

## WHAT ANTI-FRAUD INFORMATION AND COMMUNICATION POLICY FOR OLAF?

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The names of the seminars <sup>(1)</sup> as well as of the virtual public debate <sup>(2)</sup> on anti-fraud communication launched by the European Anti-Fraud Office (OLAF) within the framework of its anti-fraud communicators network (OAFCN)<sup>(3)</sup>, are very useful in introducing the anti-fraud communication and information policy: 'The protection of European financial interests: information and communication as a means of fraud prevention'.

One specific term, perhaps, deserves to be considered for a moment, the word 'fraud'. One can define fraud as being an attack on the interests of all citizens. And, since fraud does not only harm a specific person or group of persons but society as a whole, it is generally perceived as a crime without victims.

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<sup>(1)</sup> 'First training seminar of the OLAF anti-fraud communicators network', Helsinki-Stockholm, 16 to 18 September 2002.

[http://europa.eu.int/comm/anti\\_fraud/olaf-oafcndocuments/seminar1\\_en.pdf](http://europa.eu.int/comm/anti_fraud/olaf-oafcndocuments/seminar1_en.pdf)

'The role of communication in fraud prevention', Salamanca, 21 to 23 November 2002. OAFCN seminar for journalists.

[http://europa.eu.int/comm/anti\\_fraud/olaf-oafcndocuments/seminars/sal\\_en.html](http://europa.eu.int/comm/anti_fraud/olaf-oafcndocuments/seminars/sal_en.html)

'Protecting the Communities financial interests: information and communication as a means of fraud prevention in the context of EU enlargement', Bucharest, 20 to 22 October 2003.

[http://europa.eu.int/comm/anti\\_fraud/olaf-oafcndocuments/seminars/bu\\_en.html](http://europa.eu.int/comm/anti_fraud/olaf-oafcndocuments/seminars/bu_en.html)

<sup>(2)</sup> Round table on anti-fraud communication: how information and communication can be a means of EU fraud prevention and a true service to the citizens in the respect of their rights?

[http://europa.eu.int/comm/anti\\_fraud/olaf-oafcndocuments/rt/i\\_fr.html](http://europa.eu.int/comm/anti_fraud/olaf-oafcndocuments/rt/i_fr.html)

<sup>(3)</sup> OLAF anti-fraud communicators network (OAFCN)

[http://europa.eu.int/comm/anti\\_fraud/olaf-oafcndocuments/fr.html](http://europa.eu.int/comm/anti_fraud/olaf-oafcndocuments/fr.html)

Consequently, how can we make citizens aware of the danger of this type of fraud? How can we make it possible for communication and information, in other words, for a collective pedagogical action to become a major player in fraud prevention?

These are the main questions to which the public debates launched by OLAF wish to offer an answer to.

These initiatives' origins and *raison d'être* can be found in OLAF's communication and information strategy. This strategy was developed within 'the idea laboratory' that to some extent is the European Anti-Fraud Office (OLAF), taking into account its future projects, its immediate actions and its operational activities.

Therefore, it is a completely new policy that is based on two relatively simple concepts: information and communication not only as a *service to the citizen* but also as a *fraud prevention tool*. To achieve this goal, the communication strategy must be based, on the one hand, on the **absolute respect for legality principles** and, on the other hand, on the **respect for individual rights**, that is, to respect the presumption of innocence of those persons under investigation and to protect the confidentiality of investigations. This strategy must also consider another obligation we have — as all other public institutions — to *inform the public* on how public funds are being spent, including when they are assigned to investigative services, whether national or Communitarian.

OLAF's anti-fraud communication and information policy is based on concepts easy to define; but its application, in contrast, is not as easy. Indeed, its application requires pursuing and maintaining a balance — that sometimes may be very difficult to attain — between the requirements that I just mentioned and that, in certain cases, can collide and oppose each other, making the implementation of this policy a very complex matter.

Executing this communication and information strategy, in particular by means of the press, is not always a simple affair for a national investigative service and that is all the more true for a young investigative service such as OLAF, instituted within a legal framework that is still relatively fragile and half way between administrative and legal. Contrary to national services, OLAF is not based on the experience and tradition of the majority of national administrative or criminal investigative services.

OLAF has the power to act within the European Union. This means within a territory where a global judicial space does not yet exist and where internal borders — that no longer exist neither for people, nor goods, nor capital — do exist and are still clearly defined for investigators as well as for law enforcement and judicial authorities.

Information, as well as goods, persons and capital within the EU, no longer has borders and circulates faster and faster and through an ever growing number of channels. But achieving an information and communication policy based on respect for legality principles as a service to citizens does not mean that all information can be revealed: there are secret documents and confidential information that can damage the outcome of investigations and affect individual rights. The media, if not the only vehicle for this kind of information, are nonetheless the main source in charge of revealing facts that can sometimes damage investigations and persons.

Therefore, those of us who are responsible for communication departments in investigative services have the duty, on the one hand, to inform and on the other, to protect certain information. As a result it is not always easy to reconcile the public opinion's expectations with those of the media — that are always on the lookout for information — with protection of confidential information obtained during investigations.

But difficult does not mean impossible. The fact that the implementation of an anti-fraud communication and information policy is a difficult task does not mean that it is an impossible one. Our experience and the statements received from various sources prove it. Despite many difficulties, OLAF — in close collaboration with its anti-fraud communicators network — has created within the Member States and the candidate countries, even if modestly, something that constitutes undoubtedly a step further in the creation of a European platform of legality and justice. A platform also built on knowledge, information and to raise citizens' awareness towards issues that often affect them more than they imagined at first. And, once again, to inform citizens that protecting the Community's financial interests entails, above all, prevention, because prevention is better than the cure.

Among the directorates-general of the European Commission, the unit within OLAF that I have had the honour to coordinate since it was created is one of the smallest information, communication and public relations units. However, it's the only one to have included a spokesperson for the 'investigative' function of the Office who is independent from the European Commission.

