

The Interdependent Relationship Between Administrative Law and Other Legal Fields. Challenges and Legal Solutions in Electronic Invoicing

Associate professor **Marta Claudia CLIZA**¹

Assistant professor **Constantin-Claudiu ULARIU**²

Abstract

Administrative law stands as one of the oldest and most established branches of legal science. Over time, it has generated intense and meaningful scholarly and jurisprudential debate regarding its defining elements — discussions aimed at outlining its structural framework, identifying its core legal institutions, and establishing its intrinsic connections with other branches of law. These efforts have also underscored the practical relevance of fundamental legal tools rooted in this essential area of public law. Despite sustained doctrinal and judicial efforts to articulate a coherent and functional system of administrative law, ongoing and relevant legal debates continue to emerge. A particularly dynamic area of discussion centers on the relational configuration of administrative law institutions in conjunction with those from other regulatory domains, which pertain to both public and private law within the Romanian normative and institutional system. At present, an important and unresolved challenge lies in identifying and analyzing the legal and jurisprudential issues that arise from applying administrative law instruments, especially when these instruments significantly impact legal concepts and institutions from other areas of the law. These interactions not only affect public law but also extend into the domain of private law, where administrative measures often intersect with contractual, fiscal, and commercial legal frameworks. This article aims to conduct a thorough and systematic analysis — both inductive and deductive in method — of the legal instruments currently at the center of doctrinal debate. In doing so, it seeks to reflect a broad range of intellectual and normative challenges associated with the implementation of administrative law mechanisms, particularly in relation to other legal institutions in the context of enforcing electronic invoicing within the national economic framework.

Keywords: challenge, normative reflection, legal resonance, structural relationship, administrative law, legal fields.

JEL Classification: K23, K34

DOI: <https://doi.org/10.62768/ADJURIS/2025/4/09>

¹ Marta Claudia Cliza - "Nicolae Titulescu" University of Bucharest; Lawyer at Bucharest Bar Association, Romania, ORCID: <https://orcid.org/0000-0001-7021-8249>, cliza_claudia@yahoo.com.

² Constantin-Claudiu Ulariu - "Nicolae Titulescu" University of Bucharest; Judge at Bucharest Tribunal, Romania, ORCID: <https://orcid.org/0009-0009-3063-6601>, claudiu_ulariu@yahoo.ro.

Please cite this article as:

Cliza, Marta Claudia & Constantin-Claudiu Ulariu, „The Interdependent Relationship Between Administrative Law and Other Legal Fields. Challenges and Legal Solutions in Electronic Invoicing”, in Takemura, Hitomi & Steve O. Michael (eds.), *Public Law at the Crossroads of Technology, Jurisprudence and Governance in Contemporary Europe*, ADJURIS – International Academic Publisher, Bucharest, Paris, Calgary, 2025, p. 125-139.

1. Introduction

In the context of a natural socio-economic and legislative evolution closely aligned with the regulatory framework of the European Union, recent Romanian legislation has introduced a series of normative provisions aimed at implementing best practices in the area of establishing uniform standards for electronic invoicing. These provisions outline a legal and structural framework for recording economic transactions between two professionals (economic operators) in the form of a juridical act with a mixed structure, known as the electronic fiscal invoice.

The issuance of fiscal invoices holds essential legal, economic, and fiscal significance in any democratic society, and the member states of the European Union are no exception in this regard.

The legal rationale behind issuing fiscal invoices lies in the regulation of the economic system for the transfer of goods, services, and capital from one legal subject to another. This is achieved by recording these financial operations within the national fiscal system, thereby ensuring not only an accurate account of such legal transfer acts and economic relations but also a fair and objective system of fiscal imposition. This fiscal reflection must correspond to the real economic activity of the operators involved, materialized through the obligation imposed on businesses to effectively and accurately pay all taxes and duties owed to the state, based on the economic and financial operations in which they have participated and from which they have generated taxable income.

2. Defining the Concept and Legal Nature of the Electronic Fiscal Invoice

From the perspective of its legal meaning, a fiscal invoice is a document through which an economic operator, whether a legal entity or an authorized individual, as taxable subjects, reveals the list of goods sold or services provided, through which they have obtained taxed income.

All taxpayers registered in the national economic-legal system are required to issue a fiscal invoice to their clients, under the conditions where a series

of transactional relationships are structured between them, based on which economic agents transmit or purchase a series of goods and services expressible in monetary terms.

The fiscal invoice contains, in essence, details such as the goods sold, the quantity, the taxable value, and the taxes levied.

