

European Funds Fraud: The Impact on the Process of Absorption of Structural and Cohesion Funds in Romania

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ABSTRACT

The increase of the degree of absorption of European funds offered to Romania by the European Union represents one of its main objectives in the present and future situation. One of the main reasons that the funds are so important is the fact that, taking into consideration the microeconomic and macroeconomic situation that Romania is in, it represents an alternative financing mechanism of the economy that Romania can benefit in very advantageous conditions. Even under these conditions Romania- within 2007-2013 period of programming – couldn't benefit from it by attracting as many structural and cohesion funds as possible, at least in comparison to other member states. In our opinion, that of the authors' one of the reasons that led to such a low rate of absorption, alongside with the low administrative capacity of the state is the excessive bureaucracy , an inefficient legislative framework which is not harmonized with the European one, the lack of experience in using and administrating of European funds, the beneficiaries' incapacity to sustain the financial support of the project (to assure the co-financing of the project), a low involvement of Romanian banking institutions in the process of supporting the beneficiaries of European funds. Another cause is the European funds fraud that happened in Romania. In the present article, the authors have decided to analyze the influence of European funds fraud on the degree of absorption of structural and cohesion funds in Romania.

KEYWORDS: *alternative financing mechanisms, fraud, grant funds, degree of absorption, European Union.*

JEL CLASSIFICATION: *E10, E19, E29, E59, E60, E69, G23, K49, O20, O52, P50*

1. INTRODUCTION

In the following article the authors have decided to underline the negative consequences of the European funds fraud phenomenon on the economy of Romania, a phenomenon that is, in the authors' opinion, closely related to another very serious social phenomenon: the corruption. Consequently, taking into consideration the existent economic theories and the present legislative framework, including reports of the European Union and of Romania, and the specific literature that studies European funds fraud in Romania and in the European Union, in this article we tried to emphasize the elements that we consider the most important, theoretically (theories, concepts) and practically. They all helped form conclusions about the role and the influence of European funds fraud in the process of absorption of structural and cohesion funds. The architecture of the present article was divided into two main parts. In the first part the authors wanted to present an analysis of the obstacles that prevented the absorption process of structural investment and cohesion funds in the programming period 2007-2013 in Romania and in the second part the authors underlined the analysis of the European funds fraud phenomenon on the absorption process of structural investment and cohesion funds and its implications. The article ends by the conclusion drawn by the authors regarding the impact, the

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role and the influence of the European funds fraud phenomenon on the absorption process of structural investment and cohesion funds in Romania.

The methodology applied by the authors for the realization of the article meant applying more methods, respectively: analysis, statistics, comparison, induction, and conclusion. It must be said that the article is based on a large bibliography, articles, scientific works, economic theories, and Romanian and European legislative framework regarding the thesis of the article.

2. OBSTACLES IN THE PROCESS OF ABSORPTION OF EUROPEAN FUNDS THAT ROMANIA HAD WITHIN THE PROGRAMMING PERIOD 2007-2013

After the accession of Romania to the European Union, the country could benefit from the possibility of developing its economy that the European Union offered, a development made possible by the funds offered through the cohesion policy and the regional development policy of the European Union, a policy that has as objective the eradication of the social, economic and territorial disparities in Romania and in the European Union. The funds offered to Romania to reach this objective are, generally, structural and investment funds, that were generically called European funds. These funds were and are offered by the European Union to each member state, including Romania, for programming periods of time(for Romania the first programming period is 2007-2013 and the second programming period is 2014-2020) by the means of the cohesion and regional development policy, represented by:

European Structural and Investment Funds (ESIF) respectively: *European Regional Development Fund (ERDF)*, *Cohesion Fund (CF)*, *European Social Fund (ESF)*, *European Agricultural Fund for Rural Development (EAFRD)* and the *European Maritime and Fisheries Fund (EMFF)*.

