

# Typologies of EU Fraud

Study by the National Anticorruption Directorate, Romania



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## ABSTRACT

Until the European Public Prosecutor's Office was set up, the competence for investigating and prosecuting criminal offenses against the financial interests of the EU in Romania belonged to the specialized anticorruption prosecution office, the DNA (National Anti-Corruption Directorate). The DNA looks back on 18 years of experience in tackling this type of criminality, which has resulted in a significant number of court decisions. An analysis carried out by the DNA in 2019, which was based on data obtained from convictions handed down during the period 2015-2018, brought to light the main typologies of EU fraud. The study revealed that the most frequently occurring cases of fraud concerned the claims for payment of agricultural subsidies and the implementation of projects with non-reimbursable financing. Most defendants involved in these cases operated in the private sector. However, even civil servants from the responsible authorities or mayors were also convicted for participating in EU fraud. This article presents the main findings of the study; it provides a general overview and gives examples of the most typical patterns and *modi operandi* of the offenders committing offences against EU funds.

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# I. Background

In 2003, soon after the entry into force of the 1995 Convention on the protection of the European Communities' financial interests (the PIF Convention),<sup>1</sup> Romanian legislation included specific criminal offenses against the EU's financial interests in a separate chapter of Law no. 78/2000 on preventing, discovering and sanctioning of corruption. At that time, the National Anticorruption Directorate (DNA),<sup>2</sup> a prosecution office specialized in countering high- and medium-level corruption was set up; its competence mainly derived from the criminal offenses defined in Law no. 78/2000, whereby certain financial and non-financial thresholds aimed at differentiating between high-, medium- and low-level corruption had to be observed. High and medium level corruption falls within the competence of DNA, while low-level corruption is still to be investigated and prosecuted by the usual prosecution offices. In 2003, following the implementation of the PIF Convention, and bearing in mind the high emphasis placed on the investigation of EU fraud by successive Romanian governments, the legislator entrusted the National Anticorruption Directorate with the investigation and prosecution of EU fraud. However, unlike corruption offences, in relation to which the DNA has a limited competence, the Directorate obtained full competence on EU fraud, regardless of the gravity of the offense or the value of the damage caused. This measure was intended to ensure uniformity in the investigation of these offenses, a unitary jurisprudence, and thus better protection of the EU's values.

Since 2003 and until the European Public Prosecutor's Office (EPPO) was set up and assumed jurisdiction in 2021, the DNA was the only prosecution office competent to investigate and prosecute EU fraud in Romania, as provided for by the PIF Convention. The offenses against the common VAT system, as outlined in EU Directive 2017/1371 (and subsequently implemented in Romanian legislation), are not included in Law no. 78/2000, meaning that the DNA carried out investigations on such matters only if they related to other criminal offenses falling under its competence.

As a prosecution office, the DNA does not have preventive functions like awareness raising. However, considering the positive results of the DNA's activity and the expertise it has gathered in the investigation and prosecution of specific offenses that define its competence, the office has often been requested to contribute to the more general strategic measures taken by the governing bodies at the national level. Thus, data resulting from the DNA's prosecution of cases and their respective adjudication by the courts have been periodically analysed not only from a statistical point of view but occasionally also from a criminological perspective, with the purpose of identifying patterns and typologies related to commission of specific PIF-related offenses. The competent administrative bodies are able to use such analyses to take the necessary administrative, preventive measures towards eliminating or limiting the opportunities for corruption or fraud.

One of the studies carried out by the DNA in 2019 examined the typologies of EU fraud in 238 cases that the office sent to trial and that were concluded in final court convictions from 2015 to 2018.<sup>3</sup> Obviously, there is an inherent limit to such an exercise, in the sense that it does not provide a full picture of the current trends in EU fraud, especially keeping in mind that the offenses that were the subject of the analysis had been committed a few years before 2015. The conclusions remain relevant, however, as experience has taught us that the *modi operandi* of the offenders do not change much rapidly.

