# CONSIDERATIONS ON THE FISCAL AND BUDGETARY IMPLICATIONS OF THE ACTIVATION OF THE GENERAL DEROGATORY CLAUSE FROM THE STABILITY AND GROWTG PACT

Daniela IANCU[1], Andreea DRĂGHICI[2], Adriana PÎRVU[3]

[1] University of Piteşti, Faculty of Economics and Law, Romania, daniela.iancu@upit.ro
[2] University of Piteşti, Faculty of Economics and Law, Romania, andidraghici@yahoo.com
[3] University of Piteşti, Faculty of Economics and Law, Romania, adrianapantoiu@yahoo.com

***Abstract:*** *The Stability and Growth Pact was adopted in order to coordinate the national tax policies within the Economic and Monetary Union and initially consisted in the Resolution of the European Council from Amsterdam of 17 June 1997, the Council Regulation (EC) no. 1467/97 of the Council of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure, and the Council Regulation (EC) no. 1466/97 of the Council of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies. The derogatory clause is part of the series of additions and amendments introduced following the revision of the legislation in 2011-2013, offering flexibility to the rules establishing the limits of the budgetary deficit and of the public debt. Thus « in case of an unusual event outside the control of the Member State concerned, which has a significant impact on the financial position of the general budget or in case of severe economic downturn for the euro area or the EU as a whole, the Member States can be authorized to temporarily drift from the trajectory of adjustment in order to achieve the medium-term budgetary objective (...) on condition that this does not endanger budgetary sustainability in the medium-term ». Within the pandemic generated by COVID-19 this spring, for the first time since its introduction, the general derogatory clause was activated in order to fight its economic impact.*

**Key words:** fiscal policies, budgetary deficit, derogatory clause, pandemic, economic impact

**JEL Classification Codes: K10, K34**

## 1. CONSIDERATIONS ON THE STABILITY AND GROWTH PACT

The Stability and Growth Pact, introduced as part of the third step of the Economic and Monetary Union[1] whose role is to maintain some healthy public finance after the passage to the European currency, initially contained the Resolution of the European Council from Amsterdam of 17 June 1997, the Council Regulation (EC) no. 1467/97 of the Council of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure, and the Council Regulation (EC) no. 1466/97 of the Council of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies. The regulations were amended in 2005 and, following the economic and financial crisis in 2008, they were modified again in 2011[2].

For the purpose of consolidating the mechanisms of economic governance of the European Union, in 2011, they adopted the ”pack on economic governance” or the ”six-pack”, made up of five regulations and one directive which strengthened the preventive component of the Stability

[1] glossary of summaries - eur-lex (europa.eu), accessed on 13.02.2021, time 20.45
[2] Simona Gherghina, Drept financiar public (Public Financial Law), Editura C.H.Beck, 2019, page 235

and Growth Pact. In 2013, they adopted the ”two-regulation pack” or the ”pack on the budgetary surveillance and monitoring”, and on 1st January 2013, the Treaty on the stability, coordination and governance in the Economic and Monetary Union entered in force, whose purpose is, among others” to promote the budgetary discipline by means of a budgetary pact”.

The norms of the Stability and Growth Pact contain both a preventive and a corrective component. It is set up in the charge of the European Union Member States the obligation to transmit to the Commission and to the Council, each year in April, stability or convergence programmes. In accordance with the provisions of art. 126 of the Treaty on the functioning of the European Union, in order to identify the obvious errors, the Commission supervises the evolution of the budgetary situation and of the public debt level in the Member States, especially if the budgetary discipline was complied with, based on the following two criteria: (a) if the ratio between the planned or real public deficit and the gross domestic product exceeds a reference value, except when: the ratio diminished significantly and constantly and reaches a level close to the reference value, or the exceeding of the reference value is exceptional and temporary, and such ratio is maintained close to the reference value; (b) if the ratio between the planned or real public deficit and the gross domestic product exceeds a reference value, except when such ratio is diminished enough and is getting close to the reference value in a satisfactory pace.

The reference values are, pursuant to art. 1 from the Protocol on the excessive deficit procedure: 3% for the ratio between the estimated or achieved public deficit and the gross domestic product at market prices, respectively 60% for the ration between the public debt and the gross domestic product at market prices.

In case a Member State does not comply with the requirements of these criteria or of one of them, the Commission shall draft a report examining also if the public deficit exceeds the investment public expenses and if it takes into account all the other relevant factors, including the medium-term economic and budgetary position of the Member State.

