Information Sharing between OLAF and National Judicial Authorities

The Advantages of a Supranational Structure and the Legislative Limitations Specific to a European Hybrid Body

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Article

ABSTRACT

The article analyses OLAF's position as a supranational EU body in relation to national judicial authorities, focusing on the sharing of information in fraud and corruption investigations affecting the EU's financial interests. It outlines the advantages of OLAF's supranational status—such as recognised competence, speed, and established networks—while detailing legislative limitations stemming from its hybrid nature and reliance on Member States to act on its judicial recommendations. The author examines operational practices, data protection constraints, cooperation with third countries, and the interplay between formal legal frameworks and informal working relationships, concluding with lessons for the future European Public Prosecutor's Office.

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When dealing with the question of the sharing of information by OLAF, such a reflection must necessarily address the status of OLAF, not only taken individually but also in the more general context of the array of (present and future) European institutions. From its position in the European legal order, as a supranational body responsible for "the fight against fraud, corruption and any other illegal activity adversely affecting the Community's financial interests,"[1] OLAF is empowered to request the assistance of the competent national administrative authorities of the Member States operating in the same area, which are under an obligation to provide such assistance[2].

It is an entirely different situation when it comes to national judicial authorities,[3] in relation to which OLAF positions itself as a parallel structure, both in terms of status and in terms of competence. This might appear to be a paradoxical state of facts, given that an important part of the outcome of OLAF's activity are the judicial recommendations[4] addressed to the national prosecution authorities in the Member States, asking them to consider judicial actions.[5] From that perspective, the relationship between OLAF and the national judicial authorities is the very mirror of the duality of the European Union-Member States relationship, with its timid European effusions alternating with national reticence.

In this ambivalent reality, the advantages inherent to OLAF as a supranational structure (I) are incompletely matched by the legislative limitations defining OLAF as a European hybrid body (II).

I. The Advantages of OLAF as a Supranational Structure

Although the sharing of information is the key element that allows a supranational body like OLAF to fulfil its duties, it may be observed that, surprisingly, the issue of "exchange of information" is specifically mentioned as such in a very limited manner in the OLAF Regulation.[6]

Summary references are made to the necessity of putting into place "effective cooperation and exchange of information" with the anti-fraud coordination services in the Member States[7] and to administrative arrangements concluded by OLAF, having the purpose of facilitating the exchange of information[8] with external partners, including third countries and international organisations.

An entire article is then dedicated to the "exchange of information between the Office and the competent authorities of the Member States," but its scope is limited to specific investigative needs not covered by the other articles of the regulation.[9]

To fulfil its primary task, which is the protection of the financial interests of the European Union, OLAF "investigat[es] (or work[s] with authorities investigating) allegations of fraud or irregularities to the detriment of the EU budget or which impact on the good reputation of EU institutions."[10] This aspect of OLAF "working with authorities investigating" illustrates precisely OLAF's position within the legal order of the European Union and in relation to the national authorities of the Member States.

In this context, the sharing of information is necessary, or even indispensible, and nevertheless inherent throughout all the phases of an investigation: during the "selection" phase leading to the opening of an investigation,[11] when preparing or conducting specific investigative activities, upon completion of an investigation when the final report is disseminated,[12] or at any time during the investigation if needed.[13]

Benefits arise from OLAF's status as part of the European institutions, being, as such, a supranational structure. The first benefit lies in OLAF's competence, which has already been accepted at the national level. The second advantage is the speed of OLAF's intervention, which can be decided solely at OLAF's level

without having to garner or search for the agreement of other authorities concerned as would be the case in a conventional cooperation scheme.[14] At the same time and of equal importance, OLAF maintains well-established relationships with several national authorities, which facilitates the cooperation.

All these advantages are, of course, valid for the cooperation with the EU Member States. It is in this context that the supranationality of OLAF finds its best expression. Where non-EU countries are concerned, supranationality takes on a new dimension and is no longer directly linked with the competences of OLAF but instead with its status as part of the European Commission and therefore with the image it carries. Distinction must however be made between "pure" third countries, candidate countries, and acceding countries. It must also be observed that the OLAF Regulation deals with cooperation with third countries in a very limited manner.[15]

In practice, several parameters have to be taken into account when sharing information (a), with a tangible impact on OLAF investigations, from an operational point of view (b).