This independence must be, and is, practised within an absolute respect for legality principles and the defence of public interest. And the conscious effort to defend the independence of an Office created to serve the interests of the European citizen has helped my collaborators and me to accomplish our daily responsibilities. These efforts have strengthened our resolve to react in the best possible way, in other words, firmly, when faced with situations that look to destabilise and that must be effectively handled by the services responsible for institutional communication. If not it will be necessary to consider looking for a different job...

But along what lines should this anti-fraud communication and information policy be based?

### **AN ANTI-FRAUD COMMUNICATION POLICY, FOUR CARDINAL POINTS**

As was the case for a ship's crew, which in times past embarked towards troubled waters and unknown destinations, OLAF's communication and information policy, created in 2000 — when my unit was created and the director-general entrusted me with its coordination — is based upon four aspects that are the cardinal points of our activities.

The four cardinal points are:

- absolute respect for legal provisions;

- EU communication and information guidelines;
- parameters given by the Budgetary Authority;
- indications contained in the reports and viewpoints given by OLAF's Supervisory Committee <sup>(4)</sup> pertaining to the Office's investigative function.

## **1. The absolute respect for legal provisions**

I do not consider it necessary to explain this aspect extensively because it is the pillar of every service with a mission to insure the respect and protection of legal provisions. Thus it is unthinkable for any investigative service not to be based upon this central principle. The law must be respected always and at any cost. And respecting the law involves respecting the professional secret. Because if the possibility is open for a person who operates under the realm of professional secrecy to take a confidential document in order to transmit it to a third party, this makes it simply impossible for an institution to adequately perform <sup>(5)</sup>. And when the institution is an investigative service, it makes it impossible to search and/or pursue the person suspected of having violated the law or other persons' rights.

## **2. EU communication and information guidelines**

They are made available to us mainly through the Commission's communications pertaining to the 'Information and communication strategy for the European Union <sup>(6)</sup>'.

As can be read in the most recent Commission communication, dated 2 July 2002, this strategy 'does not place on a lesser level the information and communication activities developed by the Commission's directorates-general in their particular sector-based competence domain. Developed as a complement to these activities, it aims, however, at contributing to a global dynamic for all the different sector-based information actions, so as to strengthen the Commission's coherence with regard to its information and communication actions'.

Although OLAF is independent in its investigative function, as a directorate-general of the Commission, it is impossible for the anti-fraud communication and information strategy developed by the Office not to be inspired by this document. The strategy is being developed, maybe even more than in other EU areas of competence, in a progressive and empirical way.

But while contributing to create a public platform for European debate on the protection of Community financial interests, this policy also looks to contribute to reinforce the

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<sup>(4)</sup> Article 11 of Regulation (EC) No 1073/99 of the European Parliament and the European Council, dated 25 May 1999, relating to investigations carried out by the European Anti-Fraud Office (OLAF) (OJ No L 136, 31.5. 1999).

<sup>(5)</sup> Christian Panier, 'Justice, media, power: an infernal triangle'; Labour Editions, Brussels, 2004, p. 135.

<sup>(6)</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, 'Information and communication strategy for the European Union', from 7.2.2002, COM (2002) 350 final.

coherence of the Commission's actions relating to information and communication, as indicated in the communication text.

Indeed, at the time of the greatest enlargement of the Union, as well as of the approval of a European Union Constitution, and faced with incomprehension with regard to globalisation, the European project needs more and more direction and visibility. One of the conclusions reached by the heads of State during the Laeken declaration was that the European Union could not continue to make any considerable progress without the support and commitment of its citizens. Nevertheless, there are many citizens who are aware of the fact that they are ill-informed on 'European issues' and blame the media and the national authorities as well as the European institutions for the unclear vision they have of Europe.

For this reason, fighting ignorance and indifference today has become an essential need and duty of the European Union. It becomes an even more urgent obligation when criminal attacks on Community financial interests pose an important obstacle in the development of the European Union.

I am convinced that the lack of knowledge and disaffection that citizens feel towards the European Union, in particular with regard to the protection of financial interests, is not fatally irreversible. This situation is explained mainly by the complexity of the European financial procedures, but not only by this factor. Indeed, until now, the resources assigned for the development of an anti-fraud information and communication policy have been quite limited as far as European institutions and Member States are concerned.

This was even more evident after the results of the first Eurobarometer <sup>(7)</sup> survey on the attitudes concerning fraud detrimental to the EU and its budget, carried out at the request of OLAF and published in January 2004. The study showed that three out of four persons asked agree that the EU should give more information on anti-fraud campaigns and success stories, and that 56 % of EU citizens feel that the media does not inform them enough on the EU fight against this type of fraud.

In its White Paper on European governance, the Commission recognises that a real information and communication policy is the first strategic element necessary for better European governance. This standard should also be applied in the protection of Community financial interests. Thanks to targeted and precise facts given by the institutions, euro scepticism born from a sometimes imprecise mediatisation of certain budgetary irregularities should be by now certainly quite limited.

On the subject of citizens' awareness of European issues and specifically on the fight against fraud, Mr Siim Kallas, Vice-President of the European Commission on

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<sup>(7)</sup> Eurobarometer opinion poll — Attitudes concerning fraud detrimental to the European Union and its budget — carried out at the request of the OLAF unit 'Communication, public relations, spokesman', by the Directorate-General for Press and Communication ('Analysis of public opinion' sector) in 2003.

[http://europa.eu.int/comm/anti\\_fraud/press\\_room/eurobar/en.html](http://europa.eu.int/comm/anti_fraud/press_room/eurobar/en.html)

Administrative Affairs, Audit and Anti-Fraud, insists: ‘Communication can help in deterrence. It is possible to prevent fraud by raising awareness of the severity of crimes related to EU funds, as well as by promoting a meaningful public debate on this issue. It can also be done by raising awareness of OLAF’s and the local authorities’ efforts to prevent and detect fraudulent acts committed against the taxpayer’s money’ <sup>(8)</sup>.

