REDEFINING THE ROLE OF THE EUROPEAN ANTI-FRAUD OFFICE(OLAF) IN THE FIGHT AGAINST CORRUPTION

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Abstract: The Office of the European Union Anti-Fraud Office (OLAF) during 20 years of existence as an independent and operational body has built up credibility by opening investigations into high-level corruption cases in EU member states with whom national judicial authorities simply could not cope with. The topic of this paper will be the role, competencies and functioning of OLAF in the fight against corruption. Therefore, in this research we will use the analysis, synthesis and comparative method of investigations launched by OLAF because of indications of the misuse of EU funds in Hungary, Romania and Italy in order to find common denominators of the highforms of corruption and social fields in which it occurs. From the scientific point of view the aim is to reach a certain level of scientific knowledge, and from a practical point of view, to determine whether OLAF's recommendations can serve to redefine and improve the legal framework for the fight against corruption, especially in the EU candidate countries.

Keywords: EU, OLAF, corruption, recommendations

OLAF'S PLACE, ROLE, COMPETENCE AND FUNCTIONING

The European Anti-Fraud Office (OLAF) was established in April 1999 as the successor to the Financial Crimes Prevention Coordination Unit, the first body of the European Union (EU) whose aim was to protect its financial interests, primarily through the fight against fraud and corruption by initiating administrative and criminal proceedings[2]. Given that the European Union is made up of 27 Member

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2 Although the topic of this paper is related to the conduct of OLAF in the fight against corruption in EU Member States, it cannot be overlooked that this body is also responsible for carrying out controls within the EU institutions. This is supported by the fact that a significant number of EU institutions, immediately after the establishment of OLAF, reported their staff on suspicion of causing serious damage to the EU budget.

States that use a large number of funds, which are also available to non-EU countries, it is quite clear that one of the basic goals of the European Commission (EC) is to spend those funds on purpose and to prevent and punish every abuse.

These intentions are essential given that it is inevitable that these funds attract the attention of fraudsters (Strengthening OLAF, The European anti- Fraud office, Report with Evidence, 2004)

especially with regard to the use of pre-accession funds and the various benefits that the EU provides to its less developed members (Škulić, 2018:16). That is why at the same time efforts to limit and suppress it have grown with its expansion (Ćirić et al, 2015). However, the adequate response of the European institutions has often been prevented by different legal systems or different definitions of fraud (Quirke, 2015:236).

Unlike other EU bodies such as Europol and Eurojust, OLAF has no legal personality of its own (Škulić, 2018:17), but it is an independent body of the European Commission (EC), which is competent to investigate possible financing frauds of the EU budget and conduct internal and external investigations as well. However, some authors believe that the fact that OLAF operates within the EK means that the EC is investigating itself (Quirke, 2009: 98).

In addition, at the request of other European Union institutions and bodies, it is competent to carry out investigations in the field of communitarian law. OLAF's significant powers are in relation to its preventive role in defining the appropriate legislative framework to combat fraud and corruption, which applies primarily to those countries where irregularities in the use of EU funds are registered. In this regard, OLAF can cooperate with other countries and their institutions with the aim to harmonize legislation on the prevention, detection and prosecution of financial crimes and, of course, corruption, and to develop appropriate strategies and to analyze and explore new modalities to prevent those criminal acts.

Although it is not a "police authority", in another words, it does not have enforcement powers (Herlin-Karnell & Ryder, 2017) since it is not authorized to deprive a person suspected of having committed crimes within its jurisdiction, OLAF has the possibility of engaging its own independent capacities (Škulić, 2018: 17). This means that it still has certain operational powers that enable it to cooperate directly with the police and judicial authorities of the country where the investigation is being pursued, whether or not it is a member of the EU [3]. In this regard, in order to conduct operational expertise, OLAF inspectors are authorized to have access to all information and documentation held by financial institutions, including computer data which are necessary for the conduct of an investigation, under the same conditions as national inspectors in compliance with national law. This means they have the right to unannounced and immediate access to all information held by the institutions, bodies, offices and agencies of those countries, access to the premises, right to inspect all accounts of institutions, bodies, offices and agencies, and the right to request information from institutions and other bodies (Čavoški and Reljanović, 2011, 90).

On the other hand, certain OLAFs powers are in relation to the requests that the office may make against countries which are connected to possible financial abuse. In this regard, at the request of OLAF, the competent authorities of those countries are obliged to inform the OLAF of their actions, the measures and decisions taken on the basis of OLAF's recommendations and information. In addition, they have an obligation to name the legal basis and the detailed reasons for each decision. This communication proceeds according to the same rules that apply to international cooperation. How-

3 If the country is not a member of the Union, it should sign an agreement which allows cooperation with the OLAF.

ever, as can be seen, OLAF acts in such situations only through national authorities which *de facto* conduct the proceedings (Xanthaki, 2010: 6).