In terms of methodology, the study consists of two parts. The first part provides a qualitative analysis of data gathered from the indictments issued by DNA prosecutors and the conviction decisions handed down by the courts. The second part contains descriptions of several cases that formed the basis of the analysis; the authors of the study considered these cases relevant in the context of the identified typologies. The study revealed that the most frequently found typology for EU fraud cases in which conviction decisions had been handed down during the period 2015-2018 concerned two specific areas.

The first and predominant area of fraud investigations pertained to **claims and payment of subsidies for agriculture**. The EU funds that were misappropriated in this context were mainly the Special Accession Programme for Agriculture and Rural Development (SAPARD) fund, the European Agricultural Guarantee Fund (EAGF), and the European Agricultural Fund for Rural Development (EAFRD), which dealt with modernisation of agricultural holdings, construction of micro-enterprises in rural areas, installation of young farmers, water supply systems, infrastructure development, etc. In addition, cases involved the granting of direct payments to farmers, impacting increased competitiveness of the agricultural and forestry sectors as well as the quality of life in the rural areas.

The second area of fraud investigations related to **the implementation of projects with non-reimbursable financing**; cases affected the PHARE programme,<sup>4</sup> the European Social Fund (ESF), and the European Regional Development Fund (ERDF). The fraud affected mainly the fields of professional training, road modernisation, construction/rehabilitation works, the extension and rehabilitation of sewerage and water systems, the promotion of cultural traditions, the reintegration of persons deprived of liberty, integration of the unemployed into the labour market, etc. Most of the defendants in these investigations and the ensuing court decisions involved natural or legal persons operating in the private sector. In some cases, public officials, i.e., civil servants from city halls or the Payment Agency in Agriculture or even mayors, were also charged and convicted for their participation in EU fraud.

The study analysed the main defrauding mechanisms and patterns characteristic of the above-mentioned, misappropriated EU funds. These patterns differ, depending on the specific procedure used to access the EU funds and subventions and to implement the projects.

The following describes the typologies of fraud related to the two aforementioned, basic categories, i.e., claims and payment of subsidies for agriculture (II.) and the implementation of projects with non-reimbursable financing (III.). For the purpose of exemplification, one of the above-mentioned case studies is subsequently summarised to illustrate the typologies (IV) before overall conclusions are drawn from the project (V.).

## II. Typologies of Fraud Related to Claims and Payment of Subsidies for Agriculture

Background: Defendants claimed agricultural subsidies under the pretence of holding a legal right over land lots. The DNA's investigations revealed that the patterns of offences either involved misleading the responsible public officials (1.) or were committed with the support/on the initiative of public officials (2.). The following section outlines the methods most frequently used to create said appearance of holding rights and to receive payment of subsidies.

### 1. Fraud committed by applicants using methods aimed to mislead the responsible public officials

The most common methods that were used by perpetrators to mislead public officials were the following:

- Forging lease contracts

Lease contracts were forged, signatures were counterfeited, and documents presented to city hall and the payment agency by the defendants, even though they did not have the right to use the specified plots of land. In other cases, the defendant obtained information about uncultivated plots of land and their owners and subsequently drafted and signed, by forging the name

of the owner, false lease contracts for these plots in favour of his/her family members. Later, the defendant used the contracts and certificates falsely attesting the quality of his/her family members as lessees in order to obtain the subvention.

- Forging the signature of members of the association of farmers
- Presenting false declarations on the fulfilment of eligibility conditions

In one case, the mayor, as a representative of the local council, presented incomplete declarations on the use of pastures belonging to the community when requesting the payment of subsidies for these lands. He neglected to state that the local council (the beneficiary of the subsidy) did not carry out its own agricultural activity and that the declared pastures were rented to animal breeders against a tax.

