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Olaf and Customs in The Context With New Applications and Its Relations With Turkish Customs

Abstract

International and intergovernmental institutions start to be seen more on the international stage particularly for combatting transnational crimes. Fighting against those crimes causes states to ignore partly their sovereignty cause and more collaborate with these institutions and their new applications. In this sense, EU's investigative tool, OLAF has been turning into a more significant institution within the EU and partner countries. OLAF's investigations are mainly on financial crimes from misuses of EU's funds to customs-related issues. The key position of customs at OLAF's investigation rates and organization is very clear, so much that comes right after funds-related matters. Along with OLAF itself, its programs and sub-programs, like AFIS, ATIS are closely related to works of customs administrations, as well. As a part of customs union, Turkey has a unique relations with OLAF, like its strange relations with the EU, and, it remains to be seen that whether the interaction between Turkey and OLAF will breed new opportunities or obstacles on the way of Turkey's EU adventure.

Anahtar Kelimeler: OLAF, EU, ATIS, customs-related investigation, JCOs, NCTS, transit controls.

JEL Sınıflandırma Kodu: F01, F02, F13, F53, F55

Yeni Uygulamalar Bağlamında Olaf ve Gümrük ve Türk Gümrükleriyle İlişkileri

Özet

Uluslararası ve hükümetler arası kurumlar özellikle sınır aşan suçlarla mücadele konusunda gittikçe daha fazla görünür olmaya başladılar. Bu çeşit suçlarla mücadele ediyor olma, devletlerin, egemenlik ilkesini kısmen göz ardı etmelerini ve bu tarz kurumlara ve onların yeni uygulamalarıyla daha fazla işbirliğine gitmelerini sağladı. Bu manada, Avrupa Birliği'nin soruşturmacı birimi olan OLAF gerek AB içerisinde gerekse işbirliği yapan ülkeler arasında daha önemli bir kurum olmaya doğru evrilmektedir. OLAF'ın soruşturmaları, AB fonlarının suiistimal edilmesinden gümrük bağlantılı hususlara kadar temel olarak mali suçlara ilişkindir. Gümrük bağlantılı hususların OLAF soruşturmaları içerisindeki oranı ve idari yapıdaki yeri o kadar önemlidir ki, fonlara ilişkin inceleme ve soruşturmalardan sonra gümrük bağlantılı inceleme ve soruşturmalar gelmektedir. OLAF ile birlikte, onun alt programları olan AFIS ve ATIS gibi uygulamalar da gümrük idarelerinin iş ve işlemleriyle yakından ilgilidir. Türkiye'nin, Gümrük Birliği'nin bir parçası olarak, tıpkı AB ile süregelen farklı türde ilişkisi gibi, OLAF ile özel bir ilişkisi mevcuttur. Türkiye'nin OLAF ile karşılıklı etkileşiminin onun AB macerası yolunda bir fırsat mı yoksa bir engel mi olacağını zaman gösterecektir.

Keywords: OLAF (Avrupa Sahtecilikle Mücadele Bürosu), AB, ATIS (Transit Sahteciliğine Karşı Bilgi Sistemi), Gümrük Bağlantılı Soruşturma, JCOs (Müşterek Gümrük Soruşturmaları), NCTS (Yeni Bilgisayarlı Transit Sistemi)

JEL Classification Codes: F01, F02, F13, F53, F55

I. Introduction

OLAF (the European Anti-Fraud Office, the acronym of its title in French “Office de Lutte Anti-Fraude) is an investigative tool of the European Union, which conducts independent investigations about corruption, various fraud and irregularities. It has a very broad field of investigations, ranging from customs fraud and tobacco&counterfeit goods to EU’s structural funds and misconduct of the EU staff. OLAF has an information system to secure and share with member and non-member countries in the fight against fraud. Anti-Fraud Information System (AFIS) and its sub-component ATIS (Anti-Fraud Transit Information System) are applications used for anti-fraud and anti-smuggling combats. The latter one is especially designed for transit-related situations.

