Incompatibilities and conflict of interest in the accessing and use of European funds

The European Anti-Fraud Office (OLAF)

Bucharest, 14.06.2018

one-day conference

Romanian Police Academy

Pal Madarassy
OLAF D.2 Fraud Prevention





Și cu oile toate și cu lupii prieteni nu se poate.

You cannot be friend both of the sheeps and wolves.

Romanian proverb



...Consequences for the European citizen

Waste of public money

Reduction of EU purchasing power

EU businesses are harmed by illegal imports

European projects fall into disrepute

Less EU support for genuinely deserving projects

Unfair competition

Mistrust of the European institutions



HOW DOES OLAF COOPERATE WITH ITS PARTNERS?

- sharing of information and expertise
- assistance in inspections and on-the-spot checks
- negotiation and implementation of Administrative Cooperation
 Arrangements (ACAs) in order to facilitate practical day-to-day cooperation
- conferences, training, staff exchange



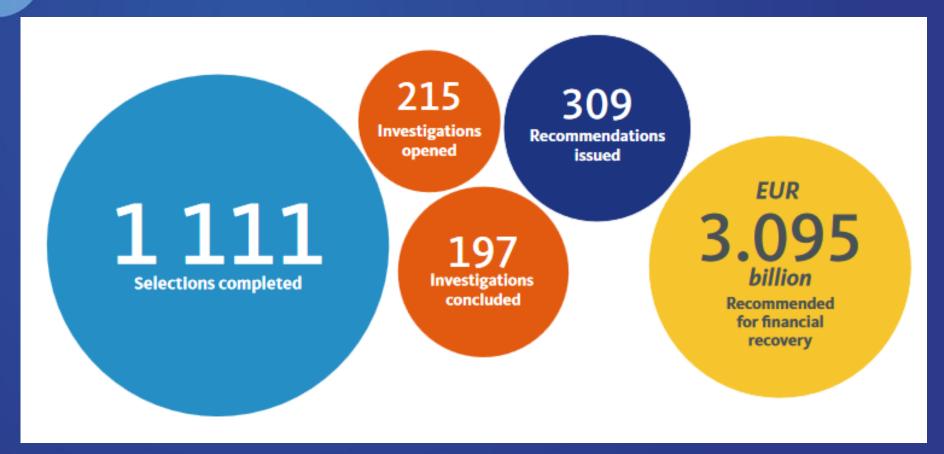
Policy for fraud prevention and detection

- Developing comprehensive anti-fraud policies and legislation
- Recommendations for anti-fraud measures to Commission departments, EU bodies and institutions;
- Gathering information from its own operational experience and other sources
- Sharing these through databases and applications
- Strengthening cooperation with MS and non-EU countries
- Awareness raising activities: seminars, conferences, trainings
- Joint Customs Operations (JCOs)



Key figures for 2017

Overview of OLAF investigative activity





Tragedia grecească se bazează pe mit. A noastră, pe corupție.

Greek tragedy is based on mythology. Ours, on corruption

Croatian aphorism (Tanja Torbarina)



Fraud in Public Procurement A collection of Red Flags and Best Practices

Developed by a working group of Member States' experts, directed and coordinated by the Fraud Prevention, Reporting and Analysis unit in the European Anti-Fraud Office (OLAF)

2015: 'Conflict of Interest'

2016: 'National Anti-Fraud Strategies'

2017: 'Fraud in Public Procurement'



Overview

- Public Procurement is the largest channel of public spending
- Vulnerable to fraud and irregularities?
 - OLAF's investigative experience shows that it is still an attractive area for fraudsters
 - 7th Cohesion Report (3.6): public procurement is open to the risk of corruption and lack of competition in many EU regions
 - MS results for the PP2007-13: 29% of irregularities detected; 36% of irregular amounts



OLAF's experience (from Annual Report 2016)

- OLAF cases have revealed:
 - Unclear or complicated applicable national pp laws
 - Lack of administrative capacity and expertise
 - Insufficiently qualified members of the evaluation committees
 - Inadequate level of audits, controls and checks
 - Corruption remains an almost universal aspect of fraudulent public procurement cases investigated by OLAF
 - Increasing trend to use off-shore accounts

Source: OLAF 2016 Annual Report



•COHESION & FISHERIES - PP 2007-13* IRREGULARITIES RELATED TO PUBLIC PROCUREMENT

source: OLAF processing of data extracted from the Irregularity Management System

As % of the total number of irregularities related to 2007-13

Infringements of public procurement rules linked to possible fraud

Public procurement irregularities** in connection with infringements related to Ethics and integrity



Annual Coordination Meetings 2018 26/06/2018

^{*} Irregularities reported for the year 2018 not included

^{**} fraudulent and non-fraudulent irregularities

•COHESION & FISHERIES – PP 2007-13* Irregularities related to Public Procurement - RO

As % of the total number of irregularities related to 2007-13**

EUR 332 mln on 683 mln = 49% (36% all MS)

Infringements of public procurement rules linked to possible fraud

Public procurement irregularities** in connection with infringements related to Ethics and integrity

$$10 \text{ on } 1,035$$

= 1% (0.3% all MS)

24 on 332 mln = 7.2% (3.6% all MS)

