Criminalizing fraud affecting the European Union's financial interests by diminution of VAT resources

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Abstract

This article aims to analyze the evolution of the EU Member States' obligation to criminalize fraud affecting the European Union's financial interests by diminution of VAT resources as a result of the competence recognized for the European Union in criminal matters, as well as to determine the extent to which the Romanian criminal law in the field corresponds to the provisions of the 1995 Convention on the protection of the European Communities' financial interests ("PFI Convention") and those of the 2017 Directive on the fight against fraud to the Union's financial interests by means of criminal law ("PFI Directive"). For this purpose, the author searched the relevant national and ECJ jurisprudence and presented and compared the relevant legal provisions, which were commented and interpreted according to the rules of law (grammatical, historical, logical-systematic, teleological), taking into account the economic and political context in which they were adopted. The study establishes an obligation to criminalize VAT fraud for EU Member States under the Convention and the Directive, as well as the conformity of the Romanian legislation with the European one in the field, with the consequence that the Romanian legislator should not modify the current regulation in transposing the Directive.

Keywords: *harmonization of criminal law; European criminal law; VAT fraud; financial interests of the European Union.*

JEL Classification: *K14, K34*

1. Introduction

Criminalizing fraud which has as an effect the diminution of VAT resources - expressly provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law[2] ("PFI Directive") - has long been considered to fall within the exclusive competence of the Member States and outside the scope of the 1995 Convention on the protection of the European Communities' financial interests ("PFI Convention"). However, starting from the relatively recent jurisprudence of the Court of Justice of the European Union (ECJ), it is important to establish *the existence of an obligation to criminalize VAT fraud even under the PFI Convention*, as well as the compliance of Romanian

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[2] OJ L 198, 28.7.2017.

legislation with the Convention, with the consequence of maintaining the current regulation, which does not need to be changed in the process of transposing the PFI Directive.

To this end, we will analyze the criminalization of fraud affecting the financial interests of the European Union by diminution of VAT resources as follows: the determination of the conditions under which it is an obligation under the Union law, having regard to the competence conferred to the EU in criminal matters, before and after the entry into force of the Treaty of Lisbon; the presentation of relevant provisions of Romanian criminal law - with reference to the corresponding provisions of the PFI Convention -, determining the implications of transposing the PFI Directive into Romanian criminal law.

Relevant legal provisions are presented and compared, commented and interpreted according to methods of legal interpretation (grammatical, historical, logical-systematic, teleological), taking into account the economic and political context in which they were adopted and the national and European case-law that they have generated.

2. Criminalizing fraud affecting the European Union's financial interests by diminution of VAT resources – obligation under the EU law

For almost four decades since the establishment of the European Communities, the provision of criminal sanctions (criminalization) for certain acts - including those affecting the interests of the Union or one of its policies - has been left to the discretion of sovereign Member States alone[3]. The „Community" and subsequently the "Union" competence in criminal matters was initially recognized and configured in the European Court of Justice's case-law, it was extended under the provisions of the Maastricht Treaty and it has fundamentally changed only through the Treaty of Lisbon, which introduced a clear legal basis for a wider competence in this field.

A. Pre-Lisbon period. By the judgment of 21 September 1989, in the *Commission of the European Communities v Hellenic Republic* case[4], the Court of Justice created a first breach. Thus, it stated that the Hellenic Republic has failed to fulfil its obligations under Article 5 of the EEC Treaty[5] - of cooperation and loyalty - by failing to institute criminal or disciplinary proceedings against the persons who

[3] The sphere of tax law and the sphere of criminal law derive from the hard core of national competences (Ioana Maria Costea, *Combaterea evaziunii fiscale şi frauda comunitară*, C.H. Beck Publishing House, Bucharest, 2010, p.219).

[4] ECJ, Judgment of 21st September 1989, *Commission of the European Communities v Hellenic Republic*, Case C-68/88, ECLI:EU:C:1989:339. All the judgments cited in this paper are available on the Court's website: *www.curia.europa.eu.*

[5] Article 5 of the EEC Treaty provided the obligation of the Member States to take all measures (general or special) to ensure fulfillment of the obligations arising out of the Treaty or acts of the institutions of the Community and to refrain from any measure likely to jeopardize the attainment of the objectives of the Treaty.

took part in and helped conceal the transactions which made it possible to evade the agricultural levies due on certain consignments of maize imported from a non-member country, representing Communities' own resources.

