

MANIFESTATIONS OF THE TAX FRAUD IN INTRACOMMUNITY ACQUISITIONS AND DELIVERIES

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The present paper deals with the problems of the intracommunity operations in Romania according to the current legislation. The intracommunity acquisitions and deliveries of goods are being presented as well as the intracommunity acquisitions and carrying out of services. We have also referred to the registering obligations towards the fiscal institutions, types of declarations and the penalties for not obeying the current legislation in the case of the economic agents undergoing intracommunity operations. At the end of the present paper, we have chosen to present three cases of fiscal fraud as well as the measures which have been adopted by Romania in 2012 in order to prevent the fiscal fraud in the field of intracommunity acquisitions.

As a research method, the authors have used not only the theoretical approach, but also the empirical one. First of all, the theoretical approach has been chosen because there have been analyzed a lot of notions on intracommunity acquisitions and deliveries of goods and services in accordance to the current legislation. Secondly, we have considered the empirical approach as we have concentrated on three fiscal fraud cases highly met in the case of the intracommunity trade.

Even though Romania, as a European state member, has a public debt rate of 32% of GDP, which is far below the average EU 27, it still continues to borrow money from the international financial institutions in order to cover the public debt. Besides the measures presented in this paper, we propose fighting against the fiscal fraud by using all the possible means of attracting supplementary budgetary sources.

Cuvinte cheie: intracommunity acquisition, intracommunity delivery, fiscal registering, fiscal fraud.

Clasificare JEL : G28, G30, G38.

1. Introduction

The intracommunity operations for goods and services are defined by the Romanian Fiscal Code and the approved standards of the Fiscal Code.

The intracommunity acquisition of goods is defined as the process of buying mobile tangible goods which are delivered or transported to a destination indicated by the buyer, the supplier or any other person in the supplier's account or the buyer's one towards a member state, another one except for the one that has sent the transport or delivered the goods. (Law no. 571/2003)

The intracommunity delivery of goods is defined as the process of selling tangible mobile goods which are delivered or transported from one member state to another member state by the supplier or the person towards which the delivery is realized or another person in their account (Law no. 571/2003, art. 128). If a intracommunity delivery takes place in a member state in which the goods expedition or transport starts, then in another member state the intracommunity goods acquisition takes place-this operation is defined as a „mirror reflection” operation. Service carrying out represents any operation that is not considered goods delivery. Intracommunity service carrying out is defined as the operation realized by performers live in Romania for some beneficiaries, taxable persons, who live in the EU territory. The intracommunity services acquisition is the operation realized by performers from the EU for some beneficiaries, taxable persons, who live in Romania.

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2. Rules regarding the taxation in the case of intracommunity operations with goods and services

In the case of intracommunity goods acquisitions and deliveries as well as the intracommunity services acquisitions and carrying out realized by Romanian legal persons, registered as VAT payers for the operations done in Romania, as a consequence of exceeding the annual turnover of 65.000 euro (Law no. 571/2003, art. 112⁶), or optionally, there is no obligation for registration at the fiscal authority. The fiscal registration code is used in case of the operations done in Romania and for those with partners from the EU.

For intracommunity services acquisitions and carrying out performed by a taxable person from Romania, who is not registered as a VAT payer for the operations done in Romania, there is not limit for the intracommunity operations for which there is a registration obligation for VAT; in this case the performer from Romania who performs services for a certain beneficiary, registered as a VAT payer in EU member state, or a certain beneficiary from Romania who purchases services from a performer registered as a VAT payer in a EU member state, has the obligation to register himself as VAT payer for these operations in Romania. In this case the obtained fiscal registration code will be used for the commercial transactions with economic agents from the EU.

According to the 8th Directives of CE from 12 February 2008, starting with January 1st 2010 each member state has the obligation to name, according to its own fiscal legislation, the beneficiary of services carrying out as a VAT payer; in this situation most of the services are taxed according to „the principle of destinations”.

