



PROSECUTOR GENERAL

KABIGA//2-51/2018.

Ms. Ingeborg Gräßle
Chair

European Parliament
Budgetary Control Committee

Brussels

Dear Chair Gräßle,

Budapest, 22th March, 2018

I was glad to have the opportunity to inform you about prosecutors' activity regarding EU funds, including specific cases and proceedings, at the meeting with the Budgetary Control Committee of the European Parliament held at the Office of the Prosecutor General of Hungary on 18th September 2017. Let me assure you that the meeting, in my view, proved to be very forward-looking, and as far as its outcome was considered it was very fruitful. As a supplement to our meeting and having regard to your statement given to Politico on 27th February 2018 as well as to your letter of 6th March 2018 requesting information, please be informed of the following.

I.)

With regard to the Metro Line 4 case, referred to in your statement and surrounded by numerous misunderstandings, and which, as indicated below, is actually not one but two cases, let me remind you of the following:

OLAF's final report on the Metro Line 4 project contains a judicial recommendation only in connection with the contracts of Alstom SA, and it finds irregularities (so not suspicions of crimes) concerning the other contracts. The Hungarian and British authorities, however, had been conducting investigations into a suspected bribery and other crimes related to the contracts of Alstom SA more than one year prior to the OLAF investigation, and OLAF learnt about the suspicions of crimes from those authorities. All this is also reflected by OLAF's judicial recommendation.

The Hungarian and British authorities have been closely cooperating in the case, which has several advantages. One of the advantages is, for example, the possibility of direct exchange of information and evidence. Unfortunately, the jury was dismissed in the British proceeding; therefore, the court has not decided about the charges pressed by the U.K. authorities. The case is expected to be re-tried this autumn.

In accordance with the above, the OLAF report was attached to the file of the ongoing proceedings (Alstom case). The investigation into the case is still ongoing. After subjecting the case to prosecutorial investigation, the Central Chief Prosecution Office of Investigation interviewed witnesses, interrogated suspects, conducted house searches, carried out seizures, analyzed a vast amount of relevant electronic data, and requested legal assistance from authorities of other Member States since a reasonable suspicion of bribery had arisen. An order on pre-trial detention was also issued in the case, and as one of the suspects intended to be interrogated had left Hungary, an arrest warrant and an extradition warrant were also issued. It can be seen that the criminal investigation continues to require intense international cooperation.

Apart from this, the interests of the criminal investigation do not allow for any information to be given about details of the investigation or planned measures.

On the other hand, the Prime Minister's Office also filed a criminal complaint in connection with certain contracts. In this regard the prosecution service ordered investigation which is being conducted by the Riot Police National Bureau of Investigation (Metro Line 4 case). This investigation is still ongoing, and it aims at clarifying the suspicion of crime concerning the contracts mentioned in the criminal complaint and described in the final report as irregular. Suspects have not been heard in the case yet.

It must be noted that apart from the companies OLAF only identified one person in its report: the Prime Minister of Hungary between 2002 and 2004. As a result of the investigation of the irregularities detected by OLAF, the commission of other crimes, such as budget fraud and misappropriation has not been proven in the course of the prosecutorial investigation of the Alstom case, therefore, in the absence of reasonable suspicion the former Prime Minister could not be heard as a suspect in the case.

I will certainly inform you about both cases as soon as it becomes possible. However, in view of the nature of the criminal proceeding I cannot tell you when exactly this will be.

I am not aware of any lawsuit mentioned in your letter of 6th March 2018 and lodged against the former mayor of the 21st District of Budapest in relation to the Metro Line 4 project.

On 28th January 2018 the Prosecution Service of Hungary received the report of the working group on metro corruption set up by the General Assembly of the Capital Budapest. The analysis of the report in terms of whether it contains any findings that may be relevant in the context of the criminal proceeding is still ongoing.

II.)

