



THE 14TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

**Irregularities Detected in Programmes
with Non-Reimbursable Funding in period 2007-2013**

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Abstract: Romania's accession to the European Union has opened new horizons for our country from the perspective of recovering the economic gaps that exist between us and the Member States. The 12 years have meant a lot of work, representing an effort made by both the governors and the direct beneficiaries. The absorption capacity of the European funds has gradually increased from one year to the next between 2007 and 2015. Thus, for example, in terms of the total amounts received from the EU budget the differences from one year to another are significant: 417.02 million euro in 2007; 641.92 million euro in 2008; 909.12 million euro in 2009, 505.73 million euro in 2010, reaching 2884.47 million euro in 2013, 3536.81 million euro in 2014, 2591.36 million euro in 2015 and 3663.96 million euro in 2016². The question that arises is whether or not this money has contributed decisively to diminishing the gaps between Romania and the countries of the western European Union. The irregularities detected by the Managing Authorities and the Audit Authority in the procurement procedures carried out within the projects financed by these funds only confirm that this money has not always been directed where it is needed.

Keywords: European funds; irregularities; European Union; European absorption

JEL Classification: M42; R11; M48

1. Introduction

Romania's accession to the European Union has opened new horizons for our country from the perspective of recovering the economic gaps that exist between us and the Member States. The 12 years have meant a lot of work, representing an effort made by both the governors and the direct beneficiaries. The absorption capacity of the European funds has gradually increased from one year to the next between 2007 and 2015. Thus, for example, in terms of the total amounts received from the EU budget the differences from one year to the next are significant: 417.02 million euro in 2007; 641.92 million euro in 2008; 909.12 million euro in 2009, 505.73 million euro in 2010, reaching 2884.47 million euro in 2013, 3536.81 million euro in 2014, 2591.36 million euro in 2015 and 3663.96 million euro in 2016. The question that remains is whether or not this money has contributed decisively to reducing the gaps between Romania and the countries of the Western European Union. The irregularities detected by the Managing Authorities and the Audit Authority in the procurement procedures carried out within the projects financed by these funds only confirm that this money has not always been directed where it is needed.

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² <https://cohesiondata.ec.europa.eu/2007-2013/SF-2007-2013-Funds-Absorption-Rate/kk86-ceun/data>.

2. Theoretical Background

The paper is based on the statistical data communicated by the European Commission regarding the degree of absorption of the European funds and on the data communicated by the Managing Authority in charge with the management of the Sectoral Operational Program 2007-2013 regarding the detected irregularities.

Also, an important source of documentation was the Audit Report of the performance of the use of funds allocated from the state budget for the development of programs or projects financed by means of external funds for the intermediate period 2007-2013, of the Court of Accounts, as well as the annual reports of the Audit Authority within the Court of Accounts.

3. Methodology

In order to carry out the research, we used a deductive and inductive methodology, in order to identify opinions, criticisms and opportunities. In the first part we presented the research carried out so far in relation to the degree of absorption in Romania and in relation to the irregularities identified in the projects with non-reimbursable financing. In the second part we presented the main statistical data regarding the Operational Sectoral Program SOP Environment 2007-2013 and the irregularities identified by the managing authorities and by the Court of Accounts by means of the Audit Authority.

4. Findings

A. Previous Research

The absorption rate of structural and cohesion funds allocated to Romania in 2007-2013 stood at a low level compared both to authorities and people's expectations and the other EU Member States because of deficiencies within the funds management and accessing system but suffering also the impact from the outside factors (Zaman and Georgescu, 2014).

An important part of structural funds cannot be effectively utilized by the beneficiary countries in order to reduce disparities and achieve convergence are: an important part of structural funds is allocated, in fact, to the rich countries of the EU; concentration of funds for economic growth under the impact generated by internal taxation of various countries; failures of government policies that lead to improper spending of funds and unjustified personal or group earnings. (Zaman and Georgescu, 2009).

