

Brief comments on the recovery of unused EU structural funds

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Abstract

Protection of EU financial interests is an important element of the Commission's political agenda in order to strengthen and enhance public confidence and to ensure proper use of taxpayers' money. The Lisbon Treaty has significantly strengthened the tools available that allow action to be taken in this regard (Articles 85, 86 and 325 of the Treaty on the Functioning of the European Union - TFEU). Articles 310 (6) and 325 TFEU oblige both the EU and its Member States to combat all forms of illegal activities affecting the financial interests of the EU. It features a comprehensive set of tools to prevent and detect misuse of the EU budget.

Keywords: structural funds, fraud, EU, cohesion policy, Europe 2020

JEL codes: K 12, K22, F 15.

Introduction

Structural funds and European investment funds (ESI) is the main instrument of investment policy of the European Union. By 2023, using funds ESI will generate a critical mass of investment in major EU priority fields to meet the needs of the real economy by supporting the creation of jobs and the European economy back on the path to sustainable growth. In this context, the EU states have pledged to:

- ✓ provide funding to more than 2 million businesses to help them become more competitive, develop new products, enter new markets and create jobs
- ✓ to invest in infrastructure in areas such as broadband communications, information technology and telecommunications or water supply. This will help EU countries, especially the least developed, to improve living standards of their citizens and create more competitive business environments.
- ✓ Use funds to invest in skills and adaptability of the European workforce, providing tens of millions of people, including young people, refugees and legal migrants, opportunities for training, retraining or starting a business.
- ✓ Europe 2020 is the EU's growth strategy for the coming decade. In a rapidly changing world, the EU wants to become a smart, sustainable and inclusive growth.

These three priorities are mutually supportive and are able to help EU Member States to achieve a high level of labor employment, productivity and social cohesion. In practice, the Union has set five major objectives - on employment, innovation, education, social inclusion and environment/energy - to be met by 2020.

The legal procedure of European Union regarding structural funds

Member States have adopted their own national targets in these areas. Various actions at European and national level are support of the Strategy. There are three situations in which the European Commission must ask Member States concerned reimbursement (recovery) amounts received from the Structural Funds and investment. First, ordering recovery when it finds that Member State did not need the entire amount received. EU financial rules would require recovery of these funds. Secondly, the EU's financial rules would require recovery of funds if the funding was earmarked for structural action already completed. Thirdly, if the money from the Structural Funds and EU investment has been mismanaged for reasons of fraud or negligence, the European Commission has the right to require the Member State concerned to reimburse amounts.

To recover money, can be activated procedures under EU law to this end. If funds available under cohesion policy, a certification authority shall develop and submit to the Commission an inventory of expenditure and request for payment for each operational program. Also, the authority must certify the proper management of funds and to evaluate compliance with EU rules and regulations.

If it appears that there are problems identified either because the gaps identified between accounts or through inspections by the Commission or other bodies, the certifying authority will have to monitor the recovery. If necessary, you can call the local legal system to help in the recovery procedure.

Although the Structural Funds are part of the EU budget, the way they are spent is based on a system of shared responsibility between the European Commission and national authorities:

- ✓ The Commission negotiates and approves development programs proposed by Member States and allocates resources.
- ✓ Countries/regions the EU manages programs, implements and select projects, which will monitor and assess.
- ✓ The Commission participates in program monitoring, commits and pays approved expenditure and verifies the control systems. For each operational program, the national mean:
 - ✓ a management authority (public authority at national, regional or local level or a public/private body to manage the operational program)
 - ✓ a certification body (a public authority at national, regional or local or body to certify the statement of expenditure and applications for payment before being sent to the Commission)
 - ✓ an auditing body (a public authority at national, regional or local level or body for each operational program, which oversees the smooth operation of management and monitoring)
- ✓ Activity finding budgetary debts resulted from irregularities is the work of verifying, establishing and individualizes payment obligation as a debt.

Is wrong, any deviation from the legality, regularity and consistency with the national laws and/or community, and provisions of contracts or other legal commitments, which harms the general budget of the European Community and/or budgets managed by or on behalf her and related co-financing budgets coming through undue expense.

Budgetary debts resulted from irregularities represent amounts recovered to the general budget of the European Community and/or budgets managed by it or on its behalf and/or budgets for co-financing as a result of improper use of Community funds and the amounts of co-financing and/or as a consequence of undue amounts of measures forming part of the system of financing all or part of these funds. Budgetary debts resulted from irregularities are established in the currency used for payments under the contract or agreement or other legal commitments and financing in lei, using the reference rate announced by the NBR as of the date of issue of the security.

The legislature has determined that amounts unduly paid from community funds and/or related co-financing, bank costs, including their accessories, and other amounts set by law for the debtor is subject recoverability budget from irregularities.

Recovery budgetary debts resulted from irregularities, the enforcement is carried out in lei, according to the Fiscal Procedure Code, the accounts given in the execution title or, where appropriate, the competent authorities. For failure to pay obligations, the borrower owes delay penalties under the law in collecting tax debts.

