

**CONSIDERATIONS REGARDING THE ORGANISATION AND FUNCTIONING OF
MAJORITY STATE-OWNED ENTITIES IN ROMANIA AND FRANCE. A
COMPARATIVE PERSPECTIVE**

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Abstract: This study aims at presenting, in broad strokes, aspects relating to the organization and functioning of majority state-owned commercial entities in Romania and France and the way in which they succeed in meeting, in an efficient and responsible manner, the public utility that they undertake statutorily. The method of approach in the present research is a comparative analysis of the types of companies in which local public authorities act as majority shareholders. By means of this analysis, the study will try to highlight convergent aspects (referring to similarity) and differentiating ones (referring to national specificity and traditions).

Keywords: capital, majority state-owned capital, mixed business entity, local public company, local administrative unit.

1. Introduction

Local public companies in France (French *Entreprise Publique Locale*, EPL), or local state-owned commercial entities, as they are called in Romania, have become ubiquitous in the everyday life of every citizen of the two European Union states, as a result of the way in which these companies are directly involved, proactively and responsibly, in fields of utmost social utility.

The organisation of towns and villages, the management of real estate, the provision of public transportation services, the administration of refuse, water-supply and sewer system, as well as of the electricity network, to which one can add activities in the fields of tourism, culture, entertainment or local economic development, are all merely the main and essential manifestations of the social necessities that the business entities investigated take on as their responsibility.

The legal framework in which these companies (created to serve public interests in a certain area) function displays similarities and differences that can be accounted for by the historical heritage, near past and national specificity of the two states. The present paper aims at identifying the similarities and differences between these economic entities, with reference to the two countries.

2. French local public companies (*Epl*). Brief history

Believed to be well represented in the European Union (their number is estimated to exceed 25,000¹), local public entities are reunited under the umbrella of CEEP – the European Centre of Employers and Enterprises Providing Public Services. Their dissemination in the

¹ Jean Leonce Dupont – President of the Federation of Local Public Entities; Vice-President of Senate and President of the General Council of the Region of Calvados in 2013-2014.

geographical area of the European Union is very different, with notable peculiarities from one country to another, and even within every state, from region to region.

Considering the administrative organisation of French territories (22 regions in Mainland France and 9 overseas regions and dominions, DOM-TOM)², in mid-November 2014 the regional distribution of local public entities was as follows:

