

# SOME ASPECTS REGARDING INSOLVENCY OF ADMINISTRATIVE-TERRITORIAL UNITS FROM THE PERSPECTIVE OF LAW NO. 273/2006 AND GOVERNMENT EMERGENCY ORDINANCE NO. 46/2013

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## Abstract

*The presumption that administrative-territorial units as legal persons under public law are always solvent, proves not to hold true for periods such as the economic crisis that Romanian society goes through, which produces negative repercussions not only in the activity of private entrepreneurs but also on local budgets.*

*In this context, the study makes an analysis of the regulatory framework established by Law no. 273/2006 on local public finance in the field of financial crisis and insolvency matters of administrative-territorial units, with consequent modifications and additions, and by Government Emergency Ordinance no. 46/2013 on financial crisis and insolvency of administrative-territorial units, respectively.*

**Keywords:** *private law; administrative-territorial units; insolvency; financial crisis; financial recovery*

## 1. Introductory Considerations

Litigation where administrative-territorial units are made to pay certain amounts of money as a result of failure to fulfill or of defective fulfillment of contractual obligations, no longer represent novelty in the Romanian administrative and legal landscape. Legal practice demonstrates that the administrative-territorial legal status is far from representing a circumstance that would qualify administrative-territorial units as being privileged in litigations they are part of, and consequently these have to pay compensation, default fees or comminatory damages as any other private entity.

The current economic crisis worsens the issue of debts accumulated by administrative-territorial units, which can determine legal incapacity of payment, and determines us to approach an issue that becomes every day a more and more tangible reality: can administrative-territorial units be declared insolvent?

A possible answer to this question implies, first of all research into the specific legal framework (if this exists and is currently applicable), and secondly, research on the consequences that the insolvency procedure has upon administrative-territorial units from the perspective of their legal status and legal competences.

In a synthetic presentation, the legal framework regarding administrative-territorial units is represented by the Law of local public administration no.

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215/2001, that was republished, modified and added to<sup>1)</sup>, which provides that both *communes and cities, municipalities and counties are administrative-territorial units where local autonomy is exercised and public administration local authorities are organized and carry out their function.*

Administrative-territorial units are public law legal entities<sup>2)</sup>, and possess the following characteristics:

- they have full legal capacity and their own *patrimony*<sup>3)</sup>;
- are legal subjects of fiscal law, own company *registration code* and *accounts* created at the local treasury and banks;
- have rights and obligations that result from agreements regarding administration of public and private domain goods or from other legal relationships with private individuals or legal entities;
- in court, they are represented by the Mayor, or depending on the case, by the President of the Local Council.

Firstly, it needs to be mentioned that the local public administration authorities that are organized and function in administrative-territorial units (communes, cities, municipalities, and counties) are, as follows: communal, city, and municipality local councils as deliberative authorities, and Mayors and local councils presidents as executive authorities. Their mission is to achieve local autonomy in administrative-territorial units, that is, to solve public issues in communes and cities<sup>4)</sup>.

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<sup>1)</sup> Law of local public administration no. 215/2001, published in the “Official Gazette of Romania”, Part I, no. 204 of 23 April 2001, republished in the Official Gazette of Romania, Part I, no. 123 of 20 February 2007, with consequent modifications and additions.

<sup>2)</sup> See art. 21 of Law no. 215/2001, republished, with consequent modifications and additions; we also mention the provisions of the new Civil Code, art. 189 which provides that “Legal entities can belong to Public or Private Law”, and details of this legal provisions are to be found in Title IV of the new Civil Code.

<sup>3)</sup> To this purpose, see art. 5 paragraph 1 of Government Ordinance no. 53/2002 on the Framework-status of administrative-territorial unit, published in the “Official Gazette of Romania”, Part I, no. 633 of 27 August 2002; Government Ordinance no. 53/2002 was endorsed with modifications and additions through Law no. 96/2003, published in the “Official Gazette of Romania” Part I, no. 195 of 26 March 2003; we also consider relevant provisions of art. 31 of the new Civil Code, which provides as general norm that “Any private individual or legal entity owns a certain patrimony”.

