

HOW ROMANIA FIGHTS AGAINST FRAUD WITH EU FUNDS

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Interview for Europe Gateway with Tudor CHIUARIU, Head of Fight Against Fraud Department - DLAF, Romania.

Whose was the idea for the establishment of the post of a Minister Delegate for the control of the implementation of international grant programs and for monitoring the application of the acquis?

In 2004, in line with EU accession commitments, the Government decided to create the position of Minister Delegate for the control of the implementation of international grant programmes and monitoring the application of the *acquis communautaire*. His role is to guarantee the respect of Romania's obligations in the fight against fraud and protection of EU's financial interests in Romania. The creation of this position had two main purposes: 1. to monitor and control the correct use of EU funds; 2. to correlate different international financing sources in order to prevent institutional parallelism.

How many people work for DLAF?

DLAF has 45 investigators, divided in three directorates. Directorate A - "Legislation, Policy and Training" in charge with initiating and approving legal projects concerning the protection of the financial interests of the EU in Romania, elaborate and coordinate training programs in the field of fight against fraud. The Directorate B "Control" is performing on-the-spot inspections and the Directorate C "Data gathering and analysis" in charge with elaborating relevant analyses and assessments concerning the protection of the financial interests of the EU in Romania.

Would you please tell us more details on how exactly does the DLAF team carry out the control on the funds - both on their obtaining and use? I can understand that both structures DLAF and DIPAS are in charge of this control.



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Based on notifications from competent authorities, the press, OLAF or ex officio, DLAF investigates cases of irregularities or fraud affecting EU's financial interests, carrying-out an administrative control. The Department has been given extended powers in the criminal area. Therefore, DLAF investigators have the right to take statements from witnesses to retain corpus delicti and evaluate the damages and to issue a procis-verbal concerning the concrete circumstances. The DLAF procis-verbal can be used as evidence in the proceedings. There is no overlap of competences with DIPAS, which monitors the implementation of projects, analyses dysfunctions and blockings of an administrative, institutional and legal nature and proposes remedies thereof.

In Bulgaria, there have always been "rumors" about frauds in the use - and mainly in the distribution - of EU funds. Little (or nothing) has been proven. Was the background situation in Romania similar before the creation of DLAF and what changed afterwards?

The figures speak for themselves. In 2004, the former AFCOS sent to prosecutors 8 files, which led to no indictments, so we can presume the situation was similar to what you have described for Bulgaria. However, the institutional and legislative changes made by the Romanian Government in 2005 produced a shift from mere rumors and fraud allegations to investigations, defendants before the courts and money recovered. Over the past two years, following DLAF investigations, prosecution has been started in 15 cases, resulting in 9 indictments. So fraud can be proven if you have the means and the will.

DLAF is the contact point of OLAF in Romania. In the July's OLAF report, 15 cases under investigation in Romania were reported, whereas the number of such cases in Bulgaria reported were only 9. What does that mean - that investigators are more efficient in Romania; or that fraud is more common in Romania? For comparison, OLAF's report for last year registered 47 cases under investigation in Romania and 11 in Bulgaria.

First of all, we should remember that where there is money, there is also fraud. Consequently, the number of cases depends on how active the structures involved in the fight against fraud are in order to discover criminal/irregular deeds. DLAF is recognized as having the strongest operational powers from all antifraud services established in the new member states. And also of being very active. That explains the important number of cases. If you are sitting in the office, moving papers from one desk to another, it is very unlikely to discover fraud. But I must stress that the number of cases is not entirely relevant, you have to look to the amount, too. For example, see the situation of ISPA projects in 2005, where Bulgaria reported a single case, with an irregular amount of 5 million euros, while Romania reported 22 cases with an irregular amount of only 1.6 million euros.

What is the statistics in Romania of fraud with EU funds - cases discovered, investigated and verdicts...? And, what are the statistics proving the efficiency of DLAF?



