

No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax, COM(2017) 706 final, 30.11.2017.

36 The EUROFISC network was established by Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax, *O.J.* L 268, 12.10.2010, 1. EUROFISC is a mechanism provided for Member States to enhance their administrative cooperation in combating organised VAT fraud and especially carousel fraud; it allows for quick and targeted sharing of information between all Member States on fraudulent activities.

37 Linked with OLAF's role in the VAT area, but not exclusively, the evaluation pointed out the need to assess the need for and possibility of better access to bank account information under appropriate conditions, which could be central to uncovering many cases of fraud or irregularity.

38 The Roadmap is available for feedback on <<https://ec.europa.eu/>

info/law/better-regulation/initiatives/ares-2017-5676334_en> (accessed 14 December 2017).

39 The possible way forward for the OLAF legal framework was set out in the Commission's evaluation report, and it is described mainly at point 5 therein.

40 This assessment will also take into account the opinion of the OLAF Supervisory Committee, *op. cit.* (n. 5).

41 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "On the protection of the financial interests of the European Union by criminal law and by administrative investigations – An integrated policy to safeguard taxpayers' money", COM(2011) 293 final, 26.5.2011.

42 Point 5.3 of the Commission's evaluation report, *op. cit.* (n. 3).

Learning Lessons

Reflecting on Regulation 883/2013 through Comparative Analysis

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I. Introduction: Context of the Evaluation of Regulation 883/2013

In 1999, the Commission established the European Anti-Fraud Office – OLAF – to give a deterrent answer to fraud, corruption, and other illegal activities detrimental to the financial interests of the Union.¹ OLAF's primary instrument to provide such deterrence is its ability to conduct administrative investigations in the Union's institutions, bodies, offices, and agencies (during internal investigations) and in the Member States (during external investigations).² Initially OLAF conducted its investigations under the overarching framework of Regulations 1073/1999 and 1074/1999: the former covered the EC; the latter covered Euratom.³ After a number of evaluations (which identified a series of drawbacks),⁴ long negotiations, and three legislative proposals,⁵ Regulation 883/2013 repealed and replaced both Regulations and currently constitutes the umbrella under which OLAF carries out its investigations.⁶

The aim of Regulation 883/2013 was to repair a number of shortcomings found in the above-mentioned evaluations. The specific objectives of Regulation 883/2013 are the following: (i) to strengthen the protection of procedural guarantees and fundamental rights;⁷ (ii) to enhance the relationship and cooperation between OLAF and the Member States, the Union's institutions, bodies, offices, and agencies as well as between

OLAF and third countries and international organisations;⁸ (iii) to improve the efficiency, effectiveness, and accountability of OLAF while simultaneously ensuring its independence;⁹ and (iv) to reinforce existing governance structures.¹⁰

To achieve these objectives, Regulation 883/2013 implemented several changes compared to the previous legal framework. In order to strengthen the legal position of persons concerned and witnesses, a number of procedural safeguards, such as the privilege against self-incrimination and the right to be assisted by a person of choice, were incorporated.¹¹ Regulation 883/2013 also addressed the need that OLAF better cooperate with its partners at the EU, national, and international levels by providing for rules facilitating the exchange of information,¹² the establishment of anti-fraud coordination services (AFCOS) in the EU Member States,¹³ and the signing (and revision) of administrative cooperation agreements.¹⁴ Efficiency and effectiveness were realized by including an obligation incumbent on the Director-General of OLAF to devise more detailed rules on investigation procedures,¹⁵ introducing criteria for the selection and opening of investigations¹⁶ as well as the consolidation and extension of OLAF's investigative tools and powers.¹⁷ Lastly, the Regulation of 2013 sought to improve OLAF's governance and control mechanisms by clarifying the monitoring role and function of OLAF's supervisory committee,¹⁸ clearly circumscribing the Director-General's mandate,¹⁹

and by providing a political forum in which views between OLAF and the Union's institutions on OLAF's policies can be exchanged and discussed.²⁰

