

THE ROLE OF THE EUROPEAN ANTI-FRAUD OFFICE (OLAF) IN THE REPORTED CASES OF FRAUD ON THE FINANCIAL INTERESTS OF THE EUROPEAN UNION IN REPUBLIC OF NORTH MACEDONIA

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Abstract

As a candidate state for accession to the European Union, the Republic of North Macedonia, by signing the Framework Agreement on Financial Partnership between the European Commission and the Republic of North Macedonia, as a beneficiary of funds from the Instrument for Pre-accession Assistance (hereinafter referred to as 'IPA'), assumes the obligation to establish an efficient system for the protection of the financial interests of the European Union (hereinafter referred to as 'EU'), which will also contribute to the protection of the national financial interests of the state. The efficiency of the control system over the implementation of IPA funds is determined by various factors, as follows: the established controls within the national administrative bodies of the state administration and IPA structures; criminal-legal protection in cases of suspected fraud; the harmonization of national legislation with the legislation of the European Union; and the effective cooperation of national authorities with the established European institutions responsible in the respective area.

This paper will provide a comprehensive assessment of the cooperation between national authorities and European institutions in the area of protection of EU financial interests, with special emphasis on the jurisdiction of the European Anti-Fraud Office (OLAF) as a sui generis institution of the European Union and the key institution responsible for investigating fraud, corruption, and other illegal activities that harm the financial interests of the EU. OLAF is an administrative body with specific investigative powers, and its structure and duties are detailed in EU regulations. In this regard, an overview of OLAF's regulation in terms of EU legislation will be elaborated, with special emphasis on the performance of OLAF's duties in candidate states, particularly in cooperation with national law enforcement institutions, through a detailed normative analysis of relevant national and EU legislation.

The paper will contribute to the process of enhancing the legal and institutional framework of the national system for the protection of EU financial interests, which will also have a direct impact on improving the protection of national financial interests.

Keywords: OLAF, protection of the EU financial interests, law enforcement institutions

Introduction

The implementation of funds from the Instrument for Pre-Accession Assistance (hereinafter referred to as "IPA") in the Republic of North Macedonia, as a candidate country for accession to the European Union, is regulated by the Framework Agreement for the implementation of the Instrument for Pre-Accession Assistance (IPA).⁷

¹ Framework Agreement between the European Commission and the Republic of North Macedonia for implementing the Instrument for pre-accession (IPA III), for the period 2021-2027 (Official Gazette of Republic of North Macedonia no.235, 04.11.2022)

² Article 40, paragraph 2, (page 34) of the Framework Agreement between the European Commission and the Republic of North Macedonia for implementing the Instrument for pre-accession (IPA III), for the period 2021-2027 (Official Gazette of Republic of North Macedonia no.235, 04.11.2022)

³ Article 43, paragraph 1, (page 36) of the Framework Agreement between the European Commission and the Republic of North Macedonia for implementing the Instrument for pre-accession (IPA III), for the period 2021-2027 (Official Gazette of Republic of North Macedonia no.235, 04.11.2022)

In addition to determining the rules for the proper implementation of IPA funds, the Framework Agreement also sets out the obligations for establishing an effective system aimed at protecting the financial interests of the European Union (hereinafter referred to as "EU"). Ensuring the effective protection of the Union's financial interests is an inseparable obligation alongside the protection of the financial interests of the state's national budget. Supporting this is the fact that the Framework Agreement provides recovery of disbursed funds⁸ or financial corrections⁹ in cases where it is determined that the funds were not used in accordance with the prescribed rules. Such measures are also applied in cases where the responsible IPA structure fails to recover the funds from the final beneficiary (grant recipient) who has violated the prescribed rules for the implementation of IPA funds. In such cases, the European Commission recovers the funds from the state budget of the IPA beneficiary country. The obligation to protect the financial interests of the European Union is emphasized in a specific provision of the Framework Agreement, namely Articles 50 and 51. According to Article 50 of the IPA Framework Agreement:

“All financial agreements and subsequent contracts, including all subcontracts concluded by beneficiaries with third parties, shall be subject to supervision, control, and audit by the Commission, including the European Commission's Anti-Fraud Office (OLAF), as well as audits by the European Court of Auditors.”