As a general rule the place for intracommunity services carrying out is considered:

- the place where the performer has established the centre of his economical activity for services carrying out toward untaxable persons (B2C- „business to customer”);
- the place where the beneficiary is, in the case of services carrying out for the taxable persons (B2B- „business to business”);

The exceptions from the general rule have been mentioned in 8th Directives and included in the national legislation (Avram and Avram, 2012). They refer to:

- services carrying out for real estate, in this situation the place is considered to be the location of that particular house;
- services for passenger transport-the place is considered to be the place where the transport is performed according with the covered distances;
- services for restaurants and catering firms-the place is considered to be the place of the actual carrying out;
- services for renting a certain means of transport for a short period of time-the place is considered to be the place where the means of transport is actually at the customer’s disposal;
- services for restaurants and catering supplied on the ships board, airplanes or trains during an operation of passenger transport performed within the EU; in this case the place of services carrying out is the place where the transports starts.

The economical agents which perform intracommunity operations, even if these operations imply goods and/or services acquisitions, goods and/or services delivery have the following obligations (Law no. 571/2003):

- registration in the “Intracommunity Operators Register”, where there is a record of all the taxable persons and untaxable legal persons who perform intracommunity operations;
- the registration of the tax deduction by 25th of the following month in which the intracommunity operations have been performed;
- the registration of the summary declaration by 25th of the following month in which the intracommunity operations have been performed; in this declaration the following details will be mentioned:
 - ✓ informations regarding the identification of the European supplier and beneficiary;
 - ✓ operation type (intracommunity goods acquisition, intracommunity services acquisition, intracommunity goods delivery, intracommunity services delivery);
 - ✓ the value of the intracommunity operations;

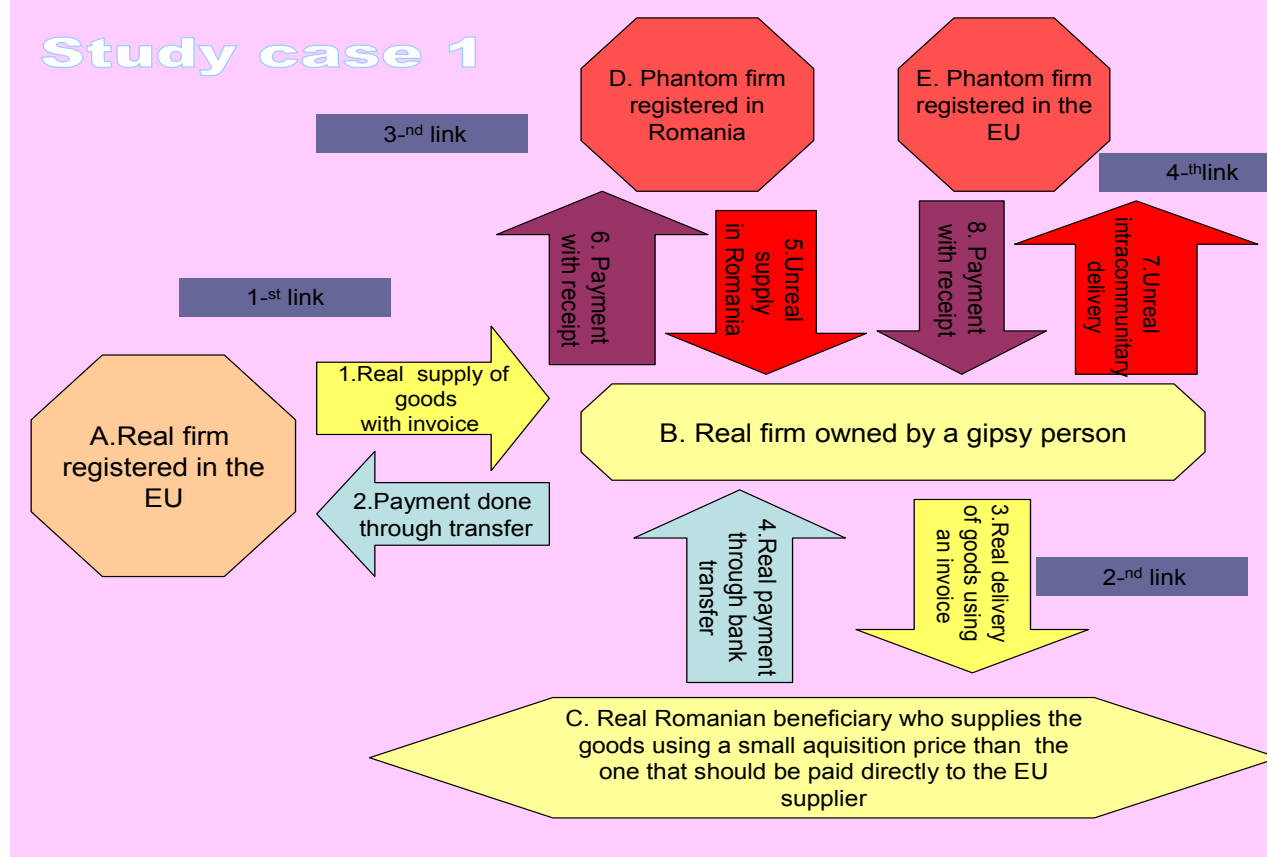
There are a lot of contraventions regarding the infringement of law in the field of intracommunity operations. Here they are (OG no. 92/2003):

