

Case study name	Transnational fraud and offshore companies
Description	The project aimed to provide food for people in need and was supported through the Fund for European Aid to the Most Deprived (FEAD) a fund that complements the actions of the European Social fund.
ESI Fund(s) concerned	Fund for European Aid to the Most Deprived (FEAD)
Irregularity type	<ul style="list-style-type: none"> • Documental fraud and transnational fraud
Reporting mechanism	The suspected fraud was reported after non-implementation of the contractual obligation – delivering food for the most deprived.
IMS reporting	Yes
Red flag(s)	<p>The fraud indicators and signals that triggered the suspicion were the following:</p> <ul style="list-style-type: none"> • A legal entity (Company X) from one EU member state won the public procurement contract in another MS, despite not having any previous experience in this sector; • “Company X” stopped delivering food to the most vulnerable during the initial stages of the project.
Description of fraud pattern	<p>A public agency in agriculture initiated a public procurement procedure in 2012 for delivery of food under the Fund for European Aid to the Most Deprived (FEAD). The “Company X” won the public procurement for over 32 million euro. After the first deliveries of flour and oil were made, the public agency made an advance payment of around €18 million to “Company X”.</p> <p>The public procurement procedure required from the winning company to provide a bank guarantee which would serve as an insurance that if the winning company does not deliver the results under the public procurement, then the bank would cover these costs. However, after the Company had received the funds and minimal deliveries had been made, the deliveries stopped and the funds disappeared. Therefore, the funds had already been paid to Company X but the contract was not being implemented.</p> <p>When the economic operator breached the contract, the bank, who issued the bank guarantee, refused to cover the costs.</p>
How the fraud was detected	This case study is based on the official public information on the case, given by OLAF and the competent authorities in two MS. It aims to demonstrate the actions of one MS to amend national legislation in order to assist the investigations of the European Anti-Fraud Office (OLAF).

A large-scale international investigation started on both an EU level, headed by OLAF, and on a national level. On the spot checks were performed in different Member-States. The fraud was suspected after “Company X” did not deliver the food for the most deprived. This was confirmed by the competent authorities in the country the project was implemented.

OLAF's assistance to authorities included the conducting of on-the-spot checks in the first MS (where project was delivered) and in a second MS (where the contractor was established) as well as making enquiries with the judicial authorities in another third MS, receiving the investigative assistance of a fourth MS and also the receipt of detailed information from the administrative authorities in two further MS.

The competent authorities provided OLAF with the relevant information for their investigation into the tax and insurance data of “Company X”. However, under the national law such information can only be issued to specific national entities. In this case, the national AFCOS assisted the investigators of the European Anti-Fraud Office in accessing the investigative information.

However, neither OLAF, nor AFCOS had the right to access to such information, according to national legislation. From legal point of view, the obtaining of tax and insurance information on “Company X” was possible through two ways:

1. If either AFCOS or OLAF are provided for by the law as being entitled to receive such sensitive information (which they were not);
2. To request the voluntary consent of the perpetrator/fraudster.

In this case, the authorities did the following to obtain the necessary information:

1. They secured the voluntary consent (through a consent declaration) from the owner of “Company X”, to assist with the AFCOS investigation,
2. The National Revenue Agency (NRA) then provided further information to AFCOS and to OLAF.
3. AFCOS and NRA initiated amendments in the national Tax-Insurance Procedure Code in 2015, 2016 and 2017.

Finally, anti-corruption prosecutors conducted searches in various locations throughout the country and Company X was prosecuted by the authorities.

<p>Difficulties encountered</p>	<p>The following difficulties were encountered in this specific transnational case:</p> <ul style="list-style-type: none"> • The public agency brought a case before the Supreme Court of Cassation, which concluded that the Bank has to pay the Bank Guarantee. A judicial enforcer seized the accounts of the Bank to use the bank guarantee to repay the agency. However, the EU funds have still not been recovered • the participation of offshore companies which further complicated investigations; • Failure of the bank of to pay the bank guarantee.
<p>Weakness identified</p>	<p>Some weaknesses in the joint efforts of the Member States involved can be identified, such as:</p> <ul style="list-style-type: none"> • the internal rules of the public agency allowed for such large sums of funds to be paid out prior to the implementation of a more significant part of the contract (although the funds were guaranteed); • the public procurement criteria that allowed an unexperienced and dubious company to apply for and win the tender; • the need for a EU institution that can investigate and prosecute at EU Level, such as the EPPO. <p>This case demonstrated the willingness of the authorities to render the necessary cooperation during an investigation of fraud by OLAF, including by promptly amending the national legislation.</p>