There is a direct relationship between financial corrections for European funds projects on the one hand, and irregularities and fraud which were discovered in this area, in Romania and reported by the European Parliament, on the other hand (Podoabă and Beatrice Oprean)

B. Case study. Irregularities identified in the procurement procedures carried out in SOP Environment 2007-2013

SOP Environment was approved by the European Commission on July 12, together with the Regional Operational Programme and the Sectoral Operational Programmes: Transport, Increase of Economic Competitiveness and Technical Assistance. From the moment of approval by the European Commission, the operations within the sectoral programmes become financeable.

SOP Environment had a budget of about 5.6 billion euro, of which about 4.5 billion euro represented non-reimbursable financing from the European Union by means of the European Regional Development

Fund (ERDF) and the Cohesion Fund (CF), and the difference represented the national co-financing (approx. 1 billion Euro).

The general objective of SOP ENV was the improvement of the living standards of the population and of the environmental standards, aiming mainly at respecting the community environmental acquis and aims to reduce the difference between the environmental infrastructure that exists between Romania and the European Union, both quantitatively as well as qualitatively. The implementation of the programme has resulted in more efficient and better public services related to water supply, sewerage and heating, considering the principle of sustainable development and the “polluter pays” principle.

SOP ENV was based entirely on the objectives and priorities of the European Union’s policies on environment and infrastructure and was in accordance with Romania’s international obligations and its specific national interests.

In order to achieve the objectives of SOP ENV, the funds were planned to be allocated to the environment sector in order to implement the following priority axes:

- Priority Axis 1 - “Extension and modernization of water and wastewater systems”;
- Priority Axis 2 - “Development of integrated waste management systems and rehabilitation of historically contaminated sites”;
- Priority Axis 3 - “Reduction of pollution and mitigation of climate change by restructuring and renovating urban heating systems towards energy efficiency targets in the identified local environmental hotspots”;
- Priority Axis 4 - “Implementation of appropriate management systems for nature protection”;
- Priority axis 5 - “Implementation of the appropriate infrastructure for the prevention of natural risks in most vulnerable areas”;
- Priority Axis 6 - “Technical assistance”.

To begin with, we analysed the value of the budget approved on priority axes:

	SOP ENVIRONMENT 2007-2013	
	Value of approved budget	Of which EU
PA1	3,149,423,956.00 €	2,776,532,160.00 €
PA1A	122,728,555.00 €	100,000,000.00 €
PA2	878,476,962.00 €	734,223,079.00 €
PA3	388,640,131.00 €	229,268,644.00 €
PA4	191,098,548.00 €	171,988,693.00 €
PA5	315,839,375.00 €	270,017,139.00 €
PA6	144,933,804.00 €	130,440,423.00 €
TOTAL	5,191,141,331.00 €	4,412,470,138.00 €

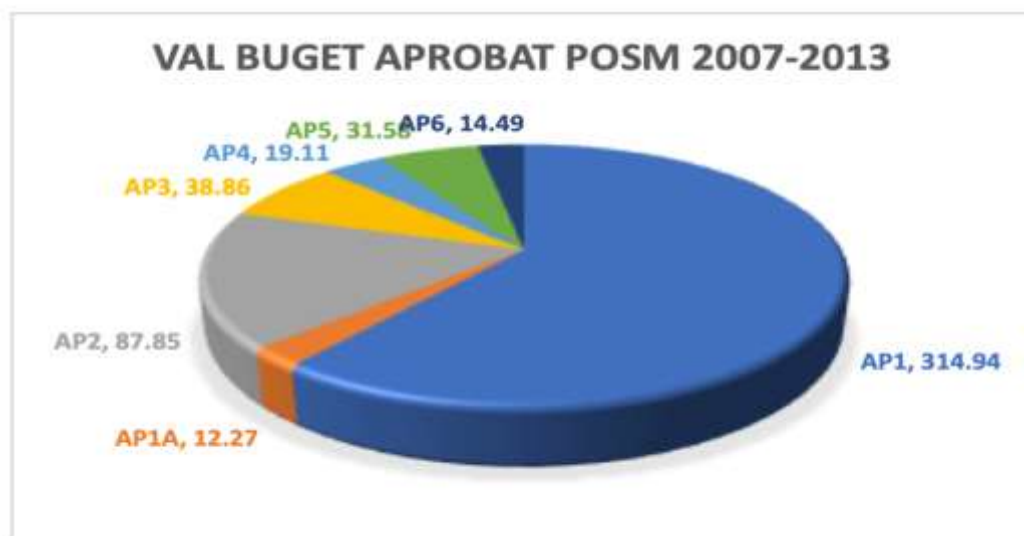


Figure 1.1. Approved Budget for SOP Environment 2007-2013 (Tens of Millions of Euro).

