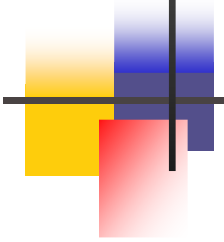


- Economic Crime and Legal Competence in the EU
- Brendan Quirke
- Liverpool John Moores University



# FRAUD UPON EU BUDGET

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**Can take different forms:**

- **Income Frauds**
- **Expenditure Frauds – CAP, Structural Funds etc**



# WHO HAS LEGAL COMPETENCE TO INVESTIGATE & PROSECUTE?

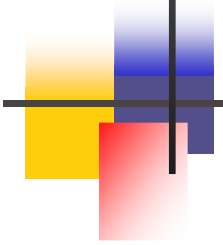
**OLAF is lead transnational institution:**

- **Mission is to protect financial interests of EU & to fight fraud, corruption & other illegal activity having financial consequences for EU or its funds**
- **Carries out investigations within EU institutions (internal) & within Member States (external)**
- **Has no power to prosecute**

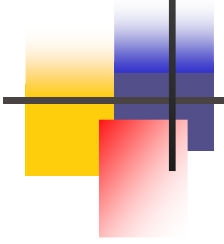


# PROPOSALS TO AMEND OLAF'S POWERS

- **Prevents EU institutions and bodies from conducting own internal investigations on matters under investigation by OLAF**
- **Clarifies OLAF's powers to conduct external investigations**
- **Enables OLAF to have direct access to information held by institutions, bodies etc in conduct of external investigations**
- **Requires OLAF to inform EU institution immediately that it is being investigated**



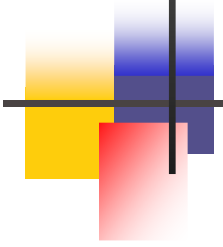
- **Establishes procedures to ensure fundamental rights of individuals being investigated**
- **Strengthens role of Supervisory Committee**



# **OBSERVATIONS & CRITICISMS**

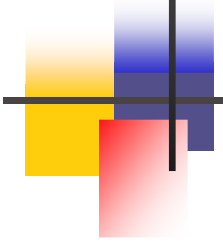
**Requirement to inform Institutions of investigation:**

- **Investigation could be compromised**
- **Up to discretion of investigator**
- **Compromises independence of OLAF**



## **Powers of Inspection:**

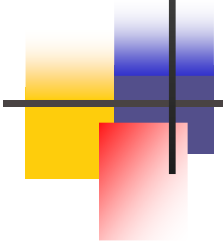
- UK Govt worried that amending OLAF's powers could compromise ability of national agencies to conduct own investigations**
- Liaison crucial as evidence gathering could be compromised**
- Credibility could be compromised – duplication of investigative effort**



# SHOULD OLAF BE INVOLVED?

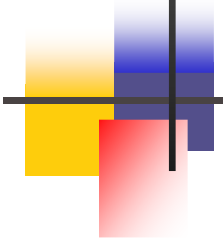
- **OLAF work could serve as preparatory phase for prosecutions in national courts**
- **OLAF has sought to establish co-operative agreements with national investigative bodies**
- **OLAF has European wide view which no national agency could have**
- **Staff have a wide range of expertise**





**YET:**

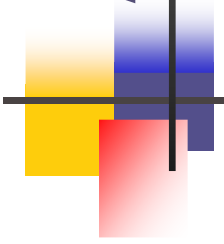
- **Problems with national courts accepting evidence collected by OLAF**
- **Delays in OLAF becoming involved**
- **Could external investigations be carried out through Commission DG's (Levi & Dorn 2004)**
- **OLAF resources then freed up for internal investigations – duplication of resources?**



# INDEPENDENCE OF OLAF

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- **OLAF part of EU Commission**
- **Commission has influence over appointment of Director**
- **Internal investigations – Commission is investigating itself – this cannot be right!**
- **Requirement for nationality balance and large number of staff on temporary contracts could disrupt complex investigations**

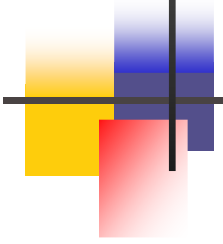


# ACCOUNTABILITY OF OLAF

**Answerable to a number of bodies:**

- **EU Commission**
- **OLAF Supervisory Committee**
- **European Parliament**
- **European Court of Justice**
- **European Court of Auditors**
- **European Ombudsman**

**Who does it account to for its investigatory activities?**



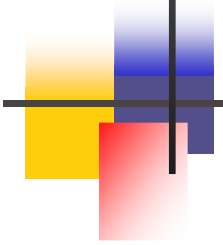
# **ROLE OF EUROJUST & EUROPOL**

**Eurojust supports & strengthens co-ordination and co-operation between national investigating & prosecuting authorities**

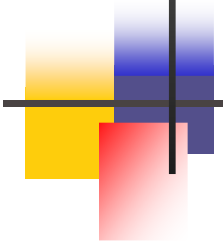
**Opportunities to co-operate with OLAF?**

**Eurojust believed that OLAF saw it as competitor**

**OLAF set up its own Magistrates unit & liaised directly with Member States**



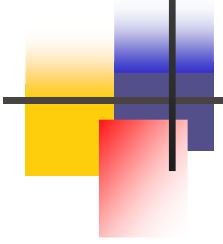
- **Fragmentation – duplication & waste of resources**
- **Both parties have signed a Memorandum of Understanding – potential to develop relationship and give OLAF some judicial authority!**



# **ROLE OF EUROPOL**

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- **Role in EU Fraud needs to be developed**
- **Late 1990's, Commission believed that Europol more interested in drugs & terrorism**
- **How should OLAF, Europol & Eurojust fit together?**
- **Merger of OLAF & Europol? Investigative and intelligence capabilities**



# EXPANSION OF EU

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- **Problem of fragmentation can only be exacerbated**
- **Community Institutions have to cope with 10 new legal systems**
- **Despite support – new Member States asked to bring structures up to standard of established members within a short period of time**
- **May not have sufficient financial resources to fund anti-fraud institutions and structures**



# LACK OF COHERENT LEGAL FRAMEWORK

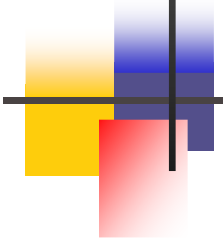
- **Fraud has to be fought across 25 different legal systems within EU and many more outside it**
- **Difficulties & differences in procedure as well as tradition & jurisprudence**
- **Criminals exploit differences to their advantage**
- **Response ad hoc**
- **Corpus Juris project – unpopular with many Member States**





# Response to lack of Legal Framework

- **Tampere European Council 1999 – principle of mutual recognition**
- **Attempts to co-ordinate judicial proceedings – creation of Eurojust**
- **European Arrest Warrant**
- **Proposal to establish European Public Prosecutor**
- **UK House of Lords view could OLAF & Europol be merged with EPP in control of merged body?**



# CONCLUSIONS

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- **Fight against fraud hampered by legal fragmentation**
- **Fragmented approach to investigation & control – multiple actors difficult to coordinate**
- **Who owns fraud? OLAF may be lead agency but highly dependent on Member States**
- **Need for coherent legal code to support activities of European Fraud Squad**