

CONSIDERATIONS REGARDING THE MANAGEMENT OF THE FRAUD INVESTIGATION AFFECTING THE FINANCIAL INTERESTS OF THE EUROPEAN UNION

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ABSTRACT

Following the information revolution and globalization, the concept of management has multiple meanings, being used very much in theory and practice. The essence of the analysis and treatment of this concept is the determination of the elements and principles which establish its traits. Given the complexity of management have appeared numerous definitions of the concept. In our country management is viewed from the science perspective, art and mood. Some authors speak of these three terms as dimensions of management. We have chosen to define these terms as management approaches (perspectives from which management can be understood in his totality).

I. General aspects regarding the management of the fraud investigation

Following the information revolution and globalization, the concept of management has multiple meanings, being used very much in theory and practice. The essence of the analysis and treatment of this concept is the determination of the elements and principles which establish its traits. Given the complexity of management have appeared numerous definitions of the concept. In our country management is viewed from the science perspective, art and mood. Some authors speak of these three terms as dimensions of management. We have chosen to define these terms as management approaches (perspectives from which management can be understood in his totality). In reality we can not separate the perspectives one from the other. They are presented as a unit without which management would not be complete. We believe that management is a synthesis of three perspectives, given that management styles are different and although most are effective. You can reach efficiency by adopting different styles, but a synthesis of three perspectives that management builds management as a "whole".

In the light of fraud investigation affecting EU financial interests, we believe that management is the art and science of making others to act so as to achieve the objectives of an organization, is the statutory process and achievement of objectives, by attaining specific basic functions in directing and use of the human, material and financial resources of the organization.

Identifying and defining the functions of management are of great importance, both theoretical and practical, because the integrated aggregate of these ones is what defines the

content of the management process. The function of management means a basic concept developed by the management theory and includes actions that follow each other in a certain order in time relatively independent and which can be grouped.

It should be noted that there are a number of features generally accepted by all management theorists. H. Fayolle, who first theorized these functions, stopped at: provision, organization, command, coordination and control. Moreover, Certo refers to four functions: planning, organizing, influencing and control. And our country continues to structure the dispute over these functions. T. ZorleŃan, believes that the functions are: the provision, organization, coordination, training and control-regulation, and Dan A. Constantinescu speaks of: provision, organization, leadership, coordination and monitoring-evaluation.

One of the greatest theoreticians of management, Peter Drucker, talks about five fundamental tasks of the manager. These are: define the objectives and nature, organization, motivation and communication, measurement, training people and self-improvement.

For the investigating fraud activity affecting the financial interests of the Union, we consider that the main managerial functions are: planning, organizing, leading and controlling. Even if the term of administration can create confusion, by parallel with management, we consider that the term best reflects the training process, the influence and targeting of people which we have in mind.

Each function contains many elements which give content and determines their forms. These items can be:

- full time group activities;
- similar nature and interdependence of these activities;
- the importance of activities throughout the system, the repeating actions within each of the activities, etc.
- their totality represents a basis for determining the organizational framework necessary to achieve each function.

Planning function refers to the determination of the tasks which have to be fulfilled in order to achieve the objectives of the organization, presenting the way the tasks have to be fulfilled and specify the time in which to be carried out. Through planning, and its instrument – the plan - managers outline exactly what organizations have to do to achieve success. For not complicating things we included in the concept of planning the forecast activities.

Management activities of this function are directed towards assessing the future of the unit. Planning is a complex and dynamic process, a specific attitude and way of thinking and acting of the leading, materialized in a series of actions, methodically carried out in order to determine the future evolution of processes and activities conducted, to determine and consciously direct the action of the objective laws of development to ensure maximum management efficiency.

Through planning, the management of the unit harmonizes objectives and of course the resources, the means necessary to achieve them.

The essence of planning is the attitude of the manager (chief) to the future development of processes and activities conducted. This attitude must be a component in the adoption of an effective working style in the management unit. Given the scale, novelty, and speed with which situations succeed and phenomena that we face today, we consider that event planning management can not completely eliminate unforeseen activity, but it may lessen the negative effects.

