

ENSURING BUDGETARY DISCIPLINE AND PROTECTING THE FINANCIAL INTERESTS OF THE EUROPEAN UNION AT A NATIONAL LEVEL BY USING EU INSTRUMENTS AND POLICIES

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Abstract

The growing need for financial resources claims, alongside with increased absorption indicators, the need to implement new ways of ensuring budgetary discipline at EU and the Member States level.

Member States from the Euro-zone have a system of support and financial assistance from the ESM, while the non-euro area does not enjoy the same treatment from the European Council and the European Commission, thus creating further conditions of deepening disparities and discrepancies between Member States.

European Commission supervises the development of the budgetary predicament and the level of Government debt in Member States, being able through the European Council to sanction states mainly in the issuance of bonds, or by requiring the involvement of the European Investment Bank to review lending policy, and ultimately by a deposit of up to 5% of GDP to the European Commission which can later be converted into a fine applied by the Member State by the European Council.

The budgetary construction and the assigning of public acquisitions should ensure the reasonableness of both the estimate budget allocations for each project / acquisition prices and acquisition contracts assumed in goods, services and work acquired.

This characteristic of public assessment processes, including those relating to public acquisition processes, is one of the requirements that should emerge from the conduct of the officials involved in acquisitions, with integrity in the discharge of the public duties. This can ensure the optimization of the acquisition process in the light of the interests and protection of public funds against irregularities and fraud

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committed in misappropriation of public funds through corruption in public acquisitions.

The accuracy of the reports of the European Commission in assessing the budgetary situation and budget deficits of every state, keeps the real macroeconomic data reported to the European Commission and the sustainability of public budgets (in particular on the revenue side), so that through a rigorous analysis, we are able to detect budgetary positions inflated by generating public budgets through budget execution failure, thus also generating excessive budget deficits.

From a simple assessment of stability for the European Union's framework, I consider that it is influenced not only by globalization and concentration of capital, but especially of impending compression of the single market by the Brexit on the one hand, the new imminent pressures the European Union is facing due to the wave of mass migration, however merging the challenges of risks increase budget deficits at the level of Member States, affecting the achievement of the overall objectives of the 2020 strategies and stability in the whole European Union.

Ergo, we find that the Euro-zone countries have a system of support and financial assistance from the ESM, while the non-Euro zone does not enjoy the same treatment from the Council and the Commission, which creates further conditions of deepening discrepancies between Member States and disparities in terms of accessibility of financial resources of the European Central Bank and in particular those managed by the European Stability mechanism.

Keywords: *financial, budget deficit, economic cohesion, budgetary discipline, economic crisis.*

JEL classification: *H41, H42, H57*

1. Introduction

The European Union viewed as unity in diversity is itself an economic and political entity in which the Single Community Market operates, with rules on the consolidation of the customs union, the common market, economic and monetary union within a European constitutional framework that proves to be very sensitively accepted by some Member States with the adoption of the draft Constitution by the Thessaloniki Summit from the 6th of February 2003.

Disparities between Community Countries are most often determined by the country-by-country level of GDP per capita compared to the level of GDP per capita at European Community level, which expresses in a simple

analysis the level of competitiveness and performance indices specific to each EU Country, compared to all indicators and factors of influence on the degree of achievement of the economic and social cohesion at the level of each Community State.

In order to help the smooth functioning of the single market and to create solidarity among its members, an economic, social and territorial cohesion policy was designed to stimulate the process of recovering gaps for less developed countries and regions. (Dornean A., 2016, p. 14)

The extent to which the Member States of the Community understand to prioritize the main co-financing projects and axes through Partnership Agreements with the European Union, together with the national instruments on the selection and implementation of sustainable development projects, the background conditions for budgetary allocations for each state in the overall budgetary positions Of the European Multiannual Budget Framework.

What is specific to Romania, as the structure of the funds allocated on the priority axes of the European funding programs under the National Operational Programs, is based, on the one hand, on the lack of a vision of the public decision-makers in the stabilization of the financing priorities of the national projects from the funds allocated by the European Union and, on the other hand, in the absence of conditions for certain guarantees regarding the eligibility and opportunity of major state projects.