<sup>4)</sup> For details regarding local autonomy as a principle of organization and functioning of local public administration, see A. Iorgovan, *Tratat de drept administrativ*, volume 1, 4<sup>th</sup> edition, All Beck Publishing House, Bucharest, 2005, pp. 770-782; V. Vedinaș, *Drept administrativ*, 7<sup>th</sup> edition, revised and updated, Universul Juridic Publishing House, Bucharest, 2012, pp. 425-429; R.N. Petrescu, *Drept administrativ*, Hamangiu Publishing House, Bucharest, 2009, p. 56; I. Nedelcu, *Drept administrativ și elemente de știința administrației*, Universul Juridic Publishing House, Bucharest, 2009, pp. 260-261; B. Vasilescu, *Drept administrativ*, Bachelor’s degree course, 2<sup>nd</sup> edition, Universul Juridic Publishing House, Bucharest, 2011, pp. 245-249; M. Voican, *Principiile cadru ale administrației publice locale*, Universul Juridic Publishing House, Bucharest, 2008, pp. 50-83.

## **2. Normative acknowledgement of financial crisis and insolvency situations of administrative-territorial units, by Law no. 273/2006 on local public finance and Government Emergency Ordinance no. 46/2013. Procedure and applicability**

According to provisions of art. 2 pt. 38 of Law no. 273/2006 on local public finance<sup>5)</sup>, *insolvency* represents the *incapacity of an administrative-territorial unit to fulfill its outstanding liabilities, except for those in contractual litigation*.

It should be noted that the law allots an entire chapter to insolvency of administrative-territorial units (Chapter 6), and to another situation that is regulated by law for the first time, that of financial crisis of administrative-territorial units, which, according to the law proceeds insolvency.

Concretely, art. 74 paragraph 1 of the law as modified by Government Emergency Ordinance no. 46/2013<sup>6)</sup>, provides that the administrative-territorial unit is considered to be in *financial crisis* if it is in one of the following situations:

a) failure to fulfill legally enforceable payment obligations, past due 90 days, which represent over 15% of the general budget of the respective territorial-administrative unit, with the exception of debts that are subject to commercial litigation;

b) failure to pay salary rights provided in the income and expenditure local budget or in the budgets of institutions or public services of local or county interest, for over 90 days past due date;

From a *procedural* point of view the financial crisis situation are intimated by:

- the main credit release authority of the administrative-territorial unit,
- the head of the finance-accounting department of the internal apparatus of the administrative-territorial unit,
- secondary and tertiary credit release authorities within the public services subordinated to the local council,
- managers of private companies or of state-owned companies that are subordinated to the local council
- different creditors,
- the head of County Public Finance Directorate, respectively of Bucharest Public Finance Directorate,
- territorial bodies of the Court of Accounts.

The intimation is addressed to:

- County Public Finance Directorate, or Bucharest Public Finance Directorate
- the main credit release authority of the administrative-territorial unit in financial crisis the main credit release authority of the administrative-territorial unit.

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<sup>5)</sup> Law no. 273/2006 on local public finance, published in the “Official Gazette of Romania”, Part I, no. 618 of 18 July 2006, with consequent modifications and additions.

<sup>6)</sup> Government Emergency Ordinance no. 46/2013 on financial crisis and administrative-territorial units, published in the “Official Gazette of Romania”, Part I, no. 299 of 24 May 2013.

Within 30 days from the application filed by any interested person, the main credit release authority of the administrative-territorial unit has the obligation to provide the economic-financial situation and conclude whether the administrative-territorial unit is in one of the legal situations of financial crisis.

The main credit release authority of the administrative-territorial unit (Mayor, president of the county Council), from the office or after the intimation of financial crisis was filed, has to summon the *deliberative authority* (local council, county council) the General Directorate of Public finance within 5 working days<sup>7)</sup>. The deliberative authority becomes *officially aware*, as provided by law, of the existence of the financial crisis, assigns the main credit release authority to draw up a financial recovery plan, and analyzes proposals to include in the financial recovery plan to be presented by the main credit release authority of the administrative-territorial unit. Although the law does not provide anything in this respect, it goes without saying that this procedural approach of the deliberative authority represents an administrative act of authority.

