EUROPEAN UNION

CENTRE FOR LEGAL
RESOURCES

NEW INVESTIGATION STRATEGIES
TO UNCOVER CORRUPTION
IN THE E.U. FINANCED PROJECTS

1. OLAF AND EPPO INVESTIGATION POWERS

OLAF has only administrative investigation powers. OLAF investigators have access to documents, accounts and other information held by EU bodies and can carry out on-spot checks on other organisations or businesses and question witnesses and potential suspects. OLAF cooperates with the Member States authorities and monitors the follow-up given to its investigations on the ground.

Nevertheless, OLAF cannot prosecute offences against the EU budget. Eurojust and Europol also lack the power to carry out acts of investigation or prosecution themselves. In order to overcome major impediments to the effective criminal investigation and prosecution of offences affecting the Union's financial interests such as fragmented national law enforcement efforts, lack of cross-border dimension of criminal investigations and prosecution, limited coordination, cooperation and information exchange among member states, lack of effective, equivalent and deterrent track record of judicial action at the member states level, European Union set up an Union-level prosecution system - European Public Prosecutor's Office .

EPPO is foreseen to start operating in 2020, with 22 EU participating countries. EPPO has the power to investigate, prosecute and bring to judgment crimes against the EU budget, such as fraud, corruption or serious cross-border VAT fraud. The EPPO will operate on 2 levels, a central office with supervising powers and delegated prosecutors, located in each participating EU country.

Identification → Reporting → Initiantion of verification, inspections or investigation → Following of the process

Source: Ened Nakuçi presentation, conference "Corruption prevention mechanisms related to EU funded projects", organised on 28 June 2018 in Bucharest, Romania.

Uncovering corruption and fraud affecting EU budget is the result of cooperation and coordination among different stakeholders, such as national managing authorities, national law enforcement authorities, OLAF, journalists, citizens and non-governmental organisations. In many cases corruption and fraud is uncovered initially by a whistleblower, a diligent journalist or even a concerned citizen.

Although OLAF does not reveal sources of incoming information, OLAF's general performance indicators reveal that incoming information from private sources are twice as many as incoming information from public sources.

According to OLAF's privacy statement for selections (OLAF DPO-178), new incoming information of possible investigative interest may arrive at OLAF from a private party, such as:

• anonymously, online via the Fraud Notification System (FNS);

• providing name and e-mail address, online via a web form;

• via e-mail or post, via the general enquiries email address or to an OLAF staff member;

• in particular in the framework of other ongoing investigations, orally, to an OLAF staff member who should record the information in a note;

• a whistleblower, via e-mail sent to a dedicated functional mailbox or through regular mail;

Other sources of incoming information are an EU institution, body, office or agency or Member State authority or media review

Figure 26. Incoming information by source

Source	2009	2010	2011	2012	2013	2014	2015	2016	2017
PRIVATE	523	594	767	889	889	959	933	756	889
PUBLIC	436	381	274	375	405	458	439	380	404
Total	**959**	**975**	**1041**	**1264**	**1294**	**1417**	**1372**	**1136**	**1293**

Source: OLAF 2017 report

Thus, during the conference "New investigation strategies to uncover corruption in the E.U. financed projects", organised on 8 November 2018 in Bucharest, Romania, special attention was given to investigative journalism, whistleblowing and red-flags analysis as methods to uncover corruption and fraud cases.

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[1] Regulation (EU) 2017/1939 to set up a European Public Prosecutor's Office (EPPO)

2. INVESTIGATIVE JOURNALISM, RED-FLAGS AND WHISTLEBLOWERS ROLE IN INVESTIGATIONS

Investigation journalists from Romania, Hungary and Serbia discussed their methods to uncover corruption cases in EU financed projects. In some cases, journalists followed trucks around countries to identify the supply chain and prove connection between companies when access to official documents was almost impossible. In other cases, the journalists followed the trail of money through offshore companies and on other world continents.

For instance Rise Project Romania and Bivol.bg followed one of the largest EU fraud case in Romania (€26m) perpetrated by Bulgarian organised crime: Romanian Agricultural Payments and Intervention Agency (APIA) signed a contract with a Bulgarian company and paid for foodstuffs that were never delivered[2].

