

EUROPEAN FUNDS AND THE CRIMINAL LIABILITY IN THEIR ADMINISTRATION AND MANAGEMENT

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ABSTRACT: *Since the entry into force of the Maastricht Treaty regarding European Union, in November 1993, the strengthening of economic and social cohesion has become one of the priority objectives of the European Union. As the European Union expanded, the economic and social cohesion has become increasingly difficult, as Member States became, in their turn, more heterogeneous. In the period 2007-2013, Romania had been allocated Structural and Cohesion Funds totaling 19.668 billion euros. We notice a growing interest from local communities, and from other entities involved in the management of structural instruments in order to find the answer to some relevant questions: What is the impact of the programs financed by the European Union funds, The extent to which programs achieve their objectives, If results of the implemented programs are valued at the lowest possible cost? To answer these questions, it is created a new principle, particularly important for European money management – accountability, which involves the use of funds accessed under the rules in force, in order to avoid any deviation from legality, regularity and compliance, as well as any failure to comply to the provisions of funding memoranda, memoranda of understanding, agreements for of financing regarding the unreimbursable financial assistance provided.*

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1. STRUCTURAL FUNDS, A WAY OF ACHIEVING A POLICY OF THE EUROPEAN UNION'S REGIONAL DEVELOPMENT

Since the entry into force of the Maastricht Treaty regarding the European Union, in November 1993, the strengthening of economic and social cohesion became from an official point of view, a priority objective of the European Union. But as the Union expanded, the achievement of economic and social cohesion has become increasingly difficult, as Member States became, in their turn, more heterogeneous.

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For economic policy of the European Community is above all a policy of solidarity, its purpose is to promote a high level of competitiveness and employability of the workforce, providing support to less developed regions and those encountering structural problems. Thus it tends towards a sustainable and stable development of the Union's member countries and an optimally functioning Internal Market.

The European Union Structural Funds are the main tools used in achieving economic and social cohesion, establishing in the same time a central element of the national policy used for the purpose of uniform and harmonious development of the Member States of the Union¹.

Since the drafting of the Treaty of Rome (1957), the document that founded the future European Community, specific references have been made to the need of eliminating the disparities among regions and in 1958 there had been established the European Social Fund and the European Fund for Agricultural Guidance and Guarantee. Subsequently, in 1975, there was created the European Regional Development Fund.

In 1989 the first multi-annual developing programming was created and in 1999, the Heads of States and Governments appointed in Berlin, the second reform of the Structural Funds, with a greater emphasis on helping social groups and disadvantaged regions.

The principle of solidarity lies in the redistribution of a part of the Community budget formed by the contribution of the Member States, to the regions and social groups that are less prosperous.

The reform of European Union of regional development was based in the period 2000 - 2006 on the following structural instruments:

- *The European Regional Development Fund (ERDF)*, established in 1975, covering infrastructure, investment in job creation and assistance for SMEs;
- *The European Social Fund (ESF)*, established in 1958, consists mainly of training and employment schemes;
- *The Guidance Section of EAGGF* (operational fund of 1962) - includes rural development measures;
- *The Financial Instrument for Fisheries Guidance (FIFG)*, operational since 1994 - aims to reform the fisheries field;
- *The Cohesion Fund (CF)*, established in 1994, meant for investment in transport and environmental infrastructure.

European Union Cohesion Policy for the period 2007 - 2013, was reformed to meet the objectives set at Lisbon and has three major objectives: Convergence (78%), regional competitiveness (18%) and European Territorial Cooperation (4%).

As complementary policies for development we mention: the European Union Common Agricultural Policy (CAP) and Common Fisheries Policy (CFP).

The structural instruments through which Economic and Social Cohesion Policy (SCP) is accomplished in the period 2007-2013, are: *the European Regional Development Fund (ERDF)* - which finances reducing regional disparities and supports economic development, *The European Social Fund (ESF)* – finances active programs meant for the creation of

¹ "Possibilities for access by local authorities, economic operators and NGOs, of the Structural and Cohesion Funds of the European Union in 2007-2013" - Guidelines developed by S.C. MICRON CONSULTING S.R.L. Bucharest.

sustainable jobs, educational development and the reduction of unemployment, *the Cohesion Fund (CF)* - an instrument that supports environmental projects, sustainable development and improvement and modernization of transport infrastructure as *the European Fund for Agriculture Development (EAFRD)* and *the European Fisheries Fund (EFF)*.

