

## **GENERAL ASPECTS REGARDING THE AUDIT OF EUROPEAN NON-REIMBURSABLE FUNDS**

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**ABSTRACT:** *Based on the EU regulations applicable to European funds, in Romania the institutional and procedural framework regarding the coordination, management, control and audit of European funds was established, respectively management authorities, certification authorities and the audit authority for each operational program implemented in the two periods of programming carried out to date, 2007-2013 and 2014-2020.*

**KEY WORDS:** *audit, management, operational, European, regulation.*

**JEL CLASSIFICATIONS:** *B 21, M 42.*

### **1. INTRODUCTION**

The responsibility for ensuring the proper execution of the budget rests primarily with the European Commission, together with the other European institutions and bodies. But for the largest proportion of expenditure, mainly in the field of natural resources and cohesion, the responsibility is shared with the Member States. As a result, Member States have the responsibility to adopt measures to prevent and combat fraud and any other illegal activity that may have an adverse impact on the financial interests of the European Union and to cooperate with all European Union institutions, agencies and offices in order to detect and investigating fraud that may affect the financial interests of the Union.

### **2. THE GENERAL FINANCIAL FRAMEWORK OF THE EUROPEAN UNION AND THE SHARED MANAGEMENT OF EUROPEAN FUNDS**

The European Commission is the institution that manages European Union policies and allocates European funds. Thus, the Commission establishes the prioritization of expenses within the Union, through cooperation with the Council and

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the Parliament, ensures the preparation of the annual budgets for approval by the Parliament and the Council and controls the way in which the expenses are carried out, subsequently verified by the European Court of Auditors.

The independent external audit of the European Union is ensured by the European Court of Auditors, based in Luxembourg, whose mission is to support the improvement of the administrative and financial management of the Union, to verify management responsibility and transparency. The European Court of Auditors fulfils, independently, the role of defender of the financial interests of the citizens of the Union. In exercising its mandate as external auditor of the Union's finances, the European Court of Auditors acts as a guardian of the financial interests of all Union citizens, contributing in particular to the improvement of the financial management of the Union's budget.

The multiannual financial framework aims at the orderly establishment of the Union's expenses within the limits of its own resources, being adopted for a period of at least five years. The annual budget of the Union applies the established multiannual financial framework, for each year of the period of the multiannual framework.

The financial regulation establishes the execution procedures and especially the responsibility of credit officers, accountants and impress account administrators, as well as the institutions' internal auditors.

The manner in which the general budget of the European Union was executed is subject to the annual external audit carried out by the European Court of Auditors, with a view to discharging the management.

Through the external audit of the budget, the Court of Accounts verifies the revenue and expenditure accounts from the budget, provides the European Parliament and the Council with an assurance statement with reference to the reliability of the accounts, the legality and regularity of the operations carried out, examines whether the revenues have been collected and the expenses have been carried out in compliance with the applicable laws and regulations and evaluates whether the financial management was sound.

Audits can be carried out before the close of the audited financial year and are carried out by checking documents or, as the case may be, at the location of the European institutions, in the Member States and in third countries. An annual report is issued for each financial year, the Court of Auditors can at any time, in addition to this report, make observations on specific issues and opinions at the request of any European institution.

The annual report of the Court, together with the special reports, as the case may be, presents the basis for carrying out the discharge procedure. Thus, Parliament, with the recommendation of the Council, determines whether the European Commission has satisfactorily fulfilled its budgetary tasks and responsibilities.

The Court's audit reports and opinions are an essential tool in the accountability processes for the management of EU finances. They are used to guarantee that the institutions in charge of implementing EU policies and programs – the Commission, other institutions, Union bodies and Member State administrations – are accountable for the management act carried out. To this end, Member States must carry out checks, establish an effective and efficient internal control system and

initiate, depending on the circumstances, the necessary and appropriate legal proceedings. In order to ensure that the funds are used according to the applicable rules, the Commission also applies its own audit procedures and uses financial correction mechanisms, which enable it to take final responsibility for the entire execution of the budget.

### **3. EUROPEAN REQUIREMENTS REGARDING THE MANAGEMENT AND CONTROL OF EUROPEAN FUNDS**

According to Regulation no. 1303/2013 establishing common provisions and general provisions regarding the ERDF, ESF, FC, FEADR, FEPAM for the current period, according to the Financial Regulation and the specific rules of each fund, including the FEAD fund, the member states must fulfil their tasks regarding management, control and the audit and assume the related responsibilities, which the shared management between the Member States and the European Commission of each fund entails.