The same article also stipulates that “authorized external auditors, agents, or representatives of the Commission, OLAF, and the European Court of Auditors shall have the right to carry out any technical and financial inspection or audit they consider necessary for monitoring the implementation of the program or agreement, including visits to locations and premises where activities financed by IPA III are implemented or managed.” Furthermore, the obligation is prescribed for the IPA beneficiary to ensure effective cooperation with the institutions of the European Commission in terms of monitoring and control over the implementation of IPA funds. The Framework Agreement specifically highlights the role of the European Anti-Fraud Office (OLAF) in the protection of the Union's financial interests, as a *sui generis* body of the Union, in terms of its powers and its position within the anti-fraud system focused on protecting the Union's financial interests.

This paper will provide an overview of the definition of OLAF's role, its powers regarding the protection of the Union's financial interests in the field of IPA funds, its cooperation with candidate countries for accession to the Union, recent developments in enhancing the powers of this Office, its cooperation with the established European Public Prosecutor's Office, and the specific nature of its activities within candidate countries for EU accession.

1. European Anti-Fraud Office (OLAF), its definition and powers, according to Regulation 883/2013 of the European Parliament and the Council on investigations carried out by the European Anti-Fraud Office (OLAF) and Regulation 2020/2223 of the European Parliament and the Council amending and supplementing Regulation (EU, Euratom) No. 883/2013, regarding cooperation with the European Public Prosecutor's Office and the effectiveness of investigations conducted by the European Anti-Fraud Office (OLAF)

According to Regulation 883/2013 of the European Parliament and the Council on investigations carried out by the European Anti-Fraud Office (OLAF) and Regulation 2020/2223 of the European Parliament, OLAF is an institution of the European Commission responsible for investigating fraud against the EU budget. It is also responsible for developing policies to combat fraud within the European Commission.

OLAF, an institution of the European Commission, was established in 1999 with the primary goal of ensuring effective protection of the European Union's financial interests by implementing effective penalties and measures against all unlawful activities that harm the financial interests of the Union. The main tool through which OLAF acts to protect the financial interests of the Union is through so-called *“administrative investigations”* (Koen, 2017). The term *“administrative investigations”*

emphasizes the nature of this body, namely that it is undoubtedly an administrative body. Although the terminology used for its powers includes the term "investigations," it does not carry the same meaning as investigations in a criminal procedure. Rather, it is more akin to an administrative investigation, which in the context of our legislation would be more similar to an inspection. Indeed, the Framework Agreement for IPA acknowledges OLAF's ability to carry out on-the-spot inspections, as specified in Article 50, paragraph 5:

"To ensure effective protection of the Union's financial interests, the Commission, including OLAF, may also carry out all investigative actions, particularly checks and inspections on the spot in accordance with Regulation (EU, Euratom) No. 883/2013 and Regulation (EC, Euratom) No. 2185/1996. These checks and inspections are prepared and carried out in close cooperation with the IPA III beneficiary, who is timely informed of the subject, purpose, and legal basis of the checks and inspections, to ensure the necessary assistance. The IPA III beneficiary identifies a service with authority for criminal investigations that will assist in carrying out investigations in accordance with Regulation (EU, Euratom) No. 883/2013 and Regulation (EC, Euratom) No. 2185/1996 at OLAF's request."

