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Bottom of the Heap. The Case of Romania

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7. Bottom of the Heap. The Case of Romania

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The suspension of EU payments in four operational programmes in 2012 showed how problematic Romania's correct and effective management of EU funds is. Such funds aim primarily at decreasing the socio-economic disparities among EU members and support the economic convergence with their Western counterparts of less developed new EU members. Consequently, a poor absorption rate of EU funds threatens income convergence between old and new member countries, thus representing a major challenge for EU integration. Currently, Romania has the poorest absorption rate among all the EU Member States² and the worst among the ten new Member States. Moreover, the financial corrections, which amount to roughly 22% of the assimilated European funds, further reduce the real absorption rate, a loss which can be attributed entirely to corruption and mismanagement. The present report investigates the proportion of EU funds which can reasonably be considered at risk because of mismanagement and corruption, asks what are the main defrauding tactics used at national level to obtain European money illicitly, and considers the extent to which the suspension or cancellation of EU assistance might be the best policy for dealing with the situation. In addition, the report will put forward a list of recommendations for the next EU programming period which are intended to mitigate the effects of corruption and mismanagement that result in a waste of public resources.

1. The Problem

Romania is supposed to receive a large amount of EU funding, ranking fourth after Poland, the Czech Republic and Hungary, in terms of the amount earmarked for the 2007-2013 programming period with 19, 67 billion EUR given by the EU for the Convergence and European Territorial Cooperation objectives³. At the end of 2012, Romania registered an absorption rate, as measured by the overall payment ratio (intermediary reimbursed payments from the European Commission), of almost 12%⁴, dramatically

¹ The research was made possible by support from the Think-Tank Fund, Open Society Foundations to the project "Misuse of Public Funds in Romania Before and After EU Accession from 2004 to 2012", implemented by the Romanian Academic Society, the EU 7th Framework Project ANTICORRP, and the authors' voluntary contributions.

² Among the underachieving trio, Romania has the lowest absorption rate (as measured by the funds, including the advances, paid by the Commission), totalling 20.7%, in contrast to Italy (28%) and Bulgaria (28.5%).

³ In Romania, the total sum available for spending, including the national co-financing rate of approximately 5 billion EUR, amounts to 24 billion EUR.

⁴ The absorption rate on May 17th, 2013 was 14, 37%, which amounts to a 2.9% rate of increase from December 31st, 2012 (11, 47%).

below Bulgaria (34%), Hungary (40%) and Central and Eastern Europe (CEE) average of 44% (KPMG – CEE, 2013: 9). In addition, among the countries with the lowest contracting ratio, Romania ranks last with 70% as compared to Slovenia (72%), Slovakia (73%) and to the CEE average of 83%. An important indicator of management efficiency in terms of real distribution is the **difference between the grants contracted and those paid** (KPMG – CEE, 2013: 14). The biggest differences are present in Romania (58%) and Bulgaria (66%)⁵, the CEE average being 39%.

One of the immediate causes behind the low absorption rate is the decision by the European Commission in 2011 to halt reimbursement claims for two operational programmes (Regional Development and Human Resources) because of problems with the public procurement procedure as pointed out by the Commission's audit missions⁶. The same happened in July 2012 when five operational programmes (Environment, Transport, Human Resources, Economic Competitiveness and Regional Development) were subject to halted reimbursement claims pending the results of the Commission's audit missions⁷. Moreover, at the end of 2012, Romania was subject to pre-suspension mechanisms concerning three operational programmes (Transport, Economic Competitiveness and Regional Development⁸) because of suspicions of fraud and the lack of adequate management and control functions. More precisely, they refer to faulty public procurement procedures, defective financial management and an inadequate prevention and detection practice with regard to fraud and conflict of interest⁹. The direct consequence of all the suspended reimbursements was the fact that the beneficiaries received the funds later than anticipated and the Government had to continue to support the programmes financially either from the state budget¹⁰, or by contracting loans from the international financial market, thus increasing the state deficit.

The **financial corrections** applied by the Commission following audit missions merit special attention because although it has the weakest absorption rate, Romania is subject to the highest level of corrections among all the Member States (Iorga et al., 2013). That particular aspect is analysed in greater detail below.

⁵ This difference is due to a dramatic increase in the number of contracted funds, Bulgaria managing to attain a 100% contraction rate in 2012, while having a payment rate of 34%.

⁶ Popescu, E. (2011) "CE a sistat platile pentru Axa 2 a POR si cere verificarea tuturor contractelor incheiate". *Ziarul Financiar Daily Newspaper*. 21 June. Available from: <<http://www.zf.ro/fonduri-ue/ce-a-sistat-platile-pentru-axa-2-a-por-si-cere-verificarea-tuturor-contractelor-incheiate-8365865/>> [Accessed 30/05/2013]; Adevarul (2012) "Cod rosu pe fonduri UE". 23 April. Available from: <http://adevarul.ro/international/europa/cod-rosu-fonduri-ue-1_50ae26f97c42d5a6639a10f1/index.html> [Accessed 30/05/2013]

⁷ Sisea, C. (2012) "Orban: Romania nu poate trimite cereri de rambursare pentru patru programe UE". *Ziare.com*. 3 July. Available from <<http://www.ziare.com/leonard-orban/ministru-afaceri-europene/orban-romania-nu-poate-trimite-cereri-de-rambursare-pentru-patru-programe-ue-1176632>> [Accessed 30/05/2013]

⁸ The Human Resources programme was subject to a pre-suspension procedure in August 2012.

