

Economic and Financial Crime Management in the Context of International Financial Crisis - Opinions

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Abstract: Economic and financial crime in its complexity, included practically all spheres of economy. One can notice, more frequently, an intersection of violent crime with economic and financial crime. Practice shows, more strongly, that the authorities face, with great difficulty, this veritable explosion acts of crime. Starting from the fact that the phenomenon of economic and financial crime occurs on a background of a radical social change during the international financial crisis, the perspective does not provide grounds for optimism. There are forms of economic and financial crime which developed by their own laws.

In this context national and European bodies charged with preventing and combating financial and economic crime must adopt effective management to meet the new challenges posed by organized crime groups specialized in the commission of economic crimes with transnational character.

Keywords: economic and financial crime, crime management, crisis

1 Introduction

Romania becoming a European Union member was possible because of its progress in achieving the objectives contained in the chapter "Justice and Home Affairs".

Difficult chapter, perhaps the most difficult, affairs and justice meant and will definitely require a major effort because "future members of the European Union must necessarily learn not only objectives but also means to achieve them."

Fundamental way to be followed is the correlation of national legislation with legislation already created in the European Union, a path that must determine a institutional and operational correlation.

The existence of a common market of crime induces the sense of rigid Europe, even powerless, in its legislative, institutional and operational response to the extension of the two categories of crime: the vertical crime and the horizontal one.

Vertical crime refers to actions of organized crime which seriously affect economic and financial interests of each member state and EU financial interests.

Without fear of exaggeration we say that in each EU country there are successfully completed large-scale criminal operations, real aggression to the economy and their finances and, consequently, to the European economy and finance.

Evasion and tax fraud, corruption of great magnitude, smuggling operations backed by money laundering and embezzlement explosion are reality recognized by

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officials and specialists of all states. France's Interior Ministry says that more than 6 billion, dirty money, enter the country annually and the value - in France exceeded 40 billion euros.

Louis Francois stated: "is already created much confusion between dirty money and the legal economy - was installed much gangrene. The wound is deep and difficult to treat. They are powerless in front of the instantaneous multiplication of fraudulent business ".

2 Crime management modelling

Vertical crime is dangerous not only because of the great destructive potential that the crime itself contains, but also because of the fact that it seriously harms the confidence of the market economy participants, confidence in the rule of law, in the ability to ensure economic and social order.

Vertical crime dangerous potential is magnified by its merger with the horizontal crime (drug trafficking, human trafficking, piracy of intellectual property rights, counterfeiting of means of payment, trafficking of art objects), one that generates a strong state of insecurity to the population.

Europe is now concerned with these two forms of crime in the same way it is sensitive and worried about begging, prostitution, pimping, theft, burglary, physical assault, etc..

EU countries are concerned with import and export of crime, with the difficulty to control flows of criminal groups that adapts rapidly to the innovations of the European space.

In European Union there are working more than 600,000 prostitutes, pimps accompanied by tens of thousands of car thieves (value of stolen cars exceeds 20 billion annually), network cards and euro counterfeiters, drug dealers and smugglers of cigarettes, alcohol, coffee, industrial products and works of art, etc..

Crime picture is not much different from a European country to another. In Paris, London, Madrid or Rome, and Budapest, Warsaw or Prague images are similar. Bucharest and Sofia have exported crime into the western member states and plugged holes with Chinese and Arabic Mafia, perfectly paired with indigenous groups, comfortably installed on the Balkan traditional welcoming beach.

Deciphering the causality of this phenomenon is obviously a difficult enterprise.

Courage to try this depends on the researchers and specialists, the analysts detached from partisanship and petty interests, located in the sphere of political evil.

In our opinion there are four types of failures in the European Union and national authorities fight crime:

- A crisis of imagination, anticipation, forecasting what will happen in the national and European space in terms of magnitude and forms of manifestation of crime, with the expanding European Union, with free movement of persons, capital and information. Have been aware of the causes of disasters only after they have

occurred in the areas of privatization, granting preferential contracts, illegal imports, illegal exports, etc.;

- A crisis of policies, strategies and concrete action plans, crisis that derives, naturally, from the crisis of imagination. If you cannot predict, cannot develop coherent policies and strategies;

- A crisis in capability, materialized in maintaining in a false operational state the obsolete institutions and bodies, stiff, unsuitable with the innovations occurring in the state and criminal practice. The crisis generated by the fear of restructuring, reforming institutions and crime fighting capabilities;

- A crisis of management manifested in operational and institutional segment in all European Union and in each member state .

At the operational level there was a excessive classification in the intelligence and an inappropriate compartmentalization of the responsibilities between the operative institutions (customs, police, prosecutors, financial guard). The inability to work effectively, in team, on the intelligence, investigation and prosecution front was demonstrated in all European countries and emerging Europe.