In the period 2007-2013, Romania had been allocated Structural and Cohesion Funds totaling 19.668 billion euros out of which for the Convergence objective - 12.660 billion, for the Cohesion - 6.552 billion euros and for territorial cooperation - 0.455 billion euros.

The Financial unreimbursable assistance allocated under the Agricultural Policy is of 8.022 billion euros. Allocations designed correspond to national priorities set by the National Strategic Reference Framework 2007 to 2013.²

2. EVALUATION OF PROJECTS FINANCED BY THE STRUCTURAL FUNDS, GENERAL CONSIDERATIONS

The selection, implementation and execution of the programs and projects financed by Structural Funds, requires specific methodologies, clearly defined objectives, implementation system, institutional framework, evaluation and management of the projects.

Intervention by programs financed by the Structural Funds can be regarded in the same context with an investment project, where there are expected accomplishments, results and performance, whose evaluation is made through a complex of indicators.

The European Commission published a collection meant for assessing socio-economic programs, to promote the methods, techniques and evaluation instruments as well as technical solutions applied in a partnership framework.

In the process of the tracking and evaluation of programs, the most important indicators relate to the criteria of their success and are a significant part in the information system, communication, negotiation and decision making.

In a program framework, operational objectives are expressed by the concept of achievement benchmarks, the specific objectives by the notion of results and overall objectives by the concept of impact³.

Lately, there is perceived a growing interest from local communities, and other entities involved in the management of structural instruments to find the answer to some relevant questions: *What is the impact of European Union financed programs, To what extent the programs achieve their objectives and Whether the results of the evaluated programs are implemented at the lowest possible cost?*

To answer these questions, it is outlined a new principle, particularly important for the management of European money – *Accountability*⁴.

² “Possibilities for access by local authorities, economic operators and NGOs, of the Structural and Cohesion Funds of the European Union in 2007-2013” - Guidelines developed by S.C.OMICRON CONSULTING S.R.L. Bucharest

³ L. Marian, Managementul proiectelor, EFI-ROM Publishing House, 2001

⁴ Gabriel Mățăuan, Evaluarea programelor sociale, Expert Publishing House, 1999

3. IRREGULARITIES IN THE USE OF STRUCTURAL FUNDS

According to the rules in force, it is considered **irregularity** *any deviation from legality, regularity and compliance as well as any failure to comply to the provisions of the funding memoranda, memoranda of understanding, agreements for financing regarding the unreimbursable financial assistance granted in Romania by the European Community and the provisions of contracts concluded on the basis of these memoranda /agreements resulting from an act or omission by the economic operator; which, through an ineligible expense, has the effect of prejudicing the general budget of the European Communities or the budgets managed by them or on their behalf.*

Intentional wrong (suspected fraud) represents any action/deliberate action or omission on:

- The use or submission of false statements or documents, incorrect or incomplete, having the effect of ownership without legal right or illegal withholding of funds/resources decrease in the general budget of the European Communities or the state budget;
- Non-disclosure of information violating a specific obligation with the same effect presented above;
- Allocation/acquisition respectively the improper use or misuse of European Union funds from the General Budget of the European Communities and/or the amounts of co-financing related to the state budget;
- The erroneous spending of the funds in any other way for purposes other than originally foreseen;
- Collection of money, properties or services, avoidance of payment, providing a personal or business advantage.

Furthermore we will present some examples of intentional irregularities, namely: false statements, false invoices (issued by fictitious company), false accounting and in particular concealment, invoices issued for services, supplies or works that have not been made/acquired – fictitious invoices; same invoices submitted to justify the costs of different projects, invoices issued for incorrect excessive amounts – unjustified increase in price of invoices, transfer of funds to other accounts than those originally reported for the activity, forgery and alteration of accounts and/or other records or justifying documents, forgery of the conclusions resulted from the checking of the documentation, falsifying findings from spot checks, the list not being exhaustive⁵.

4. AGENCIES RESPONSIBLE FOR FINDING IRREGULARITIES

The competent authorities in the management of European Union funds and of the afferent co-financing have the responsibility of taking measures necessary for the identification of irregularities and recognizing the budgetary claims resulting from irregularities within their competence framework, as well as for the recover of the amounts representing budgetary claims resulting from irregularities.

