



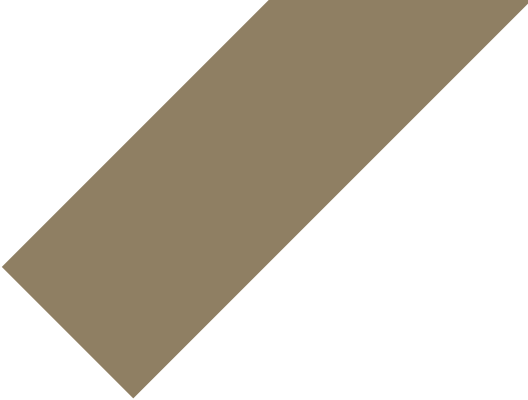
# FIVE DAY CONFERENCE

Further strengthening of the competent institutions in  
the area of managing on irregularities with the aim of  
protection of the EU financial interests

Zagreb | Croatia  
07<sup>th</sup> - 11<sup>th</sup> May 2018

## PRESENTATIONS





“Poirot,” I said.  
“I have been thinking.”  
“An admirable exercise my friend.  
Continue it.”

*Agatha Christie*



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This communication reflects the author's view and that the European Commission is not responsible for the views displays in the publications and/or in conjunction with the activities for which grant is used.

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# Conference program

## 01<sup>st</sup> Day

MONDAY 07 May 2018

- **08:45 – 09:15**  
Arrival and registration of participants
- **09:15 – 09:45**  
Opening address/welcome and introduction to the programme  
Ms **Mirella Rašić**, Deputy head of the EC Representation in Croatia  
Ms **Mirjana Jurić**, Head of Service for Combating Irregularities and Fraud Ministry of Finance, Croatia
- **CHAIR OF THE MEETING:**  
Ms **Martina Gutvald**, Head of Department, Service for Combating Irregularities and Fraud
- **09:45 – 10:15**  
AFCOS system in Republic of Croatia  
Ms **Mirjana Jurić**, Service for Combating Irregularities and Fraud, Ministry of Finance Croatia
- **Q & A**
- **10:25 – 10:45**  
Coffee Break
- **10:45 – 11:45**  
Irregularity and fraud risk management  
Ms **Martina Gutvald**, Service for Combating Irregularities and Fraud, Ministry of Finance Croatia
- **Q & A**
- **12:00 – 13:30** Lunch
- **13:30 – 14:00**  
Fraud risks, red flags and preventive measures, case study 1  
Mr **Codrut-Marian Surcelea**, Fight against fraud department-DLAF, Romania
- **Q & A**
- **14:10 – 14:30** Coffee Break
- **14:30 – 15:00**  
Frauds in EU grants: Estonian case. Cooperation between law enforcement and implementing bodies and authorities  
Ms **Maria Vassiljev**, Police and Border Guard Board, Estonia
- **15:15 – 16:30**  
Round table on the first day topic  
*Moderator:* Ms **Martina Gutvald**, Service for Combating Irregularities and Fraud

## 02<sup>nd</sup> Day

TUESDAY 08 May 2018

- **CHAIR OF THE MEETING:**  
Ms **Andrijana Anić Antić**, Head of Service, Central Finance and Contracting Agency
- **09:00 – 10:00**  
On-the spot controls, types of controls, useful tools  
Ms **Andrijana Anić Antić**, Central Finance and Contracting Agency, Croatia
- **Q & A**
- **10:10 – 10:40**  
Administrative checks. Investigations and Role of AFCOS. Case Study  
Ms **Zvezdelina Parveva-Vandeva**, Administrative Investigations Unit - AFCOS Directorate Ministry of Interior, Bulgaria
- **Q & A**
- **10:50 – 11:10**  
Coffee Break
- **11:10 – 11:40**  
Methods of criminal investigation relating to fraud, corruption and other offences affecting the EU financial interests  
Mr **Rennie Stivala**, Economic Crimes Unit, Malta Police, Malta
- **Q & A**
- **12:00 – 13:30**  
Lunch
- **13:30 – 14:30**  
OLAF's mandate and the role of AFCOS  
Ms **Maria Ntziouni-Doumas**, European Anti-fraud office (OLAF)
- **14:30 – 15:00**  
Coffee Break
- **15:00 – 16:15**  
Round table on the second day topic  
*Moderator:* Ms **Andrijana Anić Antić**, Central Finance and Contracting Agency

# 03<sup>rd</sup> Day

WEDNESDAY 09 May 2018

- **CHAIR OF THE MEETING:**  
Ms **Mirjana Jurić**, Head of Service for Combating Irregularities and Fraud
- **09:00 - 09:30**  
Fight against EU frauds: Croatian Experience  
Ms **Goranka Ramljak**,  
Ms **Tina Plazibat**,  
Independent sector for financial investigations, Croatia
- Q & A
- **09:40 - 10:10**  
Cooperation between OLAF, AFCOS and the Prosecution Office – the example of Bulgaria  
Ms **Emiliya Petrova**,  
Operational Cooperation Unit – AFCOS Directorate, Ministry of Interior, Bulgaria
- Q & A
- **10:20 - 10:50**  
Fraud Investigation Methodologies and Challenges  
Mr **Francisco Enrique González Iturralde**, Guardia Civil (Police corps), Spain
- Q & A
- **11:00 - 11:20** Coffee Break
- **11:20 - 11:50**  
Cooperation between Malta and Croatia – the "cocaine" seizure  
Mr **Anthony Spiteri**,  
Customs Department, Malta
- Q & A
- **12:00 - 13:00** Lunch
- **13:00 - 13:30**  
Romanian experience in prosecution of offences against EU's financial interests  
Ms **Oana-Claudia Raneti**,  
Fight against fraud department – DLAF, Romania
- Q & A
- **13:40 - 14:10**  
Protection of financial interests of the EU via criminal law – Croatian criminal law framework  
Ms **Marlena Jukić**,  
Mr **Dino Zorić**  
Ministry of Justice, Croatia
- Q & A
- **14:20 - 15:20**  
EPPO and estimated impact on the work of OLAF  
Ms **Maria Ntziouni-Doumas**,  
European Anti-fraud office (OLAF)
- **15:20 - 15:30** Coffee Break
- **15:30 - 16:45**  
Round table on the third day topic  
*Moderator:* Ms **Mirjana Jurić**,  
Service for Combating Irregularities and Fraud
- **20:00** Working dinner

# 04<sup>th</sup> Day

THURSDAY 10 May 2018

- **CHAIR OF THE MEETING:**  
**Bojan Krištof**,  
Head of Department, Service for Combating Irregularities and Fraud
- **09:00 - 10:00**  
Irregularity reporting in Croatia  
Mr **Bojan Krištof**,  
Service for Combating Irregularities and Fraud, Ministry of Finance, Croatia
- Q & A
- **10:10 - 10:40**  
Dutch AFCOS approach and Irregularity case study  
Mr **Tom Joose**,  
Dutch AFCOS, Customs, Netherlands
- Q & A
- **10:50- 11:10**  
Coffee Break
- **11:10 - 11:40**  
Irregularity reporting in Spain and the role of AFCOS  
Mr **Ignacio Góngora Zurro**,  
AFCOS Spain, Spain
- Q & A
- **12:00 - 13:30**  
Lunch
- **13:30 - 14:00**  
The possibilities of fraud detection on the basis of digital documents. Estonian cases  
Mr **Indrek Purga**,  
Enterprise Estonia, Estonia
- Q & A
- **14:10 - 14:30**  
Coffee Break
- **14:30 - 15:45**  
Round table on the fourth day topic  
*Moderator:* Mr **Bojan Krištof**,  
Service for Combating Irregularities and Fraud

# 05<sup>th</sup> Day

FRIDAY 11 May 2018

■ **CHAIR OF THE MEETING:**

**Mirjana Jurić**, Head of Service for Combating Irregularities and Fraud

■ **09:00 - 09:30**

Evaluation forms - Questionnaires

■ **09:30 - 11:00**

**Conclusions from the round tables**

Moderators of each round table (app 20 min per each topic)

Ms **Martina Gutvald**,  
Ms **Andrijana Anić Antić**,  
Ms **Mirjana Jurić**,  
Mr **Bojan Krištof**

■ **Q & A**

■ **11:10 - 11:30** Coffee break

■ **11:30 - 12:30**

Final remarks and closure speeches

**END OF CONFERENCE**

■ **12:30 - 14:00** Lunch





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# DAY 01

07 May 2018

## PREVENTION

Irregularity and fraud  
risk management



# AFCOS system in the Republic of Croatia



**MIRJANA JURIĆ**  
Croatia

# EU LEGAL BASE

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- **Article 325. Treaty on the functioning of the European Union** (2010/C 83) - obligation for Member State to protect EU financial interests
- **Chapter 32. Financial control** (benchmark for closing the chapter)
  - Setting up an effective and efficient coordination service to guarantee the fulfillment of obligations arising from article 280 (3) of the Treaty establishing the European Community and application of the provisions of Regulation (EC) No 2185/96 concerning the on-the-spot checks and inspections carried out by the Commission, in particular the obligation of assistance to Commission inspectors from the day of accession at the latest.
- **Regulation (EU) 883/2013 concerning investigation conducted by the European Anti-Fraud office (OLAF)**
  - Member States shall, designate a service („the anti-fraud coordination service - AFCOS”) to facilitate effective cooperation and exchange of information, including information of an operational nature, with the OLAF.

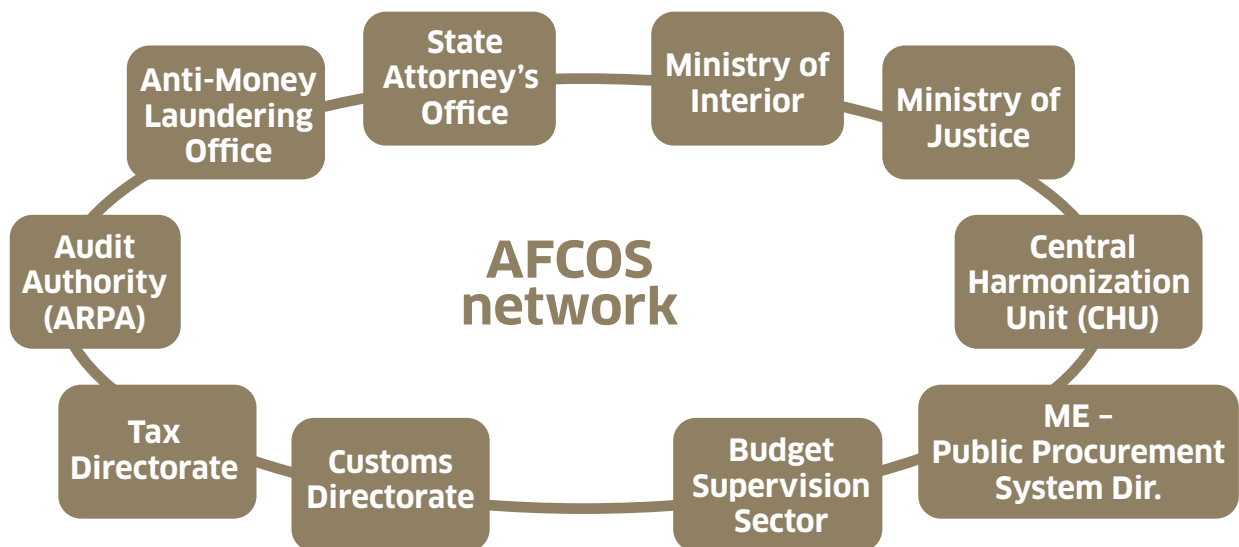
# NATIONAL LEGAL BASE

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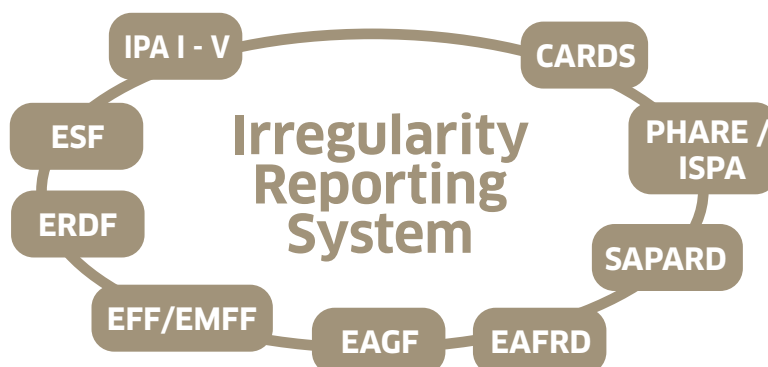
- **Budget Act** (Official Gazette 87/08, 136/12, 15/15)
  - Article 3.1. - AFCOS is a system through which the coordination of legislative, administrative and operational activities is implemented with the purpose of protecting financial interest of the European Union and direct cooperation with the European anti-fraud office (OLAF);
  - Article 114a. - „The Republic of Croatia, as a beneficiary of the European Union assistance funds, is obliged to ensure protection of the financial interests of the European Union by putting in place the system for the combating irregularities and fraud (AFCOS).”
- **Regulation on the Institutional Framework of the System of Combating Irregularities and Fraud** (OG 144/13, 19/17) - this Regulation establishes the institutional framework of the system for combating irregularities and fraud, with a view to protect financial interests of the European Union in the Republic of Croatia (AFCOS)
- **Government Decision on establishment of AFCOS Network** (OG 151/13)

# AFCOS SYSTEM IN THE REPUBLIC OF CROATIA

- **AFCOS (Anti Fraud Coordinating System)** - is the system through which the coordination of legislative, administrative and operational activities for the purpose of protection of EU financial interests is performed, together with the direct cooperation with the OLAF.
- **In the Republic of Croatia, the AFCOS system includes:**
  - a network of accredited bodies managing and using EU funds (**Irregularity Reporting System**),
  - a network of bodies dealing with combating irregularities, fraud, corruption or some other form of illegal activities in the system (**AFCOS network**),
  - the Ministry of Finance - **Service for Combating Irregularities and Fraud** (SCIF), carrying out a coordinative role within the system and representing OLAF's contact point.



Service for  
Combating Irregularities  
and Fraud





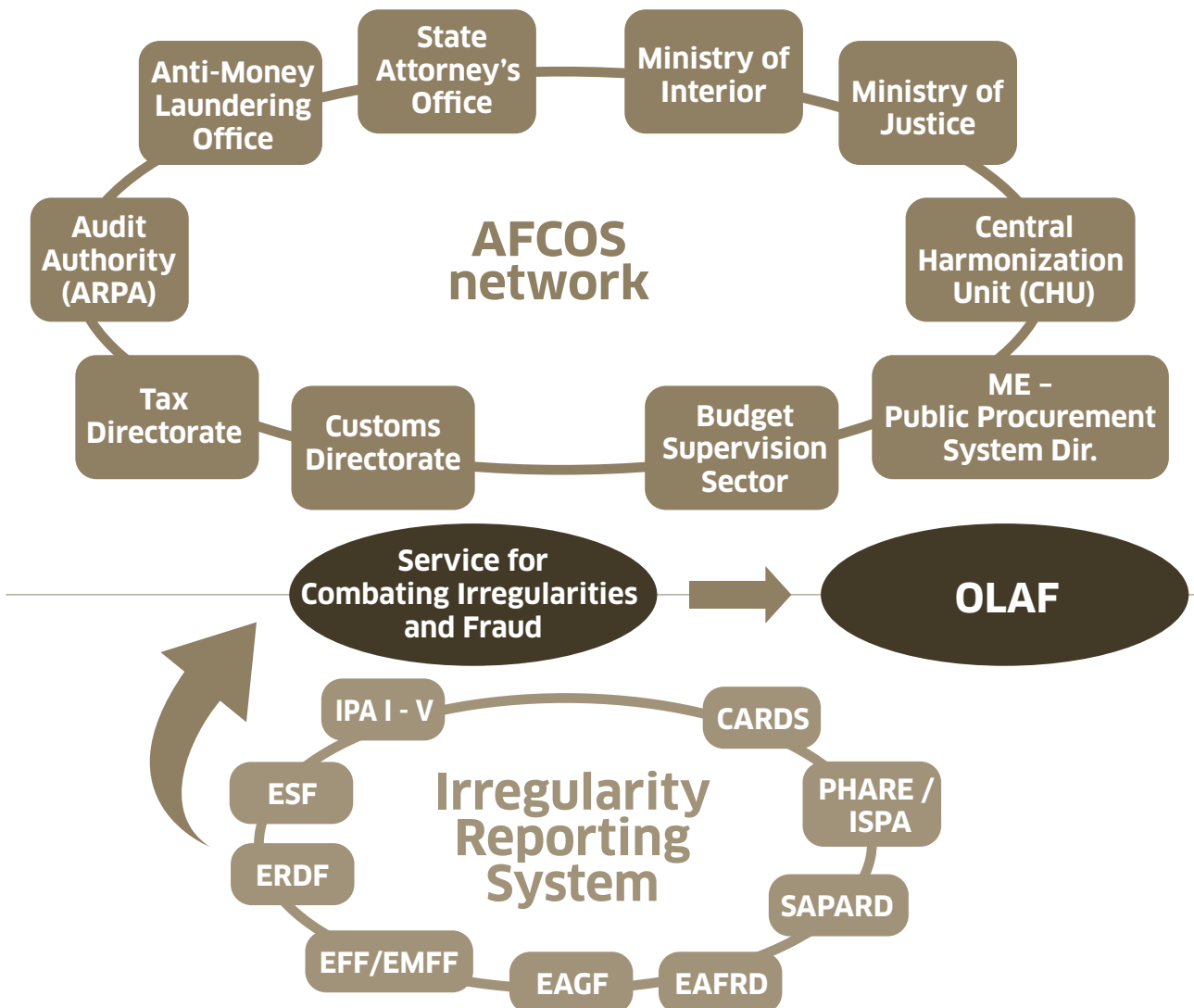
# IRREGULARITY REPORTING SYSTEM

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- **The main function of this system** is reporting on irregularities and suspicion on fraud in accordance with valid internal procedures.
- Reporting is performed by **Irregularity Officers** who are appointed in each of the body.
- The purpose of appointing **Irregularity Officers** is to provide each of the body in the Irregularity Reporting System with a person who will deal with irregularities and fraud at operational level, and whose primary tasks are:
  - **receiving** information on the occurrence of irregularities and suspicion on fraud,
  - **notifying** the superior responsible person on the received information, monitoring the follow up of the reported irregularity or suspicion on fraud within the body,
  - **drafting irregularity reports** and forwarding them to the SCIF,
  - **cooperate and communicate** with staff within their body and also with SCIF,
  - **keeping a register** of irregularities and suspicion on fraud.
- **In accordance to the Article 5. (3) of Regulation on the Institutional Framework of the System of Combating Irregularities and Fraud (OG 144/2013, 19/17)** – SCIF produces guidelines on irregularity management for the Irregularity Reporting System bodies
- **Instructions on prevention, detection, treatment, reporting and follow-up on irregularities in the context of EU assistance funds**
  - adopted by National Authorising Officer on July 3, 2011
  - applicable for irregularity reporting in the context of PAA and IPA programmes
- **Guidelines in Irregularity Management** adopted by Ministry of Finance on December 07, 2016
  - applicable for irregularity reporting in the context of programming period 2007 – 2013 (Structural instruments) and 2014 – 2020 (European Structural and Investment Funds)

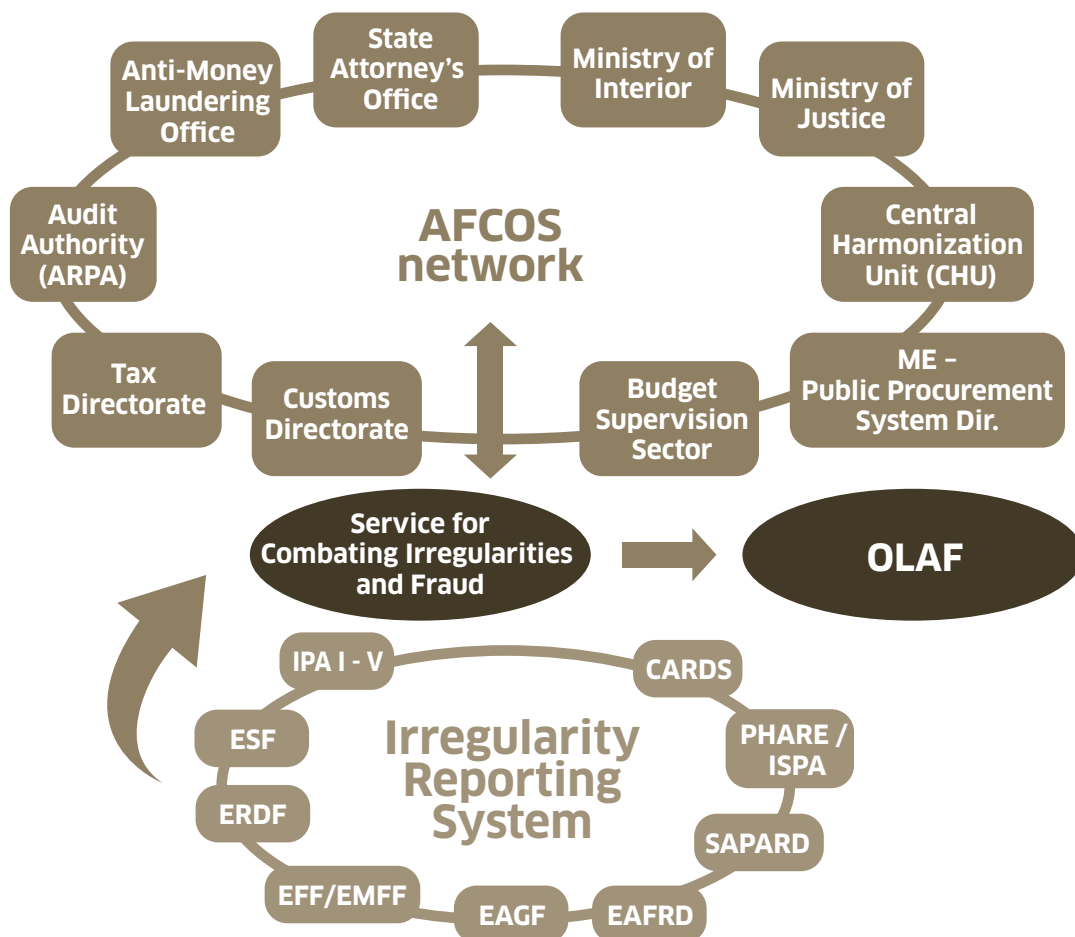
■ **SCIF is responsible for irregularity reporting within Irregularity Management System (IMS) for:**

- Pre-accession Assistance (PAA) – CARDS, PHARE, ISPA and SAPARD
- The Instrument for Pre-accession Assistance – IPA Components I - V
- Programming period 2007 – 2013
- Programming period 2014 – 2020



# THE AFCOS NETWORK

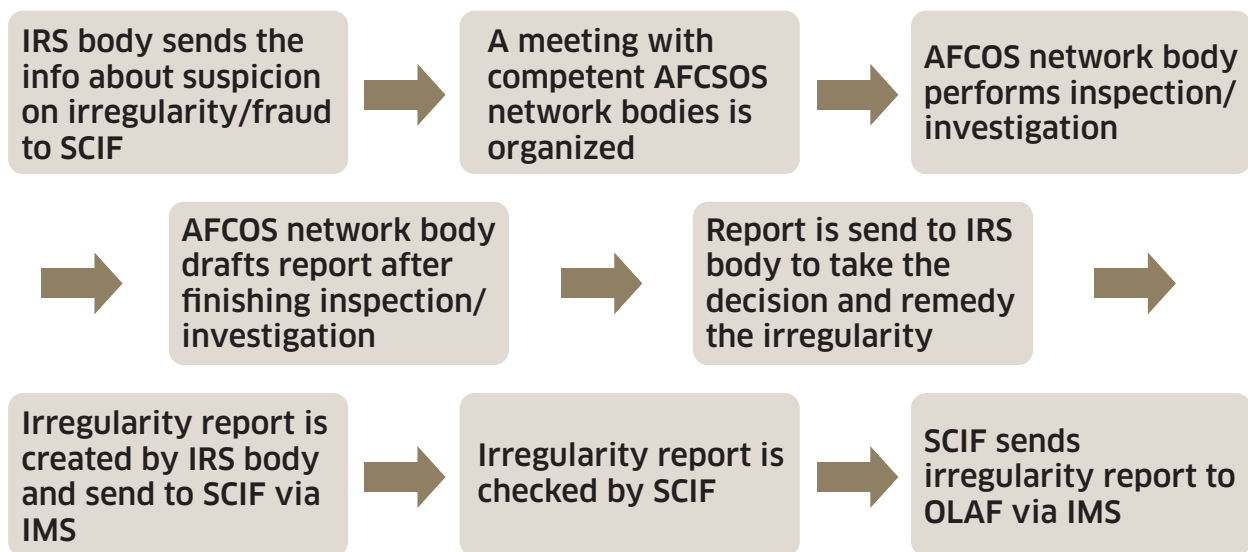
- **The AFCOS Network** as one of the three elements of the AFCOS system has been established by a Decision of the Government of the Republic of Croatia (OG 151/13)
- **The AFCOS Network is established** in order to achieve full operativeness of the AFCOS system within the framework of which the coordination of legislative, administrative and operational activities, for the purposes of protecting financial interests of the European Union in the Republic of Croatia, and direct cooperation with the European Anti-Fraud Office (OLAF) shall be carried out
- Each body within AFCOS Network **appoints its representative**
- **The role of the AFCOS network is not reporting** on irregularities but proceedings with irregularities, when it is necessary, together with the SCIF (advisory role)
- **Tasks of the AFCOS Network are:**
  - cooperation with the Organizational unit and OLAF regarding the issues of the protection of financial interests of the European Union,
  - proposing legislative and other measures with the purpose of efficient protection of financial interests of the European Union, and
  - strengthening inter-institutional cooperation, communication and exchange of data with the bodies of the AFCOS system.
- **Administrative cooperation protocols signed between SCIF and**
  - State Attorney's Office
  - Ministry of Interior
  - Agency for the Audit of European Union Programmes Implementation System (ARPA)





# COOPERATION BETWEEN IRREGULARITY REPORTING SYSTEM AND AFCOS NETWORK

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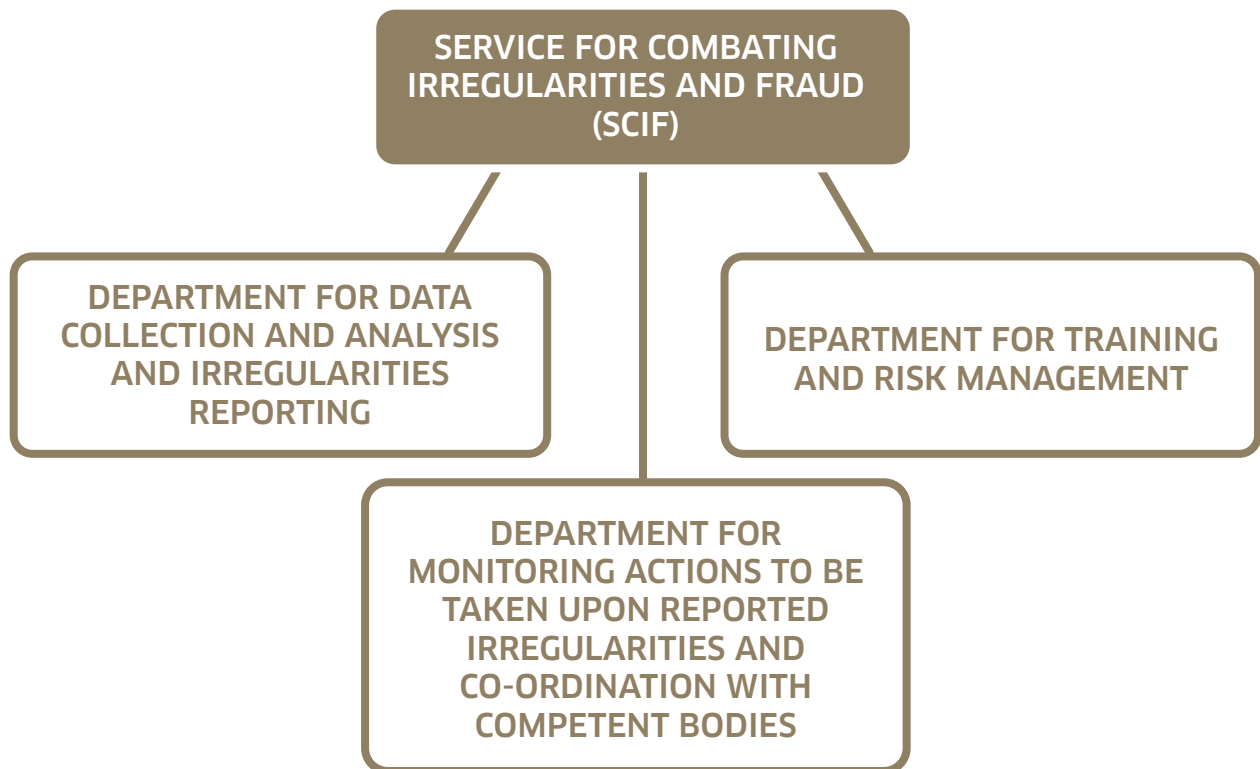
# SERVICE FOR COMBATING IRREGULARITIES AND FRAUD

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- **Service for Combating Irregularities and Fraud (SCIF)**
  - carries out a coordinative role between the bodies in the Irregularity Reporting System and the bodies in the AFCOS network,
  - represents OLAF's contact point
  - SCIF is established within the Ministry of Finance

■ **The SCIF is consisted of:**

- Department for data collection and analysis, and irregularities reporting
- Department for monitoring actions to be taken upon reported irregularities and co-ordination with competent bodies
- Department for training and risk management



# SERVICE FOR COMBATING IRREGULARITIES AND FRAUD (SCIF)

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■ **The main tasks of the SCIF are:**

- **coordination** of legislative, administrative and operational activities among the bodies in the AFCOS system for the purpose of protecting EU financial interests, and in relation to that, direct cooperation with OLAF,
- **exchange of information** on irregularities and fraud with the bodies within the AFCOS Network and OLAF,
- **providing support** in investigations carried out by OLAF in the territory of the Republic of Croatia,
- **drafting Guidelines in Irregularity Management,**

- **drafting** Irregularity and Fraud Risk Management Methodology,
- **conducting** training for employees of the AFCOS system bodies,
- **receiving, controlling and consolidation of reports** on irregularities and suspicion on fraud in the management and use of EU funds, and submitting them to OLAF via Irregularity Management System (IMS),
- **maintanance** of Irregularity Management System (IMS),
- **monitoring** the return of illegally disbursed EU funds,
- **keeping the register** of established irregularities and suspicion on fraud.

# COOPERATION WITH EUROPEAN ANTI-FRAUD OFFICE (OLAF)

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- EU legal base concerning investigation conducted by the European Anti-Fraud office (OLAF) is **Regulation (EU) 883/2013** in Article 3
- National legal base for cooperation with European Anti-Fraud Office (OLAF) is prescribed in national **Regulation on the institutional framework of the system of combating irregularities and fraud (OJ 144/13, 19/17)** in Article 8 and 9
- **Steps regarding OLAF's investigations in RoC are:**
  1. OLAF sends to SCIF letter about the opening of administrative investigation in specific case and the dates when and where the administrative investigation will be performed;
  2. Immediately, SCIF notifies State Attorney's Office and the Ministry of Interior about OLAF administrative investigation. If needed, we hold a preparatory meeting with competent AFCOS Network bodies;
  3. Prior to the administrative investigation, SCIF also collect, upon OLAF's request, any necessary information if needed from competent authorities (Managing Authority, Ministry of Interior, etc.)
  4. Furthermore, SCIF asks the Ministry of Interior to give support to OLAF (make at OLAF's disposal one or two police officers) during the administrative investigation. Please note that police officers are present during the whole process and perform their duties according to valid regulations of the Republic of Croatia (during the OLAF investigation they have "observer role", but ready to take action if needed, since this is not a criminal investigation and there is no warrant at that time)
  5. Representatives of SCIF are also present during OLAF administrative investigation as observers
  6. After the administrative investigation, if necessary, we have a wrap up meeting between competent authorities (State Attorney's Office, Ministry of Interior, Managing Authority, etc.)

# HOW TO REPORT SUSPICION OF FRAUD/IRREGULARITY TO SCIF/OLAF

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- **All natural or legal persons can inform SCIF about suspicions of irregularities and fraud affecting the EU's financial interests.**

- The information can be send:

- By post: Ministry of Finance, Service for Combating Irregularities and Fraud, Katančićeva, 5 10000, Zagreb, Republic of Croatia;
- By fax: +385 1 385 1 4591 148;
- By e-mail: [nepravilnosti.eu@mfin.hr](mailto:nepravilnosti.eu@mfin.hr)

Information about suspicion on irregularities and fraud can be send anonymously.

- **All natural or legal persons can also inform OLAF about suspicions of irregularities and fraud affecting the EU's financial interests.**

- The information can be send:

- By post: European Commission, European Anti-Fraud Office (OLAF), 1049 Brussels, Belgium
- Online via the Fraud Notification System (anonymous, with secured document transmission)
- Online via webform (non-anonymous, ie. name and email address are required, with no possibility to transmit documents)

[https://ec.europa.eu/anti-fraud/olaf-and-you/report-fraud\\_en](https://ec.europa.eu/anti-fraud/olaf-and-you/report-fraud_en)



# Irregularity and fraud risk management



**MARTINA GUTVALD**

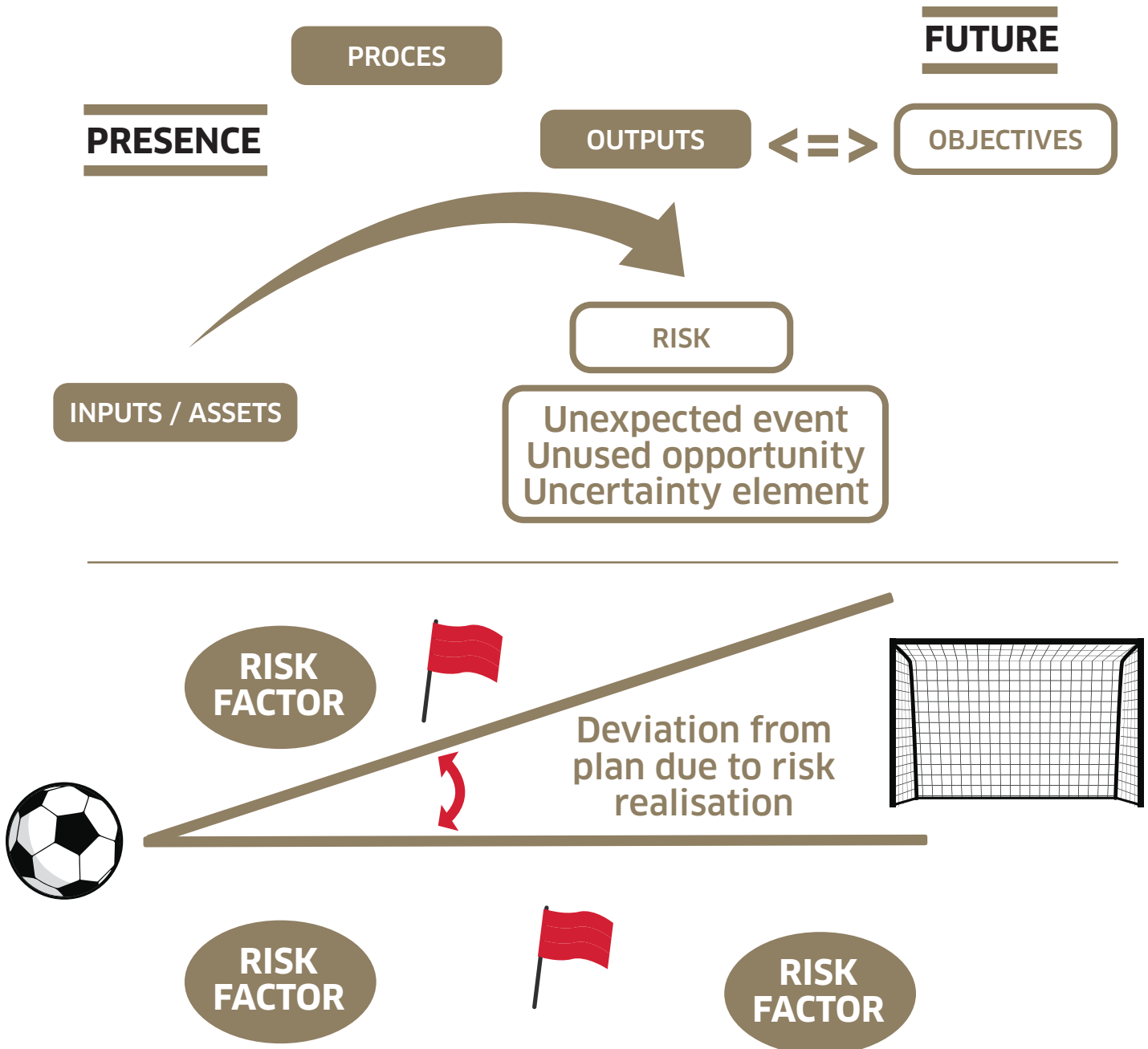
**Croatia**

# CONTENT

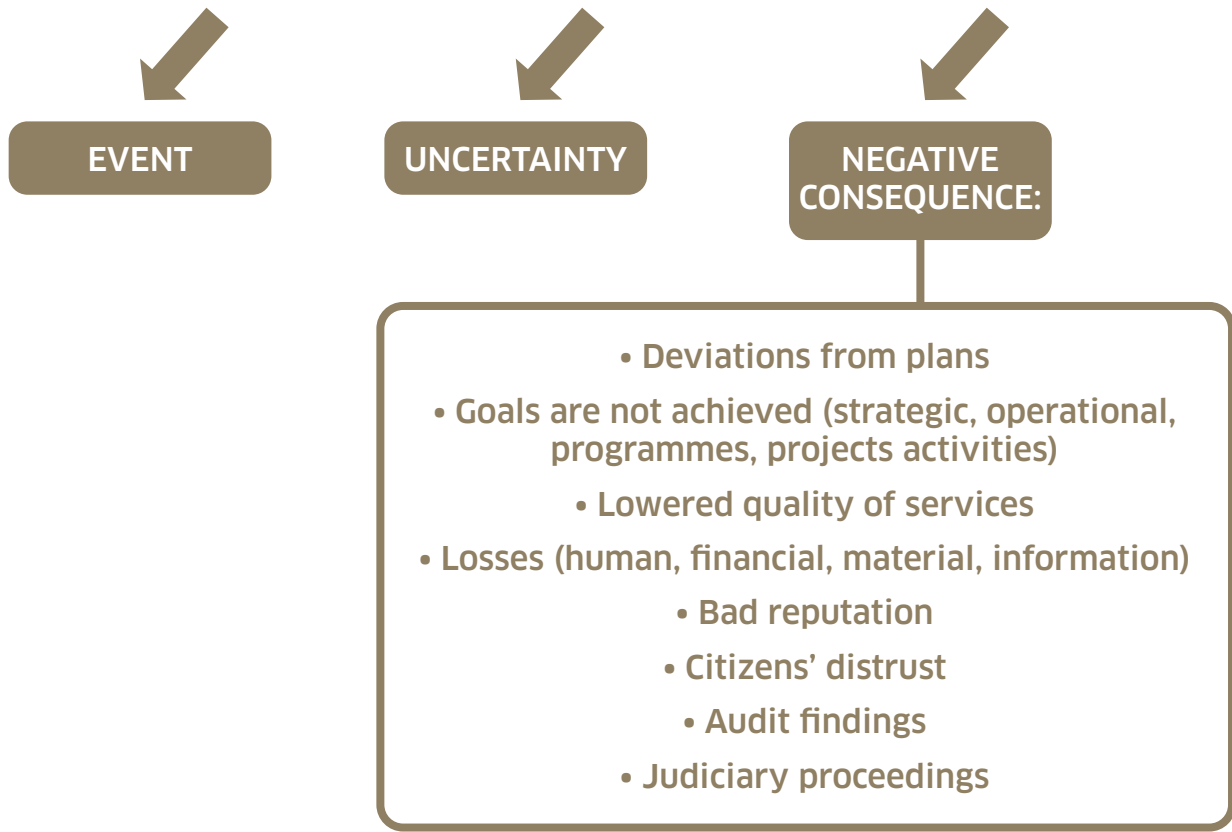
- 1 Understanding the risk concept
- 2 Risk management cycle - theory and practice
- 3 (Fraud) risk management organisational framework
- 4 Benefits of irregularity and fraud risk management - expected vs. real

## UNDERSTANDING THE RISK CONCEPT

Contemplating the future...



- **Risk in general** - any **event** that **could occur** and **adversely impact** the achievement of objectives (political, strategic and operational)



**Lost opportunities** are also considered as risks

- **Types of risks:**

**STRATEGIC**

- achievement of strategic objectives - typology how they can impact it (*political, financial, social, technological, environmental, legislative*)



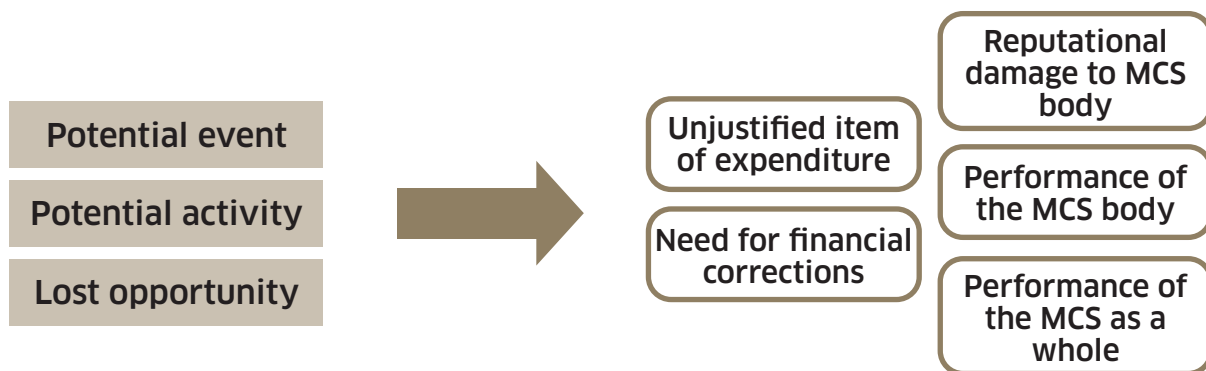
**OPERATIONAL**

- timely implementation of functions, processes and activities, quality level of services delivered to citizens, **financial, failure to comply with legislation, misinterpretation of legislation**



**Irregularity and fraud risks** (operational risks)

- **Risk related to irregularities and fraud** - potential event, activity or lost opportunity which can lead to irregularity



- **Risk factors** - anything that impacts exposure to risks => contribution to uncertainty

### INTERNAL FACTORS

- Organizational structure
- Human resources - competences and workload
- Other resources: information systems
- Management style and communication
- Planning
- Communication
- Organisational culture - ethics, moral, values

### EXTERNAL FACTORS

- Socio-economic situation and system of human values
- Pressure imposed by social partners (trade unions, non-governmental organisations, organisations)
- Political influence
- Level of cooperation with other institutions
- Changes in legislation

- **Risk indicator („red flag“):**

a signal that something is out of the ordinary and that **additional controls** have to be carried out

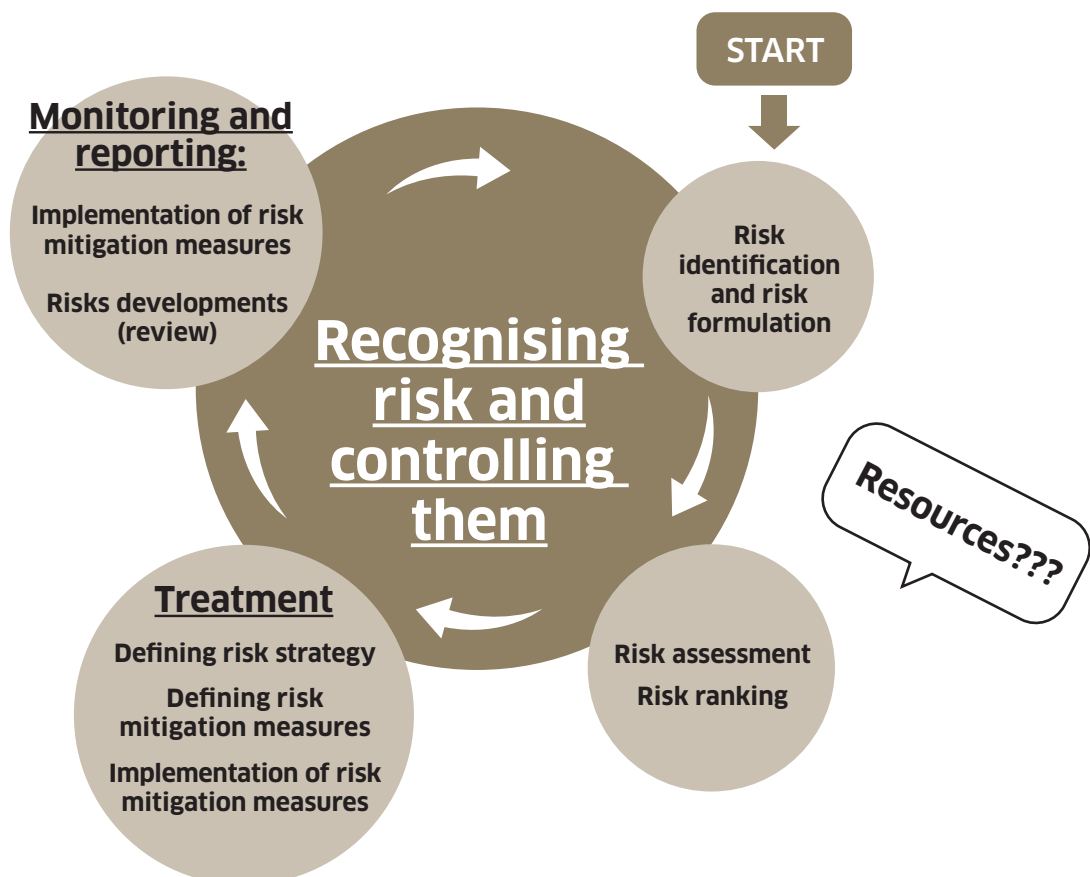
- **Documents issued by European Commission:**

- 'Fraud in Public Procurement - A collection of Red Flags and Best Practices' (2017)
- 'Identifying conflicts of interests in the Agricultural Sector - A practical guide for funds managers' (2015)
- 'Handbook on the role of auditors - A practical guide for managing authorities' (2014)
- 'Detection of forged documents in the field of structural actions - A practical guide for managing authorities' (2013)
- 'Identifying conflicts of interests in public procurement procedures for structural actions - A practical guide for managers' (2013)
- 'Compendium of Anonymised Cases - Structural Actions' (2011)



# RISK MANAGEMENT CYCLE

What to do with risks?



