

FRAUD ADVERSELY AFFECTING THE BUDGET OF THE EUROPEAN UNION: THE FORMS, METHODS AND CAUSES

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Abstract

The paper analyses the forms, methods and causes of fraud that are perpetrated to the detriment of the budget of the European Union. The forms in which EU fraud appears are shown according to the criterion of kind of budgetary resource. Crime affecting the budgetary revenue of the EU tends to appear in the form of customs duty-evasion and false declarations concerning the customs-relevant information about goods. Crime adversely affecting the expenditure side of the EU budget appears in the form of subsidy fraud in the area of the Common Agricultural Policy, and subsidy fraud in the area of the structural policies. The methods used for the EU fraud committed and considered in the paper are document forgery, concealment of goods, corruption, violence and fictional business and evasion of the laws. In conclusion an explanation is given of the main exogenous criminogenic factors that lead to the EU frauds commonly perpetrated.

Key words: EU fraud, customs duty-evasion, subsidy fraud, smuggling, methods of EU fraud, corruption, fictional business, etiology.

1 Introduction

The objective of this paper is to provide a phenomenological analysis for a definition and analysis of the concept of offences against the financial interests of the EU, in other words, the budgetary resources of the EU. This kind of phenomenology is part of criminological science that deals with the forms in which criminal behaviour appears (Gr. *faínomai* – to appear), together with their description and systematisation. Through a syn-

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thetic and casuistic description of individual phenomenological forms of criminal actions and the systematisation of them according to given criminological characteristics, an endeavour is made to delve into the complex fiscal, financial, economic and legal context in which these deeds arise, and to associate them more closely with the practical reality. Phenomenologically, criminal conduct can be subdivided according to various criteria, such as types of perpetrator, methods of perpetration, manipulative techniques, gravity of the consequences, legally protected good, statistical and other criminological forms. In order to bring to light the multidimensional importance and throw light on crime against the budget of the EU from several aspects, in this paper a phenomenological analysis is carried out at several levels and is based on two main criteria: a) the phenomenological forms considering the kind of legally protected good – the revenues and/or expenditures of the budget of the EU and b) the methods by which these crimes are committed.¹

Knowledge of the substance, scope, composition, *modus operandi* and other features of crime or delinquency is a precondition for an etiological analysis or the identification of the causes and the undertaking of appropriate preventive and repressive measures. Pursuant to the results of the phenomenological analysis, crime adversely affecting the budget of the EU, the final part of the paper endeavours to define and explain the main exogenic criminal factors and the kinds of offences. Before moving to the main part of the work, attention should be drawn to the kinds and extent of the damage caused by this kind of crime, highlighting thus the importance of the research and study of this social problem.

The detrimental consequences of crime and other offences against the financial interests of the EU are expressed in the sphere of politics, economics and finance. Quantitative assessments of the financial damage caused by offences to the detriment of the budgetary resources of the EU in the last 30 years have ranged from 1 to 20% of the EU budget. The amount of the damage to the budget determined in the cases that are brought to light comes to 1-2%, but it there is a widespread acceptance that the amount of resources misappropriated via undetected criminal conduct is five to ten times greater. Just such a high percentage of lost financial resources of the Union was mentioned in various newspaper reports, some of which were clearly aimed at inflicting political damage on European integration. But this is not simply mere anti-European rhetoric, as proved by identical statements being made by academics, politicians and economists, as well as the results of investigation and *ex post* controls carried out in different sectors of the EU budget. The first investigation into the extent of economic and financial crimes committed against the EU budget, carried out at the end of the 1980s by the Institute for Criminology and Economic Crime Law of Freiburg University resulted in the estimate that the amount of the damage was 10-20% of the EU budget (Dannecker, 1996:875). Later research by the European Commission², as well as by the European

¹ In the specialised literature about crime against the financial interests of the EU there is no generally accepted classification of criminal actions; rather, authors describe and group crime according to discretionarily chosen characteristics. See for example, in Dannecker (1993) the papers of Dannecker, Rump, Rieger, Lettieri.

² A representative of the Commission in a procedure before the European Court of Justice stated that the dark figure of damage inflicted on the EU budget comes to 10-15% (statement before the Court in April 1992 relating to a suit of the FR Germany in case 240/90).

Court of Auditors³, confirmed this high and gloomy figure. The most important source of information about criminal conduct and the amount of damage is in the annual reports of the European Commission about the protection of the financial interests of the European Communities and the fight against fraud⁴ based on figures that, according to Community law, must be supplied it by member states⁵ and its Antifraud Office, OLAF.⁶

As well as financial damage⁷ that directly affects the revenue and/or expenditure of the annual budget of the EU, this kind of crime also jeopardises the functioning of the internal market, that is, the economic system itself, of the EU. Criminal economic activity can bring about distortions of market laws and market policy in the common internal market and menace other Union policies as a result of shortage of funding for their execution. It is important to draw attention to the political price of crime against the financial resources of the EU, which extorts a heavy cost in terms of loss of trust by members of the public in European institutions and of undermining of the reputation and credibility of the EU.

2 The forms in which frauds adversely affecting the budget of the European Union appear

Offences against the budget of the EU are usually called in the specialised literature EU frauds. This concept does not mean just the crime of fraud in the usual sense of the criminal law, but also minor offences to the detriment of the budget of the EU that could be reduced to the concept of unlawfulness in the sense of the Council's Regulation concerning the protection of the financial interests of the European Communities.⁸ The main

³ Evaluation of budgetary losses of the Court of Auditors in the area of intervention measures and storage at the end of the 80s was still grimmer and came to 25-40%, and with respect to 1995, the Court gave information that the budget of the EU lost 4% to fraud, another 4% to incorrect payments, while the total amount of 14% of loss could not be determined in the court because of lack of evidence (Dannecker, 1993:23; 1996:875).

⁴ Since 1989 the European Commission has published reports about the fight against fraud on the OLAF internet site at the http://ec.europa.eu/comm/anti_fraud/reports/index_en.html

⁵ For the sake of protecting the financial interests of the Union member states are obliged four times a year in periodic intervals to send the Commission a description of detected cases of fraud and unlawful activities in the area of EU expenditures the damage of which exceeds 4,000 euros, or in the area of the traditional own revenues of the Union the damage of which exceeds 10,000 euros. *Council Regulation (EEC) No 595/91 of 4 March 1991, art. 12(1); Commission Regulation (EC) No 1681/94 of 11 July 1994, art. 12(1); Commission Regulation (EC) No 1831/94 of 26 July 1994, art. 12(1); Council Regulation (EC, EURATOM) no. 1150/2000 of 22. May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources* (OJEC L 130 of May 31 2000), Article 6 Paragraph 5 and Article 17 Paragraph 3.

⁶ Up to 2001 Commission reports contained descriptions of fraud cases investigated by or reported to OLAF. Since then the Commission has abandoned the casuistic approach and from 2002 to 2005 the reports do not contain descriptions of individual cases but contain descriptions and evaluations of the activities and measures of the Community for the protection of the financial interests of the EU, analysis of the degree of implementation of Article 280 of the Treaty on European Union in the member states and statistical analyses.

⁷ For an understanding of the amount of financial damage caused by frauds it is important to know that on January 1 2002 when the accounting unit of the EU called the ECU was replaced by the single currency of the EU the euro, their exchange rate was 1:1. Hence the amount of damage in given cases in this work adduced in ECUs can be calculated easily by a simple replacement of ECUs by euros.

⁸ Council Regulation (EC, Euratom) № 2988/95 of 18 December 1995 on the protection of the European Communities financial interests.

division of offences against the financial interests of the EU accepted not only in the specialised literature but also in EU legislation⁹ and the laws of the member states is defined according to whether the good of the revenue or the expenditure of the budget of the EU is affected. According to this criterion, two main kinds of EU fraud are distinguished.

- Evasion of import duties and taxes that constitute revenue of the budget of the EU.¹⁰ The main form of fraud with which the revenue of the budget is damaged or diminished is the evasion of import duties, which will be discussed in more detail below.
- Subsidy fraud¹¹, which refers to the misappropriation of expenditure, that is, all offences in which various kinds of subsidies, grants, incentives, aid, premiums and other kinds of expenditure are abused or misappropriated.

Both kinds of EU fraud have a common criminal aim – misappropriation of the budgetary resources of the EU. They are characterised by the avoidance of payment of or the receipt of money from the EU pursuant to certain legal obligations (Sieber, 1998:4). At issue here is the failure to meet the legally prescribed obligation to pay a sum of money that fills the budget of the EU, as well as of making unlawful applications for, and receiving, payments of money that belongs to the EU budget.

2.1 Customs evasion

After the establishment of the customs union in 1968, when internal duties were abolished, and common customs tariffs introduced, customs duties and other charges on the import of goods to the EU were prescribed in European law, primarily by the Customs Code of the Community¹² and a number of other regulations concerning the ordering of the internal market adopted by the Council and the Commission. By contrast, customs houses on EU borders remained in the jurisdiction of customs agencies of the states whose border was also the external border of the EU, and they carry out the customs procedures of importing and exporting goods, and have jurisdiction in the criminal procedures and penalisation of unlawful actions, misdemeanours and other offences during import or export.¹³

The phenomenology of conduct through which evasion of the payment of customs dues during import of goods into the EU is shown in two main categories. First is the smuggling of goods over the borders of the EU, the most common form of customs duty evasion, and the form that inflicts the most damage on the EU budget, and the other category is that of various kinds of manipulation of given standard labelling of goods such as kind, quality and quantity and other data relevant for the determination of the amount

⁹ See Article 1 Paragraph 1 of the Convention on Protection of the Financial Interests of the European Communities.

