



Fraud to the Detriment of the European Union from the Perspective of Certain Organisations

1.



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Foreword


In 2008 the Republic of Slovenia amended its Criminal Code (2008) to include the criminal offence 'Fraud to the Detriment of European Communities' in honouring its commitments made through the Act Ratifying the Convention on the Protection of the European Communities' Financial Interests (2007), and any Protocols to that Convention. The Treaty of Lisbon, which was integrated into Slovenia's legal system with the Act Ratifying the Treaty of Lisbon amending the Treaty on European Union and the Treaty Establishing the European Community (2008), abolished the three-pillar model and placed the common policies under the framework of the European Union, which was granted the status of legal entity. In response to the change, Slovenia's Penal Code, adopted in 2012, changed the name of the article 'Fraud to the Detriment of European Communities' into 'Fraud to the Detriment of the European Union'.

Since 'Fraud to the Detriment of the European Union' was added to the Penal Code, the Slovenian police has seen an increase in the number of these criminal offences as well as a rise in unlawfully acquired proceeds from such crime. No EU fraud cases were considered in 2008 and 2009. The number of investigated fraud cases rose to three (3) in 2010, nine (9) in 2011, fifteen (15) in 2012, and eight (8) in 2013 (Ministry of the Interior - Police, 2014; Ministry of the Interior - Police, 2012).

All of us who are in any way involved in maintaining the safety and legal order in a state need to be aware that the tough economic climate creates favourable conditions for the growth of risks and misuse of funds - both to the detriment of Member States as well as to the detriment of the European Union (hereinafter: EU). The current uncertainties about the future have put to the test the personal and professional integrity of many people as well as their ethical values and principles, which are the primary safeguards in preventing improper use. The underlying principle

of public budgeting is to satisfy the social needs and interests of people within a certain community.

Fraudulent use of EU funds is classified as a major criminal offence because it causes direct damage to citizens. Apart from this, fraudulent use is frequently associated with large amounts of money, which adds to the severity of the crime (Gotenica Convention on the Prevention, Detection and Investigation of Misuse of EU Funds, 2015).



Fraudulent use of EU funds is classified as a major criminal offence.

Therefore, the issue of fraud to the detriment of the EU needs to be addressed comprehensively and in a manner that will ensure that the competent agencies and individuals dealing with the issue are properly trained and informed. In response to this challenge, the Slovenian police has started the THEMIS project to address the need for advanced knowledge of legislation, identification and classification of such criminal offences, possibilities for international co-operation and obtaining evidence from abroad, as well as knowledge of the national and EU institutions dealing with the prevention of fraud to the detriment of the EU. The Criminal Police Directorate applied to the European Commission with its THEMIS project aimed at improving the detection and investigation of fraud to the detriment of the EU, and acquired funds for its implementation. The project will cover training for crime investigators, public prosecutors, judges and other interested groups involved in combating fraud against the EU. The training will be organised in two phases, each involving several different methods of work. Phase one will be carried out through conventions, round-table discussions and workshops, where different experts will present various fields ranging from the acquisition to the use of EU funds. The risks and possible ways of committing fraud to the detriment of the EU will also be presented. During phase two of the project, a clos-

ing conference will be held at which representatives of certain institutions and individual experts will present the latest trends and findings relating to fraud to the detriment of the EU.

The theoretical, practical and scientific discoveries learnt in the course of the project will be published in journals that will serve as study materials in the training of new crime investigators and will be used in the consideration of such criminal offences (Gotenica Convention on the Prevention, Detection and Investigation of Misuse of EU Funds, 2015).

This journal gives summaries of certain aspects of combating fraud to the detriment of the EU from the perspective of certain organisations, including the Government Office of the Republic of Slovenia for Development and European Cohesion Policy, the Court of Audit of the Republic of Slovenia, the Anti-Corruption Commission, the Specialised Office of the State Prosecutor, and the press.

David Smolej
Editorurednik

Cohesion Policy in the Republic of Slovenia

Bojan Suvorov

With its accession to the European Union in 2004, Slovenia became eligible for Structural Funds. Cohesion Policy is a policy aimed at promoting the development of regions within the EU. For the programming period 2014–2020, Slovenia has been allocated EUR 847 million for western Slovenia, and EUR 1.26 billion for eastern Slovenia. In the programming period 2007–2013, the financial allocation for Slovenia was EUR 4.2 billion. The planning and absorption of the EU's Cohesion Policy funds has been run through three operational programmes:

- operational programme for human resources development (EUR 756 million available from the European Social Fund),
- operational programme for strengthening regional development potentials 2007–2013 (EUR 1.783 billion from the European Regional Development Fund) and
- operational programme for environmental and transport infrastructure development (EUR 1.562 billion from the Cohesion Fund).