He goes on to say, with a motivating message with regard to OLAF’s communication policy, that changing the public opinion’s perception of the work performed by anti-fraud authorities and getting through a positive message is a difficult task, ‘But this does not mean that it cannot be done. We need to communicate continuously that we strive to be professional, impartial and reliable in fighting fraud that harms all citizens, and that these institutions work well everyday’.

He stresses that ‘in the fight against corruption the key to success is a change in public opinion. Communication policy can help achieve that public opinion functions effectively as a means to deter fraud’.

Vice-President Kallas concludes by pointing out that even if he is a strong advocate for transparency, every investigative institution must take into account the respect for law and ‘communicate and in practice confirm the message that information is given according to legal and professional principles’.

In the Member States and at European level, democracy depends on the citizens’ capacity to take part in public debate. The institutions, with the support of the Member States, should contribute by assuming this challenge, which will have an even larger field of action with the enlargement.

### **3. Parameters given by the Budgetary Authority**

The third cardinal point is occupied by the Budgetary Authority, and, specifically, by the Budgetary Control Committee (COCOBU) of the European Parliament. COCOBU has already honoured us by taking part in the seminar organised last year in Bucharest <sup>(9)</sup>. On that occasion we counted on the gracious participation of its former President, Mrs Theato, who always liked to think of herself as OLAF’s godmother.

COCOBU has indirectly participated in the creation of the communication strategy and has encouraged its application.

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<sup>(8)</sup> Siim KALLAS, Vice-President of the European Commission for Administrative Affairs, Audit and Anti-Fraud. Opening address at the OLAF seminar: ‘Deterring fraud by informing the public’, 24 to 26 November 2004, Brussels.

<sup>(9)</sup> OAFCN training seminar for anti-fraud communicators in candidate countries, Bucharest, 19 to 22 October 2003: [http://europa.eu.int/comm/anti\\_fraud/olaf-oafcn/seminars/bu\\_en.html](http://europa.eu.int/comm/anti_fraud/olaf-oafcn/seminars/bu_en.html)

In an amendment to the 2003 budget draft, for example, COCOBU's Vice-President, Mr Bösch, encouraged OLAF to be more active with its communication strategy, particularly with regard to the quantity and quality of its press releases <sup>(10)</sup>. OLAF, although it has very limited resources devoted to this area, received this suggestion very favourably to continue and increase the volume of its communication activities, by means of the media, within the boundaries, obviously, of the abovementioned constraints and other constraints which I will evoke in the following paragraphs.

However, during a public discussion with OLAF, on 7 April 2004, in connection with the investigation launched by the Belgian legal authorities concerning a German journalist working for the *Stern*, Mr Bösch asked OLAF 'to end its foolish press policy'. According to Mr Bösch, the Office had published way too many press releases and the investigators in Luxembourg had been surprised to read an OLAF press release concerning a file that had been sent to them. Mr Bösch concluded by stressing, 'There needed to be more investigators and fewer press officers'.

During the same public discussion, Mrs Stauner, European MP and COCOBU member during the fifth legislature (1999–2004), added, 'OLAF should be careful as to its declarations in press releases. It should not authorise its civil servants to address the press'.

Thereafter, members of the European Parliament of the current legislature (2004–09) have made more specific information available to us with concrete suggestions supporting the need for an anti-fraud communication policy.

Mr Szabolcs Fazakas, for example, newly elected Member of Parliament and Chairman of COCOBU, underlines that 'in the information society sharing information with the public is crucial' <sup>(11)</sup>.

He details his point of view notably with regard to the relationship between investigative bodies and the media, which changed after reading the contributions sent to the OLAF round table on anti-fraud communication <sup>(12)</sup>. 'Initially, my idea was that fraud investigators should not appear in the press at all. Indeed, their work relies on confidentiality'. But he goes on to add, 'Then, having read through the contributions and expert opinions, I reconsidered my initial point of view. Indeed, in a world influenced by

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<sup>(10)</sup> Budget 2003 — Amendment proposal 5201, made by MPE Herbert Bösch concerning budgetary guideline COM-A-III 3 0 3: 'As proposed, the doubling of information and communication financial resources in comparison to 2002 [EUR 200 000] is not justified. The financial aid that for now is stocked in the reserve will be unblocked once the Office has explained to the Budgetary Authority its information and communication strategy and, in particular, has exposed the means of diffusing more and better press releases (for 2000 and 2001, less than 12 press releases were counted per annum)'.

<sup>(11)</sup> Szabolcs Fazakas, Member of Parliament and Chairman of the Committee on Budgetary Control in the European Parliament. Opening address at the OLAF seminar: 'Deterring fraud by informing the public', 24 to 26 November 2004, Brussels.

<sup>(12)</sup> [http://europa.eu.int/comm/anti\\_fraud/olaf-oafc/rt/i\\_en.html](http://europa.eu.int/comm/anti_fraud/olaf-oafc/rt/i_en.html).

the mass media and by information available at random, it is increasingly important that organisations protecting our financial interests are present in the media and that the media portray a positive image of them’.

Mrs Silvana Koch-Mehrin, commented on the need to intensify communication campaigns within the Member States (‘the person who defrauds is a liar’), to reinforce the OLAF anti-fraud communicators network (OAFCN) and to create in all Member States a toll-free number to report on cases related to fraud <sup>(13)</sup>.

According to Mr Paulo Casaca, it goes without saying, on the one hand, that any law enforcement service requires a certain degree of discretion to properly operate and, on the other hand, that ‘the public has the ultimate right to know about public wrongdoings, and everybody — innocent or culprit — has the right to be informed of what he is accused of before a trial, so that he can defend himself’<sup>(14)</sup>.