⁹ For all three programmes, the main shortcomings were found in the management and control systems which are the responsibility of the Management Authority in question. In this sense, the common conclusion was the following: "[t]he Commission considers that there are serious deficiencies in the management and control systems [...] which affect the reliability of the procedure for management verifications and certification of payments for public procurement and for which the corrective measures are not sufficient".

¹⁰ Dan, C. (2012) "Guvernul a transferat temporar 400 milioane lei din privatizari pentru plata proiectelor cu fonduri UE". *Ziarul Financiar Daily Newspaper*. 9 August. Available from: <<http://www.zf.ro/fonduri-ue/guvernul-transfera-temporar-400-milioane-lei-din-privatizari-pentru-plata-proiectelor-cu-fonduri-ue-9934634>> [Accessed 1/06/2013]

Because of its poor absorption rate which is only slowly increasing, less actual money reaches the ultimate “consumer”, the citizen meant to benefit from the financing scheme. The **allocated per capita spending** for Romania – strictly from EU funds – is 897 EUR (if the absorption rate were 100%). Even in that respect Romania lags behind since, according to data from 2012, the **total amount of payments per capita** (155 EUR) is the lowest among the CEE countries (Romanian Fiscal Council, 2012: 43)¹¹.

The picture described above permits us to state with a degree of certainty that Romania’s predicament is a result of a combination of lack of administrative capacity, mismanagement and corruption.

Once political stability seemed to have been achieved in Romania after a stormy year in 2012, structural problems resurfaced. Corruption there remains the worst in the EU-27, echoed by the anti-government slogans of the 2012 demonstrators who stated to their rulers: “We apologize that we cannot produce as much as you can steal”¹². EU funding absorption is also the lowest, although such funds would be the ideal source of economic recovery for the country. Little work has been done on the association between the two problems and that is the gap the current report tries to fill.

According to a 2012 Eurobarometer survey, 67% of Romanians believe the level of corruption in their country has increased, while 78% of respondents agreed that corruption in Romania is much more pervasive than in other EU Member States¹³. In addition, 79% of Romanians did not believe their government was fighting corruption effectively¹⁴. The QOG 2-13 ANTICORRP survey (see chapter 8) found that Romanians see a great deal of favouritism and corruption, especially in the law enforcement and health care services.

However, Romania is fighting corruption, but so far each electoral cycle is associated mostly with the prosecution of former government members. In 2012, former Prime Minister Adrian Nastase, a Social Democrat, was imprisoned after many years of being shielded by Parliament against criminal investigation. Nastase is the country’s first head of government in the post-communist era to have been convicted of illegally funding presidential election campaign by collecting approximately 1.6 million Euros from companies that declared the payments as attendance fees for a government symposium. The ex-PM fought ferociously, with a dramatic suicide attempt and last-minute tactics to withdraw Government Infrastructure Agency (ISC) complaints from his file, reaching out to ISC director Adrian Balaban-Grajdan, who was later dismissed by his fellow Social Democrat Prime Minister Victor Ponta for his attempt to withdraw the complaint. Nastase was freed for good behaviour in spring 2013 but was dis-

¹¹ Among the lowest absorption rates from this point of view, we find Bulgaria (209 EUR absorbed from 889 EUR allocated per capita) and Slovakia (587 EUR absorbed from 2116 EUR allocated per capita). In contrast, Estonia ranked among the first (1190 absorbed from 2540 EUR allocated per capita) along with Lithuania (1002 EUR absorbed from 2088 EUR allocated per capita).

¹² Wagner, A. (2012) *Corruption and Enlargement in the European Union. Who will limit corruption in Romania Post- Accession?* Presented at the ECSA-C Ninth Biennial Conference, Ottawa, 26-28 April. Available from: <<http://canada-europe-dialogue.ca/events/2012-04-ECSA-C-Europe-in-an-Age-of-Austerity/Wagner-CorruptionEnlargementRomania.pdf>> [Accessed 03/06/2013]

¹³ European Commission (2012) *Special Eurobarometer 374- Corruption* [www]. Available from: <http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf> [Accessed 03/06/2013]

¹⁴ Ibid.

missed from the Law Faculty of Bucharest University and is banned from seeking public office. He has further outstanding legal action against him. At the other extreme of the political spectrum, following his government's fall from power in 2012 Sorin Blejnar, the former president of the Agency for Fiscal Administration (ANAF), and the leader of his cabinet Codrut Marta were indicted in September 2012. They were accused of selectively favouring fiscal evasion, and Marta and his wife were charged with organized crime and human trafficking¹⁵. Blejnar, an appointee of Nastase's foe, President Basescu, made similar claims that the accusations were politically motivated.

This raises the question of how well Romania is controlling corruption? Is corruption the exception in the public funds allocation process, or rather the norm, seeing that Prime Ministers themselves and the heads of tax offices seem to be at the top of this lucrative industry? And how is their general distribution pattern affecting EU funds? As a rule, the discretionary allocation of public funds is a particularly persistent problem in Romania (Mungiu-Pippidi, 2010; Romanian Academic Society, 2011; Institute for Public Policy, 2010 and 2011). The usual illustration is the so-called State Reserve Fund, a national level fund earmarked only for "urgent or unexpected situations" (Article 30, Law 500/2002) and which is annually increased discretionarily without parliamentary approval. Although its amount is established within the State Budget Law of a particular year, the sum is substantially increased through Government decisions, and it is distributed on grounds of political affiliation, not real documented natural emergencies¹⁶. The main red flags vis-à-vis the management of the fund are the abovementioned increases which are not subject to parliamentary approval and the change in destination from mitigating urgent situations to paying arrears from municipalities¹⁷, the building and/or consolidation of churches or the organisation of film festivals¹⁸.

