

THE FIGHT AGAINST FRAUD IN THE EUROPEAN UNION

Mihaela Iuliana DUMITRU¹, Diana Elena BRÎNZĂ²

¹ University of Pitești, Faculty of Economics and Law

² University of Pitești, Faculty of Economics and Law

Abstract: *The aim of the work is to highlight the efforts and the activity carried out at the level of the European Union in the direction of the fight against fraud, both at a general level and especially in terms of ensuring a favorable climate for the functioning and development of economic mechanisms. The totality of these actions is more and more extensive, given that the access to the Community financial support is currently facilitated, as a result of the particular conditions generated by the pandemic. Community financial assistance is seen as a necessary 'breath of oxygen', but not sufficient to support economic and financial activities.*

Key words: community fraud, anti-fraud bodies, European Union, intra-community cooperation.

JEL Classification Codes: G28, H11, P41.

1. INTRODUCTION

The issue of fraud must be examined primarily in the light of the defining elements offered by the Community bodies themselves. Thus, according to the Community provisions: "**fraud is an act of deception** committed in order to obtain personal gain or to cause a loss to another party" (art. 3, al. 2 of EU Directive 2017/1371).

In addition to this definition comes the specification in Council Regulation 2988/95 which states that: "**An irregularity** is an act that does not comply with EU rules and which could affect the financial interests of the EU, but which could be the result of real errors committed both by beneficiaries who have requested funds and by the authorities responsible for making payments. **Deliberately committed irregularities are cases of fraud**" (EU Council Regulation 2988/95).

The intra-Community offender is a species notion of the generic notion of offender, the specific difference being constituted from the field in which he acts, respectively the economic and financial, fiscal or banking intra-Community sphere through which he damages the national and European budget. The goal pursued by him is the illegal obtaining of considerable amounts of money, the change of the commercial route by interposing some commercial companies of "gallon" type, "ghost" type and the evasion of the payment of taxes related to the commercial operations carried out at European level, thus reducing the national and European budgetary resources (Nicolae Ghinea, etc., The economic and financial crime in the European Union, Sitech-Craiova Publishing House, 2009).

2. LEGISLATION REVIEW

As a result of the accession to the European Union, Romania is thus a member of the Single Market, where the customs borders between the Community countries disappear, the customs declarations for intra-Community transactions are eliminated, situations that were the basis for the production of statistics on intra-Community trade. The replacement of this data



This is an open-access article distributed under the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>).

source in the European Union was achieved by creating and developing a statistical system for collecting information directly from companies belonging to the Community area and carrying out trade activities with entities from the Member States - "Intrastat" and based on regulations applicable in all Community countries (<http://www.onpcsb.ro/pdf/ghid%20in%20romana%20ok.pdf>).

It is thus assessed at Community level that:

Romania's accession to the European Union has determined the harmonization of the national legislation with the Community legislation, producing changes in the field of taxation, with major effects on intra-Community transactions.

Tax fraud and evasion affect Member States in collecting revenue and achieving economic policy. According to statistics, tens of billions of euros (undeclared and untaxed amounts) are in offshore jurisdictions, reducing sources of national tax revenue.

Thus, at Community level, it is considered that:

- The EU must continue to support developing countries that have committed to the principles of tax good governance in order to form sound tax administrations by cooperating with them and providing them with technical assistance;

- The EU should coordinate its position in the G20 discussions on tax base erosion and profit shifting, as indicated in the European Council conclusions and on the basis of developments within the EU in addressing tax havens and aggressive tax planning;

- The automatic exchange of information should become the new international standard. The EU should reach an ambitious and coordinated position for the automatic exchange of information to become a global standard for international taxation. In particular, the EU should speak with one voice within the G8, G20 and the OECD so as to ensure a strong commitment to the development of new international regulations that take into account the current mechanisms at EU level for the automatic exchange of information.

In general, intra-Community frauds concern the evasion of value added tax (VAT) and the use of these amounts in illicit activities, the relevant national legislation in this field is the one that regulates the VAT regime in Romania and which criminalizes tax evasion and money laundering.

- Summarizing the legislative issues as a whole, here are included:

- Fiscal Code of Romania;

- Law 241/2005 on preventing and combating tax evasion;

- Law 656/2002 rep. for the prevention and sanctioning of money laundering;

- At the intra-Community level, Directive 2006/112/EC of the Council of the European Union of 28 November 2006 on the common system of value added tax appears (it represents the republication of Directive 6th and Council Directive 77/388/EC of 17 May 1977 on turnover tax respectively).