On his part, Mr Lorenzo Cesa wanted to underline ‘that thanks to the OLAF anti-fraud communicators network, we have an invaluable and essential instrument in the fulfilment of European citizens’ information requirements: people want to be informed on the cooperation and success of investigative services from Member States, and don’t want to be constantly harassed by those who tend to exploit scandals. Special attention must be paid to this because, as we know, the "all corrupted" or "all defrauders" are equivalent to "nobody is corrupted" and "nobody defrauds"<sup>(15)</sup>.

Mr Gianni Pittella finally considered that by ‘drawing attention with targeted information sequences on specific kinds of offences, the media could provoke a strong public opinion reaction, which would in turn call for an institutional course of action in a considerable number of cases, taking the form of new and stricter prevention and punishment policies. This would bring about a sort of chain reaction between the world of communication, public opinion and institutions’<sup>(16)</sup>.

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<sup>(13)</sup> Silvana Koch-Mehrin, Vice-President of the Democrat and Liberal Alliance Group for Europe, temporary member of the Committee on Budgetary Control — ‘Perspectives for OLAF’.  
[http://europa.eu.int/comm/anti\\_fraud/olaf-oafcnc/rt/c/koch\\_fr.pdf](http://europa.eu.int/comm/anti_fraud/olaf-oafcnc/rt/c/koch_fr.pdf)

<sup>(14)</sup> Paulo Casaca, Member of the European Parliament, Coordinator of the PSE Group in COCOBU — ‘Secrecy and information, a right balance to be found’.  
[http://europa.eu.int/comm/anti\\_fraud/olaf-oafcnc/rt/c/casaca\\_fr.pdf](http://europa.eu.int/comm/anti_fraud/olaf-oafcnc/rt/c/casaca_fr.pdf)

<sup>(15)</sup> Lorenzo Cesa, Member of the European Parliament, Vice-President of the PPE (DC) and DE Groups, member of the Committee on Budgetary Control — *Cui Prodest* ‘OLAF without communication?’  
[http://europa.eu.int/comm/anti\\_fraud/olaf-oafcnc/rt/c/cesa\\_fr.pdf](http://europa.eu.int/comm/anti_fraud/olaf-oafcnc/rt/c/cesa_fr.pdf)

<sup>(16)</sup> Gianni Pittella, Member of the European Parliament, (PSE Group), former President of COCOBU, ‘The media therefore have a role to play, if not in terms of prevention, at least in encouraging the



Last but not least, Mr Terry Wynn's observations on his website are also very enlightening, in particular when he underlines the difference between the public's perception and the facts in the use of Community funds. In our opinion, when a difference exists between the public's perception of the facts and the actual facts communication is always required, and for a public organisation it becomes an obligation and a service to the citizens <sup>(17)</sup>.

Finally, in reference to Mrs Theato's speech in Bucharest <sup>(18)</sup>, I can only add that, on the one hand, the not too mediated investigators are 'a sign of quality', but that, on the other hand, public opinion is informed and influenced by the press. Consequently, it is even more difficult to achieve a balance on this issue. However, it is always necessary to tend towards this balance.

#### **4. Guidelines provided by OLAF's Supervisory Committee**

The Supervisory Committee is in charge of guaranteeing OLAF's independence.

The Committee, in its Viewpoint n. 2/03 accompanying the Commission's report on the 'Evaluation of the activities of the European Anti-Fraud Office', three years after OLAF's creation, highlighted that 'OLAF has set up its own autonomous public relations department and conducts an active policy of communication with the public and the media. However, the Committee feels that, while communication is important, it is none the less secondary and should remain limited in view of the risks it entails for the respect of fundamental rights and the reputation of the institutions and their members, officials, and staff' <sup>(19)</sup>.

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dissemination of a culture of respect for the law by highlighting the damage which fraudulent activities cause to citizens'. [http://europa.eu.int/comm/anti\\_fraud/olaf-oafcn/rt/c/pitella\\_fr.pdf](http://europa.eu.int/comm/anti_fraud/olaf-oafcn/rt/c/pitella_fr.pdf)

<sup>(17)</sup> Terry Wynn, Member of the European Parliament (Group PES), 'The EU Budget — Public perception and fact': 'Contrary to public opinion, Brussels is not the European centre of fraud and waste. The funds that — according to regular media reports — allegedly "disappear through fraud and waste" do not "disappear" in the corridors of the European Commission. EU money is almost exclusively spent in and by the Member States. This is where most irregularities occur. Admittedly, the European Commission might be blamed for not having adhered to some administrative financial rules to the last letter, but the European Parliament's and the Court of Auditors' criticism have led to a profound reform process within the Commission, creating clearer responsibilities, systems that are more transparent and more efficient control procedures'.

<http://www.terrywynn.com/home.html>

<sup>(18)</sup> [http://europa.eu.int/comm/anti\\_fraud/olaf-oafcn/seminars/documents/theato\\_fr.pdf](http://europa.eu.int/comm/anti_fraud/olaf-oafcn/seminars/documents/theato_fr.pdf)

<sup>(19)</sup> [http://europa.eu.int/comm/anti\\_fraud/reports/sup\\_comm/2003/avis/fr.pdf](http://europa.eu.int/comm/anti_fraud/reports/sup_comm/2003/avis/fr.pdf)

To my knowledge, the only other observation made by OLAF's Supervisory Committee with regard to our communication policy prior to the 'Anti-fraud communication round table', was one made by the Committee's President, Mr Raymond Kendall, during the hearing before the British House of Lords. During this hearing, published in an ad hoc report on OLAF by the House of Lords <sup>(20)</sup>, Mr Kendall strongly criticised certain video images produced by the Office with its partners from the national customs services within the framework of the anti-fraud communicators network. They are the same images that according to the European MP Lorenzo Cesa, had, on the contrary, the merit of having 'drawn the attention of the world's public opinion on cigarette smuggling and contributed to an international and media mobilisation. Without this we would have never started an effective fight that has given us results during these last years that at first were completely unexpected <sup>(21)</sup>'.