¹⁰ For revenues of the budget of the EU see Đurđević (2004) and Šimović (2005:301)

¹¹ For expenditures of the budget of the EU see Đurđević (2004:191-194) and Šimović (2005:303).

¹² Customs Code, Regulation EEC no. 3913/92 of October 12, 1992. The law was implemented in Regulation EEC no. 2454/93 of September 2 1993.

¹³ The Law on creation of the common organisation of the market of August 27 1986.

of the customs duty. After studying the extensive criminological literature that describes in detail the numerous and diverse examples of conduct aimed at customs evasion, it appeared that this phenomenological dichotomy vividly presents two basic forms of the perpetration of this act, which most often differ but sometimes overlap. For example, in manipulation of the quantity of imported goods, accurate information concerning the quantity of the goods imported is not given, but at the same time, the undeclared quantity of goods is necessarily smuggled. Similarly, when information about the kind of goods that are imported is manipulated, the undeclared kind of good is also being smuggled.

2.1.1 Smuggling

Smuggling means taking a certain kind of commodity on which customs is due across the border without declaring it to the competent customs services. The ways in which goods are smuggled into the EU are very diverse, ranging from classic smuggling by secretly crossing the border away from the border crossings, or hiding goods in concealed spaces, behind false walls, in lockers and other hidden places¹⁴, via fraudulent declaration of a different kind of good, to complicated operations manipulating the customs procedures, documents or regulations. The prevention of smuggling is above all an issue of the vigour of border surveillance and control of goods that pass over the border. Smuggling is most commonly part of illegal commerce, and as well as the EU budget being damaged by customs evasion, the national budgets also suffer because of the loss of excises and value added tax.

In the EU it is mostly highly taxed goods that are smuggled, such as cigarettes and alcohol, for the sake of making a high unlawful profit by sales on well-organised black markets. For the same reason organised criminal syndicates channel the sale of smuggled goods towards the illegal markets of the countries of the northern part of the EU with a higher rate of tax (European Commission, 1997: 20). The channels for smuggling cigarettes and alcohol into the EU go along land, air and water routes, and some of the most important run from Poland into Germany via the so-called green border¹⁵, from Montenegro into Italy¹⁶, from Andorra¹⁷ and some other countries via the ports of Spain and Portugal.

The most widespread form of smuggling goods into the EU however is not smuggling via the physical concealment of goods at border crossings or the declaration of the im-

¹⁴ For places in which goods can be hidden see Adamović (2004).

¹⁵ Border across which from WWII goods from eastern Europe were smuggled into western Europe.

¹⁶ Montenegro is one of the chief exporters of smuggled cigarettes into the EU; the cigarettes arrive in it from the EU and other states and are smuggled into Italy via power boats. How big this criminal activity is can be seen from the 100 flights of freight planes to Montenegro observed in 1997, and that the illegal trade amounted to about 800,000 packets a year, which led to a loss of at least 700 million ECUs to the Union and some states (European Commission, 1997:18).

¹⁷ Andorra, city state at the border of France and Spain, since 1996 known as the chief source of smuggled cigarettes in the EU. The cigarettes are either produced in Andorra or imported into it by non-member states. The Commission's investigation showed that Andorra produced and imported tobacco products in quantities far exceeding local needs and the duty free sale to tourists, and according to official data, it does not export cigarettes. It was shown that in 1997, twice as many cigarettes were imported as in 1996. The kinds of cigarettes suggest that they were meant for the British and Irish markets, which are run by crime syndicates (European Commission, 1998:19; 1999:19-20).

port of a different kind of commodity by fraudulent customs documents¹⁸, but by what is called the transit fraud, which is carried out by manipulation of the transit procedure (Sieber, 1998:5). This is a procedure regulated by European law governing the regime for the transit of goods through the common market of the EU. Particularly affected by criminal activities is the so-called external transit procedure (Article 91 ff of the Customs Code of the Community), which has several forms: the transport of goods of third countries through the customs area of the EU, the import of goods from third countries in which the customs procedure is not carried out at the EU border but in some internal customs house and the certain EU goods to third countries¹⁹. The perpetrators have developed various ways of abusing the transit procedure, all of which, however, have but a single aim: goods that are alleged to be passing through the EU area actually remain within the Union, thus evading the payment of import customs duties. For an understanding of the way in which the transit fraud is carried out, the transit procedure must be made familiar.

The procedure starts at the customs house of physical entry into the EU, where the goods are declared, a guarantee is given that they will leave the EU, and then it enters the transit procedure. The customs house of entry issues a dispatch or shipping document or a transit document that contains the main information for the identification of the goods. A copy of the document remains in the customs house of entry, and the document accompanies the transport of the goods through the Union. In a certain period of time the goods have to be declared with the dispatch document at the customs house of exit, where the goods leave the Union. If there is no unlawfulness in the transit procedure, and the customs house confirms the transit document. After the conclusion of the transit procedure, the customs house of the point of entry will return the guarantee that has been given. If the receipt for the exit of the goods from the EU customs area does not arrive in a certain period, the customs house will initiate a search. If the consignee can be established, it will be subject to taxation, and if this is not possible, the guarantee given will be forfeited.²⁰

The weak point in this procedure that leaves the gate open to various manipulations is the regulation according to which the value guarantee given at the entry point customs house does not correspond to the amount of the customs duty for the imported goods. Organised crime and other perpetrators soon realised this, and they simply legally imported goods into the EU in the transit procedure, but did not export them from the EU, leaving them instead in the internal market and then destroying the transit documents. The alarm went off in 1988 when the following major transit fraud was detected. Firm P from the EU bought from Firm I-export of Belgrade a large quantity of beef. The meat was loaded onto trucks in Yugoslavia and at the Austrian customs house in Spielfeld the transit procedure began according to the T1 shipping declaration. Various firms in the Netherlands, Sweden and Norway were stated as being the consignees, although it was later discovered that they had no knowledge of these consignments. The truck driver had the task of waiting at a parking lot near Oldenburg, where he was awaited by a representative of P firm, who represented himself to the driver as customs officer. He removed the customs seals

¹⁸ See section b) Fraudulent declaration of kind and quality of goods.

¹⁹ Goods in the external transit procedure of the Union are recorded with the T1 document.

²⁰ On the transit procedure through the EU see for example Sieber (1998:5).

and took over the papers, and loaded the frozen meat into various refrigeration units. The T1 document and the shipping note were destroyed. The investigation of the Austrian customs agency yielded no information because Firm P was not given in the documents as supplier, and the alleged suppliers knew nothing of the consignments (Rump and Jurgen, 1993:41-42). The scale of the manipulation of the transit procedure were shown by the internal inquiry of the Germany Federal Finance Ministry, which between January 1 1992 and September 30 1994 registered 2,872 cases of manipulations of the transit procedure and the disappearance of transit documents. The consequence of this was the loss of about 1.1 billion marks of lost revenue (Sieber, 1998:5). The inquiry into the transport of live cattle through the Union that was exported from Poland to the Maghreb also showed that of the 678 transit procedures checked, 314 ended wrongly, and in 360 transit documents neither were the goods stated nor was the appropriate document shown (Rump, 1993:42). Because of the dependence of the criminal activity on the way the transit procedure was framed, in the literature there were criticisms of the Commission that said the safest method for smuggling goods in trucks into the EU was created by the European Commission itself by prescribing a “procedure only for honest customs participants” (Rump, 1993:42) and actually creating a “license to smuggle” (Sieber, 2000:190).

Aiming however to create a profit still greater than afforded by the difference between guarantee and customs duty, the perpetrators developed ways of getting back the guarantees given for goods that were never taken out. The most frequent way is to get back the transit documents with a forged receipt or stamp that the goods were regularly taken out of the EU. Because of the number of transit documents sent back to a customs house and the vast amount of work this implies, the discovery of forged stamps, data or documents is very difficult. The cases detected and discussed in the literature (Gropp, 1998:190) and in the annual reports of the Commission for the Protection of the Financial Interests of the European Communities and the Fight against Fraud (Commission of the European Communities, 2001:26) confirm that well organised groups of perpetrators and carefully planned operations are necessary for the fraudulent abuse of the transit procedure.

Another method of retaining goods in the transit procedure in the internal market of the EU in conjunction with the repayment of the guarantee is the physical simulation of the export of goods. Thus, UCLAF²¹ detected a case in which empty trucks were sent from Italy to Slovenia, and the accompanying documents were endorsed at the border. Through this false export, a quantity of undeclared alcohol was created, available for sale on the black market of northern Europe (ibid: 26). Simulation of export can be carried out with the export of some other goods, as happened in 1997, when a very complicated operation with the fraudulent import of olive oil without the payment of customs duty was discovered. Two ships set sail from Marseilles and Sete in France, each of them with 1,700 t of olive oil in transit for Turkey and Israel, as well as 1,700 t of French sunflower oil. They lay over in Monopolitana in Italy, allegedly to unload the sunflower oil, but in fact unloaded the olive oil and continued the voyage with the sunflower oil. The Italian consignee later on turned the 3,400 tons of sunflower oil in the ledgers into olive oil, and with the consent

²¹ UCLAF is the unit for coordinating the fight against fraud founded by the EC, which replaced it in 1999 with OLAF, the office for the fight against fraud.

of other firms, a number of fraudulent invoices were created in which it was proved that the consignee had sold sunflower oil and bought the same quantity of olive oil. To make the fiction complete, they paid the costs for the transport of trucks, which drove empty in order to collect bills for the fuel they bought (European Commission, 1998:22).

