

RELATIONSHIPS BETWEEN THE NATIONAL JUDICIAL AUTHORITIES AND THE INVESTIGATIVE AGENCIES IN THE VIEW OF THE EPPO

Operational models and best practices in fight against EU frauds

BOOKLET OF THE RESEARCH

February – June 2015

[Monitoring and updating the project](#)

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<http://www.unife.it/progetto/olaf>

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The project and the activities

This booklet is drafted up midway of the research project, which began in February and will end in December 2015. In this first section the main themes of the investigation, provisional results achieved and activities carried out until now by the research team will be illustrated.

As for the topic of the research it is to be firstly underlined that the need to protect the financial interests of the European Union also using criminal sanctions is an objective highlighted in a growing number of legislative proposals at EU level: it is enough to remember the “**Proposal for a Directive on the fight against fraud to the Union’s financial interests by means of criminal law**” (COM(2012)363 final), and the “**Proposal for a Regulation on the establishment of the European Public Prosecutor’s Office**” (COM(2013)534 final, Whereas n. 4).

The future instruments of fight, so as the action of already existing EU organisms, risk however to be less incisive or even ineffective if some essential requirements are not met.

Beyond a deep knowledge of the legislation and of its implementation, a **full awareness of the practical relationships between the different authorities in charge of promoting and conducting investigations on financial-economic crimes in the member States is needed.** In this field different subjects and

heterogeneous organisms with various assignments and powers are involved, such as fiscal administrations, police bodies and different judicial authorities, forming a system not easy to understand from a purely national perspective, which needs therefore to be explained in detail.

The research aims at providing such an expertise with the necessary knowledge.

In order to achieve the above mentioned objectives **the coordinating unit firstly prepared and sent to all subjects involved in the research a questionnaire aimed at a preliminary screening of the issues being investigated** in the various national systems. This allowed for a first contact between the members of the research team to be established, facilitating the definition of the methodological basis of the investigation.

Simultaneously, to give concrete start to the research, the coordinating unit (University of Ferrara) has taken steps to contact members of some of the major players involved at a national level in the investigations to combat financial and economic crime potentially detrimental to the interests of the Union. More specifically, contacts have been undertaken with the **Guardia di Finanza**, the police force specialized in carrying out investigations in the field of financial-economic crime; the **Italian Revenue Agency** and the **Public Prosecutor’s office** of Parma.

The coordinating unit has drawn up and sent to each of the three above designated subjects a **second questionnaire specifically dedicated to acquire deeper insights into the most important operational aspects of the issues the project is dealing with**. The results were discussed during specific **meetings which took place in June**, with the participation of all staff members of the University of Ferrara and the Ten. Col. Alberto Nastasia for GdF; Dr. Lucia Russo for the Public

Prosecutor's office; and Dr. Francesco Filippo Tigano to the Italian Revenue Agency.

The other partners of the research were explicitly invited to adopt a similar methodology in the course of their investigations, while respecting their prerogatives and their scientific autonomy,

The above mentioned activities already produced the results which we will briefly illustrate hereafter.

The results so far achieved

The research activities carried out so far have allowed to delineate a **standard framework of the research**, which will hopefully serve as a **model for the investigations carried out individually by each partner** in order to ensure the necessary **uniformity to the investigation**.

It looks therefore possible to split the research field into **three fundamental macro areas**, without prejudice to the specific peculiarities worthy of study in each of the systems involved.

Firstly, the importance of performing a **complete and detailed analysis of the existing administrative powers and legislation** in the investigations potentially involving phenomena affecting the financial interests of the Union clearly emerged.

Such a survey is justified in view of the fact that, in accordance with the provisions of Regulation 2185/96, OLAF agents have the **same powers as the national administrative authorities in the accomplishment of its investigative activities**. This remark clearly highlights the present need of an investigation activity such as the one carried out in this program.

Therefore it will be firstly essential in this regard to identify the **relevant legal provisions as well as the subjects endowed with the most important investigative powers** and, successively, to define and analyze the real impact of the latter subjects.

With reference to this last aspect it appears to be particularly appropriate to focus on possible **coercive powers** granted to the authorities in question, or at least on the national mechanisms designed to **overcome any resistance put up by the party subject to the investigation** directed to balance the rights of the latter with the inspection requirements (typical examples may be represented by coercive access to the workplace or to the home of the person under investigation, or the possibility to examine documentation, including informatics, retrieved during access).