- Declaring larger plots of land than those actually owned in order to obtain larger subventions
- Requesting subventions for land sold before the payment request was submitted
- Requesting subventions in the name of persons who fulfilled the eligibility conditions

In another case, for instance, the beneficiary of the subventions did not fulfil the age conditions imposed to be able to access the funds and therefore falsified lease contracts and funding requests using the names of his daughter and of a friend, even though these persons' professions and lives had nothing to do with agriculture.

## 2. Offenses committed with the support/on the initiative of the responsible public officials

The public officials were either persons with functions in the local public administration (mayors, secretaries from city hall, etc.) or civil servants within the Agency for Payment and Intervention in Agriculture (APIA). The following fraud methods were identified:

- The responsible APIA civil servant used his/her function to help relatives or friends obtain illegal agricultural subventions.

In many cases, the offenders were civil servants in the APIA and accepted subvention applications, even though they knew that the applications contained false or incorrect information. In other cases, the civil servants accessed the Integrated Administration and Control System (IACS) database in order to identify land plots for which no subsidies had been requested and provided this data to friends/relatives who later used it to fill in and submit false applications in their own name. In one case, an APIA civil servant was found guilty of blocking the oversight of the procedure by failing to draw up a report for the second application check and thus preventing another civil servant from verifying the data entered into the IACS.

- The mayor or city hall representatives illegally approving documents submitted by the applicants for plots of land under lease contracts larger than their actual size
- The mayor or vice mayor falsely stating before an APIA official that city hall had leased the communal pastureland to the applicant, although neither a contract nor a decision by city hall in this respect existed in reality

### III. Typologies of Fraud Related to the Implementation of EU Funded Projects

DNA cases identified fraud in relation to EU projects in several fields, e.g.: young farmers support, construction/upgrading/rehabilitation/extension of farms, factories, tourist units, wastewater treatment plants, business centres, education, and vocational training, etc. Two major typologies of fraud have been encountered in these cases:

#### 1. Creating the appearance of fulfilling the eligibility conditions

Cases frequently involved offenders who falsely claimed that they fulfilled the eligibility conditions for support in the form of young farmers payment. The following fraud patterns in the applications were encountered:

- Falsely attesting that the applicant fulfils the eligibility conditions or using forged documents for this purpose

The applicant falsely claimed that he is the family member of a farmer or that he used to work in a farm for at least 12 months. In other cases, the offenders – veterinarians – issued false certificates and forms attesting the transfer of a number of animals belonging to the household of the person who wished to access the funds.

Qualification diplomas or certificates were also forged for use in an application for EU funds. The fulfilment of a number of administrative conditions by the company requesting the financing (number of employees, specific technical tools, lack of fiscal debt, etc.) were also falsely certified.

Documents (i.e., bank reports or bank account statements) were frequently falsified in order to cover the lack or insufficiency of the minimum co-financing assurance that the applicant has to provide according to the conditions of the project. In addition, the offenders counterfeited and presented false letters of bank guarantee in order to obtain advance payment. In one case, which concerned a hotel modernization project, the applicant falsified the document attesting the real estate title for the building by deleting the information that the hotel was under mortgage.

- Artificial division of the project and submission of several funding applications

In order to obtain grants higher than the legally defined financial threshold, the offenders used companies they controlled via family members and/or friends and artificially divided the business projects up among these companies; as a result, they submitted a grant application for each of them that was below the threshold imposed by the financing programme.

#### 2. Defrauding public procurement procedures

The analysed cases showed that manipulating various phases of the procurement procedure for EU funded projects played an important role in illegally obtaining EU or national funding. The most common patterns identified were the following:

- Simulating the procurement procedure for execution of the project's objectives in order for the contract to be awarded to a preferred company

Fictitious offers and letters of intent were included in the tender dossier, together with those of the preferred company.

- Creating preconditions to artificially increase the procurement price (a pattern that also avoids payment of intra-community VAT)

In one case, the beneficiary purchased equipment directly from the manufacturer, but the fiscal invoice falsely stated that the acquisition was made through an intermediary company, this intermediary allegedly being the regional dealer of the manufacturer. Furthermore, the beneficiary simulated a tender in which only the intermediary presented an offer and was then “selected.”