Moreover, the main credit release authority has the obligation to draw up a financial recovery plan in partnership with the General Directorate of Public finance and the committee for financial crisis situations<sup>8)</sup>, within 30 days from the date the deliberative authority declares financial crisis situation.

This financial recovery plan shall comprise economic-financial and budget planning over the period of financial recovery procedure, and shall include the following:

1. a presentation of the economic and financial situation of the administrative-territorial unit;
2. measures that insure performance of essential public services by local public administration authorities during the enforcement of the financial recovery plan;
3. measures to improve financial management and control mechanisms, which are necessary for efficient performance of essential public services;
4. measure to increase the collection of revenues, and to generate supplementary revenues;
5. measures to reduce expenditure;
6. economic, financial and budget planning for the financial recovery procedure, which shall comprise:

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<sup>7)</sup> We indicate that the obligation of the credit accountant to apprise the General Directorate of Public finance was distinctly introduced by the deliberative authority by means of Government Emergency ordinance no 46/2013.

<sup>8)</sup> The committee for financial crisis situations was introduced by means of Government Emergency Ordinance no. 46/2013; it should be noted that through the ordinance, this committee gained important responsibilities in controlling the execution and performance of measures provided in the financial recovery plan, as the ordinance modified provisions of art. 74 paragraph 8 of Law no. 273/2006.

- a) analysis of all budget revenues and expenditures, recommendations made to increase revenues and decrease expenditures, drafting rectifications of the local budget;
- b) protection of revenues and expenditure for the current year and for the following two years;
- c) reorganization of the executive, of the organization and management of the Mayor's and County Council specialized staff, of public services and institutions of local or county interest;

7. setting up tasks for the performance of provisions in the financial recovery plan, that are based on objectives, responsibilities and deadlines.

Moreover, the changes and additions to Law no. 273/2006 incurred by the Government Emergency Ordinance no. 63/2010 approved by Law no. 3/2011, introduced important facilities for administrative-territorial units that are in financial crisis or insolvency proceedings and seeking loans or guarantees for local debt refinancing, under the financial or insolvency recovery plan. Specifically, we refer to the provisions introduced by paragraphs 4<sup>1</sup>, 4<sup>2</sup> of art. 63 of Ordinance no. 63/2010, as follows: “(4<sup>1</sup>) Administrative-territorial units/subdivisions that have been overdue payments at 31 December of the previous year, were not paid until the request opinion of local Commission of approval the local loans, or have been operating deficit at the end of the section prior to the application, not entitled to the contracting or guaranteeing of loans. (4<sup>2</sup>) *Are exempt from the provisions of paragraph (4<sup>1</sup>) territorial-administrative units/subdivisions that are in financial crisis or insolvency proceedings and seeking loans or guarantees for local debt refinancing, under the financial or insolvency recovery plan.*”

The financial recovery plan is filed for approval by the deliberative authority within 3 working days from its drawing up, and it has to be adopted within 5 working days from its filing; if the financial recovery plan is not adopted, the deliberative authority assembles to reanalyze it within 3 working days from the previous debate session.; if the financial recovery plan is not adopted, than it is considered endorsed in the form proposed by the initiator.

According to art. 74, paragraph 12 of Law no. 273/2006, modified by Government Emergency Ordinance no. 46/2013, upon the request of the main credit release authority and with the consultative approval of the committee for financial crisis situations, the deliberative authority can declare termination of financial crisis by enactment of a resolution, in the following situations:

- a) criteria that imply the existence of financial crises have not been evident for over 180 calendar days;
- b) criteria for declaring insolvency are fulfilled, thus the administrative-territorial unit undergoes the insolvency procedure, as provided by law.