Regarding the European Funds, these alternative mechanisms of financing of the economy are met with different opinions by the specialists, regarding their efficiency to contribute to the realization of the objectives of the cohesion and regional development funds of Romania and of the European Union. There are voices that say that the funds allocated to Romania by the European Union through the cohesion policy instruments will successfully contribute to the attenuation of social, economic and territorial disparities, taking into consideration the fact that they could generate Romania's economic growth, durable development and financial stability. According to other authors Boldrin and Canova (2001) „the cohesion policy is inefficient”, the European funds and the cohesion policy instruments have an “insignificant effect or a negative effect on a state”. Other experts in the field say that the European funds do not allow the economy to develop naturally, but they teach the company administrators to fill in forms and financing requests to make their investments and that they are making them forget the classical financing mechanisms and principles that would truly contribute to the economic development of a state.

In Romania, according to the official data on the official website of European Funds Ministry (www.fonduri-ue.ro), on the 30th of December 2013 the rate of absorption of the European funds that were allocated through the main financing programmes was in average 33.47%, Romania succeeding to cash in from the European Union approximately 5,1 billion Euro (The Ministry of European Funds, 2014). It must be said that in the first two years of programming period 2007-2013, the rate of absorption of the European funds was „zero”. In 2015, on the 31st of July 2015 the average rate of absorption of the structural and cohesion funds in Romania after they were allocated by the operational programmes during period 2017-2013 increased to **55.51%** and on the 29th of 2016 the rate of absorption of European funds allocated through operational programmes during the period 2007-2013 increased to **58.86%** (The Ministry of European Funds, 2016). The average absorption rate of the European funds of **58.86%** was

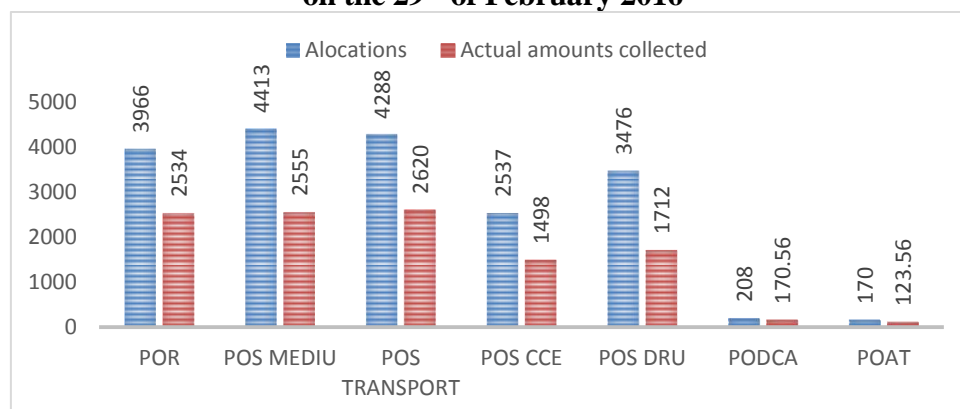
calculated taking into consideration the absorption rates on each operational programme during 2007-2013 in Romania and that is presented as follows:

Table 1. Absorption rates of the European funds for each operational programme during the period 2007-2013

No.	Name of operational programme	Absorption rate (%)
1	POR	63.91
2	POS MEDIU	57.93
3	POS TRANSPORT	61.12
4	POS CCE	59.07
5	POS DRU	49.26
6	PO DCA	82.00
7	PO AT	72.72
8	TOTAL (%)	58.86

Source: authors based on the data from The Ministry of European Funds (2016)

Diagram no. 1. Absorption of Structural and Cohesion Funds in the period 2007-2013 on the 29th of February 2016



Source: authors based on the data from The Ministry of European Funds (2016)

According to the data presented above about the absorption rate of the European funds in Romania during the period 2007-2013, we can say that the level is very low, in comparison to other member states.