- Higher frequency and higher incidence of related amounts (compared with all MS)
- Higher frequency and higher incidence of amounts in fraud (compared with all MS)
- Links with 'ethics and integrity' infringements (mostly 'Conflict of interest')

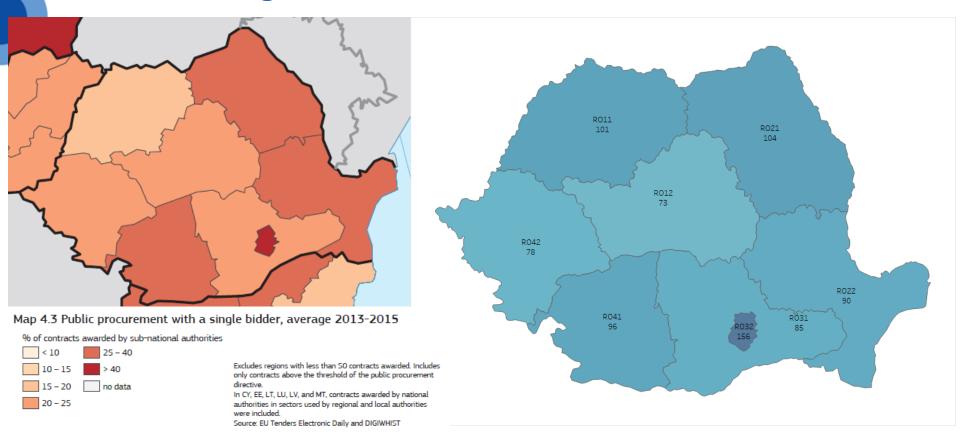
Annual Coordination Meetings 2018 26/06/2018 13



^{*} Irregularities reported since 2008 (excluding 2018)

^{**} fraudulent and non-fraudulent irregularities

•Cohesion and Fishery Policies – 2013-2017 Irregularities related to Public Procurement



All of these 'public procurement' irregularities concern PP 2007-13

1 case where NUTS is not mentioned and 1 case pertaining to the extra-region ROZZ are not included



Lăcomia strică omenia.

Greed corrupts humanity.

Romanian proverb



•COHESION & FISHERIES Most reported irregularities related to Public Procurement

- Most used: general type T16/08 and residual type 'Other' (T40/99). High frequency of fraud within the residual type.
- Wide range of (fraudulent and not fraudulent) irregularities detected in RO, with high Fraud Frequency Level. Detection is homogeneous across the national territory.
- Corruption is never reported.
- No irregularities have been reported yet for PP 2014-2020



Public Procurement: red flags and best practices by MS

- The document represents a good example of the lessons learnt by MS, insofar as it shows the grey areas highligthed by the control activities from national authorities and European bodies
- Document structured on 4 axes:
 - Pre-tendering phase
 - Tendering phase
 - Post-tendering phase
 - Horizontal fraud prevention tools
- For each phase, the critical areas are identified and, for each of these, red flags, case examples and best practices are presented



Pre-tendering phase (1)

- Needs assessment
 - Information gathering
 - External expert
- Planning the procurement procedure
 - Division of responsibilities
 - Budgeting



Pre-tendering phase (2)

- Content of the call and specifications
 - Insufficient information in the publication
 - Selection and award criteria
 - Definition of requirements
 - Deadlines and timeframe
 - Rigged specifications
 - Consultancy services
- Choice of procedure type
 - Manipulation of the procedure
 - Negotiated procedure
 - Single source awards
 - Split purchases
 - Incompatible grouping of supplies or services



Tendering phase

- Invitation to tender
 - Leaking of tender specifications
 - Manipulation of tender specifications
 - Lack of competition
 - Collusion
- Evaluation
 - Directed selection process
 - Fictitious offers
 - Discrepant offers
 - Manipulation of the offers
 - Illicit influence
- Award
 - Conflict of interests
 - False documents



Post-tendering phase

- Quality of contract implementation
- Offering bribe
- Embezzlement
- Subcontracting works without obtaining the approval



Horizontal fraud prevention tools

- Transparency
 - E-procurement
 - Publication of procurement
 - Risk assessment tools and ICTs
- Ethics and integrity
 - Awareness raising and training
 - Information to the public
 - Whistle-blower tool
- National AntiFraud Strategy for public procurement



Conclusions (1)

- Irregularities and fraud linked to breaches or abuses of the public procurement process have been identified as a significant problem in relation to the use of EU funds (MS, ECA, EC, OLAF)
- Risks: distortion of fair competition, increase of costs, decrease of quality, financing of criminal organisations, favouritism...
- MS control authorities are increasingly aware and have developed several good practices to counter this problem
- Commission supports initiatives to address the issue (integrity pacts; e-cohesion; guidance for practitioners)



- Conclusions (2) Public bodies increasingly offer open data platforms to enhance transparency
- Civil society (academia, experts, etc.) uses these data to develop specific tools which can be useful in the fight against fraud and irregularities in public procurement (e.g. DIGIWHIST initiative)
- OLAF, in cooperation with national experts, has developed a specific document ('Fraud in Public Procurement – A collection of red flags and best practices'), which gathers a great deal of the knowledge and experience acquired in the field. The document is available on the following portals:
 - CIRCABC: https://circabc.europa.eu/
 - CIRCABC > OLAF > COCOLAF Library > Fraud Prevention Group > FRAUD PREVENTION DOCUMENTATION
 - SFC 2014: https://ec.europa.eu/sfc/en/2014/anti-fraud
 - AFIS Library: https://afis.olaf.europa.eu/afis/afislibrary/



În vest, se numește lobby, în est, corupție.

