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Press release

The rate of indictments in criminal proceedings opened by the Hungarian Prosecution Service on the basis of OLAF recommendations exceeded the EU average

The result of investigations ordered in each and every case upon the so far 38 judicial recommendations, 4 pieces of information and 1 final report of the European Anti-Fraud Office (OLAF), namely the presently 52.4% rate of indictments and termination of proceedings exceeds the EU average of 42%..

In his letter of 22nd March 2018 sent to Ms. Ingeborg Gräßle, Chair of the Budgetary Control Committee of the European Parliament Dr. Péter Polt, Prosecutor General of Hungary summed up the results of the criminal proceedings launched upon the judicial recommendations of OLAF.

This letter has also been published on the website of the Prosecution Service:

<http://ugyeszseg.hu/dr-polt-peter-legfobb-ugyesz-levele-ingeborg-grasle-asszonyak-az-europai-parlament-koltsegvetesi-ellenorzo-bizottsaga-elnokenek/>

Since the informative letter of the Prosecutor General the following updates have been made concerning OLAF cases.

First of all, we would like to draw attention to an essential change in the statutory environment. The new Code Procedure Criminal, effective as of 1st July 2018 introduced a new investigation structure according to which investigations are divided into two main parts: the detection and the investigation with prosecutorial overview of the crime. The dividing line between the two parts of investigation is the interrogation of the suspect.

The investigating authority is vested with full autonomy, as well as full responsibility for the detection of the crime.

From among the cases detailed in the informative letter addressed to Ms. Gräßle the number of suspects in the case investigated by the Central Chief Prosecution Office of Investigation for the reasonable suspicion of bribery concerning the Metro Line 4 project has risen to 5 suspects. The investigation is still ongoing.

Since the informative letter of 22nd March two new OLAF recommendations have been received by the Office of the Prosecutor General. Similarly to the cases before, in the case of the two new recommendations substantive measures were taken: a criminal investigation has been ordered or, if a criminal investigation had already been ongoing, the OLAF recommendation was attached to the investigation files and was assessed as a part thereof.

1. The recommendation concerning the programme of the National Roma Self-Government “Bridge to the world of work” has been assessed as part of the already ongoing investigation conducted by the Central Investigating Department of the Directorate General for Criminal Affairs of the National Tax and Customs Administration (NAV) for the suspicion of budget fraud.

2. The other recommendation concerned irregularities giving rise to the suspicion of budget fraud. In this case a non-profit business association was involved which functioned as a designated intermediary organisation to programmes connected to particular EU funds.

Based on this recommendation the Chief Prosecution Office of the Capital, Budapest ordered an investigation on 17th August 2018 for the suspicion of budget fraud. The Chief Prosecution Office instructed the Central Investigating Department of the Directorate General for Criminal Affairs of the National Tax and Customs Administration (NAV) to conduct the investigation.

Both investigations are still in the detection phase.

Since 22nd March the Prosecution Service has filed indictment in one case initiated upon the recommendation of OLAF. In another case the Prosecution Service has decided upon the conditional prosecutorial suspension of the case.

In two investigations in the detection phase the investigative authority has decided to terminate the investigation.

Cases closed since 22nd March 2018:

1. Based on the judicial recommendation of OLAF of 14th July 2016 the Chief Prosecution Office of Szabolcs-Szatmár-Bereg County instructed the Northern Plain Criminal Directorate of the National Tax and Customs Administration (NAV) to conduct the investigation. As a result of the investigation on 15th November 2018 the Chief Prosecution Office of Szabolcs-Szatmár-Bereg County filed an indictment at the Nyíregyháza Court against three persons for *budget fraud resulting in particularly considerable financial loss and other felony*.

According to the indictment a woman managing a company in the county decided together with her self-employed daughters to modernize their fruit cultivation company and build cold stores using EU and Hungarian funds. Pursuant to the statutory provisions support can only be granted if the own financial contribution of the applicant equals at least 55% of the full required construction costs. The two daughters, however, did not have any capital, therefore, together with their mother they decided that the general constructor of the constructions will be the mother's company and they will charge extra large fees in the documentation of the investment in order to suggest that the necessary financial means are at their disposal. In fact, however, they were planning to build the cold stores exclusively from the support.

The mother's company outsourced the construction works and the subcontractors fulfilled their tasks. The mother then charged her daughters a more than double price for the construction works. According to the aid applications of the defendants the investment cost 700 million forints, whereas it actually cost them the only half of it.

Misleading the authority which decided about the payment the defendants have illicitly acquired 306 million forints, most of which had been granted by the European Union and a smaller part by Hungary.

2. Based on the judicial recommendation of OLAF of 13th June 2016 the Budapest IX. District Prosecution Office instructed the Central Hungary Criminal Directorate of the National Tax and Customs Administration (NAV) to conduct an investigation for the suspicion of budget fraud. Finally, with its decision of 26th September 2018 the Chief Prosecution Office of the Capital, Budapest suspended the *criminal procedure against the suspect for 2 years and 6 months*.

