



EUROPEAN COMMISSION
EUROPEAN ANTI-FRAUD OFFICE (OLAF)

INVESTIGATIONS & OPERATIONS II
Unit B.1 - Agriculture

07 00 43 52 06.05.10

Brussels,

OLAF Ref: 0208/0285

OLAF OPERATIONS

Please quote this reference in all
related correspondence: OLAF/2008/0285

Mr. Mihai Gavril VADAN
Director General
Paying Agency for Rural Development and Fishery – SAPARD Programme
43 Stirbei Voda Street
Sector 1,
Bucharest
Romania

Subject: Alleged irregularities and possible fraud involving SAPARD funding for the modernization of the meat processing industry in Romania.

Dear Mr VADAN,

I refer to OLAF's ongoing investigation into alleged irregularities involving SAPARD funded meat processing projects in Romania and, in particular to your letter, dated 12.04.2010 (Ref. 6743), in which you sought OLAF's opinion and views in relation to a number of issues concerning the matter.

Before I provide you with OLAF's opinion and views of the issues raised, I would like to take this opportunity to provide you with a general overview and update on the investigation at this stage.

As you know, there are 211 projects funded under Measure 1.1, meat, meat products and eggs, of the SAPARD Programme in Romania. In June 2008, during an OLAF visit to the Paying Agency, OLAF examined 45 project files and extracted copies of suspicious offers and invoices from 34 of these files for further examination and verification. Since that visit, OLAF, with the assistance of DLAF, has obtained copies of suspicious offers, invoices and contracts from a considerable number of other SAPARD project files. The verification of these documents is ongoing by OLAF and its partners in the various Member States. So far, OLAF has found evidence of possible fraud in a considerable number of these projects and the evidence obtained has been passed to the Romanian National Anti-corruption Directorate (DNA) for criminal investigation. For each of these projects the DNA has opened penal cases. In addition, with the agreement of the DNA, the evidence in relation to 11 of these projects has already been passed to your service for administrative action and recovery.

Furthermore, OLAF currently has evidence in relation to a further 32 SAPARD funded projects which it will shortly forward to the DNA for criminal investigation. With the agreement of the DNA, OLAF will then forward the evidence to your service for administrative action and recovery.

At this stage, OLAF has clear evidence of what it believes are serious irregularities or fraudulent practices in approximately 43 SAPARD project in the measure concerned. OLAF also has serious suspicions that irregular or fraudulent practices have occurred in a further 19 projects. This figure is expected to rise steadily as further evidence is received from OLAF's partners in various Member States or uncovered by OLAF as part of its own investigative actions.

As you can see, to date, 62 projects from a total of 211 are either proven or suspected of having been involved in irregular or fraudulent practices. At this stage, it is impossible to say when OLAF's investigations in these matter will end or, indeed, to estimate how many more projects in the measure will be found to contain fraudulent or irregular practices considering the fact that only marginally more than the above-mentioned 62 projects in the measure have been examined by OLAF to date.

As outlined in OLAF's various letters to you and, indeed, explained during OLAF's missions to the PARDF, the bulk of the irregularities uncovered relate to the "*Three Offer System*" for the procurement of goods and equipment. In this regard, I would ask that the PARDF consider undertaking a review of the procurement procedures for all of the 211 projects with a view to making a comparison and analysis of prices for similar/identical equipment both offered and supplied to various SAPARD applicants. Such a review could identify potential irregularities in projects where the prices for similar/identical equipment and machinery appear considerably different. Another benefit of such a review would be the identification of projects where the same three companies consistently provided offers to numerous SAPARD applicants. This in itself, would not constitute an irregularity but, on further investigation, could identify possible conflicts of interest and, indeed, possibly identify the manipulation of tendering procedures. Should the PARDF decide to undertake such a review OLAF would be interested in obtaining the results of the review, as this would assist OLAF in its investigation into the matter.

As you can imagine, the number, nature and gravity of the irregularities and possible fraud uncovered in the SAPARD measure concerned is extremely worrying and, in this regard, in accordance with agreed procedures, OLAF will be bringing these matters to the attention of DG Agriculture in order that it can be adequately addressed by that DG.

In your letter, dated 12.04.2010 (Ref. 6743), you sought OLAF's opinion regarding the justification for registering debts in the Debtor's Ledger based on OLAF's initial letters of findings (with enclosed annexes) even though OLAF's investigations have not yet been finalised. In addition, you asked for OLAF's views regarding the amount of debt, based on whether the findings should be categorised as irregular or fraudulent.

