

# FISCAL MEASURES ADOPTED BY ROMANIA IN THE COVID-19 CONTEXT IN ORDER TO HELP COMPANIES AVOID INSOLVENCY

Corina Georgiana COSTEA (CIOROIU)\*

## Abstract

*The Covid-19 pandemic has been affecting for more than a year all countries' economies, by generating an overall sanitary crisis. In order to prevent the spreading of the Covid-19 virus, countries across the world have limited or even forbidden temporarily several economic activities, which has led to a financial blockage in some industries, especially in the touristic industry. In response to the devastating economic effects, the Romanian Government has adopted several measures and fiscal mechanisms for companies, aiming at preventing their insolvency and therefore revitalizing the national economy.*

**Keywords:** *fiscal measures, insolvency, COVID-19 pandemic, national economy, global economy.*

## 1. Introduction

The COVID-19 pandemic has generated a sanitary crisis across the world. Therefore, public authorities have been constrained to adopt several measures in order to limit the impact of the COVID-19 virus spreading. Each country has developed its own policy of measures depending on the severity of the pandemic. Because of the necessity of limiting the pandemic's consequences, countries across the world have been limiting social activities, imposing national and regional quarantines. These national policies have had a strong impact on the economy since some of the measures have included limitations or even temporary bans of some economic activities. Whilst these measures have helped the prevention of the virus' spreading, they have also severely affected the economy and the business environment. This paper analyses the measures adopted by the Romanian Government to limit the pandemic's impact upon the national economy and help companies avoid imminent insolvency. The importance of this matter could be justified by the fact that these measures support the efforts made by struggling businesses to overcome their financial distress or state of insolvency. The lack of measures adopted by the Romanian Government could result in a general economic blockage and could easily cause the "death" of the majority of small and medium businesses. This paper also intends to analyse effective measures that have been adopted by other countries and therefore identify the best practices that have had a positive impact. All measures adopted by the Romanian government in order to limit the spreading of the COVID-19 virus have affected, directly or indirectly, a large majority of businesses, which have been unable to keep up with claims' payment, including budgetary claims. As a consequence, the Romanian fiscal authorities have collected a lower rate of taxes. In relation to this matter, a set of measures has been

needed not only to support businesses, but also to increase the rate of tax collection.

## 2. Measures adopted by the Romanian Government to support companies during the established state of emergency

The Romanian legislator has adopted numerous mechanisms and measures in response to the devastating effects upon the economy. However, this paper shall only analyze the measures that are relevant regarding preventing companies' insolvency, especially the fiscal measures and mechanisms, since fiscal authorities are the permanent creditor of every business.

### 2.1. The Emergency Situation Certificate (ESC)

The state of emergency has been established in Romania by the Decree no. 195 of 16<sup>th</sup> of March 2020<sup>1</sup>, which has only mentioned the possibility of affected companies to obtain the ESC. The Government Emergency Ordinance no. 29/2020 regarding some economic and fiscal-budgetary measures<sup>2</sup> had provided clarifications upon the utility of the ESC and the entities that could request its release. Therefore, the ESC is a document issued by the Ministry of Economy, Energy and Business Environment, at the request of economic operators whose activity had been totally or partially interrupted based on decisions issued by the competent public authorities. It must be mentioned that the authorities had issued several military ordinances, interrupting totally or partially several economic activities, such as: (i) educational institutions, units whose activity is the serving and consumption of food and alcoholic / non-alcoholic beverages, (ii) the activity of every entity organizing events that involve the participation of over 100 persons in open spaces, (iii)

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\* PhD Candidate, "Nicolae Titulescu" University, Bucharest (e-mail: corinacostea23@gmail.com; office@insolpedia.ro).

