

# THE FISCAL ANTI-FRAUD CONTROL. LEGAL REGIME

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## Abstract

*The fiscal anti-fraud control has been regulated quite recently, by the Government Emergency Ordinance No. 74/2013, adopted in the context of the implementation of the “Project for the modernization of the fiscal administration” and the intensification of the fight against tax evasion. On the basis of the legal norms applying to it, of specialized doctrine and legal literature, the present work aims to approach fiscal control from various perspectives – organization, enforcement and definition of legal accountability – so as to point at the same time its specific forms, in relation to other similar control forms. Moreover, the present work will also analyse the novelty elements which the law brings, so as to create a specific technical support for the authorities, regarding those case laws having as object the economic-financial frauds. The current study aims to delineate the legal regime of this control form, which we consider a specialized activity, organized within the National Agency of Fiscal Administration and performed with the specific target of control, so as to prevent, acknowledge and fight tax evasion. At the same time, the present study is useful under the present circumstances, in which fiscal fraud has become more intense, becoming a phenomenon, but also because fiscal fraud has incidence upon other field of economic and financial interest.*

**Keywords:** *operative and unexpected control, tax evasion, anti-fraud inspector, control act*

## 1. Introductory points of reference

The present work will analyse the fiscal anti-fraud control – one of the main components of the financial and fiscal control, together with fiscal audit, economic-financial audit and the control of budget execution<sup>1</sup>, as it is approached by specialized literature<sup>2</sup>.

Instituted in 1991, together with the reformation of public finances, the control against fiscal fraud has benefitted from a regulation constantly modified, which reconfirmed the mobility typical to the field. *At present*, the control against fiscal fraud has as special legal ground the provisions of G.E.O. No. 74/2013 on certain measures for improving and reorganising the activity of the National Agency of Fiscal Administration<sup>3</sup>, but also the provisions of Government Decision No. 520/2013 on the enforcement of the G.E.O. No. 74/2013. These regulations have been adopted in the context of the demand *to modernise fiscal administration and to make the fiscal anti-fraud control more efficient*; at the same time, the fight against tax evasion constitutes, together with the actions for preventing the lack of observance by taxpayers of their fiscal obligations, the top priority of A.N.A.F also for the

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<sup>1</sup> Regarding the forms of financial control, see: Rada Postolache, *Drept financiar*, (Bucharest: C.H. Beck Publ. House, 2014), 278.

<sup>2</sup> See for that matter: Rada Postolache, “Controlul financiar”, in *quoted works* 276-319; Nadia-Cerasela Aniței, “Controlul financiar”, in *Drept financiar*, (Bucharest: Universul Juridic Publ. House, 2011), 117-233; Viorel Roș, “Controlul financiar”, in *Drept financiar*, (Bucharest: C.H. Beck Publ. House, 2005), 377-416; Marian Tudor, Daniela Iancu, Andreea Drăghici, „Controlul financiar-fiscal” in *Drept financiar*, (Pitești: University of Pitești Publ. House, 2009), 284-330.

<sup>3</sup> Which will be called also A.N.A.F. in the present work.

following years, according to the Strategy of Fiscal Administration on a medium term, period 2012-2016<sup>4</sup>.

The performance of the fiscal anti-fraud control triggers also the incidence of other regulations; in many cases, the transgression of fiscal norms takes the form of the fiscal evasion crime, subject to Law No. 241/2005 on the prevention and fight against tax evasion<sup>5</sup>; frequently, tax evasion itself is associated to some “connected” crimes<sup>6</sup>, which are subject to some special distinct regulations.

In this context, we aim to delineate the legal regime of the control against fiscal fraud, from the institutional and operational perspective, by pointing out its specific elements, but also its connections with the other forms of the fiscal control, particularly the fiscal inspection.

We would like to point out the usefulness of our study, given the deepening of fiscal fraud, which has become a phenomenon, but also its connection with other domains of economic and financial interest, its approaching within legal doctrine being sequential.

## 2. The definition of fiscal anti-fraud control

From a *terminological* point of view, the control analysed within the present work is acknowledged by the special law with the name of “fiscal anti-fraud control”. Law also contains the expression: “fiscal and customs anti-fraud control”, which has the same meaning.