Planning envisages the following issues: trends, objectives, policies, programs, budgets, distribution of tasks, scheduling work, business development and control.

Organizing the management function regards choosing a particular method of use of all resources in the management system. The organization regards what the people will do and also how their personal efforts must be combined in the best way to progress in meeting targets. In other words, the organization establishes how they can use as methodically and efficiently as possible the organization resources, namely the European Anti-fraud Office, National Anti-corruption Department, the General Inspectorate of Romanian Police, the National Tax Administration Agency, etc., for preventing and combating fraud detrimental to the EU budget. Certainly the organization means activating plans, methodologies and specific work techniques. As a main function of the management process, the organization aims to group people, to arrange the tasks and activities and establish the necessary connections for directing all efforts in one direction. By this function, it lists the different natures of unit activities that are necessary to achieve its objectives, are arranged into groups and sorts of activities and are divided to compartments, formation and people.

Referring to this, Koontz stated that: "those who want to cooperate, work together more effectively if they know what to do, what activities they have in the hand work of the whole team activities and their role compared with others. To design and maintain the system of roles in the organization is essential for management organization.

Moreover, the organization means developing the structures and methods of action, adoption and their effective operation in action, and as an attribute of the management it means the utilization of human and material resources to solve specific problems. To highlight the importance of organization and skills and organizational habits, we have divided this chapter into two main parts, the structures organization, with emphasis on designing the organizational structure as a mean of sharing resources and personal organization, that organization of work and human factor being considered as a strategic variable in this equation.

Management organization is based on one hand, on the horizontal division of labor - specialization, which leads to the formulation and setting tasks and tasks of the employees and, on the other hand, the vertical division of labor, which ensures stability of some levels of authority and specifying the relationship between them. The management is influencing people so that they act in a certain way or follow a certain course of action. Management focuses primarily on behavioral problems, focuses and takes care of people performing their tasks.

The control regards checking the way things were taking place as planned. It is a systematic effort made by the management system to compare the results with standards, plans or objectives in order to determine whether the results meet these standards or if corrective action is needed. Stages of the control are: radiography results with standards and undertaking corrective actions.

Functioning specificity of the control is that it must be exercised usually, to be operational, have an objective character and take place immediately after the decisions and judgments. His role is to manage the whole business units, and each man to achieve preset objectives. The most important function is to inform permanently if work performances are or not as expected. Control action must not be limited to evaluation of results against objectives and standards established but to help prevent trends and phenomena that need corrective decisions. Control must be able to notice deviations within the time as close as possible to their production, triggering correction reactions that require.

Also, to act not only for notificating deviations and correcting them but, first, to prevent them. In other words, the control system must act on internal and external stimulus,

and compare to a series of rules, considered to be tasks or objectives that characterize the work unit.

From management perspective, control is no longer limited to actions of establishment and therefore to the onset of correction that is required but he has to prevent irregularities, failures. This side of the control, the preventive one is increasingly needed in the management policy taking into consideration that the two sides should combine.

Preventive control enables unit management to act quickly before the disruptive factors begin to operate. Control is the complete cycle stage management and has the following functions: information-evaluation, mentoring, support; corrective; punishing-rewarding.

In conclusion, with reference to the process management functions would be inefficient to understand that these are just attributes of strategic management, the responsibility of a single person or small group.

II. Investigative management of the Anti-fraud Department

Anti-Fraud Department - DLAF, ensures protection of EU financial interests in Romania. The Department has the power to control EU funds, the national coordinator of the fight against fraud.

