when the Brazilian government first approached Nestlé. Our coffee guru, Max Morgenthaler, and his team set out immediately to find a way of producing a quality cup of coffee that could be made simply by adding water, yet would retain the coffee's natural flavour. After seven long years of research in our Swiss laboratories, they found the answer.

The new product was named Nescafé – a combination of Nestlé and café. We first introduced Nescafé in Switzerland, on April 1st, 1938. For the first half of the next decade, however, World War II hindered its success in Europe. Nescafé was soon exported to France, Great Britain and the USA. Without realising it, American played a key role in re-launching Nescafé on the continent by virtue of the fact that it was included in their food rations. Its popularity grew rapidly through the rest of the decade. By the 1950s, coffee had become the beverage of choice for teenagers, who were flocking to coffeehouses to hear the new rock 'n' roll music.

It is currently estimated that, on average, some 3,000 cups of Nescafé are drunk every second. We think you'll agree, Nescafé's come a long way since 1938 and we all owe a lot to Max Morgenthaler and his team.

The only way to impose the brand name in order to give a generic name to a category is to be the first brand that imposes its self in the respective category.

No matter how small the market is, it is important that the company does not abandon its position as leader hoping for a "bigger fish" on an established market. Comparative study carried out in the US showed that out of 25 brands that were market leaders in 1923 on their established market, 20 were still leaders after 80 years, while 5 had lost the leader position.

REFERENCES

1. Bota Marius, *Mărci celebre*, Studia Universitas, Seria Negotia, nr. 2 / 2003, pag. 25 – 32, Cluj – Napoca
2. Cosma Smaranda, Marius Bota, *Bazele Marketingului*, Ed. Alma Mater, Cluj – Napoca, 2004

STRATÉGIE ET COMPÉTENCE FONDAMENTALE DANS LES INDUSTRIES DE DÉFENSE

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RÉSUMÉ. Nous présentons une approche stratégique articulée autour de la notion de compétence fondamentale pour les firmes oeuvrant dans les industries de défense. La littérature montre que les firmes qui savent utiliser leur compétence fondamentale, afin de redéployer, en tout ou en partie, leurs efforts sur de nouveaux marchés, connaissent plus de succès. Le redéploiement de ces compétences fondamentales passant par la gestion du savoir nous apparaît porteur. Ainsi, les options stratégiques s'offrant aux firmes leur permettent effectivement de mieux s'adapter au changement de leur environnement. Les cas de *General Dynamics*, *Lockheed Martin* et *GIAT Industries* sont abordés.

Introduction

L'approche des compétences connaît actuellement une expansion qui en fait un élément important de la conceptualisation de la création de valeur pour la firme et surtout pour le cas particulier des industries militaires. En effet, nous pouvons nous demander: comment les entreprises militaires se diversifient-elles sur la base de leurs compétences fondamentales? Nous allons montrer que plusieurs réponses sont possibles. Alors que les marchés militaires se contractent depuis la fin de la Guerre froide, l'intensité de la concurrence n'a de cesse de s'accroître, justement en raison de cet événement. En effet, ceci est attribuable à l'entrée en scène des anciennes puissances militaires du défunt Pacte de Varsovie désormais libres d'attaquer des marchés internationaux hors de ceux qui, traditionnellement, étaient les leurs. S'ensuit alors, pour les firmes militaires des pays de l'OTAN, la nécessité de dépasser une simple adaptation à un changement inéluctable. Ces dernières souhaitant, d'une part, demeurer concurrentielles et, d'autre part, assurer leur pérennité. La clé réside alors dans le redéploiement de leurs compétences fondamentales à travers la diversification de leurs activités sur des marchés civils. Lesquelles compétences constituent le berceau de leur avenir (Hamel et Prahalad, 1994). La compétence fondamentale s'impose comme la pierre angulaire du devenir de la firme militaire confrontée à un monde en perpétuelle redéfinition au sein duquel l'avantage concurrentiel d'hier ne sera plus d'aucune utilité demain, s'il n'est pas obsolète aujourd'hui même.

D'importants défis à relever

Il s'ensuit alors que plusieurs défis émergent à l'agenda des firmes militaires. Le « dividende de la paix » constitue indubitablement leur plus grand défi en ce qu'il a affecté ces firmes à un point tel que leur survie même est en jeu. Il est

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intéressant de noter que la reconversion à l'image de celle effectuée suite à la deuxième Guerre mondiale est, *a priori*, jugée à la fois empreinte d'inefficacité, voire d'inefficience, et anémique; la solution résidant à l'intérieur de stratégies innovantes². Une solution souvent proposée est la [re]conversion dans un cadre d'inspiration portérienne à travers des programmes intrafirmes de fusion et acquisitions ou encore en sortant purement et simplement de l'industrie pour s'orienter vers des industries plus proches de la consommation de masse, en suivant l'exemple russe. Cependant, les défis se posant de manière aiguë aux entreprises de défense russes (Bzhilianskaya, 1996) se posent aussi aux autres entreprises de ce secteur, avec une acuité variable, peu importe leur nationalité:

- «La possession de technologies ou produits concurrentiels [sur les marchés civils];
- l'accès à un réseau étendu en matière de technologie, de production et de liens économiques nationaux et internationaux [en poursuivant une recherche constante] et,
- la possession de compétences en évaluation de technologies, de gestion de l'innovation de même qu'une connaissance étendue au niveau juridique international, du marketing ainsi que de l'innovation technologique.»

Les firmes liées à la défense désirant assurer leur pérennité se doivent donc de trouver des modèles d'affaires leur permettant de tirer profit des opportunités engendrées par ces défis.

La démarche des firmes militaires

L'industrie de la défense est composée de plusieurs firmes possédant toutes au moins une compétence fondamentale. Par exemple, la compétence fondamentale de General Dynamics est l'intégration des systèmes et des savoirs de l'entreprise. Elle conçoit et intègre des systèmes de combat terrestres, maritimes ou de communication, une expertise qui se reflète à travers plusieurs de ses succès marquants: la construction de l'un des premiers sous-marins nucléaires, des missiles Tomahawk ou encore des chars M-1 et M-60. En ce qui a trait à GIAT industries, il s'agit plutôt de l'adaptabilité des utilisations de ses savoirs. Ses compétences, en matière d'armement, d'activités duales (i.e. civilo-militaires) et de fourniture de services à des agences militaires, se manifeste tant dans le char Leclerc que dans sa mise sur pieds d'hôpitaux militaires ou d'armes de chasse. Alors que dans le cas de Lockheed Martin, l'innovation constitue sa compétence fondamentale. Une compétence fondamentale qui prend forme tant dans sa technologie *stealth*, que dans sa gestion de systèmes satellitaires en partie civils, et qui serait absente n'eût été d'excellentes compétences en matière de services de haute technologie et d'intégration de systèmes de pointe.

² Williams (1961) nous fournit des exemples d'une industrie américaine diversifiée qui d'un coup se reconvertisse en partie dans des domaines de consommation courante, donc de consommation de masse, sous l'égide du War Production Board. Avec un plus grand recul que Williams, Sillers et Kleiner (1997) nous montrent que cette approche n'est plus pertinente aujourd'hui et qu'une des clés de la survie des firmes est désormais l'innovation.

Ces dernières firmes possèdent, selon le cas, un plus ou moins fort pourcentage de leur production destiné aux marchés militaires. De la même manière, elles sont toutes plus ou moins spécialisées technologiquement au niveau de leur procédé (*process*) ou au niveau de leurs produits. Ces firmes, en vertu de leur stratégie conventionnelle, s'orientent vers les marchés militaires (ou de défense) sur lesquels le client est l'État. Or, ce dernier réduisant ses achats et ses budgets en matière de défense, les firmes se voient dans l'obligation d'adopter une stratégie renouvelée en se tournant vers des marchés civils. Ce faisant, elles continuent de desservir les marchés gouvernementaux, mais en plus elles se dirigent vers d'autres firmes afin de trouver d'autres occasions d'affaires à l'instar de GIAT et de ses intérêts dans les armes de chasse par exemple³. Émerge donc une nécessité grandissante pour les firmes de réorienter ou redéployer leurs compétences fondamentales de manière à ce que leur espace stratégique inclut notamment, mais non exclusivement, la réalisation des potentialités offertes par les marchés civils.

L'environnement et les entreprises de défense se trouvent au cœur d'un important tumulte. Les certitudes du passé ne tiennent plus, nous venons de le voir. Si la nécessité pour les États de posséder des activités de défense n'est plus à démontrer, sous peine de se voir dissout dans le système international, ces derniers n'en diminuent pas moins, plus souvent qu'autrement, les crédits y étant accordés depuis la chute de l'Union Soviétique. D'une part, l'État est le client principal des entreprises militaires, mais il témoigne d'une certaine ambivalence quant au caractère porteur des ressources qu'il consacre à la défense. D'autre part, les entreprises militaires, qui opèrent dans un contexte particulier, se voient confrontées à trois forces d'importance majeure: la commercialisation, la consolidation et la mondialisation (Deloitte Consulting, 2000). Ceci n'est pas sans poser plusieurs défis liés au rétrécissement des marchés de défense et à l'intensification de la concurrence. Les firmes doivent donc modifier leur offre et se diversifier. En tablant sur leur compétence fondamentale les entreprises militaires peuvent stratégiquement se lancer sur de nouveaux marchés sans mettre leur existence en jeu.

Compétence fondamentale et stratégie

Définition (s) de la compétence fondamentale

Prahalad et Hamel (1990) sont réputés avoir développé le concept de compétence fondamentale et développent ce dernier en montrant comment les entreprises peuvent l'identifier et s'en servir. Ils en donnent la définition suivante: « *A core competence is a bundle of skills and technologies that enables a company to provide a particular benefit to customers* ». Celle-ci est identifiée à l'aide de trois critères: 1) la valeur aux yeux du client, c'est-à-dire que cette compétence fondamentale doit fournir une forme de bénéfice pour le client; 2) la différenciation par rapport à la concurrence, l'absence de cette dernière homogénéise le marché ouvert au client et il n'a plus de raison d'acheter le produit ou le service d'une firme plutôt que

³ Nous n'avons pas inclus les particuliers dans le développement de marchés civils étant donné le faible intérêt que ces derniers portent envers les produits autres que sportifs. Nous entendons par produits sportifs les armes de chasse, de compétition et les produits (véhicules, etc.) pouvant être cédés aux particuliers collectionneurs d'armes et d'autre matériel de guerre.

celui d'une autre; 3) le potentiel d'extension, ce qui entraîne une transférabilité des savoirs à travers un certain degré d'abstraction⁴. Une compétence fondamentale possède une valeur intrinsèque; elle est rare et difficilement imitable, ce qui lui permet de conférer un avantage concurrentiel important à la firme (Barney, 1991).

