Fudulu, Paul; Dinga, Ene; Chitu, Cristinel; Calaican, Laurentiu

Research Report

The implications of the adoption of acquis communautaire on financial control in Romania

Pre-Accession Impact Studies II, No. 3

Provided in Cooperation with:
European Institute of Romania, Bucharest

European Institute of Romania

Study no. 3

THE IMPLICATIONS OF THE ADOPTION OF ACQUIS COMMUNAUTAIRE ON FINANCIAL CONTROL IN ROMANIA

Authors:

Paul FUDULU, Professor – coordinator
Ene DINGA, Senior Lecturer
Cristinel CHITU
Laurentiu CALAICAN

CONTENT

EXECUTIVE SUMMARY 4
Chapter 1: ASSESSING THE ACQUIS COMMUNAUTAIRE IN THE FIELD OF FINANCIAL CONTROL 8
1.1 The Structure Of Financial Control In The European Union 10
1.2 The Assessment Of The Communitarian Legislation In The Field Of Financial Control 12
1.2.1 Introduction 12
1.2.2 Chapter's objectives 13
1.2.3 The assessment of the primary legislation 14
1.2.4 The assessment of secondary and tertiary legislation 16
1.2.4.1 General presentation of directions and actions 17
1.2.4.2 The description of financial control forms 20
1.3 The Check-List For The Stage And Quality Of Financial Control Implementation 41
1.4 Conclusions And Final Remarks 43
Notes, Commentaries, References 45
Chapter 2: THE ASSESSMENT OF THE CURRENT SITUATION OF PUBLIC FINANCIAL PUBLIC CONTROL IN ROMANIA 47
2.1 The assessment of legislation in the internal financial control 48
2.1.1 Introduction 48
2.1.2 The Objective of the chapter 48
2.1.3 The Relevant Domestic Legislation Structure 49
2.1.4 The assessing of domestic framework legislation 51
A. Provisions that have a general character (regarding financial control in general) 53
B. Provisions that have a special character (regarding certain categories of financial control) 56
B.1. Regarding internal control 56
B.2. Regarding public internal audit 58
B.3. Regarding public external audit 58
B.4. Regarding inspections (2) 58
2.1.5 Evaluating domestic institutive legislation 59
A. Conceptual analysis and progress 59
A.1. Regarding internal control 59
A.2 Regarding the public internal audit 64
B. The procedural analysis (analysis matrix) 68
B.1. Regarding public internal financial control 69
B.2. In what regards the public external financial control 83
Chapter 3: Impact assessment of the adoption of acquis communautaire in the field of public financial control in Romania 89
3.1 Introduction 90
3.2 Chapter's objectives 90
3.3 Designing the check-list to assess the stage and the quality of the financial control in Romania 91

3.3.1 Check-list operating 95
3.3.1.1 Module 1: there is a statutory and complete basis to define the systems, the principles, and the functioning of the financial control 95
3.3.1.2 Module 2: The internal control is implemented in all the institutional structures that collect or/and spend public funds 97
3.3.1.3 Module 3: There is a functionally independent mechanism of public internal audit, having relevant scope and addressability 100
3.3.1.4 Module 4: There is a functionally and structurally (i.e. external) independent mechanism for the public audit, having a relevant scope and addressability 104
3.3.1.5 Module 5: Systems to prevent and act against the irregularities, as well as to recover the lost amounts as result of irregularities or through oversight are implemented, having as criteria 106
3.3.1.6 Module 6: There are assessing mechanisms for: 108
3.4 Concluding and final remarks 112
3.4.1 General conclusions 112
3.4.2 Some particular conclusions 114
3.4.3 Institutional proposals 115
3.4.4 Action targets for the period 2005-2006 115
Notes, Comments, References 117

EXECUTIVE SUMMARY

1. Objectives of the study

The major objective of the study has been to identify, analyze and evaluate the impact of transposing the acquis communautaire in the field of financial control into Romanian legislation ,

To the aforementioned major objective some intermediate objectives have been subordinated, which consists in identifying, evaluating and analyzing the following:

- The impact of adopting the acquis communautaire on the primary Romanian legislation concerning the financial control (institutive norms);

- The impact of adopting the acquis comounautaire on the secondary Romanian legislation concerning the financial control (methodological norms, institutions, organizational structures, specialized staff);

- The impact of adopting the acquis communautaire on the tertiary Romanian legislation concerning the financial control (procedures, techniques, practices, methods, informational flows, communication with similar or analogue structures of European Commission)

2. Organizational issues

The research team organized its own activity towards reaching the „targets" assumed by the achievement of the established objectives. The targets had simultaneously to meet following three conditions:

- They are stipulated as terms of reference in the contract or in the annexes of the contract

- By targeting them (by focusing research on them) it is assured, in a systematic, complete and certain way, the achievement of the objectives of our study

- They are, in a reasonable degree (in any case, in a relevant and significant degree, from the point of view of the specific research), quantifiable, measurable, or, at least, they can be evaluated from the point of view of degree, propensity etc.

The main targets of the study are the following:

a. Acquis communautaire concerning the financial control (type A drafts)

    a. comprehensive list of the UE norms in the matter (type A1 drafts)

    b. comprehensive list of institutions (organizational structures) of UE involved in the financial control (type A2 drafts)

    c. identifying and topic grouping of the UE norms, by categories (kinds) of the financial control (type A3 drafts)

    d. elaborating the involved impact (from the point of view of primary, secondary and tertiary legislation), for any category (kinds) of the financial control (type A4 drafts)

b. Internal (i.e. Romanian) primary, secondary and tertiary legislation, which has been in force at that moment, in the field of financial control (type B drafts)

    a. comprehensive list of the internal norms in the matter (type B1 drafts)

    b. identifying and topic grouping of the internal norms, by categories (kinds) of the financial control (type B2 drafts)

c. Actual and future perception of the Romanian involved institutions, authorities and experts, of effectiveness of the financial control and as well as the expectations and desires related to this field (type C drafts)

    a. comprehensive list of the Romanian (directly or indirectly) involved institutions in the financial control activities, as well as an allocation of the team members to these institutions (type C1 drafts)

    b. comprehensive list of Romanian well known experts in the matter of financial control as well as an allocation of the team members to these experts (type C2 drafts)

The logical algoritm of the research, based on the established objectives and targets can be seen in the *Annex 1*.

The reserach activity and the writing of the study was based on a strict schedule generated by its GANT graph (see the GANT graph in the *Annex 2*).

3. The structure of the study

The study contains three chapters.

The first chapter, named ***„Assessing the acquis communautaire in the field of public financial control"*** was aimed at achieving the following objectives: obtaining a „map" of the financial control in European Union and in the member states, from the point of view of typology, involved institutions, performance degree (achieved or intended); the tendencies that could de synthesized from the European financial control functioning analysis as well as from either the European Commission reports concerning the monitoring of the progress in the financial control matter or from the international organizations involved in the field; building up a „analysis matrix" to analyze the financial control in Romania, focused on its approaching the requirements or performance of the financial control in European Union.

The second chapter, named *„* **Assessing the current situation of public financial control in Romania"** has the following objectives: assess the institutional building in the financial control field (on its three types), in force at the time in Romania; identify the main features of normative, methodological and operational framework concerning the designing, the implementing and the operating of the financial control in Romania; assess the effectiveness of the financial control in Romania; assess the institutions, organizations and, generally, the organizational and functional structures of the financial control in Romania; to systemize the features of designing, implementing, and operating of the financial control in Romania, based on the "analysis matrix" proposed in the Chapter 1.

The third chapter, named "**Impact assessment of the adoption of acquis communautaire in the field of public financial control in Romania"** has the following objectives: elaborate a check-list that was the basis for the comparative analysis between the financial control of the EU (the standards to be reached) and the financial control in Romania; apply the check-list in order to make the comparative analysis between the benchmark financial control and the financial control in Romania; identify the underdevelopment or divergence situations between the EU financial control and the financial control in Romania, as well as, whenever was possible, identify the main causes and the possible solutions to go beyond these underdevelopment situations; assess the opinion of the specialists or of other Romanian experts in the financial control, based on the aforementioned work-shop (focused on the chapter two issues), as well as on the questionnaires distributed by the European Institute in Romania; finally, conclude and draw up the future directions (at institutional and practical level) in order to achieve the full consistency between the financial control in Romania and financial control in EU, from the quantitative, structural, qualitative and sustainability point of view.

4. The methodology

The research team chose a joint methodology, based, on the one hand, on a documentary analysis (legislation, institutions, existent studies in the matter etc.) and, on the other hand, on direct evaluation (based on a work-shop as well as on a questionnaire drawn up by the research team), of the perceptions, expectations and suggestions from experts, specialists or authorities in the financial control in Romania. In this context, on April 10, 2004, the research team and EIR organized a work-shop focused on the main conclusions in Chapter 2 of the study. Also, the mentioned questionnaire was transmitted, by the EIR, to a number of persons involved in the drawing up or implementing of the financial control in the most representative institutions. In addition, the final phase of the study contained a number of meetings of the research team, scheduled by the coordinator of the study, where were debated both methodological and organizational aspects and some delicate or controversial questions in the field of public financial control in Romania. These internal work-shops were very useful and led, in the end, to the final structure of the study.

5. Main conclusions of the study

In Romania there is a non-ambiguous, consistent and continuing determination, at the Government level as well as at the central public related institutions, towards the improvement of the normative, procedural and organizational framework concerning the public financial control, firstly by setting it in line with the acquis communautaire and, simultaneously, by a creative institutional development, according to the concrete conditions of the reform and accession to UE;

The primary, secondary and, partially, tertiary legislation has already or is in course of being drawn up and implemented, without major disturbing impact on the effectiveness of the daily public financial control;

The main malfunction in the public financial control is brought about by cultural factors, strongly associated with the public financial control. This means that it is not the legislation (i.e. codification) that constitutes the basic underdeveloped situation in Romania, but its implementation and its further development, and, especially, the understanding and accepting of its role and functions (particularly concerning the internal control and the public internal auditing).

There is a real danger, cause by the haste (fully understandable, of course) of the Romanian authorities to bring the national legislation into the line with the acquis communautaire, concerning the accelerating of some insufficiently prepared processes as: a) separation of the public internal control from the public internal auditing; b) the Ministry of Finance's strategy to go, by the end of 2004, from the cash accounting to the accrual accounting that seems to be not sufficiently prepared, neither from the point of view of the cost evaluation, nor from the point of view of its general impact.

From the point of view of the achieved progress until now as well as from the perspective of the recorded or observed tendencies, the research team appreciates that the most emphasized dynamics and the best orientation can be found in the public external auditing, followed by the public internal auditing and, finally, by the internal control; in fact, we appreciate that, in the matter of internal control, there are not only many considerable underdevelopment situations but also a critical lack of understanding, preoccupations and interest, at the level of Ministry of Public Finance, towards codification, methodological regulation and procedural development.

There have not yet implemented viable systems that can dynamically assess the achieved progress in the public financial control matter; this lack could lead not only to delays concerning the fulfillment of certain Governmental commitments, but could even generate wrong direction in certain situations (as it happened, for instance, as we already have mentioned, concerning the continuation of some centralized structures of the financial control, i.e. the delegated preventive financial control).

At the level of internal control, we appreciate that there should be a fundamental reshaping of the system of informing/reporting, at the level of the EAPM's manager, in order to design clear and permanent responsibility lines, leading not only to increase responsibility of the EAPM's manager but also to support him to draw up his own control and signaling systems (including informing/reporting lines).

At all public financial control levels (internal control, public internal auditing and public external auditing), the central structures must have only a guiding, methodological standardization, monitoring and assessing role; although the standardization performed by the central structures could offer good conditions to ensure the efficiency of the financial control, this standardization must not stifle the direct financial control structures by too detailed constraints that could inhibit the creativity and the initiatives of those directly involved.

It is necessary to start a substantial and persistent process towards the developing of the associated risk analyses at the EAPM level and towards designing some "maps" of these associated risks by activity, action, operation and transaction classes concerning the public funds and assets.

It is necessary to urgently and profesionally solve certain crucial problems of an authentic and sustainable public financial control, such as: a) creating of the signification thresholds in the financial control matter; b) clarifying the traceability principle in the financial control matter; c) drawing up of the auditing trails; d) drawing up the signaling systems for the irregularity risks (with or wihout frauds); e) drawing up the signaling systems concerning the materiality of the irregularities or frauds; f) redrawing up the role of financial control (except the public external auditing, that has already been done) towards including the public revenues (either as planned or achieved) in the financial control scope.

Chapter 1: ASSESSING THE ACQUIS COMMUNAUTAIRE IN THE FIELD OF FINANCIAL CONTROL

1.1 The Structure Of Financial Control In The European Union

Based on of all EU official documents, having legislative (primary or secondary) nature and as well as settlement practice, at the level both communitarian institutions and member states, it could be concluded that by financial control it is understood the set and interconnection of the following three types of control regarding the collection and spending of public funds:

a) internal control (or managerial control)

b) internal public audit

c) external public audit

a) Internal control (managerial control: the organization (rarely), policies or procedures used in order to ensure: the achievements of an institutional entity's objectives, using the rule of the three E[1]; the balance between the objectives and the resources which are employed; resources protection against any kind of loses, fraud or irregularities; obtaining, maintaining, reporting and utilizing, in time, for the benefit of managerial decision, of all relevant information. The responsibility of managerial (internal) control belongs to that specific organization. (2) The internal control includes also the administrative control.

b) Public internal audit: it is an independent activity, which consists in consulting, aiming at increasing the value and improving the operations of the organization. It helps the organization to accomplish its goals, issuing systematic evaluations and improving risk management, the control and administration of the processes. (3) In other words, internal audit is that form of financial control having as main objective the control and the evaluation of internal control. The internal audit is established within the public entity (organization), having functional independence but not a structural one. Internal audit covers three different functions, leading to three types of internal audit:

1. financial audit: the audit of budgetary and financial systems; it is performed on the basis of an annual plan, generating evaluations regarding the efficiency of accountancy systems (including the security of the IT systems);

2. compliance and regularity audit: examines legal and administrative legality, the honesty and the correctitude of the administration, financial systems and managerial control;

3. performance audit (also named value audit for money): measuring the level of the achievement or implementation of the objectives and programs of the audited entity, analyzing the costs, risks, the accuracy of achieving the objectives and the resources consumption (including human resources); it is tested the rule of the "three E":, economy, effectiveness and efficiency (4)

c) External audit: the audit performed by an entity which is not under the control or influence of the audited organization. It is organized outside the audited entity. External audit examines if the

[1] Effectiveness, economy and efficiency

income was collected, if the spending was legal and regular and if the financial management was sound. It reports each irregularity.

Now some conclusions can be presented:

1. there are some state systems, of supervising or control of public funds (especially public income or budgetary liabilities represented by taxes, takeovers etc) which, even if they are concerned with the same public funds (as financial control), they are not included in the financial control concept and, in such a case, will not be part of the present study:

   - fiscal control exercised by state's empowered organisms, both at the level of private[2] and public[3] tax payers (for example, in Romania, the General Direction for Guidance and Fiscal Control, including its components throughout the country, organized at the level of County Department of Public Finance);

   - fiscal or financial control exercised by Governmental operative and unannounced control bodies both at the level of private and public tax payers (for example, in Romania, Financial Guard, including its components throughout the country, organized at the level of County Department of Public Finance);

   - fiscal control exercised at the border by the state empowered control bodies (for example, in Romania, Customs Authority);

   - financial audit exercised by specialized firms (usually private) on private tax payers, on contractual commercial basis, at the request and in the interest of the private tax payers.

2. the three types of financial control are characterized, mutually, by:

   - internal control is an organizational set of activities and procedures being subordinated to the manager of the entity managing the public funds (EMPF); the manger is also obliged to design the system of internal control, according to all measuring, supervising and reporting internal systems;

   - public internal audit is set up within the EMPF, being directly and exclusively subordinated to the manager of that entity; internal audit is organizing, supervising and evaluating the effectiveness and efficiency of internal control;

   - both internal control and public internal audit are organized within EMPF;

   - internal control could be an ex-ante[4] control, as well as a simultaneous control or an ex-post one;

   - the public internal audit is, usually, an ex-post control, but, at the request of the EMPF manager, could initiate, supported by the internal control systems, on spot controls on

[2] By "private tax payers" we mean those tax payers situated in the private sector of economy and those situated in state's private area (including those producing semi-public goods, but which are distributed on the market).
[3] By "public tax payers" we mean those tax payers situated in the public sector (the sector producing pure public goods).
[4] As it will be presented, the ex-ante financial control must function as a decentralized system, having the nature of an internal control procedure, under direct coordination and responsibility of that EMPF' manager.

specific objectives, clearly mentioned by the manager; the public internal audit cannot be, under any circumstance, an ex-ante control;

- the public external audit is not subordinated to the EMPF manager, being organized outside this entity; it is an ex-post control, being a legality and regularity audit of auditors; in special cases, the public external audit can operate ordinary audit missions, usually collaborating or cooperating[5] with the public internal audit, respectively with internal control (these last control categories might be considered, from a typological point of view, as on spot controls);

- the public external audit cannot be, under any circumstances, an ex-ante control;

- the public internal public is not subordinated, in the real meaning of the term, to external public audit; between the two types of public audit there are relations of cooperation and collaboration.

3. all three types of financial control are sustaining all the tree functions mentioned in relation to public internal: the function of financial control; the function of legality and regularity control; the function of performance control of the EMPF.

<table>
<tr><td colspan="2" rowspan="2"></td><td colspan="3">The criterion of the moment of financial control</td></tr>
<tr><td>Ex ante</td><td>Spot</td><td>Ex post</td></tr>
<tr><td rowspan="3">The criterion of internalization of financial control</td><td rowspan="2">intern</td><td rowspan="2">Internal control (managerial)</td><td colspan="2">Internal control (managerial)</td></tr>
<tr><td colspan="2">Public internal audit</td></tr>
<tr><td>extern</td><td></td><td colspan="2">Public external audit</td></tr>
</table>

1.2 The Assessment Of The Communitarian Legislation In The Field Of Financial Control

1.2.1 Introduction

Paragraph 1.1. has the objective analyzing and evaluating primary and secondary EU legislation regarding the exercise of financial control. Before getting into specifics, it is necessary to mention

[5] Collaboration means the information exchange (including ordinary and special reports), procedures etc.; cooperation refers to the introduction and development of common activities specific for control, based on common objectives, resources, procedures etc.

that the meaning of some terms and expressions used at the European Commission level, referring to the financial control and other related activities, are the ones accepted by the European Commission documents, with respect to international recommendations and practice (for example, Internal Auditors' Institute), as well as in different analysis and synthesis materials elaborated at the level of some organisms or institutions active in this field, as it is the glossary of communitarian terms regarding financial control existing in a SIGMA[6] study, as well as terminological specifications presented in the European Commission position papers regarding Commission's reform – "Reforming the Commission, White Paper, volume I"[7] (1)[8]. The importance of the terminology regarding financial control can be sustained by the fact that the definitions given to some operational concepts in financial control are describing, very accurately, the functions, the role and the functional limits of different types of financial control. A synthetic glossary of the reference terms in financial control is attached in Annex no. 1.

The methodology used in achieving the goals of Chapter 1 will be that of balancing legal provisions (at primary, secondary and tertiary levels of legislation) - those ones regarding communitarian institutions and those ones regarding the member states and, relying on this documentary basis, pointing out, using an analysis matrix that will be presented at the right moment, the "anatomy and physiology" of the financial control, as designed and implemented in the acquis communautaire.

1.2.2 Chapter's objectives

The present chapter aims at attaining the following goals:

1. systematizing the main requirements regarding the all around organizational and operational structures of financial control, as specified by the primary EU legislation;

2. systematizing the main tasks regarding financial control, as specified by the secondary EU legislation;

3. systematizing the basic elements of the tertiary legislation on financial control, at the EU level;

4. creating a check-list which should represent the basis of the status and quality (methodological, effectiveness and efficiency) of financial control at the level of candidate countries;

5. creating a list of the basic tasks to be achieved, by the candidate countries, the European standards regarding financial control.

The procedure the authors are going to use in order to attain the above mentioned objectives is a documentary procedure. More specifically, it is going to be realized a presumptive diagnostic-analysis, from the point of view of the basic tasks that must be fulfilled in order to achieve the accepted standards of organizing and functioning of all financial control mechanisms or creating a

[6] SIGMA (Support for Improvement in Governance and Management)
[7] Brussels, 50.04.2000, COM (2000) final/2
[8] A complete description of the sources will be presented at the end of the chapter, in the section "Notes, comments, bibliography"

framework of the normative, organizational and procedural field of financial control that should be checked up by the candidate countries, in our case, Romania. Specifically, the analyzing procedure is going to look like this:

i. listing all normative acts, directives, documents, statutes, manuals, guides etc. which are in the center of different legislative categories in financial control area;

ii. analyzing those materials from the perspective of their impact on: designing, implementing, harmonizing and developing structures and procedures of financial control;

iii. pointing out the basic tasks for attaining, by the candidate countries[9], of the European (and international) standards regarding financial control;

iv. systematizing these tasks by different legislative levels involved as well as by their necessary institutional structures.

1.2.3 The assessment of the primary legislation

Primary legislation in the field of financial control refers to those normative acts (usually laws) that are regulating a specific domain and which are adopted at the highest possible level – the Parliamentary level. In the case of this study, we are talking about decisions adopted at the level of European Parliament.

According to the above mentioned issues, the primary legislation of the EU regarding financial control (understood as a correlated, structural and functional entity of internal controlling, internal and external auditing) is contained in the following normative acts:

- TEC[10], art 5[11], mentioning general obligations of the member states;
- TEC, art. 155[12], mentioning the obligations and responsibilities f the European Commission;
- TEC, art. 188a-188c[13], presenting issues regarding the European Court of Auditors;
- TEC, art. 199-209[14], mentioning financial considerations (consideration regarding the budgetary process at the level of he Community and member states);
- TEC, art 209a[15], mentioning issues on anti-fraud war.

[9] But, of course, the member states also
[10] Treaty Establishing the European Community (Treaty of Rome)
[11] Article 10 in the consolidate version of the Treaty
[12] Article 211 in the consolidated version of the Treaty
[13] Articles 246-248 in he consolidated version of the Treaty
[14] Articles 268-279 in the consolidated version of the Treaty
[15] Article 280 in the consolidated version of the Treaty

A more detailed content of these normative acts is presented in Annex 2. From now on, we are going to perform an interpretation of the primary legislation provisions, aiming to emphasize the principles, rules, explicit or implicit recommendations, which have to be designing and implementing financial control at the EU level, in member states, and in candidate countries.

Based on the analysis of primary legislation one could determine a set of issuing, implementation and operationalization principles of financial control, regarding both its general philosophy at the EU level and some general principles and rules of approaching, designing, implementing and developing financial control at the member states level and, by a logic extension, at the level of those candidate countries wishing, in the pre-accession period, to implement as much normative and institutional structures as possible, for a fast and efficient integration, after the formal accession in the EU. The most important of these principles and rules are[16]:

- the laws call for participation in reaching the final objective, but not in choosing the means, the choice remaining at the level of member states, as long as they are according to the objective (TEC, art. 10)
- the Commission's role is to monitory the carrying out the primary legislation provisions (TEC, art. 211)
- the Commission has a guiding role in the implementation of primary legislation (TEC, art. 211)
- the Commission has relative independence in decision-making and, also, a role in elaborating the issues adopted by Council or Parliament (TEC, art. 211)
- Commission's authority is given by the Council (TEC, art. 211)
- the auditors independence is provided by primary legislation, so having maximum normative power; the independence consists in: a) independent fulfillment of all duties; b) keeping out of external instructions regarding the procedures for fulfillment specific duties; c) keeping out of those incompatible actions with the independent fulfillment of duties (TEC, art. 247)
- the auditors independence should be maintained, in reasonable limits, after the end of their mandate, too; moreover, the law asks for the former auditor's own diligences, in order to preserve the dignity and symbolic authority of auditors (TEC, art. 247)
- the cases of losing the quality of membership in relation to the Court of Auditors are exhaustive presented by primary legislation, a fact that do not allow for political interference (for the EU, both member state and communitarian political actor) (TEC, art. 247)
- legal protection of auditors is at the highest level, in order to preserve the independence, dignity and impartiality of the auditors (TEC, art. 247)

[16] We are not leaving aside the primary legislation analysis of financial control those provisions regarding budgetary process because it strongly limits the functions and the organization of financial control (especially external audit). Otherwise, Financial Regulation, that is, the official document issued on December 12, 1997 regarding financial control, is essentially based on the budgetary process.