It is important to note that OLAF conducts administrative investigations and does not have powers as an investigative body in the context of criminal proceedings, nor is it responsible for prosecuting offenders (Scharf-Croner, 2019). The specificity of OLAF as an institution of the European Commission can be further noted when emphasizing the concept of *"administrative investigations,"* under which OLAF exercises its powers. In the context of our legislation, the term "investigations" is typically associated with criminal investigations. Furthermore, while OLAF does not have the authority to undertake direct investigative actions nor is it responsible for prosecuting potential criminals, it does have the authority to take measures for the recovery of funds from the budget of the IPA beneficiary state. This conceptual status of OLAF as an institution of the European Commission responsible for protecting the financial interests of the EU in North Macedonia is quite complex, particularly because OLAF does not have a counterpart in either EU member states or candidate countries. Regarding the territorial jurisdiction of OLAF, given its primary function – the protection of the EU's financial interests – it can be easily concluded that OLAF's jurisdiction extends only within the territory of the European Union. However, its jurisdiction, as established in Article 325 of the Treaty on the Functioning of the European Union¹⁰ and Council Regulation No. 2185/96¹¹ concerning field inspections carried out by the Commission, emphasizes that OLAF's jurisdiction extends to performing checks outside the EU as well. In short, OLAF's jurisdiction applies to all countries that are beneficiaries of EU funds. Therefore, OLAF's jurisdiction regarding investigations, checks, and inspections is expanded to countries outside the EU. The concept of a *"sui generis"* institution, which has no counterpart in European countries, becomes even more complex when considering its jurisdiction and powers in candidate countries for EU accession. First, from the perspective of OLAF's jurisdiction in EU member states, it must be emphasized that according to Regulation 883/2013⁶, during on-site inspections, OLAF must act in accordance with the national law of the Union and the rules and practices of the affected member states. In accordance with national legislation, the competent authorities of the member states are obliged to provide OLAF with the necessary assistance for carrying out such inspections. While OLAF has the authority to access digital data, such access is subject to the same conditions as those for national administrative inspectors and must comply with national legislation¹². This conditionality regarding the enforceability of OLAF's powers based on national legislation, which

¹⁰ Official Journal of the European Union (2012) – Consolidated version of the Treaty on the functioning of the European Union

¹¹ COUNCIL REGULATION (EURATOM, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests

against fraud and other irregularities available on <https://eur-lex.europa.eu/eli/reg/1996/2185/oj/eng>

⁶ 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 available on <https://eur-lex.europa.eu/eli/reg/2013/883/oj/eng>

often leads to discrepancies between EU legislation and the national procedural laws of member states, raises concerns about the effectiveness of OLAF's investigations. Such discrepancies can delay investigations and hinder their efficiency, directly questioning the effective protection of the Union's financial interests. When conducting on-the-spot checks or administrative investigations, OLAF is required to respect procedural rights guaranteed during the procedure. These rights include the right to an objective and impartial process, the presentation of all relevant evidence, the use of any of the Union's official languages, the right against self-incrimination for parties or witnesses involved in an OLAF investigation, the right to comment on evidence presented against them, and the right to a record of any interview conducted (if questioned by an OLAF investigator).

Regarding the exchange of information between OLAF and the competent authorities of member states, OLAF may transfer information obtained during external and internal investigations to the relevant authorities of the affected member state to enable the country to take appropriate measures in accordance with its national legislation to protect both the financial interests of the Union and the national budget. In turn, the competent authorities of the affected member state must inform OLAF in a timely manner about the actions taken based on the information provided by OLAF, without violating the national law.¹³

After completing an administrative investigation, OLAF prepares a report detailing the investigation. The report includes the legal basis for the investigation, procedural actions taken, established facts, their preliminary classification according to the law, the estimated financial impact of the established facts, compliance with procedural guarantees, and conclusions drawn from the investigation. OLAF's reports typically include recommendations regarding whether further action is necessary (Scharf-Croner, 2019). These reports are submitted to the competent institutions in the affected member state or EU fund beneficiary country for potential further action, which may include administrative, financial, or judicial measures by the institutions. It is important to note that when preparing OLAF's reports, national legislation of the member state is always considered regarding the provisions for the relevant area. This approach aims to facilitate the acceptance of the report as evidence in national administrative or judicial proceedings, under the same conditions as reports prepared by national administrative inspectors. Regarding the acceptability of these reports as evidence in proceedings before national institutions, this will be discussed further in this paper, particularly concerning OLAF's extended powers under Regulation 2020/2223¹⁴ regarding cooperation with the European Public Prosecutor's Office and the effectiveness of investigations carried out by the European Anti-Fraud Office.