Ceci dit, il importe de mentionner que la compétence fondamentale n'est pas un actif au sens comptable, son essence est éminemment immatérielle. Il s'agit par ailleurs d'une énorme source d'avantage concurrentiel. Toutefois, l'inverse n'est pas nécessairement vrai, une source d'avantage concurrentiel n'est pas obligatoirement une compétence fondamentale. GIAT industries a fait étalage de son avantage concurrentiel en matière d'armement terrestre lors de la sortie du char Leclerc, efficace, manœuvrable et opéré avec un membre d'équipage en moins que ses concurrents. Donc, si les compétences de l'entreprise en matière d'armement terrestre ne font aucun doute, elles ne sont pas la source d'un avantage concurrentiel durable puisque des capacités similaires sont présentes chez le M1 de General Dynamics. La compétence fondamentale de GIAT, l'adaptabilité des utilisations de ses savoirs, est une source d'avantage concurrentiel durable puisqu'elle permet à cette entreprise de concevoir un nouvel hôpital de campagne, ce qui ne serait pas une sinécure pour la plupart des compétiteurs mondiaux qu'elle possède dans l'industrie militaire. Cependant, le développement de ce genre de compétences complexes est ardu et leurs fruits ne viennent qu'en longue période étant donné le long processus d'apprentissage, donc d'amélioration continue, que cela exige. Ces compétences se matérialisent sous la forme d'une plate-forme (*core product*). Ainsi, plus cet équipement de défense comportera d'applications et de fonctionnalités, plus il sera possible pour la firme militaire de jouir d'économies d'échelle et d'envergure, le cas échéant. De la même manière, l'entreprise doit comporter une architecture stratégique lui permettant suffisamment de flexibilité pour qu'elle soit en mesure de consacrer et de déployer les ressources nécessaires au développement, au maintien et à l'exploitation d'une telle compétence. Néanmoins avant d'être en mesure d'utiliser la compétence fondamentale, il est nécessaire de l'identifier. Deux méthodes s'offrent à l'entreprise de défense: d'une part, celle qui implique la correspondance entre les niveaux organisationnels et les niveaux de compétence (Gallon, Stillman et Coates, 1995) et d'autre part celle de l'association de la hiérarchie des compétences avec une hiérarchie organisationnelle (Javidan, 1998).

Tout d'abord, s'agissant de la correspondance entre les niveaux organisationnels et les niveaux de compétence, elle nous enseigne que les capacités primaires et critiques de l'entreprise peuvent être de trois ordres: les capacités d'interface avec le marché (comme la vente ou la consultation pour ne nommer que celles-là); les capacités venant d'infrastructures (l'infrastructure en matière de technologies de l'information par exemple); les capacités technologiques (dont le soutien technique au client). Il n'est cependant pas approprié de parler de compétence fondamentale dans ces trois ordres de capacité. Ici, la capacité est la possibilité de faire alors que la compétence est l'aptitude à bien faire. Les compétences fondamentales se manifestent dans ce qui est bien fait, mais mieux que le meilleur des concurrents. Ces dernières sont plus fondamentales et intrinsèques aux activités de l'entreprise. Ainsi, en ce

⁴ Les auteurs appellent le potentiel d'extension, en anglais, *extendability*.

qui a trait aux compétences fondamentales, elles possèdent une double nature: les CMC ou *core marketing competencies*, qui réfèrent à des habiletés prouvées de mise en marché des produits ou des services, et les CTC ou *core technical competencies*, qui renvoient à un degré élevé de maîtrise technique.

Une autre méthode, toutefois voisine de la précédente, est reconnue dans la littérature. Elle consiste à associer une hiérarchie des compétences avec une hiérarchie organisationnelle qui est tantôt un poste (par exemple le chef de la direction, PDG ou *CEO*) tantôt une partie de l'entreprise (comme un centre d'activité stratégique, *SBU*, ou les départements). Ce dernier pose certaines caractéristiques faisant partie des compétences (i.e. les capacités ou les ressources). Cette approche est plus déterministe. Elle est surtout plus dynamique et plus opérationnelle que la méthode précédente.

Les deux approches présentées au tableau 1 ne sont pas antinomiques, elles brillent par leur complémentarité. Si la compétence fondamentale demeure un outil créateur de valeur à la fois pour l'entreprise de défense et pour les forces armées qui constituent souvent le gros de sa clientèle. Il faut cependant s'assurer du développement à long terme de cet actif immatériel. Alors, pour assurer le développement et la pérennité d'une compétence fondamentale, il faut savoir apprendre et « apprendre à savoir ». L'acquisition de la compétence fondamentale celle-ci ne découle pas explicitement du désir de créer de nouveaux systèmes d'armes, mais bien de celui de fournir de nouveaux avantages à la clientèle militaire, d'où l'importance du design et des démonstrations conjointes entreprise/force de défense. Cette compétence devient donc éminemment stratégique. Elle est désormais définie comme « un ensemble de plusieurs savoirs et de technologies » et son intégration par l'entreprise représente « la somme des [apprentissage individuels et collectifs] de l'entreprise ». Le caractère fondamental d'une compétence, nous l'avons mentionné précédemment, se remarque à trois caractéristiques: la valeur aux yeux du client; la différenciation par rapport aux concurrents et l'élasticité (i.e. son caractère porteur). Il nous faut reconnaître, du même élan, que cette compétence représente un savoir-faire, non pas un actif tangible en tant que tel, mais un actif immatériel générateur de valeur. Elle n'est pas non plus centrée autour d'un seul produit, même si le produit peut la refléter de manière intime.

Tableau 1

**Identifier la compétence fondamentale, deux approches voisines
d'une même problématique**

Niveaux organisationnels vs niveaux de compétence	Hiérarchie des compétences avec une hiérarchie organisationnelle
<ul style="list-style-type: none"> ▪ Finalité: Attaquer de nouveaux marchés. ▪ Examiner les capacités primaires et critiques: <ul style="list-style-type: none"> ▪ Les capacités d'interface avec le marché (comme la vente ou la consultation pour ne nommer que celles-là). ▪ Les capacités venant d'infrastructures (l'infrastructure en matière de technologies de l'information par 	<ul style="list-style-type: none"> ▪ Finalité: Acquérir de nouvelles capacités et compétences pour posséder un avantage concurrentiel durable. ▪ Identifier ce que l'entreprise fait très bien. ▪ Examiner si ceci est l'apanage d'une fonction (département), d'un centre d'activité stratégique ou de l'entreprise entière. ▪ Examiner la position concurrentielle de l'entreprise.

Niveaux organisationnels vs niveaux de compétence	Hiérarchie des compétences avec une hiérarchie organisationnelle
<p>exemple).</p> <ul style="list-style-type: none"> ▪ Les capacités technologiques (dont le soutien technique au client) peuvent se catégoriser en trois groupes: <ul style="list-style-type: none"> ▪ les capacités en sciences appliquées; ▪ les capacités de design et de développement; ▪ les capacités à manifester. ▪ Reconnaître et utiliser la double nature de la compétence fondamentale: <ul style="list-style-type: none"> ▪ Les CMC ou <i>core marketing competencies</i>. Elles réfèrent à des habiletés prouvées de mise en marché des produits ou des services. ▪ Les CTC ou <i>core technical competencies</i> qui doivent répondre aux critères suivants: <ul style="list-style-type: none"> ▪ Elles harmonisent les flux de capacités techniques critiques afin de fournir un avantage concurrentiel; ▪ Elles se traduisent en valeur perçue par le consommateur; ▪ Elles sont difficiles à imiter et donc représentent des barrières importantes à la concurrence. 	<ul style="list-style-type: none"> ▪ En déterminer l'importance (significatif si le marché lui accorde une prime): <ul style="list-style-type: none"> ▪ pour des attributs relatifs au produit ou à sa livraison... ▪ ...qui sont parmi les critères d'achat clés. ▪ Avantage concurrentiel dépend des facteurs suivants: <ul style="list-style-type: none"> ▪ Investissement dans ses capacités et ses compétences; ▪ Aptitude des concurrents à imiter l'avantage concurrentiel; ▪ Prise en considération des changements dans l'industrie. ▪ À partir de là, une planification rigoureuse doit être effectuée pour: <ul style="list-style-type: none"> ▪ le démantèlement ou l'ajustement des compétences et des capacités qui perdront vraisemblablement leur valeur dans l'avenir, en tout ou en partie; ▪ le maintien et l'amélioration des ressources identifiées, des compétences et des capacités.

Il appert d'ailleurs primordial d'organiser les activités de l'entreprise de manière flexible autour de ces compétences fondamentales afin qu'elle soit en mesure d'aspirer à cet avantage concurrentiel dont nous avons précédemment discuté. Lockheed Martin, souvent reconnue pour avoir développé la technologie *stealth*, n'aurait pu effectuer une telle avancée si elle n'avait pas possédé des compétences supérieures en systèmes aéronautiques et spatiaux ou dans l'utilisation de matériaux de haute technologie, compétences qu'elle a su transférer au sein de son organisation afin de développer le *stealth*. L'idée d'intégrer les savoirs de l'entreprise est ici omniprésente, c'est pourquoi la compréhension de l'assemblage des savoirs, ainsi que du concept sous-jacent de leur parcellisation, et donc de leur gestion, s'avère primordiale.

Utilisation stratégique des compétences fondamentales

Pour prospérer, l'entreprise doit donc se donner les moyens de mettre à profit l'espace stratégique que lui ouvrent ses compétences fondamentales. Ceci implique qu'elle doit être à même de réagir adéquatement au changement. En effet, le savoir peut être modifié, parcellisé et assemblé de diverses façons. Les entreprises militaires sont traditionnellement orientées sur la performance technique

sans porter d'attention particulière au contrôle des coûts; leurs compétences sont donc directement reliées à la technique. Deloitte Consulting (2000) nous dit que l'industrie de défense devra cependant se repenser:

« Growth strategies [...] will focus on globalization, customer orientation and product development. The new strategies, in turn, will call for more efficient and cost-effective business processes. It is clear that companies that are unable to adapt to the changing market will be left behind. For others, there are significant opportunities for enhancing market share and profitability and achieving world-class competitiveness. »

Les entreprises doivent s'adapter aux changements qui s'opèrent, parfois rapidement, sur leurs marchés. Pour ce faire, l'entreprise, vue comme portefeuille de compétences, doit constamment se réinventer à travers la routinisation du changement.

Les options stratégiques des entreprises militaires

Ce qui précède nous amène à dire que plusieurs options stratégiques s'offrent effectivement aux entreprises de défense. La littérature suggère que le succès des entreprises repose sur l'utilisation des compétences fondamentales (Sterne, 1992; Véry, 1993, Gorman et Thomas, 1997), mais pas nécessairement en courte période (Duysters et Hagedoorn, 2000). Aussi, nous pouvons présenter la manière dont les entreprises de défense abordent les changements dans leur industrie selon deux dilemmes dont fait état la littérature: celui de l'adoption d'une stratégie traditionnelle par opposition à une stratégie innovatrice ou encore celui, plus prosaïque, de la survie versus la sortie de l'industrie.

