



EUROPEAN  
PUBLIC  
PROSECUTOR'S  
OFFICE

## Detection, investigation and prosecution of fraud

**Croatia, 15.05.2024**

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Protecting EU  
taxpayers' money  
from criminals

www

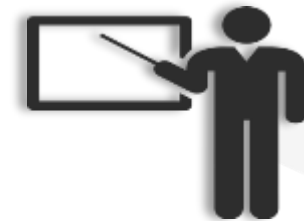


# **Status quo and definitions**

## **New legal acts**

# Presentation content

- Legal framework on EU level: ETC and Anti-Fraud
- Definitions. What is Expenditure fraud?
- Comparison between verification, audit, administrative and criminal investigation
- Irregularity reporting and the Role of controllers
- How to identify fraud – **red flags** and Case Studies



# EU Budget and Irregularities and Fraud

- **For MFF 2021-2027:**
- **1.211 trillion** topped by EUR **806.9 billion** through NextGeneration EU
- **Irregularities and Fraud (PIF Report):**
- **2016:** 19080 fraudulent and non fraudulent – 2.97 bil
- **2017:** 15213 fraudulent and non fraudulent, 2.58 bil
- **2018:** 11 683 fraudulent and non fraudulent – 2.5 bil.
- **2021:** 10,232 fraudulent and non fraudulent – 3.19 bil
- **2022:** 11 471 fraudulent and non fraudulent – 1.67 bil

Funds for ETC: **nearly 10 billion**

# CENTRAL OFFICE - OPERATIONAL ACTIVITY

DATA VALID ON 31 DECEMBER 2023



**2023**

**1 371**



**€12.28 billion**



Opened investigations

Estimated damage

**1 927**

All active investigations

**€19.27 billion**

Estimated total damage

**VAT**

of which are active VAT fraud investigations

**339**

**€11.5 billion**

Estimated total damage



**545**

Active investigations with a cross-border dimension

**1 097**

Decisions to assign measures to assisting EDPs in a different participating Member State



**€1.5 billion**

Freezing orders granted in 2023

# New perspectives in the fight against PIF related fraud

- **Environmental Crime Directive** (Dec 2023)
- **Sanctions Violation Directive** (Apr 2024) –  
**Harmonization of criminal offences for sanctions violation**
- **The New Anti-Corruption Directive** (May 2023)
  - The AC proposal provides for additional 'corruption' offences than what is currently provided for in the PIF Directive. The additional offences that do not apply to the PIF Directive, are:
    - Bribery in the private sector (Article 8),
    - Misappropriation in the private sector (Article 9 - the PIF Directive applies only to the public sector)
    - Trading in influence (Article 10)
    - Abuse of functions (Article 11)
    - Obstruction of justice (Article 12)
    - Enrichment from corruption offences (Article 13).
  - **The Anti-Money Laundering Directives Directive (EU) 2018/843**
  - **Whistle-blower's directive 2019/1937**
  - Material scope, *inter alia*: (b) breaches affecting the financial interests of the Union as referred to in Article 325 TFEU and as further specified in relevant Union measures;

# Legal framework of the fight against Fraud

- **Art. 325 TFEU and Commission decision** establishing OLAF
- **Regulation 2988/95** on the protection of the EC financial interests
- **Regulation 2185/96** concerning on the spot checks and inspections
- **Regulation 883/2013** – OLAF concerning the investigations of OLAF, as amended by Regulation 2223/2020
- **PIF Convention and PIF Directive** - Directive 2017/1371
- **EPPO Regulation** - Regulation (EU) 2017/1939
- **Regulation 1303/2013 and Sector Regulations**
- **Financial Regulation 2018/1046**
- **Regulation (EU) 2021/1059 and specific ETC Rules (Commission Impl Decisions 2022/74 and CD 2022/75 on the list of Interreg programs and areas, and support)**

