Jurnalul de Studii Juridice
ISSN: 1841-6195 | e-ISSN: 2067-8509
Covered in: CEEOL, CrossRef, CrossCheck, ICI Master Journal List - Index Copernicus, Ideas RePeC, EconPapers, Socionet, HeinOnline, EBSCO.

2022, Volume 17, Issue 1-2, pages: 35-47 | https://doi.org/10.18662/jls/17.1-2/98

Aspects of Cooperation in Detecting and Combating Tax Evasion Between the Anti-Fraud Departament (DLAF) and the European Anti-Fraud Office (OLAF)

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Abstract: *This article is dedicated to the collaboration of the Department for the Fight against Fraud (DLAF) as a national body responsible for detecting and combating tax evasion with the European Anti-Fraud Office, known as OLAF (French acronym - Office de Lutte Anti-Fraude).*
The paper will present: in the first point general notions about the two institutions; in the second point we will present the provisions of art. 23- art.31 of Law no. 61/2011 on the organisation and functioning of the Department for the Fight against Fraud (DLAF); in the third point we will present a series of actions related to European funds: PHARE, ISPA, SAPARD, POSDRU, EAFRD from the activity reports of the Department for the Fight against Fraud (DLAF).
We will take into account the following regulations when drafting the article: Law no. 61/2011 on the organisation and functioning of the Department for the Fight against Fraud (DLAF), Government Decision no. 738/2011 approving the Regulation on the organisation and functioning of the Department for the Fight against Fraud and other regulations to which these regulations refer, Decision no. 1999/352 of 28 April 1999 of the European Commission establishing the European Anti-Fraud Office (OLAF).

Keywords: *Anti-Fraud Department; European Anti-Fraud Office; body responsible for detecting and combating tax evasion; territory of Romania; protection of the financial interests of the European Unio.*

How to cite: Aniţei, N.-C. & Lazăr, R.-E. (2022). Aspects of Cooperation in Detecting and Combating Tax Evasion Between the Anti-Fraud Departament (DLAF) and the European Anti-Fraud Office (OLAF). *Jurnalul de Studii Juridice, 17*(1-2), 35-47.
https://doi.org/10.18662/jls/17.1-2/98

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1. Brief history of the establishment of the Anti-Fraud Department

In 2002, by Government Decision no. 521/2002 on the designation of the Prime Minister's Control Corps as the sole contact institution with the European Anti-Fraud Office (OLAF) of the European Union, the Directorate for the control of the contracting and use of funds granted by the European Union and the fight against fraud in relation thereto (structure without legal personality) was established within the Prime Minister's Control Corps.

In 2003, by Government Emergency Ordinance No 64/2003 on the establishment of measures concerning the establishment, organisation, reorganisation or operation of certain structures within the Government's working apparatus, ministries, other specialised bodies of the central public administration and certain public institutions, and by Government Decision No 766/2003 on the organisation and operation of the Government Control Corps, the OLAF Directorate (structure without legal personality) was established within the Government Control Corps.

In 2004, by Government Decision No 1348/2004 on the organisation and functioning of the Prime Minister's Inspection Department and Monitoring of the Transparent Use of Community Funds, the Prime Minister's Inspection Department and Monitoring of the Transparent Use of Community Funds (structure without legal personality) was set up within the working apparatus of the Minister Delegate for the control of the implementation of programmes with international financing and monitoring of the application of the Community acquis, within the Prime Minister's Chancellery.

In 2005, Emergency Ordinance No 49/2005 on the establishment of reorganisation measures within the central public administration set up the Department for the fight against fraud (structure without legal personality), subordinate to the Minister Delegate for the control of the implementation of programmes with international financing and the follow-up of the application of the Community acquis within the Prime Minister's Chancellery.

In 2007 by Decision No 205/2007 on the organisation and functioning of the Department for the Fight against Fraud - DLAF was reorganised as a structure without legal personality), within the Chancellery of the Prime Minister.