At our meeting in September the other OLAF-case referred to in your press release could not be discussed yet. With regard to the case please be informed that the Office of the Prosecutor General received the OLAF recommendation relating to the Hungarian public lighting projects on 8th January 2018. The Office of the Prosecutor General has forwarded the recommendation to the Chief Prosecution Office of Pest County (*Pest Megyei Főügyészség*) having territorial jurisdiction and competence for the proceedings. In compliance with the usual and consistently used practice, on 22nd January 2018 the Chief Prosecution Office of Pest County ordered a criminal investigation into the felony of (excessive) budget fraud resulting in particularly substantial financial loss and other crimes. In your press release you called for real police inquiry into the matter which astonished me, as you must have been

deliberately misinformed suggesting that there were also “unreal” investigations in Hungary. I must assure you that there is a real investigation in every case. The present case is not an exception either: the Riot Police National Bureau of Investigation as a real police organ is carrying out a real investigation.

You are kindly requested to take into consideration the general practice of the Office of the Prosecutor General in case of judicial recommendations of OLAF and the data in support of what is said above.

In order that prosecutorial measures taken in reply to OLAF recommendations are interpreted correctly, it should be clarified that the task of OLAF is the protection of financial interests of the European Union. OLAF is entitled to carry out administrative investigations in this context. Apart from this, OLAF may support the work of Member State authorities, takes part in the administrative investigations conducted by these authorities and harmonizes cases concerning several states. OLAF has no competence for conducting criminal procedures or to investigate suspected offences. It has therefore no investigative powers, and it lacks legal competence for criminal investigations. If OLAF in the course of its investigation suspects a crime, it has to contact the competent Member State authority. In case of a suspected crime OLAF transmits the result of its investigation, the final report to the prosecution service of the Member State concerned and recommends launching a criminal procedure in the case.

Therefore, I am obliged to inform you that your statement made in the article is false and may be suitable for misleading the public. According to your statement the investigations conducted by OLAF into the public lighting projects have clearly indicated fraudulent activities. As a matter of fact, OLAF – in accordance with its competences – detected a suspicion of crime and did not establish the commission of crime nor personal liability in the case. That is the task of the Hungarian criminal authorities and administration of justice to do so.

The OLAF Director-General may decide to send the available information to the competent authority of the Member State concerned even if there is no final report (either because no investigation has been launched or the investigation has not been completed yet), so that the national authority – if deemed necessary – could take the appropriate measures in compliance with the national legislation and in case of a suspected offence a criminal investigation could be launched by the prosecution service.

Since your visit in Hungary on 18th September 2017 OLAF has presented three recommendations to the Prosecution Service of Hungary. In each case the recommendation was followed up by substantive measures, such as ordering an investigation or the evaluation of the recommendation in the ongoing investigation. A real investigation is being conducted in every case. In this period, from among the cases initiated upon the recommendation of OLAF there was one case where the prosecution service on 16th November 2017 indicted three persons for budget fraud resulting in particularly considerable financial loss and other crimes. Based upon an earlier indictment, on 20th February 2018 the Budapest Metropolitan Court (*Fővárosi Törvényszék*) passed a first instance sentencing judgement (conviction) which is not final yet.

Together with the above mentioned recommendations and measures OLAF has issued altogether 36 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 since 2012. In each case the Prosecution Service of Hungary ordered that a criminal investigation should be opened, and if a criminal investigation was already ongoing, the OLAF recommendation was attached to the investigation files and was assessed as a part thereof.

Based upon the outcomes of criminal investigations prosecutors have filed indictments in 8 cases since 2012. Out of these cases there was one where a final sentencing judgement (conviction) was delivered, and in another case the court delivered the above mentioned non-final, first instance sentencing judgement. 8 cases were closed with the termination of the criminal proceedings; in all the other cases the criminal investigation is still ongoing.

