

GENERAL ASPECTS REGARDING FRAUD AS A MEAN TO PREJUDICE THE FINANCIAL INTERESTS OF THE EUROPEAN UNION

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Abstract

For the European Union (EU) - perhaps more than other countries - optimizing the activity of anti-fraud institutions and their management is more difficult and raises more complex problems to solve than in other states. The need to mitigate and control the financial crime phenomenon that the EU institutions are facing, depends mainly on how they master the information about stocks, sources of their formation, their cost, the allocation and use of stocks, the efficiency of budget allocation, etc. Moreover, taking into account the specific aspects of the problems the European Union is facing, the approach to optimize the activity of anti-fraud institutions and thus their management, with the shown risks, is an absolute and unequivocal necessity.

Key words: *fraud, anti-fraud fight, OLAF.*

JEL Classification: G31, G32.

1. INTRODUCTION

The Association of Certified Fraud Examiners (ACFE) in USA² uses a specific taxonomy of the types of the fraud that an organisation can encounter. ACFE divides fraud into three types, as a starting point in identifying areas vulnerable to fraud:

- Intentional manipulation of financial statements;
- Embezzlement of tangible and intangible assets;
- Corruption of the following nature: bribery, manipulation of procurement procedures, non-declaration of conflicts of interest, embezzlement of funds.

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²*Managing the Business Risk of Fraud – A Practical Guide*, Institute of Internal Auditors, the American Institute of Certified Public Accountants and the Association of Certified Fraud Examiners, 2008. <http://www.ifa-iaf.be/v1/frontEnd/libraryIfa/index.php?action=detail&id=29>.

In specialized literature, the fraud researcher Donald R. Cressey identifies three reasons underlying the commission of fraud, which can be summarized as a "fraud triangle" as it follows:



Opportunity: Even if a person has a reason, there should be an opportunity. Deficient internal control systems may lead to an opportunity (the presumed likelihood of the fraud not being detected is a crucial consideration for the fraud perpetrator). Fraud can also occur, if controls are not applied or if the persons / institutions with positions of authority create the opportunities that the existing controls are not taken into account. Examples of weaknesses in internal control systems are the deficiencies related to:

- Supervision and review;
- Separation of functions;
- Approval by the governing bodies;
- Control systems.

Rationalization: A person can formulate a justification by rationalising their acts, e.g. "It is only fair that I do this - I deserve this money" or "They owe me" or "I am only taking a loan – I will pay them back".

Financial pressure: the "Need or Greed" Factor. Pure greed can often be a strong reason. Other pressure can arise due to personal financial problems or personal vices.

According to some specialists such as Harry Cendrowski, James P. Martin and Louis W. Petro "the demolition of the fraud triangle" is key to fraud prevention. Of the three elements, opportunity is the most directly affected by strong internal control systems and therefore is the most manageable.

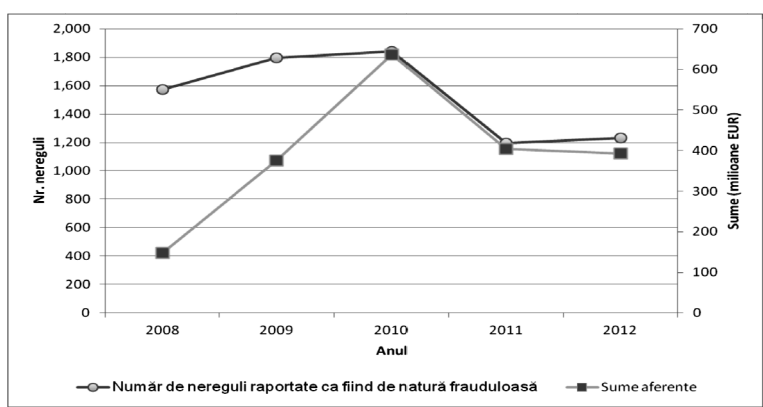
³Harry Cendrowski, James P. Martin și Louis W. Petro, *The Handbook of Fraud Deterrence*, 2007, pg. 41, quoted in: www.fonduri.mcsi.ro, "Notă informativă privind indicatorii de fraudă pentru FEDR, FSE și FC"

2. OVERVIEW OF THE ANTI-FRAUD FIGHT IN THE EU

One of the major problems that the European Union is confronted with, from the financial point of view, is embezzlement of the community budget⁴.