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<sup>2</sup> Published in the Official Journal no. 230/21.03.2020.

the activity of dentals clinics, (iv) retail sale of goods and services in shipping centers (with few exceptions), (v) cultural, scientific, artistic, religious, sporting, entertainment or gambling activities, (vi) transport services, (vii) entities that organize collective physical activities, (viii) any other entities that organize and carry out activities involving the formation of groups of more than 3 persons. The ESC had been issued in two forms: (i) Type 1 (blue), issued for the entities mentioned above, whose activity had been totally or partially interrupted, as a result of decisions adopted by the competent public authorities during the declared state of emergency and (ii) Type 2 (yellow), issued for applicants who, based on their declaration on own responsibility, show that they recorded a decrease of income of at least 25% in March 2020 compared to the average income recorded in the two previous months. The type 2 ESC had been issued for companies which were indirectly affected by the COVID-19 pandemic. One of the main advantages of the ESC is the fact that, according to article X of the Government Emergency Ordinance no. 29/2020, entities which have obtained it have had the possibility to postpone payments for utility services (gas, electricity, water, telephone and internet services etc.), and also rental payments for registered offices and secondary offices. However, these measures had been limited to a period equal to the established national emergency state, which has lasted for two months, until the 16<sup>th</sup> of May 2020. The timeframe granted by the authorities to obtain the ESC had been limited and it cannot be obtained in this moment, but its utility is not limited in time, since it is required for accessing several other benefits, such as facilities for loans granted by financial institutions. Nevertheless, the biggest advantage of obtaining an ESC is the fact that it could be used by its holders to invoke the *force majeure* in ongoing contracts. To the author's knowledge and research, no other state has adopted this measure in this form. One particularity derives from the fact that the simple ownership of an ESC is sufficient to create a *relative presumption of force majeure*. The civil law in Romania does not regulate a *presumption* of force majeure. According to art. 1.351 para. (2) of the Civil Code<sup>3</sup>, "*Force majeure is any external event, unpredictable, absolutely invincible and inevitable*" and according to para. (1), "*Unless the law or the parties don't stipulate otherwise, liability shall be removed when the damage is caused by force majeure or fortuitous case*". "The effect of the case of force majeure consists in the total elimination

of the civil liability for the damages caused by the non-execution of the (contractual – n.n.) obligations due to the force majeure event."<sup>4</sup> However, the *presumption* of a case of force majeure does not operate in every contractual relationship, since the Romanian law regulates that the contractual parties are able to exclude or limit the cases of force majeure. This is the main reason why owning an ESC generates a *relative presumption* of a force majeure case and not an *absolute presumption*. Also, according to art. 1.634 para. (1) of the Civil code, "*The debtor is liberated when its obligation cannot be executed due to a case of force majeure (...) occurring before the debtor is put in delay.*" In order to establish if the relative presumption of force majeure case operates in a certain case, the party that invokes the pandemic as a force majeure case should clarify if the contract excludes the removal of liability in such cases and if it stipulates limits in time or events. Except the facility granted by the authorities regarding the request of an ESC, companies have the possibility of requesting a notice of force majeure from the Chamber of Commerce, in accordance with art. 4 para. (1) letters j) and i) from the Law no. 335/2007 of Chambers of Commerce from Romania<sup>5</sup>. "However, the two documents should not be confused, being issued by different authorities, under different conditions and having different scope and legal effects."<sup>6</sup> The Romanian jurisprudence has shown that "For the exoneration of liability to occur, it is not sufficient that the event is external to the will of the parties and unpredictable, but it also must not have been reasonably prevented and overcome."<sup>7</sup> The European jurisprudence has shown that "The notion of force majeure contains an objective element and a subjective element. The objective element concerns unusual and foreign circumstances to the person concerned, while the subjective element is related to the obligation of the person concerned to protect himself from the consequences of the event, taking appropriate measures, without accepting excessive sacrifices."<sup>8</sup> The possibility of obtaining a notice of force majeure is regulated across many countries. "The force certificate is thus mainly used to demonstrate to the other party the existence of certain factual difficulties that hamper performance and seek understanding to privately settle the dispute. If the disputes are brought to the court, the court should consider whether the outbreak and the relevant emergency measure constitute force majeure events pursuant to the governing law, treating the force majeure certificate as evidence of fact."<sup>9</sup>

<sup>3</sup> Law no. 287/2009, published in the Official Journal no. 505/15.07.2011.