After conducting an investigation and finding that there is doubt about the misuse of EU funds, OLAF may notify the European Commission and make recommendations for further action. However, OLAF does not itself bring the prosecution in the national criminal court. (Strengthening OLAF, The European Anti-Fraud Office, Report with Evidence, House of Lords Papers, 2004). In addition, it may also inform the competent authorities of the state concerned about the results, in particular in cases where certain offenses are suspected to have been committed.

Although some authors consider it as an inspection body, given that it has in a considerable number of investigations uncovered cases of high corruption, often involving senior government officials, OLAF's decisions have considerable political weight. Namely, after the completion of the investigation, OLAF proposes to the European Commission to request the return of unpurposely spent money, which is then often invested in projects that stimulate higher employment in Europe. The aforementioned authority could be considered as a kind of repressive role.

In addition, it should be borne in mind that the EU is characterized by general liberalization, which is defined as "free movement of people, goods, services and capital", and that the development of the state system and the level of morality of the nation is not the same neither in every EU member nor in those who aspire to that position. In this sense, OLAF also plays a preventive role by implementing one of the basic objectives of the EU, according to which all available funds should be allocated in accordance with its purpose. Moreover, corruption is not a consequence of a single risk factor but more of them, such as economic, social, cultural, historical, political, legal and others factors. It endangers the rule of law, public trust in state institutions and the rule of law, justice, equality and security of citizens (Stanojević, Dimovski and Milić 2014, 48).

Based on experience, OLAF lists several characteristics that indicate serious corruption. These are covert conflicts of interest, unfair bidding practices, and tendering for pre-tailor-made public procurement for specific bidders. Namely, in the practice so far, it has been noticed that some of the poorest EU countries, poorly prepared for EU membership found it difficult to allocate large amounts of money upon joining the EU, which led to corruption (Quirke, 2015:243). In this paper, we will analyze those phenomena in specific investigations conducted by OLAF in Hungary, Romania and Italy on suspicion of misuse of EU funds.

Hungary

According to OLAF reports, Hungary is a significant beneficiary of EU funds, given that it has withdrawn around € 25 billion from various funds by 2020. Nevertheless, it lacks a planned and systematic fight against corruption in the public and private sectors, which, among other things, includes the establishment of an independent and autonomous body for the prevention of corruption (Vasić, 2007, 187).[4] Also, it is considered that Hungary, although it became a member of the EU in 2004, still does not have a developed state apparatus for effective fraud detection (Murawska 2008:186). This is indicated by the perception of corruption of 56%, which is significantly above the average of 37% in the European Union (2018 European Semester: Assessment of progress on

4 On that occasion, it is considered that the systemic and planned fight against corruption implies the adoption of a national strategy and action plan.

structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011).

According to OLAF statistics, in 2018 Hungary was in first place in Europe regarding the number of investigations initiated because it was under suspicion of spending money from the EU budget unpurposely. At the same time, Hungary was in first place regarding the number of recommendations issued by OLAF to the European Commission and Budapest in the light of results of investigations.

Table 1: *Investigations into the use of EU funds managed or spent in whole or in part at the national or regional level concluded in 2018 (Source: The OLAF report, 2018)*

State	Number of launched investigations	Number of investigations completed with recommendation
Hungary	9	7
Greece	8	6
Poland	8	3
Romania	4	2
Bulgaria	4	2
Italy	4	2

So far, regarding investigations about misuse of EU funds in Hungary, OLAF investigators have identified a phenomenon known in science as "white elephants", which describe financing projects whose justification or need is questionable. In addition, they investigated a number of cases in which companies got money with the evident existence of nepotism and conflict of interest.

The subjects of the OLAF investigations were 35 cases of repairing public lighting in local government units in Hungary entrusted to company named "Elios", given that in one of the most important development projects in Hungary significant EU funds have been invested in very poor lighting quality. During the investigation, it was found out that co-owner of this company is the brother-in-law of the Hungarian Prime Minister Viktor Orban, Istvan Tiborc.

In addition, it was found that almost always, when applying for a tender, Elios beat the competition in a large number of cases by making a minimum higher bid than the value of the project was. It was also noted that one of the reasons for winning such a large number of tenders was that a close associate of Tiborc's, a co-owner of "Elios", at the same time was involved in the preparation of tenders, adjusting them to the company's offers.

Beside the abuses noticed in those projects, investigators found out that the winners of the tenderers in some cases presented false expense accounts where the prices of the equipment covered by the tender were significantly higher than real prices. Also, a case was investigated under suspicion of the winner of the tender having no intention to carry out the project as well as of his continual deceit of the investors.

