

OLAF – 20 Years of Protecting the Financial Interests of the EU

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euclid

European Law Forum: Prevention • Investigation • Prosecution

Article

ABSTRACT

In 2019, the European Anti-Fraud Office (OLAF) celebrated 20 years of existence. From today's perspective, the Office could be qualified as one of the most recognisable Directorates-General of the European Commission. This is due to its unique powers, experience and the results achieved over the past twenty years. OLAF's main mission is to investigate fraud against the EU budget, as well as serious misconduct within the European institutions, and to develop anti-fraud policy for the European Commission. For the time being, OLAF has concluded more than 5000 cases and recommended several billion euro be returned to the EU budget. In 2018 alone, OLAF opened 219 investigations after analysing incoming information in 1259 selections. It concluded 167 investigations, which led to OLAF issuing 256 recommendations to competent authorities at EU and national level.

This article focuses on the processes that led to the establishment of OLAF, the results that the Office has achieved so far and the new challenges the Office will face in the near future, such as cooperation with the European Public Prosecutor's Office and new priorities for its investigative activities.

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CITATION SUGGESTION

M. Hofmann, S. Stoykov, "OLAF – 20 Years of Protecting the Financial Interests of the EU", 2019, Vol. 14(4), euclid, pp268–271. DOI: <https://doi.org/10.30709/euclid-2019-024>

Published in

2019, Vol. 14(4) euclid pp 268 – 271

ISSN: 1862-6947

<https://euclid.eu>



I. Introduction

For the last 20 years, the European Anti-Fraud Office (OLAF) has been at the forefront of fighting fraud and protecting the financial interests of the European Union. With an annual budget of nearly €158 billion,¹ the EU must make enormous effort to ensure that the funds are spent correctly and that there are no abuses to the detriment of the European taxpayer.

OLAF has a specific position within the Commission. As a Commission service, OLAF is in charge of developing policy and legislation in the area of preventing fraud and protecting the Union's financial interests under the political guidance of Commissioner *Johannes Hahn*. As an independent body under the leadership of its Director-General *Ville Itälä*, OLAF conducts investigations in cases of fraud, corruption, and other illegal activities affecting the Union budget. In order to guarantee impartiality, OLAF enjoys financial and functional independence when exercising its investigative mandate. With a long record of successful investigations, OLAF could be qualified as one of the most recognisable Directorates-General of the European Commission. This is due to OLAF dealing with such sensitive problems of modern society, such as corruption and misuse of taxpayers' money. With its powers to conduct independent administrative investigations – both in the Member States and within the European institutions, bodies, offices, and agencies – OLAF is an effective partner for national administrative and law enforcement authorities and for the Union's institutions and bodies.

II. The Establishment of OLAF

The first European anti-fraud body UCLAF² was created in 1987 as part of the Secretariat-General of the European Commission. It worked alongside national anti-fraud departments and provided the coordination and assistance needed to tackle transnational organised fraud. UCLAF did not have a Regulation for its activities but relied on general rules such as Art. 280 of the Treaty establishing the European Community³, Council Regulation 2988/1995,⁴ and Regulation 2185/1996⁵ concerning on-the-spot checks and inspections carried out by the Commission.

From 1995 to 1999, the former Prime Minister of Luxembourg, *Jacques Santer*, headed the European Commission. Despite his firm position on strong financial stability (with the adoption of the Convention on the Protection of European Communities' financial interests⁶ and its protocols), allegations of corruption led to the resignation of the Santer Commission on 15 March 1999. The reason for the resignation was a report⁷ on improving the financial management of the European Commission drawn up by a Committee of Independent Experts, convened by the European Parliament. The Committee found that the current legal framework for combating fraud against the financial interests of the European Communities was incoherent and incomplete. According to the report, the existing framework "(i) fails to recognise and accommodate the true nature of UCLAF, (ii) leaves the legal instruments for investigation, prosecution and punishment of fraud ineffective and (iii) fails to provide sufficient guarantees of individual liberties."