Journalists highlighted the role of source protection (journalists' privilege) which is under pressure in most of the countries in the region. Romanian National Authority for the Supervision of Personal Data Processing (ANSPDCP) requested RISE Project to reveal its sources in a case of corruption and collusion regarding EU funds and asked for information about all the data journalists acquired during their investigation. In case of noncompliance, ANSPDCP told journalists they were subject to "penalties of 20 million euros"[3]. In Hungary, government and pro-government media outlets attack independent journalists, launching smear campaigns to undermine credibility of critical journalism and watchdog work done by NGOs. Media system is deteriorating, there is no or little impact for investigative journalism in the mainstream press.

The journalists invited in the panel discussed also allegations of EU money dedicated to information and publicity measures being directed to TV stations/newspapers owned by proxies of the people in government. In principle, information and publicity measures are intended to increase public awareness and transparency regarding the projects financed by the European Union. In fact, those publicity contracts awarded to government controlled media are used to secure favourable media for government actions, propaganda and whitewashing. In countries facing enduring corruption challenges, media independence is constantly undermined by pressures from government.

Public information requests/freedom of information, open data, tips from citizens (that can monitor on spot EU funded projects), watchdog activities of NGOs are important activities in uncovering corruption, fake works, favouritism (for instance cases when application period for EU funds lasted only four days). When it comes to EU funds, we cannot fight corruption from distance. Brendan Quirke discussed the role of red flags and control systems in identifying fraud and corruption related to EU assistance. Constant pressure in most of the countries to absorb EU funds allows less

[1] https://www.riseproject.ro/articol/agentia-de-plati-in-agricultura-delapidata-de-interlopii-bulgari/

[3] http://www.ziare.com/liviu-dragnea/stiri-liviu-dragnea/efectul-teleormanleaks-autoritatile-statului-ameninta-rise-project-cu-o-amenda-uriasa-1537439

attention to design or implement adequate control systems. In all former communist countries that joined EU there is abundance of funds and pressure on absorption. According to Gabriella Nagy, abundance of funds and pressure on absorption determine unjustified development projects, overpricing/over budgeting, and less effective control mechanisms in procurement.

Therefore, control weaknesses generate more fraud opportunities. Brendan Quirke presented Joseph Bowden case, a CAP fraud case in UK in order to emphasize how systematic control failures encouraged fraud. Bowden received payments for different crops –linseed & fibre flax which covered the same areas of land. Internal controls by the Payment Agency were not properly implemented: cross-checks between the 2 subsidy schemes were not carried out, map references were not verified, on-the-spot inspections did not find any irregularities, and payment of subsidy was not dependent on evidence of processing.