One of the investigations referred to business examination of a company that received EU funds through the Hungarian Government to develop software for facilitating the use of the internet for blind and partially sighted people. During the process, it was found out that the basic activity of this company was, in fact, the chemical and pharmaceutical industries, and that the "new" software had been used from the very beginning.

Romania

In 2017, Romania like Hungary, was in first place in Europe considering the number of investigation launched by OLAF because of the improper use of EU funds (The OLAF Report 2017). However, even before it joined the EU in 2007, Romania was known for its high corruption index[5], without any strategic document both internally and externally, and without anti-fraud experts (Quirke, Б. 2009: 104).

Established in 2005, the National Anti-Fraud Directorate (DLAF) (Toade et al, 2009) in the next few years launched investigations in which the value of the estimated damage was around 1.13 billion euros, and filed charges against 14 deputies, 9 ministers including the former prime minister, dozens of mayors and their deputies, 18 directors of state-owned enterprises, as well as against 40 judges (Ćirić et al. 2015: 32).

With 11 launched investigations and 8 issued recommendations because of the irregularities found in those cases, Romania is followed by Hungary and Poland, which were under investigation in eight cases. What makes Romania specific is that OLAF investigators have detected frauds in infrastructure projects financed by both Romania and the EU budget, claiming that several offenses were committed, including forgery of documents with the aim to obtain resources from the EU funds.

Table 2: Investigations into the use of EU funds managed or spent in whole or in part at national or regional level concluded in 2017 (Source: The OLAF report 2017)

State	Number of launched investigations	Number of investigations completed with recommendation
Romania	11	8
Hungary	10	7
Poland	10	7
Greece	9	5
Bulgaria	7	4
Germany	5	3

In this period of time in many cases investigators found out that persons who applied for and received money from the EU budget tried to break the EU law. Furthermore, in a significant number of cases, investigators found out some elements of corruption between the person who won the tender and the advisor or end user of the funds. Very often, investigators found out the existence of conflicts of interest that sometimes involved representatives of the state leadership and high value public procurement projects.

These irregularities were noticed in projects funded by the European Regional Development Fund during road reconstruction. Specifically, OLAF investigators found that representatives of local authorities, who were the final beneficiaries of the funds, had a sort of agreement with the representatives of the companies that produced the technical documentation for road reconstruction. The aim was to adapt the offer of the specific company participating in the tender to such an extent so that the other tenderers would practically be eliminated from the tender process.

Such a scenario was noticed in the case of embezzlement of European funds, in which the Social Democratic Party`s (PSD) leader Liviu Dragnea, as the chairman of the Teleorman Council, played a significant role. According to Romania's National Anti-Corruption Directorate, Dragnea organized a criminal group consisting of local government representatives and businessmen. The aim of this group was to fraudulently provide significant sums of money by participating in projects financed from the state budget or from the European Union. Specifically, the Anti-Corruption Directorate launched investigation into the business of the local construction company "Tel Drum" and its representatives and found that this company had been privatized in such a way that its ownership from the Teleorman County Council had been transferred to other individuals, even though the greatest influence to its business had Dragnea.

Following the investigation, the prosecution found that Dragnea, with several other related persons, had submitted to the Regional Development Agency forged documents, on the basis of which Tel Drum was awarded a 55 km rehabilitation road contract in Teleorman. The whole project was worth € 25 million, with half of the money coming from EU funds. Specifically, it was found that the data stated in the technical project were forged, as well as the signature of the responsible engineer, while the tender conditions were so defined that only Tel Drum could obtain the realization of the project. In the same scenario, Tel Drum won another tender, with total EUR 15 million damages to EU funds. Also, it was found that Dragnea, as a high-ranking Teleorman official, approved major funding for the implementation of infrastructure projects by Tel Drum, despite the fact Teleorman was one of the poorest districts in Romania. In addition, prosecutors found that the this criminal group, or the companies they owned, had donated some money to the Dragnea`s party.

OLAF has conducted another investigation against a company allegedly under the real control of Dragnea and accused two of its executives of using or presenting false, inaccurate or incomplete documents or statements in order to obtain EU funds when purchasing a mobile asphalt preparation mixture. The investigation also included executives from WFA Impex SRL who worked closely with Tel Drum. During the investigation, it turned out that the companies not only submitted forged documents to obtain EU funds, but also in the same way tried to refund almost EUR 1 million. The said investigation also included some representatives of the Ministry of European Funds, who acknowledged that they had signed a contract for the implementation of the project "Increasing European Competitiveness", funded by European funds, at the initiative of Tel Drum.

Italy

OLAF pays considerable attention to the fight against tobacco smuggling, as it causes enormous damage to the EU budget and, in addition, goes against all smoking and public health campaigns. Based on the organization's overall experience so far, cigarette smuggling had transnational elements that made investigations more complicated and long-term. Specifically, in March 2018, a court in Turin, Italy, finalizing proceedings against the largest cigarette smuggling network in Europe, sentenced a few people to several years in prison and ordered the seizure of their property worth several million euros.

