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OLAF's role in the fight against fraud in the European Union: do too many cooks spoil the broth?

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Abstract This article discusses the role of OLAF in the fight against fraud in the European Union (EU) by examining (1) its powers and capacity to coordinate the activities of anti-fraud agencies in the twenty seven member states and (2) the constraints which prevent OLAF from operating in a more effective manner. It also analyses OLAF's relationship with other transnational agencies such as Eurojust and Europol and highlights the degree of fragmentation which exists among the many actors involved in the fight against fraud, a fragmented legal approach and the difficulties this presents in attempting to police sophisticated transnational frauds. The effect of EU expansion on this situation is considered and the support offered to new member states who have been asked to bring their anti-fraud structures up to the standards of existing members within a very short period of time is also examined. The efforts of Romania in seeking to build up anti-fraud structures and systems are discussed in some detail. This article concludes that despite the best efforts of the actors involved, a fragmented legal system and institutions have hampered the fight against fraud in the EU.

Introduction

OLAF or the European Fraud Prevention Office was established on April 28th 1999. Its creation was a response to the criticisms of its predecessor, Unite Co-ordination de la lute anti-fraude (UCLAF) [1], which was an anti-fraud organisation of the European Commission. UCLAF was severely criticised by the European Court of Auditors [3] for the quality of its operational and intelligence work. The European Parliament responded to these criticisms by issuing the Bosch Report which called for the creation of an independent anti-fraud office.

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OLAF was granted operational independence and given its own budget, yet it still remains part of the European Commission. This arrangement was judged to be useful by the Committee of Experts [2] appointed by Parliament to investigate wrongdoing within the Santer Commission and to consider issues of management, scrutiny and evaluation in the use of Community funds and the investigation of fraud and irregularity. The Committee took the view that both for the purpose of enquiries as well as for the contribution it could make to the shaping of legislation where there is a fraud interest or aspect, OLAF could play a valuable part by being based within the Commission.

There is a major problem with this arrangement. If there are suspicions of fraud and irregularity within the Commission, which OLAF would investigate, by virtue of it being the lead agency in these matters, then surely this would be an instance of the Commission investigating itself. This would bring the independent status of the anti-fraud office into disrepute. It would have been preferable to have based OLAF entirely outside the Commission, to prevent there being any allegations of “whitewash” or “cover-up” being made.

OLAF’s responsibilities

OLAF has two major responsibilities. First, it is responsible for conducting internal investigations within the institutions and other bodies of the EU and they have an obligation to fully cooperate in OLAF enquiries and to communicate to OLAF any information concerning suspected fraud and irregularity.

Second, OLAF also has the responsibility to assist member state agencies in their fraud and irregularity investigations both in terms of investigation, intelligence and helping to liaise between different national agencies.

OLAF’s activities are supervised and monitored by a Supervisory Committee which is composed of five independent members nominated jointly by the Commission, the Council of Ministers and the European Parliament. The Supervisory Committee does not have the power to interfere in operational matters but does issue an annual report through which it gives an opinion on the activities of the anti-fraud office to the institutions of the EU.

Difficulties and problems for OLAF

The early years of its life have not been easy for OLAF because it has had to endure a long period of uncertainty regarding its role and powers as there have been a number of iterations of a series of amendments to Regulation 1073/99, which is one of the regulations governing OLAF. Such a period of uncertainty is not helpful both in terms of how it affects morale and also how it affects the perceived status of the organisation. The organisation has also had to cope with the legacy of its predecessor, UCLAF, which has tied up significant resources in terms of closing old cases. There have also been problems with the relationships between sister transnational organisations, such as Eurojust and Europol, which have accentuated the problem of fragmentation.

Amendments to regulation 1073/99

The proposals put forward by the Commission in all their different guises, have been designed to strengthen the operational role of OLAF and to improve communications between OLAF, EU bodies and member state agencies, and strengthening the role of the Supervisory Committee [15] whilst ensuring fully the rights of people under investigation—to this end, the establishment of an independent “Review Adviser” has been suggested. The Review Adviser would have an oversight role with respect to procedural rights and would scrutinise complaints from people under investigation at all stages of an inquiry. He/she would also have the function of giving opinions, for example, if the OLAF Director wishes to extend an investigation beyond 12 months or if the Director wishes to postpone hearing from the accused person [10].