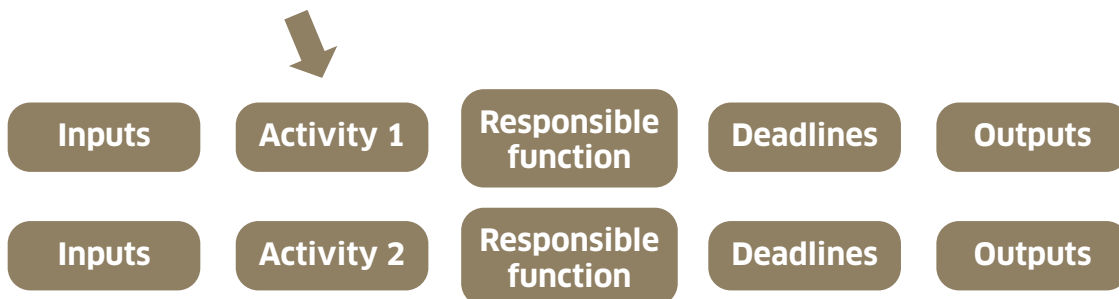
# RISK IDENTIFICATION AND FORMULATION

## Risk identification methods:

- Brainstorming
- Risk alerts filled in by employees
- Analysis of documents - SWOT analysis, EC reports, audit reports
- Root cause analysis - asking the question “Why” enough times until you get past all the symptoms of a problem and down to the root cause

## Preconditions:

- Clearly defined objectives
  - Elaborated business processes
- 



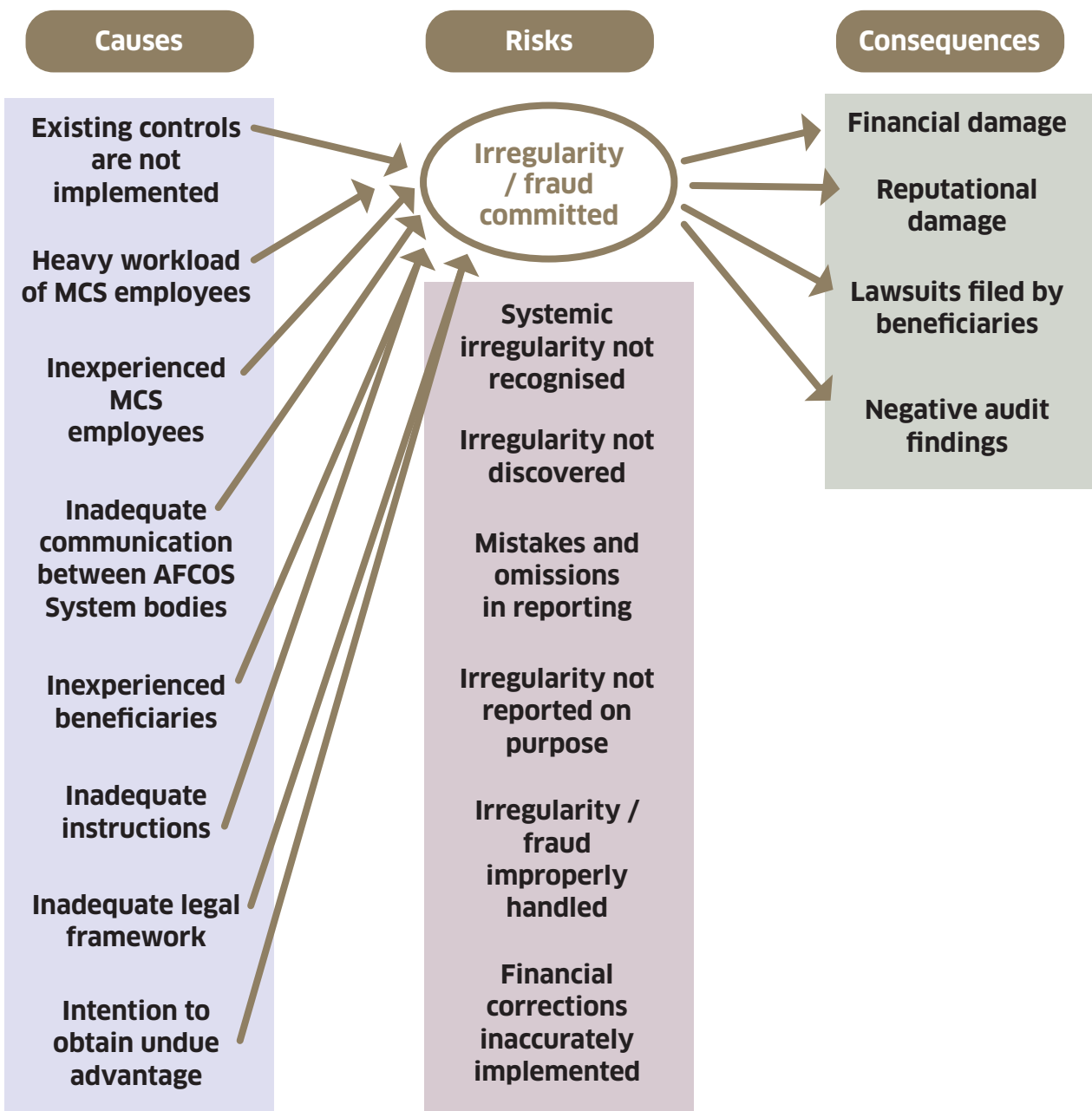
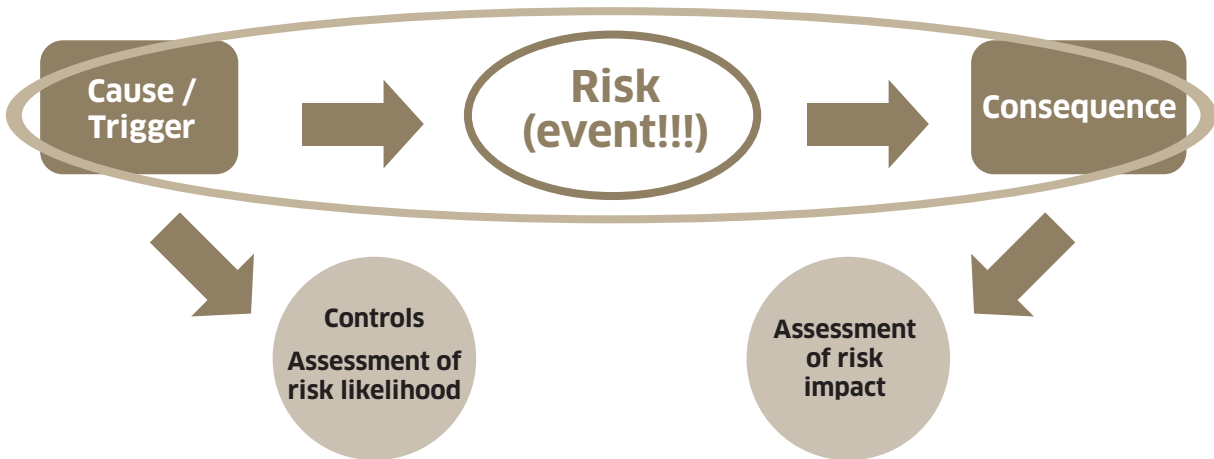
## Identification of business processes most exposed to fraud:

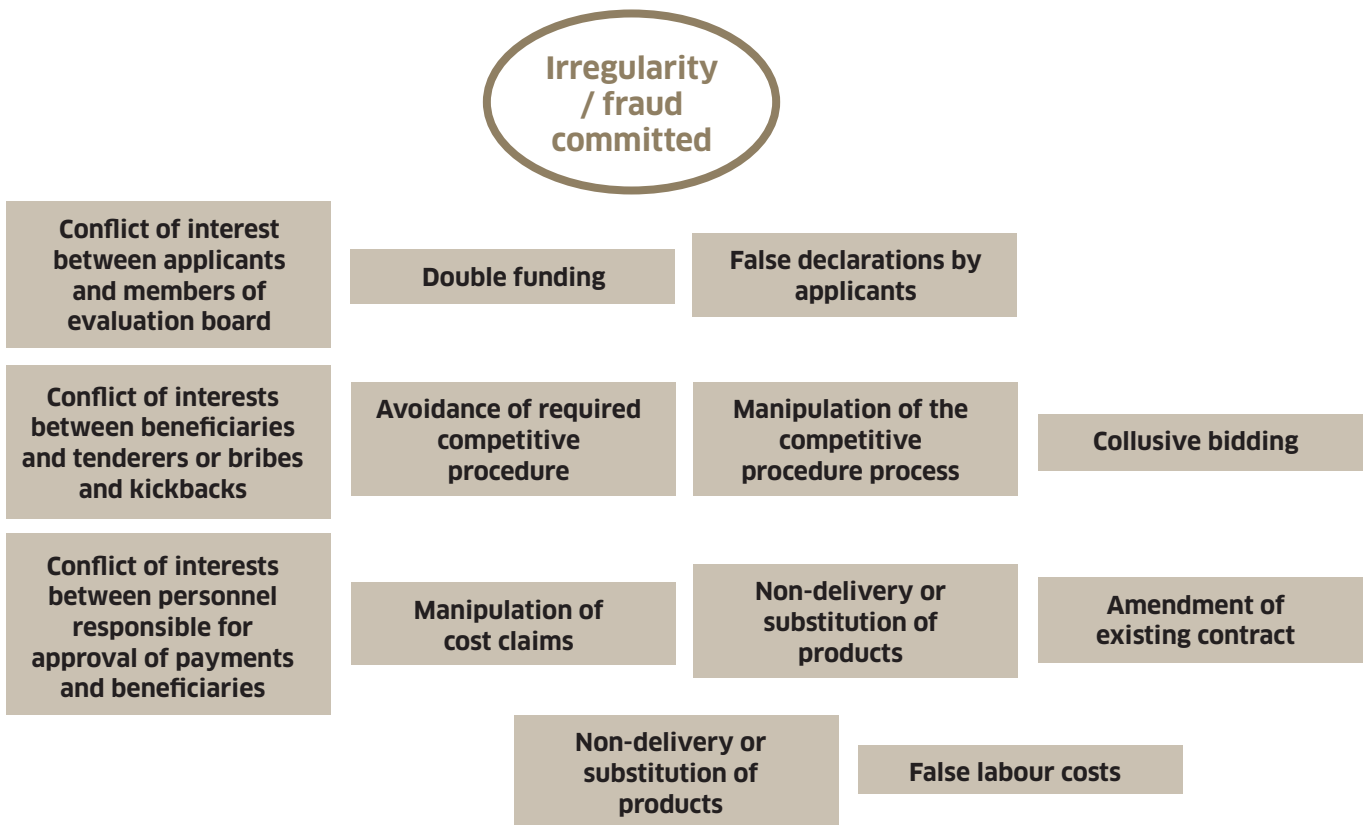
- Business processes where financial decisions are being made
- Business processes where individuals have crucial role in decisionmaking

## The riskiest business processes:

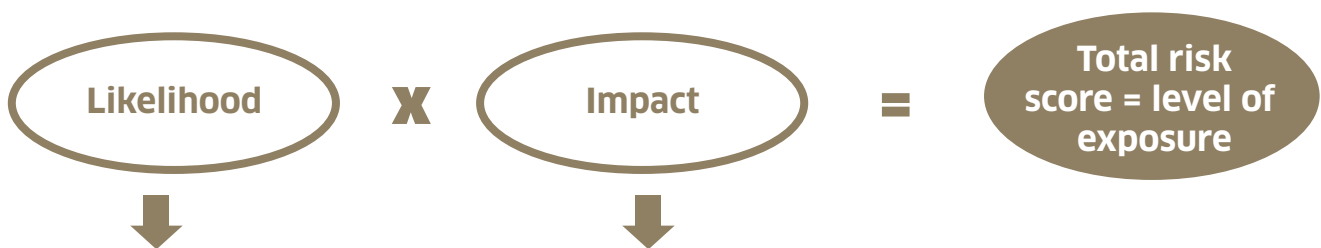
- Selection of applicants
- Implementation of operations (implementation by beneficiaries and controls by management and control system bodies)
- Payment process

## Risk formulation:

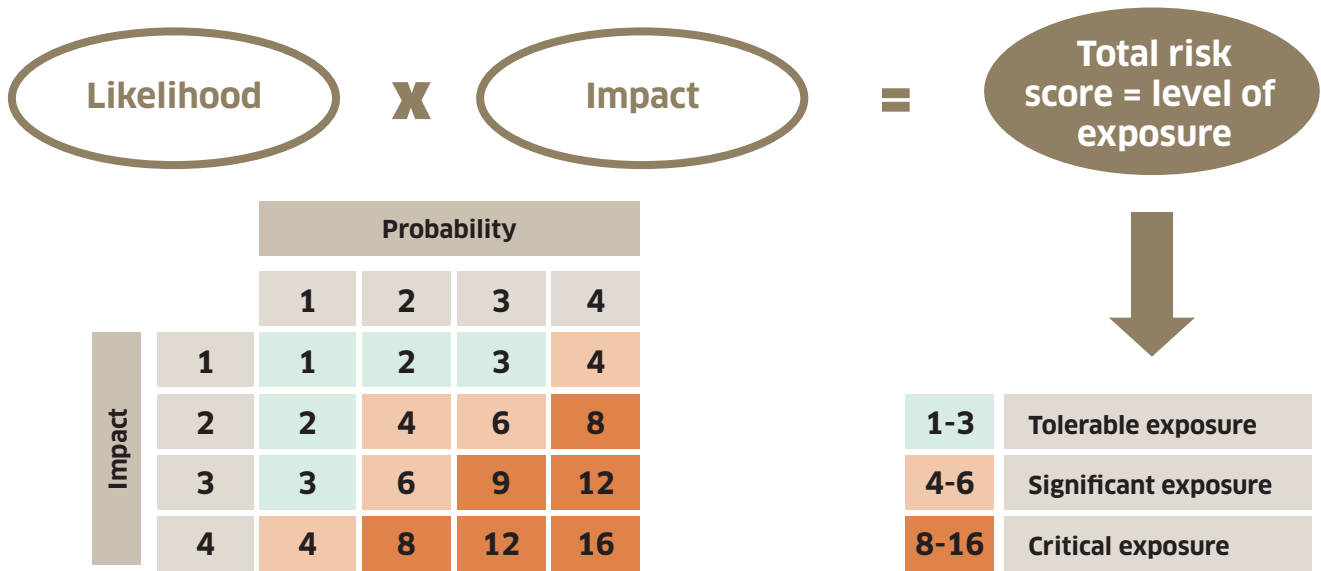




# RISK ASSESSMENT



RISK LIKELIHOOD		RISK IMPACT	INTERPRETATION
1.	Will almost never happen	1. Limited impact	Additional work delaying other processes
2.	Will rarely occur	2. Minor impact	Achievement of operational objective delayed
3.	Will sometimes occur	3. Major impact	Achievement of operational objective endangered or strategic objective delayed
4.	Will often occur	4. Extreme impact	Strategic objective endangered Formal enquiry from Parliament, negative press



## Fraud risk assessment tool:

■ **Guidance Note on Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures, June 2014**

■ **Concept of the tool:**

- catalogue of fraud risks
- catalogue of existing controls
- tool for assessment of existing control effectiveness (i.e. net risk assessment)
- action plan

## Main steps:

1. Quantification of the likelihood and impact of the specific fraud risk (GROSS risk - excluded the impact of any existing or planned control)
2. Assessment of the effectiveness of the **current** control put in place in order to mitigate the gross risk
3. Assessment of the risk after taking into account the effect of current controls (NET / residual risk)
4. Planning additional controls for significant and critical risks (*controls, responsible individuals, implementation deadlines*)
5. Assessment of the effect of the **planned additional** controls on the NET (residual) risk
6. Defining the target risk, i.e. the risk level which the MA considers tolerable

## Tool for monitoring significant and critical risks:

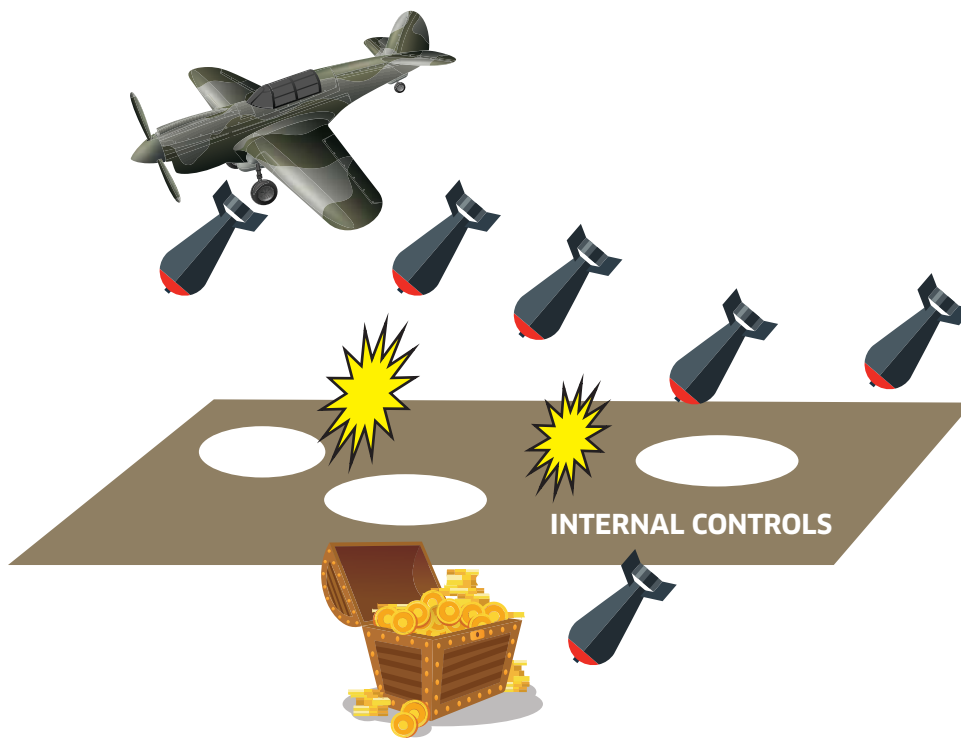
### Risk register

No.	Risk label	Risk description	Risk probability (Net)	Risk effect (Net)	Total risk score (net)	Planned mitigation measure (control)	Planned mitigation measure (control)	Responsible unit and function	Deadline	Implementation progress (Refer to progress indicator)	Risk status on [date] (active / closed)
1.					0						
2.					0						
3.					0						
4.					0						
5.					0						
6.					0						
7.					0						
8.					0						
9.					0						
10.					0						

## Practice:

- Difficulties in understanding the concept
- Difficulties in understanding the „existing controls” (= mitigating controls recommended by the EC - too general => interpreted in different ways by different bodies)
- No column is envisaged for explanation of current controls => different solutions devised by different bodies
- Difficulties in assessment of the effectiveness of current controls
- Risk assessment is a subjective category => different attitudes by different bodies: strict vs. mild, a question of sincerity (*Do not shoot the messenger!*)

## Formulation of additional risk mitigation measures (controls):



## Tool: Action plan

No.	Risk description	Risk score (priority)	Risk mitigation measure	Performance indicator	Responsible unit and function	Deadline	Implementation progress (Refer to progress indicator)	Risk status on [date] (active / closed)
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								

# TREATMENT

## Formulation of additional risk mitigation measures (controls):

### ■ Mitigation measures criteria:

SMART

- **Specific** - not too general
- **Measurable** - it must be possible to monitor implementation of those measures by means of progress indicators
- **Achievable** - not too ambitious
- **Relevant and Realistic** - it must be obvious that measures stem directly from risk assessment results and benefits of mitigation measures should exceed their costs
- **Time bound**

Quantitative or qualitative indicators

## Practice:

### ■ Defined measures are not specific enough

#### • **RISK:**

*'Inadequate cooperation with the Managing Authority'*

*Is it a dynamic category (event/activity) or a static one (state)?*

*Why is the cooperation considered inadequate? (legal framework, too heavy workload or a human factor)*

*How can it impact irregularity management? (difficulties in decisionmaking?)*

**Mitigation measure:** *'More frequent communication with the Managing Authority set up'*

*How? (meetings, written communication) How often? (regularly or ad hoc) Who is initiator?*

### ■ Defined deadlines are too general - **'Continuously'**

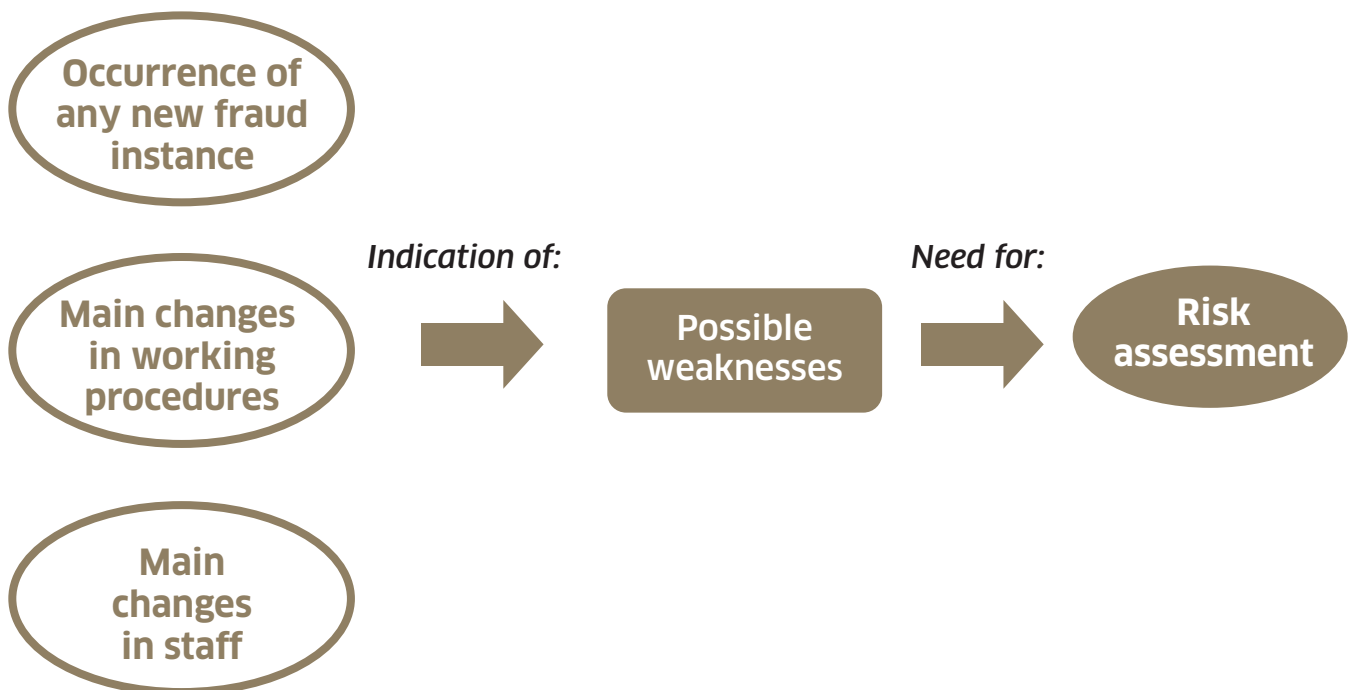
# MONITORING AND REPORTING

## Monitoring and reporting tools:

- Updating of **Risk registers** (at least once a year and following changes in control environment, development of identified risks and occurrence of new risks)
- Updating of **Action plans** (at least once a year)
- **Meetings** of Risk Managers organised by Risk Management Coordinator at the level of the Managing Authority once a year
- **Meeting** of Fraud risk assessment group organised by Risk Management Coordinator at the level of the Managing Authority at least twice a year

## Dynamics of risk assessment:

- In accordance with procedures, risk assessment exercise should be conducted **once a year or once in two years** (in case the level of risks identified is very low and no instances of fraud were reported during the preceding year)





## An overview of tools used in risk management:

Activity	Tool related to the activity	Result of the activity	Tool related to the result of activity
Risk identification		Relevant risks identified	Self-assessment tool
Risk assessment	Selfassessment tool	Significant and critical risks identified	Risk register
Defining risk mitigation measures and monitoring	Selfassessment tool	Risk mitigation measures and performance indicators identified	Action plan

# IRREGULARITY AND FRAUD RISK MANAGEMENT ORGANISATIONAL FRAMEWORK

## Actors in risk assessment:

### ■ Fraud risk assessment:

- Managing Authority
- Intermediate Bodies (*level 1 and level 2*)
- Certifying Authority

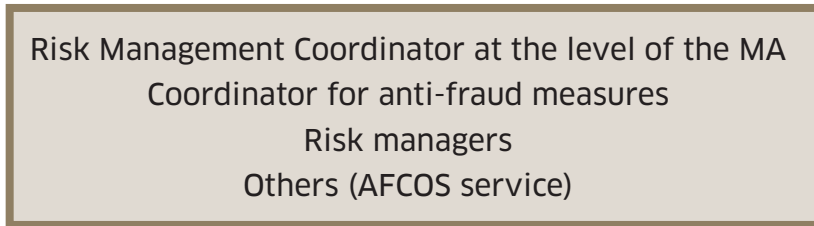
**Irregularity Reporting System bodies**

### ■ Assessment of risks threatening AFCOS system objectives:

- Irregularity Reporting System bodies - Irregularity Managers
- Service for Combating Irregularities and Fraud
- AFCOS Network bodies - representatives appointed by the Government

## Operational Programme level – Managing Authority (MA)

### FRAUD RISK ASSESSMENT GROUP



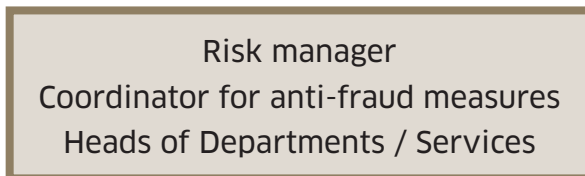
Senior  
management



AFCOS  
Service

## Priority level – Management and control system (MCS) bodies

### RISK MANAGEMENT GROUP



*Approval*



Senior  
management



Employees



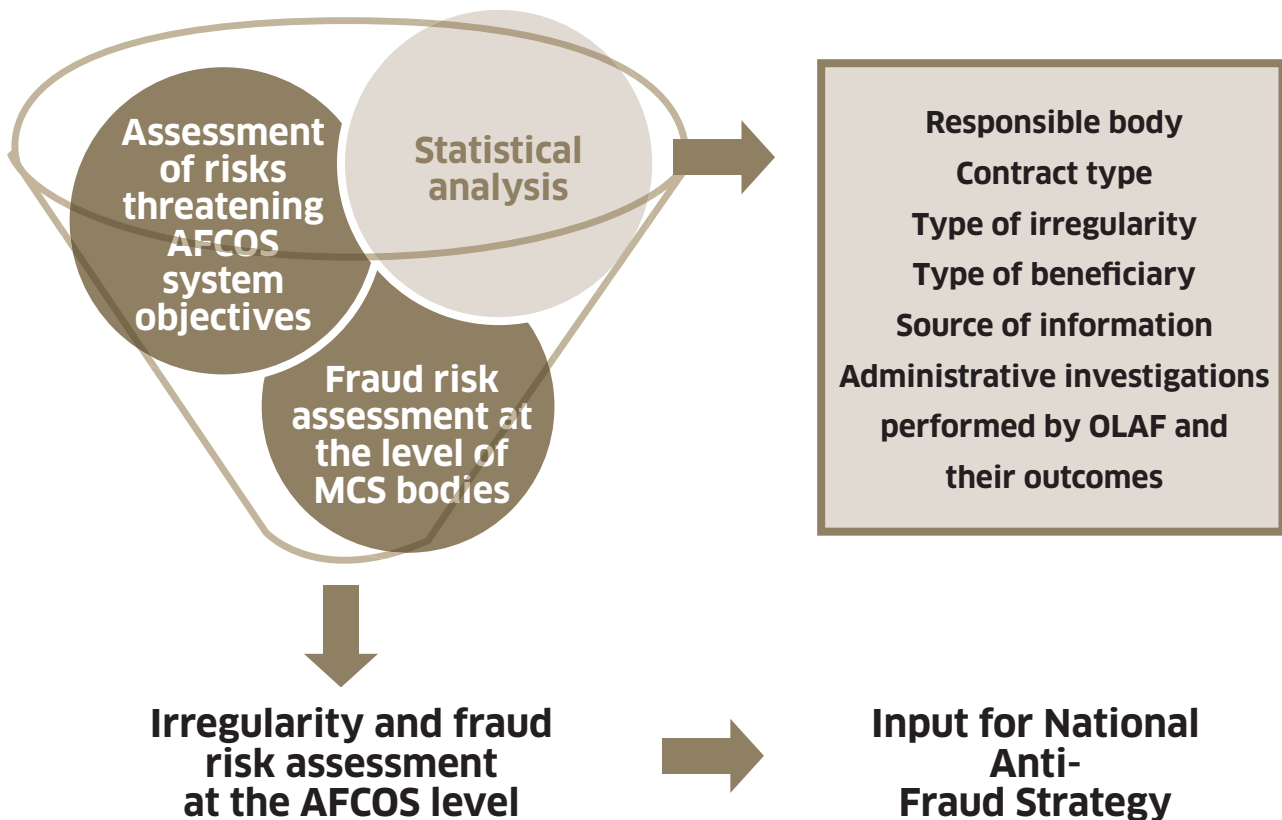
# BENEFITS OF IRREGULARITY AND FRAUD RISK MANAGEMENT

## Expected benefits:

- Set-up and maintenance of effective and efficient **AFCOS System**
- Set-up of effective and efficient **management and control systems**
- Happy auditors

## Real benefits?

# Irregularity and Fraud Risk Management Methodology:



## Outcomes of analysis of risk assessment results

### European Regional Development Fund and Cohesion Fund (2014-2020)

#### I Results of the statistical analysis:

- The most common type of irregularity:

**1. Public procurement rules infringement (93%)**

**2. Other ineligible costs**

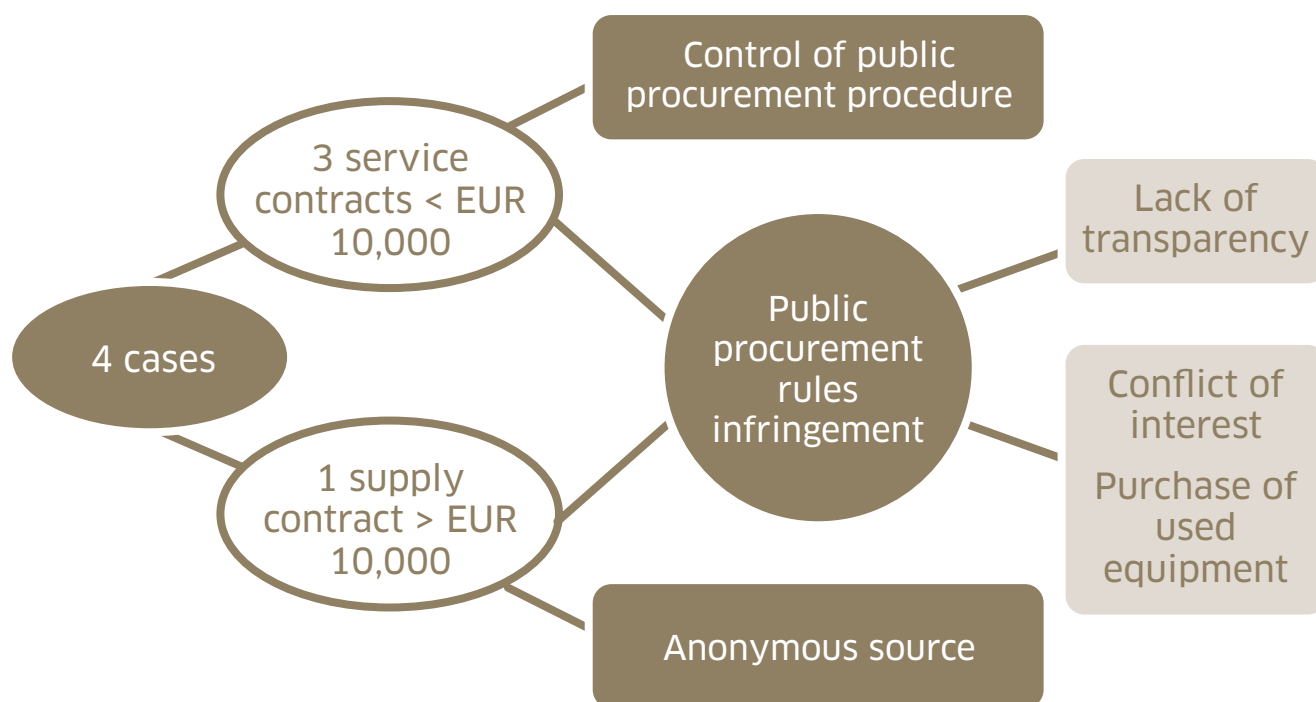
=> need for the improvement of reporting (elaboration of typology)!

- Beneficiaries:

**1. Education institutions**

**2. Limited liability companies**

## Suspicious of fraud (up to III Q 2017):



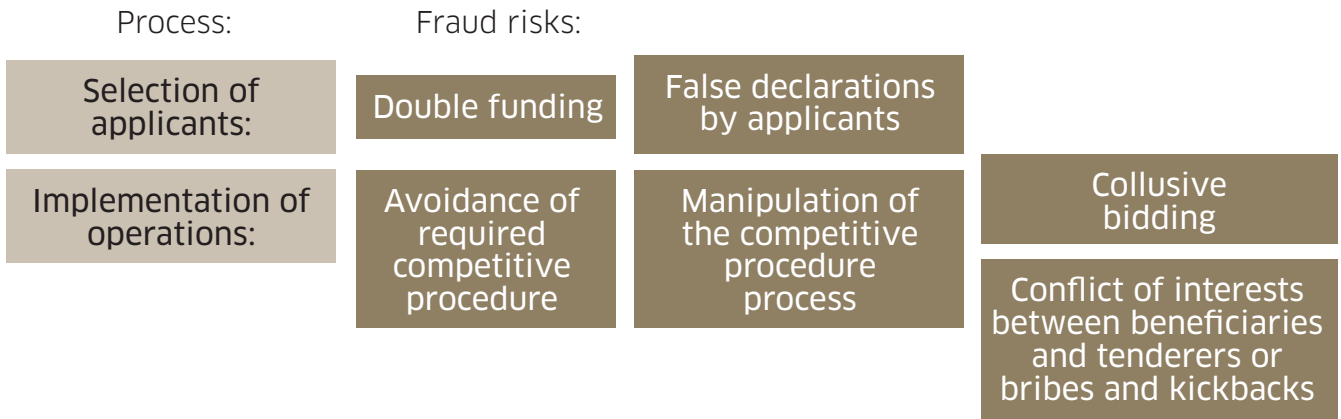
## Administrative investigations of European Anti-Fraud Office (OLAF) at the territory of the Republic of Croatia 2008-2018

Programme / Fund	No of administrative investigations
SAPARD	3
IPARD	1
IPA I	1
Operational Programme Environment 2007-2013	2
Operational Programme Competitiveness and Cohesion 2014 - 2020	1
<b>TOTAL</b>	<b>8</b>

A meeting between OLAF and State Attorney's Office - Operational Programme Transport 2007-2013

## II Results of the statistical analysis:

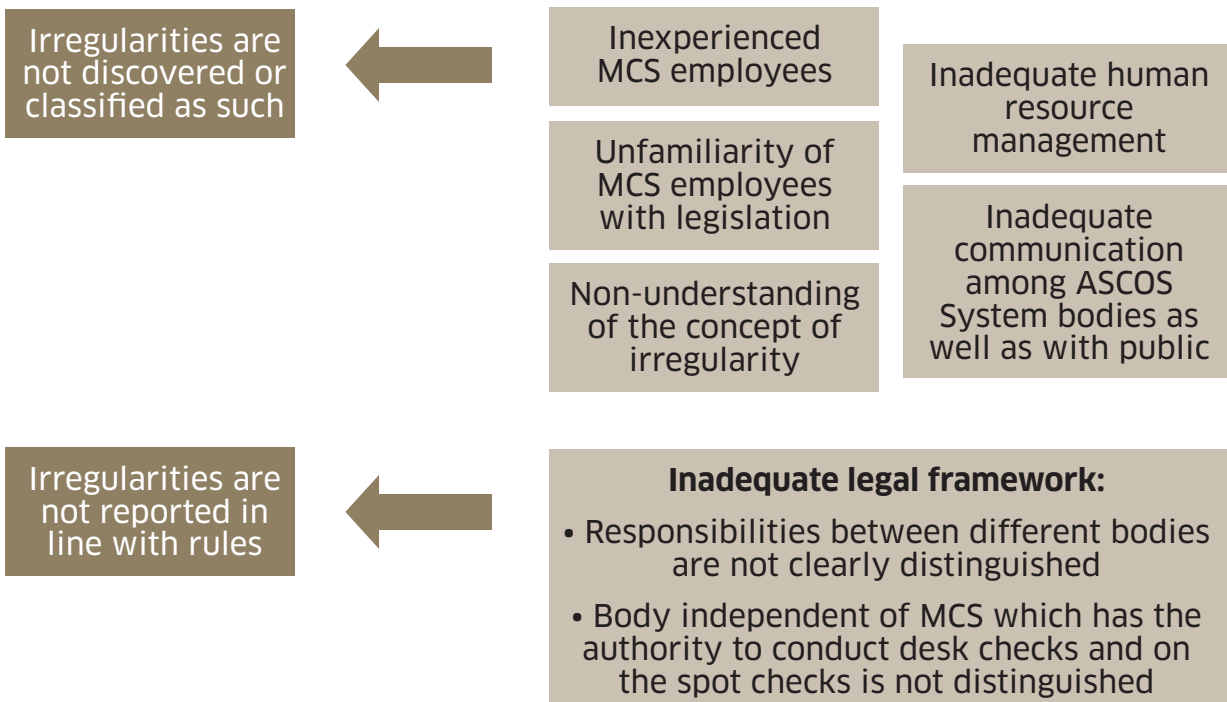
### ■ Level 2 intermediate bodies:



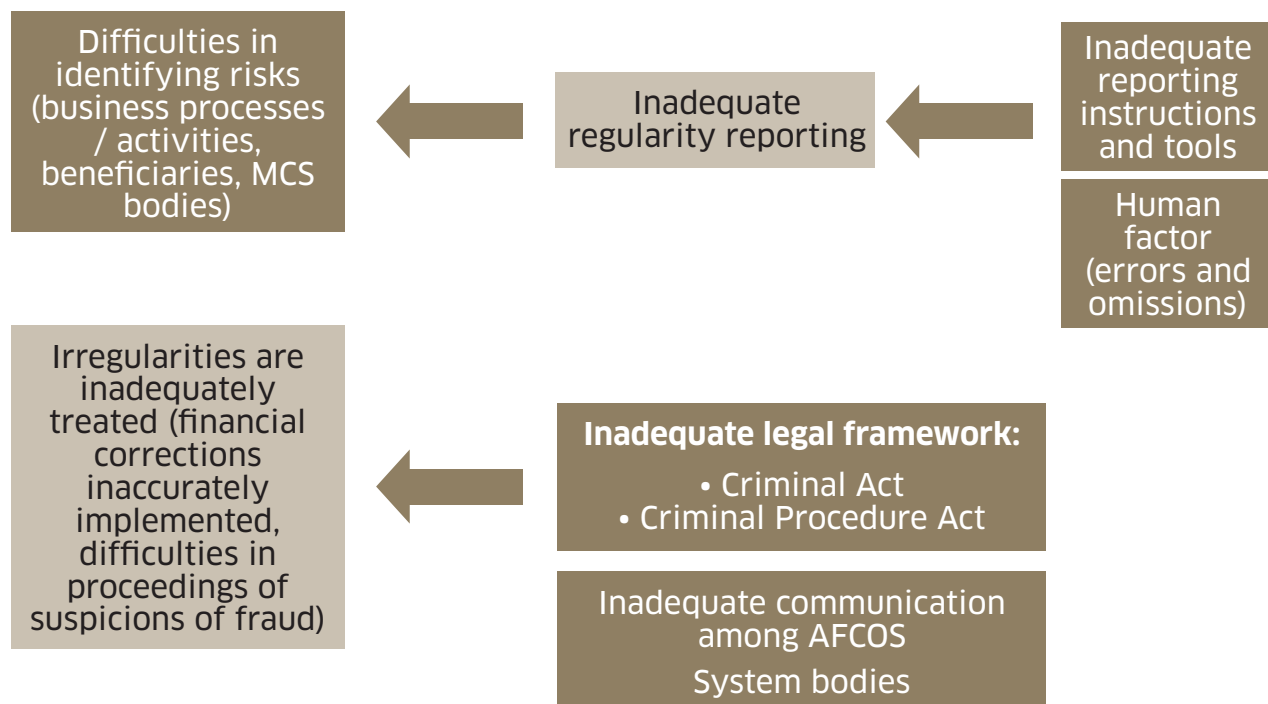
### ■ Level 1 intermediate bodies:



## IV Results of assessment of risks threatening AFCOS system objectives:



## Results of assessment of risks threatening AFCOS system objectives:



# TREATMENT

### ■ Irregularity and fraud risk mitigation measures in the Republic of Croatia:

- Conducting training need analysis related to irregularity management, drafting training catalogue for a medium-term period and organizing trainings for all AFCOS-bodies in accordance with the catalogue
- Regular training for employees of Managing Authority, Intermediate Bodies and Certifying Authority
- Consulting publications issued by EC (OLAF) and European Court of Auditors
- Training of beneficiaries (including informing them on measures aimed at prevention, detection and handling identified irregularities and fraud)
- Consulting public procurement portals and use of IT tools in case of suspicion of false applications, double funding, conflict of interest etc.
- Update of management and control system bodies' procedures and checklists
- Update of irregularity management procedures
- Improvement of irregularity reporting tools
- Exchange of experience among the national authorities and between the national authorities and European partners

- Awareness raising – participation in activities promoting the EU, issuing printed materials related to combating irregularities and fraud, updating of official WEB-page to be more user friendly and informing
- Promoting ethics and integrity – regular trainings, periodical checks of ethic awareness of people working on project implementation as well as their level of knowledge with regard to irregularity management by means of on-line questionnaire
- Strengthening legal environment (new Criminal Code, new Criminal Procedure Act, informatisation in all judicial bodies, etc.)
- Signing protocols on cooperation between AFCOS System bodies

## **Real benefits in your opinion?**

**Do they correspond to expected benefits?**

**... or are they reduced to fulfilment of an obligation / complying with a norm?**



# Fraud risks, red flags and preventive measures, case study 1



## **CODRUT-MARIAN SURCELEA**

**Romania**



# OBJECT OF INVESTIGATION

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**The investigation** comprised a number of 17 (seventeen) projects financed within Sectoral Operational Programme Development of Human Resources 2007 - 2013.

**The project's objective** consisted in the integration on the labour market of inactive persons, of the unemployed and the persons seeking for a workplace, by promoting activemeasures in the field of regional employment;

**The target group** for each project was made up of 25 persons seeking for a workplace, 25 inactive persons, 100 unemployed, 25 long-term unemployed, 25 unemployed aged over 45 and a number of 100 young unemployed.

# NOTIFICATION

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## Source of notification:

In November 2011 a Regional Interim Body for Sectoral Operational Programme Development of Human Resources (RIB SOP DHR) formulated a notification referring to the existence of **suspicious of fraud**, within **3 (three) financing applications** submitted by beneficiary SC X SRL (with I.M.B. as its legal representative) in partnership with SC Y SRL (with E.B. as its legal representative).