The financial crisis situation, and its termination, respectively needs to be registered within 5 days from declaring the financial crisis situation, by the main

credit release authority, from approval of termination of the financial crisis situation, respectively, in the local *registry of financial crisis situations of administrative-territorial units*, which is *managed by the County Public Finance Directorate or the Bucharest Public Finance Directorate*. These shall report monthly the situations of entrance into or termination of financial crises registered with the Ministry of Public Finance, for them to be included in the national registry of financial crisis situations of administrative-territorial units.

Insolvency represents the situation where the administrative-territorial unit patrimony encounters financial difficulties, characterized by acute lack of liquidity, which leads to the inability to pay debts as they fall due for a certain period of time.

Presumption of insolvency exists in the following cases:

a) failure to fulfill legally enforceable payment obligations, past due 120 days, which represent over 50% of the general budget of the respective territorial-administrative unit, with the exception of debts that are subject to commercial litigation;

b) failure to pay salary rights under employment relations and provided in the income and expenditure budget, for over 120 days past due date;

It becomes easily noticeable, that Government Emergency Ordinance no. 46/2013 brings about important modifications to legal provisions of Law no.273/2006, which regulates situations of insolvency presumption. As an example, we mention that if prior to the coming into force of the ordinance, insolvency presumption existed when failing to pay any salary rights, the ordinance confines this situation to cases where there is "failure to pay salary rights under employment relations". From our point of view this wording implies that there is no insolvency presumption in the case of failure to pay salary rights under labour relations specific to the civil servant position. However, we point out that the condition for unpaid salary rights to be provided in the income and expenditure budget for over 120 days past due date is still in force and provided in the ordinance.

The *opening* of insolvency procedure of an administrative-territorial unit can be filed at the court that has jurisdiction over the respective administrative-territorial unit, by:

a) any *creditor* or *group of creditors* that on the following legal conditions:

– has to recover one or more outstanding debts from an administrative-territorial unit,

– debts have a total value that represents over 50% of its budget for a period of 120 consecutive days.

Within 30 days of the request of any interested person, the main credit release authority of the administrative-territorial unit has the obligation to provide the economic-financial situation and the conclusion whether by law the administrative-territorial unit is in a state of insolvency.

b) the main credit release authority administrative-territorial unit, which has the obligation:

– to demand opening of insolvency procedure of an administrative-territorial unit, within 15 days from the establishment of the state of insolvency by filing an application at the court that has jurisdiction over the respective administrative-territorial unit;

– to notify creditors or any other interested persons of the opening of insolvency proceedings.

Premature, bad-faith introduction of the opening claim of insolvency procedure by the main credit release authority makes it legally liable for any prejudice caused to another party interested in this procedure.

By means of the *opening of the insolvency procedure decision* the syndic-judge shall appoint an *administrator*.

The administrator has the following obligation:

1. The obligation to draw up a recovery plan for the administrative-territorial unit, within 30 days of its appointment, with the assistance of the main credit release authority, the approval of the General Directorate of Public Finance and of the Territorial Chamber of Accounts. We point out that this obligation is explicitly mentioned in provisions of art. 75 paragraph 7 of Law no. 273/2006, and is worded according to the modifications made by Government Emergency Ordinance no.46/2013, which extends the role of the General Directorate of Public Finance in the administrative-territorial units insolvency procedure, to the approval of the insolvency recovery plan; we also emphasize a positive aspect in the fact that the Territorial Chamber of Accounts has a role in approving the insolvency recovery plan, as provided by Law no. 273/2006. By law, this institution possesses the legal obligation to exercise control in the execution and performance of measures included in the financial recovery plan, but according to the ordinance this no longer its obligation. We believe that this legislative modification is not welcome, if we take into account the legal powers of the Court of Accounts<sup>9)</sup>.

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<sup>9)</sup> The Court of Accounts is organized and functions based on provisions of art. 140 of the republished Romanian Constitution and Law no. 94/1992 on the organization and functioning of the court of Accounts, republished and added upon; the court of Accounts exercises control over the formation, administration and employment of financial resources of the state and of the public sector, providing Parliament, respectively public deliberative authorities of the administrative-territorial units, with reports on their use and administration, in accordance with the principles of legality, regularity, economy, efficiency and effectiveness – see Regulations on the organization and carrying out of specific activities of the court of Accounts, and the capitalization of the results of these activities (approved by the Decision of the Court of Accounts no. 130/2010, according to provisions of art. 11 paragraph 2 of Law no. 94/1992, republished), published in the “Official Gazette of Romania”, Part I, no. 832 of 13 December 2010; in terms of the control review by the Court of Auditors as a form of external administrative control, see I. Lazăr, *Jurisdicții administrative în materie financiară*, Universul Juridic Publishing House, Bucharest, 2011, p. 41.