In most legislations in Western countries, the fiscal invoice is the main document based on which clients can request the tax credit for the value-added tax (VAT) paid (input tax credit).

As highlighted in legal doctrine, *"the mechanism through which the tax paid for purchases (input supplies) is offset with the tax owed for sales (output supplies) is known as tax credit. VAT legislation provides the possibility of benefiting from a tax credit not only for goods and services consumed as inputs but also for capital goods. This available tax credit is reflected in the taxpayer's electronic credit register, available on the official GST portal. Expenses not related to economic activity are not eligible for tax credit"*³.

From the perspective of Romanian law, the fiscal invoice is the fiscal document established by Article 319 of the Fiscal Code, which must be issued by any taxable person, in the context of their participation in an economic activity carried out on the free market, and which materializes in any message or document in written form or issued electronically, with the only condition being to contain specific information related to the delivery of goods and the provision of services.

Therefore, the fiscal invoice represents, both in the specific domain of Romanian law and in the legal order of democratic Western countries, an element that reveals economic and financial operations, based on which the state, through its specialized institutions, can and must determine and apply taxes and duties provided by law.

However, in relation to the postmodern economic and social developments of the world's states, which involved the unprecedented development of complex international trade mechanisms, where electronic payment methods, investments in virtual currencies, and off-shore investment systems have created the need for national fiscal bodies in every country to adapt to these contemporary developments, from the perspective of how their fiscal systems align with these technological and financial, unconventional and accelerated developments.

From this perspective, an inherent and inevitable adaptation of the fiscal system required the adoption of complex and interrelated legislation within the European Union, aiming to implement the system of electronic fiscal invoices.

Thus, the preamble of Directive 2014/55 of the European Parliament and

³ Shama Banu, Sana Ara, Shambhavi S M, Kavitha J. (2024), „Research on the GST's Input Tax Credit”, *International Journal of Novel Reserch and Development*, vol. 9, no. 6, <https://www.ijnrd.org/papers/IJNRD2406133.pdf>, accessed on 08.05.2025.

the Council⁴ recognized the necessity of ensuring legal lexicon interoperability as well as best fiscal practices through the use of electronic invoicing in public procurement, in order to stimulate fiscal optimization for national budgets, reduce environmental impact through the use of paper invoices, and reduce administrative burdens imposed by issuing and verifying invoices edited on paper.

In this regard, according to Article 2, paragraphs 1 and 2 of the Directive, an "electronic invoice" is defined as *"an invoice issued, transmitted, and received in an electronic structured format that allows its automatic and electronic processing,"* while *"the main elements of an electronic invoice" include "a set of essential information components that an electronic invoice must contain to allow for cross-border interoperability, including the information necessary to ensure legal compliance"*.

Additionally, in accordance with the provisions of Article 6 of the Directive, the main content requirements for the electronic invoice include, inter alia, process and invoice identifiers, invoice period, relevant information about the seller and buyer, the payment beneficiary, and the fiscal representative of the seller, contract identification, details regarding the delivery of goods and services rendered, data regarding credit and debit, item positions, and invoice totals.

Furthermore, in the preamble of Directive 2006/112 of the European Parliament and the Council⁵, the principle was established that the implementation of a national electronic invoicing system within all EU member states would *"allow tax authorities to carry out their monitoring activities"*.

A proper administration of the fiscal invoicing system is not only a rhetorical and conciliatory goal but aims at a specific and significant impact on the national fiscal system, including the shaping of viable *"monetary and fiscal policies suitable for stabilizing the exchange rate of the national currency"*⁶.

In accordance with French specialized literature, we appreciate that the requirement for implementing a coherent issuing and verification system aims at the practical finality that *"member states can establish a later due date for the moment the taxable event occurs, in the case of issuing invoices or in cases where invoices are not issued or are issued late, within a certain period calculated from the taxable event date"*⁷.

As a consequence, following the adoption of these secondary regulations in EU law, Romania has adopted a normative framework for implementing these

⁴ Regarding electronic invoicing in the field of public procurement, published in the Official Journal of the European Union L 133/1.

⁵ Regarding the common system of value-added tax, published in the Official Journal of the European Union L 347/06.

⁶ Edamisan Stephen Ikuemonisan (2024), „Challenges and strategies in Nigerian agribusiness entrepreneurship for sustainable development”, *CABI Agriculture and Bioscience*, 5, 115, doi.org/10.1186/s43170-024-00303-5.

⁷ Pierre Di Malta (1995), *Droit fiscal européen comparé*, Ed. PUF, Paris, p. 331.

