

# The Kessler case should be a starting point for reforming the EU's anti-fraud office

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*Giovanni Kessler, the Director-General of the European Anti-Fraud Office (OLAF), has faced allegations that he listened in on telephone conversations as part of a previous OLAF investigation.*

*Helen Xanthaki argues that the case should act as motivation for EU authorities to reassess the structure of OLAF and its role in preventing fraud at the European level.*



On 2 March, the College of Commissioners decided to lift the immunity of the European Union's Anti-fraud Office (OLAF) Director General, Giovanni Kessler, in relation to a request by Belgian authorities to investigate his conduct during a previous OLAF investigation.

In the aftermath, most European media sources concentrated their reporting on the series of events that led to this decision. The case relates to an OLAF investigation that led to the forced resignation of the Maltese former Health Commissioner, John Dalli, and centres around the alleged intervention of Kessler in the tapping of a conversation between witnesses in that investigation.

The Belgian authorities' request to lift Kessler's immunity in order to investigate and ultimately possibly prosecute Kessler, and the possible illegality of that alleged intervention under Belgian law, received significant coverage, as did the [one year lapse](#) between the time that the Belgian request was forwarded to the Commission and the final decision of the Commission to lift Kessler's immunity, the alleged encouragement of Kessler to resign and take up another permanent post at the Commission, the public resentment of that allegation by the European Parliament and its Budgetary Committee, Kessler's persistence of innocence, and the final lifting of his immunity by the Commission.

There is no doubt that these events could inform a successful soap opera. The story is intriguing, and quite useful at a time of serious doubts over the EU and its future – and not only in the UK. The question is, useful to whom: Eurosceptics, Europhiles, or indeed both?

Kessler's alleged suggestion to one of the witnesses to record a telephone call, as evidence of Dalli's associate's alleged solicitation of a bribe in the Commission's name, has far reaching effects. If utilised properly, and not buried for the sake of the EU's PR, this event can finally serve as a much needed review of OLAF operational capacity. Although here it is worth making clear a disclaimer: I confess to being an effervescent ally to an effective anti-fraud unit of the EU and an equally vociferous opponent to OLAF's current cloudy regulatory and operational framework.

## The need to reform OLAF

OLAF is the long suffering successor of UCLAF (an anti-fraud coordination unit named *Unité de Coordination de la Lutte Anti-Fraude*). OLAF came



about as a response to UCLAF's long list of widely accepted weaknesses: its failure to create a culture that was intolerant of fraud and irregularity; its ineffectiveness in investigating fraud; the gaps and contradictions related to its function, to its independence, to its relations with national judicial authorities and competences, in intelligence and data gathering; the poor definition or over-complication of policy and organisational arrangements for its operations, both internal and external inquiries; its limited use and operability of electronic databases; and its inefficient documentation and archives for cases. Looking at that list through the prism of recent events, one wonders what, if anything, has changed?

OLAF remains strangled under the tight reign of the Commission, one of the bodies that it is tasked to investigate: indeed, the Kessler case was brought about within the framework of OLAF's investigation of the then Commissioner Dalli. OLAF is entangled in an ad hoc, fragmented, conflicting and uncodified mess of largely self-imposed operational conventions that are supposed to be applied within the tight constrictions of legitimacy and constitutionality in criminal investigations. Even the jurisdictional identity of legitimacy and constitutionality is fluid. Which law and which Constitution would the unavoidably confused OLAF staff work under: Belgian, EU, that of the jurisdiction with competence over the investigation, or that with competence over the actual, indeed usually cross-border, action under investigation? And really, what is the nature of OLAF and the task of its staff: are they investigators, prosecutors or something in between?

The meticulously staged underplaying of the clash between the need for clearly regulated operational borders drawn by express legal provisions on the one hand, and the complete inability, or unwillingness, of the member states to boldly agree on these borders, is now more deafening than ever. OLAF cannot, and should not, continue like this: a hybrid organisation asphyxiated between ever increasing effectiveness goals and its perpetually amputated operational powers.

The transfer from UCLAF to OLAF came as a result of the culmination of mistrust concerning UCLAF's effectiveness following the Cresson scandal, which led to the resignation of the Santer Commission in 1999. Perhaps the Kessler events can lead to a new OLAF with a regulatory framework that matches its scope as a truly independent, effective, clearly regulated anti-fraud unit. One where those investigated, those serving as witnesses, those serving as OLAF staff, OLAF's Director, OLAF's Supervisory Body, the European Parliament, and uppermost EU citizens know with great certainty what is legitimate and how to use it for the successful fight against EU fraud.

The opportunity to review OLAF's institutional, regulatory and operational framework is here. Perhaps this could be Kessler's greatest legacy to a long suffering OLAF. But of course this would require bold political decisions from the enlarged EU of 28 member states. Even wishing for this seems utopic. But if it were to happen, it would be difficult not to agree that the Kessler affair served Europhiles much more than Eurosceptics.

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*Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics. Featured image via [youtube](#).*

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