At the institutional level crisis was generated and maintained by the faulty manner in which political leaders have set priorities and allocated resources.

The performed management is relaxed, apathetic, disjointed, which is pleasing to all parties, big or small, that operate on huge, immeasurable, scene of crime.

What to do?

a) In the European context it is necessary to accelerate the harmonization of legislation. J.P. Dintilhac said "harmonization has progressed very little, leaving open field to proliferation, in commercial law field, of legal scenarios, with phony companies and sophisticated contracts backed by occult agreements".

In corporate law, tax law, banking and criminal law there are still major differences within European Union.

Harmonization has to be accelerated in the judicial systems too, ensuring an efficient cooperation in protecting the financial interests of the European Union, on extradition matter and the proper functioning of Europol and Eurojust.

European Union opened the way to creating a European criminal law, which allows a common approach to combating the most serious forms of crime. There are, inevitably, major difficulties in achieving this construction.

The most important seems to be the harmonization of sanctions. D. Fontanaud, European Commission expert and chairman of the Committee to combat crime in the Council of Europe stated: "the establishment of common criminal law without harmonization in the sanctions could lead to failure and to maintain, even in the European Union, certain areas the sanctuary, of which criminal organizations would definitely know how to take advantage of. "

In our opinion, the concept launched in French doctrine concerning the "European Union need to delegate a larger share of sovereignty" is actual and perfectly justified in matter of law and justice, just as the economic and monetary sovereignty of Member States has been divided from a long time.

If today we speak about the European economy, European finance and specific integrated space, logic would be to talk about a European criminal law, materialized, according to Pradel and Vinciguerra in a European criminal code in business - Euro-crimes.

Experts from EU countries argue the necessity of creating a European Public Prosecutor and the adoption of a common code for economic and financial crimes. Merging should be done with Europol and OLAF, into a unique investigation service, placed under the control of European public prosecutor – competent both in initiating and conducting investigations relating to fraud to the European community funds and in conducting any case which he was informed of by one of the existing prosecution in European Union countries as a result of transnational implications.

Another necessary measure is the generalization of criminal liability for legal persons, meant to increase the efficiency of the fight against economic and financial crime.

b) In the national context, the measures we propose are generated by the the recognition in Romania of the risks that may affect or compromise the EU integration.

Thus, the plan of promoted policies refers to the following risks:

- Inconsistency in establishing and implementing major economic and financial priorities;
- Seizure of the political clientele of the most profitable areas of economy and finance (marketing of petroleum products, alcohol production and trade, processing and export of timber, real estate, insurance and investment funds, infrastructure works);
- Rescheduling of the debts of economic agents that are approached to a particular political area;
- The existence of regulations contrary to European legislation in the field of justice, competition, taxation, privatization;
- Maintaining a high rate of economic and financial crime, which supplies the extended underground economy;
- The existence of failures among law enforcement structures materialized in the absence of a unitary action against serious economic and financial crime.

In our opinion the financial and economic crime at high amplitude remains outside the criminal justice and is unpunished, this opinion being, unfortunately, well anchored in the consciousness of the people.

It is in our power to recognize that we live in a not fair society, or in a justice-loving society. We live, as Professor P. Troude Chastenet, from Poitiers University in France, said "in a mercantile society where the cult of money has become a cardinal virtue."

In such a picture of reality we think that the following activities has to be undertaken:

- Improve cooperation between intelligence services, those with powers of investigation and prosecution, developing communication and horizontal ties. The circulation, analysis and treatment of information are essential to successful crime-fighting. Consolidation of specialized units in the collection and analysis of information involves removing excessive secrecy and compartmentalization, which can guarantee the operative exploitation of the information. In our opinion, the greatest barrier to the exchange of information it is human or systemic resistance to the natural flow of the information, horizontal and vertical.

- This creates delays in the processing and use of the information that are excessively classified. One can notice that services and information structures promote a culture of total protection of information, to the detriment of an operative exchange and enhancement of their efficiency.

- Establishment of National Intelligence Community, under one command, accompanied by strengthening intelligence structures of Ministry of Interior would create the need for joint planning and completion of the most representative and important counter operations and liquidation of organized structures that deal with the economic and financial crime.

According to Dr. Ionel Marin "coordinating the intelligence community institutions ... ensure completion and verification of information necessary to support decisions, avoid duplication and dysfunctional rivalries between national information system components and prevents misinformation of the legal decisions makers. National Intelligence Community as a coordinating structure must assume responsibility for analysis and exploitation of information, depending on the values protected and national interest. "

In our opinion, the integrated action of the information, intelligence, investigation and prosecution structures, through effective coordination, represents a guarantee of designing and enforcing an efficient management of the fight against organized crime in general. Intelligence community must represent a state authority, with missions and competencies established by law, and obliged to be under the control of Parliament. Intelligence community's fundamental mission is to establish for each structure and component attributes and abilities in order to avoid duplication, overlaps and timely risk stagnation or misuse of information.

