

# Cooperation in preventing and inhibiting fraud

**First Level Control Unit – BRECO Oradea, Romania**



# Agenda

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- ✓ Legal basis
- ✓ Anti-fraud measures in the procurement process
- ✓ Anti-fraud measures at FLC level
- ✓ The process of detecting and reporting of irregularities/ frauds' suspicions
- ✓ Practical examples



# Legal basis

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- Regulation (EU) No. 1303/2013
- Government Emergency Ordinance No. 66/ 2011
- Government Decision No. 875/ 2011
- Law No. 78/2000
- Law No. 98/ 2016
- Government Decision No. 395/ 2016
- Project Implementation Manual
- Internal Procedures – First Level Control Unit Procedure, Irregularities Management Procedure
- Common First Level Control Manual



# Anti-fraud measures in the procurement process

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- In the Project Implementation Manual for Interreg V-A Romania-Hungary Programme, there is a distinct chapter dedicated to the anti-fraud measures that must be undertaken by the beneficiaries when conducting a procurement procedure within a project.
- With regard to the conflict of interests, when developing a procurement procedure, all beneficiaries are recommended to comply with the legal provisions, according to national and European law on the conflict of interest and also to check the European Commission guide *Identifying conflicts of interests in public procurement procedures for structural actions* for additional information.



# Anti-fraud measures in the procurement process

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- The entire personnel of the beneficiary, involved in the procurement process, shall sign declarations on conflict of interests.
- The beneficiaries are required to attach to each partner report submitted a declaration on own responsibility stating that there have been no cases of conflict of interest for the procurement procedures for which they have reported expenditures.
- *Rules of conflict of interest shall be observed by the beneficiary during the entire process of procurement, from request to price offer to signing the contract, in order to avoid the situations that might cause conflicts of interests within the procurement process.*



# Anti-fraud measures at FLC level

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- According to the First Level Control Procedure, based on the information they have from beneficiary's declarations and Register of Commerce certificates, the controllers are filling in *The checklist for conflict of interest*.
- With regard to the deviations related to the use or presentation of false, incorrect or incomplete declarations or documents, the first level controllers check the following:
  - ✓ compliance of the justifying documents attached in the electronic system eMS to the original documents existing at the beneficiary's premises, on the occasion of the on-the-spot visits;
  - ✓ the content and form of the supporting documents related to the observance of the applicable legal norms;
  - ✓ the accounting records of the expenditures related to the operations generated by the implementation of the project;
  - ✓ the reality of the activities carried out by the beneficiaries, on the occasion of the on-site visits (e.g. existence and functionality of purchased equipment).



# Anti-fraud measures at FLC level

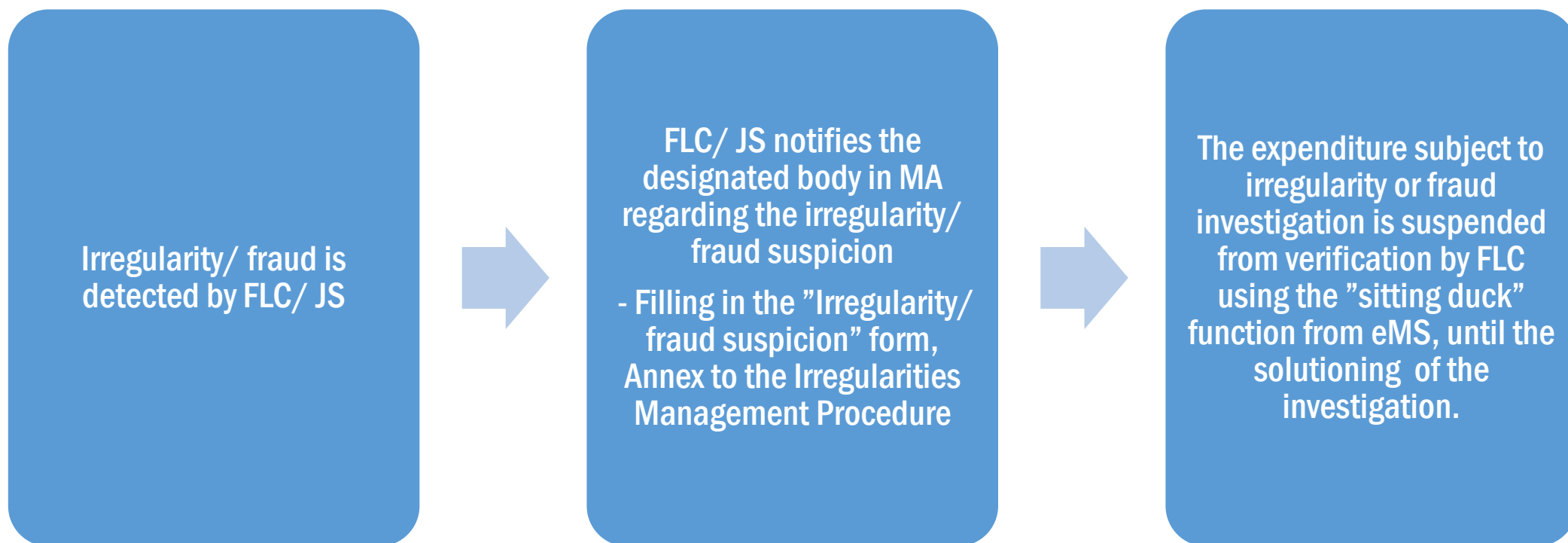
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- If any deficiencies are identified by the controllers in the field of procurements, **financial corrections** could be applied for the Romanian beneficiaries acting as contracting authority, according to GEO no. 66/2011 and according to Annex 4 - Procedure for Romanian private beneficiaries regarding the assignment of supplies, services and works contracts financed within Interreg V-A Romania-Hungary Programme.