The Fraud Triangle:
A framework for spotting high-risk fraud situations

Pressure
Financial or emotional force pushing towards fraud

FRAUD

Opportunity
Ability to execute plan without being caught

Rationalization
Personal justification of dishonest actions
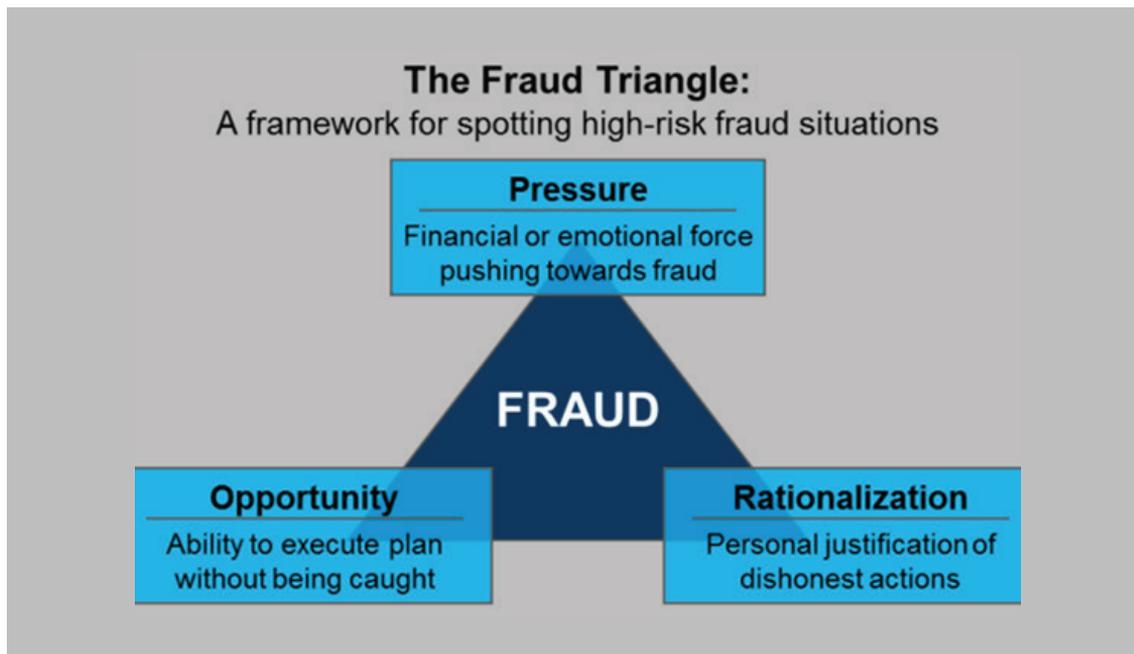
Source: *Brendan Quirke presentation, conference "New investigation strategies to uncover corruption in the E.U. financed projects", organised on 8 November 2018 in Bucharest, Romania.*

Brendan Quirke concluded that red Flags are indicators, they are not evidence. Just because a project has a number of red flags it does not mean it is subject to fraud. Projects can have no red flags and yet fraudulent behaviour could be occurring. Red Flags can be organised around internal controls, contracting process, contract design, tender evaluation, contract award & monitoring. Control weaknesses send a signal while wider control environment may raise significant issues. Wider control environment refers to issues with absorption of funds (national shortcomings and pressures), human resources management, internal regulations, evaluation & selection of projects to be funded, transparency of EU Funds, auditing & control systems and prosecution.

A red flag is a symptom that something is out of the ordinary and may need to be investigated further. Red Flags refer to the various situations & conditions that over the years have been shown to be contributing factors to fraud & irregularity.

In order to apply red-flags principles and identify effectively and efficiently most risky projects,

contracts, contractors and beneficiaries, the European Commission developed Arachne Risk Scoring Tool to support managing authorities responsible for the European Structural and Investment Funds in their management verification processes. The Arachne Risk Scoring Tool is based on internal and external data. Internal data comprise information about projects, beneficiaries, contracts, contractors and expenses and are provided by each managing authority from their own electronic systems.

External data comprise of two databases, one (ORBIS by Bureau Van Dijk) containing financial data as well as shareholders, subsidiaries and official representatives of over 210 million companies and 120 million people behind the companies and the other (WORLD COMPLIANCE by LexisNexis Risk Solutions, Inc.) containing a list of politically exposed persons, sanction lists, enforcement lists and adverse media lists. These data are processed to identify the risks of fraud and irregularities at the level of the beneficiaries, contractors, contracts and projects, both at project approval as well as at the project implementation phase. The system is currently used by 21 member states. The results of Arachne are used by the managing authorities/intermediate bodies to define the sample projects to be further investigated.

The results are also used by Commission auditors during the preparatory phase for an audit. However, Arachne is not used to select a sample of projects to be audited by the Commission services.

