

4TH TRAINING SEMINAR OF THE OLAF ANTI-FRAUD COMMUNICATORS' NETWORK (OAFCN)

Deterring fraud by informing the public: round table on anti-fraud communication from 24 to 26 November 2004

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THE ART LIES IN THE DOING

Communication: the art lies in the doing. The word "art" calls for an explanation. It should be understood not as referring to the rather vague activity of the artist but in its other sense of skill, of know-how.

The resources available to an anti-fraud department, whose main mission is to undertake investigations, include communication. This is not just a statement of principle; it is in the logical sequence of things.

There is a simple reason for this: investigations consist of detecting the mechanisms by which defrauders unduly appropriate public funds that are supposed to be used to improve the living conditions of the general public. So to investigate is to discover. Communication is the logical consequence of discovery, since communicating means disseminating knowledge of what has been discovered. If the successes and failures of investigations were simply stored out of sight in a filing cabinet, the public would be deprived of information to which they were entitled.

There is therefore no fundamental discrepancy between investigative activity and communication; both partake of the same spirit, the same logic.

But that is not the only reason. Article I-46(3) (principle of representative democracy) of the European Constitution, which has admittedly not yet been ratified, states that "*Decisions shall be taken as openly and as closely as possible to the citizen*". In relation to the work of investigative bodies, there is no proximity to the citizen if information is not supplied on the way decisions are taken, the content of investigations and their findings.

This may seem simple and really quite obvious, but the picture becomes complicated as we go into the subject in greater depth. The values we all share are values inherent in the rule of law. Article I-2 of the Constitution provides that "*the Union is founded on the values of ... the rule of law*", one of these being "*respect for human rights*".

The rule of law means that we are under an obligation to abide by principles expressed in primary legislation and instruments adopted under it. I should like to begin by reviewing these constraints under which we operate and then go on to consider how they can be reflected in our communication activities.

Incompatible principles?

In a State governed by the rule of law, public freedoms are the ultimate guiding principle, along with legal rules imposing limitations on them. We can never overemphasise the point that the law sets the limits on the area of freedom; it does not impose compulsory forms of conduct; it merely sets the limits that cannot be overstepped. And overstepping them is a crime.

What are the limits that those in charge of communication may not overstep?

All investigation services are required to enforce the law; that is what they are there for. If they break the law, their very image is at stake as their function is to enforce the law and violating it automatically discredits whatever action they take subsequently. Being at pains to respect fundamental human rights and freedoms, investigation services can therefore neither say nor do anything that is in conflict with these elementary rights. The first of these prohibitions flows from the confidentiality of investigations, which serves both to protect the person likely to be found guilty of wrongdoing (but enjoying the presumption of innocence) and to ensure that investigations proceed properly without risks from inappropriate interference and intervention (protection of evidence and sources, since investigation services also have sources). In the absolute, for considerations both of evidence and of public freedom, none of the information gathered in an ongoing case can be revealed. But it must be borne in mind that the prohibition is not absolute; it covers the facts of the case and the individuals and bodies under investigation. There is no reason why a service should not state that an investigation is in motion, provided that it does not say who is involved.

Apart from this, there is the principle of the freedom of the press, a public freedom which must be seen as a clear sign of democracy. It does not exist in dictatorships and authoritarian systems. The function of the press is to inform the public, and the investigation services also wish to inform the public of their anti-fraud activities. Two needs dovetail, and in an ideal world it could almost be concluded that life is easy. But this overlooks the fact that what our journalist friends want does not correspond to what we can give them. They want personal data; we cannot accede to that. They want the details of the case; we cannot provide them. The divorce starts here.

The diagnosis is as tough as it is simple: the principles to which we refer are paradoxical. You will observe that I did not say incompatible but simply paradoxical.

