- Background of the case!

- What happened when for the first time in BG an economic operator resisted a check?

- What happens when digital forensic operations are in place?

- How can an investigation lead to change in legislation?

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Possible scenarios

- The Public Financial Inspection Agency (PFIA) shall provide assistance to the inspectors of the OLAF for carrying out OTSCs, in case of:

  1. **Denied access to premises**, means of transport, and also other places **used for keeping** documents, **recordings of computer information data, carriers/storage of computer information data** of the investigated organization/person;

  2. **Denied to provide voluntarily** documents, **recordings of computer information data, carriers/storage of computer information data**, necessary for the check, **where access has been granted**.

- *Carrier of computer data – harddrive, SSD, usb, CD, DVD, storage devices, memory card, phone, tablet, PC etc.*
Scenario 1:

Access to premises denied to OLAF, where computer data is

PFIA contacts the District Directorate of the Police

Police, Public Financial Agency and OLAF and AFCOS enter premises

The access to premises is given with least damage to property

OLAF enters the premises and starts the OTSC.

The Economic operator cooperates and provides required digital data

The economic operator refuses to provide digital data

End of scenario № 1

Start of scenario № 2

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MODUS OPERANDI
PROCEEDINGS WITHIN SCENARIO 1

**Step 1**
Request from AFCOS to PFIA

AFCOS motivates a request to PFIA with information about the OTSC, scope, aim.

**Step 2**
Financial Inspector check

The financial inspector checks on spot whether the economic operator resists enter to premises. Drafts protocol of findings.

**Step 3**
Request from PFIA to Police

Based on the protocol, the Director of PFIA requests in written assistance from the District Directorate of the Police.

**Step 4**
Realizing OTSC and collection

If the economic operator cooperates, the collection of documents and computer data takes place.

**Step 5**
Digital data given to OLAF

Digital forensics provided by the financial inspector to the OLAF investigator by compiling a protocol of delivery and acceptance.
SEQUENCE OF DFO

SCENARIO 2

Access to premises allowed, but providing computer data denied → Financial inspector could seal the premises. → PFIA requests the region Court to issue a warrant for search and seizure of comp. data → The Regional court takes a decision immediately → PFIA Director request assistance from the Police authorities for search and seizure

Financial inspector + police carry out search and seizure → Copy of the seized data is given to OLAF → Successful investigation performed by OLAF and AFCOS

End of scenario № 2

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Digital forensics provided by the financial inspector to the OLAF investigator by compiling a protocol of delivery and acceptance.

**Step 5**
Digital data given to OLAF

Search and seizure is carried by the PFIA inspector and Police with presence of key figures. Protocol of findings and list of seized documents/data.

**Step 4**
Search and seizure

PFIA Director requests the District court for a warrant and motivates the necessity. Court decides immediately.

**Step 3**
Request to court

As a precautionary measure, PFIA inspector seals the premises. Drafts protocol

**Step 2**
Seal of premises

Access to computer data is denied. PFIA inspector drafts a protocol

**Step 1**
Protocol of refusal

**MODUS OPERANDI**

PROCEEDINGS WITHIN SCENARIO 2
Sanctions

- **In case of failure to grant the Commission's inspectors access to premises**, means of transport, and also other places **used for keeping** documents, recordings of **computer information data**, **carriers of computer information data** of the checked organization or of a person under Art. 4, Item 7, the guilty officials and the persons working under civil contracts for management and control shall be fined from **BGN 1000 to 5000**.

- **In case of failure to provide** documents and/or **computer information data necessary for the inspection of the Commission's inspectors**, the guilty officials and the persons working under civil contracts for management and control shall be fined from **BGN 1000 to 5000**.

- **In cases where violations of art. 32a and art. 32b are repeated**, the offender shall be imposed a fine or a pecuniary penalty in double size. Violations shall be established by acts issued by financial inspectors and the punitive decrees shall be issued by the director of the agency or authorized by him officials.
Mechanism of Irregularity/Fraud Reporting

OLAF

Anti Fraud Service

Certifying Authority

Managing Authorities

Intermediate bodies
Reporting of Irregularities – Aim of Reporting

- **Under EU law**, Member States **must report** cases of irregularities in revenue and expenditure to the Commission, including suspected and established fraud, which have been subject to PACA.

- **Reporting** can vary significantly. Information includes the provision infringed, the amounts in question, the practices used to commit the irregularity, the parties involved, whether the detected irregularity constitutes ‘fraud’ etc.

- **Functions**: It is a **preventive measure** to support proactive risk analysis, and it also **allows administrative and judicial monitoring** of action taken by Member States.
Reporting of Irregularities – classification

- ‘Any breach of Union law or of national law relating to its application’ encompasses the whole normative framework in EU funding; including, on the one hand, provisions specific to EU funds, and on the other, provisions on the management of public funds in general at national or institutional level.

- Irregularity
- Suspected Fraud
- Established Fraud

The fact generating the obligation to report – PACA

1. Member States shall report irregularities to the Commission which
(a) affect an amount that exceeds EUR 10 000 in contribution from the funds;
(b) have been the subject of a 'primary administrative or judicial finding'.
PACA – Primary administrative or judicial finding

- ‘primary administrative or judicial finding’ means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure.

- **Requisites for PACA:**
  - a document in writing (written assessment): a report, memorandum, resolution, recovery order, management verification report, check list any document with facts of irregularity
  - an assessment by a competent authority;
  - a conclusion that an irregularity has been committed.
Types of reporting

- In EU legislation the deadlines for meeting the reporting obligation vary, based on the type of the irregularity report (initial; follow-up or special report).
  - **Initial** - Within two months following the end of each quarter (counting from the PACA).
  - **Follow up** - *as soon as possible after obtaining the relevant information (In initiation, abonnement or conclusion of proceedings)*
  - **Immediate** – if other MS is concerned
  - **Limitation period** – no envisaged (programme). In suspicion of fraud – depends on National Legislation.
Exceptions to reporting obligations

Member States must report to the Commission only irregularities (including ‘suspected fraud’ and ‘fraud’) that affect an amount exceeding EUR 10 000 in contribution to the funds:

- Regulation (EU) No 1303/2013, Article 122(2) provides for exceptions to the reporting requirement in the following cases:
  - (a) cases where the irregularity consists solely of the failure to execute, in whole or in part, an operation included in the co-financed operational programme owing to the bankruptcy of the beneficiary;
  - (b) cases brought to the attention of the managing authority or certifying authority by the beneficiary voluntarily and before detection by either authority, whether before or after the payment of the public contribution;
  - (c) cases which are detected and corrected by the managing authority or certifying authority before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission.

- They do not apply in cases of suspected fraud!
Closing and canceling the irregularity reporting

- **Canceling** – if the case did not constitute an irregularity
- **Closing**: when all proceedings and procedures are concluded on national level, including the reimbursement to the EU Budget.
- **Examples**: 1. The beneficiary *recovers* the unduly paid sums
   2. the *financial correction procedure* is finalised;
   3. The procedures are concluded with final *administrative or judicial act*
   4. If the *court* says there was not an irregularity
   5. If the *beneficiary fulfills its obligation* that lead to the irregularity
   6. *Removal* from the *trade register* of the beneficiary
   7. the *MA discovers* the irregularity *before payment* and the funding agreement is cancelled or the beneficiary agrees to cover the financial consequences
   8. *New findings* opposite to the old ones
Practical case – case with State Agency National Security
Andon Tashukov

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