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# THE FINANCIAL GUARD OF THE BODIE RESPONSIBLE FOR FINANCIAL AND FISCAL CONTROL IN ROUMAIN LAW

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# THE FINANCIAL GUARD OF THE BODIE RESPONSIBLE FOR FINANCIAL AND FISCAL CONTROL IN ROUMAIN LAW

**Nadia Cerasela ANIŢEI***

**Abstract**

*Broadly, the financial apparatus of the state includes all state bodies that contribute directly or which only facilitate the achievement of financial activities by means of which the financial policy of the state is applied.*

*In a narrow sense, the financial apparatus includes specialized state bodies with responsibilities in financial matters.*

*From the above, it results that there are two categories of bodies in the financial apparatus, namely:*

*1. state bodies that have general jurisdiction, which includes the Parliament, the Presidency, the Government, the county and local councils, other central and local bodies of state administration, and public institutions of central and local subordination;*

*2. state bodies that have special jurisdiction which includes:*

*- specialized central agencies: Ministry of Finance and the Court of Auditors.*

*- local specialized bodies (those belonging to the Ministry of Finance and the Court of Auditors).*

*The Ministry of Finance is organized and operates as a specialized body of central public administration subordinated to the Government, which applies the strategy and Program of governance in the field of public finance.*

*Within the Ministry of Finance the following units operate:*

*A. With funding from the state budget:*

*1. The National Agency for Fiscal Administration including the President and Vice Presidents of:*

*The Financial Guard;*

*The National Customs Authority;*

*Public Finances County General Directorates which include: municipal public finance administrations, public financial administrations for medium taxpayers; public finance municipal administrations, public finance communal administrations, the Public Finances General Directorate of Bucharest*

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ANITEI, N., C., (2011) THE FINANCIAL GUARD OF THE BODIE RESPONSIBLE FOR FINANCIAL AND FISCAL CONTROL IN ROUMAIN LAW, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 63-76

*2. The National Authority for Property Restitution;*

*3. The National Commission for Prognosis;*

*4. The Central Commission for the establishment of compensations;*

*5. The Special Commission for Restitution of real estate that belonged to religious cults in Romania;*

*6. The Special Commission for Restitution of real estate that belonged to communities of citizens belonging to national minorities in Romania.*

*B. Activities which operate under the Ministry of Public Finance:*

*1. The printing and distribution of publication „Revista finanţe publice şi Contabilitate" (Public Finance and Accountancy Magazine);*

*2. The Financial Reporting Council.*

*A. National companies under the authority of the Ministry of Public Finance where the ministry is the representative of the state as shareholder:*

*1. National Company „Imprimeria Națională" – S.A (National Printing)*

*2. National Company „Loteria Română" – S.A. (Romanian Lottery).*

*The bodies mentioned above exercise the financial and fiscal control on material acts and operations in order to check whether the legal norms in concrete legal relations are observed. This control can be achieved either before the performance and execution of material acts and operations or together with their performance, or at a relatively short time after the material acts and operations are performed.*

**Keywords:**

*The Financial Guard; Commissariat General; County departments; Responsibilities of the Financial Guard; Specific rights, obligations and liabilities of the Financial Guard personnel; financial and fiscal control.*



ANITEI, N., C., (2011) THE FINANCIAL GUARD OF THE BODIE RESPONSIBLE FOR FINANCIAL AND FISCAL CONTROL IN ROUMAIN LAW, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 63-76

## 1. Definition, organization, structure and functioning of the Financial Guard

According to art.1 paragraph 1 of G.O. 1324/2009 *regarding the organization and functioning of the Financial Guard*[1] , the Financial Guard can be ***defined*** as the public institution of control, with legal personality, subordinated to the National Agency for Fiscal Administration, which performs operational and unexpected control for preventing, finding and combating all acts and deeds that have the effect of fraud and tax evasion, as well as other offenses set by law in its jurisdiction.

Financial Guard operates as a specialized control body and the Financial Guard Commissioners are civil servants with special status, invested with public authority of the state in relation with the performance of tasks and duties.

Financial Guard **is organized** and operates throughout the country[2] by:

1. Commissariat General;
2. County departments;
3. Department of Bucharest.

The Commissariat General is the central structure of the Financial Guard which under the leadership of the Commissioner General has the following **duties**:

a. ensures the achievement of the control strategy;

b. supervises the way in which the tasks assigned to county departments and to the Bucharest department are carried out;

c. establishes operational measures for the efficiency of current control;

d. establishes operational measures for the efficiency of the thematic control.

Commissioners of the General Commissariat have the authority to perform operational and unexpected control throughout the country.

Within the organizational structure of the General Commissariat other services, offices and departments may be established and the

[1] published in the Official Gazette, Part I, no. 800 of November 24, 2009 as amended and supplemented by G.O. 566/2011.