***How is each one of these legal acts related to ETC?***



# Definitions: Irregularity and Fraud.

## Suspicious.

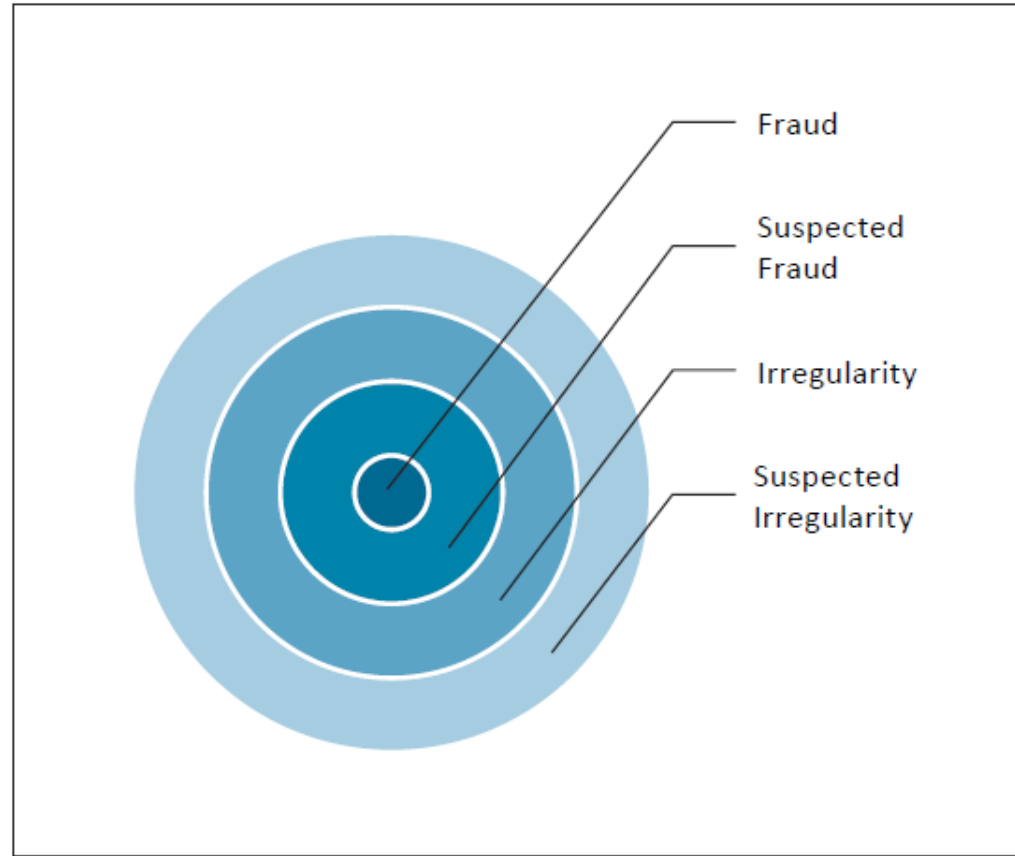
### Irregularity:

Regulation 2988/95,  
CPR and Sectorial  
Regulations

### Suspected fraud: DR

for Reporting,  
2015/1970-1973.

Fraud: PIF Convention,  
PIF Directive





# Unintentional behavior

- **Suspicion of Irregularity** – any information, including from anonymous source, that an irregularity has been committed. This information must contain at least reference to concrete project, financing Programme, managing authority and description of the case. **Handbook of Irregularities: “any information received from any source about the existence of an irregularity before the assessment of this information”**
- **Irregularity** shall mean any **infringement** of a provision of Community law resulting from an **act or omission** by an **economic operator, which has, or would have**, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure. **(Regulation 2988/95 and 1303/2013)**

# Possible Intentional behavior

- 'suspected fraud' – Regulation 2015/1970
- means an **irregularity that gives rise to the initiation of administrative or judicial proceedings** at national level in order to establish the presence of intentional behavior, in particular fraud, as referred to in Article 1(1)(a) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests;