The general unwritten rule is that most of the money goes to the ruling party or the parties within the ruling coalition (Romanian Academic Society, 2011: 16). **Table 1** below shows the use of the State Reserve Fund over the last four electoral cycles. The clientelism score calculates the ratio between emergency funds allocated to mayors of the government party and the share of the vote for the government party in the given region, all showing significant disproportion until recently. Although all parties in government tend to favour their own mayors, the two centre-right parties when governing by themselves had the highest rate of clientelism. The data indicate that in 2008, the year when the Reserve Fund was increased 509 times above the amount initially allocated (Romanian Academic Society, 2011: 16-17), the clientelism score was at its highest. In 2012, the discrepancies between the allocations for local authorities

¹⁵ Romania Curata (2012) *DNA retine 11 persoane in dosarul in care este cercetat si fostul sef ANAF Sorin Blejnar pentru evaziune fiscala*. Available from: <<http://www.romaniacurata.ro/dna-retine-11-persoane-in-dosarul-in-care-este-cercetat-si-fostul-sef-3035.htm>> [Accessed 30/05/2013]

¹⁶ Popescu, A. (2012) Premierul Ungureanu a mintit: 80% din banii de la fondul de rezerva au mers la primariile Puterii. *Romania Curata*. 10 April. Available from: <<http://romaniacurata.ro/lftfont-colorblackgtpremierul-ungureanu-a-mintitlt-fontgtlbrgt-80-din--2681.htm>> [Accessed 30/05/2013]

¹⁷ Starting from 2010, this destination took the form of derogations from the Budget Law via Government Emergency Ordinances (GEOs).

¹⁸ Mocanu Chirap, A. (2012) Catedrale si festival de film din Fondul de Rezerva. Cand inchidem fondurile extrabugetare? *Romania Curata*. 27 March. Available from: <<http://romaniacurata.ro/lftfont-colorblackgtcatedrale-si-festival-de-film-din-fondul-de-rezerv-2622.htm>> [Accessed 30/05/2013]

affiliated to government parties and the rest were lower than in previous years and, as a result, the score was the lowest since 2004. However, in 2012 four prime ministers and two parliamentary majorities changed in Romania and it is likely that the resulting political instability affected the trend. The recent improvement of the ratio is due both to a large victory by a left-right alliance – so to a more representative majority – and to a reduction in the volume of the fund due to fiscal crisis.

Table 1: Favouritism in resource allocation trend

Electoral years	2004 (Social Democrats)	2008 (Liberals)	2010 (Liberal Democrats)	2012 (Social Liberal Union)
Preferential allocations made by the main political parties in government (%)	49	45	62	53.67
Votes obtained in local elections (%)	35.5	16.2	28.8	41.57
Clientelism score	1.4	2.8	2.2	1.3

Source: Romanian Academic Society, www.sar.org.ro

Legend: State Reserve Fund allocations aggregated by electoral cycle

The Reserve Fund illustrates how public funds are distributed in Romania in some form of legal corruption. The law is circumvented, funds are distributed to client local governments which further use it to fund locally networked businesses to build churches, repair roads or other frequent public works. For example, far more churches than classrooms have been built in Romania with public funds during the last twenty years. Those businesses then fund the political parties at the local level. The present mechanism of resource allocation and distribution of EU funds by a totally different procedure is a great strain on the Romanian administration.

2. The challenge of documenting corruption

If favouritism is the general rule, with profit being capitalized mostly at party level, individual fraud and corruption are better covered by law and the latter are the subject of most investigations. Relevant data is scarce and favouritism is practically un-documented, but it can be divided into two broad categories: “reported irregularities” (non-fraudulent, suspected fraud, non-confirmed, established fraud¹⁹) and “related financial amounts”. Information pertaining to the two categories was retrieved from the annual reports (2005-2012) written by the Romanian Anti-Fraud Department (DLAF) and the National Anticorruption Directorate (DNA)²⁰.

¹⁹ The data for the “established fraud” sub-category are taken exclusively from the National Anticorruption Directorate’s (DNA) annual activity reports.

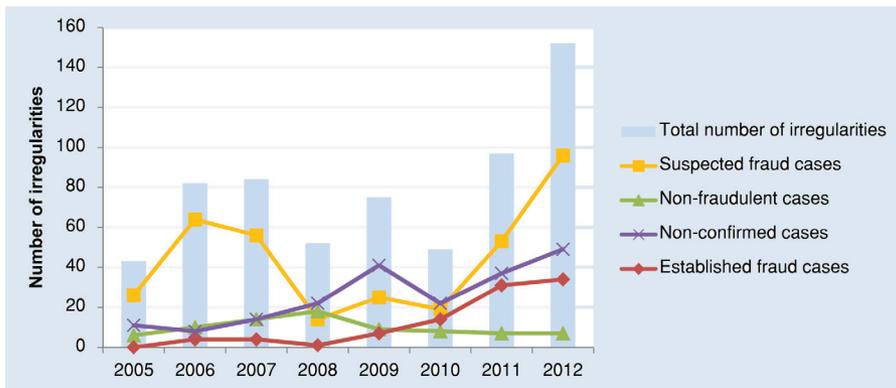
²⁰ The DNA has exclusive competence in prosecuting offences against the financial interests of the European Communities (Article 13 of GEO 43/2002).

One caveat related to the figures is that, in the DLAF reports, only in 2012 are the financial amounts related to detected irregularities differentiated in accordance with the affected European financial instrument. Therefore, up to 2012 the data on the number of DLAF detected irregularities include cases pertaining to pre-accession funds, predominantly SAPARD, ISPA and PHARE. As a consequence, we present data from 2005 to 2012 covering two programming periods (Figures 1 and 2). In addition, the financial amounts related to the detected irregularities are reported only from 2009 onwards and they are not differentiated between non-fraudulent, suspected fraud and unconfirmed cases. Hence, Figure 3 presents the related amounts for DLAF investigated irregularities, which include suspected fraud and non-fraudulent cases²¹.