We consider necessary to develop and apply uniform procedures and internal regulations on organization of the intelligence and the investigation of organized economic and financial crime.

In this context, there has to be redefined the concepts of operational information and investigation in all economic fields, economic objectives, places and environments of operational interest, according to their share in the economy, the mutations involved, the developments and transformations that occur.

- Increasing the capacity of investigation of the services acting in the areas of financial administration, fiscal and customs, according to new regulations on combating tax evasion and working effectively with the information and investigation crime bodies and with the prosecution;

- Transforming the National Office for Prevention and Combating of Money Laundering in a financial intelligence unit (FIU) according to the European model that works in the National intelligence community structure, with responsibilities in the collection, analysis, processing and transmitting information to structures of criminal investigation and prosecution; establish clear rules and procedures regarding the coordination of activities of this body with the legal authorities to investigate fraud and information;
- Reform of judicial procedure in terms of what lawyers call "arms balance", ie the ratio of the prosecution and defense in the economic and financial crime. In this matter the proof required should be reversed, already established principle in English law. The French doctrine of "if, in general, we all agree that in common law the balance must be restored to the benefit of the defendant, then we must recognize that in case of economic and financial crime the balance must be made in favor of the party that accuse, in compliance with regulations that guarantee fair trial".
- Legal regulation of preventive measures of patrimonial type, according to Italian model "confisca alargata" (extended confiscation), that is a confiscation that can include all assets, with effects not only punitive but preventive, measure that can be taken even in preceding acts phase of a criminal case.
- Firm and unified application of Criminal Code provisions concerning criminal liability of legal persons, dictated by the principles of proportionality and individuality punishment, according to European practice.

It is known that the flow of dirty money is especially significant because it is the result of international organized crime and anchored in a given economic system. Individuals who participate actively in the commission of crimes, as perpetrators or accomplices, often act for the profit and interest of personified groups, that are economic agents (companies) - the main beneficiaries of the illicit profit.

This should be the main argument for the introduction and application of criminal liability for legal persons, that does not eliminate the simultaneous liability of individuals who acted on behalf of these entities, legally abstract, but very concrete from economical and social perspective.

According to Prof. C. Ducouloux - Farard "economic and financial crimes, beyond the considerable volume of illicit flows of money that they put in circulation, prejudice the civil structure itself and can not be combated effectively only through measures directed to the offenders, but also through measures that aim to the illegal profit. "

- Ensure strict observance of rules of conduct of the magistrates, as they are provided in the Code of Conduct for Magistrates;
- Passing the judicial police units in the organizational structure of public prosecution. The current system, which is subordinated to administrative and judicial police hierarchy Ministry of Interior, is weak and ineffective. This measure would allow resizing jobs, recruitment judiciary according to specific criteria, ensuring appropriate pay, strict specialization training, ensuring a climate of teamwork;

- Taking action to prevent "incestuous ties" between the financial environment - economic, political world and the administration.

These measures are necessary in privatization, the contracts with state, transfers of assets and properties of the public to private and conversely, granting financial funds from the European Union, functioning of securities markets and stock exchanges in terms of prevention of crimes committed by persons who, having inside information before the public, perform illegal operations for their own benefit; blocking procedures for establishment and operation of fictitious companies;

- Regulation of the concept of public - private partnership to ensure exchange of information and cooperation, carrying out and completion of investigations and inquiries into specific cases; the essential is the idea of rule of law, in the public or private benefit. Such partnerships work in the U.S., Netherlands, United Kingdom, Switzerland and Belgium.

In the global context the necessary measures to be taken to increase the efficiency of the fight against transnational economic and financial crime are dictated by the fact that "despite the large number of protocols, conventions, resolutions and reports the fight against this phenomenon is undoubtedly a failure" .

Most experts' opinion is that financing of terrorism can escape any control so simple, because the international financial activity itself escape to any control without an international order based on clear and binding legal norms, on actual controls and sanctions pronounced and enforced effectively.

Measures that are being undertaken worldwide are:

1. creating an international criminal order.

The starting point in building international criminal order could be created by the International Criminal Court created after Rome Convention (1998), to which can not be opposed any immunity, and which can judge, according to the same principle of subsidiarity, the author of economic - financial crimes.

2. application of sanctions against states which do not fight against corruption and do not cooperate in preventing the financing of terrorism, encouraging the laundering of money from organized crime.