European goals in structuring the procedures for implementing the electronic invoice in the national fiscal structure, as outlined in Emergency Ordinance No. 120/2021⁸.

Thus, by the provisions of Article 10 paragraph (1) and Article 101 of the same normative act, it is established, for contractual relationships between taxable persons established in Romania according to Article 266 paragraph (2) of Law No. 227/2015, with subsequent amendments, for goods deliveries and service provisions taking place in Romania, that *"the issuer of the electronic invoice is obliged to transmit it to the recipient using the national electronic invoicing system RO e-Factura"*.

By the provisions of Article 105 of OUG No. 120/2021, however, several exceptions to this rule are established, with some taxable persons explicitly exempted from this obligation as provided by the aforementioned norm.

According to the provisions of Article 4 paragraph (2) of the same ordinance, the electronic invoice must contain, in principle, the following requirements: a) process and invoice identifiers; b) invoice date; c) information identifying the economic operator who delivered the goods/products, provided the services, or carried out the works; d) information about the recipient of the electronic invoice; e) information about the payment beneficiary; f) information about the fiscal representative of the issuer; g) identification of the type of goods/products delivered, services provided, or works executed; h) reference to the public/sector procurement contract, concession contract for works and services, and, where applicable, defense and security procurement contracts; i) details regarding the execution of works, delivery of goods/products, or provision of services; j) payment instructions; k) information regarding credit or debit; l) information on invoice items; m) breakdown of VAT; n) total invoice amount.

Furthermore, according to the provisions of Article 132 paragraph (1) letter d) of OUG No. 120/2021, failure by economic operators established in Romania to comply with the provisions regarding the transmission of invoices issued in the national electronic invoicing system RO e-Factura, starting from July 1, 2025, for one or more invoices whose transmission deadline in the national system occurs within a calendar month, constitutes an offense.

This is the current domestic regulatory framework. We note that it is fully up to the competent authorities of the Romanian state how they choose to transpose the provisions of Directive 2014/55 into the domestic legal system. This EU member state enjoys a privileged position in terms of analyzing and evaluating the national factors influencing how economic operations and financial transac-

⁸ Regarding the administration, operation, and implementation of the national system for the RO e-Factura electronic invoice and electronic invoicing in Romania, published in the Official Gazette, Part I, No. 960 of October 7, 2021.

tions, whose execution must be reflected in the content of a fiscal invoice in electronic form, are highlighted.

In this regard, it has been noted that, in principle, *"fiscal competence and fiscal power, which characterize fiscal sovereignty, belong, as a principle, to member states"*⁹.

However, although Romania's right to appreciate and choose is discretionary, in accordance with general principles of administrative law, reflecting the public authority regime under which such decisions to implement the electronic invoicing system are made, it cannot be arbitrary or disproportionate.

In this regard, the Court of Justice of the European Union ruled that, in exercising their competences, member states *"cannot adopt or implement national provisions that impair the essential freedoms protected by the European Treaties. The scope of EU law is indeed broader than the competences of European authorities, so it cannot be argued that the absence of exclusive fiscal competence or the weakness of harmonization and cooperation in certain areas means that states have absolute freedom in direct taxation ... Consequently, and regardless of the absence of explicit provisions in the European Treaties, the Court of Justice prohibits all national fiscal measures that, due to direct or indirect discrimination or any other reason, restrict the freedom of movement of European taxpayers"*¹⁰.

The justification for introducing the electronic invoice system into domestic legislation cannot therefore be solely based on a suspicion of fiscal regulators regarding the non-reporting of taxable income in an accurate, fair, and timely manner by economic agents, for the purpose of establishing a coherent and fair tax system, appropriately carried out by the competent fiscal authority, to reduce the rate of tax evasion within the national economic-financial system.

In relation to this aspect, doctrine has emphasized that *"a loss or expense can only be deducted from the taxable result to the extent that it is proven regarding its reality and its amount. However, when a business justifies an expense recorded through an invoice, it is up to the administration to establish the fictitious nature of the operation. Moreover, certain formal conditions are required for evidentiary purposes. Indeed, businesses are required to provide, in support of their declaration regarding their results, a detailed statement of the different categories of general expenses when their amount exceeds the values established by an order of the Minister of Finance"*¹¹.

Therefore, the good faith of taxable persons, in the manner of declaring

⁹ Alexandre Maitrot de La Motte (2022), *Droit fiscal de l'Union européenne*, 3rd edn., Ed. Bruylant, Bruxelles, p. 27.

