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STRENGTHENING OLAF – TOWARDS GREATER
EFFECTIVENESS IN THE PROTECTION OF THE
COMMUNITIES' FINANCIAL INTERESTS: THE
REVISION OF THE OLAF REGULATION 1073/99.

(STUDY IP/D/CONT/ST/2005-1)

FINAL REPORT

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INTRODUCTION

Reform of the regulation of the European Anti-Fraud Office (OLAF) is seen as an important element for a more effective protection of the Communities' financial interests. The Commission has presented a proposal for an amendment of the OLAF regulation 1073/99 (COM(2004) 103 final).

This study constitutes a critical assessment of how the current OLAF regulation should be reformed in view of the above-mentioned objective. It is worth noting even from the beginning of this report that, at least under the current legal framework in the area of EU criminal law, this policy area suffers from a dual plague: fragmentation and ambiguity.

The lack of an express legal basis for regulation in this policy area and the subjection of some of the institutional bodies in the first (OLAF) and some in the third pillar (Europol, Eurojust) may be a sign of the lack of coordinated unified will of the Member States to extend the competence of the EU in EU criminal law. Although these problems are remedied in the EU Constitution, the current multitude of sporadic provisions and the seemingly uncoordinated *ad hoc* regulation of problems and bodies in EU criminal law can only lead to fragmentation in regulation. Inevitably this leads to debate as to the mandate of the relevant bodies, the legal regime governing specific points of strategic and operational nature and to consequent competition amongst the bodies concerned for their own place in the system of law.

Ambiguity can be seen as a result of sporadic *ad hoc* regulation. Without a complete package of measures the legislator lacks the capacity to promote precision. Matters left to be resolved by additional or supplemental measures are left unresolved when these measures fail to be adopted in the legislative process. Moreover, the undisputed political sensitivity of relevant issues dictates either their complete neglect in legislation or their regulation in a basic, imprecise yet politically acceptable manner.

In view of the fragmentation and ambiguity in regulation, EU bodies such as OLAF, Europol and to a degree Eurojust function in an uncertain environment with ever imminent changes in their legal framework and with constant debate about their position in the system and on the legal regime which stipulates their detailed operation. Inevitably, these bodies have to devise

legitimate and acceptable routes for facing their operational and their functional realities. For OLAF in particular the problem is intensified by the crucial operational role of its activities at an EU and national level. Any criticism of OLAF's nature, structure and work must, therefore, be viewed through the prism of praise for its ability to serve EU citizens despite the regulatory ambiguities which define the environment in which OLAF functions.

This study aims to provide guidance on the main issues concerning OLAF. The team working for this study is a multi-disciplinary team with an emphasis on legal science. As a result, the approach to questions is mainly legal.

It must be made absolutely clear that the study is conducted by the Institute of Advanced Legal Studies of the School of Advanced Study of the University of London, whose experts act as external and independent experts. Although the study is funded by the European Parliament the team acts without loyalty to any of the bodies and institutions involved.

This study addresses the following issues:

1. a consideration of the relations between prosecution of fraud and audit/budgetary control authorities in Member States (tenders should specify how many and which states will be covered and whether a comparative approach will be possible);
2. OLAF's administrative and operational independence;
3. judicial supervision of investigations in European Institutions and in some Member States, OLAF's accountability;
4. protecting witnesses and the accused in investigations;
5. OLAF's cooperation with national investigative bodies;
6. possible evolution of OLAF's relations with Eurojust and Europol, and the future European Public Prosecutor;
7. possible evolution of OLAF's relations with the European Parliament and the Committee on Budgetary Control.

Questions are addressed on the basis of existing European law, although there are references to the hopefully imminent ratification of the EU Constitution. Where EU law fails to provide a concrete and express answer, lessons are drawn by the laws of EU Member States.

ISSUE 1: A CONSIDERATION OF THE RELATIONS BETWEEN PROSECUTION OF FRAUD AND AUDIT/BUDGETARY CONTROL AUTHORITIES

This study begins with an analysis of the relations between prosecution and audit authorities at the national level. This analysis must be viewed on the basis of three factors.

Firstly, national audit authorities have considerable competences in audits regarding EU-funds. In most cases these competences are mandatory and are explicitly provided for in the relevant national legal acts governing the establishment and the activities of the audit institutions¹. Moreover, the significance placed upon the above competences is expressed in the administrative structures of the Courts through creation of internal units/ audit departments, specially designated to perform audits of institutions/ functions dealing with EU funds².

Secondly, audits concerning EU-funds are the first step in the process of identification of EU-fraud and are, therefore, the first source of information for both national prosecution authorities and EU institutions established with the aim to protect the financial interests of the Communities, such as OLAF.

Thirdly, awareness and understanding of these competences would enable both national prosecution authorities and EU institutions to maximise their cooperation with the audit authorities and increase the effectiveness of the protection measures against EU-fraud.

This study covers most of the 25 Member States and the Republic of Bulgaria as a future member of the EU. This guarantees maximum relevance of the findings and the conclusions reached and ensures a solid basis for the subsequent analysis. In performing the analysis of the current situation of prosecution of fraud in the Member States a comparative approach has been utilised, aiming (a) to classify the existing models of organisation and (b) to derive

¹ This is the case in France where these competences are provided for in Art. 45 of Act No. 96-314 of 12 April 1996; in Bulgaria – Art. 5, paragraph 2, point 4 from the Law on the Court of Auditors of 2001.

² See for example: Audit Unit VIII 4 ‘EU Affairs, International Organisation and Institutions’ of the German Federal Court of Accounts; Chamber 1 of the French Court of Audits; Section 7 ‘Specialised Audits’ of the Bulgarian Court of Audits, Art. 5, para 1 and 2 from the Regulation on the structure and the organisation of the functions of the Court of Audits, <http://www.bulnao.government.bg/documents/UstroistvPravilnikSP.doc.>; Audit Department II, European Affairs, & Government-Wide Performance Audit Division of the Netherlands Court of Audit.

suggestions for a possible course of action in the future.

The organisation and functions of the Supreme Audit Institutions (SAI) in the Member States vary as a result of the legal basis for their establishment, the historical traditions in the respective Member States, the relationship between the SAI and other organs of the state, the character of their authority, and their decision-making mechanisms. For the purposes of the present study, we have identified the following criteria for the classification and typology of relationships between the national audit authorities and the prosecution of fraud: first, the incorporation of a judicial function into the competences of the SAI; and second, the relations (usually established by law) of SAI and other national institutions, in particular the national parliaments. On the basis of these two criteria the relationship between prosecution of fraud and the audit authorities can be classified into three types.

First, SAI which are in fact ‘Courts’: These have a judicial function and are not only involved in audit, but also (at least as one of their functions) adjudicate cases of operations, performed by individuals who are personally accountable for the appropriate use of public resources, grant compensations, impose penalties, etc. These are collegiate bodies incorporating judges (except for Belgium) and at times following Court procedures, independent from the Parliaments and governments of their respective countries – though co-operating with both. They exist in Belgium³, France, Greece, Italy⁴, Portugal⁵ and Spain⁶.

Second, SAI which resemble Courts because of their ‘collegiate’ structures, i.e. they are organised as Courts but in fact have no judicial function. Acting under mandates of the constitutions of their countries, they incorporate members with the status of judges, are headed by a president, authorised to play a greater role as compared to the courts. These bodies perform audits and this implies that they must be independent of their governments, while their independence from Parliament is only partial (this does not impair their audit functions, especially as their Parliamentary authorisation is of a general nature). They exist in Germany⁷, the Netherlands⁸ and Bulgaria⁹.

³ Art. 180 from the Belgian Constitution (co-ordinated on 17 February 1994).

⁴ Art. 103, para 3 from the Italian Constitution.

⁵ See Art. 209, point 1 from the Constitution of the Portuguese Republic.

⁶ See Section 136 from the Spanish Constitution.

⁷ See Section 2 from the Standing Orders of the German Federal Court of Accounts, in force as of 21 December 1987, amended 19 November 1997 (<http://www.bundesrechnungshof.de/en/rechtsgrundlagen/1024.html>).

Third, SAI which are ‘audit offices’ as head organs of the state, established on the basis of the Constitution or other law, subordinate to their national Parliaments or at least supporting Parliamentary activity. Usually they are single-member organs, sometimes with collegial aspects. This is the model followed in Austria, Denmark, Finland, Ireland and the United Kingdom.¹⁰ Luxembourg and Sweden,¹¹ have collegiate audit offices.

This analysis leads to the conclusion that the existence of a judicial function of the audit authorities has an impact on the prosecution of fraud. In this case the national audit authorities (Courts of Audit) have total independence in establishing the findings from audits. Their independence is guaranteed by their status as Courts, by the tenure of their members – who enjoy magistrates status – and by their right to draw up their programme of activities. This applies to EU-fraud as well. An important issue here is the coordination of the programme (at least the part concerning EU-funds related audits) with the European Court of Auditors. Moreover, the national audit authorities have jurisdiction over the administrative aspects of the case. This is expressed in the rulings/judgements issued directly and resulting in remedying measures (repayment of funds, payment of fines). National audit authorities with a judicial function have very broad investigative powers. These are ensured by the obligations of audited bodies for regular submission of legally stipulated documents. This represents only a minimum requirement. Generally no information can be withheld from the Court and it cannot be denied access to accounting or management documents on grounds of confidentiality. In some countries (e.g. France), hindering Courts’ investigations might give rise to sanctions, such as fines. Furthermore, national audit authorities with a judicial function have the power to decide to refer the matter to the general prosecutors, attached to the civil or criminal courts. Upon request from the Court, the prosecutor may refer the matter to the relevant judicial authorities. This is done in the cases of crimes and serious offences (including fraud and misappropriation of funds).

In the case of SAI which resemble courts or are quasi-judicial, the national audit authorities decide on a programme of audits but the national Parliament or a member of the government

⁸ See Section 78 from the Netherlands Act of 13 July 2002 to adopt the Act regulating the management of central government finances (Government Accounts Act), Bulletin of Acts and Decrees of the Kingdom of the Netherlands, 2002, no. 413.

⁹ Art. 3, para 1 from the Regulation on the structure and the organisation of the functions of the Court of Audits.

¹⁰ See www.nao.org.uk.

¹¹ In Sweden until June 2003 there existed the Audit Office subordinate to the government, established on the basis of a regulation issued by the government.

can ask them to look at a specific issue. They have restricted functions in relation to prosecution of fraud. Their functions consist of audit findings, opinions and recommendations concerning the organisation, management and policy of the audited body/institution. The activities result in issuing of reports, recommendations and management letters. Moreover, they have much stronger affiliations with national Parliaments, which is expressed in both the submission of the audit reports and their publication (as public Parliamentary papers, e.g. Netherlands). Furthermore, their reports are governed by confidentiality rules.

In the case of SAI which are pure audit offices, the national audit bodies are subordinate to the national Parliaments and present their reports to them. They are held accountable by Parliament on the activities they have performed. They have the power to request audited bodies to produce records or other documents, legally stipulated by law, for the purposes of the audit and can enforce or request enforcement actions to ensure access to these documents. Nevertheless, they do not have the power to take punitive actions or impose surcharges. Furthermore, they do not decide on the follow-up procedure or the appropriate sanctions.

Regardless of their organisation or the presence of a judicial function incorporated in their competences, the SAI exchange data on fraud, including EU-fraud, in the following ways:

- a) bilateral cooperation¹² between national audit institutions and performance of joint audits (for example in the field of environment pollution, state aid, excise duties, etc.¹³);
- b) cooperation in the framework of the European Organisation of the Supreme Audit Institutions (EUROSAI);
- c) cooperation with the European Court of Auditors¹⁴ and participation in various Task Forces and Working Groups (for example, Structural Funds Working Group, Irregularities and Fraud Working Group, etc.);
- d) cooperation with national prosecution authorities;
- e) cooperation with other bodies (ex: tax and customs authorities, agencies for internal financial control, ministries of finance¹⁵, ministries of justice¹⁶).

¹² Provided for in law (ex.: Art. 8 from the Bulgarian Law on the Court of Auditors), in the framework of bilateral cooperation agreements to joint assistance projects, for example with the support of SIGMA.

¹³ See for example the joint audits performed by the Netherlands Court of Audit, <http://www.rekenkamer.nl/cgi-bin/as.cgi/0282000/c/start/file=/9282400/modulesf/g00qge33>.

¹⁴ Also submission of annual programmes for the audit activates.

¹⁵ Art. 43 and 51 from the Bulgarian Law on the Court of Auditors.

This exchange of data takes two forms:

- (i) *formal* – when explicitly provided by law or other normative act;
- (ii) *informal* – carried out upon discretion of the court itself.

These characteristics lead to the following conclusions:

1. as a general rule the prosecuting authorities in the Member States are alerted to possible cases of fraud detected by the audit/ budgetary control authorities;
2. the process is the same irrespective of whether the violation damages the financial interests of the EU or not;
3. the advantage of using the same process is the effectiveness of the prosecution process which is guaranteed by the long established criminal law traditions of the Member States;
4. the prosecution is involved only in cases which constitute crime or serious offences¹⁷;
5. the extent to which the prosecution is involved is not pre-determined by law but depends on the decision of the audit institution or the national Parliament as a supervising body;
6. the process of prosecution at the national level tends to be rather lengthy and comes as an *ex post facto* action;
7. the disadvantage is that the national prosecution authorities do not always have the means to consider properly the intricacies of fraud in the context of the EU and have few chances of involving other relevant EU bodies, such as Eurojust, Europol or OLAF;
8. these EU bodies have to rely on the willingness of national audit institutions to alert them and to involve them in the investigation of cases related to EU-fraud;

This is mainly because national audit authorities generally do not have legally binding obligations to involve these bodies¹⁸.

¹⁶ See for example Sections 88 and 91 from the Netherlands Act of 13 July 2002 to adopt the Act regulating the management of central government finances (Government Accounts Act), Bulletin of Acts and Decrees of the Kingdom of the Netherlands, 2002, no. 413.

¹⁷ Section 16 from the Organic Act 2/1982 of the Spanish Court of Auditors; Art. 52 from the Bulgarian Law on the Court of Auditors.

¹⁸ Nevertheless, there are national audit institutions whose organic laws contain explicit obligations for submission of data on EU-fraud to the European anti-fraud bodies. See for example Art. 52, para 4 from the Bulgarian Law on the Court of Auditors.

ISSUE 2: OLAF'S ADMINISTRATIVE AND OPERATIONAL INDEPENDENCE

The issue of OLAF's independence is one of the core matters, explored in this study. The objective of the analysis has been to assess the relevance and the anticipated impact of the measures suggested in the Proposal for a Regulation of the European Parliament and the Council amending Regulation (EC) No. 1073/1999 concerning investigations conducted by OLAF. Those measures have also been evaluated in the conclusions and recommendations of the report in the light of the suggested possible scenarios for OLAF's evolution as the special EU body for the protection of the Union's financial interests and combating EU-fraud.

LEGAL GUARANTEES FOR THE INDEPENDENCE OF OLAF

The basic guarantee of OLAF's independence can be traced in Article 12 of Regulation (EC) No. 1073/99 of the European Parliament and of the Council of 25 May 1999 concerning investigations by the European Anti-fraud Office (OLAF) (OJ 1999 L136), which declares the independence of the Director General of OLAF.

Additional guarantees of OLAF's independence can be found in the establishment and the functioning of a Supervisory Committee. Under Articles 11 and 12 of Regulation 1073/99 the Committee's tasks are to strengthen 'the independence of the Office in relation to any government, institution, body or agency' and to monitor regularly 'the Office's investigative role'. The Committee is also called to reinforce the independence of OLAF's Director while he exercises its powers.

Regulation 1073/99 and the Rules of Procedure of the Supervisory Committee, adopted in February 2000, provide that:

- the Committee is composed of five qualified, independent external persons appointed by common accord of the EP, the Council and the Commission for a three-year term, renewable once;
- the members elect a Chair by majority vote from among themselves for a one-year renewable term;
- in performing their duties, the members of the Committee shall 'neither seek nor take instructions from any government or any Community organ';
- ethical rules govern the conduct of Committee members, violations of which may result in

- suspension of the member, following majority vote of the other members;
- the Director General is required to keep the Supervisory Committee regularly informed of OLAF's investigative activities;
 - the meetings of the Supervisory Committee are normally *in camera*, and certain of the documents it considers are confidential;
 - the Committee must deliver opinions to the Director General, at his request or on its own initiative, concerning investigative activities of OLAF, but it must not interfere with the conduct of investigations in progress. The Committee may issue opinions with respect to cases in which a European institution has failed to act on recommendations of the Director General, or in which the work of OLAF investigators has been obstructed, delayed or prevented;
 - the Committee can hear any member of OLAF staff, with the prior authorisation of the Director General;
 - the Committee must submit an annual report on the results of OLAF's investigations and follow-up actions to the Community institutions, and publish it in the Official Journal;
 - the Committee receives the annual programme of the Office's operational activities (Article 11(7) of Regulation (EC) 1073/1999);
 - on an annual basis the Director General forwards to the Supervisory Committee the Office's programme of activities and keeps the Committee regularly informed of the Office's activities, investigations, the results thereof and the action taken thereon.

However, under Article 2 of the Commission's Decision of 28 April 1999 (OJ L 136 – 31 May 1999), OLAF is formally part of the Commission¹⁹ and exercises its powers with the primary task of performing external and internal administrative investigations in cases of '...fraud, corruption and any other illegal activity adversely affecting the Community's financial interests'. Nevertheless, the Decision grants explicitly budgetary and administrative autonomy to OLAF and creates the framework for its operational independence so that – despite OLAF's administrative attachment to the Commission – its investigative powers are exercised independently (see paragraph 4 and Article 3 of the Decision).

The legal framework has additional guarantees to ensure OLAF's operational independence. These include guarantees for the post of the Director General of OLAF, and the monitoring powers of the Surveillance Committee (Articles 4 and 5).

¹⁹ This has a direct impact on the reporting on OLAF's activities. The report on combating EU-fraud is included in the general Commission report and the Annual Financial Report.

With regard to the management of OLAF the following is provided:

- The Director General of OLAF is independent in exercising his duties with respect to investigations (Article 12 of Regulation 1073/99 and Articles 5 and 6 of Decision 1999/352). He is entitled to initiate investigations on his own discretion. In performing his functions he ‘shall neither seek nor take instructions’ from any government or institution of the EU, including the Commission itself (Article 3 of Decision 1999/352);
- The procedure for the appointment of the Director General is designed in a way as to ensure equal access, transparency and fairness of choice after a range of consultations with the EP and the Council (Article 5, point 1 of the Decision);
- The Director General additionally ensures the operational and financial independence of the Office by recruiting and appointing its staff and drawing up its preliminary budget;
- Although falling within the administrative structure of the Commission (the Commission acts as an appointing authority), the Director General of OLAF is protected against unlawful dismissal by the introduced consultation procedure (the Commission as to consult the Supervisory Committee – Article 5, point 2).

The independence of OLAF in performing its duties is counterbalanced by the requirement to provide reports and information on the work it does. The legislation sets forth the requirements for OLAF’s accountability. This is an issue, which reflects on the proper and lawful execution of OLAF’s functions, and which ensures that the competences of the Office are discharged within its legal mandate.

OLAF reports to several institutions on a regular basis, and submits responses to their requests for information. In doing so, OLAF must take care not to violate rules regarding the protection of personal data. The legal provisions which provide for OLAF reports are the following:

- Article 280(5) of the EC Treaty requires the Commission to submit an annual report to the European Parliament and to the Council as to the measures taken to fulfil the requirements of that Article. Accordingly, OLAF produces an Annual Report on the Protection of the Financial Interests of the Communities and the Fight against Fraud;
- Article 12(3) of Regulation 1073/1999 requires OLAF’s Director General to ‘report regularly to the European Parliament, the Council, the Commission and the Court of

Auditors on the findings of investigations carried out by the Office, whilst respecting the confidentiality of those investigations, the legitimate rights of the persons concerned and, where appropriate, national provisions applicable to judicial proceedings.’ In fulfilment of this requirement, OLAF produces an annual report on its operational activities;

- Article 11(7) of Regulation (EC) 1073/1999 requires that the Director keeps the Supervisory Committee regularly informed of the Office’s activities, its investigations, the results thereof and the action taken with respect to them. In application of this provision, OLAF produces a Monthly Report on its operational activities.

Other reporting obligations are linked to the Commission’s Strategic Planning and Programming Cycle (SPP), and include the Director General’s Annual Activity Report and the half-yearly review of the implementation of OLAF’s Annual Management Plan.

The administrative and operational activities of OLAF are monitored by the Budgetary Control Committee of the European Parliament. In accordance with Article 276(2) of the EC Treaty the Parliament may request the Commission to give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission is obliged to comply. In addition, the Parliament is entitled to scrutinise the organisation of checks, the prevention, prosecution and punishment of fraud and irregularities affecting the budget of the European Union, and concerning the protection of the Community’s financial interests in general. These provisions apply equally to OLAF, but in performing these functions, the Parliament must observe the independence of the Office in exercising its powers of investigation. To this end, COCOBU is responsible for matters relating to the protection of the Community’s financial interests in general. COCOBU produces draft reports and opinions on matters related to the protection of the Communities’ financial interests including, specifically, OLAF’s annual activity report. At the request of COCOBU, OLAF’s Director General attends meetings of the Committee to give oral progress reports on specific cases. These reports are given in closed sessions. The European Parliament can also submit written questions to the Commission. OLAF must prepare the replies to those questions that touch upon its areas of responsibility.

The European Court of Auditors also has monitoring functions. Article 248(2) EC provides that the Court of Auditors is examining whether Community revenues and expenditures have been incurred in a lawful and regular manner, and whether the financial management has been sound. The Court has been granted broad treaty-based powers to collect the information

that it needs from other Community organs to perform its function of auditing the lawfulness of Community revenues and expenditures. Article 248 of the Treaty and Articles 140 and 142 of the Financial Regulation specify the conditions under which the Court of Auditors can have access to documents and information related to the financial management of the services or bodies under its control. Both provide that the other institutions of the Community shall forward to the Court the documents and information, including that stored on electronic media, necessary for the performance of its tasks. OLAF should, in general, cooperate with the Court's requests for the information that it needs to perform its auditing functions.

The analysis of the above data leads to the following conclusions:

- OLAF enjoys operational independence.
- However, there is a need to explore collaboration with Eurojust and Europol as a means of achieving effective protection of the financial interests of the EU.
- There is also a need to explore complete administrative independence of OLAF from the Commission and indeed any other of the traditional EU institutions; the model of Eurojust may be selected for this purpose;
- The present position of OLAF as a formal part of the Commission, yet independent, leads to a certain 'hybrid-status' of the Office. Despite its operational independence, the activities of the Office are still subject to evaluation by the Commission²⁰ and OLAF does not report to the EP on its own legal grounds but as a part of the executive (the Commission). At the same time, the proclaimed independence of the Office creates difficulties in performing regular and efficient communication with other relevant authorities and hinders exchange of data and documents. This might result in rather loose ties between OLAF and other stakeholders and supervisory bodies and possible cases of 'over-performing'. This is especially evident in the case of the EP, where the lack of direct link, complemented with the general and thus elusive reporting rules, creates opportunities for a rather broad interpretation of both the issues of independence and confidentiality. The result from this, namely the refusal to report, affects adversely both OLAF's accountability and the control functions of the EP as well as the right of individuals and corporate entities subject to OLAF's investigations.
- Another unresolved issue is the level of communication between the relevant bodies and the need to improve the exchange of information as well as the clarity of the rules governing the operational activity of OLAF. The first issue has been already addressed

²⁰ See for example COM(2003) 154 final.

with the adoption of a Code of Conduct²¹ drawn up between the Commission and OLAF in July 2003, which introduced measures concerning to the exchange of information for Commission internal investigations.