1. The parameters guiding the sharing of information in practice

The exchange of information between different authorities of the Member States is covered by the OLAF Regulation, thus expressing an administrative "principle of European territoriality."[16] This could be qualified as the "primary territorial competence" of OLAF.

As a rule, the OLAF Regulation does not distinguish between the national authorities as regards the issue of sharing of information: the regulation mentions "competent authorities of the Member States" – therefore, administrative authorities as well as judicial authorities are covered.

As another rule, the OLAF Regulation has a very specific way of addressing the sharing of information by OLAF, formulations such as "where necessary" or "may" having been chosen to express that OLAF disposes of a certain margin of discretion when sharing information with the Member States.[17]

There is only one exception to both these rules and it concerns the internal investigations, cases in which OLAF "shall" – therefore has the obligation to – transmit to national judicial authorities information concerning "facts" that could give rise to criminal proceedings or fall within the jurisdiction of a judicial authority of a Member State. This compulsory transmission of information obtained following an internal investigation, as opposed to a discretionary transmission in external investigations,[18] leaves, however, a certain margin of appreciation to OLAF. Not every indication or suspicion may be the subject of a transmission, but a certain amount of information must be collected to substantiate "facts," as required by the regulation.

Within this general framework established by the OLAF Regulation, the diversity of the practical situations that give rise to the necessity of sharing information with the national judicial authorities can be confined to two main hypotheses: an investigation is already ongoing at the national level or the final purpose is the opening of criminal proceedings in the Member State concerned.

In the first scenario, OLAF can establish contact with the national authority from the very moment it receives information of investigative interest, therefore even before an investigation is formally opened, and precisely with the purpose of deciding whether an OLAF investigation should be opened.[19] Afterwards, if both a national and a European investigation are to be conducted at the same time, the sharing of information takes place in relation to every investigative activity. This will continue until the investigation is closed[20].

In the second case, OLAF conducts its investigation by collecting enough evidence to, in the end, recommend to the judicial authorities of the Member States the opening of national proceedings in relation to facts which, under their national law, could be qualified as being of a criminal nature.

As designed, the OLAF Regulation is limited to establishing only guidelines concerning the sharing of information with the national authorities. For different situations that arise in practice, OLAF must turn towards a broader legal basis than its own regulation. This consists of the different acts regulating the fight against fraud in the European area, including the Convention on the protection of the European Communities' financial interests;[21] in the specific field of the sharing of information and transfer of data, its second protocol[22] contains relevant provisions.[23]

According to these, a Member State, when supplying information to the European Commission (in the present case, OLAF), has the possibility to "set specific conditions covering the use of information, whether by the Commission or by another Member State to which that information may be passed."[24] The European Commission may, however, transfer personal data obtained from a Member State to any other Member State, following simple information of the former of its intention to make such a transfer or following agreement about such transfer obtained in advance if the recipient is any third country.

Within these limits, the main advantages resulting from the supranationality of OLAF are of a very tangible practical impact: OLAF does not need to process a huge amount of paperwork to certify mutual agreement on the transmission of the information, because this is already part of its competence that has already been fully accepted by the Member States. OLAF knows exactly which national authority to request or transmit the information from/to, resulting from several years of experience and the establishment of a database used on daily basis for such transmissions; OLAF can transmit or receive the information rapidly, ergo communication with the national authorities can be as fast and easy as an e-mail.

The "secondary territorial competence" of OLAF applies where non-EU countries are concerned and is usually established in the financial agreements between the European Union and the recipients of European money outside the EU area. When disbursing funds, the European Union also imposes the condition of exercising a certain type of control on the way these funds are distributed. Standard clauses are inserted into these agreements, referring to the competence of the European Commission and OLAF to verify, by examining the documents or conducting on-the-spot checks,[25] the use of the European funds.

