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Modus operandi on investigations and cooperation with judicial authorities

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Day 2

- *Modus operandi*: administrative and criminal investigations
- Cooperation with Supreme Prosecutor's office, economic police and regional prosecutors



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Investigations: Working with irregularity and fraud allegation

- How and who can send signals/allegations?
Whistleblowing.
- How is this information registered?
- What if it's a non-working day?
- Is the whistleblower notified about the actions of the authorities?
- The “good” and “bad” information.






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Basis of investigation / check

The investigation/check always requires a formal gathering of evidence, which could be divided into several groups:

- Evidence of **material nature**;
- **Written evidence** (documents);
- Evidence obtained as a result of the **application of technical means** and specific methods (special investigative appliances);
- Evidence established by **exposure to sensory perception** (testimony of a witness, explanations of the accused, etc.)




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Methods of obtaining evidence

- **Criminal investigation**
 - Interrogation
 - Crime scene investigation
 - Expertise
 - Search/ Seizure
 - Holding an investigative experiment
 - Identification of persons and objects
 - Special investigative means

- **Administrative investigation/check**
 - Requesting, collection and verification of information and documents ;
 - Asking for explanations (additional information, interviews)
 - Conduct of OTSC or documentary checks





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Questions that most often need answers

1. **What** has been done?
2. **When** was it done?
3. **Where** was it done?
4. **How** was it done?
5. **Who** did it? ...

...and **Why?**






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Life cycle of an investigation


- Whistleblowing/own initiative → Evaluation of the information → opening an investigation → core activities → report with recommendations
- **Types of recommendations:**
 - Financial/Corrective/Establish irregularity/fraud
 - Disciplinary
 - Administrative/organizational
 - Request for opening pretrial proceedings





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Competence in carrying-out investigations/checks

Control Authorities	Fraud Prevention (risk assessment, anti-fraud strategy, management)	Fraud Detection (internal control systems)	Fraud Investigation (administrative and criminal)	Sanctions, corrective measures, criminal prosecution
	Anti-fraud cycle			
National administrative authorities	✓	✓	✓	✓
National pre-trial and judicial authorities			✓	✓
OLAF	✓	✓	✓	
European Commission	✓	✓		✓
European Public Prosecutor's Office			✓	✓



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CONFIDENTIALITY OF NATIONAL INVESTIGATIONS

- **Reporting obligation** imposed by EU legislation **may be limited!**
Art. 3 of Delegated Regulations 2015/1970-73
- *'Where national provisions provide for the confidentiality of investigations, communication of the information shall be subject to the authorisation of the competent tribunal, court or other body in accordance with national rules.'*
- This must remain an exception and safeguard the principle of uniform application (if other MS report these cases)



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Bulgarian case study: Mechanism for judicial cooperation (since 2019)

- In working on fraud cases with EU Funds – centralized information and dissemination.
- Cooperation with Supreme Prosecutor's office – Agreements. Meetings During investigation.
- Designation of police officers in the Regions of Bulgaria working on EU funds



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Fraud Case: Introduction



1. Initial information comes to AFCOS from State Agency "National Security" (SANS) that an irregularity or fraud with EU funds has been committed
2. The information states that the sector concerned is Agriculture and the project is related to planting forests in abandoned areas
3. Under the technological plan for planting the forests with different types of trees, 8 deserted lands should be covered/planted over
4. ... but the information says that they are not



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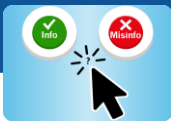


Fraud case: Starting the check on the allegation

1. AFCOS received information that a commission from the Municipality has checked the project and issued a protocol that the project is completed.
2. The Municipality also issued a document that the trees were registered in a special Tree register
3. In addition AFCOS receive a document which states that two experts from the Regional Paying Agency have checked the project and say that the project is completed.





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Fraud case: Activities regarding collection of documents:

1. Contacting the Managing Authority, the regional Paying Agency and the Municipality
2. Organising OTSC together with SANS
3. Why check an allegation that is checked by Municipality and Paying Agency? Credibility of the source.
4. Should we start a check in this case? We opened an investigation.
5. Our joint OTSC on the spot demonstrated that *"there were not any trees planted, the different properties were all covered in grass, weeds and thorns. No informational signs. Breach of contract"*
6. AFCOS establishes irregularity with final report and makes recommendations.

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Fraud case: Conclusions & Recommendations

- Breach of contract
- Case related to help from the inside
- The case is considered and reported as **FRAUD**

AFCOS Recommendations:

- Financial correction – **100% of the project cost** (imposed)
- Actions before the Prosecutor's office – **documental fraud** – to open pretrial proceedings and prosecute the perpetrators (economic operators + regional officials).




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