We consider that the low level of the absorption rate of the European funds that Romania had is due to the following obstacles that Romania had to face during the period 2007-2013: the absence of a legal framework, compatible and harmonized to that of the European Union, the absence of experienced personnel that could correctly handle and use the European funds, hiring of under qualified and inexperienced personnel on political criteria in management posts in institutions that handle and manage European funds, the lack of involvement of the real technocrats in the process of handling and managing the European funds, starting from the programming phase, the evaluation, implementation to the monitoring, the inefficient administrative - institutional capacity, poor inter-institutional cooperation, excessive bureaucracy and not finally the corruption within the system and European funds fraud.

The only cause for the fraud phenomenon is considered by some specialists to be the state and its institutions that create opportunities for those who seek to fraud funds, by unclear laws that offer “escape doors” that give them the illusion that they are within the legal framework and that they cannot be sanctioned. The founder of modern science, Adam Smith, said in his book “The Wealth of Nations” that each man, as long as he doesn’t break the law, has the right to handle his own profit as he sees fit (Smith, 2011). Even for tax fraud the specialist Nicolae

Hoanță said that „ talking about the notion of fraud, we have to talk about legal or legitimate fraud and illegal fraud” (Hoanță, 1997).

In the authors’ opinion, we consider that a reform of the administrative-institutional capacity is needed in Romania, to harmonize the legislation and to create an efficient legislative framework, eliminating all the aforementioned obstacles, and taking into consideration the examples of good practice within the European Union, Poland, for example, and to profit from the new opportunities that the cohesion policy offers for the economic development and the elimination of economic, social and territorial disparities in the programming period 2014-2020. It is known that, when the administrative-institutional mechanism of a state has a low capacity and a poor legislative system, it will not be able to administrate and run the institutions that are responsible for in an efficient manner, but it will have major difficulties to face, high administrative costs and its social-economic phenomena like fraud, corruption and tax fraud.

3. EUROPEAN FUNDS FRAUD: IMPLICATIONS ON THE EUROPEAN FUNDS ABSORPTION PROCESS IN ROMANIA

In Romania, we can find synthetic referrals to the state of the European funds fraud phenomenon in the Annual Report of Activity of Fight Against Fraud Department– **DLAF**. Each year, this institution writes a report about the activity for the protection on community financial interests, and is published in February next year. The European Commission has recommended the member states to establish an institution that should work together with the European Anti-fraud Office, to coordinate anti-fraud national strategies so that it can protect the financial interests of the European Union. In Romania the Anti-fraud Department was established, and it represents the national coordinating structure against fraud, having control over the use of community funds. This institution was founded on the 1st of June 2005 and was a part of the Prime-Minister’s Office. At the present the Fight Against Fraud Department is the contact institution for the European Anti-Fraud Office (EAFO) and it represents the Coordinating Service of Fight Against Fraud in Romania. This institution has the role of detecting fraud, especially those with European funds, and the files are part of the court files. The institution is responsible for *”coordinating the National Strategy for Fight against Fraud for the Protection of Financial Interests of the European Union in Romania and its Action Plan”*. The fight Against Fraud Department has three structures, coordinated by the director of DLAF (The Fight Against Fraud Department, 2016), namely

- **Direction A:** Legislation, politics and training - deals with initiating, drafting laws for the protection of the financial interests of the European Union in Romania, it prepares strategies and action plans in the field of anti-fraud politics, it elaborates and coordinates perfecting programmes, anti-fraud training and instruction strategies.

- **Direction B:** Control- deals with operative reports on site after received complaints, assures operational cooperation with the European Anti-fraud Office, and with the corresponding structures of member states of the European Union, coordinating all the national institutions involved in the fight against fraud.

- **Direction C:** Data collection and analysis- deals with risk analysis, collecting and processing data and information needed for the investigations, sends irregularities reports to DLAF, monitors administrative and judiciary procedures initiated by the habilitated institutions based on control notes by the Fight Against Fraud Department.

