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PROBLEMS ENCOUNTERED BY THE BENEFICIARIES OF STRUCTURAL FUNDS IN THE RELATIONSHIP WITH THE INTERMEDIARY ORGANISMS OF THE POSCCE AND POSDRU PROGRAMS

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PROBLEMS ENCOUNTERED BY THE BENEFICIARIES OF STRUCTURAL FUNDS IN THE RELATIONSHIP WITH THE INTERMEDIARY ORGANISMS OF THE POSCCE AND POSDRU PROGRAMS

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Abstract

The paper proposes to present the practical problems encountered by the beneficiaries of the POSCCE and POSDRU programs in the relationship with the national intermediary organisms (IO), such as: - lack of cooperation and support in the project implementation; - huge delays (1-2 years from the registration date) in paying the requests for reimbursement, even if the IO have a 45 days contract payment term, so that the beneficiaries end up in financial blockage; - the late checking of requests for reimbursement (almost 1-2 years from the registration date), so that the small errors can no longer be corrected, since different financial years have already passed; - impossibly short terms for answering the requests for clarifications regarding the requests for reimbursement (e.g.: 24 h term for an answer in writing to arrive from Iași to Cluj); - the impossibility of contacting them, only by written official letter delivered personally and registered in Bucharest; - the IO's do not travel in the province and request in writing or scanned a huge volume of documents to be delivered at their headquarters; - control personnel lacking in managing structural funds experience; - lack of legislation knowledge, retroactive application of the legislation when issuing financial correction minutes; - carelessness in deciding financial corrections, without studying in detail the case and without weighing the consequences; - general non-acceptance of the beneficiaries' administrative appeals, so that the only solution is the application of summons regarding the annulment of the administrative act at the administrative section of the Appellate Court, that takes 1-2 years (in the meantime the private beneficiaries become insolvent); - lack of seriousness of the IO directors, that are more preoccupied in maintaining their positions instead of admitting that they have made a judgement mistake; - verbal recognition of error in issuing a groundless financial correction minutes, but with the excuse "sue us and you will win".

Keywords:

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Structural funds, intermediary organisms, the "Economical Increase of Competitiveness" Operational Sectorial Program (POSCCE), the "Human Resources Development" Operational Sectorial Program (POSDRU), financial corrections.

A. Problems encountered by the beneficiaries of structural funds in the relationship with the intermediary organisms of the "Economical Increase of Competitiveness" Operational Sectorial Program (POSCCE)

1. Non-observance of payment contract terms. Delays in the expenses reimbursement

According to the dispositions of article 9 letter b line 4 from **the financing contract model** for the public beneficiaries approved by the Scientific Research National Authority Decision no. 9756/26.09.2008 regarding the approval of the contract model for the assignment of non-reimbursable financial assistance from the Regional Development European Fund and from the state budget for project proposals financed from **the "Economical Increase of Competitiveness" Operational Sectorial Program (POSCCE)**, the 2nd Priority Axis, Operation 2.2.1., with the subsequent modifications, „**the Intermediary Organism has the obligation to support the Beneficiary by giving the information or the clarifications that he considers necessary for the project implementation**".

According to the dispositions of article 7 line 1-3 from the financing contract model for the public beneficiaries approved by the Scientific Research National Authority Decision no. 9756/26.09.2008 the "Economical Increase of Competitiveness" Operational Sectorial Program (POSCCE), the 2nd Priority Axis, Operation 2.2.1., with the subsequent modifications, „ (1) The Management Authority will authorize the reimbursement requests, following the verification performed by the Intermadiary Organism on the the supporting documents presented by the beneficiary, in maximum 80 calendar days from the registration date. (...) (3) The Management Authority can extend the term, by previously informing the beneficiaries, in justified situations regarding the request for documents or clarifications, as well as in the situation of control missions prior to the payment authorisation".

