

Florian Neubann: *“Fighting corruption in the European Union”, 2004*

OLAF and the public:

Why the European Anti-Fraud Office should attach more importance to the active involvement of the public

An institution set up specifically to combat corruption must measure its success in the light of two overriding questions: first, is it effectively combating corruption and fraud? And, second, is its work perceived as credible by the public and does its existence increase the credibility of the political system as a whole? Operational effectiveness and political credibility go hand in hand. For both criteria, one factor is key: the involvement of the public in the fight against corruption and fraud. If that fight is to be successful in the long term, an anti-corruption agency must win the community, other anti-corruption bodies and, most of all, the population over to its cause. It does this, for example, through public information campaigns, press work and active dialogue with the other bodies involved in combating and monitoring corruption — in short, through what LALA CAMERER has described as “public interaction”:

“If little has been done to involve the community in the work of the agency, the inevitable result is that the public comes to distrust the agency and provides no information about what is going on. Without that information the agency’s investigative powers are useless.”¹

This is especially true of an institution like OLAF, whose creation in 1999 was the focus of media attention and, together with the announcement by the newly appointed Commission President at the time, Romano Prodi, of a “zero tolerance” policy towards fraud and corruption, led to high and sometimes unrealistic expectations of the Office among the public.

Five years on, however, it is difficult to measure OLAF’s success in involving the public in its work. Any assessment must also take account of the early stages when the Office focused more on itself, establishing internal procedures and processing old cases left behind by its predecessor UCLAF than on proactive communication and public relations work with the outside.

On the one hand, the increase in information about possible fraud cases received by the Office since its creation (1999-2000: 322 notifications; 2002-2003: 585 notifications, 2003-2004: 637 cases reported²) clearly points to a boost in its profile and credibility compared with its predecessor UCLAF.

However, the Office, still little known by the wider public, has so far tended to fall short in this aspect of its work. Since its creation, it has regularly been criticised for its setting of priorities and has clearly not yet been successful enough in giving a convincing account of its policies to an interested public and to Parliament and explaining its priorities.

While the setting up of the Office was positively received by the public at the time, OLAF came in for some heavy criticism in 2004 in particular. A shift in public opinion came especially after the so-called TILLACK affair, when information in the Office’s possession about the presumed bribery of a member of its staff by the Stern correspondent at the time, HANS-MARTIN TILLACK, led in March 2004 to the latter’s office and private residence being searched by the Belgian police;³ since then, some journalists most of all have taken a hostile view of the Office.⁴ OLAF

¹ Camerer, Lala: Prerequisites for Effective Anti-Corruption Ombudsman’s Offices and Anti-Corruption Agencies, 10th International Anti-Corruption Conference Prague: Workshop Papers, 10/2001. Internet: <http://www.10iacc.org/download/workshops/cs06.pdf> (15. 8. 2004).

² OLAF: Activity Report for 1999-2000 and Activity Report for 2002-2003. Figures for 2003-2004: Office’s own figures, not yet published.

³ See OLAF’s account of the case at:

http://europa.eu.int/comm/anti_fraud/press_room/pr/2004/14background_en.html (22.9.2004). Regarding the accusations by Stern’s journalist, see Tillack, Hans Martin: *Kontakt zu gut informierten Kreisen* at:

must do far more in this area if it is to reach the level of “public interaction” which is vital to its success.

The opinion of OLAF’s Supervisory Committee to the effect that the Office’s press policy is “secondary” and should “remain limited” in view of the risks it entails for the respect of fundamental rights and the reputation of the institutions⁵ must be decisively refuted. Although there is undoubtedly a potential conflict between the goals of active press work and protecting the rights of the individuals involved, information about successful anti-fraud work makes a key contribution to boosting the Office’s deterrent effect and credibility. (Pro-)active press work is a tried-and-tested means of informing the population about the fight against fraud and winning their support for it. In view of the problem that has been identified with the legitimacy of European integration, including on account of perceived corruption, the Office’s information policy cannot be secondary.