- A further step in clarifying the rules on opening, closing and extending investigations carried out by OLAF is the adoption, by the Commission, of two proposals²² for amendments of the legal framework in force. The proposals aim to establish clearer rules for the exchange of information between OLAF and the institutions, bodies and Community organisations, as well as allowing OLAF to concentrate on its operational priorities and to speed up its investigations, thus strengthening its efficiency. It is believed that the proposals could reach their objectives by:
 - strengthening the procedural guarantees for persons who are the object of OLAF investigations, and
 - strengthening the powers of the Supervisory Committee.

It is suggested, though, that this legislative initiative is complemented by activities aiming at clearing and strengthening the link between OLAF and the EP. One possible way to do this is by providing for explicit provisions on reporting rules and mechanisms in the EP internal regulation.

²¹ SEC(2003) 871.

²² Proposals for regulations of the European Parliament and of the Council modifying Regulations (EC) Nos 1073/1999 and 1074/1999 (COM(2004) 103 and 104).

ISSUE 3: JUDICIAL SUPERVISION OF INVESTIGATIONS IN EUROPEAN INSTITUTIONS AND IN SOME MEMBER STATES, OLAF'S ACCOUNTABILITY

The study investigated the question of judicial supervision and accountability of OLAF's investigations with the following objectives in mind:

- whether OLAF's present accountability mechanisms, particularly in respect of its investigative activity, include judicial supervision; and
- whether judicial supervision exists in investigations by other European justice institutions (i.e. Eurojust, Europol) and in Member States.

The study also considered available scenarios of judicial supervision in OLAF's investigations as a mechanism for enhancing OLAF's efficiency.

I. JUDICIAL SUPERVISION OF OLAF'S INVESTIGATIONS

The question of judicial supervision of OLAF investigations is considered through the examination of OLAF's existing accountability mechanisms. OLAF's accountability is ensured through several supervisory mechanisms including:

- direct institutional supervision represented by the Supervisory Committee pursuant to Art. 11 of Regulation (EC) No 1073/1999;²³
- the reporting mechanism represented by OLAF's reporting and review requirements to COCOBU pursuant to Article 12(3) of Regulation (EC) No 1073/1999;
- complaint and judicial review under the Treaty and other regulations may be regarded as the third mechanism.

1. Supervisory Committee

As is common with Supreme Audit Institutions (SAI), the question of the independence of OLAF occupies a central position of EU concern. Regulation (EC) No 1073/1999 of the European Parliament and the Council of 25 May 1999 concerning investigations conducted

²³ OJEC L 136 Vol. 42.

by the European Anti-Fraud Office, and the Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office, were adopted with a view to reinforce OLAF's independence in conducting its investigation tasks. Article 11 in each of these Regulations governs the establishment and sets the powers of the 'Supervisory Committee' which 'shall reinforce the Office's [i.e. OLAF] independence by regular monitoring of the investigative function.' A 'Surveillance Committee' had earlier been established for this task by Article 4 of the Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-Fraud Office.²⁴

Article 11(7) of Regulation (EC) 1073/1999 requires that the Director keeps the Supervisory Committee regularly informed of the Office's activities, its investigations, the results thereof and the actions taken with respect to them. In application of this provision, OLAF produces a Monthly Report on its operational activities.

The research carried out by this study reveals that the supervisory function of the Supervisory Committee with regard to OLAF's investigations does not represent judicial supervision in the strict sense. This is because neither the composition nor the mandate of the Supervisory Committee involve a judicial element.

Composition of the Supervisory Committee

- The Supervisory Committee is composed of five qualified, independent outside persons appointed by common accord of the EP, the Council and the Commission for a three-year term, renewable once;
- the members of the Supervisory Committee elect a Chair by majority vote from among themselves for a one-year renewable term;

Powers of the Supervisory Committee

Articles 11 and 12 of EP/Council Regulation (EC) 1073/99 establish the tasks of the Supervisory Committee. These tasks are:

- To reinforcing the independence of OLAF in relation to any government, institution, body or agency;
- To regularly monitor OLAF's investigative role and to reinforce the independence of

²⁴ Ibid.

OLAF's Director in the exercise of the Office's investigative powers.

Evidently, these Articles do not require the Supervisory Committee to be composed of members – or former members – of the judiciary. Moreover, the Committee's mandate does not involve a judicial function, i.e. judicial review of OLAF's actions, but is limited only to a monitoring/advisory function. Moreover, there is no legal basis in the relevant provisions for compensation or appeal, against OLAF's actions or omissions, before the Supervisory Committee.

Comparison with European justice institutions

The current situation with regard to the Supervisory Committee's oversight function over OLAF's investigations can be compared to the supervision mechanisms that exist in other European institutions in the field of criminal law, namely Europol and Eurojust.

Europol

In view of the question of whether OLAF's Supervisory Committee functions amount to judicial supervision, it can be stated that its mandate and composition can be compared to those of the Joint Supervisory Body of Europol.

Article 24(1) of Europol Convention²⁵ specifies the mandate of the Joint Supervisory Body as follows:

- to ensure that the rights of the individual are not violated by the storage, processing and utilisation of the data held by Europol;
- to monitor the transmission of data originating from Europol.

Moreover, Article 19(7) of the Europol Convention provides for an appeal procedure before the Joint Supervisory Body. Furthermore, Article 20(4) guarantees the right of individuals to appeal to the Joint Supervisory Body against decisions by Europol.

Although no judicial qualification is required for membership of the Joint Supervisory Body of Europol, the mandate of the Joint Supervisory Body involves judicial function and can, therefore, be considered to represent judicial supervision of Europol's actions.

²⁵ OJ C 316 of 27.11.1995. Council Act of 26/07/1995.

Eurojust

In view of the question of whether OLAF's Supervisory Committee functions amount to judicial supervision, the Committee's mandate and composition can also be compared with the mandate and composition of the Joint Supervisory Body of Eurojust.

Council Decision (2002/187/JHA) of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime,²⁶ provides in Article 23 (1) that the composition of the Joint Supervisory Body shall consist of a judge, or a person holding an office giving him sufficient independence, appointed by each Member State.

Article 23(7) of Council Decision (2002/187/JHA) of 28 February 2002 expressly provides for, and further guarantees, the right of appeal before the Joint Supervisory Body according to Article 19(8) of Council Decision (2002/187/JHA) of 28 February 2002 concerning appeals against decisions denying access to personal data, and Article 20(2) of Council Decision (2002/187/JHA) of 28 February 2002 concerning appeals against decision in connection to data correction.

Finally, Article 23(8) of Council Decision (2002/187/JHA) of 28 February 2002 provides that the 'decisions of the Joint Supervisory Body shall be final and binding on Eurojust.'

The Joint Supervisory Body is, by virtue of the provisions above, both composed of judicial persons and exercises judicial functions in deciding appeals and rendering decisions binding on Eurojust.

Proposals have emerged which emphasise the enhancement of OLAF's Supervisory Committee.²⁷ These proposals, however, do not go as far as transforming the Supervisory Committee into a body similar to either the Joint Supervisory Body of Eurojust or that of Europol. Instead, these proposals assign the Supervisory Committee a quasi-judicial function with regard to individual safeguards and fundamental freedoms. This is reflected in the European Parliament Assessment of OLAF (P5-TA(2003)0551), the European Parliament resolution on the Commission's Report on the evaluation of the activities of the European

²⁶ OJEC/L63/Vol54/March2002.

²⁷ E.g. the Commission's 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), COM(2004) 103 final. 2004/005 (COD).

Anti-Fraud Office (OLAF)²⁸ which states in point 14 that the Parliament expects the Commission make legislative proposals to the effect that:

- the Supervisory Committee of OLAF should in the future ensure that the OLAF's investigative activities are carried out independently
- the Supervisory Committee must be given explicit powers to ensure that the fundamental freedoms and rights of those affected by the investigations are protected
- a procedure must be established to enable the parties concerned to formulate an educated stance on the facts of the case and to ensure that the conclusion of the investigation is based exclusively on conclusive evidence.

This call by the Parliament is reflected in Article 11(1) of the Commission Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)²⁹ which provides, *inter alia*, that:

- The Supervisory Committee shall reinforce the Office's independence by regular monitoring of the implementation of the investigative function;
- The Supervisory Committee shall ensure that individual rights are respected and shall take account of the need to safeguard the of the Union's interests; and
- The Supervisory Committee shall also deliver opinions concerning procedural guarantees at the request of the person concerned, and shall inform the institutions, bodies, offices or agencies concerned at their request.

These proposals aim to expand the role of the Supervisory Committee. It is uncertain, however, what the status and consequences of the Supervisory Committee's opinions would be. The Commission's proposals do not clarify this important point. Nevertheless, opinions of OLAF's Supervisory Committee are a measure of supervision which carry authority and therefore impact on OLAF's plans for investigations.

2. Reporting requirements

OLAF is under an obligation to report to several institutions on a regular basis, and submits responses to their requests for information. The reports which OLAF produces or to which it

²⁸ COM2003 154- 2002-2237(INI).

²⁹ COM (2004)104 final, 2004/0038 (CNS) Brussels 10.02.2004.

contributes are required by the Treaty or by secondary legislation. In complying with its reporting requirement OLAF must take care not to violate rules regarding the protection of personal data (e.g. Article 8 of the above Regulation (EC) No 1073/1999).

OLAF's reporting requirements include:

- Article 280(5) of the EC Treaty which requires the Commission to submit an annual report to the European Parliament and to the Council as to the measures taken to fulfil the requirements of that Article. Accordingly, OLAF produces an Annual Report on the Protection of the Financial Interests of the Communities and the Fight against Fraud.
- Article 12(3) of Regulation 1073/1999³⁰ requires OLAF's Director General to 'report regularly to the European Parliament, the Council, the Commission and the Court of Auditors on the findings of investigations carried out by the Office, whilst respecting the confidentiality of those investigations, the legitimate rights of the persons concerned and, where appropriate, national provisions applicable to judicial proceedings.' In fulfilment of this requirement, OLAF produces an annual report on its operational activities (OLAF's report is received by COCOBU).
- Other reporting obligations are linked to the Commission's Strategic Planning and Programming cycle (SPP), and include the Director General's Annual Activity Report and the half-yearly review of the implementation of OLAF's Annual Management Plan.

OLAF's reports to the European Parliament: the Budgetary Control Committee

The EC Treaty provides that the European Parliament has political oversight of the Commission. Within this framework, COCOBU carries out both the discharge (established by Article 276(2)) and scrutiny functions.

In exercising these functions, COCOBU does not, however, represent a judicial organ but is responsible for matters relating to the protection of the Community's financial interests in general. At the request of COCOBU, OLAF's Director General attends meetings of the Committee and gives oral progress reports on specific cases. These reports are presented in closed sessions. The European Parliament can also submit written questions to the Commission. OLAF must prepare the replies to questions that touch upon its areas of responsibility.

³⁰ OJEC/ L136/Vol.42/May1999.

The study concludes, therefore, that the supervisory function of COCOBU does not represent a judicial function in respect of OLAF's investigative accountability.

OLAF's reports to the European Court of Auditors

EC Treaty Article 248(2) defines the tasks of the Court of Auditors as examining whether Community revenues and expenditures have been incurred in a lawful and regular manner, and whether the financial management has been sound.

Article 248 establishes the Court's power to the effect that:

‘[...] 2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

3. The other institutions of the Community . . . shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.’

Accordingly, OLAF is required to report to the European Court of Auditors. However, these reports are not with regard to the investigations carried out by OLAF, but report on accountability with regard to budget and expenditure matters.

3. Complaints and judicial review

Judicial review by European Court of Justice

The European Court of Justice and the Court of First Instance review the legality of acts and failures to act of the Commission (OLAF), in conformity with the following articles of the EC Treaty:

Actions for annulment (Article 230) can be brought for annulment of acts of the Council, Commission, European Parliament or the European Central Bank, provided that they have binding legal effect. Actions for annulment can be initiated by a Member State, the Council, the Commission, the European Parliament, the Court of Auditors or the ECB. Actions for annulment can be initiated by EU natural or legal persons provided that they refer to acts affecting their legitimate interests and that the legal instrument under attack is addressed to them personally or has a direct individual effect on them. Such an action may be based on allegations of *ultra vires*, violation of essential procedural requirements, infringement of the Treaties or secondary legislation, or abuse of discretionary powers. Thus, any act by OLAF based on the

instruments that regulate its functioning (e.g. Regulation 1073/99, Commission Decision 1999/352, and Regulation 2185/96) could be challenged under this Article.

It is not clear and indeed questionable whether an act of OLAF, including its conclusions in a case, could be challenged under Article 230, as they do not have a binding legal effect.

Complaints for failure to act (Article 232) can be brought against the Commission (and other European institutions) for failure to take an action required of it by the Treaty. They can be brought by the Member States or other EU institutions or by a citizen or firm, for failure to take a decision within the prescribed time limits. This Article could theoretically be invoked against the Commission for failure to fulfil the requirements of Article 280 (i.e. to organise close and regular cooperation with the Member States and to submit an annual report to the European Parliament and the Council). Since the Commission has delegated the powers of investigation conferred on the Commission to OLAF, an action based on Article 232 could be brought against the Commission for OLAF's failure to execute those powers. In this respect, such an action may constitute genuine judicial supervision of OLAF's investigative activity.

Actions for damages can be brought for non-contractual liability of the Community (Article 288). They can be brought by EU citizens, EU firms or Member States that have sustained damages as a result of a fault of staff of Community institutions. Thus, a citizen or firm could, in theory, invoke this Article for damages suffered as a result of OLAF's improper execution of its investigation tasks. Nevertheless, this type of cases does not fall within the *strictu sensu* meaning of judicial review for OLAF's investigative activity.

Staff members of Community organs can bring actions for matters arising from the employment relationship to the European courts (Article 236). This Article could be relied upon by any staff member (i.e. an interested person according to Article 4 of the Commission Decision 1999/396) alleging that OLAF has improperly conducted an internal investigation against them, the conclusions of which were the basis for disciplinary proceedings. This article therefore represents a measure of genuine judicial supervision on OLAF's investigations which, however, is by its scope limited only to persons who are members of staff of the EU institutions.

Moreover, Article 90a of the Staff Regulations provides that any person to whom those Regulations apply may submit a *request* to the Director General of OLAF, within the

meaning of Article 90(1), that he takes a decision in connection with an OLAF investigation. It also provides that any person may submit a *complaint* within the meaning of Article 90(2) against an act adversely affecting them in connection with an OLAF investigation. This must be done in accordance with Article 90(2) of the Staff Regulations, which would require OLAF's Director General to decide on the matter within four months from the date on which the complaint was lodged. This decision may be appealed to before the European Courts. These provisions represent measures of genuine judicial supervision of OLAF's investigations but they are limited to cases involving members of staff of the EU institutions.

Opinions of the European Ombudsman

The Ombudsman is authorised to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State. Such complaints may allege instances of maladministration concerning the activities of Community institutions or bodies other than the European Courts. The Ombudsman conducts inquiries, based on such complaints or on his own initiative, following which he is to issue an opinion as to whether maladministration has occurred. Where a complaint raises the possibility that an instance of maladministration has occurred, the Ombudsman refers the matter to the institution concerned requesting their view on the matter. This must be provided within three months. The Ombudsman then issues a report, in which he may make a 'critical remark' if he believes that an instance of maladministration has occurred. The report is forwarded to the European Parliament and to the institution concerned.

The European Parliament has adopted regulations and general conditions governing the performance of the Ombudsman's duties.³¹ Article 3 authorises the Ombudsman to conduct all necessary enquiries in order to clarify whether maladministration has occurred. Community institutions and bodies are obliged to supply the Ombudsman with any information that he has requested of them and give him access to the files concerned. They may refuse only on duly substantiated grounds of confidentiality.

OLAF's investigative activity may therefore be questioned before the European Ombudsman who will send any complaints concerning OLAF directly to the Office. The Ombudsman will request OLAF's view on the complaint. The opinion issued by the Ombudsman could be regarded as a form of review of OLAF's investigation, albeit not strictly judicial.

³¹ Decision of the European Parliament 94/262/ECSC, EC, Euratom on the regulations and general conditions governing the performance of the Ombudsman's duties, OJ L 113, 4.5.1994, p. 15.

II. JUDICIAL SUPERVISION IN SOME MEMBER STATES

Audit institutions in Member States discern a wide range of differences pertaining to their composition and functioning, their structural organisation and working methods. However, taking into consideration the mode of their establishment, their relations with other organs of the state, the character of their authority, and their decision-making mechanisms, the Supreme Audit Institutions (SAI) within the European Union can be classified into three types as follows³²:

- (a) ‘Courts’ with a judicial function not only involved in audit, but also (at least as one of their functions) adjudicate cases of operations, performed by individuals who are personally accountable for the appropriate use of public resources, grant compensations, impose penalties, etc. These are collegiate bodies incorporating judges (except in the case of Belgium) and at times following court procedures, independent of the parliaments and governments of their respective countries, though co-operating with both. They exist in Belgium, France, Greece, Italy, Portugal and Spain.
- (b) ‘Collegiate’ structures organised as courts but with no judicial function. Acting under mandates of the constitutions of their countries, they incorporate members with the status of judges, are headed by a president, authorised to play a greater role as compared to the courts. These bodies perform audits, which imply that they must be independent of their governments; their independence of parliament is only partial (this does not impair their audit functions, especially as their parliamentary authorisations are of a general nature). They exist in Germany and the Netherlands.
- (c) ‘Audit offices’ as head organs of the state, established on the basis of the constitution or other law, subordinate to their parliaments, or at least supporting parliamentary activity. Usually they are single-member organs, at times with collegial aspects. They exist in Austria, Denmark, Finland, Ireland and the United Kingdom. Luxembourg and Sweden have collegiate audit offices.

In order to demonstrate the trend to introduce guarantees of independence for national audit institutions, one can refer to the following national examples:

³² See Jacek Mazur, LEGAL STATUS OF THE SUPREME AUDIT INSTITUTION: APPLICATION OF INTERNATIONAL STANDARDS VS. NATIONAL TRADITIONS, publication of the SUPREME CHAMBER OF CONTROL (POLAND) quoting J. Magnet, ‘Classification des institutions supérieures de contrôle financier’, *Revue Française de Finances Publiques*, No 36, 1991.

- The Netherlands Court of Audit (Algemene Rekenkamer) and the Supreme Chamber of Control (Najwyższa Izba Kontroli, NIK) in Poland are both Supreme Audit Institutions. The establishment of these institutions is provided for in the national constitutions (Chapter 4, Articles 76-78 of the Constitution of the Kingdom of the Netherlands, and Chapter 9 of the Constitution of the Republic of Poland entitled *Organs of State Control and for Defence of Rights*);
- The Netherlands Court of Audit and the Supreme Chamber of Control are both granted constitutional independence from the executive, judicial and legislative state functions;
- However, the Netherlands Court of Audit and the Supreme Chamber of Control both enjoy a close relationship with the Lower Houses of Parliament (i.e. the Second Chamber, Tweede Kamer in the Netherlands and the Lower House, Sejm, in Poland). Both the Tweede Kamer and the Sejm exercise certain powers over these audit institutions:
 - (a) The Parliament plays a greater role in the appointment/election of the members of the audit institutions. For example, in Poland the Sejm, with the Senate's consent, appoints the President of the SCC. The Marshal (Speaker) of the Sejm appoints and dismisses the SCC's Vice-Presidents on the request of the SCC's President. The Marshal also appoints members of the Council of the SCC. The Sejm has exclusive right to audit the SCC's budget.
 - (b) The Netherlands Court of Audit and the SCC come under the direct supervision of the Lower House of the States General. Section 95 of the Government Accounts Act (the Netherlands) provides that the Court of Audit shall bring its audit reports to the attention of the Lower House and of the States General. By 1 April each year the Court of Audit shall submit to the Lower House and to the States General a report on its activities in the preceding year.

The SCC's co-operation with the Sejm has several aspects:

- The SCC undertakes audits on order of the Sejm or its bodies;
- The SCC submits to the Sejm:
 - (i) analysis of the execution of the state budget and the monetary policy guidelines,
 - (ii) opinion on the budget validation for the government,
 - (iii) information on audit results, recommendations and pronouncements,
 - (iv) annual activity report.

In Denmark, the independence of the National Audit Office is ensured through its subordination to the Folketing (the Parliament). The Speaker of the Parliament appoints and dismisses the Head of the National Audit Office.

The situation in Austria is comparable to that in the Netherlands and Poland where the constitution subordinates the Austria Court of Audit to the Nationalrat (the National Council) which is a chamber of the Austrian bicameral Legislative Assembly.

It is noteworthy that the powers of some national institutions, e.g. SCC, are limited to investigations concerning an audit case. When suspicion arises and prosecution is required, the case is handed over to the prosecution service.

Judicial Supervision of OLAF and European Institutions

OLAF falls under several supervisory mechanisms. These include a) the Supervisory Committee, b) reporting requirements and, c) judicial review of OLAF's actions.

Supervision under the Supervisory Committee does not represent judicial review because the Committee is not constituted of members of the judiciary nor does it exercise a judicial function. However, genuine judicial supervision exists in other European institutions in the area of criminal law. This is the case with Eurojust, where the Joint Supervisory Body is composed of judicial members and exercises judicial functions (delivering final decisions on Appeals). The proposal for strengthening OLAF's Supervisory Committee does not go as far as its transformation into a body with similar powers and composition as those of the Joint Supervisory Body of Eurojust. Instead, at best OLAF's Supervisory Committee may become, if these proposals are adopted, a quasi-judicial body with the power to deliver opinions on matters relating to the protection of fundamental rights in the context of OLAF's investigations.

Other mechanisms for review of OLAF's decisions can be found in the provisions on remedies before the European Courts. Some of these, such as actions for damages under Article 288, provide ground for a judicial action. However, such action does not fall within the meaning of judicial supervision for OLAF's investigative activity. Actions can also be brought against OLAF on the basis of provisions of Staff Regulations. Such actions may be considered genuine judicial supervision of OLAF's investigations. However, only staff members are able to avail themselves of these procedures. Other provisions, such as complaints for failure to act under Article 232, may be used by EU citizens and may be

considered to constitute an indirect method of judicial supervision over OLAF's activity.

The lack of direct mechanisms of judicial supervision and the reluctance shown so far for the use of existing mechanisms creates a gap in OLAF's regulation. An important component for enhancing OLAF's efficiency could be achieved through the introduction of judicial powers for OLAF's Supervisory Committee. This would imply that the requirements for membership of the Supervisory Committee must be reviewed. The Supervisory Body of Eurojust may be considered a model in this regard.

ISSUE 4: PROTECTING WITNESSES AND ACCUSED OLAF'S INVESTIGATIONS

A close examination of the current framework for the protection of rights in connection with OLAF's investigations demonstrates the adequacy of the legal framework at the time that OLAF was established. It is also evident that it must now be substantially enhanced to ensure efficient functioning of OLAF. Improvements refer to a comprehensive, rather than the current fragmented, regulation and to coherence and consistency with the general protection of rights as are now increasingly introduced in the area of EU criminal law.

