

# Chapter Six

## Corruption Exposure Mechanisms of the EU

### Assessing the European Anti-Fraud Office

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#### 1 Introduction

Currently four out of five EU citizens assume corruption as a grave issue in their own member state (Special Eurobarometer 374, 2012, p. 4). Furthermore, it is estimated that 120 billion euros a year are lost to corruption, which amounts to one per cent of the EU's GDP (ibid.). These numbers are quite worrying, and corruption is rightly assumed to be one of the most serious social problems facing the EU and Europe today. Corruption is such an important issue, because it distorts competition of the free market, negatively affects budgets and undermines political institutions as well as democratically elected politicians (Della Porta & Vannucci, 1999). The scope of corruption is very broad and therefore difficult to define. This is due to the fact that the financial and ethical impact varies greatly and already smaller criminal offences encounter as corruption.

In the context of the financial crisis, the negative effect of financial crime have been noted to be of even bigger consequence on already tight budgets and thus influences individuals directly. Thus, it becomes of considerable importance that taxpayers' money is spent to revitalizing the European economy and not lost in the realm of criminality. Sadly enough "the European budget attracts both organised economic criminals, and opportunistic entrepreneurs who resort to fraud as means of supporting a failing enterprise or helping a company or organisation in financial difficulties" (Quirke, 2009, p. 531). It is very important to recover as much as possible of the funds that have been lost to fraud, in order to build trust in the EU institutions.

In the light of new corruption scandals increasing attention has been paid towards fighting corruption. Such scandals have made protection of the Community's financial interests a prioritised issue on the EU agenda. As a first step to protect the EU's financial interest, it established the Unit for the Coordination of Fraud Prevention (UCLAF) in 1987. This body proved to not fulfil its mandate to expose and prevent fraud due to legal and

institutional failures, and thus a new European Anti-Fraud Office (OLAF) was established in 1999 in the hope that it could better serve the task of protecting the Union's financial interests in a satisfactory way. OLAF is therefore responsible to detect and expose all irregularities that take place in the context of the implementation of the EU budget. When the European institutions decided on the establishment of an anti-fraud office, this was seen as an important step in the fight against fraud and corruption both within the EU institutions and the Member States (OLAF Report, 2000). The call for amending the legal framework of OLAF was recognised as important because the efficiency of OLAF's power in fighting corruption had been subject to many criticisms and concerns. Corruption within the European Member States and the EU institutions had still been a major issue which led to the questioning of the powers obtained by OLAF in fighting these sorts of misconduct. Especially after the 2004 enlargement round of the EU and the accession of Bulgaria and Romania in 2007, corruption issues have arrived more intensively on the EU agenda (Nielsen, 2013).

The fight against corruption has not only been a priority for the EU, but over the past decades anti-fraud offices have been established all over the world (de Sousa, 2009). From a governmental point of view, anti-corruption agencies (ACA) are thought of to be an ultimate way of fighting corruption (ibid.). The rapid establishment of ACAs across the world has been recognised to make up a whole anti-corruption industry (Sampson, 2010). OLAF, as the ACA on a European level, has prioritised anti-corruption means, as its main task is to investigate and expose fraud. Therefore, our research's main objective is to explain to what extent OLAF is capable of executing its mandate satisfactorily. How has the European Anti-Fraud Office improved its capacity to expose and prevent corruption on both EU and Member State level since its establishment?

Drawing on de Sousa's (2009) six features of Anti-Corruption Agencies, we are aiming to analyse the European Anti-Fraud Office. De Sousa has developed these characteristics in order to assess the accomplishments of ACAs. In general, the principles apply to most ACAs, however, their success has proved to be very varying across the globe and ACAs have often faced difficulties in carrying out their mandate properly. These features serve to structure our research very well, and provide us with a framework due to which we can assess the effectiveness of OLAF as an ACA. De Sousa's principles are: independence, inter-institutional cooperation and networking, recruitment and specialisation, wide competences, the role of research and durability. These characteristics are often realities of ACAs institutional features and will be outlined in the following sections. These features of ACAs are both of essence and subject to criticism, and for our research purpose these principles are applied to the case of the EU's ACA, OLAF, to assess its existence and performance since its establishment in 1999.

Hence, we claim that in spite of a discrepancy between OLAF's mandate and its operational capacity, in the framework of ACAs it can be assumed to be a relatively well-functioning ACA. Although there are still clear drawbacks within OLAF's structure, the gap between legal and operational provisions has narrowed, and due to its long-term existence it has become a highly recognised actor on the international stage. As it has gained efficiency in exposing and preventing fraud on a European and Member State level, we argue contrary to Sampson's (2010) idea that anti-corruption agencies only amount to a newly emerging industry that has rather failed to respond to the growing concern of corruption. As we argue that enhancing exposure of corruption increases transparency, due to OLAF's power in exposing and preventing fraud, it has made the EU more transparent and to a certain extent contributed to an increase in trust in the EU institutions. Since OLAF can be perceived as a watchdog agency, it ensures accountability and legitimacy of political processes and therefore at the same time reduces probability of corruption.

