

► ROMANIA'S POLICY TO TACKLE FRAUD AFFECTING EU FUNDS

In late January of this year, following a change of government at the end of 2004, I was appointed as head of the **Prime Minister's Inspection Department and Follow-Up of the Transparent Use of Community Funds (PMID)**, the Romanian Anti-Fraud Co-ordination Service (AFCOS) — i.e. the contact point in Romania for the European Anti-Fraud Office (OLAF).

The new government coalition, led by the "Justice and Truth" Alliance, had presented a comprehensive political programme for reforming the judiciary system and for fighting corruption and fraud, as a major step on the path to joining the European Union on 1 January 2007.

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Protection of EU Financial Interests — Situation in January 2005

When I took over the mandate as head of PMID, the situation regarding the protection of EU financial interests was the following:

As PMID had to perform, at the same time, tasks concerning both administrative control over public bodies under the Prime Minister and control of the disbursement of EU funds, its efforts were divided and the results of its actions were limited.

The operational independence of the department was ambiguous, as its head could receive instructions for the performance of investigations from the Prime Minister.

The legal basis for inspections related to EU funds was weak. For example, in performing investigations, the department could request data and information, but no sanction was to be applied in the event that such a request was improperly answered.

A strategy for the protection of EU financial interests was to have been adopted at the latest by December 2004, but the strategy had not even been drafted when I took over the department at the end of January 2005.

Given that situation, I established the **objectives of my mandate** as follows:

- □ □ separating control activities carried out on behalf of the Prime Minister from control activities regarding EU funds;
- □ □ ensuring operational independence of investigations regarding EU funds;
- □ □ strengthening the legal framework for the anti-fraud fight;
- □ □ adopting the "National Anti-Fraud Strategy for the Protection of the European Union's Financial Interests in Romania"; and
- □ □ intensifying and ensuring the effectiveness of control actions.

A joint initiative of the OECD and the European Union, principally financed by the EU



Creation of the Fight Against Fraud Department (DLAF)

By initiating and having approved **Emergency Ordinance No. 49** of 1 June 2005 on setting up some reorganisation measures within the central public administration, we have created a new department, the **Fight Against Fraud Department (DLAF)**. DLAF has replaced PMID as the Romanian AFCOS and contact point with OLAF. Its competences are exclusively in the area of controlling the use of EU funds. Its main tasks are to co-ordinate the fight against fraud and to provide effective protection of the European Union's financial interests in Romania.

DLAF has complete operational autonomy. Under the new legislation, the control of EU funds has been established as the single activity area of DLAF. When exercising the department's competences of initiating or carrying out control activities or drawing up control reports, as the head of DLAF I am specifically prohibited from seeking or receiving instructions from any authority, institution or person.

Expansion of DLAF's Competences

Further evidence of the substantially improved legal framework are the expanded legal competences of DLAF and its personnel.

DLAF now has the right to carry out on-the-spot checks and to be given unconditional access to premises. Financial and fiscal control authorities, police and gendarmerie are legally obliged to provide operational support to control teams in performing their duties.

The department also now has the legal status of an ascertaining body with regard to crimes affecting EU financial interests. In practice, this means that control reports can be used as evidence in judicial procedures and that DLAF inspectors can seize objects and evaluate the prejudice involved.

Where elements of a criminal nature have been uncovered in the management of EU funds, the DLAF control report is forwarded to the National Anti-corruption Prosecutor's Office. This office is responsible for criminal investigations to block funds, recover and reimburse the prejudice, and bring the guilty parties to court.

A further competence of DLAF is in the normative area. The department has the legal right to initiate and approve legal acts that ensure appropriate legislative harmonisation.

In addition, in the area of intelligence, the department has the right to initiate intelligence-gathering, analysis and data translation for further assessment in the interests of protecting the European Union's financial interests in Romania.

Adoption of the National Anti-Fraud Strategy

Between end-January and June 2005, DLAF (and its predecessor, PMID) drafted the "National Anti-fraud Strategy for the Protection of the European Union's Financial Interests in Romania", which emphasized:

- the **necessity to harmonise Romanian legislation** with European regulations in the area of protecting EU financial interests and to prepare the institutional, legal and operational framework for EU accession;
- the need for **effective financial and fiscal control** regarding EU funds;
- strengthening **DLAF's role as operational and communications co-ordinator** for the institutions involved in the fight against fraud.



- The strategy is structured in eight chapters, covering: prevention measures, legal framework of public financial control, legal framework of fiscal control, criminal investigation procedures, prosecution procedures, recovery activities, co-ordination of the anti-fraud fight, and finally monitoring and evaluation of the implementation of measures set down in the strategy.

An **Action Plan** — containing objectives, measures, responsible institutions, deadlines and evaluation indicators — is also part of the strategy.

The **overall objectives** of the strategy are the development of an integrated system for co-ordination of the anti-fraud fight and the strengthening of administrative capacity of those institutions involved in preventing, identifying, investigating, and sanctioning fraud and in the recovery of the prejudice.

The National Anti-Fraud Strategy was **adopted by Government Decision on 14 July 2005**, and implementation of its measures will begin following its promulgation in the *Official Journal*.

Improvement of Anti-Fraud Results in 2005

Following the intensification of investigative actions during the first six months of this year, the PMID (and its successor, DLAF) sent to the National Anti-corruption Prosecutor's Office twice as many fraud cases as during the whole year 2004.

Next Steps

The measures described above are an important step forward towards the objective of ensuring the effective protection of EU financial interests in Romania. But we do not intend to stop here. The effectiveness of the new legal framework will be subject to further assessment. We will also try to find additional means for improving DLAF's independence, and the National Anti-Fraud Strategy will be reviewed and updated in July 2006.

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