Brigitte Slot presented the methodology to estimate the direct costs of corruption in public procurement prepared for the European Commission by PwC and Ecorys, with support of Utrecht University in the

2013 study "Identifying and Reducing Corruption in Public Procurement in the EU". The study reviewed 27 red flags and 192 case studies and identified 'best' red flags. Combinations of these red flags proved to be the strongest predictors for a probability of corruption in a procurement

'Best' red flags to be followed by managing authorities (by PwC and Ecorys)

• Inertia in composition of evaluation team
• Multiple contact points
• Contact person not employed by tender provider
• Shortened time span for bidding process
• Accelerated tender
• Tender exceptionally large
• Complaints from non-winning bidders
• Award contract has new bid specifications
• Changes in project scope/price after award
• Connections between bidders
• All bids higher than projected overall costs
• Award contract and documents not public
• Incomplete tender file (database)

Gabriella Nagy, head of public funds program of Transparency International Hungary, discussed red flags and forms of corruption in public procurement in Hungary. TI Hungary found that most typical form of corruption in procurement is bid rigging, then conflict of interest and bribe. The procurement context lacks competition and transparency as in almost half of the procedures there is only one bidder and there are strong contractual relationships between the business and political elite. Corruption in procurement is encouraged by ineffective control mechanisms, lack of independence of oversight institutions, and expensive legal remedies. TI Hungary estimated that corruption makes procurement more expensive by 20-25%, 1,5b euro loss/year (150 EUR for each Hungarian citizen per year).

K-Monitor, PetaByte and Transparency International Hungary, with the support of an European Commission, developed redflags.eu, interactive tool that allows the monitoring of procurement processes and their implementation by citizens, journalists or even public officials and catch fraud risks at different stages of the procurement process.

Marius Vasiliu reported that Romanian Regional Operation Programme's control unit incorporated Arachne tool as one of the anti-fraud measures. Other measure are related to whistleblowing and external reports by citizens.
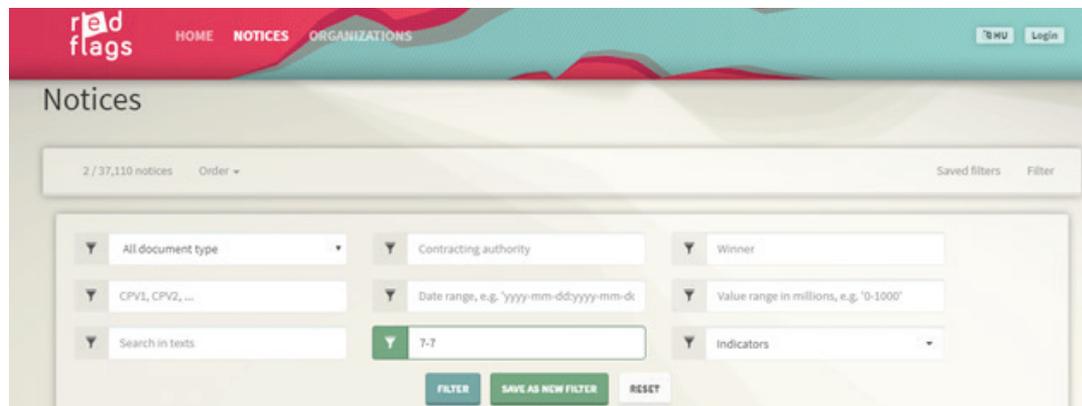
Procurements with 7 red flags (maximum possible) on redflags.eu

Whistleblower protection in Greece was discussed by Margarita Gasparinatou and Eirini Stamouli. Until 2014, Greece had no specific protection framework for whistleblowers, a concern reflected in international reports and recommendations (UNCAC, OECD, and GRECO). The Greece criminal code establish a general obligation for both public and private sector employees to report to the Prosecutor or to any other law enforcement authority any illegal action that comes to one's attention. In 2014 Greece adopted public interest witness protection law (Law 4254/2014). According to this law, any person may be characterised as a public interest witness if he/she contributes substantially to uncovering and prosecution of serious crimes, by means of the information he/she provides to the prosecuting authorities. In order to get the public interest witness protection status, a person has also to meet other two prerequisites: not being personally involved in any way in the offences in question and not aiming to benefit him/herself by reporting the wrongdoing.

In Greece, the administrative protection of civil servants reporting wrongdoing is threefold: prohibition of retaliation measures, protection of the anonymity, and reversal of the burden of proof in disciplinary proceedings in favour of officials who have made a substantial contribution to the disclosure and prosecution of acts of corruption.