From the DNA annual reports we have extracted the number of established fraud cases, namely those which have ended with a definitive legal decision establishing the occurrence of criminal acts. The related financial amounts have been taken from the final court decisions for which such data is made available by the DNA. We also focused on the related sums for the indictments drawn up by the DNA, data which can be assimilated in the “suspected fraud” category, but which contain a stronger indication of foul play. The main limitation of this approach is that it is limited to only those cases which have been investigated successfully, but we are of course aware that the universe of funds subjected to non-random distribution is far higher.

Irregularities refer to cases which were reported as being non-fraudulent, unconfirmed or presenting signs of fraud (Figure 1). In addition, the financial amounts are presented vis-à-vis the general category of irregularities and in relation to their number and the sums attached to the indictments drawn up by the DNA from 2009 to 2012, as well as those relating to the final sentences handed down by the courts starting from 2010²².

Figure 1: Total number of cases with detected irregularities categorized as non-fraudulent, unconfirmed, suspected fraud and established fraud

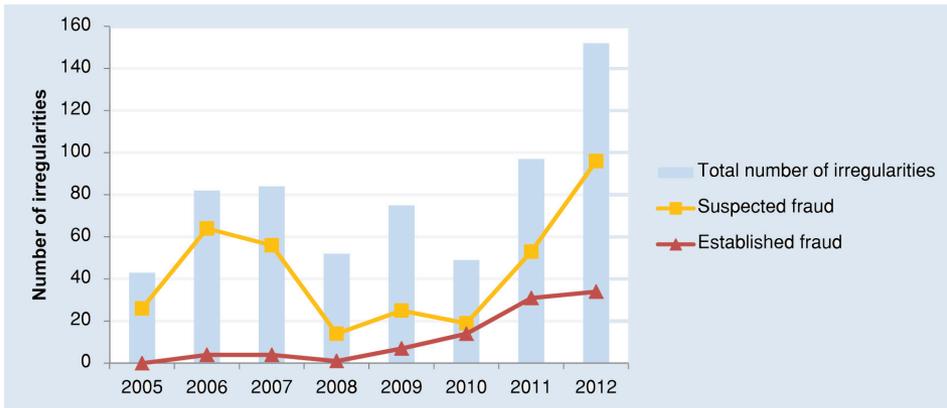


Data sources: DLAF and DNA Annual Activity Reports (2005-2012); author's own computations

²¹ A FOIA request sent to DLAF by the Romanian Academic Society think tank on June 3rd 2013 through which differentiated data were requested concerning the number of irregularities, suspected fraud, non-fraudulent and non-confirmed cases attached to each European fund from 2005 to 2012 did not yield the expected results because some of the desired indicators did not exist in the DLAF database.

²² Final sentences establishing the occurrence of acts of fraud and their related financial amounts which have been handed down in cases pertaining to EU funds are publically available on the DNA website starting with the year 2010.

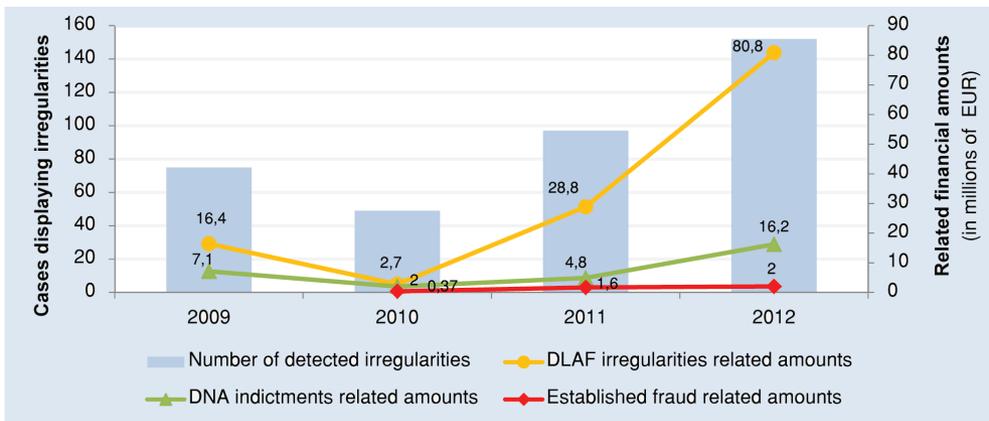
Figure 2: Number of suspected fraud and established fraud cases



Data sources: DLAF and DNA Annual Activity Reports (2005-2012); author's own computations

Figure 2 points to the fact that from 2005 to 2012 the number of cases with **detected irregularities** was higher than the number of cases reported as **suspected fraud**²³ and **established fraud**. Also, the number of cases of established fraud (convictions handed down by law courts) was considerably lower throughout the same period. However, it should be kept in mind that the number of cases of suspected fraud and established fraud during that period do not refer to the same cases since there is a time lag between the types of irregularities reported by the DLAF and the passing of sentences. Therefore, the majority of established fraud cases refer to pre-accession funding.

Figure 3: Number of detected irregularities and the related financial amounts



Data sources: DLAF and DNA Annual Activity Reports (2005-2012); author's own computations

The data presented in **Figure 3** show that the financial damage attached to detected irregularities (non-fraudulent, non-confirmed, suspected fraud) by DLAF is far higher than the amounts related to the DNA's indictments and to final court decisions establishing the

²³ As a result of a FOIA request sent to DLAF by the Romanian Academic Society think tank on June 3rd 2013, the total number of suspected fraud cases between January 2005 and May 2013 was 441.

existence of criminal acts. The total estimated financial damage calculated by DLAF from January 2005 to May 2013 in cases displaying irregularities, including suspicion of fraud, amounts to 243 million Euros²⁴.

