The challenges of trans-national investigation

“Prosecutors coordinating investigations across the EU”

Aled Williams
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?

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<th>Year</th>
<th>Suspected Fraud Euros</th>
<th>Reference</th>
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<td>2010</td>
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<td>COM(2011) 595</td>
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<tr>
<td>2011</td>
<td>404m</td>
<td>COM(2012) 408</td>
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“Irregularities” not reported as fraudulent

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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?
“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