In terms of the provisions designed to improve the flow of information, OLAF is required to inform Community institutions at an early stage in the investigation if officials or staff members are suspected of involvement in wrongdoing, in order that the institution can decide whether to take precautionary or administrative measures. This has been criticised by Levi and Dorn in evidence to the UK House of Lords, that it could lead to compromising the investigation as suspects could be forewarned and could cover up or even destroy evidence [12]. It may be argued that if institutions know as early as possible that the integrity of an individual is open to question, they could take steps and measures to try to remedy the situation. Yet these measures in the opinion of Levi and Dorn [12] are precisely what would undermine the secrecy needed to mount an investigation and to gain evidence of any criminal activity.

There has also been concern expressed about OLAF's contribution to external investigations. OLAF's role is to support the efforts and activities of member state agencies, but it cannot enter the territory of a member state and start investigating suspects, taking witness statements and gathering evidence without close co-operation with the relevant member state agencies. Liaison between agencies is absolutely essential and it is vital that both OLAF and national agencies co-operate harmoniously and do not frustrate the efforts of each other [12]. Unless there is close liaison, evidence gathering could be compromised, if national rules and regulations are not adhered to, and there could also be duplication of effort and resources. If different representatives from different agencies visit the same locations and ask the same questions of the same people, then this damages the credibility of the organisations concerned and is indicative of the amount of fragmentation which could exist, when one considers that the EU has twenty seven members and a multiplicity of agencies [18].

Given the potential difficulties it is still vital that OLAF is involved in so called external investigations, because as emphasised by Stefanou and Xanthaki [21], the investigative function of OLAF can be used to generate products which can be used in criminal proceedings and which can serve as part of the preparatory phase for prosecutions in member state court systems. OLAF has a European-wide view that no single national organisation can possibly have [17]. It collects data and intelligence from a wide variety of sources and liaises with national agencies across twenty seven member states. Its staff members have a wide range of competencies gained from backgrounds in police forces, customs, agricultural inspection, forensic accountancy and so on.

The legacy of UCLAF

In any consideration of the performance of OLAF the legacy bequeathed to it by its predecessor must be taken into consideration. The shadow of UCLAF and its perceived shortcomings has loomed large over the early years of its successor.¹ OLAF has had to see through to a conclusion, investigations begun by UCLAF. These have taken in some instances, over 5 years to conclude.

This point is amply illustrated by Table 1 above and the Court of Auditors review of OLAF's performance [4]. OLAF had to take on around 1,400 active files as the Court's report states: 'this was a very burdensome legacy owing to the disorganised way in which many of these investigations had been managed' [4]. A special taskforce had to be set up to deal with these old cases. It is difficult to identify and quantify exactly how much work has been done on these old cases as they were taken over by OLAF at different times and stages.² The fact is that OLAF's early years have been affected in terms of tying up resources and time in dealing with unfinished business from the past. Perhaps it was not the best start to the organisation's life and has obviously taken some time to put to rest.

Fragmented relationships at the centre

OLAF has had troubled relationships with sister transnational agencies, particularly with Eurojust. The role of Eurojust is to offer support and assistance to national authorities in cases which have a cross-border dimension and to assist in liaising between national prosecution and legal authorities in relation to serious crimes affecting two or more member states. Eurojust is composed of national prosecutors and magistrates or police officers from each member state and its objective is to facilitate co-operation between the national prosecuting authorities and to improve the co-ordination of criminal investigations and information exchange. Eurojust is directly accountable to the Council of Ministers to which it reports on a regular basis.

At first sight, it might appear that there is ample opportunity for OLAF and Eurojust to co-operate: OLAF on the investigation side, where it conducts administrative investigations and Eurojust providing the link with national prosecutors. The relationship between the two bodies has been a troubled one. Eurojust in its evidence to the UK House of Lords believed that OLAF saw it as a competitor. There were instances of OLAF liaising directly with national judicial authorities and not informing Eurojust and also setting up a magistrates unit within OLAF in competition with Eurojust [13]. In defence of OLAF, it can be said that its Magistrates Unit is totally dedicated to fighting EU fraud, whereas for Eurojust, fraud is just another issue and may not rank as highly as terrorism and organised crime.³ There was a feeling of resentment as OLAF considered Eurojust 'responsible for there not being a European Prosecutor responsible for fraud' [13]. Eurojust took the view that OLAF believed it had no role to play in fraud investigation unless other

