

Paul van Buitenen

The European Anti-Fraud Office... Ten Years later

On 9 December 1998, Paul van Buitenen, an official working for the Financial Control Department of the European Commission, blew the whistle to the European Parliament on irregularities happening in the European Commission. As a result, the European Parliament refused to grant discharge to the European Commission and a committee of five independent experts examined the allegations. Coming from five different Member States, these experts were two former presidents of the European Court of Auditors (Dutchman and Frenchman), two law professors (Belgian and Italian) and an auditor-general (Swede). The day after the publication of their interim report of 15 March 1999, the Commission under Jacques Santer had to step down.

Less known, but more important, is the final report of the same Committee of Independent Experts, dated 10 September 1999. This report contained numerous and very valuable proposals for an administrative reform of the European Commission, but these recommendations were never properly followed, despite assurances from the Commission that they would be. In this final report, the experts heavily criticised the way the Commission had set up OLAF. OLAF was still an internal Commission department, but enjoyed full operational independence from the Commission, thus avoiding supervisory powers for the Commission. In addition the experts noted that the Supervisory Committee of OLAF lacked the legal basis to exercise real supervisory powers over OLAF. Despite several parliamentary questions in which I addressed this

issue, the European Commission did nothing to change this situation. This brings us to the derailments of OLAF.

OLAF as common denominator

Since the Dutch voters elected me in 2004 (with 7,3% of the national votes) with a mandate to fight fraud as a Member of the European Parliament (MEP), followed by my nomination as Member of the EP Committee on Budget Control (Cocobu), I have received many indications of irregularities happening within the EU institutions. These indications were related to a very wide range of cases, from European Commission departments such as the Luxembourg-based EU statistical office (Eurostat) and the EU Publication Office (Opoc), or the renovation of the European Commission Brussels headquarters (Berlaymont building), to the new buildings of the European Parliament in Brussels, and several fraud cases in the EU Committee of the Regions. In most of these files there appeared to be one common

denominator and that is the functioning of the EU Anti-Fraud Office OLAF, which performed investigations in all of these cases. It appeared that OLAF's functioning was crucial to the lack of results in these cases. Not so much on the work floor of the Anti-Fraud Office, where often proper investigative work is carried out, but more at the top, where OLAF management is reluctant to take the right decisions with regard to the opening of investigations or the referral of cases to the national judicial authorities. These indications were confirmed by criticism in official reports on OLAF, coming from the EU Ombudsman, the EP Committee on Budget Control (Cocobu), the OLAF Supervisory Committee and the European Court of Auditors.

Parliamentary questions

During my mandate, I asked 184 parliamentary questions. Of these, 81 parliamentary questions addressed OLAF's possible shortcomings. These questions

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were often based on information from OLAF sources. Almost every parliamentary question was met with an evasive answer, not admitting what had gone wrong. The replies officially come from the Commission (Commissioner Kallas), but in effect, all the replies are written by OLAF and the Commission is just a letter box for OLAF's replies to all parliamentary questions concerning OLAF. One of my questions, however, led to the opening of an official investigation into OLAF's mistakes in a particular case. The results of this investigation are kept secret, but off-the-record it is known that the report contains findings of wrongdoings on the part of the OLAF director-general, Mr Br  ner. OLAF, however, issued a press release on 21 November 2008 that everything was found to be satisfactory in the anti-fraud office. Despite irritation in the Commission over the OLAF press release, which was factually incorrect, they did not issue a corrective press release.

Dialogue

In March 2008, Mr Br  ner complained to me that my parliamentary questions were paralysing his service and I therefore agreed to suspend submitting parliamentary questions. Between March 2008 and September 2008, an intensive dialogue took place between Mr Br  ner and me in which more than thirty letters were exchanged and several meetings took place, either with Mr Br  ner himself or with other OLAF representatives. Unfortunately, however, this dialogue did not deliver the clarification requested. In addition, many meetings have taken place on the irregularities in OLAF, between me and Commission representatives, the OLAF Supervisory Committee and the Cocobu. Although my allegations were heard with interest, no one felt the urge to undertake any action.