Research conducted in this regard revealed that the EU budget is profoundly affected by the phenomena of fraud and tax evasion, both in terms of budgetary resources (revenues) and in terms of how these budget resources are used (expenditure). In other words, the EU budget gets paid much less than normally due and in terms of expenditure it is found that some amounts granted by the European institutions, in the form of grants and aid often end up taking other destinations than those consistent with the purposes for which they were granted and with the EU interests⁵.

The highest number of irregularities of a fraudulent nature were reported by Spain, Italy, Germany and Greece, while Spain ranks first in terms of the amounts involved, followed by Belgium and Italy.⁶



Given the fact that fraud affecting the Community budget is often committed by criminal organizations operating throughout the EU, it has become necessary for the European Union, through its institutions, to incriminate these actions that bring

⁴Antoniou G., *Protecția penală a intereselor financiare ale Comunităților Europene*, RDP issue: 2, 2002, page 9.

⁵Fourgoux J.C., *Un espace judiciaire contre la fraude communautaire: un corpus iuris entre reve et realite*, 1997, Chron.349 (nr.40), quoted by Ghinea, N., *Unele considerații privitoare la fraudă care prejudiciază interesele financiare ale Comunităților Europene*, Public Security Studies, issue: 4/2012, page 15-21, www.ceeol.com.

⁶www.ipex.eu, REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND TO THE COUNCIL Protection of the European Union's financial interests-Fight against fraud Annual Report 2012

⁷www.ipex.eu, REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND TO THE COUNCIL Protection of the European Union's financial interests-Fight against fraud Annual Report 2012

significant financial damage to the community's interests and to adopt a coherent and effective set of measures enabling Member States to cooperate in preventing and combating fraud.⁸

A first step was made in 1995 by adopting the Convention on the protection of the European Communities' financial interests which, among other things, defines the fraudulent conduct both in terms of revenue and expenditure.

The definition of fraud in respect of revenue and expenditure according to the Convention on the protection of the European Communities' financial interests⁹	
Fraud in respect of revenue consists in:	1. the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,
	2. non-disclosure of information in violation of a specific obligation, with the same effect;
	3. the misapplication of such funds for purposes other than those for which they were originally granted.
Fraud in respect of expenditure consists in:	1. the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by , or on behalf of, the European Communities;
	2. non-disclosure of information in violation of a specific obligation, with the same effect;
	3. misapplication of a legally obtained benefit, with the same effect.

Thus, the Convention on the protection of the European Communities' financial interests adopted having regarding to the Treaty on European Union regarding the protection of the European Communities' financial interests defines "fraud" as being an intentional act or omission relating to:¹⁰

⁸Ghinea, N., *Unele considerații privitoare la fraudă care prejudiciază interesele financiare ale Comunităților Europene*, Public Security Studies, issue: 4/2012, page 15-21, www.ceeol.com.

⁹Ghinea, N., *Unele considerații privitoare la fraudă care prejudiciază interesele financiare ale Comunităților Europene*, Public Security Studies, issue: 4/2012, page 15-21, www.ceeol.com.

¹⁰ Official Journal of the European Communities No C 316/49 - COUNCIL ACT of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests (95/C 316/03).

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities;
- non-disclosure of information in violation of a specific obligation, with the same effect;
- the misapplication of such funds for purposes other than those for which they were originally granted.

According to Regulation (EC) No 1681/94 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organisation of an information system in this field, since 2006, Member States are required to identify, when they notify irregularities to the Commission, whether the those irregularities involve "suspected fraud"¹¹.

The Treaty on the Functioning of the European Union stipulates that the EU and Member States have a shared responsibility to protect EU financial interests and to combat fraud. Annually, in accordance with Article 325 paragraph 5 of the Treaty on the Functioning of the European Union, the European Commission, in cooperation with Member States, present the European Parliament and the Council a report on measures taken to combat fraud and any other illegal activities affecting the financial interests of EU.

Since the primary responsibility for fraud prevention at EU level lies with the European Commission, fraud deterrence success depends largely on optimizing the management of Community antifraud institutions subordinated to it.

An important aspect of protecting the EU's financial interests requires the use of mechanisms for the prevention and correction of fraud and other irregularities so as to ensure the budget implementation in accordance with the principles of sound financial management.