The initial reaction might be to go for a strategic withdrawal, on the ground that any form of communication raises the risk that we might violate the rules we have mentioned. This is the temptation of isolationism, but it provides only apparent protection since it has two major defects:

- Ø We cannot generate any kind of awareness of our investigation work and there is thus a contradiction with what I said by way of introduction regarding the value of communication as a means of preventing fraud.
- Ø What is more, isolation weakens the investigation service since we would be deluding ourselves if we believed that it offered any form of protection. Not pursuing a policy of openness towards the general public leaves the field open to one's detractors, who will be all the bolder since they will never be contradicted. This really must be borne

in mind as in this day and age the investigation services are more exposed than they used to be; they handle issues which have become a matter of public concern and a political issue.

After careful thought, and this is why I did not say *incompatible*, the question is not whether we must communicate but how we must communicate in order for these paradoxical principles to co-exist. And this encapsulates the point that communication is an art that lies in the doing – and in doing the task well.

An art that lies in the doing

It really is true to say that what counts is the doing; opposing forces have to be reconciled, and the way forward is narrow and hazardous and has to be reinvented every day. There are times when it seems more like a tightrope than even a mountain track.

In short, the job is not an easy one, and I would like to share with you a few ideas on how to answer the following questions:

What should we communicate, on what subjects, when, how, with whom?

What should we communicate, on what subjects?

This paragraph should not be the longest one because we already know the answer: we can communicate whatever is not prohibited by the law. It is intangible and irremediable. I cannot concur with what Oscar Bartoli told us the day before yesterday – that we must say everything, say it quickly and tell the truth. I will come back to this question of the truth, but one thing is clear: the communicator cannot say everything, for he would be creating major problems for himself. No investigation service can name either individuals or firms without violating the presumption of innocence. What would one say of an investigation service which said everything and said it quickly? It would be rightly accused of violating the law and fundamental principles. The very purpose of its work would be undermined and would be doomed to failure.

You are already starting to think that I am closing the hatches like a submarine ready to dive. Nothing could be further from the truth. For on Wednesday I heard both Daniela Filipescu and Johannes Von Dohnanyi say that what a journalist needs is often not the detail of the case (he already has it) but confirmation. The case (Puwak) mentioned by Daniela was exemplary. She needed confirmation. She obtained it from OLAF without OLAF breaking any law. Since I speak about art that lies in the doing, here is a first component that falls fully within the spokesman's art of communication: stick to what is not prohibited. And there is real room for manoeuvre here.

At this point, I would like to quote an African proverb: *“You hear the sound of the tree that you fell; not the sound of the forest growing.”*

The art of the communicator as is to take every opportunity to convey the sound of something other than the crashing of the felled tree, in this case the sound of the forest growing. Alessandro Buttice said on Wednesday that we have to explain a lot of things to journalists, and ultimately to the public at large, because all but a few of them are generalists rather than lawyers or specialists in investigations. He clarified this by reference to the limitation period

for public prosecutions, a sophisticated legal concept that can produce absurd results if it is not used carefully. By the same token, a case can always provide a communicator with an opportunity to help his contacts, especially when they first “meet”, to understand the background to investigative activity, the way the service operates and so on. He can make the discreet sound of the growing forest audible.

Lastly, before moving on from this first point concerning the content of communication, it is important to remember that, in circumstances that the communicator must analyse, it is still possible to say nothing and apply a No Comment policy, at least temporarily. Here again, the art is in the doing, since the option must be exercised rarely and cautiously. I share the view of Raymond Kendall, Chairman of the Supervisory Committee, who told us on Wednesday morning that, given how difficult it is to maintain secrecy, in particular in the European institutions, we must say at least *something*. And Johannes Von Dohnanyi echoed this when he reminded us that there will always be somebody somewhere who wants to talk. Total silence must be the exception, justified in specific circumstances only.

When to communicate?

The question could also be put in a quite different way: when should we start communicating? The answer will depend very much on the circumstances of the case and the objective being pursued.

If we spontaneously set about telling the public about the *forest that grows in silence*, which for present purposes means telling them about how the Fraud Office actually goes about investigating cases and what results it achieves, our communication must be at regular intervals and must always be inspired by the objective of generating the widest and fullest awareness of the efforts made and the difficulties encountered. The preventive effect of communication depends on this. The communicator is then no longer responding to pressure but taking a pro-active, dare I say didactic, approach. He conveys a message, he provides information that will help the general public and the professionals to comprehend the successes and failures of a particular course of action when the time comes.