Prior to 2012 OLAF did not issue any recommendations – in accordance with Article 11 of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 – it only forwarded its final reports about its external investigations to the Hungarian judicial authorities. In 2010 the Prosecution Service of Hungary received no final reports from OLAF. In 2011 one final report was received, and based upon this final report a criminal proceeding was opened, and following the indictment a final judgement was delivered on 24th June 2016.

Thus, – as far as the entire time period is concerned – based upon the 9 indictments the courts have delivered 2 final judgements that convicted the offenders and one non-final sentencing judgement.

The rate of indictments and terminations of proceedings in criminal proceedings opened on the basis of OLAF's recommendations, transmitted information or final reports exceed the EU average even in this way. (According to the 2016 OLAF Report the EU average is 44%, without SAPARD cases it is 50%).

In support of the above, please find below basic data concerning the measures taken by prosecutors upon the recommendations of OLAF since 2012.

Recommendations

Number of OLAF recommendation	Date of OLAF recommendation	Prosecutorial measure	Stage of the case	Investigating authority	subject matter of the case
OF/2015/0034/B4	22.12.2017	reopening of a previously terminated investigation	ongoing investigation	Riot Police National Bureau of Investigation	budget fraud against EU funds financing the modernization of public lighting
OF/2015/0450/B4	22.12.2017	attached to the files of an ongoing criminal case	ongoing investigation	National Tax and Customs Administration (NAV) Directorate	budget fraud against EU funds subsidizing a fishery project

				General for Criminal Affairs Department of Central Investigations	
OF/2015/1028/B4	18.12.2017	order of investigation	ongoing investigation	National Tax and Customs Administration (NAV) Directorate General for Criminal Affairs Department of Central Investigations	budget fraud related to EU subsidies applied for in connection with research and development projects
OF/2016/0429/B4	14.06.2017	attached to the files of an ongoing criminal case	ongoing investigation	National Tax and Customs Administration (NAV) Directorate General for Criminal Affairs Department of Central Investigations	budget fraud related to EU subsidies granted for the acquisition of agricultural and construction machinery
OF/2016/0428/B4	30.05.2017	attached to the files of an ongoing criminal case	ongoing investigation	National Tax and Customs Administration (NAV) Directorate General for Criminal Affairs Department of Central Investigations	budget fraud against EU funds subsidizing the acquisition of agricultural and construction machinery
OF/2015/1377	24.05.2017	order of investigation	ongoing investigation	National Tax and Customs Administration (NAV) Directorate	budget fraud against EU funds subsidizing the construction of a vacuum chamber

				General for Criminal Affairs Department of Central Investigations	used for the development of solar cells
OF/2014/0047/B4	09.12.2016	order of investigation	ongoing investigation	National Tax and Customs Administration (NAV) Directorate General for Criminal Affairs Department of Central Investigations	budget fraud committed in relation to subsidized acquisitions of dentistry equipment
OF/2015/0661	06.12.2016	attached to the files of an ongoing criminal case	ongoing investigation	National Tax and Customs Administration (NAV) Directorate General for Criminal Affairs Department of Central Investigations	budget fraud committed in connection with subsidized acquisitions of machinery
OF/2012/0118/B4	28.11.2016	attached to the files of an ongoing criminal case	ongoing investigation	Central Chief Prosecution Office of Investigation	various crimes connected to the purchase of Alstom metro cars
OF/2014/856/A3	14.11.2016	order of investigation	ongoing investigation	National Tax and Customs Administration (NAV) Directorate General for Criminal Affairs Department of Central Investigations	budget fraud relating to the personnel costs of research projects, Marie Curie Actions