2. The obligation to monitor the compliance with the insolvency recovery plan; if the plan is not followed the administrator shall recommend that the syndic-judge suspend the attributions of the main credit release authority of the administrative-territorial unit, and issue a decision for the administrator to take over the attributions of the main credit release authority.

3. The obligation to insure that over the period the insolvency procedure is carried out, essential public services are efficiently and effectively provided.

4. The obligation to recommend the syndic-judge to issue a termination of insolvency procedure sentence when termination of the insolvency situation of the administrative-territorial unit occurs.

5. The obligation to notify the main credit release authority, the creditors, and any other interested persons about the termination of insolvency procedure sentence.

The insolvency recovery plan shall include:

- a) measures to re-establish financial viability of the administrative-territorial unit;
- b) measures to preserve the essential services of the administrative-territorial unit during the insolvency period;
- c) the debt settlement plan.

The insolvency recovery plan shall be *endorsed* by the *local council*, within 10 days from its drawing up, and it becomes binding for both the deliberative authority and the main credit release authority of the administrative-territorial unit. If the local or county council decision is not endorsed within this period, the administrator shall recommend the syndic-judge to issue a decision for the administrator to take over the attributions of the main credit release authority

If termination of the state of insolvency is established, at the administrator's recommendation the syndic-judge shall decide on the *termination of the insolvency procedure of the administrative-territorial unit*.

Termination of the insolvency procedure results in a series of consequences, such as:

- the administrator is discharged of any duties or responsibilities towards the main credit release authority, the patrimony of the administrative-territorial unit, or towards creditors, with regard to the application of the procedure;
- the administrative-territorial unit returns to the status of financial crisis;
- the main credit release authority and the local council resume their attributions and shall carry on in accordance with the financial crisis procedures, in strictly implementing the financial recovery plan in order to remove the administrative-territorial unit from financial crisis.

The expenses generated by payment of the administrator's financial rights and carrying out of the insolvency recovery procedure are expenses of the administrative-territorial unit and are consequently paid from its budget.

The opening and termination of the insolvency procedure shall be registered within 5 days from the declaration of insolvency situation, respectively, from the



notification of the legal decision of termination of the procedure by the main credit release authority, in the local registry of insolvency situations of *administrative-territorial units*, which is managed by the County Public Finance General Directorates or the Bucharest Public Finance General Directorate. These shall report monthly on the insolvency opening and termination procedures registered with the Ministry of Public Finance, to be included in the *national registry of insolvency situations of administrative-territorial units*.

However, we notice that according to art. 85 corroborated with art. 86 paragraph 1 letter b, of Law no. 273/2006, the Ministry of Administration and Interior and the Ministry of Public Finance had the obligation to issue within 6 months from the coming into force of Law no. 273/2006 the special bill on the *application procedure of provisions of art. 74 and 75 on the financial crisis and insolvency of administrative-territorial units*, art. 74 and 75, which is to come into force only *when this special law shall come into force*.

Although all circumstances instituted by Law no. 273/2006 promised an imminent enactment of the law regarding financial crisis and insolvency of territorial-administrative units, we notice that it was only in 2013 that a legislative solution which we consider to be a legal compromise with regard to the enactment of Government Emergency Ordinance concerning financial crisis and insolvency of administrative-territorial units, was found.