The Commission can also draft a report if, although they complied with all the requirements arising from such criteria, it considers that there is a risk of production of an excessive deficit in another Member State.

In both situations, the Commission shall address a notice to the Member State establishing the existence of an excessive deficit or the existence of the risk that such deficit can be produced, and shall inform the Council which, at the proposal of the Commission, taking into account the eventual observations of the Member State concerned and after a global assessment, shall decide if there is or not an excessive deficit.

In case the Council establishes that there is an excessive deficit, it shall adopt, upon the recommendation of the Commission, without any unjustified delays, the recommendations to be addresses to the Member State concerned for it to end the situation within a given period of time. Such recommendations are not public, but they can be made public when the Council establishes that, within the indicated period of time, they did not carry out any effective action in response to its recommendations.

If the Member State concerned continues to not apply the recommendations of the Council, it can decide to summon it that, within a certain period of time, it should adopt the deficit reduction measures, reduction considered necessary by the Council to remedy the situation.

In such a case, the Council can ask the Member State concerned to submit reports according to a specified schedule, in order to be able to examine the adjustment efforts accepted by such Member State. In case of failure to comply with, the Council can decide to enforce or, if any, to consolidate one or more of the following measures: to request to the Member State concerned to publish additional information that are to be specified by the Council, before issuing bonds and certificates; to invite the European Investment Bank to review its loan policy towards the member State concerned; to request to the Member State concerned to create for the

Union, until the date the Council considers that the excessive deficit was corrected, a deposit without interest in a corresponding quantum; to apply fines in a corresponding quantum.

The President of the Council shall inform the European Parliament on the decisions made.

## 2. THE ACTIVATION OF THE STABILITY AND GROWTH PACT GENERAL DEROGATORY CLAUSE

Within the pandemic generated by COVID-19 this spring, for the first time since its introduction, the general derogatory clause was activated Stability and Growth Pact in order to fight its economic impact. In the Communication of the Commission COM(2020) 123 on the activation of the safeguard clause generated by the Stability and Growth Pact[3], it is shown that "the EU should continue to react rapidly, firmly and in coordination with this crisis rapidly evolving. During the videoconference with the European Council members of 17 March 2020, the president of the Commission announced the imminent activation of the so-called general derogatory clause". The derogatory provisions are found both in the Council Regulation (EC) no. 1466/1997 at articles 5 (1), 6 (3), 9 (1) and 10 (3), and at articles 3 (5) and 5 (2) from the Council Regulation (EC) no. 1467/1997.

At art. 5 (1) and art. 9 (1) from the Council Regulation (EC) no. 1466/1997, we find the same provision: *In case of an unusual event outside the control of the Member State concerned, which has a significant impact on the financial position of the general budget or in case of severe economic downturn for the euro area or the EU as a whole, the Member States can be authorized to temporarily drift from the trajectory of adjustment in order to achieve the medium-term budgetary objective mentioned in the third paragraph, on condition that this does not endanger the budgetary sustainability in the medium-term.*

Art. 6 (3) from the same regulation states that *a drift can also not be taken into consideration when it is originated in an unusual event outside the control of the Member State concerned, which has a significant impact on the financial position of the general budget or in case of severe economic downturn for the euro area or the EU as a whole, on condition that this does not endanger the budgetary sustainability in the medium-term.*

At art. 3 (5) and art. 5 (2) from the Council Regulation (EC) no. 1467/1997, some derogatory rules are regulated for the situations when, at the time when they undertook some concrete measures in accordance with a recommendation issued based on article 126 para. (7) from TFEU or with a notice sent based on article 126 para. (9) from TFEU, and after adopting the recommendation or notice concerned, some negative economic events occur, with major unfavourable consequences for the public finance, the Council can decide, upon the recommendation of the Commission, to adopt a reviewed recommendation or notice. The reviewed recommendation or notice, if any, shall take into consideration the relevant factors mentioned in article 2 (3) of the regulation, and especially, it can extend the period of time granted to correct the excessive deficit, basically by one year. In its recommendation or notice, the Council should assess the existence of the negative and unforeseeable economic events, with major unfavourable consequences for the public finance, compared to the economic estimates. In case of a severe economic downturn in the euro area or in the EU as a whole, the Council can also decide, upon the recommendation of the Commission, to adopt a reviewed recommendation based on article 126 (7) of TFEU or a reviewed notice based on article 126 (9) of TFEU, on condition that this should not endanger the budgetary sustainability on medium-term.