# Intentional behavior

## ■ Fraud

### Art. 3 DIRECTIVE (EU) 2017/1371

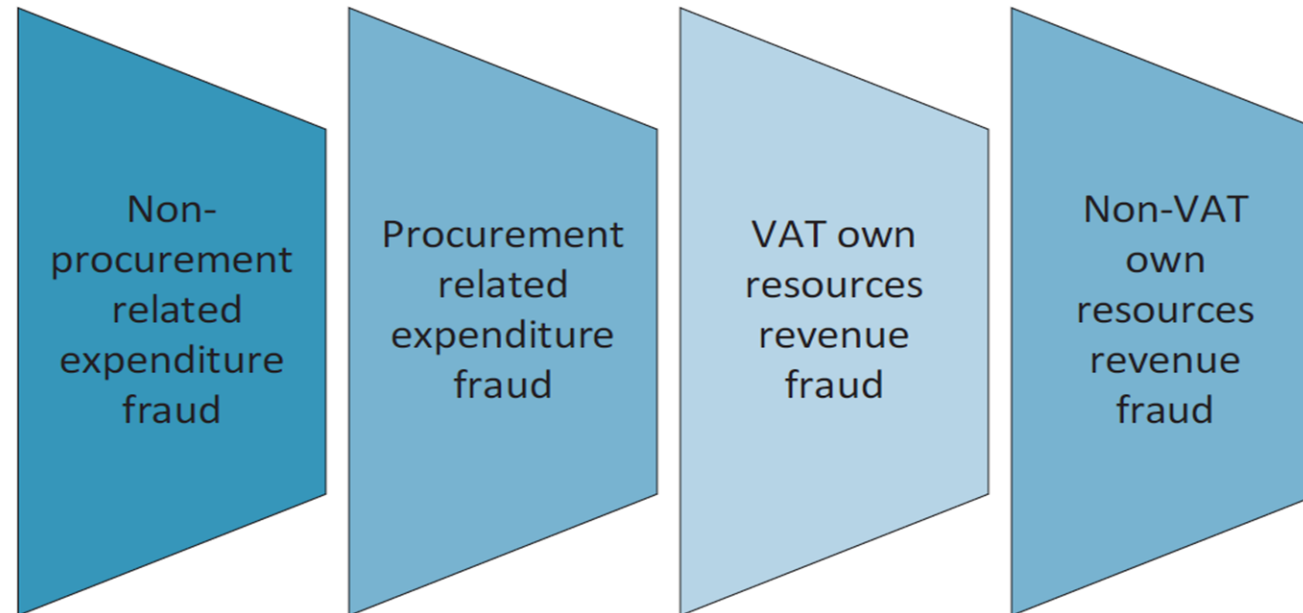
- For the purposes of this Directive, the following shall be regarded as fraud affecting the Union's financial interests:
  - i) **the use or presentation of false, incorrect or incomplete statements or documents**, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;
  - (ii) **non-disclosure of information** in violation of a specific obligation, with the same effect; or
  - (iii) **the misapplication of such funds** or assets for purposes other than those for which they were originally granted;



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**What is Expenditure Fraud?  
What is PIF Fraud?**