Afterwords, in June 2012, **the payment term of the reimbursement request** has been modified to **45 working days** (meaning

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67 calendar days) on the basis of the dispositions of article 4^1 from the Government Emergency Ordinance no. 64/3.06.2009 regarding the financial management and use of structural instruments for the convergence objective, modified by Government Emergency Ordinance no. 26/2012, as follows: „(1) **In a term of maximum 45 working days from the Intermediary Organism registration date of the beneficiary reimbursement request**, made according to the financing contract, **the Management Authority notifies the beneficiary the payment coorespondent to the expenses authorized from reimbursement request**. (2) **For the registration of additional documents or clarification from the beneficiary requested by the Intermediary Organism, the term can be interrupted several times, without surpassing a total of 10 working days**. (3) By exception, the beneficiary notification regarding the payment of the authorized correspondent expense, in case of applying percentage reductions by the management authorities according to article 6 line (3) from the Government Emergency Ordinance no. 66/2011, will be made in a term of maximum 10 working days from the payment date. (4) **In the case of the last reimbursement request registered by the beneficiary, the term stipulated at line (1) can be prolongued with the duration necessary for making all the procedural verifications specific to the final payment authorization**. (5) The non-registration of the documents or clarifications requested by the Intermediary Organism in the term stipulated at line (2) causes the total or partial rejection of the reimbursement request."

Unfortunately, contrary to these dispositions from the financing contract, the majority of **the POSCCE beneficiaries are registering reimbursement delays of approximately 1-2 years, since there are no penalties for the financer's delay in payment stipulated in the financing contract.**

According to the dispositions of article 16 line 6 from the POSCCE projects financing model contract, all the contract correspondence is made only in writting. The financer ordinarily uses as an official mean of communication the e-mail, but the beneficiary can not use it, but must send all the contract correspondence to the financer registrar's office from Bucharest or from its regional units. In the case of the POSCCE regional units, the financer's representatives are usually answering the telephone. But, at central level, the beneficiaries can talk only by making an audience appointement, which entails a long travel of the beneficiaries from the province to the capital.

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2. The non-observance of the control legal term in issuing the financial correction Minutes

According to article 21 line 23 of the Government Emergency Ordinance no. 66/2011, **the maximum term for the verification and the issuing of the Minutes for ascertaining the irregularities and for establishing the budgetary debt is of 90 days from the finishing of the verification organization activity, to which there can be added another maximum 90 days (proven by relevant documents)**.

The financer control organisms are making the audit at the final of the project, followed by the Control Report. **In many practical situations, 12-18 months are passing from the Control Report date until the receival of the official Letter regarding the project of the Minutes for ascertaining the irregularities and for establishing the budgetary debt.**

Thus, **the Minutes for ascertaining the irregularities and for establishing the budgetary debt are null and void by not being drafted in the terms stipulated by the Government Emergency Ordinance no. 66/2011.**

By issuing the Irregularity Suspicions, the financer is covering conveniently the lack of its own reaction in the period of time from the Control Report date until until the receival of the official Letter regarding the project of the Minutes for ascertaining the irregularities and for establishing the budgetary debt.

How can a beneficiary protect himself in the situation when the financer is prefabricating Irregularity Suspicions, so that the irregularities legal verification maximum term of 180 days could never be exceeded?!

Based on article 18 line 1 of the Government Emergency Ordinance no. 66/2011, „the authorities with competences in the management of the European funds have the obligation to register and to send, in a term of 10 working days, to the control structures all the ascertainments with financial implications or with possible financial implications from the audit reports issued by the Audit authority/the internal audit organisms/the external audit organisms, as well as of those from the on-the-spot check reports."

According to article 21 of the Government Emergency Ordinance no. 66/2011, „in a term of maximum 10 days from the reveival of any request by the competent control structure, this one has the obligation of organizing the activity for ascertaining the irregularities and for establishing the budgetary debt."

Thus, in a term of 10 working days **from the Control Report date, the financer has to send to the control structures, for investigation purposes, all the ascertainments with financial implications or with**

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possible financial implications, and, in another 10 days term, the control structures have the obligation to start the activity for ascertaining the irregularities.