<sup>4</sup> Niță Carolina Maria, Răducan Gabriela, *Consecințele pandemiei generate de coronavirusul SARS-Cov-2 în raporturile contractuale*, Revista Pandectele Române nr. 2/2020, www.sintact.ro.

<sup>5</sup> Published in the Official Journal no. 836/06.12.2007.

<sup>6</sup> <https://www.pwc.ro/en/romania-crisis-centre/legal/force-majeure/force-majeure-and-emergency-situations-in-the-context-of-covid-1.html>.

<sup>7</sup> Bucharest Court of Appeal, section VIII administrative and fiscal dispute, Civil Sentence no. 7478/ 09.12.2011.

<sup>8</sup> Order of the General Court (First Chamber) of 22 June 2011, *Evropaiki Dynamiki - Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission*, case T-409/09, ECLI identifier: ECLI:EU:T:2011:299.

<sup>9</sup> Sophia Tang, *Coronavirus, force majeure certificate and private international law*, March 1, 2020, <https://conflictoflaws.net/2020/coronavirus-force-majeure-certificate-and-private-international-law/>.

## 2.2. Providing facilities for loans granted by financial institutes to certain categories of debtors

Another measure adopted by Romania in response to the effects of COVID-19 pandemic, which has affected many small and medium enterprises, is the adoption of the Government Emergency Ordinance no. 37/2020 on granting facilities for loans granted by credit institutions and non-banking institutions to certain categories of debtors.<sup>10</sup> While these measures also apply to natural persons (consumers), authorized natural persons, liberal professions and other categories of debtors, this subsection shall only approach small and medium enterprises. According to this normative act, debtors, as they are defined by Article 1 letter b), may request the suspension of due claims related to loans, representing installments of capital, interest and commissions, for up to 9 months, but no longer than the 31<sup>st</sup> of December 2020. Consequently, the maximum credit period may be exceeded by a period equal to the duration of the suspension of the payment obligation. The interest due by debtors corresponding to the due amounts whose payment is suspended according to art. 2 shall be capitalized at the balance of the credit existing at the end of the suspension period. The capital thus increased shall be paid in installments for the remaining period until the new maturity of the loans, after the suspension period. The normative act, in its first version, requested that debtors should justify their financial difficulties by providing an ESC issued by the authorities, which was the main condition that debtors, other than natural persons (consumers), should had fulfill, along with the condition of not being the subject of an insolvency proceeding. However, since the effects of the COVID-19 pandemic upon the business environment have lasted an unexpected amount of time, causing a systemic risk of insolvencies, the Government has issued the Ordinance no. 227/2020 for the modification and the completion of the Government Emergency Ordinance no. 37/2020<sup>11</sup>, which has prolonged the timeframe of this facility until the 15<sup>th</sup> of March 2021. Because the ESCs have been issued for a limited period of time, debtors had been required to present a declaration on own responsibility instead of an ESC. For these debtors to benefit from the facilities regulated by GEO no. 37/2020, as modified by GEO no. 227/2020, certain conditions must be fulfilled by the requestors: (1) to send a written request to the credit institution or to the non-banking institutions; (2) to present a declaration on own responsibility regarding the decrease of by at least 25% of the average monthly income from the last 3 months prior to the request for

suspension of payment obligations by reference to the similar period of 2019 or 2020; (3) the debtor shall not be the subject of an insolvency proceeding; (4) the loan has not reached its maturity and the credit / non-banking institutions has not declared the early maturity at the 30<sup>th</sup> of December 2020; (5) debtors requesting the facilities shall not be in arrears on the date of their request. Debtors who have initially benefited from this facility were able to file another request, if both requests did not surpass the maximum period of 9 months of payment suspension. Similar measures have been adopted by countries across the world. For instance, according to the International Monetary Fund research<sup>12</sup>, most countries which regulated moratoriums have extended this facility to a maximum period of 6 months: Bulgaria (6 months), Croatia (3 months), Czech Republic (6 months). Countries such as Italy and Cyprus have extended the moratoriums for a larger period, which is justified by the fact that the effects of the COVID-19 pandemic were more severe due to the impact on tourism. This facility regulated by most countries is especially important for businesses having a reduced rate of liquidity. “The slowdown of economic activity caused by the COVID-19 outbreak and related lock-down measures implemented to tackle the health crisis have led to severe difficulties for companies to meet their financial obligations.”<sup>13</sup> By stimulating companies’ liquidity through measures suitable for different types of difficulties, fiscal authorities are able not only to support the business environment overall, but also collect a higher rate of taxes, helping to avoid the systemic risk of insolvency.