The absolute high was in 2012, when, according to the DLAF, the estimated financial damage was 80 million EUR, which translates to 3.66% of the sum absorbed in the same year (2.2 billion EUR). It should be noted that this sum includes a number of cases referring to pre-accession funding since in the DLAF's annual activity report, no distinction was made between the amounts of pre-accession and post-accession funds.

The **established financial damage** found in court decisions over the last three years is smaller than both the amounts related to detected irregularities and the ones attached to the prosecutors' indictments, but the amount is slowly increasing, which is an indication that instances of fraud are considerably more difficult to prove than to detect. In addition, the amounts proved in court to have been spent illicitly and which need to be recouped may be smaller than the ones initially calculated by the prosecutors and the state authorities. Therefore, a certain amount of money will be lost in this the interaction.

To conclude, with the specific data available *at the present time*, it is clear that the estimated cost of mismanagement and fraud must be considerably higher than the legally proven figures— the majority of which are related to pre-accession funds. We expect that in the years to come all these indicators will show an increase because the cases pertaining to the post-accession period, when available European funds were higher, have not yet been detected or have not yet come to a judicial conclusion.

3. Defrauding tactics

A recent analysis of sentences handed down by courts of law in cases dealt with by the DNA focused on identifying the tactics most frequently used in Romania to commit fraud and the types of actor involved in obtaining European funds by such means²⁵. The outcome of the analysis was that, in recent years, the cases pertaining to pre-accession funds have been resolved (Dimulescu, 2013), while at present too few court cases involving structural and cohesion funds have been concluded to be able to make sound judgements from a statistical point of view.

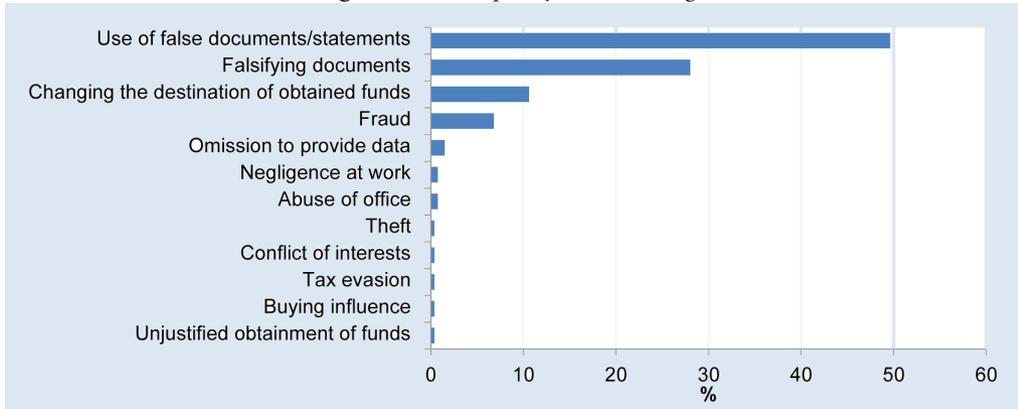
Regarding the most frequently used defrauding tactic, the use or distribution of false, inexact or incomplete documents or statements which have resulted in the unlawful obtainment of European funds, together with its variations (such as abetment, attempt, instigation, improper participation, use of false statements) represented 49.6% of the examined cases. Next most common was the strategy of falsifying documents with 28%. The results are corroborated by the Commission's 2011 Statistical Evaluation of Irregularities, whereby the use of falsified supporting documents (falsified offers)

²⁴ Information obtained as a result of a FOIA request sent to DLAF by the Romanian Academic Society on June 3rd 2013.

²⁵ The analysis does not present an exhaustive list of defrauding tactics since it concentrated on what could be proven by the DNA prosecutors during the trials ending with definitive sentences.

ranks among the most frequently detected types of infringement concerning pre-accession funds (European Commission, 2012: 71-72).

Figure 4: The frequency of defrauding tactics

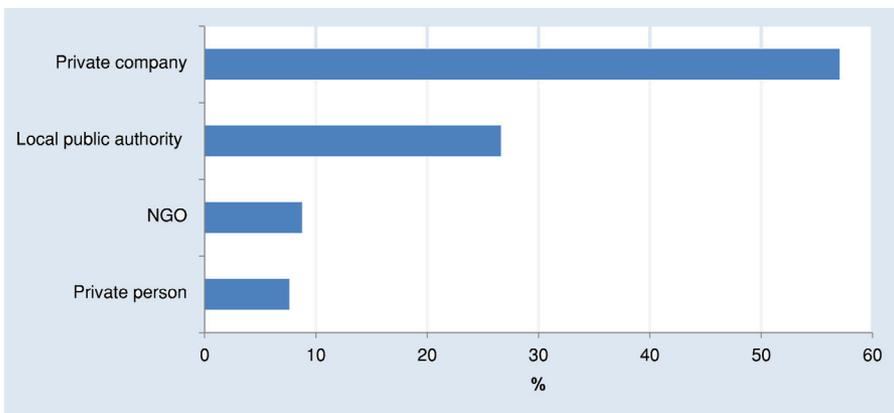


Data source: Dimulescu (2013)

Private firms (associates, administrators, shareholders, executive or administrative directors, managers or employees of private companies) were by far the most often mentioned entity in relation to illicit methods of obtaining EU funds (57.2% of the total). Local public authorities (mayors, vice-mayors, local counsellors and public employees) came second with 26.5%. NGOs (8.7%) and private individuals, mostly farmers and, as often as not, non-existent, (7.5%) completed the list.