Adding to the academic work conducted on the topic, we aim to contribute to the state of the art by illustrating how the EU's Anti-Corruption Strategy has developed and improved over time. Secondly we analyse the mandate of OLAF in the theoretical framework of ACAs. We critically assess the role of the European Anti-Fraud Office, OLAF, and its tasks within the Union's anti-fraud framework. Nevertheless, studies on OLAF have already been conducted but from different angles (Pujas, 2003; Quirke, 2009). Therefore, we are contributing to the state of the art by researching the current functioning of OLAF, and add qualitative research on assessing ACAs.

Our methodology for conducting the research is based on OLAF's Supervisory Committee (SC) Annual Reports. The SC's main task is to ensure OLAFs "independence by regularly monitoring the implementation of OLAF's investigative function."<sup>29</sup> The SC issues an annual report and opinions on their findings on how OLAF has conducted its work of the preceding year. Through a comprehensive analysis of these reports, and OLAF's own Annual Reports, we conduct an in-depth qualitative study. Additionally, interviews have been conducted of current OLAF officials, which give a comprehensive picture of how OLAF's work comes into practice.

Our research is outlined as follows; firstly we present the state of the art. In the literature review we present the difficulties with defining corruption and the theoretical concepts we apply. Secondly, we examine the EU's anti-corruption strategy and mechanisms and which role OLAF has within this framework. Thirdly, we elaborate on the methods we

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29 OLAF Homepage, Retrieved from [http://ec.europa.eu/anti\\_fraud/about-us/supervisory-committee/index\\_en.htm](http://ec.europa.eu/anti_fraud/about-us/supervisory-committee/index_en.htm)

have used to conduct the research. Finally, we execute our comprehensive analysis on the mandate of OLAF and how it has developed over time.

## 2 Defining Corruption and Theorising Anti-Corruption Measures

As much of the task of the anti-corruption agencies and bodies are to define the measures combating corruption, a major part of their work is to define corruption in itself as well. As the concept is a very 'slippery' one, this can often prove to be difficult. Kornai et al. (2009) define corruption as 'the misuse of public office for private financial gain by an elected official' (p. 5). Since corruption does not only contain bribes or any other financial gifts, but also where the public official can take advantage of its position to acquire more favourable contracts or a higher job position in the bureaucracy, Sampson (2010) defines corruption as simply a breach of any sort of public trust or mandate. Corruption is about a public official taking advantage of public resources for private gain (p. 267), and thus a very broad definition of the concept is needed. Naturally, it is difficult to combat something as diffuse as this.

Della Porta and Vannucci (1999) argue that 'corruption is one of the most acute expressions of triumphant democracy's unresolved problems' (p. 4). They assume corruption to be the result of perceived tensions of the democratic model such as the decline of political participation, lack of confidence among citizens and the questioning of democratic values (ibid.).

As corruption has such negative effects on society, the perception that ACAs are needed to counter corruption evolved. Corruption scandals have shed doubt over the accountability and trust of the political leadership (Della Porta & Mény, 1997, p. 2). Della Porta and Mény (1997) argue that corruption is made possible because private actors have an advantage in having access to public resources, and due to the fact that there is neither transparency nor competition in the distribution of governmental funds (p. 4). Indeed, Della Porta and Mény claim that corruption is especially evident in political processes that are not strictly regulated. Only if there is evidence of fraud or corruption available, the chances of prosecution increase (p. 5). "Corruption substitutes private interests for the public interest, undermines the rule of law, and denies the principles of equality and transparency in that it favours certain actors with secret and privileged access to public resources" (pp. 5-6).

As a reaction to increased exposure of corruption and fraud, de Sousa (2009) recognises that there has been a rise in the establishment of ACAs (Anti-Corruption Agencies) since the 1990's. National ACAs have been established as membership criteria of the European Union. De Sousa assumes that "ACAs are public (funded) bodies of a durable nature, with a specific mission to fight corruption and reducing the opportunity structures propitious for its occurrence in society through preventive and/or repressive measures" (p. 5). Nevertheless, they have not all proved to be able to handle their task and mandate. Many ACAs have or have had internal and or external institutional failures and do not function to their optimum. De Sousa (2009) argues that there have been many stories of failure and, hence, political will and financial support can have been decreasing, due to the general lack of indicators that can define the good performance of an ACA (p. 20).

Sampson (2010) is contributing to the debate about anti-corruption measures, by questioning the vast rise of establishment of ACAs. Sampson (2010) argues that anti-corruptionism exists as a phenomenon separate from corruption. Anti-corruptionism is articulated in the key international conventions, national laws, regulations, NGOs platforms, training sessions, congresses, meetings, measurement tools and statistical indicators, which comprise the anti-corruption industry" (ibid.). A big part of the anti-corruption fight is the debate of what the precise definition of corruption is and therefore defining the measures to counter it. This made anti-corruption so hot in the last decade and vast amounts of new initiatives and anti-corruption agencies have been established (de Sousa, 2009). As earlier mentioned, the problem of ACAs is "the problem of impact: deciphering whether the resources used for anti-corruption actually affect the phenomenon it is intended to reduce." (p. 264). The difficulty of measuring corruption as well as the effectiveness of anti-corruption instruments makes it very problematic to fight something that is notoriously difficult to define. Not only rules and regulations can combat corruption, but there is a need for change in ethics and rules of conduct among officials (p. 262).