Prerogatives of DLAF can be organized into three main categories:

- spot checks of projects financed from European funds;
- coordination of all national institutions involved in the fight against fraud;
- cooperation with the European Anti-Fraud Office - OLAF and the corresponding structures of the States Member of the European Union.
- effective protection of the Community financial interests is achieved through the effort of all institutions involved in managing and controlling funds allocated to Romania by the European Union.
- DLAF built a national anti-fraud coordination seeking early detection of possible cases of irregularities or fraud, coordination of control actions according to the specificity of the discovered deed and informing the crime prosecutors if criminal elements are discovered.
- So, proceed with celerity to punish guilty persons and recover the amounts unduly paid. The anti-fraud system coordinated by DLAF is structured on 3 levels:
 - The first level - the level of information - aims to facilitate exchange of information between agencies implementing projects financed from European funds constituting at present Irregularities Reporting Network. It seeks to incorporate, in the shortest time, the Managing Authorities and Paying Agencies that ensures financial aid from structural instruments.
 - The second level - the level of administrative control - has in mind the operational cooperation between supervisory authorities, 10 collaboration protocols were completed by DLAF with institutions involved in the fight against fraud. In this level they aim to provide operational support to each other for control actions taken on the irregularities or fraud detected by either of the partner national institutions.
 - Effective prevention and combating infringements affecting the financial interests of the EU are based on operational work of the Department and

coordinating anti-fraud system, implemented by DLAF, as national coordinator of the fight against fraud.

- DLAF carries out operative controls at the sight scene following complaints received from the European Anti-Fraud Office - OLAF, from the competent authorities in the management of Community financial assistance or ex officio. In exercising these powers, investigators DLAF:
 - unconditional access to premises, land, means of transport or other facilities used for business purposes;
 - may take statements from perpetrators and witnesses who were present to the commission of a crime;
 - can draw up official documents on the actual circumstances of its perpetration;
 - may retain the corpus delicti.

Financial and fiscal control officers and the police and gendarmerie are required to provide operational support team DLAF to exercise control.

DLAF has the status of finding body on possible fraud affecting EU financial interests, records control team concluded constitute evidence in criminal trials.

The anti-fraud coordinating system, developed by DLAF, cover both operational coordination of the institutions with responsibilities in the PIF, the activities of collecting and analyzing data, training of personnel involved in the fight against fraud and coordinate the work of public communication. Operational coordination is based on protocols of cooperation agreements between DLAF and institutions involved in the field of PIF. They seek both DLAF information about any irregularity or fraud detected in control activity specific to each institution and providing operational support for operations control of DLAF.

Anti-Fraud Department - DLAF ensure operational coordination at national level by conducting inspections in cooperation with representatives of financial control bodies of tax police, police force or other public servants. At the request of DLAF, operational support is granted to the control team based on collaboration protocols. In such situations, control action takes place in mixed teams, under the direction of a representative DLAF, each participating institution to control has the obligation to verify all required aspects of the investigation.

Anti-Fraud Department - DLAF consists of 3 divisions, under the coordination of the head chief of DLAF.

Division A (legislation, policies, training) initiate and endorse the draft laws on the protection of the European Union in Romania, develops strategies and action plans ,anti-fraud policy, develops and coordinates training programs, training and internships fraud prevention.

Division B (Control) conducts spot checks, submits notes of the National Anticorruption Department control - DNA, in the event of discovering criminal elements in the management of community funds; ensure operational coordination at national level by conducting inspections in collaboration with national whose work contributes to the protection of Community financial interests, ensure operational cooperation with the European Anti-Fraud Office - OLAF.

Division C (data collection and analysis) collects and processes data and information to trigger and conduct investigations, carries out risk analysis, provides transmission of irregularities reports to OLAF, monitors the administrative procedures and those triggered by judicial authorities in the inspection notes DLAF.

III. Peculiarities of criminal investigation management bodies to investigate fraud which affects the financial interests of the EU

As shown, the institutional system involved in combating fraud in Romania includes the judicial organs competent in the investigation and prosecution and adjudication of cases concerning crimes against the financial interests of the European Communities (National Anticorruption Directorate, the Public Prosecutor High Court of Cassation and Justice, prosecutor besides ordinary courts of law), and authorities involved in the fight against fraud (Ministry of Interior, the Financial Guard, DLAF, National Office for Preventing and Combating Money Laundering, the National Bank of Romania).