The sharing of information by OLAF is fundamentally determined by the investigative need to share specific information. This "investigative logic" is, however, not the only one to be followed, as any exchange of information has to be reconciled with data protection requirements. According to OLAF's own regulation, all the "relevant provisions" in this field are to be respected when transmitting or obtaining information in the course of the investigations.[26] A "data protection logic" therefore has to be additionally applied,[27] and the criteria to be taken into account is the "necessity" of the transfer.[28]

On the sharing of information with third countries, the direct impact of the data protection requirements brings the control of the transmission of information by OLAF to a higher level. If there is an established degree of confidence with the Member States in relation to the protection to be given to the data transmitted by and to OLAF, the situation with third countries has to be evaluated case-by-case and on the basis of the administrative agreements signed with each respective country. Here again, a differentiation has to be established concerning the third countries, depending on the level of protection that the European Union recognises with regard to each of them, compared to the European Union standards.

It has been observed in the legal doctrine that, in relation to the transmission of information to judicial authorities, OLAF applied "the same procedure for non-Member States as for Member States, thus extending in practice the scope of the OLAF-Regulation."[29] While OLAF is, indeed, entitled to apply the same procedure for the conduct of the investigations and for the internal authorisations of investigative activities,[30] the situation is, sensibly, different today as far as the transmission of information to the judicial authorities of third countries is concerned. The explanation rests in the fact that, besides the data protection aspect expressly

mentioned in the OLAF Regulation for cooperation with third counties,[31] other standards are to be observed. One of these is the level of respect afforded to human rights in the national criminal proceedings in third countries. This element is taken into account together with the official position of the European Union in diplomatic relations with the third country concerned, given that OLAF has no power of representation and is dependent on the European Commission regarding its relationship with non-EU countries.[32]

2. An operational perspective

From the operational perspective, the advantages ensuing from the supranationality of OLAF in relation to the national authorities become apparent when considering the investigative activities of OLAF individually. The global appreciation of OLAF's entire activity is reserved for the status-related considerations and conceptual analysis subject matter of the previous point. In practice, the needs may be different. The way to approach an investigative activity depends on the circumstances if a national investigation is opened, is to be opened, or if the contact has not yet been established with the national authority but there are sufficient indications, the national authority will be informed.

In the first case, every investigative step taken by OLAF will be discussed and decided in agreement with the national judicial authority in charge of the proceedings at the national level, in order to protect both the national and the European investigation. Moreover, by proceeding in such a coordinated manner, the respective legal basis allowing intervention on the part of OLAF and of the Member State can be put to maximum use; better results can be obtained more quickly.

Taking the example of an on-the-spot check, such an intrusive investigative activity needs to be coordinated with the investigative strategy of the relevant national authority, in order to prevent revealing to the persons investigated elements that would put the national proceedings at risk. Beyond that, the disclosure of at least a certain amount of information is inherent to any investigative activity implying contact with persons who are the subject of an investigation. In such case, the sharing of information between OLAF and the national judicial authority takes the form of a continuous dialogue, covering the preparatory phase, the actual execution of the investigative activity, and the results obtained.

A significant volume of information, and certainly the largest amount of personal data, is exchanged when digital forensic operations are carried out by OLAF on digital media and/or their contents,[33] following collection of the relevant data. The entire process of acquiring and examining the data being submitted to the legality requirements and procedural guarantees set out in the OLAF Regulation and the results of digital forensic operations are usable as such in national proceedings.

In general, the data is collected by OLAF and examined for the purpose of its own investigation. Situations may occur in which the data is collected by the national authority within the framework of its own national investigation and then sent to OLAF for examination, in full application of the legal provisions on the exchange of information. This can give rise to a diversity of situations in practice, which cannot be framed in a standard pattern regarding the exchange of information and to which OLAF has to respond by putting into effect a whole array of legal provisions. The duty of sincere cooperation established by European case law[34] as regards the obligations of the European Commission towards the national authorities, and in particular judicial authorities, should not be forgotten.[35]

In specific cases, different questions have been raised and examined: to what extent is OLAF bound by the requirement of a national authority not to transmit further (to any other European institution or Member State authority) the information it had provided in the first place and which supports an important part of the OLAF findings if OLAF concludes the existence of facts that may give rise to criminal proceedings in a different Member State? Under which procedure can OLAF, acting as an expert, carry out another digital forensic

operation, at the request of a national judicial authority, on data collected within the framework of an OLAF investigation that has meanwhile been closed? OLAF's duty is to ensure the legality of its own intervention, while reconciling it with the investigative needs and the requests of the national judicial authorities.