With specific reference to the Italian legislation the investigation was focused in the analysis of the incisive powers of inspection in the field of financial violations, especially those regulated by **DPR 600/73 and 622/72**. Of course we also proceeded with the identification of the subjects entitled to exercise the powers here in consideration, precisely the Guardia di Finanza and the Italian Revenue Agency.

We devoted specific attention to the interesting issue of the **relationships between these two authorities**, both being holders, in this specific area, of the same investigative powers. This situation, even if of course aimed at maximizing the efficiency of the contrast to financial – economic violations, could be characterized by many **critical profiles**, specifically related to the potential **lack of coordination** between the two authorities and to the risk of **conflict of competences**.

Special attention will be dedicated to these issues in the continuation of the research and in the final publication.

Afterwards, a **second field of interest** which deserves specific study, has been identified in the **dynamics of the transition between the administrative investigations and the criminal ones.**

To this regard, the Italian system is characterized by significant particularities. Let's just think to the military body called "Guardia di Finanza", which has powers typical of both **administrative** and **judiciary police**, and has specific tasks also in the context of criminal investigations. Such aspect, and its practical consequences, deserve specific consideration while they of course characterize the experience of the Italian system.

Another significant peculiarity has been identified in the rule contained in **art. 220 disp. att. Code of Criminal Procedure**, which deals with the specific issue raised here. The rule, however, merely sets the need to apply the guarantees of the procedural code every time the evidence of a committed crime emerges, but does not provide a concrete definition of such cases, nor any operational model to fulfil this regulation

Additionally, with specific regard to the field under investigation here, which often involves offences with a quite complex structure, it has been already cleared that the effective application of the above

mentioned rule is further opposed by the **need to undertake a relevant activity analyzing the investigative data that has been collected**, before it becomes possible to reach the actual emergence of evidence of a crime. This inevitably leads to a **physiological postponement in the application of the guarantees prescribed by the code.**

The issue of the transition from the administrative to the criminal investigation, together with the analysis of specific roles and responsibilities in both the proceedings, although considered here with specific reference to the Italian experience, seems to deserve a deeper investigation also in the other involved systems.

A third and last area of study has been identified in the analysis of the aspects that are more specifically related to the criminal investigation. In this sector, again, big importance must be given to the dynamics and relationships between the individual actors of criminal investigations, already partially object of specific consideration in the first methodological questionnaire that has been completed in order to coordinate the research among the partners.

Considering the Italian situation, the types of domestic crimes most frequently linked to violations of the Union's financial interests have been identified. Among them there are certainly, in addition to the already mentioned violations on financial matters contained in the d.l. no. 74/2000, some crimes of the criminal code

specifically directed to oppose criminal phenomena affecting also the financial interests of the Union. Special importance has been attributed to the particular offences described by articles 316 bis, 316 ter, 640 and 640 bis of the Criminal Code.

Moreover, thanks to the valuable contribution given by the experts in the hearings mentioned above, it was already possible to identify some critical issues in the **relationships between OLAF and national investigative authorities**, regarding particularly the real effectiveness of the inspections carried out by the European Anti-Fraud Office and the investigative coordination of the different bodies involved.

More specifically, it came strongly into light the opportunity to realize a **well-timed**

Future developments

The continuation of the research activity will therefore be dedicated to the **further systematization and analysis of the collected data**, which will find their main seat in the final publication that will be realized at the end of the project.

Specific attention will also be given by the coordination-unit to the **supervision of the effective participation of all the partners of the project**.

coordination between the investigation activities of the European Anti-Fraud Office and the investigations of the national authorities (in particular, prosecutors and tax police), in order to avoid any loss of time waiting for the formal conclusion of inspections carried out by the first one. This would allow to optimize the impact and the effectiveness of the contrast to community frauds, by **immediately directing investigative efforts in the analysis of any hypothetical criminal profile** that may arise as a result of an inspection carried out by OLAF.

All these aspects will be specifically considered in the research activities, also in order to develop *de jure condendo* solutions dealing with the future establishment of the European Public Prosecutor's Office.

The effort of the research-group will be specifically directed to the **processing of homogeneous contributions** that will feed into the final publication of the research, and to the **preparation of the intermediate seminar** that will close this first phase of the research, which, as planned, is going to be held in Ferrara on 27-28 November, 2015.

AGENDA

OLAF INVESTIGATIONS AND NATIONAL JUDICIAL AUTHORTIES: NATIONAL OPERATIONAL INSIGHTS IN THE VIEW OF THE FUTURE EPPO

Intermediate seminar of the Research Project



FRIDAY 27TH – SATURDAY 28TH NOVEMBER 2015 – UNIVERSITY OF FERRARA
SCHOOL OF LAW

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