### **3. Some constitutional controversies concerning Government Emergency Ordinance no. 46/2013**

The preamble of the ordinance invokes provisions of art. 85 of Law No.273/2006, according to which, within 6 months of its coming into force, the Ministry of Administration and Interior, and the Ministry of Public Finance had the obligation to draft the special law bill regarding financial crisis and insolvency of territorial-administrative units; moreover, other aspects are invoked in order to justify the issuing of other emergency ordinances related to this field, such as: the over-load of arrears to be paid by administrative-territorial units/subdivisions to goods, services and works suppliers; the necessity to resuscitate the activity of suppliers of goods, services, and works who need to recover debts from local public administration authorities in the form of arrears; provisions of the Stand-by Agreement between Romanian and the International Monetary Fund, concerning the reduction of arrears to be paid by administrative-territorial units/subdivisions; the necessity to regulate the procedure on financial crisis and insolvency of territorial-administrative units/subdivisions; the involvement of authorized institutions in the economic financial recovery of territorial-administrative units/subdivisions that deal with financial crisis and insolvency situations; right

and obligations of territorial-administrative units/subdivisions creditors, as well as the rights and obligations of local public administration authorities<sup>10)</sup>.

As shown in the preamble, all these represent aspects that are of public interest and represent emergency, out-of-the-ordinary situations whose regulations cannot be delayed. On the other hand, failure to enact the emergency ordinance will lead to failure to perform the arrangements made with international financial bodies, which in turn, will trigger negative consequences.

Although arguments invoked in the preamble of the emergency ordinance are pertinent, in our point of view, complete enforcement of provisions of Law no. 273/2006 is only possible by enacting a special law in the field due to at least two aspects.

First of all, art. 85 corroborated with art. 86, paragraph 1, letter b of Law no. 273/2006 specifically mention a “*special law regarding the enforcement procedure of provisions of art. 74 and 75 concerning financial crisis and insolvency of territorial-administrative units*”, not the regulating of this issues by emergency ordinance.

Secondly, the discussion revolves around the constitutionality of regulating situations of financial crisis and insolvency of territorial-administrative units by emergency ordinance, in relation to provisions of art. 72, paragraph 3, letter o of the Constitution of Romania, which provides that “organization of local public administration, of territory, as well as the general rule regarding local autonomy” is regulated by organic law. Thus, according to some points of view “emergency ordinances must not intervene in the field of organic laws, since this is an essential condition of their constitutionality<sup>11)</sup>. Furthermore, the Government’s exercise of legislative authority by means of emergency ordinances, grounded in art. 115 paragraph 4 of the Constitution, is limited by the cases mentioned in paragraph 6, as emergency ordinances cannot be adopted in the field of constitutional laws; cannot affect the general rule of fundamental institutions of the state, rights, liberties and duties provided by the Constitution, election rights; cannot include measures that are aimed at forced conveyance of goods into public property. However, doctrine states that the jurisprudence of the Constitutional Court in the field of limitations in the exercise of legislative authority by emergency ordinances has proven to be peculiar, in the sense that the

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<sup>10)</sup> For a minute analysis of the necessity to motivate regulatory administrative acts, mainly from the perspective of Law no. 24/2000 regarding legislative technical norms for issuing regulatory documents, as well as community documents belonging to this field (art. 296 of the consolidated Treaty on the Functioning of the European Union, art. 41 of the Charter of Fundamental Rights of the European Union, respectively), of jurisprudence of the Court of Justice of the European Union, respectively- see C.R. Vlaicu, *Birocrație și procedură în administrația publică*, Universul Juridic Publishing House, Bucharest, 2012, pp. 167-173.

<sup>11)</sup> For details, see A. Varga, *Ordonanțele guvernamentale*, in “Revista Transilvană de Științe Administrative”, no. 2 (11)/2004, pp. 157-164.

Constitutional Court attempted a grammatical interpretation of the terms used by the law-maker, which is problematical and unclear<sup>12)</sup>.

Irrespective of debates on the constitutionality of issuing Government Emergency Ordinance no. 46/2013, we observe the positive aspects of its enactment, since regulation of financial and insolvency recovery procedures for administrative-territorial units, represents in our view support in surviving the current severe economic crisis which deeply affects local budgets.