To assess whether the shortcomings identified in the previous regulations were remedied and to ascertain the continuing relevance of OLAF's current investigative framework – particularly in light of the rapidly evolving field of EU anti-fraud policy²¹ – Regulation 883/2013 obliges the Commission to carry out an evaluation of its application by October 2017.²² The Evaluation Roadmap set the wheels in motion in late 2015 and clarified the scope of the evaluation.²³ The time period covered by the evaluation is 1 October 2013 until the end of 2016. The output consists of a report from the Commission on the evaluation of Regulation 883/2013,²⁴ supported by a Commission Staff Working Document²⁵ and an opinion of the supervisory committee.²⁶ An external consultancy company provided important input for these reports.²⁷ One of the key evaluation criteria (in addition to the Commission's standard criteria of efficiency, coherence, and relevance) featured in the evaluation is the *effectiveness* of Regulation 883/2013.²⁸ In particular, the evaluation assesses whether and, if so, how Regulation 883/2013 has contributed to the achievement of the aims of the Regulation in practice and repaired the shortcomings identified.²⁹

As the evaluation has now drawn to a close, this article will focus on the evaluation's key findings with regard to the effectiveness of Regulation 883/2013, paying particular attention to the interaction with national law, to the effectiveness of external, autonomous³⁰ investigations, and to the exchange of information between OLAF and Member State authorities prior to and during investigations. The evaluation devotes ample attention to these topics, as they will be an important component of any proposal wishing to amend the current Regulation 883/2013 or of a far-reaching overhaul of OLAF's investigatory framework.³¹ These topics are also the subject of academic interest, particularly – but certainly not only³² – in two comparative studies being carried out by an international group of researchers from a host of EU universities (headed by Utrecht University)³³ under the Hercule III programme to promote activities in the field of the protection of the financial interests of the European Union.³⁴ As a result, this article further draws on the insights of both studies by reflecting on points that may be of use in the follow-up to the evaluation.

Against this backdrop, the article proceeds as follows. First, it will discuss the evaluation's key findings, especially the shortcomings identified in relation to the effectiveness of the conduct of investigations (section II.1). The crucial issue of the exchange of information between OLAF and Member State authorities will be discussed under section II.2. Second, this article touches

on the findings of the mentioned two academic studies under the Hercule III programme with the aim of offering input on further efforts to improve OLAF's investigative legal framework in the near future (section III). At the end, the article draws conclusions summarising the analysed results (section IV).

II. Key Findings of the Evaluation

1. Conducting Investigations

The extension of investigative tools and powers by Regulation 883/2013 allows OLAF to deliver on its mandate with concrete results.³⁵ OLAF's annual reports demonstrate a clear upward trend both in investigations opened and concluded and in recommendations issued.³⁶ Notwithstanding the positive impact of Regulation 883/2013 on OLAF's investigative output, the evaluation reveals the limitations of the powers and tools available to OLAF. These limitations are largely due to the references to national law in OLAF's legal framework: OLAF does not operate on the basis of an exhaustive EU code of procedure. Instead, for the scope, content, and enforceability of its powers, OLAF depends largely on national provisions.³⁷

During on-the-spot inspections – one of OLAF's crucial investigative powers – OLAF staff must act, subject to the Union law applicable, in compliance with the rules and practices of the Member States concerned.³⁸ In conformity with national law, competent authorities of the Member States must give OLAF the necessary assistance to enforce such checks.³⁹ References to national law are also prevalent in digital forensic operations. While OLAF is endowed with the power to gain access to digital data, such access is subject to the same conditions as those for national administrative inspectors and must comply with national law.⁴⁰

The dependency of OLAF's powers and their enforceability on national law – in conjunction with persistent procedural differences between these national laws – results in jurisdictional fragmentation of OLAF's investigatory tools and competences during external investigations. Such fragmentation hampers the effectiveness of OLAF investigations, as it can delay investigations and be detrimental to their quality. Ultimately, such fragmentation also negatively affects OLAF's ability to ensure equivalent protection of the Union's financial interests.⁴¹

2. Exchange of information between OLAF and the Member States

As OLAF relies heavily on Member States when carrying out its investigations, the creation of Anti-Fraud Coordination

Services (hereinafter AFCOS) has proven to be a clear improvement with regard to the exchange of information and the strengthening of ties between OLAF and the Member States.⁴² However, while Member States are obliged by Regulation 883/2013 to establish an AFCOS,⁴³ the regulation is silent on the structure, powers, and functioning of these AFCOS. The diversity of the services across Member States results in an uneven level of support, which can, in turn, inhibit cooperation and the exchange of information between OLAF and AFCOS.⁴⁴