## 3. Fiscal mechanisms adopted in order to help companies avoid financial distress and insolvency

One of the most important measures adopted by the Romanian Government in order to avoid the systemic risk of insolvency are found in Article VII of the Government Emergency Ordinance no. 29/2020. According to Article VII para. (1), for the fiscal obligations due starting with the 21<sup>st</sup> of March 2020 and not paid until the 25<sup>th</sup> of December, authorities have not calculated and instituted interest and penalties for the delay, by derogation from the Fiscal Procedure Code, approved by Law no. 207/2015<sup>14</sup>, with subsequent amendments and completions. Furthermore, according to para. (2), unpaid fiscal obligations in this period of time have not been considered to be due. This measure has been extremely helpful, especially for companies whose activities have been restricted, most of them

<sup>10</sup> Published in the Official Journal no. 261/30.03.2020.

<sup>11</sup> Published in the Official Journal no. 1331/31.12.2020.

<sup>12</sup> <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#I>

<sup>13</sup> Apedo-Amah, Marie Christine; Avdiu, Besart; Cirera, Xavier; Cruz, Marcio; Davies, Elwyn; Grover, Arti; Iacovone, Leonardo; Kilinc, Umut; Medvedev, Denis; Maduko, Franklin Okechukwu; Poupakis, Stavros; Torres, Jessica; Tran, Trang Thu, *Unmasking the Impact of COVID-19 on Businesses : Firm Level Evidence from Across the World. Policy Research Working Paper*, no. 9434. World Bank, Washington, DC, October 2020, p. 9, <https://openknowledge.worldbank.org/handle/10986/34626>.

<sup>14</sup> Published in the Official Journal no. 547/23.07.2015.

having faced the risk of insolvency. The Romanian law considers a company to be in a state of insolvency when it has an insufficiency of available cash to pay its undisputed, liquid and enforceable debts. By postponing the due date of fiscal obligations up until the 25<sup>th</sup> of December 2020, Romania has achieved the direct avoidance of small and medium enterprises. In the meantime, since the due date of fiscal claims had been delayed, fiscal authorities had also suspended or delayed the enforcement of budgetary claims. However, these safeguard measures are no longer applicable in this very moment, and the pandemic does not seem to end soon. "Smaller firms tend to face more severe financial constraints during COVID-19 even in advanced countries."<sup>15</sup> This is why, starting with the date on which these facilities were no longer in force, authorities have had to regulate new mechanisms to come in distressed companies' support.

### 3.1. Simplified rescheduling of budgetary obligations

Since the instauration of the state of emergency in the 16<sup>th</sup> of March 2020 in Romania, small and medium enterprises have faced difficulties in paying budgetary taxes. The authorities have raised the issue that these companies also face the risk of accumulating new debts, which could bring them in a state of insolvency. Therefore, in order to provide opportunities for an economic recovery, the Government Emergency Ordinance no. 181/2020 on some fiscal-budgetary measures, for amending and supplementing some normative acts, as well as for extending certain deadlines<sup>16</sup> has been issued. This normative act allows debtors to reschedule their budgetary debts for a period of maximum 12 months, without providing any guarantees, as long as the due date of these debts begins with 16<sup>th</sup> of March 2020. According to Article 1 para. (1), both main and accessory fiscal obligations may constitute the subject of simplified rescheduling. However, debtors intending to access this fiscal mechanism need to fulfill several conditions: (1) to file a request until the 30<sup>th</sup> of September 2021; optionally, debtors may propose a rescheduling program; (2) to not be the subject of an insolvency proceeding; (3) to not be dissolved; (4) to not have budgetary debts that were due before the date on which the national emergency state was instated; (5) to not have been held liable according to insolvency and fiscal regulations; (6) to have filed all fiscal declarations. It needs to be mentioned that the possibility of rescheduling budgetary claims has been regulated in the Code of fiscal procedure since 2015; however, the classic rescheduling of budgetary claims regulates debtors' obligation to provide guarantees when the claims