¹⁰ CJUE, case C-446/04, Test Claimants in the FII Group Litigation, EU:C:2006:774.

¹¹ Olivier Débat, Patrick Serlooten (2019), *Droit fiscal des affaires*, 17th edn, Ed. Dalloz, Paris, p. 199.

taxed income, is presumed until proven otherwise, based on the general provisions of Article 447 paragraph (1) of the Administrative Code¹², related to the provisions of Article 14 paragraph (2) of the Civil Code¹³ and Article 12 paragraph (4) of the Fiscal Procedure Code¹⁴.

Thus, among the primary reasons for introducing the electronic invoice should be, in particular, ensuring transparency in the economic relationships between various taxpayers, ensuring the rapid processing of tax assessments by state fiscal authorities, and, ultimately, the recovery of claims from co-partners in the economic transaction, such as the recovery of VAT from the state.

In this regard, doctrine has noted that *"any taxpayer who performs operations that determine VAT liability is required to issue a dated and numbered invoice or an equivalent document. Failure to comply with this invoicing obligation is penalized with fines, and, on the other hand, the deduction of VAT by the client is only possible if it was invoiced to them. Electronic invoices have the same legal value as those issued on paper. The invoice is no longer defined by its material form or the quality of its content. Regarding the content, the invoice must obligatorily include, for each operation, the quantity, description, VAT rate, price excluding VAT of goods or services, and, for each rate, the total VAT amount"*¹⁵.

It is true that in our era, in which *"electronic commerce has revolutionized the business model of international trade, whether business-to-business or business-to-consumer"*¹⁶, it is almost impossible for tax authorities to maintain a clear record of economic transaction acts, and therefore, it is extremely difficult to determine the place where taxes are due by economic agents, as well as the amounts due in this regard.

For example, e-commerce companies, although their registered office is legally registered in some EU member states, nevertheless, the servers through which they conduct online sales operations are registered in tax havens, such as Panama, the Virgin Islands, Malta, etc.

Thus, there is a need to establish an integrated system for issuing, by these online merchants, electronic invoices with a precise and inevitable content, which will reveal to the state in whose territory the online commerce takes place, in this case Romania, the sums obtained as taxable income, which should be subject to fair and proportional taxation within the Romanian fiscal system, where it is necessary to tax the income that was generated even within the territory of our state.

To ensure an effective exchange of information between EU member

¹² Emergency Ordinance No. 57/2019, published in the Official Gazette, Part I, No. 555 of July 5, 2019.

¹³ Published in the Official Gazette, Part I, No. 505 of July 15, 2011.

¹⁴ Law No. 207/2015, published in the Official Gazette, Part I, No. 547 of July 23, 2015.

¹⁵ Olivier Débat, Patrick Serlooten, *op. cit.*, 2019, p. 706.

¹⁶ Philippe Malherbe (2015), *Éléments de droit fiscal international*, Ed. Bruylant, Paris, p. 69.

states regarding the determination of taxable income for taxpayers, Article 20 of Directive 77/799¹⁷ *"establishes the use of standardized forms and computerized formats, which must be used for all types of exchange. The use of these standard forms is accompanied by provisions regarding the use of the Common Communication Network (CCN), an electronic data exchange system. The communicated information must be transmitted, 'as far as possible,' electronically using this network. This reflects the Commission's intention to ensure that all fiscal systems use the same communication channel"*¹⁸.

From this perspective, the system for issuing fiscal invoices, established by OUG No. 120/2021, appears, at first glance, to be necessary and rational.

However, from other perspectives, we discern the emergence of delicate legal issues, for which a thorough and teleological analysis of the applicable legal norms and principles is required, which, as we will observe, have a multi-disciplinary legal nature.

3. Discriminatory Elements Contained in the Legal Provisions Regarding Electronic Invoicing

An integrated analysis of the provisions of Article 10 paragraph (1) and Article 10¹ paragraph (1) and (2) of Government Emergency Ordinance No. 120/2021 shows that these norms contain a dual form of functional differentiation between the various types of taxpayers operating in the Romanian economic market, in the sense that, on the one hand, the obligation for economic operators to issue electronic invoices and transmit the invoices issued in the national electronic invoicing system RO e-Factura does not take into account the legal form of these operators or the nature of their economic activities, nor does it consider their distinct financial strength.