¹ Interview with OLAF official 2005

² Interview with OLAF official 2005

³ Interview with OLAF Official 2005

Table 1 UCLAF cases before 1 June 1999 and on 30 June 2004 by sector and stage

Stage/Sector	Assessment	Non-cases	Monitoring	Open	Closed without action	Follow up	Follow-up completed	Total cases
Agriculture		2			101	5		106
External aid		6	2		66	15		83
Alcohol					45			45
Internal investigations		1			20	12	1	33
Cigarettes				3	50	7	1	61
Trade		11		2	288	35	2	327
Direct expenditure				1	79	25	7	112
Customs		2		1	154	22	5	182
Structural funds		1			142	150	24	316
Precursors					113			113
VAT					21	9		30
Total	0	13	2	7	1,079	280	40	1,408

[8]

serious crimes were linked to EU fraud, such as using money fraudulently obtained from the European Budget to help fund drug trafficking or arms dealing for example. This view of Eurojust cannot readily be dismissed as paranoia as OLAF officials believe that its own Magistrates Unit is more than capable of liaising with national judicial authorities without the assistance of Eurojust.⁴ Such 'territoriality' is not conducive to fighting fraud effectively and could inevitably lead to duplication and waste of resources. The two bodies have now signed an 'agreement on arrangements of cooperation'. This agreement covers arrangements for regular contact and cooperation with joint teams which will meet on a quarterly basis and exchange case summaries and provide feedback on progress made in investigations and also operational cooperation as well. This is a major step forward and hopefully will enable a more productive and harmonious relationship to develop which will ease the concerns about a fragmented approach taken by transnational bodies.

In terms of Europol, its role in the fight against EU fraud has not really been developed. OLAF takes the view that Europol is far more interested in customs issues than wider EU fraud matters.⁵ There is some consistency to this view, as in the late 1990's there was a view in the Commission that: 'Europol is not really interested in fraud. It is more interested in drugs and terrorism.'⁶ Europol does not have the investigative powers that OLAF has, because it is more of an intelligence gathering and analysis organisation. Its powers differ from those of OLAF. Yet its role in intelligence gathering and police co-operation would strengthen OLAF's investigative function if the two bodies could liaise closely.

⁴ Interview with OLAF Official 2005

⁵ Interview with OLAF official 2005

⁶ Interview with OLAF official 2005

Impact of the EU's expansion on the fight against fraud

The fight against fraud has been compromised by the fragmented response of then fifteen member states. Indeed there have been problems between courts within a country like Italy being able to cooperate with each other [16]. Now that the EU has expanded to twenty seven members, this problem can only be exacerbated. For example, OLAF has to cope with twelve relatively new legal systems—this is hardly likely to improve the situation. Efforts have been made to prepare the then ten candidate countries for their responsibilities in the fight against fraud [9, 11]. The newly acceded countries received approximately three billion euros in financial aid between 2000 and 2004, and before accession, the candidate countries were required to ‘create an efficient anti-fraud protection system with respect to funds provided in the framework of the Accession Partnership’ [14].

The experience of Romania affords an interesting example of the difficulties faced by new member states in seeking to develop effective anti-fraud structures and of forging a productive relationship with OLAF.

Efforts of Romania to prepare for accession

Romania joined the EU together with its neighbour Bulgaria at the beginning of 2007. Like many of those countries which joined in the big expansion of 2004, it had made a rapid transformation from what is widely regarded as a particularly brutal communist dictatorship presided over by Nicolae Ceaucescu to a democratic market economy within a very short period of time. The EU could be thought of as a club, and just as with any club, whether it is the local tennis club or the freemasons, there are rules that members have to abide by. It is reasonable to assume that new members also want to create a favourable impression and make a positive contribution. This requires support from existing members and the senior members of the club. In this section, an attempt will be made to consider the kind of support Romania received in the time leading up to accession, and since she acceded.

In seeking to join the EU, Romania did have something of an image problem. She had been subjected to many scare stories in the press and media generally regarding the level of corruption in the country and whether this would lead to a widespread misuse of EU funds. Indeed, officials of newly arrived member states in 2004 have spoken in less than complimentary terms about the country and its efforts to build up effective anti-fraud structures: ‘Romania is a black hole into which billions of euros of EU funds will disappear.’⁷ Also: ‘Anti-fraud structures look good on paper, but the reality might well be something different.’⁸

The fact is that if one consults Transparency International’s Corruption Perceptions Index (CPI), Romania has scored between 2.9 in 2004 to 3.7 in 2007. The CPI scores countries on a scale of 0 to 10.0, with 0 being the most corrupt, and 10 as the least corrupt. Romania’s CPI score for 2008 is 3.8 and it is ranked 70th among the 180 countries, which indicates that it has a problem with corruption [22].