# The 4 categories of PIF fraud



*Now serving as the menu for the Material competence of the EPPO*

## CRIMES INVESTIGATED BY THE EPPO\*



### Expenditure fraud

**VAT fraud** involving two or more Member States and total damages of at least €10 million.



### Customs fraud



**Corruption** that damages the financial interests of the EU.



**Misappropriation** of EU funds or assets by a public official.



**Money laundering** involving property derived from these crimes.



**Participation in a criminal organisation** with focus on PIF offences.

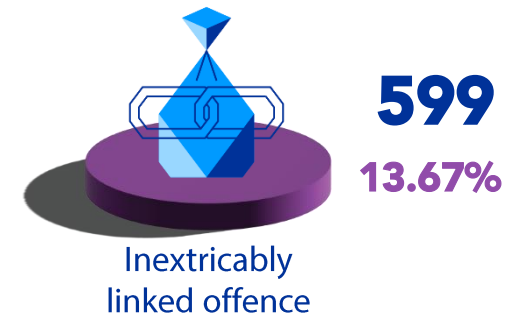
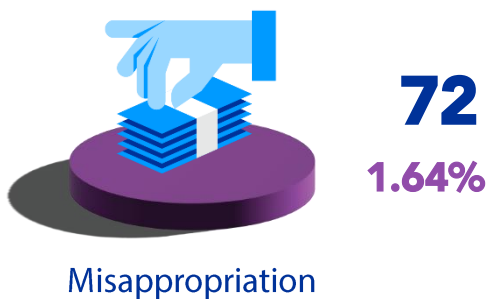
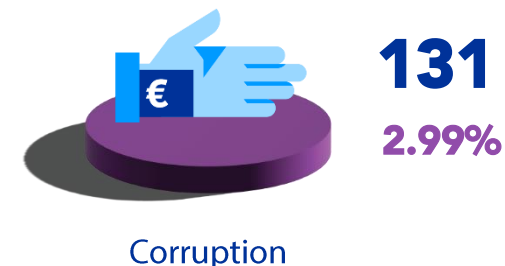
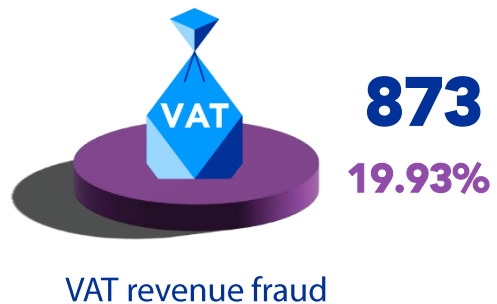
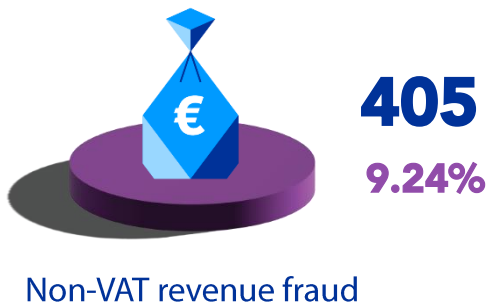


Any other **'inextricably linked' offences**.

\*As provided for in the PIF directive on the fight against fraud to the EU's financial interests by means of criminal law and implemented by national legislations. The directive harmonises definitions, sanctions and limitation periods of criminal offences.

# CENTRAL OFFICE - TYPOLOGIES IDENTIFIED IN ACTIVE EPPO CASES

NUMBER OF INVESTIGATED OFFENCES BROKEN DOWN BY TYPE





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# **Comparison between administrative checks and criminal investigations**



## Investigations: Working with irregularity and fraud allegation

- How and who can send signals/allegations?  
**Whistleblowing.**
- How is this information registered?
- What if it's a non-working day?
- Is the whistleblower notified about the actions of the authorities?
- The “**good**” and “**bad**” information.



## Basis of investigation / check



The investigation/check always requires a formal gathering of evidence, which could be divided into several groups:

- Evidence of **material nature**;
- **Written evidence** (documents);
- Evidence obtained as a result of the **application of technical means** and specific methods (special investigative appliances);
- Evidence established by **exposure to sensory perception** (testimony of a witness, explanations of the accused, etc.)

## Methods of obtaining evidence

### ■ Criminal investigation

- Interrogation
- Crime scene investigation
- Expertise
- Search/ Seizure
- Holding an investigative experiment
- Identification of persons and objects
- Special investigative means

### ■ Administrative investigation/check

- Requesting, collection and verification of information and documents ;
- Asking for explanations (additional information, interviews)
- Conduct of OTSC or documentary checks



## Questions that most often need answers

1. **What** has been done?
2. **When** was it done?
3. **Where** was it done?
4. **How** was it done?
5. **Who** did it? ...

...and **Why**?



## Life cycle of an administrative investigation/check

- Whistleblowing/own initiative/complaint → Evaluation of the information → opening an investigation → core activities → report with recommendations or administrative action
  
- **Types of recommendations/actions:**
  - Financial/Corrective/Establish irregularity/fraud
  - Disciplinary
  - Administrative/organizational
  - Request for opening pretrial proceedings



**What about criminal investigations?**

# Competence in carrying-out investigations/checks

Control Authorities	Fraud Prevention (risk assessment, anti-fraud strategy, management)	Fraud Detection (internal control systems)	Fraud Investigation (administrative and criminal)	Sanctions, corrective measures, criminal prosecution
	<b>Anti-fraud cycle</b>			
National administrative authorities	✓	✓	✓	✓
National pre-trial and judicial authorities			✓	✓
OLAF	✓	✓	✓	
European Commission	✓	✓		✓
European Public Prosecutor's Office			✓	✓

A nighttime photograph of a city street. In the foreground, several police cars with flashing blue and red lights are visible. In the background, a large, ornate building with arched windows is illuminated. The scene is partially obscured by a large, semi-transparent blue and green gradient overlay.