- the calling for the Court of Auditors to perform financial control is generally, with some exceptions, mentioned by law (TEC, art. 248)

- the Court of Auditors is exclusively responsible in front of most communitarian institutions, a new "ingredient" for the independence of the Court of Auditors members (TEC, art. 248)

- the Court of Auditors is performing the public external audit (TEC, art. 248)

- the Court of Auditors is performing compliance (or legality) and regularity control as well as performance control (TEC, art. 248)

- the Court of Auditors may establish, legally, missions of income and expenditure audit during the fiscal year, too. This means that, even if external audit (performed by the Court of Auditors) is an ex-post one (meaning that the accounts control is realized after they had been closed), in special cases, it might be empowered for checking up unclose accounts (TEC, art. 248)

- good faith is unconditional presumed in performing control missions (TEC, art. 248)

- the control might be realized on documentary basis (documentary audit) or at the level of the analyzed entity, or as a mixture of the two, depending on technical requirements of the mission (TEC, art. 248)

- the independence of the financial control structures has to be maintained at the Community level, too (TEC, art. 248)

- should not to exist differences in terms of the means employed to protect the national financial interests and EU's financial interests (TEC, art. 280)

- anti-fraud war must be common, at the level of both methods and strategies (the latter being generated by regular consultations and cooperation) (TEC, art. 280)

- protection against fraud is effective and equivalent in all member states, underlying the common perspective on the issue (TEC, art. 280)

- common preventive and force measures against fraud constitute neither a substitute nor an interference with national programs, indicating, once more, a communitarian principle asking for common objectives and particular methods (TEC, art. 280)

1.2.4 The assessment of secondary and tertiary legislation

Secondary legislation regards all types of normative acts, adopted by the Parliament or other empowered institution (for example, Ministers or other Governmental Agencies), in implementing primary legislation.

The list of the most important normative acts on secondary legislation, at the EU level, is presented in Annex 3.

The main conclusions on secondary legislation might be synthesized as follows:

1.2.4.1 General presentation of directions and actions

White Paper – Reforming the Commission, volumes 1 and 2, drawn up as a European Commission document, on 05.04.2000, represents a reforming chart of the Commission (influencing communitarian institutions, too). Practically, starting with may 2000 until the end of 2001, at the European Commission level, has been developing a broad reforming and restructuring process, in some specific domains, based on new principles of organizational philosophy. One of those domains which are going to suffer radical vision, organizational and functional modifications, is financial control domain.

According to the Commission's Reform White Paper (WP1), the new reforming directions of the communitarian institutions in the filed financial control, might be synthesized like this (the analytic list of the main provisions stipulated in WP1 and WP2 is presented in Annex 4):

I. <u>General provisions:</u>

1. there have to be created an internal control function able to function at the entity managing public finances level
2. ex-ante financial control is going to be part, gradually, of the internal audit structure
3. the necessity of the financial management revision
4. the reform presented by the WP is based on:
    a. independence
    b. responsibility (regarding different reporting lines)
    c. liability (in juridical meaning)
    d. efficiency (based on two directions: simplification and decentralization)
    e. transparency
5. organizing priorities should be the main concern and not necessarily the control itself
6. resources should be allocated according to the objectives
    a. establishing priorities (priorities cannot be accepted just after examining present ones)
    b. a better equilibrium between internal and external management
    c. promoting better working methods
7. priorities establishment should be made together with the resources allocation, passing to activity-based management (ABM)
8. annually, each General Direction of the Community is going to present a report on its activity (inclusively the European Delegation from the non-member states)

9. developing an externalization policy, in order to allow the Commission to take care of more important and major impact issues, based on the following principles:
    a. delegation of power
    b. decentralization
    c. entering into legal arrangements for services
10. implementation of performance oriented techniques

II. Financial control provisions (audit, control and management)

11. one of the first goals of the reform is creating an administrative culture
12. financial activities should become more simple, more transparent, and more decentralized
13. a key element in the audit, financial management and control reform is the ABM
14. control, financial management and internal audit are going to be restructured
15. the authorizing officers and all the managers have to be responsible for all their activities
16. defending Community's interests is going to be based on legislative cooperation with member states
17. defining responsibilities for authorizing officers and managers
18. creating proper management basis involves:
    a. clear definition of duties
    b. the understanding of responsibilities
    c. quality control by management
    d. correctness and trust
19. financial management is just a part of operational management
20. the one who decides must be the one who authorize, too
21. creating a warning group, under director's command, able to inform him about any kind of irregularities (internal control)
22. financial management, control and audit revision must aim at:
    a. the strengthening of its ability to prevent irregularities in important cases

b. the main cause for preventive financial management incapacity, is the ex-ante financial auditing centralization:

   i. it created a false premises regarding public finance security

   ii. it brings about a loss of responsibility from the manager

   iii. makes more difficult budget execution

   iv. the responsibility is divided between ex-ante and ex-post control, leading to conflicting interest

c. proposals for changing financial management:

   i. the transfer of ordinary control from financial controller to general manager (director): managers are directly responsible for all financial decisions (this responsibility is materialized in the annual report, regarding the following sections: the implementation of proper control systems and the allocation of resources used for previous established purposes)

   ii. it will be maintained the unity of the financial activity, for providing financial assistance to each service (each EMPF -substructure)

   iii. it will be respected the principle of sharing responsibilities, in order to have at least two persons taking responsibility for each financial operation[17]

   iv. at the Commission level will be created a central financial service providing assistance to all Commission's departments (coordinated by the budget responsible)

   v. Internal Audit Service will be created

   vi. will be created an Audit Progress Committee

d. protection of Community financial interests using:

   i. (tertiary legislation): guides for efficient management projects

   ii. a better coordination between European Anti-fraud Office and the other departments of the Commission

   iii. close involvement of European Anti-fraud Office in auctions and management contracts issues

   iv. optimizing communitarian funds surveillance system

[17] Covering the area of the principle of the two signatures in taking responsibilities for financial operations regarding public finance

v. increasing management efficiency in recovering unjustifiable expenses

23. the Commission is not having a legal basis for harmonizing financial auditing systems (exactly as they are defined in PIFC[18]), for member-states national budgets (9); therefore, existing legal aspects are referring to the EU budget and, regarding member-states budgets, the provisions are referring to the enforcement of national control systems of European funds:

    i. independent functional internal audit

    ii. central authority (or central authorities) for harmonizing and coordinating control and audit methodology

24. different EU types of legislation:

    a. primary legislation (above mentioned)

    b. secondary legislation (above mentioned)

    c. tertiary legislation: standards (for example, public internal financial control, internal audit chart, the ethic code for public internal audit, audit manuals, manuals for internal control and financial management etc)

1.2.4.2 The description of financial control forms

In order to depict financial control types, as they were defined above, we propose an analysis matrix, which will allow us, on the one side, a unitary investigation of the three types of financial control, and, on the other side, a systematization of their peculiarities, necessary for establishing the check-list and the legislative tasks for candidate states (in our case, Romania). In this way, the impact of the adoption of acquis communautaire on Romanian financial control can be revealed in a suggestive and operational way.

The proposed analysis matrix is referring, in fact, at those points which are considered essential for evaluating both potential impact areas of the adopted acquis communautaire in the financial control and those Romanian domestic legislation guiding lines that have to be followed in order to provide the acquis communautaire normative capability.

These main topics of the financial control are:

i. basic principles: here are going to be presented general principles of financial control, principles which generate the design, implementation, operational processes and upgrade of financial control;

[18] Public Internal Financial Control: position document inviting candidate countries (which are not obliged) to elaborate, regarding national strategy for public internal financing auditing (involving both internal control and public internal audit; for the candidate countries still having a centralized ex-ante financial auditing, it is analyzed this financial auditing type too, accompanied by a schedule and institutional tasks for its integration in the internal control structures). Romania presented to Brussels such a document, named White Paper, in 2001.

ii. mission and objectives: we are going to review the role and functions which financial control aims at in order to fulfill its relation with public finances (at the level of the EMPF and at national level);

iii. institutional structures: are going to be identified organizational methods where financial control is implemented and functions;

iv. functional characteristics: are going to be analyzed some peculiarities of financial control, especially those personalizing each type of financial control;

v. position and sphere characteristics: is going to be make an inventory of those provisions regulating the position of any one of financial control type in the entire control procedure;

vi. authority characteristics: are referring to the informing and reporting hierarchies for each financial control type;

vii. responsibility characteristics: are stressing on taking responsibilities, in any form, which is entailed by risk occurrence and probability of the risk within the EMPF;

viii. sustainability characteristics: are referring to those provisions which help for achieving the objectives and functions of all types of financial control.

Secondary legislation detailed provisions on financial control, regarding all three different types (internal control, public internal audit and public external audit), are presented in Annex 5.

Next, we are going to synthesize all these provisions in the eight points of the analysis matrix.

1. regarding internal control[19]

i. basic principles of internal control

- the actual centralized ex-ante control (if it is the case), respectively the role of financial controller, must be gradual, until this function will be assumed by operational services, by total transfer of financial transaction responsibilities to the manager, within the internal control;

- the transition to the new internal control structures will be gradual, maintaining, as long as it is necessary, the ex-ante control, for preventing disruptions in the system;

- the issue of control systems in candidate countries became more evident especially for the last 10 new acceding countries in 2004; the Commission renounced the slogan "imitate all that you find in member states" and now is seeking to give a coherent and consistent answer at the EU level (9);

- on spot-controls, exactly as ex-ante financial control, must remain at the internal control level (managerial controlling);

- in every single department would be created a control function:

[19] It should be mentioned that Chapter 28 of Romania's negotiations for EU membership, mentions nothing about internal control, as it is understood at the EU level, respectively in the present material.

- control plan will be transmitted also to public internal audit structure
- will be maintained an open communication with the irregularities department of the European Anti-fraud Office

ii. <u>internal control mission and objectives</u>

- internal control (managerial) must achieve the following objectives (8):
  - reliability and integrity of information
  - compliance with policies, plans, procedures, laws and rules
  - assets security
  - effectiveness and efficiency in using resources
  - achieving proposed objectives and goals by different operations and programs
- the final aim of internal control: maximum possible diminishing of fraud and irregularities (this means a cultural change in managerial attitude (9)); even at the member states level, some of them just recently have reached this standard while others are working hard in this direction;
- internal control has as final aim a sound management: effectiveness, economy and efficiency;
- the main objectives of internal control are:
  - the establishment of a control environment: a proper culture at the entity level (integrity, ethics, managerial style, managerial philosophy, organizational structure, authority and responsibility, human resources policies and precepts, employees qualification
  - risk evaluation: each objective is going to have a risk that should to be evaluated, in order to design the way it must be deal with
  - specific control activity: the policies and procedures guaranteeing the achievement of managerial directives
    - functions at all levels of the entity: consents, licenses/permits, verifications, reconciliations, performance examinations, asset security and tasks differentiations
  - information and communication:
    - revealing information identification, procurement and transmission in due time and proper form
    - information systems are realizing reports containing operational, financial, and compliance information allowing for controls of operations

- communication should function in a comprehensive way, inclusively inside organization

- the employees must understood their role in internal financial control system, inclusively the way their activity is influencing other persons activity

- monitoring/surveillance

iii. internal control structures

- internal control should match on the peculiarities of each structure

- total freedom (with afferent responsibility) of each entity managing public finance manager to design, implement, operate and upgrade internal control system from that entity

iv. internal control functional characteristics

- it must be dropped the old habit of an ex-post policy in internal control, in favor of pro-active internal control techniques, able to provide a continuity in evaluating the quality of financial management and of control systems (9)

- the recommendations offered by internal control do not exclude manager's responsibility to implement them (in fact, the development of internal control capabilities is one of manager's tasks)

- any transaction makes necessary for two signatures (the principle of the two signatures); the second signature could be of the present financial unity/entity (the manager decides if and when)

- the present ex-ante independent control could be also interested in:

  - the second signature

  - expertise opinions in public acquisitions

  - follow of engagements, liquidation of advances or recoveries

  - assurance that the bookkeeping registering are complete, correct and available for officials

v. location and scope characteristics of the internal control

- the internal control is organized within the EGBP structure

- the internal control is subordinated to the EGBP manager

- the internal control is a control which fulfils three functions: financial, of conformity (legality and regularity) and of performance

- the internal control is concerned with every operation or transaction within the entity in a similar way with the substantiation of any decision taken at the level of entity's management

vi. responsibility (reporting) characteristics of internal control

- the manager is making a report regarding the internal control (the way it is planned, implementation, operation and the level of performance of the internal control) in its annual report, similar with a declaration regarding the systems of internal control

vii. accountability characteristics of internal control

- the director is required to account for the management of the resources, be it at the decisional level or at the level of ensuring of the adequate internal control systems (see action 82 from Commissions Reform White Paper 2)

- the most important duty of the director, regarding the internal control is to ensure the internal audit

- the managerial responsibility of the spending centers must be institutionalized (inclusive the ex-ante control)

viii. sustainability characteristics of internal control

- the director will annually sign a declaration within his annual activity report, through which he must demonstrate that there were implemented adequate control systems and that the resources were properly used. Similarly, he confirms that the presented information are correct and complete, that resources were used according with the legal destination and that the implemented control systems ensures the legality and regularity of operations both financial and non-financial (see action 81 from White Paper 2)

    - adequate control systems were implemented and resources were properly used

    - the information presented in the report are correct and complete

    - the resources were used according with the legal destination

    - the implemented control systems ensure the legality and regularity of operations, both financial and non-financial

- there should be eliminated the political control bodies of the ministers, which don't have the necessary independence (although, they are part, in principal, of the internal control

2. in what regards the public internal audit

i. basic principles of public internal auditing

- the public internal audit will function according with the rules established by the Court of Auditors[28]

- in every institution or public authority there should function a responsible body for the institutional reform who should have in his authority (not under the formal responsibility aspect) also the public internal audit (before and after the accession to the EU)[29]

- the principles of the public internal audit in what regards the financial management and the control of the public agencies (13):

  -improvement of financial management and control in public agencies

  -isolation of decisions having a political factor, through: a) a clear identification of responsibilities; b) better accounting schemes; c) increase the economy and efficiency standard

  -introduction of new management schemes

  -identification of typical risks:

  - illegal allocations of public funds and a bad allocation of the public patrimony
  - debt risks
  - corrupted practices
  - frauds committed by ministries or other institutions when applying the rules
  - insufficient consolidation of the agencies' accounts in the financial reports (risk reports)
  - weaknesses or flaws within the institutionalization of responsibility

    -new analysis criteria: ex., models of election and classification of the public agencies

    -there should not be imported models should be analyzed the objectives, risks and the country's peculiar management

    -the classification of possible models, in accordance with the priorities and the national problems (for ex., the financial autonomy degree)

    -the election of the best degree of financial autonomy of the new agency will also include a financial associated risk analysis

    -in what regards the legal status, there should be made a distinction between the agencies created in accordance with the law of the commercial societies or on

[28] in Romania, there is the Romanian Court of Auditors

[29] this is a proposal issued by the authors of the study at hand. This person will be responsible also for the dynamics and quality of transposing the *acquis communautaire* into the Romanian legislation

other legal criteria (in relation with the type of activity the agency was consigned with)

-the budgetary control is made in a different manner, in relation with the type of the agency: a) in case the agency functions based on market criteria (under the law of the commercial societies), the government is a share-holder as all others (special measures should be taken in order to cover the risk regarding the public funds: 1) the selection of investments; 2) the control of wages; 3) separation of the business plan for using the public funds (also in the reports); 4) application of the public procurement law; b) in case of public agencies, the public agencies: 1) the budget is established based upon public rules, having also the involvement of the Ministry of Finance; 2) a special attention should be paid to the expenses related to the personnel; 3) the transactions should be made through the public treasury; 4) the centralized ex-ante control will be replaced step by step by the management control, under the Ministry of Finance guidance

- for the preparation of the accession, the public internal audit (the performance one) should also have as one of its attributions the checking up the degree of consistency with the *acquis communautaire*[20] the audit is an independent activity from the functional point of view

  -the audit is independent in relation to any other director or chief of department

  -as long as they are auditors, they are not involved in the audited activities

  -no authority can interfere in the auditor's activity or in creating the reports during the audit or after the validation procedure of the audited people

- the public internal audit owns the function of supporting and counseling the Commission

- the program of the audit: on the basis of a three years rolling plan on which the annual plans are elaborated

- conditions of ruling the audit: the public internal audit has access to all necessary information regarding the accomplishment of its mission

- the public internal audit function will be separated from the ex-ante financial control function (14)

- when the Central Financial Service proposes financial procedures, then it should get the approval of the central structure of public internal audit

ii. the mission and objectives of the public internal audit

- the primary objective of the public internal audit is to provide the manager with an independent opinion regarding the problems related to the management and internal audit (11)

[20] this is a proposal issued by the authors of the study at hand, which will turn into to the end of the study, in an implication of adopting the *acquis communautaire* in the financial

- the public internal audit will identify the risks and solutions in various domains:

-real property rights

- risk: the alignment or inappropriate maintenance of public patrimony
- solution: strict supervision of the agency

-taken loans

- risk: increase in the public debt over the normal limits
- solution: the loans will be supervised by the state and eventually, approved by the Ministry of Finance-the income policy of the agencies
- risk: too high prices, uncorrelated with the prices prevailing on the market, non-transparency of the process
- solution: the income policy of the agency should be the subject of the governments evaluation in the field of the annual budget or through a similar procedure and the condition for total recovery as a basis for the price creation

-cash programs administrated in the government's interest

- risk: the use of resources from programs in order to cover the increasing costs
- solution: separate book-keeping for the cash programs and for the operational budget

-the allocation of contributions

- risk: the lack of clear definitions in what regards the allocation of contributions
- solution: the allocation of contributions should come along with the written conditions established by the Ministry of Finance, the monitoring of donations, the implication of internal audit

-accountancy, report and audit

- the commercial agencies should accomplish the highest private standards. They are necessary in order to ensure the transparency regarding public funds
- other agencies should be preoccupied to assimilate the international standards in the field of accountancy and reporting
- the public agencies will come under the incidence of the Court of Auditors[21], the type of control used depending on the nature and status of the agency

-the financial autonomy of the agencies doesn't mean complete independence

[21] In Romania, it is the Romanian Court of Auditors

-the increased managerial responsibility implies enhanced systems and procedures of responsibility, both for the agents and the public structures

-the autonomous management (which is ensuring the efficiency) must be balanced by the governmental supervision (which ensures the security of the public funds)

-the innovative framework within the accession procedure: the accreditation of the agencies

- the mission and objectives (aligned to the common standards of WB, IMF, OECD, ONU, BERD, BEI)

  -to contribute to a rigorous and effective management of the European Commission's[22] resources

  -to promote a culture of the effective and efficient management

  -to audit the internal control systems, with the aim of ensuring the efficacy and, more general, of the good performance in implementing these improvements

  -to issue recommendations and advice regarding:

  - the better auditing of risks
  - the increased safety of assets
  - the better compliance to the rules
  - the accuracy and viability of accounting and managerial information
  - the improvement of management, control and internal audit systems
  - the improvement of efficiency and effectiveness of operations which ensure the performance (value for money)

- at the EU level, the objectives of the public internal audit are:
  - to assist the manager of the structure in controlling the risk and in compliance monitoring
  - to ensure an objective and independent opinion over the quality of the management and internal control systems
  - to make recommendations for the improvement of the operations effectiveness and efficiency and for the ensuring of economy in using the resource (safety for money, and value for money)

- the fundamental mission of the public internal audit consists in:

[22] In this case it can be made the proper adaptation depending on candidate case, as is the Romania's case

- risk control
- conformity control
- offering independent opinions regarding the management and control systems quality
- recommendations regarding the three E, in order to ensure "safety for money" and "value for money"

iii. the structures of public internal audit

- a central structure of public internal audit, at the European Commission's level[23]
- independent structures of public internal audit at the level of any EGBP
- the internal audits' network (AUDITNET), made up of the head of the central public internal audit and the INC bosses, performing the following tasks:
  - the sharing the good practices
  - recruitment of auditors
  - the audit methodology
- the Progress in Audit Committee[24], necessary until the functioning structures of the public internal audit at their sustainable level are implemented
- along with the audit chief there is a deputy (who co-ordinates the financial units) and supervising auditors
- within the public internal audit structures can also be hired external specialists (with definitive or ad-hoc character)

iv. functional characteristics of public internal audit

- the annual plan of internal audit is drawn up by the head of the internal audit structure and approved by the director of the organization; the director may come with proposals for new audit missions, but he doesn't intervene in the independence of the audit structure in order to effect his mission
- the auditor will perform his activity over all structures involved, having unlimited access to any necessary information
- the internal audit guarantees for the consistency of the budgetary system and for the working methods (on the basis of a)clear rules, b)operational procedures, c) the established and tested methodology) (12)

[23] In Romania it is the case of the Ministry of Public Finance

[24] The basic attributes of the Progress in Audit Committee are presented in Annex 5 in the current paper. This Committee has a consultative structure, without activities and executive attributions.

- the general directorates and the departments can make proposals to the central structure of public internal audit to perform only specific (special) missions, especially in order to help the first ones increase the effectiveness of auditing of the operations

- DPIA can base its activity on the work of public internal audit structures at the department and services level, and, if necessary, it can use the services of some experts who ensure competence, independence and objectivity guarantees

- The public internal audit represents the opportunity to perform a dialogue between auditor and audited ones in the Commission's interest; this dialogue is essential for the relevance of discoveries and for the quality and feasibility of recommendations which are to be made in order to be applied; the dialogue would finish with an exit meeting with the head of the audited structure, when the main results and recommendations are presented; the aim of this approach is to build up a common awareness of the real situation and of the necessary solutions in order to prevent and solve the problems and to contribute to the achievement of an efficient organization; in this terms, the public internal audit performs its counseling function (the final report of the public internal audit structure will be drawn up in one month time from its handing out to the audited person while the observations and answers of this audited person will be attached to the final report)

- The three year plan, the annual audit plan, the plans of results, the annual reports are in the responsibility of the head of the audit's public internal audit structure

- The head of the public internal audit can change the annual plan during the year, with the approval of that who approved the initial plan

- At least one month per year will be used for all auditors' training

v. location and scope characteristics of public internal audit

- As long as the internal auditor has no decisional power in the organization, he cannot make but recommendations; as a consequence, the competence, objectivity and independence image, the auditors have is very important in relation with the organization's manager

- The audit plan will also pay attention to the recommendations made by the Court of Auditors[25] (whose reports or other useful information belong to DPIA)

- The internal public audit decentralized structures (from departments and services) work completely independent of the central public internal audit service (DPIA)

- The mission area of the public internal audit everything is considered to be necessary (financial audit, operational audit, integrated audit, computer science audit etc.) in any field of Commission's activity, covering all aspects of auditing

- The internal audit is an ex-post control (although, at EGBP's manager request or other similar EGBPs, on spot (inspections) controls can also be exercised, in cooperation with the internal control structures

[25] In Romania, it is the case of the Romanian Court of Auditors

vi. responsibility (reporting) characteristics of public internal audit

- The annual plan of the public internal audit structures from the decentralized level will be also communicated to the central structure of public internal audit[26] in order to ensure the optimal use of internal public audit resources

- The public internal audit will make a report to the head of the structure (EGBP) and to the administrative council of the audited entity. They will assure themselves that they will take the recommended measures

- Annually, the internal audit will also send to the Community[27] a report with information regarding: the number and the types of audit made, the recommendations and the measures taken after the recommendations were made. The report will present all the problems that were discovered

- Annually, the leadership of the Community[28] will send to the structures which have as task the administrative discharge[29], a report made by the director, which will contain the number and the types of audit made, the recommendations issued and the measures taken after the recommendations were made

- With the purpose of efficiency and openness, the methodologies and the working programs of DPIA and public internal audit structures from the department and services level working programs (from the decentralized structures) will be coordinated, inter alia, through "internal network of auditors" ("AUDINET")[30]

- DPIA will apply the standard conditions regarding the interinstitutional relations, and in particular the ones regarding the dissemination and availability of information, similar with other general directorates and services of the Commission

- The annual audit report is published in an accessible manner (the public information transparency principle is, for the public domain, what the free competition is for the commercial field)

- The annual report of the audit will have performance indicators of the audit, in order to allow the evaluation of the audit activity

- The central structure of public internal audit (DAPI) will send to OLAF any information regarding irregularities, frauds, corruption or any other illegal activity (on the basis of a protocol)

- The central structure of public internal audit will send its annual reports to the Court of Auditors

---

[26] In Romania, it is the case of the Direction for Internal Public Audit (DAPI) within the central of the Ministry of Public Finance

[27] In Romania, it is the case of the leadership of the Ministry of Public Finance

[28] In Romania, it is the case of the leadership of the Ministry of Public Finance

[29] In Romania, it is the case of the Romanian Court of Auditors

[30] this can represent a proposal of the authors' study at hand, regarding the impact of adopting the *acquis communautaire* in the financial control in Romania.