⁷ Interview with Czech Academic Colleague 2006

⁸ Interview with Maltese Officials 2007

Given the concerns about corruption, it might be reasonable to assume that special support would have been given to the Romanian authorities by both OLAF and the European Commission, in order that they could build up robust and effective anti-fraud structures. Romania, one of the poorest states of the EU, with a nascent anti-fraud service, staffed by officials who did not have the experience of dealing with the complexities of EU policy regimes as well as not having the experience of investigating transnational frauds, was obviously in need of support and nurturing. An assessment report by Sigma, the consulting arm of the OECD in Paris, which was charged by the European Commission to undertake an assessment of the anti-fraud structures in Romania and reported in 2004, sheds some interesting light in this respect.

As with all candidate countries, Romania was required to establish an AFCOS structure. The purpose of AFCOS was to ensure effective co-ordination between the national administrations and OLAF as well as seeking to have in place organisational arrangements which would be capable of preventing and detecting fraud and irregularities as outlined by Murawska [14]. The rationale behind such structures was to ensure effective co-ordination between legislative and administrative measures dealing with EU fraud policy [14].

In the case of Romania, the designated Anti-Fraud Co-ordination Structure (AFCOS body) in 2002, was the Prime Minister's Control Department. It was established as the sole liaison institution with OLAF. The reorganisation of the government in 2003, included the transfer of this liaison function to the newly established Government Control Department. Within this department, fulfilment of the AFCOS function was delegated to the OLAF division [20]. This division was subordinate to the head of the Government Control Department, but for issues related to the protection of EU financial interests, the reporting line ran directly from the Director of the OLAF division to the Prime Minister.

The objectives of Sigma's assessment in Romania were to: 'evaluate the operational and administrative capacities of AFCOS and its partner institutions in protecting the European Union's financial interests and, where needed, to put forward proposals and recommendations for strengthening these capacities' [20].

The main findings of the Sigma Report were as follows:

- There was an improving situation in Romania. Several laws had either been passed or had been drafted which were aimed at improving overall financial management and control to protect EU financial interests.
- Although the Government Control Division of which AFCOS—the OLAF Division was an integral part, had its own budget and a high degree of operational independence, it was still subordinate to the National Control Authority, which was headed by a deputy minister and was responsible for initiating and ensuring implementation of the legal framework within which it co-ordinated control plans and exercised quality control functions throughout the public sector. The National Control Authority still took decisions on recruitment, appointments and dismissals with regard to AFCOS and the Government Control Department, so independence was compromised to some degree.
- Neither a national anti-fraud strategy nor a more specific strategy for protecting the financial interests of the European Union in Romania had been implemented.
- There was no training programme to support the OLAF division of the Government Control Department.

- A network of contact officials in partner institutions had not been developed.
- The relevant ministries had not been given the OLAF reporting guidelines and the reporting format on suspected cases of irregularity detrimental to Community funds; no training had been given on the use of these guidelines.
- The OLAF Anti-Fraud Information System (AFIS) had yet to be installed and linked by terminal to the relevant ministries.

The fact that there was no national anti-fraud strategy in place was problematic. As the Sigma experts [20] noted, a strategy for fighting fraud in Romania would be useful in harmonising the various efforts undertaken by different ministries and bodies to protect both national and international financial interests, including the EU budget and its own resources. Such a strategy would have emphasised Romania's commitment to take action in this respect. Romania did have a draft "National Strategy for protecting the Financial Interests of the European Union in Romania" and this could serve as the starting point for the elaboration of a national anti-fraud strategy.

The lack of training for staff of the OLAF division of the Government Control Department was very worrying. Fraud investigation is a complex process at the best of times and when this is coupled with the complexities of EU policy programmes such as the Common Agricultural Policy (CAP) and the Structural Funds, then such complexities can only be compounded. The AFCOS structure should have recognised this and asked for more help from Brussels in this respect. It should also have been obvious to the authorities in Brussels that a nascent anti-fraud service was going to have problems in terms of deficiencies in the skills set and expertise, and the EU Commission should have been far more pro-active in terms of addressing this issue. It is not always up to the member state to come with the "begging bowl" to Brussels. It is not the first time that this problem of inadequate training has been recognised. The same was true of the AFCOS structures of the Czech Republic [19]. It appears that no lessons have been learned from that particular episode.