The special law does not define the anti-fraud control *in expressis verbis*. The prerogatives attributed to A.N.A.F, briefly regulated by article 14 of the G.E.O. No. 74/2013, point out a control exerted with the aim to prevent, discover and fight against the deeds and acts related to tax evasion and fiscal and customs fraud. It can be deduced from here that the Special law makes a difference between tax evasion and fiscal fraud, but without defining them. Yet, specialized literature constantly uses the unitary definition of “tax evasion”, attributing two forms to it: *licit tax evasion* (generated by a favourable interpretation of law); *illicit tax evasion* or *fiscal fraud* (generated by the transgression of the imperative norms of the fiscal law), this being also the meaning considered by the lawmaker within the Law of tax evasion.

For this purpose, *de lege lata*, the name attributed to control does not correspond to its purpose pointed out by law, being limitative; moreover, according to the G.E.O. No. 74/2013, fraud is different from tax evasion, while fraud constitutes a form of tax evasion.

## 3. The organisation of the fiscal anti-fraud control within A.N.A.F.

In the autumn of 2013, the Financial Guard<sup>7</sup>, a special institution of fiscal control having legal personality was abolished according to the G.E.O. No. 74/2013 mentioned above. Its activity has been taken over by the National Agency of Fiscal Administration, under the name of “anti-fraud control”, being organized on the principle of regionalizing financial activity.

<sup>4</sup> [http://static.A.N.A.F.ro/static/10/A.N.A.F./Informatii\\_R/Strategia\\_A.N.A.F.\\_2012\\_2016.pdf](http://static.A.N.A.F.ro/static/10/A.N.A.F./Informatii_R/Strategia_A.N.A.F._2012_2016.pdf) (accessed on 10.02.2014). See this document for: measures of tax evasion prevention and fight (p. 10); tax evasion fight (p. 12).

<sup>5</sup> Official Gazette No. 672 from July 27<sup>th</sup> 2005.

<sup>6</sup> For an analysis of these, see Nadia-Cerasela Aniței, Elena-Roxana Lazăr, *Evaziunea fiscală, între legalitate și infracțiune*, (Iași: Lumen Publ. House, 2013), 109-117.

<sup>7</sup> Organized as it follows: the general Commission – at a central level; regional commissions (areal units), having in their componse districtual sections – at a territorial level. For details see Marian Tudor, Daniela Iancu, Andreea Drăghici, *quoted works*, 305-306.

*The General Directorate for Fiscal Anti-fraud.* In this context, within A.N.A.F. was organized at a central level the General Directorate for Fiscal Anti-fraud. Just like its predecessor (the Financial Guard), the General Directorate for Fiscal Anti-fraud consists in a *body specialized in fiscal and customs control*, having direct attributions of preventing, acknowledging and fighting the acts and deeds related to tax evasion and fiscal and customs fraud, according to the new regulation, which *does not have legal personality*.

The absence of legal personality strengthens here the wish of the lawmaker to have only one control structure: A.N.A.F. The control which the latter exerts is nonetheless distinctly regulated: fiscal inspection, customs control, *fiscal and customs anti-fraud control*.

*Direction for Fraud Fight.* Within the central structure of the General Directorate for Fiscal Anti-fraud functions, apart from the structures of prevention and control, *the Direction for Fraud Fight*, set up for performing the activity of *fast and steady tracking and pursuing* of the economic-financial crimes, for *shedding light* upon some *technical aspects* within the activity of criminal investigation. For this purpose, this structure offers *specialized technical support* to the *prosecutor* in carrying out the criminal investigation, for case laws regarding economic-financial crimes, by means of the anti-fraud inspectors on loan<sup>8</sup> to the Prosecution services, on the position of experts, for a period of three years, which can be expanded, by observing the requirements of the G.E.O. 74/2013.

*Regional Directorates for Fiscal Anti-fraud.* At a territorial level, within the General Directorate for Fiscal Anti-fraud function also the *Regional Directorates for Fiscal Anti-fraud*; they are as well structures lacking legal personality, organized on the basis of the same principle of regionalization, but having headquarters which are different from those of the General regional directorates of public finances, a fact which also underlines the specific features, but also the autonomy of the anti-fraud control within A.N.A.F.