This range of possibilities for OLAF to share information with the national authorities, while taking advantage of its supranationality, largely facilitates the effective cooperation between OLAF and these authorities. In terms of actual consequences for the protection of the financial interests of the European Union, the legislative limitations put on OLAF's activity have also made a contribution.

II. The Legislative Limitations Defining OLAF as a European Hybrid Body

The status of OLAF as a European hybrid body is all the more apparent at the end of its investigations, when the body's results are to be transposed in actual consequences.

As designed, the protection of the EU's financial interests by action on the part of OLAF is directed at recommending "disciplinary, administrative, financial and/or judicial action"[36] by the European Institutions or by the Member States. From this perspective, the intervention of OLAF concerns the collection of evidence,[37] with the purpose of transmitting it to other authorities which, in turn, have decisional powers. The key issue is the form this transmission takes, in other words, the form that the law grants.

OLAF's competence was brought one step higher with the new OLAF Regulation that entered into force in 2013, when the simple "sending" or "forwarding" of information[38] by the Office to different authorities at the end of its investigations was transformed into a "power to recommend."

What remains is that OLAF is highly reliant on the national judicial authorities for an effective implementation of its investigative results.[39] The consequences of this legislative limitation can only be measured in practical terms, but in order to arrive at a pertinent conclusion, the analysis must not be simplistic.

It cannot automatically be argued that the lack of a power to "prosecute" in favour of a limited power to "recommend" merely neutralises or weakens all the investigative effort behind an OLAF investigation. The doctrinal temptation to make such an assessment or a general, natural penchant to fit institutions into clearly established categories must be put aside. The reasoning should be taken even further, in order to incorporate the context surrounding the type of competence given to OLAF. In the European legal order, the battle of putting into place a new institution, or reforming it as was the case for OLAF, is dependent on national, supranational, pluralistic (multi-national), and integration concerns, all at the same time. The real impact of OLAF's power to recommend (a) may be evaluated to its full extent only if formal and informal aspects of OLAF's actual functioning are considered in the analysis (b).

1. The "power of a recommendation"

The power of a recommendation resides mostly and firstly in the quality of the investigation supporting the recommendation. The ultimate purpose is the opening of criminal proceedings at the national level. The OLAF report, which is drawn up following an investigation, establishes facts, provides "their preliminary classification in law,"[40] and takes into account the national law of the Member State concerned,[41] in the performance of a legal obligation imposed on OLAF by its own legal basis. The sharing of information by OLAF with the national judicial authorities, in the form of the recommendation, thus aims to be easier, clearer, and likely to have more substantial legal consequences.[42]

It has been judged that OLAF's final report is not a final act with legal effects.[43] In exchange, the European case law has established for the Member States a duty to cooperate in good faith, implying that, when OLAF transmits to them information, "the national judicial authorities have to examine that information carefully."[44]

In support of the final report, the investigative activities conducted by OLAF must cover enough elements revealing facts of a criminal nature. OLAF has to investigate "*à charge et à décharge,*"[45] therefore covering all the aspects that could clarify the factual situation. This can be achieved by taking full advantage of the investigative means at OLAF's disposal, within the limits of what is an administrative investigation, while at the same time respecting a standard of proof appropriate for supporting a pertinent judicial recommendation.

When all these elements are combined, the "collection of evidence" by OLAF turns into a persuasive exercise, determining the national judicial authority to act and becoming "admissible evidence" to the proceedings it would launch.[46] As a counterpart to giving OLAF simply the power to recommend, the European legislator has granted to OLAF's final "product" the value of being unambiguous admissible evidence.