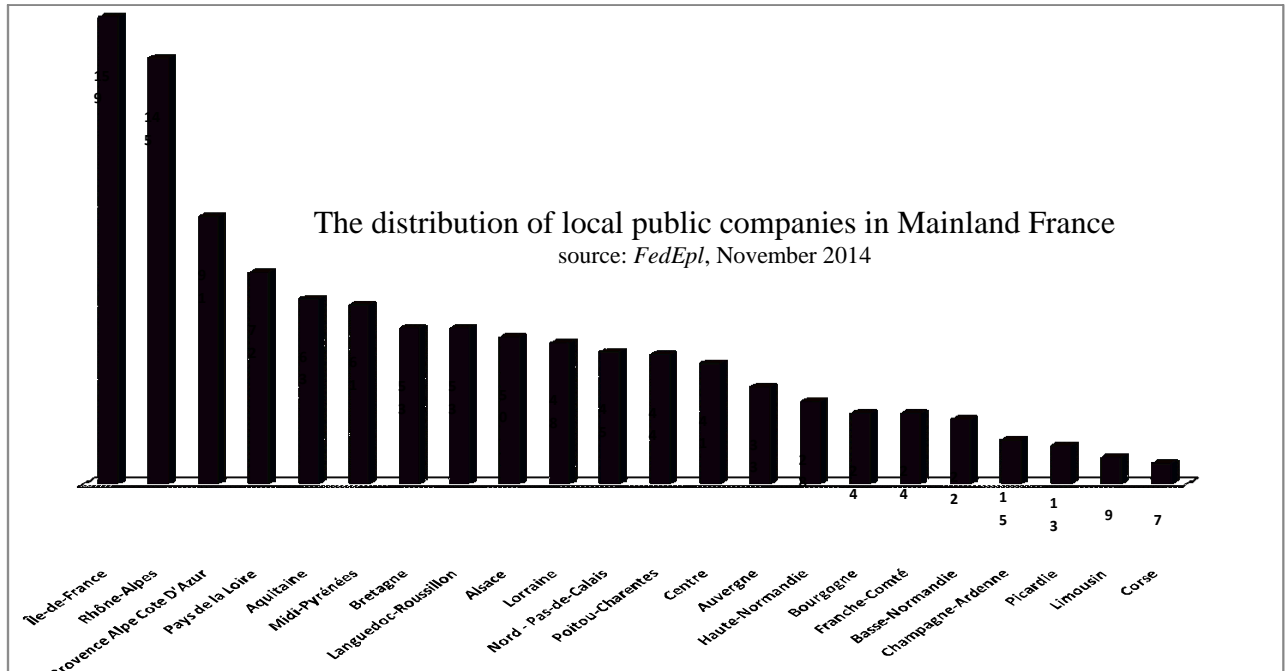


Fig 1. The distribution of local public companies in Mainland France

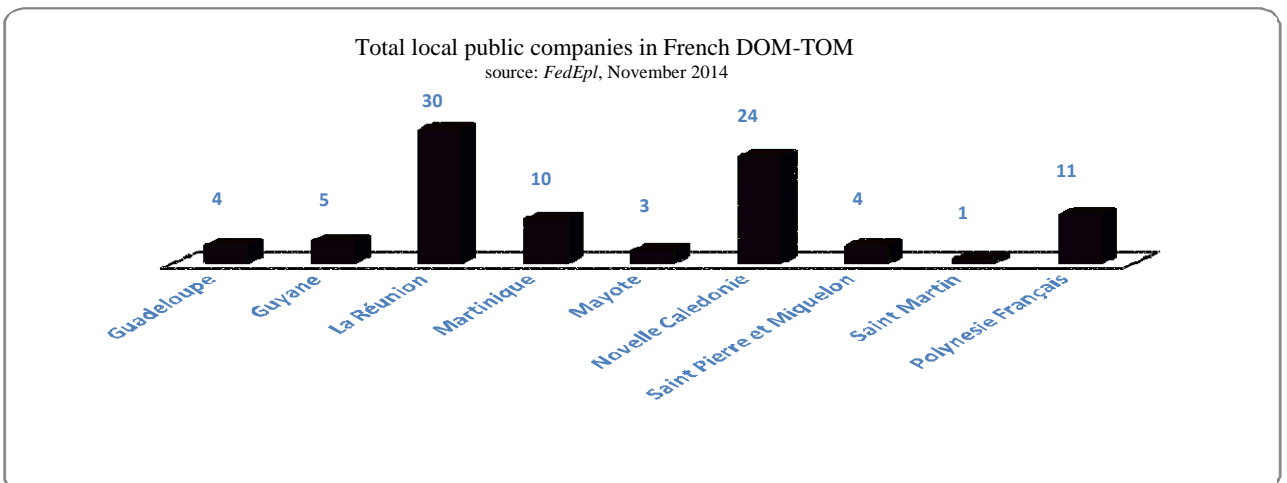


Fig. 2. The distribution of local public companies in DOM-TOM

According to the summary presented on the website of the Federation of French Local Public Enterprises (*FedEpl*)³, on November 15, 2014, there existed 1,192 local public companies.

² DOM-TOM = Départements et Territoires d'Outre Mer ('overseas departments and territories'); DOM = includes French regions scattered throughout the world, which can be grouped into four departments: Guyana, Reunion, Martinique and Guadeloupe; TOM = the entire group of overseas French territories, made up of French Polynesia, New Caledonia and the French Southern and Antarctic Lands) (cf. Munteanu, 2003: 171).

The legal status of French local public enterprises (*Epl*) is regulated so as to take the following forms of organisation, which are specific to French anonymous companies (local public enterprises are structured exclusively as joint stock companies, regardless of the object of activity and the type of shareholding):

2.1. Mixed economic entities (French *sociétés d'économie mixte, Sem*) are the best-known and most numerous enterprises in France, and they can be dated back to almost one hundred years ago. These entities ensure the association of local public companies with private economic entities to form public-private partnerships that are active in the local competitive market, but without benefiting from any economic advantage brought about by the partially public equity of the social capital that they own.

The preliminary legal regulation of these French public entities is owing to Raymond Poincaré⁴, who through the Decree of 1926 allowed communes (the present-day Romanian counterpart of Local Communal, City, Municipal and County Councils, the only public entities that have a legal personality and may found business entities) to own shareholding titles in private companies. These economic entities (mixed on the level of participation in the constitution of working capital) prospered until the beginning of the sixth decade, especially in fields of activity related to territorial development and real estate activity.

