

# EPPO and EU Law

(Jean Monnet Centre of Excellence - STEPPO)





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# EPPO-OLAF Relations and Interactions

LECTURER: Petr Klement



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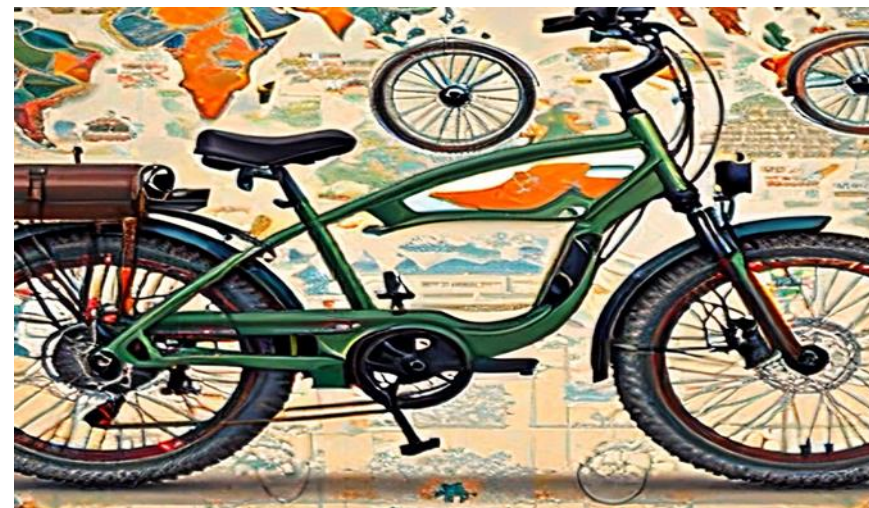


E-bikes Cases:  
example of OLAF/EPPO  
potential



3.2.2022 – EPPO operation in **Naples**, e-bikes and spare parts imported from Turkey and China, seizures of € 13 mil.

7.2.2022 – EPPO operation in **Palermo**, seizure of €130.000; imported e-bikes from China and falsely declared the country of origin as Malaysia; reported by OLAF



21.4.2022 – EPPO operation in **Venice**, evading VAT tax and customs duties, importing complete e-bikes of Chinese origin in parts, seizures of € 2 mil., reported by OLAF;

<https://www.youtube.com/watch?v=Fmq5lAsQBE>

31.5.2023 – EPPO operation in **Paris**, manager of Chinese importer of e-bikes for €26 million fraud arrested



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8.11.2023 – EPPO EDP files indictment in **Antwerp**, two importers of e-bikes charged with €6.6million customs fraud

7.2.2024 – **OLAF/Polish** Customs intercept illicit imports of 20 000 e-bikes from China; evasion of at least 8 million euro of anti-dumping duties and € 4 mil. of VAT



## Office européen de **Lutte Anti-Fraude**

- OLAF is an administrative service of the EU aimed at investigating fraud and corruption affecting the EU
- Established in 1999, based in Brussels
- Investigates also EU officials and in EU institutions
- Issues recommendations to national authorities
- Develops the anti-fraud policy for the Commission



Opened 192 new investigations (2022)	Opened 1371 new investigations (2023)
Recommended recovery of €426.8 million (2022)	Frozen €1.5 billion (2023)
Budget - €61,6 million (2022)	Budget - €66 million (2023)
Staff – 322 (2022)	Staff – 232 (+140 EDPs)





## OLAF & EPPO THE ARRANGED MARRIAGE



Highest level of protection of the financial interests of the Union through synergies (Rec. 3 of 2020/2223 Reg.)

Shall establish and maintain a close relationship based on mutual cooperation, information exchange, complementarity and the **avoidance of duplication** (Art. 4a OLAF Reg.; Art. 101 EPPO Reg.)

Shall establish practical arrangements for the exchange of information and for complementary investigations (Art. 12g OLAF Reg.)