In other circumstances, the spokesman will not have taken the initiative. His communication will be in response to a request and it is clear that the way he responds will depend on the type of request. A specific request relating to a specific case will obviously receive a different response from a more general request for better information about a service. I am tempted to say that the art of communicating consists partly in making it possible to hear the forest growing as well as the tree falling.

Lastly, there are situations where the communicator is not primarily responding to a request for information but putting up a defence against an attack. This is not a common situation but it does arise, as we know from experience. The communicator will no longer be able to convey the sound of the growing forest as all ears will be focused on the crashing tree.

When communication is not spontaneous, the communicator will always be meeting an urgent need under the barrage of questions and calls for explanations. And that is when he most needs to preserve his sangfroid, because as Edgar Morin said, “*When we respond to short-term pressures, we lose the capacity to think*”. And if there is one area where we dare not lose our capacity to think, even just once, this is it, for otherwise communication will be over. And for a long time to come.

Where the service comes under attack, before we decide how to respond we must first decide whether we actually need to answer. Is it really necessary? The risk is that we will feed the vicious circle of polemics. Communicators must be cold-blooded animals, and it may be preferable to say nothing, in particular when the remarks made are exaggerated, because we have known since the time of Talleyrand that “*Anything exaggerated is not worth taking seriously*”.

As these three situations show, the art of the spokesman and the communicator really does lie in the doing. He must both draw attention to what really matters and avoid being constrained by the need to react to events.

How to communicate?

The first rule is to communicate without embarking on debates that lead nowhere, without drawing battle-lines, but always taking a neutral tone; taking care in particular to avoid polemics, obviously, but above all avoiding any hint of a value judgement. As the French composer Hector Berlioz put it: “*We need to take a cold look at the burning questions*”. So let us follow the cold advice of deleting all adjectives and adverbs and presenting the bald facts. And let us follow the advice of our Commissioner, Siim Kallas, who recommended us to be “*professional, impartial and neutral*”. These are golden rules which have proved their worth. But there are more.

After a genius from the musical world, allow me to quote a writer, Albert Camus, who stated: “*Every ambiguity, every misunderstanding can be fatal; only clear and simple language can save us from this death*”. Actually death is far from my mind, but Camus was right in that ambiguity kills lucid and serene thinking because it opens the door to manipulation and evasion. It follows that precision is the *sine qua non* for quality communication. Approximation is out of place and must be rejected.

But communication must not only be precise, it must be simple. Otherwise, we will not be understood by the general public or by the professionals that it is our job to inform and to reassure as to the real impact of the work done by the investigation services. Again, the art lies in the doing, since we must take up the dual challenge of being simple with the risk of being inaccurate and of being precise with the risk of being complicated, bearing in mind that the rules governing the fight against fraud and financial crime are not generally regarded as being easy to understand.

What we can say here is that, within the limits of what the law allows, communication must be based on the facts, which, as Julia Bokeva said, “*have always been the greatest challenge because they create an obligation to think*”. And not just to comment, may I add. The communicator, in addition to his talent, must have confidence in the facts which in themselves are a raw material that is rather difficult to manipulate. The facts are obstinate, and reality, as one philosopher said, is irremediable.

With whom to communicate?

The name of this seminar implies that we are to communicate with the public. But the concept of the public is rather a broad one. That means, of course, that there is no scope for exclusivity in a communication policy: everyone is concerned. To tell the truth, I would rather refer to the

citizen, because fraud is combated on his behalf and for his benefit. Moreover, as head of unit, I am not dissatisfied if a well-run communication policy informs potential fraudsters of the risks they run, secretly hoping that they might be deterred from their criminal ways.

