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ORGANIZATION OF COORDINATION OF THE FIGHT AGAINST ECONOMIC FRAUD IN THE EUROPEAN UNION

Аннотация: This article is concerned with the organization of coordination of the fight against economic fraud in the European Union; the organization and the development of the European Anti-fraud Office (OLAF). Special attention is paid to the legal bases of OLAF's operation, its principles, organizational structure and activities, as well as its cooperation with EU institutions under the third pillar and EU non-member states.

Ключевые слова: Международное право, Unite de Cordination de la Lutte Anti-Fraude (UCLAF), European Anti-fraud Office (OLAF), economic fraud in the EU, EU institutions, Europol, Eurojust, Supervising Committe, European Ombudsman, EU Court of Justice

The broad legal base plus the necessity to coordinate actions on the defense of financial interests in the European Union required the establishment of a special body – The European Anti-fraud Office (OLAF)¹.

I. Legal bases of OLAF's operation

The European Anti-fraud Office (OLAF) was established in line with a Decision by the European Commission of 28th April 1999² which stated *inter alia*:

- The OLAF is the Commission's independent body³ and has operational independence within its undertakings (Article 1);
- Its objectives are to combat fraud, corruption and any other illegal actions against EU financial interests (Article 2);
- The OLAF is obliged to support cooperation within the EU member states and partake in development of European general legal provisions

- on the struggle against financial crimes;
- The OLAF shall carry out administrative investigations of infringements of the law and crimes committed within OLAF itself; internal investigations of crimes committed by employees of EU institutes, specialized agencies and bodies and external investigations of crimes committed by citizens of EU member states against EU financial interest.

In addition to the April 28th 1999 decision, the legal basis of OLAF's operations comprises of a series of other documents.

Amongst those documents, there was outlined the 25th May 1999 Agreement from the European Parliament, the European Council and the European Commission over internal investigations by the European Anti-fraud Office (OLAF)⁴, which stated:

- All EU institutes, specialized agencies and institutions are obliged to cooperate with the OLAF and provide all necessary information;
- The OLAF, in cases of receipt of such information and facts about fraud, corruption or unscrupulous behavior of EU employees, shall carry out internal investigations;
- The heads of the relevant EU institutes, specialized agencies and institutions shall be informed of the initiation of such investigations;
- Security services of EU institutes, specialized

¹ Its predecessor was Unite de Cordination de la Lutte Anti-Fraude (UCLAF), which had operated in the EU framework between 1988-1998.

² See: 1999/352/EC, ECSC, Euratom: Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (notified under document number SEC(1999) 802). - *Official Journal* - L 136, 31.5.1999. P. 20–22.

³ Herein, the EU's leading bodies are mentioned in accordance with their names, as laid down by the Treaty establishing the European Community (in the 2001 version of the Treaty of Nice) with the Treaty's Article 7 reading the following: "Implementation of the Community's tasks shall be provided by the following institutes: the European Parliament, the European Council, the European Commission, the European Court and the Accounting Chamber.

⁴ See: 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) // *Official Journal* - L 136, 31.5.1999. P. 15–19.

bodies and institutions are obliged to provide assistance to the OLAF

- The OLAF shall undertake the exchange of information with EU institutes, specialized bodies and institutions;
- If there is no *corpus delicti* in the actions by EU employees against whom internal investigations were undertaken, the investigations shall be halted by a decision of the OLAF Director, together with a written notification of this to the heads of the EU institutes, specialized bodies or institutions;
- The matter concerning the deprivations of employees of EU institutes, specialized bodies and institutions, who have committed crimes against the financial interests of the EU, of inviolability shall be settled by the OLAF in cooperation with the national law enforcement agencies.

The procedural order of investigations by OLAF is established by:

(1) Regulation №1074/1999 of May 25th 1999 of the EU Council (EURATOM) on investigations to be carried out by OLAF⁵.

(2) Regulation №1073/1999 of May 25th 1999 of the European Community, the European Parliament and the European Parliament on investigations to be carried out by OLAF⁶.

II. Principles of OLAF operations

OLAF carries out its activities on the basis of the main principles proceeding from the following Regulations:

- Publicity of the struggle against fraud and other encroachments upon EU financial interests;
- Lawfulness in the conduct of investigations;
- Independence in the conduct of investigations;
- The provision of the defense of basic human and civic rights and freedoms in the conduct of investigations;
- The obligation of external control, etc.

⁵ See: Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF). // *Official Journal* - L 136, 31.5.1999. P. 8–14.

