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# The Economic - Financial Inspection. Legal Regime

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# THE ECONOMIC - FINANCIAL INSPECTION. LEGAL REGIME

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**Abstract:**

*The economic-financial inspection represents a form of the financial control exerted by the state, carried out by a specialized public structure, upon economic operators. It constitutes a type of control which has the following specific features: objectives, content and procedural aspects, all these being the subject of the subsequent analysis, which uses law as tool.*

**Keywords:**

*economic operators, unique character of the economic-financial inspection, compulsory order of measures, fiscal jurisdiction.*

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**1. Legal regulations, definition and objectives of the economic-financial inspection**

*1.1. Legal regulations*. The economic-financial inspection has been created by the Government Emergency Ordinance No. 94/2001, regarding the organization and functioning of economical-financial inspection in relation to economical operators[2], in the context of the abrogation of Law No. 30/1991 on the organization and functioning of the financial control and Financial Guard. This normative act is completed by the provisions of the Government Ordinance No. 92/2002 – the Fiscal Procedure Code[3], as common law, in the fiscal field.

*1.2. Definition of economic-financial inspection.* The provisions of article 4 of the G.E.O. No. 94/2011 define the economic-financial inspection as the "control activity by means of which is verified the implementation of the measures for the incomes growth, for reducing expenses and for diminishing late payments, the observance of financial-economic and accounting regulations, but also the grounds and justifications of the amounts of money granted from the general consolidated budget for the subvention of some products and the support of some activities; the same inspection establishes the errors and flaws in the economic-financial activity, for fixing and avoiding them in the future, but also the obligations to the general consolidated budget, except for the fiscal ones".

*1.3. The objectives of the economic-financial inspection.* The objectives of the economic-financial inspection are briefly regulated at article 2 paragraph (2) of the G.E.O. No. 94/2011:

*a)* increasing the responsibility of economic operators when it comes to carry out the economic-financial activity;

*b)* strengthening budget and economic-financial discipline for economic operators.

In order to accomplish all these, the bodies for economic-financial inspection have, according to article 6 of the G.E.O. No. 94/2011 the following *prerogatives*:

*a)* checking the operations performed by the economic operators for increasing incomes, for reducing expenses and diminishing late payments, but also the grounds and implementation of the incomes and expenditures budget;

[2] Official Gazette No. 799 from November 11th 2011.

[3] Republished, Official Gazette No. 513 from July 31st 2007.



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*b)* checking the exactness and truthfulness of the financial-accounting records provided for by law and the by the acts for the constitution of economic operators;

*c)* controlling that the economic-financial indicators approved through the incomes and expenditures budgets, by the economic operators, are accordingly enforced, but also that these indicators are accordingly reported;

*d)* checking the truthfulness of the information provided in the documents justifying the amounts of money granted from the general consolidated budget for supporting certain activities, but also in the justifying documents provided for by law for granting the amounts of money mentioned above;

*e)* checking the way economic operators organize and exert the internal control and the preventive financial control;

*f)* checking the way in which the economic operators – who benefit from refundable financings guaranteed by state or loaned – create and insure the sources for the reimbursement and payment of interests, commissions and/or other costs corresponding to those reimbursable financings;

*f')* checking the way that European funds are used, and/or the use of national public funds corresponding to European funds;

*g)* carrying out some other functions which law assigns to the Ministry of Public Finance.

In brief, the provisions mentioned above present the economic-financial inspection as an activity of financial control of the state, distinguishing it at the same time from the fiscal inspection. In fact, the term "financial-economic inspection", as regulated by the G.E.O. No. 94/2011, points out the features of the public financial control, by means of which the Ministry of Public Finance, throughout its specialized structures, checks/controls the way that are observed the economic-financial indicators, approved with the incomes and expenditures budgets of some economic operators, but also the way are managed the European funds or the national funds corresponding to them (Lazăr., I., (2013) : 288)[4].