A very important role in coordinating the fight against fraud is held, nationally, by the three networks founded by Fight Against Fraud Department (Toader, Ungureanu, Predescu & Predescu, 2009, p. 552): “the network for reporting irregularities, the network for training coordinators, the network for anti-fraud communications”. The coordination of the activities of public relations is made by the Anti-fraud Communication Network, which was founded in

2005: “the activity of the network is based on 12 agreement protocols of cooperation between DLAF and the institutions that protect the financial interests of the Community in Romania (National Agency for Community Programmes in Education and Professional Training, Ministry of European Inclusion, Fraud Squad, Foreign Affairs, the General Inspectorate of Romanian Police, the National Company of Motorways and National Roads in Romania, Payment Agency for Rural Development and Fishing, Ministry of Transport, the Ministry of Public Finance, the Public Prosecutor’s Office Attached to the High Court of Cassation and Justice, the National Anticorruption Directorate, the Payment Agency and Intervention in Agriculture).

Based on the protocols, the memoranda and financing agreements with financing programmes using European grant funds, and other community regulations, Romania took on the role of reporting irregularities to the European Commission. The institution that is responsible with reporting the irregularities to DLAF for the entire grant funds assistance offered to Romania by the European Union is the Fight Against Fraud Department.

We consider that the European funds fraud phenomenon has a very prejudicial impact on Romania through two mechanisms: a *direct mechanism* by the privation of Romania to absorb structural and cohesion funds that is being granted to it by the European Union and an *indirect mechanism*, by forcing the state to cover sums missing after the fraud, using its own sources from within the state budget or from loans so that it can give back the money to the European Union. The fraud phenomenon affects the country both on the short term and on the long term. The long term fraud represents the phenomenon that can affect the economy of a state in a very serious manner, especially when it happens in the financial field, but also in the European funds field. The European Funds fraud produces strong economic imbalances in the state budget, considering that the sums from funds fraud are sums that are not estimated to be paid when the budget is drawn, and when they occur an important deficit happens. When the deficit occurs, the Government, through the Ministry of Public Finance is authorized to make loans from the state to finance and refinance the deficit from the previous years, up to the level registered at the end of each year. The loans can come from: within the state, by emission of government securities, or by taking external loans. These extreme loans made in the name of the state and for the state are exercised by the Government but only through the Ministry Of Finance. The function of the state is, therefore, incorrectly met because of these imbalances within the budget and are amplified by the fraud phenomenon (or even created by it).

In the authors’ opinion the magnitude that European Funds fraud in Romania and the extremely serious consequences of this economic phenomenon that is responsible for another very serious social phenomenon- corruption, should be more thoroughly studied both by the executive and by the legislative. We think that the institutional consolidation of DLAF is very important, as well as the increase in level of institutional cooperation of this organism with all the institutions that fight against fraud and corruption , as well as all the institutions and organizations that handle and administer European funds in Romania and the European Union. Another suggestion is that within DLAF there should be groups of specialists from all state institutions that fight against European funds fraud. Otherwise, we will be content with revealing only some of the criminals (post-factum attitude), taking back only small amounts of the damage, when, in fact, our attention should be focused on narrowing the possibilities to fraud (ante-factum attitude). Such an attitude, an ante-factum attitude is not possible without the existence and the responsible activity of a multitasking organism dedicated only to the fight against European funds fraud.

In order for the prevention of European funds fraud within the member states through the cohesion policy instruments as well as through FEDR, FSE, FC (European Commission, 2009), “the General Direction (GD) for Regional Policy and the GD for Employment, Social Affairs and Equality of Chances, assisted by DLAF, have all elaborated a mutual strategy to prevent

fraud (SCPF) that encompasses a series of anti-fraud actions in order to increase the level of interest regarding fraud within a compartment administration and to offer orientation and more proactive instruments to fight against fraud.