3. The retroactive application of the Government Emergency Ordinance no. 66/2011 to cases occurred before its entrance into force

The Government Emergency Ordinance no. 66/2011, published in the Romanian Official Monitor no. 461/30.06.2011, followed by the Government Decision no. 275/2011 for the approval of the application methodological rules, published in the Romanian Official Monitor no. 659/15.09.2011, **entered into force on 18.09.2011** (3 days after the Romanian Official Monitor publishing, according to the Constitution).

Unfortunately, in many cases, **the financer has applied these regulations from September 2011 retroactively, for situations prior its entrance into force, when these regulations did not exist, thus infringing on the principle of the law non-retroactivity in time** from article 15 line 2 of the Romanian Constitution, which stipulates that „**the law is disposing only for the future**", respectively from article 78 of the Romanian Constitution, which stipulates that „the civil law enters into force in 3 days from the Romanian Official Monitor publication date" and from article 6 line 1-2 of the Civil Code – Law no. 267/2009, modified by Law no. 71/2011 for its application, which stipulates that „ the civil law is applicable for the period of its being into force. **It does not have retroactive power. The acts and the juridical facts concluded or produced before the entry into force of the new law can not generate other juridical effects other than the ones stipulated by the law in force at the time of their drafting or producing.**"

The financer should apply in the control process the dispositions of the Government Ordinance no. 79/28.08.2003 regading the control and the recovery of the Community funds and the correspondent cofinancing funds inadequately used **and the provisions of the Government Decision no. 1306/24.10.2007** for the approval of the application methodological rules, with the subsequent modifications, **that were the regulations previously in force. In these regulations there are not stipulated the irregularities from the Government Emergency Ordinance no. 66/2011 or the applicable corrections.**

In article 2 letter a of the Government Ordinance no. 79/2003 the irregularity is defined as being „any deviation from the legality, regularity and conformity according to the dispositions of the financing contract regarding Community funds and the correspondend co-financing, as well as the

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dispositions of the contracts concluded on the basis of these contracts, that are causing damages through an ineligible expense to the general budget of the European Communities or the budgets administered by these or on their behalf and/or the budgets wherefrom the correspondent co-financing is coming". Article 1 line 1 of the Government Decision no. 1306/2007 for the approval of the application methodological rules of Government Ordinance no. 79/2003 stipulated that „the notion of legality is defined in Emergency Government Ordinance no. 119/1999 regarding the internal control and the financial preventive control". In article 2 letter o of Emergency Government Ordinance no. 119/1999 it is stipulated that „**the legality is the characteristic of an operation to obey the applicable legal provisions that are in force at the time of its performance**".

The only regulation in this matter previously in force, which stipulated the facts that could constitute contraventions and the contravention fine sanctions, was the Government Emergency Ordinance no. 34/19.04.2006 for the assignment of public acquisition contracts, that is in the competence of the National Authorithy for the Regulation and the Monitoring of the Public Acquisitions, not of the Management Authority or of the Intermediary Organism.

How could a beneficiary have respected before the time of its issuing a legal disposition issued on 18.09.2011?!

The POSCCE beneficiaries have no fault regarding the fact that the Romanian state has delayed from 2007 until 2011 the alignment of its own national legislation regarding the control of European funds with the European Union legislation, meaning COCOF 07/0037/03-RO/29.11.2007 – European Commission orientations for the establishment of the financial corrections applicable to the expenses co-financed from structural funds and from the cohesion fund for the non-observance of the public acquisition rules.

The Romanian legislator has recognized by way of Government Ordinance no**.** 14/17.07.2013 regarding some fiscal-budgetary measures for the state budget support of the sums correspondent to the financial corrections applied for the non-observance of the public acquisition legislation the fact that the non-alignment in time of the national legislation to the European Union Regulations does not justify the Intermediary organisms issuing of administrative acts for the establishing of the budgetary debt based on the regulations that are issued after occurrence of the situations that are the object of these administrative acts, so the retroactive application of the national law is not allowed.