The Government Control Department also had not developed written and structured procedures for disseminating information to the national authorities responsible for management of EU funds and revenue. The Sigma experts found that fraud and irregularities were defined in law, but not understood in practice, and the difference between an error and an irregularity had not been defined [20].

Also, there were no formal co-operation agreements with partner institutions. This was a major weakness. All the experience and analysis to date provided by both academic experts and practitioners have indicated that this whole area is bedevilled by the issue of fragmentation. As Quirke identified, in a small country like the Czech Republic, there were at least ten different agencies with an involvement in EU fraud investigations [19]. The situation was not likely to be any less fragmented in a country like Romania. The potential for overlap and duplication was enormous. This was a problem that needed to be addressed urgently.

Response of the Romanian authorities

The European Commission's *Monitoring Report on Romania* [7] dealt with the progress made by Romania towards accession to the EU and stressed that special

attention must be paid to the protection of the Community's financial interests by means of establishing effective mechanisms for carrying out anti-fraud investigations and drafting and implementing an anti-fraud strategy. Romania responded to these recommendations by creating a new department—the Fight against Fraud Department—DLAF, which was placed within the Prime Minister's office and would report directly to him/her. Also, the task of controlling Community funds was separated from investigations and the new department's role was exclusively in the field of protecting the Communities' financial interests and DLAF investigators were given the powers of conducting on the spot investigations, taking statements and retaining evidence. There are some police type powers here, yet DLAF is not a criminal investigation body as it conducts administrative investigations. There is the potential for confusion as well as the potential for errors and mistakes in the collection of evidence, which could potentially compromise subsequent legal cases.

As noted in DLAF's 2006 *Annual Report* [5], the number of staff members of staff was increased from 26 to 45, the majority of whom were young—well under the age of forty! This could have been a conscious attempt to avoid employing older investigators who may have been compromised by a culture of corruption—Romanian officials were a little evasive when asked to confirm if there was any substance to this observation.⁹ It may be the case that younger investigators do not possess the skills borne out of and honed by years of experience, although this is not perceived to be a problem by the Romanian authorities.¹⁰ Also, there was and still is a substantial difference in salary between DLAF investigators and other civil servants because DLAF investigators are paid around 75% more. Romanian officials admitted that this was a conscious attempt to ensure that they would not be tempted by offers of bribes or to engage in other corrupt activities.¹¹ It is unfortunately a fact of life, that low paid civil servants are more likely to take the offer of a bribe than higher paid public servants.

Also, in response to criticisms from Sigma [20], DLAF has agreed to a number of co-operation protocols with bodies/agencies which have a role in the investigation and prosecution of fraud cases. These range from the national Anti-Fraud Office (DNA) which would actually prosecute any alleged fraudsters to the General Inspectorate of the Romanian Police, to the Customs Service, to the Central Unit for the Harmonisation of the Public Internal Audit (UCAAPI) as well as those bodies which manage funds such as CAP funds and so on and which have their own units for carrying out investigation of irregularities. These services are obliged to notify DLAF with respect to any identified irregularities. From this brief overview, it is clear that there are many agencies involved in detecting/investigating EU frauds in Romania. It is possible to identify two sub-groups. In one, which could be called criminal investigation groups, there are well established arrangements for contact and co-ordination between the DNA and the Police and Customs. In the other sub-group, there are organisations which tend to undertake non-criminal investigations such as the Internal Audit Service and these organisations have no practical experience of liaising with the criminal investigative bodies. Just as Quirke [19] identified in the case of the Czech Republic, here in Romania, there is potential for confusion, inefficiency, duplication and misunderstandings.

⁹ Interview with Romanian Officials 2008

¹⁰ Interview with Romanian Officials 2008

¹¹ Interview with Romanian Officials 2008

A potential difficulty for any of the above agencies in terms of a fraud investigation is the suspicion that politicians could be involved. The Romanian Parliament has passed a law which would protect politicians from investigation and prosecution, as this would be contrary to the constitution in their view. The opinion of DLAF, is that because they are based within the Prime Minister's Office and have the status which this placement confers, means that they would not be inhibited from pursuing any such investigations—there could be a problem however, in terms of co-operation and access to documentation and so on. This issue needs to be addressed as a matter of urgency. It is surely axiomatic to say that: no one is or should be above the law.