- the direct relation with the Court of Auditors comes to DG BUGET[31] and the general operational directions

vii. accountability characteristics of public internal audit

- the auditor's obligations regarding the budget:
  - in general: to issue opinions and recommendations regarding the risk, the performance of implementation and the proper management
  - in particular:

    -the evaluation of adequacy and actuality of internal management systems of the involved departments and the appreciation regarding the associated risk

    -to evaluate the adequacy and the quality of internal control systems for each implemented budgetary operation
- the public internal audit will develop systems of evaluation for the internal control systems
- the internal auditors should obtain an accreditation formal certificate as internal auditors

viii. sustainability characteristics of public internal audit

- the existence of the Committee for Progress in Audit ensures the monitoring and evaluation of the internal public audit's quality and as a consequence, it ensures its development and improvement
  - monitors the auditing processes through the internal and external audit's reports
  - monitors the implementation of the internal and external audit's recommendations
  - co-ordinates the collaboration and cooperation between the internal and external audit
  - examines the aspects which emerge from the divergences between management and the external audit, examines the internal public audit performance
  - performs consultations with the auditors regarding the major problems

3. in what regards the public external audit (15)

i. basic principles of public external audit

- is organized and functions independently from two points of view:

[31] This communicational relation will be adapted, mutatis mutandis, to the Romania's institutional conditions.

- structural- it is outside the audited entity (EGBP)
- functional-it is not responsible in its relation with the audited entity (EGBP)

- it refers to both the creation of public incomes (the entries of public funds of EGBP) and to the allocation and spending of public funds (the exits of public money of EGBP)
- is the supreme form of financial control in a national institutional structure
- draws up the norms of organization and functioning of the public audit (both internal and external)
- is subordinated (is responsible, in the terminology of the present paper) to the legislative power (The European Parliament, at EU level, national parliaments and at the level of the member states)

ii. the mission and objectives of the public external audit

- the primordial objective is to offer the share holders (the state, for instance), an independent opinion regarding the annual financial evaluation (8)
- the objectives and the general principles of the public external audit are:
  - meet the requirements from the primary legislation (the treaties) and the secondary derivative legislation
  - offer assistance and advise to those responsible the decisions regarding the programs and Community's finances' management, with the aim of improving the financial management
  - the audit (also the policies and procedures in matter) will be ruled according to the international audit standards INTOSAI and IFAC, adapted to the Community's specific
  - the public external audit procedures will be elaborated on the basis of the Implementation European Guide, drawn up under the coordination of the Presidents' Committee of the supreme audit institutions of EU
  - in what regards the financial control, it will be the ensured the legality and regularity of transactions (regarding both payments and the revenues)
  - the independence, integrity, objectivity and the Court's professional competence will be ensured and also the confidentiality of the received information obtained during the audit process will be provided

iii. the structures of public external audit

- a central structure, the Court of European Auditors, with an executive and normative character in the matter of external public audit

- national structures, with supreme financial control authorities, at the member states level[32]

iv. functional characteristics of public external audit

- the documentation of the public external audit will consists in:
  - the acquaintance of the procedural notes regarding the audit's development and the collection of proves
  - the working document made with regard to the audit process should be clear and complete
  - in the working document, there should be mentioned: the plan of action, the nature of action, the results obtained and the conclusions derivative from the obtained proves
  - the head of the audit team and the leader of the audit unit will examine the working document
  - the procedures of ensuring the confidentiality of information, of the working document's safety and of keeping the working document on a certain period will be known
- the treatment of errors, irregularities and frauds
  - the responsibility for preventing, detecting and investigating errors and irregularities bears first of all on the management and the execution of the EU programs (the Commission and the member states)
  - the Court of Auditors will evaluate the way in which the responsible ones assumed their responsibilities according to the performance evaluation in preventing, stopping and correcting the irregularities
  - the auditors will be aware of the possibility that the acts/omissions could have material effects on the accounts, on the results of the legality/regularity examination or on the opinions regarding the health of the financial management; in context, the risk associated to errors and irregularities (also frauds, corruption or other illegalities) will be permanently evaluated
- treatment of legality and regularity
  - the planning of the audit mission will be based on the understanding of the legal framework of the entity that has to be audited

[32] In Romania, it is the case of the Romanian Court of Auditors, as central body, and also the County Chambers of Auditors, as territorial decentralized structures of the Romanian Court of Auditors. We mentioned, that at the political level, was launched the idea of establishing County Court of Auditors probably as decentralized structures of the Romanian Court of Auditors. This initiative will be evaluated in Chapter 3 of the present study.

- when the possibility of a non-conformation is foreseen, then the next step is to understand the nature of act/omission and also the circumstances in which they were produced, in order to evaluate the effects over legality and regularity

- if it is appreciated that the non-conformation is involuntary, then the auditor will talk to the manager about this issue

- if there cannot be obtained proves regarding a non-conformation suspicion, then this thing is to be mentioned in the working report by the audit

- if it is appreciated that there is a voluntary non-conformation, then the possibility that it could lead to fraud is being evaluated (even if the effect of non-conformation is not pecuniary or material) and then OLAF is informed, The effect of this –non-conformation, is to be mentioned in the audit report

- if a non-conformation has a material effect over the accounts' reliability or over the legality or regularity of the transactions' creation, then the audit will mention a qualified or adverse opinion in the audit's report

- if in within an audit regarding the accounts' reliability or the legality or regularity of the transactions' creation, the auditor is stopped by the audited authority, to obtain enough, relevant and reliable proves in order to evaluate if the non-conformity affected or could affect materially the accounts' reliability or the legality or regularity of the transactions' creation, then the auditor will mention everything about this issue in the audit's report

- if in an audit regarding the accounts' reliability or the legality or regularity of the transactions' creation, the audit is stopped, by other factors than the audited entity, to establish if a non-conformation was produced, the auditor will mention everything about this issue in the audit's report

- if in an audit regarding other objective than the accounts' reliability or the legality or regularity of the transactions' creation, the auditor finds out that a material non-conformation was produced, then he will mention everything about the circumstances under which this non-conformation was produced in the audit's report

o the elaboration of the external audit planning:

- object: the elaboration of an audit plan (the audit planning memorandum-APM)

- the aim of planning: the performance of an efficient and effective audit

- the content:

  - the sphere of mission

  - the main questions to be answered

- the nature of proves that have to be obtained
- methods of obtaining the proves
- the basis for the proves evaluation
- a resume of the results of the analytical procedures used
- the schedule of the performance of the audit mission and of creation of the audit's report
- the budget for resources and the missions costs

- approval: the audit plan should be approved by the leader of the audit unit after his consultation with the director; it should be concise because it ensures only the basis for the mission's approval
- the audit unit will develop and document an audit program, mentioning the nature, the schedule and the extension of the audit procedures necessary in order to accomplish the mission. The audit program will be made up of all objectives and all relevant risks identified and approved by the leader of the audit unit after his consultation with the director; the audit program stays at the basis of the communication towards the audit team of mission's details, and that is why it should be sufficient and detailed
- both APM and the audit program can be revisited during the audit process. The most important ones will be approved by the responsible from the EU leadership for audit, while the less important ones will be approved by the head of the audit unit after his consultation with the director. The director will be informed about any possible modification

o the acquaintance of audited activities or entities:

- a better knowledge of the entity, activities, practices of the audited object should be developed
- the leader of the audit team and the head of the audit unit will get themselves ensured of the fact that this knowledge are obtained at the necessary level and quality
- the audit unit will examine again the financial and non-financial data in order to establish their consistency with the auditors' knowledge about the audited entity/activity, thus ensuring the consistency and the relevance of conclusions

o treatment of materiality:

- the auditor (the audit unit) will take into consideration the materiality and the its relations with the associated risk

- for each result of the audit, the auditor will evaluate the materiality in terms of: the monetary value involved, the nature, the context in which that result appear

- the materiality will be taken into account in case of:

  -determination of the nature, schedule and extension of the audit procedures

  -evaluation of the audit's results

- in the evaluation of the reliability of accounts, the auditor will evaluate the materiality of the negative discovered aspects; the errors regarding the completeness, presentation and publication of accounts and the ones regarding the reality of substantiation the operations and transactions should be taken into account at the evaluation of the accounts' reliability (the true image)

- in the legality and regularity of transactions' substantiation evaluation, the auditor will establish if the aggregate value of the illegal or irregular transactions is material; moreover, the auditor will take into consideration the nature and the context of the illegal or irregular transactions

- in the planning of the account reliability auditing or of the legality/regularity transactions, the auditor will establish in normal way a materiality degree between 0.5-2% from spending (or incomes, in different cases); any deviation from this threshold will be very well documented within the mission's record and approved by the head of the audit unity, after the director's consultation and the audit responsible member's approval

- in evaluating the health (adequacy) of financial management, the auditor will establish if the audit results include aspects regarding entity or the examined activities' effectiveness, economy and efficiency, which should be included in the annual audit report or in the special reports

o treatment of the internal control:

- the auditor should obtain an agreement of the accountability and internal control systems, with the aim of planning an audit mission

- the auditor will develop professional rationale in order to establish the audit risks[33] and to choose the adequate procedures meant to limit in the highest degree these risks

- in the AMP projection, the auditor, will evaluate the inherent risk to the level of the whole entity (activity); in the projection of the audit program, the audit will have to specify this evaluation for each component of the

[33] The risk of audit is the risk that is produced when the auditor says that the accounts are reliable although they aren't, or when the auditor says that transactions were legally and regularly substantiated even if the situation is different, or when the auditor says that the financial management is adequate even though it is not this way.

audit or he should specify that this is a high risk for the component[34] in matter

- in case of an financial audit and every time there is the case in the audit of financial management adequacy, the auditor will understand the bookkeeping systems of the entity enough so that to identify and understand also:
  - the major classes of transactions in the entity's operations
  - the way these transactions are initiated
  - the significant bookkeeping registrations, documents and basic accounts in the evaluation of the financial estate
  - the process of financial and bookkeeping reference, from the initialization of the significant transactions and of other events to their inclusion in the Community's accounts
- the auditor has to obtain knowledge of the control framework enough to evaluate the management's attitudes, its seriousness and the actions regarding internal control and their role within the entity
- the auditor will obtain knowledge of the control procedures enough to project AMP
- after the bookkeeping and control systems, the auditor will make a preliminary evaluation of the auditing risk[35]for each audit component which is material and falls under the incidence of the audit mission's objectives
- the preliminary evaluation of the control risk for each audit component should be made at a high degree, except the cases in which the auditor:
  - is capable to identify the relevant internal control for the specific control risk, which can prevent or detect and correct errors, irregularities or failures of the adequate financial management
  - plans for performing of tests of control[36] for the substantiation of the evaluation
- the auditor must mention in the mission's record:

[34] By component of audit, it is understood that any assertion regarding the financial state of the audited entity: existence/non-existence, rights and obligations, produce, monetary evaluation, measurement, presentation, administration discharge, legality, regularity, reliability etc., assertion that is to be confirmed by the audit.

[35] The risk of auditing is the risk generated by the fact that the procedures of auditing cannot prevent or detect and correct in time the material errors of the financial management. Such a failure can appear even if there are no adequate procedures or if the existent internal control procedures are not operating effectively, continuous and consistently.

[36] The expression "test of auditing" replaced the "test of conformity" phrase, in order to perform the alignment of the European Court of Auditors to the international practice.

- the knowledge obtained over the bookkeeping and control systems of the entity
- the evaluation of the control risk

- the auditor will obtain audit proves through tests of control for the substantiation of any risk evaluation, other than "high risk"; the smaller the evaluation of control risk, then the higher the substantiation of evaluation through which the book-keeping systems (for the financial audit) and the internal control systems (for any type of audit) work effectively, continuous and consistently
- on the basis of control tests , the auditor evaluates if the internal control is projected and operates the way it was foreseen in the preliminary evaluation of the risk of control
- before trusting the procedures involved in the primary[37] audit, the auditor should obtain proves of audit which should uphold this trust
- the auditor will evaluate (in the performing of the tests of control) if the internal control was active all along the auditing period
- before reaching the conclusions of the audit mission, on the basis of the results of the substantial procedures and of other proves obtained by the auditor, the latter will establish if the control risk evaluation is being confirmed
- the auditor will take into consideration the evaluated levels of the inherent risk and of the control risk in determining the nature, the schedule and the extension of substantial procedures required to reduce the risk at an acceptable level
- in the audit of the account reliability and/or of legality/ regularity of transactions' substantiation regarding the evaluated levels of the inherent risk and of the control risk, the auditor will perform assessments in order to confirm or not these risks

v. location and scope characteristics of public external audit

- o is an external audit
- o is an ex-post audit, by excellence and can be also an occasional on spot audit
- o the public external audit sphere is represented by any phenomenon, process, transaction, activity or entity which works for the ensurance of the public money safety

vi. responsibility (reporting) characteristics of public external audit

[37] We translate "primary audit" as "prior audit", taking into consideration the meaning of the last expression from the context. By audit it is understood the realization of tests of auditing.

- if any irregularity is reported to the Court, the procedures through which this information will be transmitted to OLAF will be followed
- if it is appreciated that the non-conformation is involuntary, the auditor will discuss with the manager about this issue
- if there cannot be obtained proves regarding a non-conformation suspicion, then this thing is to be mentioned in the audit report
- if it is appreciated that there is a voluntary non-conformity, then it is evaluated the possibility that this one will give rise to a fraud (even if the non-conformation effect isn't pecuniary or material), after which OLAF is informed. In what regards the non-conformation effect then this thing is to be mentioned in the audit report
- if a non-conformation has a material effect over the accounts' reliability or over the legality or regularity of transactions' substantiation, then the auditor will mention a qualified opinion or an adverse one in the audit report

vii. accountability characteristics of public external audit

- the public external audit is responsible, for the legality and regularity of its own activity, to the specialized structures of the legislative powers

viii. sustainability characteristics of public external audit

- the control of the quality of the audit
  - those control procedures for the audit's quality, which are adequate to the individual audit, are to be implemented
  - in every phase of the audit process, the auditor's activity will be supervised by the leader of the audit team while the activity of this last person will be supervised by the head of the audit unit
  - objective: to obtain enough, relevant and reliable proves
  - way: the results of the supervision will be registered in the working paper regarding the result of the supervision

1.3 The Check-List For The Stage And Quality Of Financial Control Implementation

According to the analysis of the financial forms of control implemented at the EU level and also on the basis of the characteristic traits of any form of financial control, there can be drawn a list of fundamental, constitutive elements that are to be identified within a system (for instance, at the level of a candidate country), so that from the legislative and institutional point of view, that system should be aligned to the *acquis communautaire* in terms of financial control. We believe that these elements can be structured as following[38]:

1. **there is a statuary and complete basis that should define systems, principles and the functioning of the financial control (internal control, internal audit, external audit)**
    a. at the level of the primary legislation (constitutional laws or other normative acts with the same juridical power)
    b. at the level of the secondary legislation
2. **the internal control is implemented in all institutional structures that takes or spends public funds**
    a. there are responsibility and reference standards regarding the internal control
    b. there are procedures of risk association for different activities, actions, operations or transactions
    c. there are booking systems that reflect completely, truly and on time the operations and transactions
    d. the ex-ante control is implemented for liabilities and payments
    e. the control regarding the public procurement is implemented
    f. the control of public incomes (public revenue)
3. **there is an independent functional mechanism of public internal audit**, **with relevant sphere and purpose, which meets the following criteria:**
    a. is functionally independent
    b. has an adequate mandate (regarding the sphere and the audit types)
    c. uses the audit standards recognized at the level of the best EU recommendations and practices on the international level
    d. there is a coordination and a supervision regarding the audit standards and methodologies

[38] With an equal justification, it can be said that these fundamental, constitutive elements represent ,at the same time, key-questions which demand an affirmative, credible and sustainable answer

e. the audit trail is defined (also for the implementation agencies or/and the payment agencies that use communitarian funds)

4. **there is an independent functional and structural (external) mechanism of public audit, with relevant sphere and purpose, which meets the following criteria:**

   a. is functionally and structurally independent of any EGBP

   b. performs missions of public external audit, on the basis of the external public audit trail and an adequate audit mandate (regarding the sphere and types of public external audit)

   c. uses standards of recognized public external audit at the level of the best recommendations and practices of EU and on the international arena

5. **there are implemented systems of prevention and fight against irregularities and also for the recovery of any lost amounts as a consequence of irregularities, negligence, having the following criteria:**

   a. the establishment of irregularity risk signal systems which do not embody in frauds

   b. the determination (evaluation) of the prevention degree (potential or effective) of irregularities

   c. the possibility of action in case specific risks emerge

   d. procedures of determination of the materiality effects of some irregularities or frauds

   e. the legislation and the current procedures allow the retrieving of lost amounts as a consequence of irregularities or negligence

   f. there are mechanisms (of resolution through communication or of transmission of cases to specialized structures) for the treatment of irregularities or frauds

   g. there are fighting structures against fraud and corruption (within the financial control or separately)

6. there are mechanisms of evaluation of:

   i. capacity for improvement of the financial control and indicators for effectiveness

   ii. capacities of alignment to the *acquis communautaire* and also to the best international practices in matters of financial control

   iii. capacities of maintaining of the accepted standards at the international level, using the criteria:

      a. capability and capacity to develop and change

b. the existence of a strategy for development and change

c. the existence of a commitment for development and change

d. effectiveness in relation with the possibility ensured by institutions

1.4 Conclusions And Final Remarks

We believe that the following conclusions and remarks synthesize the analytical measures from the previous paragraphs regarding the *acquis communautaire* in the context of financial control:

1. ensuring the safety of the public funds represents a crucial duty of the specialized communitarian institutions;

2. the safety of the public funds implies at least three commandments

    a. complete collection of public funds

    b. legal, regular and efficient spending of the public funds

    c. complete retrieving of the lost public funds (not received or illegally spent)

3. the institutions that ensures the safety of the public funds is the financial control institution

4. the financial control institution consists of the following types of control:

    a. internal control (or managerial control)

    b. public internal audit

    c. public external audit

5. the internal control is the exclusive duty of the manager who rules a EGBP (also as drawing up and implementation)

6. the internal audit is functionally independent of the entity that makes the object of the audit, but is not structurally independent of that entity (it is organized and functions within EGBP);

7. the public external audit is both functionally and structurally independent in relation with EGBP;

8. the financial control is followed by a structure of fighting frauds (OLAF at the EU level) which receives information from the financial control structures in case certain irregularities such as frauds are identified;

9. the public internal audit and the public external audit cooperate and collaborate in specific activities;

10. the internal control is both an ex-ante and an on spot control, respectively an ex-post[39] one;

11. the public internal audit and the public external audit are, regularly, ex-post controls, but accidentally, they can also be on spot controls (but they cannot be ex-ante controls);

12. all three forms of financial control make up the all three standard types of control

    a. financial one

    b. legality and regularity one

    c. of performance one

13. in the financial control context, the European Commission doesn't impose ways and means, but makes only conclusions that should be reached at, and respectively the risks that have to be avoided or covered, depending on case;

14. the efficiency of the financial control (in all its three forms) is based on two directions of action:

    a. simplification

    b. externalization (delegation, decentralization, contraction of services)

15. each form of financial control, within its framework, is hierarchically structured, with clear command, execution, reference and responsibility relations (between the team that perform the control, the head of the team which performs the control, the head of the representative unit of control, the head of the structure of control);

16. the internal public funds of the member states will have the same status, from the financial point of view (and largely, from the safety of the public funds) similar with the communitarian funds

17. the preventive systems (the so-called systems of attention or alert), at the level of each form of control represents essential objectives in the building of a financial control that will respond to the three E (economy, effectiveness, efficiency)

18. the sphere of each all three types of control is the largest possible: any operation, transaction, action, activity, entity etc. that is related to the public funds (that implies the administration of public funds);

19. the standards of performance of the financial control are the ones accepted at the international level and according to the current practices;

20. the financial control systems contain, within their structures, viable subsystems of evaluation, adaptation and improvement, as basis for their sustainability..

[39] The previous ex-ante financial control (distinctively organized) was abolished, thus, the ex-ante control is being now performed through the internal control systems.

Notes, Commentaries, References

1. SIGMA papers no. 19 and no. 50: Effects of European Union Accession. Part 1- Budgeting and Financial Control and Part 20- External Audit

2. At the European Commission's level there are two perceptions regarding the internal (managerial) control. Thus, in practice there are two types of such kind of control: a) the southern or Mediterranean type- specific to the EU member states or candidate countries, inclusively Romania (characterized by the following procedure: the transaction passes from the official entitled to authorize the transaction, to an ex-ante financial control, designated by the Minister of Finance, who is certifying the legality and regularity of the transaction: then it passes to the person that is executing the transaction (ex., in Romania, in the Treasury Department); b) the northern type-specific to the other member states, where the responsibility belongs to the person entitled to authorize the transaction, although it can be obtained an ex-ante control for legality and regularity. In Romania, a mixed system is actually functioning: in the cases when the financial control does not certify the legality and regularity of transaction, even though the person entitled to authorize the transaction is authorizing it, then the responsibility belongs to the last person. It should be mentioned that the southern type is characterized by a high level of centralization of ex-ante control and of public book-keeping, while the northern type developed more the responsibility structures within the public management, and also those regarding the public internal audit, as managerial instrument (see in this sense, also the Compendium of PIFC: Public Internal Financial Control in Applicant Countries, issued on 2002, September, the 5th , by Robert De Koning, from DG Budget of the European Commission)

3. the definition is in great part, taken from the definition of the internal audit given by the Institute of Internal Audits, on September, 1999

4. economy the allocation of a minimum of resources, with the aim of attaining the established objective; efficiency: the realization of a high degree in the attainment of the established objective, with a minimum of resources (the optimum between economy and effectiveness)

5. the way it is described in the two normative acts which define her: Commission Regulation No. 2064/1997 and Council Regulation No. 1267/1999

6. the fraud is defined in the Convention for protecting the financial interests of the European Communities

7. according to the proposals from "The Audit Progress Committee of the European Commission (Communication to the Commission from Mrs Schreyder in agreement with Mr. Kinock, Brussels, 31.10.2000, SEC(2000)1808/3, made according with Action. 71 from White Paper of Reform)

8. the definition is taken, in its great part, from the definition given by the Institute of Internal Auditors

9. according to the analysis made in Compendium of PIFC: Public Internal Financial Control in Applicant Countries, issued on 2002, September, the 5th, by Robert De Koning, within DG Budget of the European Commission

10. according to the standards of the Internal Auditors

11. conditions for the provision of an Internal Audit Capability in each Commission Service (Communication to the Commission from Vice-President Neil Kinock in agreement with Mrs Schreyder, 31/10/00 SEC(2000) 1803/3)

12. memorandum to the Commission, from Neil Kinock 31/10/00 SEC(2000) 1801/2

13. Bratislava, 23.11.2001, the fifth forum over the governance of the agencies and public authorities (the financial management and the auditing of the public agencies). Five countries presented their reports: France, Holland, Portugal, Great Britain, Sweden

14. according to the Council Regulation no. 762/2001 (published in OJ L 111. on 20.04.2001) concerning separating the internal audit function from the ex-ante control function, and also the report which was entitled "Reorganization of Financial Control and Internal Audit in the Commission" (Communication to the Commission by Neil Kinock and Mrs Schreyder in agreement with the President, 25.06.2001)

15. Audit Court Policies and Standards, European Court of Auditors, 2nd Edition, May 2000

Chapter 2: THE ASSESSMENT OF THE CURRENT SITUATION OF PUBLIC FINANCIAL PUBLIC CONTROL IN ROMANIA

2.1 The assessment of legislation in the internal financial control

2.1.1 Introduction

Chapter 2.1 has as an objective the analysis and evaluation of the primary, secondary and tertiary Romanian legislation regarding the overall design, implementation and exercising financial control, as well as the institutions/organizations involved in this.

Taking into consideration the analysis structure we previously used in Chapter 1, in order to create a comparative evaluation isomorphism, we will be looking at the status of this in Romania in accordance with that analysis matrix. It is for this purpose that all of the official documentation will be structured in such a way such as to allow the identification of the level, structure, degree and quality of financial control, separated in its three components, as specified by the acquis communautaire.

The methodology used in achieving the goals of chapter 2.1 will again be that of balancing legal provisions (at primary, secondary and tertiary levels of legislation) and, based on this, assessing, according to the aforementioned analysis matrix, what level Romanian institutions and practice find themselves in. Aside from this, Chapter 2 will also deal with the following specific problems: 1) institutional and organizational structures currently operating in Romania in the field of financial control; 2) organizational, functional and objective links existing between financial control, as it is institutionalized at European Union level, and other forms and types of public finance control that operate legally in Romania; 3) assessing some Romanian tendencies at financial control level as well as other forms and types of public control over public funds, which are currently in force and are functional in Romania.

The main objective of this chapter is that of making a current diagnostic on Romanian financial control, diagnostic that shall be later used to identify current divergences or divergent tendencies between the requirements of the acquis communautaire and Romanian reality.

