

Case Study Name	Fraud and resistance of beneficiary to cooperate - access to premises
Description	The project concerns the delivery of 6 special vehicles for the needs of a beneficiary (the Regional public authority) under an ERDF support programme. The Beneficiary launched a tender procedure to select a contractor to deliver the 6 specialised vehicles.
ESI Fund(s) concerned	European Regional Development Fund (ERDF)
Irregularity type	No irregularity
Reporting mechanism	The case was reported as an irregularity by the Managing Authority during the initial implementation of the project.
IMS reporting	<p>Yes</p> <p>(The case was first reported as an irregularity case, a second follow-up reclassified it as suspected fraud however, fraud was not proven)</p>
Red flag(s)	<p>The suspected fraud occurred during the initial stage of the project and stemmed from suspicions that the economic operator won the public procurement without having the capacity to deliver the equipment.</p> <p>The fraud indicators and signals that triggered the suspicion were:</p> <ul style="list-style-type: none"> • A complaint that the contractor did not have the capacity to deliver the 6 specialised vehicles; • The fact that the implementation of the project was approved, even though the contractor had difficulties in fulfilling the delivery, thus sparking allegations that public officials from the Managing Authority assisted the contractor in winning the tender; • The contractor did not allow the on-the-spot check to be carried out on the territory of its office.
Description of fraud pattern	<p>An international Consortium "X" won the tender for delivery of the specialised vehicles. The project fell under the competence of the Managing Authority Y (the relevant Ministry).</p> <p>There was a suspicion that the Consortium was trying to illegally benefit from EU funds and that they possibly received assistance from the Managing Authority to win the procurement, even though the contractor did not have the capacity to deliver the specialised equipment.</p> <p>After an investigation was initiated, the contractor made all efforts to deliver the equipment and organised multiple meetings abroad where the specialised equipment was actually produced. The</p>

	<p>national partner of the Consortium pointed out that the lack of capacity was not on their part, but was due to their foreign partner. Despite the initial failing to implement the project and the probable lack of experience and lack of capacity to deliver the goods, in the end the contractor did managed to deliver the equipment from abroad. The contractor presented letters of intent from companies who manufacture such equipment. During the first delivery of the 2 vehicles, representatives from the EC were present and they established that the vehicles were compliant with the project criteria. The economic operator delivered the equipment for the purposes of the project of the regional public authority.</p>
<p>How the fraud was detected</p>	<p>AFCOS received a complaint that the contractor of the case did not have the capacity to implement the project. At the same time, OLAF opened an investigation into the same project, and they requested assistance from the national authorities under <i>Regulation 2185/96 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities.</i></p> <p>The national authorities prepared an on-the-spot check and visited the contractor's office together with the investigative team of OLAF. After the start of the on-the-spot check, the contractor decided to deny the investigators access to the premises of its office and did not give them permission to take any data related to the project. At this time the 6 specialised vehicles had not been delivered.</p> <p>The on-the-spot check failed, as at this time, there was no relevant provisions in the national legislation to assist OLAF in cases where the economic operator resists the on-the-spot check to OLAF. As a result of this experience, the Law of the Public Financial Inspection Agency of 2008 was amended and a new Chapter 3a was created, named "Rendering assistance to the inspectors of the European commission for granting access to premises and/or documentation for carrying out on-the-spot inspections and checks under <i>Council regulation (EURATOM, EC) № 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European communities' financial interests against fraud and other irregularities.</i>"</p> <p>However, the contractor's resistance to the on-the-spot check was a red flag that something may be wrong. Along with the open case of OLAF, national authorities initiated an investigation. The case was brought before the Prosecutor's office.</p>

	<p>Authorities did not manage to prove that the initial intent of the company was to defraud EU financial interests with help from the civil servants from the Managing Authority. The decision of the prosecutor of the case states that there were not enough grounds to prove any involvement of the Managing Authority or intent by the side of the “Consortium”. The project was implemented and the funds paid. The irregularity case was closed.</p>
<p>Difficulties encountered</p>	<p>During the implementation of the project, a team of OLAF Investigators, assisted by Bulgarian AFCOS, tried to perform an on-the-spot check but the economic operator resisted. The failure to assist OLAF during the on the spot check, led to amendments in the national legislation.</p> <p>In this specific case it could be assumed that because of the control activities of OLAF, AFCOS and national authorities, the project was implemented despite the initial failure. The difficulty was to prove the fraud intent of any of the companies or of any part of the Consortium. In the end, the project was implemented, the pre-trial proceedings concluded that fraud was not committed, and no funding was lost. However, the operator was later found guilty of fraud in another project.</p>
<p>Weakness identified</p>	<p>The first weakness was the lack of provisions allowing national authorities to assist OLAF if an economic operator resists the on-the-spot check. This was solved with amendments to national legislation.</p> <p>The second weakness was within the Managing Authority itself, in regards to the public procurement procedures and the different levels of control, which were supposed to properly evaluate the capacity of the company who would win the tender. This weakness was addressed with the updated Rules of procedures of the Managing Authority.</p>