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By this regulation, dedicated to the Regional Operational Program (POR), the legislator is making a distinction between the acquisition contracts signed before the entry into force of the Government Emergency Ordinance no. 66/2011 and the ones signed after its entry into force and the fact that these corrections are not supported by the beneficiaries, but by the state budget, through the resort ministry.

Also, the POSCCE beneficiaries, as well as the POR beneficiaries, are exactly in the same situation – all of them have signed acquisition contracts before the entry into force of the Government Emergency Ordinance no. 66/2011, which is why the existence of a regulation that is more favourable to the POR beneficiaries is discriminatory regarding the POSCCE beneficiaries.

Article 22 line 4 of the Government Emergency Ordinance no. 64/3.06.2009 regarding the financial management and use of structural instruments for the convergence objective, that stipulated the fact that „the Management Authority/the Intermediary Organism has the obligation to exclude from reimbursement the expenses made and declared by the beneficiaries for which, in the checking process, the non-observance of the national or Community eligibility rules is ascertained", has been included only by way of a fost inclus abia prin Government Emergency Ordinance no. 120/2010, published in the Romanian Official Monitor no. 888/30.12.2010, that has been applicalble practically on 02.01.2011.

We remind the fact that the recent jurisprudence of the administrative litigations courts of justice indicate the non-admitance of the retroactive application of the regulations by the intermediary organisms involved in the management of structural funds.

Thus, by way of the **Civil Sentence no. 4709/21.11.2012, the Bucharest Tribunal**, the IXth Administrative and fiscal litigations Section, admitted the application for summons regarding the execution suspension of the correction Minutes issued on an POSCCE project on the basis of the Government Emergency Ordinance no. 66/2011, that was successfully maintained in the the appeal by **the Bucharest Court of Appeal,** the VIIIth Administrative and fiscal litigations Section, by way of **Civil Decision no. 642/11.02.2013**. One of the arguments of the courts was the retroactive application of the Government Emergency Ordinance no. 66/2011on situations previously occurred that was performed by the financer: „**upon the legality of the correction Minutes there is a powerful enough doubt" and that „it is ascertained that the plaintiff is questioning the legal basis of the correction Minutes itself, the Government Emergency Ordinance no. 66/2011 being truly adopted after the**

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ending of the auction, the problem of applying in time this regulation being able to generate debates regarding the observance or the infringement of the Civil law non-retroactivity principle."

Also, by way of the **Civil Sentence no. 874/17.03.2014, the Bucharest Court of Appeal,** the VIII[th] Administrative and fiscal litigations Section, has admitted the application for summons regarding the execution suspension of the correction Minutes issued on an POSCCE project on the basis of the Government Emergency Ordinance no. 66/2011, considering that „**the Government Emergency Ordinance no. 66/29.06.2011**, published in the Romanian Official Monitor no. 461/30.06.2011, applicable in this case, followed by the Government Decision no. 875/31.08.2011 for the approval of the application methodological rules, **has become applicable practically on 18.09.2011**, respectively 3 days after the publishing in the Romanian Official Monitor, **and the defendant has apllied these regulations for the period March 2009 - February 2011 with the infringement of the law non-retroactivity principle**. Thus, upon the **the legality of the correction Minutes there is a powerful enough doubt that is questioning the legal basis of the correction Minutes itself**, the Government Emergency Ordinance no. 66/2011 being adopted after the finishing of the situations that are the object of the litigation. According to article 21 line 23 of the Government Emergency Ordinance no. 66/2011, the **the maximum term for the verification and the issuing of the Minutes for ascertaining the irregularities and for establishing the budgetary debt is of 90 days from the finishing of the verification organization activity, to which there can be added another maximum 90 days, proven by relevant documents**. In this case, **the control report was issued on June 2012, but from the date of its receival until the receival of the address registered by the paintiff in December 2013, regarding the project of the correction Minutes more than one and a half year has passed, thus the legal dispositions being infringed**."