Another important moment in the legal regulation of this type of public entity is the issue of Law number 7 of July 1983 (regarded by the French society as an addition to the important decentralisation laws initiated in the early 80s by the leftist governments led by François Mitterand)⁵. This law, which was unanimously adopted by the French Parliament, succeeded in turning *Sem* into a semi-public instrument in the service of local communities. In the case of *Sem*, the private partner contributes with equipment, technology and the know-how (French *savoir-faire*), while the local communities honour the partnership by contributing with liquid assets and systematic control of the effective and functional economic employment and use of resources that are made available by the French local administrative units.

What is typical of these joint stock companies is that they have to be made up of at least seven shareholders, with the public equity being between 15% and 85%.

Subsequently, the status of local public companies (*Sem*) was expounded and adapted to the requirements of the Treaty of the European Community, through Law number 2002 of January 2, 2002, which confirmed the role and position of these economic entities as instruments of public utility, subtle and overall efficient in serving the local communities that have to observe the rules of competition.

2.2. Publicly-owned local development companies (French *Société Publique Locale d'Aménagement, Spla*):

- *Spla* are local public enterprises, which have fairly recently been let into the family of economic entities of local interest and whose main characteristics are public shareholding

³ www.fedpl.fr

⁴ President of France during the Third Republic (1913-1920) and Prime Minister of France until 1929.

⁵ Cf. Traite CE, March 25, 1957, Article 295 "The present treaty does not compromise in any way the regime of ownership in the member states".

represented by local communities and limiting the range of shareholding administrative units to exert specific activity.

The basic condition underlying the establishment of these economic entities lies in the number of shareholders – at least two local communities – and the obligation to carry out specific activities on the territory of partner administrative units. The object of activity of these public entities is usually unique and refers to territorial development or management of public buildings.

The appearance of these economic entities was triggered by the privileged relationship that exists between local authorities and certain mixed public enterprises, which are specialised in real estate development or management. The authorities wanted the aforementioned business entities to enjoy the same advantages as private companies do, but free from any competitive concerns.

The activity of these entities was and is not oriented towards obtaining profit, but towards satisfying social needs on the level of a community, in a field of investment in which the amount of investments exceeds the potential and risk appetite of private entrepreneurs or *Sem*.

2.3. Local public companies (French *Société publique locale, Spl*)

Local public companies date back to the same period in which *Spla* were established, and even the legal framework regarding the foundation of these companies is the same as the one used for *Spla*, namely the framework provided by the law on the “development of local public companies” of May 28, 2010.

As in the case of *Spla*, *Spl* reunite at least two local communities and are, for the authorities of the affiliated communities, a polyvalent tool of action (owing to the variety of activities that can be carried out through these economic entities – more than 40 objects of activity⁶). This instrument is considered more efficient than public administrations, because their economic and administrative actions are exclusively oriented towards ensuring local public services and they cover a niche of local needs for which there are no claims made by any *Sem* or *Spla* due to the lack of attractiveness (reduced or sporadic request) displayed by certain public services or due to their seasonality.

In fact, the motivation behind the establishment of *Spl* consists of the inefficiency of *Sem* to cover the entire range of social needs and the obligation of *Sem* to observe competition rules. However, *Spl* may secure contracts with shareholding territorial communities without the obligation to participate in auctions or offer selections; the contracts may be allocated by means of direct award by the beneficiary entities. These characteristics are advantages that cannot be disregarded, a fact that offers the enterprises in question the status of *in-house* entities, which are highly disputed by other agents on the market of goods and services aimed at the community.

The preference of local authorities for one of these forms of local public entities depends on the dimension of the public activity in which the entities will be involved, the peculiarity of the activity developed in the benefit of communities and, naturally, the territory in which this public economic entity will carry out its activity.

⁶ According to Jean Leonce Dupont, President of *FedEpl*, in the preface to “Entreprise Publiques Locales”, 2013.

3. Diatopic analysis of *Epl* in France

According to the data provided by the website *FedEpl*, when this study was written, in France there were 1,192 such entities; 1,100 *Epl* existed in Mainland France, and 92 in overseas territories⁷.