Stratégies traditionnelle vs innovatrice. Historiquement, deux choix se sont posés aux firmes: adopter une stratégie traditionnelle, liée à la conversion à tout prix comme à la fin de la deuxième guerre mondiale, ou une stratégie innovatrice, à l'image de plusieurs firmes actuellement. Les stratégies traditionnelle se sont toutes orientées vers la conversion des entreprises avec pour finalité l'avènement d'un avantage-production. En effet, à la fin de la seconde Guerre mondiale, plusieurs entreprises des industries de défense se convertissaient tout simplement en industries civiles en abandonnant presque du jour au lendemain la production militaire pour se lancer sur des marchés civils qu'ils ne connaissaient plus ou pas du tout. La finalité de la démarche était un avantage-production, à travers la réalisation d'importantes économies d'échelle, qui leur permettrait de remporter facilement d'importantes parts de marchés dans leurs nouvelles activités. Les succès mitigés que nous leur connaissons, dans le contexte actuel, ont encouragé le développement de stratégies innovatrices. Le développement des stratégies innovatrices peut prendre trois formes. La première, le désinvestissement afin de remporter les fruits d'un avantage-coût en soldant ses produits, ce qui est rendu plus facile par la disparition de la volonté d'y investir en raison de l'intention avouée de quitter le secteur. La seconde stratégie en est une de fusion /acquisitions sélectives. Des unités d'affaires ou des entreprises sont regroupées en vue de réaliser des effets de synergie à travers l'acquisition de compétences (complémentaires la plupart du temps). L'aboutissement de ce processus conduit d'une part à un avantage technologique et d'autre part à un avantage-niche. Dans une moindre mesure, il est,

plus rarement, possible d'assister à l'émergence d'un avantage coût. La troisième stratégie est la diversification. Loin de suggérer l'abandon des activités de défense, elle en présuppose le maintien avec toutefois l'élargissement de la gamme de produits par l'ajout de produits destinés à de nouveaux marchés, civils cette fois. L'avantage qui en découle est avant tout un avantage-niche. Cependant, il est possible de parler dans ces cas d'avantage-technologique et d'avantage-coût selon le cas. Le dilemme peut toutefois se poser différemment, i.e. entre survie et sortie tout simplement plutôt qu'entre stratégies traditionnelle et innovatrice.

Survie vs sortie. Selon le point de vue d'autres auteurs, le dilemme se pose simplement en termes du dilemme survie versus sortie en réaction à la réduction des ressources gouvernementales consacrées à la défense. Le choix de la survie appelle une orientation vers l'investissement ou encore le contrôle des coûts. D'une part, la firme peut décider d'augmenter l'investissement dans certains secteurs, elle aboutira vraisemblablement à une stratégie de niche et tentera de satisfaire à des motifs financiers (i.e. influencer favorablement le cours de ses actions, le cas échéant) en faisant un effort de promotion de ses produits ou en jouant sur l'image de l'entreprise et de ses produits. Le maintien ou la diminution des investissements mène à une stratégie de maintien qui vise une hausse des bénéfices par le biais de la réalisation d'une fusion ou par l'écémage des marchés. Cet écémage mène ultimement à une récolte des produits provenant des ventes entraînant une sortie par suite du refus d'investir davantage; la situation peut être comparée à une autophagie (l'entreprise ou l'unité d'affaire se dégénère en se digérant elle-même). D'autre part, si l'entreprise choisit de contrôler ses coûts, il s'ensuivra une stratégie de maintien ou de niche. Le maintien, comme dans le cas de la diminution ou du maintien de l'investissement, appelle à une hausse des bénéfices à travers l'écémage ou encore la fusion avec les conséquences précédemment décrites. La stratégie de niche vise les mêmes motifs financiers sous-jacents à la promotion du produit ou le jeu sur l'image. Par ailleurs, si la firme décide de sortir de l'industrie en déclin par suite de la réduction du financement public, elle peut choisir de sortir le plus rapidement possible sans égard aux barrières à la sortie. Sinon, il lui est possible de tenter de récupérer une partie de sa mise en se positionnant pour la récolte de ses produits par l'autophagie telle que mentionnée plus haut. Quels que soient les choix de ces firmes, le défi posé par ce genre de décisions demeure lourd de conséquence pour leur avenir.

Ce que font les entreprises qui prospèrent. Les entreprises de défense qui continuent de prospérer grâce à la maîtrise de leur compétences fondamentales ont toutes adopté une stratégie innovatrice et choisi de survivre par des investissements soutenus dans leurs compétences. Lockheed Martin a pour stratégie d'intégrer de nouveaux savoirs dans ses produits tant civils que militaires comme en témoignent ses systèmes satellitaires. GIAT, quant à elle, utilise plutôt ses compétences dans des domaines non-traditionnels, d'où sa conception d'un hôpital de campagne. Enfin, General Dynamics choisi de se concentrer sur ses activités militaires qui constituent sa force en se défaisant de certaines unités d'affaires surtout orientées vers les marchés civils.

Conclusion

En conclusion, force nous est de constater que l'étude de la stratégie des entreprises militaires sur la base de leur compétence fondamentale est une tâche complexe. Si la compétence fondamentale peut logiquement prétendre constituer la pierre angulaire des efforts de survie et de diversification des firmes militaires, il n'en demeure pas moins que celles-ci sont affectées par une accélération du changement. Il en découle une démarche obligée de mise en valeur de leurs compétences. L'une des manières de réduire le risque d'une éventuelle diversification est de reconnaître les arrimages obligés entre compétence fondamentale et stratégie. Nous avons retenu la conception que se font Hamel et Prahalad (1994) de la compétence fondamentale. S'ils la définissent comme un *bundle of skills* qui possède de la valeur aux yeux du client tout en étant difficilement imitable et transférable à l'intérieur de l'entreprise, elle n'en possède pas moins un caractère incontestablement immatériel chevillé à l'entreprise. La littérature nous montre plusieurs façons d'identifier une compétence fondamentale (nous en avons présenté deux) qui montrent une unanimité conceptuelle en développement et ce, en dépit de la similitude des méthodes présentées. Toutefois, pour assurer son développement et sa pérennité, il est important de comprendre le lien intime qu'elle possède avec la gestion du savoir. Ainsi, l'entreprise est en mesure de mettre à profit l'espace stratégique que lui ouvrent ses compétences fondamentales. Ceci dit, plusieurs stratégies s'ouvrent alors aux entreprises militaires. D'une part, il est possible de conceptualiser le choix qu'elles ont à faire comme un dilemme du type survie versus sortie; d'autre part, comme un dilemme entre stratégie conventionnelle (opter pour une conversion pure et simple) et novatrice (procéder à des fusions/acquisitions sélectives; à une diversification ou encore à certains désinvestissements). Il devient alors primordial de considérer l'approche des compétences fondamentales.

L'approche des compétences fondamentales, bien qu'elle demeure très éloignée de la panacée, est particulièrement intéressante dans le cas des entreprises militaires en ce qu'elle pourra sans doute contribuer à diminuer les risques encourus en matière de diversification. Ces risques ne sont sans doute pas étrangers au fort biais technique des entreprises militaires. Peut-être est-ce là le reflet de la culture d'une industrie de la défense qui traditionnellement valorise, même de nos jours où les deniers publics se raréfient, la performance technique au détriment des coûts de production ou des efforts de marketing s'y rattachant. L'industrie est en mutation. Les démarches de diversification doivent dépasser de simples «vœux pieux», mis en œuvre sur la simple considération d'une sophistication technique que la firme se fait fort d'atteindre, pour plutôt reposer sur une stratégie délibérée de la part de l'entreprise.

BIBLIOGRAPHIE

1. ARGYRIS, C., SCHÖN, D., 1978, « What is an organization that it may learn ? », dans ARGYRIS, C., SCHÖN, D., *Organizational learning: a theory of action perspective*, Cambridge MA, Addison-Wesley, p. 8-29.
2. ARGYRIS, C., SCHON, D.A., 1978, *Organizational Learning*, Reading MA, Addison-Wesley.

3. BARNEY, J., 1991, « Firm resources and sustained competitive advantage », *Journal of Management*, vol.17, no. 1, p. 99-120.
4. BATES, D. L., KUKALIS, S., 1998, « The Endgame in Aerospace: A Disaster Waiting to Happen ? », *Long Range Planning*, vol. 31, no. 4, p. 615-622.
5. BZHILIANSKAYA, L., 1996, « The Transformation of Technological Capabilities in Russian Defence Enterprises, with special reference to dual-use technology », *STEEP Discussion Paper*, no. 31, March, 33p., <http://www.sussex.ac.uk/spru>, consulté le 22 juin 2000.
6. CANTWELL, J. SANTANGELO, G. D., 1999, « The frontier of international technology networks: Sourcing abroad the most highly tacit capabilities », *Information Economics and Policy*, vol. 11, no. 1, March, p. 101-123.
7. CHASE, R.L., 1997, « Knowledge Management Benchmarks », *The Journal of Knowledge Management*, vol. 1, no. 1, p. 83-92.
8. CHASE, R.L., 1997, « The Knowledge-Based Organization: An International Survey », *The Journal of Knowledge Management*, vol. 1, no. 1, p. 38-49.
9. CHRISTENSEN, C.M., SUAREZ, F.F., UTTERBACK, J.M., 1998, « Strategies for Survival in Fast-Changing Industries », *Management Science*, vol.44, no.12, December, p. S207-S220.
10. CIMON, Y., 2000, « Les firmes militaires privées en tant qu'agents de transfert de know-how militaire », *Bulletin de doctrine et d'instruction de l'Armée de terre du Canada*, vol. 3, no. 2, été, p. 22-29.
11. CIMON, Y., 2001, *Stratégies de diversification des entreprises militaires*, Montréal Qc, École des Hautes Études Commerciales, 204 p., (mémoire de maîtrise).
12. COHENDET, P., LLERENA, P., 1999, « La conception de la firme comme processeur de connaissances », *Revue d'économie industrielle*, juin, (numéro spécial sur l'économie de la connaissance).
13. COWAN, R., FORAY, D., 1995, « Quandaries in the economics of dual technologies and spillovers from military to civilian research and development », *Research Policy*, vol. 24, no. 6, p. 851-868.
14. DELOITTE CONSULTING, 2000, « Commercialization, Consolidation, and Globalization », *Aerospace and Defense*, www.dc.com/services/industries/manufacturing/aerospace/index.asp, consulté le 31 mai 2000.
15. DIXON, N.M., 1999, « The changing face of knowledge », *The Learning Organization*, vol. 6, no. 5, p. 212-216.
16. DOUGHERTY, V., 1999, « Knowledge is about people, not databases », *Industrial and Commercial Training*, vol. 31, no. 7, p. 262-266.
17. DUYSTERS, G., HAGEDOORN, J., 2000, « Core competences and company performance in the world-wide computer industry », *Journal of High Technology Management Research*, vol. 11, no. 1, Spring, p. 75-91.
18. EISENHARDT, K.M., BROWN, S.L., 1999, « Patching: Restitching Business Portfolios in Dynamic Markets », *Harvard Business Review*, May-June, p. 72-82.
19. FORTUNE, www.fortune.com
20. GALLON, M.R., STILLMAN, H.M., COATES, D., 1995, « Putting Core Competency Thinking into Practice », *Research Technology Management*, vol. 38, no. 3, p.20-28.
21. GENERAL DYNAMICS, *Annual Report*, www.gd.com
22. GIAT Industries, www.giatindustries.fr et www.soffred.fr/FR/giat.htm
23. GORMAN, P., HOWARD, T., 1997, « The theory and practice of competence-based competition », *Long Range Planning*, vol. 30, no. 4, August, p. 615-620.
24. HAGEL III, J., SINGER, M., 1999, « Unbundling the Corporation », *Harvard Business Review*, March-April 1999, p. 133-141.