With regard to the exchange of information between OLAF and other administrative and judicial authorities, the evaluation points to more serious shortcomings in the current investigative framework. While administrative and judicial authorities are under an obligation to exchange information with OLAF, they only have to do so within the limits provided for by national law.⁴⁵ These references to national law, like the investigative powers and tools touched on above, result in a fragmented landscape in which there are great divergences between Member States that can impede the exchange of information and the effective conduct of investigations.⁴⁶

III. Input on Further Efforts: Results and Recommendations of the Hercule III Studies

Is there a need to recalibrate and improve the OLAF legal framework for the (i) gathering and (ii) exchange of information related to suspicions of irregularities or fraud affecting the EU's financial interests? This question is the subject of analysis in two Hercule III projects (being) carried out by an international group of researchers under the lead of Utrecht University.⁴⁷ In response to this question, the two projects compare the OLAF framework with the frameworks of three other European law enforcement authorities – Directorate-General for Competition (DG COMP), the European Central Bank (ECB), and the European Securities and Markets Authority (ESMA) – and their respective modes of interaction with six national legal orders. The studies are premised on the problematic position of OLAF in the gathering and exchange of information due to the jurisdictionally fragmented framework of OLAF investigations.⁴⁸ The findings of the evaluation of Regulation 883/2013 (see section II above) mirror the truth of this premise.

The studies show that, due to their design, all four authorities are integrated in – and to a certain extent dependent on – national legal systems. At the same time, however, European law enforcement authorities are, as a result of their Union-wide mandate, required to ensure a level European playing field. Divergent national laws can (and most likely will) thereby im-

pede the effectiveness of EU-authorities' operations. Where an EU authority can act autonomously, i.e., where it can perform acts by itself based on Union law, that authority has the advantage of operating on a level European playing field, but only if the authority has been endowed with truly European powers. Autonomous action necessitates a great degree of both procedural and substantive harmonisation. A good example of an authority that can act autonomously is DG COMP under Regulation 1/2003. Article 20 of Regulation 1/2003, for instance, grants the Commission the power to conduct all necessary inspections of undertakings and associations of undertakings.⁴⁹ ESMA and ECB also have powers granted to them by EU law, which allows them to carry out inspections. A uniform and European legal framework defines these powers and their enforceability. While it also remains true that these authorities do not have coercive powers at their disposal to enforce their competences, they can impose fines in case of non-cooperation and/or ensure that national authorities are obliged to provide assistance in the enforcement of their powers.⁵⁰

The situation is radically different for OLAF. While OLAF is also vested with the power to conduct on-the-spot inspections, it is completely dependent on national law for both the scope and enforceability of this competence. For instance, in the Netherlands, no use can be made of criminal law powers to carry out on-the-spot inspections for administrative investigations which OLAF does. The sealing off of premises falls outside the scope of an on-the-spot inspection, and private dwellings may not be entered and/or searched.⁵¹ In contrast, the Italian means of cooperation with OLAF do allow the use of criminal powers; premises may be sealed off and private dwellings may be entered and searched under certain conditions.⁵² Therefore, while OLAF's powers have formally been drawn up in the guise of an EU regulation, the instruments OLAF uses do not work autonomously and uniformly. The regulations indicate only that the information listed therein should *in the end* be made available to OLAF via powers laid down in national law.⁵³ For this reason, OLAF's legal framework is significantly different from those of other EU law enforcement authorities. The result can be "nothing other than a conflict between its mandate and the instruments necessary to execute it."⁵⁴

The first study, on investigatory powers and safeguards, answers the question as to whether OLAF's legal framework requires recalibration in the affirmative. It concludes that there are possible strategies to enhance OLAF's legal framework for conducting investigations. One such strategy would be to define, in a regulation, a clear set of autonomous EU-level investigative powers, without thereby referring to national law. This would allow OLAF to conduct autonomous investigations in the territories of all the Member States without the drawback of jurisdictional fragmentation. To enforce its power, OLAF

could, like DG COMP, be granted the competence to impose fines in case of non-cooperation in order to ensure the effectiveness of inspections and, ultimately, provide for better and equivalent protection of the Union's financial interests.⁵⁵

References to national law are not only problematic when it comes to OLAF's powers and their enforceability. OLAF's framework for the exchange of information is plagued by similar troubles. Here we also find that OLAF is dependent on national law to obtain a strong information position. The research currently being conducted under the direction of Utrecht University aims to discover whether there is also a need to recalibrate OLAF's framework for the exchange of information. Whether this leads to the same conclusions remains to be seen.