## OLAF, EPPO THE LEGAL BASIS



### OLAF:

- Commission Decision 1999/352/EC1 (establishment)
- **Regulation 883/2013** as amended by Regulation 2020/2223 (legal basis for conducting investigations, guarantees, information duties...)
- Regulation 2185/96 (on-the-spot checks)
- Other legislation (Regulation 515/97, Regulation 1224/2009...)

### EPPO:

- **Regulation 2017/1939** (establishment and investigations)
- National law (substantive and procedural)

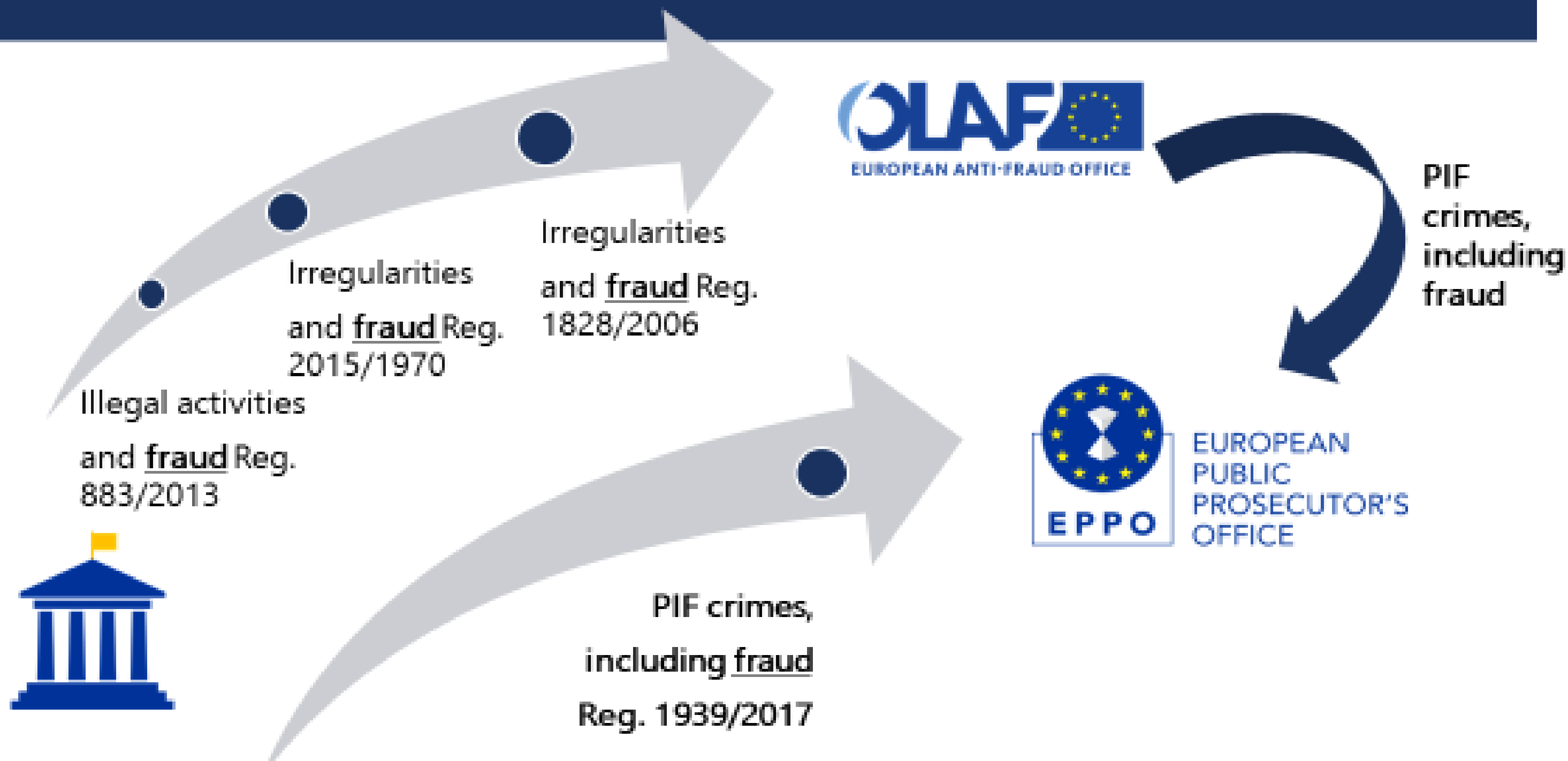


## OLAF COMPETENCE AFTER ESTABLISHMENT OF EPPO



- Internal investigations (incl. EPPO)
- Administrative investigation of irregularities followed by financial, administrative or disciplinary recommendations
- Coordinating the actions of the Member States' authorities in coordination cases (Art. 1(2) OLAF Reg.)
- Full competence over cases/PIF damage less than 10.000 EUR
- Full competence in EPPO-non-participating MS
- Assisting the EU institutions, bodies, offices, and agencies with the preliminary evaluation of suspicions of offences to be reported to EPPO

## REPORTING FRAUD IN EU



# CRIME REPORTING STATISTICS 2023

IBOA	EPPO crime reports	Exercised competence	NOT exercised competence	Pending
European Commission and Executive Agencies (via OLAF)	<b>7</b>	<b>4</b>	<b>1</b>	<b>2</b>
European Anti-Fraud Office (OLAF)	<b>72</b>	<b>38</b>	<b>7</b>	<b>27</b>
European Court of Auditors	<b>17</b>	<b>3</b>	<b>2</b>	<b>12</b>
European Investment Bank	<b>9</b>	<b>3</b>	<b>2</b>	<b>4</b>
Europol	<b>3</b>	<b>1</b>	<b>n/a</b>	<b>2</b>
<b>Total</b>	<b>108</b>	<b>49</b>	<b>12</b>	<b>47</b>



# IT PROJECTS FRAUD IN ROMANIA



**Romania: EPPO conducts 38 house searches in probe into €15 million fraud**



## IT PROJECTS FRAUD IN ROMANIA



EUROPEAN ANTI-FRAUD OFFICE

