

Judit Harmati - Liliana Laris - Tamas Meresz
Public Prosecutor trainees of Hungary

consultant: Barna Miskolczi
Public Prosecutor

International Cooperation in Criminal Matters
in the European Union

THEMIS

Initial Training International Competition
- Third Edition -

National Institute of Magistracy
Bucharest, 2008

Table of Contents

I. Introduction	3
II. Historical Background	4
1. The beginning	4
2. Development of special cooperation	5
III. Procedure on the protection of financial interests	7
1. "Battle of competences" in the range of criminal cooperation	7
2. Special cooperation in the European Union in criminal matters – comparing traditional mutual assistance and cooperation in criminal matters towards the community budget	9
IV. Criminal regulation protecting the financial interests	11
1. Reasons	11
2. Infringement subject of the PIF Convention	11
3. Examples of conduct	12
4. Conducts in the PIF Convention	14
5. The Hungarian provisions	14
V. The European Anti-Fraud Office - OLAF	16
VI. Future – de lege ferenda	20
VII. Bibliography	23
Legal background	23
Case law	24
Hungarian law	24

I. Introduction

Our document is concerned with the theme of international cooperation in criminal matters. We focus on a relatively new way of cooperation, which is still in conformation, but already has some special attributes that separate it from the traditional forms.

The protection of financial interests of the European Communities has developed together with the integration itself. The community budget as special infringement subject needs special action by the Member States and the EC acting together, in cooperation with each other. This is different from the usual forms of mutual assistance and develops new ways of cooperation protecting supranational interest utilizing –as we try to present it in our document- means of substantive and procedural law and the case law of the European Court of Justice.

The question of substantive law should not be overlooked because it deals with a special substantive legal subject, namely cooperation in criminal matters towards protection of financial interests of the EC and the regulation connected to it needs to be presented as well.

In our document, while describing cooperation, we briefly describe the European Anti Fraud Office, too, because its role is undisputedly important as it is the Office most acquainted with fraud and irregularities on the community budget. This is why the operation of OLAF and its relationship to the national authorities is included in this work.

Several publications, articles and books have recently appeared about the so called "european criminal law" in legal literature. Even so, we have not found a work describing the reasons for its development, the problems of connections to other areas or presenting the specifics of this special cooperation.

In this document, we intend to give an overall view of the special European cooperation in the European Union by completing the lack of the above mentioned and - because of the content limit - focusing on the main matters and problems in those context.

II. Historical Background

1. The beginning

The Treaties establishing the European Communities¹ originally did not contain provisions regarding Police and Judicial Cooperation in Criminal Matters, because the primary aims of the Member States were the rebuilding of Europe, the elimination of secular national controversies, and the lasting preservation of peace for the sake of an economic cooperation. By establishing the common market, in order to achieve the aims of the founding states, and by the progress towards free movement of workers and persons, numerous risks have arisen affecting the interests of the Communities.

Cross-border crime -mainly drug trafficking and terrorism- was only one of such problems. Since 1970, the community budget has had own revenues that made the control of monetary movements difficult, forming the basis for misuses. From another point of view, business ventures and individuals have taken advantage of the common market by utilizing the compulsory payment into the community budget.

By fighting against international crime, the protection of financial interests of the Communities also became important, since the number of crimes affecting the community budget, especially fraud, have been increasing.

In order to fight criminality and for the efficient protection of the Communities' financial interests, the necessity of a criminal-judicial cooperation has arisen, particularly among the Member States.

The Maastricht Treaty, establishing the European Union, was signed in February 1992. The Treaty on European Union (TEU) institutionalised Justice and Home Affairs (JHA) cooperation at the level of European integration, as the third pillar of the EU. Whereas criminal law authority is an essential factor of the national sovereignty, the third pillar, similar to the second pillar, remained apart from the Community institutional and legal structure² as an intergovernmental assistance³.

Within the intergovernmental cooperation, some organizations like the European Police Office (Europol), European Judicial Network (EJN) and European Judicial Cooperation Unit (Eurojust) have been established.

¹ The Treaty signed in 1951 setting up the European Coal and Steel Community (hereinafter referred to as ECSC) and the two Treaties signed in 1957 in Rome, setting up the European Economic Community (hereinafter referred to as EEC) and the European Atomic Energy Community (hereinafter referred to as EURATOM).

² See: Craig-De Búrca: EU Law – Text, Cases and Materials (Oxford University Press, Third Edition 2003) P. 25-26.

³ The third pillar was amended significantly by the Amsterdam Treaty in 1997. Some policies, like asylum, immigration, border controls, have been absorbed into the Community Pillar. The name of the third pillar became "Police and Judicial Cooperation in Criminal Matters" (PJCC).

Europol was established by the Europol Convention⁴ and started its full operation on 1 July, 1999. Europol's aim is to improve the effectiveness and cooperation between the competent authorities of the Member States primarily by sharing and pooling intelligence to prevent and combat serious international organised crime, such as drug trafficking and terrorism. It is a support service for the law enforcement agencies of the EU Member States. In providing support, Europol with its tools -information exchange, intelligence analysis, expertise and training- can contribute to the executive measures carried out by the relevant national authorities⁵.

The European Judicial Network was established by the Joint Action of the Council 98/428/IB. The main aim of that Joint Action is to enhance cooperation of the Member States. Their work is based on an exchange of information⁶. The EJN's operation is assisted by its contact points.

At the extraordinary Council meeting of Tampere in October 1999, the Heads of State or Government decided to make judicial cooperation against organised crime more effective. After the Tampere Summit, Eurojust was established in the Hague on the basis of a Council Decision⁷. Its aim is to enhance the efficiency of the national investigating and prosecuting authorities, individually and collectively, when dealing with serious cross-border crime, and more importantly, to bring criminals to justice quickly and effectively. Eurojust has the authority to deal with a wide range of criminal offences, including terrorism, trafficking in human beings, narcotics offences and serious fraud⁸.

The Convention⁹ of 29 May, 2000 has brought about a change as regards mutual legal assistance. The Convention provides the facility for Member States to contact each other directly, and sets up the possibility for effective cooperation (joint investigation teams, covert investigation, etc.).

2. Development of special cooperation

Compared to the development of international cooperation in criminal matters, the protection of the Communities' financial interests presents a different, more complex process. Initially, according to the interpretation of the provisions of the Treaty¹⁰ on community and national competences, the criminal protection of the community budget was not considered as community competence due to the lack of legal basis. In consideration of that, administrative measures were taken against damaging behaviour within the first pillar, so the Council set up two Regulations¹¹.