[4] See the prerogatives of the control structures, regulated by article 6 of the G.E.O. No. 94/2011.



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**2. Control bodies and entities subject to the economic-financial inspection**

*Control bodies.* Presented as a type of financial control exerted by the state, the economic-financial inspection is carried out by the Ministry of Public Finance and is exerted by means of its specialized financial structures – central or regional – as the case may be. At *a central level*, the economic-financial inspection is organized within the Ministry of Public Finance, by taking over the activity and the personnel of the Directorate General for financial control within the National Agency for Fiscal Administration, and is exerted by means of the specialized structure called "Directorate General for economic-financial inspection".

At *a regional level*, the economic-financial inspection is exerted by the specialized structures within the general regional directorates of the public territorial finances[5], which are under the *methodological coordination* of the specialized structure within the Ministry of Public Finance. The economic-financial inspection represents basically the state financial control which was formerly carried out according to Law No. 30/1991 on the organization and functioning of the financial control and of the Financial Guard[6], currently abrogated.

By *exception*, the structures of economic-financial inspection mentioned above represent[7] the control structures carrying out the functions of the Ministry of Public Finance: acknowledging the irregularities emerged in the use of European funds and/or the national public funds corresponding to them, establishing the budget debts[8], according to conditions provided for by the Government Emergency Ordinance No. 66/2011 on the prevention, acknowledgement and sanctioning of the irregularities emerged when obtaining and using European funds and/or national public funds corresponding to the latter[9].

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[5] See for that matter article 1 paragraph (5) from *Methodological norms on the creation, organization and functioning of the economic-financial inspection,* but also *the organisational chart of the general regional Directorates of public finances* approved by the Government Decision No. 101/2012, Official Gazette, No. 148 from March 6th 2012.

[6] See for that matter article 1 paragraph. (4), *Methodological norms on the creation, organization and functioning of the financial-economic inspection*, mentioned above.

[7] See for that matter the provisions of article 5[1] of the G.E.O. No. 94/2011.

[8] According to article 6 letter f[1]) of the G.E.O. No. 94/2011, these structures "check the use of European funds and/or of the public national funds related to them".

[9] This prerogative is naturally limited to the European funds implemented through the controlled economic-financial operators. Instituted at article 6 letter f[1]) of the G.E.O.



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*Entities subject to control*. The scope of the G.E.O. No. 94/2011 is limited to the operations mentioned above, which have a financial-budgetary nature and which are carried out by the economic operators, according to the regulations of this Government Emergency Ordinance. Thus, according to article 3 point 5 of the G.E.O. No. 94/2011, the economic operators are:

*a)* autonomous administrations created by the state or by an administrative-territorial unit;

*b)* companies or national firms, but also commercial firms in regard to which the state or an administrative-territorial unit represent the main shareholder;

*c)* commercial firms at which the state or an administrative-territorial unit holds a major contribution;

*d)* commercial firms or autonomous administrations at which the legal persons from letters a)-c) hold a major contribution, directly or indirectly;

*e)* national institutes of research-development, others than those functioning as public institutions;

*f)* other economic operators, irrespective of the property form, for the grounds and justification of the amounts of money granted from the general consolidated budget.

The provisions mentioned above invoke the special nature of the controlled entities: they are set up by the state or by an administrative-territorial unit or are those in regard to which the state or an administrative-unit are directly involved, on the basis of their power of control. The fact that that these entities are clearly and restrictively brought in the sphere of the control makes so that this control (the financial control lato sensu) covers *all the structures* involved in the "creation, administration and use" of the financial resources of the state and public sector.

Economic operators must not be mistaken with the public institutions as presented by the financial regulations, which are, as a rule, subject to the financial control performed by the Court of Accounts.

No. 94/20011, this prerogative is nonetheless exerted according to special regulations, that is the G.E.O. No. 66/2011 mentioned above. Thus, according to article $5^1$ paragraph (2) of the G.E.O. No. 94/2011, "The check-ups end by drafting the control documents provided for by the Government Ordinance No. 66/2001", which is a special regulation in the field.