#### **4. The objective and scope of the anti-fraud control**

*The objective of the anti-fraud control.* According to article 14 of the G.E.O. No. 74/2013, in order to carry out its activities of preventing the deeds and acts of tax evasion and fiscal fraud, A.N.A.F., through its specialized structures, carries out the *operative and unexpected control* for checking: a) the observance of the normative acts, for preventing, discovering and fighting against any acts of tax evasion and fiscal or customs fraud; b) the observance of the commerce norms, with the aim to prevent, track and remove tax evasion and fiscal or customs fraud; c) the way that assets are produced, stored, transported and valued, in all the places and spaces where the activity of economic operators takes place; d) the participation, in collaboration with the specialized bodies of other ministries and specialized institutions, to activities of tracking and fighting against illicit activities generating phenomena such as tax evasion and fiscal and customs fraud.

*The scope.* In accordance with the objective mentioned above, the lawmaker has configured the attributions of A.N.A.F. regarding the anti-fraud control, grouping them into 2 categories:

a) attributions in the field of *preventing* and *discovering* tax evasion and fiscal and customs fraud;

b) attributions in the field of *fighting against* acts related to tax evasion and fiscal and customs fraud;

Concretely speaking, the provisions of article 14 of the G.E.O. No. 74/2013, expanded at article 7 letter D of the Government Decision No. 520/2013 point out the following fields

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<sup>8</sup> Regarding the way these inspectors are nominated and transferred, see the provisions of article 4 paragraphs (11)-(14) of the G.E.O. No. 74/2013.

for exerting the anti-fraud control: the production, storage and transport of assets (on public roads, rail and inland water roads, in ports, train and bus stations, airports, inside free areas, near customs facilities, in storehouses, but also in other places where economic activities take place), the commercialization and good use of such assets.

Moreover, given the area of the anti-fraud control and the diversity of the operations which are subject to it, this control is allowed in regard to all entities performing the activities mentioned above, irrespective of their tax residence, size and organization form, in all the spaces in which the operations subject to verification are carried out, but also, according to law, “in other places where economic activities are performed”, which fall under the incidence of national normative acts, including those transposed in the legislation of the European Union; briefly, according to specialized literature<sup>9</sup>, the control is carried out “according to the place where the taxable source is found” – the headquarters of the economic agent, in any of his working points, using communication ways, in any transport place, including the headquarters of the control entity.

The anti-fraud control is a form of control allowing for the operative and free access to all the information necessary for being accomplished - that is to the data bases of other institutions or legal persons, according to the conditions established through the protocols concluded with the entities involved, respecting the legal regime of personal data; this anti-fraud control also constitutes gradually its own data basis.

Essentially, when the anti-fraud control is carried out, it is verified the lawful character of the activities performed, the existence and authenticity of the justifying documents of the latter, but also the application of seals, for insuring the assets integrity. Briefly speaking, the check-up activity can regard *any* legal fact or act generating legal financial, fiscal and customs effects, the role of anti-fraud inspectors being that of making a judgment upon their legal character.

*Interactions with other forms of control.* The fiscal anti-fraud control is a distinct control form, interacting nonetheless with the other forms of control. It intercrosses particularly with *fiscal inspection*<sup>10</sup>, but without overlapping with it, both forms influencing directly the organization of budgetary incomes; in this context, are relevant the activities subject to anti-fraud control which generate fiscal/customs debt titles for the local state budget/budgets, the management of the due and acknowledged amounts of money constituting nonetheless the prerogative of the authorized fiscal entity which is, by hypothesis, different from the anti-fraud control structure.

The fiscal anti-fraud control also intercrosses with the *activity of criminal prosecution* of the economic-financial crimes, performed within Prosecutor’s offices, by means of the Directorate for fraud fight.

Moreover, the anti-fraud control regulated by the G.E.O. No. 74/2013 is integrated in the European and international context of the anti-fraud fiscal and customs fight. We are taking into account the internal inter-institutional collaboration, for common actions of control and a thematic control, with the institutions performing their activity in fields of common interests (the Ministry of Labor, Family, Social Protection and Elderly, the Ministry of Administration and Internal Affairs). Moreover, at the internal level, A.N.A.F. collaborates with the specialized bodies of other specialized ministries and institutions, particularly with the Anti-Fraud Fight Department (DLAF), for actions of tracking and preventing illicit

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<sup>9</sup> For that matter, see Viorel Roş, *quoted works*, 401.