**The suspicions of fraud** referred to certain **declarations** signed by the beneficiary regarding the existence of administrative resources.

For instance, the beneficiary submitted to its project file an official declaration providing its company held a number of 50 employees, while its partner-2 employees. It is essential to mention that the number of employees was to be considered in the evaluation of financing application so as to get an optimal score.

The **red flag** indicated a contradiction between the statement regarding the number of employees and the financial balance in which it was mentioned a smaller number of employees.

# PRELIMINARY CONNECTIONS

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More than that, in the letter exchange RIB SOP DHR notified that the partner company had transferred 99% from the share capital to a company registered in Seychelles Republic. In this respect, it was necessary to establish if the sole associate of beneficiary SC X SRL was actually the sole associate of SC Y SRL as well (such a situation was forbidden by Law no. 31/1990 regarding the companies).

This situation represented a **risk of fraud indicator** for the Managing Authority.

Due to the fact that the applicant did not answer to the clarifications, the executive director of RIB SOP DHR took the decision to stop the contracting process.

The value of the non-reimbursable financing requested for each project: approximately 2,000,000 RON (500,000 EUR).

# THE CONTROL ACTIVITY

## – First stage

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After receiving the notification from RIB SOB DHR, DLAF team analysed the documents submitted by the beneficiaries in order to obtain EU funds. So, we obtained data from the National Trade Register Office in order to establish the legality of the existence of the companies and their capacity of carrying out professional activities. We also obtained data from the Territorial Labour Inspectorate for establishing the accurate number of employees held by the beneficiary and its the partner.

We verified the authenticity of the fiscal certificates regarding the payment of taxes to the state budget and to the local budget, by which it was certified that the beneficiaries did not have debts to the state budget, considering the overdue debts exceeded 1/12 from the total of obligations owed in the last 12 months. This condition was preliminary in the case of the contracting procedure. We also verified the authenticity of the statements of conformity and eligibility submitted by the beneficiary by its legal representative.

# FINDINGS

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**Following the verifications carried out by DLAF control team, the following were ascertained:**

We couldn't get enough proofs to establish the existence of a sole associate in the case of the beneficiary and of the partner company. In exchange, there was ascertained that the legal representative of the applicant (namely I.M.B.) signed several false statements regarding the existence of administrative resources, being supported also by E.B. – the partner representative (empowered by I.M.B. to sign documents on behalf of the partner company), who signed the same type of statements providing the number of employees mentioned in the financing application in case of the partner company. In support to their statements, the two presented official certificates which seemed to be issued by national authorities. In fact, those authorities never issued those documents and the documents content was not true. By our national data basis, the two companies had no employees at the time of presenting the finance request.

I.M.B. and E. B. had the same modus operandi regarding the statements of eligibility and conformity implying the existence of administrative resources and submission of fiscal certificates. As for the fiscal certificates, it is critical to mention that even these official documents were falsified by counterfeiting the writing, in fact the two companies having debts to the local and the state budget.

This was **an attempt of fraud** punished by the Romanian law.

# THE CONTROL ACTIVITY

## - Second stage

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Due to the fact that the Managing Authority, at that time, couldn't access data basis managed by national authorities such as ANAF, ITM, ONRC, it was a real red flag for us because we thought that the beneficiary could have obtained European money for other projects as well.

Having regard to the aspects presented, DLAF extended the verifications, asking for the central Managing Authority to provide with all the projects in which those two companies were involved.

It was ascertained that beneficiary SC X SRL, in the same partnership, submitted another 14 financing applications, which resulted in EU - financed contracts. The total value requested for financing the 14 project was approximately EUR 7,000,000.

So, we started to check all the documents that the beneficiary provided to another five regional Managing Authorities in order to obtain the money or to justify the way the prefinancing funds were spent.

Unfortunately, we saw that the two companies had the same modus operandi as in the case presented above, by using false and forged documents as fiscal certificates or statements.

## OTHER FINDINGS

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More than that, it was ascertained that, after signing the financing contracts on the basis of the false documents presented above, **SC X SRL obtained for the 14 projects a pre-financing in total amount of EUR 850,000.**

As a **preventive measure**, DLAF informed the Managing Authority which decided to cancel all financing contracts concluded with SC X SRL.

The pre-financing payments were spent entirely in a very short period of time (between one month and 6 months/project), so they avoid on-the-spot checks that the Managing Authority was about to carry out.

In the same purpose, they also moved the premises where the projects would have been implemented.

In our checks, it was also revealed that within every project there were carried out only general activities such as: the organization of round tables for discussing the specific aspects occurred in the implementation of the activities proposed, drafting the methodologies for the selection of the beneficiaries, designing the site project, conference for the launching of the project, registration of the beneficiaries considered target group or procurements of basic goods and services.

In order to justify the manner in which the pre-financing payment was spent, the legal representative I.M.B. presented to the interim bodies **a series of false or falsified documents**, respectively:

- reimbursement requests for the expenses, bearing the stamp and falsified signature of the accountant expert;
- contracts concluded with various companies whose representatives were not aware of such documents;
- invoices which are supposed to have been issued by suppliers or service providers that were paid in cash;
- acceptance notes regarding the receipt of goods;
- files from the cash registers, by which payments were justified in cash;
- payrolls which seemed signed by some employees within the project;
- lists with the projects implementation locations, presented to the representatives of the Managing authority in order to make difficult the carrying out of on-the-spot controls;
- technical-financial reports regarding the fulfillment of activities.

In fact, the money, in small amounts, was stolen by I.M.B. in cash, involving the cashiers one way or another.

The documents mentioned above were falsified by the legal representative involving the complicity of the project managers and of the accountant. It is important to know that the accountant detained documents and legal stamps of other companies she was related to, instruments that were used to write and sign contracts, invoices or to confirm some services. In fact, none of those companies signed such documents or did some work. The beneficiary and its partner used to pay small amounts in cash and to prove the other payments they presented as account extracts, which eventually proved to be falsified as well.

Following the verifications, there was ascertained that **the legal representative of I.M.B. changed the destination of funds obtained as pre-financing**, namely **he made payments for goods and services which were not related to the project implementation such as leasing of goods**.

The value of these funds amounted to EUR 215,000.

**The same thing did also the accomplice, namely A.T., who transferred payments from the pre-financing account** of the partner in the total amount of EUR 110,000.

## RESULT

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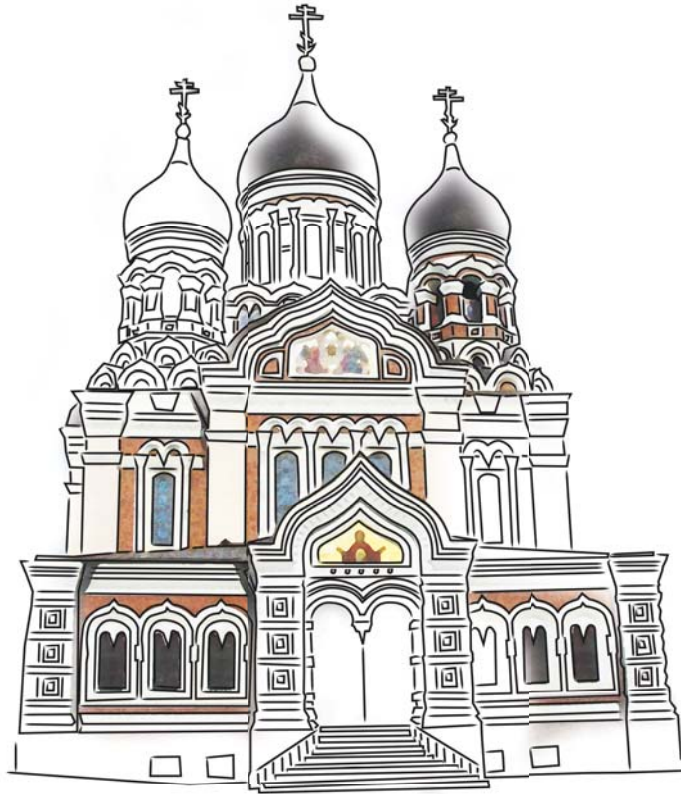
When the verifications were finalized, DLAF transmitted the result of control activity to the National Anticorruption Directorate to carry out investigations relating to the committing of **the offences of**:

- **presentation of false or falsified documents which had as purpose the illegal obtainment of funds from the general budget of EU, with very serious consequences;**

- **changing the destination of the EU funds without the observance of the legal provisions;**
- **false statements;**
- **forgery in deeds under private signature;**
- **complicity and instigation to committing the offences mentioned before.**

On July 2012 **NAD disposed the sending to trial of the defendant I.M.B., in state of freedom, for frauds committed in the case of 3 projects financed by SOPDHR 2007 - 2013.** Moreover, since September 2012, at the proposal of NAD, the defendant I.M.B. **has been in preventive detention** and by the beginning of October 2012, **he was sent to trial for frauds committed in other 14 projects.**

**In year 2013,** for the offences mentioned above, in case of all 17 projects, the defendant **I.M.B. was sentenced by a first court to a punishment with imprisonment of 11 years.** In 2015 I.M.B. was sentenced to a punishment with imprisonment of 8 years. He admitted he committed soly all the crimes.



# Frauds in EU grants: Estonian case.

Cooperation between law  
enforcement and implementing  
bodies and authorities



**MARIA VASSILJEV**

**Estonia**

# TOPICS

- **Risks in the public sector**
- **Risks in the private sector**
- **Cases**
- **Investigation**

## RISKS IN THE PUBLIC SECTOR

- **Corruption (bribery, the conflict of interests)**
- **Violation of requirements in public procurement**
- **Risks in the public sector – case 1**

The procurement of boats at Environmental Inspectorate

- An official had written technical specifications that favored boats which were supplied by his company
- The official had already ordered ships, so delivery time was short
- The official used his friend's company to hide his economic interest
- The company's tender was the best because no one else could make a tender
- Police detected the corrupt activity and the contract was not signed
- The official was convicted of violation of procedural restrictions

## RISKS IN THE PRIVATE SECTOR

- **Beneficiaries show costs of projects as higher to cover self-financing**
- **EU grants are not used for intended purposes – the expenses are not related to the project or eligible for assistance**
- **The expenses are not within the period of eligibility**
- **An applicant is „fixed“ to be eligible for requirements**

# INVESTIGATION

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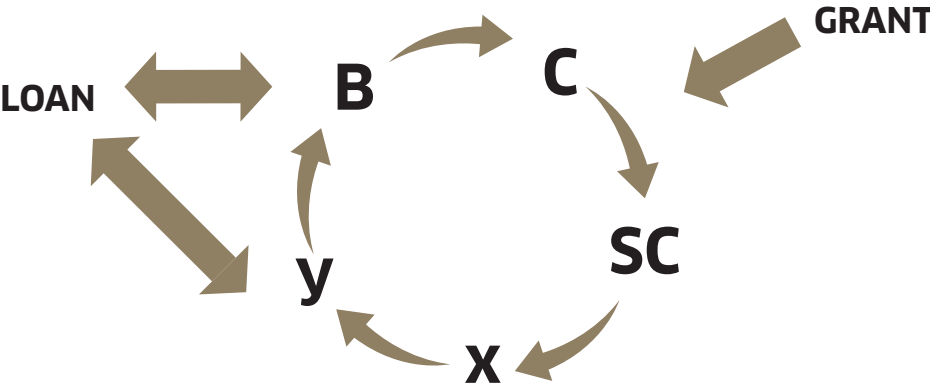
- Monitoring of bank accounts to analyze the movement of money



## Case 2

# INVESTIGATION II

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# INVESTIGATION III

---

- Identifying the actual cost of the project





# INVESTIGATION

## - case 3

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- 25 000 € vs. 240 000 €

# INVESTIGATION V

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- The taking of evidence by surveillance activities
- Digital forensic operations

# INVESTIGATION

## - cooperation

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- When police gets initial information - the sooner the better
- The importance of co-operation with intermediate body to transmit information and plan collection of evidence
- Trainings
- Analysis of the data to identify beneficiaries relationships with contractors
- Estonian Central Criminal Police 18.04.2016 memorandum

# DAY 02

08 May 2018

## DETECTION

Administrative controls  
on the spot controls



On the spot controls,  
types of controls, useful tools



**ANDRIJANA ANIĆ-ANTIĆ**

Croatia

# AGENDA

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1. **The role of CFCA and delegated functions 14-20**
2. **Administrative verification**
3. **On the spot verifications**
4. **Challenges and useful tools**
5. **Most common (suspected) irregularities**

## CFCA (I)

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- established by the Regulation on the Establishment of the Central Finance and Contracting Agency (OG No. 90/2007; OG No. 114/2007; OG No. 29/2012; OG No. 56/2013; OG No. 24/2016).
- in line with Article 2 of the Regulation, activity of the Agency consists of **financing, procurement, payments and monitoring** of the implementation of programmes and projects of the European Union, in which the management and responsibility have been transferred to the Republic of Croatia.

## CFCA (II)

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IPA Component I pre-accession (Transition Assistance and Institution Building) and Transition Facility

- CFCA performs the role of an Implementing Agency.
- tendering and contracting for this component has been completed,
- CFCA currently in charge of managing contracts, i.e. all verification and reporting requirements, including irregularity reporting

## CFCA (III)

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Financial period **2007 - 2013, Regional Competitiveness OP** Until 30 June 2013: IPA Component III - Regional development

- In the management and control system, the CFCA performed the role of an Implementing Body (Regional Competitiveness OP, Transport OP (Priority Axis 2 and 3) and Environment OP (Priority Axis 3)

As of 1 July 2013 (the date of the accession to the EU): SF (ERDF)

- In the management and control system, CFCA performed the role of Intermediate Body Level 2 for Structural funds

# CFCA (IV)

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Financial period **2014 - 2020 Competitiveness and Cohesion OP (OPCC)**

- In the management and control system, the CFCA acts as one of the Intermediate Bodies level 2.
- The managing authority for the OPCC is the Ministry of Regional Development and EU Funds (MRDEUF)

# DELEGATED FUNCTIONS 14-20 (I)

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Relevant legal framework:

- Regulation (EU) No **1303/2013** of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, (...)
- national Regulation on the bodies in management and control systems concerning the use of European Social Fund, European Regional Development Fund and Cohesion Fund, (...) (OG. 107/14, 23/15, 129/15, 15/17, 18/17 - correction)

# DELEGATED FUNCTIONS 14-20 (II)

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Article 123, 1303/2013

- 1.** Each Member State shall designate, for each operational programme, a national, regional or local public authority or body or a private body as managing authority. The same managing authority may be designated for more than one operational programme.

Croatia: MA for OPCC is Ministry of regional Development and EU Funds

# DELEGATED FUNCTIONS 14-20 (III)

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Article 123, 1303/2013

- 6.** The Member State may designate one or more intermediate bodies to carry out certain tasks of the managing or the certifying authority under the responsibility of that authority. (...)

Croatia: IBs Level 1 (IB1) for OPCC (Line Ministries – science and education; economy, entrepreneurship and crafts; environment and energy; construction and physical planning; sea, transport and infrastructure)

IBs level 2 (IB2) for OPCC (CFCA; Agency for SMEs, Innovation and Investments; Environmental Protection and Energy Efficiency Fund, Croatian Waters)

## DELEGATED FUNCTIONS 14-20 (IV)

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As regards the financial management and control, IB2:

- verifies that the co-financed products and services have been delivered and that expenditure declared by the beneficiaries has been paid and that it complies with applicable law, the operational programme and the conditions for support of the operation.

## DELEGATED FUNCTIONS 14-20 (V)

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- The verifications include the following procedures:
  - a) **administrative verifications** in respect of each application for reimbursement by beneficiaries
  - b) **on-the-spot verifications** of operations

On-the-spot verifications of individual operations pursuant to point (b) may be carried out on a sample basis.

## DELEGATED FUNCTIONS 14-20 (VI)

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- ensures that the data on each operation necessary for monitoring, evaluation, financial management, verification and audit is collected, entered and stored in the system
- implements activities concerning prevention, identification and reporting on irregularities
- prepares and updates Manual of Procedures
- ensures audit trail
- participates in training activities for a wide range of beneficiaries

# ADMINISTRATIVE VERIFICATIONS (I)

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Applications for Reimbursement (AfR)

- In line with general conditions of the contract submitted at least once every quarter (three months)
- AfR includes information about progress of activities, indicators and expenditure (additionally, includes information concerning implementation of procurement plan)
- Each AfR is checked
- Expenditure is checked on a sample basis

# ADMINISTRATIVE VERIFICATIONS (II)

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AfR SAMPLE:

- At least 50% of expenditure claimed per each AfR, of which:
  - 40% concerns procurement expenditure
  - remaining 10% concerns all other expenditure
- If 40% concerns only high-risk procurements, additional 10% of other procurements claimed is included in the sample
- All other expenditure selected on the basis of type and value (salary costs randomly selected)
- 100% of supporting financial documentation in the sample is checked
- Other supporting documents (TS, for example): number of items selected (for strategic, major and large projects)
- In case of major deficiencies: sample is increased

# ADMINISTRATIVE VERIFICATIONS (III)

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SAMPLING METHOD for EX-POST CHECK of PROCUREMENT:

- value of procurement above European thresholds (Directive 2014/24/EU) - always checked
- previous experience of the GB in procurement (2/0)
- share of procurement value in total eligible expenditure (33%)

- complexity of procurement – works (0-2)
- complexity of procurement – number of lots & type of procurement (2/0)
- financial corrections (concerning procurement) in previous projects (2/0)

# ADMINISTRATIVE VERIFICATIONS (IV)

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- Total score: 10 points
  - Procurements of  $\geq 6$  points = high risk procurements, ex-post checks. ✘
  - Procurements of  $< 6$  points = low risk procurements, no ex-post checks but: ✔
    - At least 3% or 1 procurement, if 3% is less than 1, will be selected for ex-post verifications, and
    - procurements below national Public Procurement Act (OG. 120/16) threshold will be selected on the basis of value ( $\geq 50\%$  share in TEC) – or randomly

# ADMINISTRATIVE VERIFICATIONS (V)

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INCREASING THE SAMPLE SIZE:

- In case irregularities are detected and established during verifications of procurement, sample is increased:
  - 1-25% correction: 1 additional procurement; in case of multiple irregularities increased to 2 procurements
  - 26-100% correction: 2 additional procurements; in case of multiple irregularities increased to 3 procurements

# OTS VERIFICATIONS (I)

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TYPES:

- PLANNED OTS CHECKS
  - for each project at least one OTS check will be performed (15 days after submission of final AfR at the latest)
  - physical progress of implementation and reality of expenditure is checked



# OTS VERIFICATIONS (II)

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TYPES:

- AD-HOC OTS CHECKS
  - If required, based on information received by GB or other stakeholders concerning the implementation of a project which may trigger the need for closer inspection
  - establishing whether information provided by GB is accurate and real

# OTS VERIFICATIONS (III)

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SCOPE and SAMPLE:

Each project is assessed on the basis of initial and annual risk assessment methodology:  
- high-risk projects, - medium-risk projects, - low-risk projects

No. of locations:

- high-risk projects: at least 3 locations (or all locations if fewer than 3)
- medium-risk projects: at least 2 locations
- low-risk projects: 8 – at least 1 location

# OTS VERIFICATIONS (IV)

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SAMPLE of supplies delivered:

- high-risk projects: at least 60% of linked expenditure claimed via AfRs checked per location
- medium-risk projects: at least 40% of linked expenditure claimed via AfRs checked per location
- low-risk projects: at least 20% of linked expenditure claimed via AfRs checked per location
- In case of irregularities during implementation, sample is increased by 10% (up to 100%)

# OTS VERIFICATIONS (V)

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SAMPLE of works:

- high-risk projects: at least 40% of cumulative value of works
- medium-risk projects: at least 30% cumulative value of works
- low-risk projects: at least 20% of cumulative value of works
- Items are selected on the basis of value, specific technical or physical requirements, status of completion, specific safety issues (eg. elevators), etc.
- In case of irregularities during implementation, sample is increased by 10%

# OTS VERIFICATIONS (VI)

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Elements of verification on site:

1. Adequate audit trail and accounting system in place (filing and availability of documentation)
2. (Non)existence of contract addenda to procurement contracts which were not notified to the IB2
3. Supplies and services: Items delivered comply with contract provisions
4. Works: Status of works inspected corresponds to claims submitted to IB2
5. Horizontal and visibility requirements envisaged by the contract ensured

# OTS VERIFICATIONS (VII)

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After site visit has been completed:

- GB is informed about the findings (if any) within 15 working days after the site visit at the latest
- in case additional information is required prior to official submission of findings the deadline is suspended until information has been received
- GB is informed about the deadline for implementation of corrective measures
- follow-up by PT2 is performed in order to ensure corrective measures have been implemented

# CHALLENGES (I)

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- verifications are time-consuming and need to be planned well
- a number of staff members/departments need to coordinate continuously
- plan vs. execution: a planned number of OTS visits is not performed during a year because the items that must be checked are not available for inspection (not delivered or constructed) because of prolongations in procurement/implementation
- verification deadlines should not be breached – verifications are linked to payments to GB

# CHALLENGES (II)

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- verifications result in detected irregularities, which leads to:
  - increase in scope of verifications
  - postponed payments to GB
- implementation of works contracts by GB: additional works and addenda to contracts – challenging verifications/decision making, increased risk of corrections
- retroactivity: a number of activities/costs implemented prior to grant contract signature which increases the risk of irregularities
- staff turnover / increased workload

# USEFUL TOOLS (I)

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- CFCA experience: for each project a project manager, a financial officer and an engineer are nominated so they can:
  - have continuous overview of the project progress and be able to communicate and provide information when required
  - have overview of specific issues concerning projects so the verifications are performed in a timely manner
  - meet regularly, if or when required (suspected irregularities, for example)
  - more easily prepare for OTS checks because of familiarity with relevant aspects of project

# USEFUL TOOLS (II)

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- OTS checks:
  - all designated persons may participate in OTS checks, or they can perform checks separately (3-part check-list)
  - each establishes a sample prior to visit based on aspect of verification relevant for their specific position (i.e. engineer, financial officer, project manager)
- suspension of approval of final AfR introduced in general conditions - allows for outstanding issues to be resolved
- keeping and continuously updating **instructions database**
- good IT tool (work in progress)

# MOST COMMON (SUSPECTED) IRREGULARITIES (I)

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- breach of public procurement rules concerning tendering - discriminatory criteria, brand names, proportionality principle not respected, errors in calculations of deadlines, selection and award criteria not clearly segregated, artificial splitting of subject-matter/procurement value, lack of transparency, and similar
- modifications to procurement contracts (not in line with contract/legal provisions)

# MOST COMMON (SUSPECTED) IRREGULARITIES (II)

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- during OTS checks:
  - visibility requirements not adequately addressed or missing
  - addenda to procurement contracts discovered on site which were not notified to IB2
  - modifications with respect to construction (works contract) - not notified, not in line with contract, not adequately administered
  - equipment delivered not in line with TS
  - equipment still unpacked, i.e. not in use



# Administrative checks. Investigations and role of AFCOS. Case study.



**ZVEZDELINA PARVEVA  
VANDEVA**

**Bulgaria**

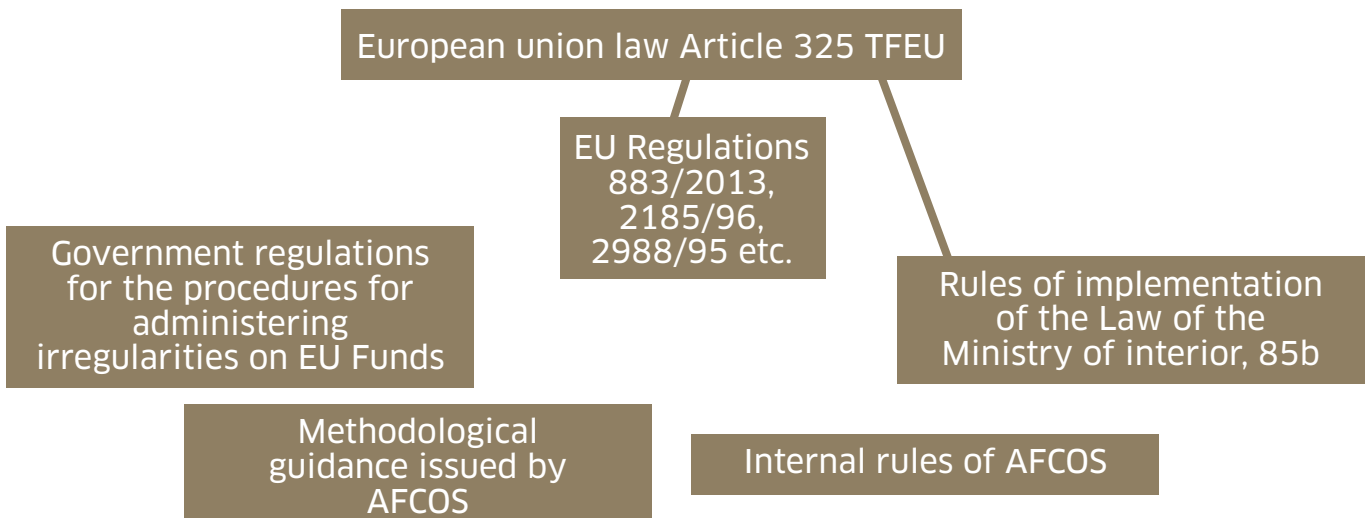
# REPRESENTATION CONTENT

- Structure of AFCOS Directorate Bulgaria;
- Legislative framework;
- Department main competence;
- Administrative check procedure;
- Administrative investigations;
- Case study;

## STRUCTURE OF AFCOS DIRECTORATE BULGARIA



## LEGISLATIVE FRAMEWORK



- Criminal code;
- Administrative - procedure code;
- New Anti Corruption Law (2018);
- Public procurement law;
- Law on the Ministry of the Interior;
- And others;

## **ADMINISTRATIVE INVESTIGATIONS DEPARTMENT. MODUS OPERANDI. INTERNAL RULES**

- Main functions:
- **Conducting administrative investigations** for identifying irregularities, affecting the EU's financial interests on own initiative or upon request by OLAF;
- **Performing on-the spot checks** as part of investigations in order to establish whether an irregularity has been committed;
- **Preparing reports of investigations** and giving recommendations to the competent authorities regarding corrective measures;
- **Organizing the cooperation** with Managing authorities, Prosecutor's Office, OLAF and others;

## **FROM WHOM THE AFCOS DIRECTORATE MAY RECEIVE INFORMATION?**

- The public;
- Public companies;
- State organizations;
- Private companies;
- OLAF;
- anonymous informants, etc.

## **ADMINISTRATIVE INVESTIGATIONS. MODUS OPERANDI. INTERNAL RULES**

- Register
- First of all we have created a register of the information.
- The Director determines with written order who registers the information.
- The Head of the Department of administrative investigations fill the gaps in the register;
- the number and the date of registration of the allegation;
- the correct name of the project;
- who is the beneficiary;
- the financial amount of project;
- the deadline of the project and so on.
- First Technical and Analytical Evaluation
- The Head of Administrative investigations department determines who does the first technical and analytical evaluation.
- Having done the analysis the expert is guided by the following rules:
- Is AFCOS Directorate the competent authority;
- What is the significance and authenticity of the information;
- Is there a clear reference to a concrete program;
- Description of the irregularity or fraud;
- A judgment as to possible result.

- Internal data base checks
  - Is there any similar signal addressed to AFCOS directorate;
  - Is there irregularity for these project;
  - Is there information from the check from the other state authorities;
  - Is there any information from the judicial authorities;
  - Is there request for assistance from OLAF;
- Having been presented with this information the Head of Department decides whether:
  - to open an administrative investigation;
  - the information has to be sent to the competent authorities;
  - to dismiss the case;
- Opening an administrative investigation – by order of the director of the AFCOS Directorate
- Planning of the Investigation:
  - Circumstances to be further clarified;
  - Actions to be carried out for the clarification of the circumstances;
  - Deadlines;
  - Responsible person;
  - Outcome;
- Basic techniques for collecting evidence in an administrative investigation
- Requesting to the Managing authorities, collection and verification of information and documents;
- Taking explanations - from the sender of the allegation, contractor and subcontractor, supervisor;
- Conduct of on-the-spot checks or documentary checks;
- CLOSING OF AN ADMINISTRATIVE INVESTIGATION
- The administrative investigation ends with a final report to the Director of AFCOS. The report includes observations and recommendations;
- In the case that during the administrative investigation an irregularity is identified, a copy of the final report has to be sent to the Managing authority;
- In the case that during the administrative investigation has been found that a criminal act has been committed, a copy of the report has to be sent to law enforcement body and/or the Prosecution of BG;

# CASE STUDY OF ADMINISTRATIVE INVESTIGATIONS

## **The project “Building of the water cycle of city ”A”.**

What main activities are supposed to be performed:

- Reconstruction of the drinking water treatment plan;
- Improving the water supply system;
- Expansion of the sewerage network;
- Supply of operating equipment for wastewater treatment plant;

## **OBJECTIVE OF THE ADMINISTRATIVE INVESTIGATION**

What was supposed to be done during the project?

How was the tender procedure performed and what were the conditions of the contract between the beneficiary and the contractor?

Was the project officially been implemented on time?

## **THE TENDER PROCEDURE**

- The contractor for the construction works is chosen after public procurement procedure;
- In the offer of the which was awarded with the contract there are no subcontractors mentioned;

## **THE CONTRACT**

- The contract has been signed, the deadline;
- The participation of subcontractors is not declared – nor in the offer, neither in the contract;
- The construction works which are supposed to be done are listed in the Bill of Quantities;

## **THE IMPLEMENTATION OF THE CONTRACT**

- The construction works are performed and admitted with the required protocols within the deadline;
- The protocols are signed by the parties in the contract and the person responsible for the supervision of the construction;
- The signed protocols for the admission of the construction works are used as a prove for the implementation of the contract in front of the managing authority;

## **THE ALLEGATION**

- The first information for irregularity and suspicion of fraud comes in AFCOS. The allegation is sent to several institutions including AFCOS directorate and the Managing Authority.

*The allegations:*

- A subcontractor has been used during the construction works, although this has not been declared in the offer, which is a violation of the regulations.
- The subcontractor has been hired through a contract with subject totally the same as the subject of the contract between the municipality and the contractor.
- Some of the construction works are not done properly or not done at all.

*Questions raised:*

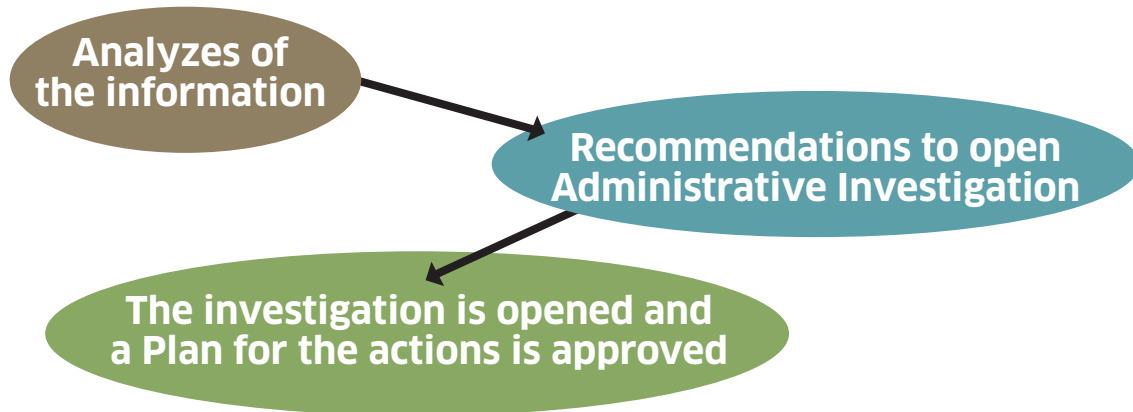
- If the municipality knows about the fact that subcontractor has been used, why they did not fulfill their obligations as a beneficiary and apply sanctions for the works which are against the contract conditions?
- If the municipality did not know about the use of subcontractor, then how is it possible after it is their obligation to implement the control over the implementation of the contract?
- Are the documents supporting the implementation legal and would they lead to verification of the expenditures?



Evidence provided:

- Copy of the contract between the municipality and the contractor.
- Copy of the contract between the contractor and the subcontractor.

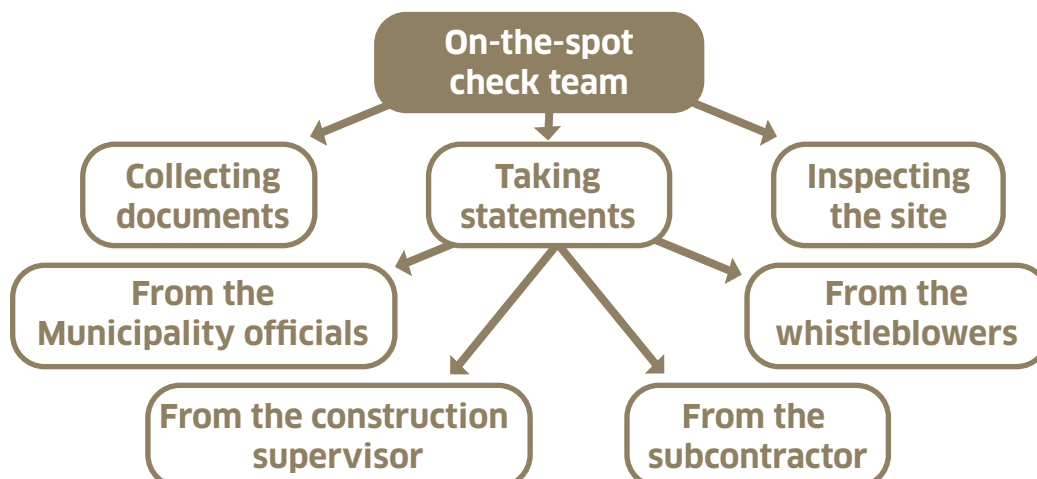
# PROCESSING OF THE ALLEGATION



## PLANNED ACTIVITIES

- Activities regarding collection of documents:
- Contacting the Managing Authority in order to receive full and comprehensive information and documentation regarding the project.
- Take statements from officials from the Municipality
- Take statements from the whistleblower in order to enhance the information regarding suspicions of fraud and irregularities.
- Take statements from the contractor and subcontractor
- Take statements from the supervisor
- On-the-spot check

# ON-THE-SPOT CHECK

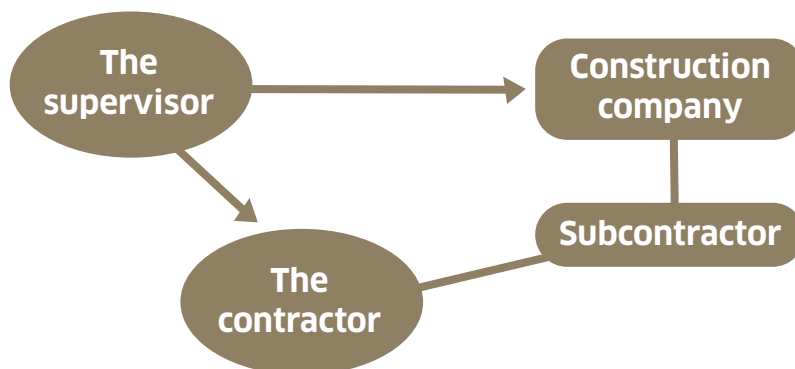


## THE OUTCOME OF THE STATEMENTS

- The statements given by the municipality officials - the construction works are accepted with protocols and are finished within the deadline mentioned in the contract;
- The statements given by the construction supervisor - they don't know of the use of subcontractor;
- The statements given by the contractor - has performed all construction repairs;

## “THE SCHEME”

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## EVALUATION OF THE EVIDENCE GATHERED

- Several obvious conclusions have appeared after the analyzes of the information gathered during the investigation.
- The violation of the regulations regarding the use of subcontractors
- After a comparison between the real bill of quantities and the bill of quantities provided by the contractor to the subcontractor it appears that all the activities are the same and with the same amount, but different values.
- The protocols produced in order to confirm the implementation of the construction works are signed by the contractor without mentioning the subcontractor.

## THE FINAL REPORT

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### *Conclusions:*

- The difference between the two bills of quantities and the statement of the subcontractor is an indicator that other subcontractors were participating in the implementation as well.
- The amount written in the bill of quantities given to the subcontractor shows that the real price of the construction works is much lower than the price given to the contractor by the beneficiary.
- The documents and protocols produced by the contractor and the beneficiary regarding the acceptance of the works, do not mention the participation of subcontractor. The same documents are used to prove the implementation in front of the managing authority in order to verify the amounts.

*Recommendations:*

- Recommendation to the managing authority to check difference between the two bills of quantities;
- Recommendations to the Supreme Cassation Prosecution office to open an investigation;

## COOPERATION WITH PARTNERS

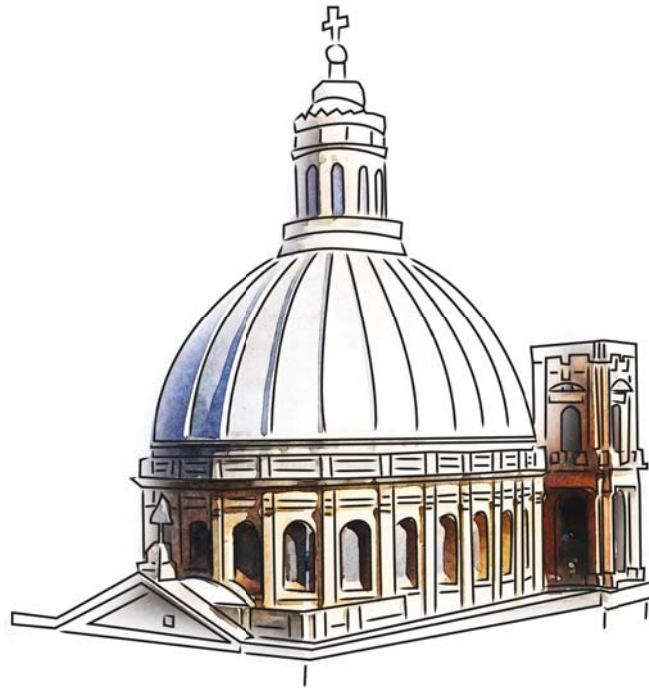
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- Managing authority - has postponed the last payment until the end of the investigation;
- Supreme Cassation Prosecution - copies of the relevant documents are provided as attachment to the final report;

## RESULTS AND IMPACT

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- In result of the investigation is detected an amount of money which is over the real amount needed for the implementation of the project.
- In result of the administrative investigation is collected enough data, needed to open a criminal investigation by the Supreme Cassation Prosecution office.



# Methods of criminal investigation relating to fraud, corruption and other offences affecting the EU financial interests



**RENNIE STIVALA**

Malta

# MALTA

... a brief overview of the islands ...



- Small group of islands approximately 60 miles due south of Sicily;
- Population just over 400,000;
- Divided into 11 Police (uniformed) Districts;
- Specialised units work from Police Headquarters just outside Valletta

## FIELD CASE STUDIES

- 3 distinct cases of investigations of cases involving detriment to the EU budget...
- varying in nature so as to give a wider picture of the extent of the investigations

# 1st CASE: EASO

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- European Asylum Seekers Organisation- EU agency situated in Malta, operating under direct EU Commission laws and using a direct EU budget.
- Investigation involving the recruitment process of a high ranking contractee.
- Late presentation of required certification, believed also to be forged.

## Investigations revealed that:

- The company issuing the certificate formed and registered some 8 years later.
- The nature of the business was also totally different from the professional experience mentioned in the certificate;
- The suspect never admitted to forgery, but evidence against him was enough to warrant prosecution...
- Case is currently **sub-judice**;
- Charges of forgery, use of forged documents, and false declaration to a public authority, liable to a fine and imprisonment of up to 2 years;
- Contract was worth around Euro 250,000 for a three year period.

# 2nd CASE STUDY

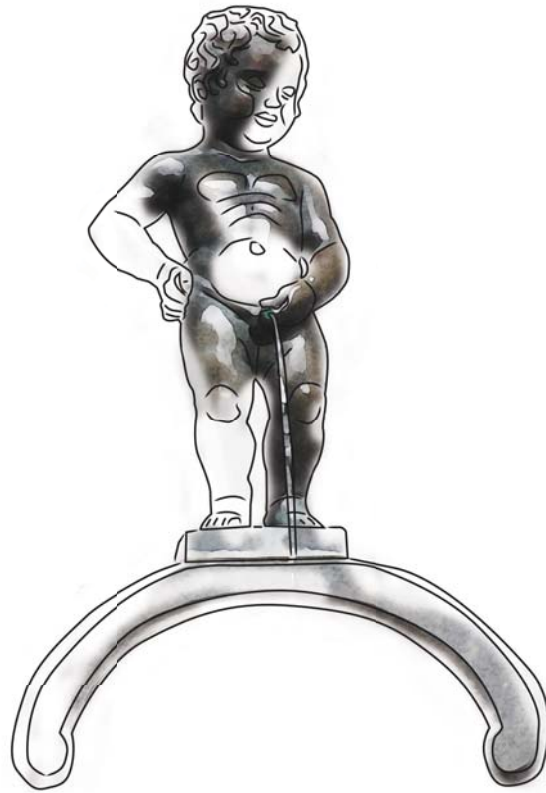
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- A locally operating and registered gaming platform requested EU funds to create various services and expand its portfolio to clients.
- European Court of Auditors started an administrative investigation, which triggered further investigations by Olaf, IAID and Malta Police;
- The information received was not enough to warrant criminal investigation, so further investigations, both locally and also overseas, were needed.
- Olaf conducted an administrative investigation in Malta with the permission and collaboration of the entity involved.
- Misrepresentation of the company's HR capacity to successfully conclude the proposed projects, for which they had received funding directly from the EU.
- The company admitted that there was misrepresentation, however alleged it was due to a service provider who was the lead partner in the venture, who gave the fictitious image of the hr capacity.
- Money received as EU funding was returned to the EU.
- Case is currently sub-judice.
- Savings/recovery to the EU budget of around Euro 125,000.

# 3rd CASE STUDY

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- Local Councils Association in Malta
- Attending meetings of the Committee of the Regions, receiving refunds for travel expenses.
- Alleged abuse of claims of refunds in relation to travel expenses.
- Claims to CoR were made on the basis of quotes for full fare price, whereas LCA was invoiced and paid for discounted economy class travel.
- Surplus in cash was kept for the use of LCA needs and not for personal use of any member.
- Olaf conducted administrative investigation in Malta;
- Request for information to Lufthansa and CoR for documents which were presented by LCA.
- In all 9 persons were arraigned in court, 7 from the LCA and 2 from the travel company
- Cases are still **sub-judice**
- Charged with fraud to the detriment of the EU, misappropriation of funds and false declaration to public authority, with up to 7 years of imprisonment at the time of the crime.
- Judgement so far (1) was for a suspended jail term



## OLAF's mandate and the role of AFCOS



**MARIA NTZIOUNI-DOUMAS**  
European Commission



# CONTENT OF THE PRESENTATION

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- Olaf mission and mandate
- Legal framework
- OLAF as investigative body
- Facts and figures
- Anti-Fraud Policy
- OLAF's partners
- Central role of AFCOS
- Recent developments in the PIF area

## A LITTLE HISTORY

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**1988** – creation of OLAF predecessor: UCLAF

**1999** – creation of OLAF

**2012** – OLAF reorganisation

**2013** – OLAF Regulation 883/2013

“OLAF” is the French acronym of the Office Européen de Lutte Anti-Fraude

## OLAF MISSION AND MANDATE

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### Mission

- Detect, investigate and stop fraud with EU funds

### Mandate

*OLAF's mandate is:*

- To conduct **independent investigations into fraud, corruption and irregularities involving EU funds** so as to ensure that EU taxpayers' money reaches projects that can stimulate the creation of jobs and growth in Europe;
- To **investigate serious misconduct by EU staff and members of the EU institutions**, thus contributing to strengthening citizens' trust in the EU institutions;
- To **develop EU policies to counter fraud**.