⁴ Convention of July 26, 1995 on the Establishment of an European Police Office /Europol Convention (OJ 1995 C 316).

⁵ For more details see: <http://www.europol.europa.eu>.

⁶ Further details can be found on its website: <http://ec.europa.eu/civiljustice>.

⁷ 2002/187/IB Council Decision of 28 February, 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ 2002 L 63, 02.03.2002. p.1).

⁸ About Eurojust see: <http://eurojust.europa.eu>.

⁹ Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

¹⁰ EC Article 3 and Article 5.

¹¹ Regulation No 2988/95 of 18 December, 1995 on the protection of the European Communities financial interests (OJ 1995 L 312) and No 2185/96 (OJ 1996 L 292) of 11 November, 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities.

Criminal protection was established within the third pillar by the Member States signing the Convention on the Protection of the European Communities' Financial Interests¹² and its Protocols. Another chapter of our document deals with the Convention.

The European Commission made an attempt to "communitarize" the PIF instruments (by applying them in the first pillar protected by direct effect, application and enforcement) by the Corpus Juris project¹³, the Green Paper¹⁴, and in 2001 by a draft¹⁵ of a Directive¹⁶.

The EC Treaty Article 280 (ex Article 209a) entitles the Council to adopt the necessary measures in the fields of the prevention of, and fight against, fraud affecting the financial interests of the Community with a view to affording effective and equivalent protection in the Member States. This provision indicated the changes of "untouchability" of national criminal law by the Communities¹⁷, because this Article created the legal basis for acting on behalf of the protection of financial interests within the first pillar.

The protection by law was not efficient enough, further actions were necessary, so in 1999, the Commission, on the basis of EC Article 280, established the European Anti-Fraud Office¹⁸ by its Decision of 28 April, 1999. Its antecedent was UCLAF, established within the Commission in 1988. The rules concerning investigations conducted by OLAF are contained in Council Regulations¹⁹. The Regulation -according to Article 249 EC- shall have general application, it shall be binding in its entirety and directly applicable in all Member States.

OLAF not only coordinates the Member States' fight against fraud, but it also has the right to exercise the Commission's powers to carry out external and internal administrative investigations²⁰. OLAF is entitled to carry out on-the-spot checks and inspections²¹. The operation of OLAF is dealt with in a later chapter of our document.

¹² Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests (OJ C 316, 27/11/1995 P. 0049-0057) - hereinafter referred to as PIF Convention.

¹³ Corpus Juris is introducing provisions for the purpose of the financial interests of the EU, under the direction of Delmas-Marty. Its main purpose is the harmonisation of criminal law and improvement of effectiveness and the level of legal protection. - See: Prof. Dr. John A.E. Vervaele: The Corpus Juris projekt: a Blueprint for Criminal Law and Criminal Procedure in the European Territory (AGON 34/2002 P. 9-13).

¹⁴ Green Paper Brussels, 11.12.2001 COM (2001) 715 final.

¹⁵ OJ 2001 C 240 E, the draft was amended in 2003 (OJ 2003 C 71 E).

¹⁶ See: Dr. Lothar Kuhl-Dr. Bernd-Roland Killmann: The Community Competence for a Directive on Criminal Law Protection of the Financial Interests (Eu crim 3-4/2006 P. 100-103. http://www.mpicc.de/eu crim/archiv/eu crim_06-03.pdf).

¹⁷ This statement has to be qualified as follows: since the 1960's the European Court of Justice has been approaching the national law to the community law in its case law (see cases 68/88., 265/95., 105/03., 176/03.).

¹⁸ Office Européen de Lutte Anti-Fraude (hereinafter referred as OLAF or the Office).

¹⁹ Regulation (CE) 1073/99 of the European Parliament and of the Council of 25 May, 1999 concerning investigations by the European Anti-Fraud Office (OLAF) (OJ 1999 L 136); Regulation (Euratom) of the European Parliament and of the Council of 25 May, 1999 concerning investigations by the European Anti-Fraud Office (OLAF) (OJ 1999 L 136).

²⁰ Further information can be found on its website: http://ec.europa.eu/dgs/olaf/mission/mission/index_en.html.

²¹ In Hungary the rules of cooperation with OLAF and setting up contact point in Hungary are contained in Law No XXIX of 2004.

We are witnessing an ongoing development. The Institutions and Member States have realized that the crimes affecting the financial interests and detrimental to the budget, are characteristic of the EU. Such offences could not be committed without the being of the Communities and the integration (offenders utilize the basic institutions of the integration as community customs, common subsidy system, the four freedoms, etc.).

For this reason, Member States accept that to achieve effective protection of the community budget and for integration itself, they should act in cooperation. This cooperation, according to the interpretation of the Commission -as the budget's main custodian- can not be attained without the harmonisation of the national criminal laws. About legislation competence, the European Court of Justice (hereinafter referred to as the Court or ECJ) is developing and extending the community competences by its interpretation in case law. Some cases are introduced later in our document.

III. Procedure on the protection of financial interests

1. "Battle of competences" in the range of criminal cooperation

As we have already tried to present in the previous chapter, the protection of the financial interests of the Communities requires special legislation that is fulfilled primarily within the third pillar, though the Commission - by its proposals- tries to transfer this protection into the first pillar. This kind of phenomenon is called "battle of competences" among professionals²².

But what does this exactly mean?

The Treaties arrange the division of competences in a few Articles. Article 3 of EC Treaty details the exclusive competences of the Communities, for example the internal market or system ensuring that competition in the internal market is not distorted. Other activities that are not mentioned in this Article are shared between the Communities and the Member States. Among these competences, the main principle is subsidiarity²³.

This regulation is qualified by Article 10 EC Treaty, which declares that Member States have to take all appropriate measures, whether general or particular, to ensure the fulfillment of obligations arising out of the Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the tasks of the Community, and shall abstain from any measure that could jeopardise the attainment of the objectives of the Treaty.