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Economic operators carry out an activity with an economic character; yet, this kind of activity is related to the present analysis only if it is supported by funds from the budget, including the EU budget.

A part of the economic operators can be also subject to the control of the Court of Accounts, according to articles 23 and 24 of Law No. 94/1992 on the organization and functioning of the Court of Accounts[10]. Therefore, according to article 23 of this normative act: "As part of the competences provided for by article 21, the Court of Accounts performs its specific activities in relation to the following categories of public entities: (...); c) autonomous administrations; d) commercial societies where the state, territorial-administrative units, public institutions or autonomous administrations own the whole or more than a half from the share capital, alone or together; (...)".

The special legislation – G.E.O. No. 94/2011 rejects the overlap of control forms over economic operators. Thus, if an economic operator has been subject to a verification made by the Court of Accounts[11], the objectives of the public external auditor *can no longer be subject* to the economic-financial inspection [article 11 paragraph (2) of the G.E.O. No. 94/2011]. Moreover, in order to avoid any issue, the special law provides that it must be made a correlation between the Project of the annual activity program of the economic-financial inspection bodies with the annual activity program of the Romanian Court of Accounts, which is afterwards approved by the leadership of the Ministry of Public Finances.

From obvious reasons, the G.E.O. No. 94/2011 clearly excludes from the sphere of economic operators: financial-bank firms, insurance companies and the firm "Fondul Proprietatea" – S.A.

### 3. The period of economic-financial inspection and its unique character

*3.1. The period of economic-financial inspection.* The economic-financial inspection is carried out within the term of the statute of limitations of the right to establish obligations for economic operators, by notifying the economic operator involved about the inspection before it starts, with

[10] Republished, Official Gazette No. 282 from April 29th 2009.

[11] The text implicitly confirms the prevalence of the financial check performed by the Romanian Court of Accounts, as a specialized entity in the field of controlling the creation, administration and use of the financial resources of the state and public sector.



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some exceptions provided for by law[12]. The period related to the economic-financial inspection starts at the end of the previous verification of the same nature and with the same objectives, respecting the term of the statute of limitations of the right to establish obligations for economic operators.

The special law, G.E.O. No. 94/2011, article 9 paragraph (1) establishes, just like in the case of fiscal debts, a term of statute of limitations of *5* and, respectively, *10 years*, if the obligations emerge from the performance of a deed provided for by the criminal law (Aniţei, N.-C., (2011) : 80-83; Postolache, R., (2009) : 228-230). These terms start to elapse from: the 1st January of the year following the financial one already closed and, respectively, from the moment when the deed which constitutes a crime sanctioned accordingly by a permanent court sentence has been committed.

During the period between the moment when the economic-financial inspection starts and the moment when the compulsory provision is issued, the statute of limitations of the right to establish legal obligations for controlled economic operators *is suspended*[13].

For the objectives provided for by article 6 letter b) – regarding the exactness and truthfulness of the data within the financial-accounting evidence provided for by law and the acts for the creation of economic operators, the law institutes *the rule of the yearly character* – the inspection is performed one time, for each fiscal year.

The date when the economic-financial inspection starts is the one mentioned in the single work control register of the controlled economic operators and cannot exceed 3 or 6 months – for major taxpayers[14].

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[12] See for that matter the provisions of article 14 paragraph (6) of the G.E.O. No. 94/2011: "Issuing the economic-financial authorization is not necessary in the case of: a) documents control; b) some actions carried out due to requests received from certain authorities, according to law; c) performing again the economic-financial inspection, due to the decision to settle a previous complaint; d) settlement of some demands made by the economic operator; e) actions related to the documentation, analysis and follow-up of the implementation of some legal regulations".

[13] Outside this special provision, the mentioned terms are interrupted and suspended according to common law – "in the cases and in the conditions established by law for the interruption and suspension of the statute of limitations of the right to take action, according *to civil or criminal law*, as the case may be" [article 10 paragraph (1) of the G.E.O. No. 94/2011].

