

The challenges of trans-national investigation

“Prosecutors coordinating investigations across the EU”

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Overview

- What is the way forward?
- How (not) to choose the way forward
- Festina Lente?

What is the way forward?

- Cooperation
 - Approximation
 - Mutual recognition as sufficient..EAW
 - TFEU Article 85

- Integration
 - Harmonization
 - Mutual recognition as limited..EEW, confiscation
 - TFEU Article 86

What is the way forward?

- TFEU Article 85.1 [Eurojust's] “tasks may include: (a) the initiation of criminal investigations...particularly those relating to offences against the financial interests of the Union;”
- “initiation”?
 - Recommend
 - Order
 - Investigate

How to choose the way forward

- What is the evidence?
 - Extent of
 - EU financial interests crime
 - Cross-border crime
 - Experience with
 - cooperation
 - integration

How to choose the way forward

- Evidence
 - re EU financial interests
 - Fight against Fraud/OLAF
 - OLAF Supervisory Committee
 - European Court of Auditors
 - re integration or cooperation
 - “Gardening leave”
 - “Dumb insolence”

Evidence of EU fraud: MS?

- Are fraud estimates reliable ?
- Member State estimates?
 - ACPO 2006..fraud cost to UK £13 billion
 - NFA 2010.....fraud cost to UK £30 billion (no EU)
 - NFA 2011.....fraud cost to UK £38 billion (no EU)
 - NFA 2012.....fraud cost to UK £73 billion (no EU)

Evidence of EU fraud: EU?

- Are fraud estimates reliable ?
- EU estimates?

suspected fraud euros

2010	643m	COM(2011) 595
2011	404m	COM(2012) 408

“Irregularities” not reported as fraudulent

2010	1, 579m	COM(2011) 595
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Evidence of EU fraud: cause?

- EU reported fraud is low
 - Total fraud vs EU is less than 0.5% of UK fraud
 - 404 million euros as % of 73 billion pounds
- Why?
 - Reported to COM by MS under TFEU 325 + regs
 - Efficient systems?

Evidence of EU fraud: agriculture

“France did not classify any of its [agricultural] 2010-cases as suspected fraud. This raises the question whether the reporting of a low number of cases of suspected fraud is due to the non-respect of reporting principles or to the ability of the control systems in place to detect fraud in the Member States.”

SWD (2012) 228

Evidence of EU fraud: agriculture follow-up

“The Commission called upon France, Germany, Spain [50% agric expenditure] and United Kingdom to explain the low number of reported fraud cases..” SWD (2012) 228

- Germany: no fraud reported
- France: *mens rea* for fraud reduces reporting etc
- Spain: close network of controls makes it difficult to perpetrate fraud.”
- UK: “United Kingdom did not reply”

Evidence: OLAF cases

- 43 cases from OLAF for national judicial authorities' investigation in 18 months (2.4 per month)
 - 2011/C 188/01 June 2009 - December 2010
- 8 cases referred by OLAF to Eurojust 2011
- 1 case to OLAF from European Court of Auditors 2011

Evidence problem re way forward

“There are no reliable estimates of the size of criminal profits in the European Union....”

- Proposal for a Directive on the freezing and confiscation of the proceeds of crime. March 2012

Experience with cooperation and integration

- Gardening leave
- Reply: Dumb insolence
 - EPPO to overcome problem?

Why *Festina Lente*

- Reported fraud is not at crisis proportions
 - 0.3%
 - 404m as % of 140 bn euros
- Improve evidential basis by
 - Case referral to EU bodies
 - Europol
 - Eurojust per Article 13
 - OLAF
 - EuroNeeds approach

Festina Lente: How to improve evidential base

- Case referral to EU bodies

- Eurojust per Article 13
- Europol
- OLAF

Refine iceberg argument

- EuroNeeds approach