2.1.2 The Objective of the chapter

This chapter wants to attain the following solid goals:

1. evaluate the institutional setting of financial control (in its three forms) currently existent in Romania;

2. identify the main legal, methodological and practical characteristics of the design, implementation and operational aspect of financial control in Romania;

3. evaluate the effectiveness of financial control in Romania;

4. evaluate the institutions, organizations and the all around organizational and operational structures of Romanian financial control;

5. systematize the characteristics of the design, implementation and operational aspect of Romanian financial control, according to the analysis matrix set out in Chapter 1.

The procedure the authors will use to attain these goals shall be a documentary one. Based on this documentary analysis, shall be drawn conclusions related to the aforementioned diagnostic elements, trying to create a large picture of Romanian financial control, a picture that in Chapter 3 of the study shall serve as a basis for a level II analysis, namely analysis of the quantitative and qualitative extent to which Romanian financial control has approached the acquis communautaire.

More specifically this chapter shall carry out the following specific activities:

i. Identify and list all legislation regarding financial control, by the three categories of financial control (internal control, public internal audit, public external audit);

ii. Identify and list secondary financial control legislation, by the three aforementioned categories;

iii. Evaluate the status of enacting and implementing primary and secondary legislation, based on the true content of said legislation;

iv. Identify and evaluate the implementation status of institutions/organizations that have to make financial control operational;

v. Systematize the analyses based on the evaluation matrix regarding the evaluation the acquis communautaire regarding financial control, as it was set out in Chapter 1.

2.1.3 The Relevant Domestic Legislation Structure

The first domestic financial control legislation category is the primary legislation.

The primary legislation in the field of financial control refers to those laws (acts of law) that generate the components (institutional, organizational, etc) of financial control. From the point of view of the national legislative system, primary legislation comprises mainly organic, institutive laws.

From the point of view of the content, the primary legislation can refer to a certain type of financial control (of the three ones discussed) or can contain provisions regarding two such types of control (we are talking about internal control[40] and public internal audit, because external public audit is always provisioned in a distinct manner).

Within primary legislation we find two categories of laws (the list of laws regarding primary and secondary Romanian financial control legislation is presented in *Appendix 1*):

I. Domestic laws (passed by national legislative assemblies);

II. European Union common provisions (passed by national legislative assemblies based on memorandums or understandings with the competent bodies of the European Commission, especially for gaining access to pre-structural community funds);

[40] There are also cases in which, as a result of insufficient conceptual, methodological or operational distinctions, some types of the same kind of financial control are treated in a separate manner within the same law: such is the case of internal audit and preventive financial control (see Government Ordinance 119/1999, republished in 2003).

III. Foreign provisions (passed at European Union level and that have not yet resulted in the adoption of domestic laws aligned to them). Foreign laws are not real operational laws for Romanian financial control but only present institutional benchmarks, which will be taken into consideration throughout the process of transposing the acquis communautaire in the field of financial control into domestic legislation. Foreign laws can also refer to those European Commission level legal provisions regarding the use of pre-structural communitarian funds in candidate countries, provisions that have not yet become communitarian laws or domestic laws. In our study, foreign laws will represent analysis issues solely in Chapter 3, where we shall be assessing the status of transposing the acquis communautaire in the field of financial control into Romanian legislation. These have been listed in Chapter 1 of the study.

Regarding the domestic laws, these have to be classified into two categories:

a) Primary laws that have institutive character beyond the limits of financial control and which mainly contain the general framework in which legislation regarding financial control will be passed and implemented; this framework is recommended for some articles in said legislation; we shall call this kind of domestic laws *domestic framework laws*.

b) Primary laws that address financial control directly and which regulate the institution of a certain kind of financial control; we shall call this kind of domestic laws *domestic institutive laws*.

The first category of domestic laws (domestic framework laws) actually generates both the place and the role of financial control, by stipulating them within broader economic-financial mechanisms. From a legislative point of view, this type of domestic laws represents the starting point for designing and implementing the second category of domestic laws. *Appendix 2* lists the most important such laws that are currently in force in Romania[41].

The second category of domestic laws is directly related to instituting financial control, in its three known forms, and these laws are enacted especially for this purpose. Domestic institutive laws create both the institution as well as the organizational framework for financial control. Moreover, domestic institutive laws represent the legislative support for the drafting and implementing of secondary legislation in the field of financial control. *Appendix 3* lists the domestic institutive laws currently in force in Romania[42].

Regarding the common provisions with those of the European Union, these refer to the conventions Romania signed with the European Union or with its institutions and which refer to collaborating or the cooperation between the Union and our country along the lines of absorbing pre-structural community funds for developing trans-border cooperation with other member or candidate countries, etc. These provisions set the legislative framework for preparing candidate countries for accession and afterwards for the Union's economic and monetary integration processes. *Appendix 4* lists laws enacted by Romanian authorities regarding this category of laws.

[41] As a matter of fact the list also contains a brief history of the progress in the field; that is why one can find in the list laws that have been modified or even repealed. The final analysis will specify each time the legislative framework in use at the time of the analysis.

[42] Idem footnote 2.

2.1.4 The assessing of domestic framework legislation

The domestic framework legislation in the field of financial control created the legal, institutional, organizational and partially, the procedural-operational benchmarks for drafting and implementing financial control domestic institutive legislation.

A few of these kinds of laws are essential:

a) Laws regarding the overall problems of the public sector:

a. public finances;

b. local public finances;

c. public accounting;

d. public administration;

e. the organizational and functional structure of the Government, ministries, governmental agencies, public institutions and authorities;

b) Laws regarding public funds and public patrimony administration's effectiveness and efficiency;

c) Laws regarding transparency, bureaucracy, corruption and so on;

d) Laws regarding governmental programs or strategies, which, either directly or as a result of their consequences, have an impact or could have an impact on the design, implementation, organization or effectiveness of financial control.

The general structure of public financial control in Romania is as follows:

1. Internal public financial control (governmental control)
    a. public entity level internal control
        i. operational managerial control
        ii. preventive financial control per se
        iii. public internal audit
    b. delegated preventive financial control
    c. governmental inspection
2. Public external audit (parliamentary audit).

From a synoptic point of view Fig. 1 presents the structure of Romanian public financial control:

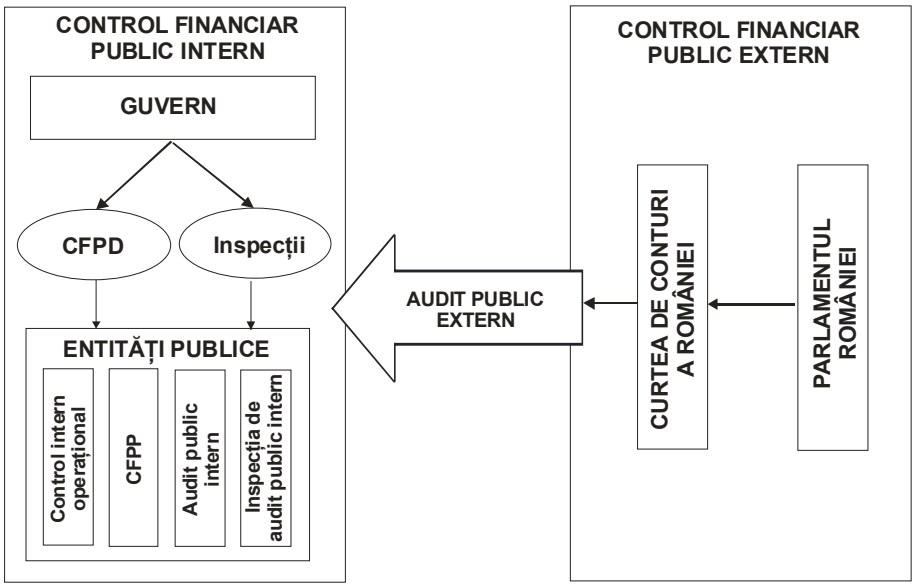

Fig. 1 *General structure of public financial control in Romania*

There are two problems that have to be discussed in relation to this financial control structure:

1. From a conceptual and methodological point of view, preventive financial control is included in internal control, in both cases of preventive financial control per se as well as in delegated preventive financial control[43];

2. Inspections represent a problem that has not yet been solved from a legal point of view. In the secondary piece of legislation regulating inspections (Government Decision 362/2000 regarding the organization of internal control inspections and setting the general attributes for carrying them out) the following is stated: "internal control inspections represent an exclusive attribute of the Ministry of Finance (art 1)". This means that the inspections having the nature of financial control inspections are carried out only in connection with public internal audit (there are two legal situations in which internal public auditing inspections are carried out: information regarding irregularities and illegal issues; notifications from chief accountants regarding operations being carried out on its own responsibility by the credit ordinators without its own preventive financial control approval (art 3, letters a and b);

Therefore, we have an important issue here related to the fact that, from a legal point of view, inspections are not stipulated as an attribute of internal control in general but only as an attribute of public internal audit. This issue shall be analyzed in detail in Chapter 3 of this study, for identifying the directions in which domestic legislation has to make progresses in its process of aligning financial control legislation to the acquis communautaire.

Law 682/2002 regarding public internal audit brings in a new concept regarding financial control, namely *public internal financial control*, defined as follows: "the entire system of internal control of the public sector, comprising the control systems of public entities, other entities so empowered by the Government and a central body that has the responsibility of harmonizing and

[43] Delegated preventive financial control (currently being exercised in a centralized manner by the Ministry of Public Finance) shall be decentralized in a step by step manner, until the time when Romania's accession to the European Union, when it shall become internal financial control per se.

implementing control and audit standards". This concept is very important from at least three points of view:

a) It refers solely to internal financial control which, as results from the legal definition, is assimilated by governmental control, which once again brings into discussion the problem of including or not including public external audit in the acquis communautaire regarding financial control;

b) It represents the objective of a very important Policy Paper of the Romanian Government (submitted to Brussels in 2001 at the request of the European Commission): Policy Paper regarding public internal financial control;

c) This is the object of interest of the European Commission, via one of its specialized structures: "*DG BUDG.B.3. – Control of Traditional Own Resources and Assistance to Candidate Countries – PIFC and Enlargement*", structure which constantly monitors the aligning of domestic legislation to the acquis communautaire in the field.

The analysis of domestic framework legislation regarding financial control leads to the following main conclusions (1)[44]:

A. Provisions that have a general character (regarding financial control in general)

- The Parliament can ask the Ministry of Public Finance (which can also obtain them from main credit ordinators) to present the documents that were at the basis of annual budget projects (Law 500/2002);

- The Ministry of Public Finance requests reports and information from any and all institutions that manage public funds (Law 500/2002);

- The Ministry of Public Finance ensures monitoring of the budget implementation, and in case divergences from authorized income and expenses are found it makes proposals to the Government for correcting the situation (Law 500/2002);

- The Ministry of Public Finance blocks or reduces use of some budget loans that are found as having no legal backing or that are not justified in the budgets of credit ordinators (Law 500/2002);

- The Ministry of Public Finance co-ordinates the monitoring of the entire public investment program (Law 500/2002);

- Budget implementation is based on the principle of separating the attributions of individuals that have the capacity of credit ordinators from the attributions of individuals that have the capacity of accountants (Law 500/2002);

- The Ministry of Public Finance requests from main credit ordinators, throughout the year, period reports regarding the degree of use of the public funds, for the purpose of monitoring budget implementation (Law 500/2002);

[44] Same as in Chapter 1, numbers contained in brackets indicate the order of some Notes, comments or bibliographical references that can be found at the end of the chapter.

- The Ministry of Public Finance establishes, by means of methodological norms, accounting procedures and the reporting system regarding information supplied by public accounting (Law 500/2002);

- Public institution accounting provides credit ordinators with information regarding the implementation of income and expense budgets, patrimony currently under administration, as well as for drawing up the general annual state budget implementation account, of the annual social state insurance implementation account, special funds, as well as of annual local budget implementation accounts (Law 82/1991);

- The Ministry of Public Finance enacts norms and regulations in the field of accounting, general accounting plan, the models for financial reports, registry and form models regarding financial and accounting activity, methodological norms regarding their drafting and use (Law 82/1991);

- Local public administration authorities hold power and responsibility over auditing, tracking and receiving local taxes and duties (Emergency Government Ordinance 45/2003);

- Local public administration authorities hold power and responsibility over the efficient administration of goods that are public and private property of territorial administrative units (Emergency Government Ordinance 45/2003);

- Local public administration authorities hold power and responsibility over administrating local public funds throughout the fiscal year, under conditions of efficiency (Emergency Government Ordinance 45/2003);

- Enhancing financial management capacity at Ministry of Finance level (Government Decision 456/2000);

- Enhancing tax collection implementation and administrative control capacity (Government Decision 456/2001);

- Separating political functions from administrative ones (Government Decision 1006/2003);

- Creating and consolidating a group of professional career public officials (Government Decision 1006/2003);

- Decision making to be carried out by the authorities that are closest to the citizens or to the problem which they are regulating (Government Decision 1006/2003)[45];

- Delegating some powers and splitting some services (Government Decision 1006/2003);

- Orienting interest towards results based on efficiency, effectiveness and quality of services. Efficiency and effectiveness improve when public official involvement increases, when responsibilities are transferred to lower levels in the administration, once the system of responsibilities is established, for each level in particular (Government Decision 1006/2003);

[45] This is where the principles of decentralization and subsidiarity find a home.

- The relation between internal and external audit has to be based on the principle that each high level auditor has to be able to rely on internal auditing systems and on the activity of internal auditors of a lower level (Government Decision 1006/2003);

- The Ministry of Public Finance carries out the function of exercising internal public financial auditing (Government Decision 1574/2003);

- The Ministry of Public Finance carries out the function of state authority, by which it ensures audit exercising, the standard application and respecting of legal regulations in its field of activity, as well as the functioning of institutions that carry out their activities and that report to it (Government Decision 1574/2003);

- The activity of the Ministry of Public Finance is based on the principle of improving the management of public funds (Government Decision 1574/2003);

- The Ministry of Public Finance exercises control over the use of budget credits by public institutions, via its specialized bodies (Government Decision 1574/2003);

- The Ministry of Public Finance (Government Decision 1574/2003):

    - Regulates preventive financial control and exercises delegated preventive financial control for the purpose of legally and efficiently constituting and utilizing public funds;

    - Provides methodological guidance, organizes training and professional development activities in the field of internal audit;

    - Carries out operational control activities in public institutions and brings resolution to contestations filed by these;

    - Drafts general strategy and framework, coordinates and evaluates public internal audit activities at the national level, carries out public internal audit missions of national interest that have multi-sector implications and exercises public internal auditing activities throughout its own apparatus;

    - Manages non-refundable financial assistance provided to Romania by the European Union, as per the provisions of the understanding memorandums and of the financing memorandums and accords signed by the Romanian Government and the European Commission;

- The Superior Council for Reforming Public Administration, Coordinating Public Policy and Structural Adjustment provides monitoring of strategies regarding public administration reforms and of the way strategies and policies are implemented at public authority and institution levels (Government Decision 1623/2004);

- The Control Body of the Government co-ordinates those groups exercising control ministries and public institutions (Government Decision 766/2003).

B. Provisions that have a special character (regarding certain categories of financial control)

B.1. Regarding internal control

- The budgetary credit ordinators (main, secondary or tertiary) have the obligation to provide (Law 500/2002):
    - The good financial management of budgetary loans;
    - The integrity of entrusted patrimony;
    - The organization and performing of current account activities, presentation on-time of financial sheets regarding the status of patrimony currently in administration and of budget implementation;
    - Organization of the monitoring system for the public acquisitions program and for the public investment works program;
    - Organization the recording of the programs, including indicators regarding them;
    - Organization and keeping up to date records on the patrimony, as per legal provisions;
- Preventive financial control is carried out on all operations that affect public funds and/or public patrimony (Law 500/2002);
- Expense undertaking and making shall be done only after it has been approved by its own preventive financial control body (Law 500/2002);
- The Ministry of Finance exercises delegated preventive financial control (Law 500/2002);
- Over the course of the budgetary year the main credit ordinators shall track the investment process and shall draft quarterly monitoring reports which they shall submit to the Ministry of Public Finance (Law 500/2002);
- The main credit ordinators are responsible for completing investment objectives included in investment programs (Law 500/2002);
- Specific operations related to undertaking, liquidating and making expenses fall to the responsibility of the credit ordinators and are carried out based on approvals received from the specialized departments of the public institution (Law 500/2002);
- Expense payment making is done by the head of the financial-accounting department, within the limits of available funds (Law 500/2002);
- Justificatory documents that are the basis of accounting records employ the responsibility of the individuals that drafted and approved them, as well as of those that entered them into the accounting records, as may be the case (Law 82/1991);

- The quarterly and yearly financial statement is the official document presenting the status of the patrimony being administered by the state and by territorial-administrative bodies, and of the income and expense budget of public institutions (Law 82/1991);

- Responsibility for organizing and managing the accounting records of the credit ordinators or of another individual that has the duty of managing that body (Law 82/1991);

- Organization and management of the accounting records is done by separate departments (Law 82/1991);

- Public institutions where accounting is not organized in separate departments or that do not have personnel employed under an individual labor contract may, in accordance with the law, sign service contracts for managing accounting records and for drafting quarterly and yearly financial statements with accounting companies or with authorized natural persons, according to the law. Contract signing shall respect regulations regarding public acquisitions of goods and services. Payment for said services shall be made from public funds that have that destination (Law 82/1991);

- For local budgets own preventive financial control is carried out on all the operations that affect public funds and/or public and private patrimony and is exercised as per legal regulations existent in this field (Emergency Government Ordinance 45/2003);

- Public expense undertaking and payment making from local budgets shall be carried out only with the approval of the internal preventive financial control body, as per legal provisions (Emergency Government Ordinance 45/2003);

- Efficient internal control is a stepping stone for improving the activities of the leaders of public institutions (Government Decisions 1006/2003);

- The efficient use of public funds shall be ensured by using the competitive system and economic criteria for awarding public acquisition contracts (Government Ordinance 20/2002);

- The drafting and implementing of Guidelines for public officials (Government Decision 1065/2001);

- Creating an oversight and control system for institutions that carry out public services (Government Decision 1065/2001);

- Decentralizing public services (Government Decision 1065/2001);

- Reducing the number of cash transactions (Government Decision 1065/2001);

- Setting up, within each public administration institution, of the Single Office for receiving citizen requests (Government Decision 1065/2001);

- Providing a good internal and external audit system which would provide the Government and the Parliament with reports regarding the management and administration of public funds (Government Decision 1065/2001);

- The Control Body of the Government ensures coordination of the anti-fraud effort and of effective and equivalent protection of the financial interests of the European Union in Romania, as the sole point of contact with the European Anti-Fraud Office (OLAF) (Government Decision 766/2003);

- The Control Body of the Government provides coordination of the activities of the control bodies from within the ministries and from central public authorities (Government Decision 766/2003);

- Within 15 days of when the Government or one of its members ends its term, as per art 105 and 109 of the Constitution, they shall present a status report on the management of ministerial activities they were responsible for, as well as of problems currently underway, by signing a transfer Minutes (Law 1151999);

- Public authorities shall organize a separate department for applying the legal provisions regarding the transparency of financial relations between public authorities and public companies, as well as regarding financial transparency within some companies (Government Decision 26/2003);

- The Ministry of Public Finance regulates preventive financial control and exercises delegated preventive financial control for legal and effective constituting of public funds (Government Decision 1574/2004).

B.2. Regarding public internal audit

- Public internal audit is carried out on all operations that affect public funds and/or public patrimony (Law 500/2002);

- For local budgets, public internal audit is carried out on all operations that affect public funds and/or public and private patrimony and is exercised as per legal regulations in the field (Emergency Government Ordinance 45/2003).

B.3. Regarding public external audit

- The general state budget completion account, the social health insurance budget and all other annual completion accounts are approved by law after they have been verified by the Court of Auditors (Law 500/2002);

- Constituting and using local public funds and local budget completion accounts shall be verified by the Court of Auditors, as per the law (Emergency Government Ordinance 45/2003).

B.4. Regarding inspections (2)

- Finding irregularities regarding the use of public funds and public patrimony and fining for such is done by the Court o Auditors, Ministry of Public Finance and by other individuals empowered for this purpose, as per the law (Law 500/2002);

- The Ministry of Public Finance carries out inspections on maintaining legality both internally and for other public institutions (Government Decision 157/4/2003).

2.1.5 Evaluating domestic institutive legislation

As was stated before, domestic institutive legislation regarding financial control establishes the law, institution, organization and procedure regarding financial control.

Since, unlike European Union level legislation, the distinction between primary domestic institutive legislation and secondary or tertiary domestic institutive legislation is not very visible (there are many methodological references in the primary legislation and, respectively, in secondary legislation – less so in tertiary legislation – and there are plenty of references of operational-procedural nature), in what follows we undertook a common analysis of the two legislation categories (primary and secondary).

Evaluating domestic institutive legislation was developed into two meaning fronts:

a) a conceptual analysis, which includes references to progress (brief history) recorded since 1999 and until now (5);

b) a procedural analysis based on the analysis matrix established in Chapter 1 and made operational for community legislation in the field of financial control; the procedural analysis was carried out on each category of financial control in part (internal control, public internal audit, public external audit)[46].

A. Conceptual analysis and progress

A.1. Regarding internal control

The internal control in public institutions (just as, in accordance with the law, in any entity[47] that manages public funds or uses public patrimony, including community funds) is currently regulated by Government Ordinance 119/1999 regarding internal control and preventive financial control, republished in Official Gazette 799/2003 (art 3, 4 and 5).

Even though preventive financial control is still distinct from management control (internal control per se) (3) via the functions and role it carries out it is a category of internal control and shall be analyzed in this paragraph.

By internal control we understand "the entirety of forms of control that are exercised at the public entity level, including internal control, as set by the management in accordance with its objectives and with legal regulations, so as to provide fund administration in an economical, efficient and

[46] For internal control we also took into consideration the two forms of financial control that are still not sufficiently present (from a conceptual and legislative point of view) in internal control but which, as a tendency, will be an integral and indistinct part of internal control (managerial): preventive financial control (both own and delegate) and inspections.

[47] An entity that manages public funds or makes use of public patrimony is called a public entity. This is the legal definition of a public entity: *public authority, public institution, national company, autonomous regie, company in which the state or a territorial-administrative body is a majority shareholder that has legal entity status and uses/manages public funds and/or public patrimony.*

effective manner; this also includes organizational structures, methods and procedures (4) (Government Ordinance 119/1999, republished in Official Gazette 799/2003; Law 672/2002).

Internal control is also regulated by all laws (primary, secondary or tertiary) that regard, develop or bring further explanations regarding its objectives, functions and role. Therefore, all legal provisions regarding activity organization, recording activity results (e.g. accounting), selecting, employing, evaluating and promoting staff, organizing the informational (and IT) system at entity level, the reporting on own activities of said entity system, the system of accountability, sanctions and penalties, etc., forms the global legislative body that regulates internal control. In fact, Government Ordinance 119/1999 regarding internal control and preventive financial control, modified and republished in Official Gazette 799/2003 only makes into law the necessity and obligation of organizing internal control in public institutions, while the way in which it shall be implemented shall respect that set of laws currently in force in this field.

Internal control had initially a very direct and punctual denotation regarding the categories of activities, which the manager of the public institution had to organize, activities that were later listed in the definition part of the institutive law (Government Decision 119/1999) (5). Afterwards the definition of internal control was extended by giving up on the punctual provision in the body of the law, of activities or actions that are the scope of internal control. In this manner, the manager of that good within public patrimony money was just receiving a generic obligation to draft, implement and organize internal control (Law 84/2003) (6). This latest development in the concept of internal control is also kept in the law that is currently in force in this matter (7).

In regards to internal control the concept of "good financial management" is very important. In constitutive law (7) good financial management is regarded in art 5 of Chapter I, immediately after the problem of internal control. Both in regards to content and to the place in the economics of the law one could say that there is an equivalence of contents between internal control and good financial management, in the sense that internal control results in good financial management and that, correlated, good financial management expresses the performance of internal control This semantic adjoining is very important, including for the scope of Chapter 3 of this study, which shall also regard the degree and the quality o the aligning of domestic legislation (framework and institutive) to the acquis communautaire in the field of financial management.

A.1.1. Internal control at the public entity level

- **<u>Internal operational control</u>**

This regards the set of structures, methods, techniques and procedures by which the manager of the public entity ensure that the administration of public funds and use of public patrimony is done in a legal, regulated, efficient and opportune manner. The legal and regulated characteristics grant the operations (transactions) of the public entity the character of conformity and the efficient and opportune characteristics grant these operations (transactions) the *performance* character.

Internal operational control refers to all institutional methods that have permanent character, which provide for the recording, record keeping, processing and transmission of information in the process, as well as reporting the situation regarding the public entity.

