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**The Impact of the Wage Regulation on the Public Budget:
European Good Practices and Traditional Landmarks in
Romanian Law**

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ABSTRACT

The wage system in the public system is an issue of great importance in time of economic restraints. For economies still facing the effects of the recent global financial crises, the money spent for paying the human resource in the public sector represents a continuous subject of discussion for the politicians, for the economics and for legal experts also. The paper proposes an analysis of the strengths and criticisms of the legal framework regarding the wage law in the EU Member States, focusing on the particular situation in Romania. The evolution of salaries in the public system in Romania is analyzed, emphasizing certain challenges the authorities had to face during the transition period to the market economy. The systems of salaried employment in the public system of other central and eastern states of Europe are analyzed, using comparison and caselaw analyses and identifying the solutions that could be taken to improve the unitary wage system in Romania. The current advocacy of remuneration in the public system is analyzed, with the interest for the problematic elements that are present in the text and proposing the removal of those who, prior to the entry into force of the normative act, should be modified and updated. Concluding that there is no perfect legal framework in this field but a flexible well orientated one, the paper explains the principles of law that can not be break in a wage law for the public sector.

Keywords: wage regulation, EU regulation, public budget

Introduction and Methodological Approach

The actual EU integration status is based on fair social standards for all EU citizens, which implies many areas and dimensions of coherency for the activity of the EU members, both at central states governments policy level and in the everyday life of the people.

The functioning of the European Union implies multiples sectors of activity, that have reached different level of integration, with precise features, starting with the most reputable unions (such may be considered the custom union) to the newest one, that are still under construction (as the fiscal union may be). A high level of competition that evolves in all relevant areas, including the workers' mobility, characterizes the current economic trends and its effects are not always positive. Being considered usually an economic phenomenon, tax harmonization calls for useful legal regulation to limit negative effects, maximizing as much as possible its economic and social benefits.¹

The wage system in the public system is an issue of great importance in time of economic restraints. For economies facing the effects of the recent global financial crises, the money spent for paying the human resource in the public sector represents a continuous subject of discussion among politicians, economic and legal experts.

The objective of this paper is to analyze the regulation for payment of wages in Romanian public sector, in the context of accession to the EU, proposing new rules of law. This analysis points out the Romanian wage payment public policy, a country positioned on the bottom of the hierarchy of the level of remuneration in the EU. The Romanian peripheral status offers a special framework for the phenomenon of favoring some professional categories, both from an institutional perspective (rights and liabilities during the work agreement) and as manifestation of influence in establishing the price for the work in during the contract.

The aim of the research is to present the domestic phenomenon in relation to the EU environment, in order to complete and enrich knowledge. The information on EU human resources payment is gathered using four channels: the academic resources (literature review), the internet and media resources, the normative resources (both on national and EU level) and the jurisprudence produced in the field.

The public authorities and institutions use different wage payment policies and regulation in the 27 member states of the European Union. Governments engage in implicit tax competition when modifying some fiscal policy goals to mitigate the effects of competition from other governments.² There are situations when the public policies on wage payments generates so many effects on economy and in social life so the concept could be defined as "wage payment war". There are two main reasons to support this renaming process of the concept. First, the competition between level of salaries within public authorities is completely different from the competition of the wage policies among private companies, in terms of effects, general features and means of action. Second, the effect of tax competition at global level is destructive for all

¹Mihaela TOFAN, Tax Law, CH Beck Publishing House, Bucuresti, 2016, p. 113.

²Tannenwald, R., „Tax Competition”, The Encyclopaedia of Tax Policy, Washington: the Urban Institute, 1999, pp. 367-371.

countries but it is even worse for the developing countries.³ On the contrary, there are opinion saying it is just a myth that tax competition hurts countries and public revenue. In reality, developed economy countries are not in competition with offshore area, the institution of tax credit being functional and efficient in order to prevent double taxation.⁴

The nowadays major opinion is not in accordance with Charles Tiebout model, out of which we derive the idea that the workers will opt for the sectors of activity with high salary, the mobility in the work filed being on an increasing trend. ⁵ There are six intense arguments based on pure economic theory, justifying that the model is working only at local level, where the flexibility of workforce is easily manifested, and it is not validated in the context of the current global economy.⁶

Freedom is one of the fundamental values of the EU, together with respect for human dignity, democracy, equality, legality and respect for human rights. The free movement of goods and capital is fully functional and complete, but the free movement of persons and services still faces difficulties. The national particularities delayed the last stages of integration, referring to the large heterogeneity in terms of competitiveness and level of remuneration of labor. The challenge is the reconciliation of national interests and characteristics, to ensure the complete fundamental freedoms. Wilson and Wildasin have proceeded in a different way, defining the work mobility accordingly to the wage level according to its ways of performance.⁷

Broadly speaking, the salary competition can be defined as any context in which different employers look for capturing the working force using the remuneration mechanisms. In a narrow sense, public wages policy can be defined as any measure of different independent public authorities that affects the way in which public spending for the remuneration of human resources is allocated between them. Public policy for the salary should be dominated by equity, efficiency, equal payment for equal work, legality, proportionality to the qualification of the workforce, etc.