surpass an amount of 20.000 lei (approx. 4.000 euros). The mechanism of simplified rescheduling of budgetary claims does not require debtors to provide guarantees. Moreover, one of the greatest advantages of this facility is the fact that debtors may request a differentiated payment of the installment rates. This possibility is especially suitable for seasonal businesses, whose repayment capacity is higher in certain periods of the year. However, each monthly rate must be at least equal to 5% of the total amount due. The fiscal authorities analyze the debtor's request in 5 business days from the date of its registration, issuing a decision of payment rescheduling or a decision of rejection of the debtor's request, as the case may be. If the debtor's request is approved, the decision of payment rescheduling shall establish the amount and terms of payment of the installment rates. Since the installments' due date is modified by the fiscal authorities' decision, for the amounts that are subject of the rescheduling, the enforcement proceedings shall not begin or shall be suspended, as the case may be. However, debtors are still obliged to pay current fiscal claims, along the debts that are rescheduled. This fiscal mechanism has helped debtors to stabilize their financial state and to consolidate their business' ongoing concern principle, reducing the risk of systemic insolvencies. Several countries have adopted a similar fiscal mechanism, or have even extended the suspension of tax payments. For example, Hungary has regulated a fiscal mechanism that allows debtors to reschedule or even extend deferred payments.<sup>17</sup> In Latvia, the tax administration is entitled to reschedule or postpone the performance of the delayed tax payments for a period of up to three years.<sup>18</sup> According to the author's research, countries across the world have adopted fiscal facilities that were available for a limited amount of time, but were subsequently prolonged.

### 3.2. Restructuring of budgetary claims

One of the most complex fiscal mechanism adopted by the authorities consists of a restructuring of budgetary claims, based on the Government Emergency Ordinance no. 6/2019 on the establishment of fiscal facilities.<sup>19</sup> Initially, in 2019, authorities had issued this normative act for debtors who registered budgetary debts of more than 1.000.000 lei (approx. 200.000 euros), and that were due on the 31<sup>st</sup> of December 2018. However, this fiscal facility had been available for a very short time, starting with the 8<sup>th</sup> of August 2019, until the 25<sup>th</sup> of September 2019. The deadline for submitting an intention of restructuring budgetary claims by debtors has then been extended to the 31<sup>st</sup> of October 2019. Concerns of a new virus spreading rapidly worldwide had already began at that

<sup>15</sup> Ibidem 14, p. 10.

<sup>16</sup> Published in the Official Journal no. 988/26.10.2020.

<sup>17</sup> CIAT/IOTA/OECD (2020), Tax Administration Responses to COVID-19: Measures Taken to Support Taxpayers, OECD, Paris, [https://read.oecd-ilibrary.org/view/?ref=126\\_126478-29c4rprb3y&title=Tax\\_administration\\_responses\\_to\\_COVID-9\\_Measures\\_taken\\_to\\_support\\_taxpayers](https://read.oecd-ilibrary.org/view/?ref=126_126478-29c4rprb3y&title=Tax_administration_responses_to_COVID-9_Measures_taken_to_support_taxpayers).

<sup>18</sup> Ibidem.

<sup>19</sup> Published in the Official Journal no. 648/05.08.2019.

