

Investigative measures – case study

Case study:

Company A, as a representative of the consortium Alfa, participates in a tender procedure launched by the Commission in the framework of the programme Horizon 2020.

The tender procedure is about financing a study to develop new water-proof materials for industrial use (direct expenditures).

Company A has gathered a number of other companies and universities to set up the consortium; the bid they have submitted provides for the drafting of innovative, high quality studies and practical tests.

Company A is based in Belgium, the other companies and universities in other EU Member States.

The consortium is awarded the tender. The financing amounts to 750 000 euros

According to the financial provisions, the consortium immediately receives 50% of the amount (375 000 euros).

The first state of play report is due within 6 months. On that date, the consortium submits a first intermediary report, which contains a preliminary study on the new material.

Before the expiration of the deadline of the 2nd report, the company A, on behalf of the consortium, requests a slight postponement from the Commission. The Commission grants 4 more months, and at the expiration of the new deadline a new report, with a new study, is submitted. No practical test has started yet.

In the meantime, the consortium requires the payment of a further instalment of 25% of the remaining amount.

During a routine check by the Commission before proceeding to the payment, the Commission finds casually that several sentences of the first and second study are the result of a “copy and paste” operation from an old study on the same material.

One of the officials of the financial unit dealing with the payments carefully re-checks the dossier and realises that the photo of the legal representative of the company A is very similar to that of the legal representative of another company in a previous project.

A check of the file of such previous project shows that at that time the same person participated in the tender under another name on behalf of another company. Therefore the representative of the company A has provided the Commission with false information to participate in the present tender.

The payments in that tender were suspended over suspicion of fraud and OLAF had been informed about the situation.

Quick contact between the Commission and OLAF for the current project shows that it is indeed the same person, that acted under different generalities, and that the first case was reported as a fraud case with an OLAF recommendation to recover the money.

At this stage, the Commission interrupts the payments and informs the EPPO.

The EDP in Belgium is assigned the case.

He would like to:

interview the representatives of the universities involved in the project, as they seem unaware of the fraudulent scheme,

intercept the phone conversation of the representative of the company A, as they are deemed to be useful to reveal the full scheme of the fraud

obtain the company A bank records

check the company A computer, as there is likely to be evidence of the offence in them

search the premises of the company A.

We assume that the legislation of the State where the EDP is conducting the investigation does not foresee searching a computer, but the possibility to copy its content is part of the activities consequent to a search of the premises.

We assume that fraud is punished in the Member State of the investigation by a penalty of at least 4 years imprisonment, under the PFI Directive, and we know that the same PFI Directive qualifies the damage that involves at least 100 000 euros as “considerable”.

Analysis:

the EDP has to verify whether there are reasonable suspicions of the offence: in this case the elements suggest there are certainly reasonable suspicions of fraud

if the national system does not provide for the searching of computer, but the EDP can use the provisions of the regulation in this regard

interviews are not mentioned in the regulation, but they are available under the law of the State where the EDP conducts the investigation

interceptions are available under the national law; the national law also provides for the possibility of using the so called “trojan horse”