3.1. Distribution of *Epl* according to the regions of Mainland France (the Hexagon)

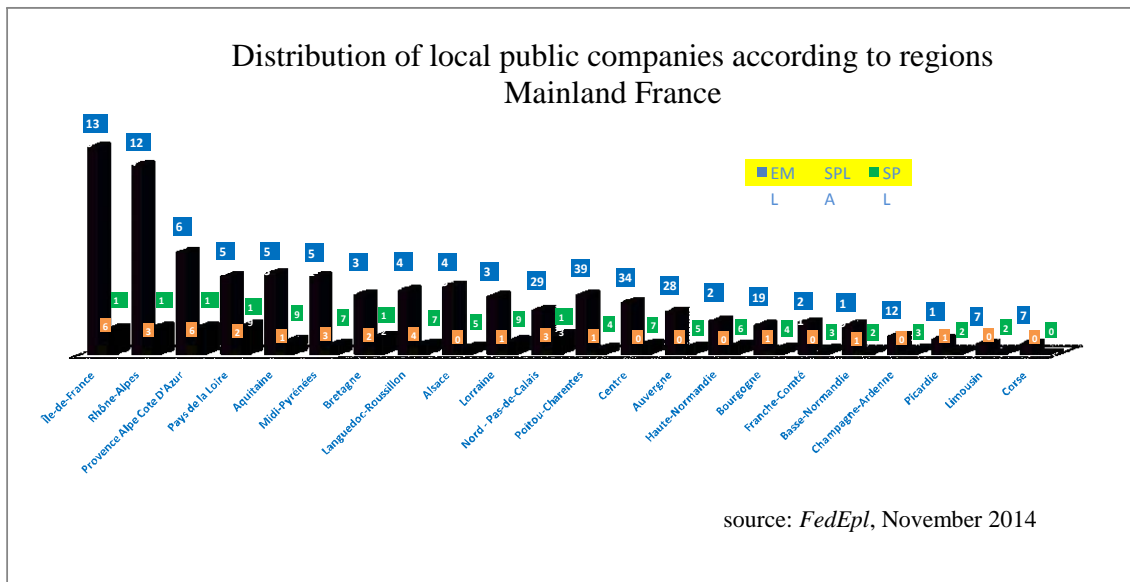


Fig 3. Distribution of local public companies according to regions

The regional distribution of these economic entities is tightly linked with the level of industrialisation and sociodemographic interest displayed by the regions in question.