In designing and implementing systems for management and control, the following benchmarks are taken into account:

- establishing and describing the functions for each body involved in the field of management and control, the appropriate distribution of functions within each body;
- compliance with the principle of separation of functions between the different bodies involved and within each of the bodies is ensured;
- implementing the necessary procedures to guarantee the correctness and regularity of the expenses incurred and declared;
- configuration of IT systems for accounting, archiving and transmission of financial information and data on indicators, procedures and systems for monitoring and reporting financial information;
- ensuring reporting and monitoring systems, if the responsible body delegates the performance of tasks to another body;
- the adoption of the provisions regarding the activity of auditing the way of operation of the created systems;
- implementing systems and procedures to provide an adequate audit trail;
- ensuring the implementation of actions to combat fraud through measures regarding the prevention, detection and correction of irregularities and fraud, as well as the necessary measures for the subsequent recovery of amounts identified as being improperly paid.

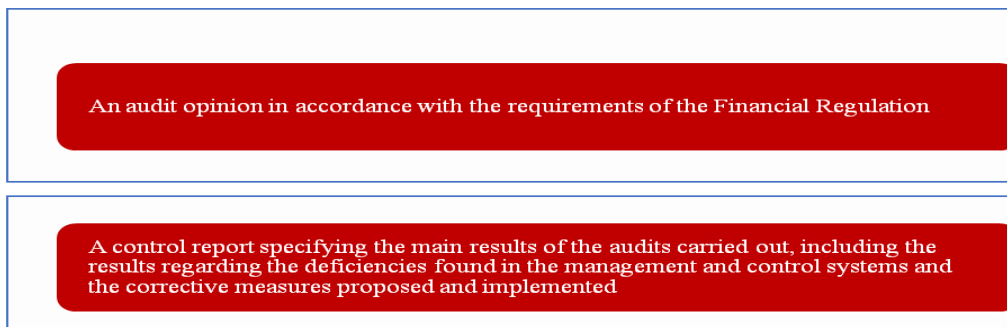
### **4. FUNCTIONS OF AUDIT AUTHORITIES**

The audit authorities have the role of ensuring that the activity of auditing the proper functioning of the management and control system within each operational program and auditing a relevant sample of financed operations is carried out, based on the expenses declared to the European Commission. For the audit of declared expenditure, a representative sample is selected and, as a general rule, statistical

methods are used to ensure that representative samples are drawn. The audit authority is responsible for ensuring the use of internationally recognized auditing standards in order to carry out the audit work.

The audit authority is concerned, within the stipulated period of maximum eight months from the date of adoption of an operational program, with the preparation of an audit strategy regarding the performance of audits. The audit strategy describes the audit methodology that will be executed, the sampling methods that will be used in conducting audits of operations and establishes the calendar planning of audits for the current accounting year and for the following two accounting years. The audit strategy is updated every year of the programming cycle. If a single system created for management and control applies to several operational programmes, a common audit strategy for those operational programs can be prepared. At the request of the European Commission, the Audit Authority has the duty to present the developed audit strategy at that time.

The audit authority prepares and issues two important categories of documents, presented in Figure 1.:



**Figure 1. Documents drawn up by the audit authorities**

The European Commission provides the models for drawing up the audit strategy, the audit opinion and the control report, to ensure the uniformity of the documents drawn up by each member state. The Commission cooperates with each audit authority to ensure the coordination of their audit plans and methods and to make possible the immediate exchange of information on the results of the audits carried out, with a view to improving the systems created in the Member States for management and control.

## **5. OLAF, EUROPEAN COORDINATOR OF THE FIGHT AGAINST FRAUD OF EUROPEAN FUNDS**

Fraud can affect the general budget of the European Union. The fight against fraud has its legal basis in Article 325 of the Treaty on the Functioning of the European Union (which replaces Article 280 of the EC Treaty). According to the provisions of this article, the European Union and the Member States must combat fraud and any other illegal activity that may affect the financial interests of the Union through

measures that discourage fraud and provide effective protection in the Member States, as well as in the institutions and other bodies of the Union European.

Member States are obliged to adopt measures identical to those implemented at national level to protect the respective state's own financial interests, and in the case of combating fraud affecting the financial interests of the Union. Member States must cooperate and coordinate their actions on the protection of the Union's financial interests against fraud. To achieve this objective, the member states, together with the European Commission, organize a close and permanent cooperation between the competent authorities involved.