⁶ See: Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF). // *Official Journal* - L 136, 31.5.1999. P. 1–7.

The principle of publicity in combating fraud and other encroachments upon the EU financial interests means that the EU institutes, specialized bodies and institutions, in the event of the revelation of facts concerning fraud, corruption and other encroachments upon the EU financial interests, shall be obliged to submit relevant information and material to the OLAF, and the OLAF shall be obliged to institute administrative, internal or external investigations and shall identify culprits (Article 7 of Regulations №№1073/1999, 1074/1999).

The principle of lawfulness in the conduct of investigations requires the precise, steadfast performance of the prescriptions of the aforesaid decisions and regulations by OLAF executives who carry out the investigation (Item 10 of Regulations №№1073/1999, 1074/1999).

The principle of independence the conduct of investigations. In line with Article 3 of the Decision by the Commission of April 28th 1999, the OLAF is fully independent in the conduct of investigations⁷. In addition, the OLAF enjoys financial and administrative autonomy, something that ensures its operational independence.

The principle of the provision of the defense of human and civic rights and freedoms is directly covered by the Provisions №№1073/1999, 1074/1999. The guarantors of its adherence are: the obligation of the provision of legal assistance (the right to a defense lawyer); the presumption of innocence; the conduct of any interrogation in one of the EU official languages upon the request of the person under interrogation; the provision of a copy of the interrogation protocol to the interrogated person; non-disclosure of information obtained as a result of interrogation, etc. Adherence of this principle shall also be demonstrated by the opportunity to complain about OLAF actions and decisions to the European Court, to the European Ombudsman and to the Supervising Committee.

The principle of obligation of external control. External control over OLAF activities shall be undertaken by the Supervising Committee, the European Parliament, the Commission, the Audit Chamber, and the EU Court and by the European Ombudsman.

The Supervising Committee shall carry out regular control over the OLAF activities to prevent

⁷ See: *Official Journal of the European Communities* №L 136. 31 May 1999. Brussels, 1999. P.21

interference by executives of EU institutes, specialized bodies and institutions. The Committee shall be formed from 5 independent employees who are not OLAF staff members. The Supervising Committee shall express its opinion in reports, one such being an annual report to the Commission about the OLAF work. Reports by the Committee are then submitted to EU institutes, specialized bodies and institutions.

The European Parliament. The Commission who OLAF serves shall be responsible to the European Parliament and annually reports to it regarding the measures taken to counteract fraud and other encroachments upon the financial interests of the EU. For this purpose, the OLAF shall submit relevant reports⁸ to the Commission.

The Commission shall carry out disciplinary control over the activities of OLAF Director General and personnel.

The Audit Chamber shall check annually the performance of the OLAF budget.

The EU Court shall check the lawfulness and appropriateness of investigations undertaken by the OLAF of the examination of concrete cases regarding the personnel of the EU institutes, specialized bodies and institutions.

The European Ombudsman shall have the right to examine material of concrete investigations by OLAF on complaints taken under consideration.

III. The OLAF organizational structure

Structurally, the OLAF is inclusive of:

- The personal management and leadership body of the Directorate General
- Advisers and aides to the Director General
- Operative employees and administrative personnel united in departments and divisions

Director General shall be appointed by the Commission for a period of 5 years, joins the Commission's staff and accepts disciplinary responsibility before the Commission.

Advisers to Director General shall be appointed to provide consultative assistance on directions of OLAF activities. They are: chief adviser, adviser on

links with international organizations; adviser on issues of corruption;

Aides to Director General shall organize current supplementary work on issues, which are of the Director General's exceptional competence. They are: aide on political issues and aide on office work.

Operative employees and administrative personnel shall carry out their activities by way of four independent divisions, each of which is subordinate to the Director General only.

Divisions A and B shall carry out internal and external investigations and criminal research work on cases of the OLAF competence. The personnel of these divisions shall consist of OLAF investigators, the majority of whom shall be sent on a mission by national investigatory bodies specialized in the investigation of financial crimes.

Division C shall carry out activities in the field of development of policy and legal provisions to counteract crimes that encroach upon the EU financial interests.

Division D shall be specialized in general issues.

IV. The order of OLAF activity

The OLAF shall realize its objectives and tasks to counteract fraud through the conduct of administrative investigations (Article 2 of Regulations №№1073/1999, 1074/1999); of internal investigations (Article 4) and of external investigations (Article 3).