In 2011, regulated by Law no. 61/2011 on the organization and functioning of the Department for the Fight against Fraud and by

Government Decision no. 738/2011 approving the Regulation on the organization and functioning of the Department for the Fight against Fraud, the Department for the Fight against Fraud (a structure with legal personality, acting on the basis of functional and decision-making autonomy, independent of other public authorities and institutions) is regulated within the Government's working apparatus, under the coordination of the Prime Minister.

Subsequently, in 2013, the regulations were amended by Law No. 38/2013 on some measures for the organization and functioning of the Government's working apparatus and for the amendment of some normative acts for the approval of GEO No. 2/2010 on some measures for the organization and functioning of the Government's working apparatus and for the amendment of some normative acts.

Studying the above we conclude by saying that if in the period 2002-2011 regardless of the name (2002-2005) and with the same name from 2007-present it functioned as a structure without legal personality from 2011-present structure with legal personality, acting on the basis of functional and decision-making autonomy, independent of other public authorities and institutions within the working apparatus of the Government, under the coordination of the Prime Minister.

Article 1 of Law no. 61/2011 on the organisation and functioning of the Department for the Fight against Fraud (DLAF) states: "The Department for the Fight against Fraud - DLAF, hereinafter referred to as the Department, shall be organised as a structure with legal personality within the working apparatus of the Government, under the coordination of the Prime Minister, financed from the state budget through the budget of the General Secretariat of the Government."

(2) of Government Decision No 738/2011 approving the Regulation on the organisation and functioning of the Department for the Fight against Fraud we note that DLAF is independent of other public authorities and institutions and acts on the basis of functional and decision-making autonomy.

DLAF is financed from the state budget through the budget of the General Secretariat of the Government.

DLAF is based in Bucharest.

Art. 1 para. (5) of Government Decision No 738/2011 approving the Regulation on the organisation and functioning of the Department for the Fight against Fraud states that "The model and characteristics of the Department's logo are set out in Annex 1."

From the conjunction of the provisions of Article 2 para. (2) of Law no. 61/2011 on the organisation and functioning of the Department for the Fight against Fraud - DLAF and Art. 2 para. (2) of the Government Decision no. 738/2011 for the approval of the Regulation on the organization and functioning of the Department for the fight against fraud, we note that DLAF is the contact institution with the European Anti-Fraud Office (OLAF) of the European Commission, cooperating as the national contact institution and coordinator of the fight against fraud.

According to Article 2(1) of Law No 61/2011 on the organisation and functioning of the Anti-Fraud Department, DLAF "shall ensure, support and coordinate, where appropriate, the fulfilment of Romania's obligations relating to the protection of the European Union's financial interests, in accordance with Article 325 of the Treaty on the Functioning of the European Union" (Anti-Fraud Department).

Article 325 (ex Article 280 TEC) of the Treaty on the Functioning of the European Union states in its five paragraphs that:

(1) "The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures taken in accordance with this Article, measures which shall act as a deterrent to fraud and provide effective protection in the Member States and in the Union institutions, bodies, offices and agencies

(2) In order to combat fraud affecting the financial interests of the Union, Member States shall take the same measures as they take to combat fraud affecting their own financial interests.

(3) Without prejudice to the other provisions of the Treaties, Member States shall coordinate their action aimed at protecting the financial interests of the Union against fraud. To that end, Member States shall organise, together with the Commission, close and constant cooperation between the competent authorities.

(4) The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall, after consulting the Court of Auditors, adopt the necessary measures in the field of the prevention of and fight against fraud affecting the financial interests of the Union in order to provide effective and equivalent protection in the Member States and in the Union institutions, bodies, offices and agencies.

(5) The Commission, in cooperation with the Member States, shall report annually to the European Parliament and the Council on the measures taken to implement this Article."