The Commission, in cooperation with the Member States, submits to the European Parliament and the Council an annual report on the measures adopted to implement the provisions of the Treaty on the functioning of the European Union.

The European Anti-Fraud Office (OLAF) has the role of carrying out investigations in the Member States concerning the EU's financial interests, as well as investigations targeting the staff of the European institutions.

The Office is delegated to exercise all the powers of the European Commission, to carry out investigations of an administrative nature with the aim of intensifying the fight against fraud, corruption and other illegal activities that adversely affect the financial interests of the Community, but also against any act or activities that contravene the provisions of the Community. OLAF is an independent body, in the sense that it exercises its investigative powers in complete independence, without seeking or receiving instructions from the Commission, any government or any other institution or body. OLAF investigates cases of possible fraud of the EU budget, acts of corruption and serious professional misconduct at the level of European institutions and develops the anti-fraud policy on behalf of the European Commission. OLAF is responsible for investigating matters related to fraud, corruption and other crimes, aiming at: all expenses committed by the EU, the main categories being structural funds, expenses related to agricultural policy and funds intended for rural development, direct expenses, as well as external aid; several categories of EU revenues, especially customs duties; suspicions of serious professional misconduct, within the EU institutions, committed by their staff and members.

Considering the information obtained and the accumulated experience, OLAF helps the institutions and authorities involved in the management of European funds, in the activities of identifying various types of fraud, existing trends, threats and potential risks, in order to prevent fraud on European funds. OLAF receives information and notifications, from various sources, regarding the existence of possible frauds and irregularities. In most cases, this information derives from the controls carried out by the persons responsible for the management of EU funds within the European institutions or in the Member States. All complaints submitted are subject to initial assessments to determine whether they fall within the Office's remit and meet the established criteria to open a case. Investigative methods include interviews and inspections at various locations, and investigations conducted fall into one of the following three categories: internal investigations, external investigations, coordination cases. After the investigations are concluded, the Office recommends action to the EU institutions and national governments concerned, generally involving the initiation of

criminal investigations, financial recoveries or other disciplinary measures. OLAF also monitors the way in which the recommended measures are put into practice.

On July 5, 2017, European Directive no. 2017/1371 on combating fraud directed against the financial interests of the Union by means of criminal law, which had a deadline for transposition by the member states on July 6, 2019. This directive replaced the Convention on the protection of the financial interests of the European Communities of 26 July 1995, including its Protocols of 27 September 1996, 29 November 1996 and 19 June 1997. Directive no. 2017/1371 defines the Union's financial interests as "all revenues, expenses and assets that are included in, are collected in or are owed to: (i) the Union's budget; (ii) the budgets of the institutions, bodies, offices and agencies of the Union established under the Treaties or the budgets managed or monitored directly or indirectly by them".

The forms of fraud that affect the financial interests of the Union were taken over according to the previous agreement and detailed in art. 3 of the Directive, distinguishing between expenditure fraud, income fraud and fraud on income obtained from own VAT resources. Fraud includes any action or inaction with respect to: the use or presentation of false, incorrect or incomplete statements or documents, having the effect of misappropriating or withholding funds or assets, respectively the illegal reduction of the resources of the Union's budget or of the budgets managed by the Union or on its behalf; non-disclosure of information, in violation of a specific obligation, having the same effect; or improper use of such funds or assets for purposes other than those for which they were originally granted, which harms the financial interests of the Union, respectively improper use of a legally obtained benefit, having the same effect.

The actions or inactions presented above refer in particular to fraudulent schemes of a cross-border nature with regard to VAT resources, non-payment or the establishment of improper rights to VAT refunds. The Directive also defines other crimes that can impact the Union's financial interests, such as money laundering, passive and active corruption, misappropriation of funds.