The European Union was given the power to legislate in criminal matters only in 1992, by the Treaty of Maastricht (on European Union), but this competence was limited to the adoption of measures on cooperation in this area - "justice and home affairs" - and the cross-border dimension of crime was long seen as a key justification for EU action[6]. The decision-making procedure, specific to the third pillar, involved intergovernmental cooperation, the Council acting unanimously on the initiative of any Member State or of the Commission[7].

Following the EU Treaty, at European level, in the field of criminal law, measures have been taken to *harmonize the definitions and penalties for offenses* in several areas (terrorism, trafficking in human beings, sexual exploitation of children and child pornography, trafficking in migrants, counterfeiting of euro, fraud and counterfeiting of non-cash means of payment, corruption, drug trafficking etc.), through legal instruments which were specific to the 3rd pillar (framework decisions and conventions). As regards offenses affecting EU financial interests, the 1995 Convention on the protection of the European Communities' financial interests and the protocols thereto were adopted[8].

According to Article 1(1) point b) of PFI Convention, "fraud affecting the European Communities' financial interests shall consist of: (…) (b) in respect of revenue, any intentional act or omission relating to: - the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities, - non-disclosure of information in violation of a specific obligation, with the same effect, - misapplication of a legally obtained benefit, with the same effect". According to Article 1(2), each Member State shall take the necessary and appropriate measures to transpose the provisions mentioned above into their national criminal law in such a way that the conduct referred to therein constitutes criminal offences (except in cases of minor fraud - involving a total amount of less than EUR 4 000 and not involving particularly serious circumstances under its laws -, for which penalties of a different type may be provided).

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[6] Jenia Iontcheva Turner, *The Expressive Dimension of EU Criminal Law* (August 30, 2011), „American Journal of Comparative Law", Vol. 60, 2012, SMU Dedman School of Law Legal Studies Research Paper No. 99, available at SSRN: https://ssrn.com/abstract=1980295, and the doctrine cited there.

[7] See for details, Paul Craig and Gráinne de Búrca. *EU law: text, cases, and materials* (Romanian translation), 4th edition, Hamangiu Publishing House, Bucharest, 2009, p. 154-156.

[8] The Convention of 26 July 1995 (OJ C 316, 27.11.1995, p.49) (on fraud); The Protocol of 27 September 1996 (OJ C 313, 23.10.1996) (on corruption); The Protocol of 29 November 1996 (OJ C 151, 20.5.1997) (on the interpretation by the ECJ); the Second Protocol of 19 June 1997 (OJ C 221, 19.7.1997) (on money laundering). "PFI" is the acronym for "protection of financial interests".

Although the Explanatory Report on the PFI Convention approved by the Council on 26 May 1997)[9] it is stated that the notion of "revenue" within the meaning of the Convention does not include revenue from application of a uniform rate to Member States' VAT assessment base, a provision which the Member States have consistently invoked to argue that VAT fraud does not fall within the scope of the Convention, the need to include VAT revenue within the notion of "European Union financial interests" has been consistently affirmed by the ECJ in its case-law, the Court having stated that:

- the concept of 'fraud' defined in Article 1 of the PFI Convention "covers revenue derived from applying a uniform rate to the harmonized VAT assessment bases determined according to EU rules", and "that conclusion cannot be called into question by the fact that VAT is not collected directly for the account of the European Union, since Article 1 of the PFI Convention specifically does not lay down such a condition[10];
- "the European Union's own resources include, inter alia, (…) revenue from application of a uniform rate to the harmonized VAT assessment bases (…), there is thus a direct link between the collection of VAT revenue (…) and the availability to the EU budget of the corresponding VAT resources, since any lacuna in the collection of the first potentially causes a reduction in the second"[11];
- "criminal penalties may nevertheless be essential to combat certain serious cases of VAT evasion in an effective and dissuasive manner"[12];
- "under Article 325(1) TFEU, Member States are required to counter fraud and any other illegal activities affecting the financial interests of the European Union through effective deterrent measures" and "the financial interests of the European Union include, in particular, revenue arising from VAT"[13].

