



Ministry of Labor, Family, Social Protection and Elderly People
National Agency for Payments and Social Inspection

Correcting irregularities: investigative powers, sanction & recovery policy

Rodica Carausu

General Directorate for Social Assistance
Ministry of Labour, Family, Social Protection and Elderly

Mihaela Duiculescu

Social Inspection
National Agency for Payments and Social Inspection

Session 5, Romania

WORKSHOP ON

REDUCING ERROR, FRAUD & CORRUPTION (EFC) IN SOCIAL PROTECTION PROGRAMS

June 8-12, 2014, Opatija, Croatia





Outline

- What is the importance of investigative powers and sanctions in combatting error, fraud and corruption (EFC)
- How has the sanctions regime changed in Romania?
- What are developments with regards to investigative powers?
- Observations on debt recovery



The importance of investigative powers and sanctions

- Sanctions and investigative powers are important to deter EFC
- They induce fraudsters to stop de-frauding the system
- Without investigative powers and sanctions, a system aimed at mitigating error, fraud and corruption (EFC) misses an important tool and it will likely limit the impact of the strategy aimed at reducing EFC
- There are a number of good economic principles for an effective sanction policy:
 - have sanctions for all possible infringements; and for all possible perpetrators
 - tailor them with the amount lost to EFC
 - use administrative procedures for low-level EFC
 - increase these level for high-value, organized or repeated infringements

In essence the cost of committing fraud has to be seen to be higher than the benefit



Current legislative framework

- Sanctions do exist - These can be either warnings or financial penalties
- Where fraud is suspected or identified, the Social Inspector's role after examining the situation, is to notify the relevant Mayor (or, for certain benefits, the payment agency) and indicate whether a sanction should be applied against the beneficiary
- Mayors will despatch their own social administrators to establish the position for themselves. However, it is rare, according to Inspectors, for any sanction to be applied
- For cases of suspected collusion no sanction available
- No guidance on use of existing sanction powers - Inspectors were using their own individual judgement on a case-by-case basis, to set the level of sanction from the range available to them



Limitations in sanctioning at the outset

- Lack of sanctioning levels/limits for each type of social assistance service/benefit
- Sanctions where existent not related to the severity of overpayment
- Absence of sanctions for the management of city halls (deputy mayors – for activities coordinated by them)
- Absence of sanctions for social service providers who do not observe the legal provisions
- Inconsistent application of sanctions where they were found



Limitations in sanctioning: some examples

- For some programs (HA) sanctions are applied for other not (GMI, FSA, CRB)
- Only in GMI program stipulations on what the fine is (half the total amount) and when it should be paid (48 hours)
- Some programs have no sanctions (CSA)



Steps taken to reform sanctions

- Use inspections to establish common irregularities and look at the gaps in the legislation
- Discussions, workshops with social inspectors, staff from Ministry and consultants of World Bank (2012, 2013)
- Assistance from legal consultant to review the sanctions across all key social assistance benefits
- Development of legislative proposal to harmonize sanctions system (awaiting approval)
- Production of guidance on the application of sanctions by the inspectors



Proposed improvements to sanctions regime

- Establish definitions for what EFC are in the legislation
- Understand who should be applying the sanctions (e.g. social inspectors rather than mayors)
- Ensure that all relevant administrative bodies and individuals (including beneficiaries) who have legal responsibility for providing or processing accurate and timely information about eligibility for social assistance programs may be subject to such sanctions
- Differentiate between administrative penalties and criminal cases depending on the severity of the irregularity



Proposed improvements to sanctions regime II

- Establish consistent administrative penalties for each social assistance program
 - Warning
 - Administrative fine
 - Community service
 - Other administrative penalties (e.g. seizure of goods; suspension of permits)
- Set minimum and maximum fines and payment conditions for sanctions

It is important to set the levels of sanctions applied on the basis of the severity of the irregularity



How have investigative powers developed?

