



Distinguishing criteria between petty and high-ranking corruption: Preliminary results II.

21st June 2021



"Corruption risk, risk of corruption? Distinguishing criteria between petty and high-ranking corruption' (101014783 — CRITCOR) project was funded by the European Union's HERCULE III programme."



Preliminary results of OKRI's researches II.:

Budget fraud on financial support from the European Union's resources

Krisztina Farkas

Assigned prosecutor

National Institute of Criminology



Overview

- 1) Basics of criminal protection of the financial interest of the EU
- 2) Basics of the Hungarian Regulation
- 3) Research 2018 conducted by National Institute of Criminology (OKRI)
- 4) Research 2021-2022 being conducted by OKRI – preliminary results

Basics of criminal law protection of the financial interest of the EU



- EU has own budget independent from MSs of approx. 150 billion euro per year
- Damages caused by different criminal behaviour approx. 10-20%
- The financial interests of the EU as a supranational legal interest
- Wide variations among the MSs (criminal offences, sanctions)
- Not equivalently protected across the EU as regards criminal law and the deterrent effect of the Union's instrument is not sufficient (European Commission)



Basics of criminal law protection of the financial interest of the EU

- Founding Treaties of the European Communities – did not contain criminal law protection
- In the 70s new financial factors appeared
- Maastricht Treaty signed in 1992 – fight against fraud became primary law of the EU
- Convention on the protection of the European Communities' financial interests adopted in 26 July 1995 - PIF Convention
- Three additional Protocols to the PIF Convention
- Lisbon Treaty signed in 2007 – secondary sources (regulations, directives) (art. 83. (1) (2) TFEU; art. 325 TFEU, art. 86 TFEU EPPO)
- (EU) Directive 2017/1731 on the fight against fraud to the Union's financial interests by means of criminal law
- (EU) Regulation 2017/1939 on implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')
- Annual PIF Reports on the protection of the EU's financial interests

Basics of criminal law protection of the financial interest of the EU - Budget of the EU



Revenues

- Traditional own resources (customs duties, agricultural duties)
- GNI based contributions
- **VAT based contributions**
- Other revenue
- Own resources

Expenditures

For the period 2014–2020

- **Structural actions** [(European Structural and Investment Funds (ESIF) European Regional Development Fund (ERDF) (5 funds)]
- **Common agricultural policy, and rural development programmes** for countries preparing to join the EU (2 funds)
- Direct expenditure
- External aid



Basics of criminal law protection of the financial interest of the EU - (EU) Directive 2017/1731

- Directive **defines the criminal offences** of fraud affecting the Union's financial interests and other criminal offences affecting financial interests (active and passive corruption, money laundering and misappropriation), **provisions on criminal sanctions**
- **'Union's financial interests'** means all revenues, expenditure and assets covered by, acquired through, or due to:
 - **the Union budget;**
 - the budgets of the Union institutions, bodies, offices and agencies;
 - VAT own resources only in cases of **serious offences** against the common VAT system (involved at least 2 MSs and amount to a total damage of at least EUR 10 000 000).