According to statistical data by OLAF, out of 800 to 900 cases investigated currently, only 80 (some 10%) are internal. However, according to its obligations, the OLAF shall prioritize these internal investigations. However, this statistical paradox has a clear explanation.

The OLAF has the right to carry out internal investigations in regard to executives of all the EU institutes, specialized bodies and institutions, including the European Parliament, the Council and the Commission, the European Central Bank and the European Investment Bank. Internal investigations shall not cover only the EU institutes, specialized bodies and institutions. They shall also be carried out in regard to facilities that earn profits from contracts with the EU or are financed by the EU. As a result, one internal investigation may become the basis for conducting a large number of external investigations, which is witnessed by common practice. Besides, the

⁸ See, for example: European Commission/European Anti-Fraud Office (OLAF)/ Report of the European Anti-Fraud Office (OLAF)/ Seventh Activity report 1 January 2006 - 31 December 2006. Executive Summary. Brussels, 2006. P. 3 – 7.

OLAF is empowered to carry out external investigations on the basis of appeals by EU member states.

OLAF investigators have the right to conduct examinations at the crime site, investigate documents and interrogate witnesses. In the conduct of such procedures, they shall notify the competent authorities of the relative EU state and obtain permission from them for the conduct of these procedural actions in the territory of the respective sovereign state. In the territories of EU member states, OLAF investigators have no right to conduct independently procedural actions of a forced nature, such as searches, arrests, sequestration or impounding of property and the undertaking of other such measures.

In fact, the OLAF responsibilities are to carry out independent investigations whose findings will be the basis for the conduct of criminal prosecutions, in line with the internal legal provisions of the countries whose citizens are the persons who have committed fraud or other crimes encroaching upon the EU financial interests.

According to common practice, investigations by OLAF shall be considered completed only after a competent national court announces its final verdict on the investigated case.

OLAF, in the conduct of external investigations, shall cooperate closely with the competent law enforcement agencies of EU member states through:

- The establishment of groups of investigators comprising either OLAF investigators or investigators of internal state bodies or
- The conduct of parallel investigations, under which OLAF external investigations shall be a kind of “launch mechanism” for interstate investigations.

The second of the aforesaid methods is used more frequently, as witnessed by the practice of OLAF activities.

For instance, as a by product of the operation known by the code name of DIABOLO in February 2007, the OLAF carried out external investigations concerning the smuggling of counterfeit cigarettes to EU territories and subsequently provided information about these investigations to a number of EU states and then was the coordinator of activities within those EU competent bodies, as a result of which:

- Several dozen people in the UK were arrested; several tons of smuggled counterfeit cigarettes were confiscated;

- At the port of Antwerp, 25 million counterfeit cigarettes were confiscated, which had been exported from Lithuania and Latvia;
- In Estonia and Lithuania, a halt was placed on the actions of organized criminal gangs who specialized in the smuggling of counterfeit tobacco products;
- The Netherlands’ Financial Intelligence and Investigation Division (FIOD), on the basis of information from the external investigation by the OLAF, instituted criminal action concerning the smuggling of tobacco products which saw the arrest of 7 suspects from the Netherlands plus 3 citizens of Latvia and Germany, and the confiscation of 11 million cigarettes;
- Smuggled tobacco products weighing 35 tons were seized in Belgium.

V. OLAF cooperation with EU institutions under the third pillar

EU member states have been attempting to form and pursue a common policy in the field of justice and internal affairs since 1970s. Currently, acting in this direction (the so-called third pillar) are the European Police Organization (Europol) and the European Institution on cooperation in the field of criminal justice (Eurojust).

Europol is an EU international organization and institution, which, in accordance with Article 29.1 of its Charter, has its own constitution and is a law enforcement agency, which (1) coordinates criminal research actions by EU member state’s law enforcement agencies and (2) collects information of operative interest and organizes the exchange of information within the framework of the information system that unites EU member states and other cooperating countries⁹.

The objective of the European Institution on cooperation in the field of criminal justice (Eurojust)¹⁰ is to promote the strengthening of cooperation in the field of criminal legal proceedings in the EU. Unlike Europol, Eurojust is an EU body.

The correlation of functions and authorities of the two organizations is that Eurojust, based on analyti-

⁹ See: Michael Santiago. *Europol and Police cooperation in Europe*. New York, 2000. P.53.

¹⁰ See: *Judicial Cooperation in the EU: the role of Eurojust/ Report with Evidence*. - London, 2004. P. 20.

cal work by Europol, promotes the cooperation of national bodies in charge of criminal prosecutions, eases the conduct of investigation of multinational crimes, and simplifies the procedures of mutual legal assistance on criminal cases and extradition.