point. Thus, the fiscal facility had been once more extended to an amount of time, starting with the 1<sup>st</sup> of February 2020 until the 31<sup>st</sup> of July 2020, the latter date being furtherly extended until the 30<sup>th</sup> of September 2020. The pandemic and the length of the restrictions imposed by authorities had generated the need for the repeated extension of the deadline of this particular fiscal mechanism. At this time, the deadline for debtors intending to access this mechanism is the 30<sup>th</sup> of September 2021, but may be extended once more, depending on the evolution of the sanitary crisis. Initially, this fiscal mechanism had been applied to companies owing more than 1.000.000 lei that were due. However, because small and medium enterprises had also needed alternatives to restructure their budgetary debts, the simplified rescheduling of debts not providing enough time for some SMEs, the authorities have eliminated the limit of at least 1.000.000 lei in budgetary debts and therefore the scope of the law had extended to any debtor, regardless of the amount of due budgetary claims. According to Article 1 para. (1), the purpose of the law is avoiding the opening of insolvency proceedings of certain categories of debtors, except for public institutions. Of course, several conditions must be fulfilled by debtors in order to access this fiscal mechanism: (1) to not meet the conditions to access the classic payment rescheduling regulated by the Code of fiscal procedure; (2) to present a restructuring plan and a private creditor test, prepared by an independent expert; (3) to not be the subject of an insolvency proceeding; (4) to not be dissolved; (5) to have submitted all fiscal declarations, according to their fiscal vector; (6) to fulfill the private creditor test, in accordance to this normative act. The private creditor test is also defined in the Law no. 85/2014 on pre-insolvency and insolvency proceedings, according to which it is a method to compare the manner in which budgetary claims may be satisfied by reference to a diligent private creditor in a pre-insolvency or reorganization proceeding and the manner in which they may be satisfied in a bankruptcy procedure; this comparison is based on a valuation report prepared by a chartered valuator, member of ANEVAR (Romanian National Association of Chartered Valuators), appointed by the budgetary creditor, and addresses inclusively the duration of a bankruptcy proceeding by comparison to the proposed payment schedule; the event in which the private creditor test confirms that the amounts which the budgetary creditor would receive in a pre-insolvency or reorganization proceeding are higher than the amounts it would receive in a bankruptcy proceeding, shall not be deemed to be an event of state aid (Article 5 point 71). The GEC no. 6/2019 however provides a slightly different definition of the private creditor test, since the subject of a restructuring plan should not simultaneously be in an insolvency proceeding. Therefore, in the fiscal perspective, the private creditor test is an independent analysis, performed based on the premises considered in the debtor's restructuring plan, which shows that the

state behaves similarly to a private creditor, sufficiently prudent and diligent, which would obtain a higher recovery degree of receivables in the version of restructuring compared both with the version of enforcement and the opening of the bankruptcy proceeding. If debtors fulfill all the requirements, they need to file a notification regarding their intent to benefit from this fiscal mechanism, and to address an independent expert drafting the restructuring plan and the private creditor test. After receiving the debtor's notification, the competent fiscal body verifies if the debtor has fulfilled its declarative obligations according to the fiscal vector until the respective date, performs the settlements, compensations, and any other operations necessary in order to establish with certainty the budgetary obligations that may be subject to restructuring. This particular fiscal mechanism presents numerous similarities with the insolvency proceedings and with the judicial reorganization proceedings, in means of filing an intention to benefit from these mechanisms, fulfilling the private creditor test in some cases, the suspension of enforcements proceedings, applying the so-called *haircuts* translated in cutting a part of the due debts, under the condition of successfully executing the restructuring plan and, of course, the restructuring plan itself. However, the restructuring plan prepared by the debtor needs to approach and detail information regarding: (1) the causes and the extent of the financial difficulty, as well as the measures implemented to overcome them; (2) its patrimonial state; (3) information regarding the causes why the debtor cannot benefit from the classic payment rescheduling in accordance with the Code of fiscal procedure and (4) presenting planned restructuring measures having clear deadlines, ways to restructure budgetary claims, as well as relevant economic-financial indicators to demonstrate the debtor's viability restoration. The normative act exemplifies several restructuring methods which may be integrated in the restructuring plan. One of the greatest advantages provided by this fiscal mechanism is the fact that the restructuring plan may establish a reimbursement period of 7 years which, in some conditions, may be extended with 3 more years, reaching a total of 10 years. Moreover, the restructuring plan may also establish a cancellation of up to 50% of the main budgetary claims, under some conditions, except those concerning the main budgetary and ancillary obligations representing State aid to be recovered. The independent expert drafting the restructuring plan also needs to supervise the debtor's activity and the execution of the plan, periodically drafting and submitting reports to the debtor and the fiscal body. Also, the head of the competent tax authority may designate one or more persons to carry out the supervision of the plan's execution; in the author's opinion, the other person besides the independent expert drafting the restructuring plan could be the members of the management and / or supervisory bodies in the company that is subject of the fiscal