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[3] https://eur-lex.europa.eu/legal-content/RO/TXT/?qid=1591119459569&uri=CELEX:52020DC0123 accessed on 14.02.2021, time 14.36

In the Communication of the Commission COM(2020) 123 on the activation of the safeguard clause generated by the Stability and Growth Pact, it is also shown that the general derogatory clause does not suspend the procedures of the Stability and Growth Pact. It will allow the Commission and the Council to take the necessary measures to coordinate the policies within the pact, deviating though from the budgetary requirements normally applicable.

## 3. THE EXCESSIVE DEFICIT PROCEDURE APPLIED TO ROMANIA IN THE CONTEXT OF THE ACTIVATION OF THE GENERAL DEROGATORY CLAUSE

As for Romania, by the Decision (EU) 2020/509 of the Council of 3 April 2020 on the existence of an excessive deficit in Romania, published in the European Union Official Journal of 8 April 2020, it was established that our country does not comply with the deficit criterion, therefore, as a consequence being open the excessive deficit procedure[4]. In motivating the decision, paragraph 7, we acknowledge the following: ”On 10 December 2019, the government adopted the Fiscal and Budgetary Strategy for 2020-2022 (”Fiscal and Budgetary Strategy”), the public deficit target being 3.8% of GDP in 2019. This value excess the reference value of 3% of GDP provided in TFEU and it is not close to it. Also, exceedingthe reference value provided by TFEU in 2019 is not extraordinary, as it does not come from any unusual event, or from a severe economic downturn in the meaning of TFEU or SGP. The winter estimates of the Commission in 2020 estimate a growth of the real GDP by 3.9% in 2019 and by 3.8% in 2020, whereas the GDP deviation is estimated to approximately zero. (…)The winter estimates of the Commission in 2020, added with budgetary variables, estimate a public deficit of 4% of GDP in 2019, 4.9% in 2020 and 6.9% in 2021. The estimated growth of the deficit is mainly determined by significant growths of pensions. In the fiscal and budgetary strategy, the government also estimate that the public deficit will remain over the reference value provided in TFEU in 2020 and in 2021, the estimated deficit being of 3.6% for GDP in 2020, and of 3.4% of GDP in 2021. Therefore, *prima facie*, the deficit criterion provided by TFEU is not accomplished[5]”.

Pursuant to the Recommendation of the Council of 3 April 2020 to end the situation of excessive public deficit in Romania, published in the European Union Official Journal of 8 April 2020, Romania should end the present situation of excessive deficit until at the very latest in 2022. The Council establishes the date of 15 September 2020 as the deadline until Romania should take effective measures and, in accordance with article 3 (4a) of the Council Regulation (EC) no. 1467/97, to submit a detailed report regarding the consolidation strategy considered to reach the targets. Subsequently, the Romanian authorities should submit a report regarding the progress made in the enforcement of such recommendations at least once in six months until the correction of the excessive deficit[6].

We notice that, although the derogatory provision was activated in March 2020, the excessive deficit procedure is applied to Romania, because the deficit is not the result of an unusual event or of an economic downturn, the crisis generated by the pandemic causing a higher budgetary pressure over the budget in our country, compared to the other European Union Member States[7]. The activation of the general derogatory clause is interpreted, in this regard, that

[4] See Prof. Tudorel ANDREI, PhD, Sorin DINU, PhD, *Aspecte ale aplicării legislației europene și modificările acesteia în contextul crizei COVID-19 (Aspects of enforcement of the European legislation andits amendments within the COVID-19 crisis),* the Romanian Academy, Department of Economic, Judicial and Sociological Sciences, the National Institute of Economic Research, the Department of Complex Research, Bucharest, 2020, page 5, file:///C:/Users/temp_/OneDrive/Desktop/pentru%20articol/d06-LegislatiaEuropeanaModificari.pdf accessed on 14.02.2021, time 12.46

[5] https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=OJ:L:2020:110:FULL&from=RO accesed on 14.02.2021, time 13.12

[6] https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=uriserv%3AOJ.C_.2020.116.01.0001.01.RON&toc=OJ%3AC%3A2020%3A116%3ATOC accesed on 14.02.2021, time 16.05

[7] See Acad. Aurel IANCU, PhD. Dan OLTEANU, *Criza economico-sanitară și schimbări în legislația economică a Uniunii Europene The economic and sanitary crisis and changes in the EU economic legislation),* the Romanian Academy, Department of Economic, Judicial and Sociological Sciences,

they will not take into account the expenses generated by the Covid-19 pandemic for the assessment of Romania regarding the achievement of the deficit target[8].