Under shared management, the Commission may adopt the following measures:

- Preventive measures: cuts in payments or full/partial suspension of intermediate payments to a Member State , applied in three cases :
 - Evidence of serious deficiency in the management and control system and not adopting any corrective measures;
 - Certified expenditure associated with serious irregularities;
 - Serious breach by a Member State of its obligations of management and control;

¹¹ Article 1a (4) of the Regulation (EC) No 1681/94 defines „suspected fraud” as „an irregularity giving rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud”. This definition is reproduced in article 27 section c of the Regulation (EC) no. 1828/2006.

- Corrective measures: where the necessary measures are not taken by the Member State concerned, the Commission may decide to impose a **financial correction** that follows three main stages:
- Ongoing: subject to modifications not formally by the Member State;
 - Confirmed / decided : approved by the Member State or decided by a Commission decision;
 - Implemented: the financial correction is made and unjustified expenses are corrected. Expenditure that are not in accordance with the applicable rules, become the subject of either a **recovery order** or of a **deduction** from subsequent payment requests.

In the Community legislation, the term of fraud is used both in relation to international crimes committed in the EU (international fraud) and in relation to transnational crime, against the interests of the EU (Community financial fraud). This last typology of fraud has several meanings under Community law. Thus, the European Anti-Fraud Office (OLAF) has jurisdiction to prosecute acts which prejudice the Community's financial interests, including fraud relating to bank cards (through theft, counterfeiting, cloning them), counterfeit of currency, and specific offense of fraud affecting the financial interests of the Community, set out in the Convention on the protection of the European Communities.¹²

In terms of the legal framework, in the European Union a series of measures have adopted to improve the legal and administrative framework for the protection of the member states.

Antifraud policy initiatives taken by European Commission

The proposal for reform of OLAF (Regulation no. 1073/1999) concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (Euratom) No. 1074/1999 focuses on clarifying the procedural rights of persons under investigation by OLAF, increasing the efficiency of its investigations and enhanced cooperation with other EU institutions and bodies, Member States and international organizations. The proposal also seeks to clarify the role of the OLAF Supervisory Committee and to establish a regular exchange of views with EU institutions to discuss OLAF's strategic priorities.

The proposal for a directive on combating fraud against the Union's financial interests through criminal law: This document aims at strengthening the legal framework for protecting the EU budget against misuse. The draft directive aims to clarify, harmonize and strengthen the criminal law in the Member States regarding offenses relating to the EU budget. There are considerable differences between Member States regarding the level of protection (through criminal law) of the EU budget. One of the reasons is that the existing legislation did not ensure a sufficient

¹²Ghinea, N., *Unele considerații privitoare la fraudă care prejudiciază interesele financiare ale Comunităților Europene*, Public Security Studies, issue: 4/2012, page 15-21, www.cceol.com.

level of harmonization and implementation in Member States. The proposal promotes deterring fraud through initiatives to harmonize crime definitions and levels of material criminal sanctions to protect EU financial interests. These include:

- defining crimes - fraud, corruption, money laundering - based on the Convention on the protection of the European Communities' financial interests and its protocols;
- harmonization of definitions of other crimes (dishonest actions of tenderers in public procurement, embezzlement contrary to the authorized purposes) ;
- providing rules on minimum prison sentences for particularly serious offenses, based on thresholds to ensure the proportionality of the measure;
- harmonize the period in which the investigation, prosecution, trial and judgment for an offense must occur;
- establishing accompanying measures for the protection of EU financial interests through criminal law, including rules on jurisdiction and liability of legal entities.

Establishing a European Public Prosecutor's Office (EPPO): OLAF and the European Commission Directorate-General for Justice and Consumers carried out a broad consultation with Member States, experts and stakeholders on the possible creation of a European Public Prosecutor's Office for the protection of EU financial interests. OLAF's experience in cases demonstrates the need for establishing a European body to improve prosecution in cases of fraud investigations in the EU and to speed up prosecution.

A centrally placed body can better ensure continuity and efficiency in the investigation and prosecution. EPPO will be a real body of investigation and prosecution, which at EU level, will increase the efficiency of the fight against crime affecting the EU budget. This will remedy the low level of investigation and prosecution currently impeding the effective protection of the financial interests of the Union.

Initiatives to combat corruption in the EU: The Commission has presented a comprehensive EU anti-corruption policy and called for a greater focus on corruption in a number of policy areas outlining closer cooperation, updated rules on confiscation of assets derived from criminal activities, a revised legislation on public procurement, better statistics on crime and rigorous use of conditionality in cooperation and development policies.