We can therefore conclude that under Article 1(1) point (b) and (2) of the PFI Convention and the ECJ case-law, as summarized above, *Member States should criminalize fraud affecting EU financial interests consisting of any intentional act or omission relating to: the use or presentation of false, incorrect or incomplete statements or documents, the non-disclosure of information in violation of a specific obligation and the misapplication of a legally obtained benefit, which has as its effect the illegal diminution of the resources of the general budget of the EU, including revenue derived from applying a uniform rate to the harmonized VAT assessment bases*.

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[9] OJ C 191, 23.6.1997.

[10] ECJ (Grand Chamber), Judgment of 8 September 2015, *Taricco and Others*, case C-105/14, EU:C:2015:555, par. 41.

[11] ECJ (Grand Chamber), Judgment of 15 November 2011, *Commission v Germany*, C-539/09, ECLI:EU:C:2011:733, par. 72; Judgment of 26 February 2013, *Åkerberg Fransson*, case C-617/10, EU:C:2013:105, par. 26; *Taricco and Others*, case C-105/14, *cit. supra*, par. 38.

[12] ECJ (Grand Chamber), *Taricco and Others*, case C-105/14, *cit. supra*, par. 39.

[13] ECJ (Grand Chamber), Judgment of 2 May 2018, *Mauro Scialdone*, case C-574/15, *ECLI:EU:C:2018:295*, par. 27, Judgment of 20 March 2018, *Menci*, case C-524/15, ECLI:EU:C:2018:197, par. 19, Judgment of 5 December 2017, *M.A.S., M.B.*, case C-42/17, EU:C:2017:936, paras 30-31.

B. Post-Lisbon period. The EU competence in criminal law has been explicitly enshrined only as a result of the amendments to the Treaties established by the Treaty of Lisbon, which entered into force on 1st December 2009.

Thus, Article 83(2) TFEU provides the possibility of establishing, at European level, *minimum rules with regard to the definition of criminal offences and sanctions in an area which has been subject to harmonization measures*, if the approximation of criminal laws and regulations of the Member States proves *essential to ensure the effective implementation of a Union policy*.

As a result of the entry into force of the Treaty of Lisbon, the Commission has initiated several *directives on the approximation of criminal law legislation*, including the PFI Directive, based on Article 83(2) TFEU. It replaces the PFI Convention including the Protocols thereto for the Member States bound by it, with effect from 6 July 2019, which is also the transposition deadline[14].

Including revenue arising from VAT own resources within the scope of the PFI Directive has been extensively debated, eventually reaching a compromise solution, in the sense that the PFI Directive "shall apply only in cases of serious offences against the common VAT system", respectively where the intentional acts or omissions are connected with the territory of two or more Member States of the Union and involve a total damage of at least EUR 10 000 000[15].

The notion of *serious offences against the common system of VAT*, as established by VAT Directive[16], refers to: "the most serious forms of VAT fraud, in particular carrousel fraud, VAT fraud through missing traders, and VAT fraud committed within a criminal organisation, which create serious threats to the common VAT system and thus to the Union budget"; offences "connected with the territory of two or more Member States", "result from a fraudulent scheme" whereby they are "committed in a structured way with the aim of taking undue advantage of the common VAT system and the total damage caused by the offences is at least EUR 10 000 000"[17].

According to Article 3(1) and (2) point (d) of the PFI Directive, "Member States shall take the necessary measures to ensure that fraud affecting the Union's financial interests constitutes a criminal offence when committed intentionally" and "the following shall be regarded as fraud affecting the Union's financial interests: (…) in respect of revenue arising from VAT own resources, any act or omission committed in *cross-border fraudulent schemes* in relation to: (i) the use or presentation of false, incorrect or incomplete VAT-related statements or documents, which has as an effect the diminution of the resources of the Union budget; (ii) non-disclosure of VAT-related information in violation of a specific

[14] See Articles 16 and 17 of PFI Directive.
[15] Article 2(2) of PFI Directive.
[16] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (ELI: http://data.europa.eu/ eli/dir/2006/112/2013-08-15).
[17] Recital (4) in the preamble to the PFI Directive. The notion of *total damage* refers to the estimated damage that results from the entire fraud scheme, both to the financial interests of the Member States concerned and to the Union, excluding interest and penalties. This Directive aims to contribute to the efforts to fight those criminal phenomena. (*idem*).

obligation, with the same effect; or (iii) the presentation of correct VAT-related statements for the purposes of fraudulently disguising the non-payment or wrongful creation of rights to VAT refunds".