To date, the Office has taken a reactive and extremely guarded approach to its official press work⁶ – doubtless on account of its specific legal situation: the successful completion of an OLAF investigation usually signals the start of criminal proceedings in a Member State; over-detailed information might endanger the success of the national criminal investigation. However, information about OLAF investigations has on numerous occasions reached the public - not through official channels but through leaks from the Office itself. Obviously, this deficit has to be put into perspective as it is symptomatic of the European Union as a whole;⁷ but, in precisely such a sensitive area as combating fraud, it undoubtedly does not serve to enhance OLAF’s credibility. To counter this problem, the Office should first take steps to increase staff identification with OLAF and reduce the likelihood of internal leaks (increase internal transparency and communication in order to boost motivation). Second, OLAF must alter its perception of the media: up to now, the latter have been regarded as more of an opponent than a potential partner in the fight against fraud. Both sides could benefit from a more open approach on the part of the Office; and extending OLAF’s official activities to include press and public relations work, without infringing the rights of individuals or data protection, makes perfect sense (more press briefings, greater transparency regarding the conduct of investigations, especially where they are closed without a result, more public conferences on the prospects for anti-fraud work, etc.).

The Office’s education and prevention work (which admittedly is not listed as one of its tasks in the underlying legislation) has also been neglected up to now. Day-to-day practice in the European Union’s Member States shows that a change of thinking is needed here: the EU budget

<http://www.forum-online.lu/textarchiv/2004/237/hmtKontakt%20zu%20gut%20informierten%20Kreisen.html> (1.9.2004) and Leyendecker, Hans: *Abgrund an Amtsversagen in Süddeutsche Zeitung*, 9.6.2004, p. 22. OLAF responded to these accusations: see its press release *Clarification regarding OLAF internal investigation and Belgian judiciary investigation on a leak of confidential information*, Brussels, 23.3.2004, at:

http://europa.eu.int/comm/anti_fraud/press_room/pr/2004/07_en.html (1.8.2004) and the journalist's own account.

⁴ Interviews with German media correspondents in Brussels, 25.5., 24.6., 24.8., 26.8., 9.9. und 29.9.2004.

⁵ OLAF Supervisory Committee: Opinion No 2/03 accompanying the Commission’s report about the evaluation of the activities of the European Anti-Fraud Office (OLAF), Luxembourg, 18.6.2003, see Chapter IV.3 (Communication), p. 21. Available online at:

http://europa.eu.int/comm/anti_fraud/reports/sup_comm/2003/avis/en.pdf (1.9.2004).

⁶ From 2000 to the present (as at October 2004) the Office has issued 82 press releases, i.e. less than two per month on average. Of these press releases, less than half (38) related to specific OLAF investigations; most of them only contained OLAF’s reaction to information which had already been published in the press. For the Office’s communication strategy, see OLAF’s homepage:

http://europa.eu.int/comm/anti_fraud/olaf-oafcn/rt/i_en.html#strat (15.9.2004) and the Round Table on Anti-fraud Communication set up by the Office:

http://europa.eu.int/comm/anti_fraud/olaf-oafcn/rt/i_en.html (15.9.2004).

⁷ See Wernicke, Christian: *Der Beton lebt in Süddeutsche Zeitung*, 9.10.2004, p. IV. The author writes of the Brussels eurocracy: “Nothing stays secret, almost every document eventually - in the strictest confidence - becomes public. The visitor just has to know which document he is looking for.”

is rarely perceived by the public as being taxpayers' own money. Instead, it is frequently seen in terms of a "self-service shop", not needing to be spent with particular care.

As a Commission department, OLAF should not be merely reactive, but in future should also take a more preventive approach to the fight against fraud. Successful anti-fraud work is built not only on detection and prosecution, but also on a third, equally important, pillar: that of prevention and education.⁸ To date, both the European Union as a whole and OLAF itself have neglected this aspect of combating fraud. Five years after its establishment, it is now up to the Office to make good this shortfall.

⁸ On the importance of involving "civil society" in the fight against corruption and fraud, see the recently adopted UN Convention against Corruption - Art. 13: Participation of Society. The text of the Convention can be found on the website of the United Nations Office on Drugs and Crime (UNODC): http://www.unodc.org/unodc/en/crime_convention_corruption.html (18.8.2004).