The Court keeps determining new Community competences, for achieving the common purposes (internal market, monetary union), more and more matters

²² Dr. Krisztina Karsai: Az európai büntetőjog rögös útján (Magyar Jog 2006/1. P. 1.), Prof. John A.E.Vervaele: The European Community and Harmonization of the Criminal Law Enforcement of Community Policy (Eu crim 3-4/2006. p. 87), Dr. Simone White: Case C-176/03 and Options for the Development of a Community Criminal Law (Eu crim 3-4/2006. p. 93).

²³ Article 5 EC Treaty: In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

should be harmonised even though they are not mentioned in Article 3 EC Treaty, they can be deduced from it and from other provisions.

The Court declared in the Greek-maize Case²⁴, that where Community legislation does not specifically provide any penalty for an infringement or refers for that purpose to national laws, regulations and administrative provisions, Article 5 of the Treaty requires the Member State to take all measures necessary to guarantee the application and effectiveness of Community law.

These above mentioned regulations are completed by Articles 274 and 280 EC Treaty. Article 274 gives scope to the Commission, Article 280 gives scope to the Council concerning the protection of the community budget and the financial interests. Whilst the Commission considers that protecting the financial interests is a special legal subject that needs special cooperation, the Council and most of the Member States claim that the punitive legislation is the "last tower of the national sovereignty", - as the Member States refer to²⁵ - so the cooperation needs to be carried out within the intergovernmental third pillar.

The "battle of competences" seems to be won by the Commission, according to the Court's interpretation. Accordingly, if in a subject there is an authority for both community and intergovernmental legislation, the community power is in favour. In turn, according to the ECJ's view, the Communities might have an overall competence in the field of harmonising national criminal law.

In its case law the Court declared in Case C-176/03. (Commission v Council), that although, as general rule, neither criminal law nor the rules of criminal procedure fall within the Community's competence, this does not prevent the Community legislature from taking measures affecting national criminal laws when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious environmental offences. This statement does apply in every field if fully effectiveness of community law is not ensured without punitive means.

However, the Court declared in Case C-440/05. (Commission v Council) that in some circumstances the European Community has the power to require Member States to create criminal sanctions for the breach of community law. The Member States acting as the Council has adopted a Framework Decision under the intergovernmental "third pillar" under the EU Treaty, believing that only in that way could European law force the Member States to lay down criminal sanctions. But the ECJ decided that there was a Community competence to do the same thing, and since the Council interferred in that competence, the Framework Decision has been annulled. This case was a clear victory for the Commission: to the surprise of many, the ECJ ruled that the Community does have the power to require criminal sanction in some cases. It said that the Community may require Member States to impose them and acknowledged the same statement mentioned above²⁶.

²⁴ In its judgment of 21 September, 1989 in Case 68/88.

²⁵ Whereas, it makes a paradoxical situation that in the course of mutual assistance and operational cooperation detectives of one Member State may proceed in the territory of another state (for example joint investigation team).

²⁶ See also:<http://headoflegal.blogspot.com/2007/12/case-c-44005-commission-v-council.html>.

As regards cooperation in criminal matters, the Court declared in the Pupino-case²⁷, that the national court has the obligation to refer to the content of a Framework Decision when interpretation of the relevant rules of its national law is limited to the general principles of law, particularly those of legal certainty and non-retroactivity. Furthermore, the principle of conforming interpretation cannot serve as the basis for a contra legem interpretation of national law.

2. Special cooperation in the European Union in criminal matters – comparing traditional mutual assistance and cooperation in criminal matters towards the community budget

The question arises: why the Commission declares the protection of the financial interests of the EC as special, when 'Police and Judicial Cooperation in Criminal Matters' has already been established as a means of fight against cross-border crime?

This is true, but our document deals with something different. The relationships within the third pillar typically occur between Member States, where a Member State fulfills a legal act for the other Member State.

On 29 May, 2000, in Strasbourg, the Member States signed the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, and on 16 October, 2001, they signed its Protocol²⁸. The Convention gave the judicial authorities the ability to make direct contacts between the judicial authorities and communicate, not through central authorities (Ministries of Justice)²⁹ any more.

In the European Union, the main types of mutual assistance are extradition, transfer of criminal proceeding, transferring the carrying out of imprisonment.

Hungarian Law on the mutual assistance in criminal matters between the Member States of the European Union³⁰ specifies several kinds of mutual assistance, such as the European Arrest Warrant, hearing along with videoconference, hearing of witnesses and experts along with telephone conference, joint investigation teams, covert investigations, etc.

Hungarian legislation, in our opinion, is complicated and needs to be amended, because in Hungary - by the bi- and multilateral agreements -, two laws are currently in force concerning mutual assistance³¹. The legislation is not unified and the provisions do not apply overall. There is urgent need to enact a standard law.

²⁷ Case C-105/03.

²⁸ The Convention and its Protocol has been proclaimed in Hungary by Law No CXVI of 2005.

²⁹ In Hungary, before signing the Convention, the Ministry of Justice and the Office of the Prosecutor General had the authority to receive and forward requests concerning mutual assistance.

³⁰ Law No CXXX of 2003.

³¹ Law No CXXX of 2003 and Law No XXXVIII of 1996.

Accordingly, ensuring the mutual assistance between Member States is a legal act within the third pillar. But this act is different from the cooperation between the institutions, the other organizations of the Union and the Member States.

In the course of this kind of cooperation, the Community enters into formal bilateral relationships, which creates a new situation, because the Community expects Member States to act and cooperate for the sake of the Community's - financial- interests. Thus, the traditional bilateral relationship becomes trilateral.

For this reason, cooperation between the Member States in the EU is wider than the "traditional" mutual assistance, because effective protection of the financial interests of the Communities requires a special and closer cooperation between the Member States and the institutions of the Union. This is also explained by the fact, that the conduct affecting -directly or indirectly- the interests of the Communities endanger the being of the integration and are considered "home affair", so a closer and more efficient cooperation is required by all means.

By this unique cooperation, the parties are not definitely vested with the same authority, they are definitely not on the same level, however, they are not by all accounts in hierarchal relationship.

The subjects of this special cooperation, developed in favour of the interests of the Communities, are not only the Member States, but also the institutions or even other organizations of the Union (for example Eurojust or OLAF).

Summing up, should a mutual assistance between Member States arise, it shall be applied as "traditional" assistance within the third pillar, but if a cooperation between an institution and a Member State emerged, the special European cooperation should be relevant.

Nevertheless, it is important to emphasize that the special cooperation is not applicable for all crimes. For example, for homicide, the "traditional" mutual assistance needs to be applied, but conducts affecting the -mostly financial- interests of the Communities are subject to the special and closer European cooperation.