- In an ideal system, investigators would have:
 - Empowerment to investigate
 - Right to access relevant information
 - Knowledge and understanding of powers
 - Investigation skills and techniques

Many of these powers exist for social inspectors in Romania but may have been underutilised



Social inspectors are empowered

- Inspection activities in the entire territory of the country (no territorial constraint)
- Investigation of cases of EFC in social services and benefits
- Benefit from protection of the law against
 - any intervention or interference of nature to influence their performance, assessment and decision-making freedom
 - against other influences that may restrict control activities



..and have right to access information

- Access to:
 - all premises of the entities subject to inspection (central or local public administration authorities, persons, public or private legal entities etc.);
 - all documents and information containing relevant data in connection with the performance of inspection activities
- May request revaluation, reassessment files for beneficiaries with social benefits where there is suspicion of EFC



Their rights are backed by sanctions

- Sanctions relate to:
 - Obstruction of social inspectors, in any way, by central or local public administration authorities, natural persons or public or private legal entities, to fully or partially perform their inspection duties and prerogatives, by any action or inaction;
 - Refusal of persons and/or legal entities to implement the measures ordered by social inspectors
 - Refusal of persons and/or legal entities to provide social inspectors with all documents and information necessary for the performance of control, assessment or monitoring activities



But they cannot conduct criminal investigations

- Inspectors pass on information to the police and prosecutors, but they do not conduct criminal investigations
 - They establish factual circumstances and supporting evidence relating to the beneficiary
- Reliance on prosecutors and police to take cases forward
 - They make investigative decisions after understanding the implications of fraud that impacts the social assistance system and the damages caused to the state budget by such criminal acts
 - Questions around incentives of these two bodies to do so when they have other priorities and the value of the offence may be low – it may not be cost-effective for police and prosecutions to take cases forward

Hope is that new sanctions framework will make a difference



Inspections face other limitations

- Inspectors in the past were not always aware of their powers
- They also lacked skills to conduct good investigations to identify cases of EFC
- Others limitations relate to data exchange and coordination with other bodies:
 - Despite progress still limits in cross-checking of databases in organizing and conducting inspections
 - Need to notify criminal prosecution bodies in the event that persons or public or private entities refuse to provide information to social inspectors even after sanctions were applied
 - Lack of the obligation for the institutions authorized to recover damages and for those collecting fines to regularly inform the social inspection on the amounts recovered from debtors



Proposal for changes: a status for social inspectors

- Professionalize social inspections
 - Determine the rights, duties, and obligations of a social inspector
 - Create a social inspectors body to support the highest performance standards in control activities
 - Position professional inspectors across public administration
 - Harmonize professional practices of social inspection with those used by similar bodies in member countries of the European Union
 - Develop and implement a common system of methods, techniques, practices and tools that allow inspectors to work in a professional network
 - Promote professional development and career development.



Investigation skills and training

Training Inspectors in investigation skills:

- Interrogate databases and cross matching
- Identify and pursue other potential sources of information
- Interview techniques

ANPIS staff (social inspectors, IT team, legal advisors) are already trained by consultants and experts from World Bank in investigation tools like:

- Crosschecking
- Identify fraud, evidence, planning and prioritising and gathering evidence
- Special observations and investigative actions
- Interview techniques
- Recording evidence
- Data protection
- Recording statements



Some observations on debt recovery

- Limiting a sanction to stopping a benefit is a basic step but is unlikely to be a deterrent
- Recovering of overpayments is a key sanction in many countries
 - For eligible beneficiaries who received too much benefit
 - For ineligible beneficiaries
- In all cases recovery of overpayment should be sought
- In Romania, there was initially some confusion over the roles of different bodies in debt collection but now a process has emerged

