

# EXCEEDING THE BUDGET DEFICIT AND ADOPTING MEASURES FOR DIFFERENT RECIPIENTS WITHOUT TAKING INTO ACCOUNT THE EFFECTS THEY MAY GENERATE OVER TIME

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## Abstract

*With this article, we propose to analyse the way in which the implementation of the measures to reduce the budget deficit was decided in Romania. Thus, we are particularly concerned with the provisions of Law no. 296/2023 on some fiscal-budgetary measures to ensure Romania's long-term financial sustainability, a normative act that at first glance positions itself correctly towards its recipients, but on closer reading, has the potential to generate negative effects, at least with regard to economic operators with state capital that can be considered profitable. We will analyse, for example, the bans imposed, in relation to their generality, without taking into account the long-term effects, and here we have in mind the fluctuation and ageing of staff, but also the lack of any means of encouraging production. However, as long as employees are aware that the company has made a profit, if it is not reflected at the salary level (bonuses, meal vouchers), even though this has happened in previous years, they will become dissatisfied, with the direct consequence being a drop in productivity and, implicitly, in the current year's profit. That is why, having analysed the above-mentioned normative act, we have come to the conclusion that it needs to be amended, at least with regard to some measures, especially those related to the granting of bonuses at salary level. We admit that measures to reduce the budget deficit are necessary, but this cannot be achieved by imposing bans that apply to different categories of recipients, without taking into account possible, well-justified exceptions. If the legislation does not change, surely memoranda will be formulated regarding the exemption of the economic operators concerned from the total/partial application, as the case may be, of the provisions of Law no. 296/2023.*

**Keywords:** deficit, budget, economic operators, reduction measures, state capital.

## 1. Introduction

As it is already well known, Romania has exceeded the budget deficit, adopting during 2023 a series of normative acts, which aim to reduce the budget deficit and, implicitly, to avoid the negative consequences that may occur<sup>1</sup>. One such example is Law no. 296/2023 on some fiscal-budgetary measures to ensure Romania's long-term financial sustainability<sup>2</sup>.

The adoption of legislation aimed at reducing the budget deficit in Romania has included a number of measures, but without differentiating between recipients who produce and make a profit and those who typically make a loss and are unable to generate sufficient revenue to sustain their activity. This approach has led to inequalities, as even profitable recipients have been affected by measures that can make their work more difficult, and their staff have been the most affected.

For example, some cost-cutting measures have put pressure on profitable businesses, affecting their ability to maintain their level of activity or invest in development. At the same time, these measures have also hit businesses that are consistently making losses and need support to stay in business.

In addition, the lack of appropriate differentiation between different categories of recipients can accentuate social and economic inequalities, amplifying the divisions between those who have and those who do not have access to the resources needed to maintain their activity or improve their financial situation.

It is therefore essential that any legislative measures adopted to reduce the budget deficit are equitable and take into account the particularities and needs of different target groups, so as to minimise the negative impact on the most vulnerable or on economic activities important for the sustainable development of the country.

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<sup>1</sup> Such as, for example, the risk of losing European funds.

<sup>2</sup> Published in the Official Gazette of Romania no. 977/27.10.2023, entering into force on 30.10.2023.

It is true that Law no. 296/2023 represents an imperative step, at least by simply reading the explanatory memorandum, namely: „as regards budgetary policy, the excessive deficit procedure (...) has been triggered for Romania (...) as the deficit (...) exceeded the threshold set by European regulations of 3% of GDP in 2019”<sup>3</sup>.

However, reading art. XXXII (1), (2), art. XL (1), (2), art. XLI (1), art. XLII (1), (2), (3), at first glance these seem to be welcomed measures in the public sector, but we should not forget that there are also state-owned economic operators that are profitable, but will run into the same regulatory reality. One cannot equate a local public authority, whose aim is to meet the needs of the municipality in question, which is usually not financially sustainable, with an economic operator in the defence industry, for example, which ended 2023 on profit. Also, not to be excluded are economic operators who, although they ended 2023 with a profit, in one of the previous years have an unrecovered loss, well below the level of the profit made.

