

**THE EXPERIENCE IN THE FIGHT AGAINST EU FRAUDS IN
SUPPORT OF THE PREVENTION AND THE
COUNTERACTION IN ORDER TO PROTECT THE EUROPEAN
UNION'S FINANCIAL INTERESTS**

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1. Introduction

“Euro-fraud” is during the last decades the object of the Criminology and Penal research. It is included into the financial crimes because it prejudices legal equities mainly connected with the economy and its important sectors and institutes. It is well known that the three European Communities consist an autonomous public order distinct from the international and internal order of the state members. But simultaneously with the gradual development of the Communities, it has been raised (and is still rising) the problem of the goods protection deriving from the existence of this new communal public order.

There are subject to the category of “communal goods” the so called “economic” or more accurate “fiscal interests of the European Communities”. The object of protection is solely and exclusively the traditional sources on their own and the expenses of the general budget of the European Communities and those which are included in the budget on their behalf. The independence of the above budgets, from the corresponding ones of the state-members is the fundamental characteristic of the communal fiscal system.

Euro-fraud adversely affects the operation of the EU—by injuring its financial interests— and undermines also the correct taking of decisions, distorts competition and puts into question the principles of free market, and especially the operation of internal market, and finally it indirectly injures in personal level the financial interest of the European citizens. In accordance with the report of the Committee for the fighting of Fraud of 1997 *“the fraud against the communal budget does not have only an economic burden but a political cost as well. It is not only estimated with the result of accounting losses, but it does consist an indirect threat against the credibility of the communal policies applying either to the external commercial policy, rural*

or structural policy, or to the internal or external actions financed from the indirect expenses". The fraud against the financial interests of the European Union reveals an endpoint degree of organization and remains at a great part dark to the degree that it is enlisted in financial circuits via networks especially complex that involve a whole chain of intermediates, which are sometimes fictitious or deriving from traditional commercial structures. It is often committed with the tolerance or the complicity or cover up of the administrative mechanism of the partial state-members or those of the domestic power that integrate the rich financial subsidies to their financial policy, stimulating at the same time productive forces to the comfort zone of uncut enrichment.

2. The investigation authorities for the combating of Euro fraud

2.1. The European Anti-fraud (OLAF)

A milestone in the history of fighting the fraud against the financial interests of European Community is the establishment of the European Anti-fraud Service (hereinafter called OLAF) on 28-4-1999. OLAF has been especially established for the protection of the financial interests of the EU, the combating of fraud, corruption and any other irregular activity including the offences of the European bodies. It achieves its mission by conducting completely independently internal and external investigations. It organizes also the close and regular cooperation between the competent authorities of the state members aiming to the coordination of their activities. OLAF provides to the state members the support and know-how required, assisting them in their efforts to combat the fraud. It also contributes to the strategy of EMU, in the field of fraud fight undertaking the initiatives required for the support of the relevant legislation. It reviews every year a thousand of fraud cases against the EU and its policy is grounded to the general principle of "zero tolerance" regarding the corruption or fraud. Its public servants have extended powers of interrogation for the civil offences but when an inquiry is carried out in penal cases, the relevant initiatives are taken over by the public officers of each state member as OLAF submits the file to the competent national authority.

The cases that OLAF has cracked, in cooperation with the Greek authorities, are important: In 2001, a fraud with communal supports of the tomato producers in Serres has been revealed. The investigation has shown that there had been declared less stremmas with increased productions while

the producers had quantities without cultivations. The executives were referred to the Greek Justice.

In 2008 in an operation of OLAF in Belgium, Germany and Greece has been revealed tobacco smuggling against the EU, with duties exceeding the amount of 100 million Euro. Among the accused were Greek customs servants.

Furthermore, OLAF is closely cooperating both with Eurojust and Europol. OLAF and Eurojust had concluded on 24-9-2008 an agreement for the further improved coordination and cooperation for the fight of financial fraud. This agreement consists for OLAF and Eurojust an extended support of their cooperation in line with the corresponding authorizations and duties. This practical agreement contains provisions for the exchange of general and personal data. This agreement is aiming to the stimulation of a more effective cooperation in operational cases of common interest. From the establishment of a common workgroup in 2004 the cooperation in cases of common interest has been increased.

OLAF and Europol are also working for the fighting of tobacco smuggling and protection of Euro. The similar with the analysis sources of Europol in conjunction with the established operational experience of OLAF is expected to safeguard the supply of the best possible information to the state members and the avoidance of any unnecessary duplication of efforts.