Basics of Hungarian regulation

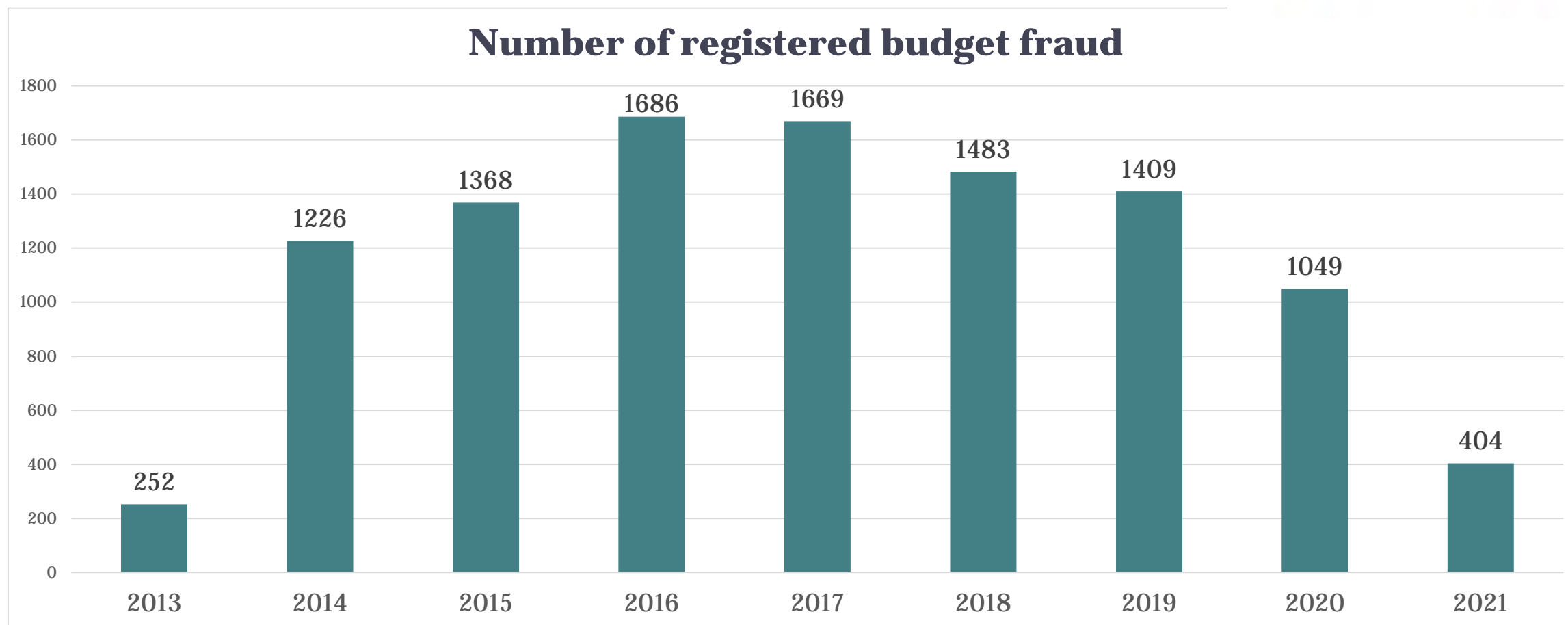
- From 1 April 2002 until 1 January 2012:
 - Protection of EU budget: „**Violation of the financial interest of the European Communities**” art. 314 **Criminal Code (CC)**
 - Protection of Hungarian budget-related 6 crimes e.g. tax-fraud (art. 310. , 310/A, art.311, art. 312, art.288, art.)
- From 1 January 2012 **Budget fraud** art 310, from 1 July 2013 budget fraud **art. 396 CC**
 - Budget means [(art 396 (9) CC):
 - sub-system of the central budget;
 - budget and/or funds managed by or on behalf of international organizations; and
 - budget and/or funds managed by or on behalf of the **European Union**
 - **Both the revenue and expenditure side of the EU budget are covered**
 - Art 396 CC covers three different types of crime
 - Material delict – punishable if it causes **financial loss** to one or more budgets (PIF Directive)



Researches

- **2018** – „The typical difficulties and practical methods of detecting and proving of budget fraud on financial support from the European Union's resources”
 - Budget fraud (Section 396 Criminal Code 2002-2017)
 - document based research (processing 200 criminal files)
- **2021-2022** CRITCOR project – „Criminal law protection of financial interest of the European Union”
 - Follow-up Research of 2018 study
 - document based research (processing 92 criminal files)
 - Budget fraud included in the whole system – which violates the EU financial interest