## 2. Analysis of the relevant articles of Law no. 296/2023

We will analyse each of the articles mentioned, to see if they can really be considered beneficial in the true sense of the word or if they have the potential to undergo a series of modifications, as follows:

### 2.1. Art. XXXII para. (1), (2) - Law no. 296/2023

„(1) Vacancies existing in the organisational structures of economic operators at the date of entry into force of the provisions of this Law, for which the procedures for filling them have not been triggered, shall be filled by competition or according to the methodology existing at the level of economic operators on the basis of the decision of the board of directors, within the maximum limit of 7.5% of the vacancies existing at the end of 2023.

(2) The remaining vacancies existing on the date of entry into force of this Law after the application of the provisions of paragraph (1) shall be abolished and may not be re-established for a period of 6 months from the date of entry into force of this Law”.

This provision is a perfect example of the need to amend Law no. 296/2023. Thus, as the text of the law itself suggests, the economic operators to whom it is addressed, *i.e.*, those with state capital, may have methodologies established at their level, regarding the method of employing staff. Unlike public institutions and authorities, where the organisation of a competition or an examination involves a series of steps that must be strictly followed, the procedures being carried out over a long period of time, an economic operator has a wider and faster range at hand, precisely because the provisions of the Administrative Code do not apply to it<sup>4</sup>.

Consequently, excluding the speed of hiring that an economic operator can benefit from, it is imperative to bring into question the fact that the latter usually has a production activity, such as, for example, the subsidiaries of the National Company ROMARM S.A., being „*the main producer and direct exporter of military products in Romania (...) is the main supplier of military equipment, ammunition and maintenance services in Romania*”<sup>5</sup>. Note that the scope of activity of this economic operator is quite narrow and in need of specialised staff or that it can specialise later, depending on its needs.

By imposing a ban of this nature on employment, for example in view of the ageing of staff and staff fluctuation, the long-term effects will certainly be seen, in that the whole company, together with its subsidiaries, will suffer, through a reduction in production and, implicitly, in the related profits. In addition, the legal article under review contradicts GD no. 134/2024<sup>6</sup> on the approval of the maximum average number of personnel for the year 2024 for economic operators in the national defence industry, carrying out activities according to the provisions of art. 24 of Law no. 232/2016 on the national defence industry<sup>7</sup>.

<sup>3</sup> According to the Explanatory Memorandum of Law no. 296/2023, <https://www.cdep.ro/proiecte/2023/500/40/6/em546.pdf>, last consulted on 10.03.2024.

<sup>4</sup> GEO no. 57/2019 on the Administrative Code, published in the Official Gazette of Romania no. 555/05.07.2019, with subsequent amendments and additions.

<sup>5</sup> According to the official website of the National Company ROMARM S.A., <https://romarm.ro/informatii-despre-companie/>, last consulted on 11.03.2024.

<sup>6</sup> Published in the Official Gazette of Romania no. 140/19.02.2024.

<sup>7</sup> Published in the Official Gazette of Romania no. 972/05.12.2016, with subsequent amendments and additions.

Thus, although reference is made to the strategic importance of the national defence industry<sup>8</sup>, but also to the difficulties in filling jobs, in relation to the niche skills and security clearances required<sup>9</sup>, at the same time there is Law no. 296/2023 which makes no differentiation or exception for this industry. It is well known that the personnel in this industry is getting older every day, and by applying art. XXXII para. (1), (2) of Law no. 296/2023, in the long term all the effects will be felt at production level. Thus, a subsidiary of ROMARM, which is profitable at the moment, may in the future, due to a lack of staff, have to either refuse orders, delegate the orders in question to other subsidiaries, or take them over, at the risk of having to pay not inconsiderable late payment penalties if it cannot cope.

## 2.2. Art. XL para. (1), (2) - Law no. 296/2023

„(1) Expenditure on food entitlements/feeding allowances/meal vouchers/feeding allowances, irrespective of their designation, established in accordance with legal regulations or collective labour agreements, may not exceed annually the equivalent of two gross minimum wages per country/year/person valid on 1 January 2019, updated with the consumer price index communicated by the National Institute of Statistics. These rights are updated from January 2025.

(2) Expenditure on holiday vouchers or other entitlements granted in accordance with legal regulations or collective labour contracts may not exceed annually, in the period from 1 January 2024 to 31 December 2026, the equivalent of 1,600 lei/year/person”.