Source: Own Processing

Value of the Approved Budget sop Env 2007-2013

Following the approval of the budget for 2007-2013, the following financing applications were analysed and approved:

	Submitted projects			Approved projects		
	No. of projects	Value	Of which EU	No. of projects	Value	Of which EU
AP1	105	3,720,142,606 €	2,358,923,836 €	105	3,720,142,606 €	2,358,923,836 €
AP1A	24	82,184,948 €	54,003,465 €	24	82,184,948 €	54,003,465 €
AP2	42	1,121,961,658 €	689,031,257 €	40	1,070,507,591 €	649,122,650 €
AP3	7	382,900,084 €	153,118,539 €	7	382,900,084 €	153,118,539 €
AP4	395	514,678,996 €	379,137,649 €	223	233,912,223 €	175,236,416 €
AP5	47	512,475,684 €	402,437,846 €	42	459,623,284 €	365,443,339 €
AP6	170	140,375,682 €	113,201,422 €	170	140,375,682 €	113,201,422 €
TOTAL	790	6,474,719,658 €	4,149,854,014 €	611	6,089,646,419 €	3,869,049,668 €

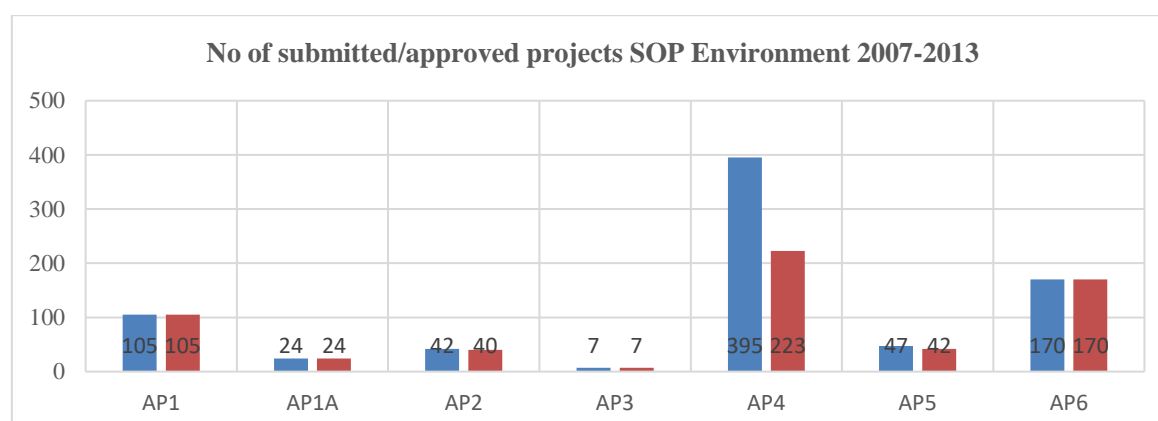


Figure 1.2. Comparison between Submitted Projects and Approved Projects for SOP Environment 2007-2013