3.2. Distribution of French *Epl* in DOM-TOM

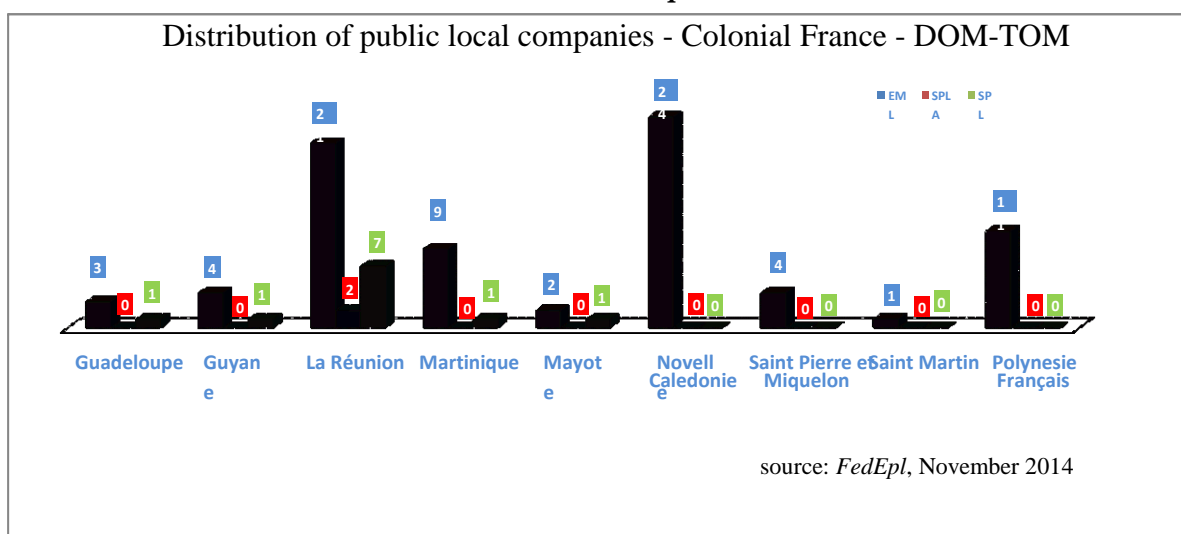


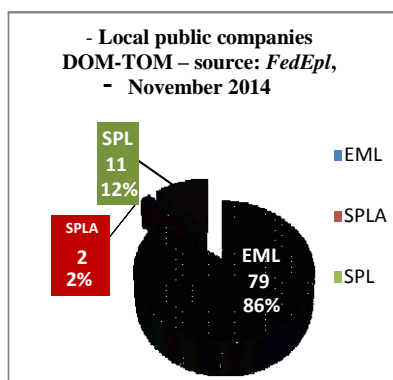
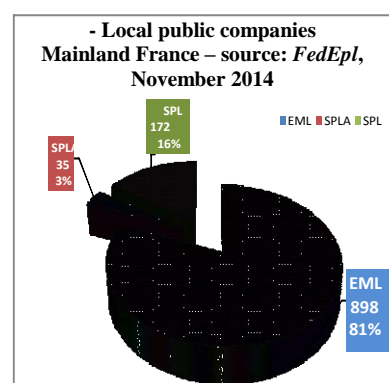
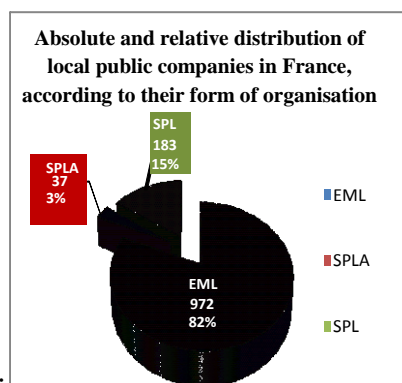
Fig. 4. Distribution of public local companies

⁷ <http://www.lesepl.fr/reseau-des-epl.php>

The distribution of public entities in overseas French territories is correlated with the interest of the metropolis in these lands. Particular interest is manifested as regards the material resources that can be exploited in the aforementioned regions and their demographic potential.

3.3. Diastratic analysis of *Epl* according to their form of organisation (*Sem*, *Spla*, *Spl*)

Approached from the viewpoint of the form of organisation determined by the legal framework that regulates the activity of these companies, their distribution in the Hexagon and DOM-TOM highlights the following situation



In the pictographs above, one can notice a quasi-identical relative distribution of majority state-owned public companies both in Mainland France and in overseas (*d'autre mer*) territories – colonial France.

The same pictographs reveal a significant concentration of local public companies in the *Sem* group. This accumulation can be accounted for by the fact that the association public-private in the shape of *Sem* ensures higher performance of these entities and a sensibly wider area of mobility as regards economic intervention, which leads to greater development possibilities for the entities in question than those existing for *Spla* and *Spl*. On the other hand, the appeal of *Spl* and *Spla* is lower than that of *Sem*, as a result of the inefficiency of legal regulation in relation to these types of companies; this fact brought about reluctance in certain community leaders that became managers of these public economic entities (a status that entails a cohort of adjacent responsibilities).

The insufficient legal guidance of *Spl* is considered a major vulnerability of these enterprises. This weak point has been pointed out by the French Competition Authority (*Autorité de la Concurrence*), which recommends the cautious employment of the services offered by these entities, as the objective of preventing political interference with the activity

of these companies cannot be achieved entirely⁸. As a result of this state of events, *Spl* and *Spla* keep observing state aid regulations, with inherent limitations and inconveniences.

⁸ Christian Julienne, president of the liberal think tank *Héritage et Progrès*, wrote the following: “All big cities, departments and others will naturally be inclined to create these local public entities in order to appoint, as vice presidents, adjuncts, department heads and other positions, from among their politician friends that are glad to become entrepreneurs paid from tax payers’ contributions and that do not give in to competition...” (orig. French).

4. Local public companies in Romania. Brief diachronic analysis

As opposed to France, Romania had a completely different start as regards the establishment and development of local public companies. The dawn of the 90s found Romanian economy centralised, as the shares of all the companies had so far been held by the socialist state. The passage towards market economy followed a winding path and lasted two and a half decades; from some points of view, the process of privatisation is yet uncompleted.

The first regulation of privatisation was provided by Law 15/1990, which outlined the main directions to be taken in the transformation of former state-owned enterprises into joint stock companies or autonomous administrations.

Nevertheless, the legal provision that regulated the privatisation of state companies was Law 58/1991, which led to the creation of a state institution that is specialised in the privatisation of business entities – *Fondul Proprietății Private (FPS, English Private Property Fund)*, subsequently renamed *APAPS, Autoritatea pentru Privatizarea și Administrarea Proprietății Statului* (English *Authority for the Privatisation and Administration of State Property*) (in 2001) and *AVAS, Autoritatea pentru Valorificarea Activelor Statului* (English *Authority for State Assets Recovery*).

In the first two decades that followed the events of December 1989, state-owned companies were privatised by selling company shares to third parties (some of these shares were sold for the symbolic price of \$1, provided that buyers agreed to take on the debts that existed at the state consolidated budget) or to company employees (privatisation according to the MEBO method). Another way in which state enterprises were privatised referred to the giveaway of a part of the shares held by the companies to the adult population; this privatisation process was known as “cuponiada” (English ‘the coupon revolution’), which was put into effect in two stages: the first “coupon revolution” occurred in 1992, while the second, in 1995.