- Dissimulating conflicts of interest in the process of selecting offers
- Companies (participating in a public tender) falsifying documents or falsely stating they fulfil the qualification and selection conditions
- Simulating the purchase of goods, as provided in the contract, and submitting to the contracting authority fictitious supporting documents together with the payment request

In one case, the beneficiary paid the supplier a first instalment of money, received the equipment, and returned the equipment after the inspection by the contracting authority. The beneficiary did not pay the rest of the money to the supplier but instead falsified documents creating the appearance of having bought and received the goods. The beneficiary then presented the documents to the contracting authority together with the payment request.

- Simulating the carrying out of several project activities and their settlement based on false documents
- Falsifying documents in order to cover non-compliance with several contractual obligations (e.g., forging the reception report and the final report in a construction contract, lying about the completion date of works)
- Receiving payment for unexecuted or improperly executed works, based on supporting documents falsely certifying that the contractual conditions were respected
- Subcontracting in full the works to another company after the beneficiary company won the contract but never intended to execute it

## IV. Case study

To illustrate some of the typologies described by this analysis, the study included two case studies: one explaining fraud related to agricultural subsidies and the other explaining fraud related to EU funded projects. They were drawn from the DNA indictments that formed the basis of the study. For reasons of personal data protection, names and other identification data have been anonymized. One of these studies is described in the following.

Two businessmen, close friends A and B, set up a scheme to obtain EU funds for their companies through the National Plan for Rural Development (NPRD)<sup>5</sup> that exceeded the maximum legal financial thresholds. The NPRD provides that, as part of the measure “Modernisation of agricultural holdings,” the eligible value of a project in the livestock sector should be limited to €2,000,000, of which the share of non-reimbursable

support should be 40%, meaning €800,000. The same document also states that no sum be reimbursed to the beneficiaries if it is discovered that they artificially created the necessary conditions to access the funds.

The two businessmen, aiming to obtain double the maximum amount allowed, used two of the companies they each owned and controlled to artificially divide their business plans for the development of chicken farms. Being close friends, the defendants decided to use the same *modus operandi*, but they acted independently in their relations with the state authorities by means of companies, which each of them controlled. Each defendant presented two almost identical grant applications for two companies which he controlled, as if they were both seeking funding for two different projects; in reality, however, defendant A owned only one chicken farm and defendant B, in his turn, owned only one chicken farm. In fact, the business projects submitted were artificially divided, with a funding request being made for each of the four companies, in order to formally remain below the ceiling imposed by the NPRD.

In the case of defendant A, the evidence revealed that the investments were located on neighbouring lands, owned by A, which were protected by a common fence. The same employees worked for both of defendant A's companies and the alleged two farms had one single administrative building, one egg sorting conveyor belt, and shared the same water supply equipment. A very similar *modus operandi* was used by defendant B in relation to his two farms.

Both A and B requested non-reimbursable sums very close to the limit of €800,000 (€799,410, €799,071, etc.) for each of their two companies (four companies in total). In order to set these budgets, the defendants used fictitious offers from the same providers/manufacturers.

Moreover, together with the grant application, the defendants presented bank statements falsely attesting that each applicant possessed the co-financing sum required. In reality, one sum of money was transferred back and forth from one company's account to another to create the illusion of the required sum of money existing in each account.

After the grants were awarded, the defendants simulated the process of procuring equipment and commissioning the works according to the grant agreement in order to illegally maximise their profit. Regarding the equipment, they used fictitious offers and letters of intent and awarded the contracts to preferred companies (chosen by defendant B, both for projects operated by defendant A and for those operated by himself) at an inflated price. Among the two defendants, defendant B was the mastermind and the one gaining most of the profit. For instance, after defendant A signed the contract to purchase the equipment, the winning company transferred 30% of the contract's value to defendant B, via a company controlled by him, allegedly as the price for equipment assembly but, in reality, representing repayment of a loan previously granted to this company by defendant B. The works contract, also awarded to a company chosen by defendant B, was successively subcontracted to other companies controlled by the same defendant (B). The sum paid to the companies that effectively executed the works was 25 times lower than the sum provided for in the initial, signed contract. The difference was returned to defendant B in the form of fictitious payments for fictitious contracts.