1.1 Cooperation of the European Anti-Fraud Office (OLAF) with the European Public Prosecutor's Office (EPPO)

Building upon Regulation 2020/2223 regarding cooperation with the European Public Prosecutor's Office (EPPO) and the effectiveness of investigations by the European Anti-Fraud Office (OLAF), it is important to emphasize that while OLAF plays a crucial role in combating fraud and protecting the financial interests of the Union, the Office's authority regarding the prosecution of potential criminal offenses depends on the national authorities of the Member State or candidate country for EU accession. From this perspective, the establishment of the European Public Prosecutor's Office

⁷ 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 available on <https://eur-lex.europa.eu/eli/reg/2013/883/oj/eng>

⁸ REGULATION (EU, Euratom) 2020/2223 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations available on <https://eur-lex.europa.eu/eli/reg/2020/2223/oj/eng>

(EPPO) under Regulation 2017/1939¹⁵ represents one of the most significant steps in safeguarding the financial interests of the EU.

Considering the respective competences of the EPPO and OLAF in protecting the financial interests of the European Union, Regulation 2020/2223 emphasizes the importance of EPPO "establishing and maintaining close relations with OLAF based on mutual cooperation within their respective powers and the exchange of information. This will particularly aim to ensure that all available means are used to protect the financial interests of the European Union through complementarity and support from OLAF for EPPO."

In this regard, Regulation 883/2013 ("OLAF Regulation") was amended by Regulation (EU, Euratom) 2020/2223 to ensure the highest level of protection of the Union's financial interests through joint actions of EPPO and close cooperation and information exchange, as well as complementarity in their procedures, avoiding actions that might lead to overlap in their competences.

To further regulate the cooperation between OLAF and EPPO, on July 5, 2021, these two EU institutions, which are key in combating fraud affecting EU funds, concluded a working agreement. The working agreement between EPPO and OLAF emphasizes mutual cooperation and assistance within their respective competences in the field of protecting the financial interests of the Union. The agreement first addresses the conditions for the exchange of information concerning reported cases of irregularities/suspicions of fraud detrimental to the EU's financial interests, conducting complementary investigations, OLAF's obligation to inform EPPO about opening an administrative investigation into suspected fraud, and the provision of information and evidence gathered during administrative investigations to EPPO.

Furthermore, OLAF is required, upon EPPO's request, to make available its expertise and all information, conduct operational analysis, and forensic activities for the needs of an open criminal investigation led by EPPO, offering operational support in every aspect within the legal powers of OLAF inspectors, including acting as an expert, expert witness, or advisor. The working agreement also outlines the conditions for opening complementary investigations (parallel investigations by OLAF) when EPPO is conducting an investigation at the same time, with the precondition that OLAF's administrative role does not compromise the integrity of the criminal investigation opened by EPPO. The working agreement also governs the assistance that EPPO must provide to OLAF within the framework of conducting administrative investigations in the fight against fraud affecting the financial interests of the European Union, as well as cooperation through joint investigative teams of OLAF and EPPO. It is evident, based on the established competences of EPPO, that its jurisdiction is limited to cases of suspected fraud in EU Member States, and EPPO does not have jurisdiction over suspected fraud cases in candidate countries for EU accession. In third countries and candidate countries, the jurisdiction for prosecuting perpetrators of fraud against the Union's funds remains with national public prosecutors. This also applies to EU Member States that have not accepted the concept of the European Public Prosecutor's Office¹⁶.

In contrast to EPPO, OLAF's jurisdiction is extended to candidate countries for EU accession and third countries benefiting from EU funds. In this context, OLAF's jurisdiction concerning administrative investigations extends to Member States that are not part of EPPO (Courtney.H.A., 2022).