Demonstrated by the title, there is a strong and ontological relationship between OLAF and customs administrations. OLAF functions as a data pool and investigation tool for movements of goods entering, exiting and transiting through customs. So, the affinity between them seems to increase in the near future. This paper first discusses the organization and history of OLAF while concentrating on its customs-related functions. Then discusses the inter-relationship between OLAF and customs administrations. Later, the paper mentions the relationship between OLAF and ATIS. Last, the paper examines the relations between OLAF and Turkish customs, particularly, in the context with NCTS and ATIS applications.

II. OLAF in The Context With Organizational and Historical Aspects

OLAF dates back to the late 1980s. The predecessor of that, UCLAF- The Task Force Anti-Fraud Co-

ordination Unit, was established in 1988 under the supervision of the EU’s Commission. After ten-year of tenure as an investigating tool, UCLAF turned into OLAF in 1999 with stronger investigative powers. Indeed, this transformation made by Decision 1999/352 and Regulation 1073/1999 brought about many key changes from investigation rules to an agreement on internal investigations. However, a number of changes were to come in the following years. 2012 and 2013 have witnessed significant changes in OLAF’s internal organization and investigation procedures, especially with the advent of Regulation No. 883/2013 (OLAF, 2017).

OLAF is led by a Director-General, who is now Giovanni Kessler since 2011. OLAF’s reorganization in 2012 has resulted in the establishment of several directorates and institutions within the body. The prominent of those is the Supervisory Committee, which monitors OLAF’s investigation functions, delivers opinions to OLAF’s general director and helps to increase OLAF’s conformity with the EU institutions. Another important part of the organizations is “the Investigation Selection and Review Unit”, which provides an opinion to the Director-General on whether an investigation should be opened or not (Guidelines, 2013, p. 3-5). The Review and Selection Unit plays a crucial role in terms of OLAF’s investigation mechanism, because thousands of fraud reports are coming from miscellaneous sources many of those are false. Hence, the Unit prevents OLAF from dealing with untrue reports of fraud.

The main skeleton of OLAF is comprised of four directorates. Directorate A (Investigations I) has four sub units from A.1 to A.4 dealing with EU staff, new financial instruments, centralized expenditure and external aid. Directorate B (Investigations

II) has five sub units from B.1 to B.5 dealing with customs&trade fraud, tobacco&counterfeit goods and agricultural&structural funds. Directorate C is mostly an assistant and supportive branch of the organization, which consists of five sub units. Directorate D is a policy-making unit of OLAF, which has four sub units, D.4 of those is very important in the context of this article. Unit D.4 deals with Customs and Tobacco Anti-Fraud policy and AFIS mechanism, which is closely related to the ATIS mechanism (OLAF, 2017).

Apart from the organizational chart, OLAF is a mainly an investigative institution. Hence, the formulation of the investigative activity plays a crucial role. OLAF's investigative activity can be divided into three phases. First, the selection phase, in which incoming information is assessed so as to evaluate if that information meets the criteria for opening an investigation. After deciding that the issue/information falls within the institution's competence, many factors such as the reliability of the information, the existence of sufficient suspicion and the credibility of allegations, etc. are taken into account. The Selection and Review Unit is the key part of the phase, however, the final decision rest upon the shoulders of the General Director. Second, the investigation phase which is carried out by a relevant investigation team. Since the reorganization of OLAF, the number of opened and concluded investigations has entirely increased from one hundreds to two or three hundreds. Issuing recommendations is the third phase of the investigative activity in which OLAF produces financial, judicial, disciplinary and administrative recommendations. Financial recommendations aim to seek the recovery of defrauded EU funds while judicial ones aim to be taken judicial actions by national prosecution authorities. On the other hand, disciplinary and administrative recom-

mendations are related to EU staff, institutions and offices in the context with their weak and problematic parts (Guidelines, 2013, p. 6-19).

III. The Interrelationship Between OLAF and Customs

OLAF has a broad field of investigations. It is authorized to investigate all kinds of fraud, corruption and other irregularities affecting the EU's financial interests. Main areas of investigations are EU's funds such as structural, agricultural and development funds, external aids; EU's some revenues chiefly customs duties and misconduct of EU's personnel. According to OLAF's 2015 Annual Report (2016, p.17), funds and expenditure related investigations come first in terms of number of investigations. Indeed, there are 104 on-going investigations on structural funds, 66 on external aid and 58 centralized expenditure. Besides funds and expenditures, 50 on customs&trade and 18 on tobacco&counterfeit goods investigations follow. Other than these main categories EU staff (37), agricultural funds (36), social funds (21) and new financial instruments (8) follow the line.