2.1.2 *Fraudulent declaration of information relevant to customs*

The amount of customs duty that an importer has to pay depends on a great many features of the goods, such as kind, quality, quantity, country of origin and so on. They are prescribed by the EU combined nomenclature, which specifies goods by describing their characteristics. Since every individual standard characteristic of a good determines the amount of customs, it is also the basis for manipulation by reporting false information for the sake of evading or paying less customs duty. The tariff system of the EU contains a very large number of specified kinds of goods according to numerous characteristics²². Because of the excessive differentiation of the tariff, the items of which are often only very slightly different and hence difficult for customs officers to determine, the possibility of manipulation of customs-relevant data is very great.

a) Fraudulent declaration of quantities of goods according to number or weight.

Such frauds are accomplished by reporting a smaller quantity of goods than really exists, which, depending on the kind of goods and the manner for determining the amount of duty can be a false declaration of a small number of units of the goods or a smaller weight of the goods. A common form of fraud occurs during the import of livestock, in which the number of imported head can be counted only by actual counting. In the importation of 80 bullocks or 800 sheep, there is a clear problem of control (Rieger, 1993:53).

b) Fraudulent declaration of kind and quality of goods

While a fraudulent declaration of the kind of goods, for example, the false declaration of alcohol as tomato juice (European Commission, 1999:20) or cigarettes as electrical spare parts (European Commission, 1998:17) is categorised as smuggling, in the manipulation of information about the quality of the same kind of goods this is a matter of classic import fraud. Such fraud is possible when the customs tariff burdens the same kind of goods with different amounts of customs duty with relation to their characteristics that in turn determine their quality. Separate specification of some slight differences in the descriptions of different goods makes customs control much harder. In particular, the tariff differences for meat, grains and dairy products consist of details, so that quite often only experts using laboratory methods can determine the right place in the tariff for a specific kind of good. Tariff differences between products that cannot be differentiated without the application of expensive and complex genetic analysis are particularly productive of crime.²³

²² The combined nomenclature used among member states up to January 1 1996 had a total of 10,518 eight-digit goods numbers (Sieber, 1998:6).

²³ In Germany several investigations were carried out that dealt with differences between tuna species – *Thunnus* and *Euthynnus*, code no. 1604 1410 01000, Real Bonito or Pelamis, code no. 1604 1410 0900 and Pelamide (Sarda spp) Code № 1604 1490 0000. The difference among zoologically different species in canned tuna was until recently identifiable only with expensive DNA analyses (Sieber, 1998:6).

In the literature there is frequent mention of cases of the declaration of high-quality meat (fillet steak for example) as low-quality remnants or as less valued meat (offal).²⁴ In the Romanian affair, so called, the perpetrators managed to evade the payment of import dues in the amount of at least 84.5 million marks by declaring high quality meat imported from Romania into Germany as “edible slaughterhouse by-products” or diaphragm muscles. Since the meat was ground on import, serological analysis for comparison of the two kinds of meat was impossible. The case was discovered because of the quantity of diaphragm muscle that the perpetrators attempted to declare, coming to 10,870 tons. Since from a single bovine animal at most a kilo of diaphragm muscle can be obtained, it would follow that 10.8 million cattle would have to have been slaughtered, in other words, that Romania would not have had a single animal left (Sieber, 1998:6).²⁵

c) False information about the country of origin of goods

The EU allows some states or areas duty free import of goods or trade preferences, abolishing or reducing the amount of customs for the sale of their goods in the area of the EU²⁶. The basis for trade preferences is the rule about origin of a product, according to which a preferential trade regime goes only for products that originate in their entirety from the country that is granted the duty-free regime, or which have been processed to a certain degree in the country enjoying the preference (Mlikotin-Tomić, 1999:389; European Commission, 1998:24). Regulations of the EU define very precisely for each product the degree of processing, in both the technical sense and the composition of the raw materials. Hence, manipulation of figures about the origin of goods imported into the Union makes a lot of sense in the importation of goods from countries that the EU has granted trade preferences. For the sake or reducing or doing away with customs, goods produced in an area without trade preferences are falsely presented, mainly by the forging of certificates of origin, as products from the area of free trade or preferential import regime. Apart from that, the objective of presenting false information about country of origin can also be to bypass the quotas for the import of goods from certain states on which the EU, in order to protect home producers, imposes quantity limits in the import of certain goods. The most famous case of manipulation of data about country of origin of a good is the case of the Greek maize, so called, which had an epilogue not only in front of the European Court, but also in European legislation.²⁷

A typical target for this kind of fraud is found in the preference rules in the area of fishery, where customs duties are quite high, and the rules about origin are very hard to control. An example is the case of scampi from Surinam, a small country in the north of South America. The EU approved for the import of this scampi a preferential regime

²⁴ For example, import duty for top cuts of beef came in 1996 to 17.6% + 417.1 ECU/kg net weight and for low quality slaughterhouse waste only to 2.7% (Sieber, 1998:6; Dannecker, 1993:26).

²⁵ In 1998, UCLAF discovered that an Irish firm that imported milk in the period from 1995 to 1997 systematically declared a lower fat quantity in the milk in order to evade paying higher duties (European Commission, 1999:27)

²⁶ The objective of preferences is often to help the economic development of countries, to stimulate collaboration with partner countries and to prepare countries that have applied for EU membership for accession.

²⁷ Case 68/88 of the Commission of the European Communities v Hellenic Republic (1989) ECR I-2965. See Article 280 of the Treaty on European Union.

with precisely determined conditions. In 1997 it was discovered that since 1992 Korean and Japanese companies had unloaded about 100 ships with about 2,920 tons of scampi, or that the set conditions to do with the crewing of the fishing vessels had not been met. Submitting imprecise declarations about the origin of the scampi, the exporters obtained from the Surinam authorities the necessary certificates for them to be imported duty-free into the Union (European Commission, 1998:25-16; 1999: 23).

In 1998 a large fraud of this kind was discovered in the automobile industry through the manipulation of the trade preference given to Hungary for the import of cars of Hungarian origin. The duty free import was conditional on parts not produced in Hungary not exceeding 40% of the value of the finished product. The Japanese producer that had moved its manufacturing to Hungary exported the cars to the Union declaring them as Hungarian, which European importers unlawfully profited from by not paying customs duty on the import of vehicles into 14 states of the EU between 1994 and 1997. In total, 58,000 vehicles were imported into the Union, which resulted in a loss to the budget of the EU of ECU 32 million (European Commission, 1999:23).

The second area that was particularly hit by manipulations with trade preferences was the textile industry. In 1998, importers of textiles in the EU, in order unlawfully to profit from the preferential regime for the import of textiles from the Maldives falsely declared that about 18.5 million imported T-shirts had been produced in the Maldives, when in fact they were Chinese goods dispatched from the PRC that never entered the territory of the Maldives at all (European Commission, 1999:24).²⁸ Manipulation of data about country of origin in this case aimed at a double fraud. Not only was the preferential tariff granted by the EU to the Maldives unlawfully exploited, but the import quotas the EU imposed on Chinese textiles were also circumvented.

Fraudulent activities for the sake of manipulation of data about the origin of goods did not bypass Croatia; in November 2000, the EU unilaterally liberalised its farm products market for Croatia and other countries of the Western Balkans.²⁹ In mid-2002 the so-called sugar scandal broke out, not only jeopardising the reputation of Croatia and its relations with the EU and some of the member states, but actually casting doubt on the balance of trade of the country, since sugar is the most important Croatian product, which accounts for about 30% of overall export. After Croatia was allowed, in 2002, to export sugar duty free in unlimited quantities to the EU, on condition that it was of Croatian origin, or that the raw materials were imported into the EU and then processed sufficiently in Croatia, in Croatia not only the export but also the import of sugar drastically rose.³⁰ For this reason the Commission began to doubt the Croatian origin of the all the exported sugar, fearing

²⁸ On the abuse of preferential treatment of textile products of Indonesian origin discovered in 1997 see European Commission (1998:26).

²⁹ The very favourable trade preferences that the EU allowed Croatia on signing of the SAA on October 29, 2001 in Luxembourg obtained treaty status.