Again, we just read an article that imposes restrictions on the bonuses that benefit employees, without making any distinction between public institutions and authorities that do not produce, respectively economic operators whose main activity is the production of weapons. The more so, as the economic operator has made a profit, imposing such a measure will only lead to the demoralisation of staff and possibly to a migration of employees to the private sector.

## 2.3. Art. XLI para. (1) - Law no. 296/2023

„(1) From the date of entry into force of this Law, economic operators, including their subsidiaries, shall be prohibited from granting awards, bonuses and other similar rights of a salary nature, if they have recorded unrecovered book losses from previous years and/or record book losses in the current year”.

The difficulty with this section of the law is that it does not refer to a specific accounting loss. Thus, it is perfectly possible that the economic operator to whom the act applies will close the year 2023 with a considerable profit, but will have a loss from a previous year, not yet recovered. Note that the notion of accounting loss, as used by the law, does not have a specific definition, and can be anywhere between 1 RON and 10.000 RON. Also, the reasons for which the accounting loss was not recovered are not taken into consideration, as described by this particular law, although there are quite a few cases in which the recovery of the loss is impossible. We are referring here in particular to situations where the debtor of an economic operator has gone bankrupt and the latter has filed a claim, but the debtor's assets have covered the debts guaranteed by the bank, for example. In the case of a debtor who is a natural person, this could be a former employee who has retired and has not repaid certain salary-related rights received unduly.

Thus, whether the debtor has died without heirs or whether we are simply talking about a criminal or tortious act of a debtor, the latter not having assets in his name that can be enforced, the accounting loss will still be unrecovered. Although it is impossible to recover the accounting loss in the situations described above, an economic operator who has done everything possible will be punished to the same extent as another economic operator who has not taken any steps to recover the loss. However, such an approach cannot be considered fair from a social point of view, especially as the article of the law refers to rights of a salary nature which may include, for example: meal vouchers, social expenses<sup>10</sup> (funeral allowances or bonuses for special

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<sup>8</sup> See the content of the Explanatory Note to GD no. 134/2024, <https://gov.ro/ro/print?modul=subpagina&link=nota-de-fundamentare-hg-nr-134-16-02-2024>, last consulted on 12.03.2024.

<sup>9</sup> L. Gheorghe, *Industria de apărare din UE și SUA se confruntă cu un mare deficit al forței de muncă*, <https://cursdegovernare.ro/industria-de-aparare-din-ue-si-sua-se-confrunta-cu-un-mare-deficit-al-forței-de-munca.html>, last consulted on 12.03.2024.

<sup>10</sup> Art. 25 of Law no. 227/2015 on the Fiscal Code, published in the Official Gazette of Romania no. 688/10.09.2015, as subsequently amended and supplemented, lists social expenses, some of which are: expenses representing meal vouchers and holiday vouchers granted by employers, according to the law; expenses representing: gifts in cash or in kind, including gift vouchers given to employees and their minor

events in the employee's life - marriage, birth of a child, etc.), statutory holiday bonuses. Nor is employee profit-sharing excluded, and the situation becomes all the more frustrating because, although there is a significant profit, for an accounting loss of a few hundred RON, no employee will be able to benefit from that money. Again, the article does nothing but promote a disloyal attitude on the part of employees, who are tempted to change their jobs, and in the end the whole economic operator suffers, unjustifiably.

#### **2.4. Art. XLII para. (1), (2), (3) - Law no. 296/2023**

„(1) From the date of entry into force of this law, the purchase of mobile telephony devices by economic operators may not exceed a maximum amount of 500 lei excluding VAT/mobile telephony device purchased.

(2) The monthly expenses for the mobile phone subscription paid from the funds of economic operators shall not exceed 35 lei excluding VAT/month/mobile phone set.

(3) Any excess of the purchase cost of mobile telephony devices or the cost of monthly mobile telephony subscriptions shall be borne by the employed staff benefiting from the mobile telephony services”.

This legal provision has a largely beneficial rationale, but completely omits the fact that, as a rule, telephone subscriptions are not made for a period of 1 month or two months, but for 1 year or even two years. The telephone operator, being 100% private, is under no obligation to comply with measures that do not apply to it, especially as the law also specifies that any cost overruns will be borne by the beneficiaries. In this situation, we bring into question the fact that employees do not have the power to negotiate directly with the telephone operator, this being done by the legal representative of the economic operator. However, no one can deny the fact that such purchases of subscriptions, that exceed the value of 35 RON per month, are often made, and the subscriptions are shared within the economic operator precisely in order to carry out its activity in optimal conditions. Perhaps some telephone operators will agree to change the price of subscriptions, but if this does not happen, the only ones who will be charged for subscriptions purchased by the operator will be its own employees.

