

NATIONAL AUTHORITIES WITH DUTIES IN DETECTING AND COMBATING TAX EVASION**Professor PhD. Elena HLACIUC***Stefan cel Mare University of Suceava, 720229, Romania
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floryy87@yahoo.com***Abstract**

The heavy burdens that legal regulations impose on taxpayers, and also the burden of these obligations, have been the main causes that have led, at all times, to stimulate the ingenuity of taxpayers to identify a multitude of procedures for evading tax obligations. The competent institutions in the field, by exercising their functions, have the role of detecting the phenomenon of tax evasion and of taking measures through which they try to eradicate tax fraud and evasion.

Key words: *tax evasion, tax fraud, national authorities*

JEL Classification: *M41*

I. INTRODUCTION

Economic globalization, in addition to advantages, such as the free movement of people, the rapid transfer of money or the unrestricted exchange of goods between countries, also involves a number of negative aspects, which materialize in economic crime, underground economy, tax evasion and fraud. The purpose of these economic phenomena is reflected in the evasion of the payment of fiscal obligations, by erroneous declaration or non-declaration of the taxable base. The state, through the competent institutions it subordinates to, has the role of combating and eradicating these economic phenomena.

Regarding the definition of the notion of "money laundering", it can be said that this handling of money through various transactions, likely to erase the traces of their source and origin, has been recognized almost unanimously and regionally worldwide or by member states of some international organizations. Under the principle that money laundering resulting from any serious crime must be considered a criminal offense in the Member States of the European Union, under the auspices of the European Economic Council of the European Union, Directive no. 91/308 of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering (Mutu-Strulea, 2006). The scope of this directive initially covered only the proceeds of drug-related offenses and covered only the financial sector, but in December 2001 a second directive was adopted, which extended the field of combating money laundering to include not only the financial sector but also the liberal professions, such as accountants, lawyers and public notaries, "who have also become obliged to identify clients, keep records and report suspicious transactions" (Antoși, Zlati, Radu, Cosmulese & Socoliuc, 2020: 2).

Tax fraud and evasion, as well as tax avoidance through aggressive tax planning method, fuel growing inequalities caused by the economic crisis and austerity programs, posing a major danger to Member States in their efforts to ensure the effective functioning of taxation systems in order to ensure the financing of public services, the redistribution of welfare, the fight against poverty, and the avoidance of fiscal competition between Member States and third countries (European Economic and Social Committee, 2013).

With respect to the conceptual delimitation between tax evasion, abuse of rights and tax avoidance, the main distinction that operates is the sphere in which these activities take place: of the illegal in the first case, at the border between legal and illegal in the second case and in the legal sphere in the latter case (Socoliuc, Mihalcic & Cosmulese, 2018; Timofte, Mates, Coca & Tanasa, 2020).

Thus, tax evasion is an illegal activity, while tax avoidance involves the exploitation of tax rules to obtain a tax advantage that the legislator never intended (provided). On the other hand, the distinction between informal economy, tax fraud and tax evasion lies in the fact that the former concepts are more extensive, encompassing the modalities and activities of the latter (Socoliuc & Grosu, 2019).

Anomic tax evasion as a concept, presented by Pătroi (2007) is based on "(...) the taxpayer's conscious motivation for non-action, being stimulated by the non-existence of the normative act and not by its imperfection.

Although it does not generate additional material costs, anomalous tax evasion can cause imbalances in terms of the deviationist desires of taxpayers".

Regarding the link between tax evasion and financial-accounting information, it can be appreciated that the latter is both a clue to the existence of tax evasion and a means of carrying it out, if it is manipulated in order to attest a certain accounting truth in order to obtain a "target" accounting and fiscal result (Grosu, 2018).

II. ANTI-FRAUD DEPARTMENT- DLAF

In Romania, the Anti-Fraud Department (DLAF), regulated according to Law no. 61/2011 on the organization and functioning of the Anti-Fraud Department, is the contact institution with European Anti-Fraud Office (OLAF) that investigates and prevents fraudulent use of EU funds (Cosmulese & Ciubotariu, 2017). The regulation was modified by Law no. 38/2013 for the approval of the Emergency Ordinance no. 2/2010 on some measures for the organization and functioning of the Government working apparatus and for the modification of some normative acts (Aniței & Lazăr, 2013:163-182).