Accordingly, it follows from those provisions that *Member States should criminalize fraud affecting EU financial interests in respect of revenue arising from VAT own resources,* consisting of any act or omission committed in *cross-border fraudulent schemes* in relation to: *the use or presentation of false, incorrect or incomplete VAT-related statements or documents, non-disclosure of VAT-related information in violation of a specific obligation, which has as an effect the diminution of the resources of the Union budget or the presentation of correct VAT-related statements for the purposes of fraudulently disguising the non-payment or wrongful creation of rights to VAT refunds.*

3. Criminalizing fraud affecting the European Union's financial interests by diminution of VAT resources in Romanian criminal law

A. The state of the Romanian current regulation. The provisions of Article 1(1)-point b) of the PFI Convention have been transposed into Romanian criminal law by Articles 18^3 and 18^2(2) of Law no 78/2000[18], as amended by Law no 161/2003[19], the criminal offences consisting of:

- "the use or presentation of false, incorrect or incomplete statements or documents" or "the intentionally non-disclosure of information, in violation of a specific obligation", "which has as its effect the illegal diminution of the resources of the Union budget or budgets managed by the Union, or on its behalf" [Article 18^3(1) and (2)];
- "the misapplication of a legally obtained benefit, which has as its effect the illegal diminution of the resources of the Union budget or budgets managed by the Union, or on its behalf" [Article 18^2(2)].

The punishment prescribed by law is imprisonment "from 2 to 7 years and the interdiction of certain rights" [for the offense under Article 18^3(1) and (2)] and respectively, "from 1 to 5 years and the interdiction of certain rights" [for the offense under Article 18^2(2)]; according to Articles 18^2(3) and 18^3(3) of Law no 78/2000, if the abovementioned offences have caused particularly serious consequences ("a material damage exceeding 2,000,000 RON", according to Article 183 of the Romanian Criminal Code), the special penalty limits increase by half.

On the other hand, the taxpayer's determination of taxes, fees or contributions resulting in wrongful creation of rights to VAT refunds, by using or presenting false, incorrect or incomplete statements or documents, when committed

[18] Law no 78/2000, on preventing, discovering and sanctioning corruption offences (Romanian Official Journal no 219 of 18 May 2000).

[19] Law no 161/2003, on measures to ensure transparency in the exercise of public dignity, public functions and business environment, prevention and sanctioning of corruption (Romanian Official Journal no 279 of 21 April 2003).

intentionally, constitutes the offense provided by ***Article 8 of Law no 241/2005***[20] and may be concurrent with the offenses provided by ***Article 9(1) points b) and c) of Law no 241/2005***[21].

Also, regarding VAT, the fraud described in the PFI Convention may constitute the offense of tax evasion provided for in ***Article 9(1) points b) and c) of Law no 241/2005***[22], if it results in illegal deduction or reduction of VAT[23], if committed by "using or presenting false, incorrect or incomplete statements or documents". The offense provided by Article 9(1) point c) of Law no 241/2005 cannot be concurrent with the offenses of forgery in documents under private signature and use of forgery, as it represents a special form of the latter[24].

We consider that each of the mentioned offenses could be concurrent with the offenses provided by Articles 18^3 or $18^2(2)$ of Law no 78/2000 only if the facts had a distinct criminal autonomy, requiring their classification also in the provisions of Law no 78/2000; otherwise we are in the presence of concurrent norms, and the facts shall will be qualified according to the special norm - Articles 8, respectively 9(1) points b) and c) of Law no 241/2005. The opinion that the provisions of Article 18^3 of Law no. 78/2000 represent a general norm of incrimination, which applies whenever there is no other special norm, was also

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[20] According to Article 8 of Law no 241/2005, on preventing and combating tax evasion (Romanian Official Journal no 672 of 27 July 2005): *"(1) The following acts or omissions shall be punished by imprisonment from 3 to 10 years and the prohibition of certain rights: the taxpayer's determination, when committed intentionally, of taxes, taxes or contributions, resulting in wrongful creation of rights to repayments or refunds and illegal obtaining of funds from the general government budget or compensations due to the general consolidated budget. (...)".*

