

International Conference

Together we are stronger?

Harmonising the fight against fraud and corruption in Europe

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Presentation

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OLAF: The EU gatekeeper in protecting the Community's financial interests

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1. Introduction

I would like to thank the organisers of this conference for giving me the opportunity to present OLAF as the EU gatekeeper in protecting the Community's financial interests.

2. OLAF's mission and role

OLAF's daily work is fighting fraud or other forms of economic crime, in the specific case, but only if done to the detriment of what is called "the financial interests of the European Union", which are basically all matters concerning the EU budget and its property.

Based on the EC-Treaty Article 280 the European Institutions and the Member States have a duty to guarantee, with regard to the taxpayer, the best use of their money and in particular to fight as effectively as possible against fraud or other illegal activities.

In 1999 the Community Institutions established the European Anti-Fraud Office (known by its French acronym - OLAF) to concentrate on activities concerning the detection and monitoring of fraud in the customs field, misappropriation of subsidies and tax evasion, insofar as the Community budget is affected by it, as well as the fight against corruption and any other illegal activity, including money-laundering harmful to the financial interests of the EU.

The specificity of OLAF is to be able to operate on two layers:

Firstly, perform independently "European" administrative investigations that may lead to "national" criminal cases. Within these activities, OLAF also assists national investigations, regardless of which character, in fighting fraud and corruption concerning the financial interests.

Secondly, as a Commission service OLAF has the role to contribute to Community policies, again, insofar as they concern the fight against economic crime affecting the EU financial interests. That covers specifically fraud and corruption prevention.

The ultimate responsibility for the implementation of the budget lies with the European Commission. In practice, all the resources and the lion's share of the EU expenditure (some 76 %) is spent under what is known as "shared management". Under these arrangements, it is the authorities in the Member States, rather than the Commission that manage the expenditure. Consequently, as OLAF does not have independent powers of criminal investigation, it is dependent on good cooperation with the investigative authorities of the Member States.

It is evident that the EU budget serves to underpin EU policies. Decisions on customs duties and on funds to be disbursed influence the economic activities. Illegal drawing from these funds or avoiding paying them distorts the ultimate economic aim set by the underlying policies. Corruption within the Institutions undermines the citizens' trust into the Institutions.

OLAF is called upon to address all these aspects and ensure smooth co-operation with the Member States' national authorities responsible for fighting economic crime, but also those of third countries or of international organisations, with whom the EU co-operate.

3. OLAF's main competencies

OLAF conducts in full independence, internal and external administrative investigations as provided for in Articles 3 and 4 of Regulation (EC) No 1073/99¹. It carries out all the powers of investigation conferred on the Commission by Community legislation and the agreements in force with third countries, with a view of reinforcing the fight against fraud, corruption and any other illegal activity affecting the financial interests of the European Community.

Investigations

For its investigative work, OLAF enjoys independence vested in the director-general. The implementation of OLAF's investigative functions (internal and external investigations) is conducted by its Director General. To consolidate this independence, the Office is subject to regular control of its investigative functions by a Supervisory Committee, composed of independent experts.

OLAF is also subject to judicial control by the Court of Justice of the European Communities, since its investigative procedures are subject to Community law, thus guaranteeing an independent judicial control of OLAF's investigative activities.

External investigations

OLAF may perform so-called external investigations, that are investigations outside of the EU institutions, especially "on the spot" checks and inspections carried out in the Member States.

Internal investigations

Experience shows that no country or institution in the world is safe from cases of corruption or breaches of their responsibilities by their officials. To this end, OLAF can carry out administrative investigations inside the institutions and the bodies and organs of the Community. It is also responsible for detecting serious facts, linked with the performance of professional activities, which might lead to a criminal prosecution of EU staff.

Coordination

In order to coordinate the action of the Member States in their fight against fraud detrimental to the interests of the Community, OLAF provides them with the support of the Commission, aimed at organising close and regular cooperation between the competent national authorities.

¹ OJ L 136, 31.5.1999

Assistance

Not strictly an investigative task, but closely related to it, OLAF assists national and international actors to help them to live up to their responsibilities to fight (also indirectly) fraud and illegal activities' to the detriment of the financial interests.

Experience during the year has shown that working closely with judicial authorities and the investigative authorities in specific cases produces good results and ensures a coherent approach leading to prosecutions.

4. OLAF's contribution to the fight against fraud and corruption

OLAF, as a Commission service, contributes to the planning and the development of prevention and anti-fraud measures and policies, but also in negotiating agreements to reinforce the EU's capacity to fight fraud and other illegal activities affecting the financial interests outside the EU.

As part of its contribution to an anti-corruption working methodology, OLAF advises European Community institutions and bodies on the systemic lessons drawn from its investigations.

Fraud proofing

The support OLAF gives is, for instance, to propose better ways of administering the EU budget by checking whether new major draft legislation or standard contracts initiated and used by the European Commission are fraud-proof.