During the 2014-2020 period, seven Operational Programs will be functional in Romania in order to ensure the continuation of the EU cohesion policy at Member State level, and € 22.5 billion will be allocated to Romania for the achievement of national objectives and priorities, financed as follows :

-  European Regional Development Fund (ERDF) – €10,72 billion;
-  Cohesion Fund (CF) – € 6,93 billion;
-  European Social Fund (ESF) – € 4,77 billion.

The seven Operational Programs for the 2014-2020 period will focus on the functions of three ministries acting as managing authorities: the Ministry of Regional Development and Public Administration, the Ministry of Agriculture and Rural Development and the Ministry of European Funds.

2. Methodology

Protecting the EU's financial interests is a key element of the EU public agenda for strengthening and raising citizens' confidence and ensuring that their money is used properly (Şaguna D., Radu D., p. 133).

For the purposes of the FPC Convention, passive corruption is defined as an act committed intentionally by an official, either directly or through a third party, which consists in claiming or receiving advantages of any kind, for himself or for a third party, or to accept the promise of advantages for the purpose of fulfilling or failing to fulfill an official's duties in accordance with his or her duties or of an act in connection with the exercise of his or her office which affects the financial interests of the European Communities.

Active corruption as defined at European level by the FPC Convention (the First Protocol to the Convention under Article 3) is the intentional act committed by any person, consisting in promising or giving, either directly or through a third party, an employee of any kind, of an official, of himself or of a third party, in order for him to perform or refrain from fulfilling, contrary to his official duties, an act in accordance with his office or in connection with the exercise of his office Causes or is likely to prejudice the financial interests of the European Communities.

The European Commission's concerns on preventing and combating fraud in the European Union budget have been reflected both in the regulation of common policies on the Commission's anti-fraud strategy and in the creation of new instruments for monitoring and monitoring the use of European funds, granting OLAF's exclusive right to investigate frauds and irregularities detected or detected ex officio either directly or through AFCONS structures at the level of the Member States of the Community in order to ensure the protection of Community funds against fraud and the ineffective use of Community budget allocations.

Currently, national budgets are the ones that bear the risk of not recovering the amounts already paid to the beneficiaries, but subject to financial corrections. Romania considered the use of OLAF's information or control reports pursuant to Regulation (EU, Euratom) No.883 / 2013 on investigations by OLAF, so that the final acts of control of the European institution would benefit from the same regime and legal value with those drafted by the national institution. (Șaguna D., Radu D., p. 140)

From researching the phenomenon of corruption by using the most significant results of scientific research on fraud and corruption in public acquisitions, we can draw a preliminary conclusion that essentially shows that corruption directly influences the economic performance of each country as well as foreign direct investment attracted to economies to each state.

Table no.1.3

Economic performance and indicators of corruption in the European Union and in Romania

General indicators of economic performance and corruption	EU	Austria	Bulgaria	Czech Republic	Hungary	Poland	Romania	Slovakia
GDP per capita, EUR 2014	27.300	38.500	5.800	14.700	10.500	10.700	7.500	13.900
FDI per capita, 2014	821	532	n.a	785	1.080	122	107	407
Total investment,% of GDP 2014	19,8	22,4	n.a	25	21,7	20	24,2	20,9
TI 2014 corruption index (10 clean, 0 high corruption)	6,4	4,2	5,8	5,1	5,4	6,1	4,3	5
The ratio between the consumption of the population and the consumption of the public administration	2,7	2,7	3,6	2,5	2,5	3,3	4,4	n.a

Source: own processing based on data from the Competitiveness

Report of Romania 2016 AM CHAM - American Chamber of Commerce in Romania, pp. 17-18.

From the data on the economic performance and corruption indicators in the European Union and Romania, it results, in principle, that in the countries with high corruption, as reflected by the corruption index (TI2014), the economic performance is wider. Thus, in Romania, where TI2014 corruption index is 4.3, GDP per capita is €7,500, being lower than in less corrupt countries such as Poland, where the corruption index (TI2014) is 6.1 and the GDP per capita is €10,700.

The same positive trend reflected in economic performance is maintained among the other countries under study, namely Hungary and Slovakia, where corruption does not manifest to a similar degree to that recorded in Romania. In the case of Hungary, the per capita GDP per capita is €10,500, given the existence of a corruption index (TI2014) of an absolute value of 5.4, while in Slovakia, as a less corrupt country to a corruption index (TI 2014) of 5, the economic performance is higher being expressed in the record of absolute values of €13,900 of GDP per capita.