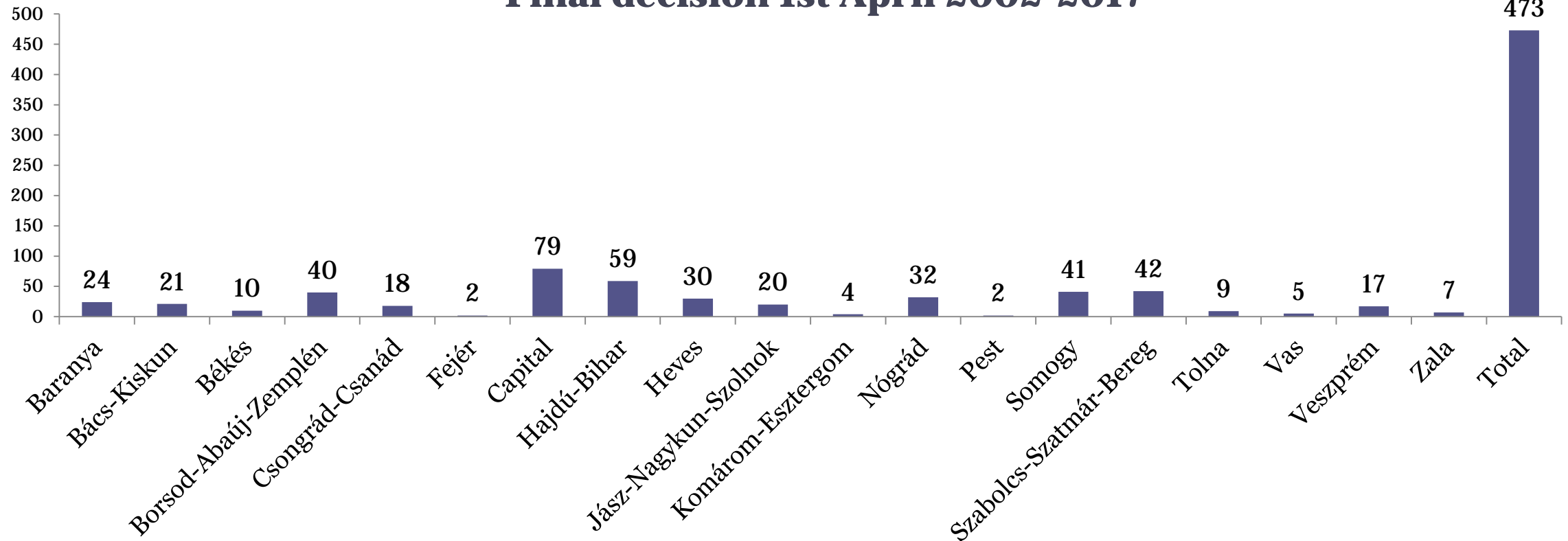
Budget fraud (section 396 Criminal Code)



Budget fraud (Section 396 Criminal Code) on financial support from the EU's resources



Final decision 1st April 2002-2017



Research conducted in 2018

- The typical difficulties and practical methods of detecting and proving of budget fraud on financial support from the European Union's resources
- It covered the expenditure side of the EU' budget
- In the research period - between 2002-2017
- 473 cases of this type of crime were committed against the European Union's budget
- Based on statistical sampling 200 cases were studied
- Examined the EU's system of supports
- As a result in addition to the general characteristics of the crime and perpetrator, the identification of typical difficulties, problems were revealed

Research conducted in 2018 - main issues



- Statistical data collection proved to be difficult (note code by chief prosecution offices)
- Who initiates the procedure
- Duration of the procedure (timeliness of criminal proceedings)
- Finale decisions of the investigating authorities
- Finale decisions of the prosecution offices
- The characteristics from the perpetrator's side
- Sentencing practice
- Issues of cummulation
- Financial loss caused by the crime
- Data/ characteristics of subject matters: Union's funds, subjects of grants, composition of supports (the funds are managed jointly by the EU and authorities in EU countries. Fraud investigation are initiated by national authorities)