1.1.1 Strengthened competences of the European Anti-Fraud Office (OLAF) in the context of conducting administrative investigations to protect the financial interests of the European Union

Given that OLAF plays one of the key roles in protecting the financial interests of the European Union, especially because as an institution, it has the authority to act outside the EU and also provides

⁹ COUNCIL REGULATION (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') available on <https://eur-lex.europa.eu/eli/reg/2017/1939/oj/eng>

¹⁶ Hungary, Ireland and Denmark are not part of the EPPO. Source: <https://www.epppo.europa.eu/en/about/members>

continuous support to EPPO in conducting criminal investigations into fraud involving EU funds, Regulation 2020/2223 of the European Parliament and Council amending Regulation (EU, Euratom) No. 883/2013 significantly strengthens OLAF's powers as an administrative body in conducting administrative investigations related to the protection of the Union's financial interests. This regulation grants OLAF the right to access information on bank accounts under the same conditions applicable to national competent authorities, and the evidentiary value of OLAF's reports is strengthened. In all procedures before the Court of Justice of the European Union, non-criminal proceedings before national courts, and national administrative procedures, OLAF's reports and the evidence attached to them will serve as evidence. This also applies to criminal proceedings. Additionally, the new regulation enables OLAF to set deadlines in its recommendations in final reports within which the competent authorities of affected Member States and candidate countries are obliged to send the final decision to national courts regarding the cases reported by OLAF. Furthermore, under this regulation, OLAF is granted access to all information, documents, and data related to the subject of the investigation, which are necessary for the effective execution of checks and inspections on-site. In this regard, administrative investigations also extend to privately owned devices used for work purposes, which, under Regulation 2020/2223, may be subject to inspection by OLAF.

It is important to note that OLAF's powers are conditional on national legislation in the Member State or the affected country where the on-site inspection is being carried out:

"The Office will subject such devices to inspection only under the same conditions and to the same extent as the national control authorities are permitted to investigate devices in private ownership, and when the Office has a well-founded suspicion that their contents may be relevant to the investigation."

This provision offers a form of guarantee that OLAF inspectors, when conducting on-site checks, will not have greater powers than national officials or inspectors. However, a more detailed analysis reveals that this provision does not negate the fact that OLAF inspectors are granted greater powers compared to national inspectorates, at least in the case of our country. This is evident from the fact that national inspectorates do not have the authority to seize private devices or conduct forensic analysis unless it pertains to certain inspection services, such as the Financial Police Office, inspectors within the Ministry of Interior, Customs Administration, and similar entities. However, a clear distinction must be made regarding these powers within the framework of criminal investigations, in accordance with the provisions of the Criminal Procedure Law and based on the orders of competent authorities. Similarly, under the new regulation, OLAF inspectors are granted access to bank accounts in accordance with national legislation. In the case of our country, access to bank accounts and related information is strictly regulated by the Banking Law¹⁷. This raises the question of whether the alignment of OLAF inspectors' rights with those of national inspection services regarding access to bank accounts also applies to the exceptions concerning banking secrecy under the Banking Law, which specifies the circumstances in which competent institutions are entitled to access bank accounts. It is important to note that national institutions have the right to access bank accounts only in cases of open investigations or checks within their competences. Therefore, it logically raises the question of how OLAF, as a European supra-national institution, will access the requested bank information. Undoubtedly, the administrative request will go through the competent national institutions, but a detailed analysis and development of the entire procedure is necessary, considering whether the competent national institution, which under the law has the right to access bank accounts and related information, can make the data available to a third or international body. It should not be overlooked that OLAF is an administrative body, meaning that all actions taken by national institutions to grant access to bank information and the data that may become available to OLAF will be obtained according to administrative procedures. Their presentation as potential evidence in a future criminal procedure raises concerns because evidence in criminal procedures must be obtained in compliance with the provisions of criminal procedure law.

Specifically, when handling data that are considered banking secrets, property in a bank vault, monitoring payment transactions, and temporarily halting certain financial transactions, the Criminal

¹⁷ Article 111 of Republic of North Macedonia ("Official Gazzette of Republic of Macedonia" no. 67/07, 90/09, 67/10, 26/13, 15/15, 153/15, 190/16, 7/19 and „Official Gazzete of Republic of North Macedonia“ no. 101/19, 122/21 и 37/25)

Procedure Law clearly defines the conditions and methods for taking actions in this regard, namely, obtaining such evidence is subject to a written request by the prosecutor to the court to issue a court order for the delivery of documentation and data for bank accounts for the purpose of criminal proceedings. Exceptions to this rule, i.e., the possibility for the prosecutor to take such measures without a court order, are provided only in urgent cases.