³⁰

Period	export to EU	import from EU.
2000	1,000 t	7,400 t
2001	45,000 t	31,000 t
(April) 2002	20,000 t	3,000 t

Jutarnji list, July 12 2002

that it might be highly subsidised sugar from the EU that was concerned, together with its re-import into the EU without customs duty.³¹ Because of doubts about the origins of Croatian sugar, Italy, Germany and Austria brought in deposits as a special financial fee for exporters from Croatia, which came to 10,000 euros per truck, practically halting the import of sugar from the country. Then came detailed controls of exported Croatian sugar, which at the end of August found out that certain quantities of exported sugar were really falsely declared. Chemical analysis of sugar imported into Greece from the Osijek sugar refinery showed the existence of mixtures of sugar-cane sugar, while the declaration stated that it was sugar from beet, the raw material from which sugar is produced in Croatia. Exporting sugar in contravention of the conditions of trade preference was also a violation of the SAA between the Republic of Croatia and the EU. Since this was only to do with small proportions of all sugar exported from Croatia (about 3%), and Croatia promptly responded by suspending the persons responsible from the refinery and issuing criminal indictments, the event did not have negative repercussions on trade relations between Croatia and the EU.³² However, it has to be said that the state attorney's office in this case indicted two perpetrators, on December 31, 2002, for the crime of misleading consumers, as defined in Article 284 Paragraph 1 of the Criminal Code, asking for a fine of 100 average day's wages to be handed down (Novoselec, 2006:20). The effectiveness of the prosecution was vitiated by the facts that the proceedings, even three years after they were initiated, have not been concluded, and the perpetrators were not accused of the crimes of fraud, customs fraud or forgery, but only for the crime of misleading consumers, which does not protect budgetary resources, and the penalty sought is, from the standpoint of the prevention of financial crimes, highly dubious.

d) False information about purpose

The amount of customs duty can also depend on the purpose of the goods being imported, and hence there can also be manipulations with this fact for the sake of customs evasion. The Community approved a preferential customs duty for the import of bovine animals not "meant for slaughtering" within four months of the date of import. However, many inquiries have shown that the animals imported have been taken to the slaughterhouse immediately after importation, although they should have lived for at least four months longer (Rieger, 1993:54).

2.2 Subsidy fraud

In order to carry out the programmes of the common policies, the EU from its budget, via the European funds and the national civil services, allocates to individuals and corporate entities financial sums in the form of subsidies, grants, premiums, incentives and other forms of assistance and financing³³. The subsidy system contains a number of crim-

³¹ See such a case of subsidy fraud with import of sugar from Aruba, 1999 (European Commission, 2002:13).

³² In March 2006 the EU agreed with Croatia on the import of tariff-free sugar from January 1 2007 with a quota of 180,000 t. *Jutarnji list*, March 15, 2006.

³³ Some theorists and legal sources distinguish direct and indirect subsidies. Direct subsidies are taken to mean the allocation of financial assistance, and indirect subsidies are tax and other reliefs. See Tiedemann (1974:15). In this paper, subsidy is taken to mean direct subsidies.

inogenic characteristics that, as numerous examples from practice will show, are hard for the average farmer to resist, while for firms and associations that want to make unlawful profits, subsidies are a real draw. The largest number of manipulations with regard to the resources allocated by the Agricultural Fund occurs, of course, in the farm sector and in the structural funds, which is logical since these are the biggest beneficiaries of the EU budget (Đurđević, 2004:193). However, reports about the protection of the financial interests of the EC and the fight against fraud that the Commission submits each year clearly show that other expenditure items of the budget, such as the resources that fund the various internal and external policies and the direct expenditures that the Commission itself manages are also equally at risk³⁴.

2.1.1 Subsidy fraud in the area of the Common Agricultural Policy

Along with protective tariffs, the main mechanism for the regulation and survival of the common agricultural market of the EU resides in various forms of subsidy with which market processes are artificially regulated and a high standard of living is ensured for the farm population of the EU. Since most farm products are subsidized, subsidies are allocated in considerable amounts to a large number of farmers in the EU. Some of the major kinds of agricultural subsidies are those for the production of given crops, export subsidies and storage subsidies and subsidies for the consumption of some product in the food industry. Because of their importance in a phenomenological description of subsidy frauds in the area of agriculture, something more should be said about export subsidies.

Export subsidies are an instrument with which the EU maintains the balance in the internal market regulating the external level of the price of farm products. The prices of agricultural products in the EU market are considerably higher than prices in other world markets because of the high costs of labour and securing appropriate profits to farmers. Because farm products from the EU are uncompetitive, their price has to be lowered for them to be able to be sold on world markets, and so the EU, in order to encourage exports or to handle internal market product surpluses, subsidises farmers to make up the difference between the internal and world market prices. For this reason it will sometimes happen that the export subsidies for some products will substantially exceed the prices these products can fetch in third countries (Leigh, 1993:76). Subsidies are allocated according to a system in which the kind, quality and quantity of products to be subsidised are detailed. By receiving subsidies, a merchant guarantees to export a given quality and quantity of product in a given time to certain third countries. The subsidies are advanced by the paying agencies of the member states on behalf of the Commission and thus a contractual relationship between the EU and the merchant is established.

The external transit procedure already described is also applied and abused in the export of subsidised farm products from the EU to other countries. These products are on the whole dispatched for export through internal customs houses and are then shipped to the EU border customs houses using the external transit procedure. The objective of

³⁴ For example, in 1999 OLAF started an investigation because of a suspicion of frauds with direct expenditure resources because there were indications of dual financing – national and Union-derived – for 16 projects of NGOs in developing countries (Commission of the European Communities, 2002:15).

the fraud is that the subsidised goods should remain in the internal market, and it has the same forms as the frauds already described of retaining in the Union goods that are transported through it in the transit procedure. For example, in 1997 the Commission detected three cases of fraud committed by the forgery of transit documents by the same Italian merchant for the sake of obtaining export subsidies. The first was committed with the alleged export of butter to Albania, for which a Belgian firm received export subsidies, although in fact the butter was transferred from trucks to private warehouses in Italy and sold in the Italian market. A second, according to the same system, related to the subsidised butter of a French exporter, while the third was a combined subsidy-customs fraud in which an Italian merchant exported subsidized French butter to Croatia, and later re-imported it into the Union with a false declaration that it was margarine (European Commission, 1998:23).

Scams with the ostensible export of subsidized goods also occur in the procedure of importing goods into other countries. A complicated fraud of this kind was detected in connection with 38,000 tons of beef and veal and 3,300 tons of chicken that in 1998 were formally imported into Jordan from the EU. In reality the Jordan-import procedure was abused by the local importer submitting a draft import declaration to the Jordanian customs to obtain a registration number. After that it at once demanded the halting of the procedure and the issue of transit re-export documents. Thus it did not pay customs duty on the import of goods into Jordan, and yet the import procedure had been carried out to such an extent as to enable it to obtain data serving as a proof for the realisation of export subsidies in the EU (European Commission, 1999:25).

A further mechanism for stabilising the EU internal market is intervention storage or intervention purchasing for the sake of removing certain surplus products from the market. They cover premiums for not sending goods to the market, subsidies for storage, compensation of costs for storage, subsidies for managing or for processing surplus food products in storage facilities, purchase of farm products at a minimum price that are then exported pursuant to a bid or at a price that the Commission sets, and so on. Through the EU intervention system, many frauds have been carried out, ranging from complex manipulations of goods about frauds to common thefts of products that are intervention stored prior to export or sold on the market by replacing them with goods not suitable for human consumption (Leigh, 1983:77). At the end of the 80s the Court of Auditors, having carried out an investigation into the intervention storage sector, revealed the existence of so many irregularities and unlawful activities that it cast doubt upon the credibility of the whole system of agricultural subsidies.³⁵

Subsidies are allocated according to criteria prescribed by the EU in its regulations, directives and many other provisions, and, as in the case of revenue, every single characteristic of a standard that is a premise for the claiming of a subsidy is also the potential

³⁵ An investigation of the Court of Auditors showed that because of a large deficit of stored inventories it was not possible to carry out quantitative or qualitative control of beef, butter and so on. A striking shortfall in qualitative control was found because there were traces of insects, mice and other pests in the grain, and beef was stored immediately alongside unpacked fish. It was shown that in intervention reserves storage there was an average shortfall of 25%, and for current products, as much as 45%. It was shown that data that the bodies sent to Brussels for reimbursement of costs were sometimes entirely arbitrarily determined (Dannecker, 1993:23).

ground for fraudulent activity. A fraudulent declaration of information relevant for obtaining subsidies can appear in the following forms:

a) Fraudulent production or export declaration

Production for which a subsidy is allowed can be fraudulently declared by declaring production that does not exist or which is not intended to be realised or for applying several times for subsidies for the same products. An example of the first possibility is the case of the olive producer that declares the production of olives on land that is not used for olive tree growing. An example of the second instance is when a producer of olives registers with several farm cooperatives and puts in several applications for financial incentives for the same quantity of product, and in order to avoid centralised electronic checks, makes one application in his own name, another in the name of a spouse or relative (Lettieri, 1993:88-89).

b) Fraudulent declaration of the quantity of goods, in number or weight

Quite the opposite to the fraud of customs evasion, in which a smaller quantity of goods is reported, when a subsidy is to be obtained fraudulently, a larger quantity is declared, because it attracts higher compensations. There are frequent examples of the forgery of data about the weight of livestock exported. An interesting case was one in which it seemed that the net weight of live cattle was too great according to the number of animals. They measured the truck and took from it the declared weight of the animals, which resulted in the truck apparently weighing just a few kilograms (Rieger, 1993:55). Tiedemann (1974:176-177) describes the case of the manipulation of the weight of calves, the straw for which in the truck had been replaced during the border crossing with a considerably amount of sound.³⁶ There is a grotesque anecdote from Italy, according to which in the late 70s there was a premium paid for slaughtering livestock; the proof of the slaughter was the presentation of a marked cattle ear. Later checks revealed the existence of a large number of one-eared cattle (Rump, 1993:39-40).