THE SIGNIFICANCE OF PROTECTION OF RIGHTS IN OLAF INVESTIGATIONS

In the light of its vital task to combat fraud, corruption and any illegal activity affecting the financial interests of the European Community, OLAF enjoys and exercises extensive investigative powers. OLAF's investigative powers include:

- 'immediate and unannounced access to any information held by the institutions, bodies, offices or agencies, and to their premises' in the course of OLAF investigations,³³
- the power to carry out similar on-the-spot inspections at the premises of economic operators,³⁴
- the power to access and obtain any information held in any form relating to irregularities;
- assuming custody of any documents or data obtained in the course of investigations.

OLAF's investigations are likely to lead to criminal or administrative proceedings.³⁵

Moreover, its findings – OLAF reports – constitute admissible evidence in administrative and judicial proceedings.³⁶ Suspects and witness in these investigations must therefore be ensured a degree of legal protection and guarantees reflecting full respect for their human rights and

³³ Article 4(2) of Regulation (EC) No 1073/1999.

³⁴ Article 4(3) of Regulation (EC) No 1073/1999.

³⁵ Article 1(3) of Regulation (EC) No 1073/1999 provides that OLAF shall conduct investigations for the purposes of 'investigating ... serious matters relating to the discharge of professional duties such as to constitute a dereliction of the obligations of officials and other servants of the Communities liable to result in disciplinary or, as the case may be, criminal proceedings.' Article 2 of the above Regulation concern 'Administrative Investigations'.

³⁶ This study, however, investigates the protection of rights in OLAF's investigations in general and without necessarily distinguishing between investigations leading to criminal from those leading to administrative proceedings. For the concept and a detailed discussion of 'administrative human rights' see, Klara Kanski, 'Towards Administrative Human Rights in the EU. Impact of the Charter of Fundamental Rights', *European Law Journal*, Vol. 10, No. 3, pp. 196-326.

fundamental freedom envisaged in Recital 10 of the OLAF Regulation (EC) No 1073/1999.³⁷

THE SCOPE OF THE RIGHTS PROTECTED

The current legal framework imposes certain duties to be observed by OLAF in conducting its investigative task. These duties correlate to rights including the following:

- a. The right to be informed of the exact nature of the allegation;
- b. The right to be offered the opportunity to comment on the allegation;
- c. The right to confidentiality of data obtained during investigations.

It must be noted that these rights are intended to apply to all persons involved or affected by OLAF's investigations, including suspects, the accused and witnesses.

LEGAL BASIS

Recital 10 of the OLAF Regulation (EC) No 1073/1999 provides that OLAF's investigations:

- must be conducted with full respect for human rights and fundamental freedoms,
- must respect in particular the principle of fairness,
- must respect the right of persons to express their views on the facts concerning them, and
- must respect the principle that the conclusions of an investigation may be based solely on elements which have evidential value.

In addition, Article 8 of the above Regulation (EC) No 1073/1999) provides for the following obligations:

- ‘1. Information obtained in the course of external investigations, in whatever form, shall be protected by the relevant provisions.
2. Information forwarded or obtained in the course of internal investigations, in whatever form, shall be subject to professional secrecy and shall enjoy the protection given to by the provisions applicable to the institutions of the European Communities.
3. Such information may not be communicated to persons other than those with the institutions of the European Communities or in the Member States whose function requires them to know, nor may it be used for purposes other than to prevent fraud,

³⁷ OJEC/ L136/Vol.42/May1999.

corruption or other illegal activity.

4. The Director [of OLAF] shall ensure that the Office's [OLAF] employees and the other persons acting under its authority observe the Community and national provisions on the protection of personal data, in particular those provided for in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection on the free movement of such data.

The Director of the Office and the members of the Supervisory Committee [of OLAF] referred to in Article 11 shall ensure that this Article and Articles 286 and 287 of the Treaty are applied.'

Article 8 above is particularly relevant to the transmission of information between OLAF and other EU institutions, namely the Supervisory Committee (under Article 11 of the Regulation (EC) No 1073/1999), the European Parliament, the Council, the Commission and the Court of Auditors (under Article 12 of Regulation (EC) No 1073/1999).

Confidentiality of OLAF reports

OLAF's reports to the European Parliament (COCOBU) concerning its investigations under Article 11 (of the Regulation (EC) No 1073/1999) are classified as confidential documents. The COCOBU Handbook 2004 provides two distinct procedures for examination of confidential documents by the committee.³⁸

The first procedure is provided for in Annex 3 to the Framework Agreement between the Commission and the Parliament.³⁹ This Framework Agreement requires the Parliament to put in place a secure archive system for documents classified as confidential and a secure reading room in which they can be consulted in accordance with the rules governing their transmission.

The second procedure is provided for in the Annex VII to the Rules of Procedure of the European Parliament (Section A).⁴⁰ Article 1 of Annex VII provides that the term confidential documents applies to documents within the meaning Article 4 of Regulation 1049/2001.⁴¹

³⁸ COCOBU (European Parliament), *Handbook 2004 for New Members of the Committee on Budgetary Control*, p. 11-12.

³⁹ See Minutes of the EP Plenary Session sitting of 5 July 2000.

⁴⁰ <http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//TEXT+RULES-EP+20040720+ANN-07+DOC+XML+V0//EN&HNAV=Y>

⁴¹ The Article provides:

1. The institutions shall refuse access to a document where disclosure would undermine the protection of: —the public interest as regards:— public security;— defence and military matters, — international relations, — the financial, monetary or economic policy of the Community or a Member State;

Any discussion concerning or involving documents within the meaning of Article 4 takes place *in camera* and may be attended exclusively by members of the committee and by officials and experts whose presence is strictly necessary.

COCOBU's Handbook also provides that, OLAF, when forwarding confidential documents, insists on the application of the second procedure, i.e. based on Annex VII.⁴²

There is no doubt that the confidential information communicated by OLAF to COCOBU falls under the meaning of Article 8 of Regulation (EC) 1073/1999 and must, therefore, enjoy the protection provided by that Article. However, in the absence of specific provisions governing the choice of procedure to be followed by COCOBU in classifying confidential information received from OLAF, there seems to be no legal support for OLAF's persistence that COCOBU classifies its report under Annex VII. OLAF's position would be justifiable if a secure archive system and a secure reading room as required by the Framework Agreement had not yet been materialized.

Article 4(1) of Regulation (EC) 1073/1999 provides for a 'decision' to be adopted by an institution, body, office or agency of the community laying out the procedures in accordance

(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

2. The institutions shall refuse access to a document where disclosure would undermine the protection of:

— commercial interests of a natural or legal person, including intellectual property; — court proceedings and legal advice; — the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.

3. Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

4. As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.

5. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.

6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

7. The exceptions as laid down in paragraphs 1 to 3 shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to privacy or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.

⁴² COCOBU (European Parliament), *Handbook 2004 for New Members of the Committee on Budgetary Control*, p. 11

with which internal investigations may be carried out by OLAF.

Article 4(6)(b) of the Regulation states that the decision setting out the procedures to be observed by OLAF in compliance with Article 4(1) must guarantee the rights of persons concerned in internal investigations.

‘Model Decision’

In accordance with this Article, a ‘Model Decision’ was annexed to the Interinstitutional Agreement of May 25 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities⁴³ to be adopted by an institution, body, office or agency of the Community in fulfilment of that Article.

Article 4 of the ‘Model Decision’ provides to the effect that:

- in internal investigations, where the possible implication of a member, manager, official or servant emerges, the interested party shall be informed rapidly as long as this would not be harmful to the investigation;
- in any event, conclusions referring by name to a member, manager, official or servant of (the institution, body, office or agency) may not be drawn once the investigation has been completed without the interested party having been enabled to express his views on all the facts which concern him;
- in cases necessitating the maintenance of absolute secrecy for the purpose of investigation and requiring the use of investigative procedures falling within the remit of a national judicial authority, compliance with the obligation to invite the member, manager, official or servant of (the institution, body, office or agency) to give their view may be deferred in agreement with the President or Secretary-General respectively.

The Protection of witnesses in OLAF’s investigations

Witnesses are not singled out for protection in the legal framework of OLAF. The assumption seems to be, therefore, that the general protection that this framework guarantees to all

⁴³ Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF). OJEC L 136/Vol. 42/1999.

persons involved in OLAF's investigations also applies to witnesses.

OLAF's Manual distinguishes between four categories of persons, depending on the status of the person (whether an official of the Community or not) and the anonymous identity of the person:

Informants: an informant is a person who is not a servant of a Community organ, who seeks to disclose to OLAF information concerning a matter within the Office's legal competence. An informant also seeks to ensure that disclosure of their identity is withheld. There are no express provisions in OLAF's legal framework exclusively relevant to informants; any stipulation on this category of persons derives from OLAF's Manual. The Manual reflects the Office's practice in dealing with this category of persons.

Generally, there appears to be no obligation on persons to come forward with information as to irregularities falling within the legal competence of OLAF. However, when OLAF is contacted by an informant, the relationship between OLAF and the informant is regulated by the law of the Member State involved in the case. The latter often requires disclosure, establishes how an informant is to be treated and generally prohibits payments to informants. The rights of informants and the degree of legal protection that they enjoy is, therefore, dependent upon the jurisdiction of the Member State concerned. In view of the absence of a harmonised application of standards in criminal proceedings throughout the EU, particularly in the area of criminal evidence and criminal procedure, it is safe to expect that the treatment of informants would be far from uniform across Member States. Failure on the part of OLAF to take account of the relevant rules may, therefore, eventually prejudice national enquiries and criminal proceedings.

With respect to the rights of informants, OLAF's practice includes:

- (a) Giving no guarantee or promise as to the treatment that the informant will receive from the national authorities;
- (b) Giving no guarantee as to anonymity when information is passed to national judicial or prosecution authorities;
- (c) Offering no reward to the informant;
- (d) OLAF does not compromise the identity of the informant.

Whistleblowers: are servants of a Community organ. In contrast to informants,

whistleblowers are under an obligation to inform OLAF of suspected irregularities, fraud or other matter falling within the legal competence of OLAF.

Legal Basis of the obligation to inform (whistleblowers)

The legal basis of the obligation of members of staff of a Community institution, body, office or agency to inform OLAF lies with Regulation (EC) 1073/99 and Staff Regulations⁴⁴.

Article 22a of the Staff Regulations provides to the effect that:

1. Any official who, in the course of or in connection with the performance of his duties, becomes aware of facts which give rise to a presumption of the existence of possible illegal activity, including fraud or corruption, detrimental to the interests of the Communities, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Communities shall without delay inform either his immediate superior or his Director General or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or the European Anti-Fraud Office (OLAF) direct. Information mentioned in the first subparagraph shall be given in writing.

This paragraph shall also apply in the event of serious failure to comply with a similar obligation on the part of a Member of an institution or any other person in the service of or carrying out work for an institution.

2. Any official receiving the information referred to in paragraph 1 shall without delay transmit to OLAF any evidence of which he is aware from which the existence of the irregularities referred to in paragraph 1 may be presumed.

3. An official shall not suffer any prejudicial effects on the part of the institution as a result of having communicated the information referred to in paragraphs 1 and 2, provided that he acted reasonably and honestly.

4. Paragraphs 1 to 3 shall not apply to documents, deeds, reports, notes or information in any form whatsoever held for the purposes of, or created or disclosed to the official in the course of, proceedings in legal cases, whether pending or closed.

⁴⁴ http://europa.eu.int/comm/dgs/personnel_administration/statut/tocen100.pdf

The scope of this article is worth comparing to that of Article 4(6)(a) of Regulation 1073/99 which provides that a decision adopted by each institution, body, office or agency (in accordance with Article 4(1) of the same Regulation discussed above) that such a decision shall in particular include rules concerning:

(a) a duty on the part of members, officials, and other servants of the institutions and bodies, and managers, officials and servants of offices and agencies, to cooperate with and supply information to the Office's servants.'

Clearly, Article 4(6)(b) of Regulation (EC) 1073/1999 is broader in scope than that of Article 22(a) of the Staff Regulation in two ways:

Firstly, Article 4(6)(b) of Regulation (EC) 1073/1999 includes *members* in addition to other categories of staff. This is crucial as the provision of the Article extends the obligation to cooperate with and supply OLAF with information to members of any institution, body, office or agency who is not official. Thus, since Staff Regulations are not considered to apply to Members of the European Parliament -as they are not 'servants' of that institution- MEPs are therefore not covered by Article 22(a) of the Staff Regulations. However, it could be argued that an obligation to inform OLAF exists for MEPs under Article 4(6)(b) of Regulation (EC) 1073/1999.

Secondly, Article 4(6)(b) of Regulation (EC) 1073/1999 establishes a duty to cooperate with OLAF in addition to the duty to supply information. Article 22(a) only requires those covered by it to transmit and supply information to OLAF.

Article 22b of the Staff Regulations provides:

1. An official who further discloses information as defined in Article 22a to the President of the Commission or of the Court of Auditors or of the Council or of the European Parliament, or to the European Ombudsman, shall not suffer any prejudicial effects on the part of the institution to which he belongs provided that both of the following conditions are met:

(a) the official honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and

(b) the official has previously disclosed the same information to OLAF or to his own institution and has allowed the OLAF or that institution the period of time set by the Office or the institution, given the complexity of the case, to take appropriate action. The official shall be duly informed of that period of time within 60 days.

2. The period referred to in paragraph 1 shall not apply where the official can demonstrate that it is unreasonable having regard to all the circumstances of the case.

3. Paragraphs 1 and 2 shall not apply to documents, deeds, reports, notes or information in any form whatsoever held for the purposes of, or created or disclosed to the official in the course of, proceedings in legal cases, whether pending or closed.’

Article 2 of the Model Decision annexed to the Interinstitutional Agreement of 25 May 1999, which has been adopted by Community organs, establishes the obligation of any official or servant of a Community organ to inform OLAF.⁴⁵ Furthermore, it ensures these official or servants against adverse treatment by providing that:

‘Managers, officials or servants of (the institution, body, office or agency) must in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in the first and second paragraphs.’

The legal provisions relating to whistleblowers acting within the defined limits accord them with protection against adverse consequences of their institutions. Upon receipt of information from whistleblowers OLAF informs the person from whom information is received in writing about his rights and obligations pursuant to the provisions described above.

Information received from informants and whistleblowers may be oral or in written form. In case of information received orally, a Record of Information will be created by OLAF before

⁴⁵ It provides: ‘Any official or servant of who becomes aware of evidence which gives rise to a presumption of the existence of possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the Communities, or of serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials or servants of the Communities liable to result in disciplinary or, in appropriate cases, criminal proceedings, or a failure to comply with the analogous obligations of the members, managers or members of staff not subject to the Staff Regulations, shall inform without delay his Head of Service or Director General or, if he considers it useful, his Secretary-General or the Office direct.’

Assessment of the case begins. If the information is communicated in a written form, such communication will be kept in OLAF's Archives.

In addition to respecting the constitutional traditions of Member States, OLAF must respect the ECHR, the Community rules on data protection (Directive 95/46/EC) and the national law of the Member State concerned. The Union is founded on principles of respect for individual rights and freedoms. Article 6 of the Treaty on European Union (TEU) provides that the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and as they result from the constitutional traditions common to Member States. This general obligation received further detailed treatment in specialised instruments adopted or proposed by the Union.

Article 6 of the ECHR

- ‘1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and the facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.’

Witnesses: A witness is an individual who is not an interested party and who provides information concerning a matter within the legal competence of OLAF either in respect of a situation which has already occurred or which is ongoing. Witnesses do not request or require anonymity.

Anonymous sources: Sometimes, however, OLAF receives information from anonymous

sources. The anonymity of the sender does not invalidate the need to verify the accuracy of the information provided. Information from anonymous sources is to be assessed according to the same standard as any other information received. However, it requires particular attention as to whether the information provided can be verified from other sources. For this reason, it is important to emphasise on the Assessment of Initial Information form that the initial information came from an anonymous source.

It is clear from the provisions analysed above that the current legal framework is unsatisfactory with regard to safeguards for witnesses in general. One dissatisfactory aspect is reflected in the inequality in the legal framework for some categories of witnesses more than others. Even though not concretely specified, the protection against adverse consequences of their institutions ensured for whistleblowers, for example, is not enjoyed by other categories, namely informants.

Moreover, the legal framework and OLAF's practice generally refer to witness testifying or providing information in favour of OLAF's investigations. There is, however, no mention of similar rights for the accused to have witnesses or for their safeguards.

Additionally, the rights of witnesses fall under the general right to fairness in gathering and handling evidence and it actually covers many rights and many aspects of the proceedings. These will cover, *inter alia*, the right to silence, the right to have witnesses heard, the problem of anonymous witnesses, the right to disclosure of exculpatory evidence, how the presumption of innocence is to be understood (whether there are circumstances where the burden of proof may be reversed) and many other aspects of the law of evidence.

PROPOSAL AND AMENDMENTS

More recent initiatives by the Commission reflect the strongly felt need to strengthen the protection of the accused in criminal proceedings. This need becomes more acute in view of the widening gap between EU measures designed to facilitate prosecutions and investigations across the EU, and the lack of instruments to safeguard the rights of those subject to such investigations and prosecutions.

In consequence of this the European Commission initiated proposals to develop a framework decision on procedural safeguards for suspects and defendants in criminal proceedings

throughout the EU (COM 2004/328), and to amend Regulation (EC) 1073/1999 (COM (2004) 103) notably by insertion of a new Article 7a.

Proposed COUNCIL FRAMEWORK DECISION on certain procedural rights in criminal proceedings throughout the European Union

The aim of the Commission's draft decision on procedural rights in criminal proceedings throughout the EU is to set common minimum standards which would facilitate the application of the principle of mutual recognition. Member States, which are all signatories to the European Convention on Human Rights, have diverging applications of the Convention.

While the idea of setting common standards is a welcome one, the Commission's draft decision, however, states that its provisions 'do not impose obligations on Member States that go further than the ECHR'. The proposal is not comprehensive with regard to the defence rights guaranteed in the ECHR, but limited to the following rights:

- (a) access to legal advice, both before the trial and at trial,
- (b) access to free interpretation and translation,
- (c) ensuring that persons who are not capable of understanding or following the proceedings receive appropriate attention,
- (d) the right to communicate, *inter alia*, with consular authorities in the case of foreign suspects, and
- (e) notifying suspected persons of their rights (by giving them a written 'Letter of Rights').

Proposed amendment to Regulation (EC) No 1073/1999 (COM (2004) 103)

The rights protected under the current legal framework of OLAF or would be protected under the proposed amendment to Regulation 1073/1999 are:

- (a) the right to be informed
- (b) the opportunity to comment
- (c) the right to be assisted by a person of choice
- (d) the privilege against self incrimination
- (e) a list of rights
- (f) record of interview and access granted to interviewee

These rights, notably, do not include certain rights essential to safeguard the rights of defence in criminal proceedings. These include the right to representation, the right to legal aid, not included, and the right to translation. Some of the safeguards contained in the Commission's proposal on procedural safeguards discussed above are not included in the proposal for amending Regulation (EC) No.1073/1999. An example of these rights is the rights to interpretation/translation services for suspects.

Moreover, the proposed amendment creates inequality between suspect and defendants across the EU. While the proposed amendment to Regulation (EC) No.1073/1999 is to be welcomed in virtue of the improvement it promises for some suspects it, however, is limited to suspects under OLAF investigations.

The *ad hoc* approach in developing safeguards is liable to create more legislative complexity, jeopardize the visibility of fundamental rights and may impede access to these rights. The alternative, clearly, is to develop a coherent and comprehensive framework for the protection of the safeguards.

Safeguards and the Protection of Individual rights in the Treaty Establishing a Constitution for Europe

The Constitutional Treaty brings about three improvements in the area of the applicability of human rights in the EU context:⁴⁶

1. the Treaty explicitly recognises the rights of the Charter of Fundamental Rights for the European Union;
2. the Treaty States that the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR); and
3. the Treaty establishes that the rights guaranteed in ECHR and in Member States' common constitutional tradition constitute general principles of the Union law.

Additionally, the Constitutional Treaty brings about important changes in the field of criminal justice. One such change concerns the new structure for justice institutions and the

⁴⁶ 'Human Rights Assessment of the EU Constitution' a study by Human Rights and Democracy NGO Network, November 2004, p. 1.

establishment of the office of the European Public Prosecutor (Article III-274) as an office of Eurojust.

The other change relates to giving a definite legal status to the Charter of Fundamental Rights of the Union. Part II Title VII, Article II-107 to II-110 provide for ‘the right to effective remedy and to a fair trial’; ‘the presumption of innocence and right to defence’; ‘principles of legality and proportionality of criminal offences and penalties’; ‘right not be tried or punished twice in criminal proceedings for the same criminal offence’. These should be regarded as general rights to be enhanced by specification of more additional rights.

THE CURRENT FRAMEWORK IN DETAIL

The current and proposed legal framework for the protection of the rights of accused and witnesses in the context of OLAF’s investigations is unsatisfactory in respect of:

1. The scope of the rights protected

The current rights of defence, as well as those proposed, do not accord sufficient protection for the accused. These rights must therefore, be enhanced through the inclusion of additional important rights such as those mentioned above.

2. The way in which these rights are provided for.

The fragmentary framework for safeguarding the rights of the accused is also a source of considerable concern. It creates inequality in the safeguards for suspects of investigations carried by OLAF as opposed to others. Even with regard to those investigations in which OLAF takes part, the degree of protection offered to witnesses (namely informants and whistleblowers) is not uniform. Additionally, the fragmentary framework creates legislative complexity and impedes the realization of common standards in criminal proceedings.

For these reasons, it is necessary to adopt a coherent and comprehensive framework for the protection of the rights of suspects in OLAF’s investigations and to enhance these rights through the inclusion of other necessary rights which supplement and strengthen rights already expressly introduced by the current legal framework.

ISSUE 5: COOPERATION OF OLAF WITH NATIONAL INVESTIGATIVE BODIES

This study looked into the national authorities of all 25 Member States and Bulgaria, established to conduct investigations in general and investigations of fraud in particular. The above was done with the following three main objectives:

- to establish the parameters for effectiveness and efficiency of the investigations carried out;
- to assess the role of OLAF in enhancing the impact and the results from the above investigations, especially in the field of preventing and combating EU-fraud. This objective was achieved by exploring the mechanisms (or the instruments), which serve as a basis and guarantee for the cooperation between OLAF and the national authorities. The justification of this approach is found in the fact that the methods for carrying out investigations, and in particular, the subsequent reporting of the findings, affect directly the admissibility of judicial proceedings (if applicable) and thus the remedying or punitive measures undertaken in protection of the EU's financial interests;
- to outline existing national models of carrying out the investigations and reporting of their results, which have proven high effectiveness and positive results. This is done in order to derive feasible suggestions for solutions, which could be incorporated into the activities of OLAF itself to improve its efficiency on the EU level.

The general investigation of fraud in the 25 Member States is carried out by two groups of institutions:

- (a) police authorities or bodies which fall into the system of police. This applies to Belgium, Bulgaria, Cyprus, Estonia, Spain, France, Ireland, Italy, Portugal, Finland;
- (b) prosecution authorities. This refers to Belgium, Bulgaria, the Czech Republic, Denmark, France.

The above authorities are also called upon to carry out investigations of EU-related fraud, such as fraud involving subsidies or general mismanagement of EU funds, tax and corporate crime, smuggling, and even corruption of EU officials.