According to Mr Kendall, the European Parliament's objective, following the resignation of the Santer Commission, was to support internal investigations in European institutions and so attention should be focused solely on these investigations.

Mr Kendall has recently commented on OLAF's communication policy, this time from a new, positive and very encouraging point of view. 'We are dealing with an area such as this which deals with ethics, with morals, also with issues of incompetence, and all these things make the work of OLAF extremely difficult. Therefore, there is this necessity of explaining the positive aspects of what they do, and there are very, very many <sup>(22)</sup>'.

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<sup>(20)</sup> Mr Raymond Kendall, Chairman of the OLAF Supervisory Committee, before the Select Committee on the European Union (Sub-Committee E) of the UK House of Lords — Strengthening OLAF: Inquiry into the European Anti-Fraud Office, Wednesday 19 May 2004 '...The difficulty comes back again to the way you approach the media communication issue. You will see that in its own publicity film, OLAF says "This is what we do," and you will see in the film pictures of people running around at a border point or something like that with a jacket with "OLAF" on the back, like "FBI" or something like this, as if they wished to present themselves as some kind of truly operational outfit, which they are not, in the sense of the way our customs service is or anything else, and they make a big thing, for example, about trafficking in cigarettes, notably in the Mediterranean. To me, it is very clear that the best people to deal with that are the customs people. So you should be very interested in what the customs people tell you about that, but there is no reason why you should necessarily want to get involved when you could be doing better things. After all, as a result of the Santer Commission, the objective of the Parliament was to get hold of the internal investigation business. So there should be a clear emphasis on internal investigations and making sure that the external investigations are done by the Member States who are in the best position to do them'.

<sup>(21)</sup> Lorenzo Cesa, Member of the European Parliament, Vice-President of the PPE (DC) and DE Groups, member of the Committee on Budgetary Control — *Cui Prodest* 'OLAF without communication?'.

<sup>(22)</sup> Raymond Kendall, President of OLAF's Supervisory Committee. Opening address at the OLAF seminar: 'Deterring fraud by informing the public', 24 to 26 November 2004, Brussels.

He goes on to say that he can confirm, on the part of the Supervisory Committee, that things are moving on very quickly towards the establishment of what is becoming every day a more efficient Anti-Fraud Office.

With regard to the relationship between investigative services and the press, Mr Kendall considers it better to give as much information to the media as possible, obviously excluding material prejudicial to the investigation. He justifies this by explaining that ‘there is perhaps — and particularly in the context of the European institutions — a tendency to overemphasise confidentiality. It seems to me, and my experience has been over the last four years here in Brussels, that it is extremely difficult to keep anything secret in the institutions. Somewhere along the line, information gets out, even suspicions which may not even be confirmed as suspicions become the subject of rumour and so on, so in that situation, it’s probably better to give as much information as you can, with due respect for confidentiality’.

It is quite obvious that to find and maintain a balance between all the interests, rights and duties and between all these different points of view — which, put together, appear sometimes contradictory — constitutes the greatest challenge we must face.

## **OLAF AND THE MEDIA**

Even though contact with the media only represents one aspect of the anti-fraud communication and information strategy, it is nevertheless a determining factor in any type of communication. What if OLAF could not communicate with the media (even if it has operational independence) if only to prevent or clear up misunderstandings, who should or could do it in its place?

Without the right to speak publicly, circumscribed within the boundaries of legal provisions, OLAF’s independence in its investigative function — which constitutes its *raison d’être* — would be severely compromised. And often nothing is more harmful than silence in a relationship with the media.

It is precisely because of its operational independence that OLAF is the only service in the European Commission to have a spokesman function which is independent of the Directorate-General for Press and Communication (DG PRESS). The relations of the Office with the media are handled on a centralised basis, in order to:

- provide the media with a single version of each material in a format that is constantly accessible, in order to prevent misunderstandings which could emerge if the information were provided by several people;
- protect the investigators and other personnel from direct media contact pertaining to sensitive areas of their work;

- ensure that the Office, rather than the individual investigators, is identified as being in charge of each investigation, to protect each civil servant's identity and avoid personalisation <sup>(23)</sup>;
- control as much as possible the risk of violation of investigation secrets and individual rights.

As some recent events have demonstrated (such as leaks of confidential documents <sup>(24)</sup>), even in a service such as OLAF, which is staffed by experienced investigators who are well-aware of their professional duties, a determined journalist can always find a disloyal person that for different reasons, objectives or interests is willing to leak information (or even worse, confidential documents) that could damage the outcome of investigations, individual rights and the credibility of the investigative service.

The Office has adopted a very strict code of conduct. For ongoing investigations it usually gives out very little or no information, taking into account the restrictions described in Communitarian and national laws, as to protect the investigations' outcomes and the fundamental rights of all persons involved.

However, OLAF makes use of all available elements to ease the media's work, in the public's interest, but taking care not to violate the legality principles on which all investigative activities should be based in a democratic system.

The most important mechanism that OLAF has established to satisfy this specific demand has been without doubt the OLAF anti-fraud communicators network (OAFCN).

## **THE OLAF ANTI-FRAUD COMMUNICATORS NETWORK**

I wish to welcome the colleagues that have joined the network in the last year. I would like to remind you that the OLAF anti-fraud communicators network (OAFCN) <sup>(25)</sup> is one of the key elements in the anti-fraud communication strategy. We have just covered the four key elements that guide us in the application of this strategy, as the four points once guided ships through troubled waters. Let us talk now about the 'crew', those who, hand in hand with OLAF, successfully guide anti-fraud communication, and share their knowledge and experience for mutual benefit, in an effort to avoid mistakes.

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<sup>(23)</sup> According to Christian Panier, in 'Justice, media, power: an infernal triangle', 'We can sometimes ask ourselves where certain public prosecutors or substitutes find the time to look at their files when we realise the amount of hours they spend talking to the press or explaining themselves to the media'.