In west it is called lobbying, in east corruption.

aphorism by Alex Dospian



Figure 4: Investigations into the use of EU funds managed or spent in whole or in part at national or regional level concluded in 2017

Country	Cases co	Cases concluded	
	Total number per country	from which closed with recommendations	
Romania	11	8	
Hungary	10	7	
Poland	10	7	
Greece	9	5	
Bulgaria	7	4	
Germany	5	3	
Italy	5	4	
Czech Republic	4	2	
Slovakia	4	2	
France	3	2	
Portugal	3	2	
Serbia	3	3	
Croatia	2	2	
Halti	2	0	
Argentina, Austria, Belarus, Burkina Faso, Burundi, Congo, Egypt, Iraq, Israel, Japan, Kenya, Kosovo, Latvia, Mali, Moldova, Morocco, Niger, Palestine, Syria, Turkey, Ukraine, United Kingdom, Uruguay, Zambia	(1 per country)	7	
Total	102	58	

"DLAF este un bun exemplu de cooperare între noi si autoritatile nationale"

"DLAF developed one of the best antifraud system, being an example for all other Member States"

Quote from Giovanni Kessler, Director General of OLAF (2012-17)



Shared Management: Cohesion and Natural Resources 2013-2017				
	Member States		OLAF	
Member State	Detected fraudulent and non-fraudulent Irregularities	Financial impact as % of payments	Investigations closed with recommendations	Financial recommendations as % of payments
	N	%	N	%
Greece	2 251	2.76%	14	0.30%
Hungary	2 808	1.20%	49	3.92%
Ireland	1 432	2.41%	0	0.00%
Italy	4 101	1.27%	20	0.31%
Latvia	611	2.89%	1	0.00%
Lithuania	1109	2.21%	3	0.06%
Luxembourg	2	0.09%	0	0.00%
Malta	117	2.42%	1	0.43%
Netherlands	813	1.74%	4	0.04%
Poland	5 461	1.74%	21	0.09%
Portugal	2 422	1.49%	9	0.36%
Romania	5 759	3.21%	107	0.52%
Slovakia	1672	11.39%	16	2.09%
Slovenia	297	1.92%	1	0.12%
Spain	11 161	3.13%	5	0.40%
Sweden	224	0.21%	0	0.00%
United Kingdom	3 062	0.75%	5	0.04%
Total	52 403	1.83%	325	0.43%



Figure 15: Actions taken by national judicial authorities (JA) following OLAF's recommendations issued between 1 January 2010 and December 2017

Member state	No decision taken by JA		Decision taken by J	A	Indictment rate
		Total	Dismissed	Indictment	
Greece	16	11	3	8	73%
Hungary	20	17	9	8	47%
Ireland	1	2	2	0	0%
Italy	20	33	14	19	58%
Latvla	1	4	3	1	25%
Lithuania	0	9	3	6	67%
Luxembourg	5	5	3	2	40%
Malta	1	6	0	6	100%
Netherlands	10	7	3	4	57%
Poland	13	11	2	9	82%
Portugal	9	7	5	2	29%
Romania	26	87	58	29	33%
Slovakia	5	11	9	2	18%
Slovenia	4	1	0	1	100%
Spain	11	19	15	4	21%
Sweden	1	2	1	1	50%
United Kingdom	21	14	9	5	36%
Grand Total	225	353	205	148	42%



Figure 27: Incoming information from Member States in 2017

Member State	Public source	Private source	Total
Romania	7	17	24
Total	74	188	262



Pentru un ban furat pierzi o mie din cei munciţi.

All the money you steal makes you lose a thousand you have worked for.

Romanian proverb



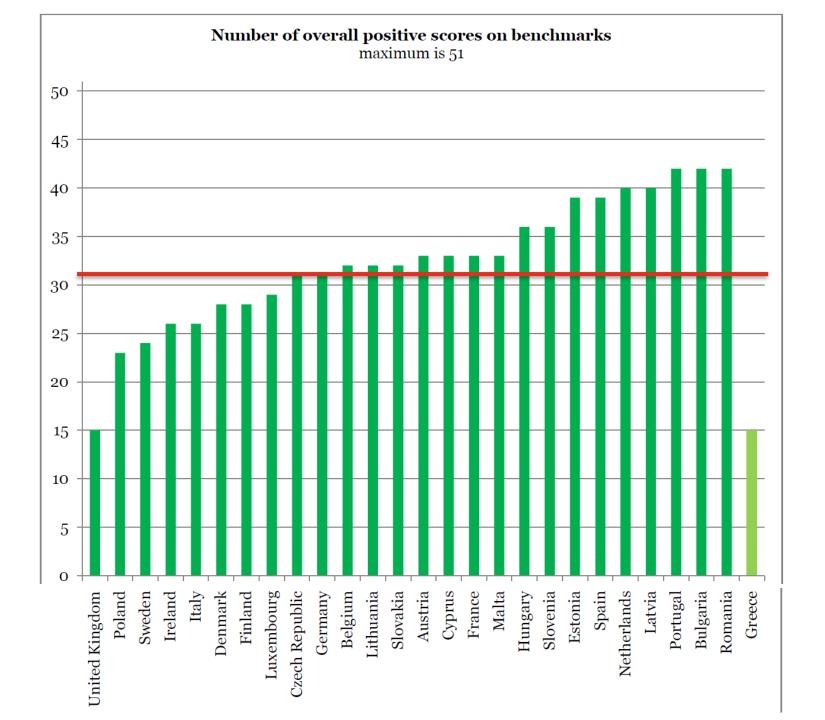
Benchmarks of the procurement systems of EU Member States (PWC study 2013)