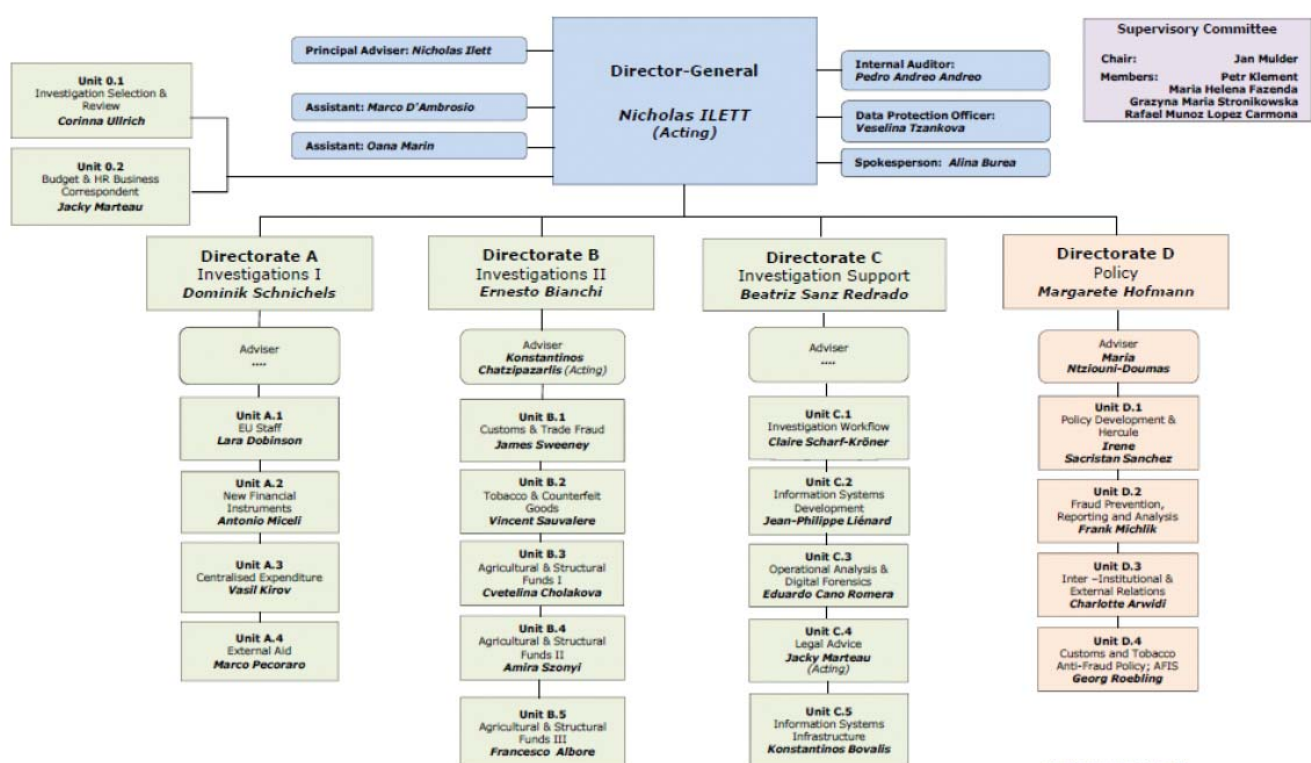
# BASIS OF OLAF'S WORK: ARTICLE 325 TFEU (1)

- Article 325 TFEU:
  - **Operational dimension**
    - Equivalence and assimilation
    - **Co-ordination** obligation
  - **Policy dimension**
    - Legal basis for Community acts
    - Reporting obligation

# BASIS OF OLAF'S WORK: ARTICLE 325 TFEU (2)

- 1. **The Union and the Member States** shall counter fraud and any other illegal activities affecting the financial interests of the Union;
- **Each EU MS has implemented the PIF convention**, which criminalises fraud, corruption etc. to the detriment of the EU's financial interests. The transposition of the PIF Directive is ongoing;
- **Member States shall take the same measures** to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests;
- Member States shall **coordinate their action and organise**, together with the Commission, close and regular **cooperation**;
- The **European Parliament and the Council**, acting in accordance with the ordinary legislative procedure, after consulting the Court of Auditors, shall adopt the necessary measures;
- The **Commission, in cooperation with Member States**, shall each year submit to the European Parliament and to the Council a **report** on the measures taken for the implementation of this Article.

# ORGANISATION CHART OF OLAF



# OLAF'S HYBRID STATUS

## 1. INVESTIGATIONS: fully independent, in all EU institutions and bodies

### Director-General of OLAF:

- appointed by the European Commission after consultations with the European Parliament and the Council for a seven-year term, not renewable;
- may neither seek nor accept instructions from any government or any institution, body, office or agency;
- entitled to bring an action against the Commission before the European Court of Justice.

## 2. POLICY: administratively part of the European Commission, under Commissioner Oettinger

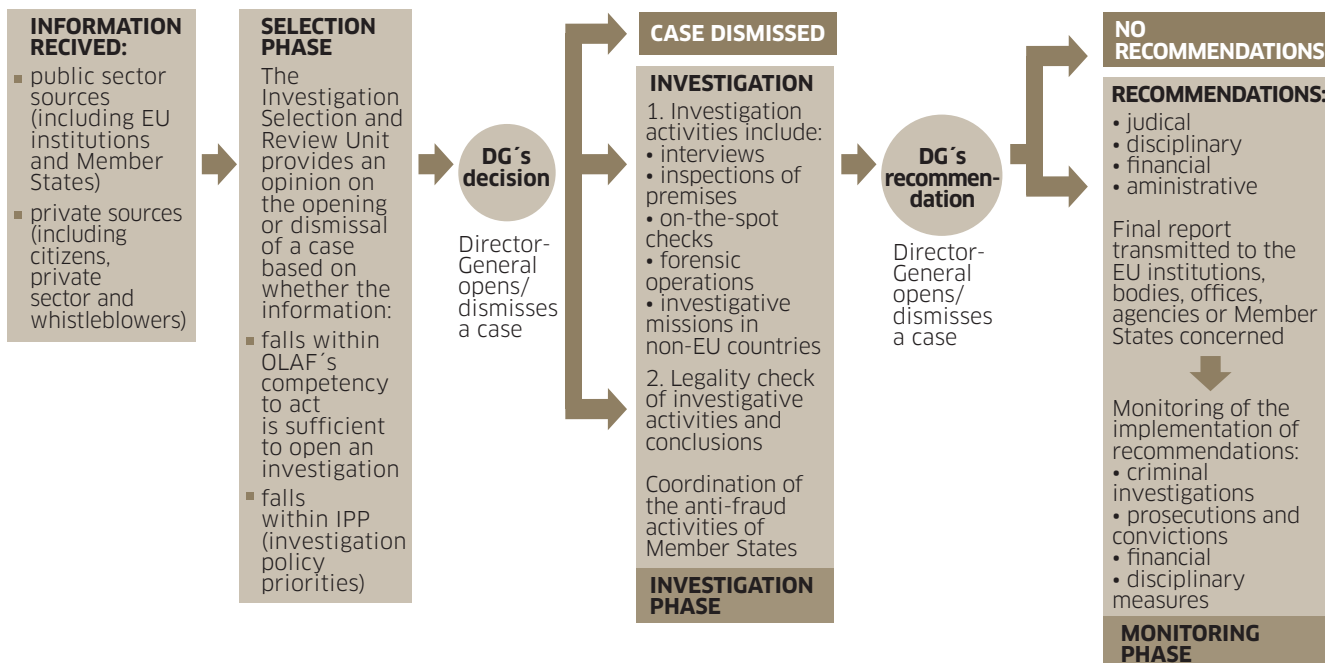
# OLAF INVESTIGATIONS

- **Internal investigations:** fraudulent or serious misconduct of EU staff and Members of the EU institutions
- **External investigations:** into beneficiaries of EU funds/economic operators (commercial companies, NGOs, contractors and subcontractors etc.) - EU and worldwide
- **Coordination:** within the scope of its jurisdiction, OLAF contributes to investigations carried out by national authorities or EU bodies
- **Legal Bases:** various, but the most important is Reg. 883/2013

# EXAMPLES OF FRAUD

- Embezzled construction aid for bridges and power stations
- Irregularities in public contract processes
- Non-payment of import levies on bicycles, energy-saving lamps, etc.
- Tax evasion caused by cigarette smuggling and contraband goods
- Expenses fraud (travel, medical, Parliamentary etc.)
- Corruption inside the EU Institutions, bodies and agencies

# OLAF INVESTIGATIVE PROCESS



## SELECTION OF CASES - CRITERIA

- OLAF's competence (financial and other interests of the EU)
- Information is sufficient (reliability of the source, credibility of the allegation)
- Proportionality (expected results vs resources; EU financial resources at risk; likelihood of recovery/prosecution...)
- Efficient use of investigative resources (workload, priorities, expertise...)
- Subsidiarity/added value (OLAF's sole competence...)
- Information falls within OLAF's Investigative Policy Priorities: Special Policy Objectives

## INVESTIGATIVE TOOLS

- Interviews with persons concerned and witnesses
- Inspection of premises
- On-the-spot checks
- Forensic operations
- Checks and inspections under sectoral rules
- Missions in third countries

## OUTCOME OF INVESTIGATIONS

- OLAF investigates under **administrative** law. It has no judicial powers
- It only OLAF seeks **evidence for and against** the "concerned person"
- OLAF may request EU and national authorities to **cooperate**
- OLAF can only make **recommendations** following its investigations

## OLAF'S RECOMMENDATIONS

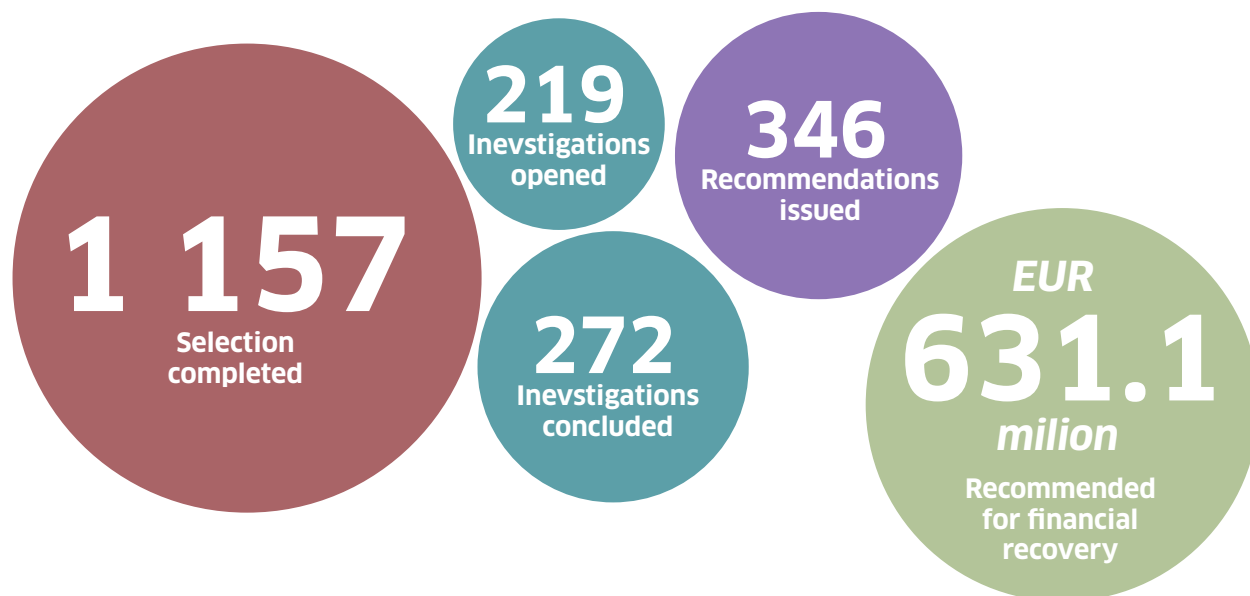
- **FINANCIAL:** recovery of misused funds by the relevant EU institution, body, office, agency or competent authority of the Member State
- **JUDICIAL:** transmission of final report to the relevant national judicial authorities, recommending legal action.
- **DISCIPLINARY:** the case is referred to the authority having disciplinary powers in the relevant EU institution, body, office or agency
- **ADMINISTRATIVE:** changes to procedures, management or control systems, legal framework recommended to EU Institutions, bodies, offices or agencies



# OLAF REPORT 2016

## - OLAF UPHOLDS STRONG INVESTIGATIVE PERFORMANCE

OLAF upheld its strong investigative performance in 2016, and further reduced the duration of its investigations



	2009	2010	2011	2012	2013	2014	2015	2016
Average duration of investigation	20.2	20.8	22.4	17.3	17.5	18.1	18.7	17.2
Average duration of selection corresponding to the case	5.7	6.4	6.9	6.3	4.3	2.9	2.3	1.7
<b>Total average duration of cases</b>	<b>25.9</b>	<b>27.2</b>	<b>29.3</b>	<b>23.6</b>	<b>21.8</b>	<b>21.0</b>	<b>21.0</b>	<b>18.9</b>

### MAIN POLICY AREAS I

- Anti- fraud policy development
  - EPPO
  - PIF Directive
  - Amendment of Regulation 883/2013
- Hercule III programme
- Fraud prevention
  - COM Anti-Fraud Strategy - CAFS
  - Casebooks, guidelines
  - Training, conferences
- Irregularity reporting and analysis
  - PIF report (art. 325 TFEU)
  - IMS, EDES

### MAIN POLICY AREAS II

- Customs and tobacco anti-fraud policy
  - Amended Regulation 515/97 on Mutual Administrative Assistance
  - 2013 Communication on fight against cigarette smuggling and illicit trade of tobacco products and the Tobacco Implementation Report on the 2013 Communication (adopted 12 May 2017)
  - Anti-Fraud Information system -AFIS
- Joint Customs Operations - JCOs
- Cooperation with our stakeholders
  - IBOA
  - Member States
  - Third countries
  - International organisations

# INTERNAL & EXTERNAL CONTROLS

- **Internal legality check and review** – legitimacy, legality, objectivity, impartiality
- **OLAF Supervisory Committee** – to guarantee its independence, OLAF is monitored by an independent committee
- **Reporting obligations to European Union Institutions – European Parliament, Council, Commission** – accountability
- **European Data Protection Supervisor** – personal data protection safeguards
- **European Court of Justice** – legality of acts
- **European Court of Auditors:** audits OLAF
- **European Ombudsman** – investigates complaints about maladministration

## OLAF'S PARTNERS – COOPERATION IS KEY!

### ■ NATIONAL LEVEL:

Competent EU and Member State authorities (administrative/control bodies, police and customs officers, judiciary...)

Authorities in non-EU countries with similar competences (Legal basis: international cooperation agreements, financing/grant agreements, cooperation Arrangements)

### ■ EUROPEAN LEVEL:

Europol, Eurojust, European Investment Bank, European Court of Auditors

### ■ INTERNATIONAL ORGANISATIONS:

Worldbank INT, UN Internal Oversight Office (OIOS), UNDP, World Food Programme, Global Fund, Inter-American Development Bank, African Development Bank, African Union Commission, etc.

## FIGHT AGAINST FRAUD: A JOINT TASK

### ■ Article 325 of the EU Treaty

### ■ OLAF Regulation 883/2013 – directly applicable in MS

#### ■ Article 3(4):

*Member States shall, for the purposes of this Regulation, designate a service (“the anti-fraud coordination service”) **to facilitate effective cooperation and exchange of information, including information of an operational nature, with the Office.** Where appropriate, in accordance with national law, the anti-fraud coordination service may be regarded as a competent authority for the purposes of this Regulation.*

## AFCOS AND OTHER MEMBER STATE AUTHORITIES – KEY PLAYERS FOR OLAF INVESTIGATIVE ACTIVITIES

- **Exchange of relevant information** within the national administration and with OLAF on **suspected fraud cases** and **irregularities**
- Facilitating OLAF's **on-the-spot checks** in the respective Member States in line with Regulation 2185/1996
- **Follow-up to OLAF's recommendations** after the closure of a case (as appropriate)

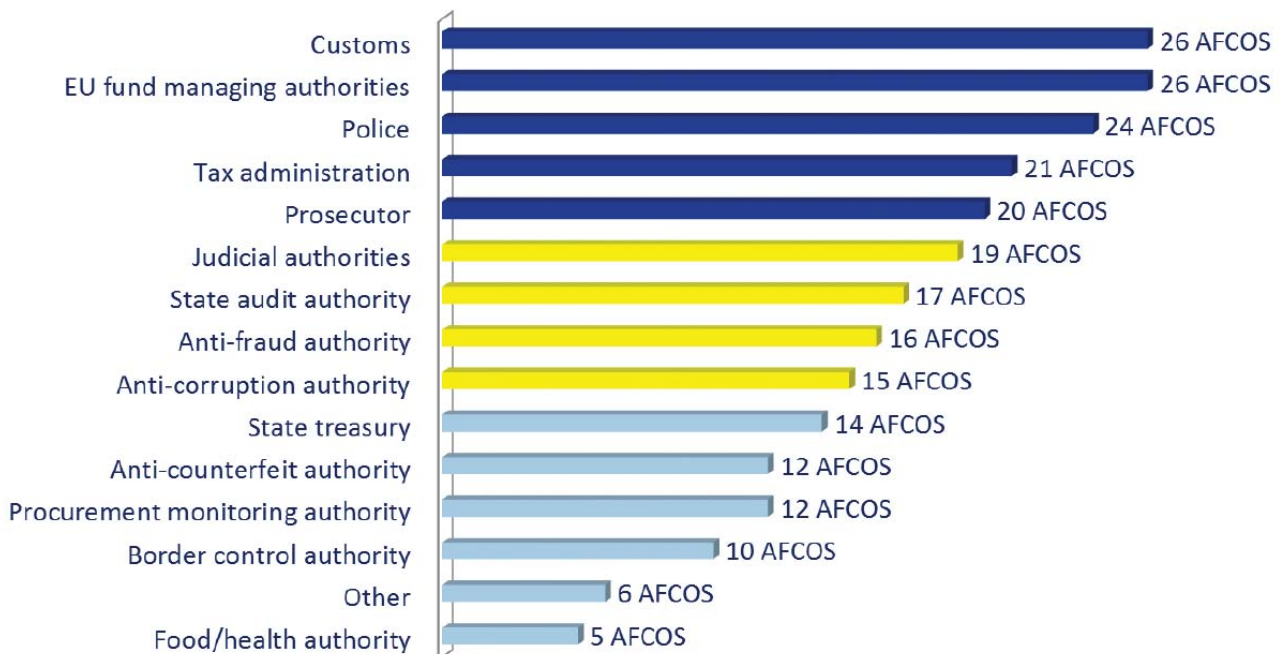
# CENTRAL ROLE OF AFCOS

- **Facilitating** the task of OLAF
- **Leading & animating the AFCOS Network** at national level
- **Promoting administrative and/or legislative adaptations** leading to a more efficient protection of EU financial interests
- **Identifying possible weaknesses** in the national system for the management of EU funds
- **Raising awareness of national authorities**, including the dissemination of information
- **Training** national authorities involved in the protection of the EU financial interests

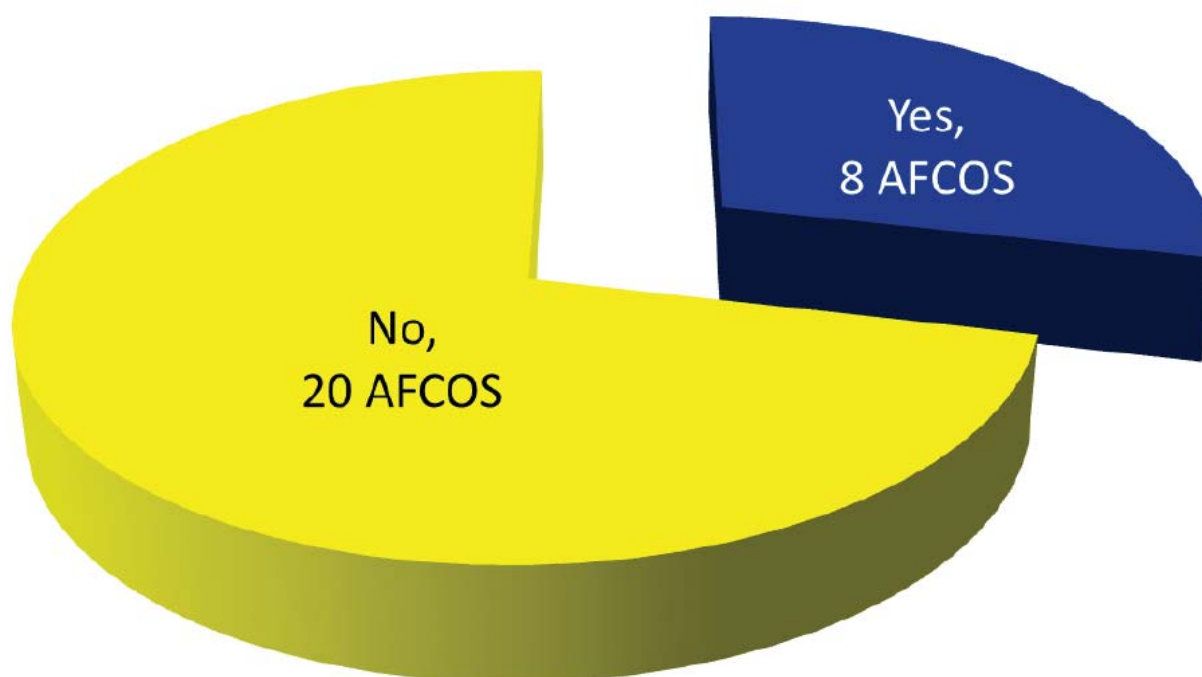
## STATE-OF-PLAY OF THE AFCOS LANDSCAPE (1)

- Organisation:
  - 80%: 1 central office vs 20%: central + local offices
  - Approx. 50%: less than 5 full-time employees
- Tasks:
  - Majority:
    - Cooperation and exchange of info with OLAF
    - Facilitator between Member State authorities and OLAF
    - Training
    - National anti-fraud strategy (NAFS)
    - Irregularity reporting
  - Fewer: Administrative and criminal investigations

## STATE-OF-PLAY OF THE AFCOS LANDSCAPE (2) COOPERATION WITH NATIONAL AUTHORITIES



## STATE-OF-PLAY OF THE AFCOS LANDSCAPE (3) INVESTIGATIVE POWERS



## PROTECTING THE EU FINANCIAL INTERESTS: IRREGULARITIES NOT REPORTED AS FRAUDULENT BY MEMBER STATES IN 2016

Budget sector (expenditure)	N° of irregularities not reported as fraudulent	Variation in relation to 2015	Involved amounts (in million EUR)	Variation in relation to 2015	As % of payments
<b>Natural resources</b>	<b>3 489</b>	<b>-17%</b>	<b>211.2</b>	<b>-35%</b>	<b>0.39%</b>
<i>Agriculture market support and direct payments</i>	1056	-15%	74.9	-43%	0.17%
<i>Rural development</i>	2409	-16%	134.7	-28%	1.21%
<i>Both</i>	24	-72%	1.6	-69%	n/a
<b>Cohesion Policy &amp; Fisheries</b>	<b>8 090</b>	<b>-23%</b>	<b>1 826.2</b>	<b>2%</b>	<b>3.74%</b>
<i>ESIF 2014-20</i>	111	11000%	6.0	37702%	0.00%
<i>Cohesion 2007-2013</i>	7670	-21%	1 785.0	6%	n/r
<i>Structural and cohesion funds before 2007-2013</i>	50	-92%	8.0	-91%	n/r
<i>Fisheries</i>	259	42%	27.2	40%	2.89%
<b>Internal Affairs</b>	<b>4</b>	<b>-</b>	<b>0.7</b>	<b>-</b>	<b>0.00%</b>
<i>FEAD, AMIF</i>	3	-	0.5	-	0.00%
<i>ISF</i>	1	-	0.2	-	0.00%
<b>Pre-accession</b>	<b>92</b>	<b>-6%</b>	<b>7.6</b>	<b>45%</b>	<b>0.49%</b>
<i>Pre accession assistance (2000-2006)</i>	5	-29%	0.3	-75%	n/r
<i>Instrument for Pre-Accession (2007-2013)</i>	86	-5%	7.1	75%	n/r
<i>Instrument for Pre-Accession (2014-2020)</i>	1	-	0.2	-	0.00%
<b>Direct expenditure</b>	<b>1861</b>	<b>16%</b>	<b>78.0</b>	<b>-30%</b>	<b>0.42%</b>
<b>Total expenditure</b>	<b>13 536</b>	<b>-17%</b>	<b>2 123.7</b>	<b>-5%</b>	<b>1.48%</b>

Budget sector (revenue)	N° of irregularities not reported as fraudulent	Variation in relation to 2015	Involved amounts	Variation in relation to 2015	As % of gross amount of TOR collected for 2016
<b>Revenue (traditional own resources)</b>	<b>4 134</b>	<b>-8%</b>	<b>454</b>	<b>30%</b>	<b>1.81%*</b>
<b>TOTAL</b>	<b>17 670</b>	<b>-15%</b>	<b>2 577.7</b>	<b>0%</b>	<b>/</b>



# PROTECTING THE EU FINANCIAL INTERESTS: FRAUDULENT IRREGULARITIES REPORTED BY MEMBER STATES IN 2016

Budget sector (expenditure)	N° of irregularities reported as fraudulent	Variation in relation to 2015	Involved amounts (in million EUR)	Variation in relation to 2015	As % of payments
<b>Natural resources</b>	<b>413</b>	<b>-3%</b>	<b>61.8</b>	<b>-13%</b>	<b>0.11%</b>
<i>Agriculture market support and direct payments</i>	128	-29%	12.4	-68%	0.03%
<i>Rural development</i>	284	22%	49.4	72%	0.44%
<i>Both</i>	1	-92%	0.0	-99%	n/a
<b>Cohesion Policy &amp; Fisheries</b>	<b>407</b>	<b>4%</b>	<b>236.9</b>	<b>-51%</b>	<b>0.48%</b>
<i>ESIF 2014-20</i>	3	200%	0.9	497%	0.00%
<i>Cohesion 2007-2013</i>	390	8%	234.3	-45%	n/r
<i>Structural and cohesion funds before 2007-2013</i>	4	-60%	0.8	-98%	n/r
<i>Fisheries</i>	10	-47%	0.9	-71%	0.10%
<b>Internal Affairs</b>	<b>0</b>	<b>-</b>	<b>0</b>	<b>-</b>	<b>0.00%</b>
<i>FEAD, AMIF</i>	0	-	0.0	-	0.00%
<i>ISF</i>	0	-	0.0	-	0.00%
<b>Pre accession</b>	<b>28</b>	<b>-3%</b>	<b>3.0</b>	<b>-62%</b>	<b>0.19%</b>
<i>Pre accession assistance (2000-2006)</i>	3	-67%	1.8	-70%	n/r
<i>Instrument for Pre-Accession (2007-2013)</i>	25	25%	1.2	-31%	n/r
<i>Instrument for Pre-Accession (2014-2020)</i>	-	-	-	-	0.00%
<b>Direct expenditure</b>	<b>49</b>	<b>880%</b>	<b>6.3</b>	<b>3025%</b>	<b>0.03%</b>
<b>Total expenditure</b>	<b>897</b>	<b>6%</b>	<b>308.0</b>	<b>-45%</b>	<b>0.21%</b>

Budget sector (revenue)	N° of irregularities reported as fraudulent	Variation in relation to 2015	Involved amounts	Variation in relation to 2015	As % of gross amount of TOR collected for 2016
<b>Revenue (traditional own resources)</b>	<b>513</b>	<b>-16%</b>	<b>83</b>	<b>6%</b>	<b>0.33%*</b>
<b>TOTAL</b>	<b>1 410</b>	<b>-3%</b>	<b>391.0</b>	<b>-39%</b>	<b>/</b>

## NATIONAL ANTI-FRAUD STRATEGY (NAFS)

- All Member States have been encouraged to establish their NAFS (since PIF Report 2014)
- 11 MS already have a NAFS
- Croatia has adopted its NAFS since January 2014
- OLAF welcomes Croatia's commitment and its strategic approach against fraud and irregularities detrimental to the EU budget
- Croatia is among the Members States that make use of risk analysis
- Croatia also took measures to harmonise national law on public procurement with EU law and measures to fight tax evasion and VAT fraud



# SUPPORT TO MS EFFORTS IN THE DEFENSE OF THE EU FINANCIAL INTERESTS: THE HERCULE PROGRAMME

- Currently Hercule III (2014-2020), with an envelope of approx. € 15 mio per year
- Croatian authorities have regularly benefitted from the programme (this conference is financed by Hercule)
- future of Hercule under the next MFF: a single antifraud programme?

## RECENT DEVELOPMENTS IN THE PIF AREA

The current anti-fraud framework is not sufficient to achieve the objectives of Art. 325 TFEU. Significant recent developments in PIF area at the EU level:

- The adoption of the PIF Directive (2017/1371): it defines in a harmonised way the offences for which the EPPO will be competent.
- The establishment of the EPPO (Regulation 2017/1939): it will conduct criminal investigations and prosecutions of PIF offences;

Once the EPPO becomes operational, the EU's financial interests will be protected in a comprehensive way: criminal investigations and prosecutions by the EPPO and administrative investigations by OLAF.

- Amedment of Reg. 883/2013.

## IN CASE OF SUSPICION OF FRAUD

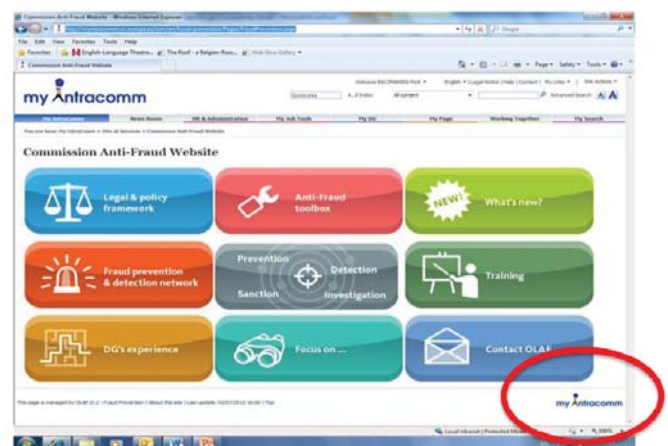
### WHAT TO REPORT? WHO CAN REPORT? HOW TO REPORT?

- Template for reporting fraud
- Whistleblowing guidelines
- OLAF procedure on whistleblowing

### Anti-fraud website:

<https://myintracomm.ec.europa.eu/serv/en/fraud-prevention/Pages/FraudPrevention.aspx>

<https://myintracomm.ec.europa.eu/serv/en/fraud-prevention/ReportFraud/Pages/index.aspx>



# DAY 03

09 May 2018

## TREATMENT

Investigation  
and prosecution



# Fight against EU frauds: the Croatian experience



**TINA PLAZIBAT &  
GORANKA RAMLJAK**

Croatia

# THE ROLE OF IAFU

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By establishing Independent Anti-Fraud Unit in February 2015, the plan was to achieve two basic goals:

- enable the State Attorney's Office of the Republic of Croatia (also called DORH) to have a faster access to processed and analysed information on the perpetrators of offences related to economic, financial and tax crime
- create an efficient analytical support to the Tax Administration, Customs Authority and the law enforcement bodies in order to detect high-risk taxpayers at the national level

## Legal basis from January 1, 2017

- new **General Tax Act**  
(this Act describes rights and obligations of our Unit. This is a procedural law)
- new **Tax Administration Act**  
(in this Act IAFU is regulated in organizational manner and scope of work is described)

*Plus*

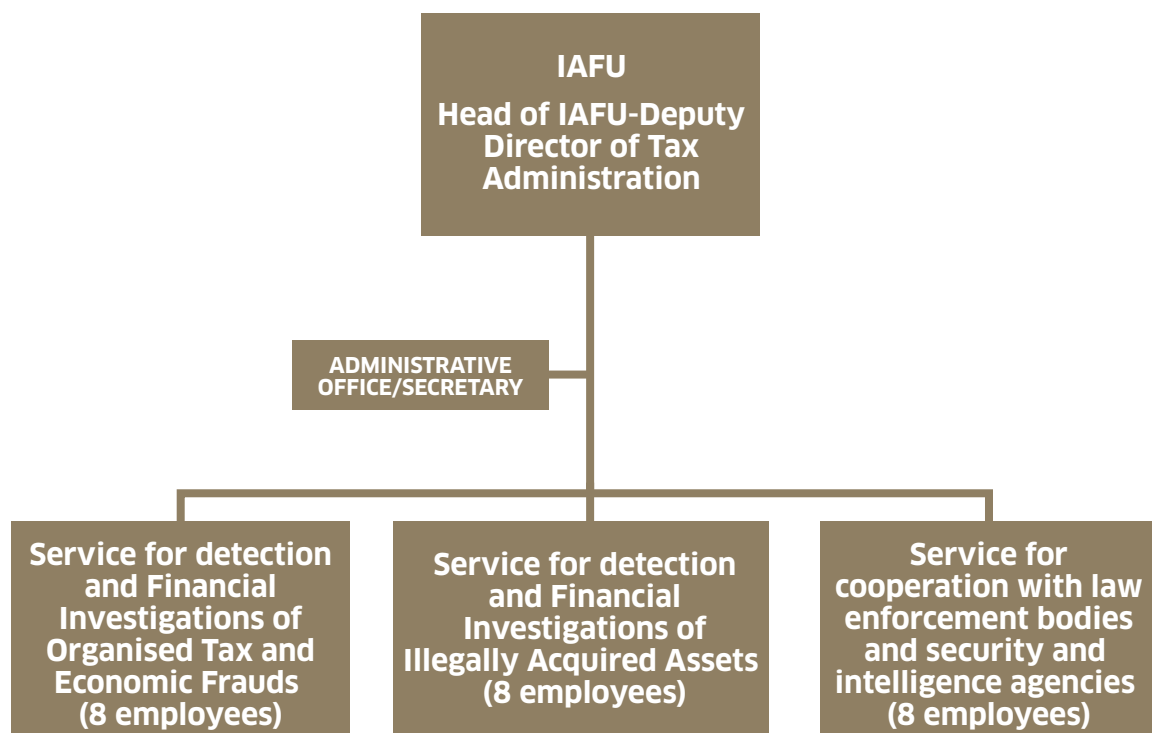
The Criminal Procedure Act

*Independent Anti Fraud Unit has now been moved from Ministry of finance to Tax Administration within New Regulation on the internal organization of the Ministry of Finance and now is operating under official name Independent Sector for Financial Investigations-ISFI*

*Main focus = financial investigations*

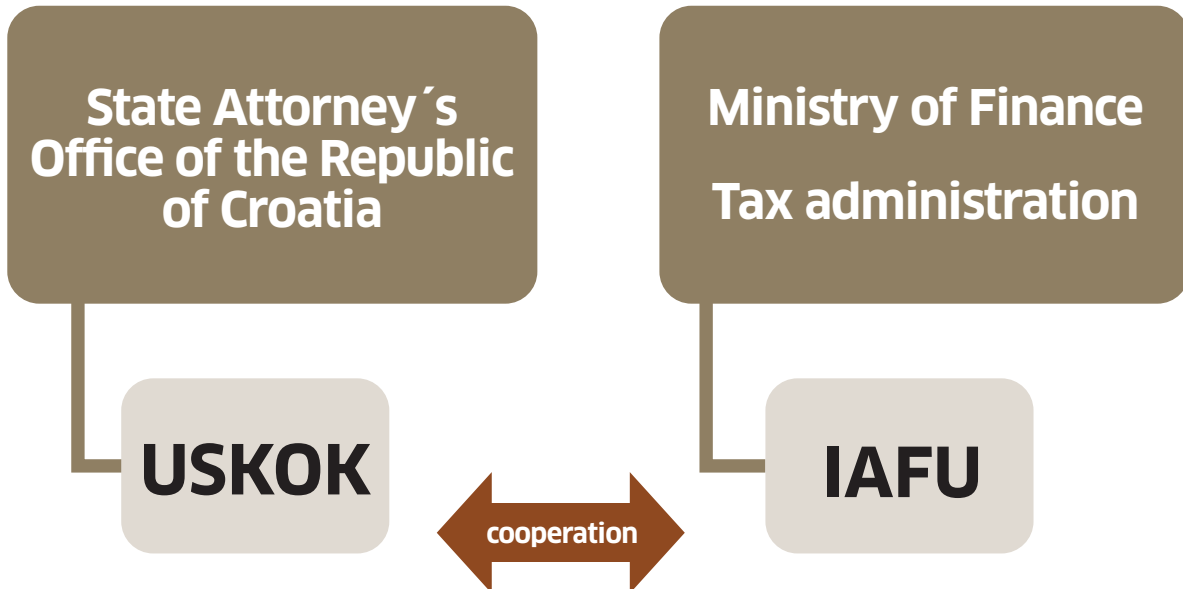
# ORGANISATION - IAFU

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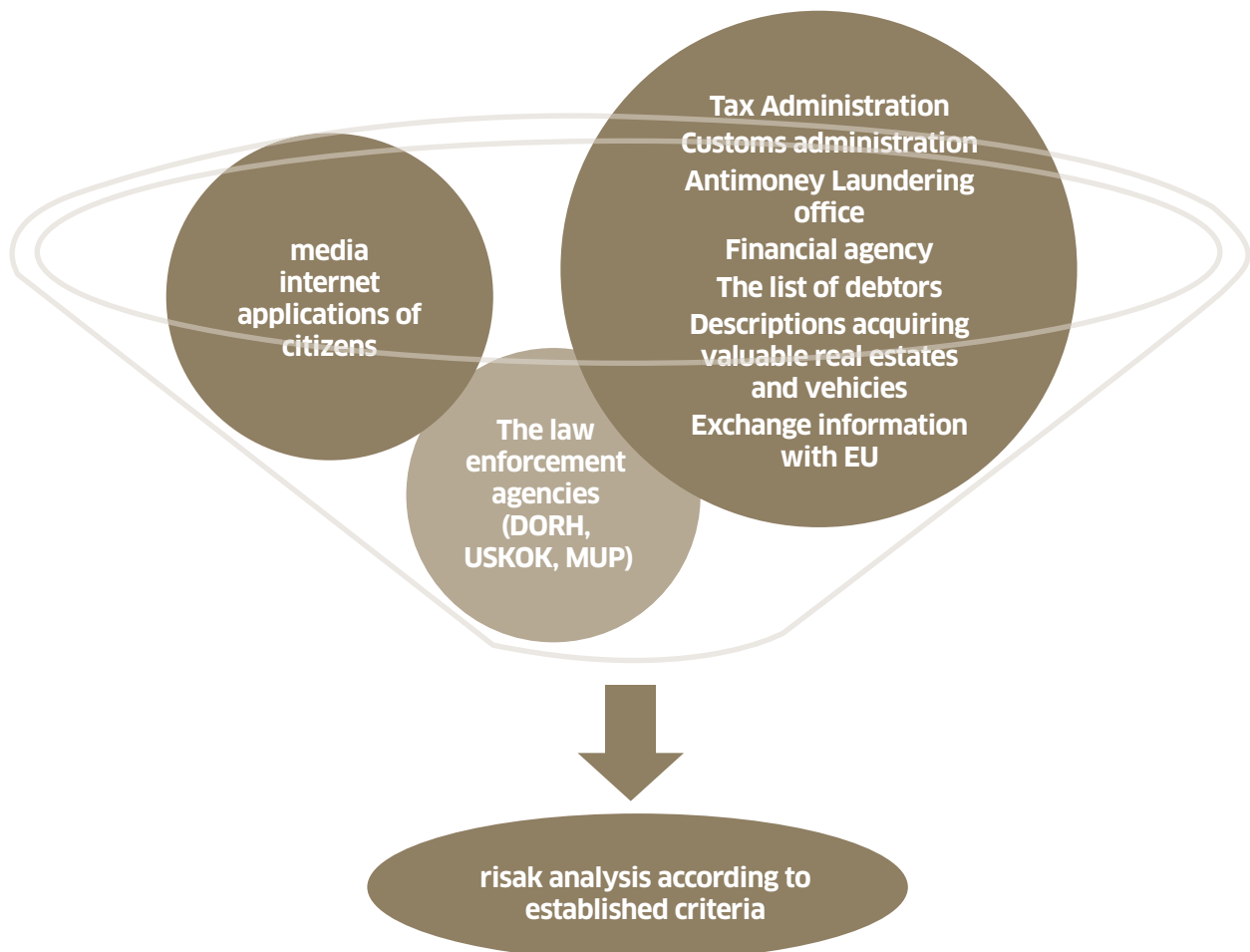


## COOPERATION WITH USKOK

Considering that the cooperation has been most significant with **the Office for the Suppression of Corruption and Organised Crime (USKOK)**, the public has given the Independent Sector the popular title of „Tax USKOK“.



## THE COURSE OF ACTION IN CASES



# THE COURSE OF ACTION IN CASES

## Case Investigation Opening

### On its own initiative:

- based on the analyses of data bases of Tax Administration and other bodies, if there are strong indication of organized crime, criminal offences of corruption and criminal offences of subsidy frauds at the expense of EU funds

### Based on requests and petitions:

- requesta of USKOK (DORH), MUP and SOA, explicitly addressed to the IAFU
- reports and petitions (including those from other Tax Administration units) with strong indications of organized crime, crime offences of corruption and criminal offences of subsidy frauds at the expense of EU funds

## FINANCIAL ANALYSIS

(includes in -the-office analysis based on data bases)

### Result = no irregularities:

- case is closed by drawing up minutes

### Result = indications of irregularities:

- financial investigation is initiated or
- the case is sent to the competent Tax Administration unit or to another supervisory body for further actions if there are indications of tax irregularities with no suspicion of organized crime, corruption or subsidy frauds

BY IAFU HEAD'S ORDER

## FINANCIAL INVESTIGATION

(includes the analyses of bank data, collection and analysis of business documentation, clients statements, on-the-spot checks, cooperation with criminal prosecution bodies and documentation exchange...)

### Result = no irregularities:

- case is closed by drawing up minutes

### Result = irregularities found:

- Report is submitted to USKOK or another competent body
- Criminal charges are filed
- Information is instituted
- Report on determined facts is sent to the competent Tax Administration unit (or to another supervisory body) for the purpose of initiating and carrying out an administrative procedure and determining and collecting the tax

## DATA SOURCES

### Electronically:

- data on acquisition and alienation of property of physical and legal persons
- data on acquisition and ownership of vehicles, vessels and aircraft
- data on real estate of State Geodetic Administration
- data on all opened bank accounts from Financial agency
- data on balance and total turnover through bank accounts
- data of Commercial courts about shares in companies
- data of Central Depository and Clearing Company about the ownership of shares and paid dividends
- data on the validity of VAT numbers, supply of goods and services within the EU and risky tax payers in the field of VAT fraud - from system EUROFISC, VIES and others.

- data on all reported income of natural persons
- data on inheritances and gifts
- data from the financial statements of companies and individuals
- data on payments of taxes and state tax debt, measures of enforcement, data from all types of tax returns (VAT, income corporate tax, income tax, salary form monthly reports, etc.).
- data from the register of taxpayers (address, tax status, contact person, the basis for the payment of taxes, etc.).
- data on issued cash - receipts and cash transactions from the system Fiscalization
- data on import and export of goods and other data recorded by Customs Administration
- data about insurance and employment of individual
- data from registry offices of the familial connection between people
- data about potential companies bankruptcy
- data from all available registers: corporate, business, institutions, associations, political parties and others
- data of associated entrepreneurs and natural persons from the web service called Poslovna Hrvatska
- concessions register
- other information available to the Ministry of Finance
- data from the records of IAFU on processed natural and legal persons
- ORBIS

**The proced request will obtain data that are not available electronically:**

- data held by other bodies (eg. data on real estate property with the relevant municipal courts)
- data on transactions of all types of accounts (of banks and other financial institutions)
- documentation and business records of the person who is the subject of processing, and other legal and natural persons

## DATA BASES

Risk analysis and detection of persons for whom there are indications that have assets in excess of legally acquired proceeds is carried out using the application “PBZO” - information essential to taxation. Data can be searched by several criteria (type of property, the acquisition date, values, etc.

**Vrsta imovine \***

VOZILO  
 NEKRETNINA  
 ZRAKOPLOV  
 PLOVILO  
 SLOBODAN UNOS (Sve kategorije)

**Datum upisa od:**  **Datum upisa do:**   
**Datum stjecanja od:**  **Datum stjecanja do:**   
Podaci bez datuma stjecanja neće biti prikazani u rezultatima pretrage.

**Vrijednost od:**  **Vrijednost do:**   
Unos cijelog broja. Podaci bez vrijednosti neće biti prikazani u rezultatima pretrage.