2.2. The Financial and Economic Crime Unit (SDOE)

The most important mixed (interrogative-auditory) Greek service of fighting including the Euro fraud is, among others, the Financial and Economic Crime Unit (SDOE), being the main corpus of fighting the financial crimes (the tax invasion and smuggling especially), money laundering, investigation of credit institutions, communal and national subsidies and grants, e-commerce and crime against the industrial property etc.

SDOE was established with Law 2343/1995 (art. 4 par. 1). It's mission consist the following:

- ✓ Research, identification and combating of economic offences of particular significance, such as money laundering frauds, violations related to provisions, grants, illegal stocks trading and other financial transactions, as well as economic frauds against the interests of the Hellenic state and the EU, regardless of the place of execution of the crime.

- ✓ Monitoring the implementation of tax legislation and performing tax audits, especially for withholding taxes focusing on V.A.T. and imposed taxes.
- ✓ Monitoring the implementation of customs legislation and regulations and performing custom controls, focusing on excise imposed on smoke, fuel, alcohol etc.
- ✓ Prevention, disclosure and combat of illegal transactions, frauds and criminal activities also when conducted using electronic means, internet and other new technologies (e-crime).
- ✓ Prevention, prosecution and combat of other offences, such as drugs trafficking, weapons and explosives, psychotropic substances, toxic and hazardous substances (radioactive and nuclear materials, toxic wastes etc), antiquities and objects of great cultural value.
- ✓ Performing on the spot controls for combatting tax fraud and smuggling.
- ✓ Surveillance of coastal and marine areas and protection, in collaboration with other competent Authorities, of the coastline and beaches as well as exchangeable and public property, owned by the Ministry of Finance, from arbitrary violations and construction thereon.

SDOE's Actions consist the following:

- ✓ Investigations of Vehicles, Sales and production premises, headquarters, warehouses etc.
- ✓ Audits on company documentation and tax records
- ✓ Investigations on residencies (with assistance by the public prosecutor)
- ✓ Ability to Interrogate and Arrest an Offender
- ✓ Confiscations of books and elements, documents, Goods, Vehicles, Computer Systems.
- ✓ In important cases of economic offences or in cases of great tax evasion and smuggling, freezing of bank accounts and other assets.

Remarks:

- ✓ SDOE staff and officials have authority to access every information or data concerning or related with the execution of their duties. Also SDOE

officials have an autonomous (without any further permission or order) right to lift bank and tax secrecy, only being compelled to respect the confidentiality provisions (Presidential Decree 85/2005, Article 2 paragraph 3).

- ✓ SDOE staff and officials have the right to seize assets or property or means used in criminal activities in order to safeguard the public interest or in cases of financial crime and large-scale tax evasion and smuggling, freeze bank accounts and assets, by written order of the service director, with the obligation to inform of the action within 24 hours the competent prosecutor (Article 30 of Law 3296/04).

Asset Recovery Office (ARO)

By article 88 of Law 3842/2010 - on “amending and supplementing the provisions of Presidential Decree 85/2005”, the D’ Department of “Recovery of assets and funds derived from criminal activities” was established in the Directorate of Special Controls (D3) of the Central Service of SDOE. This Department was established in harmonization with the framework decision of the EU Council 2007/845/JHA.

Department for Recovery of Assets and Funds Derived from Criminal Activities has the following profile and mission:

- Commencement of operations: December, 2010
- Staffing: 4 persons (January 2012)
- Responsibilities: money laundering, illegal private funds, illegal brokerage/banking and illegal financial contracts, transactions and activities.
- National Asset Recovery Office
- CARIN Contact Point (CAMDEN ASSETS RECOVERY INTER - AGENCY NETWORK).
- Mission: Enhancing National understanding and International Co-operation for methods and techniques in international tracing, freezing, seizure and confiscation of assets derived from criminal activities

Cash Seizures:

In accordance with regulation 1889/2005 of the European Parliament, Greek Customs proceed to seizures of undeclared cash. Thereafter, SDOE is informed by the General Directorate of Customs in order to conduct further

investigation. In the cases of cash seizures of Permanent Residents of Greece, SDOE investigates the possibility of tax evasion by analyzing the tax profile of the one that didn't declare the seized cash. More specifically SDOE examines the income tax declarations for the last five years and also the property declaration forms and finds out if the undeclared cash have been derived from legally declared incomes. If not, SDOE sends the relevant information note to the competent tax office.

