



EUROPEAN ANTI-FRAUD OFFICE

The Director-General

Brussels
OLAF Investigations

RECOMMENDATION FOR ACTION TO BE TAKEN FOLLOWING AN OLAF INVESTIGATION

Case No **OF/2015/1348/B4**

On 26/01/2016 the above-mentioned investigation was opened regarding possible irregularities in the implementation of project No CZ.1.15/2.1.00/04.00095 „Multifunkční kongresový areál Čapí hnízdo“ co-financed by the European Regional Development Fund under the Czech Regional Operational Programme Central Bohemia 2007-2013.

Having completed all necessary investigative activities I have now closed the investigation. Following the conclusions of the investigation as set out in the Final Report and in accordance with Article 11 of Regulation (EU, Euratom) No 883/2013, I recommend that:

The Directorate-General for Regional and Urban Policy take the following action:

Undertake all appropriate measures to ensure the exclusion of CZK 42 497 826.80 / EUR 1 647 676.40 as set out in the attached OLAF Final Report in relation to the irregularities detected in the project No CZ.1.15/2.1.00/04.00095 „Multifunkční kongresový areál Čapí hnízdo“.

The conclusions of the investigation activities establish the existence of irregularities affecting the financial interests of the European Union.

A summary of OLAF conclusions, including:

- Natural and legal persons implicated, financing projects/programmes concerned:

The beneficiary of project CZ.1.15/2.1.00/04.00095, which is co-financed from the European Regional Development Fund in the framework of the Regional Operational Programme Central Bohemia 2007-2013 (CCI 2007CZ161PO009), is the company [REDACTED] (Identification No: [REDACTED]), [REDACTED] company [REDACTED], as well as [REDACTED] at time, [REDACTED] [REDACTED] born [REDACTED] and [REDACTED] who are considered to be persons concerned.

- Main investigation activities and results:

The OLAF investigative activities identified serious irregularities in the preparation and implementation of the project in question, which represent breaches of numerous provisions of the applicable national and EU legislation.

Specifically, the beneficiary company, which received a subsidy restricted to small and medium enterprises, and a large company appear to be such as these two enterprises may be regarded as 'linked' for the purposes of the applicable legislation due to the fact that, through a group of natural persons acting jointly, they constitute a single economic unit.

Furthermore, representatives of the project beneficiary provided untrue information and concealed important information from the operational programme's managing authority when they submitted their project application and signed the grant agreement. The concealed information demonstrates that the beneficiary company did not suffer from handicaps typical of an SME, and therefore, in the meaning of the applicable legislation, the European Commission is entitled to refuse providing financial aid to such beneficiary.

Decisions of the previous company owners and subsequently the company shareholders, to change the legal form of the company to a shareholders company and to issue such a form of shares, which allowed for their anonymous ownership during the whole period of the project implementation, were in contradiction with the general principle of transparency applicable to the use of the EU financial resources. In addition, the subsequent changes in the shares ownership may be considered as an act of artificially creating the conditions required for obtaining an advantage contrary to the objectives of the applicable EU law.

- Potential breaches of legal provisions:

- SME definition – Commission Recommendation No 2003/361/EC, Czech Law on the support of SMEs No 47/2002 Coll.
- Eligibility rules – Art. 56 of the general Structural Funds Regulation (EC) No 1083/2006
- State Aid - Art. 107 of the Treaty on the Functioning of the European Union
- Artificial creation of conditions – Art. 4 of the Council regulation (EC, Euratom) No 2988/95
- Article 212 and Article 260 of the Czech Penal Code (Law No 40/2009 Coll.)

- Amounts to be excluded

The final value of **CZK 42 497 826.80 / EUR 1 647 676.40** which corresponds to the total ERDF co-financing of the project concerned.

Monitoring of implementation of Recommendation(s)

In accordance to Article 11(6) of Regulation (EU, Euratom) No 883/2013, please inform OLAF on any action or decision taken as a result of this Recommendation as soon as possible and in any event no later than **12 months**. This information will enable OLAF to monitor the outcome of its Recommendation(s).

The investigator in charge of monitoring the implementation of this Recommendation is [REDACTED] Unit B.4, [REDACTED]. If you have any queries, please do not hesitate to contact the investigator who will provide you with all necessary assistance.

The OLAF Recommendation concerning this investigation is being sent to the Directorate General for Regional and Urban Development of the European Commission and the Czech Ministry of Finance.

Your attention is drawn to the statement concerning the transfer of personal data below.

Signed Electronically

on 19/12/2017 at 10:22 by
Nicholas John Ilett [Acting DIRECTOR GENERAL]

Statement concerning the transfer of personal data

The transfer of personal data to you falls within Article 7 of Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Accordingly, as the Controller of the personal data hereby transmitted, you are responsible for ensuring that they are used only for the purpose 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 4(2) of Regulation (EC) No 45/2001, you are required as the Controller of the personal data concerned to ensure that all obligations of the Controller are complied with.