- **<u>Own preventive financial control</u>**

In regards to preventive financial control, we can make the following evaluations and remarks:

a) The concept of preventive financial control was first introduced by Government Ordinance 119/1999 – Chapter III: "*activity which verifies the legality and regulatory status of operations carried out with public funds or public patrimony, before such are approved*"; let's make note of the following regarding this concept:

- preventive financial control (PFC) only checks the legality and regulatory status regarding public funds and public patrimony[48]; therefore, PFC shall not say anything about performance (economy, effectiveness, efficiency, opportunity, etc[49]);

- it is a previous control (ex ante);

- it is considered internal control[50]

b) Preventive financial control is of two kinds: a) own preventive financial control (OPFC) – organized and carried out at the level of each public entity; b) delegated preventive financial control (DPFC) – organized and carried out by the Ministry of Public Finance; also worth mentioning is the fact that, in accordance with legal provisions, some financial operations (transactions) have to have both OPFC and DPFC approval;

c) Operations that are the scope of PFA are exhaustively presented by the law (as opposed to the case of public internal control, which has as scope any activity or action of said entity).

OPFC refers to internal control, the decision to carry out this type of audit belonging to the manager of the public entity.

- **Public Internal Audit Inspections**

Public entity level inspections may only be carried out by the bodies of the Ministry of Public Finance (central and territorial). Even tough, as we have shown above, inspections may only be organized as part of public internal audit (as per the functions of public internal audit) we think this legislative framework is too narrow: inspection should be an operative instrument available to the manager not only as a result of the two situations mentioned by the lawmaker (Government Decision 362/2000, art 3, letters a and b), but as many times as it sees it necessary to order such on the spot checks[51]. Even so, we do not think it is necessary that inspections be expressly stipulated

[48] Even though some later laws explicitly add "within the limits of undertaking loans and approved budget loans" as a scope of preventive financial control, one can accept, we think, the fact that this final statement is somewhat superfluous or redundant, it already being contained in the semantic contents of the notion of "legality". The fact that the lawmaker wanted to distinctly express it just represents the important significance the obeying of the law has from this point of view.

[49] Let's mention the fact that, with consultative character, delegated preventive financial control can issue approvals regarding "the three Es" on its own initiative, at the request of the credit ordinator where it is appointed or at the request of the Minister of Public Finance.

[50] Even though delegated preventive financial control exists (exercised by the Ministry of Public Finance), which is an external control face to the controlled entity, it is considered that we still find ourselves within the public funds administration structures and within the limits of public patrimony (meaning within the set of public entities) and, as a result, we are still dealing with internal control. Even so one can ask the question whether or not the Court of Account is or is not inside the public institution system, whereas auditing carried out by this institution is regarded as external. This problem shall be dealt with in a specialized paragraph that shall refer to the larger problem of superior hierarchy control structures (be they administrative or financial).

[51] According to the law, inspections are that kind of internal control that take place on the spot. We think that, from the point of view of the definition of inspections, we have to make some supplemental statements because, i.e., internal or external public audit missions, just as external financial auditing missions also take place on the spot. The

in primary or secondary internal control legislation, it being understood that the manager of the public entity may order, as is needed and in accordance with the conditions in which said public entity carries out its activities, management inspections, internal or mixed public control inspections (where its own internal public control structure can take part, along with other on the spot checking structures).

A.1.2. Government level internal control

- **Delegated preventive financial control**

The legislative headquarters of the field regarding DPFC is the same as that of OPDC. What needs noticing is the fact that in regards to DPFC what we understand by this type of preventive financial control is yet insufficiently stated in regards to the place, role and functions it has.

The main conceptual characteristics of DPFC are as follows:

a) it is exercised by the Ministry of Public Finance (both via its main bodies as well as via its territorial bodies);

b) it is carried out only on certain types of financial operations (transactions), which are stipulated in methodological norms approved by the Minister of Public Finance (Government Ordinance 119/1999 republished in Official Gazette 799/2000, art 12, 3rd paragraph) and for some kinds of operations only for those that go over a certain limit[52];

c) it is only carried out regarding transaction projects that have only been approved by OPFC;

Regarding DPFC we found the following progress over time:

- Law 84/2003 that modified and amended Government Ordinance 119/1999 extends the types of operations for which DPFC approval may be requested aside from those of main credit ordinators (art 16, 3rd paragraph, letter a);

- Law 84/2003 that modified and amended Government Ordinance 119/1999 introduced the responsibility of the delegated financial auditor for operations for which they granted approval (art 18, 3rd paragraph);

- Law 84/2003 that modified and amended Government Ordinance 119/1999 allows for the suspension of the maximum time period for carrying out the DPFC with the time period

---

definition elements should probably be identified at the level of the segment that undergoes on the spot checks, the duration of the check or the element that triggers the inspection mission.

[52] Therefore, it results that DPFA only seeks to create a redundancy of preventive financial control for those cases where the risk associated to operations (transactions) is too high (be it as kind of operation or as amount). This explains the tendency that DPFA gradually enter into the sphere of responsibility of the manager of the public institution as internal control develops in the direction of better management of risk associated with financial operations of public entities.

during which the process of obtaining the opinion of a neutral party (art 18, 4th paragraph)[53];

- Law 84/2003 that modified and amended Government Ordinance 119/1999 introduces a monitoring and guidance function for the delegated financial controller in regards to the PFA of the entity where he is appointed as such (art 21, 1st paragraph, letter d1);

- Law 84/2003 that modified and amended Government Ordinance 119/1999 states that the Body of Delegated Controllers can also be set up within the Ministry of Public Finance at territorial level (the initial piece of legislation only allowed for the establishing of this body at the central level) (art 21, 1st paragraph);

- Law 84/2003 that modified and amended Government Ordinance 119/1999 institutes a mandatory obligation for the head financial controller to also draft a national annual report regarding PFC (until that time only an annual report regarding the activity of delegated controllers was being drafted) (art 21, 8th paragraph, letter g1);

- Law 84/2003 that modified and amended Government Ordinance 119/1999 no longer requires Government approval for making the decision to carry out operations for which DPFC approval was denied (art 25, 4th paragraph)[54];

- **Governmental Inspections**

If internal operational control (so called managerial control), preventive financial control per se and public internal audit inspections are types of control that are carried out when the manager of the public entity decides to, governmental inspections, which also represent a sort of public internal control (within the boundaries of governmental or executive control) are carried out when the Government decides (the Ministry of Public Finance or the Prime Minister). Governmental inspections are currently being carried out in Romania by two specialized structures:

1. The Control Body of the Government

2. The National Authority of Control

The activity of the Control Body of the Government is regulated by Government Decision 776/2003 regarding the organization and functioning of the Control Body of the Government (Official Gazette 004/2004).

The activity of the National Authority of Control is regulated by the Government Decision 745/2003 (Official Gazette 496/2003), modified and supplemented by Government Decision 1537/2003 (Official Gazette 004/2004).

Synoptically speaking, the general structure of the internal control, at the level of public entities, can be represented like this (Fig. 2):

[53] Here we're really dealing not with a completion of the law but with the fixing of a problem resulting from something the lawmaker missed in Government Ordinance 119/1999; in reality getting the opinion of a neutral party in case of the intent to refuse the DPFC approval cannot suspend the time period for carrying out the DPFC, because getting a neutral opinion is part of the procedure of carrying out the DPFA.

[54] This situation has to do with increasing managerial responsibility in public institutions, within the process of decentralizing decision making and responsibility.

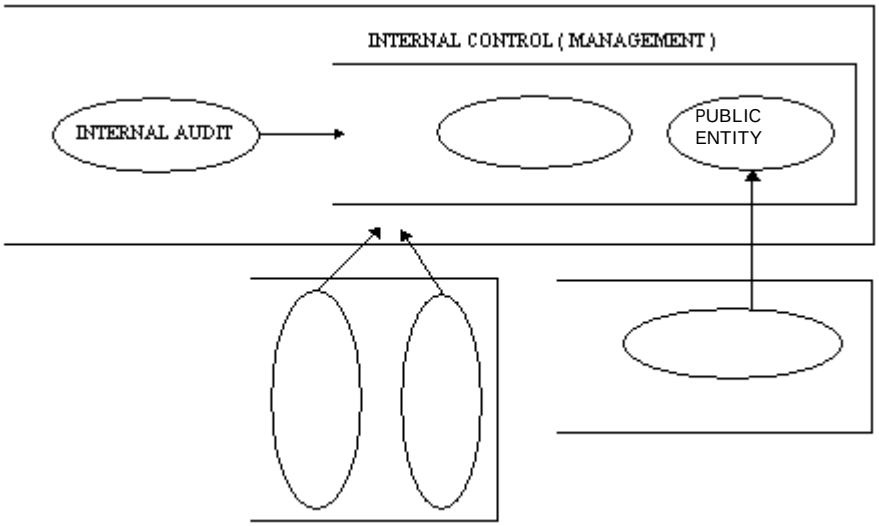

Fig. 2 The general structure of internal control

A.2 Regarding the public internal audit

The public internal audit is, now, in Romania, regulated by the Law *672/2002 regarding public internal audit* (Official Gazette 953/2002); certain draft completions can also be find in the Government Ordinance 37/2004 for modifying and completing the regulations regarding internal audit which unifies the concepts of public internal audit and financial audit (internal private audit) under the common denomination of "internal".

By public internal audit is understood "the objective and independent functional activity which gives insurance and counseling to the management for the good management of the public income and expenses, perfecting the activities of the public entities; it helps the public entity to accomplish its goals by a systematic and methodological approach, which evaluates and improves the efficiency of the managing system based on the financial administration of risk, control and the administration processes" (Law 672/2002 regarding the public internal audit).

Historically speaking one can say the following:

a) in the original normative act (8), the public internal audit was called "internal audit" and was defined as an independently organized activity in the structure of the public entity, directly subordinated to the manager of the public entity and its purpose is checking, inspecting and analyzing of the system of internal control of the public entity (9). This concept had three major shortcomings: 1) some confusions appeared between the internal *public* audit and internal *private* audit (financial audit) by not including the mentioning of the denomination "public" 2) there was not clear the fact that even though the purpose of the public internal audit was to evaluate the internal control, it is itself a part of the

internal control, seen it as a whole; 3) even though the public internal audit can, taking into account its content, inspect the system of internal control, its inspections are not the exclusive privilege of public internal audit but a special way of internal control;

b) the concept of *public internal audit* appeared for the first time in Government Ordinance blah 72/2001(Official Gazette 540/2001) without any mentioning of the area, objectives and functioning of the public internal audit; this denomination will be maintained in all the normative acts that deals with this subject;

c) the normative acts which regulates the public internal audit changed, along the time, as follows:

- together with the preventive financial control (Government Ordinance 119/1999; Government Ordinance 72/2001; Law 301/2002);
- independent (L 672/2002);
- together with the financial audit (Emergency Government Ordinance 37/2004 for changing and supplementing the regulations regarding the internal audit)

d) some extensions regarding the area of the public internal audit are brought by

Government Ordinance 37/2004 as it follows:

- the state private domain, together with the public institutions and authorities is part of the public entities, with the simple condition that the entities from the state private domain have legal entity status (it is eliminated the condition that they use/manage public funds and/or public patrimony, as it is written in Law 672/2002, Art. 2, letter g);
- the area of public entities which are not autonomous stretched from the ones subordinated to other public entities with the ones which are under the coordination or authority of other public entities, with proper implications related with the organization and functioning of the compartments of public internal audit (Art.9, letter c);
- the compartments of public internal audit have also the task to check the observance of norms, instructions as well as the code regarding the ethic behavior in the compartments of internal audit by subordinated public entities, which are co-ordinated or placed under authority, and can initiate corrective measures co-operating with the leader of the certain public entities.

e) by OMF 38/2003 it is given up the activity of quarterly certification of

book-keeping balance of public entities, by the structure of public internal audit.

Synoptically speaking, the general structure of the internal audit can be represented as it follows (Fig. 3)

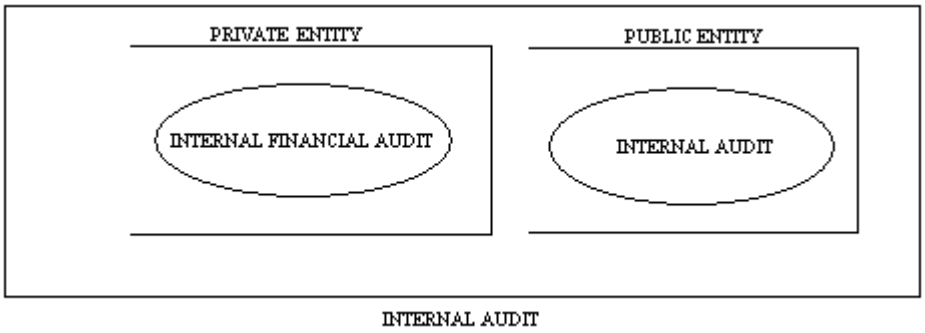

Fig. 3 The general structure of internal audit

A.3 Regarding public external audit

The public external audit is now, in Romania, regulated by the *Law 94/1992 regarding the organization and functioning of the Court of Auditors,* republished, with all the changes and completions, which followed, in Official Gazette 116/2000. The last changes and completions of the norm regarding external public audit appeared in 2002, by *the Law 77/2002 for the changing and completion of the Law 94/1992 regarding the organization and functioning of the Court of Auditors* (MO 104/20002).

By the public external audit it is understood the public audit (that is exercised by a public institution) over the public funds (private founds and/or public patrimony). The quality of public audit to be external is given by the nature of the public institutions that makes the public audit: this institutions must not be, under any circumstances, involved in the decisions regarding the audited financial operations (transactions). In Romania (like at the level of the EU and of the Member States) the public institution authorized to make the external public audit is *Court of Auditors* (*Romanian Court of Auditors* -RCA).

Unlike internal control (especially preventive financial control) and public internal audit, public external audit did not have significant conceptual difficulties. Despite all these, in time, (especially after the appearance in 1999 of the primary norms regarding public internal audit and preventive financial control) there were some debates at the conceptual, institutional and even procedural level.

We mention a few of those issues:

a) in the first place it is about the institutional headquarter of the preventive financial control; until the appearance of Government Ordinance 119/1999 regarding internal audit and preventive financial control, the institutional headquarter of the preventive financial control was the Romanian Court of Auditors. The situation was, of course, unacceptable, due to the fact that some inconsistency appeared between the ones who granted the visa for preventive financial control and the one (the same "institutional entity") who had to give his approval, under the form of public external audit, over the legality and regularity of the financial operation (transaction) for which it was granted the visa of preventive financial control: this inconsistency was solved by the passing of the preventive financial control at the level and under the subordination of each public entity. To this matter we can add two extra ones: 1) one of them refers to the

maintenance of a category of preventive financial control (PFC) in a centralized manner (at the level of the Ministry of Public Finances); 2) the second refers to the fact that PFC passed from an external way of control to an internal way of control. This essential change is in accordance with the EU legislation and thus it does not create any conceptual or institutional problems.

b) In the second place it is about the problem of the area of the external audit. The preventive financial control does not assess regarding the performance ("the three Es"), while the public internal audit does that. Should the public external audit assess regarding the performance of the audited system or not? Even though there are daring pro and cons arguments we will not develop any kind of discussion of this nature but we will confine, in the following pages, to evaluate the legislation in this field.

c) In the third place, it is about the problem of RCA's jurisdictional competence. Until recently (the changing of the Romanian Constitution), RCA had attributions, competence and institutional structures for its jurisdictional activity. The changing of the Romanian Constitution brought about a renunciation of this competence, which raises many questions regarding the structure, the functions and the finality of the external audit (10). By changing the Art. 139 (which became Art. 140) in the Constitution it is laid down (al. 1) the fact that "the *litigation resulted from the activity of the Court of Auditors are solved by specialized courts".* For the transition period, in Art. 155, al.(6), it is laid down *:" until the formation of the specialized courts, the litigation resulted from the activity of the Court of Auditors will be solved by ordinary courts";* it is true that this provision is in accordance with the structure of the European Court of Auditors (college-type instance without jurisdictional attributions and competence) but is also true that some courts of auditors from the Member States (France, Belgium, Portugal, Spain, Italy and Greece) have jurisdictional attributions and competence.

d) By the Law 77/2002 a lot of functional and structural changes are bought to the Romanian Court of Auditors (by the changing and supplementing of Law 94/1992, republished in Official Gazette 116/2000) :

- it is explicitly mentioned the character of the audit exercised by the Romanian Court of Auditors*:* "external subsequent audit" (Art 1, al 1) (14);
- by Art. 13, the compartments of subsequent financial control from the level of Bucharest are raised at the level of directions; The heads of compartments become directors, helped by an deputy (assistant);
- by Art. 8, al. 1, a single section of subsequent financial control is made up instead of the two existing ones;
- by Art. 16, Al 13, the Court of Auditors receives a new attribution: to analyze the quality of the financial administration from the perspective of effectiveness and efficiency
- by Art. 17, letter g-1, some attributions are given to the Court of Auditors in the field of using the funds given to Romania by the European Union through the SAPARD program;

- by Art. 19, letter c, the Court of Auditors receives the legal right to perform audit to legal entities who "do not fulfill their financial obligations towards the state, administrative-territorial units or public institutions, the checking being made together with the representatives of the qualified institutions in the field of the audit";

- by Art., letter d, the Court of Auditors receives the legal right to perform audit to "firms of financial investments, associations and foundations which use public funds, the checking being made with the purpose of discovering the legality of using these funds";

- by Art. 20, al. 1, the Court of Auditors receives the legal right to perform audit to: the Chamber of Deputies, Senate, Legislative Council and Ombudsman.

- by Art. 25, lit f, regarding the audit related to the state loans, together with the aspects audited by the subsequent norm (payment of the outstanding installments and afferent interests) one can also add the auditing over the *using* of the loans contracted by the state;

- by Art. 26, it is given up the auditing over "the three Es" regarding the concession and renting public property goods;

- by Art. 27, al. 1. lit e, it is introduced the audit over "the three Es"

  regarding public procurement;

- by Art. 27, al. 2 it is introduced the audit of the Court of Auditors over "the respecting of the legal dispositions regarding the way of management and use of financial resources resulted from privatization"; by the Art. 3, it is extended the audit for any step of privatization, until all aspects are clarified;

Synoptically speaking, the structure of the external audit can be conveyed like in the Fig. 4:

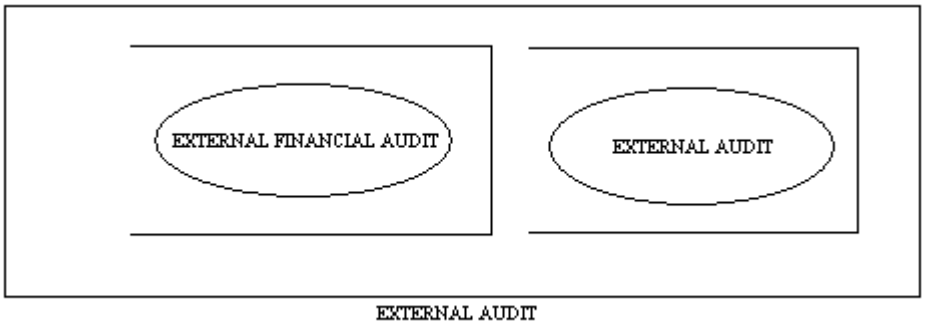

Fig. 4 The general structure of external audit

B. The procedural analysis (analysis matrix)

The procedural analysis of the financial control in Romania will be based both on primary legislation and secondary, which is now in force.

We will use the same structure of analysis as the one proposed in Chapter 1, regarding EU legislation in this field in order to assure the consistency between the two chapters.

This time we will not make precise references to the normative text (in order not to burden the reading and the deliberate clarity of the exposition).

The analysis will be made in respect with each of the three types of financial control (internal control, public internal audit, and public external audit)

B.1. Regarding public internal financial control

B.1.1. The public internal financial control at the level of public entities

- **Internal operational control (IOC)**

i. basic principles of internal control

- it is an executive(governmental) type of control
- the internal control is compulsory in any public entity
- it is a ex ante, simultaneous and ex post control
- it has a continuous character
- it has a permanent character
- it has a exhaustive (aims at all the operations of the public entity)
- it is a control, most of it, programmed (planed)
- the general normative framework of the internal control (including of the preventive financial control) is planed by the Ministry of Public Finances
- the internal control is planed, implemented and perfected by the manager of the public entity
- the manager of the public entity has the obligation of planning, implementing and perfecting the internal control
- the internal control is similar to the managerial control
- the valuation of the internal control is the competence of the public internal audit of the public entity and of the public external audit exercised by the Romanian Court of Auditors

ii. the mission and objectives of the internal control

- achieving, at a proper level of quality, the attributions of the public institutions, established in accordance with their own mission, in conditions of regularity, efficiency and effectiveness

- protecting the public funds against the losses due to error, waste, abuse or fraud;
- respecting the law, regulations and management decisions;
- developing and maintaining a system of collecting, stocking, taking over, bringing up to date and distributing of data and financial and management information, as well as some systems and procedures of adequate public information through periodical reports;

iii. the structures of internal control

- the structures of the internal control follow the functions/role which this form of financial control accomplishes at the level of public entities we are talking about.
  - in this sense, in general, there are no strong normative restrictions from the point of view of establishing some compartments which assures the recording, evidence, monitoring, checking, inspection etc. regarding the operations (transactions) made at the level of public entities;
- from the functional point of view, in general, the following structures of internal control can be implemented :
  - recording structures (i.e. accounting compartments)
  - communication/reporting structures (i.e. compartments of IT and of automatic processing of data);
  - inspecting/checking structures(i.e. specialized inspectors on specific problems of the public entity);
- the operational internal control can be organized under the following forms :
  - control bodies (i.e. at the level of ministries or of the Government)
  - inspection compartments(at the level of public entities)

iv. functional characteristics of internal control

- assures the achievement of the objectives of the public entities by a systematic evaluation and maintenance at an acceptable level the risks associated to structures, programs, projects and operations;
- assures the integrity and the competence of the leading and executive personal, their knowledge and understanding of the importance and the role of the internal control;
- establishes the specific objectives of the internal control in a way in which this would be adequate, comprehensive, reasonable and integrated to the institution's mission and its objectives.
- assures the supervision by the managerial personnel, in a continuous way, of all the activities and the fulfillment by them of the obligation to act together, promptly and responsively any time it is registered an encroachment of the legality and regularity in

performing some operations and in achieving activities in a non-economic and inefficient manner;

- reflects, in written documents, the organization of internal control, of all the operations of the institution and of all the important events;
- records immediately and correctly all the important operations and events which occurred at the level of the public entity;
- assures the approval and the achievement of the operations exclusively by the persons who are authorized to do so;

v. location and scope characteristics of internal control

- The internal control is exercised over all the activities/actions unfolded at the level of public entities and regards any financial operation (transaction) established at the level of the public entity.

vi. responsibility (reporting) characteristics of internal control

- The reports made by the structures of the internal control are transmitted to the manager of the public entity;
- Records and stores, in an adequate manner, the document in such a way that they can promptly be examined by the ones who have the right to do so;

vii. accountability characteristics of internal control

- The manager is responsible for the planning, implementing, organizing, improving and for the quality of the internal control at the level of the public entities;
- The division of the attribution regarding the carrying out of operations among individuals, in such a manner that the attributions of approval, control and recording to be done, in an adequate manner, entrusted to different persons;
- The guarantee of a qualified management at all the levels;
- The availability of the recourses and the documents only to the persons who are qualified and responsible for the using and preserving them.

viii. sustainability characteristics of internal control

- Assures a co-operative activity of the management and of the executive personal, having the obligation to answer at any time to the requests of the management and to provide a real support to the internal control

Own preventive financial control (OPFC)

ii. ***the main principles of the own preventive financial control***

- it is an executive (governmental) type of control and it is organized in any public entity

- it is an ex ante control
- it has a permanent character
- it has a continuous character
- it has a selective character (it does not aim at all the operations of the public entity)
- it has, as a whole, a programmed (planed) character
- it is organized by the manager of the public entity
- it is organized and functions in the accounting compartment of the public entity

iii. ***the mission and the objectives of the own preventive financial control***

- the legality control
- the regularity control, the control of framing the projects of operations in the limits of budgetary credits or of accrual loans

iv. ***the structure of own preventive financial control***

- own preventive financial control is exercised through some qualified persons who are in the accounting compartment of the public entity

v. ***the functional characteristics of the own preventive financial control***

- own preventive financial control is exercised, by visa, by persons from the specialized compartments appointed for this matter by the leader of the public entity
- for the granting of the visa of own preventive financial control, the projected operations are presented together with the proper explanatory documents, certified regarding their reality and legality by the signature of the leaders of the specialized compartments who initiate that operation
- the visa of own preventive financial control is exercised through the signature of the persons by right, qualified and by the application by those of a personal seal.

vi. ***location and scope characteristics of the own preventive financial control***

- It is a structure subordinated to the manager of the public entity
- Its object are the projected operations established by the manager of the public entity, based on the legal provisions regarding the type of projected operation submitted to the own preventive financial control
    - Depending on its leader, a public entity can decided over the exercising of the own preventive financial control and over other types of operations envisaged by the law

- The Ministry of Public Finances also organizes the own preventive financial control for the following operations:
  - The budget of the state treasury
  - The operations regarding public debt
  - Other operations specific to the Ministry of Public Finance

vii. responsibility (reporting) characteristics of the own preventive financial control

- The structure of the own preventive financial auditing elaborates reports addressed to the manager of the public entity
- A copy of the document of internal decision by which the manager of the public entity decided the making of an operation for which it was given a refusal of visa of own preventive financial control, is transmitted to the compartment of public internal audit of the public entity as well as to the delegated controller
- In all the cases in which, as a consequence of a refusal of visa of own preventive financial control, the leaders of the legal entities dispose, in the conditions envisaged by this injunction, the making of the operation on their own account: in this case the person appointed to make the own preventive financial control has to obligation to inform, in writing, the Court of Auditors, the Ministry of Public Finances and, depending on each case, the superior hierarchic body of the public institution.
- The refusal of visa must always be motivated in writing.

viii. accountability characteristics of own preventive financial control

- The persons designated to make the own preventive financial control have to answer to the manager of the public entity

  The managers of the public entities must organize:
  - Preventive financial control
  - Engagements' record
- The leaders of the specialized compartments regarding own preventive financial control have to answer for the reality, regularity and legality of the operations whose explanatory documents certified. The obtaining of the visa of own preventive financial control for a document which contain data which are not real or not exact or/and prove to be later no legal does not absolve of responsibility the chiefs of the specialized compartments which made them up.
- If the person appointed to make the own preventive financial control informs, in writing, the Court of Auditors, Ministry of Public Finances and, depending on the case, the superior hierarchical organ of the public institution, about the making of the operation on the responsibility of the manager of the public entity, in the situation of refusal of visa of own

preventive financial auditing, only in this situation one person cannot be hold answerable for.