However, the constitution of the DLAF is linked to the Emergency Ordinance no. 149/2005 and the Decision of the Prime Minister no. 205/2007 on the organization and functioning of the Anti-fraud Department.

DLAF is organized as a structure with legal personality, located within the working apparatus of the Government, under the coordination of the Prime Minister, the financing being ensured through the state budget, through the budget of the General Secretariat of the Government.

From an organizational point of view, DLAF consists of three directions:

1. Legal Affairs Department;
2. Control direction;
3. Information management department.

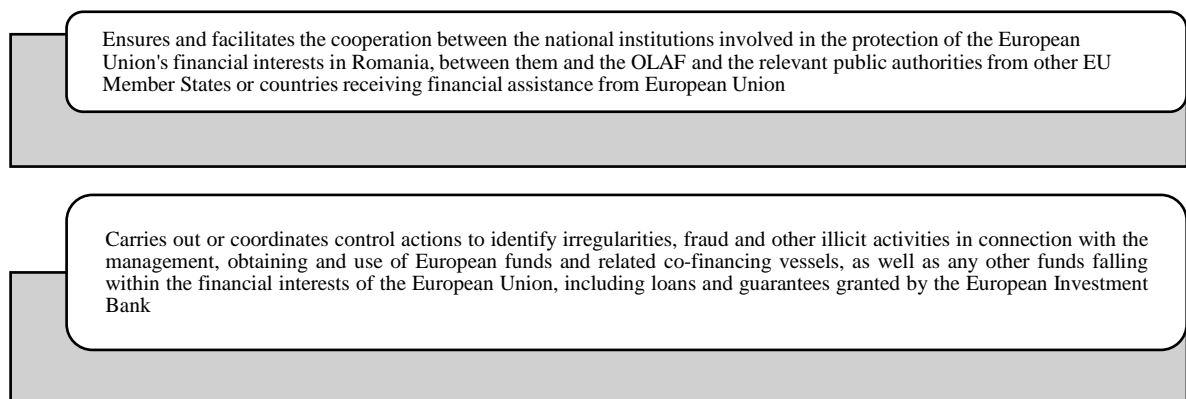
DLAF is run by a head of state secretary, appointed by decision of the Prime Minister, for a period of five years (art. 4), being independent in the performance of his duties. DLAF staff is represented by civil servants with special status and by contact staff (art. 20).

DLAF fulfills four functions (<http://www.antifrauda.gov.ro>)

- the function of representation, which ensures Romania's participation in consultative committees, working groups and communication or information exchange networks, in the field of protection of the financial interests of the European Union;
- the function of coordinating the fight against fraud, in order to ensure an effective and equivalent protection of the financial interests of the European Union in Romania;
- the control function, in order to identify irregularities, frauds and other illicit activities that harm the financial interests of the European Union in Romania;
- the regulatory function, which ensures the elaboration of the normative and institutional framework necessary to ensure the protection of the financial interests of the European Union in Romania.

The above-mentioned functions are directly related to the protection of the financial interests of the European Union in Romania, from this point of view DLAF having the quality of finding body, according to the Code of Criminal Procedure (art. 16). For the implementation of the control function, DLAF has the right to carry out administrative investigations, on-the-spot checks, analyzes and document verifications (Toader, Ungureanu, Predescu & Predescu, 2009).

In order to perform its functions, the Department fulfills the following main attributions (see Figure 1):