IV. Criminal regulation protecting the financial interests

1. Reasons

In the European Union, criminal law policy means the sum of efforts by organizations of the Union to harmonise national criminal laws and create a supranational criminal law towards the efficiency of actions against new forms of crime³².

In reference to national sovereignty, an interesting question often argued by the Member States regarding whether national sovereignty is impaired if judicial authorities act towards a common interest. Namely, the regulation protecting the community budget does not only defend the assets of the EC but indirectly promotes the subsistence of the European integration as well.

The mentioned ruling is needed, because, on one hand, crime affecting the financial interests of the EC increasingly become international and the efficient action against these offences exceeds the facilities of certain Member State. On the other hand, a special legal subject has arisen, namely the interest in smooth and efficient operation of expenditures and revenues of the community budget. Furthermore, the protection of assets of the EC is not possible without criminal measures anymore.

Such cooperation can not operate without a unified substantive legal background.

2. Infringement subject of the PIF Convention

To counter fraud affecting community budget with 20 billion Euros a year, the Member States framed the PIF Convention³³ and its Protocols. The Protocols are the following: first Protocol of 27 September, 1996³⁴, the Protocol about the jurisdiction of the ECJ of 29 November, 1996³⁵ and the second Protocol of 19 June, 1997³⁶.

Hungary (like the Czech Republic, Poland and Malta) has not ratified the Convention up to now, but has created a regulation about criminal offences in its Criminal Code according to the provisions of the Convention. Similar solution has been chosen by Cyprus, Greece, Ireland, Slovakia and Romania.

Denmark, Germany, Spain, Italy, Luxemburg, the Netherlands, Austria, Finland, Sweden, Lithuania, Slovenia and Bulgaria have ratified the Convention in another way: these countries amended their criminal codes like the non-ratifying Malta and Poland.

³² Péter M. Nyitrai: Nemzetközi és Európai Büntetőjog (Osiris Kiadó, Bp. 2006.) p. 200-206.

³³ See: footnote 12.

³⁴ OJ C 313, 23.10.1996, p. 2.

³⁵ OJ C 151, 20.05.1997, p. 2.

³⁶ OJ C 221, 19.07.1997, p. 12.

The regulation in Belgium, France, Portugal and the United Kingdom already corresponded to the Convention, so they did not need any harmonisation or amendment³⁷.

The Convention directly defends the financial interests of the EC, as a special legal subject, however, in a wider sense, it also serves the interest of achieving the EC's - economical, social, political integration - purposes³⁸. In the EC, one of the most important tasks is the protection of the common market, as the offences damaging the community budget indirectly undermine the cohesion of the EC.

The infringement subject of the PIF instruments is the EC's budget.

The revenues can be divided into three groups.

1./ Traditional own resources of the budget are: customs duty (levied on import from third countries), agricultural duties, and the so called sugar-decantation.

These revenues are considered traditional, because they automatically and totally come to the EC. The Member States only have to collect these assets and transfer them to a detached account, from where they are callable by the EC.

100% of customs come to the EC, but the Member States can retain 25% for supporting their administration and infrastructure.

2./ Own resource of the budget is the participation in VAT revenues of the Member States.

This is essentially excise-decantation. The sum is 0,5% of the VAT from the 50% of the GNP.

3./ Member States also pay an accessory consent in defined percentage of the GNP.

The EC applies the revenues through funds to different subventions, subsidies, grants, etc.

Among the expenditures, the agricultural subsidies are the most important, but significant assets are spent for production and export supports, structural operations, home policies, aids for countries of the third world, administrative expenditures, reserves and supports for new Member States as well.

3. Examples of conduct

We are going to describe some methods, damaging the revenues of the community budget.

I. The essence of *fraud, eluding the transit system* is that the country of origin and destination of the transported article is a third country. In the country of entry,

³⁷ Report and Second Report from the Commission (COM(2004) 709 final, 25.10.2004 and COM(2008)77 final, 14.2.2008).

³⁸ Dr. Barna Miskolczi: Mulasztás? Tűnődés a Btk. 314.§-a (1) bekezdésének b) pontja körül (in. Ügyészek Lapja 2007/1.) p. 28.

the duties are registered, because they are payable later in the country of exit. Fraud is committed in a way, that the carriage does not leave the Union, but disappears from the authorities and is sold saving the common charges³⁹.

II. *VAT-fraud* (or VAT carousel) is also a kind of fraud that can be exemplified as follows: a Hungarian telecommunication company, Mob1 sells phones in a value of 1 million Euros to a Belgian company, Mob2. According to the common regulations, Mob1 does not pay tax because it is payable in the buyer's country. Mob2 sells the carriage to a Belgian company, Mob3, for 1,21 million Euros (the Belgian VAT is 21%). From this amount, 210.000 Euros should be paid to the Belgian state, but Mob2 Company does not fulfil this obligation and disappears. Mob3 sells the phones to a Hungarian company, Mob4, and does not pay the Belgian VAT, since they are exported articles, but claims recovery of the 210.000 Euros he paid as VAT for Mob2 back from the Belgian state. Nevertheless, this tax has never been paid. Mob4 does not pay tax, either, although meanwhile it has sold the phones to Mob1 and also disappears. When Mob1 sells the phones abroad again (and claims recovery of the never-paid VAT) the carousel has made a circle, and it starts again. The benefit of the offenders is about 500.000 Euros.

III. Another offence damaging the EC's revenues is *smuggling of articles to avoid paying customs*.

One of the endangered resources of expenditures is in the group of structural funds. The usual conducts are the following:

- padding costs and over invoicing,
- getting assets for non existing projects, for tender conditions not fulfilling or execution with false accounts confirming projects,
- use of assets for aims not originally agreed through expending false accounts⁴⁰.

IV. The *value of the imported goods is often stated in an amount lower* than the real value in the dispatch note. That effects lower duties (deficit of EC's revenues) or the value of the exported articles is indicated higher than the real value in the accounts, and that effects higher export subsidies (deficit of EC's expenditures). Below is a short example of this -also a kind of carousel- fraud.