*ix**. sustainability characteristics of own preventive financial control***

- The persons appointed to exercise the activity of own preventive financial control must have the professional competence required by this activity
- The persons appointed to exercise the activity of own preventive financial control will respect a specific code of professional norms, drawn up by the Ministry of Public Finances
- By an internal decision of the leader of the public entity, the persons appointed to exercise the activity of own preventive financial control can benefit of a bonus due to the complexity of their work up to 25% of the monthly gross/raw wage
- The persons appointed to exercise the activity of own preventive financial control must not be involved, through work duties, in making operations subdued to own preventive financial control .

➢ Public internal audit inspections (PIAI)

i. basic principles of public internal audit inspections

- It is an executive (governmental) type of audit
- It is, in general, an ex post audit but it can also be a simultaneous audit
- It is a audit which takes place on the spot
- It is a punctual audit
- It has a continuous character
- It has a permanent character
- It has a selective character
- It does not have a programmed (planed) character
- The inspections of public internal audit can only be made by Ministry of Public Finances (the central and the territorial apparatus)

ii. the mission and objectives of the public internal audit inspections

- checking the clues regarding the cases of illegality or/and irregularities regarding operations (transactions) which took place at the level of public entities.
- Checking the performance of operations at the level of public entities without a visa of own preventive financial audit

iii. the structures of public internal audit inspections

- The direction of public internal audit from the Ministry of Public Finances
- The services of public internal audit from the general directions

iv. functional characteristics of public internal audit inspections

- the inspection of public internal audit takes place in the following circumstances:
  - the appearance (in any case) of some clues regarding the illegality or irregularity of the operations projects and operations in the framework of public entities
  - punctual notifications of the chief-accountants from the public entities regarding the making, on their own responsibility, by the manager of the public entity, of some operations for which it was not granted a visa of own preventive financial audit
  - notifications made by the chiefs of public internal audit structure of the public entities regarding the performing of illegal operations which do not have a visa of delegated preventive financial control, situation resulted from the performance of a mission of public internal audit
  - in case after an inspection is noticed infringements of legality which produced damages at the expense of public funds or public patrimony, a Minutes will be made
  - in the situations when it will be established the performance of some actions denominated by the law small offences, then a small offence Minutes will be made

v. location and scope characteristics of public internal audit inspections

- the area of action of the internal audit inspection sums up to the situations in which there are clues or notifications regarding the illegality or irregularity regarding operations projects

vi. responsibility (reporting) characteristics of public internal audit inspections

- it is reported to the manager of the public entity who ordered the performing of the inspection of internal audit
- the Court of Auditors is informed by the person who made the order for the performing of the inspection, in case there are established the existence of some infringements from legality or regularity which produced or might produce damages at the expense of the public funds or public patrimony, and the afferent documents were not contested in due time or the contestation was rejected as a whole, or in part

vii. accountability characteristics of public internal audit inspections

- the chief of the inspection team (or the person in this matter, if only one person was appointed to make the inspection) has the responsibility for the legality, regularity and the quality of performing the inspection of public internal audit

viii. sustainability characteristics of public internal audit inspections

the inspection of public internal audit is one of the means of on spot control which the manager of the public entity has and is part of the set of checking instruments in real time of the legality and regularity of the operations (transactions) at the level of public entities

- **Public Internal Audit (PIA)**

i. the basic principles of public internal audit

- it is an executive (governmental) type of audit
- it is an internal type of audit
- it is an ex pot and simultaneous audit
- it is, most of the times, programmed (planed)
- it has a continuous character
- it has a permanent character
- it has an exhaustive character (it aims at all the operations of the public entity)
- it must not be involved in the planning of the procedures of internal audit and in the developing of activities subdued to internal audit

ii. the mission and the objectives of public internal audit

- the objective assurance and counseling meant to improve the systems and the activities of the public entities
- supports the achievement of the objectives of the public entity through a systematic and methodological approach, by which it is evaluated and improved the efficiency of the leadership system based on risk assertion, of control and of management of the processes
- the evaluation of the internal control of the public entity

iii. the structures of public internal audit

- the Committee for Public Internal Audit (CPIA) (11)
- the Central Unit for Harmonizing of Public Internal Audit (CUHPIA) (12)
- the compartments of public internal audit from the public entities
- the manager of the subordinated public entity, which is coordinated or under the authority of another public entity, establishes and maintains a functional compartment of public internal audit, with the agreement of the superior public entity; if they do not receive this agreement, the audit of that entity is performed by the compartment of public internal audit of the public entity

iv. the functional characteristics of public internal audit

- at the small public institutions, which are not subordinated to other public entities, the internal public audit is limited to the regularity and it is performed by the compartments of public internal audit of the Ministry of Public Finances

- in performing their audit missions, internal auditors develop their activity based on orders, issued by the chief of the compartment of public internal audit, who explicitly envisaged the purpose, the objectives, the time and the length of internal audit, as well as the audit team

- the compartment of public internal audit notifies the structure which will be audit with a notice of 15 days before the launching of the audit mission; in the notification is mentioned the purpose, the objectives and the length of the audit mission

- the compartment of public internal audit also notifies the themes, the common cooperation program as well as the periods in which the interventions on spot are going to be made, according to methodological norms

- the internal auditors have access to all the data and information, including the ones which are in an electronic format, which they consider relevant for the purpose and the objectives mentioned in the order

- the internal auditors can request data, information as well as copies of the documents from legal and physical entities which have any relations with the audited structure, and they have the obligation to present those data

- in the same time, internal auditors can perform to these legal and physical entities any kind of financial and accounting re-checks closed related to the activities of internal auditing to whom they were subjected , which will be used for establishing the legality and the regularity of that activity

- the authorized representatives of the European Commission and of the European Court of Auditors have similar rights with the ones envisaged for the internal auditors, with the purpose of protecting the financial interests of the European Union; they must be authorized in this sense by a written authorization, which should certify their identity and position, as well as by a document which should show the objective and the purpose of the auditing or of the on spot inspection.

v. location and scope characteristics of the public internal audit

- The public internal audit is exercised over all the activities of a public entity, including over the activities of the subordinated entities, regarding the formation and using of the public funds, as well as the management of the public patrimony

- At least one time within 3 years, the public internal audit audits the following (without limiting just to these):

    - Budgetary and legal engagements from which directly or indirectly derives the paying debts, including communitarian funds

- The payments assumed by budgetary and legal engagements, including communitarian funds
- Selling, pledging, leasing or letting of goods from the state private domain or of the domain of the administrative-territorial units
- leasing or letting of goods from the state public domain or of the domain of the administrative-territorial units
- the establishment of public incomes, that is, the way of authorizing and establishing some debt titles, as well as of facilities granted at their cashing
- allocation of budgetary credits
- the accounting system and its effectiveness
- the decision- making system
- the control and management systems, as well as the risks associated to such systems
- IT systems

vi. responsibility (reporting characteristics) of the public internal audit

- Report project of the internal audit is transmitted to the audit structure; this can sent in maximum 15 days since it received the report, its points of view, which will be analyzed by the internal auditors
- In 10 days from the reception of the points of view, the compartment of public internal audit organizes conciliation reunions with the audited structure, where it is analyzed the findings and the conclusions for the acceptance of the formulated recommendations
- The chief of the compartment of public internal audit sends the final internal audit report, together with the results of the conciliation, to the leader of the public entity who approved the mission, for analysis and notice/endorsement; for a small public institution, the internal audit report id transmitted to the manager of that institution. After endorsement, the recommendations from the internal audit report will be communicated to the audited structure
- the audited structure informs the compartment of internal audit over the way of implementation of the recommendations, including their calendar. The chief of the compartment of internal audit informs CUHPIA or the superior hierarchic organ about the recommendations which were approved; these recommendations will be accompanied by documents to sustain them

vii. accountability characteristics of the public internal audit

- The manager of the public entity is obliged to organize the compartment of public internal audit

- The compartment of public internal audit is directly subordinated to the management of the public entity

- The internal auditors are responsible for the protection of the documents referring to the public internal audit performed in a public entity

- The responsibility for the measures adopted after the analysis of the recommendations presented in the audit reports belong to the management of the public entity

viii. Sustainability characteristics of public internal audit

- the position of internal auditor is not compatible with the exercising of this position as professional activity orientated towards profit and reward

- any time, in performing the internal audit, are necessary knowledge of strict specialization, the manager of the compartment of internal audit can decide over the opportunity of contracting the services of examination/consulting outside the public entity

- internal auditors which are clerks are selected and have rights, obligations and incompatibilities envisaged by the Statute of public servants

- the appointing and revoking of the internal auditors is made by the manager of the public entity, by the collective management organ, with the notice of the manager of the compartment of public audit

- internal auditors benefit of a bonus for the complexity of their work of 25% of the monthly gross wage

- for their actions, made with good-faith in exercising their duties and in their limit, the internal auditors cannot be sanctioned or moved another position

- the individuals who are relatives, including to the manager of the public entity, cannot be auditors in the same public entity

- the internal auditors cannot be appointed to perform missions of internal audit to a public structure/entity if they are related including with its manager or with the members of the collective management body

- the internal auditors must not be involved in any way in fulfilling the activities that they might audit, or in elaborating and enforcing the systems of internal auditing of the public entities

- the internal auditors which have responsibilities in the development of the programs of partial and integral financing on behalf of the European Union must not be involved in auditing those programs

- the internal auditors must not be assigned missions of internal audit in the sectors of activity where they were employed or were involved in any other way; this interdiction can be cancelled after a period of three years

B.1.2. The public internal financial control at the level of the Government

- ***The delegated preventive financial control (DPFC)***

i. <u>the basic principles of delegated preventive financial control</u>

- it is an executive (governmental) type of audit
- it is organized at the level of the Ministry of Public Finances
- the delegated controllers have visa of DPFC over the operation projects previously checked by the own preventive financial control of the public entity
- the delegated controllers work at the headquarter of the public institutions where they were appointed
- the delegated controllers are independent from the public entity where they were appointed to make the DPFC
- the delegated controllers do not express their position regarding the opportunity of the operation which are the DPFC object
- it has a continuous character
- it has a permanent character
- it is an independent control
- it has a selective character (it does not aims at all the operations of the public entity)

<u>ii. the mission and objectives of delegated preventive financial control</u>

- the illegalities, irregularities of prevention or overcoming of the limits for the budgetary credits or engagements credits, for those types of operations whose impact or monetary value does not imply a major risk regarding the administration of public money or of public patrimony

<u>iii. the structures of delegated preventive financial control</u>

- DPFC is organized within the structure of the Ministry of Public Finances, in the framework of the Delegated Controllers Body
- Delegated Controllers Body is lead by a financial-chief controller, helped by two adjunct financial controller chiefs
- within the Delegated Controllers Body it is also organized a specialized structure: the department which assures the methodological and informational support necessary in the activity of the Delegated Controllers Body

iv. <u>the functional features of delegated preventive financial control</u>

- DPFC is exercised by delegated controllers

- in case of a temporary absence from the office of a delegated controller, the minister of public finances calls another delegated controller who will fulfill the duties of the first controller during his absence

- the visa for DPFC is granted or is given up in writing, on a formulary and must hold the signature and the personal stamp of the competent delegated controller

- before the refusal; the delegated controller has the duty to inform, in writing, regarding his intention to the credit ordinator, stating the reasons of his refusal

  - if the credit ordinator presents in writing favorable arguments for performing the operation for which it is intending a visa refusal, the delegated controller, before officially registering the visa refusal, may consult a neutral opinion regarding the case

  - for the neutral statement it is ad-hoc constituted a commission formed of 3 members of the delegated controllers body, by the decision of the financial-chief controller

  - the neutral opinion is motivated in writing and has a consultative role

  - the final solution (in case of the forming of a neutral opinion) is only up to the

    delegated controller, according to the principle of independency in exercising the

    attributions of PDFC

- the persons entitled to exercise the delegated preventing financial control have the duty to keep the evidence of the projected operations refused when the preventing financial control visa was made

- for the operations also under the delegated financial preventive control of the Ministry of Public Finances, the refusal of its own preventive financial control visa makes the projected operations impossible to be the object of the delegated preventive financial control

  - under these circumstances, the credit ordinator will require from the delegated controller a consultative notification

  - the credit ordinator will analyze the opinions of the delegated controller expressed in the consultative notice and will decide on his own account upon the evolution of the operations

v. <u>location and scope characteristics of the delegated preventive financial control</u>

- the delegated preventive financial control will be performed regarding the operations established by an order of the minister of public finances and over the value limits established for each type of operation

- the responsibility of the delegated financial preventive control is a part of the preventive financial control

vi. <u>responsibility (reporting) of the delegated preventive financial control</u>

- the delegated controller can inform the Minister of Public Finances in a direct manner in what concerns the special situations which occurred in its activity
- the chief financial controller:
  - defends in front of the Minister of Public Finances, the Government and other authorities the solutions given in the exercise of their attributions by any delegated controller
  - presents the Minister of Public Finances, quarterly, reports regarding the activity of the delegated controller, the situation of the intentions and refusals of visa, and also the important aspects regarding the use of the public funds
  - presents the Government, until the end of the first semester of the current year an annual report for the last year, regarding the activity of the delegated controllers, which has to be made of an analysis from the perspective of the preceding years, of the manner of solving visa refusals of delegated preventive financial control, and also proposals for improvements of the financial legislation
  - draws up the annual national report regarding the preventive control, which is presented to the Government for debates
- in all the cases when as a consequence of a delegated preventive financial control visa refusal, the heads of the juridical persons present the way operations are solved on their own responsibility, the delegated controller having the duty to pass a written notice to the Court of Auditors and Ministry of Public Finances
- the visa refusal must all the time be a written motivation

vii. <u>accountability characteristics of delegated preventive financial control</u>

- the persons entitled to exercise the delegated preventive financial control are responsible according to the law (in relation with their guilt), for the legality, regularity and conformity to the limits of the engagement and approved budgetary credits, regarding the operations for which visa was given
- an operation for which the preventive financial control visa was refused, can be solved by the credit ordinator on his own responsibility only if he is not overcoming the approved budgetary credit

viii. <u>sustainability characteristics of delegated preventive financial control</u>

- can be included in the function of delegated chief accountant only the persons with higher studies in economics or juridical sphere and also having at least 7 years working experience in the public finances domain. Candidates for the function of delegated auditor must present a judiciary record, information and recommendations, which should prove that they have a proper moral and professional profile according to the position

- the delegated controllers are forbidden to be part of a political party or to be involved in public activities with political character
- the position of delegated controller is incompatible with any other public or private function, excepting the didactic functions in university education
- the delegated controllers are forbidden to exercise direct or thorough other persons, activities of commerce and also are not allowed to participate in the administration or the leadership of some commercial or civil activities. They cannot exercise the function of judiciary expert or arbiter designated by the parts in any arbitration
- the delegated controllers cannot be husbands, relatives or in-law up to the fourth degree (inclusively) to the credit ordinator they are working with
- the approval or refusal of the delegated preventive financial control visa cannot be imposed to the delegated controller
- the evaluation of the activity of the delegated controller is made annually grades, according to information gathered in:
  - annual reports regarding the activity of the delegated controllers
  - reports of the internal public controller structures of the Ministry of Public Finances
  - reports of the Court of Auditors
- the annual marks received by each delegated controller are kept all along the exercise of his function. The Minister of Public Finances is going to discharge immediately the delegated controller if his grade is "insufficient" or three times consecutively his mark is "satisfactory"
- the financial chief controller and his subordinates are named by a Government Decision for a 6 years mandate, according to the nominal proposal made by the Minister of Public Finances after having interviewed 6 candidates of delegated controllers designated by the Delegated Controllers Body

B.2. In what regards the public external financial control

- **Public external audit (PEA)**

i. basic principles of the public external audit

- is a parliamentary (legislative) audit
- is an ex post audit
- is a definitive audit (of last instance)
- is a certification audit of accounts (administration discharge)
- is an external audit for the public entities

- has a continuum character
- has a permanent character
- has an independent audit
- has a selective character
- has a programmed (planned) character in a greater part

ii. the mission and objectives of the public external audit

- the way of creation, management and use of financial state resources and of the public sector
- the way of management of the public and private state patrimony and of the administrative-territorial units
- respect for law in the administration of material and monetary means
- the quality of financial administration from the point of view of economy, effectiveness, and efficiency

iii. the structures of public external audit

The Romanian Court of Auditors:

- is the supreme institution of financial control (art. 1, al. 1- Law 94/1992, published in the Official Gazette, and modified and completed through Law 77/2003)
- is made up by:

  -the section of subsequent financial control

  - divisions
    - directions, services, desks

  -the jurisdictional section (instance of content and appeal)

  -the jurisdictional college (instance of content)

  -the chambers of auditors of counties and of Bucharest Municipality

    - subsequent financial control direction
    - jurisdictional college

- within the Romanian Court of Auditors there are
  - the general financial prosecutor

- financial prosecutors

iv. <u>functional characteristics of public the external audit</u>

- the financial controllers designated to verify the accounts make the reports in which they present their opinions conclusions and formulate proposals regarding the measures that are to be taken regarding the situation of the accounts
- at the request of the Senate or of the Deputy Chamber, the state budget project and the law projects in the finances and public accounting domains or through their application will result a decrease in the incomes or an increase in the spending approved by the budgetary law are verified
- according to the conclusions following the control that was made, the Court of Auditors has the right to decide:
  - the suspension of the application of measures that come in opposition to the legal regulations from the financial, accounting and fiscal domains
  - the blocking of the budgetary or special funds, when illegal or inefficient use

    is reported

v. <u>location and scope characteristics of the public external audit</u>

- the creation and use of the state budget resources, of social insurance and of the budgets of the administrative-territorial units, and also the movement of the funds between these budgets
- the establishment, use and administration of special and treasury funds
- the formation and administration of the public debt and the situation of the governmental guarantees for internal and external loans
- use of budgetary allocations, subventions and transfers and other means of financial support from the state or from administrative-territorial units for investments
- the establishment, administration and use of the public funds by the administrative autonomous authorities and by the public institutions established by law, and also by the autonomous organisms of social state insurance
- the situation, evolution and way of administration of the public and private state and administrative-territorial units patrimony by the public institutions, autonomous enterprises, companies and national societies and also the concession or loan of goods from the public property
- the establishment, use and administration of financial resources regarding the protection of the environment, improvements of the qualities of life and work conditions

- use of funds accorded by the European Union to Romania through SAPARD Program and of the afferent co-financing
- use of funds from the financial assistance accorded by the European Union to Romania and through other sources of international finances
- other domains, in which the Court's competence was established
- the institutional entities that are under the public external audit's control:
  - the state and administrative-territorial units, in quality of legal persons of public law, with their services and public institutions, autonomous or non-autonomous
  - National Bank of Romania
  - autonomous enterprises
  - commercial societies in which the state, the administrative-territorial units, the public institutions or the autonomous enterprises have, alone or together, integral or more than half of the social capital
  - the autonomous organisms of social insurance or of any other nature, which administrates goods, values or funds, in a legal compulsory regime, according to the law or through their statutes
  - the legal persons who:
    - benefit from governmental guarantees for credits, subventions or other forms of financial aid from the state, administrative-territorial units or public institutions
    - administrate, upon a contract of concession or loan, goods belonging to the public or private state domain or other administrative-territorial units
    - are not accomplishing the financial duties to administrative-territorial units or public institutions, the checking being made with the representatives of the competent institutions in the domain which is under control
    - are societies of financial investments, associations and foundations which use the public funds, the checking being made in relation with the legality of using these funds
- the following situations are the object of public external audit:
  - annual general account of execution of the state budget
  - annual account of execution of the social insurance's budget
  - annual account of execution of the local budgets

- annual account of execution of the special funds budgets
- treasury account funds
- annual account of state public debt and of the situation when governmental guarantees for internal and external credits received by other juridical persons
- administrative public money accounts, other values and public material goods
- cash execution accounts of the public budgets
- subsidies and budgetary allocations accounts for investments offered to beneficiaries other than the public institutions
- the balance sheet and the execution accounts of the budgetary credit ordinators and of the administrators of the funds which are under the public budget regime
- the accounts of the operations regarding the public debt

vi. <u>responsibility (report) characteristics of the public external audit</u>

- the reports regarding the accounts are examined by commissions formed as follow:
  - 3 account advisors from subsequent financial control department, for credit ordinator whose budgets are adopted by law
  - the manager of subsequent financial control department, deputy chief or the head of department and a controller, other than the one who performed the control, on behalf of credit ordinator
  - the manager, deputy chief of subsequent financial audit department of Bucharest Chamber of Auditors and a chief of department
- if, after examining the report, the papers and documents which are forming its basis, are discovered facts which, under penal legislation, are considered offences, the commission pass the case to empowered penal organisms, suspending examination of the case
- the act containing the decision of informing jurisdictional college or administrative discharge is communicated to all interested parties and to financial prosecutor
- the act containing the decision of informing jurisdictional college and the closing act are communicated to all interested parties
- in the first 6 months after receiving the accounts from those who are supposed to draw them up and to hand out, the Court of Auditors draws up the annual Public Report which is sent to Parliament
- the annual reports related to local are sent by county courts of auditors to local authorities

- Court of Auditors could send to the Parliament or, through County Chambers of Auditors, to deliberative public authorities of territorial-administrative units, reports in the filed in which it is empowered, each and every time they consider is necessary

- financial prosecutor informs the empowered penal organs with respect to revealed offences found out after examining control documents with which it was informed

- the Court of Auditors presents to the Parliament and, by County Chambers of Auditors, local councils reports on areas where it is empowered

vii. accountability characteristics of public external audit

- administrative discharge is not a solid base for discharging the persons of juridical responsibility

- the Court of Auditors is responsible in front of the Parliament

- the controls performed by the Court of Auditors are initiated *ex officio* and can be stopped only by the Parliament and just in those cases where the competences are exceeded

- the Chamber of Representatives and Senate's decisions, requiring the Court of Auditors to perform some controls, within the limits of its competences, are compulsory. No other public authority can give orders to it.

viii. sustainability characteristics of public external audit

- the Court of Auditors is drawing up its own budget, separately from state budget

- in the Court of Auditors plenum sessions and its leading committee sessions may attend, as guests, experts from different fields of activity related to Court's competences

- it is the supreme form of public financial control, namely legislative form of public financial control

Chapter 3: Impact assessment of the adoption of acquis communautaire in the field of public financial control in Romania

3.1 Introduction

Chapter 3 is aimed at making a comparative analysis of the degree, quality and dynamics the financial control in Romania (regarding: legislation elaboration – primary, secondary and tertiary, institutional implementation, and effectiveness) takes over or adapts to the correspondent stipulations of the European Union (communitarian institutions as well as the member states).