By way of the **Civil Sentence no. 1719/30.05.2014, the Bucharest Court of Appeal,** the VIII[th] Administrative and fiscal litigations Section, has admitted the application for summons regarding the execution suspension of the correction Minutes issued on an POSCCE project on the basis of the Government Emergency Ordinance no. 66/2011, considering that că „ the law non-retroactivity principle from article 15 line 2 of the Romanian Constitution was infringed. The Government Emergency Ordinance no. 66/2011, published in the Romanian Official Monitor no. 461/30.06.2011, followed by the Government Decision no. 875/31.08.2011 for the approval of the application methodological rules, has become applicable on

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18.09.2011 (3 days after the publishing in the Romanian Official Monitor). The Tenders Book was issued in 2009, respectively the supllying contract was signed in 2009. **The defendant has applied this regulation from September 2011 retroactively, to a situation from 2009, a time when these regulations did not exist. Even if the checking activity for the observance of the public acquisition legislation has started after the entrance into force of Government Emergency Ordinance no. 66/2011, the sanction applied to the plaintiff could have been done only according to the law in force at the time of the Tenders Book publication, respectively the Government Ordinance no. 79/2003** regading the control and the recovery of the Community funds and the correspondent cofinancing funds inadequately used, approved with modifications by way of Law no. 529/2007, with the subsequent modifications, and the Government Decision no. 1306/24.10.2007 for the approval of the application methodological rules. **In these regulations there are not stipulated the irregularities mentioned in the correction Minutes or the applicable corrections in this situation.** This circumstance is able to create a seriuos doubt upon the legality of the correction Minutes."

B. Problems encountered by the beneficiaries of structural funds in the relationship with the intermediary organisms of the "Human Resources Development" Operational Sectorial Program (POSDRU)

1. Non-observance of payment contract terms. Delays in the expenses reimbursement

On the basis of the provisions of article 9 letter B line 7 of **the financing contract model** approved by way of the Management Authority for the "Human Resources Development" Operational Sectorial Program Decision no. 53/13.12.2010, „**The the POSDRU Intermediary Organism is technically and financially monitorring all the project implementation activities in order to insure their legality, regularity and conformity**".

According to the dispositions of article 9 letter A line 16, in conjunction with article 9 letter B line 9 from the financing contract model, **POSDRU Intermediary Organism has the obligation to answer the beneficiary request for an official point of view** in a term of maximum 15

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days, respectively in a term of 5 days from the receival of the request – in urgent cases.

On the basis of the dispositions of article 9 letter B line 5 from the financing contract model, „**POSDRU Management Authorithy will reimburse the expense in a term of** 30 calendar days from the registration date of the reimbursement request, accompanied by the requested documents. The term is suspended in case the beneficiary does not send the reimbursement request with the observance of the contract conditions." Starting from September 2011, the 30 calendar days payment term has been prolongued to **45 calendar days.**

Also, according to article 7 line 12 (that has subsequently become line 10) from the financing contract model, „the final reimbursement request will be sent to the POSDRU Intermediary Organism in a term of 30 days after the final of the project implementation period", this term being subsequently prolongued as follows: - starting from October 2012 to 120 days; - starting from March 2013 to 180 days; - starting from December 2013 to 270 days.

Unfortunately, **despite these dispositions from the financing contract, the majority of the POSDRU beneficiaries are registering delays in reimbursement of approximately 1-2 years, whereas the financing contract does not stipulate any penalties for the financer's delay in payment.**

2. Communication problems

According to the POSDRU project financing contract dispositions and the POSDRU Management Authorithy Instructions, any communication of the beneficiary to the financer (addendum, notification, report, reimbursement request, clarification answer) is made in writing to the financer registrar's office from Bucharest or from its regional units.

A communication problem specific to the POSDRU Intermediary Organism at central level is the fact that not even its headquarters are correctly indicated on the financer's website, and the name of the legal representative is also not the current one. The phone number indicated on the financer's website is not the current one. At the correct phone number nobody is answering or refuses to make any connection with the department chiefs. There is no fax number, and to the e-mails the answers are given with a delay in months or not at all. For talking urgent project implementation problems, the only solution is the appointment of an audience in the capital.