In view of the importance of tax-related crime some countries have established specialised

bodies/units in the framework of their national Customs Authorities. At EU level, a particularly important tool in the activities of these bodies in their fight against fraud is the system for sharing information, which requires close cooperation with OLAF to manage the customs information system (CIS) and enables customs officers to consult a database containing details of frauds uncovered at Community level.

Cooperation with OLAF is significantly strengthened by the existing EU provisions on mutual assistance in customs matters.

OLAF itself has an investigation function, which it performs independently⁴⁷.

The results from OLAF investigations can be used in criminal proceedings and can then serve, in appropriate cases, as the preparatory phase for prosecutions in national courts⁴⁸. To promote and carry out this function at the national level OLAF has established cooperation⁴⁹ with national investigative institutions:

- via cooperation agreements with police forces or national prosecution offices;
- in the framework of the OLAF Anti-Fraud Communication network for exchange of information on EU-related fraud.

It is interesting to note that in the case of the newly acceded Member States cooperation with OLAF is strengthened and enhanced by the establishment of specialised state bodies, which perform functions related to EU-fraud. These bodies act as counterparts of OLAF (or even national bureaus of OLAF). This approach has been adopted and even strengthened in the cases of Bulgaria and Romania,⁵⁰ expected to accede in 2007. The aim is to make it easier for

⁴⁷ Articles 3, 4 and 5 of Commission Decision 1999/352/EC, ECSC, Euratom establishing the Office and Articles 11 and 12 of Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999 concerning investigations conducted by the Office.

⁴⁸ See European Commission, Commission Report, *Evaluation of the Activities of the European Anti-Fraud Office (OLAF)*, COM (2003) 154 final, Brussels, 02.04.2003, http://europa.eu.int/comm/anti_fraud/reports/commission/2003/art15_en.pdf, p. 6.

⁴⁹ For the member states' general comments on the cooperation with the Commission (OLAF) referred to in Article 280 (3) EC as regards the field of structural actions see European Commission, Commission Staff Working Document *Annex To The Report From The Commission, Protection of the European Communities' financial interests and the fight against fraud, Annual report 2003, Follow up to the Action Plan 2001-2003 and measures taken by the Member States, Implementation of Article 280 of the Treaty by the Member States and the Community in 2003* {COM(2004) 573 FINAL}, Brussels, 30.08.2004, SEC(2004) 1058., pp. 70-72.

⁵⁰ Two agents OLAF are going to be assigned to Romania and Bulgaria on a permanent basis in view of these countries' accession to the European Union. The OLAF assistants will contribute to the strengthening of the antifraud coordination services in the candidate countries. The deployment of two OLAF assistants, who will be sent to Bucharest and Sofia for a term of three years, represents a measure within the framework of the Commission's 'Action plan 2004-05 on the protection of the financial interests of the Communities'. This will be the second time that OLAF agents are sent outside of Brussels on a permanent basis, after an earlier two-year presence of the Office in Poland. The main task of the OLAF assistants will be to support the Anti-Fraud

these countries to establish coordination mechanisms of early detection, prevention and fighting of fraud. This will have very positive impact on training of staff and transfer of specialised know-how. Table 2 (see Annex) provides detailed data on the type and functions of investigative bodies existing in the Member States and information on their collaboration with OLAF.

The main objective of OLAF's involvement in the investigations, which take place at the national level, is to increase their effectiveness and efficiency and to enhance the level of protection of the EU's financial interests. This is achieved by:

- involvement of OLAF in the investigations;
- provision by OLAF of training and methodological support;
- OLAF's contribution in enhancing cooperation between the various authorities in the different Member States. This is an issue of paramount importance as EU-fraud has, on an increasing number of occasions, multi-national dimensions and involves or falls under the jurisdiction of two or more Member States, i.e. cross-border EU-fraud.

The analysis of the national models of investigation from the point of view of efficiency and impact of results achieved outlined the advantages and the good performance levels of the Serious Fraud Office in the United Kingdom and the Italian Guardia di Finanza. Despite their different structure and supervision,⁵¹ they display common features. The comparison made with national institutions existing in other Member States leads to the following conclusions on the factors for their success in preventing and combating of fraud:

- they are established as organisations responsible for the detection, investigation and prosecution of fraud cases;
- They do not investigate all fraud cases in general; instead, they focus on the so called serious fraud cases. This approach has considerable advantages considering the

Coordinating Services (AFCOS) in Romania and Bulgaria. These central contact points for the coordination of all legislative, administrative and operational aspects of the protection of the EU's financial interests have been active since 2002 in all EU accession countries and have been promoted by OLAF. They cooperate closely with the Office at an operational level. The OLAF assistants will also help further the financial, strategic and operational interests of the European Commission in matters of irregularities and fraud in the countries concerned. They will, for instance, provide technical advice, create and maintain intelligence pathways, and share best-practice experience with partners in their host countries. The OLAF assistants will be integrated within the Delegations of the European Commission but will report to OLAF for their operational activities. See for this the EU 2004 Annual Financial Report.

⁵¹ Serious Fraud Office is accountable via its Director to the Attorney General, who is appointed by the Prime Minister and is responsible to the Parliament. The Italian Guardia di Finanza is under the authority of the Ministry of Economic Affairs and Finance.

complexity of these cases and the subsequent need for efficient staffing policy, provision of targeted training and capacity building. The need for a more efficient staffing policy and the establishment of mechanisms for recruitment of qualified staff has also been pointed out as crucial for OLAF's success⁵²;

- The concentration on serious or complex fraud justifies the combination of the investigation and the prosecution functions into one unified body. With regard to this the UK's Serious Fraud Office is in a stronger position as it is a part of the UK criminal justice system⁵³ and is directly under the control of a judicial authority as a supervisory institution and a guarantor for the lawfulness of the actions. Furthermore, this structure ensures that the need of investigators to obtain information quickly and efficiently is met⁵⁴. This reduces both the time taken for investigation and the speed at which judicial proceedings are started.

The SFO has a closer and a more direct link with the Parliament and this is expressed in its reporting scheme. The Attorney General responsible for the SFO is responsible to Parliament and also presents to it an annual report on the SFO activities during the respective financial year.

⁵² See OLAF Supervisory Committee Opinion No 3/2000 on the risk of the stalling of procedures for recruiting OLAF staff (not published in the Official Journal).

⁵³ The Guardia di Finanza in Italy is a part of the Italian armed police forces and the focus of its competences describes it more as an economic and financial police.

⁵⁴ See the notice under the Section 2 from the Criminal Justice Act.

ISSUE 6: POSSIBLE EVOLUTION OF OLAF'S RELATIONS WITH EUROJUST AND EUROPOL, AND THE FUTURE EUROPEAN PUBLIC PROSECUTOR.

Currently there are four bodies (or institutional actors) vying for a position in the EU's post-Constitutional Treaty state of affairs in the areas of judicial cooperation in criminal matters and police cooperation:⁵⁵ Eurojust, the European Public Prosecutor (EPP), Europol and – to a lesser degree – OLAF. It is interesting to note that while the Constitutional Treaty has specific Articles regulating the mission of Eurojust,⁵⁶ the EPP⁵⁷ and Europol,⁵⁸ OLAF is mentioned en passant in a Protocol concerning the creation of a Schengen facility as a temporary instrument to help the new Member States implement the Schengen acquis.⁵⁹

Knowing exactly how these institutional actors will relate to each other is difficult, especially as the role of some of them, e.g. OLAF, is still under consideration.⁶⁰ Given that cooperation between Eurojust, Europol and OLAF had been tentative and occasionally problematic – especially in data exchange across Pillars, as a result of lack of data protection rules – the new relationship must represent good value for taxpayers' money. This can only be achieved by avoiding duplication of effort, by good coordination at the supranational level,⁶¹ by respecting human rights and fundamental freedoms⁶² and by adhering to the principle of subsidiarity.⁶³

So, what can OLAF's relation be with reference to the other institutional actors? In order to

⁵⁵ See *Treaty Establishing a Constitution for Europe*, Office of Official Publications of the European Communities, Luxembourg, 2005, Section 4 and Section 5, pp.124-128.

⁵⁶ Article III-273.

⁵⁷ Article III-274.

⁵⁸ Article III-276.

⁵⁹ See: *Treaty Establishing a Constitution for Europe*, Part IV, PROTOCOL ON THE TREATY AND THE ACT OF ACCESSION OF THE CZECH REPUBLIC, THE REPUBLIC OF ESTONIA, THE REPUBLIC OF CYPRUS, THE REPUBLIC OF LATVIA, THE REPUBLIC OF LITHUANIA, THE REPUBLIC OF HUNGARY, THE REPUBLIC OF MALTA, THE REPUBLIC OF POLAND, THE REPUBLIC OF SLOVENIA AND THE SLOVAK REPUBLIC, Article 24(4), Office of Official Publications of the European Communities, Luxembourg.

⁶⁰ Regulation 1073/99 is currently in the process of being changed.

⁶¹ See Salazar, L, 'Le role des nouveaux caters dans la definition d'une politique criminelle européenne' in Gilles de Kerchove and Anne Weyembergh (eds) *L'espace pénal européen: enjeux et perspectives*, 2002, pp. 55-62; Also see Nillson, HG, 'Proliferation or concentration of the actors in the JHA area?' in Gilles de Kerchove and Anne Weyembergh (eds) *L'espace pénal européen: enjeux et perspectives*, 2002, pp.63-79.

⁶² Article II-108 (presumption of innocence and right of defence), Article I-51 and Article II-68 (protection of personal data) and Article II-102 (right of access to documents).

⁶³ Fortunately the Constitutional Treaty now allows for European laws or European Framework Laws, on the basis of Article I-51 (2), which will protect individuals against the use, movement and processing of personal data by the Union (its institutions, its bodies and agencies) as well as the Member States, if this data is used, moved or processed in the context of activities which fall under Union law.

answer this question it is important to determine the position of the latter after the ratification of the Constitutional Treaty. Strictly speaking, the Constitutional Treaty provides details for the following institutional actors:

As far as Eurojust is concerned, according to Article III-273 (1):

‘Eurojust’s mission shall be to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States’ authorities and by Europol’.

As far as Europol is concerned, according to Article III-276 (1)

‘Europol’s mission shall be to support and strengthen action by the Member States’ police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy’.

As far as the EPP is concerned. According to Article III-274 (2):

‘The European Public Prosecutor’s Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union’s financial interests, as determined by the European law provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences’.

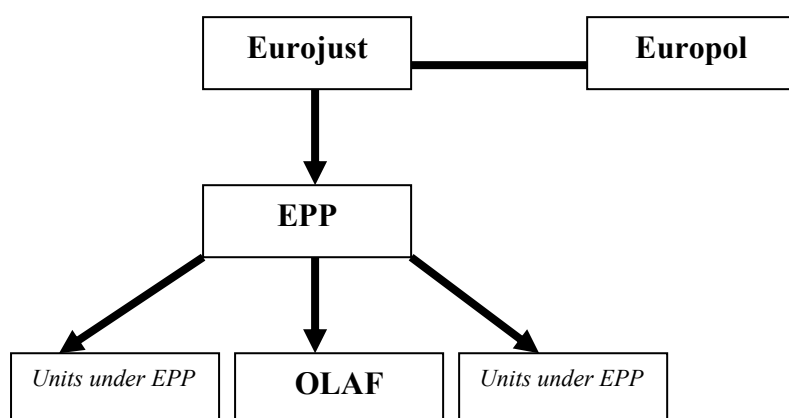
In the Constitutional Treaty OLAF is not mentioned by name (as it is part of the European Commission) while the EPP has not officially been created yet. This leaves Europol and Eurojust as the only existing actors in the field, whose mission is detailed in the Constitutional Treaty and are, therefore, assured of their existence in the future. However, even though the EPP does not exist yet, it is obvious that the Member States are certain about its creation in the future (a minimum of 9 Member States must agree before the office of the EPP is created), which is why Article III-274 is devoted to this body. It should be noted here that the role of the European Parliament is vital in the creation of the EPP as its consent is necessary.⁶⁴

At this stage we have identified three different scenaria concerning the possible future relationship of OLAF with the other institutional actors.

⁶⁴ Article III-274(1) specifies: ‘In order to combat crimes affecting the financial interests of the Union, a European law of the Council may establish a European Public Prosecutor’s Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament’.

Scenario 1 (assumes the creation of the EPP)

OLAF will become one of the investigative units of the European Public Prosecutor; the latter will be responsible to Eurojust. According to the terms of Article III-274 (1), the EPP will be created from Eurojust, provided the European Parliament gives its consent. Indeed, as we saw earlier, in Article III-274 (2) the EPP is given a mandate which covers the areas largely currently falling within OLAF's mandate (offences against the Union's financial interests).



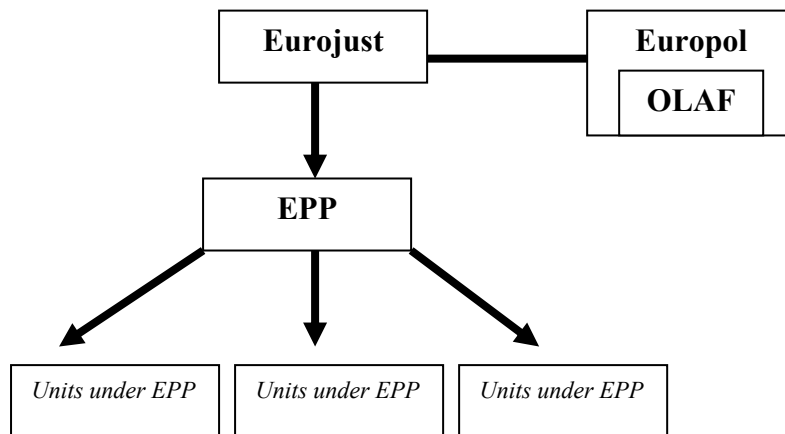
This scenario, which is workable with or without the Constitutional Treaty, can be regarded as the 'weak' scenario for OLAF in that OLAF will become one of several investigative units attached to the EPP. It will, therefore be a weaker body compared to what it is today but its mandate and relationship with other Union's institutions will be very clearly defined. In fact, perhaps anticipating such a development, OLAF and Eurojust have signed a 'Memorandum of Understanding' in which they undertake cooperate in eight areas of mutual concern/benefit.⁶⁵ The obvious advantage of this Scenario is that OLAF will be directly under a judicial authority. Even though ratification of the Constitutional Treaty has been frozen for the time being, the advantage of this scenario is that it is possible even without the Constitutional Treaty. The creation of the EPP is not impossible – even without a Constitutional Treaty. In this sense this scenario should be examined carefully because of its short and long term viability.

⁶⁵ See: 'Memorandum of Understanding between the European Judicial Cooperation Unit ('Eurojust') and the European Anti-Fraud Office ('OLAF')', http://europa.eu.int/comm/anti_fraud/press_room/pr/2003/memo_en.pdf. The Memorandum of Understanding begins by specifying the following:

- In respect of Eurojust, it appears that the case is related to fraud, corruption or any criminal offence affecting the European Community's financial interests;
- In respect of OLAF, it appears that the case directly involves judicial co-operation between the competent national authorities of two or more Member States, or, where the assistance of Eurojust is requested, the case concerns only one Member State and the Community.

Scenario 2 (assumes the creation of the EPP)

Merger of OLAF and Europol who will in the future liaise, where appropriate, with the EPP according to Article III-274(2). This scenario, which has been discussed by OLAF's supervisory committee, avoids duplication of effort as Europol and OLAF have relatively similar mandates (albeit that OLAF's current mandate only relates to the EU's financial interests) and will strengthen pragmatic police cooperation. At the moment Europol can only assist Member States with intelligence for their investigations although the possibility exists for joint investigation teams. OLAF can take part in joint investigations⁶⁶ and has some limited powers of investigation.⁶⁷

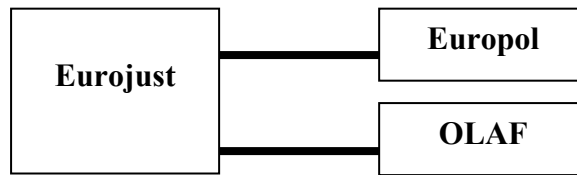


It will be up to the Member States and the European Parliament to decide whether the fact that Europol and OLAF seem to complement each other means that a merger between the two will offer the European taxpayer best value for money. Indeed it will be up to the Member States and the European Parliament to decide whether Europol and OLAF should get more powers and responsibilities or concentrate on providing good support to the Member States' enforcement authorities.

⁶⁶ See 9th preamble of Council Framework Decision of 13 June 2002 on joint investigation teams, OJ (2002) L 162/1.

⁶⁷ OLAF's powers of investigation are limited to the fight against fraud affecting the EU budget, and irregularities/fraud committed by EU institutions and bodies. See Regulation 1073/99 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) OJ (1999) L 136/1.

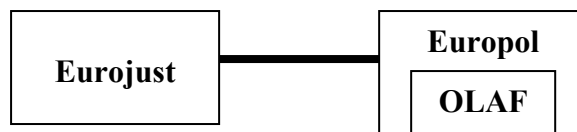
Scenario 3



In this minimum cooperation scenario, the assumption is that there will be minimal changes. Europol and OLAF will assist Eurojust. Following the Memorandum of Understanding between Eurojust and OLAF this cooperation will take an enhanced form and will cover:⁶⁸

- Operational exchange of information and co-operation
- Participation in joint investigation teams
- Strategic co-operation
- Communication of information to other partners
- Collecting, processing and storage of information
- Co-operation in the field of professional training, seminars and workshops
- Contact points
- Evaluation of co-operation

This scenario also covers the possibility of merger between Europol and OLAF.



It should be noted here that the possibility of Eurojust supervising Europol had been the subject of discussions in the IGC working group but has not been included in the Constitutional Treaty. Article III-276(2) notes that: ‘...European laws shall also lay down the procedures for scrutiny of Europol’s activities by the European Parliament, together with

⁶⁸ See: ‘Memorandum of Understanding between the European Judicial Cooperation Unit (‘Eurojust’) and the European Anti-Fraud Office (‘OLAF’)', http://europa.eu.int/comm/anti_fraud/press_room/pr/2003/memo_en.pdf.

national Parliaments'. If Europol and OLAF are merged then Eurojust will have to have an enhanced role as an initiator, which in turn means that Eurojust's relationship with Europol/OLAF would have to be redefined. This is still possible under Article III-276 (2)(b).⁶⁹

Another important question concerns the role of COCOBU in the various scenarios. Strictly speaking, the European Parliament will have a say in the creation of the EPP or a change in the status of OLAF. But what will the role of COCOBU be in the minimum cooperation scenario? In other words, what will the role of COCOBU be if things remain pretty much as they are now?

The role of the European Parliament and COCOBU with reference to OLAF is one of Parliamentary oversight. COCOBU's main concern is the accountability and transparency of OLAF as a part of the European Commission. The point here is that even though OLAF has operational independence it does not have administrative independence. Whether it is possible for a unit to have true operational independence when it does not have administrative independence is a matter for speculation. However, by reporting to the European Parliament any shortcomings relevant to accountability and transparency COCOBU serves a very important role. As this study has noted there are some concerns about OLAF's transparency and accountability that run across the breadth of the organisation. For example, OLAF's Supervisory Committee, which consists of individuals who have very little legitimacy as they represent none other than themselves. Informally they are supposed to be individuals that different institutions have nominated but this does not alter the fact that the Supervisory Committee looks like a local Parish Council consisting of five individuals respected by their peers. This is not the optimal way forward for democratic accountability and transparency as COCOBU has already found out.

⁶⁹ Article III-276(2) stipulates:

'European laws shall determine Europol's structure, operation, field of action and tasks. These tasks may include:

- (a) the collection, storage, processing, analysis and exchange of information forwarded particularly by the authorities of the Member States or third countries or bodies;
- (b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

European laws shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments'.

ISSUE 7: POSSIBLE EVOLUTION OF OLAF'S RELATIONS WITH THE EUROPEAN PARLIAMENT AND THE COMMITTEE ON BUDGETARY CONTROL

The relationship between OLAF and COCOBU is not expressly regulated in EU law. However, useful conclusions can be drawn from the interpretation of the existing provisions.

The legal basis of this relationship lies with the EC Treaty itself. As OLAF is organically part of the European Commission, the European Parliament's role in the political oversight of its work is extended to OLAF's activities. There is little doubt therefore that the nature of the relationship between COCOBU and OLAF is that of political oversight as a means of ensuring efficiency and legitimacy in the achievement of their common goal which is the protection of the financial interests of the EU. The unity of their goal is a strong foundation for cohesion and cooperation between the two bodies.

Nevertheless, the functions that allow COCOBU to perform its political oversight entail a degree of hierarchy, if not organic, then surely functional. This is evident in both the discharge and scrutiny functions of the European Parliament.

Thus, under Article 276(2) of the EC Treaty the Parliament may request that the Commission gives evidence with regard to the execution of expenditure to the operation of financial control systems for the purposes of giving discharge to the Commission. The provision obliges the Commission to provide the evidence requested by Parliament.

Moreover, in order to perform its scrutiny function, the Parliament has the obligation to scrutinise the organisation of checks, the prevention, prosecution and punishment of fraud and irregularities affecting the budget of the European Union, and concerning the protection of the Community's financial interests in general. In this situation again the Commission is obliged to offer to the Parliament whatever evidence or document is deemed necessary.

In the specific case of OLAF, these provisions and obligations also apply albeit with three additional qualifying factors: one, OLAF's independence in exercising its powers of investigation; two, the protection of the rights of the accused and of witnesses, including

whistleblowers; and three the national provisions concerning judicial proceedings.⁷⁰ Thus, the core of any debate as to the exact regulation of the relationship between the two bodies lies in the balance between on the one hand OLAF's reporting obligations to COCOBU as a means of allowing COCOBU to serve its role, and on the other hand restrictions to the data transferred to COCOBU as a means of securing OLAF's operational independence and the rights of witnesses and the accused.

In practical terms, OLAF makes available to COCOBU all data which is necessary for the compilation of COCOBU's draft reports and opinions on matters related to the protection of the Communities' financial interests and on OLAF's annual activity report. Moreover, at the request of COCOBU, OLAF's Director General attends meetings of the Committee to give oral progress reports on specific cases. These reports are given in closed sessions. Furthermore, OLAF makes all necessary data and short reports available to COCOBU in order to allow the Committee to respond to written questions from the European Parliament.

This practice is based on Article 287 of the EC Treaty in combination with Article 17 of the Staff Regulations. Article 287 imposes the duty of confidentiality upon all employees of the institutions of the EU, members of committees and officials and servants of the Community. Thus, OLAF staff can not disclose information covered by the obligation of professional secrecy even after their retirement or resignation from their posts. Article 17 of the Staff Regulations imposes the obligation on officials to exercise greatest discretion with regard to all facts and information coming to their knowledge in the course of their duties. Thus, OLAF staff may not disclose information coming to their knowledge through the performance of their duties to any 'unauthorised person'. Of course this obligation does not extend to members of COCOBU who, under Article 267(2) of the EC Treaty, are authorised to receive such information for the performance of their duty of discharge and scrutiny.

The first question arising at this point concerns the extent of OLAF's obligation to report to COCOBU. In order to respond to this question adequately, one must distinguish between internal investigations regulated by Regulation 1073/99 and external investigations regulated by Regulation 2185/96.