The authorities involved in the implementation of Cohesion Policy include a managing authority, certifying authority, audit authority, intermediate bodies and other parties involved in the process of planning and implementation of Cohesion Policy. The Republic of Slovenia Government Office for Development and European Cohesion Policy is the managing authority of the programme. Its operation is negatively affected by high staff turnover. Cohesion Policy is implemented within the legal framework of EU and national legislation, with priority being given to EU legislation.

In 2014 Slovenia's net budgetary surplus towards the EU budget reached an all-time high of EUR 633,324,871. In October 2012 the Government

of the Republic of Slovenia approved a further EUR 453 million in over-commitment for the purpose of optimising the absorption of funds in the EU Cohesion Policy programming period 2007–2013. At the end of 2014 Slovenia ranked twelfth in the absorption of EU Cohesion Policy funds for the period 2007–2013.

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In the programming period 2007–2013, co-financing was approved for over 5,000 projects. For the funds for the 2014–2020 period, the national component is already earmarked in the national budget, and enhanced regulatory work is currently underway since the applications will need to be amended

and adapted to suit the 2014–2020 conditions. In addition to appropriate regulatory framework, the basis for all further activities related to the EU's Cohesion Policy in the Republic of Slovenia also comprises the Partnership Agreement, which covers five EU funds, namely the European Agricultural Fund for Rural Development, the Cohesion Fund, the European Social Fund, the European Regional Development Fund and the European Maritime and Fisheries Fund, and the operational programme. Both were finalised with the European Commission at the end of 2014.

Control mechanisms for safeguarding EU funds

Irena Brčko-Kogoj

In accordance with EU regulations and guidelines of the European Commission, control mechanisms on the use of EU funds were established by the Republic of Slovenia Government Office for Development and European Cohesion Policy as the managing authority for Slovenia. The authority has put in place and maintains the functioning of the system, sets out common rules for implementation of Cohesion Policy, prepares guidelines for detailed specification of Cohesion Policy implementation procedures, etc. Management verifications are part of internal controls that include control procedures established for national budget funds, as well as separate procedures set up specifically for EU funds, in order to ensure that these comply with specifying provisions of EU Regulations. However, if management verifications are insufficient (poor functioning of the control and management systems), this may lead to financial corrections (the European Commission may suspend payments until the correction of irregularities and execution of financial corrections) or, in the worst-case scenario, recovery of funds. Management verifications are carried out before the operation approval decision is taken (i.e. before project implementation) and after the operation has been approved. Pre-contracting checks cover adherence to the horizontal principles (equality, sustainable development), verify the appropriateness of provisions concerning information and publicity, assess the compliance of provisions for eligible expenditure against the relevant instructions issued by the managing authority, verify the possibility of double financing of expenditure items, etc. Management verifications following the approval of an operation can be divided into administrative verifications, on-the-spot verifications, and verifications of delegated tasks. Administrative verifications are extended to all applications. They cover all key elements and specific areas of management verifications and include a complete review of the application for reimbursement and its supporting documents. The output of the administrative verification is a completed verification checklist.

The entire procedure must be completed before any payments from the national budget can be made. The aim of on-the-spot verifications is to check that expenditure items were indeed incurred and disbursed funds were used for the purpose for which they were allocated from the EU Cohesion Policy.

A preliminary on-the-spot verification report (listing findings and measures) is issued and the beneficiary is given an opportunity to comment on the report within 30 days; after this deadline, a final on-the-spot verification report is issued. By conducting verifications of delegated tasks, the managing authority checks the performance of intermediate bodies and issues a report upon completion of the verification.

The Republic of Slovenia Government Office for Development and European Cohesion Policy conducts verifications in order to detect faults, irregularities or suspicion of fraud. In the case of the latter, it is obliged to report its findings to the National Criminal Investigation Service of the Slovenian police. Most commonly, irregularities refer to public procurement (failure to comply with public procurement rules), civil engineering (absence of building permits, etc.), acquisition of equipment (the invoiced built-in equipment is either not as specified in the contract, used or not delivered) and services (only partial performance).