An atypical situation is recorded in Austria, a country where GDP per capita is €38,500, more than the average GDP per inhabitant of €27,300, which according to the TI2014 corruption index, could be classified in the most corrupt country in the European Union with respect to this unique criterion of the corruption index, which is measured at Austria's level as an absolute value of 4.2, thus higher than the corruption index in Romania where the corruption index (TI2014) is 4.3.

In trying to understand the effects of corruption on economic performance at the level of the eight states analyzed in terms of economic performance and corruption indicators in the European Union and Romania, we can conclude with preliminary value that there is a direct relationship between the corruption index and the proliferation dimension of corruption acts and performance Economic situation in each country, meaning that in countries where corruption is high, the level of economic performance is low.

The level of economic performance of a country is directly influenced by foreign direct investment, a clear situation in the case of Hungary, where FDI per capita 2012 was €1,080 per inhabitant, much higher than the level of FDI per capita 2012 in Romania where only €107 per capita was registered.

These values of foreign direct investment not only have an impact on the economic performance of the countries of the European Union, but they are also elements that lead to the consolidation and stability of the relevant macroeconomic indicators that are also considered by the World Economic

Forum in the ranking of countries according to their performance economic ones.

On the other hand, the increase in the indicator of foreign direct investments in a country, but especially the positive trend registered in absolute values over a certain period, expresses investors' confidence level in the economic potential of a country, which cannot be much different from the level of public perception on the main indicators for measuring the competitiveness of each country.

Even though the corruption dimension is difficult to quantify by accurately determining the direct costs and costs associated with corruption, it is the nature of the negative influence of corruption and fraud on strengthening investor confidence in the economic environment and in the corporation tax systems of corrupt countries characterized by Fiscal unpredictability and the lack of stability and sustainability of tax systems.

Through the Cooperation and Verification Mechanism (CVM), Romania has been subject to monitoring since its accession to the EU along with Bulgaria, with regular assessments of the state of implementation of the Community measures in the achieving of performance, measured at the level of each state by CVM of the results based on the four objectives in the following areas: judicial reforms, integrity, high-level corruption and the prevention and combating of corruption in the public sector.

As far as European Funds are concerned, relevant information on the use of European Union Funds must be available in a format that can be audited, compared and analyzed for anti-fraud purposes, respecting the most rigorous standards of ethical behavior and integrity. (Grădinaru D., 2016, p. 23).

The integrity framework is based on institutions and rules that ensure that expectations are clear and that they are properly implemented. Such a framework also depends to a large extent on the political and cultural acceptance of the fact that integrity is an important principle for civil servants and that any violation should have consequences. Attempts to modify incompatibility rules for locally elected representatives or attempted amendments to the Penal Code, which aimed at removing whole categories of individuals from the scope of integrity rules, including conflict of interest, may be relevant examples of the degree of accountability of national decision makers at national level. (Grădinaru D., 2016, p. 24).

These legislative initiatives, along with those concerning the suppression of NIA's (National Integrity Agency) activity through the amendments to the law on the functioning of NIA, have not left any singular initiatives in the struggle of the political class to ensure the obscure protection of their interests in attracting criminal responsibility for the acts of corruption. In the same sense, the legislative initiatives followed the interests of the corrupt politicians through the acts of legalization of the abuse of service, carried out by the newly established Government in early 2017 in Romania, by the urgent adoption of GEO no. 13/2017, by which the legal framework of the abuse of service was redefined, as a legal way of removing the criminal liability of the corrupt public decision-makers, for the damages sustained in their charge for damages not exceeding 200,000 lei, provided that in the old regulation the criminalization of the abuse of service as a crime was not established a limit of the damage.