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It is possible to reach the absurd point when several reimbursement requests of the same project are requested for checking in three different towns from the country, with distances of approximately 500 km from the beneficiary's headquarters. At some point it is even possible for the financer to state the fact that he can no longer find a document that he himself has moved from one regional checking unit to the other until the document disappeared.

By way of the POSDRU MA or POSCCE MA instructions, the beneficiaries are requested to give reports on paper or scanned of an absolutely impressive volume, practically copies of each financial and accounting document from the beneficiaries' archives being requested at reimbursement.

3. Undersized, unprepared and financially unmotivated personnel

The contract officers or the officers that are checking the reimbursement requests are frequently changed. Unfortunately, the personnel (especially in the POSDRU IO case, and partially in the POSCCE IO case) that is checking the reimbursement requests and the annexed documents is undersized an unprepared professionally, lacking, for example, in specialists in the public acquisition, legal and even financial area. How could a financer's employee, for instance, be able to check projects implemented by public institutions from the public acquisition, legal and financial points of view and to order financial corrections of thousands and even millions of Romanian lei, when he is totally lacking the experience of implementing such projects and is unfamiliar with the organization and the legislation regulating the activity of such institutions, all of these aspects being accompanied by a financial lack of motivation.

Unfortunately, the approaching way of the beneficiary applied by POSDRU IO and POSCCE IO is of the type „ the beneficiary is our worst enemy", not of the type „we have to cooperate with the beneficiary so that we guide him constantly in the project implementation, thus avoiding the mistakes occurrence and maximizing the funds absorption rate". The problem is getting worse when the beneficiaries are public institutions, such as the financers. Thus, it get to a paradox: by the lack of support and persecution politics of the financers upon the public beneficiaries it is triggered a nationally widespread lack of structural funds absorbtion and an indebtedness of the public institutions with financial corrections mostly

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tempestuously imposed, unfundamented and even with the infringement of the structural funds control legislation, without a well-balanced evaluation of the consequences.

Unlike the control type performed by the European Commission in the projects financed directly by it, the control of the reimbursement request is made by sampling and by financially motivated, experiences and respectful specialists.

4. The infringement of the legal dispositions by deducting the financial corrections value from the pending reimbursement request

According to article 1 letter a from the POSDRU MA Instruction no. 76/12.08.2013 regarding the debt recuperation correspondent to a project by way of deducting it from other POSDRU projects of the same beneficiary, "the extinguishing of the budgetary debts resulting from irregularities by way of deducting them from the eligible value of the following reimbursement requests can be performed in the same project if the debtor did not make the payment of the debt in a term of 30 calendar days from the time of the communication of the correction Minutes, on the basis of the article 42 of the Government Emergency Ordinance no. 66/2011, with the subsequent modifications".

Also, **according to** the Instruction no. 76/12.08.2013 and of **article 41 line 2 of the Government Emergency Ordinance no. 66/2011,** POSDRU IO can make deductions only from the following reimbursement requests for the debts that are currently ascertained; **there can be no deductions from the reimbursement request pending cheking and validation**. **Firstly, the request is fully reimbursed and then the potential debt is deducted from the following reimbursement request, after the expiry of the legal contestation term**. In article 41 line 2 of the Government Emergency Ordinance no. 66/2011, the legislator refers to the „recuperation of the budgetary debt". In order for the sums imposed as corrections to be recuperated these must firstly be paid by the financer.

According to article 21 line 20, article 27 and article 43 of the Government Emergency Ordinance no. 66/2011 regarding the prevention, ascertainment and the sanctions for the irregularities arising from obtaining and the use of European funds and/or the correspondent national public funds, modified by way of the Government Emergency Ordinance no. 26/2012, „the Minutes regarding the ascertainment of the irregularities and

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the establishment of financial corrections is a debt title and is issued in order to estinguish this debt."