With reference to internal investigations, Article 8(2) of Regulation 1073/99 provides that

⁷⁰ See Article 12(3) of Regulation 1073/99; also see Articles 1 and 4 of the sectoral regulations on mutual assistance.

‘such information may not be communicated to persons other than those within the Community institution or in the Member States whose functions require them to know it nor may it be used by Community institutions for purposes other than to ensure effective protection of the Communities’ financial interests in all Member States’. The spirit of this provision is reflected in Article 2 of the sectoral rules which provide that such information ‘may not, in particular, be sent to persons other than those in the Member States or within Community institutions whose duties require that they have access to it, unless the Member State supplying it has expressly agreed.’

With reference to external investigations, Article 8(1) of Regulation 1073/99 states that information obtained in the course of internal investigations is protected by ‘relevant provisions’. Although there is no indication as to which provisions are considered relevant for the purposes of this Article, it is interpreted that Regulation 2185/96 concerning on the spot checks and inspections is subject to Article 8(1) of Regulation 1073/99. Article 8(1) of Regulation 2185/96 repeats verbatim the provision of par.2 of Article (2) of Regulation 1073/99.

The interpretation of these provisions by OLAF is that they provide discretionary access to such data to persons whose function requires them to know.⁷¹ This interpretation seems to disregard the letter and spirit of the relevant provisions. In fact, the provision allows discretion for the transmission of such information to persons whose duties do not justify a need to know. The text states clearly that the information ‘may not’ be communicated to persons whose functions do not require them to know. Applying this discretion to those who need to know is a unilateral departure from the text of the provision and indeed a departure from the main aim of this and adjacent provisions, which is to achieve effective protection of the financial interests of the European Union. In fact, the introduction of discretion for the transmission of data to those who need to know would be in clash with Articles 11(7) and 12(3) of Regulation 1073/99 and Article 17(3) of Council Regulation 1150/2000 which introduce an unconditional obligation of frequent reports to the Parliament without any discretion on behalf of the Director of OLAF or indeed the Commission as to the disclosure of relevant information.

In other words, the discretion of the Director of OLAF and OLAF staff lies with the transmission of information to persons outside, amongst others, COCOBU. As the members

⁷¹ See *OLAF Manual*, 1st August 2003, at pp.114-116; also see *OLAF Manual*, 25 February 2005, at pp.147-148.

of COCOBU need to be aware of the development of cases, closed and ongoing, for the effective performance of their duty of political oversight of OLAF's work, OLAF has no discretion but to disclose all necessary information.

Nevertheless, with relevance to internal investigations only Article 10(3) of Regulation 1073/99 provides that without prejudice to Articles 8 and 9 of the same Regulation OLAF 'may' forward to the body concerned the conformation obtained in the course of internal investigations. This Article awards a degree of discretion, within the boundaries of legitimacy and accountability, to the Director of OLAF to disclose information obtained in the course of internal investigations. Consequently, the Director of OLAF may choose whether and when to disclose to COCOBU information on internal investigations concerning the European Parliament. However, this discretion is not offered in cases of internal investigations concerning other bodies, offices, agencies or institutions. In such cases, Article 10(3) of the Regulation does not apply and applicable is Article 8(2) of Regulation 1073/99 which under its correct interpretation does not allow any discretion to disclose data to COCOBU whose members need to know such data for the effective and efficient performance of their duties.

The second question arising at this point concerns what is perceived to be information necessary for the performance of COCOBU's duties. COCOBU is responsible for the 'consideration of fraud and irregularities in the implementation of the budget of the Union, measures aiming at preventing and prosecuting such cases, and the protection of the Union's financial interests in general'.⁷²

In responding to this question one should make a clear distinction between what is perceived as necessary information for OLAF, COCOBU and for the European Parliament as a whole. The role of the Parliament is to conduct a political oversight over OLAF. In other words Parliament has a general mandate to follow OLAF's work and to ensure that OLAF's work and methods in general do not compromise the standards of legitimacy and accountability demanded by European law and the peoples of Europe. For this general, yet crucial mandate, Parliament needs to have a good understanding of OLAF's work and methods, albeit not necessarily on an everyday basis. If an issue of specific importance to the constituents of MEPs arises, or if MEPs are concerned about a specific file or investigation, they may always demand clarifications from OLAF through the procedure of oral or written questions. It

⁷² See the Rules of Procedure of the European Parliament - Annex VI Powers and Responsibilities of standing committees: Point V(5).

would therefore be correct to state that the mandate of the European Parliament does not render necessary full reports on OLAF's everyday activities at any given time, unless otherwise requested by MEPs. This restrictive approach reflects the spirit of the provisions on confidentiality which extend knowledge on a need to know basis: the mandate of Parliament as a whole and the consequent duties of the Parliament as an institution would not necessarily justify the inevitable dangers of a possible compromise of OLAF's functional and operational independence through detailed reports on OLAF's everyday operational activities.

However, this is not true with reference to COCOBU. Their mandate is concrete and engulfs both the consideration of fraud and irregularities in the implementation of the budget of the Union and the protection of the European Union's financial interests, as well as the monitoring of the cost-effectiveness of Community financing. Under Annex IV of the Parliament's Rules of Procedure, the Committee is responsible for the control of the implementation of the budget of the Union and of the European Development Fund, and the decisions on discharge to be taken by Parliament, including the internal discharge procedure and all other measures accompanying or implementing such decisions; the closure, presenting and auditing of the accounts and balance sheets of the Union, its institutions and any bodies financed by it, including the establishment of appropriations to be carried over and the settling of balances; the control of the financial activities of the European Investment Bank; monitoring the cost-effectiveness of the various forms of Community financing in the implementation of the Union's policies; consideration of fraud and irregularities in the implementation of the budget of the Union, measures aiming at preventing and prosecuting such cases, and the protection of the Union's financial interests in general; relations with the Court of Auditors, the appointment of its members and consideration of its reports; and the Financial Regulation as far as the implementation, management and control of the budget are concerned.⁷³

It would be difficult to perceive that this close monitoring of OLAF's activities on a functional and operational basis could be possible without a full picture on files and methods. In fact, in view of the length of time required for the closure of complicated investigation files, COCOBU would need to be fully informed on the progress of open investigations in order to both recommend discharge of the Commission but also to precipitate problems such as those evident in the Eurostat affair.

⁷³ See Annex VI of Parliament's Rules of Procedure 2004; also see 2004 *Handbook 2004 for New Members of the Committee on Budgetary Control*, pp.4 and 5.

However, the obligation of OLAF to transfer all data to COCOBU is not without exemptions. Thus, the third question arising at the point is whether OLAF's obligation to report to COCOBU may compromise OLAF's independence in exercising its powers of investigation; the protection of the rights of the accused and of witnesses, including whistleblowers; and the national provisions concerning judicial proceedings.

Let us explore each of these three exemptions closely. With reference to a possible compromise of OLAF's independence in exercising its powers of investigation, one must admit that there is little doubt that the prospect of allowing full access to its current files could appear *prima facie* to carry dangerous compromises of OLAF's operational ability. However, it would be difficult to justify this with reference to COCOBU when this method of full reporting already applies to the Supervisory Committee of OLAF under Article 11 of Regulation 1073/99.

If anything, Article 11(1) of Regulation 1073/99 considers the regular monitoring of OLAF's investigative function by its Supervisory Committee as one which reinforces OLAF's independence. It must be reminded at this point that the duty of OLAF's Director under Article 11(7) of Regulation 1073/99 is not only to forward to the Supervisory Committee the annual programme of OLAF's activities but also to keep the Committee regularly informed of activities, investigations, the results of investigations and the action taken on them. If this type of data transfer takes place between OLAF and an appointed Committee of independent experts, there is no reason why this can not be repeated to the respective closed Committee of the only Union body whose legitimacy stems from direct elections. This transfer of data must extend not only to closed files but also to ongoing investigations so that members of COCOBU can follow progress, comment and scrutinize the methods and length of ongoing investigations thus precipitating problems and consequently enforcing OLAF's efficiency, kudos amongst EU citizens and ultimately its independence.

Nevertheless, in order to secure OLAF's independence in exercising its powers of investigation COCOBU may not direct OLAF to specific paths of investigation. After all, COCOBU's mandate is to inspect, not to lead.

A second exemption to OLAF's mandatory obligation to full disclosure of its files to COCOBU concerns the protection of the rights of the accused and of witnesses, including

whistleblowers. The rights of the accused and of witnesses would be compromised if their identity and details of their files became widely known before the end of the investigations and the closure of the relevant file by OLAF. The question is whether disclosure to COCOBU would render this information public.

It would not be easy to substantiate this argument, if one takes into account the strict confidentiality rules governing COCOBU.

With regards to members of staff of the European Parliament that serve or are present in meetings of COCOBU, members of COCOBU are bound by the Code of Conduct for the European Parliament. In its Section C the Code refers to Article 17 of the Staff Regulations and reaffirms the obligation of officials to refrain from disclosing to unauthorized persons any facts and information that came to their knowledge in the course of or in connection with the performance of their duties before the relevant document or information is made public. Even in exceptional cases where an official feels that a higher value or obligation dictates the disclosure of confidential information, the latter can not take place without the express authorization of the proper authority. This would be the case for example when disclosure is required in the course of legal proceedings other than proceedings before the ECJ or before a disciplinary board examining a case involving a member of staff of EU institutions. In other words, members of COCOBU are bound by the duty of confidentiality for all facts and data the knowledge of which was acquired during the course of COCOBU's work. In exceptional cases where the member of the Committee feels that there is a justified need to breach this duty of confidentiality, express permission from the relevant authority must be sought. Unilateral disclosure is allowed only in legal proceedings before the ECJ or before disciplinary boards.

The provision does not specify which is the relevant authority for awarding authorization for breach of confidentiality in the case of COCOBU. It is possible to award this role to the Chairman of COCOBU or indeed the Committee itself. This would reflect practice introduced by Article 4 of Annex VII of the Parliament's Rules of Procedure. The advantage of this scenario would be that the information would not be disclosed to anyone who does not already have knowledge on them as a means of allowing that person or body to assess the legality and legitimacy of the breach. With reference to OLAF documents however the distinct disadvantage of this would be that the decision of disclosure would remain an internal one for COCOBU and that OLAF would have no control over the matter despite the obvious

dangers that disclosure would entail for investigations, especially ongoing ones. A second scenario could award the task of authorizing the breach of confidentiality to the Interinstitutional Committee of Article 15(2) of Regulation 1049/2001. This scenario would present the advantage of some external involvement in the decision with the disadvantage of disclosure to persons not authorized to receive the relevant information. A third scenario could explore awarding this role to OLAF's Supervisory Committee acting jointly with the Chairman of COCOBU. This would entail adequate degree of common participation thus strengthening the need for synergy between the two bodies in the fight against fraud.

With regards to members of COCOBU that are also MEPs, members of COCOBU are bound by obligations concerning in specific information that came to their knowledge during the course of their work for the Committee. Under Annex VII of the new Rules of Procedure⁷⁴ the Chairman of the Committee assigns the examination of confidential documents to proceedings attended only by members of the committee and by officials and experts who have been designated in advance by the chairman and whose presence is strictly necessary. The documents are numbered, they are distributed at the beginning of the meeting and they are collected again at the end. No notes of these, and certainly no photocopies, may be taken.

The minutes of the meeting make no mention of the discussion of the item taken under the confidential procedure. Only the relevant decision, if any, may be recorded. Moreover, the protection of personal data of witnesses and the accused is stipulated in Regulation 45/2001 which prevents COCOBU from referring to named individuals in their reports.⁷⁵ It must be noted that the obligation to refrain from naming individuals applies to COCOBU with reference to reports issued by them rather than reports received in confidentiality by OLAF.

Under Article 4 of Annex VII confidentiality can be breached upon a motion from at least three members of the Committee and subsequent decision of COCOBU. There is little record on practice in such cases and there is certainly no publicly known practice on the criteria upon which such a decision can be taken. However, in view of the critical value of OLAF documents with specific reference to documents referring to ongoing investigations, leaving the decision on their disclosure to COCOBU exclusively does not seem to be the wisest option. The possibility of future exploitation of this window of opportunity in the provisions concerning the confidentiality of OLAF's data can be detrimental to the trust of OLAF to

⁷⁴ See Rules of Procedure of the European Parliament, 16th edition, July 2004.

⁷⁵ Also see case C-315/99 *Ismeri Europa srl v Court of Auditors*.

COCOBU. It would be advisable to consider regulation of this problem in a manner promoting the synergy between the two bodies. The possibility of assigning this decision to OLAF's Supervisory Committee with the participation of COCOBU meeting only when necessary would be a viable and seemingly mutually agreeable option would put an end to this minor yet crucial window of opportunity to any future *male fide* COCOBU member.

In view of this analysis one can not foresee how disclosing data to COCOBU may compromise the rights of witnesses and the accused. The provisions on confidentiality governing the transfer of data between COCOBU and OLAF seem to guarantee that unauthorized persons may not have access to sensitive data. In the event that such unauthorized leaks occur, penalties against the member breaching confidentiality and also the body itself are in place by the Staff Regulations, the Code of Conduct and the Rules of Procedure.

Nevertheless, especially with reference to members of COCOBU that are MEPs one should note that the express stipulation on their duty of confidentiality derives from a laconic provision in the Parliament's Rules of Procedures. This provision can not be considered an adequate guide for MEPs whose professional expertise may well be outside the field of law. Detailed stipulation of the scope and extent of the duty of confidentiality combined with a comprehensive regulation on issues of conflict and resolution would facilitate the work of MEPs and would contribute to the further forging of trust between OLAF and COCOBU.

The third exemption from OLAF's mandatory obligation to transfer all data to COCOBU refers to disclosures which could adversely affect national provisions concerning judicial proceedings. It must be noted that in a large number of Member States national laws consider inadmissible as evidence data that have been exposed to illegal exposure from the time of collection to the hearing before the national court. This would be a problem if OLAF's information in a file of investigation were exposed to unauthorised persons. Such conduct would tamper with the legitimacy of the information and it would endanger their utility before national courts.

However, disclosure of data to authorised persons could not possibly have this adverse effect. Such a view would dictate non transfer to any body or agency or person, including OLAF's Supervisory Committee and national authorities that acquire data through normal mutual assistance conventions.

On the basis of this analysis it becomes obvious that the relationship between COCOBU and OLAF now and in the future must be one of synergy, trust and cooperation based on current express regulations of issues related to specific points of procedure and practice. OLAF has the obligation, not the discretion, to disclose all data on all files to COCOBU (not the Parliament as a whole unless thus requested by MEPs). This data is covered by the obligation of confidentiality and no member of COCOBU may proceed to disclosure without express authorisation from the relevant authority. The authority awarding this authorisation has yet to be defined in legislation and it would be advisable to award this role to a joint OLAF/COCOBU body. The three exemptions to OLAF's obligation to disclose to COCOBU (namely when OLAF's obligation to report to COCOBU may compromise OLAF's independence in exercising its powers of investigation; the protection of the rights of the accused and of witnesses, including whistleblowers; and the national provisions concerning judicial proceedings) do not normally apply in the case of transfer of data from OLAF to COCOBU.

Nevertheless, general rules can not be considered satisfactory for all eventualities arising from OLAF's increasingly crucial procedural work. Perhaps the UK model, which allows the Serious Fraud Office to seek exemption from the duty to report on operational activities for specific files under progress in cases where the disclosure can compromise the progress of the file, may be utilised for future regulation of this issue.

This possibility would be consistent with the application of the principle of proportionality which would justify the classification of a small number of open investigations as confidential even for COCOBU. It must be noted, however, that cases falling under this extraordinary provision are extremely limited. The legislator has already taken into account the principle of proportionality when introducing different levels of access to OLAF's files in the first place and the legislator awarded access to all files to COCOBU. Thus, those classifying a file as confidential even for COCOBU must be able to prove that extraordinary circumstances require departure from the general rule. The question is, who could classify cases as confidential even for OLAF?

For reasons that are too obvious to analyse, this task could not be awarded to either COCOBU or OLAF unilaterally. It could be possible to award this task to the committee deciding on conflicts of interest with reference to issues of confidentiality arising from cases

brought before COCOBU. This could be either an Interinstitutional Committee modelled by reference to Article 15(2) of Regulation 1049/2001, or a new committee formed by OLAF's Supervisory Committee acting jointly with the Chairman of COCOBU. This latter model presents the advantage of an adequate degree of common participation thus strengthening the need for synergy between the two bodies in the fight against fraud.

Is this vision of a future relationship between OLAF and COCOBU supported by practices in the Member States? In other words, are there examples of national investigation/prosecution bodies that report to Parliamentary Committees?

In the majority of EU Member States the body responsible for the investigation of serious fraud is part of the police as the main investigatory body under the national provisions of criminal procedure. This is the case in Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Luxembourg, Malta, Portugal, Slovakia, Slovenia and Spain. In a smaller number of countries the investigation of serious fraud is the responsibility of the national prosecution service. This is the case in the Czech Republic, Estonia and Hungary. In Austria, Portugal and Poland the relevant unit is part of the Ministry of Finances.

As a result of this complete organic dependence of these units to the investigation or prosecution bodies of the Member States, they do not have reporting obligations to Parliament, at least not separate from their 'mother' institutions. Thus, in the Hellenic Republic the Permanent Committee of Financial Affairs, and its special Committee on the Budget of the State⁷⁶, discusses issues falling within the jurisdiction of the Ministries of Finances and Public Works. Under Article 101 A of the Constitution of the Hellenic Republic every independent authority reports to the Parliament. Article 138 A stipulates that all files are sent to the President of the Parliament who directs them to the respective Committee. Thus, in the Hellenic Republic all independent authorities have to report to Parliament; however, the Police Department of Financial Crime is organically part of the Police of the Hellenic Republic, which is part and subject to the control of the Ministry of Public Order. As a result reporting takes place through the Ministry rather than by use of Article 101A of the Constitution.

In a small number of Member States one may identify a national body with functions equivalent to OLAF. These are the Italian Guardia di Finanza; the Latvian State Revenue

⁷⁶ See Article 31A, 2004 Regulation of the Parliament of the Hellenic Republic.

Office; the Lithuanian Financial Crime Investigation Service; the Swedish Economic Crimes Bureau; and the Serious Fraud Office in the UK.

However, even these bodies are not independent. As a result, they have no direct reporting obligations to the Parliament or its Committees. The Italian model of the Guardia di Finanza directs to public annual reports in combination with reports to the Minister of Finances. The British model of the Serious Fraud Office directs to public annual reports and frequent reports to the Attorney General.

It is doubtful whether useful conclusions can be drawn from the brief description of the relationship between national equivalents of OLAF and national Parliamentary Committees.

ANNEXES

TABLE I

A COMPARATIVE CONSIDERATION OF THE RELATIONS BETWEEN PROSECUTION OF FRAUD AND AUDIT/BUDGETARY CONTROL AUTHORITIES IN MEMBER STATES

COMPARATIVE TABLE

| Country | Audit/ Budgetary Control Institutions | Relations with national parliament | Cooperation with OLAF |
|---------|---------------------------------------|---|-----------------------|
| Austria | Rechnungshof (Court of Audit) | <p>Relations with national parliament</p> <p>According to Art. 122 of the 1929 Constitution the Rechnungshof is directly subordinated to the Nationalrat, or the National Council. The Nationalrat is a Chamber of the bicameral the Legislative Assembly (the other chamber is the Bundesrat, or Federal Council). The Court works in close connection with the Public Accounts Committee of the Nationalrat. The Rechnungshof is headed by the President of the Court. Under the Constitution the President is elected by the Nationalrat following nomination by the Standing Committee of the Nationalrat. The appointment term for the president is 12 years. Reappointment is not permitted. To ensure his independence, the Constitution accords the President equal standing to a member of the Federal Government or a provincial government. Moreover, the President is not allowed to belong to any general representative body (such as a legislative assembly) and cannot have been a member of the Federal Government or a provincial government in the four years preceding appointment to the Rechnungshof. The President can be removed from office without explanation by a simple majority vote of the Nationalrat or by a verdict of the Constitutional Court.</p> <p>After World War II Chapter Five of the Constitution was amended in 1948 and a new Federal Law on the Rechnungshof was passed. Further regulations established rights for the president to be involved in Parliamentary debates on matter relating to audit. In 1975 the right of the President and Vice President of the Rechnungshof to participate in debates in the legislative assembly and committees on matters concerning audit</p> | |

| | | | |
|----------|--|--|---|
| Bulgaria | <p>Court of Auditors (Smetna palata) – performs <i>external</i> control of the EC funds and their management by the responsible governmental institutions and the end beneficiaries (Article 5, paragraph 2, point 4 from the Law on the Court of Auditors, promulgated, State Gazette, issue 109/ 2001).</p> <p>Agency for State Internal Financial Control (Agenzia za durzhaven vutreshen finansov kontrol) – an institution under the Minister of Finance. Performs <i>internal</i> financial control of the management of EC funds (Article 16 from the Statute of the Agency for State Internal Financial Control, promulgated, State Gazette, issue 8/ 2004).</p> <p>Audit Office</p> | <p>and the Rechnungshof was established.</p> <p>As per Articles 46 and 47 from the Law on the Court of Auditors the Court submits:</p> <ul style="list-style-type: none"> - a general annual report; - reports on specific audits as requested by the Parliament. <p>N.A. (The Agency reports to the Minister of Finance).</p> | <p>The Court of Auditors sends its annual programme for auditing of EC funds to the European Court of Auditors and to the European Commission (Article 37, paragraph 3 from the Law on the Court of Auditors)</p> |
| Cyprus | | <p>According to Article 115, both the Auditor-General and Deputy Auditor-General are appointed by the President and Vice President of the republic acting jointly. The Audit Office is not subordinated nor directly reports to Parliament. The Audit Office reports directly to the President of the Republic who then submits the reports to Parliament.</p> | |
| Denmark | <p>The National Audi Office</p> | <p>The National Audi Office is subordinated to the Folketing (Parliament). The office is headed by the Auditor-General whose appointment and dismissal is made by the Speaker of Parliament pursuant to nomination by the Parliament's Standing Order Committee.</p> <p>The Auditor General's Act includes rules for the Auditor General on authority, audit scope, procedures and outlines which materials the National Audit Office may gain access to. The Instruction for the Auditor General outlines right of access to documents. The National Audit Office of Denmark is not subject to the Freedom of Information Act or the Public Administration Act, however, the National Audit Office of Denmark is subject to equivalent rules described in</p> | |