According to the report in 2014 for the Protection of the Financial Interests of the European Union- fight against fraud (European Commission, 2015), Romania is part of the nine member states that have reported „national anti-fraud measures regarding the funds allocated within the cohesion policy”, Romania is part of the 13 states that have reported „measures of detecting fraud”. Romania is part of the nine states that have introduced „legal penalties for fraud concerning the report of irregularities „Romania is part of the 20 member states that have „given detailed information about the definitions that are especially included in the national orientation”. Romania has reported the „use of the definition of „economic operator” according to the sectoral regulations and to EU orientations (Commission Regulation (EC) No 1848/2006 of 14 December 2006; Commission Regulation (EC) No 1828/2006 of 8 December 2006), thus following the Council Regulation for the protection of the financial interests of the European Union (article no. 7 of the Regulation (CE, Euratom) no. 2988/95), the exception being a member state that exercises its rights of public authority. Romania uses the definition of the notion of „fraud suspicion” as it is established in the EU legislation and in its own national orientation. Romania uses „an internal system of reporting suspicious irregularities outside the system of irregularities management. (SGN) used by the member states that report to the Commission the actions following the indictment , reports the actions following the initial sentencing and that reports the final sentencing (final judicial sentencing).

As inferred from the data above, data which is part of the report in 2014 regarding the protection on the financial interests of the European Union- Fight against Fraud, the conclusion can be drawn that Romania has taken serious measures against European funds fraud on a national level: this aspect can also be seen because in the aforementioned report Romania was one of the member states that „have detected and reported the greatest number of illegal irregularities”. The aforementioned report also states that the biggest amounts have been reported in Poland, the Czech Republic, Romania, Hungary and Greece (between 8.5 million Euro and 210 million Euro)”.

The most common forms of fraud, according to the Association of Experts Authorized in Fraud Investigation (ACFE) (The Institute of Internal Auditors, the American Institute of Certified Public Accountants and the Association of Certified Fraud Examiners, 2008) are three types of fraud: false documents or false statements (financial statements manipulation), misappropriation of tangible or intangible goods (illegally expense reimbursement), and corruption (bribe, manipulation of the procedures to award contracts, hiding of conflict of interests and so on).

The most common type of fraud according to the report in 2014 about the protection of the financial interests of the European Union- Fight against fraud, was false in statements and false in documents, in Romania being detected and reported such illegally irregularities that were associated to corruption cases in the cohesion policy sector. It is mentioned that the European Funds fraud can be realized with administrative methods through “creative accountancy” (Şaguna, 2003). Creative accountancy represents the accounting techniques that involve the modifying of the accounting result or the presentation of financial situation, method that involves the accountant and these “do not involve creativity in the negative meaning of the word” (Stolowy, 2000).

According to the fraud researcher Dr. Donald R. Cressey A., the reasons that are at the base of fraud are represented by: opportunity, justification, financial pressure, motives that can be presented as a „triangle of fraud” (Cendrowski, Petro, Martin & Wadeki, 2007). Thus, fraud appears when there is opportunity, without it the chances for fraud to occur decrease considerably. Opportunity appears when in the mind of the author emerges the illusion that the fraud couldn't be discovered, illusion that usually appears because the control system has

certain deficiencies. The second reason that causes fraud is that the author creates a false justification (for example, he/she can imagine something like: "I deserve to use the money in the management accounting, I am the only one that deals with it and I am responsible for it, I take it, use it and then I return it without anyone knowing"). The third reason that causes fraud is the financial pressure that the author feels in a certain moment or situation, that can be translated in his/her greed for money or by a need that drives him/her mad, like an addiction (drugs, gambling, etc.).

The report in 2014 of the Department for Fight Against Fraud (2014) emphasizes the fact that in Romania the activity regarding the fight against fraud has become more and more serious and it is starting to reach its goals. Through this report was underlined that in 2014 the number of on-going control actions for the Department for Fight Against Fraud has increased to 317 from 290 in 2013 and 310 in 2012. The report presents the good institutional cooperation that the Department for Fight Against Fraud has had, taking into consideration that the 317 files were realized mainly based on the complaints made by the other institutions that fight against fraud on a national, as well as an European level, respectively: Management and Administration of European Funds Authorities, Anticorruption National Directory, individuals and legal entities, Audit Authority Attached to the Court of Auditors, European Anti-fraud Office, referral office, the Prime-Minister's Control Body. For a better presentation of the number of files in 2014, the authors have presented a chart with the sources of complaints received in DLAF, and that were used to prepare the files.