As formulated in the OLAF Regulation, the final reports drawn up by OLAF with due respect for the national law of the Member State concerned "*shall* constitute" admissible evidence in administrative or judicial proceedings of that Member State. No true margin of appreciation is left to the Member States from this perspective; however, their national authorities always have, as result of their independence and depending on the specificity and needs of their national investigation, a margin of manoeuvre to use the OLAF report as such or to repeat some investigative activities.[47] This is where the informal aspect of the relationship between OLAF and the national judicial authorities comes into play, adding value to the substance of the case being dealt with.

2. Formal and informal relationship between OLAF and the national judicial authorities – the operational perspective

In the dialogue[48] between OLAF and the national judicial authorities, the formal legal framework for the sharing of information is ultimately dependent on informal, day-to-day and case-by-case relationships established by OLAF with representatives of the national judicial authorities. Extrapolating, this could appear to be a "transposal," at the interpersonal level, of the well-established European principle of mutual trust.

The legislative limitations to OLAF's activity in terms of formal consequences may be compensated, if not entirely by the quality of the product delivered, by the availability and openness of OLAF staff to act with the aim of benefitting both the European and the national investigation. This can be achieved by cooperating and sharing information.

An observation from the legal doctrine is still valid: "it is really the informal side, in other words the de facto acceptance of OLAF as part of national mechanisms that combat crimes against the financial interests of the Union, that will allow OLAF to be successful."[49]

The supranationality of OLAF being confined to the European territory, recommendations for judicial actions can be addressed by OLAF only to the Member States. Following investigations in third countries, information revealing facts of a criminal nature can be simply transmitted to the national authorities of the third country concerned.[50] This obviously has an even less constraining effect than recommendations, but the same considerations as to the quality of the informal contact between OLAF and the competent national authority apply.

III. Conclusion – from *de lege lata* to *de lege ferenda*, Benefiting from the already Acquired Experience

Supranationality and legislative limitations, both specific to European institutions, converge to paint a picture that should eventually turn into concrete practical consequences. If there is a lesson to be learned at the European level, from the experience of OLAF, it is that of the absolute necessity for efficiency. This appears as the more important in the context of the European Public Prosecutor's Office.

The founding treaties established the principle of subsidiarity for European intervention.[51] A component of the subsidiarity, the "added value"[52] to be brought by any new structure, is a requirement that must take priority. Reality has shown that, from the extensive and complex legislative process leading at the European level to the creation of a new structure, a long phase before its effective functioning has to be calculated. This process has on many occasions revealed itself to be perfectible, propelling the necessity to legislate again before the added value is translated into concrete results in practice.

In the area of the protection of the European Union's financial interests, there is an already long shared understanding in the political, academic, and practitioners' fields that a European public prosecutor is needed in order to prosecute criminal activity against the budget of the European Union.[53] It could be useful to depart from OLAF's experience while benefitting from OLAF's expertise.

From a conceptual viewpoint, the situation can be summarised in what has become a leitmotiv of European construction: "the search for solutions allowing to reconcile two objectives apparently contrary, but both equally necessary: integration and pluralism."[54] The standard at the European level is therefore twofold: the need to ensure a horizontal coherence between the European institutions and a vertical coherence between the European and the national institutions.[55] The sharing of information between OLAF and the national judicial authorities illustrates this perspective, because policy-related, status-related, and operational aspects blend to give a complete picture of what is to be – for future legislative measures – a practical reality.