In October 1999, the European Parliament and the Council adopted Regulation 1073/1999⁸ which transformed UCLAF into the European Anti-Fraud Office (OLAF), with a hybrid nature as an investigative office and policy service of the Commission as we know it today. OLAF received more powers⁹ and independence in the conduct of investigations. Internal investigations into Union institutions and bodies also became part of OLAF's mandate.

The Commission set up OLAF to carry out administrative investigations concerning fraud, corruption, and any other illegal activities affecting the EU's financial interests and to help Member States fight fraud. According to its legal framework, OLAF investigates the following matters:

- All areas of EU expenditure (the main spending categories are structural funds, agricultural and rural development funds, direct expenditure, and external aid);
- EU revenue, in particular customs and illicit trade in tobacco products and counterfeit goods;
- Suspicions of serious misconduct by EU staff and members of the EU's institutions.

In accordance with its administrative mandate, OLAF investigates non-fraudulent irregularities as well as criminal behaviour in the Member States (external investigations) and within the European institutions, bodies, offices and agencies (internal investigations). It plays a significant role in the fight against fraud, corruption, and other illegal activities through its investigations aimed at enabling financial recoveries, disciplinary and administrative action, and prosecutions and indictments.

III. OLAF's Achievements

OLAF is entrusted with the protection of the European budget, both on the expenditure side and on the revenue side. In a wider sense, OLAF contributes to the fulfilment of the EU being a safer place. For the last 20 years, OLAF has solved more than 5000 cases and recommended that several billion euro be returned to the EU budget. In 2018, for instance, OLAF opened 219 investigations after analysing incoming information in 1259 selections. It concluded 167 investigations, which led to OLAF issuing 256 recommendations to competent authorities at EU and national level. As a result of the investigations concluded in 2018, OLAF recommended the recovery of €371 million to the EU budget.¹⁰ Years of experience and a team of highly qualified investigators, forensic experts and analysts put the Office in the unique position of identifying fraud patterns and efficiently investigating the most intricate and complex cases. Furthermore, as OLAF's primary goal is to ensure that no EU funds are lost to fraud, OLAF experts go to great lengths to trace defrauded funds, which are often hidden in third countries. In order to solve these complex transnational fraud cases and trace the proceeds of fraud, OLAF works together with national (administrative, law-enforcement and judicial) and international authorities (notably Eurojust, Europol, Interpol). These authorities recognise OLAF as a trusted partner with unique expertise in managing cases of fraud and corruption with EU funds, and ensuring that the EU budget is well protected. OLAF has also a unique investigative mandate to combat tobacco smuggling into the EU which causes huge revenue losses to the budgets of the EU and of the Member States. In complex cross-border cases in particular, OLAF brings significant added value by helping coordinate anti-smuggling operations carried out by customs and law-enforcement agencies across Europe and beyond. In addition to its investigations concerning cases of revenue fraud, OLAF coordinates large-scale Joint Customs Operations (JCOs) involving EU and international operational partners.

The Volkswagen case¹¹ and the UK undervaluation case¹² can be mentioned as examples of OLAF investigations. In the Volkswagen case, the company used a EUR 400 million loan from the European Investment Bank (EIB) to develop a new diesel engine with lower emissions. In reality, the new engine employed the so-called defeat device, which made it possible to reduce emissions during official tests only and not when the car was on the road. Following OLAF's recommendation, the EIB and Volkswagen agreed that Volkswagen would not benefit from EIB funding for several years. Volkswagen also undertook to pay €10 million for EU environmental projects. In the UK undervaluation fraud case, fraudsters made a profit by falsely declaring low values for goods imported into the EU from China. Thanks to OLAF actions, it was established that the EU budget has suffered losses of €2.7 billion in customs duties.