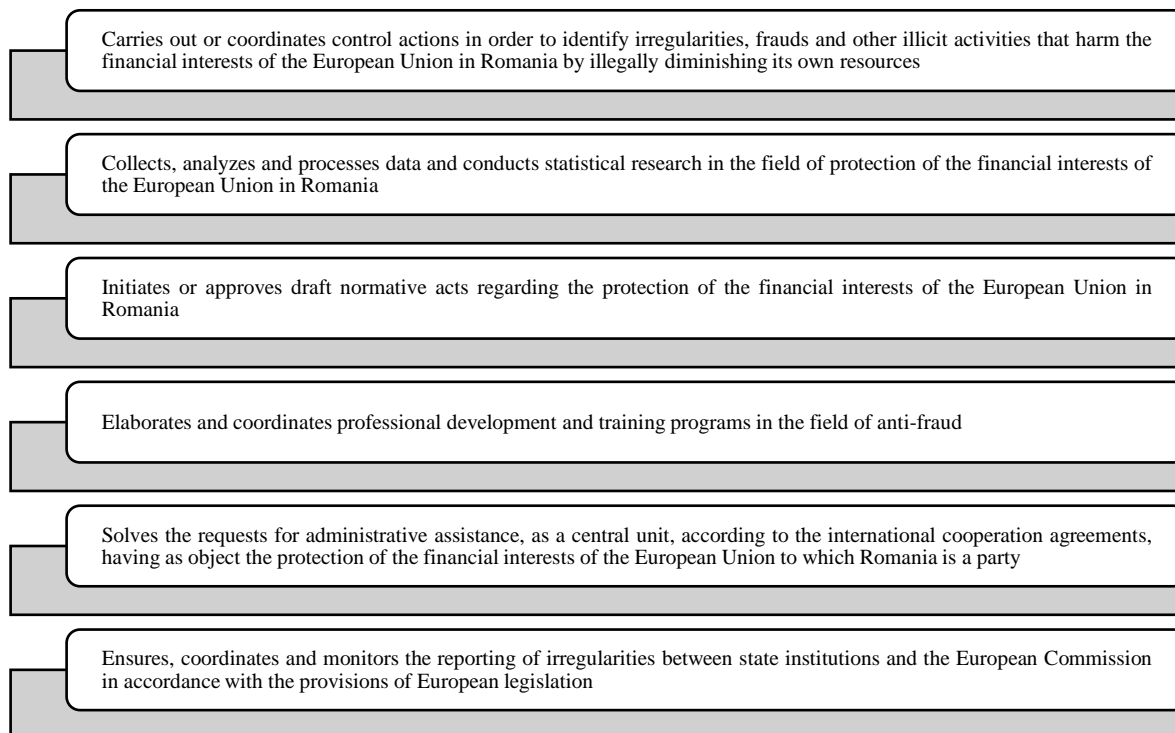


Figure 1 – The main attributions of DLAF

Source: Adapted after Quirke, 2016 and Law no. 61/2011

a) Ensures and facilitates the cooperation between the national institutions involved in the protection of the European Union's financial interests in Romania, between them and the OLAF and the relevant public authorities from other EU Member States or countries receiving financial assistance from European Union;

b) Carries out or coordinates control actions to identify irregularities, fraud and other illicit activities in connection with the management, obtaining and use of European funds and related co-financing vessels, as well as any other funds falling within the financial interests of the European Union, including loans and guarantees granted by the European Investment Bank;

c) Carries out or coordinates control actions in order to identify irregularities, frauds and other illicit activities that harm the financial interests of the European Union in Romania by illegally diminishing its own resources;

d) Collects, analyzes and processes data and conducts statistical research in the field of protection of the financial interests of the European Union in Romania;

e) Initiates or approves draft normative acts regarding the protection of the financial interests of the European Union in Romania;

f) Elaborates and coordinates professional development and training programs in the field of anti-fraud;

g) Solves the requests for administrative assistance, as a central unit, according to the international cooperation agreements, having as object the protection of the financial interests of the European Union to which Romania is a party;

h) Ensures, coordinates and monitors the reporting of irregularities between state institutions and the European Commission in accordance with the provisions of European legislation.

The notifications received by the Department can be either from the OLAF, or from other sources, but the Department is also notified ex officio regarding possible irregularities, frauds or other activities that harm the financial interests of the European Union in Romania (see <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vh77kouqbwrr>).

The way of solving the notifications is brought to the knowledge of the institution/person who formulated the notification. In the sense of art. 61 of the Criminal Procedure Code, the Department has the quality of a finding body regarding the aspects of criminal nature that harm the financial interests of the European Union in Romania.

The department in the exercise of the control function, carries out administrative investigations, on-the-spot controls, analyzes and documentary verifications.

