

Fight Against Fraud Department - DLAF

Control Direction

Presentation of the new DLAF legal framework



- **Law no 61/2011** regarding the organization and functioning of Fight Against Fraud Department – DLAF
- **Government Decision no 738/2011** for the approval of the Regulation for the organization and the functioning of Fight Against Fraud Department - DLAF



Law No. 61/2011

- Fight Against Fraud Department - DLAF is organized as structure with legal personality within the Working Apparatus of the Government and it is financed from the state budget

Law No. 61/2011



- Ensures, supports and coordinates the fulfillment of Romania's obligations with regard to the protection of EU's financial interests, in accordance with the provisions of art. 325 from the Treaty on the Functioning of the European Union
- Exclusive competences regarding the protection of EU's financial interests in Romania

Law No. 61/2011



- Contact institution of the European Antifraud Office – OLAF
- Acts on the basis of **functional and decisional autonomy, independently** of other public institutions and authorities

MAIN ATTRIBUTIONS

- ensures and facilitates the cooperation between the national institutions involved in the protection of EU's financial interests in Romania as well as between these and OLAF
- carries out or coordinates control activities in order to identify irregularities, frauds or other illegal activities which affect EU's financial interests

MAIN ATTRIBUTIONS

- collects, analyses and processes data and performs statistical surveys
- initiates or endorses draft legislation regarding the protection of EU's financial interests in Romania

INVESTIGATIVE POWERS

- DLAF is ascertaining body, according to Criminal Procedure Code, as regards the criminal activities affecting the European Union's financial interests in Romania
- DLAF may, **at the request of the prosecutor**, carry out controls regarding the observance of the legal provisions in the matter of the protection of EU's financial interests

INVESTIGATIVE POWERS

- Takes statements from any person who may provide data and information regarding the alleged irregularities, frauds
- Draws up control reports that may constitute means of evidence, according to the Criminal Procedure Code
- At DLAF request, the police, gendarmerie or other public servants are obliged to assist the control team in carrying out its duties
- Applies sanctions in the case of physical or legal persons who refuse to make available the documents and information necessary for drawing up the control report

Case study

- The Ministry of Agriculture from Romania sent DLAF a note regarding the suspicion of fraud consisting in the creation of artificial conditions by two beneficiaries, SC X SRL and SC Y SRL, in the purpose of obtaining financial support that exceeded the limit established by the National Programme of Rural Development. The programme settles that the maximum eligible value of such a project should not exceed the limit of 2.000.000 EUR, while the European financial support attained 40% of the entire amount (maxim 800.000 EUR). Commission Regulation no. 65/2011 stipulates that there will be no payment in the benefit of the applicant if the applicant creates artificial conditions for obtaining an advantage which is not in compliance with the objectives of the support scheme;
- During the activity of DLAF, it was established that between 2011 - 2014, Mr. MF, a businessman from Brasov county, tried to obtain European funds exceeding the limit we had discussed above;

Case study

- To elude these stipulations and to benefit from non-refundable funds that exceed the legal limit, the businessman used two companies, SC X SRL and SC Y SRL, which he controlled by his position as manager or legal representative, companies that had as associates persons related to Mr. MF (relatives). Using these two companies, Mr. MF divided artificially his business plans and he presented to the Management Authority two applications for receiving structural funds as not to exceed the limit established by the national programme;
- A part of DLAF activity revealed that, for establishing the projects' budgets, the businessman used counterfeit tenders issued by the same economic operators. In these tenders, the prices were settled next to the maximum limit, so he could benefit from a larger amount of non-refundable funds;

Case study

- After he got the approval of the projects and the contracts were signed with the Management Authority, he organized the tender procedure at the same time for the two of the companies, letters being sent to the same tenderers. For example, for the procurement of technological equipment, both beneficiaries used the procedure called “*selection of offers*”, setting as award criterion “*the lowest price*”;
- Consequently, he sent 3 letters to SC AE SRL, to SC P BULGARIA LTD and to SC GS SRL, both for SC X SRL and for SC Y SRL. For obtaining the contracts, all of the invited companies sent their tenders. The evaluation committees recommended the contracts should be signed with the same company, SC P BULGARIA LTD. So, SC X SRL and SC Y SRL signed contracts for the price of 498.498 EUR each, not including VAT. SC P BULGARIA LTD delivered the equipments both for SC X SRL as well as for SC Y SRL, companies where Mr. MF had the right to sign for the bank accounts. For the equipments, both companies made payments in the benefit of SC P BULGARIA LTD in a total amount of 996.996 EUR;

Case study

- DLAf sent a request to the Bulgarian AFCOS to communicate if the winner company signed those contracts, if that company had in store those equipments and the market value of those equipments. Bulgarian authorities communicated very quickly that, at the time of making the offer, SC P BULGARIA LTD didn't have in store the equipments, but they were bought after that from an Italian company, for the total price of 628.034,47 EUR.

Case study

- So, it was settled that there was a big difference between the value of the procurement made by Bulgarian company and the price they sold the goods to the two beneficiaries, difference which raises to about 60,00% from the procurement value (368.961,53 EUR). Consequently, the investigation team of DLAF have analysed the accounts belonging to the two companies to check the money transfers that were made between the beneficiary of European funds and the Bulgarian company. Analysing the accounts we discovered that after SC X SRL paid the money to SC P BULGARIA LTD, the Bulgarian company made payments right away into another account belonging to a Romanian company (SC FM SRL) in a total amount of 302.029 EUR. From this account there were made two operations of bank transfer: one bank transfer transaction was made into an account belonging to Mr. MF (250.590 EUR) while another one indicated bank transfer into the account belonging to SC X SRL (65.790 EUR). There were no support documents for these payments issued by the company which had made the bank transfer operations;

Case study

- This suspicion of fraud was sent to DNA prosecutors for further investigation related to false documents presented by the two European fund beneficiaries in the purpose of obtaining non-refundable funds. Those documents refer to the documents that were used in the procurement procedure as a result of a preliminary agreements among the tenderers, invoices and documents that justify the payments based on which the Management Authority approved the funds to be paid.

Questions ?



Codrut SURCELEA

Cristian IRIMIA

codrut,.surcelea@antifrauda.gov.ro

cristi.irimia@antifrauda.gov.ro