Source: Own processing

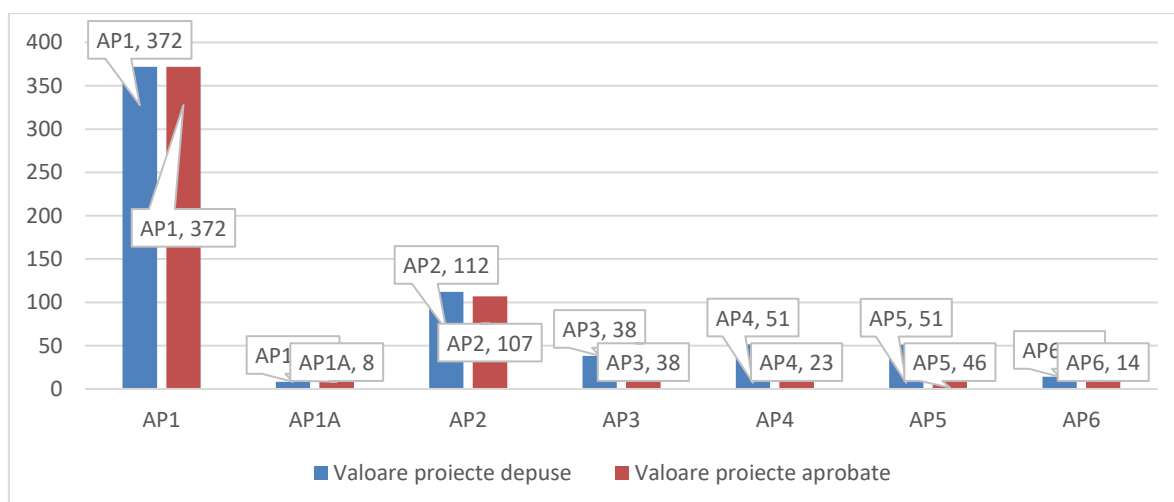


Figure 1.3. Comparison between Submitted Projects and Approved Projects (Values of Tens of Millions of Euro) for SOP Environment 2007-2013

Source: Own processing

Thus, for the SOP Environment a total of 790 projects amounting to 6,474,719,659 Euro were submitted, of which EU reached 4,149,854,015 Euro. In total, 611 projects worth 6,089,646,419.12 Euro were approved, of which EU reached 3,869,049,667.85 Euro.

Regarding the approved expenses, we made a comparative analysis between the expenses reported and approved in the 2 periods:

Programme	Value of declared expenses -lei-	Value declared of expenses-eur-	Value of authorized payments -lei-	Value of authorized payments -eur-
SOPE 2007-2013	20,415,430,883	4,308,143,598.36	16,845,872,803.22	3,554,881,574.07

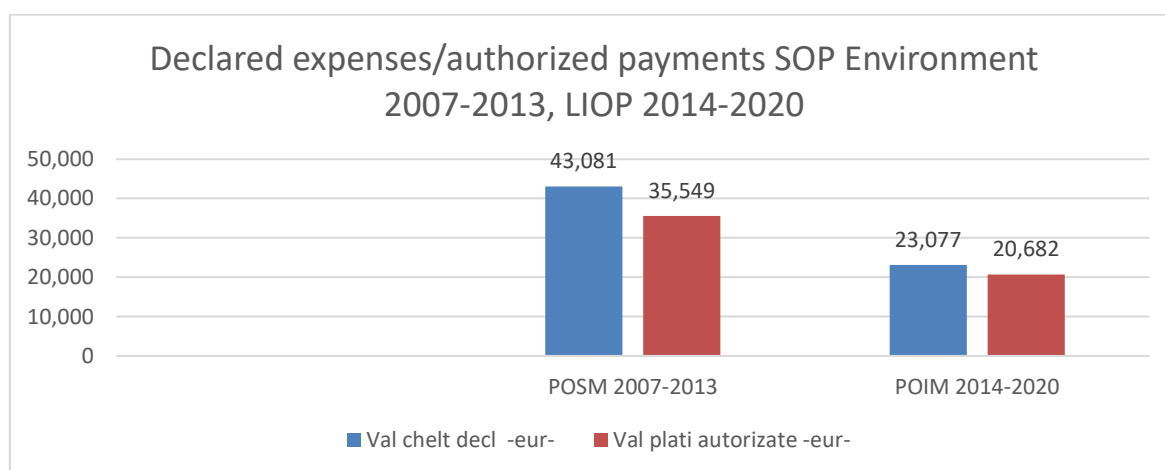


Figure 1.4. Comparison between submitted payment requests and approved payment requests (values of tens of millions of euro) for SOP Environment 2007-2013 and Large Infrastructure Operational Programme (LIOP) 2014-2020