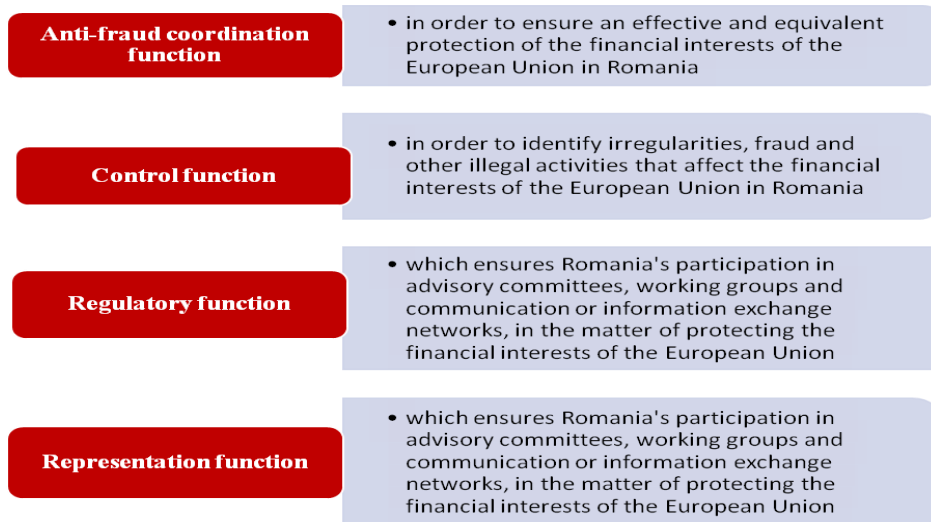
Member States are required to take the necessary measures to ensure that fraud affecting the financial interests of the Union is treated as a criminal offense by law, in all situations where it was committed with intent. On October 12, 2017, European Regulation no. 2017/1939 for the establishment, as a form of consolidated cooperation, of the European Public Prosecutor's Office (EPPO), having the competence to investigate, prosecute and prosecute the perpetrators of crimes affecting the financial interests of the Union provided for in Directive no. 2017/1371. Through this European regulation, the obligation of EU member states to criminalize and establish effective criminal sanctions for defrauding European funds has been brought back to the fore.

The European Public Prosecutor's Office (EPPO) works in a close relationship with OLAF, based on cooperation, to ensure the exchange of information and the avoidance of duplication of efforts. The relationship aims in particular to use all available means for the protection of the Union's financial interests through complementarity with OLAF and its support for the performance of the tasks performed by the EPPO.

## **6. THE DEPARTMENT FOR THE FIGHT AGAINST FRAUD (DLAF), NATIONAL COORDINATOR OF THE FIGHT AGAINST FRAUD OF EUROPEAN FUNDS**

Fraud of European funds consists in committing deviations from the provisions of the contracts or commitments concluded in the financing process, deviations that cause damage to the European Union budget, respectively the national budget. In order to protect the financial interests of the European Union and Romania, at the national level there is a body that fights against fraud, the DLAF. DLAF is the institution established for the purpose of ensuring, supporting and coordinating, as the case may be, the fulfilment of Romania's obligations in order to ensure the protection of the financial interests of the European Union, in accordance with the provisions of art. 325 of the Treaty on the Functioning of the European Union. DLAF fulfils the role of coordinator of the anti-fraud fight, being the national contact institution with the European Anti-Fraud Office - OLAF within the European Commission.

DLAF organizes and carries out its activity based on Law no. 61/2011 and is organized as a structure with legal personality within the working apparatus of the Government, under the coordination of the Prime Minister. DLAF is concerned with protecting the financial interests of the European Union in Romania, by adopting legislative, operational, administrative or inter-institutional cooperation measures. In fulfilling its duties, according to the law, the Department benefits from functional and decision-making autonomy, being independent from other public authorities and institutions and performs 4 functions, which we present below in Figure 3:



**Figure 3. DLAF functions**

## **7. THE IMPORTANCE OF PREVENTING AND DETECTING IRREGULARITIES AND FRAUD REGARDING EUROPEAN FUNDS AND WORKING WITH DLAF**

In the execution of its control function with which it is vested, the DLAF carries out checks for the prevention and detection of fraud, consisting of administrative investigations, on-site checks, analyses and documentary checks. The operative control function is exercised, based on the law, by the Control Directorate within the DLAF with the aim of identifying irregularities, fraud and other illegal activities that may affect the financial interests of the European Union in Romania. Thus, the DLAF carries out or coordinates control actions with the aim of identifying irregularities, frauds and other illegal activities in relation to the management, obtaining and use of European and co-financing funds, as well as other funds within the scope of the financial interests of the European Union, including loans and guarantees granted to Romania, or aimed at the illegal reduction of own resources.

DLAF carries out specific checks, through control actions based on ex officio notifications and following notifications regarding possible irregularities, fraud or other activities that affect the financial interests of the European Union in Romania, which it receives from various public sector entities and individuals and legal entities in the private sector. We present below, the main entities, in hierarchical order, from among which DLAF receives the most notifications, these representing the main sources of reporting to DLAF.