The provisions of the directive were transposed into the national legislation of January 1, 2008 when the provisions of the Government Emergency Ordinance no. 106/2007 amending Law nr. 571/2003 on the Tax Code and in which references to the articles of Directive 6 (77/388/EEC) have been replaced by references to Directive 112/2006;

- The decisions of the ECJ are immediately applicable throughout the Union, without the need to take them over in national law. For the field of intra-Community transactions, they are grouped into two important categories:

a) decisions by which the right to deduct VAT can be challenged;

b) decisions by which the right to exempt the payment of VAT, relating to intra-Community supplies, can be challenged.

3. DATABASE AND METHODOLOGY

For the realization of this study, scientific instruments belonging to qualitative research methods were used: documentation, observation, analysis of documents, comparative interpretation of information, synthesis.

The main purpose of the research is to highlight the main objectives of the anti-fraud fight, the scope, the identification of the particularities of the institutions involved and of the different systems in various Community states (we stopped briefly on the following Member States of the European Union: Hungary, the Netherlands and Romania).

The documents on which the research is based are a number of papers and guidelines on the institutions which have as their main concern the fight against fraud at Community level, the cooperation between them and the set of measures taken and applied in the said field.

4. RESULTS AND DISCUSSION

In this section of the article we will summarize the issue of the fight against fraud in the 3 Community states, pointing out the competent bodies in this direction, the competences in the field, objectives, mission, categories of intra-Community frauds, etc.

A. ROMANIA

The main categories of intra-Community fraud identified are:

1. totally evading the payment of obligations due to the general consolidated budget of the state;
 - a) typical intra-Community fraud (MTIC) – comprises a circuit consisting of missing trader (ghost firm), buffer company (buffer company) and, of course, the final beneficiary;
 - b) illegal VAT deduction (cross-invoicing);
 - c) fictitious intra-Community supplies;
 - d) cash & carry fraud;
 - e) import operations using the customs procedure 42.00.
2. Partial evasion of obligations due to the general consolidated budget of the state;
 - a) undervalued intra-Community acquisitions;
 - b) margin fraud;
3. *illegal reimbursements from the general consolidated budget of the state (Carousel fraud).*

The competent institutions in the field of anti-fraud are represented by:

1. **The Public Ministry** – according to the Constitution of Romania, it: "represents the general interests of the society and defends the legal order, as well as the rights and freedoms of the citizens", respectively "and exercises the attributions through prosecutors constituted in prosecutor's offices, according to the law", with the mention that "the Prosecutor's Offices function attached to the courts of law, direct and supervise the criminal investigation activity of the judicial police, according to the law" (The Constitution of Romania, Article 131). According to the existing legal provisions, the Public Ministry includes:

- *the Prosecutor's Office attached to the High Court of Cassation and Justice (PICCJ)*, which is headed by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, assisted by a first deputy and a deputy;

- *The National Anticorruption Directorate (DNA)*, headed by a Chief Prosecutor and two Deputies, is organized as an autonomous structure within the Public Ministry and is coordinated by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice;

- *The Directorate for Investigating Organized Crime and Terrorism (DIICOT)* is established as a structure with legal personality, specialized in combating organized crime and terrorism, within the Prosecutor's Office attached to the High Court of Cassation and Justice. The Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice leads the D.I.I.C.O.T. through the Chief Prosecutor of the Directorate for Investigating Organized Crime and Terrorism;

- *the prosecutor's offices attached to the Courts of Appeal;*
- *the prosecutor's offices attached to the Tribunals;*
- *the prosecutor's offices attached to the Judges.*

2. The General Inspectorate of the Romanian Police (IGPR) - The economic crime investigation police represents the specialized structure of the Romanian Police that acts through specific means of work to prevent and combat crimes of economic and financial nature and other acts of violation of the law that affect the economic climate in Romania and the fundamental rights of citizens.

The economic crime investigation police operates at central and territorial level, having the following organizational structure:

a) at the General Inspectorate of the Romanian Police there is functioning the Directorate for Investigating Economic Crime, organized in 6 services;

b) at the General Police Directorate of Bucharest municipality operates the Economic Crime Investigation Service, at the level of the General Directorate and correspondent services within the sector polices;

c) at the county police inspectorates there are functioning the economic crime investigation services, organized on lines, coordinated by the management of the county police inspectorates.

The main objective of the economic crime investigation structures is to ensure the legality climate of the business environment by combating tax evasion, smuggling, corruption, counterfeiting of goods, crimes in the field of public procurement as well as by protecting the financial interests of the European Union.

3. The General Directorate for Fiscal Fraud (DGAF) - was established within the National Agency for Fiscal Administration (ANAF) on June 26, 2013, by Government Emergency Ordinance no. 74/2013, approved by Law no. 144/2014. The priority objective is to combat tax and customs evasion and fraud.