In addition to its external activities, OLAF also has a unique mandate to carry out internal investigations into the EU institutions, bodies, offices and agencies for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union. The Office investigates serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of EU officials liable to result in disciplinary or criminal proceedings, or an equivalent failure to discharge obligations on the part of Members of institutions and bodies. As an example, in 2018 OLAF investigated serious irregularities in an EU Agency. The allegations referred to irregularities in procurement procedures and to alleged mismanagement of financial and human resources. OLAF investigators looked into specific cases of procurement where exception procedures were used despite the fact that the conditions for their use were not met. OLAF established that the Executive Director of the Agency failed to ensure that specific procurement procedures were conducted in line with the principles of sound financial management, open competition and transparency. In light of the OLAF investigation the Executive Director resigned from his position. OLAF recommended the recovery of a substantial amount from the Executive Director and invited the Agency to determine other specific amounts resulting from unjustified expenditure¹³.

IV. OLAF in the Changing Institutional Landscape

The European Public Prosecutor's Office (EPPO) is becoming a reality¹⁴ – not yet operational but with an existing legal framework¹⁵ and a Chief European Prosecutor, *Laura Codruta Kövesi*, already appointed. By the end of 2020, when the new body is to become operational, the EU anti-fraud landscape will be different. The establishment of the EPPO is a significant step in strengthening the protection of the EU budget by means of criminal law, which also raises the question of OLAF's role in the future. The ongoing revision¹⁶ of the OLAF Regulation 883/2013 should create the grounds for efficient and effective cooperation between OLAF and the EPPO. With its proposal, the Commission advocates maintaining a strong OLAF alongside the EPPO, so that all available means are used to protect the financial interests of the EU.

OLAF intends to be a key operational partner for the EPPO from day one. OLAF will put at the disposal of the EPPO its 20 years of experience in the fight against fraud: it will identify cases and report them to the EPPO; support the EPPO in investigations with expertise and operational and analytical tools; and conduct complementary activities to ensure an administrative response to fraud, e.g., the preparation of speedy financial recovery or the taking of measures to protect the budget from further harm. Moreover, where the EPPO is not acting, notably in Member States not participating in the EPPO, OLAF will continue working as it does today.

In view of this continued and central role in the protection of the Union's financial interests, the second objective of the revision of Regulation 883/2013 is to better equip OLAF with investigative tools in order to enhance the effectiveness of OLAF's investigative function. In this regard, the proposal contains a number of targeted changes regarding access to bank account information, on-the-spot-checks and inspections, and VAT fraud. The amendments aim to clarify OLAF's legal framework and would allow it to operate in an effective and more coherent manner in all its investigations.

To ensure both a seamless transition to the new institutional framework and effective cooperation between OLAF and the EPPO, the amended regulation should be in force by the time the EPPO becomes operational, i.e., the end of 2020.

V. OLAF in the Future

OLAF operates in a challenging, fast-paced environment. The nature of fraud has changed significantly in recent years and keeps shifting in line with a more digitised world, in which trade and activities of criminal

groups are increasingly international. OLAF needs to be up to these challenges to be able to deal effectively with the trans-border dimension of fraud.

As part of the European Commission, while being independent in its investigative activities, OLAF is committed to also supporting the priorities of the European Commission. One of them – protecting the environment and combating climate change – is a recognised need for all European citizens. OLAF is already prioritising cases with an environmental dimension given the increased awareness of environmental fraud and its impact on the attainment of environmental objectives and the health and safety of EU citizens. By its participation in major operations using its coordination competence, OLAF is developing knowledge into environmental fraud and achieving successful results. Acting within the limits of its mandate, OLAF has also concluded successful cases involving food, in particular in situations where fraudsters have attempted to import fake or harmful goods into the EU. OLAF will continue to step up its efforts to discover fake and unsafe products, unhealthy food stuff and illegal operations damaging the environment.