<sup>10</sup> With a few exceptions, taxes have, in their essence, a statement character – established on the basis of the statements made by taxpayers. In this context, the control of taxes, called “fiscal inspection” according to the Romanian legal system, is aimed to check the statements made by taxpayers, from the perspective of their legal character and the accuracy of the data contained, on the basis of the procedure regulated by the special law – the Fiscal Procedure Code (briefly expressed as “verification of the accurate statements and payments). For more details on the tax control, see Jacques Grosclaude, Philippe Marchessou, *Procedures fiscales*, 3 edition, (Paris : Dalloz Publ. House, 2004), 109-117.

activities generating phenomena such as tax evasion and fraud<sup>11</sup>; the institution mentioned above is also the contact institution of the European Anti-Fraud Office (OLAF), which is an European body integrated to the European Commission, but has independence in investigating frauds<sup>12</sup>.

At the same time, A.N.A.F. collaborates also with the other member states, by means of measures typical to the activity of administrative cooperation for preventing and fighting tax evasion and inter-community fiscal fraud: initiates multilateral controls and continues the participation to the control initiated by the other states; participates to the network Eurofisc of inter-community exchange of information, dedicated to the operative exchange of data regarding suspect inter-community transactions; increases the efficiency in the good use of the data received within Eurofisc, by intensifying the actions of verification performed by the territorial structures.

A.N.A.F. cooperates with the organizations having similar attributions from *other states*, on the basis of the international treaties of which Romania is a party, or on the basis of mutuality.

At the same time, it collaborates with European fiscal administrations for preventing crossborder fraud, for improving and perfecting the techniques, methods and control abilities.

## 5. Exercising the anti-fraud control and the prerogatives of fiscal anti-fraud inspectors

*Exercising the anti-fraud control.* It is taken into account here the control performed by the General Directorate of Fiscal Anti-fraud, by means of anti-fraud inspectors, and not also the special activity carried out by the anti-fraud inspectors on loan to the prosecutor's offices. The functions which this structure uses in performing the functions established by law are: *the public functions* of anti-fraud inspector<sup>13</sup> (specialized function); general public functions. Just like in the case of the former regulations, specialized instructors (anti-fraud inspectors) are public servants<sup>14</sup>, with an economic/legal specialization, invested with the public authority of the state for performing their professional attributions and duties, being all the time available for the service performed and protected.

The filling up of the functions mentioned above is done by competition or exam, the access being conditioned by meeting the *minimum conditions* provided for by law for: specialized education, pass of some complex psychological tests, pass of integrity evaluations<sup>15</sup>.

At the same time, law imposes a *special conduct*. While exercising their professional attributions, anti-fraud inspectors must wear a uniform and some distinct symbols (badge and, according to the case, weapons and other technical means used as an individual means of

<sup>11</sup> DLAF is organized and functions according to Law No. 61/2011 (Official Gazette No. 331 from 12<sup>th</sup> May 2011) as a structure with legal personality, within the working system of the Romanian Government, under the coordination of the prime minister. It is the *contact institution* of OLAF. Its objective regards *protecting the financial interests of the European Union in Romania*, so that it has the attribute of an *acknowledging body*, according to the Criminal Procedure Code. When exercising its control, DLAF performs administrative investigations, controls on the place, analyses and verification of documents, its control acts being used as evidence, according to law. For more details, see Nadia-Cerasela Aniței, Elena-Roxana Lazăr, *quoted works*, 170-172.

<sup>12</sup> For more details regarding the set up and the prerogatives of these structures, see Nadia-Cerasela Aniței, Elena-Roxana Lazăr, *quoted works*, 163-172.

<sup>13</sup> Previously called "commissioner" of the Financial Guard.

<sup>14</sup> The appointment of the anti-fraud personnel is done according to Law No. 188/1999 on the Statute of public servants, republished, with the subsequent modifications and amendments [article 4 paragraph (6) G.E.O. No. 74/2013, quoted above].