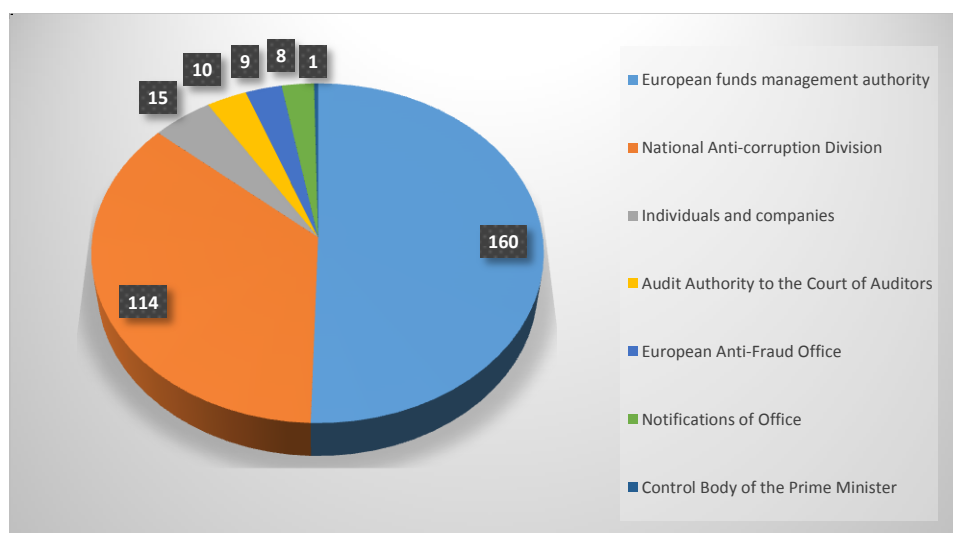


Figure 1. Sources of complaint on which DLAF prepared the 319 files in 2014

Source: elaborated by the authors based on the data from the Department for Fight Against Fraud (2014)

According to the report among the 319 files there are 305 files about projects from the period after the accession of Romania to the European Union that had European structural, cohesion, agricultural funding and UE grant funds, while only 12 files were funded through PHARE, SAPARD and ISPA during the accession of Romania to the European Union. From the 305 control actions that involved projects during 2007-2013, the projects were funded through the following instruments of cohesion and regional development policies of the European Union programs: FEADR (80 control actions), FEAGA (70 control actions), FEDR (50 control actions), FSE (48 control actions), GRANT UE (33 control actions), FC (15 control actions), ALTELE (2 control actions).

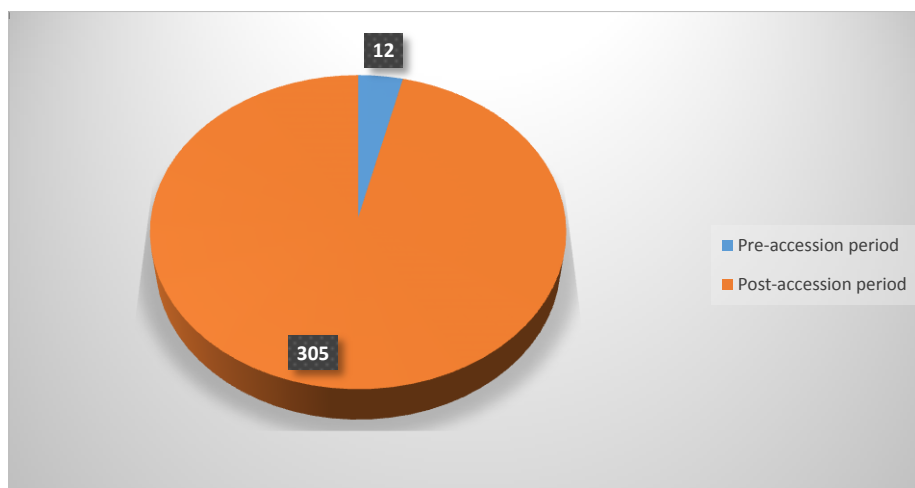


Figure 2. Distribution of the 317 files realized by DLAF in 2014 according to the programming periods