[2] The organizational Structure of the Financial Guard, can be seen on the website: http://www.gardafinanciara.ro/structura.php.



ANITEI, N., C., (2011) THE FINANCIAL GUARD OF THE BODIE RESPONSIBLE FOR FINANCIAL AND FISCAL CONTROL IN ROUMAIN LAW, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 63-76

number of management and executive positions are approved by order of the president of the National Agency for Fiscal Administration, on the motion of the Commissioner General.

Financial Guard is led by a Commissioner General, senior civil servant, appointed under the law.

The Commissioner General has the quality of credit release authority and performs legal duties in this capacity for the General Commissariat, county departments and the Department of Bucharest. The Commissioner General may delegate this quality to other persons appointed for that purpose. The act of delegation shall specify the limits and conditions of delegation.

The Commissioner General represents the Financial Guard in relations with third parties.

The Commissioner General shall appoint, employ, promote, sanction and dismiss, according to the law, the personnel and management staff of the General Commissariat, county departments and the Department of Bucharest, except the deputy commissioners, heads of department commissioners and the deputy heads of department commissioners of county departments and of Bucharest department, and of division heads commissioners of the General Commissariat, who are appointed by law, by order of the president of the National Agency for Fiscal Administration, on the motion of the Commissioner General.

In exercising his powers the Commissioner General shall issue decisions.

The Commissioner General shall provide by his decisions the proper performance of tasks of the Financial Guard according to the laws in force and be responsible to the Minister of Public Finance and to the president of the National Agency for Fiscal Administration for the entire activity carried out by the structure of the Financial Guard.

The Commissioner General is assisted in the management activity of the Financial Guard by 2 deputy commissioners, with the quality of leading civil servants. If the Commissioner General cannot exercise his powers in all reason, the delegation of power to his deputy is made by order of the president of the National Agency for Fiscal Administration.

The County departments and the Department of Bucharest are territorial units of the Financial Guard, without legal personality, subordinated to the General Commissariat.



ANITEI, N., C., (2011) THE FINANCIAL GUARD OF THE BODIE RESPONSIBLE FOR FINANCIAL AND FISCAL CONTROL IN ROUMAIN LAW, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 63-76

The County departments and the Department of Bucharest are headed by a Commissioner head of department.

The County and Bucharest Commissioners heads of departments are helped by a Commissioner Deputy Head of department and by Commissioners heads of division. In the absence of the Commissioner Head of Department, the activity of the department is headed by a commissioner deputy head of department or by a commissioner head of division, according to each case based on the decision of the Commissioner General.

County Commissioners and those of the Department of Bucharest have the control authority in the county, and in Bucharest, where they operate.

By order of the Commissioner General or with his consent, at the request of the commissioners heads of department, in case of specific control actions carried out in other counties, commissioners from any other county department and / or from the Department of Bucharest may participate.

## 2. Responsibilities of the Financial Guard

In order to perform its duties, namely to prevent, detect and combat all acts and deeds that have the effect of fraud and tax evasion and of other offenses set by law in its competence the Financial Guard performs the operational and unannounced inspection regarding:

a. the compliance with trade rules, aimed at preventing, detecting and removing illegal operations;

b. the mode of production, storage, movement and recovery of assets, in all places and spaces in which businesses operate;

c. the compliance with laws in preventing and combating all acts and deeds prohibited by law, according to the material competence;

d. the participation, with their own staff or in collaboration with specialized bodies of other ministries and specialized institutions in actions meant to detect and combat illicit activities that generate phenomena of evasion and tax fraud.

The Financial Guard may, at the request of the prosecutor, make findings of facts which represent trespassing of the provisions and obligations whose compliance they have the duty to check, drawing up recordings of procedures, by means of which one can evaluate the damage



ANITEI, N., C., (2011) THE FINANCIAL GUARD OF THE BODIE RESPONSIBLE FOR FINANCIAL AND FISCAL CONTROL IN ROUMAIN LAW, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 63-76

associated with the controlled operations, which are procedural documents that can be evidence, according to law.

The representation before courts and prosecuting authorities in cases where the Financial Guard draws up recordings of procedure as to committing offenses stipulated by the criminal law in the financial-tax field is made by the Financial Guard, based on the mandates issued by the National Agency for Fiscal Administration, within its competence.

The Financial Guard may perform other duties ordered by the President of the National Agency for Administration, under powers provided by law, in order to achieve without delay, its objectives.

### 3. The cooperation of the Financial Guard with other institutions abroad

According to art.10 paragraph 1 of G.O. 1324/2009 the Financial Guard cooperates with institutions with similar attributions in other states, based on international treaties to which Romania is party or on a reciprocal basis, as well as with bodies destined to combat fraud within the European Union, in cases of mutual interest, according to the protocols concluded in this regard, as the case may be, in collaboration with the specialized structure within the National Agency for Fiscal Administration.