- there is 1.000 to 5.000 lei fine for not registering on time the recapitulating declarations;
- a 500 lei to 1.500 lei fine for offering incomplete or inaccurate recapitulating declarations;
- if there are persons which have performed intracommunity operations without being registered in the „Intracommunity Operators Register” they will receive a fine starting from 1.000 lei up to 5.000 lei;

3. Cases of fiscal fraud in intracommunity operations with goods

A. Here it is one of the cases identified by the Financial Guard, a case in which several firms dealing with sugar, oil and other food products have been involve; the case is described in picture no.1

Study case 1



Source: Own processing

Picture no.1 Cases of fiscal fraud with food products

1st link-real goods delivery with real documents

Firm A is a real one registered in a EU member state; it delivers goods for a B firm from Romania according to the market price; the delivery is a real one based on an invoice and accompanied by transport papers (the CMR is used in the case of truck transport); the delivery done from A to B firm is considered intracommunity delivery so the firm A benefits of VAT exemption from taxation. This means that the invoice is done without VAT. The payment is done through bank transfer at the value mentioned in the invoice and it is a real operation;

2nd link-real goods delivery with real documents

Firm B is real and is usually owned by gypsy persons, the firm is registered in Romania; the firm delivers the goods purchased/bought from A firm to another C firm which is also real; the goods delivery is also real and mentioned in an invoice where the VAT value is registered because the operation takes place between two Romanian firms;

- the unitary price for the marketed good, registered in the invoice from B to C, is smaller or at least equal to the price paid by B to the provider from the EU; at first sight this operation has no economical sense since the marketing price is smaller than the purchase price, but considering the fact that the invoice sent from B to C includes the VAT the total value of the invoice sent from B to C is bigger than the total value of the invoice from A to B;
- B cashes from C the value of the entire invoice through bank transfer, the operation being a real one;
- the value of the sum cashed through bank transfer by B from C is bigger than the one paid by B to A in the EU;

3rd link-unreal acquisition of goods using false documents

- taking into account that B writes the invoice for goods delivery to C, including the 24% VAT valid in Romania, this sum should be paid to the generally consolidated state budget by the 25th of the next month;
- in order to avoid paying the sum corresponding to the VAT, B gets some documents from another phantom firm—we'll call it D—fictitiously registered in Romania. These documents are supplying documents which mention some goods that have not really been purchased by B from D. The value of the fictitiously supplied goods is almost equal to the value of goods traded from B to C, the reason being to cancel the VAT value collected from the invoice sent by B to C through illegal VAT deduction from the invoice sent from D to B;

- the payment to B from D is done using a fake document- a cash receipt;