[21] According to Article 9(1)-point b) and c) of Law no 241/2005 (*cit. supra*): *"(1) The following acts or omissions shall constitute tax evasion offenses and shall be punished by imprisonment from 2 to 8 years and the prohibition of certain rights, if committed for the purpose of circumventing tax obligations: (...) b) the omission, in whole or in part, of the disclosure in the accounting or other legal documents of the commercial transactions performed or of the realized revenues; c) the registration, in accounting or other legal documents, of expenditure which is not based on real operations or registration of other fictitious transactions; (...)."* Concerning the offenses provided for by the Articles 8 and 9(1) points b) and c) of Law no 241/2005, as concurrent offences, see Bogdan Vîrjan, *Infracţiunile de evaziune fiscală*, 2nd edition, C.H. Beck Publishing House, Bucharest, 2016, p. 280. "The acts or omissions provided for by the Article 9(1) points b) and c) of Law no 241/2005 referring to the same trading company represent alternatives of the same offense and constitute a single offense of tax evasion provided by Article 9(1) points b) and c) of Law no 241/2005." (Romanian High Court of Cassation and Justice, the panel of preliminary rulings for clarification of legal aspects, decision no 25/2017, published in the Romanian Official Journal no 936 of 28 November 2017).

[22] See *supra*, note no. 20.

[23] As regards the classification of the wrongful deduction of VAT or the reduction of the VAT collected as being the offense provided for in Article 9(1) point c) of Law no 241/2005 and not that provided by Article 8(1) of Law no 241/2005, see Neculai Cârlescu, *Evaziunea fiscală. Comentarii şi exemple practice*, 3rd edition, C.H. Beck Publishing House, Bucharest, 2015, pp. 234, 240. To the contrary, see Dragoş Pătroi, Florin Cuciureanu, *TVA intracomunitar. Frauda Carusel. Rambursarea TVA*, C.H. Beck Publishing House, Bucharest, 2009, p.95.

[24] Romanian High Court of Cassation and Justice, the panel for the settlement of appeals in the interest of law, Decision no 21/2017 (published in the Romanian Official Journal no 1024 of 27 December 2017).

expressed by other authors[25]. Additionally, researching national judiciary practice, no decisions applying Article 18^3 of Law no 78/2000 could be identified. An argument that the offenses provided by Law no 241/2005 should have "priority" consists of the limits of the imprisonment punishment laid down by law, which are higher than those of the offenses provided by Law no 78/2000; thus, the other solution would contravene the provisions of Article 325(2) TFEU, according to which "Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests".

On the other hand, since it falls within the scope of the PIF Convention, VAT fraud can also fall within the scope of the Articles 18^3 and 18^2(2) of Law no 78/2000, as these texts transpose those of the Convention. Since, in accordance with the principle of interpretation in the light of European law, the national provisions transposing European law must be interpreted in the light of the wording and purpose of the transposed act[26].

Synthesizing, *fraud affecting the financial interests of the European Union by illegal diminution of VAT revenues is criminalized by Romanian criminal law according to Articles 8 and 9(1) points b) and c) of Law no 241/2005 and, in the alternative, to Articles 18^3 and 18^2(2) of Law no 78/2000. These texts comply with the requirements of the PFI Convention, the first two being supplemented by the general provisions of the last two articles, which represent in fact a translation of the provisions of Article 1(1) point (b) of the PFI Convention.*

B. Implications of transposing the PIF Directive into Romanian criminal law. Fraud related to "revenue from VAT own resources", described in Article 3(2) point (d) of the PFI Directive, has its correspondent offences in Romanian criminal law, namely in the provisions of Articles 8 or 9(1) points b) and c) of Law no 241/2005, and, in the alternative, in the provisions of Articles 18^3 of Law no 78/2000, irrespective of the cross-border nature or the amount of the damage caused. These texts cover the third form of offense defined at point (iii) from Article 3(2) point (d) of the PFI Directive, consisting of "the presentation of correct VAT-related statements for the purposes of fraudulently disguising the non-payment or wrongful creation of rights to VAT refunds", if "committed in cross-border fraudulent schemes", in particular, "carousel" fraud[27], with a recurrent character in the field.

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[25] Ioana Maria Costea, *Fiscalitate europeană. Note de curs,* Hamangiu Publishing House, Bucharest, 2016, pp. 384-385.