**PRESS RELEASE No 19/2023**

**9 November 2023**

# **OLAF and EPPO investigate alleged fraud and money laundering in Romania**

**The European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO) have been looking into suspected fraud worth 15 million euro in Romania. 38 house searches were carried out this week following OLAF's and the EPPO's investigations.**



# OLAF

## SCOPE OF INVESTIGATIONS



- Internal and External Investigations
  - Coordination Cases
  - Mixed Inspections
  - Support/Complementary Investigations to EPPO
- 
- revenue/expenditure side of EU budget (e.g. subsidies/customs duties)
  - misconduct of EU personnel
  - within and outside EU (upon international agreements or contractual basis)





# OLAF

## THE OUTCOME OF INVESTIGATIONS



OLAF issues Final Reports with **judicial, administrative, financial** and **disciplinary** recommendations

*T-193/04 Tillack\* 47 67-70; F-5/05 and 7/05 Violetti\* 90-91*

The decision to forward information to the national authorities does not constitute an act adversely affecting an official, as it does not bring a distinct change in the legal position of the person concerned by the information in question.

Article 10(2) of Regulation No 1073/1999 merely provides for the forwarding of information to national judicial authorities, which remain free, in the context of their own powers, to assess the content and significance of that information. They make their own decision whether to take the action or not.

# OLAF, EPPO DIFFERENCES

## CRIMINAL VS. ADMINISTRATIVE INVESTIGATIONS



Balance of probabilities

vs.

Beyond reasonable  
doubt



Irregularities

vs.

Establishment of elements of  
a criminal offence



Limited judicial review

vs.

Permanent judicial review



Limited access to coercive  
measures

vs.