IV. Conclusion

Regulation 883/2013 was adopted to step up the fight against fraud, corruption, and any other illegal activity affecting the financial interests of the Union.⁵⁶ The Regulation intended to do so by correcting a number of shortcomings in its older le-

gal framework, which stemmed from the Office's inception in 1999. In particular, it aimed to make OLAF more effective by facilitating the exchange of information between OLAF and the Member States and by consolidating and extending OLAF's investigative powers. An evaluation by the Commission intended to assess whether the shortcoming identified had been resolved by Regulation 883/2013. The evaluation concluded that the changes introduced by Regulation 883/2013 allowed OLAF to deliver concrete results in the protection of the Union's financial interests. With regard to external investigations, however, the evaluation confirmed the well documented⁵⁷ effectiveness problems that emerge from the framework's various references to national law, particularly in relation to the performance of investigations and the exchange of information: OLAF's dependence on national law results in jurisdictional fragmentation of its investigations. These problems are not new to Regulation 883/2013 but date primarily back to OLAF's creation in 1999. Should an overhaul of OLAF's investigatory framework be considered in 2018, the academic studies conducted or currently (being) conducted under the umbrella of the Hercule III programme, which emphasise the need for a common Union-wide framework for external investigations, will surely provide useful points of reflection.

* The author also serves as national rapporteur for the Netherlands for the forthcoming Hercule III study entitled "Exchange of information with EU and national enforcement authorities: Improving OLAF's legislative framework through a comparison with other EU authorities (ECN/ESMA/ECB)". See below.

1 L. Kuhl, "Cooperation between Administrative Authorities in Transnational Multi-Agency Investigations in the EU: Still a Long Road Ahead to Mutual Recognition", in: K. Ligeti and V. Franssen (eds.), *Challenges in the Field of Economic and Financial Crime in Europe and the US*, 2017, pp. 135, 137.

2 See recital 4 and Art. 2(1) and 2(2) of Commission Decision (EC, ECSC, Euratom) 1999/352 establishing the European Anti-Fraud Office (OLAF) [1999] O.J. L 136, 20.

3 J.F.H. Inghelram, *Legal and Institutional Aspects of the European Anti-Fraud Office (OLAF). An Analysis with a Look Forward to a European Public Prosecutor's Office*, 2011, p. 57.

4 See, for instance, Report from the Commission, "Evaluation of the activities of the European Anti-Fraud Office (OLAF)", COM(2003) 154 final; Court of Auditors, "Special report 1/2005 concerning the management of the European Anti-Fraud Office (OLAF)", 2005/C 202/01; its follow-up in Court of Auditors, "Special report 2/2011: Follow-up of Special Report 1/2005 concerning management of the European Anti-Fraud Office" <https://www.eca.europa.eu/Lists/ECADocuments/SR11_02/SR11_02_EN.PDF> (accessed 7 November 2017); and OLAF Supervisory Committee, "Opinion 2/03 accompanying the Commission's report. Evaluation of the activities of the European Anti-Fraud Office (OLAF)", OLAF/460/03-EN Rev. 1.

5 The first proposal, tabled by the European Commission in 2004, was presented in two documents: (i) European Commission, "Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)", COM(2004) 103 final and (ii) European Commission, "Proposal for a Council Regulation amending Regulation

(Euratom) 1074/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)", COM(2004) 104 final. In 2006, a second proposal followed: European Commission, "Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)", COM(2006) 244 final. The 2006 proposal was modified by the one tabled in 2011: European Commission, "Amended Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing regulation (Euratom) 1074/1999", COM(2011) 135 final. The modified 2011 proposal constituted the basis for Regulation 883/2013.

6 Cf. Art. 20 of Regulation (EU, Euratom) 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) 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) 1074/1999 (hereinafter Regulation 883/2013).