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| France | <p>The Court of Auditors (La Cour des comptes) (Code on the financial jurisdictions, legislative part; Acts (Loi) from 2 and 27 Dec 1994, Act of 24 July 2005) – performs non-obligatory control of bodies- beneficiaries of EC funds (Art. 45 from the Acts No. 96-314 of 12 April 1996)</p> | <p>the Instruction for the Auditor General. The Office works in close connection with the Parliament's Public Accounts Committee.</p> <p>Article 47 of the Constitution of 4 October 1958 provides that the Court 'assists Parliament and the Government in overseeing the implementation of the Finance Acts'. The new Article 47-1, introduced as part of the constitutional reform of 22 February 1996, stipulates that the Court also 'assists Parliament and the Government in overseeing and applying the laws governing social security funding'. There are five forms of collaboration between the Court and Parliament First, the <i>Premier président</i> of the <i>Cour des comptes</i> may pass on the Court's findings and observations to the Finance Committees of both Houses of the French Parliament (<i>l'Assemblée nationale</i> and the <i>Sénat</i>). Furthermore, since 1996, any communication sent to a minister is automatically sent to the finance committees of both Houses, if no substantive reply is received within six months. Secondly, Parliamentary Committees, Finance Committees or boards of inquiry may ask the Court to carry out a specific management audit in any of the departments or organisations within their remit. Thirdly, the Court's Annual Public Report and the Special Public Reports on specific issues, which have been published regularly since 1991, are laid before Parliament and sent to the President of the Republic. Originally, the Court submitted an annual report only to the Head of State. However, since 1832, it has submitted its report to both Houses of Parliament. The report has since then been published, and is laid before both Houses by the <i>Premier président</i>. In addition, once a year the Cour des comptes prepares a report for Parliament on how the resources made available by the previous year's Finance Act have been used. This report is delivered to Parliament every July. It</p> | <p>OLAF partners in France: - la Direction Générale des Douanes et des Droits Indirects (1998) established under the Ministry of Economy (functions to recover resources from the EU budget and community aid for agriculture) - la Gendarmerie Nationale - the FALCONE programme for harmonising of the procedures for analysing financial crime - La Brigade Centrale de Répression des Fraudes Communautaires (action de la Direction Centrale de la Police Judiciaire) The Direction Centrale de la Police Judiciaire set up a Brigade Centrale de Répression des Fraudes Communautaires (Central Community Fraud Brigade) within the Sous-Direction des Affaires Economiques et Financières (Subdirectorate for Economic and Financial Affairs) in 1996.</p> |
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| | | <p>is now a separate document from the other more official, and almost judicial, report delivered by the Cour: the general statement of concordance between the general accounts of the Finance Department and the accounts prepared by the Treasury's senior accountants. Finally, the Court has since 1995 prepared and submitted to Parliament an annual report on the use of the social security budget by all the social security bodies under its supervision. The report has had a constitutional basis since the constitutional reform of 22 February 1996, and is defined by Organic Act No. 96-646 of 22 July 1996 (Article L.O. 132-3 of the Public Finance Courts Code).</p> | |
| <p>Greece Italy</p> | <p>The Italian Corte dei conti is an Institution with the role of safeguarding public finance and guaranteeing the respect of jurisdictional order. The Corte pursues these two aims through two functions: the audit function and the jurisdictional function. According to Article 100 of the Italian Constitution the Corte is responsible for 'a priori' audit of the legality of Government acts, and also for <i>a posteriori</i> audit of the State Budget's management. It participates, in the cases and in the manners foreseen by the law, in the supervision of the financial administration of those bodies to which the State contributes funds on a routine basis. It reports directly to the Chambers of Parliament on its findings. The Corte is neither an organ of the Parliament nor of the Government. Article 100 of the Constitution places it in the particular position of organ of constitutional relevance. In the audit field, in order to better enact Art. 100 of the Constitution, Art. 3 par. 1 of the Law n. 20 of January 14th, 1994 establishes that the Corte dei conti should carry out an 'a priori' audit, exclusively on the most significant Government acts expressly listed in the article. They are, essentially general planning acts of the</p> | <p>The Corte reports, at least once a year, to Parliament and to Regional Councils on the results of audit carried out. There is no obligation to discuss the reports in Parliament. Through the reports the Parliament is informed so that it can adopt measures that fall under its authority. The Parliament shows great consideration for the Corte's reports, on account of its independence.</p> | |

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| | <p>administration; acts audited 'a priori' for the consequences they produce on the following implementation acts. The 'a priori' audit of these acts is performed so as to avoid that illegal administrative procedures catch on as a result of the illegitimacy of the general act. The provisions of art. 3 par. 4 of Law n. 20 must be considered the most important part of the whole reform. They introduce the new methodology of auditing, entrusting the Institution with the task of carrying out <i>a posteriori</i> audits on the management of the budget and the capital assets of Departments and on EC funds.</p> <p>This audit includes investigations aimed at sectors or subjects not only focussing on the legality aspects, but also taking into account effectiveness (results), efficiency (time and methods) and economy (costs). For this purpose the legislator entrusted the Corte dei conti with the task of setting on a yearly basis audit programmes and criteria. Paragraph 4 of the already mentioned article 3 entrusts the Corte also with the task of verifying the functioning of internal audit in each Department.</p> | | |
| Luxemburg The Netherlands | Algemene Rekenkamer (The Netherlands Court of Audit). | <p>The Netherlands Court of Audit is an independent High Council of State organ. The Constitution guarantees the independence of the Court. However, the court enjoys close connection with the Parliament. The Netherlands Court of Audit comes under the direct supervision of the Lower House of the States General (Parliament). Section 95 of the Government Accounts Act provides that: " 1. The Court of Audit shall bring the reports it issues on its audit to Our attention and to that of the States General. 2.By 1 April every year, the Court of Audit shall submit to Us and to the States General a report on its activities in the preceding year."</p> <p>The Court consists of Board with a President appointed by the Queen and the Parliament. Moreover a Secretary-General is appointed by Royal Decree on the</p> | |

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| Malta | | recommendation of the Netherlands Court of Audit to advise the Board and heads the professional organisation | |
| Poland | Najwyższa Izba Kontroli (NIK) The Supreme Chamber of Control | <p>The Supreme Chamber of Control (SCC) (Najwyższa Izba Kontroli, NIK) is the main Audit organ in Poland. According to the April 1997 Constitutional provisions, the SCC is an independent constitutional body. Chapter 9 of the Constitution entitled <i>Organs of State Control and for Defence of Rights</i> refers to the SCC. Although the Supreme Chamber of Control is subordinate to the Sejm (the Lower Chamber of Parliament) the Constitution, however, grants the SCC's independence and its institutional separation from other state organs. Article 202 of the Constitution provides: "1. The Supreme Chamber of Control shall be the supreme organ of state audit. 2. The Supreme Chamber of Control shall be subordinate to the Sejm."</p> <p>The SCC's close co-operation with the Sejm has several aspects including: The SCC undertakes audits on order of the Sejm or its bodies;</p> <ul style="list-style-type: none"> • The SCC submits to the Sejm: <ul style="list-style-type: none"> (v) analysis of the execution of the state budget and the monetary policy guidelines, (vi) opinion on the budget validation for the government, (vii) information on audit results, recommendations and pronouncements, (viii) annual activity report. • The Sejm, with the Senate's consent, appoints the President of the SCC. The Marshal (Speaker) | <p>An institutional system for the protection of the financial interests of the Community was developed. It consists of the Governmental Plenipotentiary for Combating Fraud against Poland and the EU and two assisting structures: Bureau for International Treasury Relations (ITR) within the Ministry of Finance and Multidisciplinary Team for Combating Fraud against Poland and the EU. Presently, Poland together with all new Member States participates in the multi-country anti-fraud Phare programme for the protection of the Communities' financial interests (MCP PH/2002/1412) implemented under OLAF's guidance. The objective of this project is to establish the network of AFCOS structure (Anti-Fraud Co-ordinating Service), it means the network of anti - fraud services operating in all the countries with a view to safeguard the financial interests of the Communities. In Poland the role of AFCOS performs the ITR Bureau.</p> <p>Moreover, the above mentioned institutions co-operate with public prosecutors office and they bring the identified matters to the attention of prosecution, which conducts the investigation and are responsible for</p> |

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| | | <p>of the Sejm appoints and dismisses on the request of the SCC's President the SCC's Vice-Presidents and also appoints members of the Council of the SCC.</p> <ul style="list-style-type: none"> The Sejm has exclusive right to audit the SCC's budget. | <p>providing OLAF with the relevant information.</p> |
| <p>Portugal</p> | <p>Tribunal de Contas – Court of Auditors The 1976 Constitution of the Portuguese Republic (CPR) includes the <i>Tribunal de Contas</i> (Court of Auditors) on the list of Courts (Art. 209, point 1 CPR), qualifying it as a sovereign body – on a par with the President of the Republic, the Portuguese Parliament and the Government (Art. 110 CPR). Defined as a true Court, the general constitutionally established principles for Courts are applied to it, of which we emphasise the following:</p> <ul style="list-style-type: none"> The principle of independence and exclusive subjection to the law (art. 203); The right to co-operation from other entities (art. 202); The principles that decisions must be fundamented, that they are obligatory and that they must prevail (art. 205); The principle of publicity (art. 206). <p>The independence of both the President and the Judges essentially guarantees the independence of the <i>Tribunal de Contas</i> (Court of Auditors). Therefore, the independence of the former must be constitutionally protected by the independence of the latter. The principle of the Judges' independence determines not only their immovability and exemption from liability, but also their freedom from any and all orders and instructions from other authorities. Thus, it also determines the definition of a specific appointment regime, guaranteeing that exemption and impartiality will prevent the bench of this Court, and that of others, from being occupied according to the interests of the</p> | | |

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| | <p>Government or Administration (Art. 216 CPR). The <i>Tribunal de Cuentas</i> (Court of Auditors) is defined as « <i>the supreme body which examines the legality of public expenditure and rules on the accounts which the law has ordered to be submitted to the Court</i> » (Art. 214 CPR). Moreover, the constituent legislator has elected the <i>Tribunal de Cuentas</i> (Court of Auditors) to the category of a specialised financial court, profoundly different from other courts with regard to competencies. In reality, and as can be seen in art. 214, the Constitution immediately emphasises that the Court does not only hold jurisdictional functions. It also has other functions, namely « <i>to give an opinion on the General State Account</i> ».</p> <p>Furthermore, its constitutionally established competency may be extended by law, as expressly provided for by the Constitution (Art. 214, point d CPR)</p> <p>In conclusion, at a structural and operational level, the <i>Tribunal de Cuentas</i> (Court of Auditors) is a court, or more precisely, a financial court . It is a <i>sovereign body, an independent, constitutional body of the State, which is not included in the Public Administration, in particular, in the State/ Administration.</i></p> | | |
| Spain | <p>Tribunal de Cuentas – Court of Audit Established by Section 136 from the Spanish Constitution organ to exercise the function of audit of the economic administration and of the accounts of the whole public sector; it also has a function of jurisdictional nature whose content is centred in the prosecution of the accounting responsibility.</p> | <p>The Court is directly accountable to the Parliament. Without prejudice to its own jurisdiction, the Court is obliged to send an annual report to the Parliament (Section 136, paragraph 2 from the Constitution).</p> | |

| TABLE 2 | |
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| OLAF'S COOPERATION WITH NATIONAL INVESTIGATIVE BODIES | |
| Country | Nature of co-operation with national investigative bodies |
| <p>Austria</p> <p>OLAF's Counterpart Betrugsbekämpfungsabteilung im Bundesministerium für Finanzen - Anti-Fraud Department of the Austrian Ministry of Finance</p> <p>Deals primarily with the following areas: cooperation and official assistance with customs matters (at national and international level and within the World Customs Organisation), the third pillar of the Treaty on European Union, the Austrian Customs Information and Analysis Centre (ZIA), the Anti-Fraud Information System, customs information systems, customs-related Internet crime and the Austrian customs authorities' centre of expertise on the Internet and cyber crime, checks on the illegal employment of foreign workers, and public relations in the anti-fraud field.</p> | <p>The Belgian federal police - The federal police force</p> <p>Created on 1 January 2001. The federal police work with the local police to increase security in the country and safeguard democracy. The force is founded on the principles of integrity, impartiality and responsibility. The organisation is headed by a Commissioner General, who coordinates five Directorates-General:</p> <ul style="list-style-type: none"> - Directorate-General for administrative police - Directorate-General for criminal investigation - Directorate-General for operational support - Directorate-General for personnel - Directorate-General for resources and equipment. <p>The Commissioner General also heads departments responsible for contacts with the local police, international police cooperation, integrated policing, coordination and external communication. The federal police perform specialist functions in areas of administration and criminal investigation at supra-local level and provide support to units of the local</p> |
| <p>Belgium</p> <p>Service Public Fédéral Finances - Belgian Customs and Excise Administration's National Investigation Department)</p> <p>The customs administration plays a key role in international controls on flows of travellers and goods. It receives notifications of offences committed abroad and has to take appropriate action in Belgium.</p> <p>In 2001 only the Department handled 3 176 requests for exchanges of information: 1 496 requests made to Belgium by other Member States and 1 625 requests made to other Member States by Belgium. These exchanges brought concrete results in the areas of narcotics, forgery and pirated goods, and the Convention on International Trade in Endangered Species (CITES).</p> <p>Large quantities of narcotic drugs (cocaine, marijuana and XTC) were seized by means of controlled deliveries.</p> | <p>The Belgian federal police - The federal police force</p> <p>Created on 1 January 2001. The federal police work with the local police to increase security in the country and safeguard democracy. The force is founded on the principles of integrity, impartiality and responsibility. The organisation is headed by a Commissioner General, who coordinates five Directorates-General:</p> <ul style="list-style-type: none"> - Directorate-General for administrative police - Directorate-General for criminal investigation - Directorate-General for operational support - Directorate-General for personnel - Directorate-General for resources and equipment. <p>The Commissioner General also heads departments responsible for contacts with the local police, international police cooperation, integrated policing, coordination and external communication. The federal police perform specialist functions in areas of administration and criminal investigation at supra-local level and provide support to units of the local</p> |

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| | | <p>police and the federal police force itself.</p> <p>Deals on a regular basis with offences affecting the financial interests of the EU. OLAF calls on the services of special investigators from the Central Department for Economic and Financial Crime, in particular.</p> <p>The offences investigated by these officers are mainly cases of fraud involving subsidies. In response to an express request by the European Union they will also investigate corruption by EU officials.</p> <p>Parquet federal – The Federal Prosecution Service</p> <p>The Federal Prosecution Service began operating on 21 May 2002. It consists of the Federal Prosecutor, 18 federal judges and administrative staff. The legislation gives it four main functions. It prosecutes an exhaustive list of specific offences: major offences against the security of the State, threatened acts of serious violence or thefts of nuclear material and offences relating to the external protection of nuclear material, trafficking in human beings, arms trafficking, serious violations of humanitarian law, and criminal conspiracies. It coordinates all prosecutions irrespective of the offence. It facilitates international cooperation and is the central judicial contact point for international judicial authorities and institutions such as the International Criminal Courts and Tribunals, EUROJUST and OLAF. It monitors the operation of the federal police in general and specific respects. The powers of the Federal Prosecution Service extend throughout the territory of the Kingdom.</p> |
| <p>Bulgaria</p> | | <p>Министерство на вътрешните работи/ Съвет за координация на борбата срещу нарушения, засягащи финансовите интереси на Европейската Общност - Ministry of the Interior / The Council co-ordinating the fight against the infringements affecting the financial interests of the European Communities</p> <p>In 2003, a Council co-ordinating the fight against the infringements affecting the financial interests of the European Communities has been established as a national contact point of OLAF. The main purpose of the Council is to give guidelines and to propose measures; to monitor and to ensure coordination in the activities of the authorities involved in detection and prevention of infringements committed with funds and property provided within the framework of EU funds or programmes; to interact with the European Anti-Fraud Office and the relevant bodies competent in the area of the protection of the financial interests of the European Communities in the Member States of the European Union and in other states. In order to fulfil this objective the council interacts with the judicial authorities by</p> |

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| | | <p>way of mutual instruments.</p> <p>The Council consists of a Chairman, a Deputy Chairman and members. The Chairman of the Council is the Minister of Interior who appoints his deputy - a Deputy Minister of Interior. Members of the Council are the Director of the National Police Service of the Ministry of Interior; the Director of the National Service for Combating Organised Crime of the Ministry of Interior; the Director of the National Border Police Service of the Ministry of Interior; the Director of the Customs Agency with the Minister of Finance; the Director of the Bureau for Financial Intelligence Agency with the Minister of Finance; the Director of Public Internal Financial Control Agency with the Minister of Finance; the Director of the General Tax Directorate of the Ministry of Finance; the Director of the Central Financing and Contracting Unit of the Ministry of Finance; the Director of the EU Funds Management Directorate of the Ministry of Finance, the Director General of the National Veterinary Service with the Minister of Agriculture and Forestry; the Director of the Integration Policy Directorate of the Ministry of Agriculture and Forestry and the Director of the Development of Rural Areas and Investment Directorate of the Ministry of Agriculture and Forestry.</p> |
| <p>Cyprus</p> | <p>Department of Customs and Excise</p> <p>The Department falls within the domain of the Ministry of Finance and has been in existence for more than 100 years. The Department consists of the Customs and the VAT Service.</p> <p>The Department's vision is to transform itself into a modern organization, fully compatible with the E.U. Services, which will play its full part as a customs administration of the EU, and set an example, which others wish to follow.</p> <p>The Department aims to maximize the potential of its entire staff, employ innovative working practices, and utilize the latest technology, in pursuit of its vision.</p> <p>The mission of the Department of Customs and Excise is:</p> <ul style="list-style-type: none"> • To protect society and the environment, and facilitate the improvement of its quality of life, by preventing illicit traffic in narcotics and other prohibited and restricted goods; • To collect the revenues for which it is responsible; • To facilitate legitimate trade and business; and • To collect and analyse trade statistical data within its competence. | <p>The Cyprus Police</p> <p>The Police have constant and close cooperation with various institutions and agencies, in Cyprus and abroad, in order to combat criminality.</p> <p>The Police Fraud Office undertakes the responsibility for prevention, fight and investigation of fraud and corruption.</p> <p>It cooperates very closely with OLAF in the framework of the OLAF Anti-Fraud Communication network.</p> |
| <p>The Czech</p> | | <p>Nejvyšší státní zastupitelstv</p> |

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| <p>Republic</p> | | <p>(The Supreme Prosecutor's Office)</p> <p>The Supreme Public Prosecutor's Office is the highest component in the system of public prosecutor's offices in the Czech Republic. The Public Prosecutor's Office is a body representing a public prosecution in a trial; in a preliminary proceeding it supervises observance of the rule of law in criminal proceedings. Its work is focused on the criminal sphere; however, the Public Prosecutor's Offices have also significant competencies in the sphere of civil and administrative law. The Supreme Public Prosecutor's Office is based in Brno. Within its authorities it contributes to the integration of practices of individual prosecutors and inferior prosecutor's offices.</p> <p>A significant step focused on establishing contacts with OLAF was concluding the 'Arrangement on Cooperation' between the Supreme Public Prosecutor's Office and OLAF in October 2001. It was agreed that by means of cooperation contracts the Supreme Public Prosecutor's Office would create a net of contact points - 'AFCOS' - with relevant central authorities. It took place in the first half of the year 2002. This net has competences in the sphere of cooperation in a struggle against discrepancies in the EU funds' management. So far, three cases relating to fraud have been observed, the objects of which are financial interests of the European Union. However, the criminal acts of this nature are expected to be more frequent in the future with respect to joining the EU. Within the framework of the prosecution system, two departments have been established at the High Public Prosecutor's Offices in Prague and Olomouc, which are engaged solely in serious economic and financial criminality. Fraudulent activities relating to the EU funds also belong to their competence. At the Supreme Public Prosecutor's Office in Brno, there is a similar department that controls activities of the two above-mentioned departments.</p> |
| <p>Denmark</p> | <p>Told & Skattestyrelsen : Økokrimkontoret - Central Customs and Tax Administration : International Anti Fraud Division</p> <p>The Customs and Taxation Board is the supreme authority in Denmark responsible for collecting and controlling all national taxes and excise duties and the EU's own resources. Combating fraud and economic crime is given a high priority. The Customs and Taxation Board has therefore set up a special office to combat fraud and economic crime involving customs and excise duty and taxation - the Economic Crime Office (International Anti Fraud Division). A large proportion of cases handled by the Economic Crime Office is of an international or cross-border nature. OLAF is therefore one of</p> | <p>Public Prosecutor for serious economic crime (SOK)</p> <p>The Office was created in 1973 and is a law enforcement agency within the prosecution system. It is responsible for cases of economic crime. It has close cooperation with tax and custom authorities and other authorities, including those who administer funds from the EU budget.</p> <p>In April 1998 the Danish Director of Public Prosecution established a visitation scheme for EU-fraud cases in Denmark. According to this visitation scheme the Danish Public Prosecutor for Serious Economic Crime on a national basis is responsible for uniformity and efficiency in the judicial treatment of and reaction to fraud against the economic interests of the EU. It also has a coordinative role when EU-fraud cases have international aspects, are of a principal character or have a bearing of more than one police district in Denmark. The coordinative role means that where SOK does not run the investigation itself it gives guidance to the relevant police districts in Denmark both on the investigation, the</p> |

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| | <p>its most important partners, especially in cases of customs fraud, VAT carousels and the organised smuggling and trafficking of harmonised goods subject to excise duty such as cigarettes and spirits. Cooperation also exists in controls of goods with false trademarks and false declarations of origin. The Office also attaches considerable importance to cooperation with other anti-fraud units in the other Member States and in non-EU countries. At national level, the Office works closely with the special police and legal authorities responsible for investigating and prosecuting economic crime. The Economic Crime Office was set up in 1997 as an independent anti-fraud unit within the Customs and Taxation Board to provide quick and effective central coordination of international fraud and economic crime involving customs and excise duty and taxation. To strengthen its role, the Office was also designated as the competent authority for the exchange of information and administrative cooperation with other countries. The Office also liaises between the local economic crime units - the Anti-Fraud Units - and the police and the prosecution authorities nationally and internationally as well as OLAF and anti-fraud units in other countries.</p> | <p>legal assessment and possible indictment. The Office helps to arrange investigation coordination meetings between several police districts in Denmark and other relevant authorities, including OLAF. SOK is designated as the national contact point of OLAF in relation to EU fraud and assists OLAF and helps the police districts in Denmark with contact and cooperation with OLAF. SOK and the police districts in Denmark have received assistance from OLAF in order to complete investigations. The cooperation with OLAF has improved coordination of investigation of serious cross-border EU-fraud where several MS are affected.</p> |
| <p>Germany</p> | <p>Zollkriminalamt – Customs Criminal Investigation Department</p> <p>The Customs Criminal Investigation Department, which forms the centrepiece of the German Customs Investigation Service, operates under the auspices of the German Ministry of Finance. It provides back-up to the customs administration in securing tax revenue (for instance, by monitoring procedures for the dispatch of goods subject to high rates of tax or goods subject to regulation by a common organisation of the market). It helps with the monitoring of Community expenditure and the detection of cases of tax fraud, and it is responsible for monitoring the market, that is, random observation of transactions involving capital, payments, services and goods. The Customs Criminal Investigation Department maintains an information system for customs investigations, as well as scientific and technical facilities in the criminal law field. It is also the head office of the customs</p> | |

administration, notably where official assistance to OLAF is concerned. It coordinates and directs investigations carried out by the eight customs investigation offices operating under its auspices. One of the essential tasks of the Central Customs Support Group, a special unit within the Customs Criminal Investigation Department, is to protect customs investigation officials working to prevent or detect criminal offences. It also provides protection for informers and third parties not involved in criminal acts. In addition, it is responsible for protecting witnesses.

The Customs Criminal Investigation Department coordinates and directs investigations conducted by the customs investigation offices in the areas of customs and agriculture and measures implemented by the main customs offices in Germany. It also promotes cooperation with foreign agencies and the Commission in the context of the bilateral agreements on reciprocal support for customs administrations. In addition, it compiles data on fraud cases, ways of committing crimes, criminals and other subjects, and analyses which of the economic areas studied are particularly vulnerable to fraud, with a view to providing support for the customs offices concerned on the basis of these analyses.