The Hungarian company "Exim" exports maize into a third country, and applies for a grant via the common export subsidy system. The certificate attached to the application testifies (falsely) that the goods are of extraordinarily good quality (the EC gave higher subsidy for exporting products of good quality in the mentioned year). The offender gets the export subsidy and the maize is transferred into the third country. It stops at the other side of the border and comes back into Hungary. The company "Exim" announces in the meantime that it is going to import maize. The documents now testify that the product is of poor quality (therefore the duty, according to the certification, is low). The company pays the customs, the train crosses the border, stops and goes back. The process always starts from the beginning until the maize goes to seed. The profit is the margin between the export subsidy and the customs, multiplied by the number of transactions.

³⁹ See: Dr. Ervin Belovics -Dr. Gábor Molnár -Dr. Pál Sinku: Büntetőjog Különös Rész HVG Orac, Budapest 2007. p. 668.

⁴⁰ See: Dr. Ervin Belovics -Dr. Gábor Molnár -Dr. Pál Sinku: Büntetőjog Különös Rész HVG Orac, Budapest 2007. p. 668.

4. Conducts in the PIF Convention

The Convention defines the elements of the facts of fraud. This fraud shall be, in respect of expenditure, any intentional act or omission which realises:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the community budget or budgets managed by, or on behalf of the EC,
- non-disclosure of information in violation of a specific obligation, with the same effect,
- the misapplication of such funds for purposes other than those for which they were granted⁴¹.

In respect of revenues, fraud shall be any intentional act or omission which realises:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the community budget or budgets managed by, or on behalf of the EC,
- non-disclosure of information in violation of a specific obligation, with the same effect,
- misapplication of a legally obtained benefit, with the same effect⁴².

According to the Convention, fraud shall be considered to be serious if it involves a minimum amount to be set in each Member State and not exceeding ECU 50.000. That means such offence, involving at least ECU 50.000 needs to be taken into account as serious fraud. Up to a total amount of less than ECU 4.000, the Convention allows to provide different type of penalties from criminal sanctions⁴³.

The Convention also requires that the heads of businesses or any persons having power to take decisions or exercise control within a business shall be able to declare criminally liable in cases of fraud affecting the EC's financial interests⁴⁴.

5. The Hungarian provisions

Hungary, to fulfill its obligations deriving from the Convention, has created a new criminal offence in the Criminal Code⁴⁵ (hereinafter referred to as CC), which has come into force on 1 April, 2002.

By analyzing the grounds of non-ratification of the PIF Convention in Hungary, Ákos Farkas, Professor at the University of Miskolc named three reasons of leeway of ratification⁴⁶:

1. Hungary has not ratified the Convention in consideration of protecting its national sovereignty: there is no admittance for common legislature into national criminal law.

⁴¹ PIF Convention article 1 point 1/a.

⁴² Article 1 point 1/b of PIF Convention.

⁴³ Article 2 points 1 and 2 of PIF Convention.

⁴⁴ Article 3 of PIF Convention.

⁴⁵ Law No IV of 1978.

⁴⁶ Prof. Dr. Ákos Farkas: Why Delays the Ratification of the PFI Convention in Hungary? (Eu crim 1-2/2007, p. 55).

2. Hungary fulfilled its harmonisation obligations till its accession to the Union in 2004. If the Communities hurry the ratification of the Convention, the country can argue that the provisions of our CC suitably protect the financial interests of the Communities.
3. Hungary has implemented its criminal cooperation obligations by creating new offence in the CC and adopting law about the criminal liability of legal entities.

The Hungarian regulation raises several problems. Its deficiency is the translation: the used terms are not appropriate with the meaning of the Convention, although the legislator's intention evidently tended to be this.

On the score of the Communities' expenditures, the Hungarian expression "support" does not mean the same as "resources" written in the PIF Convention, which narrows the latitude of dispensers of justice, a consequence that is not in keeping with the spirit of the Convention. The Commission has already formulated this query in its report⁴⁷ and called our country's attention to use the term in a wider sense, or otherwise Hungary will not comply with the harmonisation demands.

The offence in the Hungarian Law is similar to the Convention, albeit the Hungarian regulation is to be interpreted in a more narrow sense: it requires "false-sophisticated-untrue contented" document or statement in front of the Convention's "incorrect-incomplete" terms. Deceit is also a condition which is determined in the CC, but not specified in the Convention.

The Hungarian offence also demands results, but even if 1 Euro is illegally spent from the community budget, it is considered to be an offence.

The legislator has not differentiated on the basis of amounts: the sanction is uniformly 5 years imprisonment. The proportionate and dissuasive penalties are ensured by the discretion right of the court in the course of imposing punishments.

The Hungarian regulation – according to the provisions of the PIF Convention – appoints special delinquents as well, but is stricter, as their negligent conduct is also punishable. In Hungary another law⁴⁸ contains provisions about the penalties applicable in case of offences, committed by legal entities.

In our opinion, it was not reasonable to create a new offence in the Hungarian Criminal Code, because Hungary could have fulfilled its obligations deriving from the Convention -to adopt effective, proportionate and dissuasive criminal penalties- by modifying the already existing criminal provisions. Several further definitional problems arise for them: it is difficult to find a solution by the regulation in force today. This could be a subject of another document.

European frauds generate notable diminution of revenues and illegal retention of assets. According to "optimistic" estimates, 10% of the Communities' budget

⁴⁷ Second Report from the Commission COM (2008)77 final, 14.2.2008.

⁴⁸ Law No CIV of 2001.

seeps via illegal channels –but some analysts talk about twice this amount–, which sum appears as benefit on behalf of the offenders⁴⁹.

At the same time, the Member States are not interested in reporting such cases to the Communities, as they fear that as the Communities' measures against the states representing "high number of cases", they would get less resources from the community budget. On the basis of this, community fraud takes about 2-3% of official criminal statistics.

This is influenced by the phenomenon, that the same conduct is considered European fraud in one of the Member States, but not in another. Good example is the Hungarian opinion, that the sale or the sale for not allowed purposes of cereals (stored in warehouses with the purposes of intervention) is not defined European fraud, but an offence against property.

For this reason, in our opinion, the work of a community institution is important to coordinate the action against crime and irregularities affecting the financial interests of the Communities. In consideration of this, the European Anti-Fraud Office is not to be overlooked because of its expertise.

V. The European Anti-Fraud Office - OLAF

The operation and competence of OLAF is regulated by the Commission Decision and Council Regulations mentioned above⁵⁰.

