



Administrative AND/OR Criminal Investigations in PIF Cases?

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- **EPPO Regulation** provides for
 - **shared competence** between MSs and the EU in PIF cases (Art. 22)
 - **limited EPPO competence in VAT fraud cases** (Art.22)
 - **OLAF support** for ongoing EPPO investigations (Art. 101(3))
 - **enhanced cooperation** (UK, IR, DK, HU, PL, S do not participate)
- **Proposed Amendment of OLAF Regulation** accords **key role for OLAF** in PIF investigations where
 - EPPO is not competent or
 - refrains from exercising its competence (Art. 25 EPPO Regulation) or
 - in countries not participating in the EPPO
- **Preliminary evaluation of the information by OLAF** (Art 12c).

Objectives of the Amendment of the OLAF Regulation

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- Ensure complementarity with the EPPO
- Improve the efficiency of administrative PIF investigations by targeted changes
- **How to ensure the complementarity of criminal and administrative action?**

Admissibility of evidence

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“The most important factor effecting the follow-up to OLAF recommendations relates to the **admissibility of OLAF-collected evidence** in national judicial proceedings”
(EU Commission Evaluation Report)

Factors influencing admissibility

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- **Factors influencing admissibility**
 - the fragmented investigative powers of OLAF;
 - the assimilation rule provided by Regulation 883/2013;
 - the level of protection of procedural safeguards in OLAF investigations.
- **Duplication of investigative efforts** due to uncertainties about the admissibility of the OLAF Final Report.
 - detrimental to both procedural economy and
 - the rights of the person under investigation.

Art. 3 of proposed Amendment of OLAF Regulation

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- OLAF's **on-the-spot checks and inspections** are **subject to**
 - **EU law alone**, where economic operators submit to a check by OLAF.
 - national law, if the economic operator **does not cooperate** and OLAF needs to rely on national authorities, or receives their assistance for other reasons.
- Art. 3 of proposed Amendment of the OLAF Regulation shall reduce the fragmentation of OLAF investigative powers in the context of on-the-spot checks

Art. 11(2) of Proposed Amendment of OLAF Regulation

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- Admissibility of **OLAF-collected evidence** is strengthened in
 - **non-criminal proceedings**

OLAF reports shall constitute admissible evidence in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States “**upon simple verification of their authenticity**”
 - **administrative and judicial proceedings at Union level.**
- Admissibility of **OLAF-collected evidence in criminal proceedings remains problematic.**

Interaction of different admissibility rules in EPPO and Draft OLAF Regulations

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- Admissibility of evidence emerge to be the common “Achille’s heel” of EPPO and OLAF.
- Different standards of admissibility:
 - Art. 11 (2) Proposed Amendment of OLAF Regulation provides for assimilation rule
 - Art. 37 EPPO Regulation provides for non-discrimination rule
- If OLAF performs investigative measures on request of EPPO, what rule shall apply?

Thank you for your attention