Currently, the process of privatisation is nearly completed (except in the field of public services and electricity delivery). The acceleration of the process of privatisation happened due to some legal changes introduced in 1997, which were aimed at the decentralisation of the decisions to privatise by means of passing the shares held by the state to authorities of the central or local public administration.

At the end of June 2014, according to the data provided by the National Agency for Fiscal Administration (Romanian *Agenția Națională de Administrare Fiscală, ANAF*⁹), in Romania there were 1,170 majority state-owned companies that belonged to local administrative units.

As a result of corroborating the information provided on the website www.anaf.ro/listaB with the information presented for every company listed in this record, it can be concluded that the legal forms of organisation of these enterprises (in contrast with French legal forms, which restrict the existence of these entities to joint stock companies) include joint stock companies, autonomous administrations and limited liability companies.

As opposed to France, where the public-private partnership was systematically developed by means of *Sem* (ever since 1926), in Romania the attempt to regulate this type of

⁹ www.static.anaf.ro/static/10/Anaf/Declaratii_R/S1001/ListaB_16072014.pdf

association – through Law 178/2010 on “public-private partnership” and the Government Decision 1239/2010 regarding the adoption of “Methodological norms for the application of Law 178/2010 on public-private partnership” – was contested by the European Commission, which invoked the infringement of the community acquis. The Government Emergency Ordinance 39/2011, issued subsequently, only solved the problems pointed out by the European authorities partially. At present, although it is very much desired by Romanian and foreign investors alike, the law of public-private partnership is not operational.

4.1. Diatopic analysis of majority LAU-owned economic entities, according to the development regions of Romania

As regards the distribution of majority LAU-owned economic entities (entities whose equities are in majority owned by local administrative units, LAU) in the eight development regions of Romania (which are not like French local administrative units, but only territorial associations of counties that do not have a legal personality and are designed for the implementation of projects of intercommunity infrastructure), the situation is as follows:

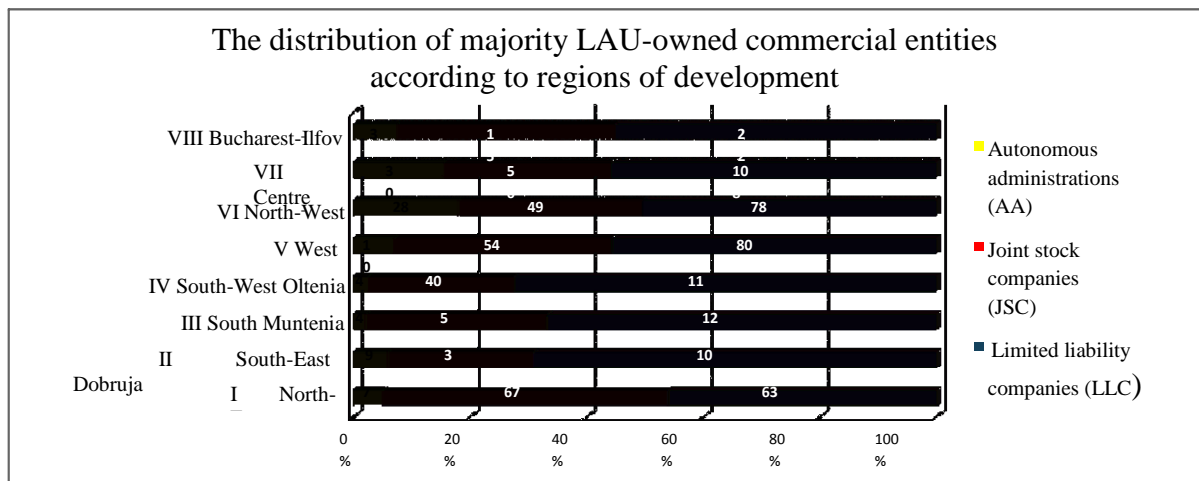
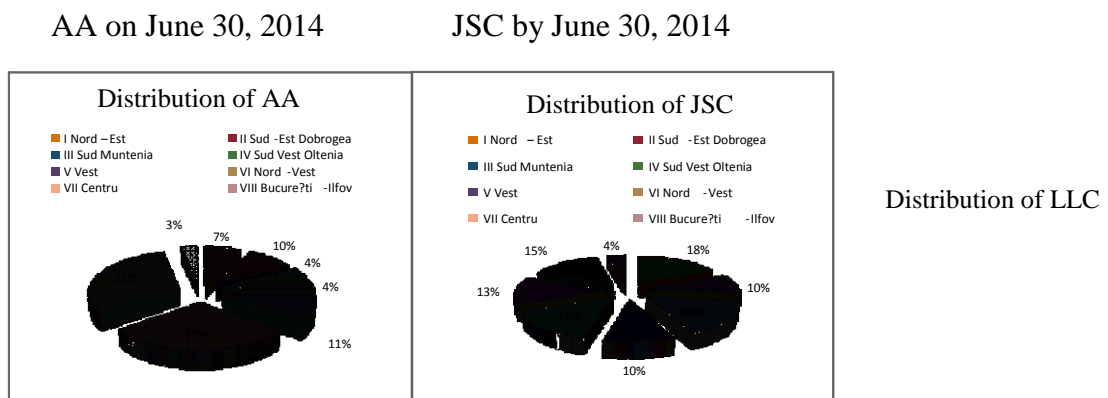
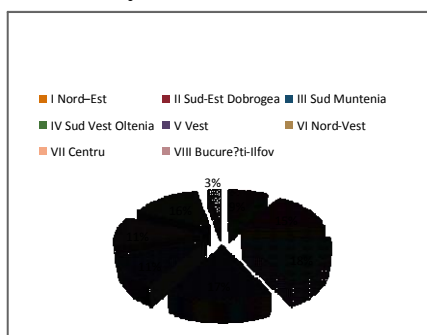