26. HAMEL, G., PRAHALAD, C. K., 1994, *Competing for the Future*, Boston MA, Harvard Business School Press, 358 p.
27. JAVIDAN, M., 1998, « Core Competence: What Does it Mean in Practice ? », *Long Range Planning*, vol. 31, no. 1, p. 60-71.
28. KNOT, P., PEARSON, A., TAYLOR, R., 1996, « A new approach to competence analysis », *International Journal of Technology Management*, vol. 11, no. 3-4, p.494-504.
29. LEI, D.T., 2000, « Industry evolution and competence development: The imperatives of technological convergence », *International Journal of Technology Management*, vol. 19, nos. 7-8, p. 699-738.
30. LEI, D.T., 1997, « Competence-building, technology fusion and competitive advantage: The key roles of organizational learning and strategic alliances », *International Journal of Technology Management*, vol. 14, nos. 2-4, p.208-237.
31. LOCKHEED MARTIN, *Annual Report*, www.lockheedmartin.com
32. MARCH, I.C., GUNASEKARAK, A., 1999, « Business strategy in high-tech ventures: an empirical analysis », *Management Decision*, vol.37, no. 3., p. 222-232.
33. MORRELL, D., 1999, « Améliorer l'apprentissage dans l'Armée de terre canadienne », *Le Bulletin de doctrine et d'instruction de l'Armée de terre*, vol. 2, no. 4, hiver, p.77-84.
34. NEWMAN, V., 1997, « Redefining Knowledge Management to Deliver Competitive Advantage », *Journal of Knowledge Management*, vol. 1, no. 2, Decemder, p. 123-128.
35. NONAKA, I., TAKEUCHI, H., 1995, *The Knowledge Creating Company: How Japanese Companies Create the Dynamics of Innovation*, NY, Oxford University Press, 284 p.
36. OCDE, Knowledge, learning, and information in the economy, 20 p.
37. PAPIN, M.W., KLEINER, B.H., 1998, « Effective strategic management in the aerospace industry », *Aircraft Engineering and Aerospace Technology*, vol. 70, no.1, p.38-44.
38. PEARSON, G., PROCTOR, T., 1994, « The Modern Framework for Marketing Planning », *Marketing Intelligence & Planning*, vol.12, no. 4, p. 22-26.
39. PÉREZ-BUSTAMANTE, G., 1999, « Knowledge management in agile innovative organisations », *Journal of Knowledge Management*, vol. 3, no. 1, p. 6-17.
40. PFEFFER, J., SUTTON, R.I., 2000, *The Knowing-Doing Gap*, Boston MA, Harvard Business School Press, 314 p.
41. PFEFFER, J., SUTTON, R.I., 1999, « Knowing « What » to Do is Not Enough: Turning Knowledge into Action », *California Management Review*, vol. 42, no. 1, Fall, p.83-108.
42. PORTER, M.E., 1990, « The Competitive Advantage of Nations », *Harvard Business Review*, March-April, p. 73-93
43. PRAHALAD, C., HAMEL, G., 1990, « The core competence of the corporation », *Harvard Business Review*, May-June , p. 79-91.
44. RANSOM, G., KNIGHTON, T., 1996, « Stepping up to the challenge of change », *Managing Service Quality*, vol. 6, no. 5, p. 10-16.
45. SILLERS, T.S., KLEINER, B.H., 1997, « Defence conversion: surviving (and prospering) in the 1990s », *Work Study*, vol. 46, no. 2, p. 45-48.
46. STERNE, D., 1992, « Core Competences: The Key to Corporate Advantage », *Multinational Business*, no.2, Summer, p. 13-21.
47. STONEHOUSE, G.H., PEMBERTON, J.D., 1999, « Learning and knowledge management in the intelligent organisation », *Participation and Empowerment: An International Journal*, vol. 7, no. 5, p. 131-144.
48. SUAREZ, F., UTTERBACK, J.M., 1995, « Dominant Designs and the Survival of the Firms », *Strategic Management Journal*, vol. 16, no. 6, p. 415-430.
49. TEECE, T., PISANO, G., 1994, « The dynamic capabilities of firms: an introduction », *Industrial and Corporate Change*, vol. 3.
50. UNLAND, M., KLEINER, B.H., 1996., « New developments in organizing around core competences », *Work Study*, vol. 45, no. 2, p. 5-9.

51. UTTERBACK, J.M., MEYER, M., TUFF, T., RICHARDSON, L., 1992, « When Speeding Concepts to Market Can Be a Mistake », *Interfaces*, vol. 22, no. 4, July-August, p. 24-37.
52. VALDEZ, R., KLEINER, B.H., 1996, « How to build teamwork in the defence industry », *Team Performance Management: An International Journal*, vol. 2, no. 2, p. 41-48.
53. VÉRY, P., 1993, « Success in diversification: Building on core competences », *Long Range Planning*, vol. 26, no. 5, October, p. 80-93.
54. WILLIAMS, B.H., 1961, *The Economics of National Security: Reconversion and Partial Mobilization*, vol. XXI, Washington D.C., The Industrial College of the Armed Forces, p. 27-32

LEGAL INFORMALITY AND JAPAN'S "NEW" PRIVACY LAW

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ABSTRACT. Since Japan's economic bubble burst in 1989, many pundits have predicted the weakening of the Japanese state's ability to dictate industrial policy. Together with a series of scandals and other cases of mishandling (such as the hapless organization of rescue efforts after the 1995 Kobe earthquake), the Japanese bureaucracy was seen to have lost the credibility it needed to "administer guidance". Or so it seems. More often than not, the so-called iron triangle, made up of politicians, bureaucrats, and businessmen, have adapted to Japan's changing circumstances in order to maintain the status quo. This paper will use the case of Japan's new privacy law to illustrate this from a legal perspective. In conclusion, the author speculates on the future possibility of more fundamental changes towards the legal protection of information in Japan as a result of international pressure.

INTRODUCTION

Japan's "New" Privacy Law

In April 2005, Japan will see the enactment of five new privacy laws. This is the first time that Japan will have comprehensive data privacy legislation that covers both the public and private sectors. Considering that the Japanese government has been a stringent proponent of self-regulation for the last two decades, the passage of these new laws has been proclaimed as nothing less than a watershed in the protection of online privacy in the country. Yet, one may wonder just how revolutionary the new laws actually are. Since the impetus for the privacy bill originated from the upper echelons of the Japanese political system, can they really be expected to have moved away from Japan's traditional approach towards adjudication? Furthermore, by looking at the contents of the new laws, it becomes quite apparent that certain aspects of Japan's legal environment have remained unchanged. Namely, they have adhered to one of the dominant interpretations towards the legal environment in Japan – that of "legal informality," as propounded by Frank K. Upham in *Law and Social Change in Postwar Japan*. *Informality* is used to describe the nature of the Japanese legal system, while something else known as *verticality* represents the outcome of this particular characteristic. The first term describes a scenario where the lack of formal legislation makes it difficult for business and citizens to turn to the judiciary in times of need. This in turn creates a "vertical" environment, where people are forced to be dependent on ad hoc state mediation mechanisms instead of the courts for settlement of disputes.

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The Root of the Debate: Computerizing the Koseki

The first question that needs to be answered is why the Japanese government had felt it necessary to present a privacy bill for deliberation in the first place. After all, it is precisely an environment that is devoid of such formal regulations that the Japanese bureaucracy is most able to wield influence. In actuality, protecting the information privacy of the Japanese people can be said to have been the government's most unimportant objective in wanting to pass the privacy bill. As part of the Mori administration's e-government program, a debate began in 1999 over a law that concerned Japan's Basic Resident Registers. Known in Japanese as the *koseki*, this was a Meiji-era system used in the compilation of a population database (Yoshino and Murakoshi 1977). The ruling Liberal Democratic Party (LDP) needed to amend a 1967 law concerning the *koseki* which would allow it to be computerized as part of a national electronic network, known as Juki Net. This network would place the *koseki* in an interconnected online environment that would allow government offices across the country to retrieve the personal information of individuals through the use of an 11-digit number unique to each citizen (Kwan 2002). However, since the Japanese government did not have a good record in safekeeping public information, there was intense opposition from not only the opposition political parties, but the coalition New Komeito Party as well (Privacy and American Business 2003). Furthermore, the Japanese constitution made it such that Japanese public entities below the prefectural level could boycott the system if they felt that measures to protect the digitized *koseki* were insufficient. This forced the LDP into a compromise with its coalition New Komeito Party; the latter would allow the passage of the amendment to the Basic Resident Registers Law in August 1999, but only if a data protection law was enacted before Juki Net came into being.

The Route of Passage of the Privacy Bill

When the initial bill was proposed in March 2001, the decades old mentality of the Japanese government was clearly visible. There were no penalties fixed for public entities on the one hand, and final say over punitive measures imposed on the private sector was retained in the hands of the relevant ministry. Not surprisingly, the bill drew little support from opposition members of the Diet, who felt that the original intent of the law as a safeguard for the digitized *koseki* had been marginalized. In addition, the main point of contention was the privacy bill's alleged potential to infringe on freedom of speech. After the debacle that was the Mori administration, party stalwarts were determined to focus the aims of the privacy bill on protecting bureaucrats and politicians from the prying eyes of the media (Kyodo News International 2002). They had included a so-called "transparency clause" within the bill's Basic Principles, termed as such because it required the means and usage of the information attained to be transparent, thus allowing appropriate access to the referent of the information. Since journalistic prerogatives sometimes preclude the luxury of maintaining such transparency, it is little surprise that all the major newspapers and commercial television networks rose up in protest (Japan Weekly Monitor 2002). This attempt by the LDP to shackle the free press was the real coup scored by the opposition, which immediately took up the mantle as the defender of free speech. This happened as

media organizations lobbied them for support in forcing the LDP to repeal its privacy bill. Indeed, because the issue of free speech affected such a broad spectrum the – the National Association of Commercial Broadcasters in Japan, the Association of Japanese Broadcast Writers, the Association of Scenario Writers in Japan, the Foreign Correspondents Club of Japan, the Japan Magazine Publishers Association, the Japan Newspaper Publishers and Editors Association, and the Japan Book Publisher's Association etc. all voiced their objections vociferously (Privacy and American Business 2003).

Emboldened by the raucous that had been raised by their newfound allies, the opposition parties were able to stand their ground all the way past an extended Diet session. The LDP-coalition was left with little choice but to revise their proposal in preparation for the 2003 Diet session. The revisions gave ground on several issues, but remained essentially unchanged. The Basic Principles remained in the bill bereft of only the title heading itself. Penalties were imposed on offenders working in public administration, but the means with which they could actually be charged were left ambiguous. Yet, the bill in this form was able to pass through the Diet relatively effortlessly. The primary reason that can explain this sudden turn of events was a crucial change in the revised bill – that newsgathering bodies would be free from ministerial intervention. Satisfied with this key concession from the coalition, media organizations were no longer as committed in opposing passage of the bill. On the contrary, they were looking forward to the continuation of the stable working relationship between them and the government within which they knew how to operate (The Yomiuri Shimbun 2003). This also meant that there was only lacklustre support for the privacy bill proposals submitted by the opposition parties that centered on the setting up of a third-party organization to act as a privacy watchdog. Media organizations were understandably ambivalent towards someone else other than the government acting as overseer (Asahi News Service 2003). The LDP too, had not come out of this exchange a loser. Since magazines did not count as a news organization, they were subjected to administrative guidance from above. The LDP thus gained a victory of sorts since scandals tended to emerge from these rather than the mainstream newspapers. As the LDP had also agreed to re-look the law three years after its enactment, there was no longer a need for the media to quibble over the vagaries of what was after all a Basic Law; it was expected that individual stipulations would come eventually for the various industries. In this way, the LDP-led coalition was able to appease the media's requests (with magazines as the scapegoat), and essentially signaled the end of any ardent opposition on their part. Without the support of the media, the opposition parties lacked the backing that was necessary to return the focus of the privacy bill debate back onto the rights of the individual.