No supervision and above the law

As indicated earlier, OLAF is still an internal Commission department and cannot therefore be individually challenged in court. Despite the fact that the European Commission has been condemned on several occasions for OLAF's mistakes, the European Commission claims that it cannot intervene in OLAF, because of respect for OLAF's operational

independence. The Supervisory Committee of OLAF is powerless. Despite some highly critical reports, there has been no proper follow-up, as the Supervisory Committee lacks the legal basis to exercise adequate supervision. Not only was this indicated in September 1999 by the independent external experts, but the European Court of Auditors also confirmed this lack of supervision in its special report on OLAF in 2005. Finally, in Parliament there is no political support to initiate an investigation into OLAF, as the head of OLAF,

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Mr Br  ner, was re-nominated in 2006 under heavy political pressure from the German Chairs of the two biggest political groups (Hans-Gert P  ttering and Martin Schulz). All this has had a disastrous effect on the attitude of OLAF's management. Hiding behind their 'operational independence', ignoring the Supervisory Committee and immune from cases in the EU Court of Justice, some members of OLAF's management now think that they are above the law.

45-page note with allegations

In a final effort to convince the European Commission to open investigations against OLAF, I submitted a 45-page note to the Commission and OLAF on 25 November 2008. On 9 December 2008, I distributed an anonymous version of this note to the press. In this note I focused on four cases of irregularities, which serve as examples of what is going wrong in OLAF. So far, there has been no official reaction to the note, and informally I hear that hardly anyone bothers to examine it. The 45 pages are broadly dismissed as irrelevant or a repetition of known allegations. The German coordinator of the Christian Democrats in Cocobu, Frau Dr. Gr  ssle, has taken the lead in dismissing my actions as irrelevant and as the product of a frustrated person. Other MEP's follow this reasoning without showing any interest in reading the note.

The allegations against OLAF

What are the allegations against OLAF?

1 OLAF breaches the rights of those under investigation. Suspects are not informed properly, or are not given the chance to defend themselves. OLAF distributes defamatory information, and witnesses may find themselves being suspected without proper information.

2 There is no proper appeal procedure against OLAF's decisions unless one goes to court, and even then it is the Commission which may face condemnation, not OLAF.

3 OLAF hardly performs internal investigations in the EU institutions, although the office was created mainly for this reason. Of its 450 staff (including temporary staff), working in 22 units plus management, only 100 staff work on investigations, and of those 100, only one unit of 15 men works full time on internal investigations. This has led to frustration among investigators.

4 There is a common thread of undue delays and unexplained periods of inactivity during the investigative phase of OLAF investigations.

5 In some cases the final reports have been sent to the national judicial authorities when cases have passed the statute of limitation; in others, the lack of relevance of the case has led these authorities not to open the case.

6 There is an overall lack of rigorous and systematic organisation in both the indexation and the filing of OLAF documents. Confidential documents are lying on the floor or are not registered. Safes are not properly secured after working hours.

7 When being challenged on its shortcomings, OLAF does not hesitate to send, as a matter of routine, misleading briefings to Commission and Parliament or to issue misleading press statements, in an effort to conceal its shortcomings.

8 OLAF is sensitive to political pressure, although the office was supposed to resist such pressure.

9 OLAF selection processes for management positions are often rigged and performed as a smokescreen for the selection of a preferred candidate.

10 As a result of all this, OLAF staff are leaking information in order to generate criticisms that would lead to investigation and improvement. Instead, OLAF organises witch hunts for whistleblowers using inappropriate techniques that breach individual rights.

To substantiate and illustrate these shortcomings, I presented in my note of 25 November 2008 four detailed cases of shortcomings. These four cases describe the following OLAF irregularities:

Case-1: OLAF directors selection process

The selection process for two directors posts in OLAF was rigged from the start. The nomination of Mr Larsson and Mr Walton-George should be investigated. As a result of my complaints only a limited administrative enquiry took place. So far, the results of this enquiry remain secret. Informally it is known that the report contains findings against Mr Brünner. He appears to have acted inappropriately after being informed of irregularities. Mr Brünner also seems to have made contradictory statements about his actions.