OLAF mandate is to increase the effectiveness of the fight against fraud and other illegal activities detrimental to the financial interests of the Communities. The Office must exercise its investigation powers in full independence⁵¹.

The internal administrative investigations are carried out within the institutions, bodies, offices and agencies, while the external investigations are to be conducted in the Member States and, in accordance with the cooperation agreements in force, in third countries.

The head of OLAF is the Director; the reinforcement of the independence of the Office is the task of the Supervisory Committee.

In our opinion, the Regulations about the particular and procedure rules need to be completed, because they contain neither provisions relative to the deadlines of the investigations carried out by OLAF, nor provisions about remedies against the decisions or in general, against the procedure of the Office. Because of the lack of such provisions, more detailed regulations are needed, that would determine the exact competence and particular rules of the procedure of investigations, on-the-spot checks and inspections of OLAF.

⁴⁹ Dr. Barna Miskolczi: Mulasztás? Tűnődés a Btk. 314.§-a (1) bekezdésének b) pontja körül (in. *Ügyészek Lapja* 2007/1.).

⁵⁰ See: footnote 18.

⁵¹ Even if the Office is set up within the Commission, it must be independent. The Director has commencement right of action against Commission decisions that endanger the independence of the Office.

Recognizing that the OLAF regulations need to be amended, the European Parliament and the Council composed some modifying drafts. The draft known by us is COMBUD 60/07 (01.03.07.), that already disposes of deadlines and detailed regulations about the external and internal investigations, furthermore, it modifies the internal organization of the Office (Executive Director, Review Panel). This draft also contains guarantee provisions about proceedings, such as data protection.

According to the experience gained up to now⁵², the establishment and operation of OLAF is a great improvement for the protection of the Communities' financial interests. By setting up OLAF, an organization has been created that makes a joint stand against the conducts offending the financial interests of the Communities.

The competences of the Office can be described as follows⁵³:

1. Forwarding of information about irregularities by OLAF to the judicial authorities⁵⁴: OLAF forwards information to the judicial authorities, usually for the purposes of opening a national criminal investigation.
2. Forwarding of information by the judicial authorities to OLAF⁵⁵: OLAF receives for its own purposes information from the Member States' judicial authorities that has been taken from the criminal files for which these authorities are responsible.
3. Assistance given by OLAF to the judicial authorities⁵⁶: The national judicial authorities can initiate a criminal investigation or launch criminal proceedings as a result of information forwarded by OLAF. OLAF can assist the judicial authorities in the following ways: by supplying additional information for the purposes of the national investigation or by facilitating communication or the provision of information by other Community departments or institutions. In addition, national judicial authorities may request OLAF to undertake additional investigations or facilitate international judicial cooperation in criminal matters.
4. OLAF monitors national criminal proceedings in the Member States⁵⁷: If the national authorities initiate a criminal investigation either as a result of information forwarded by OLAF or of their own motion in an OLAF-related case. OLAF has a specific interest in monitoring developments in the investigation and in being apprised of the results. OLAF is willing to assist the national authorities wherever necessary in order to ensure that the investigation can proceed as efficiently as possible, especially from the point of view of the Community interest.
5. OLAF is associated with the national criminal proceedings: OLAF could be given the opportunity to intervene in proceedings and to set out the Community interests which are at stake.

⁵² For more details see the annual reports and their annexes on 2004 and 2008 of the Commission..

⁵³ See: Draft Inventory - The Role of OLAF in National Criminal Proceedings (European Commission), OLAF document.

⁵⁴ The legal basis of these tasks: Articles 9 and 10 of EC Regulation 1073/1999, and Articles 8 and 10 of EC Regulation 2185/96.

⁵⁵ Based on Article 7 of EC Regulation 1073/1999.

⁵⁶ These are based on Article 1 of EC Regulation 1073/1999 and Article 2 (2) and (6) of Decision 1999/352.

⁵⁷ Its legal basis by the provision "in so far as national law allows" is Article 7 of EC Regulation 1073/1999.

Summing up, if OLAF simply appears as informant, assisting in flow of information, its activities are not hindered. Another situation is when the Member States have obligations to inform the Office, or OLAF desires to assist actively in national criminal procedures. In relation to this, partly there is no common legal source or partly there is an authorizing provision, but the national regulations also prevail and if they do not allow forwarding information or the assistance of OLAF, the Office remains an "outsider".

The Regulations about the operation of OLAF are binding and directly applicable in Hungary following accession to the Union on 1 May, 2004.

Our Criminal Procedure Code⁵⁸ incorporates provisions about giving information in the course of criminal procedures with restrictions, that the applicant organ or person needs to prove its legal interest in the conduction or the result of the process⁵⁹.

Besides this, CPC lays down the obligation of judicial authorities to send files and to ensure introspection into them for organs stated in CPC taking notice of necessity and proportion. CPC, however, does not mention the Office as an organ of the European Commission⁶⁰ among the entitled subjects. In accordance with this present Hungarian law –alongside restricted interpretation up to now– does not open the door to inform OLAF. At the most, the Office has straight rights as relator.

In order to solve this problem, the Office of the Prosecutor General initiated a law modification on 4 February, 2008. Its essence is that CPC would name OLAF among the above mentioned list of applicant authorities. Thus, the free run of applied files and information could be given directly to OLAF.

By contacting the competent authorities, we have carried out research regarding the legal practice and OLAF's entitlements in other Member States as a result, it can be set out that the Office does not have extensive competencies in other countries, either.

Administrative investigations usually do not face difficulties. Regarding criminal investigations, since the OLAF Regulations contain the provision "insofar as national law allows", there is a significant difference between the Member States. OLAF can *take part in criminal procedures* as member of a joint investigation team in Belgium, Czech Republic, Lithuania and Slovakia. As witness, expert or consultant, the Office participates in Portugal, Finland, Germany, Poland and Slovakia. In Austria, Sweden and Estonia the approach is the most conservative: only national authorities can investigate, while in Ireland, Cyprus and Romania it is the other way round: OLAF can actively participate in criminal investigations.

In reference to *forwarding information* to OLAF, the Member States can be divided into two groups. In Portugal, Austria, Belgium, Germany, Ireland, the Netherlands, the Czech Republic, Estonia, Poland and Slovakia, national law does not include such an obligation, but in virtue of the ad hoc decision of the competent authority -if the interests of the investigation are not endangered-

⁵⁸ Criminal Procedure Code No XIX of 1998 - hereinafter referred to as: CPC.