DISCUSSION

Continuation of the Vertical Structure

The fact that the mass media were wary of any third-party intervention over their activities suggests a desire on their part to maintain the status quo between them and the government. While this particular relationship continues to be nuanced after the bill was revised, it is certainly explicit that all other industries will

fall directly under the purview of their relevant ministries. Until more intrinsic statutes are promulgated in the future, interpretation of the new privacy law is still very much at the behest of the government. In addition, only time will tell if the pro-business LDP will truly fulfill its role in clamping down on information privacy infringers. In this way, the informal relationships between the politician-bureaucrat-businessman triumvirate has been very much maintained. When it comes to the Japanese citizenry, this verticality has been sustained under the new law in a much more far-reaching way due to its ambiguous nature. The root of the "problem" can probably be traced back to the 2001 Law Concerning Disclosure of Information Held by Administrative Agencies. Under this law, public entities have the right to refuse the disclosure of information to the individual if they deem the request to be inappropriate. What is appropriate, however, currently seems to be an arbitrarily decision made by the officials in charge of information disclosure. The unpredictable nature of the disclosure law thus brings up fundamental problems to the whole issue of personal information protection; how can anyone take action towards safeguarding their personal information when they are not aware of what information has been gathered about themselves? If a person seeking this information was turned down, they would have had no way of knowing exactly what personal information of theirs was in the hands of the government, much less how it was being used by them. Thus, the lack of a transparent system ensuring access to one's personal information places the individual at the mercy of the government, and essentially makes a moot point of any other stipulations in the law. Even if the requisition for personal information could be made successfully, the current law makes it unclear as to how the individual might take legal action.

CONCLUSION AND FUTURE SPECULATIONS

When the new privacy law "comes online" in 2005, the government still retains much leeway in inferring how its contents should be interpreted, and there appears to have been very little deviation from the legal environment that Upham describes in his treatise. The informal and vertical structure of the past is very much intact in this arrangement, and it remains to be seen if the judiciary will take steps to influence the protection of information privacy under case law. Another point to take note of has been the lack of consideration towards the international privacy environment in the Japanese diet deliberations. Considering that the European Commission's Directive on Data Protection (1995) "prohibits the transfer of personal data to non-European Union nations that do not meet the European standard for privacy protection", it is surprising that the need to "harmonize" Japan's own laws to that of the European Union (E.U.) were not tabled at all. Indeed, if the U.S. had to negotiate a Safe Harbor arrangement in order to meet with the E.U.'s standards (Regan 2003), it is highly probably that Japan will face the same problem since it has always followed the American model of self-regulation. With the high-tech, information exchange industry blossoming, it is unlikely that Japan can avoid the issue of information privacy with its third largest trading partner that is the E.U. (MIAC 2005). While it is too early to make any predictions on the effectiveness of the new laws, the good news is that at the very latest, any

serious revisions to the law will have to be undertaken in 2008 if not sooner. At that time, even if the new laws prove sufficient in protecting the right to information privacy within Japan, the impetus to change from without might finally force Japan to move away from its comfort zone of informal regulation.

REFERENCES

1. Asahi News Service (2002), "Take The Bill Back And Rewrite It From Scratch," 16 May.
2. European Parliament and the Council of the European Union (1995), Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Available at: http://europa.eu.int/comm/internal_market/en/dataprot/law.
3. Japan Weekly Monitor (2002), "Media Privacy Bill to Cover Freelance, Net Reporters," 4 March.
4. Kwan, Weng Kin (2002), "Japan's Online Registry Runs into Glitches, Protests," The Straits Times, 6 August.
5. Kyodo News International (2002), "Veteran Journalist Says Privacy Bill Protects Government Not Public," 20 May.
6. Ministry of Internal Affairs and Communications (2005), Japan Statistical Yearbook 2005. Japan: Statistical Research and Training Institute, MIAC.
7. Privacy and American Business (2003), "Special Issue on Consumer Privacy in Japan and the New National Privacy Law," 10 (8).
8. Regan, Priscilla M. (2003), "Safe Harbors or Free Frontiers? Privacy and Transborder Data Flows," *Journal of Social Issues*, 59 (2), 263-282.
9. The Yomiuri Shimbun (2003), "Editorial; Freedom of Speech at Risk," 7 April, 10.
10. Upham, Frank K. (1987), *Law and Social Change in Postwar Japan*. Cambridge, Mass.: Harvard University Press.
11. Yoshino, I. Roger and Sueo Murakoshi (1977), *The Invisible Visible Minority: Japan's Burakumin*. Osaka: Buraku Kaiho Kenkyusho.

COMPANIES IN USA FACING BANKRUPTCY. WAYS OF SOLVING IT: REORGANIZATION OR LIQUIDATION

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ABSTRACT. The article talks about the main issues involved in bankruptcy and financial distress in general. The fundamental issue that must be addressed when a company encounters financial distress is whether it is “worth more dead than alive”; this means if the business would be more valuable if it continued in operation or if it were liquidated and sold off in pieces. When the company's financial difficulties appear to be temporary, creditors work directly with the company for restructuring the firm's debts, either in an extension, postponing the date of required payment, or in a composition, where creditors voluntarily reduce their claims on the debtor. When it is obvious that a firm is worth more dead than alive, some informal procedures can be used to liquidate the firm. One of these is the assignment, which usually yields creditors a larger amount than they would receive in formal bankruptcy liquidation. It is very important for a manager to know all the issues involved in bankruptcy because facing a situation like this, the decisions that he is taking along with the creditors' and stakeholders' decisions, before and during bankruptcy proceedings, will determine the final results of the company.

Even if we all would like that our companies be successful and growing, there are cases in which the enterprise encounters financial distress, where its managers must try to minimize losses. The ability of a firm to hang on during rough time often means the difference between forced liquidation versus rehabilitation and even success. It is critical to the executives to understand bankruptcy, because they must know the best way to handle things when their customer suppliers face the threat of bankruptcy.

Financial distress begins when a firm is unable to meet scheduled payments or when cash flow projections indicate that it will soon be unable to do so. In this case, the central issues raised refer to the inability to meet scheduled debt payments (if this is a temporary or a permanent problem) and also to the fact if the company is “worth more dead than alive”. This means if the business would be more valuable if it were maintained and continued in operation or if it were liquidated and sold off in pieces.

As I have said, when a firm experiences financial distress, its managers and creditors must decide whether the problem is temporary, and the firm is really financially viable, or whether a permanent problem exists that endangers the firm's life. Then, the parties must decide whether to try to solve the problem informally or under the direction of a bankruptcy court. Because of costs associated with formal bankruptcy, including the disruption that occurs when a firm's customers, suppliers and employees learn that it has filed under the Bankruptcy Act², it is desirable if possible to reorganize (or liquidate) outside of formal bankruptcy.

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² Bankruptcy Act of USA - an Act relating to the law of bankruptcy and matters connected therewith

The factors of business failure are either economical or financial, or they could be disasters or frauds. The financial factors have the biggest percentage in business failure³ and they include too much debt and insufficient capital. Some case studies show that the financial difficulties are usually the result of a series of errors, misjudgments and interrelated weaknesses that can be attributed directly or indirectly to management.

Business failure is quite wide spread in the United States, as we can see from the following table. A fairly large number of businesses fail each year, although the failures in any one year are not a large percentage of the total business population. It is interesting to note that whereas the failure rate per 10.000 businesses fluctuates with the state of the economy, the average liability per failure has tended to increase over time, at least into the early 1990s. This is due primarily to inflation, but it also reflects the fact that some very large firms have failed in recent years.

Years	Average number of failures per Year	Average failure rate per 10.000 Businesses	Average Liability per failure(\$)
1950-1959	11.119	42	41.082
1960-1969	13.110	52	92.271
1970-1979	9.311	36	296.497
1980	11.742	42	394.744
1985	57.253	115	645.160
1990	60.747	74	923.996
1991	88.140	107	1.098.539
1992	97.069	110	971.653
1993	86.133	109	554.438
1994	71.558	86	404.955
1995	71.128	86	524.175
1996	71.931	80	411.071
1997	83.384	88	448.970

Historical failure rate of U.S. Businesses⁴

Although bankruptcy is more frequent among smaller firms, large firms are not immune too. However, some firms might be too big or too important to be allowed to fail and mergers or governmental intervention are often used as an alternative to outright failure and liquidation. Some recent large bankruptcies are shown in the following table⁵:

Company	Business	Assets (billions of Dollars)	Date
Integrated Health Service	Health care	5.4	2/02/ 2000
Montgomery Ward Holding	Retail department stores	4.9	7/07/ 1997

³ Source: Dun & Bradstreet Inc., Business Failure Record (New York)

⁴ Source: Dun & Bradstreet, Inc., *Business Failure Record* (New York, updated annually)

⁵ Source: Bankruptcy.com, a division of New Generation Research

COMPANIES IN USA FACING BANKRUPTCY.WAYS OF SOLVING IT

Company	Business	Assets (billions of Dollars)	Date
Loewen Group International	Funeral services	4.7	1/07/ 1999
Safety – Kleen	Chemical waste	4.4	9/06/ 2000
Dow Corning Corporation	Silicon	4.1	15/05/ 1995
Iridium LLC/Capital Corporation	Wireless communications	3.7	13/08/ 1999
CHS Electronica	Computer products	3.6	4/04/ 2000
Mariner Post – Acute	Health care	3.0	18/01/ 2000
Harnischfeger Industries Inc	Surface mining equipment	2.9	7/06/ 1999
ICO Global Communications	Wireless communications	2.6	27/08/1999

When facing bankruptcy, a company has two possibilities, either reorganization or liquidation. Both of them are advisable to be done under informal settlement procedures because they are faster and less costly than formal bankruptcy.

Informal reorganization appears when company's financial difficulties seem to be temporary and creditors are generally willing to work with the company to help it recover and reestablish itself on a sound financial basis. They make some voluntary plans, called workouts, which require a restructuring of the firm's debt, because current cash flows are insufficient to serving the existing debt. Restructuring typically involves extension and/or composition. In an *extension*, creditors postpone the dates of required interest or principal payments, or both. In a *composition*, creditors voluntarily reduce their fixed claims on the debtor by accepting a lower principal amount, by reducing the interest rate on the debt, or by some combination of these changes.