Prosecution in the cases having as object crimes against financial interests of the European Communities, contained in the Law. 78/2000 takes place at the central structure of the National Anticorruption Directorate of Service against corruption offenses against the European Communities financial interests of the Department to combat corruption. To facilitate internal information exchange concerning the state of the records and communication with other national and European institutions involved in the fight against fraud, to ensure the desideratum of effective protection of EU financial interests in Romania, has established a database, managed by the chief prosecutor of the Service to Combat Corruption Offenses Against the European Communities' financial interests, which includes all records, investigated at the central structure but also in regional services, having as object offenses in connection with obtaining and using funds allocated from the budget of the European Communities.

On the General Inspectorate of Romanian Police, the Fraud Investigation Division does specific activities to investigate fraud affecting EU financial interests.

Fraud investigation police are specialized structure of the Romanian Police acting through specific means working to combat serious fraud which fall within the sphere of organized crime, corruption and other offenses that affect the economic climate in Romania and the fundamental rights of citizens.

All investigative activity in this area is conducted under the authority of the prosecutor. European fraud investigation, including flagrant crime is carried out in criminal cases under the supervision and control of the prosecutor, in strict accordance with the stipulations of the Criminal Procedure Code and special laws in the field. Police investigating fraud, dealing with the prosecutor, must comply with the procedural-criminal dispositions regarding the powers and be subject to supervision during the preparation of precursory acts prosecutor in criminal cases until the finalization of the criminal investigation.

1. Specific police activities conducted in phases of documentation and fraud investigation affecting EU interests.

Fraud investigation police uses, primarily, in order to prevent and combat crimes affecting the financial interests of the C. E., the following specific activities:

Informative-operative activities in accordance with Law no. 218/2002 regarding the organization and functioning of the Romanian Police, Law no. 39/2003 regarding the prevention and combating organized crime, Orders and Provisions of the Ministry of Interior and Administrative Reform.

By collecting, checking and putting good use of data and information, police in the investigation of fraud formations should not, under any circumstances, harm or impede illegally fundamental rights and freedoms of citizens, private life, honor or reputation.

1.1 Permanent knowledge of the operational situation in the area of protection of the financial interests of UE in Romania.

1.2. Mandatory documentation and continuing appropriation of legal regulations in the field, study the literature, knowledge of the methods applied by offenders (specific modes of operation), regular analysis of the way of acting, development and crime trends;

2. Exchange of information management in the fraud investigation affecting the EU budget. Interinstitutional cooperation

Prosecutors and police units, in order to investigate fraud targeting European budget, cooperate, under the law, with public institutions in the composition of other administrative structures.

2.1. Cooperation with institutions / bodies of the Ministry of Public Finance:

A. The National Tax Administration Agency, the General Direction of Inspection and the General Direction of Tax Administration of Large Taxpayers - to determine the legality and reality in the accounts records of the incomes, expenses and trading operations on which to calculate duties and taxes or requested and returned TVA., to determine the financial consequences following the frauding of the public or private property and the names of persons responsible for new cases created, etc..

Carrying out investigations at the directions of local taxes in whose area of expertise either have declared their homes / residences or hold real property information physical or legal persons who are the object of the research to identify them in order to seizure insurer.

B. The National Company "National Printing" - to conduct joint training of their personnel to detect the efficiency of the printed marking and counterfeit documents accounts.

C. National Customs Authority on the situation of foreign trade operations (when required will be raised both from customs documents and Commissioners customs).

2.2. **The Ministry of Justice**, ensures by the National Administration of Prisons information from its databases on persons under arrest in prison. National Trade Register Office, the regional offices provide the verification and identification data on companies and the provision of documents with evidentiary value in cases concerning fraud in the system establishment and operation of companies.

2.3. **The Romanian Intelligence Service and Foreign Intelligence Service**-for the exchange of information on facts and persons who present operating interest within the economic and the organized financial crime and which may affect national security.

2.4. **General Inspectorate for Communications and Information Technology** - for:

a) identify fraudulent e-operators who violate regulations on electronic communications, information technology, mail and radio protection;

b) provide evidence, to call police in cases where research is carried out on "e-procurement system" and "electronic signature".