According to paragraph 2 of the same article the actions performed for achieving the objectives set out in paragraph (1) are done through the specialized department of the organizational structure of the Financial Guard, with the notification of the president of the National Agency for Fiscal Administration, and will be coordinated and directly supervised by the Commissioner General.

### 4. Specific rights, obligations and liabilities of the Financial Guard personnel

To be able to fulfill their duty the Commissioners of the Financial Guard are authorized to:

a. carry out controls in places where goods are manufactured, stored or sold or where activities that are covered by laws in force on the prevention, detection and combating all acts and deeds which are forbidden by them are performed;



ANITEI, N., C., (2011) THE FINANCIAL GUARD OF THE BODIE RESPONSIBLE FOR FINANCIAL AND FISCAL CONTROL IN ROUMAIN LAW, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 63-76

b. to verify the compliance with legal regulations on the movement of goods on public roads, ports, railways and waterways, airports, near the customs, bond warehouses, free zones and other places where such activity takes place;

c. to verify the legality of performed activities, the existence and authenticity of documents in the production activities and provision of services or during transport, storage and marketing of goods and apply seals to ensure integrity of the property;

d. to order measures regarding the confiscation of goods whose manufacture, storage, transport or sale is unlawful, as well as of the revenues from illegal commercial activities or services and the financial and accounting documents which may serve to prove the contraventions or, where appropriate, the criminal offenses;

e. to request, based on the conditions and code of criminal procedure, the carrying out by authorized bodies of searches in public or private places - house, yards, outbuildings and gardens, where there are indications that in these places there are hidden documents, goods or the activities that have the effect of tax evasion or fraud;

f. to find documents and facts that have resulted in tax evasion and fraud, to ask the tax authorities to establish due tax liability, to request the competent enforcement bodies to take precautionary measures whenever there is the danger that the debtor may evade the prosecuting charges or to conceal or dissipate their wealth and to apprise, as appropriate, the prosecution;

g. ask the administrators of the controlled units and the involved individuals for explanations, clarifications, verbal explanations and / or in writing, as appropriate, on the findings;

h. to require, by law, certified copies of original documents, take assays, samples, specimens etc. necessary to complete the act of control. The examination of assays, samples, and specimens is made in specialized laboratories, the expenses being paid of special funds allocated in the income and expenditure budget of the Financial Guard;

i. to find contraventions and to apply the appropriate sanctions under powers provided by law;

j. to draw up papers of operational and unannounced control on the results of inspections, to apply the measures provided by the legal norms and to notify the competent authorities to seize the findings;



ANITEI, N., C., (2011) THE FINANCIAL GUARD OF THE BODIE RESPONSIBLE FOR FINANCIAL AND FISCAL CONTROL IN ROUMAIN LAW, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 63-76

k. to stop means of transportation, under the law, to verify the documents accompanying the goods and persons carried;

l. to request from financial and banking, insurance and reinsurance institutions, under the law, data or, where appropriate documents in order to process and underlie the findings on facts that contravene the legislation;

m. to wear a uniform, to dispose of, and make use of weapons and means of defense provided, according to law;

n. to use the vehicles bearing signs and warning sound and light specific devices.

The Financial Guard organizes and manages, under the law, their own data bank on the facts in its jurisdiction.

Financial Guard commissioners shall:

a. wear a uniform with specific insignia;

b. be equipped with weapons, according to law;

c. to comply with the law;

d. have a right conduct;

e. be honest and incorruptible;

f. act resolutely to prevent and combat all acts liable to diminish the authority and prestige of the institution;

g. not use for personal use and not divulge information acquired as a result of exercising their function;

h. not disclose this information, including after the termination of employment for a period of three years, unless required by legal proceedings or in case of information exchange between the competent state institutions and in case of communications made within the provisions of the law, to foreign bodies with similar responsibilities;

i. keeping the secrecy of the banking and tax information provided by law.

**5. The control performed by the Financial Guard**

The Financial Guard personnel carries out in its tasks the operational and unexpected control as:

1. current control operations;

2. thematic control operations.

The *current control* is operative and unannounced, using the control identification card, the badge of authority and the duty order.



ANITEI, N., C., (2011) THE FINANCIAL GUARD OF THE BODIE RESPONSIBLE FOR FINANCIAL AND FISCAL CONTROL IN ROUMAIN LAW, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 63-76

The *thematic control* is enforced by the Financial Guard commissioners under orders by the Ministry of Public Finance management and by the Commissioner General.

The person who orders the thematic control sets the targets, the audited entities, the period during which the check is performed and the duration of control.