4th link-unreal delivery of goods using unreal documents

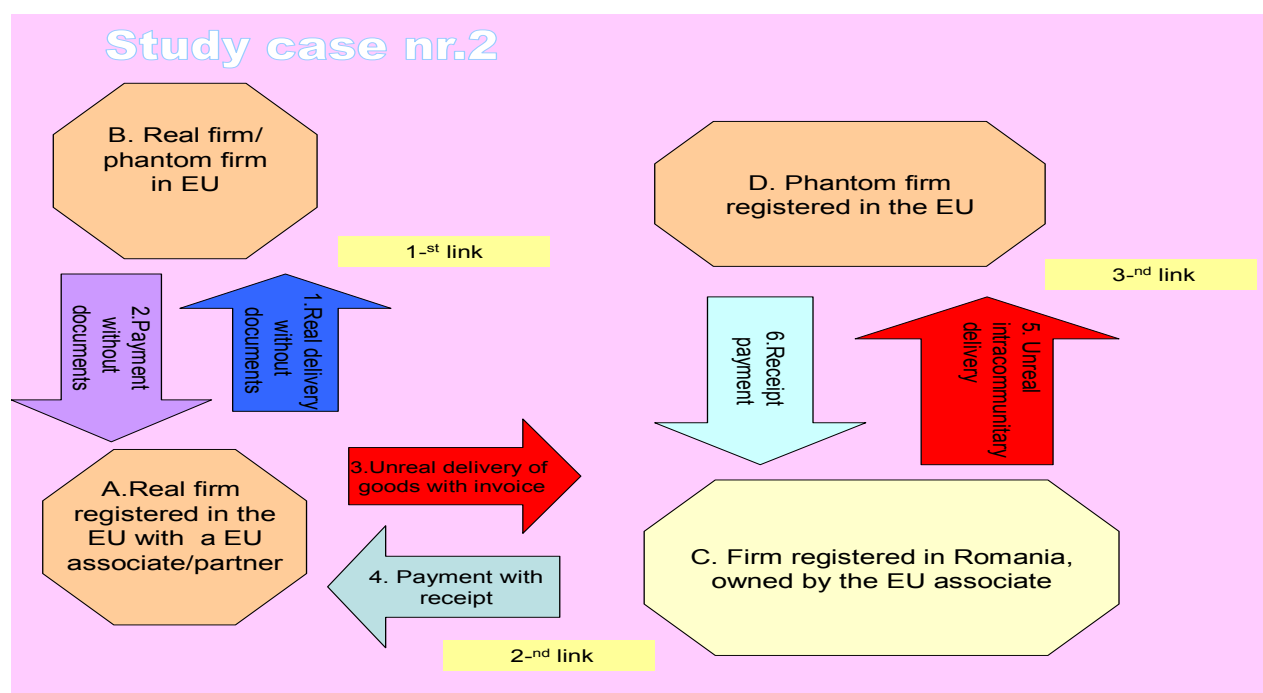
- in order to cancel the VAT collected from the invoice sent from B to C, an invoice for the fictitious goods supply by B from D is written; in this way B registers itself with huge goods stocks whose existence can't be explained because they really don't exist;
- in order „to get rid of” these stocks another unreal invoice is written- this invoice refers to goods delivery from B to a fictitious E beneficiary from the EU, and the value of this invoice is unreally paid using a cash receipt from E to B;
- the intracommunity delivery being VAT tax free, then B can discharge the stocks fictitiously got from D;

The Fiscal Fraud takes place in Romania and it is realized by B having several implications:

- the VAT is not paid for the operations of real delivery of goods to C and along the entire reporting period, B appears registered with having to cash VAT from the state budget;
- the unpayment of profit tax for the real value of sales considering the fact that it gets an extremely small profit or at the end of the reporting period it is at loss.

C also takes advantage from the fiscal fraud done by B. C purchases goods at a smaller price than the one that should have been paid to the A supplier from the EU. In these circumstances we can state that C is guilty of disloyal rivalry as it purchases products/goods under the market price. This brings to an increase of sales and profits too as compared to a firm that purchases goods at the market price.

B. Here it is another case concerning fraud in the case of intracommunity operations with goods such as means of transport, electronics, appliances etc. The Financial Guard has identified the following stages of this operation which is described in picture no.2



Source: Own processing

Picture no.2 Cases of fiscal fraud with industrially goods

1st link-real delivery of goods without writing the documents

Firm A is real and registered in the EU being owned by an associate who is a EU resident; A delivers goods to different, real or phantom firms from the EU without writing the documents required for goods delivery and income cashing. These are not written in order to avoid the payment of the profit tax and VAT also in the European state where the firm is registered and where the associate resides. In this way the operation of goods delivery and profit cashing is done illegally;

2nd link-unreal goods delivery with fictitious documents

For the goods really delivered from A to B, unreal documents are fictitiously written from A to C. We have to mention the fact that C is registered in Romania and its associate is the same person from A, the person who is a

European resident. This delivery apparently looks like a real goods intracommunity delivery-VAT tax free; in this particular case A writes the invoice for the C without mentioning the VAT contribution;