Furthermore, de Sousa (2009) recognises principles and components that an ACA should have, and the components most of them have (pp. 12-13); De Sousa points out that there is no standard model of how an ACA should be structured (p. 12), however, these characteristics can usually be distinguished in most of them. *Independence* refers to the agencies autonomy from political interference and the agencies' budgetary and operational independence (p. 13). *Inter-institutional cooperation and networking* refers to cooperation with other public bodies, and thus increase in communication and information transfer between institutions (p. 14). This is in order to make up for insufficiencies of domestic means to fight corruption. *Recruitment and specialisation* refer to the need of specialised knowledge within an ACA. In order to best take use of human resources, unified training

procedures of employees are of utter importance (p. 15). However, there is often a lack of clear human resource strategies of ACAs which can substantially hinder an ACAs execution of its tasks. *Wide competences and special powers* refer to the fact that ACAs often 'take over' parts of the mandate of other bodies that had the task of fighting corruption before the establishment of the ACA. The consequence of this can often be conflicts of interest between cooperating bodies (p.16). Furthermore, since corruption is difficult to define, it is problematic to design counter policies as well. As fighting corruption should not only be restricted to financial crime, ethical misconduct should also be investigated by ACAs, which makes the ACAs tasks even wider. *The role of research* refers to how the ACAs conduct their research and investigations. Some research is originally done by the ACA, and others is done externally, depending the ACAs human, administrative and financial resources (p. 17). The final aspect, *durability*, refers to that in order for an ACA to build up the capacity to execute its mandate, it has to last a considerable time (p. 18). If the work is not done in a continuous fashion, the ACA has most likely no chance of delivering concrete results. In the following, all these features of ACAs are applied to the EU's anti-corruption agency in order to assess to what extent it can be perceived as an effective institution to combat fraud and corruption on a European and Member State level.

### 3 The EU's Anti-Corruption Policy

The evolution of European anti-fraud policy and thus the protection of the Communities' financial interests began to develop in the late 1980s. Especially in the wake of the Santer Commission that resigned based on corruption accusations in 1999, the Commission wanted to increase the strength of its institutions, its accountability and its legitimacy as supranational body (Nastase, 2013). When the European institutions received own resources and were given wide budgetary and financial competences, it was recognised that fraud control on a European level has become very urgent (Pujas, 2003, p. 779). By now, the Commission and the Member States administer 80 per cent of the budget under shared management whereas around 20 per cent is managed solely by the Commission. Henceforth, the control of the proper budget implementation remains challenging for the Commission and leaves much room for fraud at various levels. In this respect, the EP, the Council and the European Court of Auditors have recognized the urgent need to implement stricter control measures and better tools to protect the financial interests of the EU (Commission, 2011, 376 final, p. 4).

In that regard, the EU has introduced different policies and measures to respond to this need. According to Article 325 TFEU, the Commission in cooperation with the Member States is responsible for the detection and prevention of fraud within the European Union. By 2011, the Commission has, however, recognised the urgent need to advance its Anti-Fraud Strategy and has therefore launched a new Commission Communication with the general objective to “improve prevention, detection and the conditions for investigations of fraud and to achieve adequate reparation and deterrence, with proportionate and dissuasive sanctions, and respecting the due process, especially by introducing anti-fraud strategies at Commission Service level” (Commission, 2011, 376 final, p. 3). Consequently, the Commission’s Anti-Fraud Strategy defines clear priorities and therefore focuses on concrete measures (Commission, 2011, p. 9).

The role of the European Anti-Fraud Office, OLAF, can be assessed in this context. It is among one of the services that the European Commission offers and serves as an important assistant when it comes to combating all forms of fraud and corruption that affect the financial interests of the EU.<sup>30</sup> Within the Commission’s Anti-Fraud Strategy, OLAF contributes to the development of clear investigation methods and provides strict guidelines and anti-corruption strategies (Commission, 2011, p. 11). Due to its accumulated knowledge, OLAF can be perceived as an expert in its field. It supports Commission Services which are responsible for the managing of funds and supports them in detecting corruption trends.<sup>31</sup>

According to Article 325 (3) of the TFEU, “the Member States shall coordinate their action aimed at protecting the financial interests of the Union against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.” In this context, OLAF has been established. It assists the Member States and develops strict “fraud prevention policies” with them (Commission, 2011, p. 12).