Moreover, lessons learnt are identified from the results of investigative activities and intelligence analysis and communicated to the appropriate authorities. OLAF therefore analyses its investigative activities in a structured and multidisciplinary manner and includes information resulting from internal and external investigations, and other operational activities carried out by the office.

OLAF also supports departments implementing Community policies in their efforts to protect the Communities' financial interests and issues recommendations for ensuring the highest possible security against fraud, corruption, and irregularities.

Hercule

Furthermore OLAF manages the European Community anti-fraud programme "HERCULE" to fund research, training and technical assistance in the field of anti-fraud and anti-corruption (98 million € over 2007-2013). This includes the purchase of special equipment for combating fraud and grants to national departments or other public agencies so that they can combat fraud, including cigarette smuggling and counterfeiting themselves. Technical assistance also involves the organisation of seminars for officials from the national departments concerned. Procurement can be organised for the purchase of tools and technical and IT services to analyse the origin of cigarettes, and exchanges of relevant information in this area.

Notification of irregularities and blacklisting

In the past, the idea to fight fraud led to the introduction of a notification system for national administrations of irregularities with a view to prevent similar attacks on the budget over the EU. A first attempt to introduce EU wide black-listing is based on penal judgements in the public procurement field and an efficient administration (e.g. better functioning of accounting and reporting systems).

5. Legislative instruments and networks at EU level

As this conference is devoted to the fight against fraud and corruption in Europe I will first point out the achievements of the EU in this area by describing the legislative instruments to fight fraud and corruption, the plan to establish a European Anti-Corruption network and the already existing cooperation within the OLAF Anti-Fraud Communicators' Network.

5.1 Legislative instruments

The following legislative instruments were developed by the EU to fight fraud and corruption. Not all of them have been so far adopted by the Member States but we should work hard at their effective application:

- **Convention on the Fight against Corruption involving officials of the European Communities or officials of Member States of the European Union²**, which made active and passive corruption of officials punishable offences, even where financial damage to the Union is not affected. It covers the criminal liability for heads of businesses and contains provisions on jurisdiction, extradition and international cooperation.
- **Protocol³ to the Convention on the Protection of the European Communities' Financial Interests (PIF)⁴**, which criminalises both active and passive corruption of national and Community officials, where such corruption damages or is likely to damage the financial interests of the Union.
- **Second protocol to the PIF Convention⁵**, which criminalises money laundering of proceeds generated also by corruption and introduced liability to legal persons in cases of fraud, active corruption and money laundering, and providing for the possibility of confiscation of these proceeds or the corresponding property.

The implementation of the Convention on the Protection of the European Communities' financial interests and its protocols is currently reviewed in a second report from the Commission⁶. This report assesses the national implementing measures in the Member States which have ratified the PFI instruments and urges

² OJ 97/C 195/01 25.6.97

³ OJ 96/C 313/01 23.10.96

⁴ OJ 95/C 316/03 27.11.95

⁵ OJ 97/C 221/02 19.7.97

⁶ COM(2008) 77 final of 14.2.08

those Member States which still have not done so⁷ to ratify all the PFI instruments without delay.

These Member States will be addressed by the Commission to state their positions on application of provisions in the PFI instruments. Based on these positions, the Commission will consider proceedings under Article 8 of the PFI convention.

5.2 Project of a European Anti-Corruption network

In July 2007 the Council of the European Union submitted to the EP a proposal to set up a contact-point network against corruption. This network shall improve cooperation between authorities and agencies of the Member States of the European Union to prevent and combat corruption by meeting at least once the year and sharing good-practices. The European Commission, Europol and Eurojust shall be part of this network that will have the tasks to constitute a forum for the exchange throughout the EU of information on effective measures and experience in the prevention and combating of corruption.

Currently, the EP is preparing a report on the proposal. The main concerns of the Parliament as well as of OLAF include the following:

- the Commission (OLAF) should become a full member of the network on the same footing as the MS authorities since its scope of activities is very similar;
- the financing of the network should be from the EU budget or at least open to any source. There are many members of the network, which lack the resources to participate in the network if not supported from outside sources;

OLAF is not of the opinion that the network should be chaired by the Presidency, as proposed by the Parliament rapporteur. It is an expert group where the contribution of individual members varies substantially and this arrangement could paralyze its activities.

The adoption of the EP Report and consequently the final adoption by the Council cannot be foreseen at this stage, unfortunately.

5.3 OLAF Anti-Fraud Communicators' Network (OAFCN)

Another important and already existing network is the OLAF Anti-Fraud Communicators' Network (OAFCN). The idea behind is to prevent fraud and corruption by disseminating information on OLAF's tasks and work. To this end, this network brings together the spokespersons responsible for external communications in national police, prosecution and custom offices.

6. Risks for the EU financial interests

Since this conference has the title "Harmonising the fight against fraud and corruption in Europe" I would like to point out what in OLAF's view could be improved to combat

⁷ These are Italy (for the second protocol), the Czech Republic, Hungary, Malta, Poland and Estonia

fraud and corruption effectively. Therefore I will first briefly describe the risks for the EU financial interests and then focus on the necessary improvements in the fight against fraud and corruption in Europe.