Protecting the European Union's financial interests is a paramount concern, given that the EC budget is increasingly threatened by criminal activities. International criminal groups have always practised subsidy fraud and tax evasion and will continue to do so, given the extensive financial aid provided by the EU.

These irregular practices have affected the EU's Member States to differing degrees. Cooperation dates back to the setting-up of UCLAF in the early 1980s. The main concerns then - as today - were irregularities relating to imports of textiles from east Asia.

Fraud involving farm export refunds, unlawful activities relating to embargoes (particularly those involving steel products) and anti-dumping cases were major areas where we later achieved sound success through close cooperation with OLAF. Currently, a major area of cooperation is the battle against organised cigarette smuggling, which is responsible

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| | <p>for sizeable losses to the EU budget. This is something which affects not only individual European citizens, as victims of crime, but also, to an even greater extent, institutions such as the Commission or the European Parliament, which are increasingly aware of the drawbacks of having different criminal law systems in the different Member States. The challenge is to bring about improvements as soon as possible in the application of criminal law.</p> | |
| <p>Greece</p> | <p>ΓΕΝΙΚΗ ΔΙΕΥΘΥΝΣΗ ΤΕΛΩΝΕΙΩΝ ΚΑΙ ΕΙΛΙΚΩΝ ΦΟΡΩΝ ΚΑΤΑΝΑΛΩΣΗΣ - Directorate General Of Customs And Excise</p> <p>The Directorate General of Customs and Excise, its Divisions and Special Decentralised and Regional Customs Authorities, under the Ministry of Economy and Finance, form a unit under the title 'Customs Service'.</p> <p>The Customs officers are subject to the provisions of the Civil Servants Code.</p> <p>They have also the duty and the power to hold preliminary investigations in cases of contraband, duty and tax evasion or any other customs offence.</p> <p>The mission of Customs Service is the assessment and collection of revenues, provided for in the relevant customs and tax legislation, related to the Greek State and to the EU's own resources, the facilitation of trade and economic growth as well as the protection of society.</p> <p>The geographical position of the country determines the priorities of the Hellenic Customs Service. The main goals of its activities are the protection of the borders - which are also the external borders of the European Union - and the fight against fraud.</p> <p>The contemporary form and extent of organized crime demand that measures to be taken which impose international cooperation and common actions among countries.</p> <p>Consequently, the Hellenic Customs Service places emphasis on the cooperation with OLAF and the coordinated action with the member -states, as well as on the cross-border cooperation with the Balkan countries, in order to combat illicit actions.</p> | |

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| <p>Spain</p> | <p>Agencia Tributaria - The Spanish Taxation Agency The Taxation Agency, created in 1992, is the administrative organisation responsible for enforcing the state tax and customs system on the state's behalf. Its powers include the administration, inspection and collection of state taxes, the collection of part of the revenue of the Autonomous Communities, the collection of the European Union's own resources, customs administration and combating smuggling. Its functions include services to taxpayers and combating tax and customs fraud. The results of fraud checks are improving year by year thanks to updated working methods in the monitoring field. Cooperation with the European Anti-Fraud Office, OLAF, is very important, as it enables combating coordinated fraud perpetrated throughout the European Union and to exchange experiences, thereby learning from each organisation's best practice.</p> | <p>Cuerpo Nacional de Policia – The Spanish National Police Force Relations between the Spanish National Police Force (CNP) and OLAF go back to the time when UCLAF, OLAF's predecessor, was the unit responsible for coordinating measures to combat fraud harmful to the Communities' financial interests. In March 2000, OLAF, which had just been set up, recruited a Spanish police inspector as a seconded national expert. From then on ties between the Spanish National Police Force and OLAF grew stronger and it became clear that OLAF's investigations required a police-style approach, given that many crimes relating to the budget are committed by organised gangs of criminals. Developments in international crime suggest that as far as the measures to combat fraud against Community interests is concerned, the way forward is to reinforce existing financial investigation units to enable them to provide the flexibility and dynamism already displayed by the Member States' police forces. The Spanish National Police Force has a further advantage in investigations into activities in Spanish-speaking Latin American countries, with which there is close police cooperation. It is only through the ambitious project of integrating the resources available throughout the EU that fraud can be combated effectively. The Spanish National Police Force has a part to play here, thanks to the extensive experience it has built up through a wide range of activities in the economic and financial domain. OLAF's network of groups must also play a vital preventive role in the fight against fraud, by making EU citizens better informed and more aware of the efficiency and transparency of the institutions responsible for controlling public funds and protecting the EU's financial interests. It is the mission of the Head Office of the <u>Judicial Police</u>, through its services at national, Autonomous Community and provincial level, to draw up detailed and strategic plans for combating organised crime, and to set up and develop specialised investigation units, including the Economic and Financial Crime Investigation Forces, which dealt with over 27 000 cases of fraud in 2002 (71 % of all cases of fraud reported in Spain). Tax offences against the national and Community budgets accounted for a large proportion of these cases. The Organic Law on Security Forces endows the National Police Force with exclusive powers as regards cooperation with and the provision of assistance to other countries' police forces. Within this framework, the National Police Force cooperates closely with the police forces of the other EU Member States, carrying out a large number of joint investigations into economic matters, with a particular emphasis on inquiries directed against organised groups specialising in tax and corporate crime.</p> <p>la Guardia Civil Its many responsibilities, laid down by law, include setting up the Spanish Authority for the Safeguard of Taxes (Resguardo Fiscal). Within the Guardia Civil, it is the Taxation Service (part of the Taxation and Borders Department) which is responsible for this field. This</p> |
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| | | <p>specialist service takes action to prevent and prosecute smuggling, drug-trafficking, fraud and other tax-related offences within the remit legally assigned to the Guardia Civil. It also liaises and cooperates at operational level in these areas with other similar services, both national and foreign.</p> <p>The Taxation Service comprises approximately 3300 staff members divided up between the central organisation, the regional tax patrols and the units which provide services in customs zones at ports, airports and land borders.</p> <p>The Taxation Service was set up under the Law of 15 March 1940, which integrated the Military Police (Cuerpo de Carabineros), responsible for guarding the coastline and borders, preventing smuggling in customs zones and on national territory, and imposing penalties for the latter offence, into the Guardia Civil. After the incorporation of the Cuerpo de Carabineros, the Guardia Civil took over the duties which the Cuerpo had previously carried out.</p> <p>The cooperation between the Guardia Civil and OLAF in the fight against fraud goes back to 1993, when an officer of the Guardia Civil started a period of service as a national expert in what was then UCLAF. Further officers were subsequently seconded; a temporary agent and two national experts from the Guardia Civil are currently working for OLAF.</p> <p>Cooperation between OLAF and the Guardia Civil has resulted in a large number of investigations in the farming sector (tomatoes, citrus fruits, olive oil, bananas, etc) and the commercial sector (coal, petrol, alcohol, etc), many of which have led to legal proceedings. In 2000 and 2001, the Guardia Civil, together with OLAF, wound up ten anti-fraud operations, involving 47 arrests and fraud against public finance amounting to an estimated €299 million.</p> <p>On the domestic side, the Guardia Civil is taking decisive action against tobacco smuggling. In future, relations between OLAF and the Guardia Civil must be further improved by stepping up operational cooperation and through the smooth exchange of police information.</p> |
| <p>Estonia</p> | <p>Rahandusministerium – Ministry of Finance</p> <p>The Ministry was appointed by the Government to fulfil the role of co-operation partner for OLAF. The name AFCOS - Anti-Fraud Co-ordinating Service describes the Estonian set-up accurately.</p> <p>Ministry of Finance is functioning as co-ordinating body exchanging information with OLAF and relevant state institutions and bringing together OLAF officers and the Estonian law enforcement agencies or other Government organisations possessing the relevant expertise to enable the most effective protection of EU financial interests. The wide range of OLAF activities demands also many-sided</p> | <p>Esti Politseil – Central Criminal Police</p> <p>Prevents, combats and detects criminal offences which cover the whole state, cover several counties, are very serious, draw special public attention or have had serious consequences. For example serious crimes against persons, crimes causing great material damage to the state, crimes related to money laundering, crimes needing comprehensive international co-operation, organised crime and serious drug offences etc.</p> <p>The operational aspects of international police co-operation are the responsibility of the International Criminal Intelligence Department of the Central Criminal Police. The Department has the following tasks:</p> <ul style="list-style-type: none"> • Organisation of international co-operation in preventing, combating and detecting crime, and the exchange of relevant information; |

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| | <p>specialities from AFCOS. To provide it the involved law enforcement agencies are Customs, Central Criminal Police, Tax Fraud Investigation Centre, Security Police and State Prosecutors Office.</p> <p>Working relation with OLAF date back already for several years over which Estonian Customs has had effective co-operation and joint investigations with OLAF. From May 2002 preparations were started to widen the collaboration with OLAF and to ensure a more efficient protection of EU financial interests.</p> <p>For effectively combating fraud and corruption it is vital to have high level public awareness about the impacts of these kinds of crimes especially to taxpayers. Taking part in OLAF initiated Anti-fraud Communicators Network and educating the public opinion with regard to crimes aimed at affecting EU financial interests is helping to achieve this goal.</p> <p>Tolliametisse – Estonian Customs Board (ECB) is functioning under the administration of the Ministry of Finance. ECB is performing the roles of a tax administrator, trade facilitator and protector of the society fighting against smuggling and tax frauds. Customs collects about 45% of state revenue. Customs Administration employs about 1400 officials who work in 5 Regional Customs Houses and in the Central Administration. ECB performs its duties in close co-operation with other ministries and government agencies of Estonia, with local municipalities and other relevant institutions. Customs have close co-operation with the border guard and police authorities while protecting the society. Customs Administrations of other countries have been and are good co-operation partners to ECB. Estonia has been the WCO member since 1992.</p> <p>The main area of co-operation with OLAF has been detection of tax frauds. This co-operation has been especially fruitful in the sphere of investigation of several export frauds connected with butter and milk powder exports into the EU Member States. OLAF representatives were involved in conducting audits in the companies under investigation. Good results</p> | <ul style="list-style-type: none"> • Fulfilment of the duties of the Interpol National Central Bureau and the European national contact point; • Co-ordination of other international police co-operation, and organisation and co-ordination of co-operation with police liaison officers residing in other states. The Estonian Police has participated and is participating in many international operations. <p>Contacts between the Central Criminal Police and OLAF were established several years ago and since then there have been several working meetings. The officers of the Central Criminal Police have taken part in seminars organised and delivered by OLAF, which has, on one side, assisted Estonia in preparing the accession to the EU and, on the other side, made the efforts of the Estonian law enforcement structures in combating fraud more effective.</p> |
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| <p>France</p> | <p>were achieved from co-operation in the investigation of silicone metals imports and smuggling of cigarettes. As an information exchange channel the Board has started to use some of AFIS modules and has planned to enhance those.</p> | |
| <p>Douanes et Droits Indirects (Customs) In France, the Customs and Indirect Taxation Department leads the efforts to combat fraud against the Community's interests, essentially because of its mandate to recover own resources intended for the European Union budget and to monitor Community agricultural aid. These are the characteristics that justify the fact that the department comes under the aegis of the Ministry for Economic Affairs, Finance and Industry. Through its information and communication office, customs supplies the media with information on major seizures. The publicity helps to point up the significant harm that fraud causes to the EU's economic interests. The press is also directed to OLAF's spokesperson for a transnational picture of fraud trends. Whilst France is still essentially a transit country for cigarette smuggling, action taken by the customs services is part of the broader aim of defending European interests since many of the seizures made on French territory were found in goods being transported to the United Kingdom.</p> | | <p>Gendarmerie Nationale</p> <p>The gendarmerie is a police force with military status set up to protect public safety (it protects people and goods, informs, warns and assists), maintain public order and enforce laws. It has sole responsibility for public security over 95% of the country and on behalf of 50% of the population. Dealing each year with approximately one third of crimes and offences, the gendarmerie is active in every area of the fight against crime. With its extensive network of 3 474 territorial brigades, it also has investigation units in charge of the most complex enquiries and benefits from the support of its specialised services (mountain and sea operations, maintaining order, etc.). Constantly changing, it has incorporated into its enquiries the techniques of both forensic science and criminal analysis. Criminal analysts can now assist investigators at all levels. Criminal investigation technicians are also deployed throughout the country in order to carry out technical and forensic operations as rapidly as possible.</p> <p>The development of cooperation between the gendarmerie and OLAF has been very beneficial as regards both training and at operational level. Where training is concerned, exchanges on criminal analysis and the fight against financial crime help to develop the know-how of staff in each of the institutions. Research being carried out jointly under a Falcone programme (OLAF, Europol, Belgium, Finland, etc.) on the harmonisation of financial crime analysis procedures looks like being a particularly promising area of cooperation. Operational activities have also reflected the value of the cooperation and fully justify the existence of the partnership. In June 2000, following a report from OLAF, gendarmerie investigators conducted an enquiry under letters rogatory that concerned bananas imported from Italy under cover of forged 'overseas' import certificates. Five persons were charged and two were imprisoned. The fraud involved an estimated €112.5 million. In 2000 and 2001, following the discovery of an extensive traffic in second-hand vehicles between France, Belgium, Spain, the United Kingdom and Germany, the gendarmerie investigations, conducted with the assistance of OLAF, resulted in the arrest of six persons, of whom three were imprisoned. The amount of VAT defrauded was estimated at €380 000.</p> <p>Police Nationale (Police) The Direction Centrale de la Police Judiciaire set up a Brigade Centrale de Répression des</p> |

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| | | <p>Fraudes Communautaires (Central Community Fraud Brigade) within the Sous-Direction des Affaires Economiques et Financières (Subdirectorate for Economic and Financial Affairs) in 1996. This brigade has units throughout national territory, including the overseas departments, which are specialised in combating organised crime and qualified to lend technical expertise in the judicial field, particularly as regards criminal law in business matters. Administratively, the Central Brigade is placed within the Office Central pour la Répression de la Grande Délinquance Financière (Central Office for the containment of large-scale financial crime) which is a national, cross-ministry structure with operational responsibility for combating money-laundering. It does not confine its activities to simply investigating offences against the Community's interests - it will also try to track down the illegal profits. The specialised staff of the National Police Force work internally, in close cooperation with the other departments concerned, particularly the Directions Générales des Douanes (Customs departments) and the Gendarmerie Nationale. The National Police Force trains its special investigators in matters relating to fraud against the financial interests of the European Union in cooperation with the European Anti-Fraud Office, which ensures maximum operational effectiveness.</p> |
| <p>Hungary</p> | <p>Vám-és Pénzügyőrség Osztóság Parancsnokságá (Customs and Finance Guard)</p> <p>The Customs and Finance Guard supervised by the Minister of Finance possess one of the most complex and efficient systems by controlling the export and import turnover, by performing activities concerning the investigation and law enforcement in order to assure the economic growth as well as repress the black economy.</p> <p>One of the main tasks of the Hungarian customs administration is to provide resources for the state budget, to perform the customs control of the goods and passenger traffic through the state borders, to impose and collect customs and other public charges. The Customs and Finance Guard takes a prominent part in law enforcement, crime prevention, the fight against money laundering and international terrorism as well as in ceasing drug, spirit and cigarette smuggling. The Customs and Finance Guard renders help towards other authorities and co-organizations to detect law infringements.</p> <p>The Customs and Finance Guard performs detection and investigation of financial and customs offences falling within</p> | |

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| | <p>its competence including urgent crime-investigation activities. The main objective of the Hungarian Customs and Finance Guard is to strengthen cooperation with OLAF to fight against fraud and corruption. By exchanging information successful investigations have been carried out together and on the request of OLAF Officers concerning the post control of sugar consignments, alcohol smuggling.</p> <p>OLAF Coordination Bureau In the framework of the Government Resolution of 2001 the Government agrees to establish and develop controlled relations between Hungary and OLAF. The Ministry of Finance was appointed as a Single Contact Point, and coordination within the scope of cooperation is the competence of the Ministry. The Bureau has started its operation in 2001 within the Legal Department in the Ministry. To support the multidisciplinary operation of the Bureau the Government established a Working Group, appointed its members from the concerned authorities. The Bureau staff is 3. The actual and ongoing aim of the Bureau is to build operational connections with the Hungarian partners and partners of Member states and Candidate countries as well. By all of the legal instruments we fight for transparent financial processes without fraud and irregularities.</p> | |
| <p>Ireland</p> | <p>The primary task of the Irish Customs Service, which forms part of the Office of the Revenue Commissioners, is to implement import and export controls, ensuring that prohibited drugs and other contraband are prevented from entering the State and the wider European Union and that export controls are respected. Irish Customs work closely with their counterparts in other EU and non-EU administrations, and deal with the risk of fraud and smuggling by continuing to strengthen their system of controls and investigations, backed up with sophisticated intelligence-gathering and risk based intervention.</p> <p>Department of Agriculture & Food (DAFF) The Department makes annual payments of some €2.41 billion through in excess of 250 schemes to a wide variety of</p> | <p>Garda Síochána - Ireland's National Police Service. Its mission is to achieve the highest possible level of personal protection, community commitment and state security. There are over 11,800 Garda personnel in the service, operating from 703 Stations. In addition there are 1,750 civilian support staff. Until so far no high profile successful cases through involvement with OLAF have been registered, but it is considered essential that the structures exist to deal with serious fraud of international dimensions.</p> |

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| | <p>customers. The priority is to provide a speedy and efficient payment service for customers while preventing any misuse of public funds and ensuring full accountability. There is full cooperation with both OLAF, the European Commission, the Court of Auditors and other Member States to prevent the misuse of community resources.</p> | |
| <p>Italy</p> | <p>Agencia delle Dogane - Customs Legislative Decree No 300 of 30 July 1999, which was part of a major reform of the Italian administration, set up the Agenzia delle Dogane to perform the duties previously carried out by the Ministry of Finance's customs and indirect taxation department.</p> <p>In accordance with the Ministerial Order of 28 December 2000, the Service became operational on 1 January 2001.</p> <p>The Service was born out of the desire to simplify relations with users, streamline procedures, encourage people to be aware of their obligations and pay their taxes voluntarily, raise general awareness among all concerned of the importance of the customs and customs policies, make the administration, communications and the sharing of information more transparent by training and raising awareness at all levels.</p> <p>The Customs Service was set up as an independent body. Its structure and procedures draw on the most up-to-date theories of management studies, with a commercial-style organisation that is in line with and comparable to that of customs authorities in most EU countries.</p> <p>At international level, it maintains links and collaborates with customs services from EU Member States and non-EU countries.</p> <p>At Community level, a particularly important tool in the fight against fraud is the system for sharing information, which requires close cooperation with OLAF to manage the customs information system (CIS) and enables customs officers to consult a data base containing details of frauds uncovered at Community level.</p> | <p>Carabinieri The <u>Carabinieri</u> Corps, founded in 1814, is a branch of the armed forces with general law-enforcement powers and standing responsibility for maintaining public safety. It operates under the Ministry of Defence as far as its military functions are concerned, including participation in military operations, in the context of which it cooperates in particular with the 'Multinational Specialised Units' (MSUs). These combine both military and police functions and were set up under the auspices of the EU to act as integrated law-enforcement units. The Carabinieri are also under the authority of the Ministry of the Interior as regards the maintenance of law and order and public safety and in operational terms report to the judicial authorities when carrying out criminal investigation work.</p> <p>Some units with specific remits are answerable to other ministries (health, environment, culture, labour, agriculture, external affairs). These include the units responsible for agricultural policies, which combat fraud against the EU budget, and for the fight against currency counterfeiting, which are active in preventing and investigating forgeries (banknotes, coins, debt instruments, stamps, cheques and securities) and financial flows involving organised crime, and maintain contacts with their specialist counterparts in other countries via an officer liaising with OLAF.</p> <p>Direzione Nazionale Antimafia (D.N.A) - National Anti-Mafia Directorate</p> <p>Guardia di Finanza La Guardia di Finanza, 64 000-strong, is a military police corps answerable to the Ministry of Economic Affairs and Finance and an integral part of the armed forces and law enforcement authorities. As the economic and financial police, the Guardia di Finanza guarantees the collective interest in economic and financial security, working to defend the State and European Union budget as well as protect consumer rights and market and competition operating rules.</p> <p>Alongside this 'primary' institutional mission, the corps also has a 'collective' institutional role, in conjunction with the other Police and Armed Forces, in maintaining public order and security and defending the frontiers.</p> <p>In fulfilling the role of economic and financial police, by fighting money laundering and economic crime, tackling the phenomena of the black market economy and clandestine betting and combating smuggling and fraud, the Guardia di Finanza prosecutes all forms of</p> |

unfair competition and creates an atmosphere of trust amongst operators, which is indispensable for the balanced and genuine development of economic relationships. As the economic police, the corps works to seek out and report infringements of the operating rules of the economy, competition and the market; as the financial police, its activities are aimed at the prevention and suppression of all offences harmful to the acquisition, management and use of the financial resources needed for the provision of public goods and services.

All these activities, so different in both operating methods and means used, lead to an 'ultimate purpose' established by the institution, which is essentially to safeguard the economic and financial security of the country and of the European Union.

Polizia di Stato - Police

The Department of Public Security, organised into central directorates and regional or local offices, some of them composed on a combined-forces basis, is tasked with:

- implementing policy on public order and public security;
- technical and operational coordination of the police forces;
- directing and administering the State Police;
- directing and managing technical support services, to meet the general requirements of the Ministry of the Interior among other things.

The Department is headed by the Chief of Police, Director-General of Public Security. He is also in charge of the State Police, a national civilian force with general powers to secure public order and public security and with crime prevention and enforcement powers. Set up in 1852, it acquired its present structure with the reform legislation of 1981; it has staff with police functions and scientific and technical staff, the total being around 110 000. It is subdivided into police forces, interregional directorates and interregional, provincial and local offices (specialised units, mobile units, training institutes, flying squads, regional scientific police offices, telecommunications units, and vehicle fleet management units).

For some time now the State Police have been cooperating closely with OLAF, and the upshot is an exchange of information that has proved particularly valuable. Such cooperation, aimed at improving initiatives responding to the widely varying forms of crime against the Community's interests, also aims to harmonise our respective institutional activities with a view to combating fraud and organised economic and financial crime.