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30 *ibid.*

31 *ibid.*

## 4 The European Anti-Fraud Office: Mandate and Legal Base

The mandate of OLAF is to protect the financial interests of the EU, assure the reputation of the European institutions by preventing any misconduct and support the European Commission in the development and implementation of fraud prevention and detection policies. OLAF's investigations cover all EU expenditures, ranging from structural funds, agricultural policy and rural development to the Commission's direct expenditures and external aid payments.<sup>32</sup> Since the distribution of the EU budget attracts high potential for misuse, fraud and corruption, OLAF's task is to prevent these misconducts and fight any activity that may damage the reputation of the EU (Quirke, 2009a, p. 534).

According to Article 1 (2) of the Regulation 1073/1999, the Anti-fraud office needs to assist Member States and cooperate with the respective authorities on a regular basis. Furthermore, Article 7 states that all European and national institutions are obliged to report to OLAF when irregularities, suspect data or information on fraud is rising. They are required to forward any document or information to ensure cooperation and limit inefficiencies. The European anti-fraud office maintains investigative powers and is able to conduct external as well as internal investigations, as provided by Article 3 and 4 of the Regulation. External investigations refer to "on-the-spot inspections and checks in the Member States"<sup>33</sup> where OLAF on a Member State's request provides assistance in any investigation to detect irregularities in EU funded projects (Quirke, 2009a, p. 534). In addition to that, OLAF holds internal investigative power that refers to investigations within institutions, bodies, offices and agencies.<sup>34</sup> In case of internal investigations institutions under investigations need to disclose all relevant information and data to OLAF. Article 4 (2) states that OLAF has the right to access any data held by institutions and can indeed "request oral information" if perceived as necessary. Similar to external investigations, it can carry out "on-the-spot inspections" (Article 4 (3)). Furthermore, the Office needs to respect the personal rights of people subject to investigations and needs to adhere to the Charter of Fundamental Rights. As indicated in Article 5 of the Regulation, for opening an external or internal investigation, OLAF can either react on a request

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32 OLAF Homepage, Retrieved from [http://ec.europa.eu/anti\\_fraud/investigations/eu-expenditure/index\\_en.htm](http://ec.europa.eu/anti_fraud/investigations/eu-expenditure/index_en.htm)

33 Regulation (EC) No 1073/1999

34 *ibid.*

coming from a Member State or an institution or it can act on an own initiative being made by the Director General of OLAF.

Article 9 of the Regulation lies down what actions need to be taken once the investigations have been completed by OLAF. Since OLAF is no legal authority, it has no law enforcement powers. Hence, its power is limited to the drafting of reports that contain the major findings of the investigations and outline recommendations for further actions to be taken by the respective national authorities. However, as articulated in Article 9 (2) OLAF needs to stick to “procedural requirements laid down in the national law of the Member State concerned”. Consequently, these reports are either sent to Member State authorities in case of external investigations or to the institutions concerned when internal investigations have been conducted.<sup>35</sup> The Reports serve as “admissible evidence in administrative or judicial proceedings of the Member State” (Article 9 (2)). Article 11(1) outlines the tasks of the Supervisory Committee which inspects the investigative powers of OLAF and monitors its independency. It acts as an independent body and each year publishes a critical report in which it assesses OLAF’s powers in carrying out its mandate (Article 11 (8)).

Even though the mandate of OLAF provides a concrete framework to fight fraud and corruption within the EU, it has been subject to much criticism. These criticisms are pointed out and assessed in our analytical section.

## 5 Analysis of OLAF’s functioning: How does OLAF fight corruption?

### 5.1 Independence

It was clearly noted by the SC that in the early years of running the Office there were clear discrepancies between the legal and operational provisions (SC Report, 2001). During the transitional period, OLAF had to devote much effort to adapt to the new Regulation. This came to hinder the effectiveness of OLAF’s work (SC Report, 2001, p. 6).

The main hindrance for the operational and administrative independence had been that OLAF did neither have the capacity nor the experience to manage the selection

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<sup>35</sup> *ibid.*

procedures (p. 9). Hence, OLAF had to rely on recommendations from other institutions on which staff to hire, which consequently limited their administrative independence to quite some extent. Only slight improvements of OLAF's autonomy were noted by the SC in 2001 (SC Report, 2002, p.7).

Officially there are no threats to OLAF's independence, neither legally nor from other institutions and the hybrid status of OLAF as investigative Office and association of the Commission is functioning well (Belbeoch, 2013). Furthermore, the appointment procedure of the Director-General which is outlined in Article 12 (3) of the Regulation, guarantees his independence. On the other hand, even though the Parliament and the Council decide on the final Director-General, they appoint him or her from a suggested list proposed by the Commission (Article 12 (2)), which might question the real independence of OLAF's Director-General (Quirke, 2009a, p. 538).

Moreover, Belbeoch argued that in 2012 the Commission pointed out the importance that other institutions cannot intervene in OLAF's work, even not the Commission, and arguably this proves that OLAF's independence is real and not only on paper (Belbeoch, 2013). Additionally, what ensures OLAF's independence is that the Commission employees in OLAF, the non-investigators working in the organisational units, do not have access to the Case Management System (CMS) information database which the OLAF investigators use to store the investigational data. This means that no other institution has access to OLAF investigative data (ibid.).