In accordance with the provisions of Article 325 of the Treaty on the Functioning of the European Union Article 2(1) of Government Decision

No 738/2011 approving the Regulation on the organisation and functioning of the Department for the fight against fraud DLAF "shall ensure the protection of the financial interests of the European Union in Romania, as follows:

(a) the Department shall coordinate, at national level, the adoption of legislative, administrative and operational measures to combat fraud and any illegal activity affecting the financial interests of the European Union. These measures shall be similar to those adopted to combat fraud affecting national financial interests;

(b) the Department shall cooperate with the authorities of the Member States, the European institutions or other European financial entities in order to protect the financial interests of the European Union;

c) The Department shall prepare, in cooperation with other national institutions, and submit Romania's contribution to the annual report of the European Commission on the measures taken to implement the provisions of Article 325 of the Treaty on the Functioning of the European Union."

From the provisions of Article 2 (3) of Government Decision No 738/2011 approving the Regulation on the organisation and functioning of the Department for the Fight against Fraud, it can be seen that by using the verb "may" DLAF is not obliged to conclude legal instruments of administrative cooperation with the relevant national, European or international authorities and institutions, in compliance with the law, but has the possibility to choose whether or not to conclude such legal instruments of administrative cooperation with these authorities and/or institutions. We consider, de lege ferenda, that the use of the verb "may" should be removed and it should be made obligatory to cooperate with the relevant national, European or international authorities and institutions with a view to concluding legal instruments of administrative cooperation in order to succeed in the fight against fraud, since it is the contact institution with the European Anti-Fraud Office (OLAF) of the European Commission cooperating as the national contact institution and coordinator of the fight against fraud.

2. A brief history of the establishment of the European Anti-Fraud Office

The European Anti-Fraud Office, known as OLAF (French acronym - Office de Lutte Anti-Fraude) is the legal instrument through which the interests of the European Union are protected under the

legislation against organised crime and tax fraud (Anderson Malcolm, Apap Joana (2002): 61).

Established in 1999 by Decision No 352 of 28 April of the Euratom Commission, based on Article 325 of the Treaty on the Functioning of the EU (formerly Article 280 of the EC Treaty), OLAF's predecessor was the Office for the Coordination of Fraud Prevention, created in 1988 as part of the Secretariat-General of the European Commission. Although it has the status of an independent body in the performance of its fraud investigation function, OLAF is part of the European Commission and has major responsibilities in the performance of the Commission's budgetary function.

OLAF's main purpose is to combat tax fraud, together with the fight against corruption, in order to protect the financial interests of the European Union, with the support of the police and judicial authorities, and its main function is investigation.

Based in Brussels, OLAF currently employs 400 staff and is part of the Commission. However, in carrying out its investigative work, OLAF is completely independent in the performance of its duties and cannot take instructions from the Commission, the government or any other institution or body. OLAF's investigations can be external (by carrying out on-the-spot inspections and checks in the Member States) or internal (in the form of administrative investigations within the institutions, bodies, offices and agencies).

In carrying out its tasks, OLAF respects the provisions of Regulation (EC) No 1073/1999, Regulation (Euratom) No 1074/1999 and the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office.

On 3 July 2013, the European Parliament adopted the proposal for a new Regulation, namely Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), which lays the foundations for the reform of OLAF, so as to enhance procedural guarantees for persons who are the subject of OLAF investigations.

Romania has enshrined, at the legislative level, the way of cooperation with the European institution, thus giving greater effectiveness to the provisions stipulated in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office

(OLAF), the provisions of European legislation in the field of protection of the financial interests of the European Union, the provisions of Law no. 61/2011 on the organisation and functioning of the Department for the Fight against Fraud, the provisions of Government Decision no. 738/2011 approving the Regulation on the organisation and functioning of the Department for the Fight against Fraud pursuant to Article 23(2) of the latter act.

3. Cooperation of the Department for the Fight against Fraud - DLAF with the European Anti-Fraud Office - OLAF) according to Government Decision No 738/2011 approving the Regulation on the organisation and functioning of the Department for the Fight against Fraud

The provisions of Articles 23 - 31 of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by Government Decision No 738/2011, set out the modalities of cooperation of the Department for the fight against fraud (DLAF) with the European Anti-Fraud Office (OLAF).