Within the development by the Department of the control actions, according to the following attributions:

1. carry out or coordinate control actions to identify irregularities, fraud and other lawful activities in connection with the management, obtaining and use of European funds and related co-financing, as well as any other funds falling within the financial interests of the European Union, including loans and guarantees granted by the European Investment Bank;

2. performs or coordinates control actions in order to identify financial irregularities, fraud and other illicit activities that harm the financial interests of the European Union in Romania by illegally diminishing its own resources and requests:

a) that all public institutions and authorities, economic operators with state or private capital, any other entity, as well as natural persons allow the representatives of the Department access to headquarters, land, means of transport or other spaces used for economic purposes;

b) the documents and information necessary for the elaboration of the control act to all public institutions and authorities, economic operators with state or private capital, to any other entities, as well as to the natural persons.

c) to the representatives of the Department to take statements from any person who can provide data and information regarding possible irregularities, frauds or other activities that harm the financial interests of the European Union.

The department draws up control documents that can constitute means of proof, under the conditions of the Code of Criminal Procedure.

The Department may draw up the acts of financial-fiscal control bodies, specialized bodies of the central public administration or public institutions subordinated to the Government or ministries, acts and documents on checks and controls performed in their field of activity on concerned institutions and persons.

The police, gendarmerie or other agents of the public forces are obliged to provide support to the control team in the exercise of their duties at the request of the Department.

If there are irregularities regarding the obtaining or use of European funds, as well as the related co-financing funds, the Department sends the control act to the authorities with competences in managing the funds for fulfilling their obligations regarding reporting irregularities and financial recovery, according to law.

The above-mentioned authorities have the obligation to communicate, within 60 days from the date of receipt of the control act of the Department, the measures taken to remedy the issues signaled by it, as well as the actions taken to recover any damages.

If irregularities regarding the management of European funds are found, the Department sends the control act to the line ministries in order to take the necessary measures to remedy the deficiencies and, as the case may be, to sanction the responsible persons, informing the Prime Minister. The line ministries shall inform the Department, within 60 days, of the measures taken to remedy the issues signaled by the control act and, where appropriate, of the sanctions imposed.

If irregularities are found that result in the illegal depletion of own resources, the Department shall transmit the control act to the authority responsible for establishing and collecting them.

The authorities shall inform the Department, within 60 days, of the measures taken to remedy the issues reported and, where appropriate, to recover the amounts due.

In case of finding elements of a criminal nature, the Department notifies the competent prosecutor's office to carry out the criminal investigation and sends the control act in order to recover the damage and prosecute the guilty persons.

In order to fulfill the attributions provided in art. 8 lit. a) and d), all authorities with competences in the management of European funds, in establishing, collecting and controlling the resources to be transferred to the general budget of the European Union have the obligation to transmit to the Department, within 15 days, the requested data and information.

In order to fulfill the attribution provided in art. 8 lit. g) the competent authorities and institutions have the obligation to transmit to the Department the information requested for solving the requests for administrative assistance, according to their obligations according to the international cooperation agreements having as object the protection of the financial interests of the European Union.

Penalties

According to art.18 of Law no.61/2011, it is a contravention the refusal of natural or legal persons to provide, within the prescribed period, the documents and information necessary for the preparation of the control act, requested by the representatives of the Department, according to art. 11 para. (2) lit. (B) ".

From the provisions of art. 19 of Law no. 61/2011 results the value of the fine for the contravention provided in art. 18 of Law no. 61/2011 which is from 500 RON to 5,000 RON. Both the finding of this contravention and the application of the sanction will be made by the authorized persons within the Department. The provisions of the Government Ordinance no. 2/2001 on the legal regime of contraventions, approved with amendments and completions by Law no. 180/2002, subsequently also amended and supplemented.

The Department may benefit from technical assistance and equipment from the European Union, as well as specific staff training programs.

The Department for the fight against fraud - DLAF was reorganized in 2017 in order to strengthen the administrative capacity of the institution and streamline specific activities. Thus, two new operative compartments were set up, within the Control Department, respectively, the Information Management Department (the organizational structure is presented in Annex 2).

The activity of reporting irregularities to OLAF - part of the fraud detection measures is coordinated at national level by DLAF, which in 2017, carried out a series of activities aimed at fulfilling Romania's obligations, according to the provisions of European regulations and of the financing memoranda, in the matter of reporting irregularities.