restructuring proceeding. During the restructuring plan's unfolding, if the supervisors find that the debtor has not fulfill an obligation in due time, they shall notify the debtor, granting a reasonable amount of time for adjustment which may be extended for justified reasons, but no longer than 6 months. If debtors face yet again difficulties during the restructuring plan's unfold, they may modify the initial restructuring plan but under some conditions such as to do so before the unfulfillment takes place and to present an adjusted restructuring plan and a private creditor test. For the budgetary obligations contained by the restructuring plan, the competent fiscal authorities shall suspend or shall not begin enforcement proceedings. Clearly, this fiscal mechanism is highly flexible and consists of a valuable instrument for the business environment. Nevertheless, as considered in the insolvency law, the claims that are subject of the restructuring plan are considered to be historical claims and, since this fiscal mechanism ensures the debtors' ongoing concern principle, debtors will likely generate current claims, which are to be paid according to the documents they derive from and at specific terms, which means that debtors should have a high reimbursement capacity or liquidate a part of its patrimony, in order to be able to meet all assumed obligations. In cases in which debtors may not carry out the restructuring plan as foreseen, the fiscal restructuring plan shall fail. The plan's failure generates the fiscal authorities' obligation to file a request of opening the insolvency proceeding against the debtor. This provision of the law may be considered as a sanction applied upon the debtor for the restructuring plan's failure, since the debtor itself had suggested its planned recovery measures in the first place. Even if the debtor would become the subject of an insolvency proceeding in this scenario, it may notify its intent of accessing the judicial reorganization proceeding, having one last chance to try to recover from financial distress. However, the judicial reorganization proceeding is extended to an initial period of 3 years, without having the possibility to surpass a total period of 4 years, while this fiscal mechanism provides an initial period of maximum 7 years, which may extend up to a total of 10 years. Considering these aspects, it is without a doubt that the fiscal mechanism of restructuring budgetary obligations is more flexible and could ease the debtor's

financial distress, meaning that if the debtor may not execute the restructuring plan, its recovery chances are uncertainly low in the scenario of converting to the judicial reorganization proceeding.

#### 4. Conclusions

This paper has analysed some of the mechanisms adopted by Romania in order to avoid systemic insolvency among small and medium enterprises, greatly affected by the COVID-19 pandemic and numerous measures of businesses' activity limitation or restriction. Since the pandemic has had a worldwide impact, each country has adopted an economic policy in response to the negative effects upon the business environment. In the author's opinion, Romania has been adopting economic and fiscal mechanisms that are suitable to each type of business, regardless of its size. These mechanisms concerned debtors' temporary incapacity of fiscal obligations and loans' reimbursement, the situation of their ongoing contracts, as well as other aspects which may have consisted of a difficulty risking becoming a state of insolvency. The author believes that the effects of the COVID-19 pandemic upon the economy are yet to unfold but, when the fiscal mechanisms presented in this paper (any many others) shall no longer apply, numerous businesses would file for insolvency. This is why the author believes that these mechanisms should apply for an extended period of time, calculated in years. It is yet uncertain how long will the pandemic last and, even if it comes to an end in the near future, its effects upon the economy would last for years, which is why the fiscal mechanisms presented in the second section of this paper should become permanent. Another reason would be the fact that the mechanism of budgetary obligations' restructuring is perfectly compatible with the preventive composition, a special proceeding aiming at the prevention of the state of insolvency. Of course, in addition to the mechanisms presented in this paper, Romania has adopted numerous other measures and mechanisms for businesses affected by the effects of the COVID-19 pandemic, which may form the subject of further research work given the fact that corporate recovery from financial distress or insolvency is a general topic of interest.

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- Government Emergency Ordinance no. 227/2020 for the modification and the completion of the Government Emergency Ordinance no. 37/2020, published in the Official Journal no. 1331/31.12.2020;
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