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## Reporting of irregularities and fraud

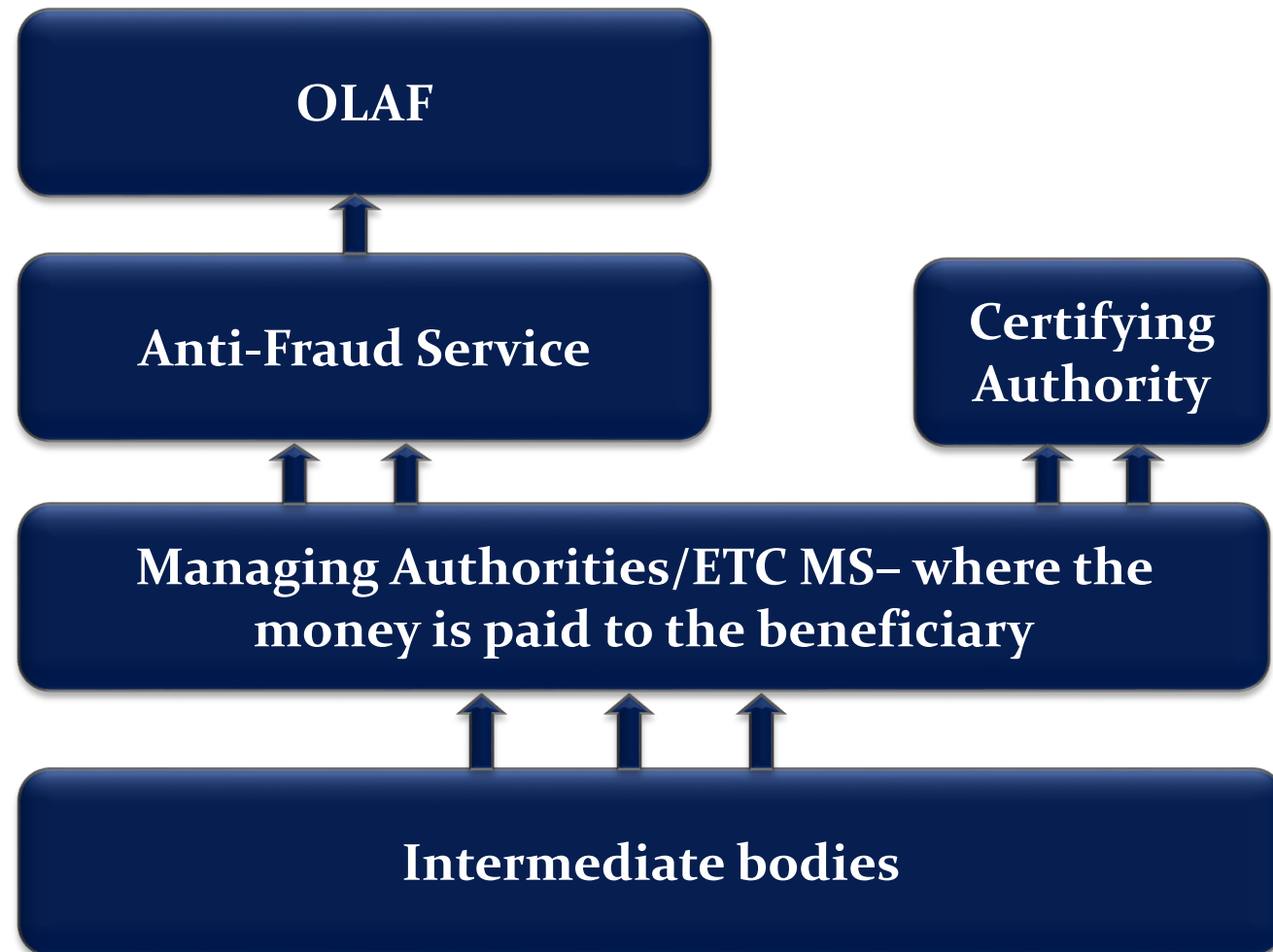
# Reporting of Irregularities – Aim of Reporting

- Under EU law, Member States **must report** cases of irregularities in revenue and expenditure to the Commission, including suspected and established fraud, which have been subject to PACA.
- Reporting can vary significantly. Information includes the provision infringed, the amounts in question, the practices used to commit the irregularity, the parties involved, whether the detected irregularity constitutes 'fraud' etc.
- Functions: It is a **preventive measure** to support proactive risk analysis, and it also **allows administrative and judicial monitoring** of action taken by Member States.