In 2017, the national authorities identified and reported a number of 1270 cases of violation of legality, compliance and regularity, related to the programming periods 2007-2013 and 2014-2020, of which 1096 cases of irregularities, 161 cases of suspected fraud and 13 cases of fraud were found by the courts. Thus, in the reference year, DLAF in its capacity as AFCOS Romania, centralized, analyzed and transmitted to OLAF a number of 3,007 requests for opening new cases or updating, closing, canceling or reopening, requests that were submitted for irregularities found in 2017 or in previous years. Of these requests, a number of 379 requests were returned to the national authorities to be completed and / or amended in accordance with the relevant regulations.

The operational programs that recorded a higher number of detected and reported irregularities are (Gidei, 2018):

- PNDR with a total number of 657 cases, of which 575 cases of irregularities, 71 cases of suspected fraud and 11 cases of fraud found by the courts, the affected value being in the amount of 42,994,181 Euro.
- POSDRU with a total number of 248 cases, of which 238 cases of irregularities and 10 cases of suspected fraud, the amount affected being in the amount of 21,502,090 Euro.
- POSCCE with a total number of 104 cases, of which 94 cases of irregularities and 10 cases of suspected fraud, the amount affected being in the amount of 30,285,267 Euro.
- POR with a total number of 96 cases, of which 94 cases of irregularities and 2 cases of suspected fraud, the amount affected being in the amount of 27,986,200 Euro.
- POSM with a total number of 72 cases of irregularities, the affected value being in the amount of 21,060,769 Euro.
- POST with a total number of 47 cases, of which 46 cases of irregularities and one case of suspected fraud, the affected value being in the amount of 34,444,965 Euro.
- PODCA with a total number of 8 cases, of which 7 cases of irregularities and one case of suspected fraud, the amount affected being in the amount of 724,807 Euro.

In order to identify frauds that harm the financial interests of the European Union in Romania, the Control Department, with the support of the Information Management Department, carried out specific activities, supporting through results the institutional mandate. In 2017, the Information Management Department processed a total of 1,047 preliminary verification files, of which 371 were new files entered in the reference year. Of the 1,047 cases, 362 cases were resolved, and the solutions provided were: 154 - were classified; 97 - proposals for opening control actions; 58 - were declined to fall within the competence of other institutions; 46 - were connected to other files in progress; and 7 - other situations.

From the presented data it is found that approximately 43% of the cases were filed, as the notified issues were not confirmed. Of the 1,047 cases, 235 were sourced from DNA. Of these, a number of 79 files were completed in 2017, as follows:

- 52 proposals for the opening of control actions;
- 21 papers were filed due to non-confirmation of the notified issues, - 6 files were connected to other papers.

At the same time, in 2017, the Information Management Department worked on a number of 233 petitions (see Figure 2). Compared to the previous year, there was an increase in the number of petitions by about 33%.

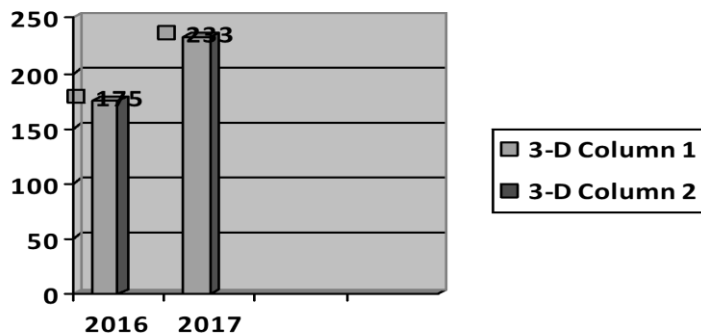


Figure 2 – Total petitions entered in 2016 in DLAF

Source: Adapted after Gidei, 2018

Of the 233 registered petitions, a number of 204 were resolved, i.e. a degree of achievement of over 85%.

In 2017, the Control Directorate dealt with 528 cases involving a number of 448 projects financed from the general budget of the European Union through non-reimbursable funds and 424 agricultural subsidies granted under surface support schemes, originating from Community funds. and funds allocated from the state budget. Of this total, 258 cases were completed, the following being found:

- in 150 cases	indications of fraud affecting the financial interests of the European Union, with criminal prosecution bodies
- in 87 cases	the notified facts were not confirmed
- in 17 cases	the need to file, because, during the control, the criminal investigation body ruled on the criminal case
- in 4 cases	the existence of implementation irregularities

Evolution of completed control actions - comparison of 2015, 2016 and 2017, actions by which the funds from the general budget of the European Union were verified (see Figure 3):