As analyzed and illustrated above, at least four units (B.1, B.2, D.2, D.4) under two directorates (B and D) are strongly related to customs-affiliated issues, a fact that demonstrates the importance of customs in OLAF. Besides that organizational fact, investigation numbers on customs-related matters come the second after funds&expenditures related ones.

Relations between OLAF and national customs authorities emerge in a number of ways. First and foremost is joint customs operations (JCOs). JCOs are specific anti-fraud, anti-corruption activities that are carried out together by customs authorities and

OLAF. Both member and non-member states can join JCOs, which are mainly about sensitive goods, certain risky areas and routes. OLAF plays a more coordinative and supportive role during JCOs, by providing intelligence, technical and financial assistance, while local customs authorities are carrying out field operations (OLAF, 2017).

Second way of relations appears as the signature of administrative cooperation agreements with partner customs authorities in non-member countries. OLAF has signed a number of those arrangements with countries, such as the USA, China, Australia, Ukraine, Morocco and so on. OLAF can share information and expertise and help countries carry out on the spot checks with those arrangements. OLAF's international cooperation efforts play an important role in fighting against customs fraud, corruption and other irregularities.

IV. OLAF and ATIS

ATIS (Anti-Fraud Transit Information System) is a transportation part of the Anti-Fraud Information System (AFIS). In fact, AFIS is an umbrella term demonstrating OLAF's information exchange and storage capabilities. AFIS serves as an information pool for controlling legal trade movements and combat illegal activities. According to OLAF's 2016 Management Plan (2017, p. 6-8), as of 2015, more than 8000 users and 1700 competent services from member states, non-member states and international organizations have been benefitting from the AFIS portal. AFIS enables users to get fraud-related information through a secure line, to store and analyze them, too.

As a part of AFIS, ATIS has been more concentrated on transit matters, which is closely related to NCTS (New Computerized Transit System). NCTS

is a computer-based transit system that enables companies to transit their goods within the EU or partner countries without paying customs taxes. So, goods can travel to final destination without confronting any obstacles. As ATIS User Manual illustrates (2016, p.9-12), ATIS plays a data storage and analyze role in terms of transit information, since NCTS's information (on the basis of MRN, Movement Reference Number) is shared and stored in the ATIS database. To clarify, main features of ATIS are providing complex search capabilities, processing all NCTS messages including sensitive, non-sensitive goods, reporting and sharing transit information for risk analysis and other aims.

ATIS provides a huge pool of information on transit movements within the EU and partner countries like Turkey. ATIS allows the user to list and view validation messages on the basis of search criteria. Search criteria can be determined according to ATIS record, MRN, goods, transport, operators and events. Those criteria gives the user an opportunity to analyze relevant information about an on-going and completed transit movement. Within the EU and partner countries, ATIS and NCTS demonstrate a borderless union, which has been one of the ultimate targets of the EU.

V. OLAF and Turkey in The Context With Atis

Before mentioning the relations between OLAF and Turkey, it is necessary to discuss the history of Turkey and the EU, which has very different and extraordinary features. Turkey's EU adventure actually began in 1963 with the signature of the Ankara Agreement. However, the EU process has intensified particularly after 1995 with the signature of Customs Union (CU) agreement culminating in the

adoption of Turkey as an official candidate state in 1999. After gaining the candidate state status, Turkey began accession negotiations with the EU in 2005 by negotiating 35 chapters including the customs chapter.