7 Recitals 23 through 28 of Regulation 883/2013.

8 Recitals 29 through 36 of Regulation 883/2013.

9 Recitals 8 through 22 and recitals 42 through 48 of Regulation 883/2013.

10 Recitals 37 through 42 of Regulation 883/2013.

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- 11 Art. 9 of Regulation 883/2013. In addition to these safeguards, Regulation 883/2013 put in place rules on confidentiality and data protection (Art. 10) and introduced a legality check to ensure the respect of procedural guarantees (Art. 17(7)).
- 12 See, in particular, Art. 6, 8, 11, 12, 13, and 14 of Regulation 883/2013.
- 13 Art. 3(4) of Regulation 883/2013.
- 14 Art. 1(5) of Regulation 883/2013, applies in relation to Member States and the EU's institutions, bodies, offices, and agencies; Art. 13(1) applies in relation to Eurojust and Europol; and Art. 14(1) applies in relation to third countries and international organisations.
- 15 Art. 7 of Regulation 883/2013 regulates the investigations in general. In addition, Art. 17(8) obliges the Director-General to put in place guidelines on investigation procedures for OLAF staff. These guidelines were provided for by OLAF, "Guidelines on Investigation Procedures for OLAF Staff", Ref. Ares(2013)3077837 (hereinafter GIP).
- 16 Art. 5 of Regulation 883/2013 mentions the following criteria: investigation policy priorities, annual management plan, efficient use of OLAF's resources, and proportionality. With regard to internal investigations, specific account shall be taken of the institution, body, office, or agency best placed to conduct them, based, in particular, on the nature of the facts, the actual or potential financial impact of the case, and the likelihood of any judicial follow-up. Detailed rules on the case selection procedure are the provided for by the Art. 1 through 7 of the GIP.
- 17 Art. 3 and 4 of Regulation 883/2013.
- 18 Art. 15 of Regulation 883/2013.
- 19 Art. 17 of Regulation 883/2013.
- 20 Art. 16 of Regulation 883/2013.
- 21 Think, in particular, of a redefinition of OLAF's investigative role with the establishment of the European Public Prosecutor's Office. See recital 103 through 105 and Art. 101 of Council Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO"), *O.J. L* 283, 31.10.2017, 1.
- 22 Art. 19 of Regulation 883/2013 stipulates that by 2 October 2017, the Commission must submit to the European Parliament and the Council an evaluation report on the application of Regulation 883/2013. Said report must be accompanied by an opinion of the Supervisory Committee and shall state whether there is a need to amend this Regulation.
- 23 European Commission, "Evaluation of the application of Regulation (EC, Euratom) 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF)" <http://ec.europa.eu/smart-regulation/road-maps/docs/2017_olaf_001_evaluation_of_regulation_883_2013_en.pdf> (accessed 7 November 2017).
- 24 Report from the European Commission, "Evaluation of the application of Regulation (EU, Euratom) 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) 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) 1074/1999", COM(2017) 589 final.
- 25 European Commission, "Commission staff working document. Evaluation of the application of Regulation (EU, Euratom) 883/2013 of the European Parliament and of the Council of 11 September concerning investigations conducted by the European Anti-fraud Office (OLAF) and repealing regulation (EC) 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) 1074/1999", SWD(2017) 332 final.
- 26 OLAF Supervisory Committee, "Opinion 2/2017 accompanying the Commission Evaluation report on the application of Regulation (EU) of the European Parliament and of the Council 883/2013 (Article 19)", Ref. Ares(2017)4762494.
- 27 ICF, "Evaluation of the application of Regulation 883/2013 concerning investigations conducted by the European Anti-fraud Office (OLAF): final report", <https://ec.europa.eu/anti-fraud/sites/antifraud/files/evaluation_of_the_application_regulation_883_en.pdf> (accessed on 8 November 2017).
- 28 European Commission, "Commission staff working document: Better Regulation Guidelines", SWD(2017) 350, §3, pp. 58–64.