Analysis based on 5 anti-corruption benchmarks

- Firm basis to protect public procurement against corruption
- Risk assessment
- Prevention
- Detection
- Investigation and reporting

Based on 51 indicators and best practices in EU Member States an analysis explored a set of benchmarks against which the procurement systems of all Member States are tested.





The costs of corruption

- The European Parliament commissioned a study on the costs of corruption in 2012
- Consortium of PWC, ECORYS and Utrecht University
- Focused on 8 Member States and 5 sectors
- Results presented in September 2013
- To date still the most detailed and reliable estimation of the costs of corruption in the EU



Visit OLAF's website to find it

http://ec.europa.eu/anti_fraud/policy/preventing-fraud/index_en.htm



Main findings of the study

- Public procurement = about 20% GDP in the EU (2010: € 2.4 trillion)
- Direct cost of corruption is between 2.9% and 4.4% of the value of procurement published in OJ
- This equals an amount between EUR 1 470 million and EUR 2 247 million each year



Main findings of the study – costs of corruption by sector

Direct costs of corruption in public procurement		
Sector	Direct costs of corruption (in million EUR)	% of the overall procurement value in the sector in the 8 Member States
Road & rail	488 –755	1.9 % to 2.9%
Water & waste	27 –38	1.8% to 2.5%
Urban/utility construction	830 - 1 141	4.8% to 6.6%
Training	26 –86	4.7 % to 15.9%
Research & Development	99 –228	1.7% to 3.9%

Table: costs of corruption by sector (Source: PwC)



Types of corruption - analysis

Type of corruption by sector							
Sector	Bid rigging	Kickbacks	Conflict of interest	Deliberate mismanagement			
Urban/utility construction	19	14	11	3			
Road & Rail	10	8	4	1			
Water & Waste	15	6	3	0			
Training	1	3	2	1			
Research & Development	12	4	2	O			
Total*	5 7	35	22	5			
Type of corruption by Member State							
Member State	Did vigaina	Kickbacks	Conflict	Deliberate micman agement			
France	Bid rigging 6	3	of interest 5	mismanagement 1			
Hungary	9	2	4	0			
Italy	12	3	4	0			
Lithuania	11	2	1	1			
Netherlands	0	0	1	0			
Poland	10	6	2	1			
Romania	4	8	4	1			
Spain	5	11	1	1			
Total*	5 7	35	22	5			

Table: types of corruption identified (Source: PwC)

Main findings of the study – Types of corruption

- Bid rigging Found in 48% of cases, most found in Water & Waste and R&D
- Kickbacks Found in 30% of cases, equally spread between sectors
- Conflict of interest Found in 20 % of cases, most in training and Urban / Utility construction
- Other Including deliberate mismanagement/ignorance equally spread, relatively low occurrence but nevertheless significant



•Irregularities reported (until March 2016)

EU 27							
Programming Period	N° of irregularities	Irregular amounts	% of commitments	% of payments			
2000-06	28 193	5 237 041 432	2.4%	2.4%			
Of which fraudulent	1 9	72 627 982 932	0.3%	0.3%			
2007-13	26 478	7 043 773 577	2.0%	3.4%			
Of which fraudulent	1 2	1 235 913 850	0.4%	0.6%			
Total	54 667	12 280 628 374	2.2%	2.9%			

Romania							
Programming Period	N° of irregularities	Irregular amounts	% of commitments	% of payments			
2007-13	1 402	362 834 884	1.9%	5.1%			
Of which fraudulent	139	89 830 911	0.5%	1.3%			



Programming period 2007-13
 Irregularities reported – main patterns

- EU 27
 - Majority of irregularities related to ERDF (above 70%)
 - For fraudulent irregularities more balance (ERDF – ESF 60% - 40%)
 - Amounts far more important for ERDF
 - Increased role of MCS in detection of fraudulent irregularities
 - Between detection and reporting: 12 months

- Romania
 - N: Share between the three funds is more even (ERDF: 52%, ESF: 32%, CF: 16%
 - Fraudulent irregularities: Few CF cases (only 2%). ERDF 53%, ESF 45%.
 - CF has a significant share of amounts: 24%

Between detection and reporting: 2.4 months



Programming period 2007-13 Irregularities reported – Typology – EU 27 - N

- Most recurrent typologies overall frequency of occurrence
 - Infringements of public procurement rules (34%)
 - Infringements concerning the request for aid (30%)
 - Eligibility / legitimacy of expenditure (30%)
- Fraudulent irregularities
 - Forged / fake / falsified documents or false statements are the most recurrent (39%)
 - Infringements of contractual or other rules' share is significantly higher (29%)
 - 'Ethics and integrity' category has been detected in more than 4% of the cases.