The results corroborate the data present in DLAF’s 2011 and 2012 annual activity reports on the types of perpetrator since the private sector also came in first in the suspected fraud category (Fight against Fraud Department – DLAF, 2011: 30 and 2012: 36).

Figure 5: Types of entities involved in fraud



Data source: Dimulescu (2013)

The Romanian Academic Society set up a project to monitor press articles both at the local and national level which deal with cases of fraud involving EU money. Their investigation identified a list of 38 methods of fraudulent mismanagement of funds presented in the press between 2004 and 2013.

The list is composed of the following cases: abuse of office (and instigation) against the public interest; accepting bribes (and instigation); using consultancy services throughout the project's implementation in order to obscure the destination of funds; changing the purpose of spending contrary to contract provisions; using EU funds to amass personal benefits; offering bribes to win a public procurement contest; trading political influence with individuals who approve financing contracts; demanding bribes to accept false reimbursement claims; demanding bribes to give a public procurement contract to a certain firm; reimbursement through non-existent companies; following flawed construction techniques; delaying contract closure after grant decision; restrictive public procurement criteria; discriminatory treatment of participants in a public procurement procedure; imposing a subcontracting percentage to the provider of services; the winner of the public procurement contract failing to fulfil conditions necessary for the implementation of a contract; providing invoices to values lower than the true costs incurred; falsification of proof of attainment of a project's intended results and realization of activities; lying about the value of declared indicators; copy/paste evaluation of proposed projects; copy/pasting the contents of a project proposal; tampering with the technical-economic evaluation result; projects written up by consultancy companies favoured by the contracting authority; buying financial statement letters from banks; the use of false, inexact or incomplete documents, statements or falsified certificates; use of bribery to ensure co-financing; disappearing after having received the pre-financing funds; money laundering; additional works declared as being similar activities; conflict of interest; exorbitant amounts used in public procurement contracts administered by certain Management Authorities; delays in finalizing works; omitting to publish the public procurement announcement electronically or publishing it only with a considerable delay so as to favour preferred firms; acceptance by the Management Authority of ineligible reimbursement claims; unauthorized access to a project's control and verification documents; high salaries for project experts although the project's aim does not justify them²⁶.

The systematic character of the problem is obvious: the Commission stated that one of the reasons for the very slow advancement of the SME dedicated axis was the "widespread collusion between applying companies and public officials in charge of approving applications for funding", the result being the Commission's refusal to receive payment claims²⁷. At present, no studies have been made of favouritism for EU funds in Romania. The statistical information that does exist only scratches the surface of the problem but there are several resounding cases of high ranking officials whose

²⁶ For more information on this project entitled "Misuse of Public Funds in Romania Before and After EU Accession", see: <<http://sar.org.ro/initiativa-fonduri-europene-manual-de-fraudare/?lang=en>>

²⁷ Pop, R. (2012) De ce si-a pierdut UE increderea in Romania. Ce se intampla cu capacitatea de management si controlul fondurilor europene? *Romania Curata*. 16 November. Available from: <<http://www.romaniacurata.ro/articol-3522.htm>> [Accessed 05/06/2013]

family or acquaintances have benefitted from a contract with substantial EU funding. For instance, in 2012a DLAF investigation prompted by a press campaign revealed that in 2011 the Ministry for Rural Development and Tourism, run by Elena Udrea (Liberal Democrats), ignored public procurement rules²⁸ and gave a publicity contract worth 2 million EUR to the president of the Romanian Boxing Federation who, in turn, “hired” his own private company – which had only 5 part-time employees and until July 2011 had specialized in repairing office equipment– to organize a boxing tournament featuring a well-known Romanian boxing champion²⁹. The money were supposed to be used to promote Romania’s image as a tourist destination, which was the only eligible activity for reimbursement from the EU, but only 1% of it was used to that end and for 66% of the services provided, the firm did not have the necessary documents (mainly subcontracting agreements) which were not even requested by the Ministry³⁰.

Another example is the case of the current Regional Development Minister, Liviu Dragnea (Social Democrats), who in 2009, when he held the office of County Council President of Teleorman County, approved the award of two contracts for road repair to a firm which had been awarded many such public deals in that particular county throughout the years. The firm’s owner was one of Dragnea’s friends and his brother-in-law later became an MP in Teleorman. An audit investigation from the Commission in 2011 (after which reimbursement claims coming from the Regional Development programme – the axis dealing with the development of local and regional transportation infrastructure – were blocked) revealed that the County Council had imposed restrictive clauses in the public procurement contract which only that particular firm could fulfil³¹.

Yet another resonant case occurred in 2011 and involved the Minister of Labour at the time, Ioan Botis (Liberal Democrats). He was investigated by the DLAF, DNA and the National Integrity Agency (ANI) for acts of corruption and conflict of interest pertaining to EU funds. The press revealed that his wife worked for an NGO overseeing a project which had received support through the Human Resources operational programme – which is administered by the Labour Ministry – a month after Botis was appointed head of the same ministry. Moreover, the organisation had its headquarters in the Minister’s house, his former chief of parliamentary staff who was also directly involved in the project was one of the NGO’s founding members, and the minister’s personal assistant and an employee of the ministry received sums of money from the same non-governmental entity. The scandal erupted when Botis himself publically admitted it

²⁸ The attribution of publicity contracts worth more than 20 000 EUR must be preceded by a public procurement participation announcement, be published in the electronic public procurement system and have its own website.