Combined investigations have made it possible to prosecute criminal gangs that are more and more capable of acting within highly profitable economic and financial circuits. Cooperation with OLAF has been particularly useful in the fight against forms of crime

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| <p>Latvia</p> | <p>Valsts Ienemumu Dienests - State Revenue Service The VID of the Republic of Latvia is a state administration institution operating under the supervision of the Ministry of Finance. It was established in 1994 by merging State Finance Inspection Board and Customs Department. State Revenue Service has been established with the task to implement the State fiscal and customs policies, to ensure the protection of the state economic border and collection of the planned revenue to the State budget. Achieving voluntary timely assessment and collection of taxes, duties and other compulsory payments, thereby contributing to the economic and social well-being of Latvian people is a major direction for the State Revenue Service today. The main tasks of the State Revenue Service are to ensure collection of state taxes, duties and other compulsory payments, administered by the State Revenue Service on the territory of Latvia and on customs border. Co-operation between Latvian Customs and the European Fraud Prevention Office (OLAF) is based upon the 5th Protocol of the Agreement of Mutual Administrative Assistance in Customs Area concluded between the Republic of Latvia and European Union, signed on 12 June 1995 and entered into force 1 February 1998. The most common form of practical co-operation is the processing of information requests received from OLAF followed by inspections made by Latvian Customs officials within their competence, preparation of the answer to the requested information and sending it over to OLAF. On some occasions the representatives of OLAF have visited Latvia to participate in the investigations carried out by Latvian Customs officers concerning issues of mutual interest. The representatives of OLAF have participated in such inspections as observers and consultants.</p> | <p>that have a manifestly high capacity for market penetration through the use of more and more sophisticated high-tech tools through recourse to low-risk, high-yield activities.</p> |
| <p>Lithuania</p> | <p>Muitines Kriminalines Tarnybos - Customs Criminal Services</p> | <p>Specialiuju Tyrimu Tarnyba (STT) - Special Investigation Service The STT is an independent specialised law enforcement agency responsible for the</p> |

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| | | <p>prevention, detection and investigation of corruption-related offences. STT is accountable to the President of the Republic and the Parliament. Its activities are supervised by the Prosecutor Offices.</p> <p>While forestalling and investigating corruption, STT carries out intelligence activities, conducts interviews and preliminary investigations in criminal cases.</p> <p>However, criminal prosecution is not the only function of STT. It also collects, stores, analyses and summarises information about corruption and related phenomena, develops and implements corruption prevention measures, co-operates with other law enforcement bodies, and, last but not least, informs the general public about the phenomenon of corruption and techniques of curtailing it.</p> <p>Over the last few years, STT was visited by OLAF officers a couple of times. Special attention has been paid to reducing the manifestation of corruption and to preparing to safeguard EU structural funds from fraudulent acts and other illegal embezzlement. The said concern and the fact that corruption and fraud are closely connected has prompted us to search contacts with OLAF officers. Several meetings with them demonstrated mutual understanding and readiness for a constructive and effective co-operation.</p> <p>FINANSINU NUSIKALTIMU TYRIMO TARNYBA - Financial Crime Investigation Service</p> <p>The essential goal of the <u>Financial Crime Investigation Service</u> under the Ministry of the Interior of the Republic of Lithuania (FCIS) is to create in Lithuania the effective system of financial crimes' prevention. Disclosing and investigating crimes and other violations of Law, implementing preventive measures, FCIS effects the operative activity, conducts the pre-trial investigation, conducts the investigation of the economy financial activity of natural and legal persons. This blocks up the way for the criminal action and protects the state financial system from the criminal influence. The service also effects prevention of criminal actions against financial system and the measures, providing the possibility to seek for the concealed taxes and the payments supplementing state budget.</p> <p>In 2002 upon the Resolution of the Lithuanian Government FCIS was appointed the responsible institution for co-operation with the European Anti-Fraud Office (OLAF). The division of the service OLAF Lithuania co-ordinates the activity of the Lithuanian institutions, providing the protection of the financial interests of the European Communities. In October 2004 the Seimas of Lithuania charged the service to safeguard the clear use of the financial assistance provided to Lithuania by EU.</p> |
| <p>Luxembourg</p> | <p>Administration des Douanes et Accises – Administration of Customs and Excises</p> <p>It reports to the Ministry of Finance and its functions were substantially expended in 1993 when it was given national</p> | |

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| | <p>and international security functions. The Administration of Customs and Excises was given powers in matters ranging from transport to employment law, social law and the environment. This multitude of powers and good relations with the various Ministries enable it to enjoy access to up-to-date information on fraud trends. Cooperation with OLAF, and especially its network of communicators (OAFCN), is extremely important for combating international fraud.</p> | |
| <p>Malta</p> | | <p>Internal Audit and Investigations Directorate (IAID) This is an independent public agency operating under the responsibility of the Cabinet Office of the Prime Minister. It is the operating arm of the Internal Audit and Investigations Board (IAIB), which is the national policy making body for public internal audit and financial investigations. The Directorate's vision is to provide government with a centralised, functionally independent and professionally competent appraisal, consulting and investigative function established within Government to examine, evaluate, inspect, scrutinize and recommend on government activities as a service to Government itself. Its primary function is twofold: (1) the performance of internal audit assignments in government departments and similar public agencies, and also, (2) the execution of financial (administrative) investigations. Such functions will be regulated by formal legislation by the middle of 2003. Certain important issues discovered through the IAID's work can also be referred for the decision of the Cabinet of Ministers, if the necessity warrants so. The IAID is also OLAF's interlocutor in Malta and as a result has been designated as the very nucleus of a 'virtual network' - the Coordinating Committee (CC), where all the existing national inspection, audit, investigation and judiciary agencies effectively interrelate with each other, freely exchanging information and supporting each other to prevent and combat mismanagement, defalcations and fraud with regards to public funds and other funds that the Maltese government will be indirectly managing through its international obligations, for instance EU funds.</p> |
| <p>Netherlands</p> | <p>FIOD-ECD opsporingsdienst van de Belastingdienst - Investigation Service of the Tax and Customs Administration. The Tax and Customs Administration is responsible for levying, collecting and enforcing national taxes. It also has a number of responsibilities in the field of economic and financial legislation. In this respect, the Tax and Customs</p> | |

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| | <p>Administration aims to encourage and stimulate citizens to fulfil their statutory obligations, for instance by providing detailed and accurate information and reliable service. Even so, fraud is committed on a larger and smaller scale. This is a loss for the government and for those citizens who do fulfil their obligations. The fight against fraud is also a major task for the Tax and Customs Administration as a law enforcement agency, in inspections as well as investigations.</p> <p>The FIOD-ECD is the investigation service of the Tax and Customs Administration. The FIOD-ECD is involved in law enforcement and, as a result, contributes to:</p> <ul style="list-style-type: none"> - the fight against fiscal, financial and economic fraud through criminal proceedings; - safeguarding an incorruptible professional and business world; - the protection of the consumer; - the fight against organised crime. <p>Inspection and detection are the core tasks of the FIOD-ECD. Inspections take place in the economic and financial field; detection in the field of economic, financial and fiscal fraud. These different forms of fraud often appear to go together. Because fiscal, economic and financial knowledge are thus combined within the Tax and Customs Administration, they can be deployed extremely effectively.</p> <p>The FIOD-ECD employs around 1,300 people. Together they conduct around 650 criminal investigations per year, of which around 90% leads to one or more suspects being summoned to appear in court. The investigations uncover fraud totalling around 450 million euro. The inspection teams carry out around 850 inspections per year.</p> | |
| <p>Poland</p> | <p>Biuro Miedzynarodowych Relacji Skarbowych - Bureau for International Treasury Relations</p> <p>This is OLAF partner in Poland. It was established by Regulation of August 2002, which amended Regulation on the status of the Ministry of Finance (M.P.02.38.602). The Bureau is a part of the General Inspectorate of Treasury Control. With a view to ensure the appropriate level of protection of the financial interests of Poland and the</p> | |

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| | <p>European Union, the Bureau, in compliance with the Ministry of Finance Regulations:</p> <ul style="list-style-type: none"> - coordinates activities and exchanges information related to safeguarding the financial interests of Poland and the European Union between control bodies and other competent services, - maintains ongoing contacts with OLAF and institutions of the Member States and candidate countries involved in the fight against fraud, - initiates, coordinates and supervises treasury control of EU not returnable funds' expenditure, - provides opinions on drafts of legislation related to the expenditure of EU not returnable funds, - identifies training needs of the services within the General Inspectorate of Treasury Control. | |
| <p>Portugal</p> | <p>A Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o Consumo - Customs et Excise</p> <p>The Portuguese Directorate-General for Customs and Excise is the department of the Ministry of Finance tasked with exercising controls on the external Community border and on the national customs territory for tax and economic purposes and for the protection of society - covering in particular the fields of culture, the environment and public health and safety - and with administering excise duties and the other indirect taxes falling within its remit. It also has the task of licensing imports and exports where this procedure is a legal requirement.</p> <p>Portuguese Customs has its own anti-fraud structure, which lays down the strategy to be adopted, carries out planning tasks and draws up and evaluates - at national level - the measures which specialised regional departments are called on to implement. As a branch of the criminal police, Customs plays an important part in investigating customs and tax offences which it itself detects.</p> | <p>A Guarda Nacional Republicana (GNR) - the Republican National Guard</p> <p>The GNR, set up by the Decree of 3 May 1911, is a military security force responsible for internal security and criminal investigations and for preventing and combating tax and customs-related offences. Since 1993 it has included a special unit, the Tax Section, which is responsible for carrying out the GNR's tax and customs-related duties throughout Portugal.</p> <p>Cooperation between the GNR and OLAF (UCLAF, as it then was) started in the mid-1990s and was strengthened and deepened particularly after 1996. In January of that year, following the seizure by the Tax Section of approximately 15 million cigarettes and the transport vessel, the high level of cooperation between the two institutions enabled the route taken by cigarettes from their point of origin to be reconstructed and a link with US tobacco companies uncovered, as the EU claimed some years later.</p> <p>Cooperation continued with visits between the two institutions and joint initiatives, a notable example being the seminar on combating fraud linked with intra-Community movements of goods and the monitoring and surveillance of the external Community border, held in Lisbon in October 1996. This event involved the promotion and funding of staff training and technical assistance, as well as ongoing exchanges of information on cigarette and alcohol smuggling.</p> <p>In the operational field, the Tax Section was responsible for the investigation which led to the dismantling in 2000 of the largest network smuggling cigarettes into Portugal by sea. In 2001 the Section wound up the largest investigation relating to alcoholic beverages ever</p> |

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| | | <p>conducted in Portugal, as a result of which 167 persons were charged with tax fraud; losses to Portugal and the EU were estimated at around €65 million.</p> <p>Cooperation between the GNR and EU bodies concerned with combating crime in general and tax and customs-related fraud in particular is an established fact which has now become a necessity rather than an aspiration. OLAF has a particularly important role to play here in creating synergies, bringing together objectives and experiences, and disseminating information on initiatives, results and other issues with an impact on public opinion through the OLAF Anti-Fraud Communicators Network (OAFCN).</p> |
| <p>Finland</p> | <p>Tulli - Finnish Customs</p> <p>Finnish Customs is an operationally independent national authority under the Ministry of Finance. Its job is to supervise legal flows of goods, track down unlawful ones and take the appropriate action as required by national and international rules. It collects any taxes, charges and duties that are payable, helps legal foreign trade to run smoothly and protects society from the smuggling of drugs and other dangerous substances and from economic crime.</p> <p>For the purposes of crime prevention, Customs works in close cooperation with other law enforcement authorities, such as the Finnish Police (Poliisi) and the Frontier Guard (Rajavartiolaitos), and its remit also includes the pre-trial investigation of customs offences. Finnish Customs comprises the National Board of Customs (Tullihallitus), the Customs Laboratory (Tullilaboratorio) and five district customs offices.</p> <p>Finnish Customs (Suomen Tulli) has been working closely with OLAF and its predecessor UCLAF ever since Finland joined the EU in 1995. OLAF's role has proved to be particularly important when it comes to coordination between different countries' law-enforcement authorities on the investigation of cross-border crime affecting Community resources.</p> <p>Organised criminal groups have been effectively exploiting the opportunities provided by Europe's internal borders and it would be difficult for individual countries to combat these activities without a fraud prevention outfit like OLAF. OLAF's importance has been particularly apparent in the fight</p> | <p>A Policia Judiciária – Police</p> <p>Kikurikospoliisi (KRP) - the Finnish Police and the National Bureau of Investigation (NBI)</p> <p>There is only one police organisation in Finland, and unlike many other EU countries, the whole police organisation is subjected to the Ministry of the Interior. The organisation is subdivided further into local police units and specialised national units.</p> <p>The Finnish system is also different to practises in many other countries in a way that it is a police officer that is in charge of the pre-trial investigation of an offence, not a prosecutor. Only when the police have completed the pre-trial investigation, the case is forwarded to the prosecution Service subjected to the Ministry of Justice.</p> <p>The National Bureau of Investigation is a national police unit operating in whole territory of Finland. The most important duties of the Bureau include prevention of serious crime, investigation of related offences and forwarding cases for prosecution. A special task of the Bureau is to prevent professional, organised and international crime. The Bureau serves as the national focal point in criminal intelligence and international criminal police matters. Also, the only crime laboratory in Finland is operating in the context of the Bureau.</p> <p>Only few cases concerning embezzled or otherwise misused EU subsidies have been reported to police since Finland became a member in the community.</p> <p>The Finnish police consider crime prevention as one of the most important goals in the operation. The National Bureau of Investigation has produced good results in preventing EU fraud by providing training to the parties responsible for granting EU subsidies. They have been trained to be critical about applications for subsidies and alert to recognise possible indications of fraud.</p> <p>Efforts have also been made to improve the control of granted subsidies.</p> <p>So far, Finland has been saved from extensive crimes falling to the scope of OLAF.</p> |

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| | <p>against cigarette smuggling, which in recent years has proved to be one of the most challenging areas of crime to tackle throughout the EU.</p> <p>OLAF has an important role in developing and maintaining the EU's customs information systems. In its daily work Finnish Customs increasingly relies on the message and notification systems administered by OLAF. OLAF has also helped Finnish Customs with the development and acquisition of new monitoring technology. The use of standard procedures and equipment throughout the EU has also been promoted and OLAF has played an important part in the practical organisation of joint inspection operations by customs authorities.</p> <p>Finnish Customs is keen for OLAF to form an even more effective support unit in the future with the ability to coordinate measures taken by Member States' authorities to combat organised crime. Here the biggest challenge for OLAF and the Member States will be the enlargement of the European Union and the need to get the new Member States involved in the anti-fraud work and in the common procedures used in it.</p> | |
| <p>Slovakia</p> | <p>Centrál kontaktný útvar pre Slovenskú republiku - Central contact point of OLAF</p> <p>The department was established on 1 January 2002 as a department within the Control Section of the Office of the Government of the Slovak Republic by the Government Decision No. 1133 of 28 November 2001. In respect of the organizational structure it was inevitable - in compliance with Article 2 Part 2 of the Slovak Republic Constitution - to establish legal framework, based on which the department shall proceed its activities on protection of financial interests of the European Communities in accordance with Communities' legislation. For this purpose an amendment of the Act No. 10/1996 on Control in State Administration as amended was adopted, which was published in the Collection of Laws under the No. 461 and came into force on 1 September 2002.</p> <p>In compliance with § 2 part 2 of this amendment, the Office of the Government of the Slovak Republic performs, pursuant</p> | |

to a governmental decision, control of the efficiency of the use of state budget funds determined for the fulfilment of state administration tasks, including finance provided from abroad. Referring to the above-mentioned provision the Office of the Government fulfils tasks relating to the control and protection of the financial interests of the European Communities and co-operates with the European Anti-Fraud Office for this purpose (Article 3 Paragraph 3). Therefore, the European Anti-Fraud Office and the Office of the Government of the Slovak Republic concluded the Arrangement in the form of an Exchange of Letters concerning the co-operation in the fight against fraud and other irregularities, which have a negative impact on Communities' financial interests. This Co-operation Arrangement is applied as from 15 September 2002. The department Central Contact Point of OLAF in the Slovak Republic, in compliance with competencies of other state bodies, established for purposes of co-operation on protection of Communities' financial interests anti-fraud coordinating structure (AFCOS) The AFCOS structure consists of representatives of the Supreme Audit Office, Public Prosecution Office, which signed the agreement on co-operation with the Office of the Government, Ministry of Finance (National fund, Financial Control Department and Internal Audit Department), Public Procurement Office, Ministry of Interior, Tax Directorate and Customs Directorate.

From its establishment the department Central Contact Point of OLAF in the Slovak Republic has conducted a number of administrative investigations (controls) on its own based on the concrete proposals as well as administrative investigations within the framework of co-operation with the investigators of the European Anti-Fraud Office. In the course of all activities the department has co-operated with the European Anti-fraud Office and informed about outcomes and results. Within this year, the department Central Contact Point conducted in co-operation with the Control Section of the Office of the Government the control activity of the efficiency of twinning projects of selected beneficiaries of such type of foreign aid. The department has supervised this control.

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| <p>Slovenia</p> | <p>Urad SR za nadzor proracuna / Ministrstvo za Finance (Budget Supervision Office (BSO) / Ministry of Finance) By its Decision of 4 July 2002, the Government of the Republic of Slovenia appointed the Budget Supervisory Service (BSS) of the Ministry of Finance to AFCOS and at the same time established a task force for protection of the financial interests of the EC and fight against fraud, including the Customs Administration of the RS, Tax Administration of the RS, Foreign Exchange Inspectorate of the RS, Office of the RS for Prevention of Money Laundering, Office of Criminal Police of the Ministry of the Interior, Ministry of Justice, Office for the Prevention of Corruption of the Government of the RS, Public Prosecutor's Office of the RS and the BSS.</p> <p>The BSS is the national authority in charge of development and coordination of Public Internal Financial Control System (PIFC), independent financial control of EU budgetary funds and control of the state budget. It was established in 1995 and reformed in 1999 in accordance with new needs as a result of the process of Slovenia's accession to the EU. The BSS has since its establishment closely co-operated with the European Commission in the field of PIFC and control of European pre-accession funds. Ever since it has assumed the function of AFCOS, the BSS has been enhancing its co-operation with OLAF and co-ordinating the AFCOS task force. Among other institutions, the Customs Administration of the Republic of Slovenia has co-operated with OLAF since 1997 on the basis of an interim agreement and since 1999 on the basis of Protocol 5 on Mutual Assistance Between Administrative Authorities in Customs Matters to the Agreement between the Republic of Slovenia and the EU. This co-operation mainly covers illegal trafficking of cigarettes, textiles, sugar, butter, olive oil and pirated trademark goods. It is based on mutual assistance in exchange of all important information and documents. The Office of the RS for Prevention of Money Laundering also works with OLAF, particularly as regards criminal offences of laundering money originating from cigarette and alcohol smuggling.</p> |
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| <p>Sweden</p> | <p>Tullverket - The Customs and Excise Agency</p> <p>The Customs and Excise Agency has two main objectives: one is to assess and collect customs duties, VAT and other taxes and duties payable on imports and exports of goods; the other is to monitor and check the transport of goods to and from Sweden so as to ensure that the import and export rules are complied with.</p> <p>In Sweden, the exchange of information on suspected customs fraud and irregularities within the Union is a priority. Since Sweden's accession in 1995, resources have been earmarked for the discharge of all mutual assistance duties, i.e. the AM notices that OLAF issues to Member countries. The EU's complex regulatory framework for imports and exports makes major demands of customs services and, of course, of economic actors as well. For us, it is vital that the proper customs duties should be charged and that competitive neutrality should be maintained so that companies duly observing the law are not exposed to unfair competition. Corporate infringements of the law and criminal activities must be prevented, detected and prosecuted with all the means available under Community and national law. OLAF has now extended its activities to cases of suspected fraud and the view is that it should increasingly focus on large-scale cases. An increasing number of large-scale cases have in fact been recorded. The common customs information system is operational and the Swedish customs authorities have prepared for the introduction of the anti-fraud information system and the customs information system (CIS) into the national customs network. OLAF, guardian of the Community law aspects of the CIS, plays an important role in the technical side and in the operation and further development of the system. Over the years, OLAF has assisted Sweden and other Member States with aid and joint financing for the acquisition of certain items of technical equipment. We feel this aid to be crucial for the development of our technology and methodology. It has allowed us to develop our skills and effectiveness in customs work at both national and Community levels. This is a requirement if the police and</p> |
| | <p>Ekobrottsmyndigheten - The Swedish National Economic Crimes Bureau</p> <p>The Swedish National Economic Crimes Bureau, created in 1998, is a law enforcement agency within the Swedish prosecution system and is responsible for the fight against economic crime in the metropolitan regions. EBM presents a new concept and operates directly under the Ministry of Justice. The staff amounts to about 390 people and is composed of prosecutors, police officers, economic investigators, other specialists and administrative staff who work together in project teams. EBM works in close co-operation with i.e. the Tax Administration and the Customs, which also can second additional staff to EBM. EBM is the sole law enforcement body in Sweden handling cases of fraud against the Community's financial interests.</p> <p>In the wider field of irregularities The Swedish National Economic Crimes Bureau (EBM) is responsible for co-ordinating national measures against misuse and other irregular and inefficient management and use of EU-related funds in Sweden. In addition to this EBM promotes collaboration with national authorities in charge of ex-ante and ex-post checks, in order to increase the awareness of the risks of fraud among the officers who perform this kind of checks. EBM is also pointed out by the Swedish government to be the national contact point to OLAF. This means that EBM assists OLAF and national authorities with specific contact points and helps to speed up the process when someone has a question to the opposite body.</p> |

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| <p>United Kingdom</p> | <p>customs authorities in the EU are to cooperate effectively in combating crime by means that include compatible data systems for actions against cross-border crime.</p> <p>H.M. Customs & Excise</p> <p>HM Customs and Excise is a coherent, dynamic organisation with a number of key roles within UK Law Enforcement. They include protecting society by combating drugs trafficking and enforcing other prohibitions and restrictions. It protects the UK and EU revenue from crime against, and non-compliance with, the VAT, excise and customs regimes administered by it. The institution is a leader in financial crime investigations and intelligence - tackling money laundering and seizing the proceeds of crime for maximum impact on criminal activity in the UK.</p> <p>The body is an intelligence led organisation, using increasingly sophisticated methods, and aim to use our people and equipment to best effect, maximising our impact against the criminal and non-compliant fraternity. We analyse information on movement of goods and criminals using the latest technology. HM Customs and Excise is unique in the UK in having powers to gather intelligence, detect, investigate and prosecute. We are one of the largest national intelligence and investigation agencies to disrupt criminal threats to the UK and do so with the assistance of other UK Law enforcement bodies.</p> <p>With the increasingly international nature of crime, the UK is fully committed to working with other Member States and OLAF is a key element in enabling to work collaboratively in the international arena. OLAF has a unique position in the centre, providing expertise and resources. The institution contributes to this expertise and have delegates permanently attached to OLAF. Apart from working jointly on casework of mutual interest, participating in operations where necessary, it also provide regular updates of tactical intelligence for OLAF.</p> | <p>Serious Fraud Office</p> <p>The Serious Fraud Office is the UK investigation and prosecution agency responsible for examining the largest and most complicated cases of fraud. Examples include investment fraud, banking fraud, commercial corruption, fraud committed against corporations or shareholders in the private sector and on local and national government. The SFO will also be involved in investigating certain types of cartels. The Police forces throughout the UK regions provide investigation support to the SFO. The SFO also conducts investigations in its jurisdiction on behalf of foreign anti-fraud agencies seeking evidence in the UK for their cases.</p> <p>The legal powers and the operational method of the SFO have been devised to focus especially on major fraud and also where the case is of major public concern or national interest. Therefore the number of cases investigated by the SFO is relatively small, but because of their 'sum at risk' assessment, they are considerable high-value frauds.</p> <p>The industrial, technological and mercantile activities of the Member States of the European Union represent a huge economic dynamo. Where wealth is generated criminals are attracted to abuse and evade lawful and ethical practice. The fight against fraud is a large task.</p> <p>Most cases investigated by the Serious Fraud Office have an international element, so working closely with European partners is extremely important to achieve success.</p> |
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| | Membership of the OLAF Anti-Fraud Communicators' Network (OAFCN) promotes the co-ordination of efforts to educate and inform the public and media to gain their support and assistance in the fight against fraud. | |
| Romania | Corpul de Control al Guvernului (Service de contrôle rattaché au 1er Ministre) | |