Manipulations of quantities of olives and olive oil produced in Italy took on such proportions that it was said that frauds with this product and its oil had become an integral part of Italian agriculture since Italy had joined the European Community. A part of the blame has to be borne by the Commission, because it established the procedure for controls of subsidising that turned out to be counter-productive and encouraged the collusion of producers in the manipulation of quantitative data. For planting olive trees and for olives produced production incentives were allocated. These were calculated according to the number of trees and the weight of olives harvested and were paid directly to the farmers. A second subsidy was given to oil producers for the production of olive oil in cans meant only for sale in member states of the Community. The data about the number of trees that were entered into the forms by the farmers should have been checked by the oil producers that pressed the olives. However, the logic of their cooperation tended to result in false reporting of data to provide illegal benefits to both sides, rather than effective mutual checks. If a farmer falsely increased the quantity of olives, then the oil producer, accepting the enlarged quantitative data, could itself appropriate unjustified pay-

³⁶ See case 28.

ments of subsidies. When the figures for production reached almost 200,000 tons, which was almost a third of total production of olive oil in Italy, the Commission was forced to introduce a special programme for subsidies and surveillance that has in the meantime become a model for other areas as well.³⁷

c) Fraudulent declarations of kind and quality of goods

The forms in which the fraudulent declaration of kind and quality of goods in the export of subsidised goods appear are the same as in the evasion of customs payments in this manner during the import of products from third countries into the EU. But according to the inverted financial logic, in this case, cheap products are reported as expensive and high value goods, in order to obtain the high incentives.³⁸ The greatest problem in detecting such frauds consists in the already mentioned difficulties in the determination of the qualities of goods for which specialised knowledge is required, or goods that cross the border frozen or in containers.

The Commission uncovered a very complex and well-organised fraud of this category in investigations that went on from 1995 to 1998. After it was observed that considerably quantities of sunflower oil were imported into several EU countries in ships from Turkey, it was suspected that it was in fact hazelnut oil intended to be blended with olive oil. The oil was declared as sunflower in forged documents in order to avoid the provision of guarantees for the import of hazelnut oil. An addition of 18 to 20% hazelnut oil, which is three times cheaper than olive oil on the world markets, is very difficult to detect, but such an oil loses its quality and no longer has the right to any form of subsidy. Further investigations revealed a further twist. After being shifted several times into accounts in various tax havens and Switzerland, the hazelnut oil was sold to a Swiss firm that invoiced it as olive oil to three Spanish firms that were controlled by the same person. Thus in the ledgers of these firms, as end consignees, no unlawfulness was seen, since no one of these firms bought or received hazelnut or sunflower oil in their invoices. The adulterated olive oil was then sold on to Spanish firms. This fraud cost the consumers about 40 million ECU, and the EU suffered a loss of 30 million ECU because of the loss of the guarantee on the hazelnut oil and in addition lost 43 million ECU for the unjustifiably paid subsidies for olive oil (European Commission, 1998:21; 1999:21).

d) False information about the origin of goods

As a rule, a subsidy can be obtained only for goods originating in the Union, and so there are possible manipulations through declaring goods from third countries as goods originating in the EU. If there are volume quotas for the subsidizing of goods from one member state, there are possible manipulations with the presentation of goods from one EU country as goods from another. Such a case was detected in 1998 in the production of tobacco, for the subsidising of which the Commission had set national quotas. In a sea-

³⁷ The Commission first of all carried out a remote investigation, taking aerial photographs of the situation in olive groves and computerised calculations. The results were compared with the controls of random sampling carried out. Since then remote reconnaissance has been specifically stipulated in two Regulations (1703/91 and 3766/61). See the further measures taken by the Commission (Dannecker, 1993:29).

³⁸ Paste is declared as chicken meat with bones, and chicken feet as chicken legs (Leigh, 1993:77). For frauds with fraudulent declarations of kinds of grain, see case no. 18 (Tiedemann, 1974:140-144).

son in which the production of tobacco in Spain exceeded the national quota, while in Portugal it was below the quota, Portuguese tobacco planters bought (via middlemen) the Spanish surpluses and declared them as their own, thus obtaining subsidies (European Commission, 1998:28).

e) Fraudulent information about country of export

Behind the manipulation of information about the country of export is the differentiation of the amount of export subsidy according to the country of export. For example, if the amount of subsidy for the export of wheat to neighbouring countries is different, every operator is encouraged to choose the higher-paying country and to leave it to its business partners there to sell the products to the country for which the export subsidy is lower (Dannecker, 1993:25). A precondition for the payment of an export subsidy is the entry of the goods into the economic area of a given country, but in many cases it is hard to determine the country to which the goods are sent, particularly if it is reloaded or redirected by sea. Another subsidy fraud of this kind is when an exporter falsely reports the export of goods to a third country, while the goods actually stay in the EU, being transferred from one member state to another in order to obtain unjustified subsidies. Tiedemann reports on one such fraud of 1968 – a German exporter obtained a subsidy of 78,950 marks for exporting 360,000 kg of powdered milk to Switzerland, while in fact the milk was sold in Italy.³⁹

f) Fraudulent declaration about the purpose of goods

This manner of fraud is common in the case of subsidies related to intervention measures on the market, when, for example, goods are purchased or the costs of warehousing or processing them are borne on condition that they are used for a given purpose, and then they are directed to some other, unlawful end use. This happens if, for example, farmers obtain a subsidy on condition that they use milk only for fodder, and then sell the milk on to other farmers, who can also claim subsidies for it.

2.2.2 Subsidy frauds in the area of the structural policies

The second-largest expenditure of the EU budget (about 30%) goes into the structural funds for the financing of regional development and social policies via various economic, social, educational and other programmes (Đurđević, 2004:193). The structural policy budgetary resources are managed by special departments in national governments, and the member states have the ultimate responsibility for the financial control of the use of the money of these funds.⁴⁰ The most common forms of fraud with resources from the structure funds relate to the partial or total non-performance of activities, or the non-performance of the obligations provided for by the financing of the programme, double national and European financing, or multiple use of different European sources of financing for the same purpose, and investing fund resources into currency speculations and other financial scams for the same of making a profit. Misspending in certain programmes is assisted by there being lit-

³⁹ A detailed account of this case is found in Tiedemann (1974:102-105). For percentages of prosecutions and proofs of crimes committed of this kind, *ibid.* 121-129.

⁴⁰ For the way control is carried out by member states with respect to activities co-financed by the structural funds, see Commission Regulation (EC) no. 2064/97 of October 1997.

the risk of being discovered, since it is difficult if not impossible to check the purposefulness or justification of every cost incurred in carrying out a given programme.

As an example of the fraudulent appropriate of resources from one of the structural funds, the literature often cites the case of the so-called Flathus programme, meaning for the retraining of long-term unemployed in Thüringen, jointly financed by the European Social Fund. The subsidy was received by a private consultancy firm located in Berlin, and the training was to be carried out by a subsidiary in Denmark. It was demonstrated that the Danish firm had a contract obliging subcontractors in France, Ireland and the UK to transfer part of the contractual amount to a branch of the firm or to the headquarters and to issue fictitious invoices for the services of the training programme (Gropp, 1998:190; Sieber, 1998:9). A cause of fraud in the financing of programmes for employment also happened in Drama, Greece, where nine producers of ready-to-wear apparel received about 2.9 million euros of subsidies for creating new jobs. Instead of employing new workers, they sacked their old staff, and reemployed them in a newly founded firm with a new name (Courakis, 2001:200).

In its annual reports about the protection of the financial interests of the European Communities the Commission gives regular information about frauds with structural funds resources. In 1997 a criminal investigation was started in which it was established that a large part of a donation of about 4.4 million ECU given from the resources of the ESF to a public body in Portugal had been embezzled. This involved declared large amounts of inappropriate and non-existent expenditures, and some items of expenditure had been artificially boosted with fictitious activities (European Commission, 1998:30). In the same year, a whole network of institutions and operations for misappropriation of resources from the Guarantee Department of the Agricultural Fund was detected, covering systematic forgery, overpayment and issue of fraudulent accounts in the same ring of operators for non-existent services. The network involved firms in various offshore locations in the role of users or contractual parties linked by the same owners or managements. Some offshore companies were founded at the time the project was approved with the sole aim of collecting EU resources for services that were not performed (European Commission, 1998:30; 1999:29).

An event that occurred in 1998 showed that not even academic circles were immune to the unlawful use of subsidies. Control of the delivery of the curriculum in a British college financed with ESF resources established that there was no difference between the tuition funded by the programme and the ordinary tuition of the college (European Commission, 1999:28). Further frauds with resources of the ESF were discovered in the same year in the co-financing of a programme of personal professional development in the Netherlands, carried out by the artificial inflation of expenses, among other things and by forging the numbers of classes taught (European Commission, 1999:28).

3 Methods for carrying out frauds adversely affecting the budget of the European Union

The criterion of a second phenomenological cross section of criminal conduct against the financial interests of the EU is the method with which the paper began. The concept of method, *modus operandi* or manipulative technique means the actual concrete activ-

ity or means undertaken by the perpetrator for the same of illegally appropriating financial resources belong to the EU budget. These are the methods that enable perpetrators to manipulate the facts comprising the constitutive character of the fiscal norm concerning the EU budget. The descriptions of phenomenal forms of conduct used to attack budgetary revenue or expenditure have shown that the methods that the perpetrators use are both very diverse and sometimes also combined. They can be divided into five categories: 1, forgery of documentation; 2, concealment of goods; 3, receiving and giving bribes; 4, violence and 5, sham transactions and evasion of the law.⁴¹ Particular attention in a phenomenological analysis is devoted to the category of sham transactions and evasion of the law as specific methods of criminal behaviour in the grey zone of European law, which is a fertile criminogenic area for the commission of EU frauds.