<sup>(24)</sup> OLAF Press Release Numbers: 17/2004, 14/2004, 7/2004, 21/2003 and 3/2002 in the web page: [http://europa.eu.int/comm/anti\\_fraud/press\\_room/pr/index\\_en.html](http://europa.eu.int/comm/anti_fraud/press_room/pr/index_en.html). Number 83/2004 from the Court of Justice.

<sup>(25)</sup> [http://europa.eu.int/comm/anti\\_fraud/olaf-oafcn/fr.html](http://europa.eu.int/comm/anti_fraud/olaf-oafcn/fr.html)

The idea to create the network came up in 2001. The OAFCN owes its success to the professionalism and enthusiasm of its members. The network's goal is to give added value to the work of national investigative services, as well as to showcase the work of the different Member States and the global Community dimension of the fight against fraud. OAFCN members constantly exchange information on a legal and operational level on questions pertaining to information procedures of mutual interest. Likewise, they help journalists to evaluate, understand and document information transmitted to them by other OAFCN members, regardless of their nationality. Usually, national law enforcement services are more effective and feel more at ease with national than with foreign media. In collaboration with OLAF and other national investigative services <sup>(26)</sup>, OAFCN members provide common media coverage (videos, photos and press releases) to illustrate their operational activities.

One of OAFCN's priorities for 2003–05 is to inform the candidate countries' citizens on the various criminal activities that we are trying to fight and the risks that they represent for taxpayers. The network's last meetings have included for the first time the 10 new EU Member States, as well as Bulgaria and Romania. Our seminars and the virtual round table have also been conceived in accordance with this objective.

For the public and the media to be aware of the importance of protecting the Community's financial interests in the candidate countries, it is necessary to assure taxpayers that their money is being spent in the best possible way. This also means explaining how and why any type of fraud against the Community's financial interests, from diversion of taxes and rights that make up the European budget to the abuse of Community financial assistance, involves a real and important loss that directly affects each European taxpayer. The OAFCN members carry out common media actions to illustrate how the Member States' national investigative services collaborate with OLAF. The goal is to show the success of administrative cooperation within an operational framework.

## **ISSUES TO REFLECT ON ADDRESSED TO THE MEDIA**

To my friends the journalists, with all the respect that I have for them as a citizen, for the essential role they play in a democratic system, including the one of democracy's watchdog, I would like to send out a message, or rather, to discuss some matters to reflect on.

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<sup>(26)</sup> Some 56 % of European citizens declare that the media give relatively little information on the fight against fraud detrimental to the EU in their country. Among them, 58 % consider themselves ill informed of this issue in the other Member States, while 57 % are badly informed on the EU fight against this type of fraud. Three out of four people think that the EU must distribute more information on the anti-fraud campaigns and successes obtained in this area.

[http://europa.eu.int/comm/anti\\_fraud/press\\_room/eurobar/en.html](http://europa.eu.int/comm/anti_fraud/press_room/eurobar/en.html)

First of all, I insist on the fact that OLAF was created as a service for European citizens to defend the inalienable values that are at the core of the European Union: legality, rule of law and respect for democratic values. Therefore, all of OLAF's activities are deeply related to these values. This is valid even if OLAF's operational legal framework, created in an emergency situation by the Community Legislator in 1999, at the time of the Santer Commission's fall, cannot always fulfil the expectations of all parties involved — and this becomes especially complicated when faced with opposing expectations, as we discussed previously.

Obviously, journalists want to obtain as much information as possible on a specific subject. But the Office's obligation is to protect fundamental rights, legal standards and the integrity and effectiveness of its investigations.

I also want to stress that OLAF is, and remains, a small service. The Office has a team of about 350 employees, from the director-general, to the investigators; to the ushers... This is a small group of people in comparison with national investigative services, which have thousands of agents. But, even as a small service, OLAF handles investigations which are usually very delicate, complex, transnational, and which involve very large amounts of money. These investigations take place both inside and outside Community institutions and European Union territory. The fact that every Member State has its own legal framework and that the Communitarian one must also be considered adds to the complexity of the Office's work. To that we must add, last but not least, the language barriers...

I will now point out some of the problems and issues that are well-understood by law enforcement specialists, but may not be so by the outside world. Some of our interlocutors don't necessarily understand what it means to carry out an investigation and are sometimes unable to grasp the complexities involved in our work.

On this same note, it is quite clear that OLAF does not have a policy of 'journalistic scoops'. OLAF has no wish to conduct a communication policy marked by 'sensationalism'. OLAF's objective, above all, is to achieve concrete results in its investigations. This means that we aim to achieve results that cannot be measured by the number of positive press articles, but rather by the number of guilty verdicts, recovery measures and administrative or disciplinary procedures. This means as well, as the experts on this subject know, that these results cannot be expected immediately after an OLAF investigation has ended. Indeed, the legal, administrative and disciplinary procedures that can arise from an OLAF investigation are long and subject to complex procedures.

### **Information several years after the end of an OLAF investigation. Why?**

Why does so much time elapse between an OLAF investigation and the disclosure of the information relating to it? There are many reasons. An OLAF investigation, as any complex financial and transnational investigation, can take months and even years to complete.

Secondly, in order to confront any attacks against the Office's conclusions by the accused parties (who are very often represented by very experienced and well-prepared lawyers, considering the amounts of money involved), investigators need adequate time to prepare their files.

Thirdly, the end of an OLAF investigation often marks, as already mentioned, the beginning of another investigation (police, legal and/or administrative) in one or more States (in the EU or a third country).

And finally, due to the fact that operational results of investigations pertaining to financial and economic issues (such as guilty verdicts, recoveries, etc.) often arrive, as in every country, only after several years. In fact, in addition to the complexity of financial and transnational investigations, the majority of countries in the world, as well as all the Member States, have two if not three levels of judicial recourse.