The steps taken in reorganization are:

- 1) The debt restructuring begins with a meeting between the failing firm's managers and creditors. The creditors appoint a committee consisting of four or five of the largest creditors, plus one or two of the smaller ones. This meeting is often conducted by an adjustment bureau associated with and run by a local credit managers' association. First of all, the management draws up a list of creditors, with amounts of debt owed. There are typically different classes of debt, ranging from first – mortgage holders⁶ to unsecured creditors.
- 2) The company develops information showing the value of the firm under different scenarios. Typically, one scenario is going out of business, selling off the assets, and then distributing the proceeds to the various creditors in accordance with the priority of their claims⁷, with any surplus going to the common stockholders. Other scenarios include continued operations, frequently with some improvements in capital equipment, marketing and perhaps some management changes.

⁶ = persons who own the mortgage over the business

⁷ = the sum of money which is requested in a claim

- 3) This information gathered is shared with the firm's bankers and other creditors. Frequently, it can be demonstrated that the firm's debt exceed its liquidating value, and it can also be shown that legal fees and other costs associated with a formal liquidation under federal bankruptcy procedures would materially lower the net proceeds available to creditors. Further, it takes often several years to resolve matters in a formal proceeding, so the present value of the eventual proceeds will be lower still. This information, when presented in a credible manner, often convinces creditors that they would be better off accepting something less than the full amount of their claims rather than holding out for the full face amount.
- 4) If management and the major creditors agree that the problems can probably be resolved, then a more formal plan is drafted and presented to all the creditors, along with the reasons creditors should be willing to compromise on their claims.

In developing the reorganization plan, creditors prefer an extension because it promises eventual payment in full. Because of the sacrifices involved, the creditors must have faith that the debtor firm will be able to solve its problems. In a composition creditors agree to reduce their claims. Typically, creditors receive cash and/or new securities that have a combined market value that is less than the amounts owed them. Bargaining⁸ will take place between the debtor and the creditors over the savings that result from avoiding the costs of legal bankruptcy: administrative costs, legal fees, investigative costs etc. Often, the bargaining process will result in a restructuring that involves both extension and composition.

Voluntary settlements are both informal and simple, and also relatively inexpensive because legal and administrative expenses are held to a minimum. Thus, voluntary procedures generally result in the largest return to creditors. Although creditors do not obtain immediate payment and may even have to accept less than is owed them, they generally recover more money, and sooner, than if the firm were to file for bankruptcy.

In recent years, one factor that has motivated some creditors, especially banks and insurance companies, to agree to voluntary restructuring is the fact that restructurings can sometimes help creditors avoid showing a loss. Thus, a bank that is "in trouble" with its regulations over weak capital ratios may agree to extend further loans that are used to pay the interest on earlier loans in order to keep the bank from having to write down the value of its earlier loans. This particular type of restructuring depends on the willingness of the regulators to go along with the process, and whether the bank is likely to recover more in the end by restructuring the debt than by forcing the borrower into bankruptcy immediately.

The biggest problem with informal reorganization is getting all the parties to agree to the voluntary plan. This problem is called the *holdout problem*. To illustrate it, consider an example with ten creditors owed \$1 million each but with assets worth only \$9 million as a going concern (the present value of its expected future free cash flows), and only \$7 million if it is liquidated. The goal of the firm is to avoid liquidation by remedying the default. In an informal workout, this would require a reorganization plan that is agreed to by each of the ten creditors. Suppose the

⁸ = discussions in order to reach an agreement

firm offers each creditor new debt with a face value of \$850.000 in exchange for the old \$1.000.000 face value debt. If each of the creditors accepted the offer, the firm could be successfully reorganized. The reorganization would leave the equity holders with some value – the market value of the equity would be $\$9.000.000 - 10 * (\$850.000) = \$500.000$. Further, the creditors would have claims worth \$8.5 million, which is more than of their \$7 million value in claims in case of liquidation.

Although such an exchange offer seems to benefit all parties, it might well not be accepted by the creditors. Here's why: Suppose seven of the ten creditors tender their bonds; thus, seven creditors each now have claims with a face value of \$850.000 each, or \$5.950.000 in total, while the three creditors that did not tender their bonds each still have a claim with a face value of \$1 million. The total face value of the debts at this point is \$8.950.000, which is less than \$9 million value of the firm. In this situation, the three holdout creditors would receive the full face value of their debt. However, this probably won't happen, because all of the creditors would be sophisticated enough to realize this could happen, and each creditor would want to be the one of the three holdouts that gets paid in full. Thus, it is likely that none of the creditors would accept the offer. In this case, the holdout problem makes it difficult to restructure the firm's debts.

It is easier for a firm with few creditors to informally reorganize than it is for a firm with many creditors. Also, if the firm had a single creditor, there would be no holdout problem.

The holdout problem is mitigated in bankruptcy proceedings by the bankruptcy court's ability to lump⁹ creditors into classes. Each class is considered to have accepted a reorganization plan if two-thirds of the amount of debt and one – half the number of claimants vote for the plan, and the plan will be approved by the court if it is deemed to be "fair and equitable" to the dissenting parties. This procedure, in which the court mandates a reorganization plan in spite of dissent¹⁰, is called a *cramdown*, because the court crams the plan down the throats of the dissenters. The ability of the court to force acceptance of reorganization greatly reduces the incentive for creditors to claim worth \$850.000 in face value, along with information that each creditor would probably receive only \$700.000 under the liquidation alternative, it would have a good chance of success.

Even if informal reorganization is less costly, some companies could file for bankruptcy with a federal court and can be officially declared bankrupted. They can have some advantages in this case because the primary purpose of the bankruptcy law is to avoid having firms that are worth more as ongoing concerns be put out of business by individual creditors who could force liquidation without regard to the effects on other parties.

In the US Bankruptcy law, the chapter which deals with business reorganization is Chapter 11, and is the most important section from a financial management viewpoint. Filing for bankruptcy under Chapter 11 has several features that help the bankrupt firm:

⁹ = to put two or more different people together and consider them as a single group

¹⁰ = refusal to agree with an official decision

- 1) Interest and principal payments, including interest and delayed payments, may be delayed without penalty until a reorganization plan is approved, and the plan itself may call for even further delays. This permits cash generated from operations to be used to sustain operations rather than be paid to creditors.
- 2) The firm is permitted to issue debtor – in – possession (DIP) financing. DIP financing enhances the ability of the firm to borrow funds for short – term liquidity purposes, because such loans are, under the law, senior to all previous unsecured debt.
- 3) The debtor firm's managers are given the exclusive right for 120 days after filing for bankruptcy protection to submit a reorganization plan, plus another 60 days to obtain agreement on the plan from the affected parties. The court may also extend these dates. After management's first right to submit a plan has expired, any party to the proceedings may propose its own reorganization plan.

A particular case of the last feature is the small business filing for bankruptcy under Chapter 11. There have been made several provisions in the Amendments which are designed to afford small businesses a faster, more efficient and less expensive mechanism for reorganizing their businesses than Chapter 11 had provided, by eliminating the requirement for the appointment of a creditors' committee and simplifying the disclosure statement and plan confirmation process.

A "small business" is defined as a person engaged in commercial or business activities whose aggregate non-contingent liquidated secured and unsecured debts do not exceed \$2,000,000. (A person whose primary activity is the business of owning or operating real property also does not qualify as a small business under the Amendments.) The Amendments provide that, in a case in which the debtor is a small business and elects to be considered a small business, only the debtor may file a plan until after 100 days after the date of the bankruptcy filing and all plans must be filed within 160 days after the date of the bankruptcy filing. (For a person not a small business, the analogous periods under Chapter 11 are 120 and 180 days). The bankruptcy court may reduce or increase the 100-day and 160-day periods upon cause shown by any party. Small business debtors may solicit votes on a plan based on a disclosure statement that is conditionally approved by the bankruptcy court, so long as the debtor provides adequate information to each holder of a claim or interest that is solicited. The Amendments also provide that a hearing on the approval of the disclosure may be combined with a hearing on confirmation of the plan.

We have talked up to this point about informal and formal reorganization, but, in recent years, a new type of reorganization appeared, a reorganization that combines the advantages of both the informal workout and formal Chapter 11. This new hybrid is called a *Prepackaged bankruptcy*, or *pre-pack*.

In an informal workout, a debtor negotiates a restructuring with its creditors. Even though complex workouts typically involve corporate officers, lenders, lawyers, and investment bankers, workouts are still less expensive and less damaging to reputations than are Chapter 11 reorganizations. In a prepackaged bankruptcy, the debtor firm gets all, or most of, the creditors to agree to the reorganization plan prior to

filling for bankruptcy. Then, a reorganization plan is filed along with, or shortly after, the bankruptcy petition. If enough creditors have signed on before the filling, a cramdown can be used to bring reluctant creditors along.

The logical question which arises from all of these is why would a firm that can arrange an informal reorganization wants to file for bankruptcy. The answer is coming from the advantages of the prepackaged bankruptcy, and these are the reduction of the holdout problem, the preserving of the creditors' claims and the lower taxes. Perhaps the biggest benefit of a prepackaged bankruptcy is the reduction of the holdout problem because the bankruptcy filling permits a cramdown that otherwise would be impossible. By eliminating holdouts, bankruptcy forces all creditors in each class to participate on a pro rata basis, which preserves the relative value of all claimants. Also, filling for formal bankruptcy can at times have positive implications. First, in an informal reorganization in which the debt holders trade debt for equity, if the original equity holders end up with less than 50 percent ownership, the company loses its accumulated taxes. In formal bankruptcy, the firm may get to keep its loss carry – forward. Second, in a workout, when debt worth, say, \$1000, is exchanged for debt worth say, \$500, the reduction in debt of \$500 is considered to be taxable income to the corporation. However, if the same situation occurs in Chapter 11 reorganization, the difference is not treated as taxable income.

Prepackaged bankruptcies make sense in many situations. If sufficient agreement can be reached among creditors through informal negotiations, a subsequent filling can solve the holdout problem and result in favorable tax treatment. For these reasons, the number of prepackaged bankruptcies in USA has grown dramatically in recent years.

Informal Liquidation

When it is obvious that a firm is more valuable dead than alive, informal procedures can also be used to liquidate the firm. *Assignment* is an informal procedure for liquidating a firm, and it usually yields creditors a larger amount than they would get in formal bankruptcy liquidation. However, assignments are feasible only if the firm is small and its affairs are not too complex. An assignment calls for title to the debtor's assets to be transferred to a third party, known as an *assignee* or *trustee*. The assignee is instructed to liquidate the assets through a private sale or public auction and then to distribute the proceeds among the creditors on a pro rata basis. The assignment does not automatically discharge the debtor's obligations. However, the debtor may have the assignee write on the check to each creditor the requisite legal language to make endorsement of the check acknowledgement of full settlement of the claim.

Assignment has some advantages over liquidation in federal bankruptcy courts in terms of time, legal formality and expense. The assignee has more flexibility in disposing of property than does a federal bankruptcy trustee, so action can be taken sooner, before inventory becomes obsolete. Also, because the assignee is often familiar with the debtor's business, better results may be achieved. However, an assignment does not automatically result in a full and legal discharge of all the debtor's liabilities, nor does it protect the creditors against fraud. Both of these problems can be reduced by formal liquidation in bankruptcy.