The customs part of the negotiations has been one of the most important components of this process. Because, Turkey had already signed the CU agreement in 1995 before starting accession negotiations and entering the Union, the first example of its kind. That has meant a lot for Turkish customs. First of all, Turkish parliament passed the new customs code and several sub-legislation at the end of 1999, which is basically a translation of the EU's customs code with minor changes. Second, Turkish customs have witnessed modernization and reorganization efforts with the help of funds coming from the EU (pre-accession funds) and other international organizations. Concerning the second aspect, Turkey implemented an automation project that involves several computer programs such as BILGE (Computerized Customs Activities), GUMSIS (Security Systems for Customs Checkpoints), NCTS (New Computerized Transit System) and so on (Turna, 2015, p.18-19). These efforts have helped the Turkish customs increase its importance, deterrence, and efficiency. Before that, the image of customs had been identified as baggage checkers, gatekeepers and the most corrupt structure of the state. As Robbins notes succinctly, (2008, p. 648) while security, justice have been considered as domestic issues, the customs issue of Turkey has been an international phenomenon rather than a domestic issue.

Just like the relationship between the EU and Turkey, as an effective investigative tool of the EU, OLAF has a different and special relationship with

Turkey, too. Since Turkey is a very important transit route for EU-originated or EU-bound goods, OLAF has developed strong ties with Turkey particularly in terms of customs-related issues. Regulation 883/2013 requires all member states to create anti-fraud coordination services (EU, Eur-Lex, 2013). When it comes to non-member states things work differently. OLAF has national contact points and liaison officers in those countries, one which is in Turkey. The Liaison Office in Turkey represents three countries including Albania and Syria.

Turkey takes part in JCOs as well. In 2014, the operation "Ermis" on counterfeit goods was carried out successfully with the help of Turkish Customs experts as well as Serbian and Montenegro customs officers. In 2012, Turkey participated in the operation "Barrel" on cigarettes, which resulted in the seizure of 1.2 million of them. Similarly, Turkey played a role in the operation "Sirocco" on various goods with the involvement of many member and non-member countries (OLAF, 2017). As seen from these three examples, apart from ordinary bureaucratic relations, OLAF and Turkey have a strategic cooperation for fighting against smuggling and customs fraud.

The relationship between OLAF and Turkey continue to intensify on the field of transit system. In fact, Turkey is a part of Common Transit Agreement (NCTS) enabling it into the EU transit system. In a similar way to customs union, Turkey is a part of EU's transit system, again, without being a full-member. In parallel with this development, Turkey can reach and use the ATIS database. This means a lot for both the EU and Turkey. For the EU, Turkey is a significant transit route for goods, so, when Turkey involves in the ATIS, pre- and post-control of goods' movements can be done easily.

For Turkey of which more than half of its export to the EU countries, it has a crucial economic relationship with the EU. Involvement in ATIS makes it easier and quicker for Turkey to track the goods bound for the EU. Both sides can benefit from data pool of ATIS, and so, they can analyze and share their risk factors which makes the international trade between them more comfortable and safer.

VI. Conclusion and Projections

The world has been evolving into a trend particularly since the early 1980s, that international and inter-governmental institutions, organizations play a key role. Financial Action Task Force (FATF) on money laundering, the UN Office on Drugs and Crime (UN-ODC) on drugs and human trafficking can be regarded as prominent of those organizations. OLAF is another example of those, too. In fact, it is a part of the EU, functioning according to EU's principles, but it is also an investigative institution that works together other states and their administrations in member and non-member states. As a half-member of the EU, Turkey has a sui generis relationship with OLAF, sometimes participating in JCO's, sometimes joining administrative and bureaucratic procedures. The very last example of those relations starts to be seen in the field of transit regulations in the NCTS context. Based on information sharing, ATIS, -as a part of big information system, AFIS- is a multi-faceted tool that facilitates the control of transit movements within the EU and partner countries. Turkey, as a part of NCTS, starts to use ATIS both for its international trade benefits and EU adventure.

As a matter of fact, Turkey's gains from this relations could be multifaceted. First, Turkey may increase its investigative capability on customs-relat-

ed matters by benefitting from OLAF's investigation procedures, for example, by effectively using selection and review unit experiences. Second, OLAF and ATIS will help Turkey develop its risk analysis based transit controls, which will make checks of over-million transactions easier. Third, since the information sharing and mutual assistance become more effective and easier, Turkey's capacity for combatting anti-fraud and anti-smuggling activities will improve by increasing cooperation with international organizations. Last but not least, more harmonization on many more fields will strengthen Turkey's hand on the way of full membership of the EU.

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