- 29 See the roadmap, *op. cit.* (n. 23) p. 4; COM(2017) 589 final, *op. cit.* (n. 24), p. 2; SWD(2017) 332 final, *op. cit.* (n. 25), p. 13; ICF report, *op. cit.* (n. 27), pp. 54–55
- 30 Autonomous investigations are those in which OLAF perform acts by itself. Member State authorities can be present and assist and do not do so in the fulfilment of their own tasks but for the fulfilment of OLAF's tasks. An example of an autonomous investigative act is an on-the-spot check. For further information, see M. Simonato, "OLAF investigations in a multi-level system. Legal obstacles to effective enforcement", (2016) *eucri*, 136, 137.
- 31 COM(2017) 589 final, *op. cit.* (n. 24), pp. 3, 6–8.
- 32 Next to studies and earlier evaluations conducted by the EU (see n. 4), the ICF Report (n. 27), Ecorys and CONT-committee studies deserve mention. See Ecorys, "Study on impact of strengthening of administrative and criminal law procedural rules for the protection of the EU financial interests", JUST/A4/2011/EVAL/01; and Directorate-General for Internal Policies, "The protection of the procedural rights of persons concerned by OLAF administrative investigations and the admissibility of OLAF final reports as criminal evidence: in-depth analysis" IP/D/CONT/IC/2017-066.
- 33 Academics from Queen Mary University of London, University of Luxembourg, the Polish Academy of Sciences, the University of Bonn, and Paris Nanterre University were instrumental in the design of both studies.
- 34 Regulation (EU) 250/2014 of the European Parliament and of the Council establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme) and repealing Decision (EC) 804/2004, *O.J. L* 84, 20.3.2014, 6.
- 35 COM(2017) 589 final, *op. cit.* (n. 24), p. 3; SWD(2017) 332 final, *op. cit.* (n. 25), p. 14.
- 36 OLAF, "The OLAF report 2016", §12, p. 50, figure 17.
- 37 COM(2017) 589 final, *op. cit.* (n. 24), p. 3; SWD(2017) 332 final, *op. cit.* (n. 25), p. 40; ICF, *op. cit.* (n. 27), p. 95.
- 38 Article 3(3) of Regulation 883/2013.
- 39 Art. 7(3) of Regulation 883/2013.
- 40 Art. 7(1) of Council Regulation (Euratom, EC) 2185/96 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, 15.11.1996, *O.J. L* 292, 2.
- 41 COM(2017) 589 final, *op. cit.* (n. 24), p. 3; SWD(2017) 332 final, *op. cit.* (n. 25), p. 16; ICF, *op. cit.* (n. 27), pp. 88–98.
- 42 COM(2017) 589 final, *op. cit.* (n. 24), p. 3; SWD(2017) 332 final, *op. cit.* (n. 25), p. 23–24; ICF, *op. cit.* (n. 27), p. 103.
- 43 Art. 3(4) of Regulation 883/2013.
- 44 SWD(2017) 332 final, *op. cit.* (n. 25), p. 24; ICF, *op. cit.* (n. 27), pp. 103–104.
- 45 Arts. 8(2) and 8(3) of Regulation 883/2013. Article 12(3) deals with the exchange of information in the follow-up phase, which is not the subject of this article.
- 46 SWD(2017) 332 final, p. 25.
- 47 The project on the gathering of information, focusing in particular on investigatory powers and procedural safeguards, was carried out in 2016 and 2017. The results of this project can be found at: <<https://dspace.library.uu.nl/handle/1874/352061>> (accessed 13 November 2017). The second project, on the exchange of information, is presently being conducted. Results are to be published in spring 2018. For this reason, references will only be made to the published report on the gathering of evidence.
- 48 M.J.J.P. Luchtman, "Introduction", in: M.J.J.P. Luchtman and J.A.E. Vervaele (eds.), *Investigatory powers and procedural safeguards: improving OLAF's legislative framework through a comparison with other EU law enforcement authorities (ECN/ESMA/ECB)*, 2017, p. 1.
- 49 Art. 20 of Council Regulation (EC) 1/2003.
- 50 M. Scholten and M. Simonato, "EU report", in: M.J.J.P. Luchtman and J.A.E. Vervaele (eds.), *op. cit.* (n. 48), pp. 47–48.
- 51 J.J.M. Graat, "The Netherlands", in: M.J.J.P. Luchtman and J.A.E. Vervaele (eds.), *op. cit.* (n. 48), pp. 111–125.
- 52 S. Allegrezza, "Italy", in: M.J.J.P. Luchtman and J.A.E. Vervaele (eds.), *op. cit.* (n. 48), p. 144.
- 53 Art. 7(1) of Regulation 2185/96.
- 54 M.J.J.P. Luchtman and J.A.E. Vervaele, *op. cit.* (n. 48), p. 321.
- 55 M.J.J.P. Luchtman and J.A.E. Vervaele, *op. cit.* (n. 48), pp. 328–329.
- 56 Art. 1(1) of Regulation 883/2013.
- 57 See the studies mentioned in note 47, and the ECORY and CONT-committee studies mentioned in note 32.