<sup>15</sup> According to specialized literature, "the perfect investigator of tax evasion acts must be a good combination between: a police officer, a detective, an accountant, a sociologist, a computer scientist and a lawyer. For that matter, see: Financial Investigations: a financial approach to detecting and resolving crimes, U.S. Government Printing Office, 2003, p. 3, apud, Nadia-Cerasela Aniței, Elena-Roxana Lazăr, *quoted works*, 175.

defense, protection and communication, which are freely given). In certain circumstances, when performing their professional duties, anti-fraud inspectors can wear *civilian clothes*.

According to article 18 paragraph (1) of the Government Decision No. 520/2013, anti-fraud inspectors (excepting those of the Directorate for Fraud Fight), when performing their duties, carry out the following:

a) *operations of current control*, performed operatively and in an unexpected manner, on the basis of the control identity card, badge and permanent service order;

b) *operations of thematic control*, on the basis of the control identity card, badge and *thematic control order*, by means of which are established the objectives to be checked, the entities subject to control, the period subject to verification, the length and the moment when the control starts.

Law rules that any control operation must be performed by at least two anti-fraud inspectors, while the control can be exercised anywhere in Romania, and not only within the territory where the Regional Directorate for Anti-fraud is located. The control actions with a high degree of danger can be performed by control teams accompanied by the *members of the sub-units specialized in rapid intervention*, under the subordination of the Ministry of Internal Affairs, in the conditions established by the protocol concluded between the latter and A.N.A.F.

Moreover, according to article 9 of the G.E.O. No. 74/2013, when strong *clues* show that there have been committed deeds provided for by the criminal law, A.N.A.F. can demand to the Ministry of Internal Affairs to ensure the necessary staff for the protection and safety of the operations performed by the public servants in completing their control activities, the necessary personnel being also provided by the *sub-units specialized in rapid intervention*.

*The prerogatives of anti-fraud inspectors*. They are inseparable from the objective and prerogatives of A.N.A.F., being regulated with the same content and purpose: preventing, acknowledging and fighting against fraud and tax evasion. Without reiterating them, we will point out the relevant features of these prerogatives, on the basis of their content:

a) *the prerogatives for preventing and acknowledging tax evasion and fiscal and customs fraud*

a1) *Investigations, supervisions, verifications, fiscal and customs acknowledgements*. The prerogatives attributed by law point out a complex control activity, which is not limited to a typically administrative activity. Either that is performed in an operative and unexpected manner, or in a thematic one, the anti-fraud control presupposes factual check-ups, including factual and written stocks, followed and upheld by a control of the written documents attesting the legitimacy of the operations subject to verifications, which are extremely diverse, and which can take including the form of cross check-ups. For that matter, in order to find out the truth, anti-fraud inspectors can demand, in the conditions of the Fiscal Procedure Code, the copies of the original documents, can also take proofs, samples and other similar items, but also to demand the performance of the technical expertise necessary for the control act (for instance the evolution of financial flows of the person subject to verification). The analysis and examination of proofs and samples, but also the technical expertise, are performed in agreed specialized laboratories, the expenses for their performance, including those related to the storage and handling of the confiscated goods being supported from the funds specially granted for the budget of incomes and expenses.

Moreover, law, in its actual forms, expands the field of control, by providing for the possibility for data to be demanded or, according to the case, documents, from any private and/or public entity, with the aim of handling and motivating the acknowledgements on

committing deeds which are not according to the legislation in force, in the fiscal and customs field<sup>16</sup>.

Moreover, during a control, the identity of the managers of the entities checked can be demanded and established, without taking the role played by the structures authorized by that matter.

According to current legislation, inspectors no longer have the right to demand, according to the conditions of the Criminal Procedure Code, the performance of perquisitions in public or particular place, there being considered<sup>17</sup> that “the lawmaker avoids like this the transgression of the separation of state powers, naturally acknowledging the right of the criminal investigation bodies to order the necessary measures for criminal investigations, without getting indications for that purpose”.

