

THE EPPO and EU law: a step forward in integration



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EPPO AND EU LAW: A STEP FORWARD IN INTEGRATION

TOPIC 4: THE EPPO
PROGRAMMING 2021-23:
HIGHLIGHTS

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EPPO - OLAF COOPERATION AND INTERACTIONS

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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

WHAT IS OLAF?

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 234 new investigations (2021)	Opened 865 new investigations (2022)
Recommended the recovery of €527.4 million (2021)	Freezed €359 million (2022)
Budget - €61 million (2021)	Budget - €51.2 million (2022)
Staff – 371 (2021)	Staff – 217 (+114 EDPs)

OLAF & EPPO – THE CODIFIED ATTRACTION

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

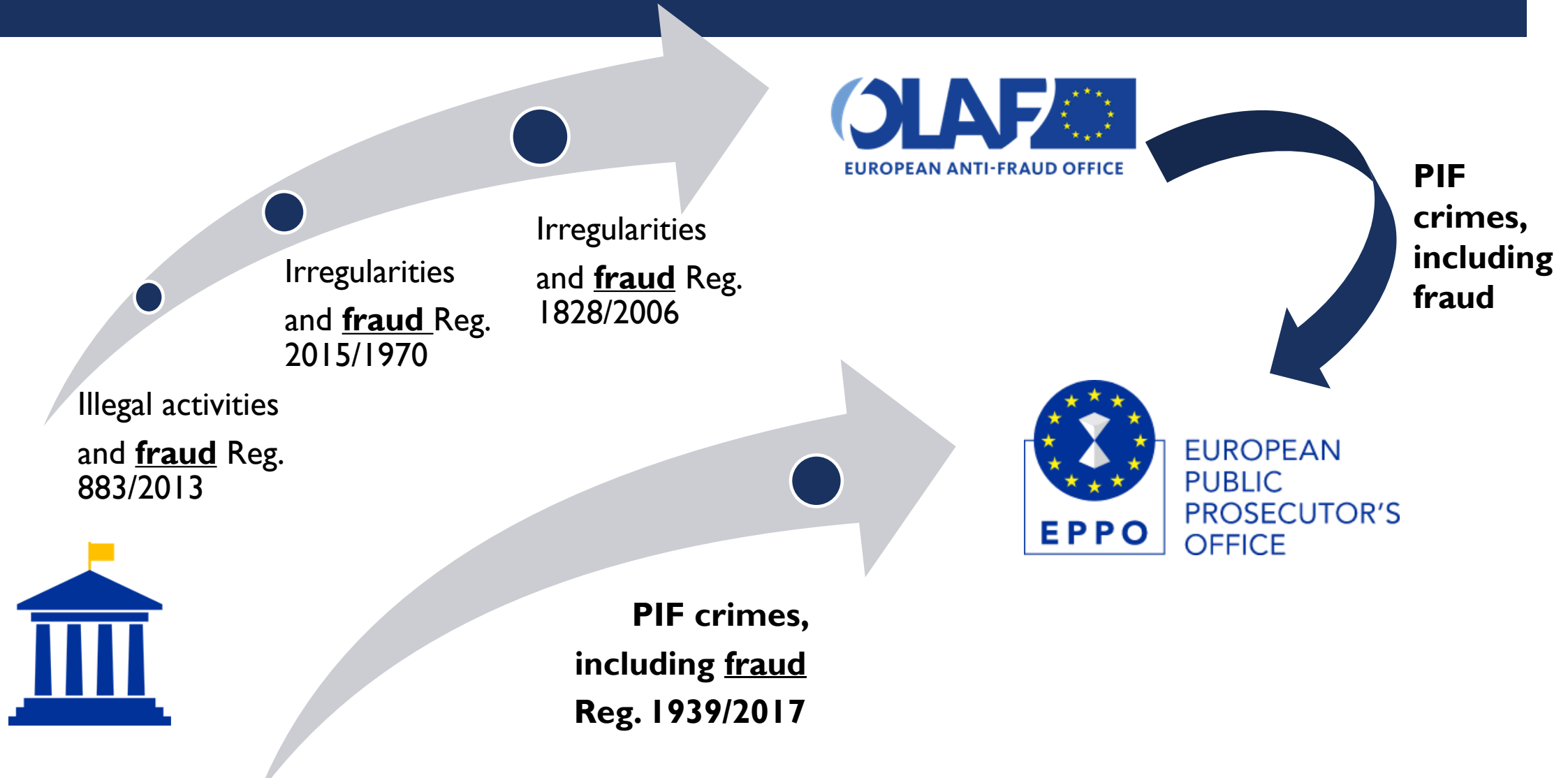
OLAF:

- 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)

REPORTING FRAUD IN EU



INSTITUTIONS, BODIES, OFFICES AND AGENCIES: CRIME REPORTING STATISTICS

IBOA	ECRs	Exercised competence	NOT exercised competence	Pending
European Anti-Fraud Office (OLAF)	55	37	7	11
European Commission	16	12	1	3
Eurojust	9	5	0	4
European Court of Auditors (ECA)	8	5	1	2
European Investment Bank (EIB)	11	6	4	1
European Central Bank (ECB)	3	3	0	0
European Parliament	1	0	1	0
Total	103	68	14	21



EUROPEAN
PUBLIC
PROSECUTOR'S
OFFICE



VENICE



EPPO unravels **€1.6 million**
fraud involving futuristic
water purification machines

WATER TREATMENT CASE

- Case reported by OLAF
- Project concerning production of solar powered water treatment
- Despite the promises made, the water treatment plants were never finished. To cover up the project's failings, the suspects are believed to have provided fraudulent assurances to the European Commission certifying the functionality and the advancement of the project, including false water analysis results.
- Violating tendering rules and providing false statements to gain access to European Union funds amounting to €113 000
- Investigation is ongoing
- Presumption of innocence



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)

THE OUTCOME OF OLAF 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.

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



OLAF COMPETENCE „AFTER“ 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

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 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 SUPPORT ACTIVITIES

- 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?

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
- Trial is ongoing
- Presumption of innocence

Europski tužitelji podigli novu optužnicu ministrice Žalac



Portal Novi list

29. prosinac 2022 11:32



Foto Patrik Macek/PIXSELL

EPPO ASSISTENCE TO OLAF

In the course of ongoing support (Art. 12e OLAF Reg.) or complementary investigation (Art. 12f OLAF Reg.)

Upon a written request with reasoning

In order to overcome obstacles, which couldn't be overcome by measures available to OLAF

OLAF+EPPO PRACTICAL 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

THE FUTURE: SHORT HORIZON

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

THE FUTURE: LONG HORIZON

- Powerful potential of EPPO-OLAF partnership
- **Model 1:** OLAF as a 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



THANK YOU

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