Source: Own processing

We made a synthetic analysis of the irregularities found from the point of view of the priority axis, the type of Beneficiary and the type of error, specifying that we used the euro exchange rate of 4.7388 lei/euro:

Priority Axis	No. of approved projects	Value approved projects	No. of projects affected by irregularities	% of total	The amount affected by irregularities	% of total
AP1	105	3,720,142,606	65	62 %	157,878,544	4.24 %
AP1A	24	82,184,948	4	17 %	412,963	0.50 %
AP2	40	1,070,507,591	33	83 %	34,423,213	3.22 %
AP3	7	382,900,084	7	100 %	15,240,809	3.98 %
AP4	223	233,912,223	55	25 %	6,705,010	2.87 %
AP5	42	459,623,284	28	67 %	43,766,635	9.52 %
AP6	170	140,375,682	7	4 %	9,798,840	6.98 %
Total	611	6,089,646,419	199	33 %	268,226,014	4.40 %

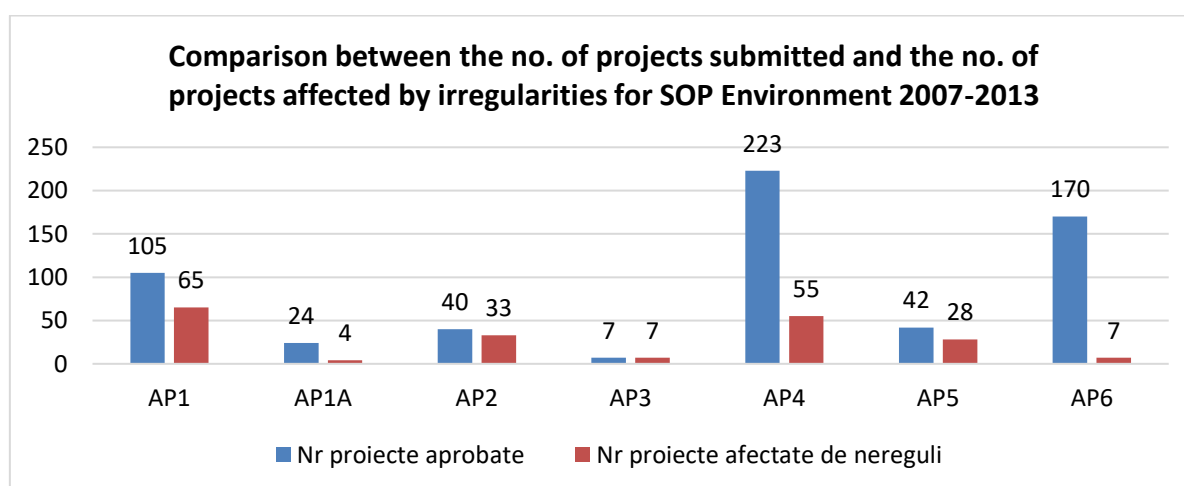


Figure 1.5. Comparison between the no of Projects Submitted and the no. of Projects Affected by Irregularities for SOP Environment 2007-2013

Source: Own processing

Comparison between the no. of projects approved/no. of projects affected by irregularities SOP Environment 2007-2013.

From our analysis of the irregularities identified by the Managing Authorities and the Court of Accounts by means of the Audit Authority, it follows that in case of Priority Axis 3 (Extension and modernization of water and wastewater systems) 100% of the funded projects are affected by irregularities. The amount of irregularities for this axis is of 15,240,809 euro, respectively 3.98% of the amount financed. All 7 projects funded were implemented by Local Public Authorities (City Halls and County Councils).

Within this PA3 the irregularities mainly concerned the use of restrictive selection criteria and in a certain case the contracting authority chose a negotiation procedure without prior publication of a call for tender and could not prove the existence of the unforeseeable circumstances that would have given it the right to use such a procedure.