3rd link-unreal goods delivery with fictitious documents

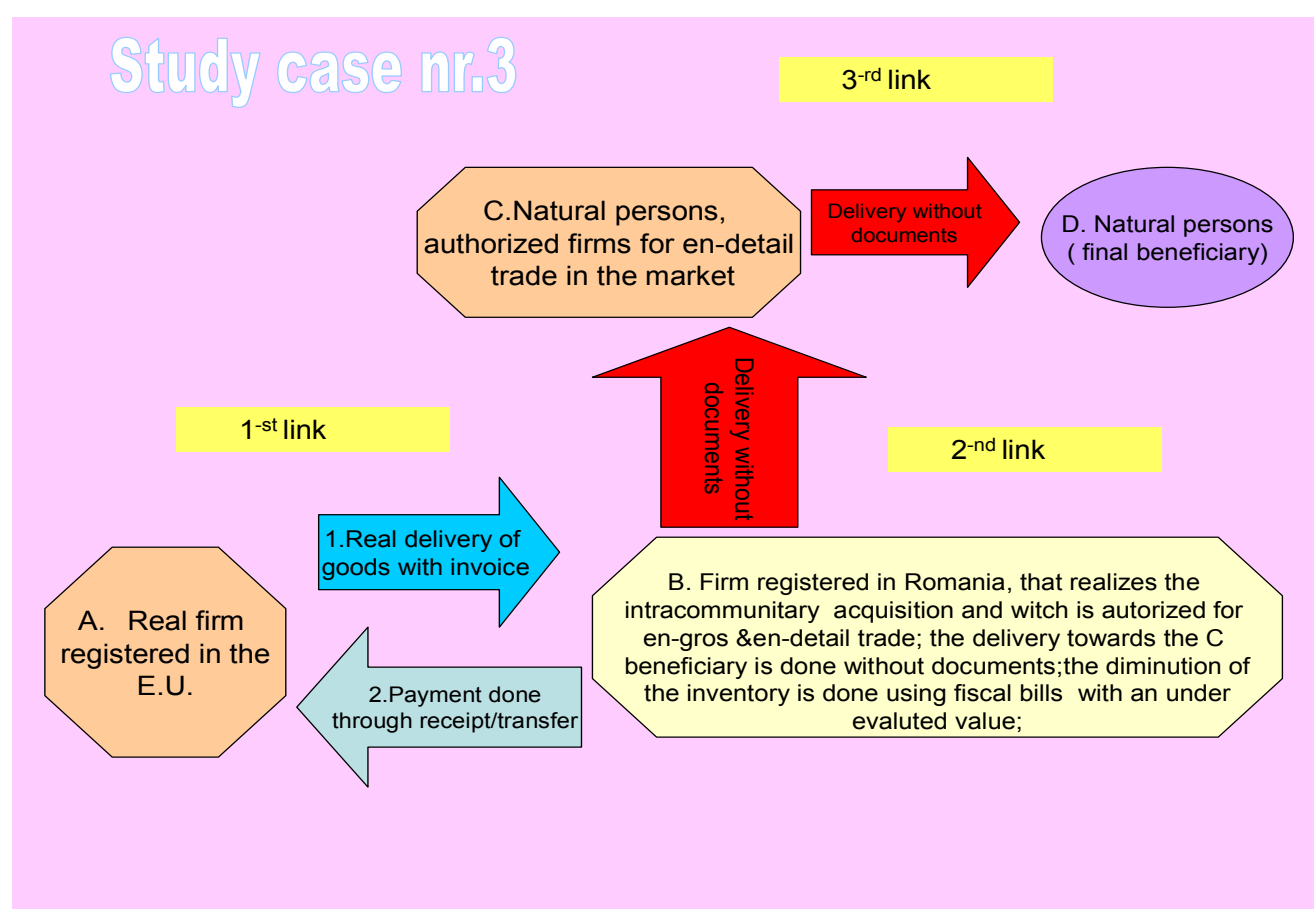
The goods which have not really purchased from A by C, are later traded by C towards another firm; this D firm is in fact a phantom firm, registered in the EU. The whole operation is registered in an invoice in which the VAT contribution is not mentioned. The firm D may really exist in the EU, but C gets its identification details and in this way an identity theft occurs because even if D really exists, it doesn't know anything about the unreal delivery done by

The payment from D to C is done through a cash receipt.