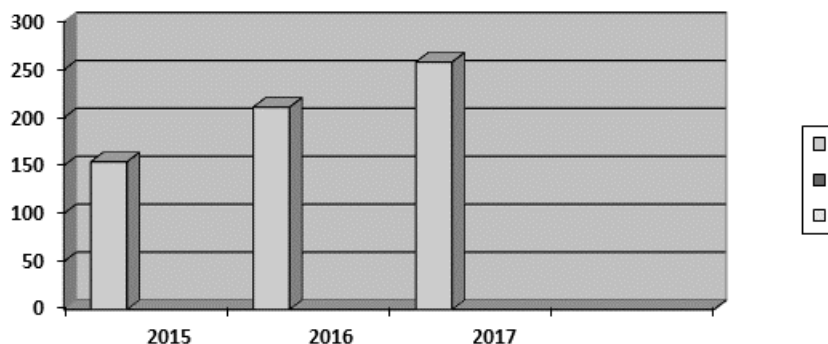


Figure 3 – Evolution of completed control actions

Source: Adapted after Gidei, 2018

From the presented data, there is an upward trend in the number of completed cases, the increase in the reference year compared to 2015 being over 50%.

The estimated value of the financial impact resulting from the DLAF investigations was 45,832,368 Euro, of which (Vulcan, 2018):

- the highest amount found was 12,289,342.82 Euro;
- in 88 cases amounts were found that were below the value of 100,000 Euros;
- in 44 cases were found amounts between 100,000 Euro and 1,000,000 Euro;
- in 11 cases damages of more than 1,000,000 Euro were found;
- in 6 cases the estimation of the financial impact was not performed as it involved a financial accounting evaluation.

III. GENERAL DIRECTORATE FOR FISCAL ANTI-FRAUD (DGAF)

The end of September 2013 brought a consistent modification of the provisions regarding one of the national institutions with attributions in the field of control having as object the prevention, discovery and fight against tax fraud and evasion, respectively the Financial Guard (Aniței & Lazăr, 2013).

By Emergency Ordinance no. 74 of 2013, published in the Official Gazette no. 389 of June 29, 2013 - with applicability after a period of 90 days, specially designed to allow the necessary time for public authorities to implement the new legal provisions - the Financial Guard is abolished.

The General Directorate for Fiscal Anti-Fraud (DGAF) was established in 2013 as a separate department within ANAF, as an institution empowered to actively fight to detect and combat tax evasion.

DGAF has responsibilities for preventing and combating acts and acts of tax evasion and tax and customs fraud.

The activity of the General Directorate for Fiscal Antifraud is carried out on two main directions:

- First, the prevention and control of tax evasion;
- Second, combating tax evasion.

DGAF does not have legal personality, and also within DGAF there are eight regional anti-tax fraud directorates with headquarters in: Bucharest, Alexandria, Constanța, Sibiu, Suceava, Târgu Jiu, Deva and Oradea.

Within ANAF, the public functions used for DGAF were reproduced as follows:

1. Management functions: general anti-fraud inspector; Deputy General Anti-Fraud Inspector; chief anti-fraud inspector;
2. Class I performance functions: anti-fraud inspector;
3. general public functions;
4. Contractual functions.

The anti-fraud inspectors from the Anti-Fraud Directorate will carry out their activity within the prosecutor's offices, by seconding under the exclusive authority of the head of the prosecutor's office where he works, in order to sincerely and thoroughly carry out activities of discovery and prosecution of economic crimes. and to clarify some technical aspects in the criminal investigation activity.

From the comparative analysis of Emergency Ordinance no. 74 of 2013 and the previous legislation (Emergency Ordinance no. on the organization of the Financial Guard) one notices the massive preservation of the rights of the previous Financial Guard, and the differences where they exist are not substantial. Thus, anti-fraud inspectors, according to art. 6 of the legislation in force, in the exercise of their attributions have the right:

- a) to carry out controls in all areas where goods and services are produced, stored or traded or activities are carried out that fall within the scope of national normative acts, including transposed by Community legislation in force regarding the prevention, discovery and control of any acts and deeds that are prohibited by them.
- b) to verify, in accordance with the law, the observance of the legal regulations regarding the movement of goods on public roads, railways and rivers, in ports, stations, bus stations, airports, inside free zones, in the vicinity of customs units, warehouses and other places in which economic activities take place.
- c) to verify the legality of the activities carried out, the existence and authenticity of the supporting documents in the activities of production and provision of services or during the transport, storage and sale of goods and to apply seals to ensure the integrity of goods.
- d) to order measures, under the conditions of the fiscal legislation, regarding the confiscation, under the conditions of the law, of the goods whose manufacture, storage, transport or sale is illicit, as well as of the incomes realized from commercial activities or illegal services and to raise financial-accounting and other documents that can be used to prove contraventions or, as the case may be, offenses.
- e) to notify the criminal investigation bodies in case of the existence of certain circumstances regarding the commission of certain deeds provided by the criminal law in the field of tax evasion;
- f) to legitimize and establish the identity of the administrators of the controlled entities, as well as of any persons involved in committing the acts of fraud and tax and customs evasion found and to request written explanations from them, as appropriate;
- g) to retain documents, under the conditions of the Fiscal Procedure Code, to request certified copies of the original documents, to take samples and other such specimens and to request the performance of technical expertise necessary to complete the control act;
- h) to ascertain the contraventions and to apply the corresponding sanctions, according to the competencies provided by law;

- i) to stop the means of transport, in accordance with the law, for the verification of the documents accompanying the transported goods and persons.
- j) to request, in accordance with the law, data or, as the case may be, documents, from any private and / or public entity, in order to investigate and substantiate the findings regarding the commission of acts contrary to the legislation in force in the fiscal and customs financial field. .
- k) to establish and use databases, including those of other public institutions, necessary for the prevention of tax evasion, economic and financial crimes and other illicit acts in the fiscal and customs field;
- l) to carry out necessary verifications to prevent and discover the facts of fraud and tax and customs evasion.
- m) To carry out thematic control operations.
At the same time, the anti-fraud inspectors within the DGAF carry out, at the prosecutor's disposal:
 - technical-scientific findings, which constitute means of proof, in accordance with the law;
 - financial investigations in order to make goods unavailable;
 - any other verifications in fiscal matters ordered by the prosecutor.

From the provisions of art. 6 of the Emergency Ordinance no. 74/2013, it results that the two forms of control initiated under the auspices of the Financial Guard are still maintained: the operational and unexpected control, on the one hand, and the thematic control, on the other hand. The result of the findings takes the form of minutes and control documents. As the case may be, they are constituted in acts of ascertainment and sanctioning of contraventions or in acts of notification of the criminal investigation bodies.

Tax evasion is investigated by a specialist, with training in the field of economic law; The literature shows that the perfect investigator for tax evasion is a successful combination of: a police officer, a detective, an accountant, a sociologist, a computer scientist and a lawyer.

The complexity of the investigation activity derives from the plurality and from the technical character of the documents to be researched: contracts, accounting registers, payment instruments - checks, promissory notes, account statements, etc. Therefore, the discovery of the facts of tax evasion requires the performance of a technical-accounting expertise. Such an expertise could find: the movement of money during the course of criminal activity; identifying how the money was used over a period of time; establishing participants in financial transactions; the discovery of other clues likely to lead to further detailed investigations.

IV. CONCLUSION

Given the degree of economic development, it is observed that poorer countries have a more developed underground economy. Also, the application and control of less strict laws are associated with a larger dimension of the informal sector of the economy and with the manifestation of evasion.

Therefore, tax complexity can be a cause of tax evasion, which can take many forms, such as - how to calculate and determine the tax bases to be declared, the complexity and the large number of forms to be completed and submitted to the fiscal authorities, the frequent modifications of the fiscal legislation, the multitude of fiscal rules, the interpretability of the legal provisions in the fiscal field, etc.

We appreciate as positive the way of organizing the DGAF and DLAF, by comparison, with other bodies with similar attributions at EU level. For example, in Italy, we are talking about an extremization of the attributions of the Financial Guard, which appears as a militarized structure, cumulatively subordinated to the Ministry of Defense and the Ministry of Finance. The members of the Financial Guard are graduates of the Military Academy. At the same time, the Italian Financial Guard is one of the most endowed ethnic and military financial control bodies in the EU, with no less than 600 boats and over 100 aircraft at its disposal, in carrying out missions to control and sanction criminal evasion.

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