The fraudulent activity of the defendants was facilitated by two civil servants from two agencies subordinate to the Ministry of Agriculture and responsible for the monitoring and control of the use of such funds. These officials identified both irregularities and commission of fraud but did not mention them in their reports. Moreover, they even confirmed that there was no evidence of artificial conditions having been created. They even offered advice to the defendants on how to cover up the illegalities they observed and alerted them with regard to imminent control actions from higher authorities. In exchange for their support, the civil servants received payoffs in the form of accommodation in touristic areas and food.



The defendants A and B were both indicted for the use of false, incorrect, and incomplete documents, which resulted in the misappropriation of EU funds, and for active bribery. The four companies involved were indicted for use of false, incorrect, and incomplete documents, which resulted in the misappropriation of EU funds.<sup>6</sup> The two civil servants were indicted for complicity in the use of false, incorrect, and incomplete documents, which resulted in the misappropriation of EU funds, and for passive bribery. Defendant A and the two companies controlled by him admitted guilt<sup>7</sup> and were therefore tried and convicted in expedited proceedings. The proceedings continue for defendant B and the companies controlled by him. They were convicted in the first instance, and the case is currently under appeal.

## V. Conclusions

At the time it was drafted, the study on fraud typologies conducted by the DNA was meant to be a practical instrument not only for Romanian prosecutors and investigators but also (and predominantly) for the public administration and the government, in order for them to better understand the phenomenon of EU fraud and the factors contributing to this type of criminality. Public/government officials were enabled to calibrate legal and organisational measures to prevent and tackle this criminal phenomenon. The study examined the offences initially provided by the PIF Convention as transposed into Romanian law, i.e., the chapter of Law no. 78/2000 as it was in force in 2018. Therefore, the scope of the study did not cover other relevant criminal offenses related to EU fraud that may complete the picture, e.g., active/passive corruption and money laundering. The study also does not include offences against the common VAT system, as provided by Directive (EU) 2017/1371, which had not yet been implemented into Romanian law at the time. To complete the picture, a follow-up to this study could be carried out in the future, but this would require a joint effort by the EPPO and the DNA.

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1. 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, O.J. C 316, 27.11.1995, 49–57.↵
  2. At that time, the name of the office was the National Anticorruption Prosecution Office. However, after several Constitutional Court decisions and amendments of its statute, the name was changed to National Anticorruption Directorate (DNA).↵
  3. The analysis can be found in Romanian on the website of the DNA at: <<http://www.pna.ro/obiect2.jsp?id=420>>, accessed 29 September 2021.↵
  4. "PHARE" stands for "Poland and Hungary: Assistance for Restructuring their Economies"; it is the main pre-accession financing instrument of the EU that assists the applicant countries of Central and Eastern Europe. Initially directed to Poland and Hungary, the instrument was extended and covered the Central and Eastern European countries that acceded the EU in 2004 and 2007, including Romania.↵
  5. NPRD is a document issued by the Romanian government and approved by the Decision of the European Commission no. C(2008) 3831 of 16 July 2008.↵
  6. According to the Romanian criminal law, legal persons can be held criminally liable for any offense if committed in the carrying out of the object of activity of the legal person, in its interest or on its behalf.↵
  7. According to Romanian law, the subjective element of the legal person to engage its criminal liability is required. According to the Romanian Criminal Procedure Code, the defendant may admit guilt and request the trial to be concluded (based only on the evidence gathered during the criminal investigation) at the first hearing before the court and in an expedited procedure. In this case, the court will rule a penalty reduced with a third. This procedure can apply both to natural and legal persons.↵
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