[14] By exception, the minister of public finance can order the performance of economic-financial inspection missions *while national and interest programs are carried out*, being



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During this period, the economic-financial inspection can be carried out separately or in combination, concomitantly or operatively; ex-post.

According to article 7 of the *Methodological Norms (MN)*, the economic-financial inspection for economic operators *precedes the fiscal inspection*, as a rule.

*3.2. The unique character of the economic-financial inspection*. The unique character is not clearly formulated as a principle in the G.E.O. No. 94/2011, but the latter contains information which configures this character from the legal point of view[15].

The uniqueness has the role to avoid the overlap of the same financial situation to several multiple verifications, by different authorities, or even by the same public authority, but also to implicitly protect the entities subject to control. In fact, uniqueness is a feature which characterizes the financial and fiscal control on the whole of its forms, being identified in all the normative acts regulating it.

By exception, the Ministry of Public Finances can decide to *check again* a certain period, if from the moment the economic-financial inspection was concluded, up to the point where the statute of limitations term is reached, *additional data* has emerged, which was not known at the moment of the verification and which influences the results of the economic-financial inspection.

**4. The legal documents concluded when an economic-financial inspection is carried out**

According to the G.E.O. No. 94/2011, when a fiscal inspection is carried out, the following legal document can be concluded: the report of the economic-financial inspection; the compulsory order to take measures; the summons on the acknowledgement and sanctioning of crimes; all these will be subsequently presented.

The provisions of article 7 of the Methodological norms on the enforcement of the G.E.O. No. 94/2011 classify the documents which an economic-financial body can draft as it follows:

established by the normative acts in regard to economic operators within the field concerned [article 15 paragraph (5) G.E.O. No. 94/2011].

[15] See for that matter the provisions of article 17 paragraph (3), with reference at article 6 letter b); article 11 paragraph (1)-(2) and paragraph (4) of the G.E.O. No. 94/2011.



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*a)* control documents: the report of the economic-financial inspection; unilateral note; summons; report on the follow-up of the observance of the measures imposed[16];

*b)* other types of control documents, which constitute *attachments* of the report of the economic-financial inspection: report of the previous verification of documents[17]; acknowledgement note[18]; intermediary report[19]; summons on the acknowledgement and sanctioning of crimes;

*c)* compulsory order.

*The project report of the economic-financial inspection.* The acknowledgments made during the control performed in deeds and documents, but also their consequences, will be recorded in a project report of the fiscal inspection, presented also to the controlled economic operator, who can express his legal point of view within *three days*, according to law.

*The report of the economic-financial inspection.* After analyzing the point of view expressed by the economic operator, the economic-financial inspection body will *complete* the report of the economic-financial inspection, by expressing its opinion as well, motivated with legal and concrete arguments.

If after checking the objectives and the documents related to them no infringements of law are acknowledged, or the existing ones do not

[16] The report on the follow-up of the observance of the measures imposed is a bilateral control act drafted in regard to the economic operator who has failed to accomplish the measures instituted by the compulsory order [article 23 paragraph (1) M.N.].

[17] The report of the previous verification of documents is a unilateral control act drafted at the headquarters of the economic-financial inspection body, on the basis of the control of documents performed in relation to the information which the body in question holds or as a result of exerting the functions provided for by law, when irregularities or lacks of correspondence emerged in the reports of the economic operator in relation to legal regulation [article 24 paragraph (1) M.N.].

[18] The acknowledgement note is the control bilateral act drafted when during the economic-financial inspection are acknowledged deeds which could not be subsequently reconstituted, but also in other circumstances evaluated by the economic-financial body [article 25 paragraph (1) M.N.]. The acknowledgement note is the control bilateral act drafted when during the economic-financial inspection are acknowledged deeds which could not be subsequently reconstituted, but also in other circumstances evaluated by the economic-financial body.