Co-operation with OLAF

It appears on the surface at least, that there is a good level of co-operation between DLAF and OLAF. There have been a number of joint on the spot investigations in Romania in 2007, including investigating two projects financed from the pre-accession Pologne Hongarie Assistance a la Reconstruction des Economies (PHARE) funds, a project financed by Instrument for Structural Policy for Pre-Accession (ISPA) funds and one financed from a loan from the European Investment Bank—the total value of the projects amounted to more than 58 million euros [6]. DLAF also carried out a joint investigation with OLAF of a case which constituted an example of defrauding funds from the Leonardo da Vinci programme. It involved training in professional activities in Germany for 120 young people. The training partners were found to be fictitious, Romanian citizens had not travelled to Germany and false documents had been submitted in order to obtain the financing. Such a fraud involves a high degree of organisation. Reports were sent to prosecutors in Romania and attempts were made to recover the funds fraudulently obtained and spent.

Also, the role of DLAF at the apex of the AFCOS structure is recognised by OLAF in a way that is not always the case in the Czech Republic [19], with all communication of irregularities to Brussels being handled by DLAF and there being no separate reporting by individual agencies.¹² One 'fly in the ointment' amidst all this positive information, is the fact that an OLAF official who had been based in Bucharest during this formative period has now been withdrawn and has not been replaced.¹³ This is unfortunate, as DLAF officials found the advice offered to have been very useful and it was very helpful to have such easy access to an experienced OLAF official.¹⁴ It is somewhat surprising that this should have happened given the concerns expressed by the EU about the general situation in Romania and the worries concerning the security of EU funds. Also, given that there appears to have been very little co-operation with the Bulgarian authorities, in terms of joint investigations,¹⁵ then the presence of an OLAF official could have perhaps aided the liaison function and surmounted some of the barriers between the two countries, which appear to exist.

¹² Interview with Romanian Officials 2008

¹³ Interview with Romanian Officials 2008

¹⁴ Interview with Romanian Officials 2008

¹⁵ Interview with Romanian Officials 2008

Conclusion

The main conclusion that can be drawn from this article is that OLAF is attempting to lead the fight against fraud with one hand tied behind its back. It is hampered by the degree of fragmentation which exists at different levels. At the first level there is a high degree of legal fragmentation, as there is no single legal code or system to protect the European Budget. There are twenty seven different legal systems, with differing law enforcement methods and methods of collecting evidence which makes it very difficult to take evidence before a court in another jurisdiction.

A second level where fragmentation exists is in the approach to investigation and control. There are multiple actors involved in the monitoring and investigation of fraud across twenty seven member states. OLAF in attempting to co-ordinate the activities of these agencies faces a mammoth task due to the territorial, linguistic, legal and cultural barriers which exist. When one considers that OLAF has faced difficulties in trying to co-ordinate its activities with those of a sister agency, Eurojust, then this does not bode well for more widespread co-ordination with twenty seven member state agencies.

There is no one agency which 'owns' fraud. OLAF may be the lead agency but it is highly dependent upon member state agencies and its independence is compromised because it is still part of the Commission and the fact that its early years have been overshadowed by the legacy of its predecessor, UCLAF. It has taken 7 years to clear up the backlog of cases inherited from UCLAF. Although it has been in existence for 10 years, OLAF has faced severe difficulties in its early years and still faces enormous challenges. It is still a young organisation and needs strong support from the EU institutions and from member states and their politicians and officials.

The process of rapid EU expansion has made a difficult situation even more difficult in terms of the increased fragmentation which has occurred as well as some of the difficulties encountered by new member states such as Romania which has gaps in its knowledge and experienced the problem of fragmentation in terms of a multiplicity of agencies involved in the investigative process. Member states should not have to go to Brussels with a "begging bowl" to ask for help and assistance, but they need to take a more proactive stance in terms of seeking aid and further training. Also, OLAF should for the foreseeable future ensure that its officials are based in candidate countries as well as new entrant countries in order to ensure that the national officials' gain experience of working with a transnational organisation like OLAF as well as helping OLAF to gain a wider understanding of the issues facing national authorities.