From this, the question arises: “What would be the prescribed procedure for delivering bank account data to an international institution like OLAF, which is conducting an open administrative investigation under its jurisdiction, but for which no criminal procedure has been initiated before national investigative authorities or the national prosecutor?” These issues require special attention and detailed regulation in national legislation. First, the entire cooperation between OLAF and domestic national authorities needs to be clearly regulated, especially in relation to OLAF’s expanded powers, particularly regarding obtaining sensitive evidence like bank accounts and mobile devices. Furthermore, cooperation in joint investigations between OLAF and national investigative authorities needs to be regulated to ensure that when OLAF requests access to bank accounts or forensic data from mobile devices, national prosecutorial authorities already have certain indications to initiate a corresponding investigation under national law. This would allow the potential evidence to be obtained in compliance with criminal procedure law¹⁸, ensuring its admissibility and usefulness in proceedings before national courts. On the other hand, given that the Law on International Cooperation in Criminal Matters (“Official Gazette of RNM” no.77/21 cannot apply here because OLAF is an administrative body, a legal solution must be found to fully define the cooperation with OLAF, establishing clear legal rules to ensure the legality of obtaining evidence and the entire process of assistance provided to OLAF in conducting administrative investigations, without violating basic guarantees for the protection of personal data rights and the foundational principles of criminal procedure law.

2. Cooperation of the European Anti-Fraud Office (OLAF) with the Member States of the European Union

The cooperation of OLAF with the EU Member States in the area of protecting the financial interests of the European Union against fraud represents a system of direct cooperation with the Member States, particularly through the Anti-Fraud Coordination Committee (COCOLAF)¹⁹, with the goal of improving the policy for preventing fraud to the detriment of the financial interests of the Union. It is important to emphasize that the Committee has an advisory role and is composed exclusively of representatives from the Member States and services of the European Union. Additionally, within this Committee, various expert groups are formed, which address issues related to the protection of the financial interests of the Union, as well as expert groups aimed at enhancing cooperation between specialized national anti-fraud services, sharing operational experiences and best practices, and raising awareness of fraud. To strengthen cooperation and raise awareness in the fight against fraud, the European Commission has also established a Network for Communication on Anti-Fraud (OAFCN), in which EU Member States participate. The aim of this network is to promote the policy for fraud prevention and share best practices in communication and media activities on anti-fraud issues. The Network's goal is also to raise awareness among citizens and the media about the work of OLAF and the EU Member States in protecting the Union's budget from fraud, thereby safeguarding the financial interests of its citizens.

Perhaps the most successful form of cooperation between OLAF and the Member States is the establishment of the anti-fraud service²⁰ as the main contact point of OLAF in the Member States. This service was established in accordance with Regulation 883/2013, which details the jurisdiction and structure of OLAF. However, it is important to note that the establishment of such services is also

¹⁸ Article 200 of the Criminal Procedure Law (“Official Gazette of RNM” no.150/10, no.100/12 and no.198/18)

¹⁹ COMMISSION DECISION of 23 February 1994 setting up an advisory committee for the coordination of fraud prevention (94/140/EC) and COMMISSION DECISION of 25 February 2005 amending Decision 94/140/EC setting up an advisory committee for the coordination of fraud prevention (2005/223/EC) достапни на <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31994D0140> и <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32005D0223> (последен пристап на 23.04.2025 година)

²⁰ Anti-fraud coordination services (AFCOS)

mandatory for candidate countries for EU membership. The structure, form, and jurisdiction of this Service can vary from country to country, considering that Regulation 883/2013 specifies the obligation to establish this service and its main responsibilities but does not prescribe which body should integrate it (Guidance note on main tasks and responsibilities of an Anti-Fraud Co-ordination Service (AFCOS)). It is only emphasized that the service can have investigative powers.