The DLAF is a body for ascertaining the criminal offenses provided for by the Code of Criminal Procedure, regarding all aspects of a criminal nature that affect the financial interests of the European Union in Romania. The control documents issued by the DLAF constitute evidence, and the DLAF can carry out checks at the request of the prosecutor, regarding the verification of compliance with the legal provisions in the field of protecting the financial interests of the European Union.

When it identifies irregularities in obtaining, respectively the use of European funds and related national funds for co-financing, the DLAF submits the control act to the competent authorities in managing the funds to fulfil their obligations regarding the reporting of irregularities and financial recovery, according to the law. The concerned authorities have the obligation to communicate, following the receipt of the Department's control act, the measures taken to resolve the issues flagged by it, as well as the actions taken to recover any damages.

In the event of the identification of irregularities within the carried-out control missions, the Department communicates the control act to the relevant ministries, responsible for taking the necessary measures to remedy the identified deficiencies and, as the case may be, for sanctioning the responsible persons, with the information of the Prime Minister. The competent ministries have the obligation to inform the Department about the measures taken to resolve the issues reported by the control act and, as the case may be, about the sanctions imposed.

If elements of a criminal nature are discovered, the Department notifies the prosecutor's office competent to carry out the criminal investigation and communicates the control act in order to recover the damage and hold the guilty persons criminally



liable. The management authorities are also involved in the activities of ascertaining irregularities regarding the European funds and have responsibilities regarding the control activities of the running of the operational program, carrying out the following procedures in this regard: administrative checks of all reimbursement requests submitted by beneficiaries; on-the-spot checks of ongoing funded projects based on a sample.

The management authorities and other authorities and institutions involved in the management of European funds record and centralize the findings formulated by their own staff, following the performance of their own activities. They also record and analyse all complaints about the programs they manage, which they receive from various sources. Another source of information is the internal audit, these institutions having the obligation to organize and exercise the internal public audit activity, carried out by the specialized departments, in accordance with the provisions of the national and community legislation in force. Internal auditors also formulate findings on ongoing operations, which institutions record and analyse.

All findings and notifications that have financial implications or possible financial implications will be compulsorily forwarded to the own control structures, for the purpose of investigation. According to the legal provisions, "the activity of ascertaining irregularities and establishing budget claims/financial corrections is carried out by the authorities with powers in the management of European funds, through control structures organized for this purpose within them".

After receiving the requests, the competent control structure will ensure the organization and carrying out of the activity of ascertaining irregularities and establishing budget claims. The findings transmitted by the representatives of the European Union, through the control/audit documents drawn up and which have financial implications, as well as the findings from the audit reports issued by the Audit Authority at the closure of the programs or projects, have priority for the performance of the ascertainment activity, based on the projects of control documents/audit reports drawn up and presented by these institutions.

The verifications of the control structures are materialized through the preparation of minutes or notes of ascertaining irregularities and establishing budget claims, respectively establishing financial corrections. These documents constitute debt securities, issued in order to settle these debts.

In the event of the detection of irregularities that present indications of possible fraud, the control structures are obliged to immediately notify the DLAF and continue the activity of verification and drawing up of the minutes of the detection of irregularities and the establishment of budgetary claims, as well as the recovery of claims budget, separate from the conduct of the criminal investigation.

The leadership of the authorities involved in the management of European funds has the obligation to monitor all cases of irregularities and to order the necessary measures to improve the management and financial control systems, in order to prevent their recurrence in the future. The concept of fraud has several definitions. In the context of legislation on the control of European funds, the term "fraud" falls within the broader concept of "irregularities". Thus, irregularities contain deficiencies,

deviations, malfunctions and even fraud. If such an act was committed intentionally, it is qualified as fraud.

Fraud refers to any intentional act or intentional omission intended to defraud others, and the fraudster obtains a gain. Fraud involving public funds is sometimes related to corruption, which is generally understood as any act or omission by which public authority is abused or sought to be abused, with the aim of obtaining undue benefits.

According to the national legislation in Romania, the irregularity represents any deviation from legality, regularity and compliance as these requirements are provided in the national and/or European provisions and in the contracts concluded on the basis of these provisions. The deviations result from actions or inactions of the beneficiaries or representatives of the institutions involved in the running of the European funding programs, being those actions or inactions that have damaged or have the potential to damage the budget of the European Union or other public funds, materialized by amounts improperly paid from the respective funds. In the national legislation on combating the fraud of European funds, separated from irregularities, fraud is described, this being considered a crime committed in connection with obtaining or using European funds or other public funds, a crime provided for and criminalized either by the Criminal Code or by other special laws.