The specific risks for the EU financial interests are:

6.1 The diversity of the different penal and administrative legal systems that apply due to the differences between the Member States

Particularly, fraud in the areas of cigarettes, alcohol and VAT has shown no signs of abating at all, although the methods and locations of the fraud continually change and develop, often in response to successful actions taken by the specialist services of the Member States, acceding, candidate and third countries in co-operation with OLAF. The fraud activities remain interlinked: cigarette and VAT fraud is carried out by the same organisations, and both are a means to launder the proceeds of these and other illegal activities.

Mutual assistance vital to fight and prevent cross border economic criminality must be made as practical as possible and not fall short of enormous efforts of understanding each others' systems.

6.2 The information flow stopping at the borders of Member States

OLAF relies on the assistance of the Member States authorities to get notified about irregularities. Moreover, OLAF serves as a platform for the exchange of data in the customs area via the databases Customs Information System (CIS) and the European Customs File Identification Database (FIDE) but relevant data concerning fraud and corruption is currently not sufficiently exchanged between the Member States.

6.3 Overloaded criminal justice systems

It is known that national criminal justice systems, including the advancing role of prosecutors, are inefficient and overloaded with cases. One of the possible ways chosen by some Member States to address the overburdening of justice systems is that material law may be decriminalised so that only the more complex cases are to be dealt with by prosecution services or/and discretion is granted to authorities to deal with criminal offences, due to the needed anticipatory value judgment before settling economic crimes.

6.4 Defrauding public monies

There is an on-going trend of organised crime towards defrauding public funds. That trend may in the future even be reinforced by lacking structures to counter this trend. Prosecution of fraud and judicial follow-up risks not to be ensured throughout Europe, thereby creating inequalities between Member States, where those providing for less efficient prosecution may attract criminal networks assaulting the European financial

interests. This development is closely linked to the existing limits of territoriality and sovereignty in legal terms.

7. Necessary improvements in the fight against fraud and corruption in Europe

7.1 Dealing with the diversity of the different penal and administrative legal systems

This is where EU policies kick in, such as the one on better co-operation between national administrations in the customs and taxation field and those linked to fighting money-laundering. Also policies on fighting corruption, procurement and administering subventions at national and at European level help to overcome the national diversities and ensure better management of EU funds. OLAF is contributing to these policies in the limit of its mandate.

7.2 Dealing with the information flow stopping at the borders of Member States

The Customs Information System (CIS) and the European Customs File Identification Database (FIDE) are already good examples of solutions to make more data and cases available to customs investigations services. This could be extended to other areas of fraud and corruption.

7.3 Dealing with overloaded criminal justice systems

The overloaded system can partially be fought via reducing criminalisation and introducing other dissuasive methods, which in some cases can be administrative fines (e.g. experimented with some success in the agricultural sector in the EU). Administrative sanctions, fines but also debarment for example, showed to be very effective tools in some international organizations, which do not have the tools of criminal law.

There are ideas to extend such fines also to other policies managed by the Commission (e.g. in the external aid sector). Since such fines can be handled more easily, they help to focus resources on serious criminality. However, administrative sanctions alone do not work, if not underpinned by a working administration. The Commission, also with a strong support from OLAF, is currently working on the improvement of its sanction mechanisms.

7.4 Fighting the trend to defraud public monies through prevention

The biggest challenge seems to be to avoid incentives to defraud in the first place, that is to shape a policy in a way that economic incentives, contained in public funds, such as reduced taxes or subventions, make economic sense enough so as not to contain the “temptation” to abuse them. This would require an overview of all policies and their impact, yet, seems to be worthwhile to be started steadily.

OLAF believes the trend to defraud public monies may be fought with a better way of administering public monies. Public authorities still lack systems similar to private enterprises to become aware of abused funds. This is a long term project: It covers improving administrative capabilities, ethics of public administrators, the regulatory framework and better understanding of the economics behind the fraud. It is the incentives that must be reduced, e.g. by linking subsidies to effective economic actions and not to declared intentions (e.g. in the agricultural sector or in the customs), by simplifying of the procedures and by limiting the discretion of the public officials.

8. Conclusions

OLAF aims at helping other services of the Commission to establish a more complete and multidisciplinary framework, e.g. by requiring Member States and other services of the Commission to cooperate and assist one another and exchange information to allow swift investigations and appropriate action in any area. A better exchange of information would allow OLAF to assist better the Member States for cases of cross border fraud such as VAT "carousel" fraud.

The risks posed by corruption and fraud are not overstated. The success of an effective combat against fraud and corruption depends on whether we succeed in an enhanced cooperation and harmonisation of the fight by setting common standards for collection of evidence, by expanding the access and volume of case relevant data and by implementing all remaining legal instruments.