# The process of detecting and reporting of irregularities/ frauds' suspicions

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# Practical examples (1)

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## 1. Infringement of legal regulations on procurement

– use of false, inaccurate or incomplete documents.



- A beneficiary presented as a supporting document for the procurement reported a note justifying the choice of the procurement procedure, having mentioned on it the eMS code of the project.

The eMS code is generated automatically when performing the first save of the application in the system.

Given that the subject of the procurement is the preparation of the application in eMS, it was considered suspicious that one of the first documents prepared for procurement, the note justifying the choice of procedure, contains the eMS code of the project.

Upon clarifications requested from the beneficiary and supplementary information requested from the eMS Department within MA, the conclusion is that the beneficiary submitted, for the purpose of validating the reported expenses, a document containing information which it could not have at the time of its issuance.



# Practical examples (2)

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## 1. Infringement of legal regulations on procurement – use of false, inaccurate or incomplete documents.

- A beneficiary provided false documents in order to prove the compliance with the legal provisions with regard to market research stage, which resulted to have been performed fictitiously.
- Fictitious registration of procurement documents: the numbers allocated to the documents in the procurement file (invitation, offer received, justifying note regarding the selection of the offer) are not correlated to the ones mentioned in the register of inputs and outputs.

*According to Law no. 78/2000, an operation or an illegal act has been carried out by using false, inaccurate or incomplete documents in order to obtain European Funds in an unjustly manner.*



# Practical examples (3)

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## 1. Infringement of legal regulations on procurement – use of false, inaccurate or incomplete documents.

- A beneficiary (contracting authority) accepted the submitted tender even though it did not comply with the requirements expressly mentioned in the specifications from the procurement documentation.

*The provisions of art. 207 of Law 98/2016 with subsequent amendments and completions were not respected.*

*Considering that the beneficiary accepted the offer as complying with the specifications, the controllers find the existence of an **irregularity**, the proposed **financial correction** being 25% of the contract value. The legal basis for applying this correction is mentioned in GD 519 of 2014 - Annex containing the rates for determining the percentage reductions / financial corrections that apply in case of non-compliance with procurement procedures, point 3 "Evaluation of tenders based on illegal selection or award criteria".*



# Practical examples (4)

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## 2. Infringement of legal regulations on procurement – conflict of interests

- Based on the information provided by the Register of commerce certificates for the bidders from whom were requested offers in the procurement process, FLC concluded that all the bidders in the procurement procedure have the same address and their legal representatives (majority associates) have the same name.

*According to GD no. 875/2011, apparent links between tenderers, such as addresses, employees or common telephone numbers represent a **fraud indicator**.*



# Practical examples (5)

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## 3. Conflict of interest in case of staff costs

- A beneficiary, private institution, concluded an employment contract with the person who owns the position of president of the institution. The employment contract is signed by the same person both as president and as an employee.

*As a consequence, the beneficiary, by concluding the above mentioned employment contract, has not respected the provisions of the Subsidy Contract, Financial Regulation EC no. 966/2012 and Project Implementation Manual, regarding the conflict of interest.*

*Moreover, the legal representative of the institution has signed the declaration of absence of conflict of interest and the declaration of availability, which might be subject to the provisions of Law no. 78/2000 regarding false statements.*



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# Thank you for your attention!

Name: Adela-Maria Micle

Claudia T. Jurcuț-Todoran

Institution: First Level Control Unit, BRECO Oradea, Romania

Email address: [office@brecoradea.ro](mailto:office@brecoradea.ro)

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