The case study from Greece was put into context with a discussion about the proposed European Directive on whistleblower protection and the whistleblower protection policies of EU institutions and agencies.

European Ombudsman Emily O'Reilly stressed that whistleblowers play a very important role in serving public interest, including informing OLAF work. Whistleblowers also play a central role in the democratic process as proved by disclosures of large scale tax avoidance schemes in the Panama papers. Thus there is need to develop at EU and member states level an institutional environment that encourage individuals to speak up about wrongdoing and are protected when they do so. Institutions need to be encouraged to see whistleblowers not as threats but rather as enablers of good behaviour. Emily O'Reilly reported that European Ombudsman drew up internal whistleblowing rules and invited interested parties to comment.

Also OLAF developed an anonymous reporting procedure with safeguards for those who report that can be used by whistleblowers to report potential issues on how EU funds are being used. One of the strategic enquiries launched by European Ombudsman concerned whistleblowers and it aimed to ensure that the substance of whistleblowers complaints is fully investigated and whistleblowers are kept informed of what action will be taken to rectify the situation. All EU institutions and agencies are supposed to adopt internal rules on whistleblowing. Thus, European Ombudsman asked 9 EU institutions[4] about their whistleblowing policies and found that all 9 EU institutions adopted or updated their whistleblowing rules.

Consequences of corruption and irregularities are useless, ineffective and inefficient projects. During the conference, the participants discussed examples from Italy, Romania and Hungary.

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[4] The European Commission, the European Parliament, the Council of Ministers, the European External Action Service, the Committee of the Regions, the European Economic and Social Committee, the European Court of Justice, the European Court of Auditors and the office of the European Data Protection Supervisor

Sicilian village's €2m EU-funded 'lift to nowhere' [5]

Bicycle Roads in Hungary, financed by EU [6]

Modernisation of public lighting in Hungary funded by EU [7]

€6m EU-funded road modernized in Romania [8]

[5] https://www.telegraph.co.uk/news/worldnews/europe/italy/11400808/Scandal-of-Sicilian-villages-2m-EU-funded-lift-to-nowhere.html

[6] Gabriella Nagy's presentation

[7] Gabriella Nagy's presentation

[8] https://www.bzi.ro/cand-va-opriti-din-furat-in-ce-hal-arata-un-drum-asfaltat-cu-6-milioane-de-euro-de-la-ue-foto-355651#

2. CONCLUSION

Efforts to tackle corruption in EU financed projects are difficult as schemes evolve and become more complicated and transnational. EU budget provides yearly vital funding to hundreds of thousands of projects in all EU member states, candidate and neighbouring countries, and internationally.

For 2017 OLAF issued 309 recommendations concerning 3 billion euro recommended for financial recovery. Nevertheless, criminal investigation and prosecution of offences affecting the Union's financial interests rests with the member states. A Union-level prosecution system - European Public Prosecutor's Office is foreseen to be operational in 2020 but it does not cover all member states.

In this context, investigative journalism, red-flags systems and whistleblowers may play a key role in identifying fraud-related corruption. These three methods of informing investigations have also their own challenges discussed during the conference. Independent journalism and watchdog is work in under pressure from governments in counties facing enduring corruption challenges, red-flags systems started to be implemented just recently and whistleblowing is far from being accepted as legitimate reporting.

Although these impediments, dedicated investigative journalists continue to work in public interests in Serbia, Romania, Hungary and other EU countries and some of them shared their work and methods during the conference "New investigation strategies to uncover corruption in the E.U. financed projects", organised on 8 November 2018 in Bucharest, Romania.

Red-flags systems continue to be developed and improved with predictive models. For instance, Arachne tool helped recovering 134 million euro from beneficiaries. Whistleblowers have more options to report, including anonymous reporting. New whistleblower directive will better protect persons disclosing information acquired in a work-related context, on illegal or harmful activities.

CONFERENCE SPEAKERS **"NEW INVESTIGATION STRATEGIES TO UNCOVER CORRUPTION IN THE E.U. FINANCED PROJECTS",** 28 JUNE 2018, BUCHAREST, ROMANIA

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