In your letter, you stated that, in addition to national legislation, the PARDF also applies the provisions of a number of EU Regulations, including Article 3 and 9 of Regulation No 1073/99¹

¹ Regulation (EC) No 1073/99 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)

In relation to the transmission of evidence, by OLAF, to your service, I would refer to Article 10(1) of Regulation 1073/99, which states that OLAF may at any time forward to the competent authorities of the Member State concerned, information (evidence) obtained during the course of the investigation. In this regard, OLAF considers that the information (evidence) recently forwarded to your service in relation to the 11 projects mentioned above and listed in the enclosed annex was provided in accordance with the provisions of Article 10(1) of Regulation 1073/99. As mentioned above, OLAF's investigation is ongoing with little sign of being finalised in the near future and therefore a final case report cannot be forwarded to your service at this stage, in accordance with the provisions of Article 9(3) of Regulation 1073/99.

In a number of the above-mentioned 11 cases, the information provided by OLAF consisted of reports of controls conducted by the investigative authorities of other Member States (e.g. the ZKA in Germany, the Guardia di Finanza in Italy). In each of these cases, OLAF's requests to these national authorities were made under the provisions of Regulation 515/97³.

In providing the results of the controls, conducted by the investigative authorities of other Member States, OLAF has acted as coordinator in that it simply passed the information (evidence) from the national authorities of one Member State to the national authorities of another Member State. These control reports should now be considered in a similar manner to information received by your service in accordance with mutual assistance requests made between administrative authorities of Member States under the provisions of Regulation 515/97. I would draw your attention to Article 12 of Regulation 515/97, which stipulates that such reports can be used as evidence by your service.

In relation to those projects, for which the evidence provided consists of an OLAF control report, I would again refer you to Article 10(1) of Regulation 1073/99, which allows for the ongoing transmission of information (evidence) during an investigation.

In relation to the second issue, you stated that the results of any criminal investigation conducted by the DNA is important in determining if the findings in particular cases should be classified as fraud or irregularities. You stated that if the DNA does not open a penal case in the matter then OLAF's findings could not be classified as fraud but as an irregularity.

I would point out that, in all of the 11 cases, for which OLAF has provided information (evidence) in the form of reports to the DNA, penal cases have been opened for each and criminal investigations commenced. In deciding whether to initiate criminal proceedings against any individual or entity, the DNA must decide if there is a reasonable possibility of a conviction. In all of the cases, already forwarded by OLAF to the DNA, OLAF believes that clear evidence of fraud has been provided in that the SAPARD applications in question contained false documents. The DNA must attempt to identify the individual or entity, who orchestrated this fraud and indeed produced the false documents. In those cases, the fraudulent acts have been proven, however, due to the international nature of the acts, it may be difficult or, indeed, impossible for the DNA to identify who actually orchestrated the fraudulent act. As you know, the nature of the procurement procedures is complex and the

³ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and the cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.

falsification of such documents may have been carried out by the legal representatives of the SAPARD applicant, agents acting on behalf of the applicant or suppliers (either in Romania or elsewhere) or indeed by the supplier/tendering companies themselves. As mentioned above, the DNA may not be able to identify definitely the guilty individual or entity and, therefore, decide that it is unable to initiate criminal proceedings. However, under SAPARD rules, it is the responsibility of the SAPARD applicant to ensure that all documents used to support his SAPARD application are authentic, legitimate and fully in accordance with the rules of the Programme.

As stated in previous correspondence, irrespective of any decision to initiate criminal proceedings in the matter in relation to possible FRAUD in the matter OLAF is convinced that there is sufficient evidence that serious intentional IRREGULARITIES have occurred in the implementation of the projects concerned.

In this regard, I would refer you to Title II, Articles 4 and 5 of Reg. 2988/95³ which provides clear definitions of irregularities, either intentional or unintentional. In the 11 cases already forwarded to you, there is clear evidence that the SAPARD beneficiaries in question submitted false documents in support of their SAPARD applications. In view of the nature and gravity of the irregularities, involving the intentional/deliberate submission of false documents, it is OLAF's strong view that administrative penalties, involving TOTAL recovery, as outlined in Article 5(1) (c) of Regulation 2988/95 should be applied. In this regard, I would again ask that OLAF's various letters and the control reports enclosed therewith, be regarded as 'Primary Administrative Findings' in accordance with the provisions of article 35 Of Regulation No 1290/2005⁴ and that the appropriate regulatory actions be undertaken as requested by OLAF.