The fiscal fraud is realized by A and it takes place in a EU member state where this firm is registered. The fiscal fraud consists in:

- VAT unpayment for the real operation of goods delivery towards B;
- the not paying of a tax for profit in the case of the income got from the sales done towards B;
- the C firm is used to get rid of A's administration, this administration derives from the delivery of goods from A to B. In the same way the 4th firm D is used to get rid of C's administration which has resulted from a fictitious purchase of goods from A

C. Another case instrumented by the Financial Guard describes an intracommunity fiscal fraud referring to the category of fruits, vegetables and flowers; this is presented in picture no.3



Source: Own processing

Picture no.3 Cases of fiscal fraud in commerce with fruit, vegetables and flowers

1st link-real delivery of goods with genuine sale documents

A really exists and it is registered in the EU. B is real and it is registered in Romania. The operation of delivery of goods from A to B is real and done using a fiscal invoice and transport documents (CMR for auto transport). The invoice from A to B is considered intracommunity delivery and it is done without the VAT value from the EU expedition state. The payment for the goods delivered from A to B is done through bank transfer or receipt.

2nd link-real goods delivery without sale documents

B firm is registered in Romania and there are two situations:

- a) B is a VAT payer in Romania for exceeding the turnover of 65.000 E or it is declared as an optional VAT payer (it chooses to pay it at the beginning of the business or along the activity even if it has not exceeded the limit of 65.000 E).

In this particular case the fiscal registration code for the operations performed in Romania is communicated to A in order to take advantage of an exemption of taxation and to register the delivery without VAT;

b) B is not a VAT payer in Romania, but it is registered as being a VAT payer for the intracommunity operations. In this case, for all the operations performed in Romania, B writes invoices without VAT because the turnover has not exceeded the limit of 65.000 E and the firm has not optionally declared itself as a VAT payer for all the operations taking place in Romania. The assigned fiscal code will be used only in relation to the EU and not for the trading operations performed on the Romanian territory. Even in this case the communication of the VAT code to A - assigned to B for intracommunity operations-will allow A to invoice goods without VAT, the operation being similar to a common intracommunity delivery.

The difference between the 2 ways of registering B consists in the following situations:

- if B is registered as a VAT payer for all the operations performed in Romania, then it has to pay a VAT only when selling goods;
- if B is registered only for intracommunity operations it will have to pay a VAT when purchasing goods in Romania (24% of purchasing value);

All the goods purchased by B are traded without documents to another C firm that can be an authorized economical agent for retail trade on the market (company, natural person, individual enterprise). The diminution of the inventory for all goods illegally delivered from B to C is done by issuing fiscal bills using a fiscal electronic device. The unitary prices used are closed to the value of goods acquisition in the EU, as if the merchandise was directly sold to natural persons.

3rd link-real delivery of goods without selling documents

The goods purchased by C from B without documents are in fact traded by C to natural persons without documents. The persons are final beneficiaries of the goods intracommunity purchased by B. The fiscal fraud is realized in Romania by two firms B&C. Besides the fraud which is realized in Romania, we can also have a fiscal fraud in the EU member state that delivers the goods at an undervalued market price according to the invoice, the price difference is cashed illegally.

4. Measures adopted by Romania in 2012 for the prevention of the fiscal fraud in the field of intracommunity acquisition

D.G.T.I. (the General Department of Informational Technology) of A.N.A.F (The National Agency for Fiscal Administration) has designed an application called „Traffic control” regarding the intracommunity acquisitions. Beginning with the 15th of March, according to the A.N.A.F. President’s Order no. 406/2012, it is the Financial Guard’s duty to:

a) continuously monitor all the intracommunity goods acquisition transports in all the Romanian customs offices with EU state members, such as Bulgaria & Hungary. Within this application there have been identified categories of goods with a high fiscal risk of tax dodging;

b) when this order no.406/2012 has been introduced, that was in March 2012, there were 11 categories of goods with a high fiscal risk of tax dodging:

- fruits & vegetables;
- flowers;
- sugar;
- tinned foods (boxes, jars, pet);
- meat, other derived meat products & eggs;
- excised energy products (diesel oil, petrol, coal, fuel oil);
- unexcised energy products (oil engine);
- tobacco products;
- living animals;
- coffee;
- other goods with a high fiscal risk;

In the category of „other goods with high fiscal risk” we introduce goods for which there have been presented no documents to prove their origin when checking in. Within the same category we can include the transports with undecipherable information regarding the merchandise which is being transported, undecipherable information on the transport CMR letter or those which are considered suspicious by the Financial Guards’ Commissioners because the quantity of goods registered in the documents is too small as compared to the full capacity of the means of transport, the delegated driver does not have any information on the category of goods he transports and the actual destination)

c) later this number of categories has been modified, so at the moment (July 2012) there are 7 categories as follows:

- fruits & vegetables;
- flowers;
- sugar;

- tinned foods (boxes, jars, pet);
- meat, other derived meat products & eggs;
- unexcised energy products (oil engine);
- other goods with high fiscal risk;

d) the activity of the Financial Guard has been structured on 3 directions in each customs office at the border with EU state members:

- P1 station-where all the intracommunity acquisition transports entering Romania are introduced in the “traffic control” system (these transports include transitory transports or those whose destination is represented by Romanian firms). The details that need to be introduced in the system are:
 - the registration number of the given means of transport;
 - the category of the goods which are transported;
 - the identification information of the goods’ beneficiary (this is required if the recipient is registered in Romania);
 - the “transit” sign needs to be mentioned when the goods are only in transit in Romania and the final recipient is another EU state member;
 - the file containing the scanning of the transport document presented while passing through the customs (CMR);
- P2 station-that lies at 100-200 distance from P1 station. At this station all the transports belonging to the high fiscal risk category are sealed (the transitory ones are also included here). In the case of those goods whose recipient is not a Romanian firm, the means of transport circulates sealed within the Romanian territory and it will be unsealed by the Financial Guard from the county where its destination is.
- P3 station-is situated on the way out Romania towards another EU state member. At this station the registration plates of all the means of transport are being checked in the “traffic control” system; if they are sealed, the applied seal is recovered and the documents for the removal of the seal are written. We may encounter exceptional situations where the transport appears in the system as being sealed and when passing through the customs this particular seal is missing. In this particular situation the police authorities are informed in order to inquire about it.

5. Conclusions

The intracommunity operations have a strong impact on the Romanian economy with major implications at the level of the formed resources at the general consolidated state budget. The sums of money coming out from the intracommunity operations(VAT and profit tax) should be registered in the accountancy of the economical agents and effectively paid at the state budget without a diminution of the tax base through different commercial or book keeping „tricks”.

The measures for the prevention of the fiscal fraud adopted by Romania through the Financial Guard (measures which refer to the permanent monitoring of the goods transports for intracommunity acquisitions, the introduction of some goods in the category of goods with a high fiscal risk and the sealing of the transports of goods included in the category „high fiscal risk”, up to the actual unloading at the Romanian beneficiary or at the Romanian border in case of transitory transports) have diminished the phenomenon of fraud in intracommunity operations. We consider that these measures play a special role but they are not enough when it comes to:

- the lack of employees in the Financial Guard Departments (at one customs office in 24 hours we need a number of 16 commissioners);
- the lack of time to thoroughly check the connection between the goods registered in the transport documents and those which are in the truck at the moment;
- the lack of technical support and employees to check the connection between the quantity registered in the transport documents and the one existing in the truck.

Furthermore these operations are to be taken into account in the case of the formed resources of each EU member state. Under the given circumstances, it is extremely important for all the EU member states to cooperate and to allow information exchange in order to efficiently fight against fiscal fraud in this field.

In order to improve the methods of fight against fiscal fraud in intracommunity operations we propose the following solutions:

- the unification of the reporting periods of the intracommunity operations performed in a month in all EU state members; we have to point out here that in the VIES system there are discrepancies between the sums reported by the supplier as being intracommunity deliveries from a state member and the sums of money reported by the Romanian beneficiary as being intracommunity acquisitions from the same state member; these discrepancies are caused by different reporting period of the intracommunity operations performed by the economical agents from the member states;

- the reduction of the time limit given for answering to the request of a member state for another member state according to SCAC 2004, regarding the checking of intracommunity operations (at present the request for information from another member state is of 3 months in Romania);
- the introduction of a system to check the intracommunity deliveries performed by Romanian economical agents towards other EU state members; the present VIES system only supplies information about the intracommunity acquisitions performed by Romanian firms as compared to intracommunity deliveries reporting by the member state and having Romanian beneficiaries. In order to check if an intracommunity delivery performed by a Romanian economical agent for a beneficiary from another member state is real, there is no efficient checking system for the implied parties and the reported sums of money; in this case we need to fill in a SCAC 2004 document to allow information exchange between the member state but unfortunately the answering time limit is quite long.

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