²⁹ Neag, M., Berceanu, G., And Tolontan, C. (2012) *Comisia Europeanareclama fapte penale la gala organizata de Obreja si finantata de Udrea. Obreja: “Astia de la DLAF se trezesc de dimineata si acuza lumea”*. 26 April. Available from: <<http://www.tolo.ro/2012/04/26/comisia-europeana-acuza-fapte-penale-la-gala-organizata-de-obreja-si-finantata-de-udrea/>> [Accessed 05/06/2013]

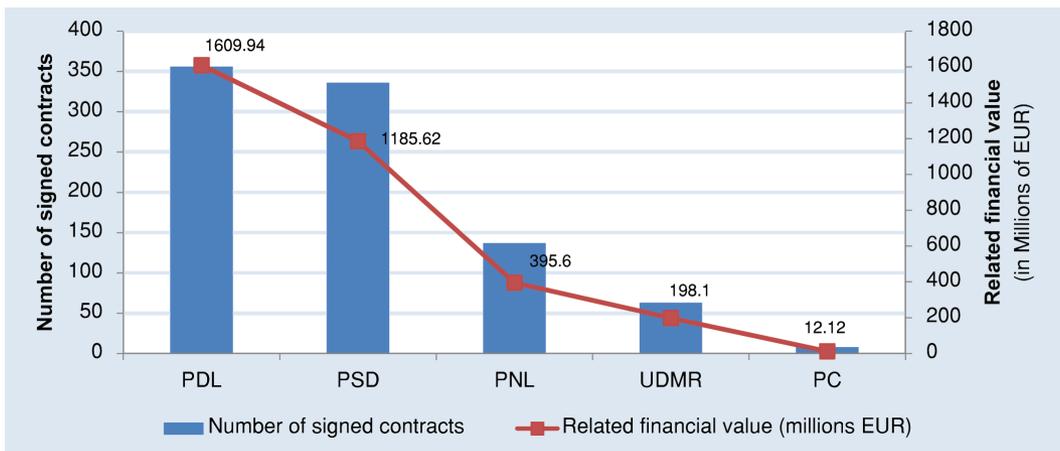
³⁰ Neag, M., Tolontan, C. (2012) *Cum s-au folosit banii romanilor la Gala Bute: 1% pentru frunza, 99% in vant*. 31 October. Available from: <<http://www.tolo.ro/2012/10/31/cum-s-au-folosit-banii-romanilor-la-gala-bute-1-pentru-frunza-99-in-vint/>> [Accessed 05/06/2013]

³¹ Stoica, I. (2012) *Comisia Europeana a descoperit licitatiile truncate ale lui Liviu Dragnea si cere banii inapoi. EvenimentulZilei*. 14 December. Available from: <<http://www.evz.ro/detalii/stiri/liviu-dragnea-se-vrea-ministru-pentru-a-si-albi-licitatiile-truncate-1015760.html>> [Accessed 07/06/2013]

to be true, but denied the existence of a conflict of interest³². Subsequently, the contract was annulled, the pre-financing sum retrieved and, before a verdict was reached, Ioan Botis resigned from the ministry, although he remained a member of the Labour Committee in the Chamber of Deputies³³.

By aggregating the available data on the number of signed contracts involving EU funds and the political orientation of local authorities, the link between the distribution of contracts and their financial value across political parties can be studied. **Figure 6** presents the number of signed contracts involving structural and cohesion funds at the level of local authorities – meaning county and local councils – from 2007 to September 2011 and show that most contracts (356) were won by officials belonging to the Liberal Democrats (PDL) who were the ruling party at the time. In second place with 336 contracts came the Social Democrats (PSD). The Liberals (PNL) were third with 137, while the ethnic Hungarian party (UDMR) and the Conservatives (PC) came next with 63 and 8 respectively. The financial value of the contracts was high for all the parties involved, but especially for the Liberal Democrats (1, 6 billion EUR) and the Social Democrats (almost 1, 2 billion EUR)³⁴. However, the disproportion is less severe than in the case of the Reserve Fund.

Figure 6: Number of signed contracts and their related financial value at the local authority level per political party (2007 – 2011)



Data sources: Iorga, Alexandru and Ercus (2011); Romanian Academic Society 2013

³² Mihai, A., Anghel, I. (2011) Cazul Botis ar putea periclita finantarea europeana. *Ziarul Financiar*. 19 April. Available from: <<http://www.zf.ro/eveniment/cazul-botis-ar-putea-periclita-finantarea-europeana-8173422>> [Accessed 07/06/2013]

³³ Mihai, A. (2011) Asociatia lui Botis trebuie sa inapoieze 150.000 de euro. *Ziarul Financiar*. 18 August. Available from: <<http://www.zf.ro/eveniment/asociatia-lui-botis-trebuie-sa-inapoieze-150-000-de-euro-8629124>> [Accessed 07/06/2013]

³⁴ The data include contracts signed only for the following operational programmes: Regional Development, Administrative Capacity Development, Human Resources, Environmental Infrastructure Development and Economic Competitiveness.

4. Financial impact and recommendations

The matter of financial corrections applied by the Commission following audit missions merits particular attention since Romania, as stated above, while showing the lowest absorption rate is subject to the highest level of corrections among all the Member States (Iorga et al., 2013). The corrections refer mainly to deficiencies in the public procurement procedure.