In order to achieve the above mentioned objective, as we have already seen, the previous two chapters (the first one is referring to the EU, and the second one to Romania) were elaborated based on the same analysis and even presentation structure, to allow the third chapter, a comprehensive, detailed and comparative analysis, of the type of a generic check-list.

The issues of the previous two chapters (generated by documentary, conceptual, and methodological analyses) were supplemented with two extremely useful activities, aimed at "measuring" the perceptions and the expectations of the responsible specialists, experts, and public servants in Romania, in the matter of the financial control. In this context, with the great support of the European Institute in Romania, the research team has organized and developed a work-shop, scheduled on April 10, 2004, at the headquarter of the European Institute in Romania, attended by responsible authorities and specialists from the public institutions and involved in designing, implementing and applying the financial control (the list of the participants can be viewed in the *Annex 1*). The participants who were invited had received also a list of ten problems that the research team has proposed to be debated (see the mentioned list of problems in the *Annex 2*).

In addition, the invited specialists as well as other specialists and experts in Romania, have received, with the support of the European Institute in Romania, a questionnaire elaborated by the research team, which focused on the problems of legislation, implementation, and operating the financial control in Romania (see the questionnaire in the *Annex 3*).

Consequently, the third chapter unifies the achievements and the tendencies evolved from the documentary analyses (primary, secondary, and tertiary legislation in the matter) with the expectations, perceptions and proposals of those who are involved (directly or indirectly) in the financial control in Romania (as regards the designing, implementing, and operating). This fact leads to a substantial credibility of our case study, and anchors it not only in the "functional" realm but also in the institutional one.

3.2 Chapter's objectives

This chapter is aimed at achieving the following objectives:

1. Elaborate a check-list that will be the base of the comparative analysis between the financial control of the EU (the standard to be reached) and the financial control in Romania; although, as we have seen in the first chapter, the financial control in EU is itself in a continuum reshaping process (on the base of internal developments as well as because the members states contributions). However the legislative and institutional actual state of the financial control in EU will constitute the best benchmark for the evaluations developed in this chapter;

2. Apply the check-list in order to make the strictly speaking comparative analysis between the benchmark financial control and the financial control in Romania, by assessing the following issues:

a) the degree of entering in line

   i. at legislative level

   ii. at implementation level

   iii. at operating level

b) the quality of the entering in line

c) the tendency in the entering in line process

3. Identify the underdevelopment or divergent situations between the EU financial control and the financial control in Romania, as well as, wherever possible, identify the main causes and the possible solutions in order to overcome these situations;

4. Assess the positions of the practice specialists or of other Romanian experts in the financial control matter, based on the above mentioned work-shop (related to the issues of chapter), as well as on the questionnaires sent by the European Institute in Romania;

5. Finally, conclude and design the future directions (at institutional and practical level) in order to achieve the complete entering in line of the financial control in Romania with financial control in EU, from quantitative, structural, qualitative and of sustainability points of view.

3.3 Designing the check-list to assess the stage and the quality of the financial control in Romania

The check-list that the research team proposes to evaluate the degree and the quality of the legislation, implementation and operating of the financial control field in Romania is based on the following conceptual and methodological "anchors":

a. Main stipulations of the financial control in EU and in the member states, at institutional and operating levels, as they can be synthesized from the analyses performed in the chapter 1 of the study;

b. Institutional and organizational implementations in Romania, in the financial control matter, as they emerge from the analysis performed in the chapter 2 of the study;

c. Provisions of the Chapter 28 "Financial Control" for negotiating the Romanian accession to EU;

d. Provisions from the Position document of Romanian Government concerning the public internal financial control (Policy Paper) sent to Brussels in 2001;

e. Opinions expressed by the participants in the work-shop related to the Chapter 2 of the study (interest group);

f. Opinions drawn out based on the answers given in the questionnaires in the matter of the financial control in Romania.

Based on the above mentioned data sources, the research team proposes employment a check-list in order to assess the stage, the quality, the tendency and the efficiency of the financial control in Romania, in the light of the benchmark represented by the financial control in EU. This check-list contains six assessing modules, respectively 34 evaluating criteria. Certainly, it is difficult to estimate a weighted coefficient (generated from an importance matrix) that could lead, by an algebraically summation, to a *sui-generis* score that could describe the "position" of the financial control in Romania as compared to the financial control in EU, but such an idea is not an exaggeration and in the future it could be operated within the framework of a continuation of the present study(**1**)[55].

I. There is a statutory and complete basis to define the systems, the principles and the functioning of the financial control (internal control, internal audit, and external audit);

1. at the primary legislation level (organic laws or other normative acts with the same juridical signification)
2. at the secondary legislation level
3. at the tertiary legislation level

II. The internal control is implemented in all the institutional structures that collect or/and spend public funds

3. there are responsibility and reporting standards concerning the internal control
4. there are procedures to associate the risk to activities, actions, operations and transactions
5. there are accounting systems that reflect completely, really and timely the operations and the transactions
6. an ex-ante (preventive) control for commitments and payments is implemented
7. a control of the public procurements is implemented
8. a control of public revenues (public collects) is implemented

III. There is a functionally independent mechanism of public internal audit, having a relevant scope and addressability and matching the following criteria:

9. is functionally independent
10. has an adequate mandate (concerning the scope and the type of internal audit)

[55] As in the chapters 1 and 2, the figures into brackets signify the current number of notes, comments or bibliographic references, that can be viewed at the end of the chapter.

11. uses the public internal audit standards, established at the best recommendation and practices level of EU and in the world

12. there is a coordination and supervising concerning the audit standards and methodologies

13. the audit trail is defined (including the implementing/paying agencies for the European funds)

14. the number of public servants in the public internal audit structures is sufficient and qualified

IV. There is a functionally and structurally (i.e. external) independent mechanism for the public audit, having a relevant scope and addressability and matching the criteria:

15. is functionally and structurally independent in relation to any EAPM [56]

16. performs public external audit missions, based on an audit adequate mandate (concerning the scope and the types of public external audit)

17. uses public external audit standards established at the best recommendation and practices standards of EU and in the world

18. performs public external audit missions based on the associated risk to the actions, operations and transactions

19. the audit trail of the public external audit is defined, based on the signification thresholds and on the traceability principle

20. collaborates with the public internal audit in performing its specific missions

V. Systems to prevent and act against the irregularities, as well as to recover any lost amounts as result of irregularities or through oversight are implemented, having as criteria:

21. establishing risk signaling systems for those irregularities that are not frauds

22. assessing the degree (potential or actual) of prevent of the irregularities

23. the possibility to act in the eventuality the specific risks occur

24. procedures to measure the materiality of the effects of irregularities or frauds

25. the in force legislation and procedures assure the recovering of the lost amounts as result of irregularities or through oversight

26. there are mechanisms (to solve, or to report, or to translate the cases to specialized structures) aimed at treating the irregularities or frauds

[56] *Entity that Administers Public Money*, as public funds as well as public assets.

27. there are structures fighting against the fraud and corruption (inside the financial control or outside from it)

VI. There are assessing mechanisms for:

28. improving the capacity of the financial control and effectiveness indicators

29. entering in line capacity, focused on the acquis communautaire as well as on the best practices in the world in the financial control matter

30. maintaining capacity concerned with the established standards in the world, by using the criteria:

    30.1. a capability and a capacity to develop and to change

    30.2. a strategy to develop and change

    30.3. a commitment to develop and change

    30.4. effectiveness related to the institutional possibility

3.3.1 Check-list operating

3.3.1.1 Module 1: there is a statutory and complete basis to define the systems, the principles, and the functioning of the financial control

No.	Criterion/Standard	Factual evaluation for Romania	Predictable tendencies	Proposals
1.	Primary legislation level	- the primary legislation is completely finalized and it is in line with the structures, institutions and mechanisms in the EU - a further clarification is needed concerning the status of the delegated preventive financial control: if, concerning the objective, everything is clear (until the accession act, the delegated preventive financial control will become the EAPM manager's task), the schedule and the concrete methodology of this transfer is going to be established and implemented	According to the provisions in the Chapter 28 "Financial Control" and the provisions in the "Policy Paper" position document concerning the public internal financial control, Romania will follow suit the recorded progress achieved in the EU and in the member states in the matter of the financial control	Establishing , inside the Ministry for European Integration, of a department focused on monitoring the progresses of the EU and the member states in the matter of the financial control: "Committee for assessing the financial control progresses". The Committee will work on the basis of an own Regulation of organizing and functioning, which is functionally independent[57]
2.	Secondary legislation level	- most of the secondary legislation in the field of public audit (internal and external) is in force - legislation concerning the internal control is not unitary codified such as to constitute a single and clear normative block in the matter;	There are not non-ambiguous intentions to solve this underdevelopment situation, according to our own understanding	it is needed a systematization of all provisions concerning the internal control organized in public institutions and as well as in all EAPM, by collecting the existing dissipated norms (as the Public finance law, the Accounting law etc.) as well as by taking over the EU provisions in the matter and drawing of a "Code of managerial public internal control", which should have a strong methodological and procedural character
3.	Tertiary legislation level	- some manuals and practice guidelines (containing procedures, techniques, and methods) in the matter of public internal audit and in the matter of public external audit have been already completed; - in the field of the public external audit it has been even issued, within some twinning programs, a manual for the performance audit (system audit or management audit or the audit concerning the value for money); - there are not yet such issues in the internal	- as result of the work-shop concerning to the financial control in Romania (Chapter 2 of the study), the research team understood that all the involved institutions in the financial control matter have had strong preoccupations to eradicate such a underdevelopment situation in the field of tertiary legislation;	- some future specialized twinning programs with member states could create the institutional framework to clarify these problems and to draw up, accordingly, the appropriate procedures, techniques and methods

[57] The existing CUHPIA (Central Unit for Harmonizing the Public Internal Audit) is focused only on monitoring and assessing the progresses recorded in the field of public internal control. Consequently, this activity should be enlarged to cover the other two forms of the financial control: internal control and external public audit.

		control matter; -there are not drawn up obvious, complete and operational procedures concerning the associated (to activities, actions, operations and transactions) risk evaluation neither for internal control nor for public internal audit nor for public external audit; - as result of the previously mentioned fact, the financial control plan (in the three components of the financial control) is not designed on the basis of the associated risk analysis; - the crucial traceability principle is not yet operational; as result, the signification thresholds and the critical path in programming the financial control missions are ignored; - as result of the above mentioned facts, the audit trail (internal and external) for the public institutions is not yet drawn up(except for a proposal concerning the European funds, elaborated by the Direction of Public Internal Audit in the Romanian Ministry of Public Finance; this proposal is still at the stage of a "prototype")		

3.3.1.2 Module 2: The internal control is implemented in all the institutional structures that collect or/and spend public funds

No.	Criterion/Standard	Factual evaluation for Romania	Predictable tendencies	Proposals
1.	There are in place standards for responsibility and reporting concerning the internal control	- in the internal control field, by norms, there are stipulated systems and procedures of responsibility and reporting; - in the context, these provisions are, rather implicit ; they are generated by the general internal regulation for the public servants involved in the financial control, especially in the internal control activities;	- it seems that it does not exist systematic efforts, part of a strategic perspective, to eliminate the underdevelopment situation in this area	- it is necessary, accordingly to the above mentioned proposal concerning the "Code of managerial public internal control", a complete and coherent systematization of the criteria, standards and lines of informing/reporting inside the internal control structures, in order to assure the comprehensiveness, the promptitude and the adequacy of the internal control reports; - the above mentioned measures should not have as a result the obstruction of the information channels, that is, the dissipation and discrediting of the information value, by its un-relevance to the management; - it is necessary that the standards and systems of informing/reporting be designed as alarm systems, in different degrees, that can implicitly indicate the need for manager's actions to liquidate or to diminish some negative phenomena or destructive processes of the managed system
2.	There are in place procedures to associate the risk to activities, actions, operations and transactions	- there are not such procedures, neither at the central structures level nor at the local structures level in the field of public funds management; - no one of the financial control forms (internal control, public internal audit, and public external audit) evaluates the associated risk to the actions, operations, and transactions and, as such, the financial control missions are not planned on the basis of associated risk analysis; - we think that the effectiveness and efficiency of ordinary or exceptional missions of financial control considerably diminished because of the lack of the associated risk analysis in the	- there are only some hesitating and non-systematic attempts, that are rather punctually than generally focused, in drawing up associated risk analysis (concerning the actions, operations, and transactions of EDPM); these insulated attempts are generated by the more professionals public servants; - there is a quasi-general perception that the associated risk analysis is a rather fashionable than practical problem , and, as result, this has not	- it is necessary to impose certain general programs, with precise schedules and standards, especially at the level of central institutions and authorities, concerning the associated risk analyses and, focused especially on the procedures and technical analyses elaboration in the matter of the associated risk; - we suggest, in the context, that the Romanian Ministry of Finance should collaborate, in the matter of financial control, with the European

		programming and operating the financial control missions	had a considerable or decisive impact concerning the efficiency of the financial control missions	Commission institutions, with more advanced member states in this matter, with specialized research institutes (in the field of financial and monetary matter) or centers of the Romanian Academy
3.	There are in place accounting systems that reflect completely, really and timely the operations and the transactions	- such systems are designed and implemented in all EDPM		
4.	An ex-ante (preventive) control for liabilities and payments is implemented	- such a control is existing and it is completely and correctly implemented in the two forms: own preventive financial control and delegated preventive financial control	- the delegated preventive financial control, that is, now a centralized control exerted by the Ministry of Finance, will gradually pass, until the accession moment, inside the internal control, as it is the case with own preventive financial control; - in the context of what been stated above, the preventive financial control will have a single species; this species will be of the nature of internal control, under the EDPM manager, and it can be organized by the manager according to the law in force, as well as according his own conception concerning the proper management of the public funds	- it is necessary to draw up a precise schedule and, particularly, an adequate procedure to translate the delegated preventive financial control into the internal control (or into the own preventive financial control, in order to avoid certain disturbances of the preventive financial control activities and, especially, in order to avoid inducing of unreasonable overlappings in the preventive financial control actions (over-control) or, by the contrary, to avoid losing sight of such a control concerning the activities, operations and transactions in the EDPM (sub-control); - the above mentioned task is in the load of Ministry of Finance and it is relatively urgent because Romania will be (we hope) a member state on January 1, 2007
5.	A control of the public procurements is implemented	- such a control is implemented an it is functioning		
6.	A control of the public revenues (public collects) is	- the public revenues control is not yet implemented, except the public external audit (the control exerted by the Romanian Court of Auditors);	- the recent establishment of the National Agency for Fiscal Administration (under the Ministry of Finance authority) could have a	- the research team believes that the National Authority of Control is not a desirable institution within the Romania's strategy concerning the

	implemented	- the public internal audit performs only an indirect control of the public revenues, by drawing up the audit reports about the institutional structures concerned with the fiscal control; - the internal control does not evaluates, in a focused way, the control of the public revenues; it is concentrated only on the public expenditures	positive impact on the designing of some systems and procedures of control of the public revenues; - the recent establishment of the National Authority of Control will have, by a contrary, by our own opinion, a negative impact on developing of certain systems of control of the public revenues because it institutes (at operational and mental levels) an external control that overlaps or, sometimes sub-ordinates the internal (managerial) control; this situation could create a moral hazard, which could lead to a diminution of the effectiveness and efficiency of the internal control inside the EAPM; as a consequence, it could emerge also some more serious aspects concerning the public funds safety (fraud or, at least, irregularities proliferation)	financial control; it must be abolished and its tasks must be redistributed to EAPM functions (including the afferent responsibilities and accountabilities);

3.3.1.3 Module 3: There is a functionally independent mechanism of public internal audit, having relevant scope and addressability

No.	Criterion/Standard	Factual evaluation for Romania	Predictable tendencies	Proposals
1.	Is functionally independent	- by norms, the public internal audit is functionally independent; - practically, the public internal control is not entirely and in mass proportion, viewed as the main (essential) adviser of the EDPM manager; this misperception induces, at the level of the manager of EAPM as well as at the level of the chief of the public internal audit structure, a very negative behavior face the public internal audit role and functions: the public internal audit is simply assessed as being a common component of the internal control system under the EAPM manager; - from the normative analysis as well as from the results of the work-shop organized by the European Institute in Romania, seems that the regulated functionally independence does not works as own initiative of the public internal audit structures and cannot be found in the "courage" of these structures to report to the EAPM manager about the mis-workings of EAPM (including managerial mis-working) etc.; - we believe that the functionally independence of the public internal control (face to the EAPM manager) is rather declared and non-rejected than understood, but it is not totally implemented and operated; as result, many audit reports are only convenient and have not the expected impact on the improvement of the EAPM activity; - the chief of CUHPIA is member of the CPIA; as result, arises an inconsistence between the attributions (function and role) of the two institutional structures	- a process is taken-off , still slowly (but seems to be irreversible), at the level of the EAPM manager as well as at the level of public internal audit structure, to become conscious of the role and the specific functions of the public internal audit	- research team appreciate that the norm referring the public internal audit does not strong mentions about the role and position of this form of financial control face to the EAPM manager; - although the public internal audit must be considered, really, as a type of internal control (because structurally it is inside the EAPM), it is needed to be stronger emphasized the differences of the role, function and position of the public internal control face to the other structures of the internal control; - an adequate training must be developed, firstly at the level of the EAPM managers but also at the level of the chiefs of the public internal audit structures, in order to induce clearly, of the role and the functions of the public internal control: as the control of the internal control; this is a crucial idea and it is needed to be emphasized also the idea that the public internal audit can, only as exception, be considered as a species of the internal control, strictly speaking, in the case in which the EAPM manager asks or the chief of the public internal control suggests so, as special cases; - the CUHPIA chief must not be part of the CPIA (in context, it is needed that the Law 672/2002 be correspondently modified)
2.	Has an adequate mandate (concerning the scope and the types of internal audit)	- as a norm, the public internal audit has clearly defined its scope and its specific types; - although, the norm is not completely and always abided by in designing and implementing the public internal audit missions,; - in too many cases, the public internal audit is not functioning as a control component of the internal control but, strictly speaking, as a species	- a dedicatory culture (of the EAPM managers as well as of the public internal audit structures chiefs) concerning the public internal audit is still perpetuated; this situation could bring about great delays and distortions in understanding the	- the primary legislation and, especially, the secondary legislation are to detailed concerning the scope, types, ways of implementing (not only how to work but also how to record or how to report); this situation could substantially reduce the initiative and the imagination of the involved public internal audit structure (of

		of the internal control, that is, it is focused directly on the actions, operations or transactions of the EAPM; perpetuation of this situation will fundamentally obstruct the carrying out not only of the public internal audit specific functions but also will negatively affect the understanding of the true role of the public internal audit; - related to the conformity (i.e. regularity and legality audit) audit missions, the weight of the value for money audit (performance audit) is still much too small,; - although the public internal audit is focused on any activity, operation or transaction of the EAPM, we have learned that one of the most important of these activities – that is, drawing up the state budget project, respectively, the local budget – is not audited before the mentioned projects are forwarded to the deliberating or/and approving public institutions (for instance, the state budget project elaborated by the Ministry of Public Finance)	real role and functions of the public internal audit (as we have mentioned before, in too many cases the public internal audit is viewed as a species of the internal control, but having a more impressive name; - it seems that does not exist a strong and non-ambiguous propensity of the central public structures involved in the financial control to develop this type of audit, despite the fact that it performs directly the most important function of the public internal audit: the evaluation of the internal control in any EAPM	course, this provisions are necessary and, some of them, even indispensable from the point of view of standardization) but they must be delimitated and restricted to general ways and methods, in order to permit to public internal audit structures to elaborate the details required by the concrete cases which are examined; - should be identified the adequate institutional ways (probably by professional training) by which the EAPM managers and the public internal audit structures chiefs can understand the necessity and the usefulness of the role and working independence of the public internal audit; - developing and implementing of a national program coordinated by the Ministry of Public Finance which should draw up the indicators, procedures and the systems for implementing the value for money audit (the program will also include twinnings with member states of EU, as well as an promotional strategy and an internal specialized training); - the state budget project that is drawn up by the Ministry of Public Finance, cannot be transmitted to the Government (in order to be approved and transmitted to the Parliament) without the approval by the public internal audit structure; in this way, two main functions could be achieved: a) matching the informational circuit with the Court of Auditors ex post control; b) the inclusion the public revenues in the financial internal control (as we know, the financial external control – public external audit – exerts already the control on the public revenues, in an ex post way, so it does not exerts a control on the planning of public revenues but on the execution of public revenues)
3.	Uses the public internal audit	- the concrete missions of the public internal audit try to take over, to adapt and to use the best practice of the EU and in the world;	- learning and assimilation, into the methodological and procedural practice, of the	- research team recommends the practice of twinnings on public internal audit topics to be continued;

	standards, established at the best recommendation and practices level of EU and in the world	- the public internal audit standards are known (especially at the central structures level) and are assimilated into current specific activity	recommendations and of the best European and international practice, constitute a working process; - there is a complete openness of the involved authorities towards the collaboration with the specialized structures in the European Commission, with central institutions in the member states, in the matter of taking over of these practices concerning the public internal audit	- manuals or procedural guidelines (from the member states) must be translated and known in the matter of public internal audit; - developing the practice that Romanian public internal auditors take part in training or working stages within public internal audit structures of the European Commission or in member states
4.	There is a coordination and supervising concerning the audit standards and methodologies	- yes, this coordination is a task of the Ministry of Public Finance, by CUHPIA (Central Unit for Harmonizing the Public Internal Audit – see the chapter 2 of the study); - it is also in place a national and independent structure, having the role to dynamically evaluate the progresses made in the field of the public internal audit – CPIA (Committee for Public Internal Audit)		- it is necessary that the CUHPIA remain a general guiding unit, in the methodological and standardization field; it should not have direct functions of audit (as the law 672/2002 stipulates) because in this way could arise some centralizing elements that are neither necessary nor useful
5.	The audit trail is defined (including the implementing/paying agencies for the European funds)	- no, the audit trail is not defined, except in the case of the European funds (at the level of the central structure of public internal audit, up to the point in time this study was issued, in the Ministry of Public Finance was elaborated such an audit trail, but it has still an experimental value, until the time of the present study); - the research team appreciates that does not exist the necessary and sufficient expertise to elaborate the public internal audit trail, at least at the level of directly involved personnel (or staff) in the public internal audit activity within the EAPMs	- the perception of the necessity to design the public internal audit trail exists at least at the level of central involved structure (Ministry of Public Finance)	- it is necessary to start up a national program (at the level of all public internal audit structures in the country) to make aware, explain and design the public internal audit trails; - designing of the public internal audit trail requires the previous designing of other two methodological "ingredients": a) designing of the signification thresholds; b) clarifying the traceability principle in the public internal audit matter; - the research team appreciates that this problem can be satisfactory solved only by a close cooperation with the qualified institutions of the European Commission and with the public internal audit central structures in the member states and even by a cooperation protocol signed with the specialized center of the Romanian Academy
6.	The public servants in the public internal	- the perception that evolved from the work-shop, as well as the information gained from	it seems there is not, at the level of central involved public	- Should be accepted (by completing and

	audit structures is sufficient and qualified	other informing channels, had lead the research team to conclude that the involved personnel in the public internal audit activities is now insufficient; - concerning the qualification of the involved personnel, there is the perception that it could be differentiated according to the public internal audit missions; now it seems to be an over-qualification for a minor components (phases) of these missions and, by contrary, an under-qualification for those components of the missions that are more refined and more complex	structures, a conscious of such a perception, met within the EAPM public internal audit structures	modifying the Law 672/2002) the employment of medium qualified personnel (high school level of studies) and the structuring of the auditing teams, from the point of view of personnel qualification, degree of complexity or relevance of the public internal audit missions (this proposal also implies, of course, some changes in the methodological or procedural norms concerning the achievement of the public internal audit missions)

3.3.1.4 Module 4: There is a functionally and structurally (i.e. external) independent mechanism for the public audit, having a relevant scope and addressability