Therefore, besides the modifications and completions brought to Law no. 273/2006, which have already been mentioned, the ordinance comprises a series of other regulations that have positive effects upon local budgets; they provide protection measures for territorial-administrative units in the insolvency of administrative-territorial units procedure. Thus "On the initiation of the procedure all legal or extra-legal actions for recovery of debts from administrative-territorial units are suspended." (art. 66) respectively "No interest, increase, penalty or expenses of any type can be added to the previously created debts or consequent to the initiation of the procedure, that are not guaranteed with mortgage, deposit or other real movable guarantee or right of lien of any type, or to unguaranteed parties from debts guaranteed with such warrantees, from the date the procedure is initiated"(art. 68).

One the other hand, what should be noted is the public document characteristic of the local Registry of insolvency situations of administrative-territorial units, which inventories all insolvent administrative-territorial units, and is managed by the General Directorates of County Public Finance. In our opinion, the public document characteristic proves the application of the unanimously acknowledged principle of transparency and free access to public interest information in the fields regulated by Government Emergency Ordinance no. 46/2013. Furthermore, according to the last part of art. 52 paragraph 1 of the ordinance, this Registry is permanently updated on the web page of the Ministry of Public Finance<sup>13)</sup>.

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<sup>12)</sup> D.C. Dănișor, *Intelegerea trunchiată a competenței exclusive a Curtii Constitutionale în domeniul contenciosului constitutional--(II). Partajul competentelor de justitie constitutională în raport cu distingerea validității de conformitate*, în "Pandectele Române" no. 3/2011, pp. 31-32.

<sup>13)</sup> Which in our opinion, represents a form of materialization of public administration transparency, as well as that of the innovative concepts of *e-administration* and *e-government*, established in European Union Law, and which can be directly and immediately implemented in our domestic law; for doctrinarian establishment see E.L. Cătană, *Principiile buneii guvernări. Evoluții europene și studii comparative*, Universul Juridic Publishing House, Bucharest, 2009, pp. 86-94; D. Sabău, *E-government – A theoretical Framework*, in Dragoș, Neamțu&Hamlin (eds.), "Law in Action: Case Studies in Good Governance", Institute for Public Policies and Social Research, Michigan State University, East Lansing, Michigan, 2011, pp. 189-190; A.-C. Baciuc, A.-M. Codreanu, *Perspectives on Transparency and E-Government in Selected Local Administrations*, in Dragoș, Neamțu&Hamlin (eds.), "Law in Action: Case Studies in Good Governance", Institute for Public Policies and Social Research, Michigan State University, East Lansing, Michigan, 2011, pp. 225-254.

#### 4. Conclusions

Although the Law no. 273/2006 on local public finance, with recent changes and additions have occurred through the Government Emergency Ordinance no. 63/2010 approved by Law no. 3/2011, includes provisions related to financial crisis and insolvency of administrative-territorial units, these prove to be inapplicable if their coming into force is conditioned by the coming into force of a special law on financial crisis and insolvency of administrative-territorial units.

Even though all circumstances instituted by Law no. 273/2006 promised an imminent enactment of the law regarding financial crisis and insolvency of territorial-administrative units, we notice that it was only in 2013 that a legislative solution related to the enactment of Government Emergency Ordinance concerning financial crisis and insolvency of administrative-territorial units, was found.

Despite the fact that it does not represent the optimal legislative solution in the current constitutional context, the enactment of Government Emergency Ordinance no. 46/2013 is to be valued, first of all because of the preventive role of the regulatory procedure to be applied in financial crisis situations, and secondly because its application could prevent administrative-territorial units from going into insolvency.

Since the administrative-territorial unit represents the local collectivity, and the patrimony of the administrative-territorial unit does not belong to elected local public authorities but to the collectivity itself, and there is a feeling of collective “shame” generated by such a situation, we are of the opinion that the negative social impact of an administrative-territorial unit in financial crisis or insolvency is certain.

There is also another great certainty: there is the need for a regulatory framework that regulates financial crisis and the possibility for administrative-territorial units to become insolvent, for the regulation of financial and insolvency recovery procedures that would protect administrative-territorial units which have to undergo the current economic crisis, and whose effects directly affect local budgets.

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