3.1 Forging documents

The most common method for committing EU frauds is the forgery of documents with facts that affect the application of certain customs or subsidy norms. The point of forging documents is to manipulate the data in such a way as falsely to present or to conceal for the sake of exemptions from the payment of customs duty, the application of more favourable tariffs or to get subsidies. Import and export customs declarations, transit documents, certificates of origin, quality certificates, veterinary certificates, goods declarations, tariff classifications, invoices confirming costs, ledgers (cooking of books) and various other forms of certificates and declarations can all be forged. A document can be forged either by the perpetrator itself drawing up a fake document and filling it with untruthful data, by altering a real document, unlawfully acquiring a real document and presenting it to the competent body, and forging the signature, stamp or seal unlawfully authenticating a real or forged document. False presentation or concealment of customs- or subsidy-relevant facts to and from the competent bodies can be committed by giving untruthful facts by word of mouth. However, in the commission of EU frauds the official bodies are usually deceived by forged documents, for exporters and importers as well as other subsidized entities declare goods for the customs procedure or apply for and justify subsidies by documents in which they themselves enter the relevant data, which the competent body only has to endorse.

The techniques for forging documents are diverse, and might involve the use of the most up to date technology, or might be simple and crude forgeries. In the light of the daily volume of business at customs houses and the huge number of documents, data and stamps that customs officers have to check, in practice it has proved that even poor forgeries stand a good chance of succeeding.⁴²

⁴¹ This classification does not take over in its entirety the division of methods of EU fraud established by Ulrich Sieber on the basis of empirical research into crime in the area the results of which were first published in the article "Subventionsbetrug und Steuerhinterziehung" (1996) but are based on it. According to Sieber (1998a:9-13) there are four categories of manipulative techniques that can be used to commit the offence of customs evasion and subsidy fraud against the budget of the EU: 1. False information, forgery and other means of concealment; 2. Use of legal loopholes and grey zones; 3. Lobbying and bribes. 4. Violence.

⁴² Documents have been discovered authenticated with stamps belonging to non-existence customs houses, customs houses with misspelled names and words, such as *Coustums*, and there have been applications using the names of well known footballers, sometimes with misspelled names, such as Franz Beckenbauer, Klaus Augenthaler (Sieber, 1998a:10)

3.2 Concealment of goods

Concealment of goods is the classic method for smuggling goods. For EU fraud commission, it can be used on its own or combined with the forgery of documents. The concealment method is used on its own when the goods are brought into the common customs area away from the border crossing or across the border crossing when it is not open. Much more common are cases of EU fraud committed by not declaring the right quantities of goods while crossing the border, or not declaring all the goods that are imported or exported, which is a combination of concealment and falsification of documents. In such cases the perpetrator untruthfully declares data with a fraudulent document, and at the same time physically conceals the undeclared goods placing them in some secret or hidden place in the vehicle, masks them in some other goods or packs them specially.

3.3 Corruption

Corruption, from the Latin *rumpere* – to break, which is defined in criminal law as the giving and receiving of bribes, is the most dangerous method for committing EU frauds, for with it, criminal activity permeates the national and supranational structures to which the citizens have confided the authority and duty to collect, dispose of, allocate and control the budgetary resources of the EU. Not seldom are there statements that the phenomenon of corruption is the genuine and only battle in the battle against EU fraud (Lettieri, 1993:96). Corruption in the context of EU frauds means actions by which some material, personal or other benefit is given or promised to national or European officers or officials whose remit includes matters of customs control and the allocation of subsidies, in order to influence the commission or omission of certain official actions or the making of certain decisions. The method of bribery necessarily implies that the perpetrator of EU fraud (the business operator or the organised crime syndicate) finds as accessory to the fraud a public servant with authority to establish the premises for and the application of certain customs or subsidiary norms.⁴³ On the one hand the perpetrator of EU fraud, in order to evade customs duty or unlawfully to get a subsidy, gives a bribe, and on the other hand the officer or official receives the bribe and abuses his or her official authority.

Corruption in the commission of EU fraud is not primarily used to protect the perpetrator of criminal activities from criminal or administrative prosecution, although there probably are cases of bribery even after irregularities or crimes against the EU budget have been detected. Corruption is actually most often the method with which EU fraud is either done or made safe. Bribes are given, received, agreed on and promised before the implementation of the actions through which the evasion of customs duty or the misappropriation of subsidies is addressed, and the purpose of the bribes is to make sure these actions are carried out.

For the sake of avoiding the payment of customs duties customs officers are bribed not to carry out certain control actions such as inspecting goods to check the accuracy of the data given in the customs documents, to interpret the regulations more generously, to overstep their discretionary authorities or falsely to confirm the correctness of some cus-

⁴³ For receiving and giving bribes as connected offences see Derenčinović (201:255-257).

toms- or subsidy-relevant datum by stamping it with the appropriate stamp or by issuing a certificate⁴⁴. Some empirical investigations have shown that corruption is actually most common among customs officers and veterinarians responsible for determining the quality of imported meat (Sieber, 1998b:13). In order to facilitate the commission of subsidy frauds, officials and officers who determine the existence of the premises for and decide about the allocation of subsidies and those who control the lawful use of subsidy funds tend to be bribed. A drastic example of the corruption of government officials in which organised crime was also involved was a case of corruption among the officers of the Italian Guardia di Finanza who abused their positions, among other things, by dragging out controls in which the fraudulent actions and other unlawful acts to the detriment of the Agricultural Fund were established, in order to enable the company to obtain the subsidies that it sought (Lettieri, 1993:96).

Corruption aimed at facilitating EU fraud can appear in various forms. Conventional and individual corruption that corresponds to the criminal act of bribery can appear as “street corruption” that, for example, covers the situational corruption of customs officers. If corruption in the customs service assumes major proportions, then this is institutional or systemic corruption. With respect to the allocation of subsidies, there can be what is called contracting corruption, when, for example, the regular procedure for the allocation of a subsidy or when a subsidy contract is entered into outside the prescribed conditions, or political corruption when, for example, regulations are deliberately adopted with gaps in the law or when there the way records about budgetary expenditure is kept is not transparent.⁴⁵

Corruption is also the strongest weapon in the hand of organised crime. Contemporary organised crime gangs bribe public servants and politicians in order to have a greater influence on politics, the media and the administration and the judiciary. Investigations in connection with subsidy frauds in the area of the CAP in Italy showed that in that country organised crime had managed to corrupt the highest levels of government for the sake of committing EU frauds.⁴⁶ As Sieber observed, this means that a link was discovered among organised crime and the economy, the administration and politics in a state that was a member of the EU and that administered and controlled the use of EU budgetary resources (Sieber, 1997:4).

An activity resulting in the legal exercise of influence over bodies and individuals involved in decision making and that can be at the edges of lawfulness or even camouflaged corruption is lobbying (Sieber, 2002:21-22). Lobbying is an accepted part of democratic culture, in which lawfully-founded pressure groups in Brussels and in the capitals of the member states try to influence experts at the working level or on members of the European Parliament. Public lobbying openly affects the decision-making process, establishing public communication among decision makers and interest groups, and enables the spe-

⁴⁴ One enquiry into corruption among customs officers revealed that for desisting from inspecting trucks smuggling cigarettes they received 200 marks or a carton of cigarettes for 3 marks. See Mischkowitz et al. (2000: 170-171)

⁴⁵ For these forms of corruption, more detail can be found in Derenčinović (2001: 39-40); Sačić (2001:23-24).

⁴⁶ For example, the criminal proceedings against former Italian prime minister Andreotti. See Sieber (1998:3). For such cases of corruption in Italy see Lettieri (1993:95-96).

cial knowledge from the area of trade and industry to be incorporated into the legislative procedure.⁴⁷ Lobbying however that enters into the area of illicit practice can be described as a kind of bribery covering the provision of certain services or providing certain earnings and other illicit incentives for the achievement of political or economic protection or benefit. Such for example is the organisation of free seminars and lectures for public officers in fashionable resorts at the cost of public expenditures, or their employment as paid consultants or members of consultancy or management boards in firms.⁴⁸

3.4 Violence

Acts of violence such as murder, abduction, intimidation, extortion, blackmail and other grave assaults on physical, psychological or sexual integrity are not characteristic of EU fraud. The application of violence as method for committing EU frauds are on the whole restricted to activities related to the illegal trade in tobacco and alcohol engaged in by criminal gangs, while other forms of criminal actions against the EU budget mostly do not involve the use of physical or psychological force.

The illegal trade in cigarettes in the EU is often linked with various terrorist, war-time or crime organisations established for the sake of attaining various aims or profits by violence. It is assumed that the ETA in Spain is financed by cigarette smuggling, that the smuggling chain across the Adriatic was a source of income for the Serb armed forces during the war in the western Balkans and that the tobacco black market in Italy is run by the mafia (Sieber, 1998:13).