DLAF cooperates with OLAF in accordance with Article 23(2) of the Regulation. (1) of the Regulation on the organisation and functioning of the Department for the Fight against Fraud, approved by GD no. 738/2011 as the national contact institution and national coordinator of the fight against fraud (AFCOS ROMANIA) with OLAF.

The cooperation between the two institutions according to art. 23 - art. 31 of the Regulation of organization and functioning of the Department for the fight against fraud, approved by GD no. 738/2011 is carried out as follows:

1. through administrative actions;
2. through operational measures;
3. through technical assistance;
4. reporting irregularities (Anti-Fraud Department, 2022).

3.1. Cooperation through administrative actions

From the provisions of Article 24 (1) of the Rules of Organisation and Functioning of the Department for the Fight against Fraud, approved by Decision No 738/2011, we note that DLAF participates in the following meetings organised by OLAF: the annual meeting of the Heads of Anti-Fraud Coordination Services of the Member States of the European Union, the OLAF Anti-Fraud Communicators Network, the Advisory Committee

for the Coordination of Fraud Prevention - COCOLAF and sub-groups or other such working meetings.

Article 31(2) of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by Decision No 738/2011, states that DLAF, in cooperation with OLAF, shall draw up and implement training programmes and modules specific to the protection of the European Union's financial interests.

3.2. Cooperation through operational measures

According to Article 26 (1) part (I) of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by GD No 738/2011, we note that DLAF representatives and OLAF representatives "may" carry out joint control actions on the territory of Romania with access to all data and information, under the conditions of the law.

We note that by introducing the verb "may" it is not obligatory for DLAF and OLAF representatives to carry out joint control actions in which they have access to all data and information on the territory of Romania, under the conditions of the law, but DLAF decides whether it wants to carry out joint control actions with OLAF.

Also, Part II of Article 26(1) of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by GD No 738/2011, specifies that DLAF representatives "may" benefit from technical assistance provided by OLAF representatives, who have access to all data and information, under the law. From these provisions we note that by introducing the verb "may" it is not obligatory for OLAF representatives to be granted technical assistance in which they have access to all data and information, under the conditions of the law, but it is up to DLAF whether it wishes, or does not wish, to request technical assistance from OLAF representatives in which they have access to all data and information, under the conditions of the law.

From the provisions of Article 26(1) of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by GD no. 738/2011, it appears that outside the Romanian territory only "following a written request from OLAF "may" assist the investigations carried out by OLAF representatives of DLAF. And by using the verb "may" we observe that it is not mandatory for DLAF representatives to assist the investigations carried out by OLAF following a written request from OLAF outside the Romanian territory.

Article 26(5) of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by GD No 738/2011, states that per a contrario, DLAF representatives "may" request OLAF to carry out investigations outside Romanian territory, by means of an official address expressly specifying the aspects requiring verification. It should also be noted that the use of the verb "may" does not require DLAF representatives to request investigations to be carried out outside Romania by means of an official address expressly specifying the aspects requiring verification.

Following joint controls by DLAF and OLAF under Article 26(2) of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by GD No 738/2011, DLAF draws up its own control note.

If, on the basis of Regulation (EC) No 1.073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) pursuant to Article 27(1) of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by Decision No 738/2011, OLAF transmits to DLAF information obtained in the course of external investigations which has not been concluded by a final control report, DLAF shall, where appropriate, initiate its own control action.

Article 25 of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by Decision No 738/2011, states that OLAF shall refer to DLAF possible irregularities, fraud or other activities detrimental to the financial interests of the European Union and DLAF shall, where appropriate, carry out the corresponding inspection measures and shall make available to OLAF the inspection report and, on request, any other data and information relating to the action in question, but in compliance with the legal provisions in force.

According to Article 27(2) of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by GD No 738/2011 on the basis of Regulation (EC) No 1.073/1999, OLAF sends the final control report, which contains indications of fraud, to DLAF and DLAF is obliged to refer the matter to the competent public prosecutor's office on the basis of the OLAF report.