Programming period 2007-13 Irregularities reported – Typology – EU 27 - €

- Typologies having the highest financial impact
 - Infringements of public procurement rules (44% of the total amounts affected by irregularity)
 - Infringements of contract or other rules' (25%)
 - Infringements concerning the request for aid' (22%)
- Fraudulent irregularities
 - Highest value and share for 'infringements of contractual or other rules' (27%)
 - Infringements concerning the request for aid' (21%)
 - ▶ 'Ethics and Integrity' (19%). This also shows the highest average amounts



Programming period 2007-13 Irregularities reported – Typology – Romania -

- Most recurrent typologies overall frequency of occurrence
 - 'Public procurement' (55%)
 - 'Infringements of contract and other rules' (18%)
 - 'Eligibility / legitimacy of expenditure' & 'request' (17%)
- Fraudulent irregularities
 - Documentary proof (i.e. forged / fake / falsified documents or false statements) (61%)
 - 'Eligibility / legitimacy of expenditure' & 'request' (27% and 29%)
 - 'Infringements of contract and other rules' (24%)



Programming period 2007-13 Irregularities reported – Typology – Romania -

- Typologies having the highest financial impact
 - Public procurement (64%)
 - Documentary proof (14%)
- Fraudulent irregularities
 - Highest value and share for 'Documentary proof' (Forged / fake / falsified documents or false statements)(47%)
 - Public procurement infringements (32%)
 - Ethics and Integrity (24%)
 - Highest average value for 'Ethics and Integrity' (EUR 1.5 million)



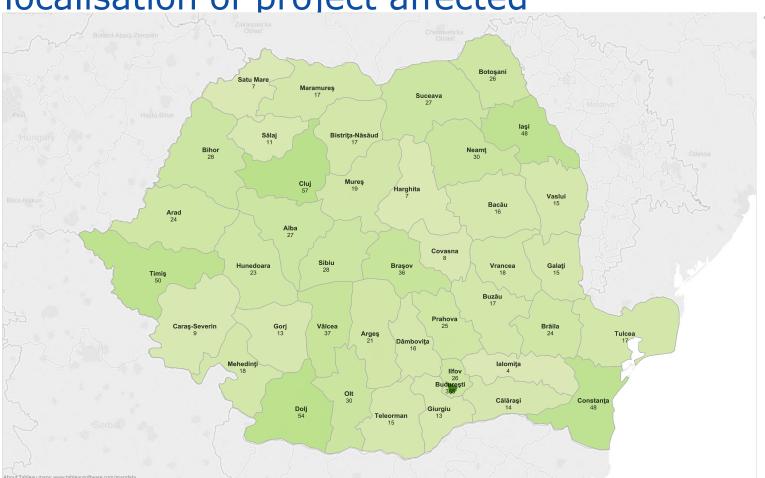
De lene ochi-şi închide şi buzele-şi deschide.

Because laziness close the eyes and open the lips.

Romanian proverb

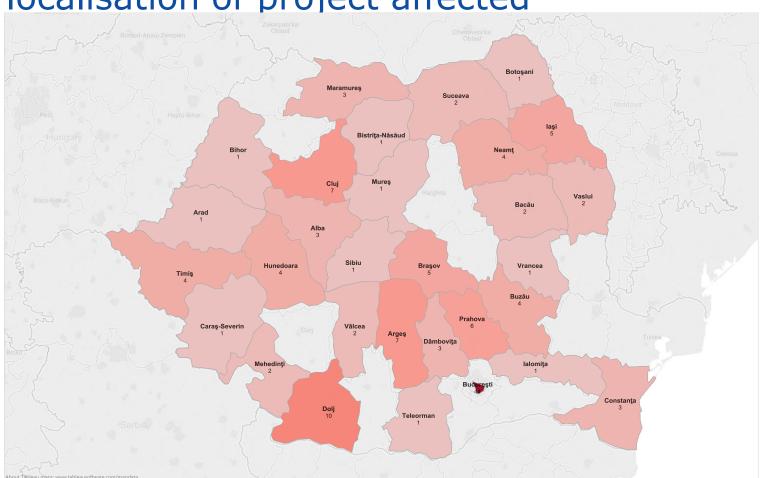


 Distribution of irregularities according to localisation of project affected





 Distribution of suspected frauds according to localisation of project affected





Tot ce ai furat de la stat e numai jumate din cât ţi-a luat.

Everything you stole from the state is only half of what it took from you.

