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Information and fraud prevention in the European Union: the viewpoint of a criminal procedure lawyer

(Round Table on Anti-Fraud Communication)-*OLAF*

1. At the end of the last century a well-known German scholar “read”, reconstructed and probed criminal procedure from the point of view of information in (INPUT, evidence) and data out (OUTPUT, decisions by the judicial authorities). Nowadays there is probably no aspect of society or the law that escapes this kind of scrutiny. The questions OLAF wishes to discuss not only highlight the growing importance of information flows, but are being looked at, understandably, in the context of the more or less confidential and quasi-judicial investigations carried out by the European Anti-Fraud Office.

At first sight, the discourse clearly has different aspects:

- a) investigative and information services: here a balance must be found between the need for confidentiality, to avoid compromising the outcome of investigations, and the public’s right to be informed. The problem is akin to the old question of “publicity” in criminal procedure;
- b) methods of information: thought must be given to the use of news, both from the point of view of technology (media or otherwise) and forms of dissemination. This second aspect obviously presupposes a very flexible response to the first.

2. On the first point, there is one thing I think must be stressed: the right of citizens to be informed of the investigations carried out by OLAF. To reverse the order of points for discussion somewhat, I believe we must ask why and to what extent the right to information (see also Article 10 of the ECHR) should not be satisfied.

It is worth pointing out how useful it is to disseminate news about OLAF activities. Making public OLAF's findings and its attempts to uncover fraud against the Community's financial interests may serve two purposes: it gives people the sense that the Union's assets belong to all the citizens of the Member States, and, as well as this awareness of the common good, it spreads the sense that any offence against those assets is unlawful. This is the only way to make people aware of the importance of the resources that are essential to the Union. We should remember how often we have heard the complaint that the European Community is too "remote" from ordinary people.

Now the question has been rephrased, it is easy to acknowledge that the right to information may be sacrificed if the essential requirements of the investigation so dictate. It may be sufficient to give reports that conceal references making it possible to identify persons or companies. The need for confidentiality in investigations is subordinate to the right of information, if confidentiality is not absolutely essential to the effectiveness of the investigations.

3. It is a simple matter, even in the short time allowed here, to look at the second aspect, i.e. the methods of information. Once we agree on the absolute need to inform Union citizens about what is being done to prevent fraud against the Community, it is obvious that such information must be broadcast via the medium that reaches most people, television. More complicated is the control over the accuracy of the news to be broadcast: to this end it would be appropriate for OLAF, not least in order to balance the right to information and the need for confidentiality, to check the information via its own press office.