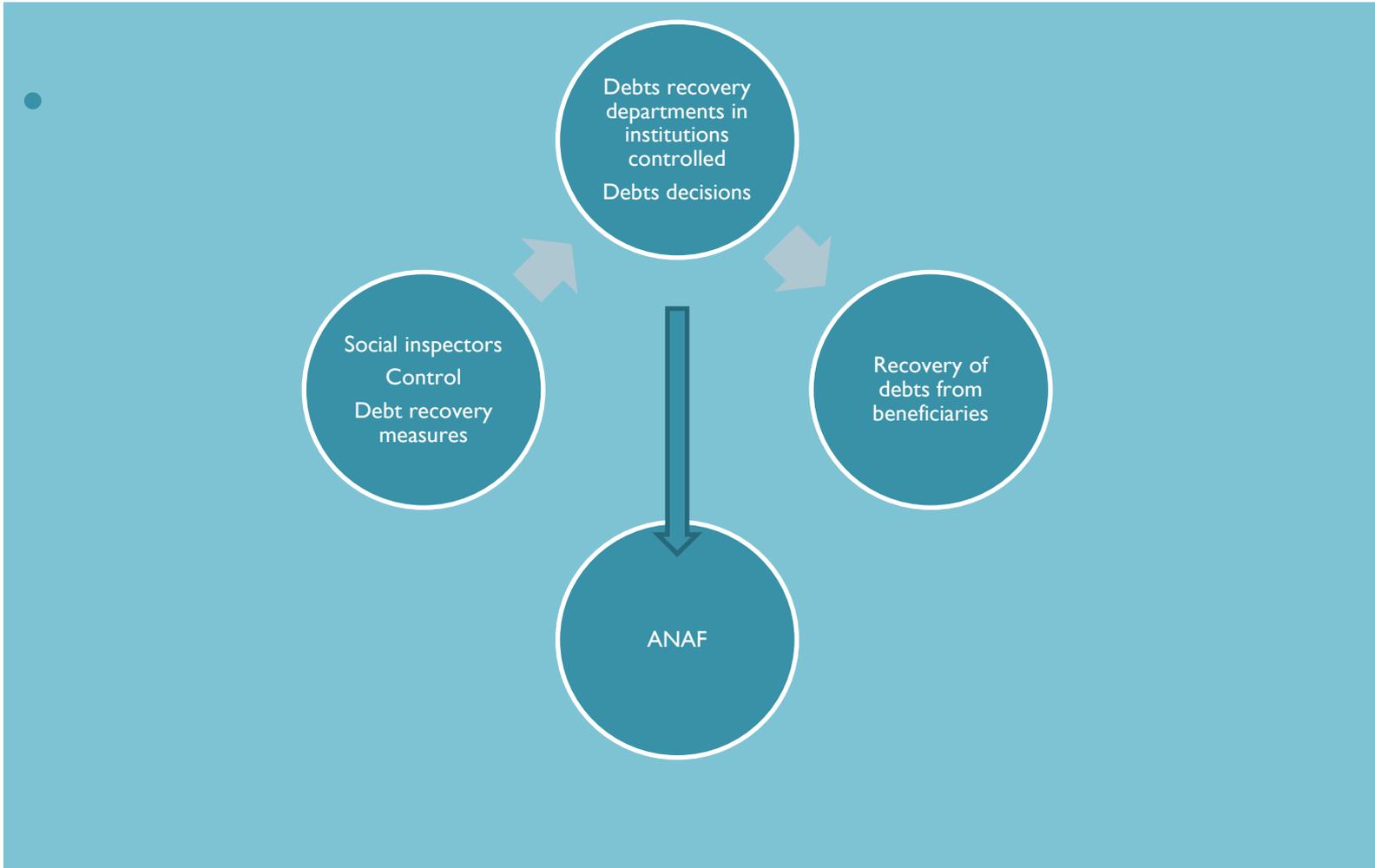


Recovery policy

- Responsibility for recovery of payments sits initially with the payments agency and then ANAF
- Once an overpayment has been identified, the payment agency should start the recovery
- The beneficiary is notified and will have the right to challenge it in court within a given timeframe
- Once the timeframe is elapsed and the decision stands, the Payment Agency should refer the decision to ANAF which starts recovery procedures



Recovery policy





Social Inspection in Romania

Thank you for your attention!