Range of criminal law  
coercive measures





HR: EPPO is not OLAF, just as Iran is not Iraq / EPPO nije OLAF, kao što ni Iran nije Irak

13/03/2023 (Vecernji list)

On the day when Gabrijele Žalac was arrested, November 11, 2021, we wrote in one comment why it is important that Croatia entered the EPPO zone. "It's not OLAF, EPPO has real powers, sharp teeth, and examples like this show that it's no joke."

- Case reported by OLAF in June 2021
- Allegations refer to an IT system procured by the Croatian Ministry
- OLAF conducted two on-the-spot checks combined with Digital Forensic Operations in Croatia
- (EPPO) has initiated an investigation against four Croatian citizens, as well as two companies
- Arrests and seizures followed
- Indictment sent to court in December 2022

## Europski tužitelji podigli novu optužnicu ministrice Žalac



Portal Novi list

29. prosinac 2022 11:32





## OLAF ASSISTANCE TO EPPO

Conducting  
administrative  
investigations  
(Art. 101 EPPO Reg.)

Providing  
information,  
analyses, expertise  
and operational  
support

Reporting criminal  
offences

Coordinating  
activities of  
national authorities  
and EU bodies

Hit-no-hit access to  
operational  
databases

In EPPO non-participating Member states?

## OLAF SUPPORT TO EPPO INVESTIGATIONS

- upon request of EDP (Art. 101 EPPO Reg.; Art. 12e OLAF Reg.)
  - in accordance with OLAF's mandate
  - scope not limited by the law
  - e.g. forensic activities, expertise on EU programmes, their rules and procedures, data from OLAF investigations
  - may include request to keep particular formal procedures and observe particular procedural rights and guarantees, incl. those resulting from national law (Art. 12e(3) OLAF Reg., Art. 41(3) EPPO Reg.)
- Outside territories of EPPO participating Member states?
  - Bypassing MLA international conventions?

## OLAF COMPLEMENTARY INVESTIGATIONS

- In the course of ongoing EPPO investigations
  - upon information of OLAF DG
  - EPPO may disagree to its opening (in 20 days) its continuation or to performing particular acts
  - Opened especially to secure or speed up (administrative) assets recovery, to take (administrative) precautionary measures, to issue administrative or disciplinary recommendations, to investigate non-fraudulent irregularities...
- Run independently from EPPO (exchange of info. envisaged)
  - OLAF sends a copy of the Final Report to EPPO upon completion



## OLAF, EPPO CHALLENGES



- Duality of reporting crime
- Coordination of investigations
- Providing information, analyses, expertise and operational support
- Coordinating activities of national authorities and EU bodies
- Conducting administrative investigations
- Hit-no-hit access to operational databases
- Admissibility of evidence
  
- Complementary administrative investigations



## OLAF, EPPO CHALLENGES



- need to strengthen interactivity of EPPO/OLAF databases and exchange of data
- Readjustment of OLAF support to EPPO needs, incl. deadlines
- making EDPs' expectations realistic
- education in the processes and know-how
- focusing on crime detection





# THE FUTURE OF PROTECTING THE EU BUDGET



- **Model 1:** OLAF as the PIF protection coordinator
- **Model 2:** EPPO as the PIF protection coordinator, OLAF as a subordinate body or „the EU investigator“
- **Model 3:** keeping the decentralized topography of PIF protection bodies



# PROTECTING THE EU BUDGET



## Europol

- Working arrangement
- Exchange of information
- Hit/No Hit mechanism



## EU Anti-Fraud Office (OLAF)

- Working arrangement
- Avoid duplication
- Maximise recovery of damage
- Support



## Eurojust

- Working arrangement
- Judicial cooperation requests
- Non-participating Member States and third countries



## National authorities (non-exhaustive)

- Prosecutor generals
- (Specialised) Prosecution offices
- Police
- Customs



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**THANK YOU**

Petr Klement

[petr.klement@ext.ec.europa.eu](mailto:petr.klement@ext.ec.europa.eu)