3. Review of the jurisprudence of the Greek Courts

It is useful to identically quote at this point, as an example, some cases that the Greek Courts and the Greek Authorities handled concerning Euro-Fraud:

- **Supreme Court Case No 964/2008:** The accused X1 during the period from February till December 1992 in the capacity of the manager of the general partnership X2 has misrepresented to the employees of the competent directorate of the Ministry of Agricultural with her applications for financial support filed every month and the attached to it custom's clearance export certificates of standardized olive oil to third countries (Jordan, Egypt and Lebanon), that the above general partnership has standardized and exported certain quantities of olive oil. The said applications for subsidy were false per contents because with the above custom's export clearance certificates, it had been exported abroad soya oil and not olive oil for which the company could not take subsidy from the above fund. This revealed from an audit carried out in the company which showed that there were missing 100 tons of olive oil from its warehouses (presentation of purchases of larger quantities of olive oil than the actual ones order to be justified the export of the olive oil), while containers which should had contained olive oil were actually loaded with soya oil. The result of these misrepresentations of the accused was the causing of damage to the property of the European Agricultural Guidance and guarantee Fund amounting in excess of 50.000.000 drachmas.

The Court has admitted the commitment of felonious fraud against the E.U. budget per par. 1 of article fourth of Law 2803/2000 characterizing it as a sui generis offence. The Court has also pointed out that the provisions of Law 1608/1950 do not apply in the absence of direct damage against the Greek state's property that is, when the State is only obliged to repay to the community the unduly paid communal funds since in this case, the damage is not the direct and necessary result of the proprietary disposal. The Supreme

Court characteristically mentions that *"The reasoning of the Court of Appeal judgment may admit that, the accused with her actions has "threatened the causing of damage of equal value to the property also of the Greek State" but as no true facts were contained justifying "the threat of the occurrence of the aforementioned damage" and the damage is in other words indirect and not direct, Law 1608/1950 does not apply"*.The Court finally ruled that it could not be ascertained whether it was one just action of fraud or fraud consecutively committed because the appealed judgment, while admits the act of fraud was consecutively committed that is with more than one actions it does not clarify if any prejudiced proprietary disposal was the result of separate error of the competent bodies of the Ministry of Agriculture caused from the separate fraudulent accused behavior or because of the once committed error that above bodies have proceeded with successive tortious actions when it does not exist any issue of fraud consecutively committed.

- **Supreme Court Case No407/2008:** The accused X1 has incorporated in the year 1987 a limited liability company making exports mainly of citrus fruits collecting export subsidies. Due to his long lasting experience he knew very well the procedure for the collection of the export subsidies, the competent persons and the debilities of the competent service of the Ministry of Agriculture. Thus, he set in action from December 1994 a plan of deceiving this service enabling him to collect illegal export subsidy. The starting point of his plan was the acquisition of the commercial capacity from X2 of Russian origin, 19 years old, that has been used from him as a spineless body probably against a small remuneration. The presumed as incorporated personal enterprise from X2 has never been set in operation being exclusively established with the purpose to collect the accused X1 the herein mentioned illegal export subsidy. He has thus submitted to the competent services of the Ministry of Agriculture an application of X2 for export subsidy for the export in Russia of 7.225 tons of good quality of lemons. The forwarding document of Patras customs office with the relevant clearing certificates of the same custom's office and the corresponding certificates of quality control of the Agricultural directorate of Patras prefecture were forged since there was not any official evidence that a clearing had been carried out and export of the referred to quantity of lemons or any custom's clearance or quality control of the lemons under export or had been complied with the provided custom's formalities to certify that such an export had been incurred. The forged documents had been used by the accused in knowledge of the forgery who would then collect in this way the huge subsidy amounting to 350 million

drachmas. In the meantime, accused X1 had convinced X3 to incorporate a company order to cooperate on the grounds that his own company due to its debts to the associations could not collect the export subsidies. As soon as the accused was informed from the employees of the competent service of the Ministry of Agriculture that the file for the subsidy of 350 million drachmas had been approved he proceeded with the materialization of the plan of fraud. With a false assignment contract, X2 had assigned to the company of X3 his claim for the receipt of the export subsidy that is the whole of the amount of Drs. 350 million. The accused X1 opened a bank account in the name of X3 to which it would be deposited the funds of the export subsidy the beneficiary of which was his own company which could not collect them because it had created from its commercial activity debts of large amounts in various banks and associations. X3 has appointed in the next day as his proxies the accused brothers X1 and X2 who would collect the funds of the illegal subsidy. Finally, the bank and the competent service of the Ministry of Agriculture seized the fraud.