Fig 8. The distribution of majority LAU-owned commercial entities according to regions of development

The distribution according to the type of legal status and the eight regions of economic development is depicted in the following diagrams:



LLC by June 30, 2014



4.2. Diastatic analysis of majority LAU-owned economic entities according to the Romanian development regions

As stated in the data provided by the Ministry of Finances, in Romania the 1,170 majority LAU-owned economic entities run more than 120 activities declared as main economic activities according to CAEN – *Clasificarea Activităților Economiei Naționale* ('the classification of national economic activities'). These activities refer especially to sanitation, collection and supply of drinking water, maintenance of networks of drinking water, purification and sewage, electricity delivery, system of public transport, real estate administration and land development. The aforementioned activities are entirely superposed onto the object of activity of French *Sem*, *Spla* and *Spl*. It is worth noting the special situation of Romanian companies, many of which are going through trying times organisationally and economically (more than 18% of these companies are faced with insolvency, bankruptcy or other difficulties, and they have amendments recorded at the National Trade Register Office).

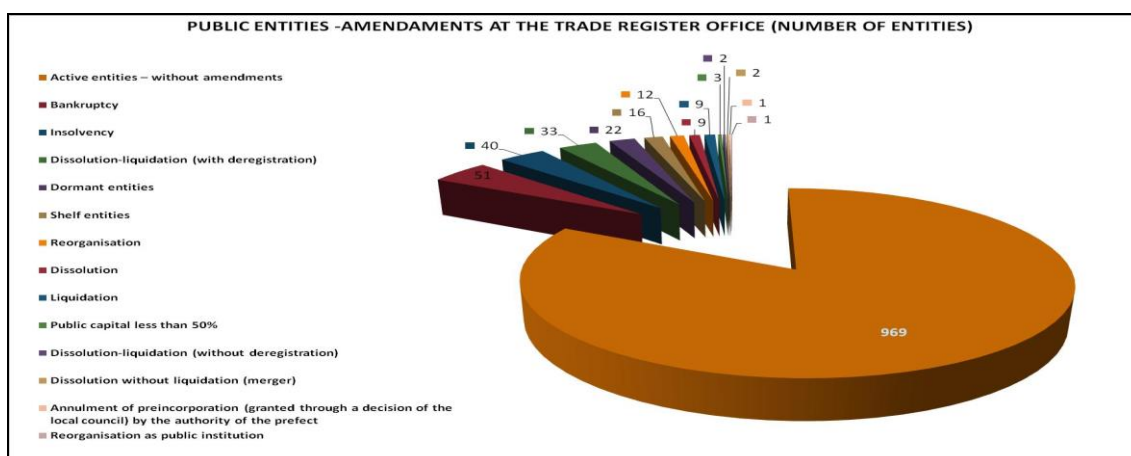


Fig 9. Public entities – Amendments recorded at the Trade Register Office (number of entities)

Another characteristic of Romanian economic entities is their progressive decapitalisation: currently, no development region cumulates equity that exceeds the amount of the initial capital. This matter of fact is a serious warning, which should be taken into account by the Romanian authorities, in the sense that they should put an end to the economic decline of these entities. This can be achieved by means of recapitalisation or legal regulations

that would allow for the encouragement of public-private partnership in the public sector, such as the laws adopted in Mainland France in the 50s-60s¹⁰.