Again, this consequence, along with the other articles of law outlined above will be a major issue whereby existing employees will no longer consider their current job to be beneficial and will either migrate to the private sector, retire or reduce their productivity, all of which will affect the profitability of the economic operator. However, it is worth mentioning that things do not stop here, and if a state-owned economic operator becomes unprofitable for the reasons mentioned so far, the Romanian state will have to intervene. Consequently, inadequate salaries and benefits<sup>11</sup> are a major cause of staff turnover, which cannot be denied. Thus, we believe that it would be more beneficial to prevent such a situation, rather than budgeting some initially profitable economic operators, who will suffer staff shortages due to the application of Law no. 296/2023 in its current form.

### **3. Conclusions**

It is crucial that the process of drafting legislation includes consultation and active dialogue with stakeholders, including representatives of business, trade unions, non-governmental organisations and experts in various relevant fields. By involving these parties, the potential impact of legislative measures can be better identified and more effective solutions for reducing the budget deficit can be proposed.

It is also important that the government is open to feedback and willing to adjust fiscal policy and legislation in line with changes in the economic and social environment. This can ensure that the measures adopted are tailored to the needs and realities of businesses and workers, thereby helping to promote sustainable economic growth and reduce social inequalities.

Finally, a crucial issue is the fair and equitable application of legislation and the constant monitoring of the effects of these measures on the economy and society. By regularly assessing the impact and adjusting policies

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children, health services provided in the event of occupational diseases and accidents at work up to admission to a health facility, cultural vouchers and crèche vouchers granted by the employer in accordance with the legislation in force, the cost of tourist and/or treatment services, including transport, granted by the employer to his employees and their family members, and contributions to the intervention funds of miners' trade associations.

<sup>11</sup> „To retain talent, companies need to offer competitive salary and benefits packages and regularly review these offers to ensure they remain competitive in the marketplace”. A. Gherman, *Fluctuația de personal în companii: cauze și soluții*, <https://www.hr-consultinglab.com/post/fluctuatia-de-personal-in-companii-cauze-si-solutii>, last consulted on 12.03.2024.

according to the results achieved, it can be ensured that the legislation adopted to reduce the budget deficit really serves the general interest and contributes to the balanced and sustainable development of Romania.

In conclusion, there are several measures that the Romanian government can take to reduce the budget deficit:

- Increasing tax revenue: The government can increase its revenue by increasing taxes or improving tax collection. This may include reviewing and adjusting tax rates, broadening the tax base or combating tax evasion;
- Pension and health care reform: Reviewing and reforming pension and health care systems can help reduce government spending in the long run. These reforms may include adjusting the retirement age, strengthening private pensions or introducing more sustainable financing mechanisms for the health system;
- Promoting economic growth: Stimulating economic growth can generate additional revenue for the government by increasing tax revenues and reducing social spending. This can be achieved through policies that support investment, innovation and entrepreneurship, as well as by removing bureaucratic obstacles and improving the business climate;
- Strengthening the public sector: The government can optimise and reorganise its public sector to reduce administrative expenditure and improve the efficiency and transparency of public spending.

Of course, there are other measures that can be adopted<sup>12</sup>, which can be implemented individually or in combination, depending on the specific economic and social circumstances and the policy objectives of the government. It is important that these measures are balanced and that the impact on economic growth and social welfare is taken into account. As such, Law no. 296/2023 can certainly be amended, but it is not the only way for Romania to reduce the budget deficit.

Legislation that is not adapted to economic realities and does not take into account the particularities of those it is aimed at can create difficulties in the development of a country and create bottlenecks in the labour market. When laws and regulations are not updated to reflect changes in the economy or to meet the needs and requirements of different sectors and social groups, serious problems can arise.

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<sup>12</sup> Al. Milcev, *Deficit bugetar actual și în următorii ani. Cum face rost Guvernul de bani?*, <https://www.universuljuridic.ro/deficit-bugetar-actual-si-in-urmatorii-ani-cum-face-rost-guvernul-de-bani/>, last consulted on 12.03.2024.