According to the legal provisions at central level, there are 9 directions, respectively:

- a) Anti-Fraud Directorate
- b) Directorate coordination of special cases
- c) Directorate for Inter-institutional Cooperation
- d) Directorate for Intra-Community Operations and VAT (with operational control tasks)
- e) Directorate for Customs Operations, Import-Export and Excise Goods (with operational control tasks)
- f) Directorate for control of activities with fiscal risk and rapid intervention (with operational control attributions)
- g) Directorate for Risk Analysis, Selection and Programming
- h) Directorate for Methodologies, Anti-Fraud Procedures, Synthesis and Reporting
- i) Directorate for Tax Investigations

The function of preventing tax evasion performed by the dgaf's activity takes a multitude of forms, but the most important are considered to be the following:

- Granting / withdrawing the registration code for VAT purposes;

- Inactivation of companies under the conditions provided by the primary and secondary legislation;
- Establishment of customs and traffic control records generated by risk profiles.

4. The National Office for Preventing and Combating Money Laundering (ONPCSB) - operates as a financial information unit within the national system for preventing and combating money laundering and terrorist financing (SB/FT) (according to fatf recommendation 29). The office's object of activity is the prevention and combating of money laundering and terrorist financing (Regulation on the organization and functioning of the Office - Government Decision no. 1599/2008).

5. EUROPOL – the European Police Office – is a European Union agency whose tasks are to collate, analyse information and send analytical material to the competent law enforcement agencies in the Member States. Europol is a multidisciplinary law enforcement agency that works with both police organisations in the Member States and customs, tax, immigration, coastguard, etc. authorities.

At the same time, Europol has concluded operational agreements with 13 organizations and third countries (Australia, Canada, Colombia, EUROJUST, Iceland, INTERPOL, Monaco, Albania, Norway, Switzerland, U.S. Agencies - ex Immigration & Customs Enforcement ICE, ATF, DEA, US Postal Service, US Secret Service, Lichtenstein and Serbia) and 20 strategic agreements with Bosnia Herzegovina, Montenegro, Moldova, Russia, Turkey, Ukraine – Organizations, WCO, UNODC, CEPOL, European Commission, ECB, OLAF, Frontex, European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Situation Centre of the European Council (SitCen).

B. HUNGARY

The investigation of tax crimes was carried out by the authorities as follows:

1. Hungarian Customs authority and financial guard (HC&FG)
2. Police bodies with activities to protect the economy conducted the procedures for investigating fraud if they were fiscal;
3. The Criminal Directorate of the Tax Administration and Financial Control was established together with the regional and local bodies;
4. the competence of fiscal and financial investigation has passed from the Police (The Directorate for Financial Investigations of the Criminal Directorate of the National Police and its local bodies);
5. The National Bureau of Investigation (NIO) was established within the National Police, the financial affairs being investigated by the Department for Financial Investigations and its regional bodies;
6. The NIO is reorganised as an independent service, financial investigations were carried out at regional level;
7. The Tax and Financial Control Administration and the Hungarian Customs Authority and the Financial Guard have merged into the National Tax and Customs Administration (NTCA), with exclusive competence in the investigation of various financial crimes such as: fraud in the payment of contributions to the social security system, social allowances and other social security; fraud against the budget (tax evasion, tax fraud, smuggling, excise fraud); the omission of monitoring and supervisory responsibilities in relation to budget fraud; the conspiracy to commit violations of the legal provisions on excise duties; violation of accounting provisions; fraudulent bankruptcy.

In the legislative field we are talking about the basic law, namely Law C of 2012 on the Criminal Code Fraud against the budget, Section 396, which brings together the provisions on tax evasion, tax fraud, smuggling and excise fraud under a new name of fraud against the budget.

The main categories of fraud encountered are:

- Invoice factories
- Intra-Community VAT fraud:
 - VAT fraud in connection with export activities
 - VAT fraud in connection with intra-Community acquisitions
 - CAROUSEL or organised VAT fraud
 - import of goods under the VAT exemption regime (tax fraud using the customs procedure 42.00). In the fight against MTIC frauds, it is mandatory to create a financial profile that will help to search for the goods and recover them with the help of a fact sheet whose appearance is in the manner below:

The figure displays four screenshots of a 'Financial Profile Fact Sheet' form, arranged in a 2x2 grid. Each form has a blue header with the title 'Financial Profile Fact sheet' or 'Financial Profile Fact Sheet'. The top-left form includes sections for 'Perpetrator's financial profile' with fields for Case Nr., Underlying criminal offense, Value of commission, and Time of commission. It also has sections for 'Asset tracing results' (Perpetrator name, Permanent Residence, Temporary residence) and 'Investigation Database - antecedent search' (Perpetrator involved in other crim. procedures, Relevant information on assets). The top-right form focuses on real estate and bank accounts, with fields for 'TAKARNET Fact sheet attached' (yes - no), 'contract of purchase attached' (igen - nem), and 'Bank account details' (Bank accounts linked with the perpetrator, The perpetrator has ... Bank accounts rendelkezik, detailed bank account informations concerning ... time intervals: yes - no). The bottom-left form includes a section for 'Real estates' with a list of 4 entries for TAKARNET real estates and financial rights. The bottom-right form covers 'Vehicles' (The perpetrator does not own any vehicle, The perpetrator owns ... vehicles, Fact sheets / vehicles attached: yes - no), 'Business shares' (negative, The perpetrator owns shares in ... companies, incorporation documents/contracts attached: yes - no), and 'Other relevant assets' with a list of 3 entries.

Figure 1. Financial profile of the perpetrator's

Source: Hungary Legislation in the fight against fraud

C. NETHERLANDS

FIOD - The Criminal Investigations Service of the Dutch Ministry of Finance is part of the Dutch Tax and Customs Administration. It fights against tax, financial-economic and property fraud, ensures the integrity of the financial system and fights organised crime. FIOD may be involved if a person evades fees or otherwise commits fraud. All investigators have absolute police powers and are supported by FIOD teams in the field of forensic information technology, arrests, surveillance, interception, strategic information, international cooperation and covert operations. In the Netherlands, all criminal charges are conducted under the authority of a

prosecutor. In almost all the criminal investigations conducted by FIOD, these prosecutors belong to a National Specialized Prosecutor's Office, "Functioneel Parket".

Within this unit the main tasks refer to:

1. Analysis of information from national and EU databases to detect intra-Community VAT fraud as early as possible, modern tools such as Analytics are used for this purpose
2. Exchange of information with other EU Member States
3. Coordination of tax audit
4. Training of tax auditors, investigators, prosecutors, judges, etc.
5. Supporting criminal investigations
6. International cooperation at operational, tactical and strategic level (Eurofisc, EMPACT, joint investigation teams, EC working groups)
7. Communication strategies, focused on entrepreneurs, banks, notaries, tax consultants, freight forwarders, etc.
8. Suggestions for amending the legislation to the Ministry of Finance and/or the European Commission.

In the Netherlands, there is a General Criminal Code and a General Tax Law. The main measures to be taken in the Netherlands refer to:

- warning letters;
- confiscation of the proceeds of the crime;
- cooperation with the Financial Intelligence Unit (FIUs);
- Administrative fine imposed by the Tax Administration.

5. CONCLUSIONS

The reporting and settlement of tax frauds is closely related to the application of the criminal legislation that regulates and sanctions non-compliant behaviors regarding the evasion of the fulfillment of the obligations incumbent on by law.

The use of the administrative law or of the criminal law is determined according to which instrument is the most efficient and effective: the criminal law will be used to sanction situations that involve flagrant violations of the legal order, resulting in serious harm to the interests of citizens.

It is expected that by unmasking criminal networks, with the help of controls, streamlining the taxation regime, obtaining information on the networks with the highest risk will be able to reduce the economic and financial risks.

Under these circumstances, it has been concluded that teams are needed to collaborate at community level. Thus, JIT teams — Joint Investigation Teams were born, which are formed on the basis of an agreement between two or more Member States and/or other parties, with a precise objective and for a limited duration (MLA Convention 2000, Framework Decision of 13 June 2002 on joint investigation teams).

REFERENCES

1. Nicolae Ghinea, s.a., *Economic and financial crime in the European Union*, Sitech-Craiova Publishing House, 2009
2. *Council Regulation (EC, Euratom) 2988/95 on the protection of the European Communities' financial interests* available online at: <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A31995R2988>
3. ec.europa.eu/taxation_customs/vies/

4. *EU Directive 2017/1371 on the fight against fraud to the Union's financial interests by criminal law means* available online at: <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32017L1371&from=EN>
5. *Framework Decision of 13 June 2002 on joint investigation teams* available online at : <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A32002F0465>
6. <http://www.onpcsb.ro/>
7. <http://www.onpcsb.ro/pdf/ghid%20in%20romana%20ok.pdf>
8. *Law No 302/2004 on international judicial cooperation in criminal matters*
9. *Law No. 129/11.07.2019 for the prevention and fight against money laundering and terrorist financing, as well as for amending and supplementing some normative acts*
10. *The Code of criminal procedure*
11. *The MLA Convention 2000 on legal assistance in Criminal matters – online materials*
12. *The Romanian Constitution* available online at: <http://www.cdep.ro/pls/dic/site.page?id=339>
13. www.belastingdienst.nl