I would also refer to Section B, Article 4, Paragraph 5 of the MAFA⁵, which states that:

"No project for which the authorities of Romania, including the SAPARD Agency, have made any deduction, retention or further charge specific to SAPARD, which would reduce amounts payable or paid to the beneficiary, shall be eligible for co-financing"

Following discussions with DG Agriculture of the European Commission, OLAF considers that, for the 11 cases already forwarded to your service for administrative recovery, the provisions of this article of the MAFA apply. In the circumstances, OLAF will be recommending to DG Agriculture that the 11 SAPARD funded projects in question should not be co-financed by the EU budget and should be dealt with under the 'Clearance of Accounts' procedure.

As mentioned above, over the coming weeks and months, OLAF will be forwarding similar information and evidence to you service, in relation to considerable number of other SAPARD funded projects, for appropriate administrative actions and recovery. In this regard, I would ask that, in dealing with these additional cases, the PARDF takes full account of OLAF's views and recommendations as outline in this letter.

I trust that this letter provides sufficient clarification on the issues raised and that the PARDF will proceed with the OLAF's recommendations as outlined in the various letters, which issued to you in relation to the 11 projects mentioned.

³ Council Regulation (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests.

⁴ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy.

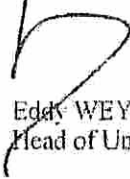
⁵ Multiannual Financing Agreement between the Commission of the European Communities on behalf of the European Community and Romania.

In conclusion, in relation to the 11 SAPARD funded projects mentioned above, I would be obliged if you could provide details of the actions taken by the PARDF to date to recover the irregularly paid funding. In this regard, I enclose a table (in annex) of the 11 projects with specific questions concerning each of the cases. In your reply I would be obliged if you could provide details on the current status of recovery, details of any appeals, legal challenges etc and the results thereof, by any of the beneficiaries against the cancellation of the SAPARD Financing Contracts in question.

I would like to thank you in advance for your cooperation in these matters and look forward to your reply as soon as possible.

Should you have any queries or wish to seek clarification in connection with these matters, please feel free to make direct contact with Mr Damian D'ARCY, e-mail: Damian.D'ARCY@ec.europa.eu or Mr Miklós SZENCZI, e-mail: Miklos.SZENCZI@ec.europa.eu in this office who are dealing with the matter.

Yours sincerely


Eddy WEYNS
Head of Unit

Copy: Mrs Adina PETRESCU, State Secretary, DLAF, Secretariatul General al Guvernului, Bulevardul Regina Elisabeta nr. 3-5 (Sector 3), 030015, RO-Bucuresti

Statement concerning the transfer of personal data

The transfer of personal data to you falls within Article 8 of European Parliament and Council Regulation No (EC) 45/2001 on the protection of personal data by the Community institutions. Accordingly, as the controller of the personal data hereby transmitted, you are responsible for ensuring that they are used only for the purposes for which they are transmitted. Processing in a way incompatible with that purpose, such as transferring it to another recipient where this is not necessary or legally required on important public interest grounds, is contrary to the conditions upon which this data has been transferred to you. Moreover, according to article 6(2) of Directive 95/46, you are required as the Controller of the personal data concerned to ensure that all obligations of the Controller are complied with.

ANNEX

	SAPARD Beneficiary	OLAF letter to PARDF	Irregularity Report No	Debtor's Ref. No	Current status of recovery	Other relevant information (Legal appeal etc.)
1	AMARETO IMPEX SRL, Project No. C 1.124161300022 28.05.2004.	D/541 21/01/2010				
2	SC ITALOVINI SRL Project N° C 1.125253700026 30.05.2006 (OF/2010/0023)	D/2381 10/03/2010				
3	SC SALFROM SRL Project N° C 1.1214173400038 07.03.2005	D/2654 17/03/2010				
4	SC C&C COMPANY SRL Project no. C 1.10204210700050 15.06.2006	D/2072 2/03/2010				
5	OPREA AVI – COM SRL Project N° C 1.10232728000059 01.03.2006	D/2092 3/03/2010				
6	SC ATFAB SRL Project N° C 1.10201521800068 11.09.2006	D/2758 19/03/2010				
7	SC ROTINA PRODUCT SRL Project No C1,10201652200036 20.12.2006	D/3164 30/03/2010				
8	SC H & E REINERT SRL Project No C1,10201570800067 13.07.2006	D/3163 30,03,2010				
9	SC SALCONSERV SA Project No C1,1219173400047 11.12.2007 (OF/2009/0391)	D/2759 19/03/2010				
10	SC SCANDIA ROMANA SA Project No C1,121073400003 27.03.2003 (OF/2009/0393)	D/3166 30/03/2010				
11	SC Meda Prod 98 Srl Project No C 1.121034200004 6/08/2003	D/2706 19/03/2010 D/3975 26,04,2010				