The Audit Authority of the Court of Accounts of Romania, with its structures at central and regional level, is the national authority competent to carry out external audit in accordance

⁵ Andreea Vass, Adventures of European funds in the Balkans - www 22-Edited by 2008 Magazine Group for Social Dialogue, July 2008

with the European Union legislation and the national legislation regarding the management of European Union funds⁶.

The findings of the Audit Authority, arising from the performance audit completed tasks, which presents indications of possible fraud, reported to the Anti-Fraud Department immediately - AFD.

The Anti-Fraud Department - AFD, as an institution of contact with the European Anti-Fraud Office - EAFO, ensures, supports, or coordinates, as appropriate, the accomplishment of the obligations incumbent to Romania regarding the protection of the financial interests of the European Community, in accordance with the provisions of the Art. 280 from the Treaty of establishing the European Community, having the task to control the obtaining, carrying or use of the Community funds as well as the afferent co-financing funds.

5. CRIMINAL LIABILITY IN THE USE OF EUROPEAN FUNDS

In mid-2008 it was ascertained that over the last 3 years, over 80 million euros in European funds have been absorbed under serious irregularities and fraud. Their discovering was due to the Romanian control systems of the European funds, represented by the Fight against Fraud Department (FAFD, established in 2005). Implementing agencies were informed and there was recovered, by administrative process, a tiny amount of about 4 million euros. In other cases, recovery procedures are in progress. In five criminal cases, the courts passed substantive convictions with sentences that extend to 10 years in prison.

The increased number of fraud cases of the European Union funds is not due to their multiplication in recent years, but due to the increasing number of checks carried out covering wider areas.

The most common methods used to fraud the European Union funds, identified due to the controls made are: situations where the fraud of funds is made directly by the beneficiary by forgery of the discount document, purchasing their own equipment, when the equipment and even the production activity is transferred between the two companies controlled or owned by the same person, one company is benefiting from European funds over-estimation (there were instances where funds have been accessed 1 million for a project and finally, through successive subcontracting, the project was accomplished to a value of 40-50% of the funds received), in such cases the beneficiary simulates his own contribution⁷.

The European rules are clear, the money are not granted for free, and all the beneficiaries must justify for the money received. The problematic cases undermine not only the capacity for the efficient use of the European funds, but also the perspective of future allocations of funds from the Community budget. At the risk of becoming champions of the fraud, we need a rigorous and transparent monitoring system, but also an effective legal system. In any case, undesirable consequences will not arise because of the unmasking and convictions, but precisely because of their perpetual ignorance.

Making operative investigations is an imperative necessity, aiming to reduce the risk of fulfilling the prescription term of criminal liability.

⁶ Government Decision nr.457/2008 regarding the institutional framework of co-ordination and management of structural instruments

⁷ Ovidiu Doblega, „Exista riscul prescrierii unor infractiuni cu fonduri europene”, July 17, 2008, www.ziare.com

6. EFFECTS OF THE DEFECTIVE USE OF THE ALLOCATED EUROPEAN FUNDS

Any misuse of European Union funds, both the structural and cohesion funds but as well the funds for agriculture, will lead to financial corrections, consisting of postponing payments, reducing future installments, respectively the recovery of the money allocated.

For the structural funds, the European legislation and standards has in its service several types of control, which can lead to financial corrections, namely:

- each Member State must submit operational programs, approved by the Commission before any payments are made, step successfully fulfilled by Romania in late 2007;
- if Romania does not properly manage their implementation, does not benefit from certification and appropriate audit authorities, more specifically, there will be no interim payment, step hardly met by Romania;
- payments for programs can be interrupted, suspended or canceled if the Commission suspects or reveals cases of irregularities or fraud including corrupt practices;
- financial corrections may apply where irregularities are found during the ordinary ex-post control.

The cold breath of the EU in the nape of the rulers from Bucharest, ordered the introduction of amendments to the necessary laws for the compliance of the European conditions. Our ability to absorb European funding, compared with last year, has increased exponentially. We have at least the legal, institutional framework and the portfolio of projects funded⁸.

Government and beneficiaries must focus now on the effective and correct implementation of these funds by avoiding fraud and by drastic punishment of frauds.

⁸ Andreea Vass, "Aventurile fondurilor europene in Balcani" - *www* 2008 Magazine 22-Edited by the Group for Social Dialogue, July 2008