[19] It has the structure of the economic-financial inspection report; in terms of the aspects acknowledged, the intermediary report does not mention negative influences, liabilities and does not order measures either. This act is attached to the economic-financial inspection report.



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justify the drafting of a report of economic-financial inspection, given their volume and importance, a *unilateral note* will be drafted. In this note, the economic-financial inspection bodies will present the documents checked and the acknowledgements done.

*Compulsory order of measures*. On the basis of the *acknowledgments* within the reports of the economic-financial inspection, specific measures are ordered by means of an order issued by the authorized economic-financial body [article 21 paragraph (3) of the G.E.O. No. 94/2011]. This order becomes compulsory from the moment is notified to the controlled economic operator and has the control report attached.

The text above must be understood by connecting it to the provisions of article 8 paragraph (1) letter f) of the G.E.O. No. 94/2011, according to which the economic-financial inspection body has the right to *establish the obligations provided for by law which have to be observed by the economic operators*, abiding by the requests of this normative act. The ordered measures can consist in the following, according to the case: payment of the due amounts of money; removing, amending or preventing the irregularities acknowledged in relation to the activity of the controlled economic operators; recovery of the damage; suspension of the measures which are not according to the financial-accounting regulations.

The amounts of money which have to be paid to the *general consolidated budget* and which are established by the reports of economic-financial inspection, being part of the compulsory order, represent *fiscal debts,* for which are calculated the accessories established by the Fiscal Procedure Code (interests, late payment penalties or, according to the situations, late payment increases).

According to article 22 paragraph (1), the compulsory provision constitutes *a debt title*, subject to the legal regulations in force regarding the collection of fiscal debts – the Fiscal Procedure Code (Postolache., R., (2009) : 199-210).

The compulsory provision is a *financial administrative* document issues by the economic-financial inspection bodies in regard to the enforcement of the legal provisions related to the duty of the economic operator to observe the measures established. The *jurisdiction* on the compulsory order is subject, according to article 23 paragraph (1) of the G.E.O. No. 94/2011 to the Law of the Administrative Court No. 554/2004. The economic operator can make a *complaint* against the compulsory provision, which will be settled, according to article 23



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paragraph (1) of the G.E.O. No. 94/2011 by the Ministry of Public Finance; the latter can establish that regional general directorates of public finances can have also competences to settle the complaints made against the compulsory orders issued by the territorial control structures [provided for by the article 5 paragraph (2) of the G.E.O No. 94/2011][20].

The previous complaint does not suspend the enforcement of the compulsory order [article 23 paragraph (3) of the G.E.O. No. 94/2011].

*The summons*. Represents the document drafted by the economic-financial inspection body, if it is acknowledged that the situations registered during the inspection could constitute a crime, according to the criminal law[21].

*The contravention summons* is drafted by the economic-financial inspection body for the transgressions provided for by article 25 paragraph (1) of the G.E.O. No. 94/2011 and, from the perspective of its legal regime, is subject to the provisions of the common law – G.O. No. 2/2001 on the legal regime of contraventions.

**Conclusions**

Given its purpose, the economic-financial inspection is comparable to the financial control carried out by the Court of Accounts; but the two constitute distinct forms of the financial control, organized on the basis of different legal grounds and accomplished by means of control structures which are different as well, law avoiding their overlapping.

The economic-financial inspection is clearly different from fiscal inspection; the first is limited to controlling the establishment of the obligations to the general consolidated budget, law clearly excluding it from controlling the establishment of fiscal obligations, which represent the aim of fiscal inspection.

In brief, through its purpose, control structures/entities subject to control and the way is accomplished, the economic-financial inspection represents a form of the financial control, which covers a well defined sector – the economic-financial activity of economic operators.

[20] See regarding the settlement procedure the provisions of articles 34-46 of the M.N., quoted before.

[21] See for that matter the provisions of article 22 of the M.N., quoted before.



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