No.	Criterion/Standard	Factual evaluation for Romania	Predictable tendencies	Proposals
1.	Is functionally and structurally independent in relation to any EAPM	- yes, the public external audit is exerted by the Romanian Court of Auditors, that is an independent institution, functionally and structurally in relation to any EAPM (the Romanian Court of Auditors is subordinated directly and exclusively to the Romanian Parliament)	- according with the EU norms and with the best international practices, this situation is stable	
2.	Performs public external audit missions, based on an audit adequate mandate (concerning the scope and the types of public external audit)	- yes, the public external audit missions are planned according the role and the functions of this type of public audit; - although the constitutive law of the Romanian Court of Auditors stipulates the ex-post nature of the public external audit, i.e. "ex post (o.u.) external control" , in fact the Romanian Court of Auditors performs also public external audit mission inside the financial year; - face to the public internal audit, the public external audit give a greater importance to the public external audit named the value for money (i.e., the public external audit of the performance); accordingly, there are, at the level of the Romanian Court of Auditors, interesting proposals for indicators aimed at to measure and to quantify the performance at the level of EAPM, as well as some specialized procedures to make this	the Romanian Court of Auditors give a special attention to the value for money public external audit (this is extremely positive aspect)	- the activity (so, the objectives, role, and functions) of the Romanian Court of Auditors might to be maintained in the field on ensuring the safety of the public money in areas of maximum risk or of national signification; - based on the previous ideas, we think that a much more systematically and rationally designed system for coordination and collaboration between the public internal and external audit could take away from the Court of Auditors some small and non-significant audit missions of public external audit; so, a reducing of the cost of missions could be gained and, simultaneously, the public external audit missions will be given with a much more importance and aggregation character, concerning the safety and the efficiency of the public money using at the national level; - following the above mentions, either by norm or by an adequate protocol, this problem could be solved; so, it is possible to verify the important feature of the Court of Auditors control namely: this control is an "ex-post" control, that is, performed after the end of the audited phenomenon (for instance, after the end of the financial year)
3.	Uses public external audit standards established at the best recommendation and	- yes, the public external audit is connected to the recommendations and practices of the EU and of international	- this position is maintained, in a continuum and permanent way	

	practices level of EU and in the world	lessons		
4.	Performs public external audit missions based on the associated risk to the actions, operations and transactions	- there is not yet drawn up a complete and systematic associated risk analysis (associated to activities, actions, operations and transactions) risk analysis, from the point of view of public external audit	- at the level of the Court of Auditors as well as at the level of experts in this institution, there is a clear perception of the necessity, utility and urgency for drawing of such studies, that could increase the efficiency of the public external audit and the degree of the public money safety	- the research team appreciates to be useful, at this point, to establish a closed cooperation between the Ministry of Public Finance and the Romanian Court of Auditors, in order to identify the associated) to activities, actions, operations and transactions) risks that involve the public money and assets; - obviously, could exist differences of evaluation (quantification) of the associated risk from the perspective of the public internal audit, respectively from the perspective of the public external audit, because these risks are different, dependent on the moment of performing of the audit mission (inside or outside of the financial year)
5.	The audit trail of the public external audit is defined, based on the signification thresholds and on the traceability principle	- there is not a "product" in the matter, now	- as in the associated risk case, at the level of Court of Auditors can be identified concerns to solve this problem	- it is necessary to emphasize the efforts towards this objective, eventually by establishing an informal team in the Court of Auditors and in cooperation with European structures involved or academically specialized centers
6.	Collaborates with the public internal audit in performing its specific missions	- yes, the Court of Auditors examines, beforehand, the public internal audit reports, when it performs a public external audit mission; - there is not yet a massive and constant practice to establish joint teams of public audit (public internal and external auditors)	- there is the perception of the usefulness of the cooperation between the two types of public audit, at the informational level as well as at the level of concrete cooperation by joint team of auditors	- after drawing up the "map" of the associated risks (both from the perspective of the public internal and public external audit) it become possible to pass to the next stage: defining of the common programs to collaborate and cooperate, on a robust and permanent basis

3.3.1.5 Module 5: Systems to prevent and act against the irregularities, as well as to recover the lost amounts as result of irregularities or through oversight are implemented, having as criteria

No.	Criterion/Standard	Factual evaluation for Romania	Predictable tendencies	Proposals
1.	Establishing risk signaling systems for those irregularities that are not frauds	- such systems are put in place and are functioning, in any EAPM not in a systemically way (i.e. automatic) but rather based on the own expertise of the manager or of the involved structures in the internal control	- there is the perception of the necessity of an automatic system (based on an adequate scoreboard that can indicate the importance, the imminence and the nature of the danger) to signal the risks (the probability of appearing certain eventualities), at the level of all public institutions and authorities that deal with public funds or assets	- it is called for the necessity (statutory) as all the EAPMs elaborate automatic systems aimed at to signal the irregularity risks that are not yet frauds; - such systems could be designed in a general manner (in principle) by the specialized research structures (eventually in cooperation with UE experts) and then could be personalized to each EAPM
2.	Assessing the degree (potential or actual) to prevent the irregularities	- for this objective there is not, also, designed and put in place reliable systems and procedures, with a continuum and permanent character, aimed to measure the degree of preventing of the irregularities; - preventing of the irregularities is operated, at the internal control level, based on classics and relative empirical methods	- it seems that does not exists a generalized perception concerning the necessity of such a quantification or monitoring	- we think this problem must and could be solved once the previous problem is solved and even within this last problem
3.	The possibility to act in the eventuality of arising the specific risks	- yes, in all perspectives: administrative or criminal; - this possibility is both normal and based on a long-term expertise and practice at the EAPM level		- it is recommended to continue the process of unitary codification in the field
4.	Procedures to measure the materiality of the effects of irregularities or frauds	- yes, the internal control has the capability to identify and quantify the materiality of irregularities or frauds		
5.	The in force legislation and procedures assure to recover the lost amounts as result of irregularities or through oversight	- yes, both for public funds or assets, and for the European funds		
6.	There are mechanisms (in order to solve, or to report, or to translate the cases to specialized structures) to	- yes, there are in place functioning mechanisms, both at the level of informing/reporting and at the level of transmission the cases to specialized		

	cope with irregularities or frauds	structures to treat them		
7.	There are structures to fight against the fraud and corruption (inside the financial control or outside it)			

3.3.1.6 Module 6: There are assessing mechanisms for:

No.	Criterion/Standard	Factual evaluation for Romania	Predictable tendencies	Proposals
1.	Improvement of the capacity of the financial control and effectiveness indicators	- at the level of CUHPIA and of CPIA are continuously performed assessments about the effectiveness and the progresses achieved in the financial control field, but only concerning the public internal audit	- in the methodological and procedural standardization process, ensured by the CUHPIA and by CPIA, can be seen some tendencies to draw up such indicators	- we think it is necessary to be designed (by legal norms) and developed certain functions of the public internal audit concerning the self-assessing, from the point of view of ensuring the effectiveness and the efficiency of the internal control - CUHPIA might administer a large activity, at the all EAPMs level, in order to draw up a systems of indicators to monitor and quantify the effectiveness of the financial control
2.	The ability to adopt the acquis communautaire as well as the best practices in the world in the financial control matter	-such assessments, in principle, and at the CUHPIA and CPIA levels, is continually performed, but only concerning the public internal audit; - in principle, the Romanian Court of Auditors can, also, perform, periodically, such assessments and monitoring; - the internal control does not perform such assessments and monitoring.	- it is not be seen any tendency in assessing (i.e., dynamic monitoring and quantifying) of the degree and the quality of the setting the financial control in Romania in line with the acquis communautaire	- the research team proposes that, inside the Ministry of European Integration (by completing the normative existing framework) should be constituted a specialized team aimed at monitoring and quantifying (benchmarking) the progresses achieved in the process of setting the financial control in Romania in line with the acquis communautaire; this team must draw up twice a year specialized reports to the Ministry of European Integration as well as to the Ministry of Public Finance (the last Ministry must remain the generic administrator of the public money at the national level, anywhere the public money works)
3.	Capacity of maintaining the established standards in the world, by using the criteria:			

	Capability and capacity to develop and to change	the vagueness of the perception on the role of the internal control as well as on the public internal audit, at the level of EAPM managers, affects in a considerable degree the capability and the capacity of the EAPM to develop, creatively and adequately, the internal control and the public internal audit systems	the research team appreciates that, in this field, the tendency is, still, to take over the best practices in EU and the member states (or those recommended by the CUHPIA or the European Court of Auditors); a much weaker tendency to create own systems, procedures or mechanisms is identified	it is required to develop a managerial culture that can develop, in its turn, the confidence and the responsibility in administering the public funds and which tend to generate impulses towards the creativity and institutional development at he EAPM level; this goal could be achieved, especially by a specialized training and, simultaneously, by imposing more rigorous criteria in selecting the managers for EAPM, from the point of view of their capacity to independently and adequately develop systems and mechanisms to administering and controlling

	The existence of a strategy to develop and change	- there is such a strategy (generally speaking), based on the Chapter 28 stipulations, "Financial Control", of negotiating the Romania accession to the EU, as well as in the position document stipulation, "Policy Paper" on the public internal financial control, that is submitted to the European Commission; certain elements of such a strategy could be found in the general strategy of Romania in the context of its accession process to EU; - properly speaking, at the level of EAPM do not exist such complete strategies but only some strategic elements, included in the general and specific strategy of any EAPM		- the research team proposes that, at the level of the public internal audit structure in any EAPM, should be constituted a group of experts concerned with monitoring the developing process of the own EAPM, as well as with assessing the changing pressures and the risk involved by a positive or negative reaction of the EAPM to these pressures, etc.; - we appreciate that such a solution could, firstly, would support the standard role and functions of the public internal audit (to evaluate the quality of the EAPM activity), and, secondly, could perform a prospective analysis or even simulation of policies for different "trajectories" that the EAPM could take; all these assessments must be drawn up on the base of the changing pressures that are emerging or could emerge in the future; - related to this, the research team wishes to offer a new proposal, that we consider extremely important: the public internal audit structure might develop, with a continuous and permanent character, a special function, aimed at measuring and ensuring the sustainability on long run of the EAPM (**2**)
	A commitment to develop and change	- there is such a commitment; it has an implicitly character (see the previous mentions, in this column) and a genetic nature	- this commitment is total, assumed and irreversible, at the level of all EAPMs	

	Effectiveness related to the institutional possibility	the financial control effectiveness face to the possibilities ensured by the institutions (in a large sense: legislation, methodologies, organizations, practices etc.) can be appreciate, in our opinion, as follows: - <u>internal control level:</u> *unsatisfactory* (except the preventive financial control – own and delegated – as well as the accounting systems); - <u>public internal audit</u>: *medium*; - <u>public external audit</u>: *good*	In relation to this criterion, we think the tendency is positive in all three types of public financial control, but the speed is different, as follows: - *small*: in the internal control - *medium*: in public internal audit - *high* : in public external audit	- it is required the speeding up of drawing up and implementation of the "Code of managerial public internal control"– CMPIC, which was mentioned above; - it is necessary to draw up a national training program focused on the EAPM managers and on the public internal audit structures, having as declared goal to change the culture position of the mentioned targets in relation to the role, functions and the place of the public internal audit in the EAPM

3.4 Concluding and final remarks

The accession process of Romania to EU signifies, in fact, a process that has as final goal to give to European Union the certainty that Romania has the capacity to enter the EU by meeting the accession criteria as well as the standards of these criteria.

One of the extremely delicate fields for EU, as a whole, as well as for the individual member states, is to ensure about the safety and the efficiency of using the public funds (in particular, the proper working of public institutions and authorities). A good prove for this objective of EU is the existence of a special chapter for negotiation of Romania's accession, that is, Chapter 28, "Financial Control".

Our study has tried to perform not only a diagnostic-analysis (a benchmark) for Romania's stage (from the point of view of its present legislation, institutions and practices in the financial control field, i.e. internal control, public internal audit, and public external audit) regarding adoption of the acquis communautaire, but also to it equally aimed at identifying other aspects in the matter: a) predictable or desirable tendencies, levels of perception of those involved in the financial control activity concerning its structure, dynamics and quality; b) shortcomings or bottlenecks in the plenary development of the financial control; c) some aspects concerning the enterprise culture in the matter of financial control and its own impact.

The study analyzes all the components of the INTOSAI recommendations on the internal control (**3**) by a check-list synthesized from a large number of analyses and assessments made in the world (including the SIGMA organization evaluations). As a result, quantitative and qualitative assessments were drawn up as well as some description of the overall and specific tendencies in the matter. Some proposals for future legislation, procedures or organizational changes were given as well.

In this section we will synthesize some conclusions that the research team has drawn from the entire study.

3.4.1 General conclusions

1. In Romania there is a non-ambiguous, consistent and continuing determination, at the Government level as well as at the level of specific central public institutions, towards the improvement of the normative, procedural and organizational framework concerning the public financial control, firstly by catching up with the acquis communautaire and, simultaneously, by an own and creative institutional development, taking into account the concrete conditions of the Romania's reform and accession process into UE;

2. The primary, secondary and, partially, tertiary legislation are in place or in the process of drawing up and implementation, without major disturbing impact on the effective processes of performing daily the public financial control;

3. The main problems in the field of public financial control are brought about by specific cultural features. This means that it is not the legislation (i.e. codification) which represents the basic underdeveloped situation in Romania, but its implementation and its further development, as follows:

    - many EAPMs' managers are not yet entirely convinced about the usefulness of the public internal audit, as an own control component of the internal control and as its

permanent and reliable adviser for the benefit of the managerial performance (firstly concerning the public fund and assets management);

- many chiefs of the public internal audit structures consider that this type of financial control is some other name given to the common internal control (former control bodies of the EAPMs' managers);

- many EAPMs' managers do not have a clear understanding of the role, functions and the procedures of the internal control, as the main managerial function; as a result, many EAPMs' activities are still designed and organized in the form of simple and passive recording structures.

4. There is a real danger, caused by the hurry (fully understandable, of course) of the Romanian authorities to adopt the acquis communautaire, consisting in speeding up of some insufficiently prepared processes as: a) separating of the public internal control from the public internal audit (separation required by the philosophy of the public financial control, but which requires itself a preparatory stage related to cultural aspects, including the mentality of the personnel which is going to work in the two mentioned separated fields; consequently, there is a danger of performing the same functions in the two fields, i.e. a phenomenon that is inconsistent with even the reason of the separation); b) the Ministry of Finance's strategy to pass, by the end of 2004, from the cash accounting to the accrual accounting, a process that seems to have not been sufficiently prepared, neither from the point of view of the cost evaluation, nor from the point of view of its general impact (**4**);

5. There is the tendency to maintain a certain centralization in the field of the public financial control that can even be, in the final instance, a source of to much bureaucracy, corruption, or political interference with administration; some cases could be presented here: a) maintaining the Control Body of the Government, with other basic competences than those related to the "internal affairs" of the Government members; b) establishing of the National Authority of Control, with a negative impact on the desirable internalization process of the… internal control; c) maintaining, for about four years, of the preventive delegated financial control inside the Ministry of Public Finance, with the same negative impact mentioned in the above point b). These structures might be rethought[58], not only in order to eliminate the aforementioned dangers but also in order to avoid the avoidance of the responsibility by passing it from the level of "public revenues and expenditures centers" (i.e. the EAPMs) to the Government level; we think this transfer of the responsibility could generate a certain undesirable moral hazard in ensuring the safety and the efficiency in using the public funds;

6. From the point of view of the achieved progresses until now as well as from the perspective of the recorded or observed tendencies, the research team appreciates that the most emphasized dynamics and the best orientation can be found in the field of the public external audit, followed by the public internal audit and, finally, in the internal control; in fact, we appreciate that, in the matter of internal control, there are by the accession process, in the public financial control field not only many considerable underdevelopment situations but also a critical lack of understanding, concern and interest, at the level of Ministry of Public Finance, towards codifying, methodological regulation and procedural developing;

58 As was mentioned in the study contents, the Government has already a strategy of passing of the delegated preventive financial control to the internal control, beside the own preventive financial control, until the accession moment, on January 1, 2007.

7. There are not yet implemented viable systems able to dynamically assess the achieved progress in the public financial control (in this context, we appreciate that such systems must be urgently implemented inside the public internal audit structures); this situation could lead not only to delays concerning certain Governmental commitments in adopting the acquis communautaire in the filed but also could even generate wrong developments in some situations (as has happened, for instance, as we above mentioned, concerning the maintaining of some centralized structures of the financial control, i.e. the delegated preventive financial control);

8. At the level of internal control, we think that should take place a serious change in the system of informing/reporting at the level of the EAPM's manager, in order to establish clear and permanent responsibilities, with the purpose not only to increase the responsibility of the EAPM's manager but also to help him to design his own control and signaling systems (including informing/reporting lines);

9. At the mentality level (cultural attitudes) the EAPMs' managers must understand the fact that the most efficient internal control system is the *ad hoc*[1] one, designed and, consequently, strongly limiting the taking over (often under the time or conditionally pressures and more often without having the optimal functional conditions) of systems, methods or procedures from outside (including the EU and the members states experiences) (**5**); the EAPMs' managers must be concerned only with the proper working of the implemented methods, systems and mechanisms.

10. At all the public financial control levels (internal control, public internal audit and public external audit), the central structures must have only a guiding, methodological standardization, monitoring and assessing role; these central structures should not have any competences in performing direct control activities; the exceptions must be allowed, in special situations, by *ad hoc* built structures, without having a permanent character;

11. In developing the above point 10, we think that the legislation (especially the methodological and procedural norms) must contain only the principles and the basic elements but not constraining details; we want to say here that we should not be confuse the standardization (i.e., a mean to increase the efficiency and the inter-levels communications) with stifling of the direct public financial control structures by detailed provisions that, anyway, are perishable on the medium run.

3.4.2 Some particular conclusions

1. it is necessary to be drawn up a steadfast and consistent schedule in order to transfer the delegated preventive financial control into the each EAPM internal control structure;

2. it is necessary to be started a substantial and persistent process of developing the associated risk analyses at the EAPM level and of designing some "maps" of these associated risks by activity, action, operation and transaction classes concerning the public funds and assets;

3. it is necessary to be performed studies and researches (including the European Commission or member states experts cooperation and collaborations or cooperation's with the specialized institutes or centers of the Romanian Academy too), in order to:

    a. generate the significance thresholds in the public financial control field;

    b. clarify the traceability principle in the public financial control;

c. drawing up the audit trails (internal as well as external);

d. drawing up the signaling systems concerning the irregularity risks occurrence (inside or outside the fraud);

e. design the signaling systems for the materiality of the irregularities or frauds occurred;

4. it is necessary to be redefined the scope of the public financial control (except the public external audit, that generally reached this objective) towards including also the public revenues (as programmed as well as collected);

3.4.3 Institutional proposals

In employment of the check-list in order to assess the degree to which the Romanian public financial control has adopted the acquis communautaire (the results of such an use were been presented in this chapter), the research team has made, implicitly, a number of proposals, either institutionally, or methodologically, or organizationally. Now, we want to remind only the most important institutional proposals and, contextually, to offer another proposals and evaluations that, as we think, could have a positive impact in the adoption process.

1. it is necessary to be drawn up a "Code of managerial public internal control", aimed at containing all the provisions concerning the organizing and functioning of the public internal control (the most under-developed component of the public financial control in Romania): observing and recording systems, risk signaling systems, reporting systems (including all feed-back mechanisms and channels of circulation by which the EAPM manager dynamically control the EAPM);

2. it is necessary to drawn up to a "Law of responsibility on the public funds", aimed at containing the unavoidable provisions, of any nature (legislative, methodological, procedural, organizational etc.) in order to ensure the safety and efficiency of the using of public funds (including the recovering mechanisms of the lost amounts as a consequence of irregularities or frauds);

3. it is necessary to modify and complete the *Law 672/2002 on the public internal audit*, in order to include as a basic function of the public internal audit the following: dynamic assessing of the achieved progress at EAPM level, regarding the adopting of the acquis communautaire; these assessments will be synthesized at the CUHPIA level, which will include them in its annual report;

3.4.4 Action targets for the period 2005-2006

1. The research team makes the commitment to continue the present study and, within the European Institute in Romania to perform, based on the analysis matrix (see the chapters 1 and 2) as well as based on the check-list presented in this chapter, a permanent monitoring, under all aspects, of the achieved progress or failures of the public financial control in Romania (for all three components of the public financial control). The result of this monitoring, in the form of biannual reports, will be transmitted to the European Institute in Romania and, by this institution, to interested institutions and authorities. The progresses or regresses will be quantified both related to the basic requirements of the acquis communautaire and to the benchmark performed by the present study (this benchmark could be considered as a dated diagnostic – June 2004); the monitoring team will draw up a scoreboard system aimed at quantifying, at an aggregate level, the

"positioning" of the public financial control in Romania in relation to the acquis communautaire;

2. The research team proposes, for the second half of the year 2006, to draw up a revised edition of the present study, within some other project, in order to record the achieved progresses in the field and to present to the specialized structures of the European Commission, the situation of the public financial control in Romania, before the accession moment. This revised version of the study will be based on:

    a. evaluation of the monitored results, based on a scoreboard, concerning the public financial control;

    b. evaluation of the legislative dynamics in the field (primary, secondary and, especially, tertiary);

    c. performance of two cross-investigations, which are statistically representative, based on a questionnaire like the one in the present study, but more detailed in respect to including the cultural and procedural aspects;

    d. organization of two work-shops with: the experts in the public financial control and specialists inside the public financial control structures (EAPM managers, public internal auditors, financial controllers in the Romanian Court of Auditors);

    e. organization of a roundtable with the participation of experts from the specialized structures of the European Commission as well as of specialists from central structures of public financial control in the member states (ministries of finance, courts of auditors, governmental agencies, administrative bodies etc.);

3. The research team proposes to the European Institute in Romania to study the possibility starting of a study regarding the "enveloping institution" of the public financial control, i.e., the public administration. In relation to this, we suggest to the EIR to contact SIGMA organization, in order to discuss the possibility of a joint team (SIGMA experts and the research team) to make a common study concerning the degree and the quality in which the public administration in Romania achieved or is in course or has the tendency to reach the normative, structural, cultural and functional features of the average administrative institutional setting in the EU on the begin of 2007. Such a study could be achieved in the second half of the year 2005 or in the first half of the year 2006, to allow using of the results of the revised edition of the present study (the second half of year 2006), as we suggested above. These proposals could have as a result to lead the research team towards a *sui-generis* "specialization" in this field, and, consequently, able to make high scientific research with highly credible results.

Notes, Comments, References

(1) The present study has not such an objective, but it could be seriously taken into consideration, especially in the context in which the EU (particularly at the European Commission level) performs a lot of monitoring and calculates aggregate scores to assess the achievement of some specialized criteria and standards (for instance, the European concern to monitor and quantify the evolutions in the member states in line with Growth and Stability Pact criteria; or, an another example, the recent report of the European Commission to the European Council, on February 2004, on the Lisbon Strategy: „Delivering Lisbon Reforms for the Enlarged Union" – Report from the Commission to the Spring European Council, Brussels, 20.02.2004, COM (2004), 29 final/2); in the final part of our study we will propose something in the matter;

(2) The Sustainability seems to be a new paradigm that conditions any economic, social, political or cultural development in the contemporary world. The EU drawn up the Lisbon Strategy (2000) and the Growth and Stability Pact (2002) even from the perspective of the necessity to ensure the sustainable development of the Union. The effectiveness and even the efficiency seem to work under this new principle of the sustainability that could invert all the evaluations concerning the prosperity or the rentability of different societies or economic establishments. In this light, we appreciate that the public funds management must work under this principle of the sustainability, that will regulate both the effectiveness of the public funds and its efficiency and, probably will change our perspective on the public funds safety; in this context, we consider that the public internal audit might already begin to design and monitor such sustainability indicators;

(3) Un abstract from these provisions contains, concerning the control environment, the followings:

1. establishing a positive ethic tone;
2. offering of a guiding towards an adequate behavior;
3. moving off the temptations towards a non-ethical behavior;
4. ensuring the discipline, if the case;
5. ensuring the personnel posts and keep a certain level of competence towards performing of the tasks;
6. defining in a non-ambiguously way, the key areas of authority and responsibility;
7. establishing the adequate lines of reporting;
8. establishing policies and procedures of control of the management based on the risk analysis of the management;
9. using daily training programs, communications with the managers and different actions that involve all levels managers, in order to strengthen the importance of the management control;

10. monitoring the control operations of the organization by annual assessments and reporting to the top management;

(4) Wee have here a "nice" example for that the public internal audit should perform but, because the lack of an adequate culture (mentality, perception) concerning the public financial control , and especially concerning the public internal audit, it did not, namely: the impact assessment, cost/benefit analysis etc. of this passing from the cash accounting to the accrual accounting;

(5) We stress here the fact that the EU (and, consequently, all its institutions) does not impose ways, but only it indicates the objectives to be reached; as a result, it remains open not only the problem of adapting the means to perform the indicated objectives, but remains open also the problem of the creativity of each country in the public financial control field (as a matter of fact, the institutional "dowry" of EU must be considered as a common and rationalized intersection of all particular contributions of the member states; in this respect a great role is being played by the new open method of coordination, implemented by the Lisbon Strategy);

(6) There countries (for instance, England or New Zealand) where there is in force a law of the fiscal responsibility; this law is aimed at ensuring the sustainability of the fiscal policy but, based on its model, it is possible to elaborate a law concerning the responsibility on the public funds; one of the institutional gains from such a law (except the properly impact towards ensuring the safety and the efficiency of the public funds) is the following: it could be a supplementary argument for European Commission concerning the irreversible determination of Romania on the road to achieving the criteria and the standards required