Furthermore, OLAF's enhanced powers, especially regarding administrative investigations and its strengthened role as a service for the EPPO, have also been highlighted. From this, it can be concluded that in addition to direct cooperation with EU Member States, OLAF also cooperates with them as a service of the European Public Prosecutor's Office. OLAF's crucial role in conducting investigations and gathering evidence provides additional support for the functioning of the EPPO. For example, OLAF's investigations often result in significant findings that the EPPO can use in criminal proceedings within the Member States. This cooperation has been elaborated in terms of avoiding duplication of actions between OLAF and the EPPO, conducting complementary investigations, and prioritizing the EPPO's proceedings over administrative investigations conducted by OLAF, all regulated by the previously mentioned Working Arrangement between OLAF and the EPPO (Working Arrangement between the European Anti-fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO), 5th of July 2021) . While the EPPO carries out the prosecutorial functions against perpetrators of criminal offenses affecting the EU's financial interests, where OLAF does not have jurisdiction—i.e., is limited to administrative investigations—OLAF's jurisdiction extends beyond the Member States of the EU and into candidate countries for EU membership and Member States not part of the EPPO framework. This does not mean that OLAF replaces the EPPO in these countries or candidate countries, but that it enjoys broader territorial jurisdiction compared to the EPPO.

3. Cooperation of the European Anti-Fraud Office (OLAF) with Candidate Countries for European Union Membership, with special focus on cooperation with the Republic of North Macedonia

Through the use and implementation of funds from the Instrument for Pre-Accession Assistance (IPA) and the signing of the Framework Agreement²¹, which regulates the rules for implementing the allocated IPA funds, the Republic of North Macedonia undertakes obligations for the proper implementation of these funds, as well as for establishing a control system and taking effective measures to protect the financial interests of the Union. Specifically, in Article 50 of the Framework Agreement, as previously mentioned, rules for supervision, control, audit, and protection of financial interests are outlined. This article also concretely defines and emphasizes the obligation of the country to cooperate with OLAF and provide assistance to OLAF in carrying out on-the-spot checks²². In the same article of the Framework Agreement, there is also an obligation for the establishment of an "anti-fraud coordination service" by the IPA beneficiary country:

"The IPA III beneficiary designates an anti-fraud coordination service to facilitate effective cooperation and exchange of information with OLAF, including operational information."

This provision underscores the goal of creating this service, which is to enhance effective cooperation and exchange of information with OLAF, including operational information. It is important to note that the Republic of North Macedonia has established the Anti-Fraud Coordination Service (AFCOS)²³, which coordinates the actions between national administrative authorities and prosecution bodies in the field of protecting the financial interests of the Union. This service is set up within the Ministry of Finance, as the Department for Combating Fraud and Protecting the Financial Interests of

²¹ Framework Agreement between the European Commission and the Republic of North Macedonia for implementing the Instrument for pre-accession (IPA III), for the period 2021-2027 (Official Gazette of Republic of North Macedonia no.235, 04.11.2022)

²² Article 50, paragraph 1 of the Framework Agreement between the European Commission and the Republic of North Macedonia for implementing the Instrument for pre-accession (IPA III), for the period 2021-2027 (Official Gazette of Republic of North Macedonia no.235, 04.11.2022)

²³ Article 50, paragraph 2 of the Framework Agreement between the European Commission and the Republic of North Macedonia for implementing the Instrument for pre-accession (IPA III), for the period 2021-2027 (Official Gazette of Republic of North Macedonia no.235, 04.11.2022)

the European Union. This department enjoys the powers and authorizations granted according to the Framework Agreement.

Article 50 of the Framework Agreement clearly stipulates:

"The IPA III beneficiary ensures that agents or representatives of the Commission, including OLAF, have the right to examine the relevant documentation and accounts relating to items financed under the related financial agreement and to assist the European Court of Auditors in conducting audits regarding the use of IPA III assistance. When private devices are used for work purposes, these devices may be subject to inspection by OLAF. Such devices are subject to inspection by OLAF only under the same conditions and to the same extent as national control authorities are permitted to investigate devices in private ownership and when OLAF has reasonable grounds to suspect that their contents may be relevant to the investigation."