For each control at least two commissioners are needed.

In case of control actions of greater danger, the teams of commissioners will be accompanied by members of the police rapid intervention specialized sub-units.

## 6. Control documents issued by the Financial Guard Commissioners

Control documents issued by the Financial Guard commissioners are administrative documents of operational and unannounced control and are presented to the General Directorate of Public Finance in whose jurisdiction the registered office of the controlled economic agent, in order to take fiscal measures, or notify the criminal investigation office, as the case may be.

The documents by means of which are ruled immediate measures resulted of the control performed by the commissioners of the Financial Guard, whose execution is the responsibility of the audited entities, constitute documents opposable to the respective entities.

The control documents signed mention that this control is operative and unannounced.

The Financial Guard acknowledges by recording of proceedings the offenses committed and applies the legal fines.

The recording of proceeding is drawn up by the control authorities of the Financial Guard in the following cases:

a) when, as a result of control actions performed in accordance with the powers established by law, determine the circumstances regarding the committing of offenses stipulated by the criminal law in the financial-fiscal field;

b) at the request of the prosecutor. In this situation, the recording of proceedings is whether a technical–scientific finding elaborated in accordance with the provisions of the Criminal Procedure Code and is submitted to the applicant until the deadline set.



ANITEI, N., C., (2011) THE FINANCIAL GUARD OF THE BODIE RESPONSIBLE FOR FINANCIAL AND FISCAL CONTROL IN ROUMAIN LAW, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 63-76

According to art.9 paragraph 4 of G.O. 1324/2009 regarding the circumstances of committing offenses stipulated by the criminal law in the financial-fiscal field, the authorities of the Financial Guard draw up recordings of proceedings by means of which they set their tax implications, based on which they notify the prosecution authorities and rule, under the Government Ordinance 93/2003 regarding the Fiscal Procedure Code, republished, with subsequent amendments, the establishment of precautionary measures whenever there is a danger for the debtor to evade prosecution or to conceal or dissipate their wealth.

According to paragraph 5 of the same article, the Financial Guard may, at the request of the prosecutor, make findings of facts which trespass the provisions and obligations whose compliance they control, drawing up recordings of proceedings, by means of which they can evaluate the injury associated with the checked operations, which are procedure documents that may constitute evidence, according to the law.

According to art.10 paragraph 3 of G.O. 1324/2009 the recordings of proceedings referred to in art. 9 paragraphs (4) and (5) may include assessments of tax loss, based on establishing the tax implications arising from avoiding the payment of taxes, of fees, of contributions and of other amounts owed to the general budget, without calculating the obligations incidental thereto, and do not represent promissory notes.

The recordings of proceedings shall be kept in a special record, administered by the issuing Financial Guard unit.

The recovery of findings on the fiscal situation, recorded in the minutes, shall be made in accordance with an order of the president of the National Agency for Fiscal Administration, a copy of the report is communicated to the competent fiscal authority which is managing the taxpayer's tax file.

Against the recording of proceeding a complaint may be drawn.



ANITEI, N., C., (2011) THE FINANCIAL GUARD OF THE BODIE RESPONSIBLE FOR FINANCIAL AND FISCAL CONTROL IN ROUMAIN LAW, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 63-76

## Conclusion

Financial control is the part of the economic control, whose aim is to let the state know about the way in which the material and financial means are established, distributed and used by autonomous administrations, companies, different institutions and other agents and the way the public funds are achieved and spent by: autonomous administrations, companies that have public capital, public institutions; to ensure financial stability; to achieve economic-financial efficiency; to develop national economy and achieve the social progress.

Financial control has the role to prevent illegal acts, to identify deficiencies and take appropriate measures to restore legality.

The objective of the financial control is to solve the errors, irregularities, deficiencies in order to fix them and avoid them in future.

In Romania, within the control structure and organizational forms we distinguish three major components:

1. **Legislative control** is performed by the Parliament by means of the Chamber of Deputies and the Senate and by the specialist advisory body (Advisory Council, the Constitutional Court). The two chambers perform the legislative control through committees, permanent committees, special committees, subcommittees, reports, inquiries, etc.;

2. **Economic-financial and fiscal control** is performed by specialized bodies, namely by the Ministry of Public Finance (through the National Agency for Fiscal Administration, Central Tax Commission, National Anti-Fraud Department, the National Customs Authority, the Financial Guard, the General Directorate of Public Finance) and the Court of Auditors;

3. **Judicial control** is achieved by the judiciary power through the following institutions:

- High Court of Justice and Cassation;
- Courts.



ANITEI, N., C., (2011) THE FINANCIAL GUARD OF THE BODIE RESPONSIBLE FOR FINANCIAL AND FISCAL CONTROL IN ROUMAIN LAW, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 63-76

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