2.5. The National Bank of Romania - by:

A. Financial Stability Department-for providing data and information from the database of Payment Incident Bureau regarding cases of refusals to pay bank payment instruments (checks, promissory notes) the lack of availability in the bank account;

B. Division of Surveillance-order execution of specific checks at the commercial banks on illegalities committed when performing certain banking operations (officials) and to verify the legality of exchange centers and the local operations done by them.

However, to document criminal activity in cases of fraud of EU funds through the banking system, which is the customary system by organized criminal groups, criminal investigation bodies follow the main points:

- file opening accounts, their turnover and bank documents underlying the calls on their operations from banking establishments where are open accounts with the approval of the prosecutor in accordance with the laws on banking secrecy / professional, will seek in particular types of transactions (credit / bank cutting and intrabanking, external transfers, cash transactions: withdrawals / deposits, exchange, etc.).

- compliance on customer knowledge (Law No. 656/2002 as amended by Law 230/2005, the internal bank rules); verification of documents submitted at the opening of

accounts in terms of consistency identification of persons, certified copies of identification cards by bank officials;

- authentic correspondence analysis presented by clients (proxies, delegates, documents issued by ORC) with identification of those mentioned in documents;
- recorded video images on those carrying out operations;
- the drawing up and enforcement of the circuit of the banking related documents: verify specimen signatures, to identify persons who appear to carry out operations, if payment instruments presented fulfill the conditions established by law to be operated;

2.6. **The National Office for Prevention and Combating Money Laundering**, it is found that money from European funding are subject to the washing process, will be ordered for scientific and technical findings of financial analysis

2.7. **The Fight Fraud Department of the Romanian Government** - in which case the police investigation of fraud may use the stipulations of the cooperation protocol signed with the that institution.

2.8. In the same purpose, dictated by the necessity of interdisciplinary cooperation in the smooth administration of the judicial process of Fraud Investigation Division conducted activities or require special consideration of the structures of other administrative entities such as Ministry of National Defense, Court of Auditors Ministry of Health, Education, Research and Youth, Ministry of Agriculture, Forestry, Water and Environment, Ministry of Industry and Trade, Ministry of Labor, Social Solidarity and Family, Ministry of Transport, Constructions and Tourism, Ministry of Communications and Information Technology, Agency for Payments and Intervention in Agriculture, the Public Ministry (in particular the National Anti-Corruption)

If the Union's financial interests are damaged due to the action of organized criminal groups, must bear in mind that according to Article 16 of Law nr.508/2004, to gather evidence and identify the perpetrators, since the phase of preceding acts, Prosecutors DIICOT may provide the following measures:

- the surveillance of bank accounts and accounts treated as such;
- the surveillance, interception or recording of communications;
- access to computer systems;
- communication of documents, bank documents, financial or accounting.

3. Ways to commit a crime

The cases of criminal investigation organs, has determined that the main ways of committing crimes in the sphere of funding programs granted to Romania by the European Communities are:

- the use or presentation by the managers of companies receiving the documents or false, inaccurate or incomplete declarations, to obtain grants from the Regional Development Agencies;
- company representatives failure to provide data and information required to obtain funds from the Regional Development Agencies;
- change destination grant funds obtained;
- when drawing up the necessary documentation, use or production of documents or false, inaccurate or incomplete declarations, to reduce resources in the overall EU budget

- granting of such illegal funding by public officials to private individuals and companies who are directly concerned; existence of interest groups through which significant sums from the EU budget are diverted by its own civil servants in positions of leadership and control;
- obtaining grants by holding bogus auctions;
- preparation by public officials in complicity with representatives of private companies, false documents, based on which they obtain grants.

In conclusion, achieving the corresponding ability to prevent fraud depends on effective implementation of relevant provisions, if it is accompanied by an inter-institutional cooperation, specialization and improvement for staff, the solutions to be taken must have a significant impact both in terms of prevention and removal of consequences of illegal actions.

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