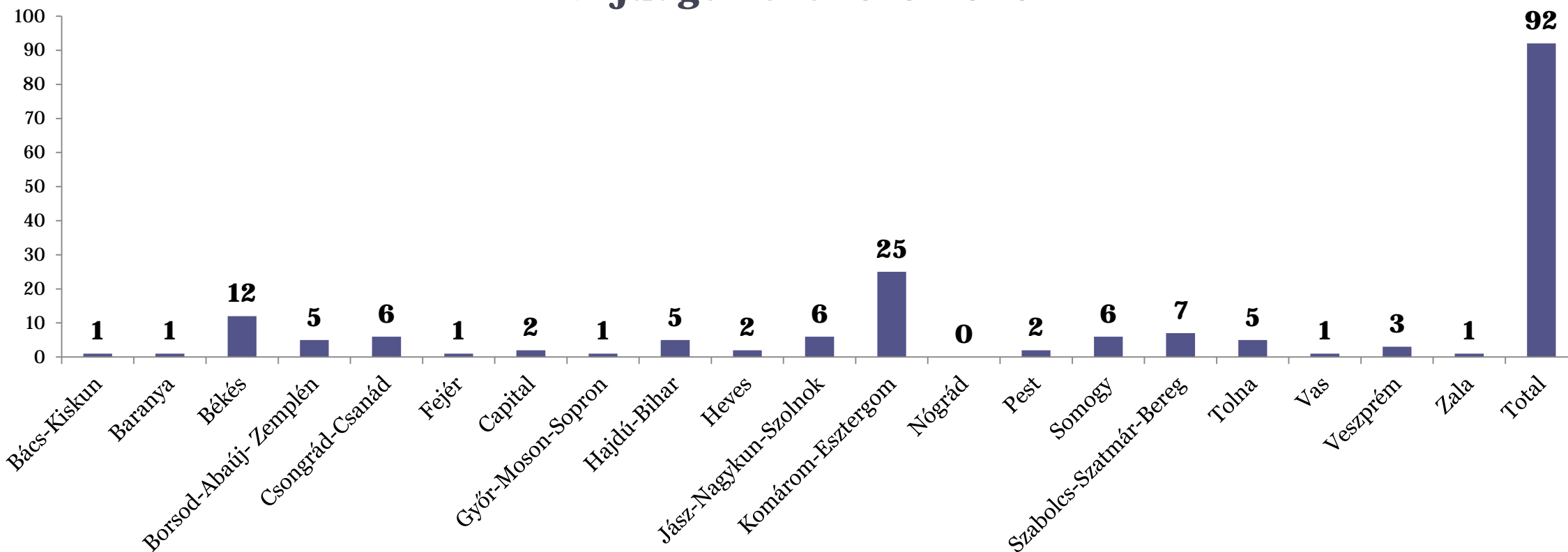
Circular of Prosecutor General 5/2014. (XI.30.) on criminal proceedings against the financial interests of the European Communities



- In measures in merits applied by public prosecutor has to be included: the Union's fund concern, the sum of Community support, the system of support (direct system or shared management), authority responsible for payment, national co- financing source and amount)
- OLAF compliance with contact legal norms
- Examination whether the perpetrator was enriched by the commission of the crime – the use of coercive measures to secure confiscation
- Examination whether there are criminal law measures applicable to the legal person are in cummulation with criminal offences against public confidence, corruption and money laundering
- up-to-date and immediately available statistics have to be available

Budget fraud (Section 396 Criminal Code) on financial support from the EU's resources

Final judgement 2018-2020





Research being conducted in 2021-2022

- Budget fraud (Section 396 Criminal Code) on financial support from the EU's resources
- Cases resulted in final judgement 2018-2020, document-based research (92 cases)
- 1.phase requesting a list of cases
- 2.phase requesting files
- 3.phase examining files
- 4.phase art. 396 CC subject matter VAT at least 2 MSs and 10 M euro; other PIF crimes
- Round table discussion with professionals



Research conducting in 2021-2022 - some experiences

- Extremely complex, time consuming procedures
- There is a long time between the time of commission the offense and the initiation of the proceedings
- The project managing authority does not find the project irregular during the investigation, mainly uncover administrative deficiencies
- Procurement of large and complex grant materials
- Hearing a lot of witnesses
- Identification of persons involved as subcontractors in each projects, obtaining necessary documents
- International Criminal Cooperation
- Proof of intention
- Prolongation of criminal proceedings



Thank you for your kind attention!

Krisztina Farkas

Phone number: +36/1- 3567566/136

E-mail: farkas@okri.hu