In sum, the fight against fraud by OLAF suffers from a fragmented response and confirms the statement that "too many cooks spoil the broth".

References

1. Committee of Independent Experts. (1999). *First report on allegations regarding fraud, mismanagement and nepotism in the European Commission* (Vol. 1). Luxembourg: Office for Official Publications of the European Communities.
2. Committee of Independent Experts. (1999). *Second report on reform of the commission—analysis of current practice and proposals for tackling mismanagement, irregularities and fraud* (Vol. 2). Luxembourg: Office for Official Publications of the European Communities.

3. Court of Auditors. (1998). *Special report No. 8/98 on the commission's services specifically involved in the fight against fraud, notably the Unite Coordination de la lutte anti-fraud' (UCLAF) together with the Commission's replies*, OJ230, vol. 41. Luxembourg: Office for Official Publications of the European Communities.
4. Court of Auditors. (2005). *Special report No. 1/2005 concerning the management of the European anti-fraud office OLAF together with the commission's replies*. Luxembourg: Office for Official Publications of the European Communities.
5. DLAF. (2007). *The fight against fraud 2006 annual report*. Bucharest: Prime Minister's Chancellery: Department for the Fight Against Fraud.
6. DLAF. (2008). *The fight against fraud 2007 annual report*. Bucharest: Prime Minister's Chancellery: Department for the Fight Against Fraud.
7. European Commission. (2004). *Monitoring report on Romania*. Luxembourg: Office of Official Publications of the European Communities.
8. European Commission. (2005). *Complementary evaluation of the activities of the European anti-fraud office (OLAF)*. Luxembourg: Office of Official Publications of the European Communities.
9. European Commission. (2006). *Report of the European anti-fraud office sixth activity report for the period 1 January 2005 to 31 December 2005*. Luxembourg: Office of Official Publications of the European Communities.
10. EuCrim (2006). *The European criminal law association forum*. Issue 1–2.
11. European Parliament. (2004). *Report on the protection of the financial interests of the communities and fight against fraud—annual report 2002*. Luxembourg: Office for Official Publications of the European Communities.
12. House of Lords. (2004a). *Strengthening OLAF, the European anti-fraud office. 24th Report, Session 2003/04*. London: H.M.S.O.
13. House of Lords. (2004b). *Judicial cooperation in the EU: The role of Eurojust. 23rd Report, Session 2003/04*. London: H.M.S.O.
14. Murawska, A. (2004). *Impact of the enlargement on the protection of the financial interests of the European community against fraud* (pp. 1–8). Bologna: Second Pan-European Conference Standing Group on EU Politics. 24–26 June 2004. Official Journal of the European Communities, C316, 27/11/1995, Convention on the Protection of the European Communities Financial Interests.
15. OLAF Supervisory Committee. (2007). *Activity report of OLAF supervisory committee, December 2005-May 2007*. Luxembourg: Office for Official Publications of the European Communities.
16. Passas, N., & Nelkin, D. (1993). The thin line between legitimate and criminal enterprises: subsidy frauds in the European Community. *Crime Law and Social Change*, 19(3), 223–243.
17. Quirke, B. (2006). Economic Crime and Legal Competence in the EU. In P. C. van Duyne, A. Maljevic, M. van Dijck, K. von Lampe & J. L. Newell (Eds.), *The organisation of crime for profit* (pp. 91–107). Nijmegen: Wolf Legal.
18. Quirke, B. (2007). OLAF: the fight against EU fraud. *Journal of Financial Crime*, 14(2), 178–189.
19. Quirke, B. (2008). EU fraud and new member states: The case of the Czech Republic. In P. C. van Duyne, J. Harvey, A. Maljevic, K. von Lampe & M. Scheinost (Eds.), *European crime-markets at cross-roads* (pp. 221–236). Nijmegen: Wolf Legal.
20. Sigma. (2004). *Draft report of the assessment of the anti-fraud system in Romania*. Paris: OECD.
21. Stefanou, C., & Xanthaki, H. (2005). *Strengthening OLAF—towards greater effectiveness in the protection of the Communities financial interests: The revision of the OLAF regulation 1073/99*. London: Institute of Advances Legal Studies, University of London.
22. Transparency International (2008). *Corruption perceptions index*. http://www.transparency.org/policy_research/survey_indices/cpi/2008.