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Thor 25.08.2014
A 100/14/2014



EUROPEAN ANTI-FRAUD OFFICE

The Director-General

MINISTERUL PUBLIC
PARCHETUL DE PE LĂNGĂ ÎNALȚA CURTE
DE CASĂȚIE ȘI JUSTIȚIE
DIRECȚIA NAȚIONALĂ ANTICORUPȚIE
SECTIA II
Nr. 85/P/2011
20.11 luna 09 Ziua 04

ginoi. N° 23120

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National Anticorruption
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MINISTERUL PUBLIC
PARCHETUL DE PE LĂNGĂ ÎNALȚA CURTE
DE CASĂȚIE ȘI JUSTIȚIE
DIRECȚIA NAȚIONALĂ ANTICORUPȚIE
CABINET PROSECUTOR ȘEF
Nr. 22711/C/2014
2014 luna 9 ziua 02

02.09.2014

Brussels
DESQUADA/ra,
OLAF.A.4(S)(2014)21733

La des. pleu

Subject: **Transmission of Recommendation and Final Report**

OF No **OF/2010/0068/A4** (Please include this number in all correspondence)

Dear Mrs KÖVESI,

This is to inform you that OLAF has completed its investigation regarding irregularities and potential criminal offences detected in relation to the implementation of Grant Contract RO 0007.02.02.01.2195 – "Developing and Marketing of HIS software (Hospital Informational System) of Medical management (hospital, polyclinic, laboratory etc.), development and selling of three new softwares" signed on 21 November 2002 (EU funds granted: EUR 50 000).

Pursuant to Article 11 of Regulation (EU, Euratom) No 883/2013, I transmit to you a Recommendation for action to be taken following this investigation together with the Final Report. OLAF investigation is related to the on-going Romanian criminal investigation 85/P/2011 directed by Mrs MORARU, Public Prosecutor at the *Directia Nationala Anticoruptie* (DNA).

Please be informed that OLAF Recommendations concerning this investigation are also being sent to the following EU institution:

The Directorate General Enlargement (DG ELARG) of the European Commission.

I take this opportunity to thank you for your cooperation in this matter.

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

Yours sincerely,

Giovanni KESSLER

Encl.: Recommendation and Final Report

Statement concerning the transfer of personal data

The transfer of personal data to you falls within Article 8 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 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.



EUROPEAN ANTI-FRAUD OFFICE

The Director-General

Brussels
DESQUADA/ra,
OLAF.A.4(S)(2014)21724
OLAF Investigations

**RECOMMENDATION
FOR ACTION TO BE TAKEN FOLLOWING AN OLAF
INVESTIGATION**

OF No **OF/2010/0068/A4**

On 24/01/2012 the above-mentioned investigation regarding irregularities and potential criminal offences detected in relation to the implementation of Grant Contract RO 0007.02.02.01.2195 - "Developing and Marketing of HIS software (Hospital Informational System) of Medical management (hospital, polyclinic, laboratory etc.), development and selling of three new softwares" signed on 21 November 2002 (EU funds granted: EUR 50 000) was opened.

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 competent Romanian authorities (The Romanian National Anticorruption Directorate) take the following action:

- To take into consideration the results of OLAF's investigation in the on-going judicial proceedings in relation to the matters as set out in the attached OLAF Final Report.
- To cooperate closely with the European Commission and undertake all necessary administrative actions so that effective recovery of the funds can be ensured.

The conclusions of the investigation activities indicate that there are grounds for believing that criminal offences affecting the financial or other interests of the European Union have been committed.

In the course of the OLAF investigation, the following irregularities and possible criminal offences committed by the beneficiary (Romanian Software Company – RSC) were detected:

Possible piracy of software:

OLAF considers that there is serious indication that the softwares HIPOCRATE AMBULANTA, CARE.NET and ARES.NET delivered by RSC within the Operation funded by the awarded grant were not autonomously developed by RSC and are likely to stem from piracy of OMNIS GROUP's ISIS.NET software.

As the facts could fall within the scope of application of the Romanian criminal law and Romanian law No 8/1996 protecting copyrights and related rights, OLAF considers that further judicial actions in Romania would be necessary to confirm this established serious presumption.

Should the results of the on-going investigation in Romania corroborate this presumption, the presentation of the operation by the beneficiary in Annex I of the Grant contract would not reflect the reality and would constitute false statements from the beneficiary in contravention to the contractual provisions (Article 11 (3) of Annex II of the Grant contract). In this case, in accordance with Article 18 (2) of the Annex II of the Grant contract, the Contracting authority may request full or partial repayment of amounts paid to the beneficiary.

Ineligibility of RSC to receive the grant:

The facts listed in Section 2.2.2 of the enclosed report constitute a body of evidence that the Romanian company RSC was created, used and controlled by the managers/beneficial owners of MEDIST SA to act as an intermediary company to apply for the grant on behalf of and in the interest of MEDIST SA and its managers/beneficial owners.

In this context and taking into consideration that, in accordance with the eligibility criteria laid down in Section 2.1.1 (j) of call for proposals published in May 2001, an applicant for the grant cannot act as an "intermediary company", OLAF considers that RSC was not eligible to receive this grant.

Ineligible costs:

In accordance with the facts listed in Section 2.2.3 of the enclosed report, OLAF considers that certain managers/shareholders of RSC acted in a position of conflict of interest in contravention to Article 4 of Annex II of the Grant Contract.

In this context, OLAF considers that in line with Article 1 (2), Article 11 (3) and Article 18 (2) of Annex II of the Grant Contract, the corresponding costs (EUR 8 486) should be considered as ineligible and repaid to the Contracting authority.

Monitoring of implementation of Recommendation

In accordance to Article 11 paragraph 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.

The investigator in charge of monitoring the implementation of this Recommendation is Mr Damien DESQUIENS, damien.desquiens@ec.europa.eu (OLAF, Unit A4). If you have any queries, please do not hesitate to contact the investigator who will provide you with all necessary assistance.

Please be informed that OLAF Recommendations concerning this investigation are also being sent to the following EU institution, body, office or agency:

The Directorate General Enlargement (DG ELARG) of the European Commission.

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



Giovanni KESSLER

Encl.: Final Report and 29 annexes

Statement concerning the transfer of personal data

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