Although there are many elements that prove OLAF's independence and underline that there has been a clear improvement since its early days, the SC has noted that the independence of OLAF is threatened due to other European bodies or comparable national institutions which seek to influence OLAF's work during the selection or investigation phase (SC Report, 2011, p. 4). That implies, indeed, that OLAF is facing pressure and influence from surrounding bodies. For example, in the 2010 SC Report, OLAF's independence is questioned due to institutions unwillingness to give OLAF access to information and data bases which OLAF has the right to access (p. 24). That has been the case in the "cash-for-amendments" scandal (Willis, 2011), where OLAF investigators were denied access to MEPs offices. Furthermore, what clearly limits OLAF is its association with the Commission as it must obey to their rules which arguably can be seen as political pressure from outside (Příborský, 2013). This implies that the hybrid status of OLAF can in some situations be subject to political pressure, due to its association with the Commission and the duty to comply with the Commission Rules, however this infringes its own independence. The situation of internal investigations of the Commission itself, have thus a significant potential to lead to a compromise of OLAF's independence (Quirke, 2009a, p. 539).

## 5.2 Inter-institutional Cooperation

As corruption knows no borders, they cannot be solved by national anti-fraud agencies alone. Close communication and cooperation as well as continuous information transfer between OLAF and national ACAs is of utmost importance to ensure the implementation of OLAF's aims and objectives. Therefore, one can argue that OLAF belongs to an international network that "compensates for the insufficiencies of domestic instruments" and enhances the "coordination of investigations and prosecutions on corruption between the EU member state agencies" (de Sousa, 2009, p. 14).

Due to OLAF's limited financial, administrative and human resources, it cannot tackle all corruption issues itself and therefore transmits those cases that do not fall within its list of priorities to the respective Member States authorities (Belbeoch, 2013). As stated in Article 5, OLAF, can be perceived as being an assistant to Member States in fighting corruption and acts on their request. As mentioned in Opinion 2/2003, OLAF has been successful in assisting EU Member States and helping them to implement effective anti-fraud strategies. Moreover, anti-fraud measures can better be carried out on a Community level compared to the limited information available to national institution (Belbeoch, 2013).

In the context of cross border corruption cases, OLAF relies upon cooperation with its partners because it can only act as administrative body and the real success of a case therefore depends on the actions taken by the respective Member State authorities. They are responsible to bring into effect the recommendations issued by OLAF and need to bring the case to a suitable end, be it judicial proceedings or financial recovery (Přiborský, 2013). Already during the investigation phase, OLAF relies strongly on the cooperation with national bodies which often refuse to hand out personal data and thereby challenge OLAF in conducting its investigations in a short and effective manner (SC Report, 2009). As stated in SC 2008 Report, this is due to the fact that "judicial authorities of the member state which receive OLAF's reports are not obliged to instigate legal proceedings. It is up to these authorities to take a decision in line with the rule of law applicable in their territory and, where appropriate, with their criminal policy priorities" (p. 12). The reasons why Member States often fail to act on a recommendation sent by OLAF are very diverse. Belbeoch (2013) argues that opening a case transmitted by OLAF often entails massive extra workload for the Member States authorities. The cases are mostly very complex and the lack of sufficient knowledge about EU law is prevalent among many national officials. Since 80 per cent of the EU budget is implemented solely by the Member States, they are responsible for the financial recovery in case money has been lost to fraud and corruption. Consequently, Member States might choose not to open a case in avoidance of having

to make financial repayments to the EU (Belbeoch, 2013). In the years between 2006 and 2011, a total number of 1030 recommendations have been transferred to the respective Member State authorities (OLAF Report 2011, p.22). Nevertheless, they have reacted only on 54,3 per cent (559 cases) of the incoming recommendations leaving the other 45,7 per cent ignored and not subject to further consideration. Of the 559 opened cases, some 471 have been processed during a trial and faced a judicial decision in the national courts (ibid.). Furthermore, Quirke (2009) claims that “very often EU money is not seen as “our money”, thus, there appears to be an unwillingness to take the necessary initiatives to deal specifically with fraud involving EU funds” (p. 533). Member States and European institutions are often in breach with Article 7 of the Regulation when they fail to report cases of fraud to the European Anti-fraud Office.

As part of its investigative work and as an assistant body, OLAF provides the Member States with legal evidences that can later on be used during judicial proceedings (Belbeoch, 2013). A new Judicial and Legal Advice Unit has been implemented to check the legality of OLAF during investigations and the correctness of the file before it is sent to the Member State in charge. Thereby, it ensures that the transmitted evidence is coherent with national law and can be used as appropriate evidence (Příborský, 2013).

