

Case study name	Port Facility Construction Case
Description	The project consisted of a large-scale expansion of maritime port facilities in a coastal municipality. The beneficiary of the project was the Port Authority. The project was included in European Commission Decision in 2004 for receiving the support of the Cohesion Fund. The port was to be extended about 150 hectares into the sea. The project involved a contractor executing the works as well as subcontractors supplying the materials for the construction works. Although the project dates back to 2005, actual construction began in 2011.
ESI Fund(s) concerned	Cohesion Fund
Irregularity type	<p>The following irregularities were detected:</p> <ul style="list-style-type: none"> • Infringement of EU directives on public procurement and the national legislation implementing them. • The price of the materials supplied did not correspond to the price initially approved in the project. Thus, the extra cost invoiced to the aid recipient would have led to an increase in the contractor's profit. • The national authorities did not carry out appropriate checks on the origin, quantities or price of the materials invoiced by the contractor
Reporting mechanism	Fraud was suspected after an MEP from a regional political party lodged a complaint with OLAF in 2009. By letter, DG REGIO requested OLAF's intervention to examine possible irregularities in connection with the project.
IMS reporting	No
Red flag(s)	<p>The fraud indicators and signals that triggered the suspicion were:</p> <ol style="list-style-type: none"> a) Possible inflation of project costs and doubtful amounts in particular the quantities and unit price of the construction materials supplied for the work. b) Delays in project leading to sea water erosion of structure and the project being well over budget c) The decision to procure the construction materials from a faraway quarry alluded to possible irregularities.
Description of fraud pattern	<p>The maximum amount of eligible expenditure was set at € 450 million while the maximum amount of Cohesion Fund assistance was set at € 247.5 million (55% of eligible expenditure).</p> <p>The irregularities and fraud committed occurred both at the tender and award stage of the project and in the subsequent execution of the contract. The suspicion was that the budget for securing construction materials was fraudulent because some of the materials had been obtained by a contractor without payment. In addition, the amount of material needed could not have been</p>

	<p>determined. It was also suspected that price of the building materials was inflated.</p> <p>The fraud on the project was committed by :</p> <ol style="list-style-type: none"> 1. Issuing false statements in the supporting documents regarding the origin, quantity and price of the materials supplied for the work. The accusation against the beneficiary involved its having conspired for the improper use of public funds with the construction company that was awarded the contract during the contracting phase. The winning bidders were misleading in determining the value of the construction materials (over-valuing the materials used) and would have required simulating expenses. 2. Work certificates issued and approved by the beneficiary, which did not correspond to the reality of the works carried out. 3. A lack of control in the monitoring of the work (technical assistance to the management and execution of the work)
<p>How the fraud was detected</p>	<p>On-the-spot checks were conducted on several key stakeholders including the beneficiary, the works contractor and subcontractors, including the suppliers of the materials used and the companies transporting the materials. OLAF conducted its investigation by analyzing all the documentation relating to the award of the project and the subsequent implementation. Several analyses were conducted by the Operational Analysis and Digital Forensics Unit in OLAF along with the national managing authority.</p> <p>The documentation was provided to the investigators by the national managing authority and collected during the numerous on-the-spot checks carried out on the beneficiary, the contractor, the suppliers of materials and their transport companies.</p> <p>OLAF's investigation lasted three and a half years. Given the seriousness of the irregularities detected, OLAF asked the national authorities to revoke all the amounts declared as eligible (i.e. € 530 million) by the beneficiary (Port Authority), and to recover the entire amount (€ 198 million) already paid by the Cohesion Fund). OLAF requested DG REGIO to block the final settlement of outstanding aid (€ 49.5 million). The national judicial authorities were asked by OLAF to verify whether the facts might constitute fraud affecting the EU budget according to the provision of the National Penal Code.</p> <p>Concerning the legal proceedings before the National Central Court, an appeal was pending against the "order" of the investigating judge 4 years after the conclusion of the OLAF investigation. The appeal pending against the Instructing Judge's order was resolved when the Criminal Chamber determined that there was "sufficient evidence" to go to trial. However, currently, no one has been convicted in these proceedings and the aid paid to</p>

	<p>the beneficiary has not been recovered. DG REGIO suspended the final settlement of outstanding aid (€ 49.5 million). Follow up actions that followed this fraud case are still ongoing.</p>
Difficulties encountered	<p>This fraud case is an example of non-cooperation with OLAF. In the course of the investigation, OLAF officials were refused access to the accounting records and tax documents of the contractor responsible for the execution of the works. This refusal inhibited OLAF's ability to analyze specific aspects of the project's accounting. The investigators found it impossible to check whether the exact amount of materials used during the construction was in accordance with the technical specifications.</p>
Weakness identified	<p>The fact that the initial budget failed to account for the impediments to securing raw materials and thus undervalued this aspect of the project is a failure of the Port Authority and raises the question as to whether more should be done to ensure that beneficiaries budget their projects properly before receiving Cohesion Funds. Therefore, serious deficiencies affected the management and control systems and these systems were not sufficient to ensure the legality, regularity and eligibility of the expenditure for which co-financing from the Cohesion Fund was requested.</p>