In most cases, the involved parties may consider it beneficial to use (and will not hesitate to do so) all the grounds for appeal at their disposal.

Excessive speculation or criticism of OLAF's operational activities (which began practically on the day after its creation and which the Office has had to face and answer to one way or the other...) can considerably slow down its operational activities. This only benefits the criminal organisations that the Office has the responsibility to fight.

So please pay attention, dear journalists. Even a small investigative service can be weakened, even paralysed, by scandals or repetitive media attacks, and in such cases this only works against public interest. Prudence is therefore essential. If an investigator is at risk of being misled or manipulated, then so is a journalist. Like an investigator, a journalist's duty is to be attentive. In Brussels — the largest press room in the world, where press releases in several languages are constantly exchanged — attentiveness can become prudence by verifying information instead of simply translating it. This lack of prudence can lead to the circulation of false ideas and erroneous information. It is always prudent to ask who stands to gain from the circulation of inaccurate information. One should always ask: 'Who does it benefit?' Economic or political lobbyists, someone's personal ambitions? 'Who does it benefit?' is the question that everyone within the European Parliament, other institutions and even in the Brussels press room is starting to ask. And that only makes us feel confident, first and foremost, as citizens.

### **Is a relationship based on trust possible between OLAF and the press?**

According to a Belgian high-ranking magistrate, Christian Panier <sup>(27)</sup>, 'the relationship between the justice system and the media has never been harmonious. It will never be a good relationship because both professions are, if not contradictory, very different. For the media, the keyword is "quickly", whereas for justice and for investigative services the keyword is "not too quickly", because if one moves too quickly, one makes mistakes'.

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<sup>(27)</sup> Christian Panier, author of 'Justice, media, power: an infernal triangle'.

The experienced German investigative journalist, Mr Johannes Von Dohnanyi explained, ‘investigative journalists and investigators from institutions behave like cats and dogs. Information exchange between European investigative journalists and investigators is often so difficult — on both sides — due mainly to distrust <sup>(28)</sup>’.

In order for this relationship to become more harmonious, it is first necessary to try to create a relationship based on trust between journalists and those in charge of communication in investigative services, a personal and trusting rapport that can only be built individually and by taking everyday life experiences into consideration. But when I say a relationship based on trust, by this I do not mean based on complicity. A relationship based on trust means respect for one another’s work, legal obligations and professional ethics.

Unfortunately, this relationship can sometimes be broken. Indeed, as said by von Dohnanyi, ‘journalists go with their research to European institutions and find themselves very often being blocked in their work by these institutions and maybe even sometimes being put on the suspect list. There are also journalists who cause massacres with information given to them in absolute trust by making it public without considering the possible consequences, just to get a scoop. As always in life we need to choose carefully who we can trust’, concluded Von Dohnanyi.

In other words, in order to be effective while respecting the duties that have been assigned to him as a public servant, the OLAF spokesman must not necessarily have the same relationship with all journalists. Mutual trust must be earned by all parties involved.

As the Romanian television reporter Cristian Unteanu <sup>(29)</sup> said, to be efficient, a spokesperson doesn’t need to *give* journalists all the elements of the investigation, hand them entire files, nor introduce them to sources. Experience has shown that investigative reporters find it helpful when spokespeople provide them with key elements to understanding an issue, or facilitate their contact with investigative and judicial personnel around the world, who can give them information that the spokesperson him/herself often cannot provide. The spokesperson can also help the reporter with documentation — for example, television and magazines need images and OLAF has done a great deal to provide memorable images, such as those that illustrated cigarette smuggling for viewers and readers around the world.

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<sup>(28)</sup> Johannes von Dohnanyi, *Sonntags Blick*, Ringier AG, Zürich — ‘Investigative journalists and the protection of sources’. [http://europa.eu.int/comm/anti\\_fraud/olaf-oafc/rt/c/jvd\\_fr.pdf](http://europa.eu.int/comm/anti_fraud/olaf-oafc/rt/c/jvd_fr.pdf)

<sup>(29)</sup> Cristian Unteanu, European correspondent, Prima TV Romania — ‘Communication towards citizens: a democratic principle of the institutions work.’

[http://europa.eu.int/comm/anti\\_fraud/olaf-oafc/rt/c/unteanu\\_fr.pdf](http://europa.eu.int/comm/anti_fraud/olaf-oafc/rt/c/unteanu_fr.pdf)



The spokesperson's talent is key, as indicated by Unteanu, as is the respect given to the investigation's priorities. But I think it is important to emphasise at this point that the reporter's intelligence, ability and professionalism — as my contact with eminent reporters has shown me — will carry him or her the rest of the way.

In short, my journalist friends, a relationship of mutual trust and respect between you and the communications department of any investigative agency is essential. You should seek it out and cultivate it. But this relationship requires the respect of the law and of your professional duties.

To respect the law, according to Christian Panier, means to never do less than is required and to never do wrong. To respect professional duties means to always do more and always strive to do it better. Let us try to always respect our professional duties with the greatest intellectual honesty, because behind every investigation there lies real men and women and real lives.

### **OLAF's independence**

OLAF was created to fight fraud committed against the community's financial interests and corruption within European institutions. As such, it was created as a completely independent investigative institution. This independence entails, obviously, an absolute respect for the law under every circumstance, as well as independence from everything and everybody — from any personal ambition and from any desire for notoriety.

It is to be expected that the work of a completely independent office won't make everybody happy. When a reporter or someone very influential is unhappy, it is to be expected that they will attack the investigators' work. To think otherwise would be naïve.

Thankfully, most of OLAF's personnel has been trained to confront this type of situation. They have been trained to remain independent in the face of external pressure, including the media's.