3. close monitoring of international circuits of capital and exclusion from the financial circuits of the states that do not comply with legal requirements.

In agreement with published minimum requirements for keeping information secret and transparency, those states that do not enforce these rules to be carried on by companies in their activities on their territory should be excluded from monetary and financial transactions circuit.

Specialists developed the concept of "international interference right" justified by the fact that "the sovereignty of certain states do in fact serve only to cover the pretext of secrecy in business practices contrary to the general interests of present and future societies on our planet ".

4. strengthening international organizations in terms of their power in front of states and multinational financial powers that do not respect the rule of law adopted

in regard to the fight against organized crime. There are many international and regional studies and denounce serious criminality of economic and financial magnitude, but their work is completed only in making recommendations which have a minor effect on the proliferation phenomenon. The absence of international sanctions to be pronounced against the State and economic-financial operators induce a feeling of helplessness in combating transnational crime.

Economic-financial crimes cause damages hard to measure with impact on social and economic environment in general. Material and moral damages are, in some degree, immediately visible and difficult to customize.

The phenomenon of economic - financial crime occurs and is manifested in a specific environment, that of economy and finance, which has a variety of organizational forms that are in a constantly changing, offering a wide range of possibilities for action, backed with appropriate techniques.

The victims of this phenomenon, but in some cases, and partners, are governments, business sector, the finance - banking.

Indirect victims is, in our opinion, an unexplored topic, but particularly important in relation to the consequences, not immediate, but distant. Indirect or collateral, these victims are citizens, who, due to embezzlement, tax evasion, fraud, fraudulent privatization etc, see their living standards declined, welfare compromised, access to education and culture blocked by illegal reducing (in a criminal manner) of the funds for these objectives. To these people are joining the category of people purchasing counterfeit products, dangerous for consumption.

Economic - financial crimes, regarding the magnitude of the damage and the large number of victims, produce an obvious imbalance in the society as a whole, with impact on the climate of public order and national security.

Diminishing public budgets for law enforcement, justice and national defense as a result of criminal actions has extremely serious effects on state capacity to ensure administration of the society in the most important areas.

Secret agreements (so-called contracts which contain classified information), acces to resources and information, irrational way of doing business, accompanied by a hidden or manifest violence, are marks of white collar crime which transforms the official economy, making it look totally opposite to the desired model.

In such a picture the economic and financial crime must be analyzed as an auxiliary to political life, as the political environment is largely funded by individuals, groups and companies that develop criminal business. This illegal funding is then rewarded by politicians through granting public funds to donors.

Analysis of forms and magnitude of economic-financial crime leads us to finding in present society of a profound crisis of values: moral values related to the general public that are vehemently attacked by the values of market economy which operates in a highly original register. This crisis is maintained by the great actors of the political and economic scene, by political elites and leaders of criminal business.

In our opinion, today more and more private companies are aware of these things:

- Cases of fraud will increase significantly by the companies own employees and by persons outside;
- Public authorities will give priority to cases of fraud to the detriment of the state;
- Effectively combating crime can be achieved by a highly trained legal staff, trained in prestigious institutions with strict specialization;

Will increase the safety needs of companies in the context of globalization, for scientific and technical progress generates new forms of crime, as any economic crisis leads to increased crime.

3 Conclusion

In terms of methods and practices of control and supervision of markets and financial services, we believe that the British experience is a model that can be extended to every European country. In essence the British model refers to a law (Law on markets and financial services, adopted in 2000) which entitles an authority (the Financial Services Authority - FSA) to control and sanction any violations of the law in this field. The objective of this authority is to promote voluntary compliance with the law, imposing penalties consisting of fines or public denunciation of the companies that do not respect the law. Principles of action of this authority are:

- Transparency in decision making;
- Fair treatment to all enterprises;
- Proportionality in the administration of the sanctions;
- Consistency in application of law;
- The power to prosecute the authors of illegalities committed in the financial market, considered as crimes committed by "white collar" or those involved in money laundering operations.

Conclusions:

A. Economic and financial crimes transform and affect all values that are indispensable ingredient of every society morals. People's faith in genuine values is shaken by the magnitude of the illegal profit and the lack of sanctions for those who have accumulated wealth from criminal activities.

B. We believe there are compelling words those spoken by Professor P. Troude - Chestenet from Poitiers University, at the end of a seminar on financial crime: "Is there financial crime in a society where the cult of money has become a cardinal virtue? How can you talk about financial crime in a society where, in fact, is considered criminal the one who remains poor? The more justice becomes closer to political power, the more it distants from freedom and , no doubt, from the Truth".

Romania's status as a European Union member generates expectations about the ability of Romanian law to harmonize quickly and effectively with European law and provides certainty to belong to a united Europe.

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