Source: elaborated by the authors based on the data from the Department for Fight Against Fraud (2014)

Taking into consideration the aforementioned data, both in DLAF report and in the report about the protection of the financial interests of the European Union- Fight against fraud, we consider that Romania is on the right track in fighting against European funds fraud, considering that the steps made by the main institution responsible for coordinating the strategies of fighting against fraud, respectively DLAF. Therefore, in the future, we consider that the phenomenon of European funds fraud will decrease, and it will not impact on the European Funds Absorption Process in Romania.

4. CONCLUSIONS

In the authors' opinion the programming period 2014-2020 will be a period when the European Funds absorption rate will no longer be affected by the European funds fraud phenomenon, taking into consideration the existence in Romania of efficient structures that fight against this phenomenon and the progress made so far.

We consider that, if the administrative authorities for the European funds, respectively the management financing programmes in Romania, will be more efficiently involved in the fraud prevention process by conducting efficient internal control actions based on a rigorous monitoring and revision on the administrative and accountancy mechanisms of the European funds, the fraud phenomenon could be prevented and the temptation of European funds fraud will be considerably diminished.

As we have already mentioned in this article, the main reason that leads to the fraud phenomenon is opportunity, so if the Romanian management authorities will no longer allow this opportunity to occur, the phenomenon will also cease to exist. Many times this opportunity appeared mainly because of the law-maker, that is the legislative framework that allowed the occurrence of the phenomenon of "legal fraud" so the authorities and the institutions that manage the European funds in Romania will have to consolidate and harmonize the national legislative framework for the European funds in order to prevent and eliminate European funds fraud. At the same time, we consider that the management authorities will definitely have to coordinate their control actions with those of the financed projects' auditors in order to stop the opportunity for fraud. Another important step is for the audit authorities to carefully verify if the fraud detection mechanisms that the authorities implement are truly efficient.

Another objective that the management authorities and the internal and external auditors should have in the fight against fraud is to have sufficient knowledge so that it can correctly identify fraud indicators and to report in due time any irregularity and suspicion of European funds fraud. “The risk of not identifying a significant prejudice caused by fraud is bigger than the risk of not identifying a mistake or error, because fraud can involve sophisticated and well organized systems that are meant to hide it, like false documents, will full non-registration of transactions, or intentional lase in documents” (The international audit standard 240: “The auditor’s responsibility to take into consideration fraud during the financial statements”, 2004).

The authors’ opinion is that by the consolidation of administrative and institutional capacity of the institutions involved in the management and administrative process of the European funds, by an efficient a national and European collaboration of those institutions, by the implementation of an adequate and efficient mechanism of preventing fraud by these institutions, by creating a stable and harmonized legislative framework, the fraud phenomenon in the European funds sector will decrease considerably, and will be eradicated in time. Therefore, the process of European funds absorption will no longer suffer because of the fraud phenomenon. Once this phenomenon will be eliminated, Romania will have to focus on the elimination of the other barriers that affected the European funds absorption process (underlined in the first part of the article), in order to benefit from the funds and to accomplish the objectives for the 2020 Strategy: “*intelligent growth: developing an economy based on knowledge and innovation; durable growth: promoting a more efficient economy from the point of view of the use of resources, more ecological and more competitive; a growth which is favorable to inclusion: promoting an economy with a higher rate of workforce, that ensures territorial and social cohesion*” (European Commission, 2010).

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