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The role of the Court of Audit in auditing EU funds

Tina Eržen, PhD

The legal basis for the functioning of the EU is provided by the Treaty on European Union (Treaty Establishing the European Union, onto which Member States transfer the competences for the implementation of their common goals) and the Treaty on the Functioning of the European Union (regulates the functioning of the EU and determines the areas of, delimitation of, and arrangements for exercising its competences). With an aim of exercising these competences, the institutions of the EU adopt regulations, directives, decisions, recommendations and opinions. The primary aim of the EU budget is to promote and implement the common EU policy. The annual budget of the EU is based on the multi-annual financial framework of 7-year perspectives (2000–2006, 2007–2013, 2014–2020). The European Commission shall implement the budget in co-operation with Member States, at own risk, and within the limits of the appropriations, having regard to the principles of sound financial management. The Court of Audit of the Republic of Slovenia is the highest body for supervising state accounts, the state budget and all public spending in Slovenia, which includes the funds of the EU. The Court of Audit shall audit the regularity and performance of business operations of users of public funds, and any act on past operations, as well as any act on planned business operations of any user of public funds. Auditing refers to the management (utilisation) of EU funds, but does not cover direct spending which is the responsibility of the European Court of Auditors. Therefore, the Court of Audit of the Republic of Slovenia can focus its activities on identifying opportunities for improving the absorption rate of available EU funds. In the course of the audits, the performance of the acts (effectiveness, efficiency and economy) is verified. The areas in which irregularities in the use of EU funds may give rise to suspicion of a criminal offence are mainly related to public procurement procedures, double financing, conclusion and performance of agreements concerning labour costs and consulting services, as well as incorrect co-financing rates and ineligible expenditure (T. Eržen, personal interview, 22 January 2015).

Prevention of corruption related to fraud against EU funds

Mirjan Hren

It is important to note that 99% of the world's population account for (just) 5.5% of global wealth (one adult in this group owns a total of EUR 3,322), whereas 1% of the world's population holds 48% of global wealth (one adult in this group owns a total of approximately EUR 2.3 million). Many companies, their owners and various associations, spend a significant part of their assets every year on lobbying the legislators in an attempt to secure a legal environment that safeguards and fosters their position. This leads to considerable risks of systemic corruption, both in EU institutions and bodies as well as in Member States.

Systemic corruption risks in EU institutions and bodies and in Member States can occur before and/or after decisions are taken. As regards the budget of the EU, these risks can occur in the areas of financing and spending. Investigations of fraud, corruption and other unlawful actions in the EU are the responsibility of the European Anti-Fraud Office (OLAF), as the institution that safeguards the financial interests of the EU. OLAF regularly reports on the irregularities and fraud to the European Commission. When a Member State's expenditure is not in line with the European Community's interests, this gives rise to a dilemma regarding whether the matter should be reported a) in line with EU's interests, or b) in line with the interests of the receiving Member State.

The reporting on, and exercising the control over, the use of the European Community's funds is carried out on four levels (1. intermediate body, 2. managing authority, 3. Anti-Fraud Co-ordination Service AFCOS and 4. OLAF - European Commission).

All the operators in the chain have the authority and obligation to carry out controls with professionalism and due diligence. Beneficiaries of EU funds shall at all times ensure that its actions and disbursements comply with the regulations concerning the use of such funds, from the beginning to the end of the operation.

The causes for reporting irregularities may include:

- poorly trained responsible persons,
- high turnover in authorised control staff,
- insufficient numbers of persons implementing control,
- guidelines for control,
- the motive of the beneficiary (funding recipient)
- the motive of the Member State (funding recipient)

The control carried out by the competent institutions is concentrated on checking the documents instead of performing on-the-spot verifications. The supervisory authorities are mainly concerned with demonstrating their efficiency in implementing their competences whereas they should be paying more attention to efficient co-operation with other competent authorities. It is a major issue when the authorities become self-absorbed and unable to maintain successful co-operation with other competent national authorities.

The only way to safeguard the EU's financial interests is through co-ordinated efforts of competent national authorities, working together like musicians playing the European anthem.

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Misuse of EU funds and political corruption

Blanka Žgajnar

In Slovenia the authorities for detection and prosecution of criminal offences worked on a case of corruption committed by a former member of the European Parliament. In the role of an official representative of the Republic of Slovenia, the Slovenian Member of the European Parliament (hereinafter: MEP) accepted the offer of payment of 100,000 EUR per year from Claire Newel and Jonathan Calvert, posing as lobbyists of a fictitious company, Taylor Jones, in return for a promise that he would, within his powers as an MEP and member of Taylor Jones' international advisory board, perform official acts and table amendments and proposals for changing laws.