The Romanian Wage Payment in the Public Sector - Short History

When Romania joined the EU (2007), updating the regulation on human resources mobility became necessary, as part of implementing the acquis

³Tax Justice Network – Tax Competition, Aug 26, 2016, available at <http://www.taxjustice.net/tax-competition/>, retrieved 26 May 2019.

⁴IFC Forum – Tax Competition, available at <https://www.ifcforum.org/myths-v-reality/>, retrieved 26 May 2019.

⁵Tiebout, C. (1956), "A Pure Theory of Local Expenditures", *Journal of Political Economy*, 64 (5): 416–424, doi:10.1086/257839.

⁶Tax Competition – Was Charles Tiebout Joking? Fools Gold Blog, April 23, 2015, available at <http://foolsgold.international/competitiveness-was-charles-tiebout-joking/>, retrieved 20 May 2019.

⁷Wilson, J. D., Wildasin, D., "Capital Tax Competition: Bane or Boon", *Journal of Public Economics*, nr. 88, 2004, pp. 1065-1091.

communautaire. The Romanian Parliament adopted Law no. 344/2006 on the posting of workers in the transnational provision of services, transposing Directive 96/71/EC. Similar legislation exists in other EU countries and it is applied when an enterprise of Romania decides to provide services in that state and for a limited period of time it relocates its employees in that state.

The Romanian workers' movement was affected by restrictive measures imposed by some Member States (Germany, UK, and Ireland) and it was completed after the deadline for full liberalization of the labor market in the EU (2014).

In the EU context, Romanian legal system does not comply with the conditions for deliberately using "social dumping" or "wage dumps", according to the following arguments. First, Romanian government does not deliberately maintain a level of welfare and low wage levels with the intention of dumping. Secondly, differences in wage levels between EU states are real and substantial and posting of workers in the transnational provision of services without imposing *lex loci laboris* on minimum pay does not mean pay below the home state. Thirdly, there is not a general European standard minimum wage to oblige employers to comply with.

The Romanian authorities' policy with regard to the level of payment for public wages has launched in 1991, simultaneously with the transition to the new salary system, few normative acts such as:

- Law no. 50/1991 (the salaries for the staff of the bodies of the judiciary, with more than 40 other modifying acts).
- Law no. 53/1991 which established the salaries for senators and deputies, respectively for the staff of the Parliament's apparatus. It is also a law still in force and with an important suite of modifications.
- The Government Decision no. 307/1991, which subsequently became Government Decision no. 281/1993 (the salaries for the staff in the local public administration institutions).
- Law no. 40/1991 (the salaries for the members of the Government, as well as for the staff of the Presidency).

At the end of the last century, the need for a new payment system in the public sector emerged, aiming at ensuring a better correlation of the wage rights between all budgetary sectors, irrespective of the normative act by which these rights were approved. Until 1998, the basic salaries of the various functions were differentiated in all budget sectors based on hierarchical coefficients specific to each function or degree

Law 330/2009 on the unitary salary of staff paid from public funds, the basic salaries of the personnel in the budgetary sector are established by 39 normative acts, respecting the following principles:

- Establishing a salary between a minimum and a maximum limit.
- Offering punctual values by seniority for staff in education.
- Unique levels for public dignity functions and assimilated to them.

- Specific/punctual levels of remuneration for civil servants.

The use of these principles in the new public wage system has led to over 400 payment levels, which no longer correspond to the initial previewed hierarchy. As a result of the situation, the ratio between the minimum wage in the budgetary sector and the maximum wage in the same sector is about 1/29, which raised a lot of dilemma such as the respect of the principle of equity in public work remuneration and the principle of equal salary for equal work.

