Case study name	Conflict of interest in local transport infrastructure
Description	The project consisted in the extension of the metro line in the capital city. Prior to this construction, there was only one metro line serving several districts located across the river, which divides the city. The extension planned was 7.4 km long and included 10 stops. Today this automated and driverless metro line provides transport for over 400,000 people every day. A grant agreement was signed between the Beneficiary and the National Development Agency in late 2008, and in late 2009, the EC approved the project and was included in the 2007-2013 programming period representing one of the period's largest projects.
ESI Fund(s) concerned	Cohesion Fund (and EIB loans)
Irregularity type	• Conflict of interest • Breach of Principle of non-discrimination and equal treatment of bidders • Fraud
Reporting mechanism	OLAF held several operational meetings, corresponding with different judicial authorities. This included the Eurojust Coordination Meeting. Audits were carried out by different national authorities, including the Managing Authority, which commissioned an independent expert, the Government Audit Office and the State Court of Auditors.
IMS reporting	Yes
Red flag(s)	Fraud in public procurement procedures, specifically receiving public funds despite the lack of necessary capacities and contracting entities despite evident conflict of interests. The main indicator that triggered the suspicion were: • Irregular Public procurement procedures • Irregular supervision of works In particular, the project included about 100 different contracts, 20 of which were independent construction contracts, including a large multinational technology company. The contracts corresponded to the "Conditions of Contract for Plant & Design-Build" contract type under the FIDIC (International Federation of Consulting Engineers or Fédération Internationale Des Ingénieurs-Conseils), the so-called 'Yellow Book' standards. Such choice would not constitute an irregularity per se, if the Beneficiary could have guaranteed the correct coordination of the works.
Description of fraud pattern	In 2003, the Government decided on the metro extension by covering 70% of the costs of the construction, with the municipality making up the remaining 30%. An Investment Contract was signed

between the municipality (Beneficiary) and the municipality-owned company commissioned to implement the project. This contract required the company to employ an Independent Verification Engineer/Independent Supervising Engineer to oversee the decisions made by the Project Owner during implementation.

A financing agreement, signed in 2004, entrusted the State Treasury to manage the project's funding. In 2005, the National Metro Act entered into force, approving the projected costs. Two EIB Loans were obtained to finance the project later that year

The alleged serious irregularities, fraud and possible corruption mainly involved a company that was part of the Project Management and was also acting as FIDIC Engineer from mid-2006 to late 2012. The OLAF investigation highlighted **irregularities after the application phase, in the contracting phase and in the implementation phase**. The **irregularities were allegedly due to a conflict of interest and a breach of the principle of non-discrimination and equal treatment of bidders**. Some staff members of the municipality-owned company were in a conflict of interest with certain contractors according to the findings of the investigation.

OLAF reported that the contract recipient lacked the necessary professional capacity and staff to manage and coordinate the project. It was also claimed that the Beneficiary did not guarantee that the project would take place in due time, with the appropriate quality standard and at the best price. Nor did the Beneficiary provide for the correct financial and technical planning of the project, including ensuring the adequate coordination of the different works contracts.
The Project management did not have the sufficient professional capacity and staff.

In addition, it was found that the entity tasked with Project Management, which was also the FIDIC Engineer until 2012, **did not respect public procurement rules while assisting the Beneficiary in choosing the works contractors**. The FIDIC Engineer and Project Management entity appeared to have repeatedly put themselves in a situation which created a conflict of interest with different contractors. Finally, the OLAF investigation found that the role of Independent Verification Engineer was only implemented on a temporary basis until 2012.

The Project Management Consultant, who also served as FIDIC Engineer until 2012, **participated in the Evaluation Committee meetings for the selection of contractors. It then supposedly acted as sub-contractor to some of these companies, which constitutes a formal breach of the contract that it signed to carry out this project**.

	Irregularities appear to have affected all payments made under the supervision of this entity to the works contractors concerned. As the Project Management consultant this entity had to verify the payment requests of the contracted companies. **In some cases, the investigation found that the same natural person would sign both the certification of performance of the subcontractor and also the certification of the invoice of that same entity as Project Management Consultant.** FIDIC rules however precisely require an independent supervisor engineer. There were also cases in which the payment request certified by this entity showed an error in the EUR exchange rate which benefitted the contractors, as well as cases of lack of supporting documents and missing signatures. Furthermore, bribery and corruption was suspected in relation to the contract signed by a large technology company from another Member State and the public procurement procedure which preceded signing the contract. The EIB informed the prosecutor's services of both Member States where the project was being implemented and where the relevant company was based, as well as informing OLAF. Evidence was provided suggesting illicit payments were made to different consultancies and media companies. Judicial investigations were launched in both countries. However, local authorities did not find corroboration of the allegations. These allegations included the Contracting Authority accepting a successful tenderer's removal of one of the subcontractors, when doing so constituted a modification of selection criteria after opening of tenders, resulting in an incorrect final decision In addition, it was alleged that the Contracting Authority presented different eligibility requirements for sole bidders and consortia. In some cases, pre-selection procedures included the irregular exclusion of valid bidders. Finally, tender conditions were reportedly modified without publishing the new contract notice and deadline. In this case, those bidders who had already bought the tender documentation were informed, without publishing the information publically. Thus new potential bidders who had not applied under the old conditions were claimed to have been unfairly excluded.
How the fraud was detected	In early 2012, the European Court of Auditors notified OLAF regarding the extension of the metro line construction project. The ECA highlighted irregularities and indications of fraud in the signing of a contract between the city-owned company, the municipality (the beneficiary) and a foreign company from another Member State. Subsequently, EC/DG REGIO also noted their suspicion concerning irregularities to OLAF. These irregularities had already

	resulted in the exclusion of 11 contracts in this project from EU funding. In addition to these complaints, the EIB informed OLAF, the prosecutor of the Member State where the metro was being built and the prosecutor of the other Member State where the company was based, of irregularities concerning one of the project's contracts with the large foreign company. Other administrative and judicial bodies were also conducting audits parallel to OLAF. Parallel to this specific investigation, OLAF was also investigating a possible fraud which involved a large technology company and a third country. Some of the information received during this investigation concerned the metro line construction, implying irregular public procurement procedures. **Crucially, OLAF found that while the supervision of works was very irregular prior to December 2012, this was no longer the case afterwards (when the principal offending entity ceased to be involved).** During the investigation, OLAF collected and analyzed documents from the competent national administrative authorities and DG REGIO, conducted on-the-spot checks of the municipality-owned company implementing the project as well on the foreign company contracted by the implementing company. OLAF also collected and analyzed judicial documents, holding Operational Meetings with judicial authorities.
Weakness identified	The main weakness according to the OLAF report was the lack of financial and technical preparation combined with a failure to properly adapt the FIDIC "Yellow Book Standards" to the project. Conflicts of interest were present during the contracting phase. Furthermore, proper verifications were not conducted, even during the application phase, and therefore failed to identify that the applicant lacked necessary personnel to manage and coordinate the project.