When the group of state prosecutors for organised crime and the police began the pre-trial procedure, they hit upon an obstacle: the court turned down their application for a search warrant on the MEP. According to the court, the journalists had tricked the suspects into submitting information they had then forwarded to the police. The Prosecutor's Office requested international legal aid with the competent authorities in Belgium and France, but their request was declined on the grounds of the decision taken by the Slovenian court. Following the newspaper article on corrupt MEPs, which was published in The Sunday Times, the European Anti-Fraud Office, OLAF, initiated an investigation of its own, however, from the information available it was not possible for OLAF to conclude that the former MEP had requested payment in exchange for tabling an amendment with the European Parliament. In the end it was recommended that the matter be closed without further action.

Following this, the Slovenian police decided to file a criminal complaint on the basis of existing evidence (police officers conducting interviews with reporters), and the prosecutors lodged a request for an investiga-

tion. The evidence consisted of 55 electronic mail messages exchanged between Victoria Newel and the former Slovenian MEP, including an electronic mail that contained the text of the tabled amendment, proposed by Victoria Newel, the European Parliament's confirmation of the content of the submitted electronic mail, statements on the financial interests of the MEPs, and more. After the court's decision to start an investigation and the dismissal of the appeal against this decision, the former MEP contacted the Prosecutor's Office and pleaded guilty of the criminal offence specified in the indictment. He was sentenced to two years and six months of (work release) imprisonment.



In Slovenia the authorities for detection and prosecution of criminal offences worked on a case of corruption committed by a former MEP.

Precision journalism as the basis for pre-trial procedure

Ana Gajič

In 2013 Slovenia recorded a total of 1,787 registered media and more than 6,000 journalists. The numbers are high and rising, particularly with regard to online media. However, traditional journalism is not to be equated with precision journalism. The aim of precision journalism is to reveal facts which have a considerable effect on the life of people in society. Precision journalists apply social research methods to the practice of journalism and produce pieces that give a more realistic and more reliable picture of society. The use of scientific methods makes their work professional and of high quality. Precision journalism was started in the U.S. It is less common in Europe, and practically non-existent in Slovenia. The main difference between traditional (investigative) and precision journalism is that precision journalists use publicly available information, whereas traditional journalists receive their information from friendly sources. Publicly available data make the information obtained by a precision journalist reliable and verifiable, whereas the information coming from a friendly source cannot be verified and may contain a hidden agenda to present. A good example of precision journalism is the study of systemic corruption. The precision journalist conducted nine interviews with Slovenian experts (Anti-Corruption Commission, Ombudsman, Faculty of Law, etc.) She set three hypotheses, which were confirmed at the end of the study, including:

- Systemic corruption is made possible by legislation.
- Systemic corruption makes independent work of state authorities impossible.
- Systemic corruption in Slovenia paralyses the functioning of the state.

Systemic corruption has economic, social and moral consequences, but the most important issues relating to systemic corruption are the

following: it is the key reason for the economic and moral degradation of the state; Slovenia needs to put an end to the political-corporate-financial connections that create ideal conditions for privileged politicians; there is a lack of political will to limit corruption; and Slovenia's politics needs new values which will be based on accountability, transparency and human integrity.

Conclusion

Goljufije na škodo EU so pereča problematika s katero smo se srečevali v preteklosti in se bomo z njo zagotovo srečevali tudi v prihodnosti. Države članice EU morajo za pregon goljufij na škodo EU vzeti enako resno, kot če bi bila oškodovana neposredno njihova država (Quirke, 2009). Poznavanje institucij, ki nastopajo v vlogi organov upravljanja, potrjevanje, revizijskih organov, posredniških teles ter drugih udeležencev v procesu načrtovanja in izvajanja kohezijske politike je ključno, da bodo organi odkrivanja, preiskovanja in pregona uspešni pri svojem delu. To delo je zato tudi prvo v seriji osmih nadaljevanj, kjer bodo podrobneje predstavljeni Evropski sklad za regionalni razvoj, Evropski kmetijski sklad za razvoj podeželja, Evropski socialni sklad, Kohezijski sklad, Evropski sklad za begunce, Evropski sklad za vključevanje državljanov tretjih držav, pridobivanje podatkov iz tujine in evropski javni tožilec. Serija zbranih povzetkov s posamezni gradivi bo pripomoček kriminalistom, tožilcem in drugim, ki se ukvarjajo s problematiko goljufij na škodo EU, oziroma se bodo s to problematiko ukvarjali v prihodnje.

EU Member States must attempt to combat fraud to the detriment of the EU with the same determination as if their own state was the directly injured party (Quirke, 2009).

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