Depending on the type of wages that we mainly refer to and analyze, the efficiency of the new regulation is appreciated differently, for instance:

- a) The highest degree of harmonization is necessary in the field of the remuneration for the work in similar institutions and public authorities, because the differences between them proves disrespect to the principle of equal payment for equal work.
- b) Within the same public authority and institution, there should be a certain hierarchy of the salary payments level, aimed at avoiding discrimination, unintentional differentiation between activities and qualification for a particular mission.
- c) There is, however, a certain justified sub-category of public wages, such as those applied to seniority, efficiency in the working field, results of the professional evaluation etc.

There is also a direct connection between the perception of the generosity of the public wages policy and the level of taxation of the wages. It is pertinent to note that liberal low-tax regime were encouraged by high levels of economic, financial and monetary regulation and high taxes in other countries, and the competition provided by these regimes helped to spur international liberalization which has generally been beneficial.⁸ The action plan adopted by the Commission on 17 June 2015 for fair and effective taxation in the EU also addressed issues related to harmful tax practices and the work of the Code of Conduct Group.

We note that the preferred instrument of harmonization of the EU public finance is the directive, as it respects the right of the state to decide on the procedure and means to respect it, still achieving a certain level of uniformity of the regulation.⁹

⁸Bishnodat Persaud – *The OECD Harmful Tax Competition Policy: A Major Issue for Small States*, in Biswas, R. (ed.) (2002), *International Tax Competition: Globalisation and Fiscal Sovereignty*, Commonwealth Secretariat, London, <https://doi.org/10.14217/9781848597587-en>, p. 27.

⁹Dan Drosu SAGUNA, Mihaela TOFAN, *European Financial and Fiscal Law*, CH Beck Publishing House, 2010, Bucuresti.



































































Minimum Gross Base Salaries in Romania

Minimum gross basic salary In Romania is guaranteed by the regulation included in Government Decision. For the first time in 1991, a minimum national salary was set in the amount of 315 lei for a full 170 hours of work per month (respectively 1,555 Euro per working hour). At the same time, the terminology "minimum wage per country" (Article 1) was institutionalized. In 2007, by Government Decision no. 1825/2006, there was stipulated a minimum gross wage of 390 lei and for 2007-2010, a minimum basic salary of 440 RON was negotiated between the government representatives and the national unions leaders (art. 44 paragraph 4). Collective labor agreements at branch level established higher gross minimum wages (i.e. 500 lei).

At present, Art. 159 of the Labor Code in force stipulates that the basic gross minimum wage guaranteed in payment in whole country, corresponding to the normal work schedule, is determined by Government decision, after consulting the trade unions and employers. The employer cannot negotiate and set basic salaries under the individual work contract below the country's minimum gross basic salary. The breach of this obligation constitutes a contravention and is sanctioned by a fine from 1000 lei to 2000 lei (art. 4 of the Government Decision no. 1825/2006)

Starting with 2012, the country's gross salary has experiencing a spectacular evolution starting at 850 lei and rising to 1450 lei in 2017 (the minim wage in Romania increased almost 4 times more in 10 years).

Table 1. *The Minimum Wage in EU*

Country	Monthly minimum wage (EUR)	Country	Monthly minimum wage (EUR)
   Belgium	1531.93	   Lithuania	380.00
   Bulgaria	235.20	   Luxembourg	1998.59
   Croatia	439.33	   Malta	735.63
   Czech Republic	421.00	   Netherlands	1551.60
   Estonia	470.00	   Poland	474
   France	1480.27	   Portugal	649.83
   Germany	1498.00	   Romania	321.23
   Greece	586	   Slovakia	435.00
   Hungary	411.00	   Slovenia	804.96
   Ireland	1563.25	   Spain	825.65
   Latvia	380.00	   United Kingdom	1354.16

Source: <https://ec.europa.eu/eurostat>, the 30th of June 2017.

The taxation of labor remuneration is a form of direct taxation. The TFEU regulates in Title VII common imperative rules on competition, taxation and legislative harmonization and, after dealing with the competition rules

applicable to enterprises and the State aid issue in Chapter 1, Chapter 2 regulates the fundamental provisions in the field of tax competition between EU Member States and Chapter 3 regulates the approximation of laws.

The procedure to follow for the approximation of laws is detailed in Chapter 3 of Title VII, stating that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall adopt measures on the approximation of laws, regulations and administrative provisions of the Member States which have as their main objective the establishment and functioning of the internal market.

It should be noted that the text of the treaty allows Member States which consider it necessary to maintain the national provisions justified by the important requirements in the field of the common foreign and security policy and the common security and defense policy or relating to the protection of the environment and the working environment.