Thus, the mentioned legal provision makes no differentiation between, on the one hand, companies, regardless of their form of organization, regulated by Law No. 31/1990 and other special laws, and, on the other hand, between authorized natural persons, who should benefit either from a longer grace period to implement this electronic invoicing system, or be exempted from this obligation, considering the particular legal nature of these types of taxable persons, as well as their relatively poor financial solvency, which may make it difficult for them to acquire the electronic invoicing systems and transmit them into the national fiscal system.

¹⁷ Regarding mutual assistance between the competent authorities of the Member States in the field of direct taxation and insurance premium taxation, published in the Official Journal L. 336 of December 27, 1977.

¹⁸ Michael Lang, Pasquale Pistone, Josef Schuch, Claus Staringer (eds.) (2013), *Introduction to European Tax Law on Direct Taxation*, 3rd edn., Linde, Vienna, p. 219.

In this regard, we note that it is not fair to equate an economic agent representing a multinational corporation registered in Romania, which has practically unlimited financial resources, with authorized natural persons or family businesses, whose adaptation to the new system was abrupt and lacked support, facilities, or information from state authorities with fiscal responsibilities.

On the other hand, the content of Article 5 of Government Emergency Ordinance No. 120/2021 reveals a categorical distinction between two categories of recipients of the cited legal provisions.

Thus, there is a clear distinction between the situation of economic operators established in Romania, according to Article 266 paragraph (2) of Law No. 227/2015, with subsequent amendments and additions, and the spectrum of economic operators not established in Romania, according to the aforementioned legal provisions, who do not voluntarily opt for using the national electronic invoicing system RO e-Factura.

For the first category of subjects, the provisions of Government Emergency Ordinance No. 120/2021 establish the immutable obligation to issue electronic invoices in public procurement, while, for operators not established in Romania, the obligation to issue invoices in electronic format and transmit them to the national system through the dedicated IT platform does not apply inevitably but only if they "opt for using the national electronic invoicing system RO e-Factura."

Moreover, regarding economic operators using electronic fiscal cash registers integrated into unsupervised equipment, such as vending machines that operate based on card payments, as well as note or coin acceptors (except those integrated into machines used for delivering energy products), for which the integration of the printing device and customer display is no longer mandatory according to the provisions of Article 3 paragraph (21) of Government Emergency Ordinance No. 28/1999¹⁹, with subsequent amendments and additions, they are exempted from the general obligation to issue electronic invoices under Article 10 paragraph (1), second thesis of Government Emergency Ordinance No. 120/2021.

For these subjects of law, the provisions of Government Emergency Ordinance No. 120/2021 do not provide any complementary clarification that would explain why the Romanian legislator opted to exclude them from the group of taxable persons required to issue invoices electronically and transmit these proofs of financial transactions into the national system for recording all fiscal invoices, for determining taxes and duties by the National Agency for Fiscal Administration.

¹⁹ Regarding the obligation of economic operators to use electronic fiscal devices, published in the Official Gazette, Part I, No. 75 of January 21, 2005.

However, for the merchants covered by the provisions of Article 3 paragraph (21) of Government Emergency Ordinance No. 28/1999, the only legal justification emerging from the national regulatory framework is that they operate integrated fiscal electronic devices that work on card payments.

Yet, card payments do not necessarily guarantee sufficient transparency for the economic operations carried out by these taxable persons, and, on the other hand, they do not necessarily mean that these fiscal transactions performed with an electronic financial-banking instrument (i.e., a card) are easily identifiable by the tax authority, so that the tax authority can determine in an integrated and timely manner the establishment of taxes, duties, and all contributions due to the general consolidated state budget.

Therefore, this exemption, along with others, raises doubts about the fairness of the legal implementation of the national electronic invoicing system, and seriously calls into question the equity of the entire legal framework currently being analyzed in this article.

By considering these discriminatory dysfunctions in the content of the legal norms regarding the implementation of the national electronic invoicing system and the electronic registration of economic operations carried out by private enterprises or state-majority or fully state-owned enterprises on Romanian territory, we will subject to a proper multi-disciplinary analysis the hypotheses in which these provisions, lacking natural integration in the internal legal order, could establish cases of discrimination.

As revealed in legal doctrine, *"the principle of non-discrimination is evidently and intrinsically linked to the concept of equality before the law. Indeed, when we think about what equality before the law means in a contemporary constitutional system, often the first thing that comes to mind is non-discrimination. Other aspects of the principle, such as respect for the doctrine of precedent and commitment to equal subjection before the law, are rarely seen as central or emblematic examples of it"*²⁰.