The suspect of the case was the Hungarian alternate member of the European Economic and Social Committee in Brussels between June 2004 and September 2015. During this time period this person was entitled to the reimbursement of travelling expenses between Budapest and Brussels and to a lump sum travel allowance.

On accounting for the travel expenses the defendant presented to the administrator of the Committee false boarding cards and electronic tickets on a regular basis. Deceiving the paying agent of the European Union with the false travel documents the defendant caused a monetary loss to the budget of the European Union between 2011 and 2013 of altogether HUF 1,182,361.

The suspect admitted to have committed the crime, and has compensated for the financial loss and also volunteered to pay an additional amount of HUF 250,000 for charity purposes.

The conditional prosecutorial suspension of the criminal procedure involves the establishment of criminal liability. Pursuant to the new Code Procedure Criminal the prosecutor shall suspend the procedure if with regard to the future conduct of the suspect the procedure is likely to be terminated. The conditional prosecutorial suspension of the criminal procedure is only applicable if the sanction for the criminal conduct does not exceed three – or in some special cases five – years' imprisonment and with regard to the type of the criminal offence, the way of the perpetration and the person of the suspect the suspension shall lead to a positive change in the suspect's conduct. If the suspect fails to comply with the obligations set out in the decision or the suspect is heard as a suspect during the time period of the suspension for a deliberately committed crime, the suspended criminal procedure shall be pursued against him/her.

3. The Office of the Prosecutor General received the recommendation of OLAF concerning the Hungarian public lighting projects on 8th January 2018. Based upon the said recommendation of 22nd December 2017 on 22nd January 2018 the Chief Prosecution Office of Pest County ordered a criminal investigation into the felony of budget fraud resulting in a particularly substantial financial loss and other crimes. The investigation was carried out by the Riot Police National Bureau of Investigation. The criminal proceeding in the detection phase was terminated by the National Bureau of Investigation on 26th October 2018 on the grounds of absence of a criminal offence.
4. Based on the judicial recommendation of OLAF of 12th. June 2015 the Chief Prosecution Office of the Capital Budapest ordered an investigation on 6th July 2015 for the suspicion of budget fraud resulting in a particularly considerable financial loss. The investigation was carried out by the Central Investigating Department of the Directorate General for Criminal Affairs of the National Tax and Customs Administration (NAV). The investigation was examining the construction investments and public procurement consultancy services received by self-governments. With its decision dated 29th June 2018 the Central Investigating Department of the Directorate General for Criminal Affairs of the National Tax and Customs Administration (NAV) terminated the investigation as no criminal offence could be detected.

The task of OLAF, as an EU organisation is the protection of the financial interest of the European Union. OLAF is entitled to carry out investigations into administrative irregularities against EU-funds. OLAF has no authorization to conduct criminal procedures or to examine the suspicion of crime. OLAF has no investigative powers. If suspicion of a crime arises in

the course of an OLAF investigation OLAF may make recommendations to the judicial authorities of the Member State concerned. After its investigation finishes, OLAF makes recommendations to the competent Member State authority if it suspects that a criminal offence has been committed, and it requests the opening of a criminal investigation.

Since 2012 together with the above mentioned 2 recommendations OLAF has issued 38 judicial recommendations (which indicated suspected crimes based on their own administrative investigations) and transmitted 4 pieces of information (information suggesting the commission of criminal offences, forwarded documents – without making any recommendations to open criminal proceedings) to the Office of the Prosecutor General of Hungary. Prior to this OLAF only sent one final report to Hungary in 2011.

Although no such obligation exists, the Prosecution Service of Hungary issues an order on the opening of a criminal procedure in each case in accordance with the protocol set by the Prosecutor General of Hungary, and it entrusts a national investigation authority with the task of the criminal investigation, whereas if there had already been an ongoing investigation in the case, the OLAF recommendation was attached to the files of the investigation and was assessed as a part thereof.

Based upon the outcomes of criminal investigations prosecutors have filed indictments in 10 cases. Out of these cases there were 2 where a final sentencing judgement (conviction) was delivered, and in 1 case the court delivered a non-final, first instance sentencing judgement. In one case the Prosecution Service *decided on the conditional prosecutorial suspension* of the case which, however, also means the establishment of criminal liability. 10 cases were closed with the termination of the criminal proceedings. In all the other cases the criminal investigation is still ongoing.

The result of investigations ordered upon the judicial recommendations, information and the final report of the European Anti-Fraud Office (OLAF), namely the presently 52.4% rate of indictments, the conditional prosecutorial suspension and the termination of proceedings exceeds the EU average.

(Pursuant to the 2016 report of OLAF the EU average was 44%, whereas in 2017 it was 42%. Pursuant to the 2017 report of OLAF the number of indictments was 21% in Germany, 29% in Austria, 18% in Slovakia, 33% in Romania and 0% in Ireland.)

Budapest, 16th November 2018

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