The forms of fraud, taken over in Directive (EU) 2017/1371, are criminalized separately by the Romanian legislator in Law no. 78/2000, in article 18, with specific reference to crimes in the field of European funds, including criminal acts. Both the authorities working in the field of managing European funds and the beneficiaries of funding have the responsibility to design, implement and apply implementation, verification and control procedures in order to ensure the granting and use of these funds in a fair and efficient manner, respecting the principles regarding good financial management, provided by the community legislation.

The authorities must take the necessary measures in order to prevent irregularities and frauds, including through correct and timely information activities of the beneficiaries on the risks of irregularities and frauds, especially regarding the discovery and reporting of indications of fraud. If, following the verification of payment requests, the authorities determine the existence of expenses incurred by beneficiaries that do not comply with the conditions of legality, regularity or compliance established by the provisions of national and community legislation, then they have the obligation to partially or fully exclude these expenses from reimbursement or payment. The concerned authorities have the obligation to apply financial corrections, based on the debt securities issued.

The authorities have the obligation to immediately notify the European Public Prosecutor's Office (EPPO) in the event of finding indications of fraud for which it could exercise its competence and inform the DLAF. In situations where the conditions for the intervention of the European Public Prosecutor's Office are not met, but indications of fraud have been found, the authorities must notify both the DLAF and the criminal investigation bodies as soon as possible.

DLAF receives notifications from any natural or legal person, other body and public entity that have information about possible fraud or irregularities that they have

become aware of. An important source of information reporting is the financial auditors, members of the Chamber of Financial Auditors in Romania (CAFR). Financial auditors, individuals and legal entities, provide external financial audit services of projects financed by European funds.

The objective of the financial auditors is to identify errors and frauds by verifying that the funds have been spent by the beneficiaries in accordance with the terms and conditions stipulated in the financing contracts, based on the applicable national and European legislation.

Thus, the financial auditors, following the implementation of financial auditing activities of European projects, are able to identify and report, either through the audit reports requested by the management authorities, or directly to the DLAF, possible cases of fraud and irregularities. The reported cases will be investigated by the DLAF, as part of the DLAF's ongoing control actions.

Romania has the obligation to report all cases of irregularities that have been detected to the European Commission - OLAF. In this sense, the activity of coordination, centralization and communication of reports is carried out by the DLAF, which ensures the relationship with OLAF, based on European regulations, OLAF instructions and procedures DLAF reports to OLAF the irregularities identified and for which the following categories of documents were prepared. OLAF examines reported cases, decides whether or not to open an investigation and cooperates, as appropriate, with the authorities of each Member State in fraud investigation activities.

The conclusion that emerges is the importance of cooperation between the DLAF and the institutions and structures involved in the management, control and audit of European funds in order to combat fraud that harms the EU budget. Thus, these institutions must communicate to the DLAF any indications of situations that could be qualified as possible irregularities, fraud and suspicion of fraud or other illegal activities that may affect the financial interests of the European Union in Romania. Likewise, individuals and legal entities, especially beneficiaries of European funds and financial auditors of projects financed by European funds, must submit reports to the DLAF as soon as they discover indications that require investigation by the DLAF and reporting to the European Commission.

## **8. CONCLUSION**

The non-reimbursable European funds granted to Romania as a member state of the European Union have as their legal basis the Treaty on the Functioning of the European Union, the Financial Regulation applicable to the general budget of the European Union and the European Regulations regarding the provisions communicated and the specific provisions applicable to each fund.

In the 2007-2020 period, Romania implemented 7 operational programs in each of the two programming periods, financed from the 6 most important European funds, which support the policy of ensuring cohesion and agricultural development of all member states.

Based on the European regulations applicable to European funds, the institutional and procedural framework for the coordination, management, control and

audit of European funds was established in Romania, consisting of management, certification and audit authorities for each operational program.

In order to combat fraud that harms the EU budget and, implicitly, to protect the financial interests of all European citizens, it is of particular importance the collaboration between the DLAF and the institutions, respectively their structures involved in the management, internal audit and internal control of the activities regarding the European funds received by Romania, as well as the cooperation between DLAF and the external public auditor of European funds.

Also, the cooperation between the DLAF, the beneficiaries of European funds and the external financial auditors of European projects constitutes an important source of identification, investigation and reporting of fraud situations of European funds. The entities involved must immediately communicate to DLAF any evidence discovered that requires investigation by DLAF and reporting to the European Commission, via OLAF. In this way, European citizens are protected against fraud and other illegal activities that could have a negative impact on the budget and financial interests of the European Union.

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