On an international stage, OLAF has by now become a well-known institution, which fights fraud and corruption on a national, European and international level (Belbeoch, 2013). Therefore, cooperation often transcends European borders as it has been emphasized in the OLAF Annual Report of 2011. OLAF has worked closely with the competent Russian and Indian authorities in order to combat international cigarette smuggling and the illegal import of biodiesel from the United States (pp.24).

Inter-institutional cooperation with other corporate bodies at Union level and constant information transfer indeed enhances the effectiveness of OLAF. Eurojust has been established to “support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States” (Quirke, 2009a, p. 540). Even though there are various opportunities available for Eurojust and OLAF to cooperate, “OLAF on the investigation side” (Quirke, 2009, p. 540) and Eurojust “providing the link with national prosecutors” (ibid.), they have failed so far and did not provide a substantial progress in fighting fraud effectively.

### 5.3 Recruitment and Specialisation

Training of staff and managing human resources is of much importance to an anti-corruption industry, however, there have often been noted clear weaknesses in ACAs

human resource strategies. When OLAF has been established, it firstly took over the entire staff of the predecessor body, UCLAF (SC Report, 2000, p. 5). Especially in the beginning OLAF struggled to hire the adequate qualified staff. By 2003, the SC noted that recruitment procedures of OLAF had not been good enough to improve their work (Opinion No 2/2003). Furthermore, the SC urged for the need of more specialised financial investigators and more expertise of OLAFs staff (SC Report, 2007, p. 13). Even though efforts were made in order to improve human resources, the SC recognised in 2010 that OLAF still missed a clear human resource strategy.

The OLAF staff is of very various professional background, arguably more than other services (Příborský, 2013). The diversity is illustrated by the fact that they come from professions such as the police, custom services, tax authorities, IT experts and intelligence, but also different academic backgrounds such as law and economics (ibid). There is one specific unit (Unit C2) that supports investigations by training and assisting investigators, both by internal and external experts (ibid.). In the field of investigating fraud, this is a significant factor of success, as specialised expertise of the investigators makes or breaks the outcome of an investigation.

In particular in the setting up period, OLAF has faced major challenges with its temporary staff. These can be perceived as an unsolved problem and leftover of the previous body, UCLAF. The issue laid in the fact that staff needed clearer career perspectives and stronger loyalty with OLAF. Moreover, in February 2012 the new Instruction to Staff on Investigative Procedures (ISIP) was adopted and replaced the old OLAF Manual (OLAF Report, 2012, p. 10). The ISIP simplified instructions for staff on the investigative procedures and provided for better allocation of resources. Indeed, it ensured the legal review of cases during the selection and opening stage (ibid.). Consequently, the internal organization of OLAF has improved (SC Report, 2013, p. 25).

Comparing with the beginning, the working capacity of OLAF's staff has improved significantly, though there might be room for improvement in relation to clarifying recruitment.

#### 5.4 Wide Competences

OLAF has the mandate to investigate cases of fraud and corruption at European and Member State level. It applies to all cases that threaten the financial interests of the EU and consequently the competences OLAF are very vaguely defined. This has been highly criticised by the SC in 2011 (p.11).

Since the setting up of OLAF, it has faced many challenges in exercising its mandate because European institutions and Member State authorities have refused cooperation and have therefore not acknowledged its competences. In particular in the beginning, OLAF's tasks often overlapped with the ones held by previous agencies and bodies which created a conflict of interests (SC Report, 2002, p.7).

In the course of the time, OLAF sought ways and means to respond to these difficulties and provided more transparency in its too broad competences. Therefore, in 2006, it developed the so called *de minimis* policy which states that minor corruption cases shall be dealt with by other institutions to relieve OLAF from high workload and rather focus its investigations on cases of high financial impact and public interest (SC Report, 2008). By 2007, minor cases had been sent to the Investigation and Disciplinary Office of the Commission (IDOC) that was charged to deal with smaller cases (SC Report, 2008, p.13). In this regard, the SC recommended in its opinion 5/2008 that it should, indeed, be clearly defined which cases are dealt with by OLAF and which are rather transmitted to IDOC. By now, new financial indicators have replaced OLAF's *de minimis* policy which states the financial impact that a case needs to have in order to be either investigated by OLAF or a smaller institution (Belbeoch, 2013). Besides this new financial regulation, OLAF has in its past still worked on cases with a rather low financial impact and has therefore not closely stuck to the financial indicators. This is partly due to the fact that OLAF's mandate not only applies to cases that are of financial interest, but also to those that relate to political and ethical focus on corruption and could to a certain extent damage the reputation of the EU and the trust in its institutions. Furthermore, OLAF has implemented a list of priorities to better define which criteria it accesses when it chooses to open a new investigative case. When the respective case does not fall within this list, it is sent to the respective Member State authorities (Belbeoch, 2013). Even though OLAF holds wide competences and powers, it restricts its field of activity.