Also, one of the fundamental elements for the cohesion of legal rules drawn from the Agreement on the European Economic Area, which is similar to the rules of the Treaty on the Functioning of the European Union, is the prohibition of discrimination based on economic, social, or nationality grounds, promoting fundamental freedoms and competition rights in the economic field.

The Court of Justice of the European Union has stated that *"one of the main objectives of the Agreement on the European Economic Area is to ensure the fullest possible realization of the free movement of goods, persons, services, and capital throughout the European Economic Area, so that the internal market established within the European Union is extended to the EFTA [European Free*

²⁰ Michael P. Foran (2023), *Equality Before the Law Equal Dignity, Wrongful Discrimination, and the Rule of Law*, Ed. Hart Publishing, London, p. 28.

Trade Association] states"²¹.

Regarding this legal treatment inconsistency, the national case law has held that "*for a situation to be considered discriminatory, there must be two comparable situations where the treatment applied has been different. Subsequently, the differentiated treatment must aim at or have the effect of restricting or removing the recognition, use, or exercise, under equal conditions, of human rights and fundamental freedoms or of rights recognized by law in the political, economic, social, and cultural domains or in any other areas of public life*"²².

As for the meaning of discrimination, it is defined by the provisions of Article 2 paragraph (2) of Government Ordinance No. 137/2000²³.

Thus, this form of inequity refers to any differentiation, exclusion, marginalization, restriction, or preference, whether legal or purely factual, regarding a particular subject of law or a group of subjects of law, based on criteria of race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, disability, chronic non-contagious disease, HIV infection, membership in a disadvantaged category, as well as any other criterion that aims to or results in the loss, limitation, or diminishment of the recognition, use, or exercise, under equal conditions, of human rights and fundamental freedoms or of rights recognized by law, in the political, economic, social, and cultural domains or in any other areas of public life.

Therefore, the institution of discrimination, including in administrative and fiscal law, is distinguished by creating a distinctive situation, either negative or positive, between an individual and another or between one category of citizens and another, based on criteria that are not objective and justifiable²⁴.

In this case, a "*unique logic that could explain why discrimination is wrong*"²⁵ can be identified.

From the analysis of this legal institution, it appears that its legal structure differentiates and combines a series of multi-disciplinary principles, including those of administrative law, civil law, labor law, as well as intrinsic elements of European Union law and those determined by the application of the provisions of

²¹ CJUE, case Ospelt, C-452/01, ECR I-9743, paragraphs 29 and 32.

²² Bucharest Court, 2nd Section of Administrative and Fiscal Litigation, civil ruling No. 812/14.02.2025, available on the website <https://www.rejust.ro/intern/g83gg234d>, in the version from 09.05.2025.

²³ Regarding the prevention and sanctioning of all forms of discrimination, published in the Official Gazette, No. 166 of March 7, 2014.

²⁴ Alice Taylor (2024), „Interpreting Discrimination Law Creatively: Statutory Discrimination Law in the UK, Canada and Australia”, *Industrial Law Journal*, volume 53, Issue 3, pp. 569–575, <https://doi.org/10.1093/indlaw/dwae028>.

²⁵ William Linton (2018), „Discrimination as Stigma: A Theory of Anti-discrimination Law”, *Industrial Law Journal*, Volume 47, Issue 3, pp. 458–463, <https://doi.org/10.1093/indlaw/dwy016>.

the European Convention on Human Rights²⁶.

Regarding the fulfillment of the conditions for discrimination in this case, as structured in administrative law, we observe that these conditions objectify in a material or substantial order requirement, namely the determination of essentially differentiated treatment compared to various subjects of law involved in the decision-making process, and, on the other hand, in a subjective or moral requirement, meaning that the treatment applied aims at creating a distinction based on race, ethnicity, social, economic, or any other criterion that limits or does not provide the opportunity to fully exercise the rights and freedoms of the individual or group of subjects of law targeted by the discriminatory act.

Regarding the legal nature of discriminatory treatment, it represents a state contrary to the legal principle of equality before the law, established at the constitutional level by the provisions of Article 16 paragraph (1) of the Fundamental Law.

In the jurisprudence of the Romanian Constitutional Court, it has been held that *"the principle of equality before the law presupposes the establishment of equal treatment for situations that, depending on the goal pursued, are not different. Therefore, it does not exclude, but rather presupposes, different solutions for different situations. Consequently, a different treatment cannot be merely the expression of the exclusive assessment of the legislator, but must be rationally justified, respecting the principle of equality of citizens before the law and public authorities"*²⁷.