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1. Article 2(1) of the Commission Decision of 28 April 1999 establishing the European Anti-Fraud Office (OLAF), O.J. L. 136, 31.5.1999, p. 20.↩
2. For example, Article 3 (2) of Regulation (EU, Euratom) No 883/2013.↩
3. The term "judicial authorities" is understood here in a wider context, covering not only judicial authorities as designated *stricto sensu* in some Member States (i.e., courts) but also authorities with competence to launch criminal proceedings (i.e., prosecutors or even police services, depending on the national system).↩
4. For more detail on judicial recommendations, see point II.a below.↩
5. For an up-to-date reflection, refer to the OLAF Report 2014, available on the OLAF website at http://ec.europa.eu/anti_fraud/documents/reports-olaf/2014/olaf_report_2014_en.pdf, p. 23 et seq.↩
6. Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, O.J. L. 248, 18.9.2013, p. 1 (hereinafter "Regulation (EU, Euratom) No 883/2013" or referred to as the "OLAF Regulation").↩
7. Recital (10) and Article 3(4) of Regulation (EU, Euratom) No 883/2013.↩
8. Article 2(7) of Regulation (EU, Euratom) No 883/2013.↩
9. Article 12 of Regulation (EU, Euratom) No 883/2013. This article was designed to serve the purpose of transmitting information during the course of the investigations, the other scenarios of transmission of information, e.g., during the selection phase or upon completion of an investigation being specifically addressed by other articles.↩
10. S. White, *Operational Activities and Due Process*, in *OLAF at the Crossroads. Action against EU fraud*, C. Stefanou, S. White and H. Xanthaki, Hart Publishing, Oxford and Portland, Oregon, 2011, p. 77.↩
11. The "selection" phase is based on Article 5 of Regulation (EU, Euratom) No 883/2013 and has to comply with the requirements set out therein.↩
12. Article 11 of Regulation (EU, Euratom) No 883/2013.↩
13. See fn. 9 above.↩
14. This remark has to be nuanced, however, taking into consideration case-by-case cooperation with the national authorities concerned.↩
15. Article 14 of Regulation (EU, Euratom) No 883/2013.↩