In 2006, OLAF has adopted a "zero-tolerance policy" which exclusively applies to corruption cases within EU institutions. Therefore, OLAF officially puts its main focus on internal investigations since it is considered to be "unacceptable to tolerate any corruption based in the EU's institutions" (Přiborský, 2013). Due to that it concentrates particularly on EU institutions and provides assistance to national authorities. Thereby, OLAF seeks to ensure that trust in the EU and its institution is still maintained among the European population.

Since OLAF's competences lack clarity and in particular its right in carrying out on-the-spot-investigations is not clearly defined, many institutions question the interference by OLAF into their competences. With regard to the European Parliament, cooperation

in past cases has often proved to be difficult because it questioned OLAF's powers and competences (SC Report, 2011, p.11). The EP fears that the MEP's right of immunities and privileges are in danger when OLAF is granted unlimited access to personal data held by the institutions, and therefore does the EP challenges the legitimacy of OLAF and it has often claimed that OLAF's methods of conducting investigations are not objective and transparent enough (Pujas, 2003, p. 792). OLAF recognises the need for increased on-the-spot-checks in the EP to ensure MEPs compliance with internal rules of the Parliament (OLAF Report, 2012, p. 28). In its Opinion 1/2011, the SC expressed its concern on this issue and argued that the denial of personal data to OLAF also increases its dependency on other institutions and therefore challenges its status as independent body.

The ways of how OLAF conducts its investigations have also been subject to much critique. Hence, it needs to respect the Charter of Fundamental Rights and the Individual Rights of the people subject to investigations. The protection of personal data is the key to a successful investigation because it is a crucial element in safeguarding the rights of individuals concerned by investigations (OLAF Report 2012, p. 31). Nevertheless, Opinion 2/2003 states that OLAF's investigations are not objective enough and lack transparency and therefore it is frequently accused of breaching the rules and duties it is required to adhere to.

## 5.5 Role of Research

The investigative powers of ACAs depend on its resources and the image of the agency to the outer world. In this context, OLAF carries out research support when conducting external investigations e.g. in the Member States and assists the national ACA authorities, hence in this field OLAF has shared competences with the Member States. In regards to internal investigations it has exclusive competences as the sole body to detect fraud in the EU institutions, and therefore internal investigations have priority (SC Report, 2001, p. 44).

It was recognised that OLAF had to respond to transparency issues, and therefore major improvements were made in the internal organisation within the new office (SC Report, 2001, p. 7). The transparency issue was partly addressed in 2001 when OLAF started to record all its investigation cases, and "started to codify and harmonise operational procedures ... in connection with the preparation of an OLAF Manual" (p. 6). The first version of the OLAF Manual of Operational Procedures was drafted, in order to bring more transparency and accountability into OLAF's work. Even though these introductions were improvements, the early years were still characterised by challenges such as not efficient enough earmarking of the budget, insufficient interdepartmental cooperation and the lack of operational experience.

Over the years, the Manual of how investigative research was to be conducted has been redrafted several times, due to the fact that “decisions have been taken in a pragmatic and often ad hoc fashion by line managers themselves” (SC Report, 2002, p. 59). Therefore, there was a grave need to implement practical and useful guidelines for investigations, and, in that context, the SC urged for a new version of the Manual (SC Report, 2007, p. 13). As an answer to long-lasting problems of mismanagement the ISIP has been adopted.

Since there was a need for more focus on core business and more efficiency in the procedures, investigations needed to be shortened to become more efficient and trustworthy by the public. The new ISIP provides with clearer rules, and a more coherent and consistent approach to investigations (Belbeoch, 2013). The main change in the procedure was the erection of a new selection unit (Unit 01), which is solely dedicated to dealing with selection of cases. Due to this unit the selection phase has been dramatically shortened from 6.8 months to 1.4 months (OLAF Report, 2012, p. 5). This makes a total of six months reduction in the total investigative procedure down to 22.6 months including the selection phase. This increased efficiency is important in order to deal with increase in investigative items that are reported to OLAF.

Even though the six-month reduction is a clear improvement in procedural efficiency, there is still a grave problem of very lengthy investigation durations. By 2009, the SC recognised that 78 per cent of OLAF investigations have taken longer than nine months. The SC was not able to clearly analyse why this has been the case, but it stressed the need of clear deadlines in the investigation process. For the credibility of OLAF, it is important to complete open cases in a very efficient and systematic manner, because otherwise the trustworthiness of OLAF would highly be challenged and the public would lose confidence in OLAF’s ability to fight corruption (SC Report, 2009). Even though working procedures have been improving over the last decade, the duration of lengthy investigations are still problematic (Belbeoch, 2013).

The SC argues that even by 2010 OLAF had not implemented systematic working methods to internally check and avoid extension of investigations with justified reasons (SC Report, 2011, p. 20), and inadequate management of day-to-day cases in the lack of proper planning (p. 21). However there are many reasons for why investigations can take long time; such as problematic cooperation with other institutions, language barriers when cooperating with third countries, and the sole fact that writing reports is a very time consuming task (Belbeoch, 2013). OLAF has clearly improved its research capacity, however, the efficiency of investigations can be improved to quite an extent.