According to article 17 line 1 of the Government Decision no. 875/31.08.2011 for the approval of the application methodological rules of Government Emergency Ordinance no. 66/2011, „the deduction of the budget debts from the payments/reimbursements to which the beneficiary is entitled to is made upon the condition of previously issuing a debt title".

Thus, **the only document on the basis of which the financer can impose financial corrections is the Minutes regarding the ascertainment of the irregularities and the establishment of financial corrections**. **The Standard letter of information for the beneficiary regarding the Reimbursement request does not constitute the legal instrument through which the financer is able to order financial corrections upon the pending reimbursement request.**

It is already well known the fact that the European Commission has applied corrections of 25% upon the POSCCE program and twice 25% upon the POSDRU program for serious management irregularities of the Intermediary Organisms, by way of Government Emergency Ordinance no. 1287/2012, Government Emergency Ordinance no. 1212/2012 and Government Emergency Ordinance no. 680/2013. This fact has generated a real war of the Intermediary Organisms against the beneficiaries, with the purpose of recuperating these sums, especially from the beneficiaries that are public because these are more sound and lasting then the private beneficiaries.

C. Solutions

Considering the fact that **in Romania the jurisprudence in the area of the execution suspension or the annulment of the financial correction Minutes is currently creating and, at the level of the Appeal Courts and even at the Supreme Court of Justice level, there are still being issued contradictory judgements**, in the sense that some courts of justice consider that the Government Emergency Ordinance no. 66/2011 is infringing on the law non-retroactivity principle, and others have the contrary opinion, **the solutions for the beneficiaries would be the following ones**:

1. invoking the non-constitutionality exeption of the Government Emergency Ordinance no. 66/2011 in the application for summons regarding the annulment of the administrative act in front of the national court of justice;

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2. on the basis of article 267 of the Treaty for the functioning of the European Union, **the application of a proposal to the national court of justice that is judging the annulment of the administrative act application for summons, so that subsequently it would be addressed to the European Union Court of Justice a request for the issuing of a preliminary judgement regarding the interpretation and the compatibility of the** Government Emergency Ordinance no**. 66/2011 with the European regulations in this area**.

3. on the basis of article 258-260 of the Treaty for the functioning of the European Union, **the application of a complaint to the European Commission, so that this institution would initiate against Romania, as a state, an application for summons regarding the ascertainment of the infringement of obligations** (*infringement*), in the sense that a Romanian state authorithy has issued a correction Minutes that is violating the European regulations in this area and the national courts of justice did not annul this Minutes.

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1. Instruction no. 76/12.08.2013 of the "Human Resources Development" Operational Sectorial Program Management Authority regarding the debt recuperation correspondent to a project by way of deducting it from other POSDRU projects of the same beneficiary;
2. Government Ordinance no**.** 14/17.07.2013 regarding some fiscal-budgetary measures for the state budget support of the sums correspondent to the financial corrections applied for the non-observance of the public acquisition legislation, in the Romanian Official Monitor no. 472/30.07.2013, with the subsequent modifications;
3. Government Decision no. 680/4.09.2013 regarding the financial corrections imposed on the "Human Resources Development" Operational Sectorial Program (POSDRU) 2007-2013 according to the request of the European Commission, in the Romanian

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Official Monitor no. 575/10.09.2013, with the subsequent modifications;