⁵⁹ Article 74/B paragraph 5 of CPC, Hungarian authorities fulfil such obligations by flexible adaptation of this provision.

⁶⁰ Article 74/B paragraph 6 of CPC.

information can be forwarded. Whereas, in Romania, Lithuania and Finland, information is changed via joint contact points (AFCOS).

Researches show that OLAF's assistance in national criminal proceedings make them more efficient –nevertheless, the Office has built up an enormous expertise about irregularities affecting the Communities' financial interests during its operation– practically completely depends on national regulation and discretion of the authorities.

On that score, it would be reasonable to set up a community regulation that would oblige the Member States to forward information to OLAF. This needs to be naturally affiliated with guarantee provisions, as the modifying draft by the European Parliament and the Council provides.

The greatest problem with OLAF's operation is that it has been established to execute administrative investigations but most recognised cases are objects of criminal procedure. This ambiguous legal background is associated by the fact that the main task of the Office is to investigate every conduct affecting the Communities' financial interests, whether it has administrative or criminal consequences. From this situation arises the Office's effort to appear as a criminal authority, whereas it is considered detrimental by the Member States.

By all means, it is reasonable to arrange OLAF's status by unequivocal regulation. Either it gets criminal investigation competencies or not, national legal provisions regarding the admission for OLAF's operation (for example forwarding of information to the Office) should be harmonised.

The Council Regulation No 2185/96⁶¹ could serve as a model solution for the problem of availability in criminal proceeding of documents and information collected by OLAF. Similar to this, if OLAF officers purchased the evidences by observing national procedural rules, they could become equal with national evidences in the national courts.

It should be connected by the principle of mutual recognition by that every Member State accepts the judgement of another state without restrictions. To develop this train of thought, the adoption of a uniform guarantee system, that contains the rights and obligations of persons involved in the procedure and ensures right to remedy, is elemental.

⁶¹ Council Regulation (Euratom, EC) No 2185/96 of 11 November, 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities.

VI. Future – de lege ferenda

Parallel to the evolution of integration, the development of a new kind of cooperation can be observed.

In the beginning, the protection of the Communities' financial interests were thought of as solvable by sectoral supervisions, but it has not lived up to expectations. The action of the Member States within their national borders did not seem to be adequate to set back the damaging conduct, either. Therefore, a Commission organ, UCLAF was founded in 1988, from which OLAF was established later.

Alongside changing of the system of checks and supervisions (independent external organ instead of units within organizations), to a more efficient protection, developments occurred in the sphere of substantive law. After adopting the PIF instruments, Corpus Juris, Green Paper and drafts of a Directive appeared.

Regarding competences, it is still debated whether the protection of the Communities' financial interests should be regulated within the first or the third pillar, but the case law of the ECJ, although warily, seems to form the outcome of this dispute.

The evolution in the sphere of substantive law has not left the forms of cooperation untouched. The "traditional" mutual assistance between Member States is too difficult and not efficient enough to ensure a procedural frame for the protection of the Communities' financial interests. The Communities' entry into this system breaks the bilateral cooperation as a Member State proceeds towards common interest against conducts affecting the community budget, while being in contact not only with another Member State, but also with the Communities themselves. It means the evolution of a brand new kind of cooperation.

This is the situation now. But which direction will the evolution take, if it consists of more fields, where every sphere is in connection with the other one, and the change of one influences the other, too?

We do not intend to list utopias here, rather try to design a possible direction of the development that could help to solve the problems reviewed in our document so far.

The Member States have already accepted, that each of them has to ensure the same protection for the Communities' financial interest, which cannot be achieved without applying criminal measures.

Efficient action needs uniformed regulation. Its first steps have already been taken by the PIF Convention, and its first Protocol has already entered into force. The implementation of its provisions into national laws is almost done. There still are discrepancies however, the elimination of which could be based upon the provisions of the Corpus Juris or the Green Paper. All these similar provisions

must be related to the offences affecting the Communities' financial interests, and should be placed in distinct chapters in the national criminal codes. Hereby the Member States would only partly give up the validation of their punitive power and beyond special common offences, other criminal regulation would be left untouched.

The instances damaging both the community and national budgets (for example VAT fraud) would stay on their original place harmonising these provisions. The period of prescription and the deterrents are important parts of substantive law, where harmonisation is also necessary.

Regarding the fight against crime affecting the Communities' financial interests towards efficient action, the harmonisation of national laws itself is not enough. Establishing bodies or agencies is necessary, so that, in case of such offences, they could cooperate with the national authorities.

According to one of the conceptions OLAF should carry out the investigations, not by receiving the powers of national authorities, but by being entitled to take part in the work of national bodies. It would be reasonable to oblige Member States to forward information, whereas in consideration of this, adoption of data protection and other guarantee rules would be necessary. OLAF, while carrying out its competences, would not stand above the national authorities but it would supplement them as the Office would assist in detections of cross-border crime.

To achieve this purpose, the legal status of OLAF must be re-regulated and the Office needs to be entitled with criminal investigation competences. The rules of its operation must be suitably defined in detail and a guarantee system must be established to remedy the contingent injuries.

In reference to this, the harmonisation of national procedure laws is also necessary, primarily regarding the proof, the rights and obligations of persons involved, but at least the adoption of "de minimis" rules is reasonable for the acceptance of evidence and data obtained in another Member State.

Investigations need to be executed with regards to basic rights, written in the European Charter.

Over such investigations, the European Prosecutor (EP) would be the supervisor, who would also have right to charge.

The EP would consider remedies and initiations presented in the course of the investigation, and refused by the authority (either national or OLAF). The EP would provide that in the pursuance of the investigation, the procedural rules of the affected country are observed. So it would be able to span problems that retard the accession of evidence obtained in another Member State and would also cancel that they would have to be collected again within mutual assistance, hereby accelerating the conduct of criminal proceedings. But we also regard the adoption and application of a unified European criminal procedural regulation as possible -even by "de minimis" regulation- in the pursuance of such "common investigations".

The European Prosecutor could work in its country as prosecutor at the same time, but investigations of offences affecting the Communities would have primacy.

Indictment and prosecution would take place in national court, according to national provisions.

We think that the European Prosecutors' organization could be developed and formed from Eurojust, as the Constitution Treaty and the Treaty of Lisbon describes.