In analyzing the aforementioned provision from the Framework Agreement for IPA, it highlights OLAF's right to access all documentation that it deems relevant to an investigation, including accounts that may be the subject of investigation. We have already discussed the open issues regarding access to bank accounts, and if this provision pertains to such accounts, it can be concluded that the problem with OLAF's access to bank accounts is an issue that also exists in the Republic of North Macedonia, in light of the provisions of the Law on Banks and the procedural rules for accessing bank accounts under the Criminal Procedure Law. This provision also continues by noting that "private devices used for work purposes" may be subject to inspection by OLAF. Again, this creates a conflict of norms, given that in our country, access to private devices under investigation is strictly regulated from a criminal law perspective. The provision from Article 50 of the Framework Agreement makes this even more difficult to apply due to the condition it imposes, i.e., it limits OLAF's access to the extent to which national control authorities are allowed to investigate devices in private ownership. Previously, we highlighted that national authorities with such powers are prosecution authorities, within the framework of criminal proceedings. Given that OLAF is an administrative body without a counterpart in either EU member states or candidate countries, and is a *sui generis* institution of the European Commission, the question arises as to how the actions of national authorities with criminal law powers will be aligned with OLAF's administrative role in conducting administrative investigations, a term that is unfamiliar to our legislation. OLAF, besides cooperating with national authorities, whether administrative bodies, prosecution bodies, or courts, also has the right to cooperate directly with national authorities, especially when it comes to sensitive data. This applies to on-the-spot checks, where OLAF may, but is not required to, request assistance for on-site checks. The Framework Agreement clarifies that: "if participants in IPA III-funded activities resist an on-site check or inspection, the IPA III beneficiary, in accordance with its national laws and regulations, provides the necessary assistance to the inspectors of the Commission/OLAF to enable them to carry out their duties during the on-site check or inspection, including providing information on bank accounts relevant to OLAF's investigative activities," confirming that assistance is conditional on compliance with national legislation governing on-site checks.

In the context of OLAF's final reports and recommendations, and in the case of our country, the question remains open regarding the direct applicability of these reports as evidence in criminal proceedings.

Concluding Observations

The Republic of North Macedonia, as a beneficiary of EU funds, assumes obligations aimed at effectively fighting fraud in EU funds and protecting the financial interests of the European Union. In addition to aligning national legislation with EU legislation, this also means establishing effective bodies to implement the zero-tolerance policy on fraud at the expense of the Union's financial interests. Effective anti-fraud efforts and protection of the EU's financial interests also require coordinated and efficient cooperation with relevant European institutions. At the level of EU anti-fraud legislation, OLAF's important role is indisputable. However, the anti-fraud system for protecting the Union's financial interests, when viewed through the lens of cooperation between national institutions and OLAF, appears quite complex. Given that OLAF is a *sui generis* body without a counterpart in EU

member states or candidate countries, it enjoys a significant mandate in conducting administrative investigations, even though it is an administrative body. Therefore, cooperation between national authorities and OLAF, especially in candidate countries, presents a challenge.

As previously mentioned, the Republic of North Macedonia has committed to cooperating with OLAF in protecting the Union's financial interests, actively providing assistance to OLAF inspectors in conducting on-site checks, has established the Anti-Fraud Coordination Service, and regularly reports irregularities related to the implementation of IPA funds in accordance with the Framework Agreement. However, to achieve high-level cooperation with OLAF and in line with the European Commission's recommendations, steps need to be taken towards finding appropriate legal solutions concerning the evidentiary value of OLAF's final reports, particularly in criminal proceedings, access to bank information without violating national laws, and inspections of private devices subject to OLAF's investigation.

Addressing all the previously mentioned open issues in terms of effective cooperation with OLAF, which will lead to the efficient protection of the Union's financial interests, is of mutual interest. As much as it serves the Union's financial interests, it is also a national interest, since, as stipulated in the Framework Agreement for IPA, if national authorities fail to recover funds allocated for implementation in case of irregularities/fraud, this does not prevent the Union from recovering those funds from the budget of the IPA beneficiary country. Therefore, effective cooperation with OLAF will directly contribute to the protection of European funds, which in turn will have a direct impact on the national budget of the country.

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