We will not be able to accept a similarity between the sanctioning system applicable in some states such as Lithuania and Slovenia where minimum injury limits are imposed to bring criminal liability for detected frauds so that we can accept the change in the fraud prevention paradigm offenses of abuse of service in Romania using this reasoning not supported by European norms and irrational rules as a whole, so that damages under a certain limit set by law are no longer recoverable and intentional acts do not attract legal liability of fraudsters. Even if, due to the fully justified reaction of the social media directly affected by the measures to change the rules of criminalization and corruption, the judicial effects were canceled through the promotion of GEO no. 14/2017, the concerns of the European partners and the European institutions remain to fight against corruption and fraud, which warned Romania every time when, through the adoption of legislative measures, the political decision-makers tried to suppress forces of power (ANI, DNA, ANAP, etc.) in order to put themselves under the shelter of the law for frauds and corruption detected and investigated by state forces.

In the budgeting and acquisition process, the reasonableness of both the budget allocations for each project / public acquisition and the prices assumed under the public acquisition contracts for the purchased goods, services and works should be reasonable.

This feature of public assessment processes, including those relating to public acquisition processes, is one of the requirements that should shift from the conduct of public acquisition officials who, along with integrity in

the exercise of public duties, can ensure the optimization of public acquisition processes, through the protection of interests and public funds, in the face of irregularities and fraud committed in the misappropriation of public financial resources through corrupt acts in public acquisition.

After the possibility of accessing the European funds in the various European programs / projects developed, the possibility of illicit obtaining of these funds appeared in some cases with the complicity of the officials who worked in the management and / or control / audit authorities. (Grădinaru D., 2016, p. 27).

The desire of the individual to have a very good material state is a major cause of an economic nature in making the personal decision to obtain unlawful incomes in the faithful exercise of the public function, and the cultural fund and the political instability generating ambiguous legislative norms and permissive complement the broader framework of abusive agents' misappropriation of European funds with the complicity and participation of state officials.

Regarding budget support, the main risk factor consists of a combination of two aspects: funds are naturally viable, and public finance management systems in partner countries are often deficient. The eligibility conditions associated with the funding are too general and may give rise to divergent interpretations (Şaguna D., Radu D., p. 139).

The FPC Convention sets out what behaviors are considered dangerous for the financial interests of the European Union, and imposes an obligation on Member States to criminalize these behaviors, and the concrete way in which each State does with its criminal policy (Grădinaru D., 2016, p.63).

The particularities of transposing the provisions of the FPC Convention into the national legislation of each state in our view have taken into account both the culture and degree of citizenship of European citizens involved in the public debates of draft internal regulatory acts, but above all the political will have been expressed by public decision in the steps to consolidate internal law packages designed to equally protect European and national funds in public acquisition processes.

Some states (Belgium, Italy, Latvia, Luxembourg and Austria) still require additional conditions regarding the subjective side (intention), requirements not provided for in Art. 1 (1) (a) of the FPC Convention. On the other hand, fraud in the form of non-disclosure of information in violation of

a specific obligation in France is punishable only in exceptional cases, and in Hungary and Estonia the misappropriation act does not cover all types of expenditure. (Grădinaru D., 2016, p.77).

In spite of the development of an *Acquis* of the European Union which encompasses measures for fraud, corruption and money laundering, Member States have adopted different rules in national law and therefore degrees of protection are sometimes different in their internal judicial systems. In particular, it has been appreciated that such disparities have a negative impact on the effectiveness of policies promoted by the European Union to protect its financial interests. Only by the adoption by all Member States of similar domestic provisions on the conditions of criminalization and punishment of these facts could a uniform interpretation of all the requirements be imposed by these cases to be investigated, which derives from the existence of different practices. (Grădinaru D., 2016, p. 86).

These shortcomings are in the process of finding a solution by establishing a regulated internal framework for the enforcement of sanctions for individuals and legal entities involved in European Union fraud by transposing within the internal rules the minimum limits of sentences between 6 months and 5 years established by the proposals of the European Parliament's 2012 Directive, which would ensure consistency across the Community in applying the same sanctions for the same facts as to discourage fraudulent practices having a direct effect on increasing the effective protection of European financial resources.

3. Conclusions

The mid-term evaluation is provided for in the political agreement on the Multiannual Financial Framework (MFF) for 2014-2020 and Article 2 of Regulation Council Regulation 1311/2013 ("the MFF Regulation"), and the prospects for the first evaluation at the end of 2016 responded to the need for additional funds for migration, security and external border control of €2.5 billion, and complementary funds of €1.4 billion to support investment in non-EU regions and to use private partners to tackle the root causes of migration; in fact, the funds supplemented by the Commission for this new challenge for the European Union rise to the amount of € 3.9 Billion.