When carrying out the control, the anti-fraud inspectors can acknowledge certain circumstances in which some acts provided for by criminal law have been committed in the fiscal field.

a2) *Coercion*. In strong connection to the control activity and for restoring the affected legal order, the anti-fraud inspectors can:

- order for measures of *confiscating* the assets/incomes having an illicit way of fabrication, storage, transport or presentation, but also the incomes obtained from illegal commercial activities or services delivery; confiscation has the special legal regime instituted by the Government Ordinance No. 14/2007, regarding the regulation of the way and conditions in which the assets entered according to law in the private property of the state are used<sup>18</sup>;

- take *insurance measures* for the situation in which there is the danger for the debtor to escape the prosecution or to hide, alienate or spread his patrimony;

- acknowledge the *crimes* and apply the appropriate sanctions, according to law, to take the financial-accounting documents or documents of another type which can help to prove the contraventions or, according to the case, the crimes;

a3) *Complaint/communication*. According to the circumstance, the anti-fraud inspectors shall make complaints to: fiscal bodies; criminal prosecution bodies; entities authorized to implement the confiscation and insurance measures; the same inspectors must notify to the entities mentioned above the acts concluded and the documents on which they are based, with the aim to use the acknowledgements and to apply to measures ordered by the control acts. The inspectors cannot replace the specialized structures in the field.

b) *Prerogatives for fighting against fraud*. Separately, the special law regulates the prerogatives for fighting against fraud, attributed to the *Directorate for Fraud Fight*, which is directly connected to the criminal prosecution activity performed by the Prosecutor’s offices, and thus, reformed. The prerogatives are carried out by the inspectors on loan to Prosecutor’s offices and concern:

- offering specialized *technical support* to the prosecutor in carrying out the criminal prosecution related to the criminal files having economic-financial crimes as object;

- performing the following, by means of the Directorate for Fraud Fight, out of the prosecutor’s order: technical-scientific acknowledgements constituting evidence, according to law; financial investigations, with the aim of rendering certain assets unavailable; any other check-up in the fiscal field, ordered by the prosecutor.

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<sup>16</sup> This prerogative regarded before the financial-bank, insurances and re-insurances institutions.

<sup>17</sup> See Nadia-Cerasela Aniței, Elena-Roxana Lazăr, *quoted works*, 178-179.

<sup>18</sup> Republished in the Official Gazette No. 195 from March 27<sup>th</sup> March 2009. According to article 7 letter B, point 8 of the Government Decision No. 520/2013, the activity of using the assets confiscated or entered in the private property of the state, according to law, but also of the assets seized during the compulsory foreclosure, according to law, is organized by A.N.A.F.

Practically speaking, when they are on loan<sup>19</sup>, the anti-fraud inspectors have to carry out the criminal prosecution, being involved, as "experts" in all the range of operations required by the performance of the economic-financial crimes investigation, which overcome the fiscal fraud *stricto sensu*. The activity of the inspectors mentioned above is performed *under the exclusive authority of the chief of the prosecutor's office* within which they function, by carrying out the activities ordered by him, in order to insure the impartiality but also the promptness and efficiency of the criminal investigation activity performed by the Prosecutor's offices; the same inspectors cannot, in any situation, replace the prosecutor's activity<sup>20</sup>.

## 6. The legal regime of the control acts concluded

According to article 15 of the G.E.O. No. 74/2013, "When performing its own attributions, as a consequence of the controls concluded, A.N.A.F. concludes minutes of control/acts of control, for establishing the fiscal situation *de facto*, for acknowledging and sanctioning contraventions, but also for acknowledging the circumstances regarding some deeds provide for by the criminal law, "opposable to the entities checked"<sup>21</sup>.

The procedure on the drafting, form and content of the minutes concluded by the anti-fraud structure are established by means of the order of the president of A.N.A.F.

*The minutes on the fiscal situation de facto.* Establishing this situation constitutes the main objective in the exertion of the anti-fraud control, being included in the final act of anti-fraud control.

In no circumstance can a control act produce legal effects directly upon taxes and contributions due to the general consolidated budget. If the legal fiscal/customs order is affected, the anti-fraud inspector is bound to *notify the competent bodies*, which will receive one copy of the minutes of anti-fraud control, accompanied by the documents proving its authenticity, with an aim to *use the acknowledgements* within the control act.

The control act has an *administrative-fiscal* character, being subject to the legal regime instituted by the Fiscal Procedure Code. On its basis, according to the case, the fiscal body where it is or should be the controlled entity (the taxpayer) shall issue the taxation decision, having the legal regime of the fiscal debts title, or on the basis of the same act, will be started the criminal investigation.