In the Recommendation of the Council regarding the Reform National Programme of Romania for 2020 including a notice of the Council concerning the Convergence Programme of Romania for 2020, they state in paragraph 31 that, following the assessment of the Convergence Programme of Romania for 2020, the Council made the following recommendation: Romania should undertake actions so that to apply fiscal and budgetary policies compliant with the Council recommendation of 3 April 2020 and also to take all the necessary measures to effectively fight the pandemic, support the economy and support the future recovery. To avoid adopting some permanent measures that would endanger the sustainability of the public finance. To consolidate the resilience of the health system, including regarding the medical personnel and the medical products, and to improve access to health services.

Besides this recommendation, Romania was recommended that, in 2020 and 2021, to:

To offer proper solutions of substitution of the incomes and to expand the social protective measures and the access to essential services for all. To attenuate the impact of the crisis over the job placement by developing some work flexible formula and some activation measures. To consolidate the skills and the digital learning and to ensure equal access to education.

To ensure support as liquidity for the economy that the enterprises and household could benefit from, especially the small and medium enterprises and freelancers. To go forward with financing mature public investment projects and to promote private investments in order to favour the economic recovery. To direct investments prevalently towards the ecologic and digital transition, especially towards the sustainable transport, the digital service infrastructure, the production and use of energy in a non-polluting and effective way, as well as towards the environment infrastructure, including the mining areas.

To improve the efficiency and the quality of public administration, and the predictability of the decision-making process, including through an adequate implication of the social partners[9].

For an efficient and sustainable recovery, the leaders of the European Union agreed on an incentive pack made up of the long-term budget of the European Union 2021-2027 and Next Generation EU, which represents a temporary instrument with a role to support the reconstruction of the European Union, mainly supporting investments and reforms. A main element of such instrument is the recovery and resilience mechanism that will support the essential investments and reforms for sustainability. The recovery and resilience plans of thre Member States will have to comply with some conditions, respectively to reflect the relevant challenges, to align to the priorities of the European Union and to the specific recommendations addressed to each Member State in the latest years.

## 4. CONCLUSIONS

The financial pack that all the member State will benefit from, will play an important part in achieving the budgetary correction in our country, the European resources financing projects that will lead to the GDP increase.

”In Romania, the total cost of the supporting measures related to COVID-19 in 2020 was of 4.85% of GDP. Part of these measures continue in 2021, besides other new approved

the National Institute of Economic Research, the Department of Complex Research, Bucharest, 2020, page 16-17, file:///C:/Users/temp_/OneDrive/Desktop/pentru%20articol/d13-CrizaEconomicoSanitaraLegislatia.pdf accesat la 14.02.2021, 16.35

[8] See the Convergence Programme 2020 of the Romanian Government, page 28, ProgramdeConvergenta2020_20052020.pdf accessed on 14.02.2021, time 16.52

[9] RECOMMENDATION OF THE COUNCIL regarding the National Reform Programme of Romania for 2020 which includes a notice of the Council regarding the Convergence Programme of Romania for 2020 https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52020DC0523&from=EN accessed on 14.02.2021, time 17.08

measures, thus generating an estimate cost of 3.81% of GDP[10]. Also, to fight the negative economic effects generated by the COVID-19 pandemic, they approved a series of government support programmes in order to support the SMEs activity and of the large companies and the small and medium enterprises having a turnover of over 20 million RON by the intermediary of the state guarantees, for 2020 they granted guarantees in amount of 12.48 billion RON (1.20% of GDP), and for 2021, they estimate guarantees in amount of 28.10 billion RON (2.52% GDP). The budgetary planning for 2021 and the estimates during 2022-2024 establish the ESA (European system of accounts) budgetary deficit in 2021 to 8.23% of GDP, and this will reach in 2024 to 2.90% of GDP, respectively a reduction of 5.33 percentage points compared to 2021, to the end of the prognosis horizon (2024) situating within the provisions of European regulations, respectively 2.9% of GDP in 2024"[11].

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[10] And in 2021, Romania benefits from the general derogatory clause, which supposes the exclusion of the measures regarding the Covid-19 pandemic from the assessments concerning the achievement of the deficit target within the excessive deficit procedure.

[11] The Minister of Finance, Report on the macro-economic situation for and its projection for 2022-2024, https://mfinante.gov.ro/acasa/transparenta/proiecte-acte-normative accessed on 14.02.2021, time 17.57