This kind of liquidation is described in Chapter 7 of the US Federal Bankruptcy Reform Act. It provides safeguards against fraud by the debtor, provides for an equitable distribution of the debtor's assets among the creditors, and allows insolvent debtors to discharge all their obligations and thus be able to start new businesses unhampered by the burdens of prior debt. However, formal liquidation is time consuming and costly, and it extinguishes the business.

Conclusion

Bankruptcy could be great for businesses these days – especially for consultants, lawyers and investment bankers, who reap hefty fees during bankruptcy proceedings, and for managers, who continue to collect their salaries and bonuses as long as the business is kept alive. The problem which appears is that bankruptcy courts allows cases to drag on too long, depleting assets that could be sold to pay off creditors and shareholders. Too often, quick resolution is impossible because bankruptcy judges are required to deal with issues as labor disputes, pension plan funding and environmental liability – social questions that could be solved by legislative action rather than by bankruptcy courts.

BIBLIOGRAPHY:

1. Brigham Eugene F., Ehrhardt Michael C., Financial Management – Theory and Practice, 10th Edition, 2002
2. Longman, Dictionary of Contemporary English, 2003
3. www.creditinfocenter.com/bankruptcy/
4. http://statutes.agc.gov.sg/non_version/

POLITIQUES DE SECURITE DES DONNEES EN «DECHTATA»

FLORIS COSMIN POP¹

ABSTRACT. The main goal of this project is to analyze the data security system of "DechTata" from various points of view. The starting points are the security policies, and the dependency of their implementation on the material infrastructure itself. We go on defining the activity of the help-desk operator, an "actor" who, by the nature of his work, often finds himself on "the first line of defense", as long as he is there to detect the failures of the system. In the end we analyze one of the main tools of the operators, the "eControl" software and its possible improvements.

Introduction

«DechTata» est une grande entreprise commerciale, faisant partie d'un groupe international. La vente se fait principalement par l'intermédiaire de demandes téléphoniques. Récemment un système «en ligne» (vente par Internet) est mis en place. Les commerciaux, des opérateurs téléphoniques, utilisent une infrastructure fortement centralisée de nature informatique. De plus, le bon fonctionnement du système, et en principal la sécurité des données disponibles, est une des missions critiques du service informatique. Hormis les spécialistes en chaque domaine (réseaux, bases des données, systèmes d'exploitation, systèmes de copies de sécurité etc.) on trouve dans ce service des opérateurs help-desk qui aident à surveiller le fonctionnement du système presque 24 heures chaque jour. Pour cela on emploie des outils spécifiques, comme l'application «eControl», application qu'on améliore constamment.

I. Les politiques de sécurité

Les politiques de sécurité des données sont définies comme base pour assurer la sécurité de l'entreprise, sachant que les DONNEES représentent la partie la plus fragile et donc la plus critique du système. Mais ce n'est pas suffisant de définir ces politiques, il faut aussi les mettre en place, c'est-à-dire qu'il faut les implémenter. On arrive vite à se rendre compte du fait que leur implémentation dépend de la composante matérielle du système, et que les politiques elles mêmes dépendent les unes des autres.

Types des politiques

a) Les métapolitiques sont les politiques qui régissent la façon d'appliquer les autres règles définissent les politiques de sécurité des données. C'est par exemple le cas de gestion des exceptions – appelés «cas de variation». Quel type d'exceptions peut-on accepter, quelle est la démarche qu'il faut suivre pour enregistrer ces cas et comment appliquer les solutions spécifiques nécessaires ? Depuis les niveaux de responsabilité pour l'application des politiques, jusqu'aux critères de choix des outils à employer pour l'implémentation, tout est couvert par les métapolitiques.

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b) Les politiques d'accès (au système et aux données) spécifient les conditions dans lesquelles les utilisateurs du système peuvent y accéder, depuis l'accès dans le bâtiment même, jusqu'aux moyens d'accès logique (par réseau interne ou externe). On trouve ici par exemple la description du «mot de passe suffisamment puissant», et les règles relatives à la durée de vie des mots de passe.

c) Les politiques des droits d'accès décrivent la hiérarchie des utilisateurs (commercial – opérateur – administrateur). Par exemple, seulement les administrateurs ont le droit d'installer des applications dans le système, les opérateurs peuvent configurer les postes de travail pour les commerciaux et peuvent débloquent leurs sessions en cas de nécessité. Les commerciaux ont accès seulement aux applications nécessaires pour leur travail, ainsi qu'à la partie du système (les données) qui leur permet de travailler. Il y a une catégorie d'utilisateurs avec encore «moins de droits». Il s'agit des visiteurs, comme les consultants extérieurs ou des invités qui, en plus, doivent avoir à tout moment comme escorte un employé direct de l'entreprise.

d) Les politiques relatives aux applications sont les politiques qui définissent clairement quel type d'application on peut utiliser (dont les applications anti-virus) et comment les employer. La mise à jour des applications (depuis les systèmes d'exploitation jusqu'aux définitions des listes de virus connus) et la mise en place de l'audit périodique des systèmes s'y retrouvent.

e) Les politiques sur les copies de sécurité. C'est une catégorie importante des politiques, car une grande partie des efforts associés à la sécurité des données est couverte par l'activité de réaliser ces copies. Le contenu de chaque copie, leur fréquence, la gestion des erreurs qu'on peut rencontrer à l'heure de les réaliser, ainsi que l'utilisation des copies pour récupérer le dernier état stable du système en cas de besoin, tout est spécifié. On classe les données (et donc les copies) comme critiques ou pas, en fonction de leur importance pour le bon fonctionnement du système. La configuration des serveurs fait partie des données critiques. En revanche, ce n'est pas le cas du contenu des serveurs de courrier électronique (interne).

La dépendance de la composante matérielle

J'ai eu la chance d'assister pendant le déroulement de mon projet (plus précisément pendant le mois de Juin 2004) à une évolution de l'infrastructure matérielle de «DechTata». Le noyau du système n'est pas constitué seulement par les serveurs contenant les données, mais aussi par d'autres composants de liaison. Il s'agit des routeurs, commutateurs (switches), concentrateurs (hubs) et les câbles mêmes de connexion.

Une caractéristique essentielle des connexions est leur redondance. Le but est d'assurer une disponibilité maximale du système, en maximisant la tolérance aux failles physiques du réseau.

Avant Juin 2004 le système était caractérisé par une redondance partielle des connexions entre les serveurs centraux et le reste du réseau, organisé dans des VLANs (Virtual Local Area Networks). La majorité des serveurs étaient encore connectés seulement à un des commutateurs.

Depuis Juin 2004, les routeurs et les commutateurs anciens ont été remplacés par deux commutateurs identiques de nouvelle génération (CISCO Catalyst 6509) qui permettent d'implémenter des règles d'accès comme les routeurs et les coupe-

feux. Les condensateurs ont été aussi remplacés par des commutateurs, cette fois par un modèle plus basique, CISCO Catalyst 2950. En plus de la simplicité de la nouvelle configuration, et une redondance presque complète des connexions (la majorité des serveurs ont désormais des connexions directes à deux commutateurs), elle offre quelques autres avantages:

- la possibilité d'implémenter des filtres de trafic réseau, et donc un meilleur contrôle des accès aux serveurs et aux services.
- La possibilité d'implémenter, au niveau des commutateurs, les droits d'accès à partir de l'identificateur utilisé à la connexion. Par défaut on a accès seulement à la partie «publique» du réseau (i.e. les imprimantes) mais l'identification permet d'accéder aux autres ressources en fonction de droits associés à l'utilisateur.
- La possibilité d'implémenter des segments vraiment isolés du réseau (les VLANs), de manière que les utilisateurs d'un segment ne peuvent plus accéder aux autres, mais seulement aux serveurs et aux services qui les intéressent pour leur travail.

Tout ceci montre que la technologie actuelle (des commutateurs en ce cas) offre une grande facilité pour implémenter des règles de sécurité des données, sans devoir employer une variété de composants différents.

La dépendance entre les politiques

Le diagramme suivant montre les dépendances rencontrées entre les différents types des politiques de sécurité (PdS):

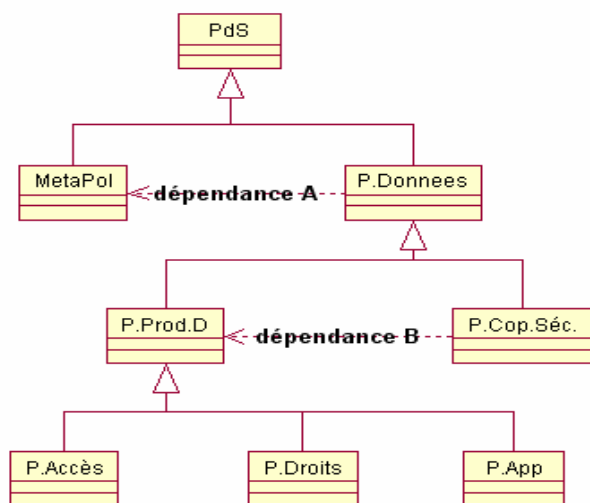


Figure 1. Dépendances entre les politiques

Dépendance A: «Si les Métapolitiques (MetaPol) ne sont pas respectées, les politiques sur les données (P.Données) ne sont pas valides».

Dépendance B: «Si les politiques de production des données (P.Prod.D), c'est à dire les politiques d'accès (P.Accès), les politiques des droits (P.Droits) et les politiques sûr les applications (P.App) ne sont pas respectées, les politiques sur les copies de sécurité (P.Cop.Séc.) ne sont pas pertinentes».

L'impacte sur l'activité de l'entreprise

Il y a une multitude des causes pour des éventuels problèmes: l'ignorance des gens, les mauvaises intentions et les failles de nature physique (matérielle) et applicative, pour en citer quelques unes.

Une simple analogie permet d'illustrer l'impacte sur la vie de l'entreprise:

«DechTata» n'est rien d'autre qu'un organisme vivant, disons un humain.

L'infrastructure matérielle est le squelette, les départements et les services (même si fortement automatisés par de moyens informatiques) sont les organes, les données transportant l'information représentent le sang transportant l'oxygène et la nourriture, le système de sécurité (les politiques et leur implémentation) est le système nerveux.

On comprend bien qu'une hémorragie (interne ou externe) peut avoir des effets très graves, ou être même fatale...

II. Les tâches de l'opérateur

Les serveurs principaux et un nombre de postes de travail spéciaux fonctionnent 24 heures tous les jours, 7 jours à la semaine, à quelques minutes près (le temps de les redémarrer). Cela offre la possibilité d'avoir un système (en tant que services) disponible presque 20 heures par jour, tous les jours de la semaine. Mais cela impose la présence des opérateurs qui supervisent cette activité à tout moment, pour détecter, avec le délai minimum, l'apparition des incidences et assurer leur solution.

Il y a des «opérateurs - matin», «opérateurs -après-midi», «opérateurs - nuit» et même des «opérateurs - samedi». L'activité des opérateurs est divisée en tâches et des sous tâches, liées aux diverses opérations et fonctions du système. En tant que responsabilité, les opérateurs doivent impérativement détecter les incidences, et essayer de les définir (leur causes, leur effets). Pour appliquer les solutions nécessaires, en cas de besoin ils contactent les responsables associés à chaque thème. En tant que spécialistes, ils guident les opérateurs dans les étapes de la solution à appliquer.