Additionally, regarding the violation of equality in rights, the Constitutional Court has held that *"legal treatment differences are admissible for different situations when they are rationally and objectively justified"*²⁸.

In the same sense is the relevant practice of the European Court of Human Rights, which, in applying the provisions of Article 14 of the Convention, has stated that *"discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations. A difference in treatment has no objective and reasonable justification if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means used and the aim pursued"*²⁹.

²⁶ Andrew J. Morris, (1995) „On the Normative Foundations of Indirect Discrimination Law: Understanding the Competing Models of Discrimination Law as Aristotelian Forms of Justice”, *Oxford Journal of Legal Studies*, vol. 15, issue 2, pp. 199–228, <https://doi.org/10.1093/ojls/15.2.199>.

²⁷ Constitutional Court, Plenary Decision No. 1 of February 8, 1994, published in the Official Gazette of Romania, Part I, No. 69 of February 16, 1994.

²⁸ Constitutional Court, Decision No. 168 of December 10, 1998, published in the Official Gazette of Romania, Part I, No. 77 of February 24, 1999, and Decision No. 231 of May 25, 2004, published in the Official Gazette of Romania, Part I, No. 561 of June 24, 2004.

²⁹ ECHR, judgment of November 2, 2010, pronounced in the case of Şerife Yiğit v. Turkey.

In the matter of regulating the obligation of electronic invoicing, we observe that this legal differentiation in treatment between, on the one hand, economically vulnerable economic operators and, on the other hand, economic agents benefiting from a strong position in the country's economic or financial market, is unjustified by reasonable and proportionate considerations, namely objective grounds.

A similar distinction, from the perspective of legal treatment in electronic invoicing, can be observed between, on the one hand, companies registered in Romania and, on the other hand, professionals who have not legally established their registered office in Romania based on their own legal choice.

In contrast, from the way Government Emergency Ordinance No. 120/2021 is regulated, it is clear that the legal differentiation between categories is disproportionate and arbitrary, with the Romanian legislator making a subjective and discriminatory distinction between various categories of economic agents operating in Romania by unjustifiably imposing this electronic invoicing and registration obligation in the RO e-Factura national system only on some of them while excluding others, without revealing objective criteria or providing justification for this differentiated treatment.

In this case, not only is the principle of equal treatment of taxpayers, established by Article 5 paragraph (1) of the Fiscal Procedure Code, ignored, but also the principle of equality before the law provided by the provisions of Articles 7 of the Administrative Code and 30 of the Civil Code.

Thus, the multi-disciplinary nature of the unjustified unequal treatment imposed by the national legislator in the field of electronic invoicing is revealed, as it falls under principles applicable in several legal domains, all of which converge towards the idea of a biased attitude of the legislator towards certain economic agents subject to the principle of fiscalization and taxation of income generated on Romanian territory, to the detriment of other professionals who are obliged, within a relatively short time, to acquire and operationalize technical and informational systems to issue electronic fiscal invoices and transmit them into the national IT system RO e-Factura.

Regarding the nature of this discriminatory treatment, the doctrine distinguishes between direct discrimination, i.e., explicit, by applying an evident differentiated regime between one category and another, without a reasonable and sufficient justification, and indirect discrimination, which refers to a distinction made between subjects of law, which, on the surface, appears neutral but proves to be unjust, such as imposing requirements on certain subjects of law that few members of the targeted group can fulfill, compared to the larger group of subjects of law in society as a whole³⁰.

³⁰ Francisca Pou Giménez (2020), „Anti-Discrimination Law in Civil Law Jurisdictions”, *International Journal of Constitutional Law*, Volume 18, Issue 3, pp. 1055–1063, <https://doi.org/>

In the case of indirect discrimination, it is distinguished by being hybrid, in the sense that it combines the structural elements and specific requirements of direct discrimination, with a precise focus on an unfair and unjustified measure targeted at a specific group, distinguished by various criteria, a hallmark of positive discrimination³¹.

In the case of the regulation method established by the provisions of Government Emergency Ordinance No. 120/2021, structural elements of indirect discrimination can be identified, as certain groups of taxable persons are favored based on seemingly neutral and positive criteria, seemingly exempting certain groups of economic agents from the obligation to electronically invoice considering their specific position in the Romanian economic market, yet, in reality, these provisions contain discriminatory criteria and practices that are not objectively justified by pursuing a legitimate aim, and the means used to achieve that aim are inadequate and unnecessary, which means the provisions of Article 2 paragraph (3) of Government Ordinance No. 137/2000 are applicable.