Naturally, the confiscation and insurance measures shall be used, according to special law.

*The contravention minutes.* Will be sanctioned as contraventions only the deeds referred to by law. As a legal act, the contravention minutes are subject to the requirements instituted by the G.E.O. No. 2/2001 on the legal regime of contraventions. Their enforcement is nonetheless subject to the Fiscal Procedure Code, the same minutes also having the quality of fiscal debt title, there being necessary for them to be communicated to the entity having the ability to execute the fiscal debts.

*The act for notifying the criminal investigation body.* When acknowledging certain circumstances in which some deeds provided for by the criminal law for the fiscal field have been committed, the inspectors for fiscal anti-fraud have the duty to notify the criminal investigation bodies about it, establishing at the same time their fiscal implications and ruling,

<sup>19</sup> Regarding the appointment and the way inspectors are "loaned", see the provisions of article art. 4 paragraphs (11)-(14) of the G.E.O. No. 74/2013.

<sup>20</sup> The current work will not focus on "The way anti-fraud inspectors exert their attributions while they are *on loan* to Prosecutor's offices", this being established by the law on the statut of this category of public servants, as provided for by the provisions of article 5 paragraph (15) of the G.E.O. No. 74/2013.

<sup>21</sup> For that matter, see Emil Bălan, *quoted works*, 322.



according to the conditions of the Fiscal Procedure Code, on taking the insurance measures, any time there is the danger for the debtor to escape from the investigation or to hide, alienate or spread his patrimony.

## 7. Conclusions

The study of two normative acts has brought us to the following conclusions:

a) *Terminological inconsistency. De lege ferenda*, it is necessary to think again the terminology within the two normative acts under discussion: on the one hand, for making compatible the name of the control analyzed, while on the other hand for making compatible the meaning of tax evasion as presented in the two regulations: the G.E.O. No. 74/2013 and Law No. 241/2005, given that tax evasion also includes fiscal fraud.

b) *Organisation*. By assigning it to A.N.A.F., the new law confers a unitary character to the activity of fiscal and customs control. Yet, albeit integrated to A.N.A.F. and organized on the principle of regionalization, the fiscal anti-fraud control keeps its specific elements unaltered, a fact which justifies the way it has been performed as self-standing so far, by means of specialized anti-fraud inspectors.

A novelty element is the Directorate for Fraud Control, which consolidates the activity of criminal investigation, its set up being at the same time according to article 120/1 of Law No. 304/2004 on judicial organization<sup>22</sup>, according to which: "The experts in the economic, financial, banking, customs and informatics field can perform their activity *within Prosecutor's offices*, but also in other fields, for shedding light upon some technical aspects related to the criminal investigation activity".

c) *Procedures*. The procedure according to which the anti-fraud control is performed is not essentially different from that presented by the former regulations, the law currently in force confirming again the character of "specialized body" of this control structure.

The new elements brought expand the area of control also to bus and train stations, the inspectors having the right to demand information and documents from any entity, public or private, as the new law no longer limits their field.

d) *Performance/check-up of control*. Essentially, the G.E.O. No. 74/2013 only insures the organizational and operational framework of the anti-fraud control, by conferring legitimacy to it, for acknowledging the fiscal and customs situation de facto.

Most of the times, ending the anti-fraud control constitutes the premise of some new activities, for using acknowledgements, which are under the competence of some specialized structures and the incidence of other legal regulations, frequently represented by: the Fiscal Procedure Code, the Criminal Code, Law No. 241/2005 on tax evasion.

All the aspects mentioned above point out a *specific control*, with an identity legally acknowledged, which is delimited from the other species of the financial and fiscal control, particularly in terms of its objective and way of being exercised, declared by law: prevention, acknowledgement and fight against tax evasion and fiscal fraud<sup>23</sup>.

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<sup>22</sup> Official Gazette No. 827 from September 13<sup>th</sup> 2005.

<sup>23</sup> Legal literature analyses this control as a "financial control of the state". See for that matter: Viorel Ros, *quoted works*, 400-402; Emil Bălan, *quoted works*, 320-321.

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