Based on its long-standing experience and expertise in combating fraud, OLAF has also become a knowledge centre on anti-fraud matters and will further enhance this role. The new Commission Anti-Fraud Strategy (CAFS) from April 2019¹⁷ aims to improve the collection and analysis of fraud-related data both at EU level and in the Member States, and reinforce anti-fraud governance across the Commission. The Strategy focuses on improving the quality and completeness of relevant information through connecting different data sources and creating smarter tools to draw operational conclusions. OLAF is leading the implementation of the CAFS and works closely with all Commission services to put in place a wide range of anti-fraud actions, such as tailor-made anti-fraud strategies based on effective fraud risk analysis. This is an important step in the preparation for a new generation of spending programmes in the Multiannual Financial Framework (MFF) 2021–2027.

For 20 years, OLAF has done a great deal to protect the financial interests of the European Union. Strengthening OLAF's legislative framework, alongside the establishment of the EPPO and above all the close cooperation with all its partners – the Member States and EU institutions as well as Eurojust, Europol, Interpol and other international agencies – is essential to ensure that the scope of investigations is comprehensive and that the new anti-fraud institutional landscape is effective and functioning smoothly. OLAF will continue using modern technological tools and enhanced operational and strategic analysis, both for its investigative work and fraud prevention purposes.

This demonstrates that OLAF is fully prepared to meet all new challenges and public expectations, strongly stating that the EU's financial interests will continue to be protected in the best possible way.

1. EU budget in 2017 – Total: €157.9 billion; Source – European Commission: https://europa.eu/european-union/about-eu/eu-budget/expenditure_en↵

2. Unité de Coordination de la Lutte Anti-Fraude (UCLAF).↵

3. Treaty establishing the European Community, O.J. C 340, 10.11.1997.↵

4. Council Regulation (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests, O.J. L 312, 23.12.1995, 1.↵

5. Regulation 2185/1996 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, 15.11.1996, 2.↵

6. Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests (O.J. C 316, 27.11.1995, 48). The Convention is no longer in force; it was repealed by Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law. For the Directive, see the article by A. Juszczak/E. Sason, (2017) *eucrim*, 80.↵

7. Available at: https://ec.europa.eu/anti-fraud/sites/antifraud/files/docs/body/rep_sages_2_en.pdf.↵

8. 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, 31/05/1999 P. 0001 - 0007↵

9. OLAF's investigative mandate for the protection of the EU's financial interests was initially laid down in Regulations 1073/1999 and 1074/1999. Following Commission proposals in 2004, 2006, and 2011, Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (O.J. L 248, 18.9.2013, 1) was adopted and replaced the regulations from 1999.↵

10. See OLAF 2018 Annual report, p. 12, available at: https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf_report_2018_en.pdf.↵
11. EIB Press release: <https://www.eib.org/attachments/press/summary-olaf-report-antrieb-rdi-volkswagen-ag.pdf>.↵
12. European Commission, Press release: https://ec.europa.eu/commission/presscorner/detail/en/IP_18_5807.↵
13. See OLAF 2018 Annual report, p. 23-24.↵
14. The 1999 Report on improving the financial management (see n. 7) recommended the establishment of the European Prosecutor (Recommendation 59) in three stages: (i) appointment of an independent European Public Prosecutor (EPP); (ii) creation of a national Prosecution Office for European Offences (POEO) in each Member State, and (iii) creation of a single, indivisible European Prosecution Office (EPO) on the basis of the EPP and POEOs.↵
15. Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), O.J. L 283, 31.10.2017, 1.↵
16. Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations, COM(2018) 338 final.↵
17. Commission Anti-Fraud Strategy: enhanced action to protect the EU budget, available at: https://ec.europa.eu/anti-fraud/sites/antifraud/files/2019_commission_anti_fraud_strategy_en.pdf.↵

* Authors statement

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The project is co-financed by the [Union Anti-Fraud Programme \(UAFP\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



**Co-funded by
the European Union**