**What is the difference between reporting to the Commission and reporting to the judicial or law enforcement authorities? What about to the EPPO?**



## *Mechanism of Irregularity/Fraud Reporting*



# PACA – Primary administrative or judicial finding

- **'primary administrative or judicial finding'** means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure.
- **Requisites for PACA:**
- **a document in writing (written assessment):** a report, memorandum, resolution, recovery order, management verification report, check list any document with facts of irregularity
- **an assessment by a competent authority;**
- **a conclusion that an irregularity has been committed.**



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# Red flags and practical knowledge

# Dealing with Fraud. Red flags

## Red flags

- A red flag is an **indicator of possible fraud or corruption**. It is an element or a set of elements that are unusual in nature or vary from normal activity. It is a signal that something is out of the ordinary and may need to be investigated further.
- The presence of **red flags should make staff more vigilant** and should make them take the necessary measures to confirm or deny that there is a risk of fraud. Reactivity is of great importance.

*How to detect fraud in your daily work?*

# Red flags in the **Format of Documents**

- *Practical examples – **Documents – the physical way to commit fraud***
- Documents which **depart from standard** and generally accepted layouts should be questioned.
- Invoices, letters with **no logo** of the company
- Invoices printed on **paper other than prepared forms**
- **Visible differences** in type, size, sharpness, colour, etc. of font in the document
- **Erased or crossed-out figures**, write-offs without signatures of authorised persons

# Red flags in the **Format of Documents**

- **Handwritten amounts** without signatures of authorised persons or elements in a printed document where not a priori justified (**Example**)
- Lack or surplus of letters, lack of continuity in the text lines
- Abnormal **sharp edges of official stamps** or unusual colour indicating the use of a computer printer
- **Fully identical signatures of persons** (in format and size) on various documents suggesting the possibility of forgery in form of computer print
- Number of handwritten **signatures made in a similar style or by identical pen** on documents related to different time periods

# Red flags in the **Content of Documents**

- Unusual dates, amounts, notes, phone numbers, and calculations
- **Miscalculation** in an invoice or in a payslip **produced by a computer**: e.g. total amounts not corresponding to the sum of the transactions
- **Missing obligatory element** in an invoice: date, Tax Identification Number, invoice's number, etc....
- **Same mutual position of a stamp** and a signature of person on a set of documents suggesting the use of an image (and not a genuine signature): it may be a computer-generated image used to falsify the documents

# Red flags in the **Content of Documents**

- **Lack of contact details of companies or persons**, like phone number, emails etc
- **Absence of serial numbers on invoices** and delivery notes for goods, which are usually marked by serial numbers (electronics, production lines, etc.)
- Description of **goods** or **services** in a **vague manner**
- **Discrepancies and deviation from standard concerning bank account numbers** (e.g. fewer digits than there should be, number not corresponding to specific branch of a bank, other visible inconsistencies)



# Red flags on **Circumstances**

- **Contractor's address same as employee address (example)**
- Address of the supplier or beneficiary in a domiciling institution
- **Unusual number of payments to one payee or address (example)**
- Invoices and bills issued by entities not registered in business activity register/trade register
- Unusual delays in providing information

# Red flags on **Circumstances**

- The data contained in the document **differ visually from a similar document issued by the same body (example)**
- Reference to a company not recorded in publicly available registers of companies or not traceable in public resources
- Invoices issued by a newly established company
- Beneficiary not being able to provide originals upon request
- **Beneficiary says "It was just a mistake"**

**How is this mistake never in the favor of EU Funds?**

# Circumstances

## ***Public Procurement – highest number of irregularities in EU/highest in damage in criminal investigations***

- Bid rigging, splitting of purchases, tailor-made specifications
- Staff costs wrongly calculated
- No proper procurement procedure followed
- Artificial splitting of contracts in order to benefit from the easier tendering procedure
- Complementary works related to already contracted services
- Specific Technical criteria/specifications set by beneficiary to limit the competition
- Publicity criteria not followed in the public procurement procedure
- No audit trail
- **The problem with Conflict of interest – who is responsible to detect and take measures?**



**THANK YOU**

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