### **WHY DOES OLAF SOMETIMES HAVE TO TAKE A PUBLIC STAND?**

OLAF does not measure its results according to the amount of positive press that it receives. This being the case, why is it necessary for OLAF to sometimes take a stand concerning the attacks carried out against it through the media? The answer is simple and based on concrete facts.

As I explained, due to objective reasons that elude the OLAF's will and capabilities, the results of its investigations — the judicial, administrative and disciplinary measures — oftentimes take months or even years to be put forward.

As European MP Lorenzo Cesa has stated in a very direct way, sometimes 'the publication of an investigation's results by the media before the court has taken action,

can transform these results not only into instruments of political squabbling, but worse, into instruments utilised by criminal organisations <sup>(30)</sup>.’ These public processes in the media, this publication of the results of an OLAF investigation therefore often need to be publicly denied or rectified by the investigative service that has been unjustly challenged, even before legal measures are taken in the case.

If an investigative body such as OLAF, as many would like it to, refrained from exercising its right to rectify or clarify the allegations and speculation that have often threatened to compromise it, this would damage not only its aesthetic image, but its credibility. And let us not forget that the Office’s cooperation with its partners worldwide depends on the credibility and the professionalism of its investigators, the majority of whom were recruited from among the ranks of highly experienced judges, police officers, customs officials and European investigators.

These allegations can have serious consequences if they are made prior to judicial or administrative rulings which would establish the facts of the matter and individual responsibilities in that particular case but which is often only reached several years later. During this period of time the Office’s credibility is undermined. And should this occur at a time when the Office is involved in investigations that attract the attention of the general public and official institutions both in Europe and at times throughout the world it is easy to imagine the effect that this might have on public opinion.

Over the years, OLAF has become an essential instrument of international cooperation, very much appreciated by its partners at national level, with whom it has built close ties that are strengthened regularly <sup>(31)</sup>. If the Office lacked the right and the technical resources to defend itself publicly with weapons similar to those with which it is unfairly attacked (for example, statements to the press), it would come to an end. This would end the hope of creating a true legal system that looks out for the interests of all of Europe’s citizens.

This is why, with the prudence that is required, we believe that this Office has the duty — not only the right — to publicly respond to public accusations, as well as set in motion any necessary processes at the indicated institutions to protect its institutional credibility.

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<sup>(30)</sup> Lorenzo CESA, Member of the European Parliament, Vice-President of the PPE Group (DC) and of the DE, member of the Budgetary Control Commission — *Cui prodest* “OLAF without communication ?”

[http://europa.eu.int/comm/anti\\_fraud/olaf-oafcrt/c/cesa\\_fr.pdf](http://europa.eu.int/comm/anti_fraud/olaf-oafcrt/c/cesa_fr.pdf)

<sup>(31)</sup> To wit, the very positive statements made by the heads and the general directors of the main national police, customs and judicial institutions who are partners of OLAF on the ground. These statements can be read on OLAF’s website :

[http://europa.eu.int/comm/anti\\_fraud/partners/tribune/index\\_en.html](http://europa.eu.int/comm/anti_fraud/partners/tribune/index_en.html)

## CONCLUSIONS

Despite the numerous and rigorous rules that regulate the information and communications policies at an investigative service such as OLAF — which apply not only to media relations, but also to general information, publications, videos, Internet, public relations and others — we will always be confronted by different points of view, which can be explained by the diversity of approaches and perspectives linked to national cultures, as well as different professional environments and even personal interests.

The two most extreme points of view come from two different schools of thought. On the one hand, there are those who would like everything to be made public, from the moment the investigation begins, and on the other hand, there are those who would prefer it if the investigative bodies remained permanently silent and devoid of any and all communication instruments.

The anti-fraud communication and information policy put forth by OLAF — a service that the legislature designed to be independent — is located somewhere between these two extremes, aiming for a balance that is not always easy to achieve. Independence, in a rule-of-law system, implies the absolute respect for the law under every circumstance, especially in the face of personal ambition and the desire for notoriety.

Luckily, the majority of OLAF's personnel was trained and is prepared to confront this type of situation. They are trained to be independent from every form of pressure, internal and external to the European institutions, even the pressures of the media.

'Transparency, service to the citizen and prevention' are the keywords of the OLAF's information and communication policy, but always within the strictest respect for the law.

The implementation of this policy requires not only ideas, but also moral rectitude and professionalism. It also requires human and financial means. It requires above all the political support of the European Parliament and the European Commission.

And it also depends upon the understanding and the support of the professional associations of journalists, as we build a relationship based on trust and a mutual respect for our legal and professional obligations.

The seminars and the forum initiated by OLAF to discuss the topic of communication as an instrument to prevent fraud also intend to provide the opportunity for a detailed study of the specificities of communication and information in the area of fraud prevention and to examine the ways in which they should be carried out. Here are some questions that we should reflect on.

- ✓ Once we accept that all anti-fraud bodies (police, customs, financial services, control and administrative services, etc.) must carry out information and communication activities, how should these actions help in the prevention of fraud, inform citizens about how their money is being spent and reduce the distance that separates them from Europe without degenerating in propaganda?

- ✓ What is the difference between information, communication and propaganda and what are the boundaries that separate them?
- ✓ Given the fact that the media are among the main information and communication instruments of any public institution, at national or Community level, what rules should govern the relationship between an investigative body and the press? And which press are we talking about, at European level and in the new countries? Can we rightfully refer to a ‘European press,’ or are we referring to a diverse group of national, regional and local media outlets?
- ✓ Press relations are important. But information and communication actions are not limited to relations with journalists. There are other instruments that we must know and use appropriately, and even perhaps differently from country to country, in order to bring our institutions closer to the citizens. What are these instruments?

If during the reflections that are to follow we are able to come up with some clear and concrete answers to these questions, I think that we will have achieved the main goals of our event. If each of us leaves here with some new ideas, some clear ideas, about how to improve our respective institutions’ work in the area of fraud prevention, we could, I believe, all be satisfied with our work.

*Alessandro Buttice*