3.5 Sham transactions and evasion of the law

Sham transactions and evasion of the law are particular methods of committing EU fraud by which the perpetrator does not patently and directly violate a given customs or subsidy regulation by not meeting some of the legal characteristics, but rather abuses it by making use of legal loopholes and other legal flaws, and acting against the spirit of the regulation. These are procedures or operations for which there is no economic need or object, but are carried out only to obtain the material benefits provided for in EU law. These were defined by the Council in its decision of June 17 1977 as “transactions... in which goods are dispatched without a good economic reason and only with the intention of getting round or extracting benefit from modifications of the regulations about dues”.⁴⁹ Offences committed by such methods are often called grey areas, because they are on the border between crime and legitimate economic activities, or indicate that the blame needs to be shared by the legislator, that has inappropriately framed some political decision, and the perpetrator, which has unlawfully made use of the error of the legislator.

⁴⁷ See examples of permissible European political lobbying in Sieber (1998:12).

⁴⁸ The example of payment for advice to a public servant responsible for subsidy allocation from a firm the activities of which are subsidised occurred in the already mentioned example of fraud with resources of the ESF meant for the co-financing of the Flathus programme for retraining the unemployed in Thuringia. In the committee of a Berlin consultancy firm via which the subsidy was paid and the branch of which was supposed to carry out the programme was an official of the ministry in Thuringia responsible for handing over the money. See Gropp (1998:190).

⁴⁹ OJEC no. C 157/1 of 5.7.1977, after Dannecker (1993:29; 1996:581).

The premise for being able to make use of such methods is a good knowledge of the European law and regulations that are to be abused, or a professional knowledge from the area of European economic area. It is a known fact that firms that operate in the area of European import, export and subsidies employ lawyers and law firms specialised in the analysis of EU regulations and guidelines, in order to discover new legal loopholes, legal definitions that can be easily manipulated, and other possibilities for the making of a profit by the abuse of the law.⁵⁰ The adroit manipulation of regulations means that crimes committed with such methods produce some of the most spectacular cases and scandals in the CAP⁵¹, while the perpetrators, thanks to their exposure in the media, instead of social condemnation and punishment, often earn the adulation of the public for their skills (Dannecker, 1993:29).

3.5.1 *Sham transactions*

From the phenomenological point of view sham transactions and evasions of the law often make up a criminological unit (Dannecker, 1993:29), but from a legal standpoint they are two different kinds of offence, separately regulated in the national legislations and in European law (Reisner, 1995). The criminological unity derives from the fact that one method of bypassing the law is actually the undertaking of sham transactions. Such transactions or fictitious actions exist when certain actions are never undertaken at all or are undertaken only to conceal some other action (Dannecker, 1993:29). Sham transactions can be undertaken outside the grey zone, that is, they do not have to be based on an inappropriate formulation of the law, but can be direct violations of very clear legal regulations. In the cases of sham transactions aimed at committing EU fraud already mentioned there were sham exports of alcohol in the transit procedure through the area of the EU with empty trucks (Commission of the European Communities, 2001:26; European Commission, 1998:20), the sham export of subsidised wine from the EU to eastern Europe (European Commission, 1999:26), carrying out certain sham actions in order to provide evidence for financial controls, such as driving empty trucks in order to procure fuel receipts, proving that the trucks carried sold sunflower oil or brought in bought olive oil (European Commission, 1998:22) and issuing invoices for operations never carried out for which financial resources were allocated, characteristic of frauds of the structural funds. In the literature, as extreme examples of fictional transactions, the following are cited: the export of empty barrels or barrels of water that, allegedly, contain tomato juice, and the import of Turkish products for delivering to mailboxes via a Swiss firm in order to avoid the payment of customs duty during import into the EU (Dannecker, 1993:29).⁵²

3.5.2 *Evasion of the law*

The concept of evasion of the law covers all actions that make use of legal loopholes, disharmonies and other nomotechnical and substantive shortcomings in the regulations

⁵⁰ Cf. Sieber (1998:11) and note 18.

⁵¹ Evasion of the law for the misappropriation agricultural subsidies is discussed in the doctoral dissertation of Nippoldt (1974), the empirical research basis for which was the investigation into subsidy fraud carried out in the early 70s by Tiedemann.

⁵² For further cases of fictitious exports of goods see cases no. 66 and 67 (Tiedemann, 1974: 269-277).

in order to make illicit profits. The objective is to make use of poorly formulated legal provisions in such a way that the perpetrator acts according to the grammatical, semantic or formal interpretation of a given provision, but against the sense of it, or against the reason it was passed by the legislative authority in the first place. In the literature and in legislation in general evasion of the law is described by general anti-evasion clauses. In the identification of such actions, it is necessary to distinguish acceptable avoidance of the regulations from the abuse of them. In principle it is permissible to avoid a binding law and to require the realisation of legally envisaged benefits if all the legal premises for them have been met. As against this, the illegal evasion of laws implies the deliberate exploitation of legal loopholes and other shortcomings by undertaking artificial, unprofessional and economically completely absurd actions or transactions that have no other purpose but to obtain legal benefits or to avoid legal harm, which violates the sense of the law (Reisner, 1995:5).⁵³

a) Goods manipulation – a product before crossing a border either artificially or without good reason is modified so as to be put into a more favourable tariff, thus attracting a higher subsidy or avoiding higher customs duty. After crossing the border the product is restored to its previous condition, without any great expense of time, money or labour.⁵⁴ One typical example of this is the so-called yoghurt scam, in which the different tariff for the subsidy of milk products with respect to their aggregate condition was abused. For the export of yoghurt, a subsidy of 0.13 marks/kg was allowed, and for the export of milk products in powder, granule or some other solid form, 1.30 marks/kg. One ingenious producer sold frozen yoghurt in Poland and because of this economically pointless procedure applied for a higher subsidy (Gropp, 1998:190).

b) Fantasy products – this refers to products that are not meant for the market at all, their on the whole very cheap manufacturing processes serving only to fulfil the conditions of a certain favourable tariff item and to obtain subsidies that are greater than the manufacturing costs. A striking example of fictitious business with a fantasy product that ended up in front of the European Court of Justice⁵⁵ was the case of the so-called raw sausages. In the period from 1965 to 1968 Germany exported to Switzerland and the then Yugoslavia more than 3,000 tons of inedible sausage from slaughterhouse waste, fat and sawdust, and then the sausages were destroyed or made into soap. Although of course they did not meet normal commercial standards for sausages nor were at all suitable for consumption, export subsidies in the amount of 5 million marks were nevertheless paid out for them. This manipulation even paid off in the case when the sausages were destroyed, because the export subsidy was 5.51 marks per 100 kg greater than manufacturing costs.⁵⁶ Only in 1969 was a definition introduced saying that a sausage had to be fit for human consumption.⁵⁷

⁵³ See Reisner (1995:5-6) and examples from the judicial practice of the ECJ (ibid. 33-47).

⁵⁴ See case 27 (Tiedemann, 1974: 174-176).

⁵⁵ ECJ decision of October 9, 1973.

⁵⁶ For this case, see Reisner (1995 40-44), for more accurate figures concerning calculation of exports see ibid. (41).

⁵⁷ Regulation no. 2403/69. OJEC L 303/6 of December 3, 1969.

c) Circuitous route – this is concerned with cases in which goods do not arrive at their destination directly, but go a roundabout route so that the country on the route could be stated as the country of origin or the country of import. This category includes the well-known case of the fraudulent exploitation of a loophole to do with the marking of the origin of goods in the regulations concerning the subsidizing of German grain. At the end of the 1980s the EU, because of the excessive production of grain in Germany, determined to avoid expensive intervention or storage measures by allocating subsidies for exports to third countries. The regulation concerning the subsidy of export specified the country of export, but not the country of origin of the grain. German firms exploited this loophole by buying French grain, unloading it into a silo in Hamburg, at once re-loading it into ships and then declaring it to be German grain when it was exported to the USSR (Dannecker, 1993:25; Rump, 1993:41).

Apart from loopholes in the law, a further legislative shortcoming that has resulted in numerous evasions of the law and criminal profit generation is the existence of what are called dissonant tariffs. While loopholes usually result from shortcomings within the same regulation, dissonant tariffs are the outcome of a disharmony of certain regulations within the whole area of economic law. An example of the abuse of dissonant tariffs is described in the smuggling of goods in the transit procedure by exploitation of the difference between the amount of customs duty and the amount of the guarantees that are deposited for goods in transit through the EU area.⁵⁸ Another case of very frequently exploited disharmonies in the same economic system are the regulations according to which an export of a certain good from the common market is allocated a higher subsidy than the import of the same commodity into the common market. Thus in the early 1970s a German product exported the meat to Switzerland and received the export subsidy. The Swiss importer exported the meat to Italy. The customs duty on import into Italy properly paid to the EC were much lower than the subsidy that the German company obtained on the export to Switzerland. In the criminal proceedings for subsidy fraud, the German firm's defence was that it was not responsible for the actions of the Swiss purchaser and that all the data were properly stated. Since it was considered highly contentious whether the concealment of the sale to a state of the EC was relevant from the point of criminal law, the proceedings were abandoned (Dannecker, 1993:24-25). In the very same system, an illicit profit of about 950,000 marks was made by exporting subsidised starch to Italy from Germany via Switzerland (Sieber, 1998:11).