Russian proverb



EARDF investigation





Presented by Pal MADARASSY OLAF.D2

Based on the work of

Alin BRESUG OLAF.B5



General information

- EAFRD beneficiary SC ROD SRL, in Romania
- Contract Placing stocking and storage cells
- Value of the contract: aprox. 2.500.000 EUR
- One single tender procedure
- Three offers system







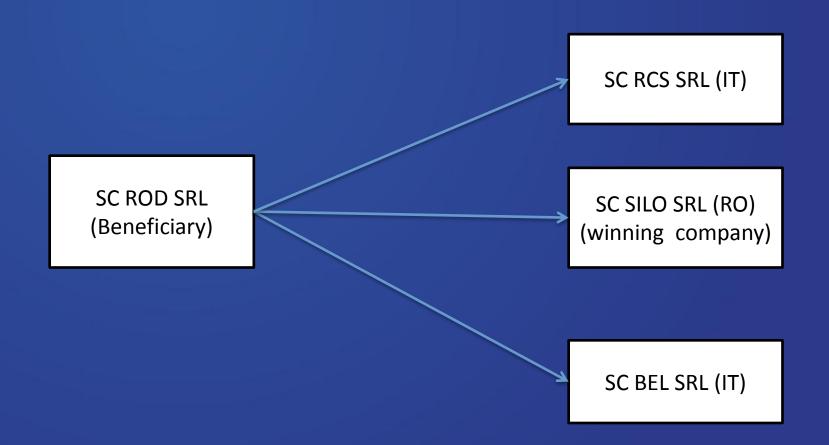






- Source of information: Romanian Paying Agency
- Allegation: falsified offers
- Preliminary inquiries
- Analysis of the project documentation
- Request to Italian Carabinieri







Results IT (1)

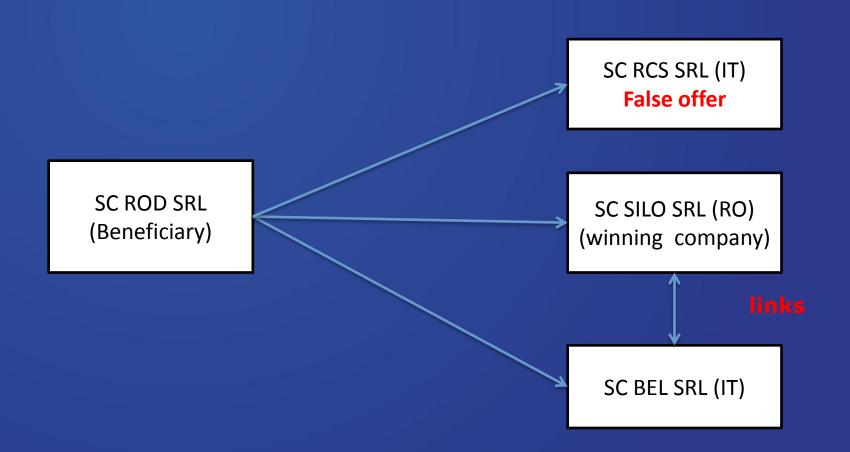
- SC RCS SRL did not receive any invitation from the Romanian beneficiary
- The offer addressed to the Romanian beneficiary was false
- All the signatures were falsified
- The prices of the equipment were at least 80% higher than the market prices



Results IT (2)

- SC BEL SRL received the invitation and submitted the offer
- all the correspondence was via SC SIL SRL (RO)
- The computers used by SC BEL SRL breowkdown and all previous correspondence was lost







OTSC Reg. 2185/1996 to SC ROD SRL (Beneficiary)

- Jointly conducted by OLAF DLAF
- All the documents draw up by the consultant SC ADA SRL (RO)
- The responsible person within SC ADA SRL was Mr. D.



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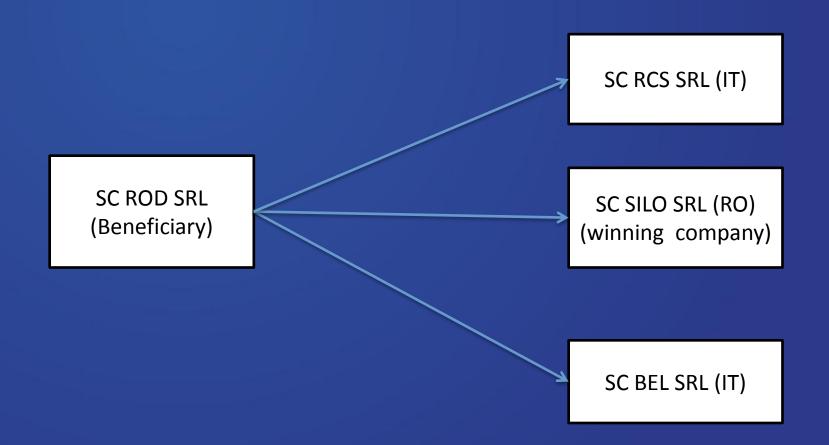






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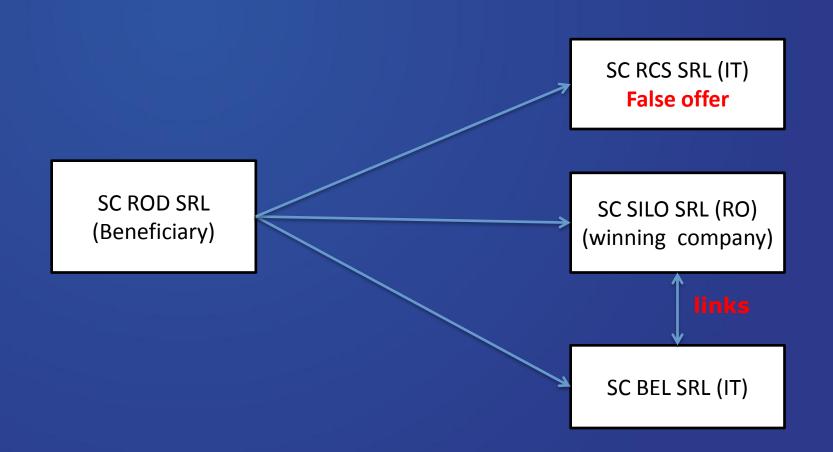
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OTSC Reg. 2185/1996 to SC SILO SRL (supplier)