16. The Corpus Juris 2000 proposed several "guiding principles" for the European Public Prosecutor, and the principle of European territoriality was mentioned as one of the "new" guiding principles (Appendix II, point II); it was further detailed in Article 18, which explains that "the territory of the Member States of the Union constitutes a single legal area".↩
17. See, in this respect, Articles 3(6), 5(6) or 12(1) of Regulation (EU, Euratom) No 883/2013.↩
18. See, in this respect, concerning the situation under the former legal basis regulating OLAF's investigative activities *J. Gonzales-Herrero Gonzales and M.M. Butincu,* The Collection of Evidence by OLAF and Its Transmission to the National Judicial Authorities, in eucrim, 3/2009, p. 92.↩
19. Among others, the principles of subsidiarity and added-value for OLAF intervention are taken into account when deciding whether or not an OLAF investigation is to be opened.↩
20. An analysis has to be realised here, on a case-by-case basis, of whether OLAF's investigation should be continued or ended, based on the subsidiarity principle and the needs and purposes of each of the investigations↩
21. O.J. C. 316, 27.11.1995, p. 49 et seq.↩
22. Second Protocol, drawn up on the basis of Article K.3 of the treaty on European Union, to the Convention on the protection of the European Communities' financial interests, O.J. C. 221, 19.7.1997, p. 12 et seq.↩
23. Article 7, "Cooperation with the Commission of the European Communities" and Article 10, "Transfer of data to other Member States and third countries".↩
24. Article 7(2) of the Second Protocol to the Convention on the protection of the European Communities' financial interests, cited above.↩
25. On-the-spot checks are conducted by OLAF on the basis of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities, O.J. L. 292, 15.11.96, p. 2.↩
26. Article 10 of Regulation (EU, Euratom) No 883/2013, treating aspects of "confidentiality and data protection".↩
27. The many aspects related to the impact of data protection requirements on investigations by OLAF would require a separate analysis and shall not be treated more in detail here.↩
28. The limiting criteria for the transfer of personal data to EU institutions and bodies, Member State authorities, third country authorities, or international organisations are set out in Articles 7-9 of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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, O.J. L. 8, 12.1.2001, p. 1. Detailed rules applicable to OLAF's investigative activity are to be found in the "OLAF Instructions to Staff on Data Protection for Investigative Activities", applicable as from 19/04/2013 and available on the OLAF website at http://ec.europa.eu/anti_fraud/documents/data-protection/2013/isdpfinal_2013.pdf↩
29. J.F.H. Inghelram, *Legal and Institutional Aspects of the European Anti-Fraud Office (OLAF). An Analysis with a Look Forward to a European Public Prosecutor's Office*, Europa Law Publishing, Groningen 2011, p. 75. It should be noted that the publication refers to the situation under the former OLAF legal basis and corresponding internal rules.↩
30. The competences of OLAF, once established, are indistinctive as regards the recipients of EU funds and irrespective of their country of implementation.↩
31. Article 14 (2) of Regulation (EU, Euratom) No 883/2013.↩
32. For more on the relationship of OLAF with third countries, see C. Stefanou, *Relationship with the Member States*, in *OLAF at the Crossroads. Action against EU fraud*, op. cit., pp. 182-184.↩
33. The rules are set out in the "Guidelines on Digital Forensic Procedures for OLAF Staff", applicable from the 1st of January 2014 and available on OLAF's website at http://ec.europa.eu/anti_fraud/documents/forensics/guidelines_en.pdf↩
34. Case C-2/88 Imm. *J.J. Zwartweld and Others*, 6.12.1990.↩
35. For a detailed analysis on this point, see J.F.H. Inghelram, op. cit., pp. 107-109.↩
36. Article 11(1) second sub-paragraph of Regulation (EU, Euratom) No 883/2013.↩
37. L. Kuhl, *L'expérience de l'Office européen de lutte anti-fraude,* in *Le contrôle judiciaire du parquet européen. Nécessité, modèles, enjeux*, sous la direction de G. Giudicelli-Delage, S. Manacorda et J. Tricot, Société de législation comparée, 2015, Paris, p. 178↩
38. Articles 9 and 10 of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), O.J. L. 136, 31.5.1999, p. 1.↩
39. L. Kuhl, *Framework for Coordination Between Judicial Authorities and OLAF,* in *Choice of Forum in Cooperation Against EU Financial Crime. Freedom, Security and Justice and the Protection of Specific EU-Interests*, Michiel Luchtman (ed.), Eleven International Publishing, 2013, p. 91.↩
40. Article 11(1) first subparagraph of Regulation (EU, Euratom) No 883/2013.↩
41. Article 11(2) of Regulation (EU, Euratom) No 883/2013.↩
42. Along the same lines, see also J.F.H. Inghelram, op. cit., p. 110.↩
43. Case T-193/04, Tillack/Commission, 4.10.2006, para. 69.↩
44. Case T-193/04, para. 72. The judgment referred to the forwarding of information pursuant to Article 10(2) of Regulation No 1073/1999, which has now become Article 12 of Regulation (EU, Euratom) No 883/2013.↩
45. According to Article 9(1) of Regulation (EU, Euratom) No 883/2013, "In its investigations the Office shall seek evidence for and against the person concerned".↩
46. Article 11(2) of Regulation (EU, Euratom) No 883/2013 provides that reports drawn up by OLAF with respect for the national law of the Member State concerned "shall constitute" admissible evidence in administrative or judicial proceeding of that Member State.↩
47. For example, interviewing a witness again.↩
48. L. Kuhl, op. cit., p. 178.↩
49. C. Stefanou, op. cit. p; 184.↩
50. The rules of transmission as referred to in point I.a above have to be followed.↩
51. Article 5 of the Treaty on the European Union.↩

52. See, in this respect, J. Tricot, *Ministère public européen et système pénaux nationaux : les enjeux de l'articulation verticale*, in *L'intégration pénale indirecte. Interactions entre droit pénal et coopération judiciaire au sein de l'Union européenne*, sous la direction de G. Giudicelli-Delage et S. Manacorda, Société de législation comparée, 2005, Paris, pp. 202-203.↩
53. Recently, Vice-President Kristalina Georgieva, Commissioner Věra Jourová, and MEP Monica Macovei published the tribute "We urgently need a European Public Prosecutor's Office", available on EurActiv.com website.↩
54. M. Delmas-Marty, *Avant-propos*, in *L'intégration pénale indirecte. Interactions entre droit pénal et coopération judiciaire au sein de l'Union européenne*, op. cit., p. 19 (author's translation).↩
55. For an in-depth analysis of these aspects, see M. Delmas-Marty, op. cit., pp. 16-17, and G. Giudicelli-Delage, *Remarques conclusives*, *ibid*., p. 375 et seq.↩

* Author statement

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