## 5.6 Durability

Since OLAF was established in 1999 it has continuously improved its working mechanism. Indeed, it has gained experience in how to combat fraud at a national, European and international level and has become a more efficient and highly appreciated institution that forwards its experiences to other anti-fraud bodies (Belbeoch, 2013). In this context, policy learning is an important aspect which can clearly be seen by the fact that a proposed amendment of OLAF's Regulation is on the way. The fact that OLAF as an ACA has acquired such a high level of international recognition and has become more known to the general public, can partly explain why OLAF the last year has experienced a 21 per cent increase in investigative items reported (OLAF Report, 2012, p. 13). The increase in information reported is assumed to be a result of increased visibility of OLAF, improved transparency, and an increased perception that the EU's financial interests must be protected (ibid.).

Within the time, the internal working mechanisms have increased and OLAF now adheres to a strict work strategy as it adopts an Annual Management Plan and sticks to the OLAF Manual. As an independent institution, OLAF receives an annual continuous and stable budget by the European Parliament and, thus, does not rely upon voluntary party donations.

## 6 Conclusion

Coming back to our research question: how has the European Anti-Fraud Office improved its capacity to expose and prevent corruption on both EU and Member State level since its establishment? Has it been capable of executing its mandate satisfactorily? The establishment of the European Anti-Fraud Office was the EU's response to corruption scandals and the global trend of a new emerging anti-corruption industry.

Even though it has been widely recognised that ACAs serve as good counter means of corruption, their success in combating fraud still remains questioned, as to the lack of evidence of concrete impact. However, ACAs as watchdog agencies make corruption more risky and therefore ensure more transparent and accountable policy processes. De Sousa (2009) has outlined features which in general are inherent in ACAs, but depending on the quality of each feature, one can assess to a certain extent whether an ACA has been successful in executing its mandate. However, when all characteristics are adhered to sufficiently, this cannot fully serve as proof of efficiency of an ACA, since the concrete data results are always subject to interpretation.

In our chapter, we have applied De Sousa's principles to OLAF, in order to evaluate OLAF's powers in detecting and preventing fraud at a European and Member State level. When analysing the development of OLAF's work since 1999, we argue that compared to its mandate there is still a discrepancy between the legal provision and its operational capacity. Nevertheless, major improvements have been made. This is in contradiction to Sampson's assumption that ACAs have been rather ineffective in combating fraud on a global level. We argue that, even though OLAF in the past has had many difficulties in carrying out its mandate properly, over time it has gained experience and developed into a relatively well-functioning ACA.

In regard with OLAF's independence provision, there are many legal guarantees that ensure it, however, in practice the independence has clearly been compromised when conducting internal investigations. Concerning external investigations, OLAF depends on Member States' cooperation when bringing cases to an end and this indeed limits OLAF's independence, too. Moreover, the mandate as outlined in the Regulation creates overlapping competences with other corporate bodies. Since OLAF's competences have often not been clearly defined, provisions which aimed to enhance the relationship between OLAF and its partners have proved not to encourage cooperation but rather turned into a competitive relationship. In certain cases the EP has been reluctant to cooperate with OLAF during investigation procedures and, thus, hindered the smooth exchange of relevant data. With the establishment of the OLAF Manual and its constant redrafting, the internal organisation has by the time become more efficient and fitting to the current investigations. In this context, the new ISIP has recently been implemented and caused a six-month reduction in the selection phase of cases. Due to its continuous political support, OLAF has achieved a level of high integrity.

Therefore, OLAF's ability to expose and prevent fraud in a European context, has contributed to more transparency in the EU policy-making. Despite the fact that it has some reservations, OLAF can be considered to be an efficient watchdog agency. Therefore, we can confirm that OLAF's activities lead to more transparency in the EU.

In sum, OLAF's legal base provides for it to be an effective ACA, though the gap between the legal and operational provisions has narrowed, a discrepancy is still existing and can be perceived as a constraint on OLAF's tasks in carrying out its mandate. Furthermore, a proposed amendment of Regulation 1073/1999 has been tabled and negotiated, though not decided upon yet. Even though it is not yet known when the final decision will be agreed upon, one can expect it to be implemented within a reasonable time span and the fact that this amendment is already proposed, to a certain extent limits our research. This is due to the fact that the new Regulation will most likely improve some of the

shortcomings we have criticised in this study. Since the exact date of the implementation is, however, still unknown, our conclusions are of high value and add to previous research made on ACAs.

So far, we have focused our research on the time span between 2000, when the first Report by the Supervisory Committee has been published, and 2012, when the latest Report has been issued. We have assessed the development of OLAF and its capacity in carrying out its mandate during this time and have noticed that despite some discrepancies, OLAF has in general improved its effectiveness in combating fraud and corruption and has become a highly recognized ACA. With regard to further research, it will be of high interest to analyse how OLAF will develop in the future and whether it will be able to improve even more in order to narrow the still existing discrepancies.