Par contre, s'il s'agit d'une incidence critique (qui affecte le bon fonctionnement du système en empêchant en plus le travail des autres utilisateurs), il faut toujours contacter le «spécialiste de garde».

Toute cette démarche a été définie en accord avec les politiques de sécurité des données, car ce sont les opérateurs qui, par la nature de leur travail, représentent souvent la première ligne de défense contre la perte des données.

1.La définition des tâches

Pour illustrer la variété des tâches on a défini plusieurs catégories, mais la liste n'est pas, exhaustive, et ne peut pas l'être, car l'évolution du système et des fonctionnalités vont évoluer en même temps les tâches:

- a. début de processus - vérifier leur activation automatique ou les activer manuellement, souvent en marquant l'heure dans un historique;
- b. fin de processus – vérifier la fin sans erreurs, ou les arrêter aux heures limites;
- c. réaliser les copies de sécurité – lancer les processus réalisant les copies, noter leur durée, marquer l'heure de fin. Ce sont des tâches de grande importance comme on peut voir dans les politiques sur les copies de sécurité;
- d. transfert des données – par FTP, par courrier électronique etc.;
- e. superviser les serveurs – détecter l'arrêt des services ou le fonctionnement non habituel;

- f. espace de stockage sur les disques – prévenir l'encombrement des données dans les disques des serveurs principaux, en vérifiant les taux d'occupation d'espace;
- g. maintenance du système – arrêter ou redemander des serveurs périodiquement ou dans le cas d'actualisation des systèmes d'exploitation;
- h. actualisation d'applications – il s'agit des applications internes qui s'exécutent dans les serveurs centraux;
- i. tâche spéciale (implicite) – envoyer à la fin du tour, à l'opérateur suivant, un rapport avec les incidences rencontrées (ces incidences peuvent influencer les prochaines tâches).

2. La dépendance entre les tâches

Voici un arbre de dépendances:

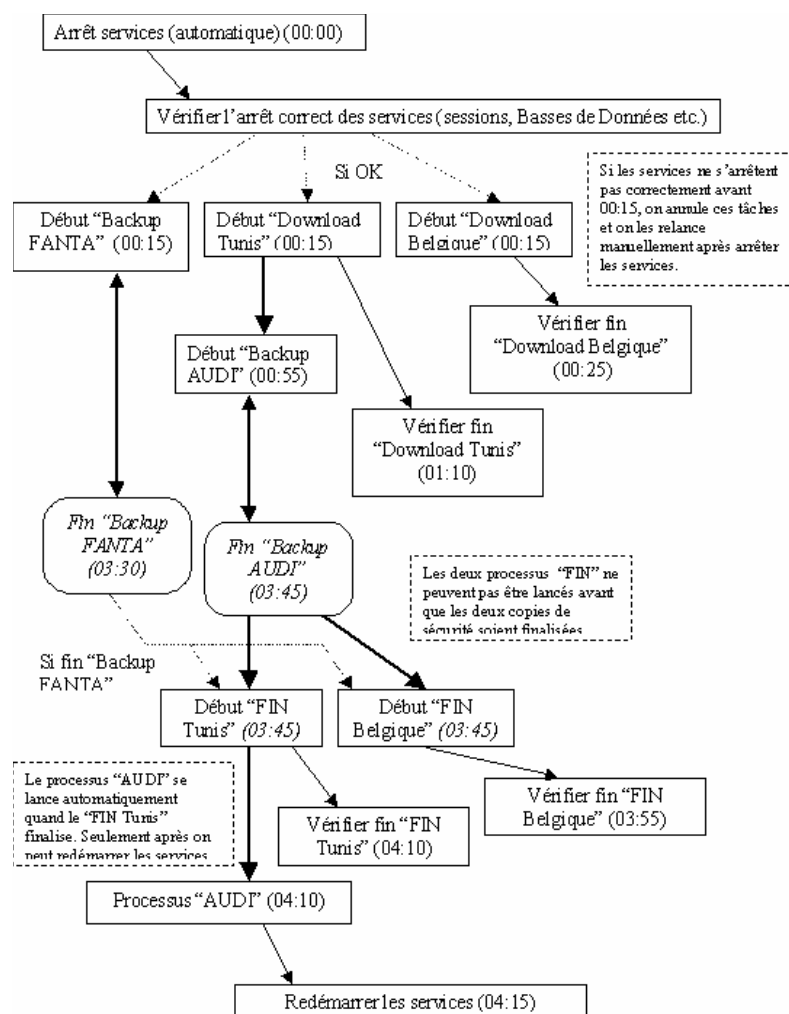


Figure 2. Exemple de dépendances entre des tâches

Cet exemple de chaîne des tâches (relative à la maintenance des serveurs centraux), est particulièrement intéressant car différents types de tâches sont impliqués, dont des copies de sécurité.

Les heures indiquées sont fictives, mais les durées sont réelles (du moins approximatives), à partir de l'heure de référence «00:00».

Les flèches en gras signifient des lancements automatiques, tandis que les autres sont simplement des suites logiques.

3.Modèle UML

La figure suivante présente le modèle des éléments en relation avec une tâche.

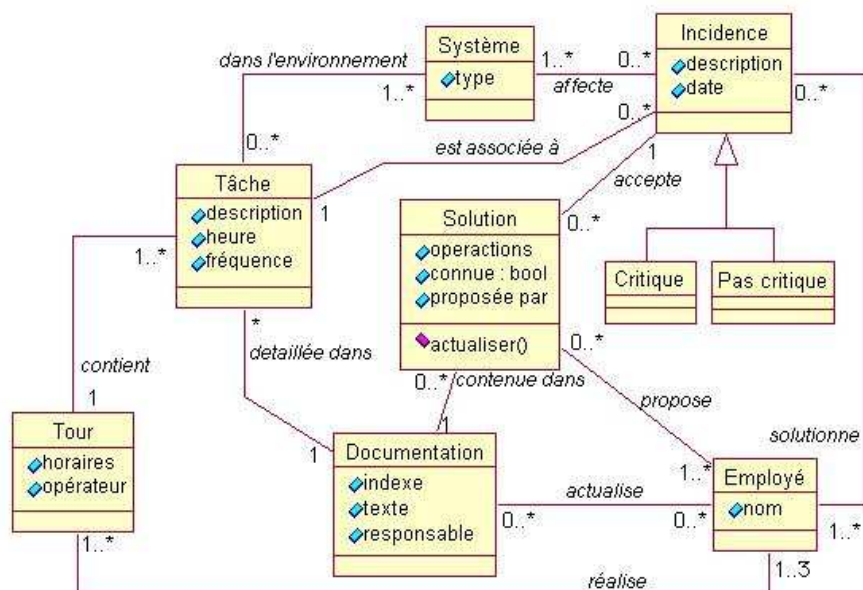


Figure 3. Modèle UML de la tâche

III. L'application «eControl»

Les opérateurs sont munis de plusieurs outils qui les aident à réaliser leur tâches. Des applications de connexion/contrôle à distance, des moniteurs pour les processus et les serveurs principaux et d'autres. Mais l'outil principal est une petite application – «eControl». Cette dernière partie du projet est dédiée à l'analyse de cet outil, en essayant d'apporter des éventuelles améliorations.

1.Etude de l'application existante

L'application «eControl» permet une gestion très commode des tâches et des éléments qui se trouvent en relation avec le travail des opérateurs. Elle permet aussi l'intégration directe de la documentation disponible sur les tâches et la solution des incidences connues. La possibilité d'accéder aux historiques (heures de début, observations, incidences etc.) vient souvent à l'aide de l'opérateur.

Une analyse USDP a été réalisée, en employant la modélisation UML, prise comme standard.

L'application est réalisée en utilisant la plateforme de Visual Basic (et MsAccès) et a subi plusieurs évolutions.

L'étude a montré le fait que l'application répond à toutes les besoins définis au début (quand les premières versions ont été construites). Mais des nouveaux besoins sont apparus, ainsi qu'on peut faire des propositions pour des évolutions futures.

2. Proposition d'amélioration: «eMobil»

De manière «traditionnelle», l'opérateur utilise son poste de travail, avec les outils associés. Mais des plus en plus des tâches doivent se réaliser «loin du poste de travail», comme par exemple le contrôle des serveurs ou même la réalisation des copies de sécurité. En revenant à son poste, l'opérateur doit introduire les données relatives à l'exécution des tâches (heures de début/fin, observations ou même des incidences) dans la base de données de «eControl».

L'idée serait d'employer un dispositif mobile, permettant le stockage des information «sur place» et le téléchargement des données une fois l'opérateur revenu à son poste. L'us d'un PDA (Personal Digital Assistant) paraît l'idéale.

Pour cela une application légère «eMobil», gérant des formulaires (utilisant Java ou simplement HTML) qui serait installée sur la PDA, et un protocole de transfert d'information (un format du type XML) «eTrans» ont été proposés pour développement.

Faute de temps, ce développement a été considéré comme possédant une priorité faible, mais dans le futur l'analyse faite servira à l'évolution de l'application «eControl».

3. Impacte sur l'activité de l'entreprise

La sécurité des données d'une entreprise de la taille de «DechTata» n'est pas une chose facile à assurer. On définit des politiques de sécurité, on les implémente en utilisant une infrastructure matérielle moderne, on emploie des acteurs qui surveillent le bon fonctionnement du système presque 24 heures chaque jour, on les munit des outils de plus en plus adaptés à leurs besoins. Est-il suffisant ?

Après avoir vécu plusieurs mois dans cette entreprise, en participant à sa vie en tant qu'opérateur de nuit, je peux répondre simplement: «non».

Il faut que tout le monde y participe, et que tout le monde réalise l'importance de chaque élément défini pour la sécurité des données, qui à la fin n'est rien d'autre que la sécurité de l'entreprise même, et de ses employés.

Conclusions

J'ai compris au long de ce projet que les éléments définis pour la sécurité des données, depuis les politiques, jusqu'aux outils employés par les opérateurs pour réaliser leur tâches, ne sont pas isolés, mais forment une chaîne qui, comme tout chaîne, a la puissance de son maillon le plus faible. C'est la raison pour laquelle la connaissance de ces éléments est tellement importante. Les connaître et les comprendre représente le point de départ pour assurer leur validité.

En réalisant ce projet j'ai pu apprendre, sans intermédiaire, ce qu'est la «sécurité des données» et son importance pour une entreprise comme «DechTata».

BIBLIOGRAPHY

1. "Guide to Securing Microsoft Windows 2000® Group Policy: Security Configuration Tool Set, Operational Network Evaluations Division of the Systems and Network Attack Center (SNAC)", J. Haney - NATIONAL SECURITY AGENCY of the United States of America, version 1.2 updated December 3, 2002 (UNCLASSIFIED)
2. "OMG Unified Modeling Language Specification", March 2003, version 1.5, formal/03-03-01
3. Standards IEEE: <http://standards.ieee.org/>
4. La documentation "DechTata" associée aux tâches des opérateurs (+1000 pages)
5. Documentation des cours 3IF et 4IF: Analyse USDP; Modélisation UML (INSA de Lyon)