The next priority axis in order of the number of projects affected by the irregularities of the total projects is PA 2 (Development of integrated waste management systems and rehabilitation of historically

contaminated sites). Thus, in this case 33 out of 40 projects were affected by irregularities (83% of the number of projects). The sum of the irregularities for this axis is of 34,423,213 euro, respectively 3.22% of the funded amount. The beneficiaries of the projects with irregularities are mainly local public authorities (87%), and the remaining 13% are central public institutions.

Within this PA2 the irregularities mainly concerned:

- use of minimum restrictive qualification requirements;
- using the negotiation procedure without prior publication of a call for tender without proving the existence of the unforeseeable circumstances that would have allowed it to use such a procedure;
- artificial division of works contracts (n.n. for which GEO 66/2011 provides sanctions starting from 25% of the contract value);
- the winning tenders did not fully meet the minimum qualification requirements;
- the breach of the principles of equal treatment and transparency in the award of public procurement contracts.

Regarding Priority Axis 5 (Implementation of the appropriate infrastructure for the prevention of natural risks in most vulnerable areas) we have the third axis in the order of the number of projects affected by irregularities out of the total projects funded on the respective axis. Thus, a number of 28 projects out of 42 were affected by the irregularities (67%).

The amount affected by irregularities on PA5 is 43,766,635 euro, respectively 9.52% of the funded amount, as it is the axis with the highest percentage of error in terms of the amount affected by the irregularities out of the total funded amount. The benefits of the projects which have irregularities are mainly national administrations (97%), while the remaining of 3% are national agencies.

Within this PA5 the irregularities mainly concerned:

- the winning tenders did not fully meet the minimum qualification requirements (the highest amount affected by the irregularities);
- use of minimum restrictive qualification requirements;
- the breaches of the principles of equal treatment and transparency in the award of public procurement contracts.

The next priority axis in order of the percentage of the projects affected by the irregularities from the total projects on the respective axis is Priority Axis 1 (Extension and modernization of water and wastewater systems). Thus, 65 out of 105 projects were affected by the irregularities, respectively 62%.

While in terms of the percentage of projects affected by the irregularities of the total of projects on the respective axis, PA1 comes 4th, and if we analyse the amount affected by error on this axis we find that from this point of view on this axis AP1 we have the largest amounts affected by irregularities.

Thus, the amount affected by irregularities on this axis is of 157,878,544 euro, 4.24% of the approved amount for projects financed on this axis, the largest amount of all priority axes. Of the projects affected by the irregularities, a number of 52 are projects carried out by Regional Water Operators, respectively 80% of the projects affected by irregularities. Another 18% of the projects affected by irregularities were implemented by local public authorities. Only one project out of the 65 affected by the irregularities was implemented by a national administration.

Within this PA1 the irregularities mainly concerned:

- the winning tenders did not fully meet the minimum qualification requirements (the highest amount affected by the irregularities);
- the use of minimum restrictive qualification requirements;
- incorrect assessment of the minimum qualification requirements;
- unjustified reduction of the deadline for submitting tenders;
- breach of the principles of equal treatment and transparency in the award of public procurement contracts;
- the award of additional works without the application of a public procurement procedure;
- the contracting authority amended the minimum qualification requirements by means of clarifications and not by publishing an erratum;
- the use of the negotiation procedure without prior publication of a call for tender without proving the existence of the unforeseeable circumstances that would have given it the right to resort to such a procedure;
- artificial division of works contracts (n.n. for which GEO 66/2011 provides sanctions starting from 25% of the contract value).

Regarding Priority Axis 4 (Implementation of appropriate management systems for nature protection) here we have the fifth axis in the order of the number of projects affected by irregularities out of the total projects financed on that axis. Thus, a number of 55 projects out of 223 were affected by irregularities (25%).

The amount affected by irregularities on PA4 is 6,705,010 euro, respectively 2.87% of the amount financed. The beneficiaries of the projects with irregularities are mainly private beneficiaries (31%). The rest of the beneficiaries are local public authorities (25%), research institutes (5%), central public institutions (18%), national companies (18%) and universities (3%).