Europol and Eurojust, in accordance with their respective positions in the EU system and with their powers, are the bodies of “external” competence, e.g. provide interaction among EU member states, primarily, looking after the interests of these states.

In contrast, the OLAF, as a service of the Commission, basically ensures the interests of the EU itself and ensures the interests of EU member states but only in indirect ways.

Despite the difference in status, the OLAF, Europol and Eurojust are interconnected by the common subject of crimes and criminality.

This common interest predetermined the need for close cooperation between them. In particular, in April 2003, recognizing the need for such cooperation, the OLAF and Eurojust concluded a Memorandum, which covers the exchange of information on crimes, the involvement of both organizations’ representatives in consultations and the joint conduct of conferences¹¹.

As to cooperation with Europol, the OLAF realizes this through the conduct of concrete internal and external investigations.

VI. OLAF cooperation with EU non-member states

That the OLAF is responsible for, apart from other things, issues of counter action against fraud in the customs field, predetermined the need of its cooperation with the competent bodies of states having common borders with EU member states, in particular, the Russian Federation and the Azerbaijan Republic.

The legal basis of cooperation between the EU and Russia in the customs field consists of:

- The Agreement on partnership and cooperation (further- APC)¹² concluded on the Island of Corfu and in effect since December 1st 1997;

- The Joint Statement on cooperation in the customs field between the Russian Federation and the European Commission of July 18th 1997 (further- the Joint Statement)¹³;
- The Administrative Accord between the State Customs Committee of the Russian Federation and the OLAF on the System of mutual exchange of information on goods trafficked between the RF and EU member states.

In line with the concluded agreements and with the Order №92 by the State Customs Committee of the RF of January 26th 2001, there was adopted a technological scheme of mutual exchange of information on goods trafficked between the RF and EU member states. The parties involved began to exchange information under this technological scheme.

In addition, the Federal Customs Services of the RF implemented a project known as the “Modernization of the information system of customs bodies”, one of whose tasks is to harmonize and unify the Russian legal provisions with international standards and make the Russian customs legal provisions more in harmony with that of the EU.

The legal basis of cooperation between the OLAF and the competent bodies of the Azerbaijan Republic is the Agreement on partnership and cooperation between the Azerbaijan Republic and EU member states signed in Luxembourg on April 22nd 1996¹⁴.

In line with the Agreement, the EU and the Azerbaijan Republic concluded a Protocol of mutual assistance in the customs field. The Protocol envisions cooperation in the issues of counter action, identification and investigation of cases of infringements of customs regulations.

On May 1st 2004, the EU and the Azerbaijan Republic concluded a Plan of Action¹⁵ on the struggle against corruption, fraud, smuggling and other illegal activities.

The EU, under the active support by the OLAF, implements a number of projects in the Azerbaijan Republic, including the one on enhancement of customs authorities and the improvement of the Customs Code of the Azerbaijan Republic.

¹¹ See: Judicial Cooperation in the EU: the role of Eurojust / Report with Evidence. - London, 2004. P. 26-27.

¹² See: Diplomatic Bulletin №15/16, Moscow, 1994. p. 29-59; Russia and the European Union: documents and materials (edited by S. Y. Kashkin), Moscow, 2003. P. 31-77

¹³ See: Russia and the European Union: documents and materials (edited by S. Y. Kashkin), Moscow, 2003. P.102-104

¹⁴ See: The Code of legal acts of the Azerbaijan Republic, №11, November 30, 2007. P.118

¹⁵ The Joint Plan of Actions of European Union and the Azerbaijan Republic, May 1, 2004. P.18

VII. Some conclusions

To fight multinational criminality, states must be united in their efforts to combat it. Of the number of participants, there are a number of distinguished international law enforcement organizations, which are designed to pursue these goals and implement corresponding action. One of these organizations is the European Anti-fraud Office (OLAF).

The OLAF has a mixed status: on the one hand, it is empowered to counteract fraud and on the other encroachments upon the financial interests of the EU, which is the largest integrative formation, and further it is designed to promote the fight against fraud in the EU sovereign member states

The experience of the OLAF and its operation cannot automatically be transferred to another environment. However, the peculiarities and results of the activities of this organization allow that it can be used for the establishment of other structures, which will secure the financial interests of other integrative entities, in particular, the ones whose member states form the Russian Federation and the Azerbaijan Republic.

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