In our view, concerning OLAF's rule, the other possibility is that the professional background of the European Prosecutor, coming into being from Eurojust, as a cabinet standing behind the prosecutors and the professional organization would be ensured by OLAF, utilizing its professional experience. So the investigation of European frauds would be a kind of "prosecutorial investigation" which is, by special conducts, an existing institution in Hungarian law.

The European Investigation Judge would decide about emergency provisions involving deprivation of liberty, remedies against decisions and measures of the European Prosecutor. This judge would operate within the organization of the ECJ and would be elected with the same conditions and procedure as the other European magistrates, but would have different competencies. As expertise, criminal law knowledge would be necessary. It is also a possible variation that in every Member State there would be one magistrate who, as investigation judge, would have exclusive competence in special European offences.

Should, by reason of the same conduct, a criminal proceeding be commenced in more Member States, on one hand the principal of anticipation, on the other hand the place of the first act would be received in aspect of jurisdiction. The judging court and its proceeding would be formed by national competence and procedural provisions.

We may have run a bit forward, but one thing is for sure: all Member States agreed the foundation of the European Prosecutor as they see the necessity of harmonisation of their criminal laws for the protection of the Communities' financial interests. The objection to the European Prosecutor's institution was not among the reasons of the French and Dutch rejection of the Constitution Treaty or the Irish rejection of the Treaty of Lisbon.

The criminal protection of the Communities' financial interests is not a subject of debate any more. The only question is the form of its realisation: whether it should be intergovernmental or supranational. By the case law of the Court, and by the thriving group of supporters of the European Prosecutor, the latter seems to be more feasible.

Anyway, we pay increased attention to the evolution of an exciting, new regulation and cooperation. Its reason for existence is uncontested, especially as it has been established by the same economical considerations and necessities which aligned its way so far, and which frame the basis of the integration itself as well.

VII. Bibliography

- CRAIG-DE BÚRCA: EU Law – Text, Cases and Materials (Oxford University Press, Third Edition 2003)
- DR. BARNA MISKOLCZI: Mulasztás? Tűnődés a Btk. 314.§-a (1) bekezdésének b) pontja körül (in. Ügyészek Lapja 2007/1)
- DR. ERVIN BELOVICS -DR. GÁBOR MOLNÁR –DR. PÁL SINKU: Büntetőjog Különös Rész (HVG Orac, Budapest 2007)
- DR. INGO E. FROMM: Die Frage der Zulässigkeit der Einführung strafrechtlicher Verordnungen des Rates der EG zum Schutz der Finanzinteressen der Europäischen Gemeinschaft (EuCrim 3-4/2006)
- DR. KRISZTINA KARSAI: Az európai büntetőjog rögzös útján (Magyar Jog 2006/1)
- DR. BERND-ROLAND KILLMANN: Der Kommissionsbericht über die Umsetzung der Instrumente zum Schutz der Finanzinteressen der Europäischen Gemeinschaften (EuCrim 1-2/2007)
- DR. LOTHAR KUHL - DR. BERND-ROLAND KILLMANN: The Community Competence for a Directive on Criminal Law Protection of the Financial Interests (EuCrim 3-4/2006)
- DR. SIMONE WHITE: Case C-176/03 and Options for the Development of a Community Criminal Law (EuCrim 3-4/2006)
- PÉTER M. NYITRAI: Nemzetközi és Európai Büntetőjog (Osiris Press Budapest 2006)
- PROF. DR. ÁKOS FARKAS: Why Delays the Ratification of the PFI Convention in Hungary? (EuCrim 1-2/2007)
- PROF. DR. JOHN A.E. VERVAELE: The Corpus Juris projekt: a Blueprint for Criminal Law and Criminal Procedure in the European Territory (AGON 34/2002)
- PROF. JOHN A.E.VERVAELE: The European Community and Harmonization of the Criminal Law Enforcement of Community Policy (EuCrim 3-4/2006)
- ZOLTÁN HORVÁTH: Kézikönyv az Európai Unióról (Magyar Országgyűlés, Fifth Edition 2002)

Legal background

Treaty on European Union of 7 February, 1992 Maastricht

Treaty of Amsterdam of 2 October, 1997 Amsterdam

Constitution Treaty of 29 October, 2004 Rome

Treaty of Lisbon of 3 December, 2007 Lisabon

Europol Convention of 26 July, 1995 (OJ 1995 C 316)

Council Decision 2002/187/IB setting up Eurojust (OJ 2002 L 63, 02.03.2002)

Convention of 29 May, 2000

PIF Convention: Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests (OJ C 316, 27/11/1995)

Protocols: 27th of September, 1996 (OJ C 313, 23.10.1996) 29th of November, 1996 (OJ C 151, 20.05.1997), 19th of June, 1997 (OJ C 221, 19.07.1997)

Regulation No 2185/96 of 11 November, 1996 (OJ 1996 L 292)

Regulation No 2988/95 of 18 December, 1995 (OJ 1995 L 312)

Regulation (CE) 1073/99 of the European Parliament and of the Council of 25 May, 1999 concerning investigations by the European Anti-Fraud Office (OLAF) (OJ 1999 L 136)

Regulation (Euratom) of the European Parliament and of the Council of 25 May, 1999 concerning investigations by the European Anti-Fraud Office (OLAF) (OJ 1999 L 136)

Green Paper Brussels, of 11 December, 2001 COM (2001) 715 final

Report and Second Report from the Commission (COM(2004) 709 final, of 25 October, 2004 and COM(2008)77 final, of 14 February, 2008)

Draft Inventory - The Role of OLAF in National Criminal Proceedings (European Commission), OLAF document

Case law

Case 68/88 (Greek Maize Case) ECR 1989 P.02965 - judgement of 21 September, 1989

Case 265/95 (Commission v French Republic) ECR 1997 P.I-06959 - judgement of 9 December, 1997

Case 105/03 (Pupino Case) Rec. 2005 P.I-5285 - judgement of 16 June, 2005

Case 176/03 (Commission v Council) Rec. 2005 P. I-7879 - judgement of 13 September, 2005

Case 440/05 (Commission v Council) Rec. 2007 P. I-9097 - judgement of 29 October, 2007

Hungarian law

Law No IV of 1978

Law No XXXVIII of 1996

Law No XIX of 1998

Law No CIV of 2001

Law No XXIX of 2004

Law No CXXX of 2003

Law No CXVI of 2005