**Prikaži samo podatke za OIB iz**  (Sve ispostave)

**Tip osobe \***

Pravna osoba  
 Fizička osoba

**Godina rođenja od:**  **Godina rođenja do:**   
GGGG GGGG

**Prikaži samo podatke za OIB bez dohotka**  
Obavezna polja su označena sa \*



In our example, we searched the natural persons who are from 01 September 2015. acquired properties worth more than 1.000.000,00 kn. At the state level, it is about 61 person. Red exclamation mark people without a documented income

Kriteriji pretrage

Ukupan broj rezultata: 61 Stranica: 1/3

Rbr.	OIB	Ime i prezime / Naziv pravne osobe	Datum upisa	Vrsta imovine	Vrijednost	Datum stjecanja	
1.			09.10.2015.	NEKRETNINA	1.229.168,41	10.09.2015.	<a href="#">Pregledaj</a>
2.			09.10.2015.	NEKRETNINA	1.833.752,88	05.10.2015.	<a href="#">Pregledaj</a> !
3.			09.10.2015.	NEKRETNINA	1.553.826,68	03.09.2015.	<a href="#">Pregledaj</a>
4.			09.10.2015.	NEKRETNINA	1.056.295,38	14.09.2015.	<a href="#">Pregledaj</a> !
5.			09.10.2015.	NEKRETNINA	1.132.745,55	10.09.2015.	<a href="#">Pregledaj</a>
6.			09.10.2015.	NEKRETNINA	2.956.563,56	15.09.2015.	<a href="#">Pregledaj</a>
7.			09.10.2015.	NEKRETNINA	1.320.369,23	14.09.2015.	<a href="#">Pregledaj</a>
8.			09.10.2015.	NEKRETNINA	1.679.475,38	29.09.2015.	<a href="#">Pregledaj</a>
9.			09.10.2015.	NEKRETNINA	1.207.194,72	14.09.2015.	<a href="#">Pregledaj</a> !
10.			09.10.2015.	NEKRETNINA	1.024.518,16	25.09.2015.	<a href="#">Pregledaj</a>
11.			09.10.2015.	NEKRETNINA	1.812.535,44	08.09.2015.	<a href="#">Pregledaj</a> !
12.			09.10.2015.	NEKRETNINA	2.717.523,26	07.09.2015.	<a href="#">Pregledaj</a>
13.			07.10.2015.	NEKRETNINA	1.006.840,29	24.09.2015.	<a href="#">Pregledaj</a>
14.			07.10.2015.	NEKRETNINA	1.132.834,65	08.09.2015.	<a href="#">Pregledaj</a> !
15.			07.10.2015.	NEKRETNINA	1.290.826,16	07.09.2015.	<a href="#">Pregledaj</a> !
16.			07.10.2015.	NEKRETNINA	2.965.939,95	02.09.2015.	<a href="#">Pregledaj</a>
17.			07.10.2015.	NEKRETNINA	1.907.355,50	07.10.2015.	<a href="#">Pregledaj</a>
18.			06.10.2015.	NEKRETNINA	1.211.097,00	18.09.2015.	<a href="#">Pregledaj</a>
19.			06.10.2015.	NEKRETNINA	1.055.998,72	03.09.2015.	<a href="#">Pregledaj</a>
20.			06.10.2015.	NEKRETNINA	1.031.485,99	05.10.2015.	<a href="#">Pregledaj</a>
21.			06.10.2015.	NEKRETNINA	3.510.755,88	30.09.2015.	<a href="#">Pregledaj</a>
22.			05.10.2015.	NEKRETNINA	2.680.723,21	11.09.2015.	<a href="#">Pregledaj</a>
23.			05.10.2015.	NEKRETNINA	1.188.889,54	07.09.2015.	<a href="#">Pregledaj</a> !
24.			05.10.2015.	NEKRETNINA	1.999.934,06	02.09.2015.	<a href="#">Pregledaj</a> !
25.			05.10.2015.	NEKRETNINA	1.026.792,31	25.09.2015.	<a href="#">Pregledaj</a>

[Sljedeća >>](#)

Introducing JOPPD form (report of receipts, income tax and contributions for compulsory insurance) on 01 January 2014 enabled a detailed insight into the taxable and non-taxable income of natural persons as shown in the following screen:

Izvori primitaka		Vlasništvo	Podaci o nadzoru		
Doh. i primici		Dohodak	Promet nekretnina	Promet vozila	Naslj. i darovi
Za razdoblje prije 2014. molimo pogledajte "Dohodak"					
<b>UVID U PODATKE O VISINI DOHODAKA I PRIMITAKA</b>					
Podaci iz ISPU sustava					
Godina	2014. ▾	razdoblje: godina, uvid na dan: 12. 10. 2015.		<a href="#">Dohvati podatke</a>	
Rbr.	Opis	Dohodak	Porez i prirez		
<b>I.</b>	<b>DOHODAK/POREZ I PRIREZ</b>				
1.	Dohodak od nesamostalnog rada - ukupno	122.596,71	22.951,94		
a)	Dohodak od nesamostalnog rada - plaća	122.596,71	22.951,94		
b)	Dohodak od nesamostalnog rada - mirovina	0,00	0,00		
2.	Dohodak od samostalne djelatnosti	0,00	0,00		
3.	Dohodak od kapitala	0,00	0,00		
4.	Dohodak od imovine i imovinskih prava	0,00	0,00		
5.	Dohodak od osiguranja	0,00	0,00		
6.	Drugi dohodak	0,00	0,00		
7.	Inozemni dohodak	0,00	0,00		
8.	Povrat/uplata poreza i prireza po godišnjoj prijavi		-3.556,70		
9.	UKUPNO DOHODAK/POREZ I PRIREZ	122.596,71	19.395,24		
Rbr.	Opis	Iznos			
<b>II.</b>	<b>UKUPNO NEOPOREZIVI PRIMICI IZ JOPPD</b>	1.774,00	<a href="#">Detaljan pregled</a>		
Rbr.	Opis	Iznos			
<b>III.</b>	<b>OSTALI NEOPOREZIVI PRIMICI</b>				
1.	Neoporezivi primitak od imovine otuđenje		0,00		

Insight into transactions on bank account is one of the most important records immediately available through IT. For information on the transactions of current and savings accounts, term deposits and all other kinds of accounts you need the written request send to bank (General Tax Act)

```

F61MRR7          INFORMACIJSKI SUSTAV POREZNE UPRAVE          12.10.2015
      Uvid u podatke Registra računa - prometi po vlasniku računa      08:15:47
-- SREDIŠNJI URED -----
OIB: [REDACTED]          MB/MBG: [REDACTED]          MB sam.djel:
Naziv/prezime i ime: [REDACTED]

Promet od: 01 01 2015 do 12 10 2015
===== str 1 / 3 =====
Broj računa          Stanje na početku razdoblja
                    Duguje          Potražuje
=====
HR20 2484 008: [REDACTED]          0,00          2,58
                    0,00          0,00
HR36 2484 008: [REDACTED]          0,00          21.111,04
                    1.095.728,54          1.171.346,75
HR44 2484 008: [REDACTED]          0,00          25.623,32
                    583.706,95          593.385,07

Ukupno:          0,00          794.080,20
                    6.839.772,74          8.329.385,72
----- APIS IT Zagreb -----
F1 Help  F2 Ponovo  F3 Kraj  F6 Povratak  F7 -1  F8 +1  F9 Opći podaci
F10 Povijest  F11 Blokade  F12 Promet po računu
    
```

The records PBZO also possible to see data on the vehicles owned by the taxpayer, aircraft, acquisition and disposal of real estate, boats, property securities, shares, details about bank register, liens and blockades, all according to the state on the inquiry.

OIB: [REDACTED]  
 Ime i prezime: [REDACTED]

Datum i vrijeme upita: 04.08.2015. 10:51:34  
 Upit poslao: 3000/SREDIŠNJI URED

Vozila | Zrakoplovi | Nekretnine | Plovila | Vrijed. papiri | Dividenda | Udjeli | Zal. prava | ORP | JRR | Blokada

**PODACI O VOZILU**

Nadležna institucija: MINISTARSTVO UNUTARNJIH POSLOVA (MUP)

Stranica: 1/1

Rbr.	Marka Model/Tip Godina	Snaga (kWh) Broj šasijske Registarska oznaka	Vrijednost Datum stjecanja Datum odjave	Vrsta vozila Teret Korisnik
1.	MAZDA 2.0 D / 323 1999.	[REDACTED]	0,00 07.09.1999.	M1 - OSOBNI AUTOMOBIL NE
2.	OPEL COMF.DTR. / VECTRA 2.0 2004.	[REDACTED]	0,00 16.04.2004.	M1 - OSOBNI AUTOMOBIL NE

[<< Natrag](#)    [Ispis podataka](#)

## RESULTS-TILL MAY 2018

### CRIMINAL REPORTS – 25 CRIMINAL INVESTIGATIONS-23

- No. of accused legal and natural persons: **392**
- No. of accused legal persons: **89**
- Material gain: **1.535.670.725,33 kn**
- Money laundry case: **631.021.162,03 kn**
- Tax: **145.466.941,70 kn**
- Subvention fraud: **18.570.387,61 kn**

# CASES FROM PRACTICE

---

## VAT FRAUD

- Initial detection of VAT fraud after Croatian accession in EU via SCAC requests (administrative cooperation in the field of VAT)
- Information from Eurofisc
- Risk analysis table sheet set up in the Independent Anty- Fraud Unit (IAFU)
- Data from the Local Tax Offices related to VAT refund
- Development of risk analysis in TA

## HIGH RISK GOODS

- **GOLD**
- **MOBILE PHONES**
- **GAMES, ELECTRONIC GOODS**
- **CARS**
- **TABLETS**
- **All other goods sensible to VAT fraud: chocolate, tuna, coffee, ect.**

## MISSING TRADERS

### Measures to stop the missing traders:

- Cancellation or suspension of VAT ID Number (Article 77, paragraph 7. and 8. Value Added Tax Act (official gazette of the Republic of Croatia “Narodne novine” number: 73/13 to 115/16)
- Precautionary measures (Article 171, Paragraph 1. and 4. General Tax Act) may be taken in order to collect an unspecified amount of tax liability if the entrepreneur fails to keep business books or does not submit his tax returns

## CASE 1

### **We suspect that sales of gold and payment in Croatia from Italian physical person really happened**

We sent SCAC and asked for the following:

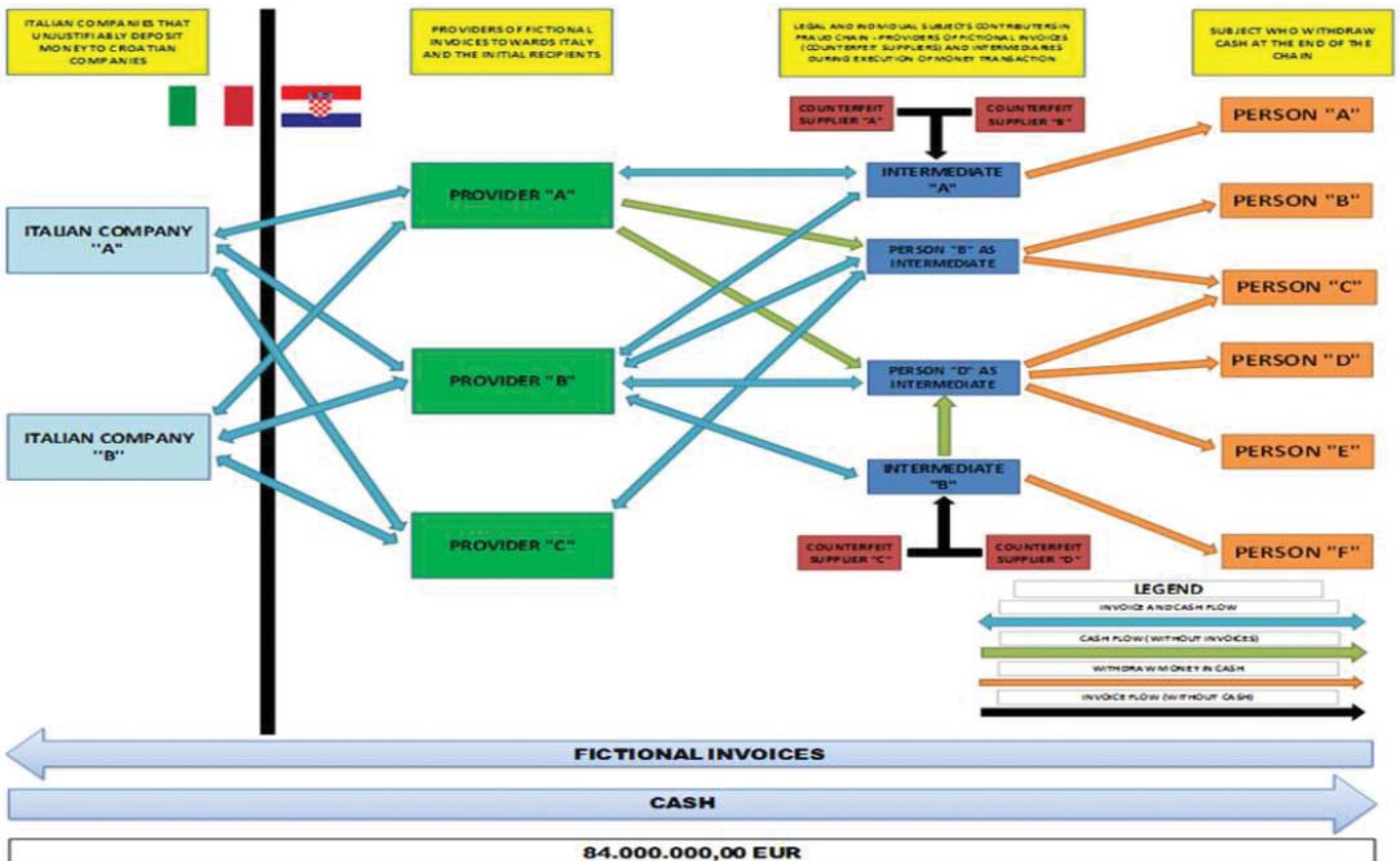
- Did the delivery of gold from Italian physical person to our taxpayer really happen?
- Where did the delivery take place (Italy or Croatia)?
- Did the physical person receive payment and in what amount?

**Response from Italy:**

- No goods
- No delivery
- No supply
- Fake documentation

**Next steps:**

- Send the five SCAC requests to Italy to check the other gold supply
- Response was the same as previous

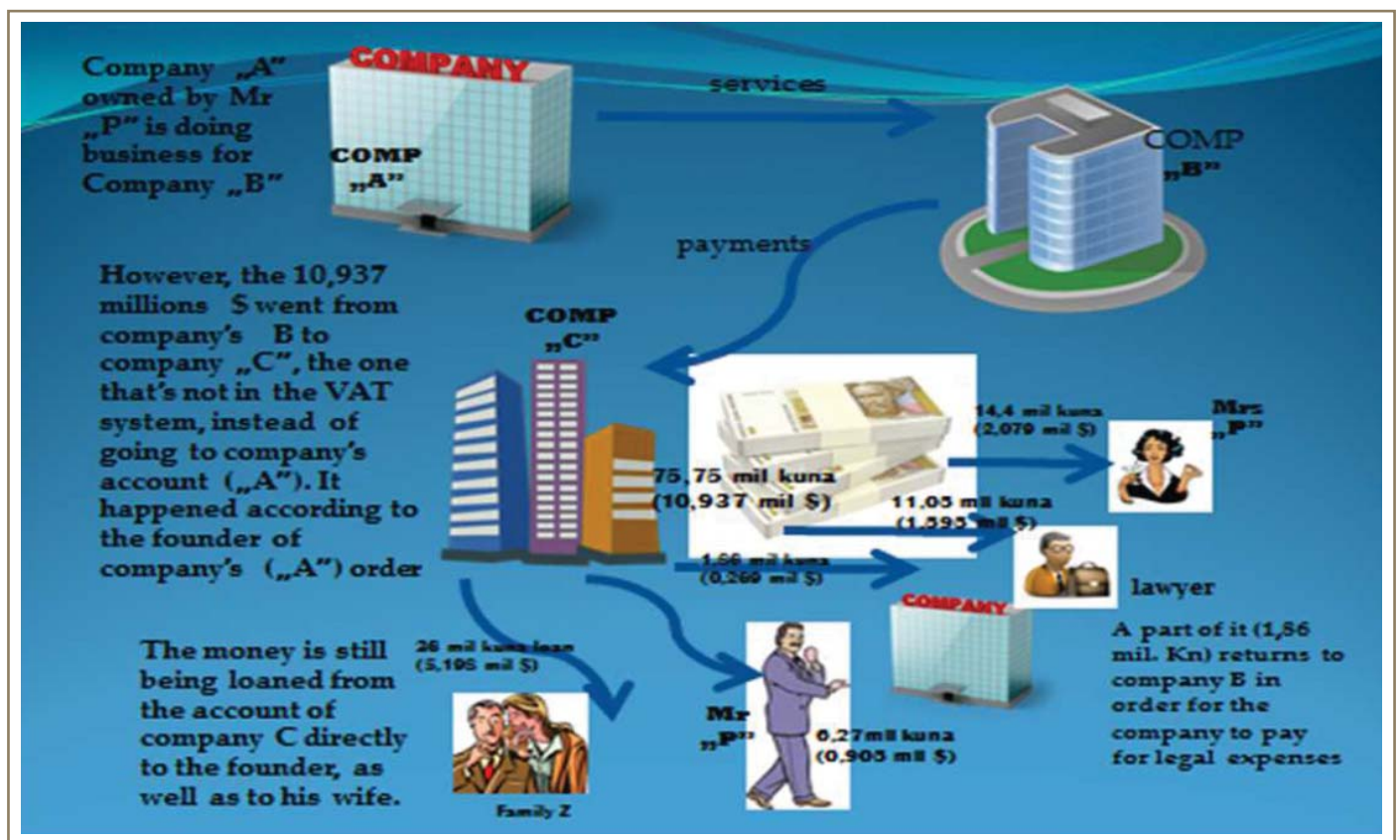


## CASE 2

- company detected in the IAFU (Risk analysis table sheet )
- VAT refund request in the amount of 800.000 €
- Paying agency for agricultural, fisheries and rural development has terminated the contract in the amount of 2,7 mil € because of incomplete documentation
- Report was sent to the State Attorney's Office

## CASE 3

- Fictitious transfer of contract from one company to the other to avoid VAT
- Cooperation with State Attorney's Office
- Due to reasonable suspicion that a criminal offence against economy has been committed by tax or customs evasion referred to in Article 256 paragraphs 1 and 3 of the Criminal Code





# Cooperation between OLAF, AFCOS and the Prosecution Office - the experience of Bulgaria



**EMILIYA PETROVA**  
Bulgaria

# PRESENTATION CONTENT

---

- Key Players
- Legal Basis
- Form of Cooperation
- Organization of the Process
- Successful Stories

## KEY PLAYERS (THE ACTORS INVOLVED IN THE PROCESS)

European Anti-Fraud Office

AFCOS Directorate

AFCOS Council Members

Bulgarian Law Enforcement Authorities

Prosecution Office of Republic of Bulgaria

## STRUCTURE & FUNCTIONS OF THE AFCOS DIRECTORATE

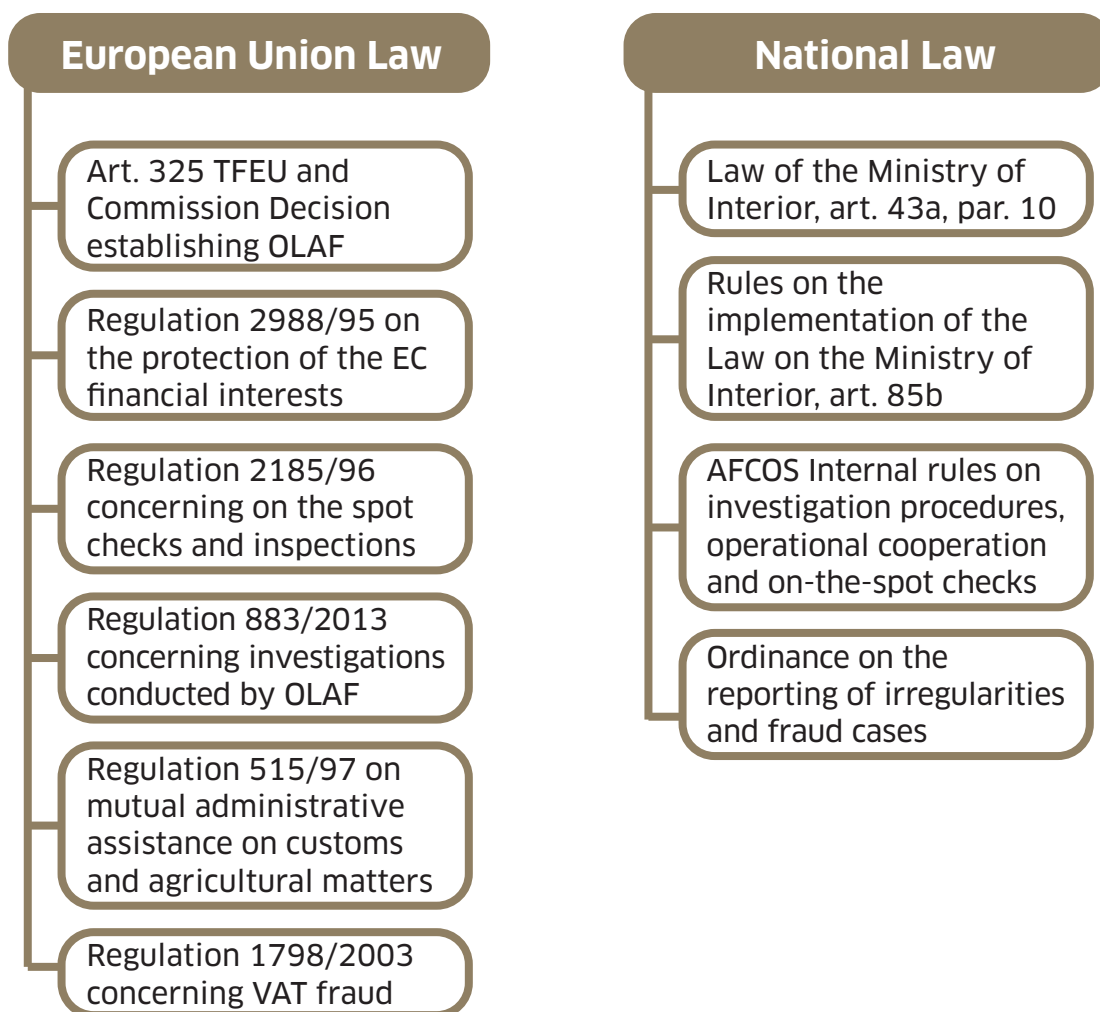


The AFCOS Directorate is a structure within the Ministry of Interior, which carries out control, information and coordination activities with regard to the protection of the financial interests of the European Union and serves as an Anti-Fraud Co-ordination Service, which supports the efficient cooperation and exchange of information with the European Anti-Fraud Office (OLAF) in accordance with art. 3 pt. 4 of Regulation (EC, Euratom) № 883/2013 of the European Parliament and of the Council of 11 September 2013 Concerning Investigations Conducted by the European Anti-Fraud Office (OLAF)

# MEMBERS OF THE AFCOS COUNCIL 19 INSTITUTIONS AT DEPUTY MINISTER LEVEL

- Managing Authorities of EU Funded Operational Programmes
- Certifying Authority
- Audit of the EU Funds Executive Agency
- Public Internal Financial Control Agency
- Customs and Tax Authorities
- State Fund Agriculture
- Secretary General of the Ministry of Interior representing the Police Authorities

## LEGAL BASIS FOR THE COOPERATION OLAF - AFCOS



## FORMS OF ASSISTANCE FROM AFCOS TO OLAF

- Requests for information and documentation
- Requests for assistance with regard to on-the-spot controls on the territory of Bulgaria
- Requests for controls, checks and administrative investigations to be carried out by the AFCOS Directorate
- Requests for information and documentation concerning the follow-up of the judicial recommendations given in the OLAF Final Case Reports



# REQUESTS FOR INFORMATION AND DOCUMENTATION

The AFCOS Directorate exchanges information with OLAF, including such of operational nature, on the protection of the financial interests of the European Union.

In carrying out its functions and activities the AFCOS Directorate's officials have the right to:

- request information and documents from the bodies administering EU funds, instruments and programs;
- require documents and information from state and local authorities, legal entities and individuals, and organizations



## BULGARIAN MODEL FOR ON-THE-SPOT CHECKS

### 1. Gathering and expanding information

- AFCOS and Ministry of Interior databases
- Commercial Register
- Irregularity Register
- Addresses' visits

### 2. Provision of participants

- Economic operator
- Prosecution's office
- Local police authorities
- Public Financial Agency Inspection
- Managing Authorities, Audit Authorities, other competent authorities

### **3. Update of the information of the on-going pre-trial proceedings and prosecution checks**

#### **4. Interview preparation**

- by AFCOS
- by Managing Authority

#### **5. Final On-the-spot Check Plan**

#### **6. Workig meeting at AFCOS Directorate's premises**

OLAF Investigators, the AFCOS Director, the Head of the Operational Cooperation Unit and the AFCOS Experts involved in the control

#### **7. Starting the on-the-spot check**

- written authorization
- identity of team
- purpose and scope of OTSC
- Operational center at AFCOS Directorate during the OTSC

#### **8. On-the-spot check core activities**

- all kind of documentation in relation to the public procurement
- computer data
- physical checks as to nature of quantity of goods
- budgetary and accountant documents
- documentation of the project etc.

#### **9. Finalizing the On-the-spot Check**

- report of the OTSC
- objection and comments
- operational meeting in AFCOS, conclusions and recommendations

#### **9. Finalizing the On-the-spot Check**

- report of the OTSC
- objection and comments
- operational meeting in AFCOS, conclusions and recommendations

#### **10. Analysis on the results**

## **REQUEST FOR CONTROLS TO BE CARRIED OUT BY THE NATIONAL AUTHORITIES**

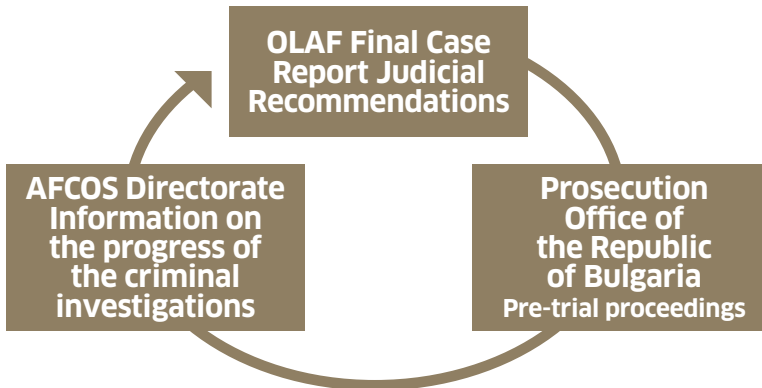
### **Administrative Investigations**

- In arriving at its decision whether to open an investigation, OLAF considers whether the matter falls within one of the areas of investigative priority which are defined annually by the Office following the principles of proportionality, subsidiarity/value added and efficient use of OLAF resources.
- Dismissed case sent to the national authorities for undertaking the actions deemed appropriate.
- Request to inform OLAF about the results out of the verification carried out by the national competent authorities.

### On-the-Spot Controls

- One request received so far - request for verification concerning the involvement of a Bulgarian commercial company in the implementation of an EU funded project in Romania.
- The AFCOS Directorate performed on-the-spot control, prepared a report and sent it to OLAF.
- Serious misuse of EU funding uncovered.

## OLAF JUDICIAL RECOMMENDATIONS FOLLOW-UP



Cooperation Agreement between the Prosecution Office of the Republic of Bulgaria and the AFCOS Council Art. 13.

The Prosecution Office, on OLAF request, shall submit to the AFCOS Directorate information about initiated, on-going and closed pre-trial proceedings with regard to:

- on-going administrative investigations, initiated by OLAF;
- closed administrative investigations followed by a final case report with judicial recommendations;
- on-the-spot controls on the territory of Republic of Bulgaria.

## FORMS OF ASSISTANCE FROM OLAF TO AFCOS

Requests for Information and Documentation	Requests for on-the-spot controls in other Member States	Requests for opening an investigation /coordination case/	Support for Operational Missions in another Member State
--	--	---	--

## CASE STUDY ONE

- **The Smart Lady** Case
- Parties involved: 5 NGOs
- Off Shore Companies
- Commission Officials

### Modus Operandi

80% + 20% shares in funding

20% participation secures through friends' companies

The Smart Company owned by Stella the Smart is chosen as the Implementing Body preparing the campaigns

# CASE STUDY TWO

## ■ **Mr. Big Promise** Case

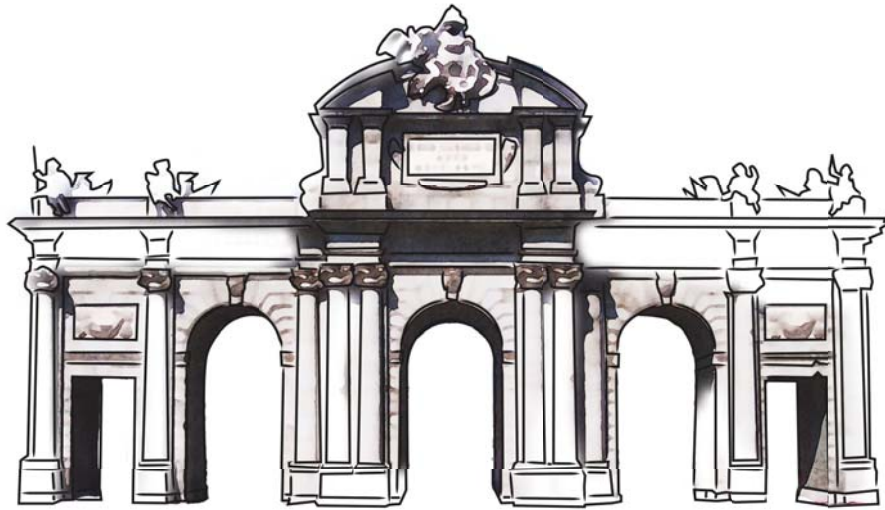
Tender procedures for the supply of food for the most deprived

### **Modus Operandi:**

Mr. Big Promise invented tens of companies and used them to “gain experience”

Support from a big bank – issued guarantees

Finally Mr. Big Promise disappeared



# Law enforcement challenges in investigating fraud cases in Spain



**FRANCISCO GONZÁLEZ  
ITURRALDE**  
Spain

# INDEX

ENFORCING OCG ACTIVITIES IN SPAIN  
LAST DEVELOPMENTS IN FINANCIAL INVESTIGATION  
REMAINING CHALLENGES IN FINANCIAL INVESTIGATION

## ENFORCING OCG ACTIVITIES IN SPAIN

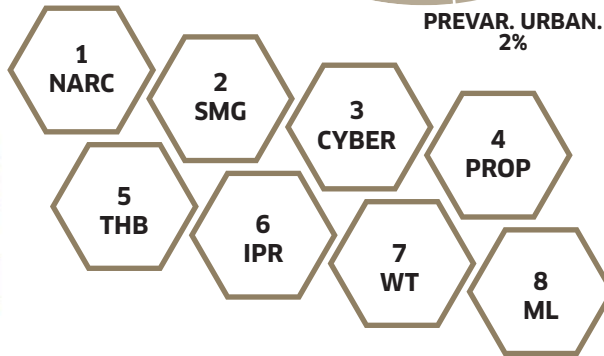
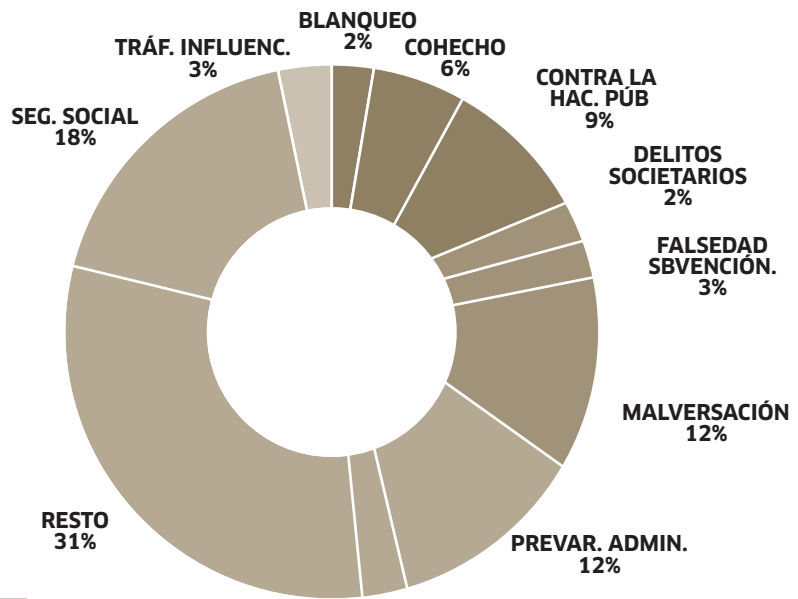
### Situación 2016 - Crimen Organizado en España

Actuación de los grupos de crimen organizado por provincias

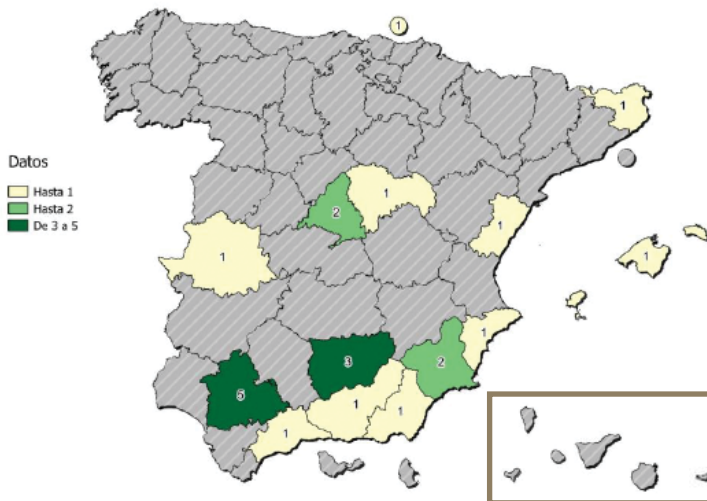


# Lucha contra la corrupción es España. Año 2016

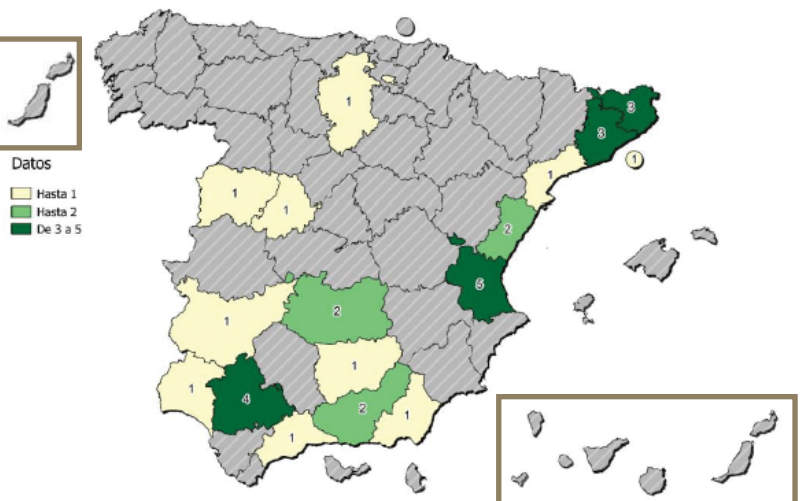
TIPOLOGÍAS PENALES	Total
BLANQUEO	24
COHECHO	70
CONTRA LA HAC.PÚBL	99
DELITOS SOCIETARIOS	21
FALSEDAD SUBVENCIÓN	31
MALVERSACIÓN	139
PREVAR. ADMIN.	130
PREVAR.URBAN.	22
RESTO	349
SEG. SOCIAL	201
TRAF. INFLUENC.	30
<b>Total general</b>	<b>1.116</b>



DOMINIO FRAUDE HACIENDA Y S.S. AÑO 2016



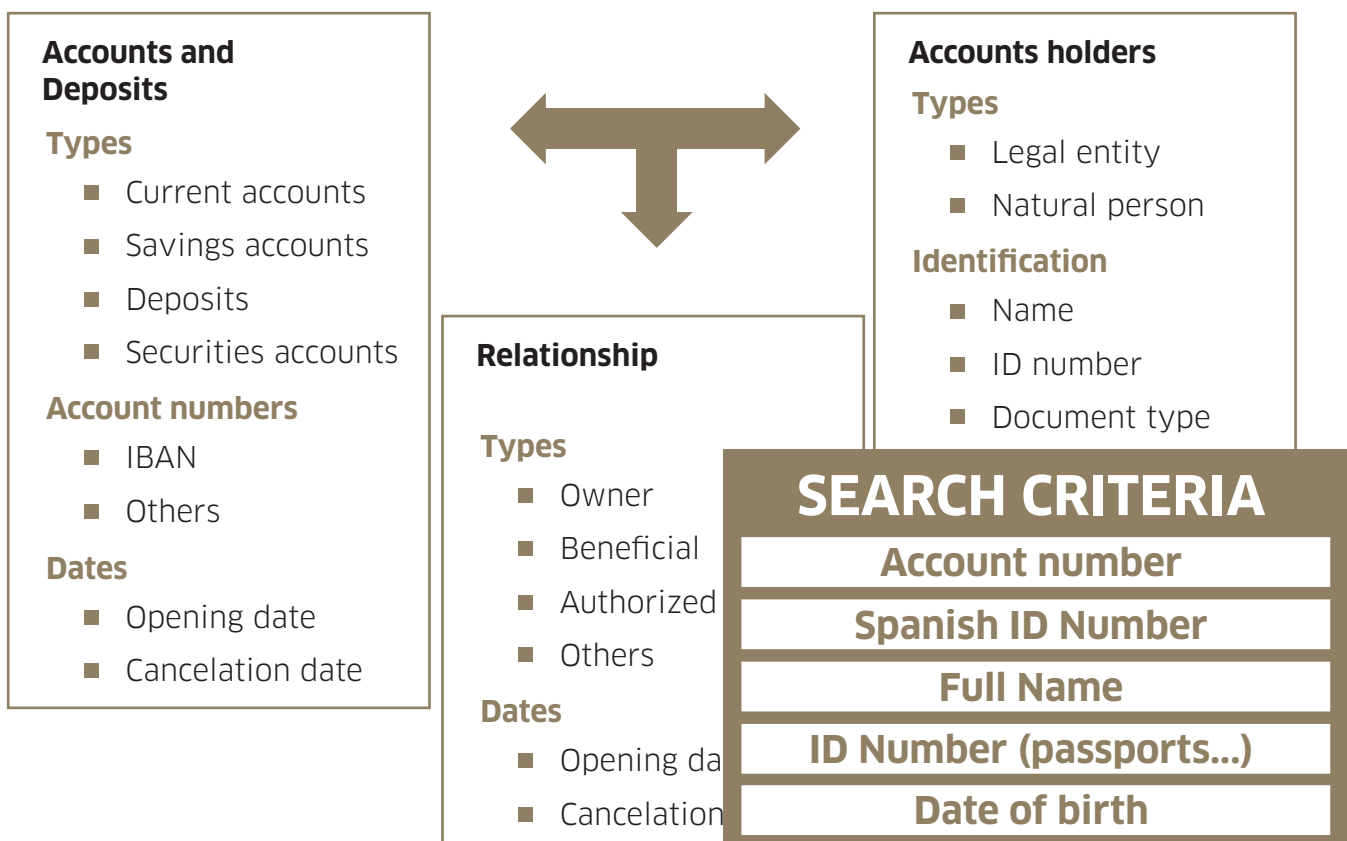
DOMINIO FRAUDE HACIENDA Y S.S. AÑO 2017



# LAST DEVELOPMENTS IN FINANCIAL INVESTIGATION

- ENHANCING INTERNAL COOPERATION WITHIN THE MOI
- BENEFICIAL OWNERSHIP DATABASES
- CENTRAL ACCOUNT DATABASE (SPANISH FIU)
- NEW STRUCTURES: ARO/AMO SERVICE
- COUNCIL DECISION 2006/960/JAI

## CENTRAL ACCOUNT DATABASE

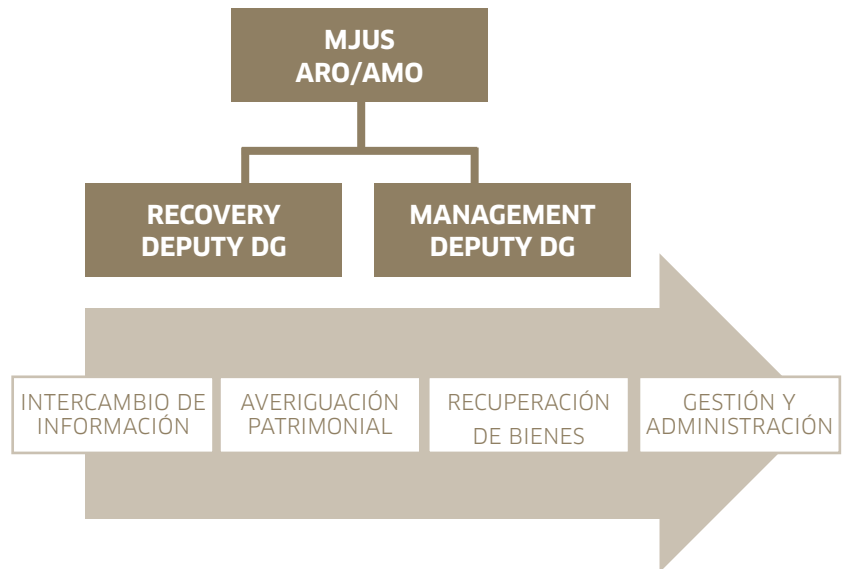
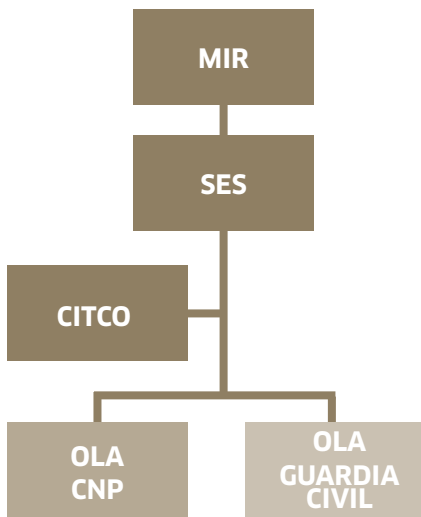


## ARO/AMO

### Confiscation and provisional measures \*

Countries should adopt measures similar to those set forth in the Vienna Convention, the Palermo Convention, and the Terrorist Financing Convention, including legislative measures, to enable their competent authorities to freeze or seize and confiscate the following, without prejudicing the rights of *bona fide* third parties: (a) property laundered, (b) proceeds from, or instrumentalities used in or intended for use in money laundering or predicate offences, (c) property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations, or (d) property of corresponding value.





## SIMPLYFYING EXCHANGE OF INFORMATION AND INTELLIGENCE AMONG EU MS

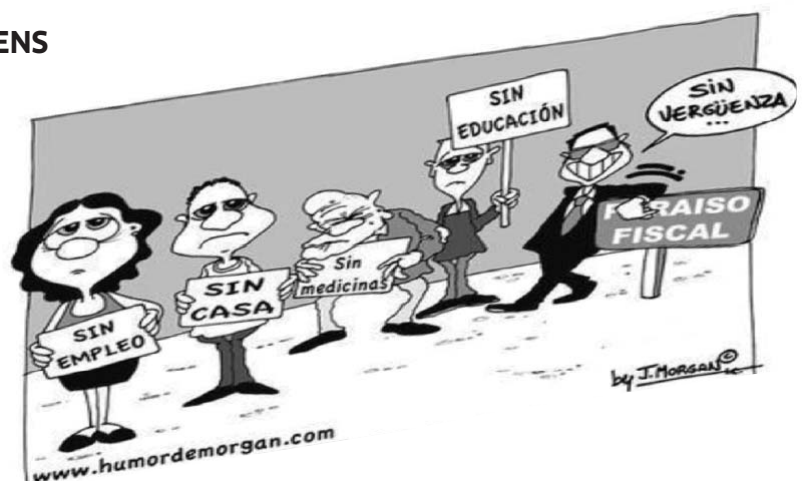
COUNCIL DECISION 2006/960/JAI. SP LAW 31/2010

# REMAINING CHALLENGES IN FINANCIAL INVESTIGATION

- RAISING AWARENESS AGAINST FRAUD PUBLIC FUNDING
- ENHANCING LAE TRAINING
- ENHANCING LEA HUMAN RESOURCES AVAILABILITY
- GRANTING LAE ACCESS TO OFFICIAL DATABASES
- BENEFICIAL OWNERSHIP DATA BASES
- ENHANCING REGULATION OF TAX HAVENS

### ENHANCING REGULATION OF TAX HAVENS

EU initiatives on regulating activities of tax havens: 0  
 Only listing in 2015 & 2017



# **NO MONEY NO CRIME**

The main motive for cross-border organised crime, including mafia-type criminal organisation, is financial gain. As a consequence, competent authorities should be given the means to trace, freeze, manage and confiscate the proceeds of crime. However, the effective prevention of and fight against organised crime should be achieved by neutralising the proceeds of crime and should be extended, in certain cases, to any property deriving from activities of criminal nature.

Among the most effective means of combating organised crime is providing for severe legal consequences for committing such crime, as well as effective detection and the freezing and confiscation of the instrumentalities and proceeds of crime.





# Cooperation between Malta and Croatia - The “Cocaine” Seizure



**ANTHONY SPITERI**

Malta

# 1. ALERT FRENCH CUSTOMS

## SECURE EMAIL ALERT

On 22 January 2018, Malta Customs received a secure email alert indicating that:

CONTAINER: **CMAU4949406**

- Container loaded at Manzanillo on m.v. Ocean Promise, was likely to contain drugs.
- Declared on manifest to contain “metal scrap”.
- *Modus Operandi*: These drugs might be concealed with the cargo.
- Vessel first European port was to be Algeciras, a port in the south of Spain. Spanish Customs informed to monitor the vessel for any suspicious movements as the container was remain on board.
- Vessel was to enter Malta Freeport between the 2<sup>nd</sup> and 7<sup>th</sup> February.
- Container was to be transhipped at Malta Freeport, and Rijeka was registered as the Final destination - e.t.a. 10<sup>th</sup> February.
- French Customs requested Malta Customs to inspect the container.



# IMPORTING VESSEL

## The container arrived on m.v. Ocean Promise



## 2.

# THE CONTAINER

## MOVEMENT OF THE CONTAINER


- The container was discharged on the 4<sup>th</sup> February, at the Malta Freeport; it was immediately conveyed under escort to a secure area within the port and monitored 24/7.
- On the 5<sup>th</sup>, it was conveyed under escort for scanning.
- After scanning, it was escorted back to its secure area.
- The scanning images revealed several areas of concern.