The total amount of imposed corrections from EU accession in 2007 until December 2012 was approximately 300 million EUR³⁵ – 498 million if we add the 198 million worth of corrections imposed on the Human Resources programme³⁶ – or 20% to 22.5% of the funds absorbed until the same date (2.2 billion EUR). Furthermore, the most frequent corrections are those amounting to 5% (43% of the cases) and 25% (31% of the cases) of a public procurement contract. The average value of a correction was 13% of a public procurement contract budget (400.000 EUR). The highest corrections targeted the operational programme dealing with regional development (84%), while the second was that dedicated to the environment (13%). Also, the corrections mostly referred to public works contracts (62%), audit services (14%), design activities (7%), technical assistance (6%), consultancy (6%) and publicity services (5%).

The main reasons for their imposition were: illegal qualification requirements (56%), unequal treatment of contenders (11%), the winning offer not fulfilling the conditions (9%), procurement decisions with only one candidate (9%), illegal increase of the contract's value (6%), using the qualification criteria as evaluation factors (6%), ignoring the transparency principle (3%) (Iorga et al., 2013).

The above analysis shows that the estimated direct cost of corruption is small compared to the high opportunity cost posed by poor governance. In that sense development is further curtailed since even the amount of funds absorbed is further drastically reduced by the corrections which resulted from the cases of mismanagement and fraud found both at the beneficiaries' level and within particular national and local state structures entrusted with the management function. The question, therefore, is whether suspension, reduction or cancelling of EU assistance is the most effective mechanism for protecting the interests of the European taxpayer? Or would all of them turn out to be rather like throwing the baby out with the bathwater?

Therefore the **recommendations** for better management of European funds in Romania for the 2014-2020 programming period should focus on pre-emption or ex-ante controls so as to avoid reaching the stage where the funds are suspended, reduced or cancelled – a situation which does not fully resolve the problem since the money cannot be recouped in full by the EU through corrections. Therefore, this report suggests the following:

³⁵ The financial correction was greater than that of Spain (158 million), Poland (24 million) or Germany (22 million). The Institute for Public Policy's study did not look at the financial corrections imposed on the Human Resources programme at the end of 2012.

³⁶ Preluca, R. (2012) Memorandum privind corectiile pe POSDRU, aprobat astazi de Guvern, *fonduri-structurale.ro*. 27 November. Available from: <<http://www.fonduri-structurale.ro/detalii.aspx?eID=12078&t=Stiri>> [Accessed 08/06/2013]

- 1. The creation of an Early Warning mechanism to pre-empt the suspension of funds.** More specifically, a mechanism is needed by means of which the verification and control procedure is made more efficient *before* the suspension or cancellation of EU assistance comes into effect. To that end, there needs to be a set of indicators used to give early warning of the suspicion of fraud or irregularity not only at the public procurement and project selection level, but at project level too. Such indicators could be grouped according to the phase of the project's life-cycle (definition of grants conditions and terms of reference, grant/procurement decision, implementation of the project/grant and general, systemic conditions).
- 2. The design of a system of social accountability in monitoring and auditing the spending of EU funding.** This recommendation refers to entrusting direction of every stage of projects (planning, evaluation and audit) to local stakeholders, in other words to those who stand to lose most from corrupt use of EU funds, so enhancing transparency and control. The system would be based on precise information given by different community or sector stakeholders and which would allow various outcomes. First, it would facilitate swift monitoring to allow quick reactions from journalists and civil society. Second, it would allow pre-emptive actions from managing authorities and thus deter the suspension of EU structural and cohesion funds. Third, it would bring more transparency to the management system and reduce incentives to fraudulent activity. The innovative aspect of the output will be its reference to the role different stakeholders will be able to play in the monitoring of the spending of EU structural and cohesion funds: the press, civil society, beneficiaries, public procurement competitors, evaluators, consultants, personnel in the management and control system and the directly responsible public authorities.
- 3. The development of a more inclusive, participatory process of design, monitoring and implementation for the next programming period.** The result of Romania's absorption history is the existence of a group of people who possess sufficient training and expertise to recommend better avenues for efficient spending. They are familiar with both the pre-accession programme and the current framework, some of them having gained experience in areas as vast as evaluation, consultation, project implementation and programme management. They could become part of an Expert Consultation/Monitoring Group and would be able to contribute to better decision-making, as well as being capable of analysing fraudulent practices and discussing solutions for them. This group could complement the local stakeholders' involvement with the necessary insight to disentangle the hindrances – both intentional and unintentional – to a proper and efficient spending of EU funds. More specifically, such individuals have access to technical or legal information out of the reach of local stakeholders, but in Romania such experts and practitioners are seldom encouraged to take part in the refinement of public procurement and management practices of EU funds.

In the current format, they are discouraged from expressing any negative views since that would be interpreted as unsolicited critical opinion. More openness from the Management Authorities and the Ministry of European Funds would send an encouraging signal in that regard. Therefore, participation in monitoring activities and the positive channelling of dissent could be transformed into a prestigious and well-received activity.

- 4. Improvement in the quality of evaluation and enhancement of the personal responsibility of independent evaluators contracted by operational programme managers.** Much fraud happens because of bad project or contract *evaluation*. If a project is too vague or is badly written but has passed the evaluation stage, it can be argued that a missing objective – absent due perhaps to miss-spending or fraud – has in fact been achieved. Basically, once a contract or a project has been accepted, the monitoring institutions, civil society, stakeholders and the media can report only those instances where the money requested and the money spent do not contribute to achieving the agreed outcomes, outputs and specific objectives found in the project application. The evaluation step is critical in the sense that it legitimizes the project and subsequent claims for reimbursement. Therefore, the concrete recommendation is the following: improve the quality of evaluation so as to limit the number of projects which could be defrauded due to badly written project-applications and inflated project costs. That can be done by increasing the personal responsibility given to individual evaluators, but also by increasing transparency to the general public about the projects funded and offering them information such as specific objectives, main activities, expected results, duration of the project, and so on.

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