3.3. Cooperation through technical assistance

Article 24(2) of the Rules of Organisation and Functioning of the Department for the Fight against Fraud, approved by Decision No

738/2011 specifies that DLAF is a member of OLAF's Anti-Fraud Communicators Network and provides representation at its meetings.

Article 26(7) of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by Decision No 738/2011, stipulates that DLAF representatives are responsible for facilitating requests for technical assistance from national institutions or authorities to OLAF.

Article 28 of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by Decision No 738/2011, states that DLAF shall provide OLAF with "all relevant information and documents relating to: the existence of suspicions of irregularities, fraud and other illegal activities detrimental to the financial interests of the European Union, economic operators or natural persons involved in the acquisition, implementation and use of European funds, financing projects or programmes, the progress of cases controlled by the Department or any other information requested, in accordance with the law. "

According to Article 29(2) of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by Decision No 738/2011 at OLAF's request, DLAF shall make available to OLAF copies of prosecution indictments and court decisions in cases concerning offences against the financial interests of the European Union, as well as other documents requested, in compliance with the legal provisions.

4. Cooperation through operational assistance and technical assistance actions

According to Article 26 (3) sentence (I) of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by GD No 738/2011, OLAF representatives will receive from DLAF, upon request, operational support or technical assistance when carrying out investigations in Romania.

Article 26(II)(3) of the Regulation on the organisation and functioning of the Department for the Fight against Fraud, approved by Decision No 738/2011 DLAF representatives are required to present themselves on the basis of their service badges to OLAF representatives.

Article 26(4) of the Regulation on the organisation and functioning of the Anti-Fraud Department, approved by Decision No 738/2011, states that OLAF may provide technical assistance at the request of DLAF where

necessary at operational level or in order to obtain information required for the conduct of preliminary checks or control actions initiated. We note that the use of the verb "may" makes OLAF's decision to provide assistance at the request of DLAF non-binding and that when OLAF agrees to provide technical assistance DLAF will only do so where operationally necessary or in order to obtain information necessary for the conduct of preliminary checks or control actions initiated.

According to Article 29(1) of the Rules of Organisation and Functioning of the Department for the Fight against Fraud, approved by Decision No 738/2011 at OLAF's request, DLAF shall provide information on the state of investigations in criminal cases in which suspected offences against the financial interests of the European Union have been identified and shall make available copies of prosecution indictments and court decisions in these cases.

Article 31(2) of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by Decision No 738/2011, stipulates that at OLAF's request DLAF shall provide the necessary information and clarifications on the national legislation applicable to the protection of the European Union's financial interests in Romania.

5. Cooperation for reporting irregularities

From the provisions of Article 30(1) and (2) of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by GD No 738/2011, it is noted that DLAF ensures, coordinates and monitors the reporting of irregularities between national institutions and OLAF, providing the necessary information and clarifications in this respect and ensures the transmission of information received from OLAF to the entities involved in the reporting of irregularities.

Article 30(3) of the Regulation on the organisation and functioning of the Department for the fight against fraud, approved by Decision No 738/2011, states that DLAF shall facilitate the exchange of information between national authorities and institutions and the European Commission on quarterly reporting of irregularities.

According to Article 325 TFEU OLAF ensures cooperation between the Member States and the European Commission to protect the EU's financial interests and to conduct external administrative investigations in order to combat fraud, corruption and other illegal activities detrimental to the European budget.

Romania of the national legislative provisions referred to in this article provides the Member State's legislative response to OLAF's quality under Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, so that the final control acts of the European institution have the same status and legal value as those drawn up by the national institution.

Acknowledgment

Articol prezentat la Scientific Association of Law and Administration Suceava, the Faculty of Law of the National University "Yuriy Fedkovych" from Chernivtsi, Ukraina and Lumen Research Center in Social and Humanistic Sciences (Iasi), with the support of the Institute of Legal Research „Acad. Andrei Rădulescu" of the Romanian Academy and of Ecological University from Bucharest, will organize, between INTERNATIONAL SCIENTIFIC CONFERENCE "Ethical and Social Dimensions in Public Administration & Law – 7th edition", 26-28 mai 2022

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