At the same time, a consultation procedure may be followed by states to prevent the adoption of laws that have the effect of distorting loyal tax competition. According to art. 117 (ex Article 97 TEC), the Commission, after consulting the Member States, shall recommend to the States concerned appropriate measures to avoid distortion. When a Member State is looking to adopt or to amend national provisions does not comply with the Commission's recommendation, the other Member States may not be required, under Article 116, to amend their national provisions with a view to eliminating this distortions. When the Member State which has disregarded the Commission's recommendation causes only distortion to its detriment, Article 116 shall not apply.

Sinn has studied the issue of tax competition at the European Union level by showing that intensifying the phenomenon between states for attracting mobile capital will limit the ability of Member States to maintain their current high level of social transfers. ¹⁰ He believes that it is necessary to establish a central European Union-level authority responsible for redistributive policies, so that Europe "does not have to give up the progress made in the social plan." ¹¹

From our point of view, it is also possible to consider the extensions of the prerogatives of a particular existing authority, acquiring in addition to the competences already exercised and competencies in the field of concrete monitoring of the tax competition influence on the mobility of the workers.

¹⁰Sinn, H.W., „How Much Europe? Subsidiarity, Centralization and Fiscal Competition”, *Scottish Journal of Political Economy*, nr. 41, 1994, pp. 85-107.

¹¹Sinn, H.W., „Tax Harmonization and Tax Competition in Europe”, *European Economic Review*, nr. 34, 1990, pp. 489-504, p. 502.

New Framework for Public Wages in Romania: Law no. 153/2017

The Law no. 153/2017 establishes the level of remuneration of the worker in public entities within a unique framework, imposing the following milestones:

- The current system proposes a ratio of 1/7 much closer to what a developed state is and a normality regarding salary in the budget segment.
- from 2023, the salary should be paid directly by reference to the gross guaranteed minimum salary for the country, using the right coefficient for each function (a specific multiplication coefficient will be established for each type of activity, qualification and level of efficiency).
- the target for the minimum salary in the economy should reach in 2023 at least 2500 lei (about 550 euros), aiming at exiting-out of the gray area of the low-wage economy specific for the underdeveloped countries.
- we estimate, without much mistaking, that the annex to Law 157/2017 will support a whole suite of changes throughout this period, by 2023.
- Negotiations will commence on each occupational family, and obviously, depending on the negotiating power of each, there will be changes.
- The law is in force and creates certainty about salary, normality, and transparency, by indexing annual salaries of all employees in each institution.
- There is a specific Article 16 in the chapter entitled "Wage rights" (explained/detailed in following articles of the law), addressing the the work done in projects funded by European funds.

Individuals in public institutions paid for working in EU funded projects will benefit of an increase of the basic salaries / bonuses by up to 50%, regardless of the number of projects in which will be involved. The limitation of the number of overtime payments from EU funded projects did not limit the involvement of the same persons in all the projects (and here we refer especially to the research/education segment); probably the salary limitation will strongerly influence the competitiveness in occupying policy, altogether with the mirage (or not) of the increase in purchasing power.

In the vast majority of occupational families, there are projected increases in gross salary, according to the appendix of the law, but the discourse about net salary and purchasing power is quite different in the relevant literature. Thus, small wage increases may soon be swallowed by increases of the cost for the first necessity services (potable water, electricity and natural gas).

Concluding Remarks

As we have seen, EU imperative rules of law (in particular the provisions of the Treaty on the Functioning of the European Union, but also the regulation in taxation directives) create the necessary framework for monitoring public wage policies, in respect of the EU law and the powers of the European Union Member States competence to organize domestic public activities.

In Romania, there is a new public wage law, offering a unique legal framework for the payment of the human resource involved in public sector activity. During the elaboration of the salary system, the fundamental principles were considered, thus ensuring a better correlation of the wage rights between all budgetary sectors / occupational families.

By implementing the new salary law for public sector in Romania, a new hierarchy of basic salaries was attempted, both among different fields of activity and within the same field, depending on the complexity and importance of the activity carried out. This emerged from the desire to practice a transparent and fair pay system, like the German system.

The Romanian public wage law, at the formal level, emerged in the context of the economic crisis as a measure to make some savings to the budget, meant to reduce the "bloated bill" of the personnel expenses. The current context should hopefully create a more solid regulation and we believe that the law is welcome, and we expect it to be seen and implemented for all occupational families. Soon, the effects of its coming into force will generate the increase of the purchasing power for the citizen personal budgets, if the economic context does not change.

It is an important moment in terms of regulating the salaries of the budgetary sector and is a plus of confidence in the medium-term evolution of the minimum wage in the economy and which, according to the law, in order to overcome the gap to the comparable countries in the region by 2023.

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