Even if this initial assessment did not affect the structure of European funds initially allocated under the 2014-2020 budgetary framework, in the

case of Romania, as in any EU Member State, there is no guarantee that the level of Structural Fund allocations will not be adjusted at the next evaluation and revisions of the EU budget. President Juncker's optimistic tone that said that "the Union's budget is an eloquent proof of financial soundness" could be contradicted by future developments in the single market and the EU's revenue constraints in the absence of the UK's contribution to the Community budget after all the exclusion procedures of this state from the European Union. On the other hand, we consider that, in order to cover this revenue gap in the Community budget, the customs policy in the Community should be rethought so that by optimum setting of adjusted customs tariffs an additional revenue is made to the EU budget and in the same sense effective protection of Member States' economies against products of lesser quality imported from outside the European Union is achieved.

Responsible for securing the proper and wise spending of EU funds are both the Commission and the Member States and in recent years they have already taken numerous measures to ensure this. All the countries of the European Union have fully transposed the provisions of Article 2 and Article 3 of the First Protocol on Corruption, but with the specific features of each State and in accordance with the criminal policy of the EU Member States. This is the result of the resistance of public officials to committing acts of corruption and fraud from European funds, as it is known that in countries where the sanctioning system is milder and the level of corruption and fraud is higher, as for example in Greece, penalties for fraud involving European funds are imprisonment from 10 days to 5 years for the simple option and from 2 to 5 years for aggravated variants.

In the same militant framework for European Union fraud, there are also other EU countries (Spain, Italy, imprisonment from 6 months to 3 years, Austria with imprisonment of no more than 6 months, Poland with imprisonment 3 months to 5 years, Portugal with imprisonment of up to 3 years or fine), where the corruption indexes are higher as we have shown in the scientific research in the thesis.

In Romania, all the provisions of the FPC Convention on fraud and corruption have been taken and transposed, and in comparison with the other EU Member States, we consider that the penal system of corruption and fraud in European funds is one that provides for the superior limits of the application of criminal sanctions, and in particular for fraud in respect of

European funds, the penalty is imprisonment from 2 years to 7 years, and in the aggravated version the limits are increased by half.

From the analysis of fraud investigation data on the protection of European interests, data available in the NAD and AFFD's Activity Reports shows that those who are fraudulent to EU funds are unaware of the legal consequences and criminal sanctions of their deeds. This fact cannot exclude from the whole of the causes of the offenses concerning the protection of the interests of the European funds, the insufficient measures of the national authorities in the awareness of the consequences of the acts of fraud and corruption, and, on the other hand, those campaigns of public information of the institutions with prevention and Combating these types of fraud such as AFFS, NAD, Managing Authorities, Audit Authority, NAPA, MFF, NIA, etc., all of which did not lead to increasing civisms in the field of absorption and fair use of European funds and nor in reducing corruption and fraud in public acquisition processes.

4. References

- Amundsen, I. (1999), *Political corruption: An introduction to the issues*, Chr. Michelsen Institute, WP 1999:7, CMI, Bergen;
- Dornean A., (2016), *Gestiunea fondurilor structurale europene*, Editia 2, Ed. C.H. Beck;
- Grădinaru D., (2016) *Investigarea infracțiunilor contra intereselor financiare ale UE*, Ed. C.H. Beck;
- OECD (2013), *Implementing the OECD Principles for Integrity in Public Procurement (November 2013)*, p. 22: www.oecd-ilibrary.org/governance/implementing-the-oecd-principles-for-integrity-in-public-procurement/why-clean-public-procurement-matters_9789264201385-3en;jsessionid=951fbj6h46u4a.x-oecd-live-01;
- Șaguna D. & Radu D., (2016) *Politica de coeziune a Uniunii Europene 2014 – 2020, Strategia Europa 2020*, Ed. C.H.Beck;
- Transparency International (2014), *Curbing corruption in public procurement*, at http://www.acec.ca/source/2014/november/pdf/2014_AntiCorruption_PublicProcurement_Guide_EN.pdf
- Transparency International (2016): *Corruption perceptions index 2016. The perceived levels of public sector corruption in 176 countries/territories around the world.*