If the budgetary debts resulted from irregularities can not be recovered by voluntary payment or deduction, the competent authorities in the EU funds management will transmit execution titles established territorial bodies subordinated to National Agency for Fiscal Administration and/or competent bodies of the other creditors employees.

They will conduct enforcement proceedings to recover amounts unduly paid from Community funds and/or financing funds they manage in accordance with the provisions of the Fiscal Procedure Code. Competent authorities in managing structural funds and related co-responsibility to take steps to identify irregularities and finding budgetary debts resulted from irregularities within their competence and to recover amounts representing budgetary claims resulting from irregularities.

Debits set by the European Commission and/or the competent authorities in managing structural funds for the establishment and/or recovery of budgetary debts resulted from irregularities could not be carried out and for which the accounts of European funds were reunited the deadlines imposed by the European Commission or the need to continue funding programs, the authorities competent in managing structural funds may propose financial regulation extinguishing budgetary obligations arising from Community funds and accounts reunification those resulting from payment of undue amounts of the related financing. Since manages 80% of European funds, Member States have the duty to investigate and to prosecute cases of corruption and fraud detrimental to the European budget.

The EU supports Member States yet to implement these investigations by the European Anti-Fraud Office (OLAF).

For the European Commission, fraud prevention is a priority and there OLAF to ensure that taxpayers' money is used for the benefit of all.

This body has three overarching objectives:

- ✓ protect the financial interests of the European Union by investigating fraud, corruption and other illegal activities;
- ✓ Detection and investigation of serious deviations from the professional obligations of the members and employees of EU institutions and bodies, which could lead to the outbreak of disciplinary or criminal proceedings;
- ✓ Supporting the European Commission in the development and implementation of policies to prevent and detect fraud. Member States are under legal obligation (Article 325 TFEU and the Convention on protection of financial interests) to combat illegal activities to the detriment of the EU and penalize criminal fraud harming the EU budget. However, currently, the penalties for fraud range from small fines to long periods of detention.
- ✓ In addition, the legislation requires Member States systematically punishing holders (elected or appointed) posts corrupt public officials.

This hampers ensure equivalent protection throughout the EU by criminal law and is likely to lead to different outcomes in similar individual cases, depending on the applicable national criminal provisions. It also could allow criminals to choose where to pursue criminal activities or move to another state after the crime, where criminal provisions targeting only the conduct of a Member State.

At Union level, it is worth examining fraud and irregularities in the implementation of the EU budget, the adoption of measures to prevent and ensure the prosecution of these cases and protecting the EU's financial interests in general. In December 1995, Parliament exercised its first right conferred by the Treaty to create a commission of inquiry and investigate allegations of fraud and maladministration under the Community transit procedure. Recommendations of the inquiry then enjoyed considerable support. In recent years, legislation and recommendations on fraud and protecting the interests of the Union have become more numerous, which expresses both the need for effective action at Union level in the context of an emergency, and the attention given by the European legislator perplexities and citizens' concerns about public spending. The Commission estimates that tax fraud in all its forms, amounts to EUR 1 000 billion in the European Union, and 2 000 per citizen

Conclusion

The Commission and national authorities have a shared responsibility to protect EU funds. It is extremely important for Member States to report all irregularities and fraud suspects quickly and assume fully the role of ensuring effective response mechanisms in this regard. The findings of the report published today we will guide you to areas where there is still work and help to ensure adequate protection of EU taxpayers' money. According to the European Commission report, the number of cases of irregularities in own resources and direct expenditure fell significantly in 2009 compared to 2008. In other areas, such as agriculture, cohesion policy and

pre-accession funds was found but a general increase in the number of reported irregularities, including alleged cases of fraud. This situation may be due to several factors. Often, it can be a sign that control measures and existing anti-fraud systems work better and that they report a greater number of cases.

Under EU legislation, all errors found should be corrected regarding EU funds and funds not used according to rules to be recovered. Protection of EU financial interests and combating fraud beyond European borders, and the Commission seek to increase international cooperation in this field.

Among the measures highlighted in today's report include international negotiations for agreements corruption and anti-fraud intensive work to tackle cigarette smuggling and implementing a new database to help prevent and identify infringements agricultural and customs that might affect revenue EU.

References

Saguna Dan Drosu, Daniela Iuliana Radu, 2016, Politicaa de Coeziune a Uniunii Europene 2014-2020. Strategia Europa 2020, Ed. C.H. Beck, Bucuresti

http://www.antifrauda.gov.ro/docs/ro/raport_dlaf/rap_ro.pdf

https://www.transparency.org.ro/proiecte/proiecte_incheiate/2010/proiect_3/Protejarea%20intereselor%20financiare%20UE.pdf

http://www.europarl.europa.eu/atyourservice/ro/displayFtu.html?ftuId=FTU_1.5.6.html

<http://eur-lex.europa.eu>

Annual Reports on the protection of the EU's financial interests ("PIF" Report), <http://ec.europa.eu/anti-fraud/reports/>

Protection of the European Union's financial interests -Fight against Fraud, https://ec.europa.eu/anti-fraud/sites/antifraud/files/docs/body/swd_2015_156_en.pdf