4. Conclusions

The manner in which the Romanian legislator has understood to transpose the mandatory regulation of European Union law into the national normative system is deficient and imperfect, in the sense that it lacks normative coherence and a clear, precise, and equitable individualization of the legal subjects obliged to follow the steps of integration into the national system regarding the RO e-Factura electronic invoice.

Thus, a discriminatory situation is created between one category of taxpayers and other categories of taxable persons. In order to discern these elements of individualization of the institution of discrimination, the legal interpreter is obliged to resort to an integrated and deductive analysis, appealing to a series of legal norms and principles specific to several fields of domestic and international law.

In this way, the integrated manner in which the provisions of administrative and fiscal law intersect with the rules of law specific to other legal fields is revealed, an aspect that is, however, a natural and fruitful one in a democratic society in full evolution, marked by interrelated aspects.

Bibliography

1. Banu, Shama, Sana Ara, Shambhavi S. M. & Kavitha J. (2024), „Research on

10.1093/icon/moaa076.

³¹ Michael Conolly (1998), „Discrimination Law: Requirements and Preferences: Falkirk Council and Others v. Whyte and Others”, *Industrial Law Journal*, Volume 27, Issue 2, pp. 133–142, <https://doi.org/10.1093/ilj/27.2.133>.

- the GST's Input Tax Credit", *International Journal of Novel Research and Development*, vol. 9, no. 6, <https://www.ijnrd.org/papers/IJNRD2406133.pdf>, accessed on 08.05.2025.
2. Conolly, Michael (1998), „Discrimination Law: Requirements and Preferences: Falkirk Council and Others v. Whyte and Others", *Industrial Law Journal*, Volume 27, Issue 2, pp. 133–142, <https://doi.org/10.1093/ijl/27.2.133>.
 3. Constitutional Court, Decision No. 168 of December 10, 1998, published in the Official Gazette of Romania, Part I, No. 77 of February 24, 1999
 4. Constitutional Court, Decision No. 231 of May 25, 2004, published in the Official Gazette of Romania, Part I, No. 561 of June 24, 2004.
 5. Constitutional Court, Plenary Decision No. 1 of February 8, 1994, published in the Official Gazette of Romania, Part I, No. 69 of February 16, 1994.
 6. Débat, Olivier & Patrick Serlooten (2019), *Droit fiscal des affaires*, 17th edn, Ed. Dalloz, Paris.
 7. Foran, Michael P. (2023), *Equality Before the Law Equal Dignity, Wrongful Discrimination, and the Rule of Law*, Ed. Hart Publishing, London.
 8. Giménez, Francisca Pou (2020), „Anti-Discrimination Law in Civil Law Jurisdictions", *International Journal of Constitutional Law*, Volume 18, Issue 3, pp. 1055–1063, <https://doi.org/10.1093/icon/moaa076>.
 9. Ikuemonisan, Edamisan Stephen (2024), „Challenges and strategies in Nigerian agribusiness entrepreneurship for sustainable development", *CABI Agriculture and Bioscience*, 5, 115, doi.org/10.1186/s43170-024-00303-5.
 10. Lang, Michael, Pasquale Pistone, Josef Schuch & Claus Staringer (eds.) (2013), *Introduction to European Tax Law on Direct Taxation*, 3rd edn., Linde, Viena.
 11. Linton, William (2018), „Discrimination as Stigma: A Theory of Anti-discrimination Law", *Industrial Law Journal*, Volume 47, Issue 3, pp. 458–463, <https://doi.org/10.1093/indlaw/dwy016>.
 12. Malherbe, Philippe (2015), *Éléments de droit fiscal international*, Ed. Bruylant, Paris.
 13. Malta, Pierre Di (1995), *Droit fiscal européen comparé*, Ed. PUF, Paris.
 14. Morris, Andrew J. (1995) „On the Normative Foundations of Indirect Discrimination Law: Understanding the Competing Models of Discrimination Law as Aristotelian Forms of Justice", *Oxford Journal of Legal Studies*, vol. 15, issue 2, pp. 199–228, <https://doi.org/10.1093/ojls/15.2.199>.
 15. Motte, Alexandre Maitrot de La (2022), *Droit fiscal de l'Union européenne*, 3rd edn., Ed. Bruylant, Bruxelles.
 16. Taylor, Alice (2024), „Interpreting Discrimination Law Creatively: Statutory Discrimination Law in the UK, Canada and Australia", *Industrial Law Journal*, volume 53, Issue 3, pp. 569–575, <https://doi.org/10.1093/indlaw/dwae028>.