- SC SILO was in the possesion of all three invitations
- SC ADA SRL → SC SILO SRL
-@yahoo.com ______@yahoo.com
- Similar modus operandi



OLAF Decision

Extension of the scope of the investigation

 The involvement of SC SILO SRL and SC ADA SRL into EAFRD Programme in Romania



Art 7 Reg 2185/1996

Commission inspectors shall have access, under the same conditions as national administrative inspectors and in compliance with national legislation, to all the information and documentation on the operations concerned which are required for the proper conduct of the onthe-spot checks and inspections.



Art 17 Romanian GD No 738/2011

The persons or entities subjected to control have the right to be notified about the ongoing control actions, except for those situations when there is a strong possibility that relevant data, documents or goods that may constitute means of evidence disappear or that significant changes occur with respect to certain factual aspects



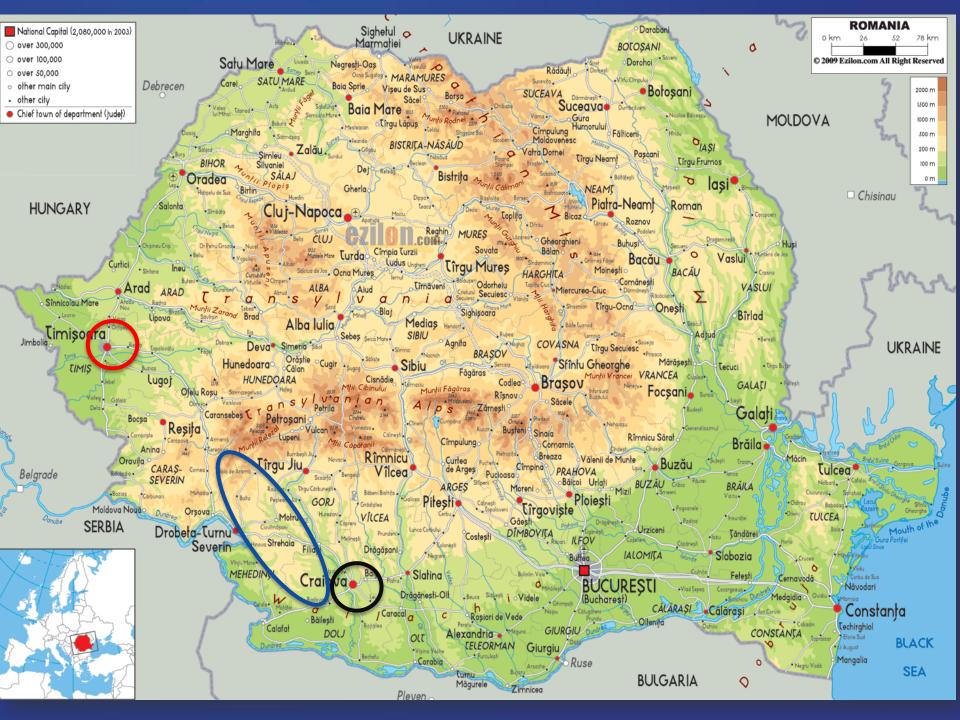
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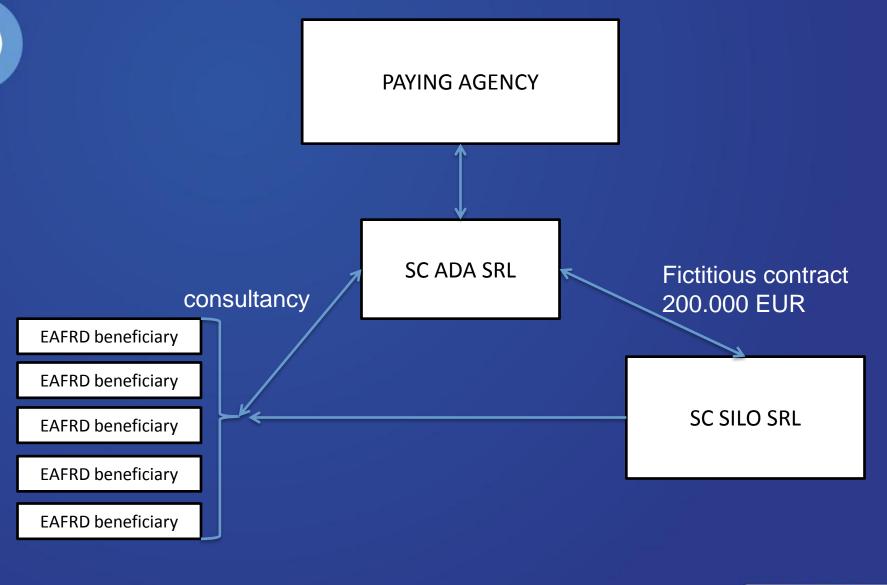
- Acquiring the documentation (invitations, offers) for 5 EAFRD projects
- Fictitious contract between SC ADA SRL and SC SILO SRL
- SC SILO SRL paid to SC ADA SRL 200.000EUR
- Mother of Mr. D. working in Paying Agency
- Responsible for reimbursement of EU funds to EAFRD beneficiaries

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Într-o societate bolnavă de corupție, omul cinstit este obligat să se adapteze la boală.