The Court had ruled in this case that it was an attempt of communal fraud to felonious degree with illegal profit exceeding the amount of Drs. 50.000.000. Taking into consideration that the accused X1 had knowingly used forged documents to collect unduly funds with an equal damage of the directly injured person that is EU and in specific of FEOGA. The Court ruled that, the fraud against the financial interests of EU is a sui generis crime, but has admitted on the other hand an apparent series of crimes as the specific punishable act is subject at first level to the provisions of Law 2803/2000 and section 386 of P.C., but Law 2803/2000 should apply as a special one because includes all elements of section 386 of P.C., but it restricts the injured entity to the EU only and it contains furthermore the special characteristics giving lighter form in practice (application of Law 2803/2000 as a special and more advantageous law).

- **Oranges on Withdrawal:** Audit to the agricultural association of Koutsopodi Argorlidos revealed omissions and irregularities during the withdrawal procedures of the oranges. Fines for fictitious bills of lading were imposed to the transportation companies and fines for illegal recovery of subsidies were imposed to the agricultural association. The relevant information was forwarded to the Ministry of Agriculture for the recovery of the illegal subsidies. Furthermore the audit report was sent to the competent public prosecutor (Nafplio Region).

• **Standardization and exportation Company of Citrus Fruits:**

Audit to an Exporting Company of Citrus Fruits revealed the existence of fictitious bills of landing for 1.300.000 kgs. of oranges and 1.100.000 kgs. of lemons. Fines for tax offences were imposed (approximately 450.000€). Furthermore the audit report was sent to the competent Public Prosecutor (Veroia Region).

• **Raisins Trading Company:** An audit in a raisin processing and trading Company in Kato Axaia Patron revealed the issuing of fictitious tax records for the receiving of the raisins. Fines of tax offences were imposed to 130 raisin producers from the agricultural association of Irakleion Crete, approximately 95.000€ and the amount of the recovery of the subsidies was 155.000 €. Furthermore, audit reports were sent to the competent public prosecutors of Crete and Patra Regions.

4. Conclusion

It is necessary to be pointed out as conclusion the following: In order for the national public order to be protected from Euro-Frauds, she must organize two sectors of defense: a) *Prevention* and b) *Suppression*. Thus, into an environment of prevention and on the basis of the relevant codes of behavior the self-control of the professional environment must be established, while the need to broaden the financing supervision regarding the subsidies and economic supervision of the circuit of production - trading is demanding. Finally there are required the organizational measures (cooperation of the national services of internal safety, judicial authorities, customs administrations, harmonization of the systems for individuals tracing, operation of a European information system) creating in this way the appropriate structure for the achievement of a really difficult target: *The handling of criminality in a democratic environment*.

On the suppressive level and in accordance with those already mentioned we can conclude that for the fighting of the "phenomenon" of communal fraud it is probably indicated the correct use of the already existing arrangements instead of the unbridled criminalization by introducing an infinite series of punishable actions which only create confusion and do not solve the problem. We must abstain the complicatedness and suggest the simplicity regarding our contribution to the "unified area of freedom, security and justice". It would perhaps most preferable, as it had been alleged, the

implementation of a vertical communal system of administrative sanctions in conjunction with the corresponding national penal system. But all the above under the prisma of the principle of proportionate and the term and condition that the administrative sanctions will be surrounded by a nexus of guarantees.

But as long as is necessary (as in the case under discussion) our national criminal armory to be supported with new provisions the following are pointed out: The offences characterized as "fraud" against the communities, incorporated a significant number of acts which - per our internal legislation - substantiate more than one and different between them crimes against property (fraud, embezzlement, perfidy), memorandum (forgery and use of forged document, misappropriation of false declaration, embezzlement of funds (false certification, exploitation of delegated etc.). The need of correct systematic interpretation of the new provisions is obvious. This interpretation work must aim in the present case to the making of a clearly visible scope against the provisions of the old internal legislation so that these new provisions to be smoothly integrated to our legal tradition and be secured afterwards the equality in the application of the penal law. This necessary (or inevitable) harmonization of our penal legislation to the communal demands must not lead to the drop of the quality of our penal law and the abandonment of its traditional virtues such as the clarity and predictability of its rules or the liberal /individualistic character of the penal trial.