## DISCHARGE OF THE CONTAINER FREEPORT PORTAL

CMAU4949406

Entered terminal at	04/02/2018 16:07:34
Left terminal at	
Inbound On	OT0203 - OCEAN PROMISE (EXP) - SG
Outbound On	
Category	Transshipment
Status	Full
Transit State	
Agent (Inbound)	Bianchi Group of Co. Ltd
Agent (Outbound)	
Known Destinations	RJK - Rijeka

# CMA CGM Bill of Lading

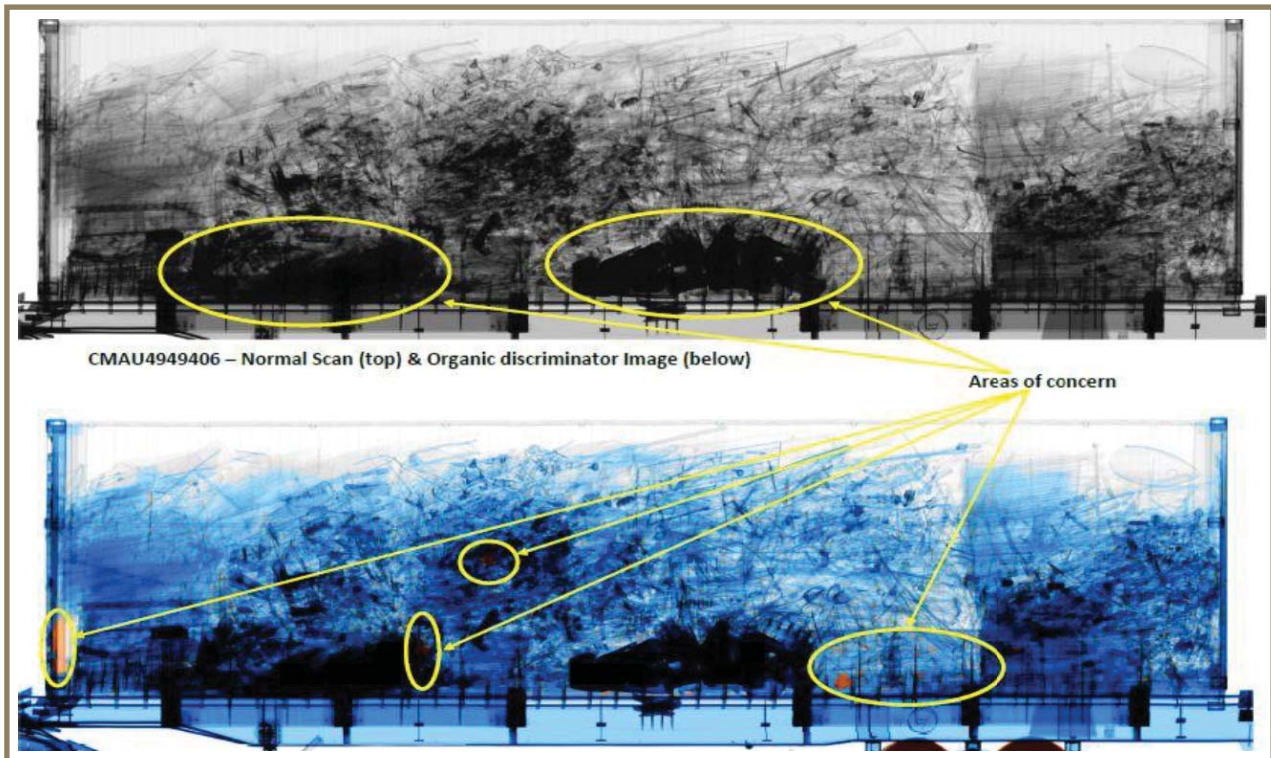
<b>SHIPPER</b> MSS PANAMA S.A. BOCCA 126F CHIVO CHIVO AREA OMAE TORREJOS CIUDAD DE PANAMA TEL: 397-9716		<b>DRAFT BILL OF LADING</b>		<b>VOYAGE NUMBER</b> 212MCE	
<b>CONSIGNEE</b> OTKUP METAL D.O.O. BOLNIČKA CESTA 51/12, BUSEDOGRAD 10 000 CID: 0166449236 ZAGREB CROATIA				<b>BILL OF LADING NUMBER</b> PMA0133980	
<b>NOTIFY PARTY - Consignee to be responsible for failure to notify</b> OTKUP METAL D.O.O. BOLNIČKA CESTA 51/12, BUSEDOGRAD 10 000 CID: 0166449236 CONTACT: FILIP BOSNJAK PHONE: 00385 91 5288 EMAIL: FILIP.BOSNJAK@CMX.CGM		<b>EXPORT REFERENCES</b> 		<b>CARRIER</b> CMA CGM SOCIETE ANONYME AU CAPITAL DE 234 360 330 EURO HEAD OFFICE: 4, QUAI D'IVERNÉE - 13002 MARSEILLE - FRANCE TEL: (33) 4 88 91 90 00 - FAX: (33) 4 88 91 90 95 562 034 422 P.O.S. MARSEILLE	
<b>PRE CARRIAGE BY*</b>		<b>PLACE OF RECEIPT*</b>		<b>FREIGHT TO BE PAID AT</b>	
<b>VESSEL</b> OCEAN PROMISE		<b>PORT OF LOADING</b> MANZANILLO, PA		<b>PANAMA CITY</b>	
<b>MARKS AND NOS CONTAINER AND SEALS</b>		<b>DESCRIPTION OF PACKAGES AND GOODS AS STATED BY SHIPPER</b>		<b>GROSS WEIGHT CARGO</b>	
SEAL: F6680348		1 x 40BC 4 BUNCE CHATARRA MIXTA (HIERRO) MIXED SCRAP (IRON) Shipped on Board OCEAN PROMISE 20-JAN-2018 CIA CGM PANAMA As agents for the Carrier		20000.000	
<b>NO AND KIND OF PACKAGES</b>		<b>SHIPPER'S LOAD STOW AND COUNT</b> SAID TO CONTAIN		<b>TARE</b> 3300	
<b>MEASUREMENT</b>		<b>DESCRIPTION OF PACKAGES AND GOODS AS STATED BY SHIPPER</b>		<b>TARE</b> 3300	
<b>NO AND KIND OF PACKAGES</b>		<b>SHIPPER'S LOAD STOW AND COUNT</b> SAID TO CONTAIN		<b>MEASUREMENT</b> 60.000	
<b>MARKS AND NOS CONTAINER AND SEALS</b>		<b>DESCRIPTION OF PACKAGES AND GOODS AS STATED BY SHIPPER</b>		<b>GROSS WEIGHT CARGO</b>	
SEAL: F6680348		1 x 40BC 4 BUNCE CHATARRA MIXTA (HIERRO) MIXED SCRAP (IRON) Shipped on Board OCEAN PROMISE 20-JAN-2018 CIA CGM PANAMA As agents for the Carrier		20000.000	
<b>NO AND KIND OF PACKAGES</b>		<b>SHIPPER'S LOAD STOW AND COUNT</b> SAID TO CONTAIN		<b>TARE</b> 3300	
<b>MEASUREMENT</b>		<b>DESCRIPTION OF PACKAGES AND GOODS AS STATED BY SHIPPER</b>		<b>TARE</b> 3300	
<b>NO AND KIND OF PACKAGES</b>		<b>SHIPPER'S LOAD STOW AND COUNT</b> SAID TO CONTAIN		<b>MEASUREMENT</b> 60.000	
<b>MARKS AND NOS CONTAINER AND SEALS</b>		<b>DESCRIPTION OF PACKAGES AND GOODS AS STATED BY SHIPPER</b>		<b>GROSS WEIGHT CARGO</b>	
SEAL: F6680348		1 x 40BC 4 BUNCE CHATARRA MIXTA (HIERRO) MIXED SCRAP (IRON) Shipped on Board OCEAN PROMISE 20-JAN-2018 CIA CGM PANAMA As agents for the Carrier		20000.000	
<b>NO AND KIND OF PACKAGES</b>		<b>SHIPPER'S LOAD STOW AND COUNT</b> SAID TO CONTAIN		<b>TARE</b> 3300	
<b>MEASUREMENT</b>		<b>DESCRIPTION OF PACKAGES AND GOODS AS STATED BY SHIPPER</b>		<b>TARE</b> 3300	
<b>NO AND KIND OF PACKAGES</b>		<b>SHIPPER'S LOAD STOW AND COUNT</b> SAID TO CONTAIN		<b>MEASUREMENT</b> 60.000	

## 3. SCANNING PROCESS

### CUSTOMS SCANNER



# SCANNING IMAGES



- The container was loaded with scrap metal full to the brim. Cargo was resting against the doors. It was very dangerous to open and inspect this unit.
- The issue was discussed within the Customs Management and it was decided that the container should be released for onward transshipment. However, until its departure from Malta, the unit was to remain under constant watch.
- Customs in Croatia would take the responsibility to physical check the cargo.
- If narcotics were found in the container, it would be much easier to conduct a controlled delivery and narrow down on the perpetrators.
- Scans of the container were forwarded to Croatia Customs, showing the areas of concern.
- Eventually, the container was escorted to the vessel.
- It was loaded on m.v. APL Florida, destination Rijeka.
- Container left on the 23<sup>rd</sup> February.

## EXPORTING VESSEL

Container loaded on m.v. APL Florida



# FREEMPORT PORTAL

CMAU4949406

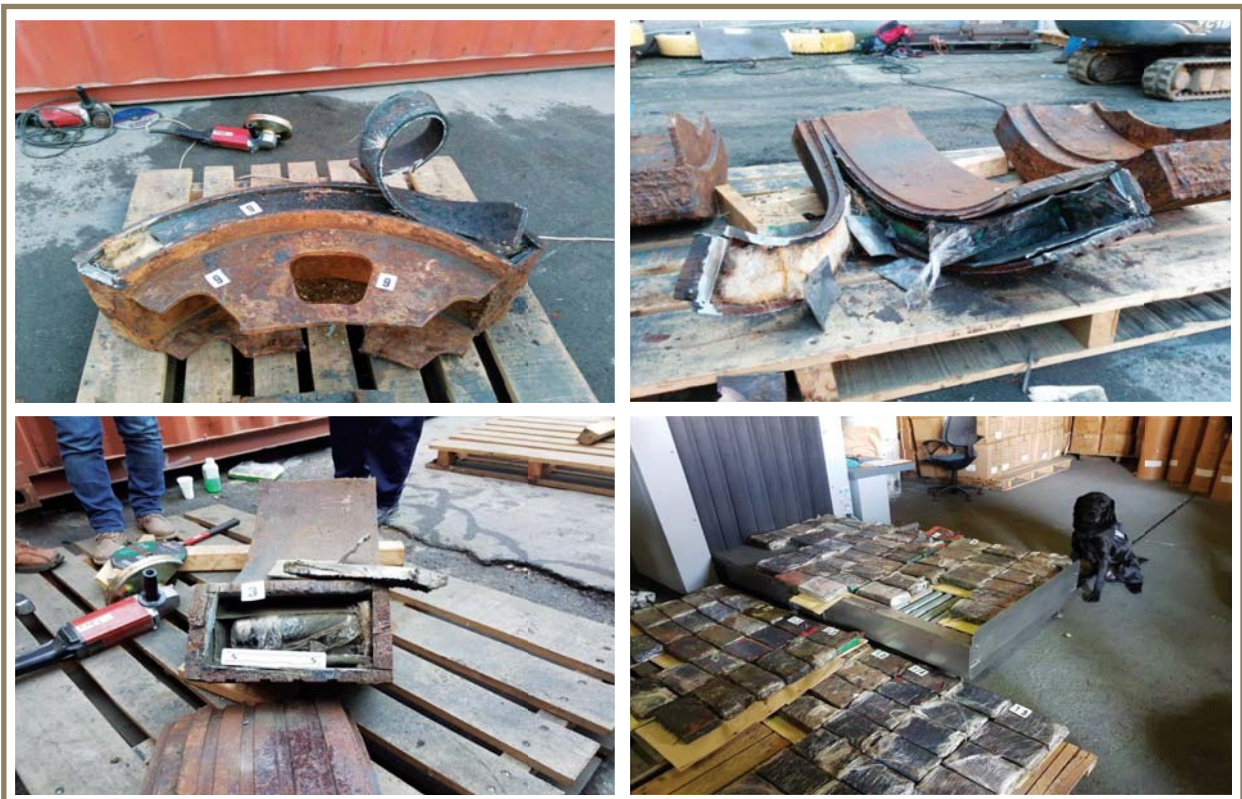
Entered terminal at	04/02/2018 16:07:34
Left terminal at	23/02/2018 07:25:23
Inbound On	OT0203 - OCEAN PROMISE (EXP) - SG
Outbound On	OT0332 - APL FLORIDA (CMA)
Category	Transshipment
Status	Full
Transit State	Departed
Agent (Inbound)	Bianchi Group of Co. Ltd
Agent (Outbound)	Cma-Cgm Malta Agency Ltd.
Known Destinations	RJK - Rijeka

## SEIZURE OF COCAINE

- On 9<sup>th</sup> March, Croatia Customs issued a Risk Information Form (RIF) indicating that the Customs and Police seized cocaine, destined for the Croatian illicit drugs market.
- Manifest and BL declaration read "Mixed Scrap" (iron).
- Goods found: **Cocaine in Metal Scrap Pieces**

## GRATITUDE TO MALTA

- The French Authorities expressed their gratitude to Malta Customs for the collaboration offered in this operation
- Malta Customs was informed that the Croatian Authorities seized 100 kilograms of cocaine inside metal scrap and several arrests were made.
- These included different nationals - 6 with Croatian citizenship, 1 with Dutch citizenship, 1 with Colombian and Spanish citizenship and 1 with Dutch and Bosnia-Herzegovina citizenship.





# FOREIGN MEDIA

## Police seize 100 kg of cocaine from shipping container in Croatia

The Borneo Post 10 Mar 2018 +1 more

ZAGREB: Police seized 100 kg of cocaine hidden in a shipping container with 20 tonnes of mixed metal waste in what is believed to be one of the most complex operations in Croatia's history.

EUROPOL

TCN FAMILY HOME NEWS POLITICS

100KG OF COCAINE AND 150KG OF MARIJUANA SEIZED IN MAJOR INTERNATIONAL OPERATION DISMANTLING BALKAN CARAVANS

08 March 2018 Press Release

Police Seize 100 Kilos of Panama Cocaine

By HINA, 08 Mar 2018, 18:03 PM Politics

# MALTESE MEDIA

Id-Dwana Maltija tagħti sehma b'suċċess f'operazzjoni biex twaqqaf ċirku ta' kriminalità organizzata

Id-Dwana Maltija tagħti sehma b'suċċess f'operazzjoni kongjunta ma Dwaniet oħra li jteżisti bejn id-Dwaniet fuq livell Ewropew għadhom kif waslu għal...

100kg of cocaine found hidden in container - TVM News

An operation by European Customs authorities, including that of Malta, led to the seizure of some 100 kilograms of cocaine at Rijeka port in Croatia. The operation involving French, Spanish...

European customs departments, including Malta, successfully intercept 100kg consignment of cocaine

28 March 2018, Wednesday 14.2°C / 58°F RSS

Home > Local > News > European customs departments, including Malta, successfully intercept 100kg consignment of cocaine

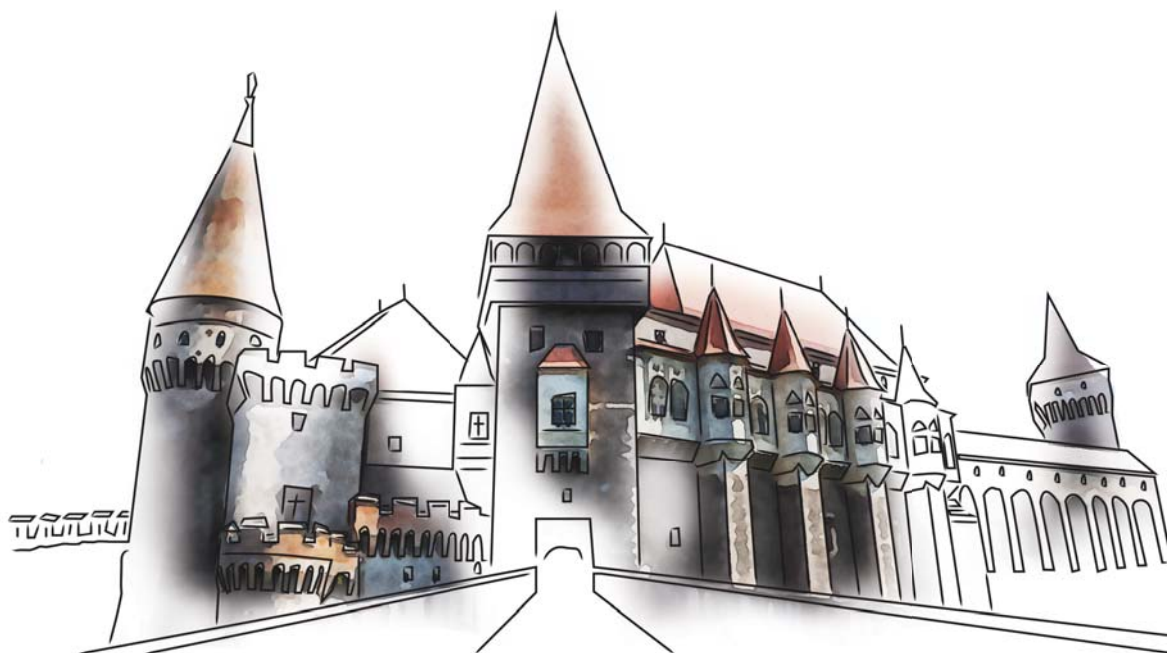
13 March 2018, 13:42 Last update: about 15 days ago

Tuesday, March 13, 2018, 13:23

**100kg of cocaine seized in international operation involving Malta Customs**

**Nine people arrested in Croatia following the seizure**

Times of Malta



# Romanian experience in prosecution of offences against EU's financial interests



**OANA RANETI**

Romania

# The EU's financial interests

## Case-law of the Court of Justice of the European Union - Interpretation - C-11/00 and C-15/00

Essential criterion – the affected income and expenditure must be in connection with the EU budget either directly or indirectly through the budgets managed by the European institutions;

## Regulation (EU, Euratom) 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF):

"Union financial interests" - include the revenue, expenditure and assets covered by the budget of the European Union and those covered by the budgets of the institutions, bodies, offices and agencies and the budgets managed and monitored by them

## Art. 325 TFUE on "combatting fraud"

1. The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies.
  2. Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.
- **Council Regulation (EC, Euratom) no 2988/95** on the protection of the European Communities financial interests
  - **Directive (EU) 2017/1371** of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law

## Definition of the "irregularity"(art. 1 (2) R2988/95)

'**Irregularity**' - any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.

## Definition of "fraud" - art. 3 Directive 2017/1371

- any intentional act or omission concerning:
- the use or presentation of false, inaccurate or incomplete statements or documents;
- failure to disclose information in violation of a specific obligation;
- misappropriating these funds for purposes other than those for which they were originally granted;
- **Result:** the undue collection or recovery of funds deriving from the Union budget or the budgets of Union institutions, bodies, offices and agencies established under the Treaties or budgets managed or directly or indirectly controlled by them

# Legislative measures adopted at national level

## ■ At administrative level:

- GEO no. 66 / 2011 on the prevention, detection and sanctioning of the irregularities in obtaining and using the European funds and/or the national public funds related to them and
- The Methodological Norms - GD 875/2011

## ■ At judicial level:

- Law no. 78/2000 on the prevention, detection and Sanctioning of Corruption - Section 4<sup>1</sup> Offenses against the Financial Interests of the European Communities
- Penal Code

# Institutional framework

## ■ National level

- Administrative – The Fight against Fraud Department (DLAF)
- Judiciary - National Anticorruption Directorate (DNA)

## ■ European level

- European Anti-Fraud Office - OLAF

# DLAF – Romanian AFCOS

## ■ Legal Framework

- **Law no 61/2011** regarding the organization and functioning of Fight Against Fraud Department – DLAF
- **Government Decision no 738/2011** for the approval of the Regulation for the organization and functioning of Fight Against Fraud Department - DLAF

# Specialised administrative body with exclusive competences regarding:

- **on-the-spot controls** – beneficiaries of EU funds or other interested parties
- **anti-fraud coordination** of national institutions (prevention, communication, investigations or exchange of information – best practices)
- **cooperation** with the European Anti-Fraud Office - OLAF

# Investigative powers

- Takes statements from any person who may provide data and information regarding the alleged irregularities, frauds
- Draws up control reports that may constitute **means of evidence**, according to the Criminal Procedure Code
- At DLAF request, the police, gendarmerie or other public servants are obliged to assist the control team in carrying out its duties
- Applies sanctions in the case of natural or legal persons who refuse to make available the documents and information necessary for drawing up the control report

- DLAF draws up control papers/acts that can constitute evidence in front of courts
- The control acts drawn up by the Department are not acts or administrative operations
- The control report of D.L.A.F. constitutes an act of notification of the criminal investigation bodies and can not be controlled by administrative litigation
  - DLAF is **ascertaining body**, according to art. 61 of Criminal Procedure Code, in respect of criminal aspects affecting the financial interests of the European Union in Romania
  - **At prosecutor's request**, DLAF may carry out controls regarding the observance of the legal provisions on the protection of EU's financial interests

## Findings

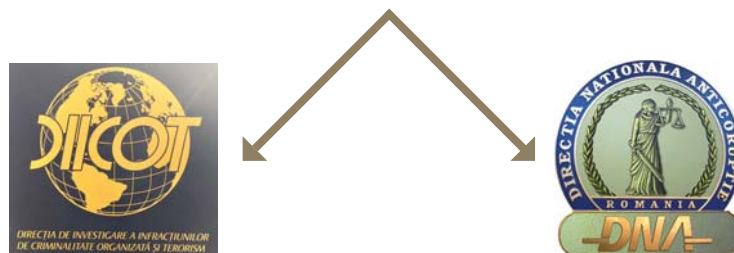
- with administrative relevance - irregularities
- with criminal relevance - frauds

## Follow-up

- by administrative means
- by judicial means

# NATIONAL ANTICORRUPTION DIRECTORATE

- **Part of the Judicial Authority** – independence, stability, impartiality
- **Part of the Romanian Public Ministry**  
The Prosecutor's Office Attached to the High Court of Cassation and Justice



The **only structure of the Public Ministry and a criminal investigating authority with powers in the field of investigating fraud affecting the financial interests of the EU in Romania**, irrespective of the amount of the damage caused or the quality of the persons who committed one of the offenses provided by Law no.78 / 2000

# Legal Framework

## General legislation:

1. Romanian Constitution
2. The Criminal Code
3. The Criminal Procedure Code

## Special laws for the National Anticorruption Directorate

1. Law no. 78/2000 on preventing, discovering and sanctioning corruption offences
2. The Government Emergency Ordinance no. 43/2002 regarding the National Anticorruption Directorate

## Jurisdiction

- **Bribery offences** – if the bribe exceeds 10,000 €
- Offences assimilated to **corruption** – if the damage exceeds 200,000 €
- Bribery and corruption assimilated offences committed by certain high level officials (i.e. MP's, ministers, judges and prosecutors, mayors etc.)
- **ALL offences against the financial interests of the EU**

## Offences against the financial interests of the EU

**Art. 18<sup>1</sup>** – (1) **Using or presenting in bad faith false, inaccurate or incomplete documents or statements**, which has as result the **illegal obtaining of funds from the general budget of the European Union** or from the budgets administrated by it or on its behalf, shall be punished with imprisonment from 2 to 7 years and interdiction of certain rights.

(2) The **deliberate omission to provide the information required according to the law**, with the purpose of obtaining funds from the general budget of the European Union or from the budgets administrated by it or on its behalf, shall be sanctioned with the same punishment as the one provided by paragraph (1), if it results in the unfair obtaining of these funds.

(3) If the deeds provided by art. 1 and 2 caused particularly serious consequences the special limits of the punishment shall be increased by a half.

**Art. 18<sup>2</sup>** (1) **Changing the destination of the funds obtained from the general budget of the European Union** or from the budgets administrated by it or on its behalf, without abiding by the law, shall be punished with imprisonment from 1 to 5 years and the interdiction of certain rights.

(2) **Changing the destination of a legally obtained benefit**, without abiding by the law, if it results in the **illegal diminishing of the resources of the general budget of the European Union** or of the budgets administrated by it or on its behalf, shall be sanctioned with the same punishment as the one provided by paragraph 1.

(3) If the deeds provided by paragraphs 1 and 2 caused particularly serious consequence the special limits of the punishment shall be increased by a half.

**Art. 18<sup>3</sup>** (1) **Using or presenting in bad faith false, inaccurate or incomplete documents or statements**, if it results in the **illegal diminishing of the resources of the general budget of the European Union** or of the budgets administrated by it or on its behalf, shall be punished with imprisonment from 2 to 7 years and the interdiction of certain rights.

(2) The **deliberate omission to provide the information required according to the law**, if it results in the **illegal diminishing of the resources of the general budget of the European Union** or of the budgets administrated by it or on its behalf, shall be sanctioned with the same punishment as the one provided by article (1).

(3) If the offences provided by paragraphs 1 and 2 caused particularly serious consequences, the special limits of the punishment shall be increased by a half.

**Art. 18<sup>5)</sup> - Willingly not observing an office duty**, as a result of non-performing it or deficiently performing it, **by a director, administrator or the person with decisional or control tasks within an economic agent**, if it had as result the perpetration of one of the offences provided by art. 18<sup>1</sup> - 18<sup>3</sup> or the perpetration of a corruption or money laundering offence in connection with the funds of the European Union, by a person subordinated to him/her and who acted on behalf of that specific economic agent, is punished with imprisonment from 6 months to 3 years or a fine.

## Investigation of offences against the financial interests of the EU

- complaints formulated by DLAF
  - *ex-officio* complaints from DNA
  - notifications of natural and legal persons
  - ex officio referrals of other criminal prosecution bodies and declines of jurisdiction in favor of DNA
  - notifications of bodies managing European funds or having control and finding responsibilities (Agency for Payments and Intervention for Agriculture, Directorates for Public Finances etc.)
- The request of the DNA prosecutor is addressed to DLAF to carry out controls on compliance with legal provisions on the protection of the European Union's financial interests
  - The request of the DNA prosecutor may indicate the facts or circumstances which DLAF must identify, clarify and evaluate, the objectives to be met, the period within which the findings must be carried out etc.

## Results in the fight for the protection of the financial interests of EU

- **solved cases - 912 files**, 16.33% more than 2016 and 39.91% versus 2015
- **108 indictments (referrals)** - 18.51% more than in 2016
- **320 defendants** - 284 individuals and 36 legal persons (327 in 2016, but 146 indictees in 2015)
- **3 defendants arrested**
- **22 Guilt Admission Agreements** - versus 16 agreements in 2016
- total **financial damage** amount
  - U.E. - 106,416,092.67 lei and 197,951 Euro
  - national budget - national co-financing funds 23.480.251 lei

- **The investigations completed by indictment** were based on **17 DLAF complaints**, *ex-officio* petitions, individuals' complaints, complaints from fund management bodies (APIA, MDRT, AFIR) and the Court of Auditors
- **Offenses in the agricultural area are predominant** - in about 80 cases the funds for agriculture, such as the EAGF and the EAFRD (European Agricultural Fund for Rural Development), have been misappropriated for projects aimed at animal husbandry, support for agriculture, agricultural markets, direct payments to farmers, increasing the competitiveness of the agricultural and forestry sectors and increasing the quality of life in rural areas





Protection of financial interests  
of the EU *via* criminal law  
– Croatian criminal law framework



**MARLENA JUKIĆ**  
**DINO ZORIĆ**

Croatia

# BASIC LEGISLATIVE FRAMEWORK

- I National framework
- II EU framework

## I – National legislative framework and impact from the EU legislation

The Convention on the protection of the European Communities' financial interests (**PIF Convention**)

Followed by the 3 Protocols

## PIF Convention definition of fraud affecting EU's financial interests

### Definition of fraud affecting EU's financial interests

#### ■ Article 1

For the purposes of the Convention, fraud affecting the European Communities financial interests shall consist of:

- a) **in respect of expenditure any international act or omission relating to:**
  - the use of presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities
  - non-disclosure of information in violation of a specific obligation, with the same effect
  - the misapplication of such funds for purposes other than those for which they were originally granted
- b) **in respect of revenue, any intentional act or omission:**
  - the use of presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by or on behalf of, the European Communities
  - non-disclosure of information in violation of a specific obligation, with the same effect
  - misapplication of a legally obtained benefit, with the same effect

# Implementation into Croatian legal framework

## Amendments to the Criminal Code in 2007

### ■ Two new criminal offences:

- Special Cases of Fraud to the Detriment of Financial Interests of the European Union (Article 224b)
- Abuse of Authority Pertaining to the European Union Funds (Article 292a)

### Article 224b - **Special Cases of Fraud to the Detriment of Financial Interests of the European Union**

The following shall also be deemed perpetration of the criminal offence of fraud referred to in Article 224 of this Act:

- giving incomplete or incorrect data on facts significant for making a decision on granting aid or subsidy, if this may affect European Union's interests,
- failing to meet the obligation, when requesting or receiving a subsidy or any other tax benefit, to submit data on all changes regarding significant circumstances which might influence the making of a decision on the subsidy, aid, or tax benefit, if this may affect European Union's financial interests.
- a person that voluntarily prevents detriment to financial interests of the European Union by correcting or completing the application or by informing about the facts failed to be submitted, shall not be punished for the act referred to in paragraph 1 of this Article.

### Article 292a - **Abuse of Authority Pertaining to the European Union Funds**

Whoever, in the procedure of granting European Union funds, submits an offer based on documents of untrue content, false balances, estimates or other false facts, thus putting himself/herself or another natural or legal person in a more favourable position when obtaining funds or other favours, shall be **punished by imprisonment for six months to three years**.

Whoever, while managing the European Union funds matching the amount of the subsidy or regularly granted aid, uses these funds contrary to their purpose, shall be **punished by the sentence referred to in paragraph 1 of this Article**.

Whoever commits the crime referred to in paragraphs 1 and 2 of this Article with an aim to acquire unlawful pecuniary gain for himself/herself, his/her own legal person or any other legal person, shall be **punished by imprisonment for six months to five years**.

If, by committing the crime referred to in paragraph 3 of this Article, significant pecuniary gain has been acquired, and the perpetrator acted with the aim of acquiring such pecuniary gain, he/she shall be **punished by imprisonment for one to eight years**.

A person that voluntarily prevents detriment to financial interests of the European Union by correcting or completing the application or by informing about the facts failed to be submitted, shall not be punished for the act referred to in paragraphs 1 and 2 of this Article.

## Article 298 - **Avoiding Customs Control**

Whoever, with an aim to acquire unlawful pecuniary gain for him/herself or any other natural or legal person while performing import or export with the countries of the European Union, presents false quantities, qualities, types and purposes of goods or objects by drawing up documents of false content, false balances, estimates, or performing other types of false representation or concealment of facts, shall be punished **by imprisonment for six months to five years**.

## **Amendments to the Criminal Code 2008**

### **Article 224 b - Fraud to the Detriment of Financial Interests of the European Union**

- 1) Whoever by using or displaying false, incorrect or incomplete statements or documents or omitting a special obligation to provide data unlawfully appropriates or holds funds from the general budget of the European Communities, budgets managed or managed by the European Communities on their behalf, shall be punished **by imprisonment for a term between six months and five years**.
- 2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever uses of the funds referred to in paragraph 1 of this Article, contrary to the originally authorized purpose.
- 3) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever whoever by using or displaying false, inaccurate or incomplete statements or documents, omitting a particular obligation to provide data or misuse of legally acquired profits, unlawfully deducts funds from the general budget of the European Communities, budgets managed or managed by the European Communities on their behalf.

## **New Criminal Code**

- **new Criminal Code entered into force on 1 January 2013**
- **Reasons for adopting the new Criminal Code:**
  - Harmonisation with the relevant international sources of criminal law - UN conventions and protocols, *acquis*, Council of Europe's conventions, legal standards of the European Court of Human Rights, *et al.*.
  - Modernisation of the general and special part of the Criminal Code based on the good practice of other European criminal law legal systems

## **Criminal Code – new basic national framework for protection of the Union's financial interests via means of the criminal law**

### Structure of the Criminal Code

- a) **GENERAL PART** - general institutes that apply to all criminal offences prescribed by the Criminal Code (e.g. general principles of criminal law, type and amount of criminal sanctions, types of criminal guilt..)
- b) **SPECIAL PART** - catalogue of criminal offences

# Title XXIV – Criminal offences against the economy

## Protection of the Union’s financial interests – under the scope of two criminal offences from the Criminal Code

- (Article 256) Tax or Customs Duty Evasion
- (Article 258) Subsidy Fraud

### Article 256 - Tax or Customs Duty Evasion

- 1) Whoever, with the aim that he/she or another person evade paying in full or in part a tax or customs duty, provides false or incomplete information on income, objects or other facts of relevance for determining the amount of tax or customs duty payable or whoever, in the case of mandatory declaration, fails, with the same aim, to declare his/her income, object or other facts of relevance to the determination of tax or customs duty payable, which results in a reduction of the tax or customs duty payable by an amount exceeding twenty thousand kuna or to its non-determination in the said amount **shall be sentenced to imprisonment for a term of between six months and five years.**
- 2) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever uses a tax relief or customs privilege in an amount exceeding twenty thousand kuna in breach of the conditions under which he/she obtained it.
- 3) If the criminal offence referred to in paragraph 1 or 2 of this Article leads to a reduction in or non-determination of a considerable tax liability, the perpetrator **shall be sentenced to imprisonment for a term of between one and ten years.**
- 4) The provisions of paragraphs 1 through 3 of this Article **shall also be applied to the perpetrator who reduces European Union funds by committing the acts described.**

### Article 258 - Subsidy Fraud

- 1) Whoever, with the aim that he/she or another person receive a state subsidy, provides a state subsidy provider with false or incomplete information concerning the facts on which the decision on the granting of a state subsidy depends, or fails to inform a state subsidy provider of changes important for making the decision on the granting of a state subsidy **shall be sentenced to imprisonment for a term of between six months and five years.**
- 2) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever uses the granted state subsidy funds in a manner contrary to their intended use.
- 3) If, in the case referred to in paragraph 1 of this Article, the perpetrator acts with the aim of receiving a significant amount of state subsidies or if, in the case referred to in paragraph 2 of this Article, he/she uses a considerable amount of state subsidies, he/she **shall be sentenced to imprisonment for a term of between one and ten years.**
- 4) The punishment of whoever in cases referred to in paragraph 1 of this Article prevents of his/her own free will the taking of the decision on the granting of a state subsidy may be remitted.
- 5) **State subsidies within the meaning of this Article shall be equated with subsidies and aid granted from European Union funds.**

## II EU legislative framework

- DIRECTIVE (EU) 2017/1371 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law **(PIF DIRECTIVE)**
- COUNCIL REGULATION (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office **(EPPO)**

### 1. PIF DIRECTIVE

#### Basic features:

- Member States have to comply with this Directive **by 6 July 2019**
- PIF directive **establishes minimum rules concerning the definition of criminal offences and sanctions with regard to combatting fraud and other illegal activities affecting the Union's financial interests** (Member States are free to adopt or maintain more stringent rules for criminal offences affecting the Union's financial interests)
- Defines Union's financial interests as all revenues, expenditure and assets covered by, acquired through, or due to:
  - the Union budget;
  - the budgets of the Union institutions, bodies, offices and agencies established pursuant to the Treaties or budgets directly or indirectly managed and monitored by them;
- Defines criminal offences with regard to fraud affecting the Union's financial interests  
Enables liability of natural and legal persons, as well as freezing and confiscation of instrumentalities and proceeds from the criminal offences

### 2. EUROPEAN PUBLIC PROSECUTOR'S OFFICE – EPPO

#### Basic features:

- EPPO was established with the Council Regulation (EU) 2017/1939 of 12 October 2017 **implementing enhanced cooperation**
- **20 Member States** notified (the European Parliament, the Council and the Commission) of their wish to establish enhanced cooperation – Croatia among them
- EPPO shall be responsible for **investigating, prosecuting and bringing to judgment the perpetrators** of, and accomplices to, **criminal offences** affecting the financial interests of the Union – **as defined in the PIF Directive**
- National law shall apply to the extent that a matter is not regulated by this Regulation. The applicable national law shall be the law of the Member State whose European Delegated Prosecutor is handling the case (where a matter is governed by both national law and this Regulation, the latter shall prevail)
- The competent national authorities shall actively assist and support the investigations and prosecutions of the EPPO

## 2. a) European Public Prosecutor's Office – EPPO

- The EPPO shall be accountable to the European Parliament, to the Council and to the Commission
  - The EPPO shall be an indivisible Union body
  - The EPPO shall be organised at a central level (Luxemburg) and at a decentralised level
  - The decentralised level shall consist of European Delegated Prosecutors who shall be located in the Member States
  - The European Delegated Prosecutors shall act on behalf of the EPPO in their respective Member States and shall have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment
  - The European Parliament and the Council shall appoint by common accord the European Chief Prosecutor for a non-renewable term of 7 years

## 2. b) European Public Prosecutor's Office – EPPO

- The EPPO shall be competent in respect of the criminal offences affecting the financial interests of the Union that are provided for in the PIF Directive, as implemented by national law
- The EPPO shall assume the investigative and prosecutorial tasks conferred on it by this Regulation **on a date to be determined by a decision of the Commission** on a proposal of the European Chief Prosecutor once the EPPO is set up.
- The date to be set by the Commission **shall not be earlier than 3 years after the date of entry into force of this Regulation.**



# EPPO and estimated impact on the work of OLAF



**MARIA NTZIOUNI-DOUMAS**

European Commission



# RECENT DEVELOPMENTS IN THE PIF AREA

## Significant recent developments in PIF area at the EU level:

- The establishment of the EPPO: it will conduct criminal investigations and prosecutions of PIF offences;
- The adoption of the PIF Directive: it defines in a harmonised way the offences for which the EPPO will be competent.

Once the EPPO becomes operational, the EU's financial interests will be protected in a comprehensive way: criminal investigations and prosecutions by the EPPO and administrative investigations by OLAF.

## THE NEED FOR AN EPPO

- The current anti-fraud framework was not sufficient to achieve the objectives of Art. 325 TFEU;
- In 2013 the Commission presented a proposal to establish the EPPO;
- Landmark project for both fight against fraud and EU criminal justice policy.

## THE EPPO REGULATION

- EPPO Regulation 2017/1939
- EPPO is to be established in **enhanced cooperation**, with 20 participating Member States;
- **Other Member States may join** later on;
- **Minimum 3 years to set it up** (also, the transposition of the PIF Directive).
- Entry into force: 20 November
- Start of operations: not earlier than 3 years after the entry into force -> late 2020

## THE MAIN CHARACTERISTICS OF THE EPPO

- **Independent** prosecution office, able to operate across the borders;
- **Composition:**
  - Central level (Chief Prosecutor and College of European Prosecutors);
  - European Delegated Prosecutors, who will work for the EPPO in their Member States;
- **Competence:**
  - PIF Directive no. 2017/1371 (includes serious transnational VAT fraud)
  - No exclusive competence, but right of evocation;
- Common set of **investigative measures** that must be made available to the EPPO in all participating Member States (e.g. search of premises, freezing of assets, interception of communications);
- **Prosecutions and trials in the national courts;**
- Expected result: increase in prosecutions and related recoveries, deterrent effect.

# THE SETTING UP OF THE EPPO (1)

## The setting up phase:

- Selection procedures and appointments;
- Legislative measures;
- Adoption of the internal rules of procedure;
- Decision on CMS and implementation;
- Logistics;
- Also:
- The transposition of the PIF Directive.

# THE SETTING UP OF THE EPPO (2)

## Gradual approach to setting up:

- Between 2018 - 2023;
- Budget appropriations: from 2019;
- Posts: from 32 posts in 2019 to 115 posts in 2023.

COM will be responsible for the setting up and the initial administrative operation of the EPPO:

- Task force (OLAF, JUST, SG, LS + BUDG, HR)
- Interim Administrative Director.

# PROTECTING THE EU FINANCIAL INTERESTS: FRAUDULENT IRREGULARITIES REPORTED BY MEMBER STATES IN 2016

Budget sector (expenditure)	N° of irregularities reported as fraudulent	Variation in relation to 2015	Involved amounts (in million EUR)	Variation in relation to 2015	As % of payments
<b>Natural resources</b>	<b>413</b>	<b>-3%</b>	<b>61.8</b>	<b>-13%</b>	<b>0.11%</b>
<i>Agriculture market support and direct payments</i>	128	-29%	12.4	-68%	0.03%
<i>Rural development</i>	284	22%	49.4	72%	0.44%
<i>Both</i>	1	-92%	0.0	-99%	n/a
<b>Cohesion Policy &amp; Fisheries</b>	<b>407</b>	<b>4%</b>	<b>236.9</b>	<b>-51%</b>	<b>0.48%</b>
<i>ESIF 2014-20</i>	3	200%	0.9	497%	0.00%
<i>Cohesion 2007-2013</i>	390	8%	234.3	-45%	n/r
<i>Structural and cohesion funds before 2007-2013</i>	4	-60%	0.8	-98%	n/r
<i>Fisheries</i>	10	-47%	0.9	-71%	0.10%
<b>Internal Affairs</b>	<b>0</b>	<b>-</b>	<b>0</b>	<b>-</b>	<b>0.00%</b>
<i>FEAD, AMIF</i>	0	-	0.0	-	0.00%
<i>ISF</i>	0	-	0.0	-	0.00%
<b>Pre accession</b>	<b>28</b>	<b>-3%</b>	<b>3.0</b>	<b>-62%</b>	<b>0.19%</b>
<i>Pre accession assistance (2000-2006)</i>	3	-67%	1.8	-70%	n/r
<i>Instrument for Pre-Accession (2007-2013)</i>	25	25%	1.2	-31%	n/r
<i>Instrument for Pre-Accession (2014-2020)</i>	-	-	-	-	0.00%
<b>Direct expenditure</b>	<b>49</b>	<b>880%</b>	<b>6.3</b>	<b>3025%</b>	<b>0.03%</b>
<b>Total expenditure</b>	<b>897</b>	<b>6%</b>	<b>308.0</b>	<b>-45%</b>	<b>0.21%</b>

Budget sector (revenue)	N° of irregularities reported as fraudulent	Variation in relation to 2015	Involved amounts	Variation in relation to 2015	As % of gross amount of TOR collected for 2016
<b>Revenue (traditional own resources)</b>	<b>513</b>	<b>-16%</b>	<b>83</b>	<b>6%</b>	<b>0.33%*</b>
<b>TOTAL</b>	<b>1 410</b>	<b>-3%</b>	<b>391.0</b>	<b>-39%</b>	<b>/</b>

# IRREGULARITIES REPORTED BY MEMBER STATES FOR THE PROGRAMMING PERIOD 2007-13

Objective	All reported irregularities		All irregularities reported as fraudulent	
	N	EUR	N	EUR
Convergence	20 519	6 860 253 188	1 163	1 269 893 486
Regional comp. and Empl.	7 809	702 635 822	226	42 693 844
Territorial cooperation	532	31 427 851	40	5 590 298
Multiobjective	5 037	1 056 482 135	239	144 618 074
Fisheries	788	92 213 308	64	17 754 897
N/A	180	20 771 542	18	4 904 794
<b>TOTAL</b>	<b>34 865</b>	<b>8 763 783 846</b>	<b>1 750</b>	<b>1 485 455 393</b>

Objective	Irregularities detected and reported programming period 2007-13 / payments		
	FDR	IDR	Total
Convergence	0.5%	2.3%	2.8%
Regional comp. and Empl.	0.1%	1.5%	1.6%
Territorial cooperation	0.1%	0.3%	0.4%
Multiobjective	0.3%	2.0%	2.4%
Fisheries	0.5%	2.1%	2.5%
<b>Total</b>	<b>0.4%</b>	<b>2.1%</b>	<b>2.5%</b>

Actions taken by national judicial authorities following OLAF's recommendations issued between January 2009 and December 2016

Member state	No decision taken by JA (*)	Decision taken by JA			Indictment rate
		Total	Dismissed	Indictment	
Austria	3	5	2	3	60%
Belgium	9	36	17	19	53%
Bulgaria	13	22	12	10	45%
Croatia	2	0	0	0	NA
Cyprus	2	3	2	1	33%
Czech Republic	3	6	4	2	33%
Denmark	2	3	2	1	33%
Estonia	1	1	0	1	100%
Finland	2	1	1	0	0%
France	8	9	4	5	56%
Germany	15	19	13	6	32%
Greece	13	10	2	8	80%
Hungary	22	9	6	3	33%
Ireland	1	2	2	0	0%
Italy	25	30	11	19	63%
Latvia	2	2	2	0	0%
Lithuania	3	7	4	3	43%
Luxembourg	6	4	3	1	25%
Malta	3	4		4	100%
Netherlands	11	4	3	1	25%
Poland	9	11	2	9	82%
Portugal	10	5	4	1	20%
Romania	28	74	50	24	32%
Slovakia	5	9	7	2	22%
Slovenia	3	1	0	1	100%
Spain	12	16	10	6	38%
Sweden	1	2	1	1	50%
United Kingdom	19	13	7	6	46%
<b>Grand Total</b>	<b>233</b>	<b>308</b>	<b>171</b>	<b>137</b>	<b>44%</b>
<b>Grand Total without SAPARD (**)</b>	<b>233</b>	<b>246</b>	<b>123</b>	<b>123</b>	<b>50%</b>

# CONSEQUENCES FOR NATIONAL AUTHORITIES AND EU BODIES (1)

## REPORTING

- **Obligation** for "institutions, bodies, office and agencies of the Union and the authorities of the Member States competent under applicable national law" **to report "without delay"** any criminal conduct for which the EPPO could exercise its competence;
- **Reporting should be made through existing mechanisms.** The EU institutions and bodies could also use OLAF for the reporting of information;
- The MS should also put in place an efficient system for the **"preliminary evaluation"** of the allegations;
- MS authorities should set up a system that ensures that information is reported to the EPPO as soon as possible. **It is up to the MS to decide whether to set up a de-centralised or centralised system.**

# CONSEQUENCES FOR NATIONAL AUTHORITIES AND EU BODIES (2)

## INVESTIGATION PHASE

- The day-to-day activities of an EPPO investigation is carried out by European Delegated Prosecutors and competent national authorities;
- The audit authorities will cooperate with the EPPO/EDPs as they currently do with the national judicial authorities;
- The EDPs will act as national prosecutors do.