The art of the communicator is precisely to open his communication policy to everybody while adapting his message to the target audience. One does not address the same message to professionals, to politicians and to the general public, who may not be so familiar with the fight against fraud, but what my own experience has taught me is that the need for communication is essential if the effectiveness of the investigation function is to be enhanced. From time to time, I return to France to address groups of fellow members of the active judiciary. Technical communication about our work and the possibilities of collaboration always generates enthusiasm and improves understanding of the synergies that we can put into effect. But sometimes I also make presentations to groups which ask me to do so, such as associations or think tanks, and every time I see that people are relieved to discover that there is a body in Brussels which detects frauds, brings fraudulent techniques to light and recovers as much money as it can. They are just as satisfied to learn that there are relay arrangements in place in all the Member States that continue and back up our efforts.

Lastly, my personal conviction is that any communication policy must also be addressed to the political authorities. There are two main reasons for that:

- Ø They have legitimate institutional authority over us and we are answerable to them.
- Ø Since they are not professionals, they need to be informed, if only so that they can exercise their decision-making function.

The art of the communicator is also to fulfil this mission in all its diversity but in all its wealth.

But that said, there remains the question of the media, because communication policies tend to depend on them. So asking with whom we are to communicate entails the question through whom we are to communicate?

This brings us to a key point of the problem where we all realise we are on less solid ground. Strong words were said both during our debates on the first day and at our second workshop on the partnership between investigation services and the media.

The press is free in a democracy and, consequently, it can deal with the data it receives as it sees fit. Freedom can go as far as challenging the work of the institutions and even of the investigation services. In his relations with the media, the spokesman will be constantly mindful of the Chinese proverb which reminds us that “*you are the master of what you say but what you have said is your master*”. If you do not want your words to come back and haunt you, it is essential to establish a partnership with the press. I remember that Alessandro Buttice spoke of trust right at the beginning of this seminar. Trust shared with the majority, though not necessarily with all. As if echoing him, Johannes Von Dohnanyi answered: test us, test our cooperation and see whether it works. But he also said that one had to test without manipulating. I agree, and I would like to repeat what Alessandro said when he called for a relationship without lies and without manipulation. I will take the liberty of making my contribution to the debate by proposing that communicators should be prohibited from practising seduction. We have nothing to sell. Lies, manipulation and seduction are the very opposite of what Oscar Bartoli recommended: tell the truth. You cannot say everything, but

whatever you say must be true. That is the price to be paid for the trust of the media and of the public. In addition, it is what the network must offer you: contact points which you trust because you know the people in it.

To conclude on this sensitive question, I should like to remind communicators of a very specific aspect of their mission that, in my opinion, further illustrates my point that the art lies in the doing and that they must acquire and develop this ability. The press often know far more than we think, but sometimes they need confirmation or orientation. Let the communicator say whatever he can say without breaking the law, in the context of his partnership with those he feels he can trust, and let the journalist do the rest; for we should not forget that the journalist is also a professional (or should be, at any rate).

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Actually, I have not told you anything new.

My objectives were of a different order:

- Ø First, to show that information is a core concern for fraud investigation services. Pardon my metaphor, but what can you know about a perfume if you have never opened the bottle? Nothing! Not the slightest hint of its fragrance! Some things are simply not possible in today's world.
- Ø Then, to stress that the communicator's art is a difficult art which, once the path to be followed has been signposted by the rule of law and public fundamental freedoms, resides in the ability to act with every form of subtlety in every situation. This is why the art truly lies in the doing. As the philosopher Merleau Ponty said, "*A philosopher is a person who has inseparably a taste for the obvious and a sense of ambiguity*"; we could paraphrase him by saying that a communicator is a person who has inseparably a taste for making his investigation service well known and a sense for the limits set by the rule of law.

Nobody will dispute that this is a difficult art, but I suggest that this is what actually makes it so interesting. And in any event it is the way to be followed. And to really drive the point home, let me quote three people, two of whom have already gone down in history:

- Ø Seneca, whose advice to communicators dates from two thousand or so years ago: "*It is not because it is difficult that we do not dare to do it; it is because we do not dare to do it that it is difficult.*"
- Ø Leonardo da Vinci, who argued five hundred years ago that: "*Thinking is easy, acting is difficult, but acting in accordance with one's thoughts is the most difficult thing in the world.*"
- Ø And Siim Kallas, the European Commissioner, who introduced our work with the words: "*The task is difficult but possible.*"