Within this PA4 the irregularities mainly concerned:

- the winning tenders did not fully meet the minimum qualification requirements (the highest amount affected by the irregularities);
- positive adjustment of the contract, which was in the advantage of the provider, as the price was an evaluation factor;
- conflict of interest (to private beneficiaries);
- failure to comply with an adequate degree of transparency and publicity;
- use of minimum restrictive qualification requirements;
- incorrect assessment of the minimum qualification requirements;
- unjustified reduction of the deadline for submitting tenders;
- breach of the principles of equal treatment and transparency in the award of public procurement contracts;
- the award of additional works without the application of a public procurement procedure.

The sixth, and the last axis we analysed is PA 1A axis (“Extension and modernization of water and wastewater systems - additional). Thus, within this additional call, irregularities were identified in 4 of the 24 funded projects, respectively 17% of the total projects on the PA 1A axis. The amount affected by irregularities was of 412,963 euro, 0.50% of the amount financed by PA 1A. All projects were implemented by regional water operators.

Within this PA1A the irregularities mainly concerned:

- experts working on several projects in parallel;
- the contracting authority used illegal evaluation factors;
- use of minimum restrictive qualification requirements;
- incorrect assessment of the minimum qualification requirements.

5. Conclusions

The role of non-reimbursable financing, a role assumed by the European Union, is to reduce disparities between EU economies. Thus, it is extremely important that the European funds are directed to economic and geographical areas that are much lower than the European average. The role of the control authorities is to ensure an equal treatment regarding the implementation of the projects with non-reimbursable financing. There must be no Beneficiaries to consume the European Union money in their own interest. Whether we speak of Private Beneficiaries or of Beneficiaries that are public institutions, there is a tendency to consider projects with non-reimbursable financing as a means of easy enrichment. This is not the role of non-reimbursable financing. The moment when we are going to understand as a country the role of non-reimbursable financing it may be too late. It is true that progress has been made in all these years starting from the pre-accession period up to the time of writing this report but we can see around us countries that have progressed much faster than Romania, countries that have secured by means of non-reimbursable funds country objectives that could have never be achieved by means of their own budgets. The problem is that the money spent is not coming back, the European Union considers that the money has been directed responsibly by the national authorities and from one programming period to another it considers other and other country objectives. It is true that these non-reimbursable funds were considered an opportunity by the criminal organizations, but the Romanian state has the obligation to ensure that it imposes a strict control of these funds so that they reach only those who need it. As we have seen, in our case study, there were numerous situations in which certain suppliers were favoured. Of course, investigations are still ongoing and we cannot know at this time whether these have been confirmed or not.

From the analysis made, we found that there is a contradiction in terms of the need for addressing irregularities identified during the projects with non-reimbursable financing. The control and management bodies consider that, when they identified an irregularity and issued a correction decision, the problem was solved once the money was returned. Of course, a notification was also sent to the investigative bodies in order to establish the criminal liability of these culprits.

While in the case of Private Beneficiaries we agree to this approach, we do not agree to this approach in case of Beneficiaries which are public institutions.

Thus, we have not seen until now an approach of the Court of Accounts, which has the responsibility of the control in public institutions regarding the financial corrections on projects carried out by public institutions. From our point of view, if there are corrections on certain projects carried out by the public

institutions and the money is paid from the own budgets of the public institutions, this money should be recovered from the persons in charge of that public institution.

Of course, it was considered that as the works were performed, even if corrections paid from the budget of the institution were received, no damage occurred. We consider that there is a prejudice as long as the governing bodies, the Local Council, the County Council, etc. have approved only a certain percentage of co-financing and a certain percentage of ineligible expenses once the application for funding has been submitted. As long as there is no decision given by the LC, CC to approve the additional amounts with which the respective institution contributes to the fulfilment of the respective investment project, we are in the situation in which amounts were spent without the approval of the credit release authority.

We also found that a large part of the irregularities refers to creating an advantage for certain suppliers, economic operators. This means that higher amounts were paid as compared to the amounts which would have been paid if those providers had not had an advantage. So, a prejudice that must be recovered from the persons in charge exists.

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