The report will seek to intensify anti-corruption measures in the EU and to strengthen mutual trust between Member States. It will also identify trends at EU level, facilitate the exchange of best practices and prepare the ground for future EU policy measures.

Commission Anti-Fraud Strategy (CAFS) is mainly addressed to Commission directorates. It aims to strike a balance between simplification and cost efficiency and

the ability to adapt existing anti-fraud measures to counter new schemes of fraud. The Commission relies on the experience of OLAF investigations into alleged fraud.

3. ASPECTS OF COMBATTING FRAUD IN ROMANIA

In the Romanian national legislation, the term fraud was first used within the definition given by the GO 79/2003 regarding the control and recovery of Community funds and of misused co-financing funds.

In Romanian legislation, crimes affecting the financial interests of the Community can be found in Law 78/2000, which divides these offenses as follows: ¹³	
Fraud in respect of revenue consists in:	The first two ways of committing fraud in respect of revenue according to the Convention on the protection of the European Communities' financial interests constitute a distinct crime – namely <i>thereduction of European funds</i> .
	The third way of committing fraud in respect of revenue is <i>the missaplication of a legally obtained benefit</i> .
Fraud in respect of expenditure consists in:	The first two ways of committing fraud in respect of expenditure according to the Convention on the protection of the European Communities' financial interests constitute a distinct crime, namely <i>illegally obtaining EU funds</i> .
	The third way of committing fraud in respect of expenditure is the <i>misapplication of funds</i> .

The GEO 49/2005 establishing measures to reorganize the central administration, the Anti-Fraud Fight Department (DLAF) was established as an institution of contact with the European Anti-Fraud Office, which has the following tasks:

- to ensure coordination of anti-fraud fight and to effectively and equivalently protect the financial interests of the EU in Romania;
- to inspect the obtaining, carrying or use of funds from the EU budget, having the quality of finding body regarding possible irregularities and/or fraud affecting EU's financial interests in Romania;
- to ensure and facilitate cooperation between national institutions involved in the protection of EU financial interests in Romania, and between them and the European Anti-Fraud Office and EU Member States;

¹³Ghinea, N., *Unele considerații privitoare la fraudă care prejudiciază interesele financiare ale Comunităților Europene*, Public Security Studies, issue: 4/2012, page 15-21, www.cceol.com.

- to initiate and approve draft laws regarding the protection of EU financial interests in Romania in order to harmonize the legal framework;
- to collect, analyze and process the data in order to achieve relevant analyzes in the field of protection of EU financial interests in Romania;
- to develop and coordinate training programs, apprenticeships and training in the fight anti-fraud field.

Also, the Anti-Fraud Fight Department receives the complaints from the European Anti-Fraud Office or from other sources or takes notice on irregularities affecting the financial interests of the EU, carries out appropriate checks and delivers the control report including its findings and all data and information required to the European Anti-Fraud Office.¹⁴

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- [7] Law 78/2000 on preventing, detecting and punishing corruption, as amended and supplemented

¹⁴Ghinea, N., *Unele considerații privitoare la fraudă care prejudiciază interesele financiare ale Comunităților Europene*, Public Security Studies, issue: 4/2012, page 15-21, www.ceeol.com.

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- [9] GEO 49/2005 establishing measures to reorganize the central public administration
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ASSESSMENT OF THE SERVICE QUALITY IN THE PREPARATORY SCHOOL OF ECONOMICS THROUGH SERVPERF MODEL

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Abstract

The aim of this study is to apply the SERVPERF scale to measure student's perceived quality in preparatory school of economics. The SERVPERF model is based on five dimensions: tangibility, reliability, responsiveness, assurance and empathy. Operational measures of the quality service were collected from a sample of students at the preparatory school of economics in Tlemcen city.

Results revealed that service quality in the preparatory school of economics was more than moderate level based on SERVPERF model. The student perceived that the most important dimensions were responsiveness, empathy and assurance, followed by reliability and tangibility.

Keywords: Service quality, higher education, SERVPERF, preparatory school of economics, Algeria

JELClassification: L2

1. INTRODUCTION

A number of environmental forces are driving change within and across countries and their higher education. These changes have served to put the issue of service quality firmly on the agenda of many higher education institutions (Brooks & Becket, 2008). The student's perceived service quality in higher education is one of the most important issues in higher education institutions. Those institutions have to constantly monitor the higher education services in order to continuous improvements (Kontic, 2014).

In the context of globalization, the challenge for Algerian higher education system is to do more than dispense knowledge, to go further by introducing the

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