One of the implicated parties mentioned in the note, who did receive access to the report, threatened me with a court case. I am not able to judge which of my allegations have been investigated, as I was not granted the same access to this report despite my repeated request for access.

Mr Brünner made misleading statements to Parliament, to the Staff Committee of the Commission, in his press releases and in his statements to the Cocobu. This means that he attempted to cover up his professional wrongdoing and to hide the true course of events.

Case-2: OLAF bribery claim against a journalist

The EU Ombudsman and the European Human Rights Court concluded that OLAF initiated a bribery claim against a journalist (Hans-Martin Tillack of *Stern*) on the basis of vague and unsubstantiated rumours. The Court's judgement did not have any consequences for OLAF. On the basis of additional research as presented in my 45-page note, the conclusion presents itself that the OLAF bribery claim may have been fake altogether. The conduct of OLAF management, who are still in post today, is highly questionable.

Mr Pöttering informed me in November 2007 that, following a vote in the Committee of Presidents, a critical Ombudsman report of 2005 on this case was never taken on board by Parliament, despite the Ombudsman's request to Parliament to formulate an opinion on this case. OLAF has made misleading statements to the European Commission, the European Parliament, the European Court of Justice, the European Ombudsman, the public prosecutors, the press and even to its own investigators.

To cover up some of the shortcomings, OLAF Director-general Mr Brünner has assembled disciplinary files against some of his staff, under a false pretext, thus breaching the confidence and rights of his staff.

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Today, 6 January 2009, the Belgian judiciary has decided to close the case against Tillack. After 7 years of investigative attempts, including house searches and defamatory information, OLAF has not managed to substantiate the bribery allegations against Tillack. So normally OLAF should now also close the case.

Case-3: The CDE case

OLAF received information from whistleblowers of the Centre for the Development of Enterprise (CDE) on irregularities committed by the former CDE director and by the acting CDE director. OLAF investigated only the allegations against the former director (from Mali). Although OLAF did not evaluate the allegations against the acting director (from France), it claimed that there was not enough evidence to warrant an investigation. In reality, OLAF had not processed the information from the CDE whistleblowers in accordance with OLAF procedures.

At the same time, the CDE whistleblowers were victimised in the CDE for their assistance to OLAF and their hope of protection and vindication relied entirely on the outcome of OLAF investigations. Only after the same information had been submitted for the third

time to OLAF, by myself and another MEP (Brian Simpson), did the office decide to re-open the evaluation against the acting director under another case number, thus faking a new case.

Case-4: The OLAF investigation into a German MEP

In 2005, OLAF evaluated a complaint against a German MEP and the investigators came to the conclusion that the opening of an official investigation was warranted. However, Mr Brünner, as director-general of OLAF, used his authority to close down the case under the pretext that this matter fell outside OLAF's competence.

OLAF recommended that the MEP could have infringed Article 9 of the Parliament's Rules of Procedure (on transparency of other interests), but that it was for the administration of the Parliament to draw the appropriate conclusions. OLAF also recommended that Parliament should establish a clear code of conduct for its members as a complement to the Rules of Procedure. However, Mr Pöttering informed me that Parliament did not do anything with these recommendations.

Suggestions

OLAF is seriously ill. The cause of its illness is twofold: OLAF's failing management and its false legal basis. For both causes a solution exists: the replacement of OLAF's management and the creation of a proper legal basis. The proper legal basis consists in giving OLAF an independent status outside the European Commission and placing it under effective supervision with the power to intervene.

There is also one other solution: the dissolution of OLAF and the distribution of its tasks over EU bodies with the proper expertise. OLAF's internal investigations would go to an inter-institutional Disciplinary Office (now IDOC). OLAF's external investigations would go to the European Commission DG's. OLAF's preparations for criminal files would be attributed to specialised departments in the Member States. ♦