## INDICTMENT

- The decision to prosecute/dismiss a case is taken by the central level of EPPO on a proposal from the EDP;
- When necessary for recovery, administrative follow up or monitoring, EPPO shall inform national authorities of the decision to prosecute.

## TRIAL PHASE

- Any cooperation of audit authorities with judicial authorities remains unchanged.

# OLAF-EPPO cooperation (1)

- **Which cooperation?**
  - Independent actors
  - Flow of information
    - OLAF to EPPO
    - EPPO to OLAF
  - Operative support

## OLAF-EPPO cooperation (2)

- In the area of fraud, in the participating Member States → The need to efficiently protect the EU's financial interests calls for OLAF and EPPO, within their distinct mandates, **to complement each other**
  - **Complementarity of criminal and administrative investigations:** different tools, different conditions, different aims
- The EPPO Regulation sets out some high level principles and **requires close cooperation and exchange of information** between the two:
  - **Sources of incoming information** for each other (including mutual indirect access to OLAF's CMS);
  - Article 24: obligation to inform "without undue delay"
  - Article 101:
    - If the EPPO opens an investigation, **OLAF will not open a parallel one**, but will be available to support the EPPO;
    - The EPPO may call on **OLAF support** during an investigation.

Homologues Group

## OLAF-EPPO cooperation (3)

### Revision of Regulation 883 → rules on EPPO/OLAF cooperation

- OLAF continues to be competent for fraud and irregularities;
- Report to the EPPO any information about criminal conduct → verification?
- No parallel investigations → complementary investigations?
- Act where the EPPO cannot or does not want to act:
  - Referral of cases to national authorities
  - Administrative follow up
- Assist the EPPO on request:
  - Information, analysis, expertise
  - Coordination of specific actions
  - Other?

## OLAF's future role (1)

- OLAF will continue to play its key role in administrative investigations;
- In the participating Member States: OLAF will continue to play its role **as regards non-fraudulent irregularities**;
- In the non-participating Member States: OLAF will see **no changes to its work vis-à-vis those Member States which do not participate in the EPPO** and
- In investigations into serious misconduct by members of the institutions and EU staff.

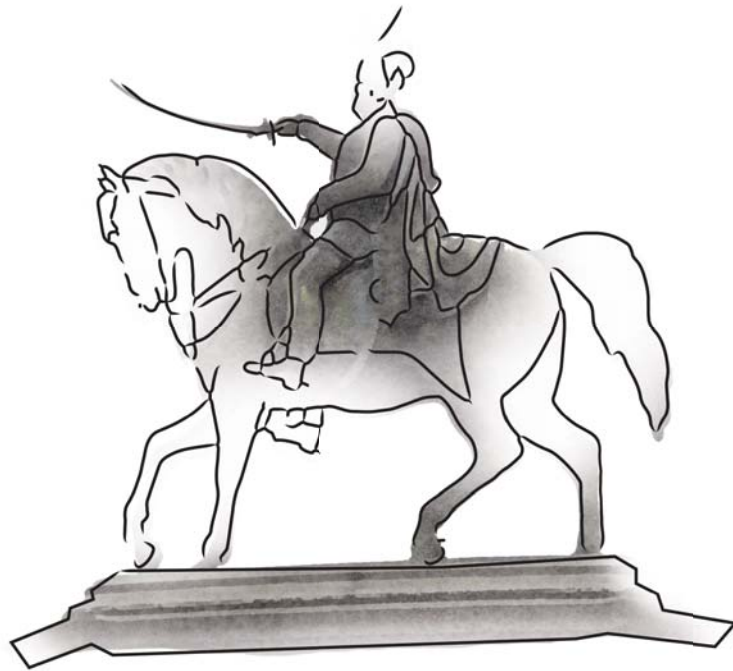
## OLAF's future role (2)

- The draft proposal amending OLAF Regulation 883/2013 is being finalised;
- The Commission proposal to amend Reg. 883, includes:
  - The necessary adjustments to reflect the establishment of the EPPO;
  - Address targeted shortcomings of the current legislation, revealed by the evaluation.

# DAY 04

10 May 2018

## **IRREGULARITY REPORTING AND FOLLOW-UP**



# Irregularity reporting



**BOJAN KRIŠTOF**

Croatia

# CONTENT

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- 1. Legal basis
- 2. AFCOS system
  - ◆ AFCOS-network
  - ◆ The irregularity reporting system
  - ◆ Service for Combating Irregularities and Fraud (SCIF)
- 3. Guidelines on irregularity management
  - ◆ Detection of irregularity
  - ◆ Treatment of irregularity
  - ◆ Reporting on irregularities
- 4. Statistics

## 1. LEGAL BASIS

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- ◆ **Budget Act** (OG 87/08, 136/12, 15/15)
  - Article 3, paragraph 1: AFCOS is a system through which the coordination of legislative, administrative and operative activities is implemented with the purpose of protecting financial interest of the European Union and direct cooperation with the European anti-fraud office (OLAF);
  - Article 114a: “The Republic of Croatia as beneficiary of EU assistance is obliged to ensure the protection of the European Union's financial interests through the establishment of a system for combating irregularities and fraud (AFCOS)”

**It provides the legal basis for the adoption of an ordinance to prescribe the institutional framework of the system for combating irregularities and fraud (AFCOS system)**

- ◆ **Criminal Law** (NN 125/11, 144/12, 56/15, 61/15, 101/17)
  - The prosecution of criminal offenses against the financial interests of the EU
  - Introducing a criminal offense of Subsidy Fraud (provisions of Art. 258):
    - Whoever, with the aim that he or she or another person receive a state subsidy, **provides a state subsidy provider with false or incomplete information concerning the facts on which the decision on the granting of a state subsidy depends,**
    - **or fails to inform a state subsidy provider of changes important for making the decision on the granting of a state subsidy**
    - **or whoever uses the granted state subsidy funds in a manner contrary to their intended use.**

(state subsidy = subsidies and aid granted from EU funds)



## ◆ **Other criminal offences:**

- tax or duty evasion
- abuse of position and authority
- unlawful favouritism
- taking/giving bribes
- misuse in the public procurement procedure
- misuse of privileged information
- fraud in business dealings - fraud in the narrow sense

## ◆ **Regulation on the institutional framework of the system for combating irregularities and fraud(OG 144/13, 19/17)**

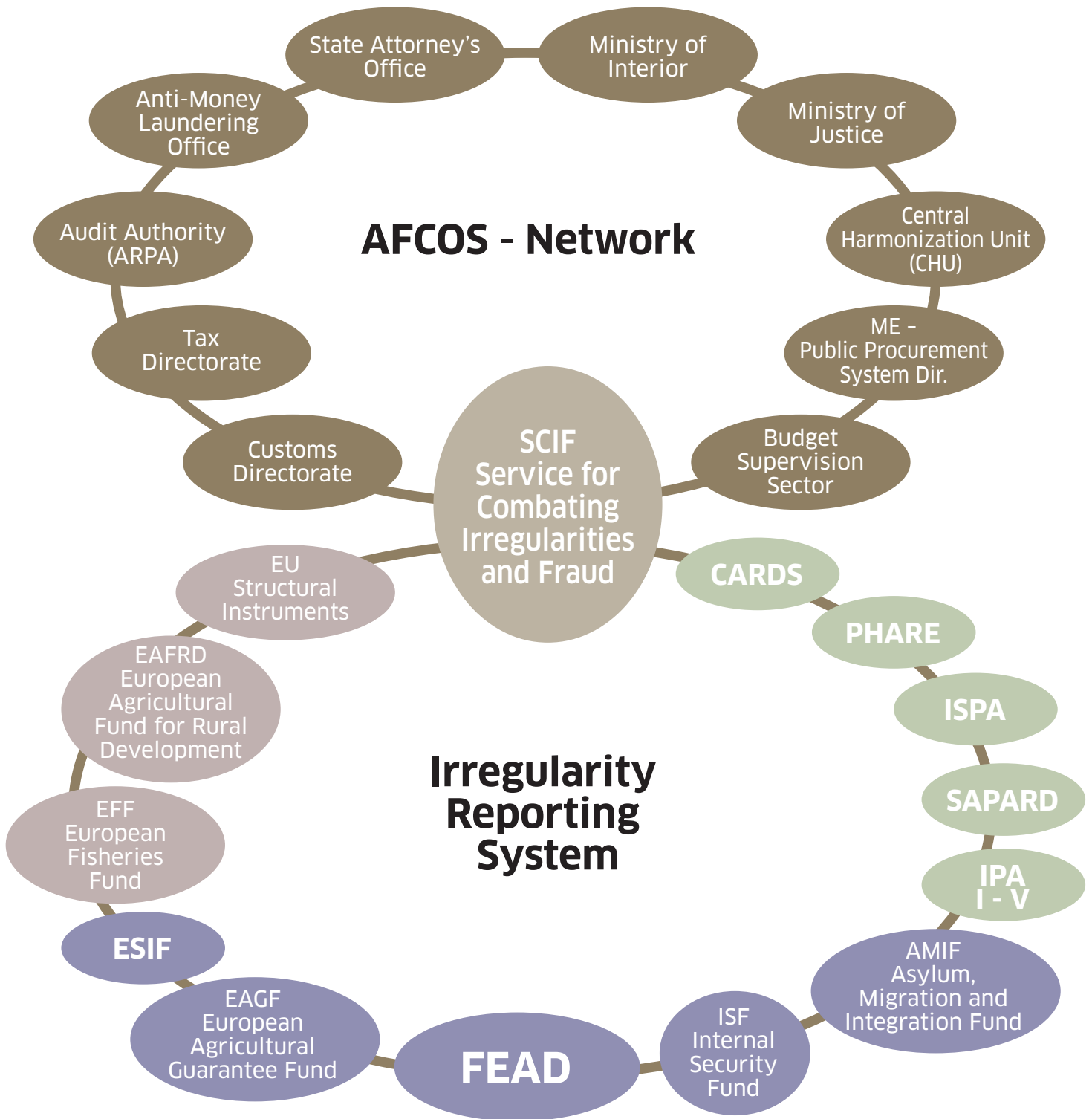
- An institutional framework for the fight against irregularities and fraud is established with the aim of protecting the financial interests of the European Union in the Republic of Croatia (AFCOS):
  - The irregularity reporting system = Control and management system (CMS)
  - AFCOS network - bodies involved in combating irregularities, fraud, corruption or other forms of illegal activities
  - Ministry of Finance, Service for Combating Irregularities and Fraud (SCIF) - the body responsible for the protection of EU financial interests in the Republic of Croatia
- **The decision on founding of AFCOS network (OG 151/13)**
  - The bodies of AFCOS network are determined
- **The rules of procedure relating to management of irregularities:**
- **Guidelines on irregularity management (13.08.2015., 7.12.2016.)**
  - Created by SCIF (Ministry of Finance)
  - Passed by the Minister of Finance in the form of a Decision
  - Must be in line with the Common national rules „irregularity ”
  - The bodies that report on irregularities are obliged to harmonize their manuals on internal procedures regarding irregularities with the Guidelines.

# 2. AFCOS-SYSTEM IN CROATIA

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- AFCOS (Anti Fraud Coordinating System) – is the system through which the coordination of legislative, administrative and operational activities for the purpose of protection of EU financial interests is performed, together with the direct cooperation with the OLAF.
- In the Republic of Croatia, the AFCOS system includes:
  - **Irregularity Reporting System** - a network of accredited bodies managing and using EU funds
  - **AFCOS network** - a network of bodies dealing with combating irregularities, fraud, corruption or some other form of illegal activities in the system
  - the Ministry of Finance – **Service for Combating Irregularities and Fraud (SCIF)**, carrying out a coordinative role within the system and representing OLAF’s contact point.

# AFCOS SYSTEM IN REPUBLIC OF CROATIA



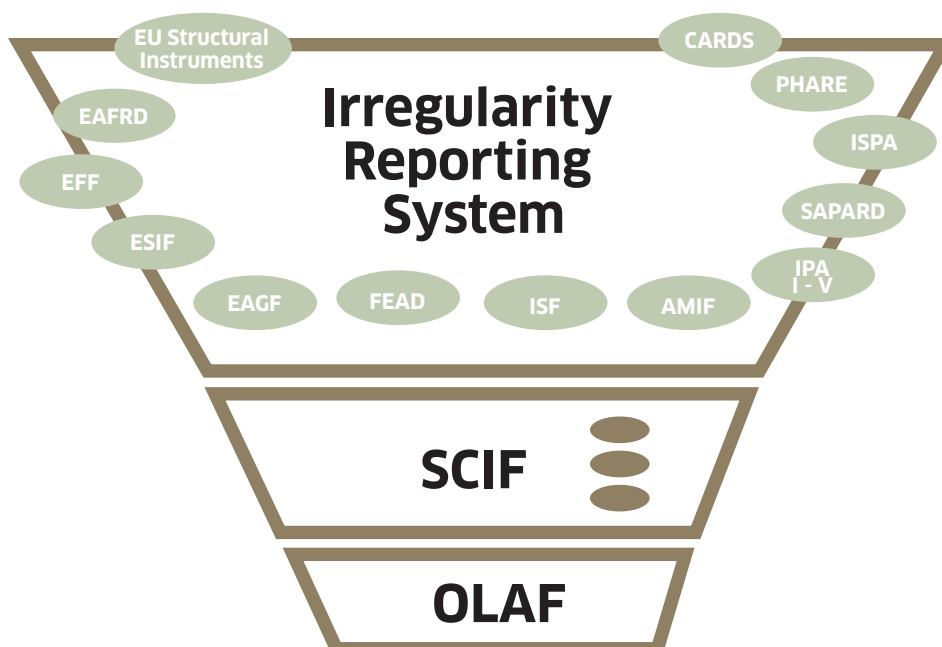
## AFCOS-Network

- ◆ **The AFCOS Network as one of three elements of the AFCOS system has been established** by a Decision of the Government of the Republic of Croatia (OG 151/13).
  - The AFCOS Network is established in order to achieve full functioning of the AFCOS system within the framework of which the coordination of legislative, administrative and operational activities, for the purposes of protecting financial interests of the European Union in the Republic of Croatia, and direct cooperation with the European Anti-Fraud Office (OLAF) shall be carried out.

- Each body within AFCOS Network **appoints its representative**.
- **The role of the AFCOS network** is **not reporting** on irregularities but proceedings with irregularities, when it is necessary, together with the SCIF (advisory role).
- **Tasks of the AFCOS Network are:**
  - cooperation with the Organizational unit and OLAF regarding the issues of the protection of financial interests of the European Union,
  - proposing legislative and other measures with the purpose of efficient protection of financial interests of the European Union, and
  - strengthening inter-institutional cooperation, communication and exchange of data with the bodies of the AFCOS system.
- **Administrative cooperation protocols signed between SCIF and**
  - State Attorney's Office
  - Ministry of Interior
  - Agency for the Audit of European Union Programmes Implementation System (ARPA)

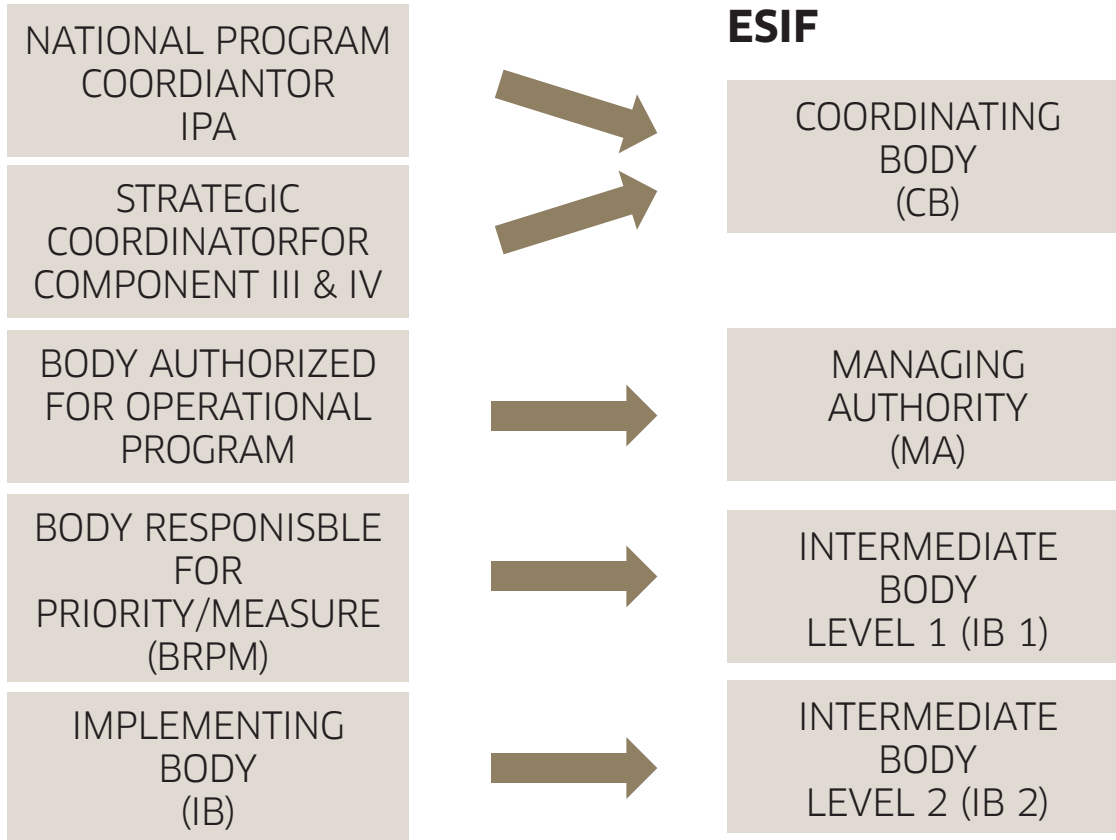
## Irregularity Reporting System

- ◆ **The main function of this system** is reporting on irregularities and suspicion on fraud in accordance with valid internal procedures.
  - Reporting is performed by **Irregularity Officers (or Irregularity coordinator)** who are appointed in each of the accredited body. Each **Irregularity Officers must have a deputy**.
- ◆ The purpose of appointing **Irregularity Officers** is to provide each of the body in the Irregularity Reporting System with a person who will deal with irregularities and fraud at operational level, and whose primary tasks are:
  - **receiving information** on the occurrence of irregularities and suspicion on fraud,
  - **notifying** the superior responsible person on the received information, monitoring the follow up of the reported irregularity or suspicion on fraud within the body,
  - **drafting irregularity reports** and forwarding them to the SCIF,
  - **cooperate and communicate** with staff within their body and also with SCIF,
  - **keeping a register** of irregularities and suspicion on fraud.

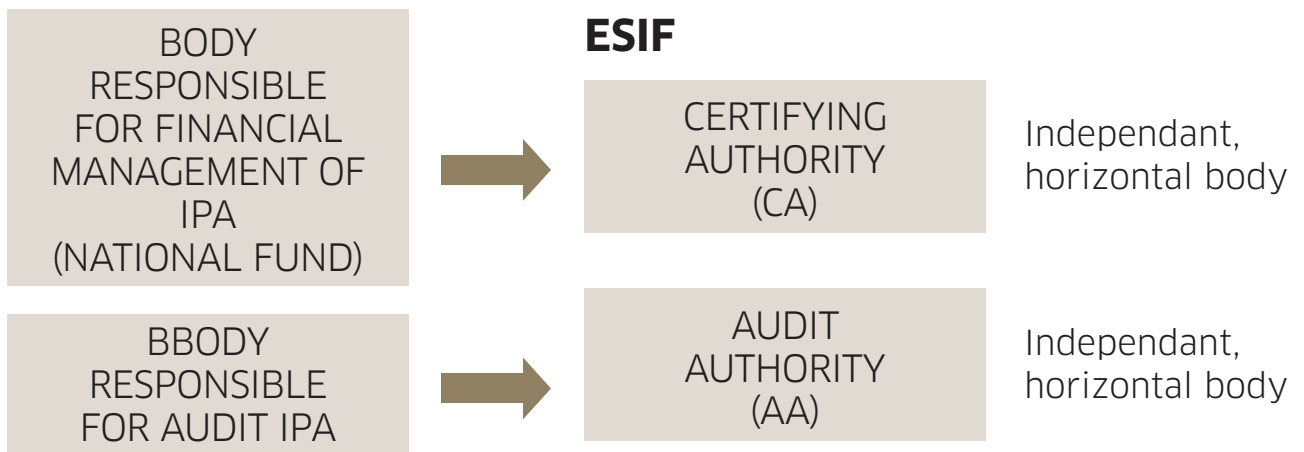


# AFCOS-system in Croatia - IPA and ESIF

## Program IPA



## Program IPA



## AFCOS-system in Croatia ESIF - Designation of authorities

### ◆ Designation of authorities:

<b>MANAGING AUTHORITY</b>	It manages and is responsible for the overall implementation of the OP: it is responsible for programming, ensures the establishment of the MCS, gives instructions to IBs for the implementation of delegated functions, monitors the implementation of the program,
<b>INTERMEDIATE BODY LEVEL 1</b>	It plans financial resources, carries out information and visibility measures, prepares project selection documents, participates in the selection of projects to be funded, participates in customer payment processes and returns for irregularities, etc.
<b>INTERMEDIATE BODY LEVEL 2</b>	Participates in the preparation of tender documentation and project selection, concludes a grant agreement with the user, collaborates „daily” with the user and gives advice, verifies the execution of contractual obligations of the user and monitors the progress of the project, determines irregularities, decides on the eligibility of costs during implementation and initiates financial corrections (the first level of ESIF control at project level), etc.

## Detection and treatment of irregularities in IPA

BODY AUTHORIZED FOR OPERATIONAL PROGRAM	<ul style="list-style-type: none"> <li>◆ taking decision on <b>established</b> irregularity</li> <li>◆ Decision On Irregularity (<b>PACA</b>)</li> </ul>	NATIONAL FUND (NF)	<ul style="list-style-type: none"> <li>◆ taking decision on <b>established</b> irregularity</li> <li>◆ Decision On Irregularity (<b>PACA</b>)</li> </ul>
BODY RESPONSIBLE FOR PRIORITY/MEASURE (BRPM)	<ul style="list-style-type: none"> <li>◆ taking decision on <b>established</b> irregularity</li> <li>◆ Decision On Irregularity (<b>PACA</b>)</li> </ul>	AUDIT AUTHORITY (AA)	<ul style="list-style-type: none"> <li>◆ taking decision on <b>established</b> irregularity</li> <li>◆ Decision On Irregularity (<b>PACA</b>)</li> </ul>
IMPLEMENTING BODY (IB)	<ul style="list-style-type: none"> <li>◆ taking decision on <b>established</b> irregularity</li> <li>◆ Decision On Irregularity (<b>PACA</b>)</li> </ul>		

# Detection and treatment of irregularities in ESIF

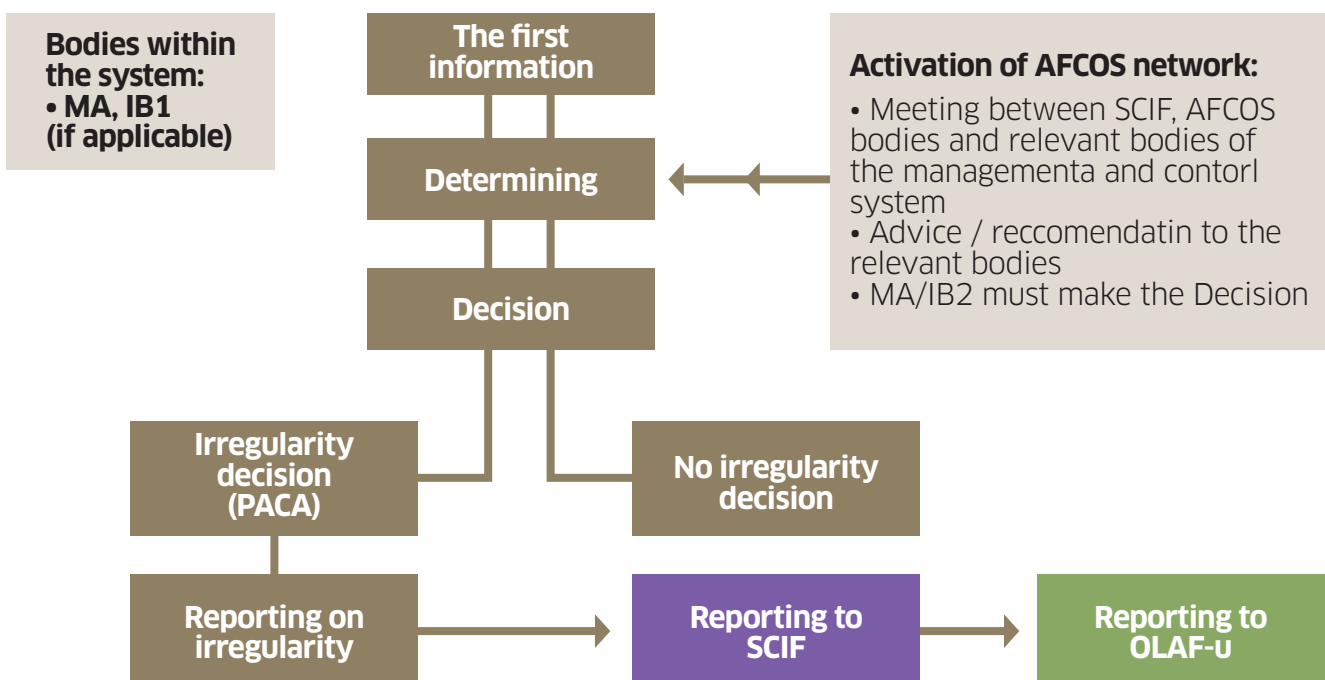


**Program IPA:** Primary Administrative or Judicial Findings (PACA) - Different types of documents (audit report, on-the-spot check report, AFCOS network findings)

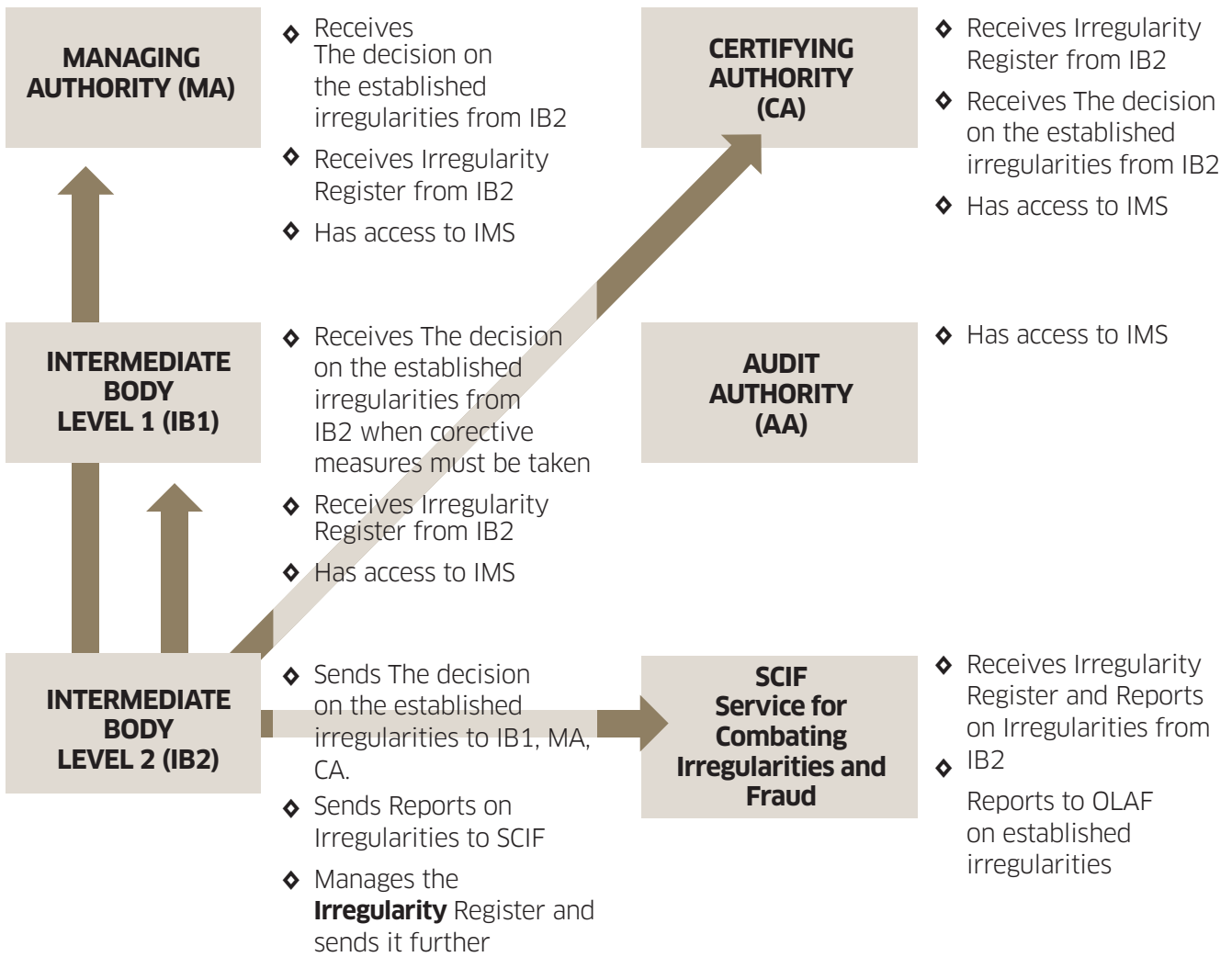


**ESI-funds:** The decision on the established irregularities - a standard document

## Reporting on irregularities – procedure within the system

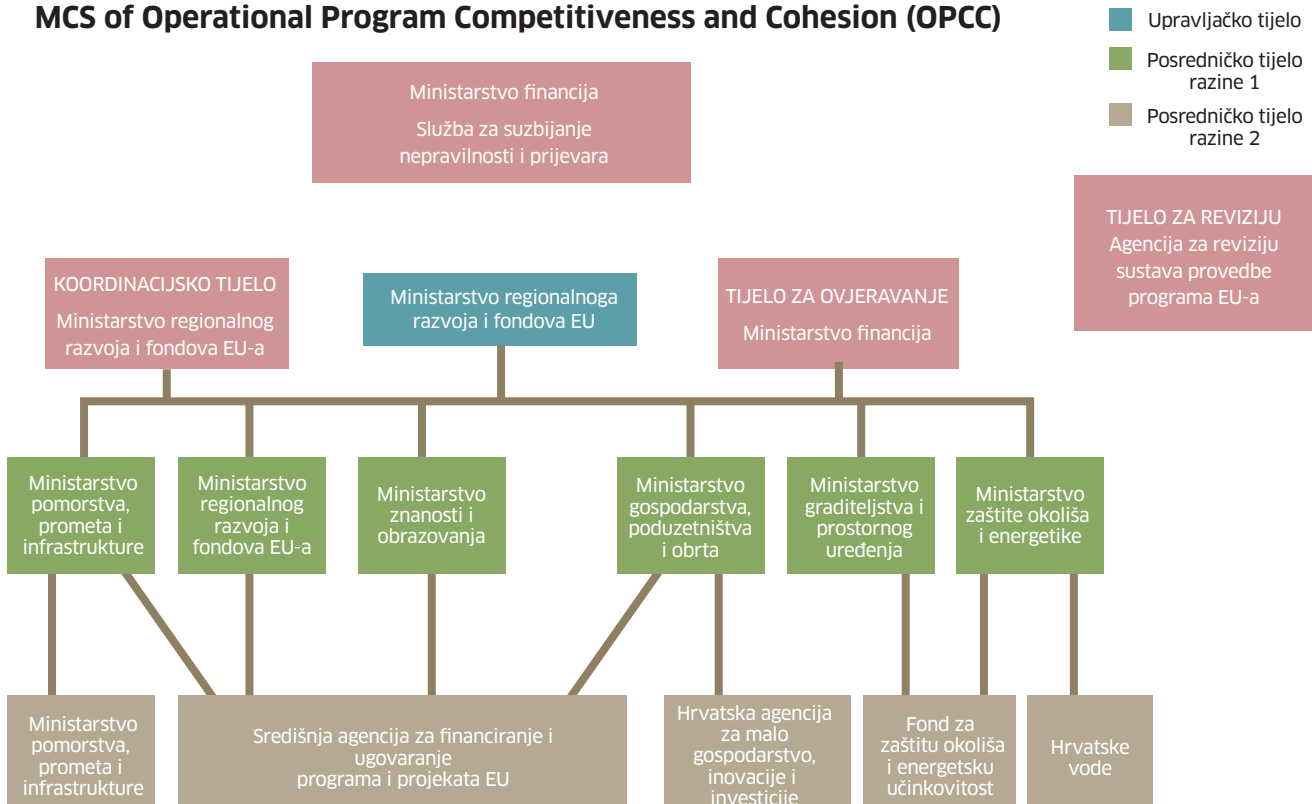


# Reporting on irregularities ESIF



## ESIF

### MCS of Operational Program Competitiveness and Cohesion (OPCC)



# 3. GUIDELINES ON IRREGULARITY MANAGEMENT

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- **Guidelines describe the methodology** for comprehensive process of irregularity management, particularly for the field: prevention, detection, treatment, reporting on established irregularities and follow-up on reported irregularities and suspicion on fraud, in order to establish consistent practice in applying the legal framework for the protection of the EU's financial interests in the Republic of Croatia
- **The main part of the Guidelines provides detailed reporting procedures for irregularities**
- Bodies in the management and control system of following EU funds are obliged to implement these Guidelines:
  - The European Regional Development Fund for the 2007-2013 programming period,
  - Cohesion Fund for the 2007-2013 programming period,
  - The European Social Fund for the 2007-2013 programming period,
  - The European Regional Development Fund for the 2014-2020 programming period,
  - Cohesion Fund for the Programming Period 2014-2020,
  - European Social Fund for the 2014-2020 programming period
- Legal basis: Article 5, paragraph 3a. Regulation on the institutional framework of the system for combating irregularities and fraud (Official Gazette 144/2013, 19/17)
- Passed by the Minister of Finance in the form of a Decision
- Pursuant to Article 6, paragraph 3 of the Regulation, the reporting bodies on irregularities are obliged to incorporate the procedures outlined in the Guidelines into their own internal procedures manuals
- ◆ **Structure:**
  - Abbreviations and definitions
  - I. Introduction (Purpose, Application Guidelines)
  - II. Legal basis for managing irregularities (protecting the EU's financial interests)
  - III. AFCOS system
  - IV. Prevention (raising awareness on fighting irregularities, strengthening AFCOS system, risk management)
  - V. Detecting irregularities
  - VI. Treatment of irregularities
  - **VII. Reporting on identified irregularities**
  - VIII. Document handling



# V. Detection of irregularities

## ◆ Concept of irregularity:

- any breach of Union law or national law
- resulting from an act or omission done by the economic operator
- which harms or could harm the EU budget
- **Definiton of irregularity:** 'irregularity' means any breach of Union law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the ESI Funds, which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union. (Article 2 Regulation European Parliament and Council No 1303/2013)
- **Definiton of economic operator:** 'economic operator' means any natural or legal person or other entity taking part in the implementation of assistance from the ESI Funds, with the exception of a Member State exercising its prerogatives as a public authority; (Article 2 Regulation European Parliament and Council No 1303/2013).

As a consequence, institutions (ministries, agencies performing functions IB1, IB2, MA, AA, etc.) in performing delegated functions in accordance with the law can not be considered as "economic operator" but can be treated as economic operator only when they are users of certain operations or actions (for example, technical assistance).

- The most common types of irregularities
- The Role of Irregularities Officer
- Warning of competent authorities for suspicion on inirregularity
- Actions of competent authorities upon receipt of information on suspicion of irregularity
- Temporary measures for securing refunds (suspension of payments)

### Information from daily activities

### Information from third parties

### Information from audit, MA, CA, AFCOS network

IB 2

**WARNING  
ON  
IRREGULARITIES**

## ■ Purpose of Irregularity Officer (IO):

- the main purpose of appointing IO is to ensure a consistent institutional practice regarding the reporting of irregularities at the level of its institution and the need for acontact point for SCIF

## ■ Irregularity Officer Functions:

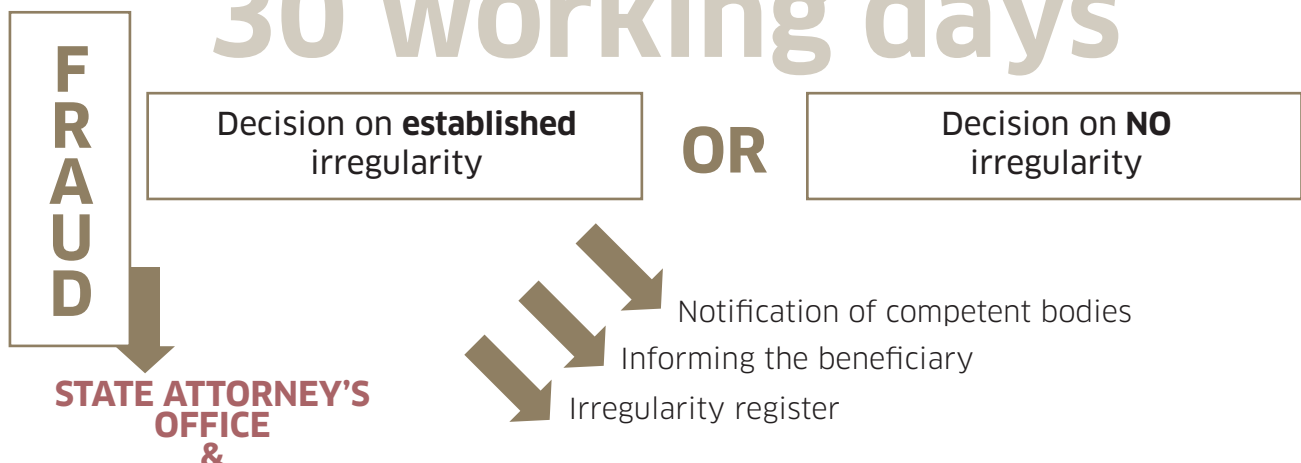
- preparation of IMS irregularities report (initial report, follow-up report and emergency report);
- ensuring the quality of information submitted to the SCIF within the framework of the irregularity report in relation to the criteria set out in the EC Regulations;
- recording and updating irregularity data in the irregularities Registry;

- cooperation with representatives of competent bodies (e.g. AFCOS bodies, MCS bodies) which includes gathering information on detection and treatment of irregularities, seeking explanations, advice or expert opinion from other competent authorities and forwarding information within their institution;
  - If necessary participate in working meetings / groups in the process of determining irregularities within their institution;
  - participation in meetings / seminars / workshops, etc. organized by SCIF;
  - conducting a proper audit trail on the actions carried out and decisions taken within its institution
- **The role of IO in IB2 regarding the suspected irregularity report**
    - The IO receives the suspected irregularity report and without delay estimates the credibility of the received information :
      - if the result of an assessment does not give rise to doubt about the irregularity, IO shall without delay make an official note, signed by an authorized person (head of the body / authorized person), which states that there will be no further action upon the received report
      - if there is a doubt as to the irregularity from the result of the assessment, the IO shall without delay fill out the Alert Form irregularity as well as enter information in Irregularities Registry
      - informs the head of the body / authorized person about the received report and submits the filed out Form for Reporting suspected irregularity
  - **The role of IO in IB2 related to the procedure of irregularities treatment**
    - in case further action is needed to establish irregularities, the head of the body / authorized person IB 2 will decide on initiating an irregularity determination procedure
      - an employee (e.g. project manager, financial expert) conducting an irregularity determination procedure can consult with IO to ensure consistency of conduct with regard to determining irregularities
    - in the case of the establishment of the working group, IO should be included in order to ensure consistency of the procedure with regard to the determination of irregularities

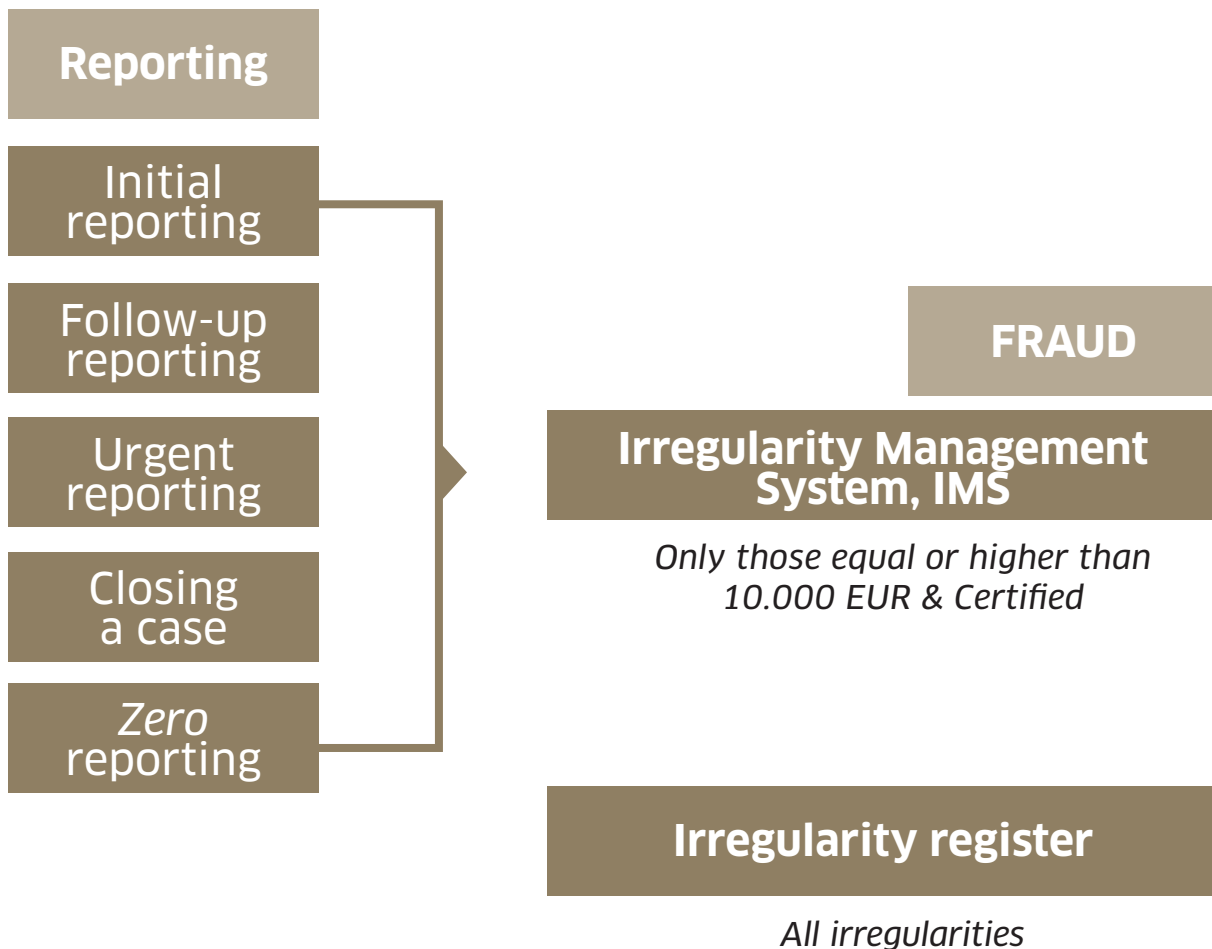
## Treatment of irregularity



30 working days



# Reporting on identified irregularities



- **Documents** (part of the Guidelines on Irregularity Management):
- **Alert Form**
  - Made by IB2 after receiving information on suspicion on irregularity - send it to IB 1 and to MA by email.
  - CA is informed during the certifying period.
- **Decision on irregularity**
  - Decision on established irregularity - IB2 sends to IB1, MA, CA
  - Decision on NO irregularity - IB2 sends to IB1, MA
- **Irregularity register**
  - Contains alerts on irregularities and determined irregularities (no threshold)
  - IB 2 submits the registry 15 days after end of quarter to SCIF, and copy is sent to MA, IB1 & CA

## Reporting tools

- **Irregularity register**
- **Irregularity Management System, IMS**

# Irregularity register

Should have information  
on all irregularities

Irregularity Management  
System, IMS

Only those equal or higher than 10.000 EUR  
& Certified

DRAFT

- **Reports must be sent to SCIF at latest 15 days after the end of Q**
- **Both should contain same type of data**
  
- **Most common mistakes:**
  - omitting information,
  - incorrect information input,
  - duplication of cases,
  - problems related to the display of updates to earlier open cases,
  - the differences in the information given in the IMS system,
  - a different way of managing irregularity cases in irregularities registers and the IMS system,
  - Different bodies submit different forms of registry irregularities,
  - use of different currencies (EUR / HRK),
  - Calculation errors (EU part + HR part + Private contribution <> total),
  - False format number (9,999.00 instead of 9,999.00, number saved as text etc.)