Following a five-year investigation conducted by OLAF with police across the Europe, it has been revealed that the international smuggling network has smuggled cigarettes outside the European Union to third countries or imported them into Italy, all the time avoiding to pay mandatory customs and tax duties. The investigation was further complicated by the fact that the smugglers' network cooperated with organized crime groups that operated in both EU and non-EU countries. Smuggling was also facilitated by customs officers from individual countries issuing clearance documents, despite the fact that no cigarette containers crossed the EU border or confirmed exports when the trucks were already seized.

The Turin court accepted all the evidence gathered by OLAF and its partners. In addition to imprisonment and seizure of property, the court ordered the defendants to pay more than € 119 million to the Italian customs and € 36 million to the tax administration. Otherwise, this case has been prosecuted not only in Italy, but also in Belgium, Germany, Romania, Bulgaria, Spain, Lithuania and Poland as well.

CONCLUSION

Bearing in mind the contemporary security challenges, risks and threats, the aforementioned phenomenon of the free movement of people, goods, services and capital should be interpreted firstly from the standpoint of the free "movement" of security risks, since corruption cannot be observed for a long time only as an isolated, criminal phenomenon of a single country, but as an economic, legal, criminological, social problem of the wider region.

Precisely because of the above-mentioned transnational character of corruption, the establishment of the international legal standards has proven to be a necessary need to combat corruption. The first steps in this direction were made in 1990, when numerous international organizations, most notably the United Nations (UN) and the World Bank, began to study the political and economic aspects of corruption. Most of their activities were in relation to description and definition of corruption, listing and describing offenses that, due to their elements, could be considered corrupt, as well as directing mechanisms in the fight against corruption. The establishment a normative framework, standards and principles has been extremely slow process, which is why the implementation of anti-corruption regulations in every sense of the word is "winning freedom", step by step (Simonović, 2014, according to Bejatović et al 2014).

On this occasion, thirty years later, we are talking about redefining the role of the European Anti-Fraud Office (OLAF), bearing in mind that corruption offenses in modern society and market economies are experiencing real expansion and are often closely linked to various forms of economic and organized crime (Ignjatović Đ, Škulic M, 2010, 253-254), which could also be seen from the examples we cited. The importance of OLAF is also reflected in the fact that corruption is the most covert type of criminal behavior, and often the methods and forms of corruptive behavior are preferred over the means and methods of suppressing it (Stajić Lj, 2015, 154).

In addition, investigations conducted by OLAF have shown that corruption is often mentioned in business operations of companies, respectively as a criminal offense by legal entities, especially in cases involving large sums of money. In such cases, perpetrators of corrupt offenses are persons of middle or upper social classes who undertake their criminal activities in connection with the job or function they perform, but with the aim of keeping both parties - the recipient and the bribe taker – undetected. Such covert action actually creates a closed circle, making detection of corruption significantly more difficult. That is why detecting and clarifying corruption cases is a difficult job in the most developed countries, which results is an extremely high "dark number" - the number of unresolved cases.

In addition to the fact that it was founded on the basis of coordinated action of EU member states, OLAF's significant role is the power to suggest changes to the normative framework in order to prevent corruption. For that purpose, the implementation of the Early Warning System (EWS), a database with the names of individuals and legal entities that are linked or have been linked to fraudulent activities to the detriment of the EU's financial interests, is also important (Vega, 2017:258). In that sense, based on the data collected by OLAF, hundreds of people have been convicted so far, and more than seven billion euros have been returned to the EU budget (Vega, 2017:258). However, part of the science still believes that the effectiveness of the measures taken by OLAF is limited by its competencies, i.e. the inability to initiate criminal proceedings. (Herlin-Karnell & Ryder,2017: 38).

Bearing in mind that the representatives of OLAF and the Office of the European Public Prosecutor have signed an agreement about "using all available means to safeguard the Union's financial interests through the complementarity of their mandates and the support that OLAF provides to the Office of the Public Prosecutor", it is expected that OLAF will become the main investigative body of Office of the European Public Prosecutor in the near future.

This is indicated by the structure of the European Public Prosecutor's Office, headed by the Chief Prosecutor. Formationally, OLAF will be subordinate to European prosecutors who will supervise prosecutors acting in the Member States. Given that prosecutors operating in member states will also be competent to start criminal proceedings against suspected of money embezzlers and misappropriation of EU funds before the national courts of Member States, it is expected that OLAF would also have wider operational powers. It is also considered that in such circumstances, an organized and institutionalized exchange of information will be encouraged, especially in joint investigations conducted by OLAF and the investigative bodies of the Member States (Xanthaki, 2010:13)

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