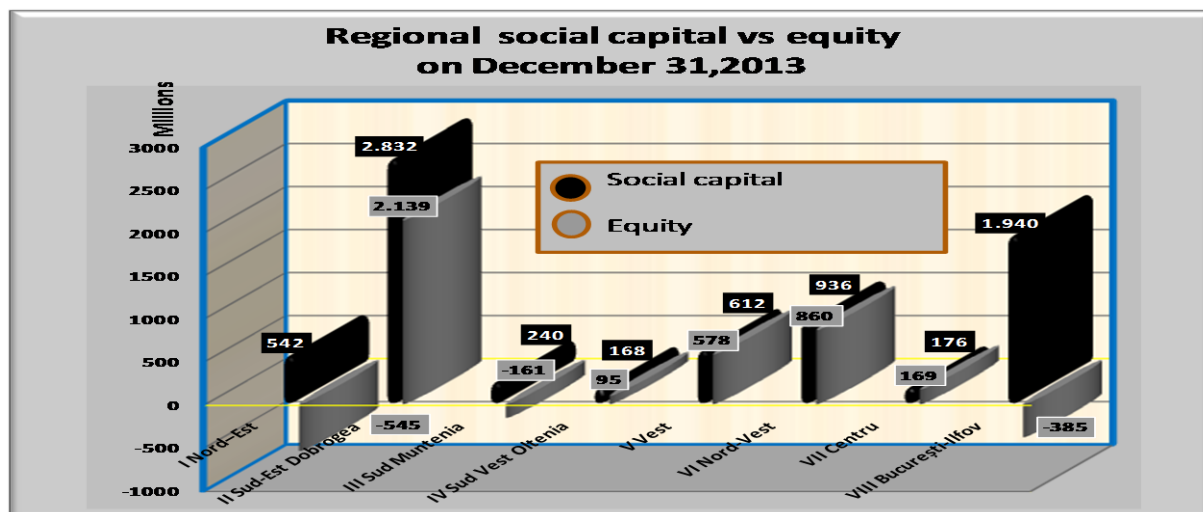


Fig. 10 Regional social capitals vs equity on December 31, 2013

5. Concluding remarks

From the diachronic, diatopic and diastratic analysis of the activity of public entities in which LAUs of the two countries are the main shareholders, the following points can be noted:

i) The increase in the number of *Epl* in France (and in other EU countries), as a result of the diversification of the request of local public services, especially through the development of mixed enterprises (*Sem*) simultaneously with the encouragement of the development of *Spla* and *Spl*;

ii) The decline in the number of entities in which Romanian LAUs are the main shareholders, due to the economic crisis and unproductive management that lead these entities to insolvency and bankruptcy. As opposed to the 1,192 French local public enterprises, the 1,170 majority LAU-owned economic entities in Romania are exceedingly numerous relative to actual needs, if one also considers the fact that the population of France is more than three times the population of Romania. Thus, we are witnessing a change in the number of entities whose shares are mainly owned by LAUs due to the relentless action of market laws rather than due to the intervention of the state through laws and measures to control and regulate the market of request and offer of local public services;

iii) In France, the state pays special attention to the sector of public services, supporting mixed companies that act in a clear and legally well-grounded competitive environment. However, for seasonal services, for which the demand is discontinuous and which are not attractive in the public environment, the state has accepted the compromise of so-called in-house enterprises, thereby encouraging the development of *Spla* and *Spl*. In Romania, the failure of the laws of public-private partnership has hindered the process of development of the services sector supported by LAUs;

¹⁰ An analysis of the performance of majority state-owned economic entities was presented in the study by S. Siserman (2014, forthcoming).

iv) The more than 120 objects of activity carried out via majority LAU-owned economic entities are far more numerous than the objects of activity of French local public companies (which the president of the Federation of Local Public Companies estimated to be about 40 in 2013). This fact raises serious questions about the need to establish or maintain certain Romanian public enterprises, as these do not serve any other “purpose” than that of ensuring their employees’ social security (most of these companies are decapitalised or face various forms of economic difficulties);

v) The fact that the International Monetary Fund required the careful observation of majority LAU-owned economic entities beginning with the year 2011 signals that, in time, the activity of these entities will lead to their economic redress (or to the end of the activity of entities that are unprofitable, by means of dissolution-liquidation or deregistration), along with a change in the number of these enterprises on a national level, brought about by the real social need of local public services.

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