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As I told you earlier, the statistics are the best proof of our efficiency! In 2005, DLAF completed 43 investigations, ascertaining the existence of potential frauds in 26 cases and that of administrative irregularities in 6 others. The number has increased significantly in 2006, with 53 cases already finalized. In 45 of these DLAF concluded that there was evidence of potential fraud affecting the Communities' financial interests in Romania, and in 6 others administrative irregularities were found. An important aspect is that there have been, until now, 9 indictments. The level of frauds discovered as percentage of the total number of cases has thus increased from 60% to 85%. This demonstrates we have improved operational efficiency, as the development of the intelligence gathering dimension of DLAF's activity has ensured that investigators are better aware of where, whom and how the European assistance has been obtained, managed and spent. However, perhaps the most compelling evidence regarding DLAF's efficiency as a control structure is the increase in investigations as compared to 2004, when DLAF's predecessor DIPM only completed 14 investigations on the granting, management and use of EU funds.

In Bulgaria, recently was created a special department at the Prosecution under the direct auspices of the Prosecutor General for anti-fraud of EU funds. Its director told the media that it is difficult to prove and detect such cases because of the very loose requirements of the EU for the grants. Would you agree?

I do not think that detecting and prosecuting cases of fraud is affected by the EU requirements for the grants. In my opinion the most important element is to have an effective institutional set-up, supported by a solid legal framework. In our case, transposition of PIF Convention has been completed. PIF offences were introduced in Romanian criminal law, they are sanctioned by dissuasive penalties (up to 20 years imprisonment). We have also included liability of heads of businesses and that of legal persons.

What makes your job easy and what are the obstacles?



DLAF's position as national antifraud coordinator and institution responsible for assuring an effective and equivalent protection of European Union's financial interests in Romania enhances

cooperation with other relevant authorities, which in turn means we receive in due time the necessary documents and information. Cooperation at national level is based on a series of protocols concluded by DLAF with other public institutions (Financial Guard, State Inspectorate for Constructions, National Agency for Fiscal Administration, General Inspectorate of Romanian Police, National Anticorruption Directorate). DLAF's broad operational powers include: unconditional access to premises, and documents; competence to take statements from the projects' beneficiaries and witnesses; the obligation of economic operators to provide the requested documents, the obligation of fiscal control authorities, of police or other law enforcement agencies to grant support to DLAF investigation teams. One cannot talk about obstacles, but rather about an unclear public perception about the finality of DLAF controls. The 2005 change in policy and the strengthening of the antifraud system has been received in different ways. Brussels has welcomed it enthusiastically. Back home, we have met with reticence and sometimes hostility. There are those who have begun to comment unfavourably. "People from the past" have felt threatened by our youth, correctness and will to change. "Is it possible to do things differently? Why should we do things differently? This is how we have always done things. We have so much "experience"!"; People who have created a system whereby funds are re-routed to friends, relatives and party colleagues are upset by those who have come to change that which was going "so well". They have tried to intimidate us: "you cannot know, you are young, you are inexperienced, you are overly keen";. We have not allowed ourselves to be intimidated, and with time results have proved us right.

Do you think from your experience that the requirements for EU funding (esp. Phare and Sapard programs) are inaccurate and do not permit to detect and counteract in cases of fraud?

As a general statement, I would say that procedures are well-designed. Problems appear - as always - in the implementation process. From my point of view, it is very important that procedures remain accessible and not excessively difficult, we shouldn't forget that the objective is for the money to be spent.

Are the Romanian media sensible when it comes to issues of EU funds fraud?

Here we have to make the difference between present and past, having as reference the change in government in 2005. Before there was great sensitivity towards this subject, out of two main reasons. On the one hand, between 2000 and 2004, there have been cases of political leaders involved in fraud with EU money. The best known case is that of the former minister for European Integration, Mrs. Hildegard Puwak which was involved in a scandal with EU funds. Thus, the Romanian media lost its trust in public authorities. On the other hand, there were many cases with possible frauds affecting EU funds where the relevant institutions weren't able to solve them in a normal period of time. The institutions had a slow or no reaction at all and they did not cooperate with each other. The media speculated this indecision and lack of effectiveness. 2005 brought a radical change in our relation with the press. Mass-media became a real partner for us and both sides gave up former adversarial positions! The change in attitude was reciprocal. Beginning with 2005, Romanian media has had a positive attitude towards DLAF. We are also trying to improve the investigation journalists' knowledge on European projects and funding. This is in recognition of the fact that media inquiries can be a very valuable source of information. So far, we have opened 18 files with possible frauds affecting EU funds by taking up fraud allegations presented in newspapers articles.

On the European level, there is considerable criticism about the efficiency of OLAF. Could

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OLAF use some aspects and models of the experience of DLAF in its future work? OLAF's top-representatives have pointed out in summer that the Romanian experience could be a model and example to follow by the rest of the Union.