4 Conclusion: the criminogenesis of fraud adversely against the budget of the European Union

The criminogenesis of all criminal behaviour is the result of endogenic or internal factors that mark the perpetrator's biological and psychological structure, and the exogenic or external elements from the perpetrator's environment that lead to or condition the commission of the offence. Since this paper has not analysed the perpetrators of EU frauds, in the conclusion it will be restricted to the exogenic criminogenic factors that can

⁵⁸ See chapter 1.1 "Smuggling".

be derived from the phenomenological analysis. This concerns certain economic, financial, social, legal and other social circumstances that condition and cause the commission of EU frauds or at least enable them.

a) The protectionist market policy of the EU. One feature of economic crime is that it is caused by the economic system in which it works, which is confirmed by economic crime in the EU. For many products, the EU market is a politically regulated system in which high prices are artificially maintained with financial instruments for the sake of protecting domestic producers. The two most important financial mechanisms of the protectionist market politics of the EU that are criminogenic in their effect are protective tariffs and subsidies. Protective tariffs induce perpetrators to import goods illegally across the border and sell them on the internal market at a price considerably higher than the external market. The opening of market borders of the EU to goods from other world and national markets and the abolition of protectionist tariffs would ipso facto do away with evasion of customs duties, smuggling or false declarations of goods to be sold on the EU market. But from a political viewpoint for the EU any move from a *eurodirigiste* economy to a world market economy is still unacceptable, although the efforts of the European Commission are very slowly moving in this direction (Đurđević, 2004:196).

Considering the prevailing kind of expenditures in it, the EU budget can be characterised as a subsidy budget, and according to criminological investigations, subsidies are a highly criminogenic financial instrument and very subject to criminal behaviour (Tiedemann, 1974:14, 357-359), primarily because subsidies are in the form of monetary grants that are very hard to control, because there is never any question of the refund of the money for some service that has already been performed; rather, this is a macroeconomic payment the purpose of which is to reduce export price, i.e., the price of goods on the internal market to the world price. Apart from the intrinsic criminogenicity of subsidies, the European system for managing and allocating subsidies has a criminogenic effect. There is between the EU budget and the end user of the subsidy a vast administrative machine that comprehends several European and national levels. This is supposed to realise and control the funding of subsidy recipients according to a complicated procedure and in line with numerous and very specific European and national regulations. Such a mechanism for the allocation and control of the use of subsidies makes the commission of subsidy frauds additionally simple and creates new conditions for such frauds.

b) Shortcomings of the regulations of the EU. EU law has many shortcomings, in both the legal system as a whole, and in the attitude to the legislative technicalities of given provisions. It consists of a vast set of orders, guidelines, books of regulations, tariffs and other regulations the number of which climbs steeply each year, and because there is no proper insight into the instruments that already exist a prescriptive system that is excessively complex, fragmentary, contradictory and unreadable arises. This particularly holds true for the area of law in the area of the CAP, in which there is hyperproduction of rules (Oppermann, 1999:552, 562). The failings of some of the regulations lie in their ambiguity or lack of expertise, which in given cases is not always the consequence of negligence or lack of professionalism, but because the provisions were deliberately made unclear so that a compromise could more easily be found in the Council of Ministers (Sieber, 2000:4). For the purpose of finding a consensus at the European level, legal security

is sacrificed, and the door is opened for illegal procedures. As well as this, in the area of customs and agricultural law, we often come upon regulations that contain artificial classifications of products based on numerous standard classifications that sometimes differ only negligibly, which has a markedly criminogenic effect. As we saw in the analysis of the phenomenal forms of EU fraud, by the fraudulent declaration of given legally relevant facts, every characteristic of a rule that prescribes some customs obligation or some subsidy procedure is the starting point for a fraudulent activity. Fraud however does not consist only of the direct violation of a given rule, the failure to meet its legal characteristics, but also the evasion of a rule or the application of it in a way that is against its meaning, making use of lacunae in the law, dissonant tariffs and other legislative shortcomings. For this reason the issue of a proper legislative techniques, not only from the nomotechnical point of view, but in the sense of the substantive meaningfulness of a provision, is of first rate importance for the realisation of the aim of it. In legal systems in which the principle of lawfulness is strictly applied shortcomings in legislative technicalities or disharmony among statutory formulations, because of the difficulty of prosecution and trial, even the total impossibility of any post hoc sanctions being imposed, create particular opportunities for their own abuse.

c) Inadequate control of the respecting of customs and subsidy procedures. It is very well known that the risk of the detection of a criminal act is one of the most important factors in the prevention of crime. In most crimes, the perpetrator will be dissuaded from committing the crime more because of the likelihood of being found out than because of the serious penalties attracted by such crimes. Hence it is likely that the main criminogenic factor in EU fraud is the absence or impossibility of carrying out appropriate controls of the respecting of customs and subsidy regulations. The customs procedure for importing goods into the EU has a number of systemic weakness because of which it is incapable of carrying out the task enjoined upon it, and this is a check on whether the goods that is being imported into the EU, in all their characteristics, correspond to the goods that are declared in the customs documents. The reasons because of which the customs procedure does not give the necessary guarantee of control are organisational, procedural and technical. The volume of transactions, with respect to the quantity of declared goods, goes far beyond the capacity of the existing number of border crossings and customs officers. Hence customs control as a rule is restricted to control of documents, and inspection of the goods is carried out only in exceptional cases or by way of random checks (Dannecker, 1993:27; Rump, 1993:42). Transit procedures have the systemic drawbacks already described that enabled them to be manipulated for the sake of EU fraud perpetration.

Apart from that, in the system for allocating subsidies from the Agricultural Fund, a structural weakness has been observed that dissuades national governments from detecting fraud. The agricultural subsidies are allocated by the civil services of the member states from their own resources, the Commission later on reimbursing them for documented and justified expenditures. If a member state did not carry out a verification and payment procedure in the proper way, or if the payments were not made according to the financial regulations of the Union, the Commission will refuse to refund such agricultural expenditures (Đurđević, 2004;197). A solution according to which the financial burden for frauds would be borne by national or regional budgets has understandably weakened

the enthusiasm of member states for carrying out the corresponding administrative controls, for member states are caught in a conflict of interests between the task of detecting and reporting misallocated and misemployed subsidies and protection of their own financial resources (Tiedemann, 1974:40; Sieber, 2000:3). The absence of any opposed interests between controller and controllee can be seen in the relation between the departments competent for the allocation of farm subsidies and the subsidised farmers because these departments tend to see themselves much more as representatives of the interests of the farmers (Gropp, 1998:191) than as representatives of the interests of the EU budget.

d) Absence of any social condemnation. The attitude of society to a given crime is an important preventive or criminogenic factor. If a certain action excites social condemnation or approval, then this will be crucial for the making of individual decisions about whether to commit an offence, especially when it is socially integrated and professionally successful persons from the circles of business people, lawyers, tax advisers and so on that are concerned. In respect of crimes whereby the government is deprived of some monetary dues, such as tax evasion, there is a characteristic total absence of or at least reduced social and ethical condemnation. The same goes for EU fraud, to an even greater extent, and in the literature there are certain reasons given for the absence of any social condemnation of the perpetrators of such offences. These are victimless crimes, without any individual to attract the sympathy of the public, only some far off EU exchequer (Gropp, 1998:191), the money of which, it is felt, is anyway spent without any justification. As already mentioned, the perpetrators of some spectacular frauds generated by the exploitation of legal loopholes and the abuse of the law often arouse admiration and approval in the public that is met by the sensationalising descriptions of adroit manipulation and snook-cocking at the European lawmaker. Perpetrators of EU frauds who do not commit them for their own but for their firm's benefit tend to internalise the absence of social condemnation. They have not garnered any pecuniary benefit for themselves, and do not accept that they have committed an offence or that they have harmed anyone, rather considering themselves to have done their duties as conscientious employees in line with the orders of the management and the principles of good management (Courakis, 2001:130-131).

e) The impossibility and ineffectiveness of criminal prosecution. The characteristic of transnational crime in the EU, to which EU fraud belongs, is the absence of any effective criminal law prevention and repression at European level, because of the absence of a criminal law system and criminal law at a European level. The Union does not have at its disposal any criminal law authorities or any criminal law jurisdiction. The absolute retention of sovereignty over criminal law by the member states has made it impossible to create European bodies for criminal prosecution or criminal jurisprudence. And while criminals can freely roam the length and breadth of the EU and without let or hindrance organise cross-border criminal activities, the authorities of the national bodies of criminal prosecution have to halt at national borders and as a rule can carry out no actions on the territory of another member state. Of course, because of the gathering strength of transnational organised crime, national bodies are forced to collaborate and swap information, but direct communication is still very restricted. There is no procedure for the automatic admission of evidence produced in front of foreign national courts or, with the exception of the European arrest warrant, any automatic execution of foreign decisions. Ev-

idence produced in the area of one state member and the decisions of its courts can still only be used in criminal proceedings in the courts of another state via the mechanism of international criminal law assistance, which affords only a slow, bureaucratic and complicated procedure.⁵⁹

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⁵⁹ It should nevertheless be said that ministers of the EU member states meeting in the Council of the EU in Luxembourg held on June 1 and 2 2006 agreed on the so-called European arrest warrant, which will speed up procedures among member states for obtaining cases, documents and data for evidentiary purposes in criminal proceedings. See Council of the European Union (2006).

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