[26] On the principle of interpretation in the light of European law, see, Helmut Satzger, *International and European Criminal Law*, second edition, C.H. Beck Publishing House, München, 2018, pp. 113-118 and 122-123, and, *mutatis mutandis*, André Klip, *European Criminal Law. An Integrative Approach*, 3rd edition, Intersentia, 2016, pp.161-172; Paul Craig, Gráinne de Búrca, *op. cit.*, pp. 358-368, and the doctrine and jurisprudence cited there.

[27] For example, a supplier established in Member State 1, the so-called conduit company, supplies goods (VAT exempted) to a second company established in Member State 2, the so-called missing trader. This trader then takes advantage of the VAT-exempted intra-Community supply of goods and resells the same goods in the domestic market of Member State 2, offering very competitive

As mentioned, the scope of the PFI Directive with regard to VAT fraud was limited to offenses "connected with the territory of two or more Member States", "result from a fraudulent scheme" whereby they are "committed in a structured way with the aim of taking undue advantage of the common VAT system and the total damage caused by the offences is at least EUR 10 000 000". Therefore, the protection of EU financial interests in this respect is more limited than that offered under the PFI Convention, which allowed no penalties other than criminal penalties except for minor fraud involving a total amount of less than EUR 4,000.

Thus, since the PFI Convention has been fully transposed into Romanian law, we consider that *the transposition of Article 3(2) point (d) of the PFI Directive does not require the amendment of national law, as the latter already meets the requirements of the EU Act* (the PFI Directive providing reduced protection as compared to the Convention).

However, if the Romanian legislator would opt for introducing this special form of VAT fraud under the Directive (by translating the text, as he did in the case of the PFI Convention), this would lead, due to overlapping texts, to difficulties in interpreting and applying the law, respectively to the legal framing of facts that would circumscribe both the offenses provided by Articles 8 or 9(1) points b) and c) of Law no 241/2005, as well as by Article 18^3 of Law no 78/2000. In order to prevent such negative consequences, it should also be stipulated that if the deeds described in the newly introduced text of criminalization constitute, according to the Criminal Code or special laws, more serious crimes, they are punished under the conditions and with the sanctions laid down in these laws; such a rule would be similar to those of Article 16 of Law no 78/2000[28] or of Article 281 of Law no 31/1990 on companies[29].

prices. It can do this because, although the trader charges VAT to its customer, it does not remit this to the tax authorities, thereby increasing its profit margins. Subsequently, the missing trader disappears without trace, which makes the tax collection impossible in the state in which goods or services are consumed. Under a variant of this scheme, a customer of the missing trader (the broker) sells or pretends to sell the goods abroad, sometimes back to the conduit company, and claims back from its tax authorities the VAT that it paid to the missing trader. The same transaction can be repeated in a circular manner, and is thus known as 'carousel fraud'. This scheme is described in the Special Report of the European Court of Auditors, no 24/2015, *Tackling intra-Community VAT fraud: More action needed* [pursuant to Article 287(4), second subparagraph, TFEU], available at https://www.eca.europa.eu/Lists/ECADocuments/SR15_24/SR_VAT_FRAUD_RO.pdf.

[28] According to Article 16 of Law no 78/2000, "If the deeds provided in this section constitute, according to the Criminal Code or special laws, more serious crimes, they shall be punished under the conditions and with the sanctions laid down in these laws."

[29] According to Article 281 of Law no 31/1990 (Romanian Official Journal no 1066 of 17 November 2004), "The acts provided in the present title, are sanctioned with the penalties provided by Criminal Code or special laws if, according to them, they constitute more serious crimes".

4. Conclusions

EU Member States have the obligation to criminalize VAT fraud under both the PFI Convention, having regard to the case-law of the CJEU, and the PFI Directive, which expressly provides for it.

Fraud affecting the financial interests of the European Union by illegal diminution of VAT revenues is criminalized by Romanian criminal law according to Articles 8 and 9(1) points b) and c) of Law no 241/2005 and, in the alternative, to Articles 18^3 and 18^2(2) of Law no 78/2000. These texts comply with the requirements of the PFI Convention and, implicitly, those of the PFI Directive.

The transposition of Article 3(2) point (d) of the PFI Directive does not require the amendment of the national legislation, since the latter already meets the requirements of the EU act; still, if the Romanian legislator opts for introducing this special form of VAT fraud under the Directive, its subsidiary character should be stipulated also, in order to prevent difficulties in interpreting and applying the law, due to overlapping texts.

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