**Consequence: Poor / incomplete data for statistical analysis, inability to compare registers of different institutions**

## Irregularity Management System, IMS

- IMS is made as a "web based" application accessed via the Internet browser and requires "SSL - User's Digital Certificate" installed on the computer of the user in order to access the system
- In order to become an IMS user, a special electronic certificate, username and password is required, created by OLAF at the request of SCIF
- SCIF will initiate an opening of a user account based on a written request for opening an account (in the form of a letter or electronic mail) and a delivered decision on appointing an Irregularity officer signed by the head of the body (both for Irregularity officer and their deputy)

## ■ IMS Roles:

- **Creator** - the person making reports on irregularities (**Irregularity Officers**)
- **Manager** - a person who approves / rejects created reports on irregularities (head of body / authorized person)
- **Observer** - has read-only rights - MA, IB1, CA, AA

Managed Organizations - 28

Registered Users - 244

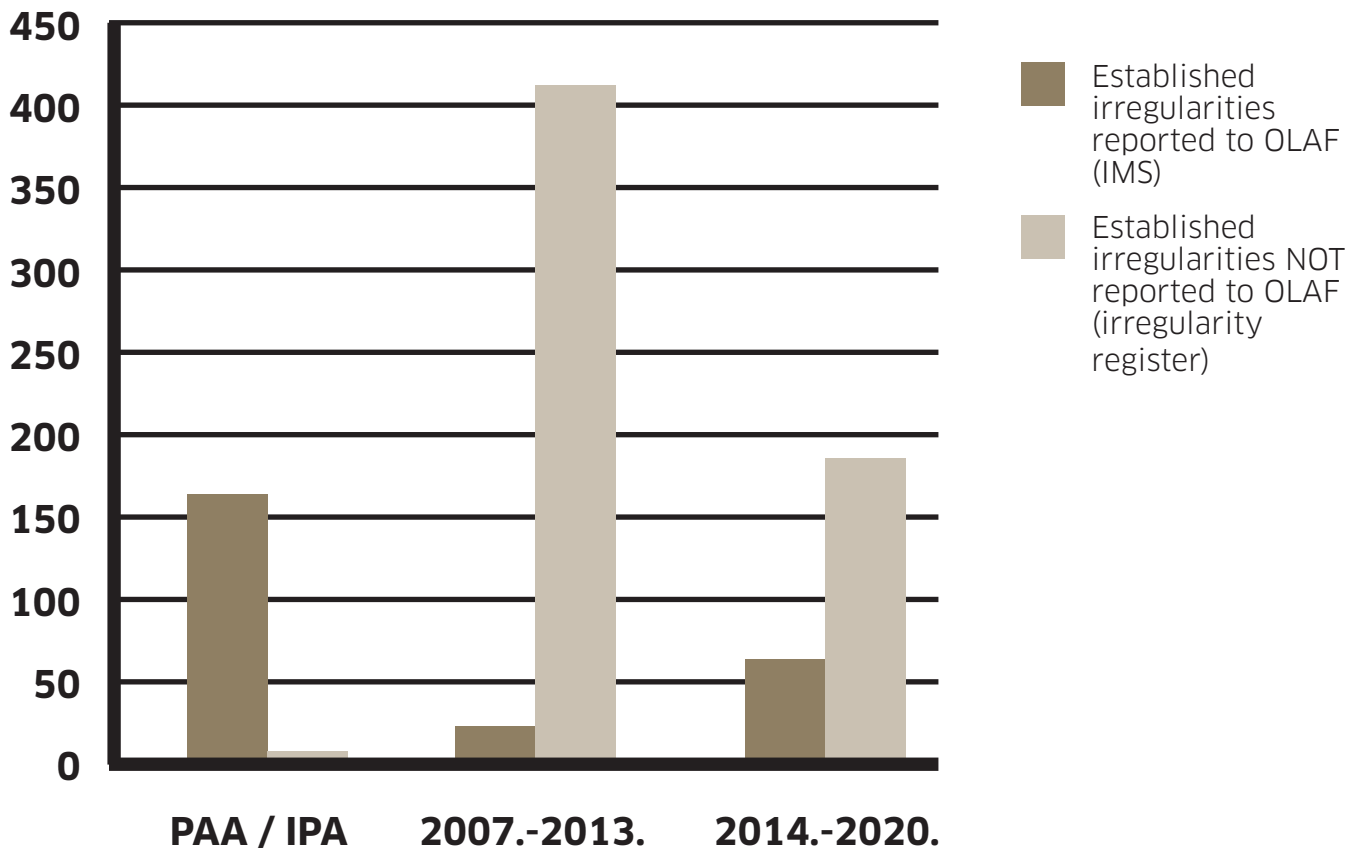
# 4. STATISTICS IIQ 2008. - IIIQ 2017.

**1.092 Alert Forms**

**857 Decision on irregularity 78,5 %**

**247 IMS - OLAF 28,8%**

**610 Closed cases**

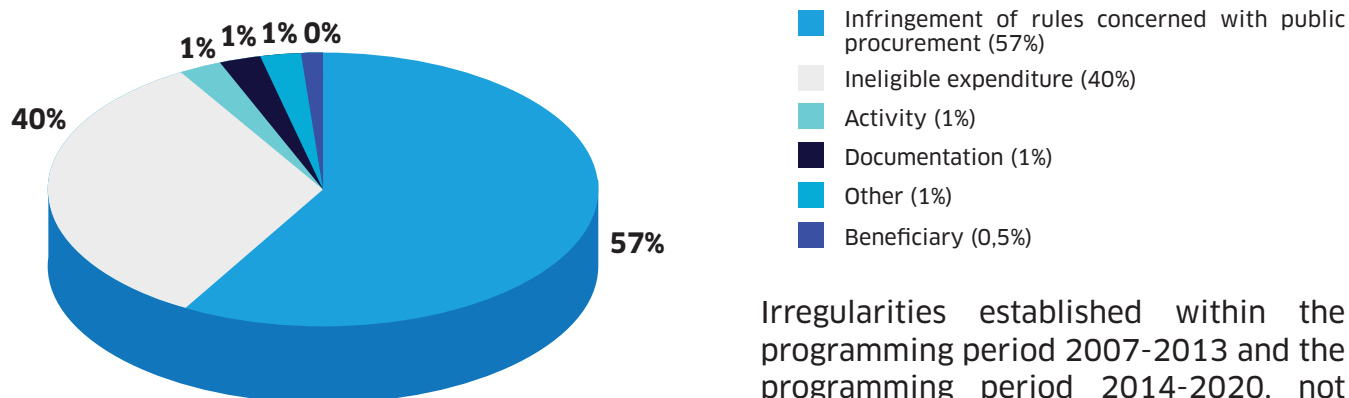


**67.800.017,04 EUR total amount in reported irregularities**  
**18.207.366,64 EUR total amount certified by the CA (26.9%)**

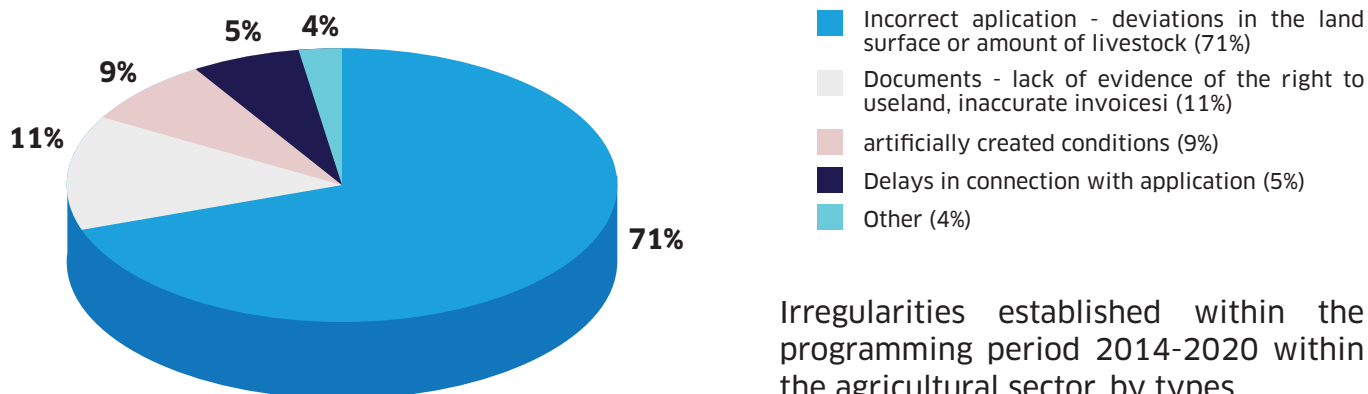
**73,1% cases of irregularities were established before they were certified**

**16.984.863,47 EUR or 25,0% was reported to OLAF**

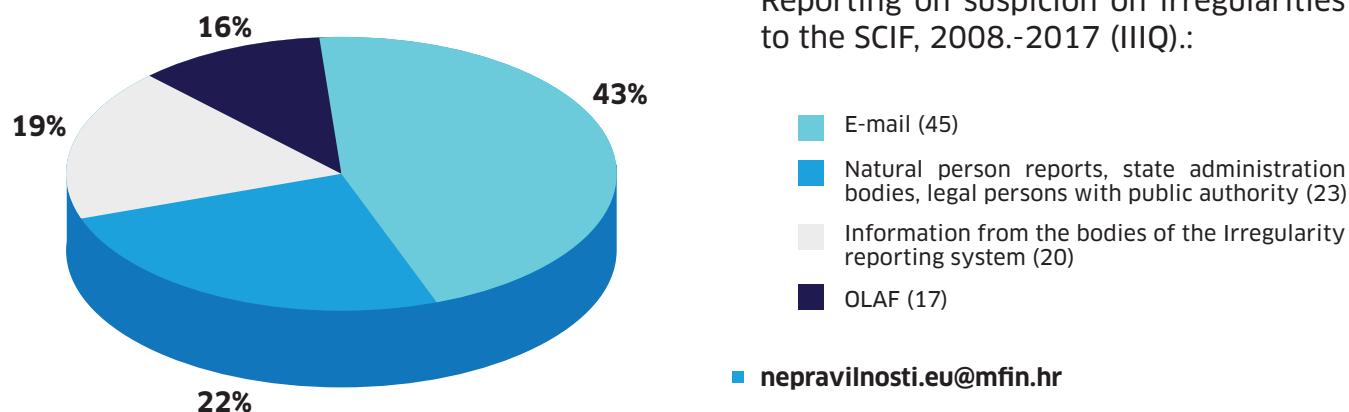
**2.867.425,55 EUR or 15,7% of certified amount has been returned by beneficiaries**



Irregularities established within the programming period 2007-2013 and the programming period 2014-2020, not including the agriculture sector, by types



Irregularities established within the programming period 2014-2020 within the agricultural sector, by types



Reporting on suspicion on irregularities to the SCIF, 2008.-2017 (IIIQ).:

■ [nepravilnosti.eu@mfin.hr](mailto:nepravilnosti.eu@mfin.hr)



**AFCOS**  
(National Anti-Fraud Team)



**TOM JOOSSE**  
Netherlands

# INDEX OF THE PRESENTATION

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- Background;
- Organisation;
- Goals and ambitions;
- Practical activities.

## BACKGROUND

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- ◆ **The implementation of the Dutch AFCOS**
  - Regulation 883/2013 independent authority;
  - Increasing pressure OLAF and Commission;
  - Increasing numbers of AM and RIF;
  - To unite knowledge and skills;
  - To improve the quality of analysis;
  - More awareness, in- and external.
- ◆ **Differences between AFCOS's**
  - Competences and expertises;
  - Investigative powers;
  - Staff and resources.

## ORGANISATION AFCOS

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- ◆ **Our team:**
  - Case-officers AFCOS-requests;
  - Investigators;
  - Account-managers;
  - Administrative support;
  - Coordinator;
  - Head of the Unit.



### ◆ **Priorities:**

- AFCOS-requests (AM, RIF etc.);
- To generate fraud signals regarding Own Resources;
- Excise;
- To generate fraud signals (non fiscal).

# GOALS AND AMBITIONS

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### ◆ **Goals:**

- To coordinate legislative, administrative and operational activities to protect the EU budget;
- To coordinate between the national authorities and OLAF;
- To inform the Commission and OLAF about irregularities;
- To build cases with a national character, which are applicable to criminal law.

### ◆ **Effects:**

- To reinforce the approach against fraud;
- One point of contact for OLAF;
- Preventive effect when fraud is anticipated;
- The follow up is always properly prepared and well executed.

### ◆ **The ambition of the Dutch AFCOS is:**

To generate at least five cases;  
All applicable to criminal law;  
With a mutual financial interest of five million euro.

# PRACTICAL ACTIVITIES

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### ◆ **To work together with OLAF:**

- Regulation 515/97 on mutual administrative assistance
- To coordinate AM-messages;
- Requests for information;
- ConTraffic.

### ◆ **AM-messages:**

- Extensive international (fraud) investigations, mostly targeting origin, value and classification;
- Antidumping duties applicable;
- Obligation to execute the requested, financial consequences are at risk.

### ◆ **Requests for information:**

- To evaluate and analyse signals in order to determine if an official investigation is required;
- Obligation to execute the requested, financial consequences are at risk.

### ◆ **ConTraffic:**

- OLAF-database which automatically compares electronic import declarations to logistic data;
- The output exist of risk signals about possible evasion of ADD;
- Obligation to execute the requested, financial consequences are at risk.

### ◆ **To work together with OLAF:**

- Regulation 2185/96 (on the spot checks)
- On the spot checks executed by OLAF in connection to EU subsidies;
- On own competence (OLAF), but accompanied by the national authorities;
- AFCOS is mandated by national law to accompany OLAF during these on the spot checks;
- Not only custom related matters.

### ◆ **To work together with the Commission:**

- Requests for information from DG TAXUD and DG Trade;
- Assistance in case of audits by DG Budget.

### ◆ **IRIS (International Risk Information Systems):**

- Enforcement with EU and Wordly databases
- Exchanging risk-based information with Member states;
- AFIS (OLAF) and CRMS\_RIF (DG TAXUD);
- CEN (WCO).

### ◆ **Investigative activities:**

- Get cases into criminal law;
- for EU-budget;
- for Excise.

## **Two examples:**

### **Example 1 ADD-case**

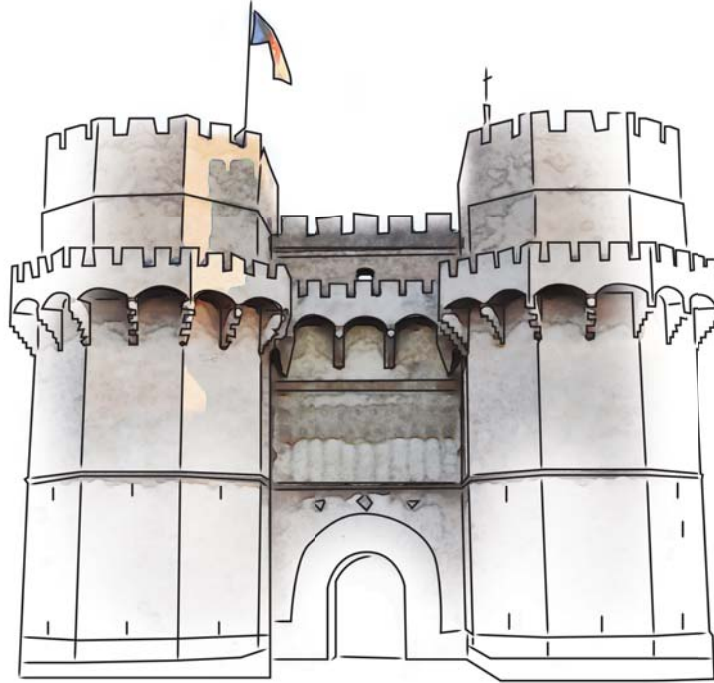
German importers of kitchen table ware avoid paying Chinese ADD by false origin and a Customs value which is way too low

- Importdeclaration CvO Bangladesh;
- Established that the goods were transhipped from China via Malaysia to Rotterdam;
- After stopping origin diversion the importer declares the goods with a value which is 30% too low;
- Fiscaal amount: € 2,7 miljoen;
- Criminal court case against the German importers.

## Example 2 e-commerce case

E-shop delivers photo materials from China to individuals throughout the EU

- Deliveries in EU via central clearing in NL
- Imports via parcel packages;
- Declared Customs value extreme low ;
- Very high revenues;
- Only one active mailbox in NL;
- Fiscal amount: more than € 10 million;
- Criminal case against Chinese suspect.



# Irregularity reporting in Spain and the role of AFCOS



**IGNACIO GÓNGORA  
ZURRO**

Spain

# STRUCTURE OF THE PRESENTATION

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- I. BRIEF INTRODUCTION TO SPANISH AFCOS.
- II. IRREGULARITY REPORTING IN SPAIN: OVERVIEW.
- III. BEST PRACTICE: AFCOS GUIDELINES WITH REGARD TO IRREGULARITIES INVOLVED IN CRIMINAL PROCEEDINGS.
- IV. NEXT STEPS

## BRIEF INTRODUCTION TO SPANISH AFCOS

- ◆ **Date of creation:** End of 2014.
- ◆ **National Legal Framework:** General Grants Law (Law 38/2003) - Additional provision no. 25, which was introduced in September 2015.
- ◆ **Number of people:** 5
- ◆ **Organization:** Deputy Directorate-General integrated in the Inspectorate General of Finance (“Intervención General de la Administración del Estado”- IGAE). **Ministry of Finance.**
  - Relationship with Audit Authority.
  - Professional background.
  - Full independence in the development of its tasks.

### ◆ **Functions:**



- Promote the adoption of national antifraud strategies.
- Identify deficiencies in national systems for managing EU Funds and promote the corresponding legal and administrative changes in order to protect the EU’s financial interests.
- Lay down procedures for coordination and exchange of information with regard to suspicions of fraud among national authorities and between these authorities and OLAF.
- Promote training activities in the field of prevention and fight against fraud.
- **No investigative powers.** But right of access to information to the same extent as OLAF. Legal obligation to cooperate with AFCOS.

# IRREGULARITY REPORTING IN SPAIN: OVERVIEW

## REPORTING STRUCTURE IN SPAIN

### REPORTING AUTHORITIES IN SPAIN:

#### ◆ Managing Authorities:

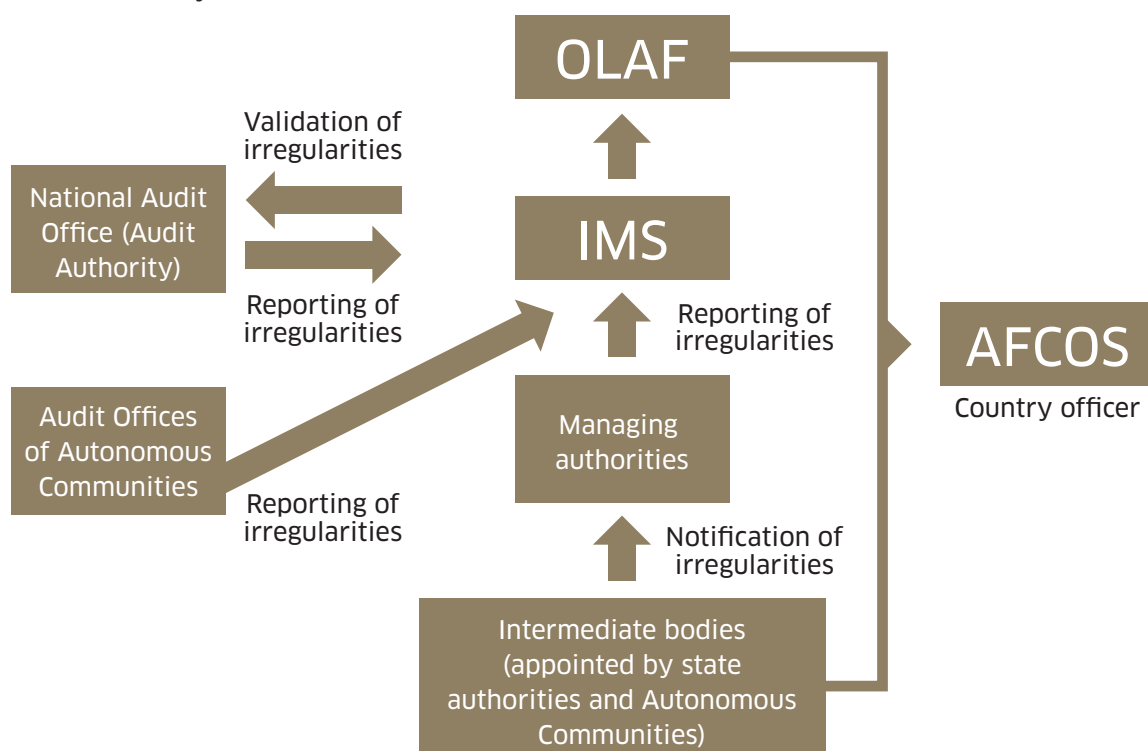
- Report **(a)** irregularities detected by MA in the framework of their own controls and **(b)** also those detected by IB (both national and regional), which are communicated to MA through the national information systems.
- Irregularities detected by IB are not created in IMS by the IB.

#### ◆ National Audit Office (Audit Authority):

- Reports irregularities detected by the Office regarding any Fund (mainly National Programmes).
- Validate (and send to OLAF) irregularities reported by the rest of the authorities (role of manager).

#### ◆ Audit Offices of Autonomous Communities: only irregularities detected by these Offices

- ERDF and ESF Regional Programmes: competent to report irregularities in IMS.
- Fisheries and Agriculture: communicate irregularities to MA through national information systems.



#### ◆ Role of AFCOS with regard to irregularity reporting:

- Define the reporting structure (Country Officers)
- Cooperate with National Audit Office (Audit Authority) in the validation of irregularities reported by all the reporting authorities.
- Supervise the quality of reporting with regard to the classification of irregularities as suspected fraud, established fraud or simple irregularity.
- Supervise the adequate follow-up of irregularities classified as suspected fraud.
- Organization of training courses and seminars for creators with regard to irregularity reporting requirements and IMS.

## ◆ Number of irregularities reported

FUND	2013	2014	2015	2016	2017
CF	6	3	154	47	134
EAGF/EAFRD	375	457	531	324	359
EFF	28	13	19	90	15
ERDF	184	68	4819	2677	973
ESF	88	102	89	138	54
<b>Total</b>	<b>681</b>	<b>643</b>	<b>5612</b>	<b>3276</b>	<b>1499</b>

## BEST PRACTICE: AFCOS GUIDELINES WITH REGARD TO IRREGULARITIES INVOLVED IN CRIMINAL PROCEEDINGS.

### GUIDELINES ON CLASSIFICATION OF IRREGULARITIES

#### ◆ DENOMINATION:

“Guidelines on classification and procedure to follow regarding irregularities and suspicions of fraud in operations or projects subject to criminal proceedings”.

#### ◆ DATE OF APPROVAL:

3<sup>rd</sup> February, 2016.

#### ◆ STARTING POINT:

- Shortage of reporting of irregularities classified as suspected fraud.
- Reasons for this situation.
- Commission Delegated Regulations 2015/1970, 2015/1971, 2015/1972, 2015/1973 and Commission Implementing Regulations 2015/1974, 2015/1975, 2015/1976 and 2015/1977, about reporting of irregularities concerning EU Funds
- Irregularities must be classified as:
  - Irregularity in the sense of Regulation 2988/95
  - Suspected fraud
  - Established fraud
- Irregularity: well-known definition.
- Suspected fraud: article 2 a) of Delegated Regulation 2015/1970:
  - **Definition:** “(1) Irregularity that (2) gives rise to the initiation of administrative or judicial proceedings at national level, (3) in order to establish the presence of intentional behaviour, in particular fraud”.
  - **Consequence:** the existence of a criminal procedure which aims to determine whether fraud has been committed is a key element to classify the irregularity as suspected fraud.
- Established fraud: If, (1) once the administrative or judicial proceedings mentioned above have finished, (2) the competent administrative or judicial authority concludes that there has been a fraud.

## ◆ OBJECT AND SCOPE OF APPLICATION: Section 1

Irregularities detected in projects or activities funded by ERDF, ESF, CF, EFF, EAGF, EAFRD, FEAD, AMIF and the instrument for financial support for police cooperation, preventing and combating crime, and crisis management.

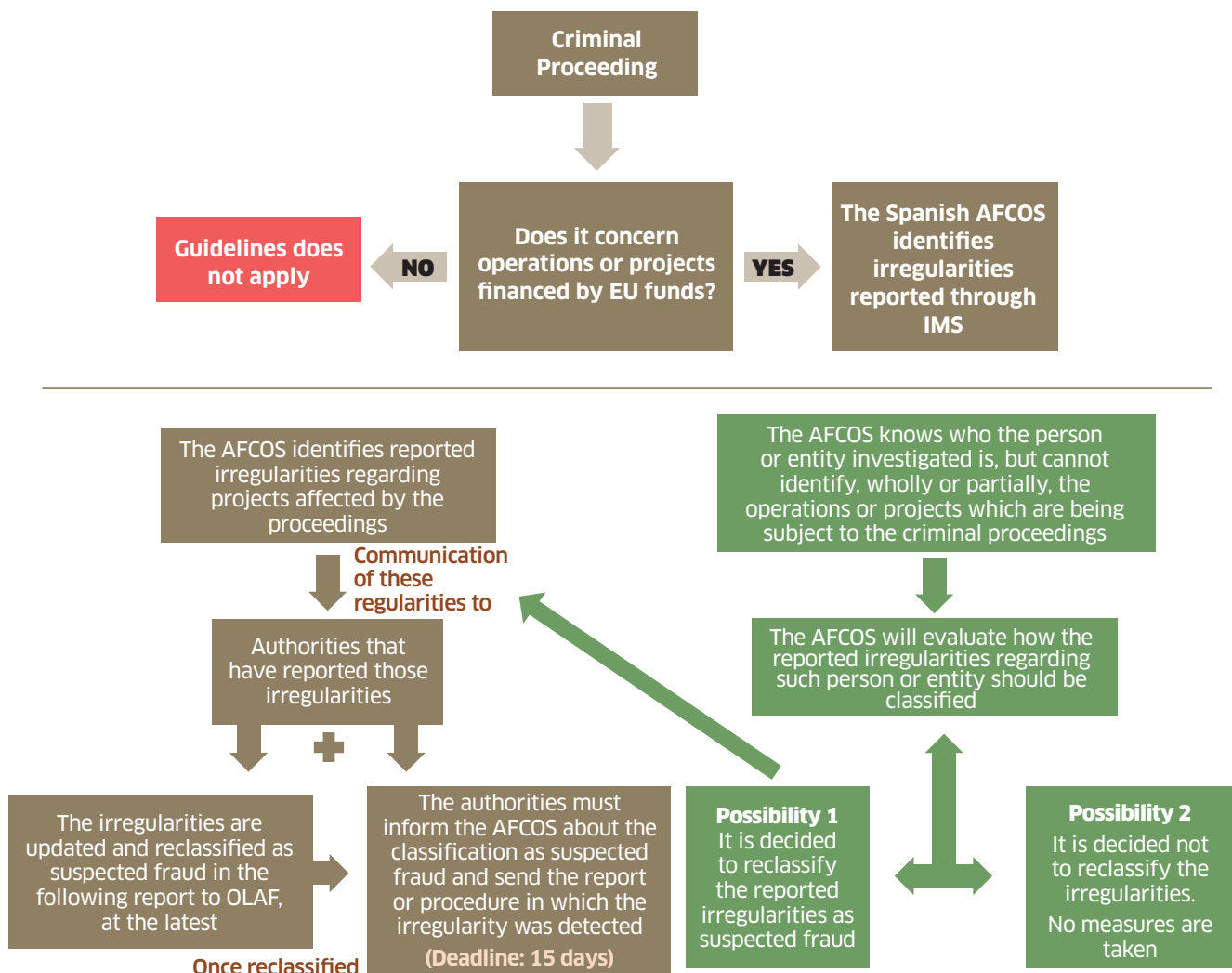
## ◆ MAIN PRINCIPLE: Section 2

- **Premise:** when, from any reliable source, the competent authority knows that there is a criminal procedure which aims to determine the existence of fraud with regard to operations or projects funded by any of the aforementioned Funds;
- **Consequence:** Every irregularity detected with regard to those projects or operations must be classified as **“suspected fraud”** in the framework of irregularity reporting to OLAF.

## ◆ PROCEDURE TO FOLLOW: Several situations

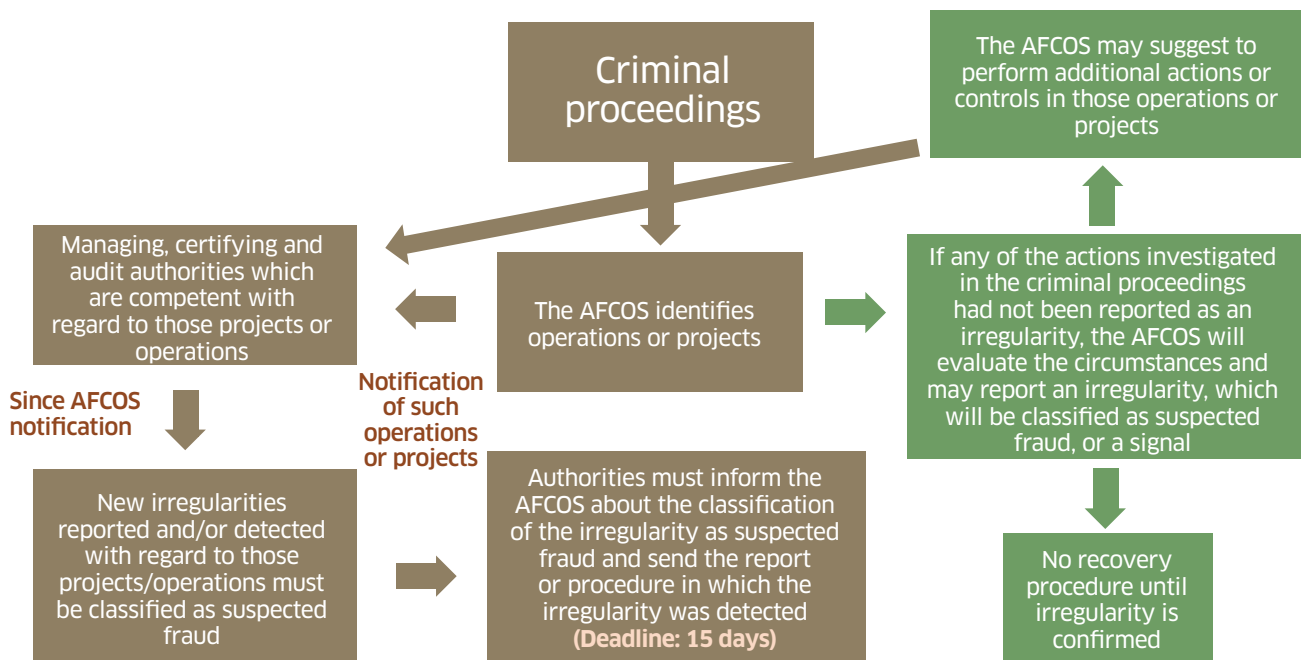
- Irregularities already detected and reported to OLAF when we get knowledge of the criminal proceedings (Section **Three**).
- Irregularities detected and/or reported to OLAF afterwards (Section **Four**).
- Procedure to follow once the criminal proceedings are over (Section **Five**).
- Procedure to follow when managing, certifying and/or audit authorities are the ones who get knowledge of the criminal proceedings (Section **Six**).

## Procedure to follow regarding irregularities already detected and reported to OLAF (Section Three)

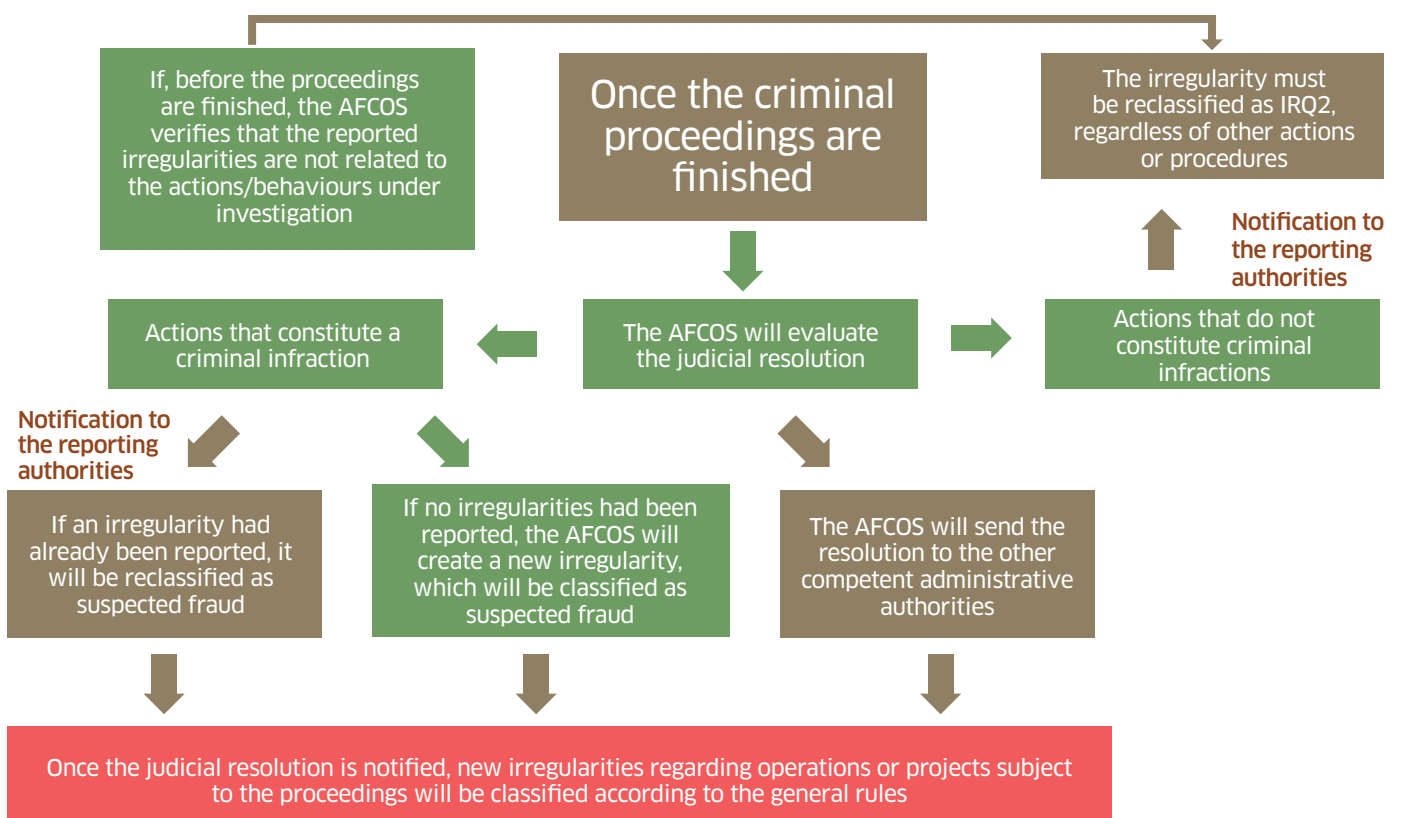




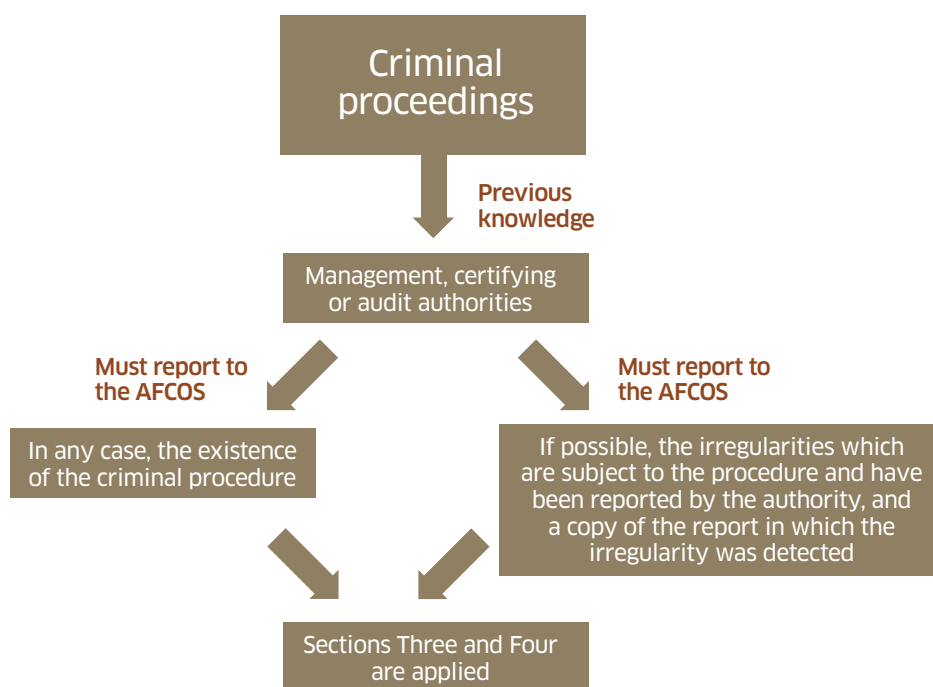
## Procedure to follow regarding irregularities detected and/or reported to OLAF after getting knowledge of the criminal proceedings (Section Four)



## Procedure to follow once the criminal proceedings are over (Section Five)



## Procedure to follow when managing, certifying and/or audit authorities are the ones who get knowledge of the criminal proceedings (Section Six)



## GUIDELINES ABOUT CLASSIFICATION OF IRREGULARITIES

FUND	2013			2014			2015			2016			2017		
	N/A	IRQ2	IRQ3	N/A	IRQ2	IRQ3	N/A	IRQ2	IRQ3	N/A	IRQ2	IRQ3	N/A	IRQ2	IRQ3
CF		6			3		2	150	2		47		5	129	
EAGF/EAFRD	38	327	10	60	378	19	50	470	11	52	262	10	19	335	5
EFF	2	26		1	12		4	14	1	14	76		2	13	
ERDF	1	183			68		30	4788	1	112	2461	104		918	19
ESF	5	83		9	90	3	1	88		2	136			53	1
<b>TOTAL</b>	<b>46</b>	<b>625</b>	<b>10</b>	<b>70</b>	<b>551</b>	<b>22</b>	<b>87</b>	<b>5510</b>	<b>15</b>	<b>180</b>	<b>2982</b>	<b>114</b>	<b>26</b>	<b>1448</b>	<b>25</b>

## NEXT STEPS

### NEXT STEPS ON CLASSIFICATION OF IRREGULARITIES

- ◆ **Cooperation Agreement between AFCOS and the Prosecution Office specialised in economic crimes.**
  - Objective: Centralise the follow-up of judicial proceedings affecting projects financed by EU Funds.
- ◆ **Formal consultation procedure with AFCOS with regard to classification of irregularities.**
  - Objective: Clarify situations where MA or IB have reasonable doubts whether a certain irregularity should be considered fraudulent (case by case).
  - Already doing it on an informal basis.
  - Need to rely on AFCOS network.



The possibilities of fraud  
detection on the basis of  
digital documents.  
Estonian cases.



**INDREK PURGA**

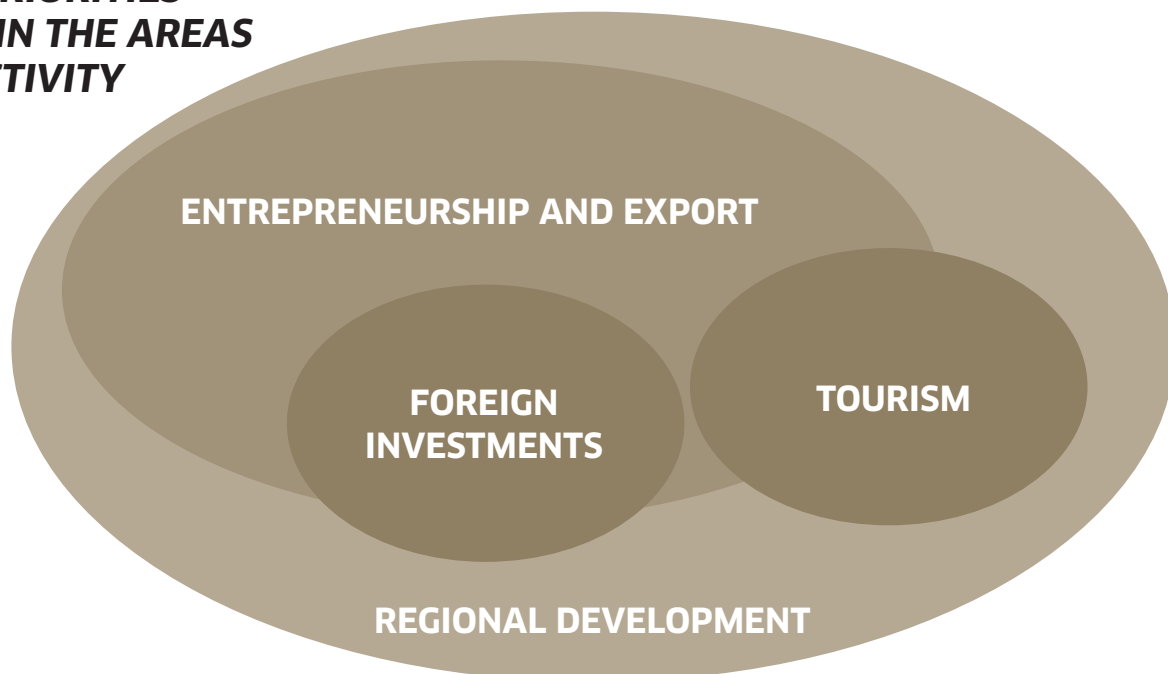
Estonia

# ABOUT ENTERPRISE ESTONIA:

## ◆ 280 employees

Established in 2000, Enterprise Estonia (EAS) promotes business and regional policy in Estonia and is one of the largest institutions within the national support system for entrepreneurship by providing financial assistance, counselling, cooperation opportunities and training for entrepreneurs, research institutions, the public and non-profit sectors. <https://www.eas.ee/>

### **EAS PRIORITIES WITHIN THE AREAS OF ACTIVITY**



## ◆ According to the numbers:

- The biggest risk is the projects with three offers
- Risky activities: IT development, marketing research, counseling service etc
- Opponents: consulting firms, former employees
- The circle of participants in fraud is kept as small as possible
- Almost all documents are digital

## ◆ Forgery

- Digital documents vs scanned documents
- e-mails (\*.eml, \*.msg, \*.txt, ... Re:, Fw:)
- Microsoft Office documents
- PDF - documents
- Photos (\*.jpg, \*.bmp, \*.png - pixel graphics do not allow the situation to be restored)

◆ **Demos ...**

**Fake e-mails**

**Changed contracts**

**Fake payment orders**

**Fake offers**

**missing IT development**

◆ **Further topics:**

- plagiarism detection
- Expertise for expert

# NOTES

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## CONTACT INFORMATION

# BENEFICIARY INSTITUTION OF THE PROJECT

### **SERVICE FOR COMBATING IRREGULARITIES AND FRAUD**

Ministry of Finance of the Republic of Croatia  
Katančičeva 5 | 10 000 Zagreb | Croatia

**Phone:** +385 (1) 4591 385

**Email:** [mirjana.juric@mfin.hr](mailto:mirjana.juric@mfin.hr) | [nepravilnosti.eu@mfin.hr](mailto:nepravilnosti.eu@mfin.hr)

**Web:** [www.mfin.hr/en/protection-of-eus-financial-interests](http://www.mfin.hr/en/protection-of-eus-financial-interests)

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### **EUROPEAN COMMISSION**

#### **EUROPEAN ANTI-FRAUD OFFICE (OLAF)**

1049 Bruxelles | Rue Joseph II, 30 | Belgium

**Web:** [https://ec.europa.eu/anti-fraud//home\\_en](https://ec.europa.eu/anti-fraud//home_en)  
[https://ec.europa.eu/anti-fraud/policy/hercule\\_en](https://ec.europa.eu/anti-fraud/policy/hercule_en)