In a society sick of corruption, honest man is forced to adapt to the disease.

aphorism by Michael Enachi



Criminal offences

- Using in bad faith false, inaccurate or incomplete documents or statements which has a result the illegal obtaining of EU funds
- Improper participation to the above mentioned offence
- Money laundering in relation to the illegal obtainment of EU funds



Follow-up

- Judicial recommendations
- DNA has initiated criminal proceedings
- Financial recommendations: 2,5 Mil. EUR
- 5 new OLAF investigations



Toţi şobolanii vin acasă la cel care a furat ceva de la moară.

All the rats come to the house of the one who stole something from the mill.

Romanian proverb



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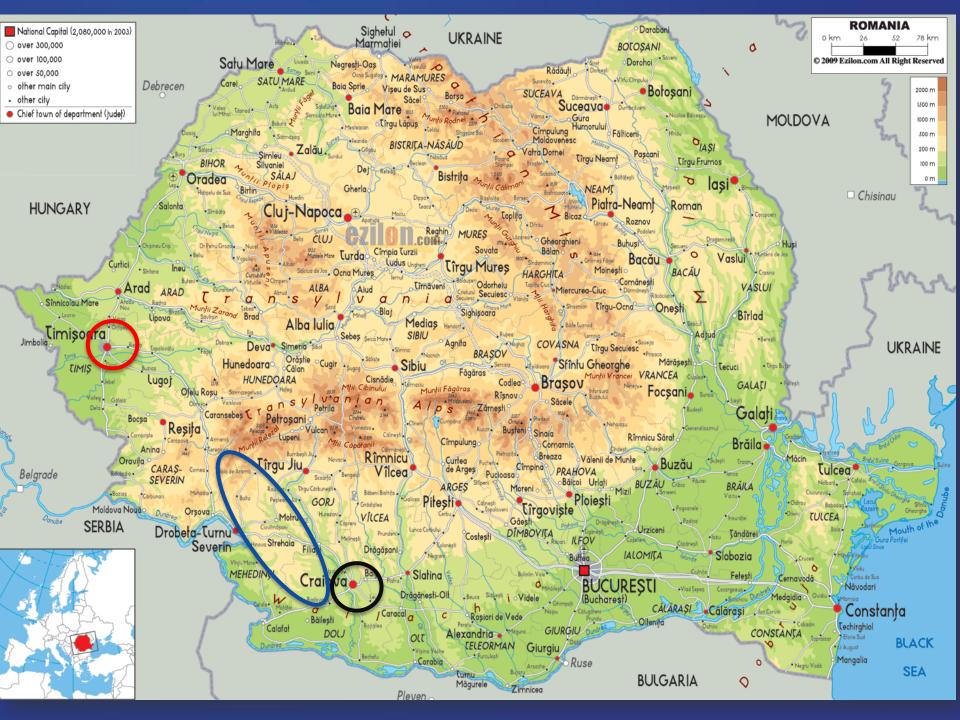
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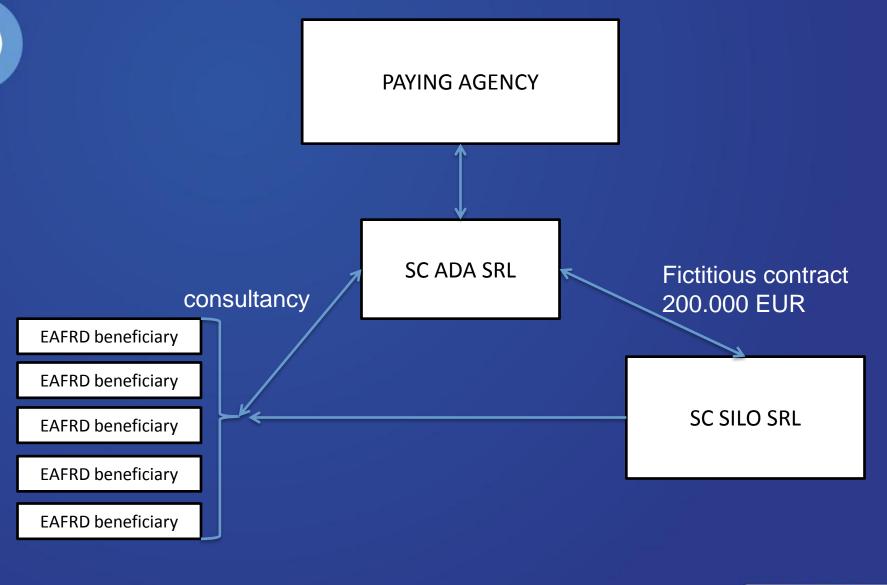
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- Financial recommendations: 2,5 Mil. EUR
- 5 new OLAF investigations



Toți șobolanii vin acasă la cel care a furat ceva de la moară.

All the rats come to the house of the one who stole something from the mill.

Romanian proverb



Thank you for your attention!



Any questions?

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