4. Government Decision no. 1287/18.12.2012 regarding the financial corrections proposed by the European Commission on the expenses financed from the "Economical Increase of Competitiveness" Operational Sectorial Program, in the Romanian Official Monitor no. 880/22.12.2012, with the subsequent modifications;
5. Government Decision no. 1212/12.12.2012 regarding the financial corrections imposed by the European Commission on the expenses financed from the "Human Resources Development" Operational Sectorial Program, in the Romanian Official Monitor no. 852/17.12.2012, with the subsequent modifications;
6. Government Decision no. 875/31.08.2011 for the approval of the application methodological rules of Government Emergency Ordinance no**.** 66/29.06.2011 regarding the prevention, ascertainment and the sanctions for the irregularities arising from obtaining and the use of European funds and/or the correspondent national public funds, in the Romanian Official Monitor no. 659/15.09.2011, with the subsequent modifications;
7. Government Emergency Ordinance no. 66/29.06.2011 regarding the prevention, ascertainment and the sanctions for the irregularities arising from obtaining and the use of European funds and/or the correspondent national public funds, in the Romanian Official Monitor no. 461/30.06.2011, with the subsequent modifications;
8. Management Authority for the "Human Resources Development" Operational Sectorial Program Decision no. 53/13.12.2010 regarding the modification of the strategic financing contract following the legislative modifications, with the subsequent modifications;
9. Romanian Civil Code of 2009 - Law no. 287/25.06.2009, in the Romanian Official Monitor no. 511/24.07.2009, modified by the Law no. 71/2011 for the application of the Civil Code, in the Romanian Official Monitor no. 409/10.06.2011 and by the Government Emergency Ordinance no. 79/20.09.2011 for the regulation of some necessary measures for the entry into force of Law no. 287/2009, in the Romanian Official Monitor no. 696/30.09.2011;
10. Government Emergency Ordinance no. 64/3.06.2009 regarding the

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financial management and use of structural instruments for the convergence objective, in the Romanian Official Monitor no. 413/17.06.2009, with the subsequent modifications;
11. Scientific Research National Authority Decision no. 9756/26.09.2008 regarding the approval of the contract model for the assignment of non-reimbursable financial assistance from the Regional Development European Fund and from the state budget for project proposals financed from the "Economical Increase of Competitiveness" Operational Sectorial Program (POSCCE), the 2nd Priority Axis, Operation 2.2.1., with the subsequent modifications;
12. COCOF 07/0037/03-RO/29.11.2007 – European Commission orientations for the establishment of the financial corrections applicable to the expenses co-financed from structural funds and from the cohesion fund for the non-observance of the public acquisition rules;
13. Government Decision no. 1306/24.10.2007 for the approval of the application methodological rules of Government Ordinance no. 79/28.08.2003 regading the control and the recovery of the Community funds and the correspondent cofinancing funds inadequately used, in the Romanian Official Monitor no. 753/6.11.2007, with the subsequent modifications;
14. Government Decision no. 925/19.07.2006 for the approval of the application methodological rules of the dispositions regarding the assignment of public acquisition contracts from the Government Emergency Ordinance no. 34/19.04.2006 for the assignment of public acquisition contracts, public works concession contracts and services concession contracts, in the Romanian Official Monitor no. 625/20.06.2006, with the subsequent modifications;
15. Government Emergency Ordinance no. 34/19.04.2006 for the assignment of public acquisition contracts, public works concession contracts and services concession contracts, in the Romanian Official Monitor no. 418/15.05.2006, with the subsequent modifications;
16. Law no. 554/2.12.2004 regarding the administrative litigations, in the Romanian Official Monitor no. 1154/7.12.2004, with the subsequent modifications;
17. Directive 2004/18/CE/31.03.2004 regarding the coordination of the assignment procedures for works, goods and services public

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acquisition contracts, in the European Union Official Journal no. 0/1.07.2007, with the subsequent modifications;
18. Government Ordinance no. 79/28.08.2003 regading the control and the recovery of the Community funds and the correspondent cofinancing funds inadequately used, in the Romanian Official Monitor no. 622/30.08.2003, with the subsequent modifications;
19. Romanian Constitution, in the Romanian Official Monitor no. 767/31.10.2003.

III. Jurisprudence:

1. Civil Sentence no. 1719/30.05.2014, Bucharest Court of Appeal, the VIIIth Administrative and fiscal litigations Section;
2. Civil Decision no. 874/17.03.2014, Bucharest Court of Appeal, the VIIIth Administrative and fiscal litigations Section.
3. Civil Decision no. 642/11.02.2013, Bucharest Court of Appeal, the VIIIth Administrative and fiscal litigations Section;
4. Civil Sentence no. 4709/21.11.2012, Bucharest Tribunal, the IXth Administrative and fiscal litigations Section.

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