I don't believe we can speak about criticism with respect to OLAF, but rather about objective difficulties in fulfilling its responsibilities, inherent to the particular status of this institution. We speak about an institution with supranational competences, whose results are exploited at national level, in a field which is still reserved exclusively to member states (criminal justice). The diversity of the national legal systems which OLAF has to consider during its investigations constitutes a factor which makes OLAF's activity a complex one, different from the one of the national control structures. OLAF's area of competence is very large, being involved in the protection of the Communities' financial and economic interests, as well as in the fight against cross-border organized crime, fraud and any other illegal activities which could affect the Community budget. OLAF discharges responsibilities granted to the European Commission by Community legislation and by agreements concluded with third countries. The scope of DLAF activity is not as broad as that of OLAF. The competence of our Department is the control of EU funds. DLAF can promptly investigate fraud allegations, without having to give prior notification to national structures involved in the management of Community funds or to economic operators. The differences between OLAF and DLAF are such as between species and kind, but are as well conceptual, so that I do not believe the DLAF set up can be a model for the control structure within the European Commission. Concerning the second part of your question I have to say that, indeed, Mr. Franz Hermann-Bruner, General Director of OLAF stated, at the June AFCOS meeting in Bucharest that "the institutional model implemented by Romania in 2005 for the protection of EU funds is an example for other Member States or candidate countries" and this, of course, honors us.

What is the role of the foreign experts and counselors in the establishment and functioning of DLAF?

DLAF received the support of two pre-accession advisors, with expertise in administrative capacity consolidation and public communication. Their input has been very significant in the new antifraud policy launched by the government in 2005.

Would you please describe us shortly some of the most striking cases of fraud of EU-money in Romania?

I give you two examples which give you a complete picture of the control process, from the start of the

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investigation to the indictment phase. CORDUN case: The objective of the project was the construction of two roads, with a total allocated amount around 1 million euro. The investigation by DLAF revealed illegal tenders, with incomplete offers and an ineligible winner. Investigators also found aspects of fraud in the execution phase: the Constructor was found to have used different materials than those specified in the contract, resulting in faulty execution, and several supporting documents were forged.

DLAF's control report was sent to the National Anti-corruption Directorate, which began criminal prosecution, while bankruptcy procedures were also initiated. Three defendants (all representatives of the Constructor) were sent before Bucharest Law Court for crimes against the Communities' financial interests and are currently awaiting trial. A.N. case: Also in 2005, DLAF began an ex-officio investigation following allegations in the Romanian media regarding PHARE funds which seemed to disappear in a 'Bermuda Triangle for European money'. 3 projects were identified whereby the same individual, supported by significant political backing, used European funds illegally and camouflaged this embezzlement behind false documentation. The projects aimed to set up employment services, provide software solutions and internet connection for schools respectively. DLAF investigations revealed illegal tender procedures involving conflicts of interest. Furthermore, the beneficiary supplied forged documents supporting both his claims for payment and the accomplishment of the projects' objectives. The practices employed in the fraud were remarkably similar for the 3 projects. DLAF forwarded its findings to the National Anti-corruption Directorate, which began criminal prosecution against A.N. and has since sent the defendant before the Courts. Since the beneficiaries had requested the termination of the grant contracts, payment conventions were drawn up for the recovery of the full ineligible amount. Recovery is therefore ongoing, and the trial will take place in the near future. Given the interest manifested by the press in the case, DLAF also included an account of the investigation in its Annual Report for 2005.

Have any Bulgarian officials (colleagues of yours on any level from the Bulgarian administration) ever contacted you for advice, experience exchange or sharing good practices?

At the AFCOS meeting held in June 2005, a Bulgarian delegation participated. They were involved in all the discussions, projects and initiatives debated on that occasion.

Do you have observations on the efficiency of the Bulgarian administration in the domain of anti-fraud?

As the last monitoring report of the European Commission points out, there have been improvements in the fight against fraud in Bulgaria, particularly the creation of the new central unit within the Bulgarian AFCOS.

Romania is the only country with an institution working on the control of community funds, implementing a National antifraud strategy. Have representatives of the Bulgarian administration ever contacted you for advice and cooperation in this field?

Not for the moment, but we are open to any proposal from our Bulgarian counterparts.