OF/2014/0674/B4	20.10.2016	order of investigation	ongoing investigation	National Tax and Customs Administration (NAV) Central-Hungarian Crime Directorate	budget fraud connected to projects aiming at the development medical tourism-related and other websites
OF/2014/1030/B4	21.09.2016	attached to the files of an ongoing criminal case	ongoing investigation	National Tax and Customs Administration (NAV) South Transdanubian Crime Directorate	budget fraud against EU funds subsidizing a program for the development of science education and classrooms
OF/2015/0123/B4	14.07.2016	order of investigation	ongoing investigation	National Tax and Customs Administration (NAV) North Plain Crime Directorate	budget fraud relating to subsidies granted for young farmers
OF/2015/152/A1	13.06.2016	order of investigation	ongoing investigation	National Tax and Customs Administration (NAV) Central-Hungarian Crime Directorate	budget fraud connected to expenses reimbursed by the European Economic and Social Committee
OF/2014/0568/B4.	08.06.2016	attached to the files of an ongoing criminal case	ongoing investigation	National Tax and Customs Administration (NAV) Directorate General for Criminal Affairs Department of Central Investigations	budget fraud committed in connection with subsidized acquisitions of machinery
OF/2014/1330/B4	09.05.2016	order of investigation	termination of investigation	Central Chief Prosecution Office of	budget fraud against EU funds subsidizing the

			on 20,01,2017	Investigation	development of micro-enterprises
OF/2014/1138/B4	04.12.2015	attached to the files of an ongoing criminal case	indictment on 16.11.2017	National Tax and Customs Administration (NAV) South Plain Crime Directorate	budget fraud relating to development of the interactive visitors' and information system of Szeged Zoo
OF/2012/1342/A1	18.12.2015	order of investigation	ongoing investigation	Central Chief Prosecution Office of Investigation	budget fraud relating to the reimbursement of costs of a MEP
OF/2014/0418/B4	28.10.2015	order of investigation	indictment on 24.04.2017	National Tax and Customs Administration (NAV) Directorate General for Criminal Affairs Department of Central Investigations	budget fraud relating to a subsidized software development
OF/2013/0141/B4 (OF/2013/1355/B4)	24.09.2015	order of investigation	ongoing investigation	National Tax and Customs Administration (NAV) South- Transdanubian Regional Crime Directorate	budget fraud committed in relation to EU subsidies granted for the refurbishment of Integrated Community Service Spaces in villages in Hungary and for acquisitions of machinery
OF/2011/0357/B4	12.06.2015	order of investigation	ongoing investigation	Central Chief Prosecution Office of Investigation	budget fraud relating to the project of increasing the capacity of the National Development Agency

OF/2010/0863/B4	12.06.2015	order of investigation	ongoing investigation	National Tax and Customs Administration (NAV) Directorate General for Criminal Affairs Department of Central Investigations	budget fraud relating to construction investments and public procurement consultancy services of local governments
OF/2011/1112/B4	12.06.2015	order of investigation	ongoing investigation	National Tax and Customs Administration (NAV) Directorate General for Criminal Affairs Department of Central Investigations	budget fraud relating to infrastructure projects of the National Infrastructure Development Agency
OF/2013/0049/A3	02.06.2015	order of reopening	investigation terminated on 28.11.2016	National Tax and Customs Administration (NAV) Central-Hungarian Regional Crime Directorate	budget fraud against EU funds subsidizing research programs
OF/2011/0945/B4	08.01.2015	attached to the files of an ongoing investigation	indictment on 06.02.2017, first instance judgement on 20.02.2018	National Tax and Customs Administration (NAV) North Plain Regional Crime Directorate	budget fraud against EU funds subsidizing the acquisitions of packaging technology machinery and relevant IT
OF/2012/1098/B4	19.12.2014	order of investigation	investigation terminated on	Budapest Police Headquarters	budget fraud relating to the design contracts

			23.05.2017	Anti-corruption and Economic Crimes Department	of the Heart of Budapest project
OF/2012/1164/B4	07.10.2014	order of investigation	indictment on 30.03.2017	Central Chief Prosecution Office of Investigation	budget fraud relating to subsidized acquisitions of medical diagnostic devices
OF/2009/0494/B4	25.09.2014	order of investigation	investigation terminated on 19.10. 2016	National Tax and Customs Administration (NAV) Central-Hungarian Regional Crime Directorate	budget fraud relating to the EU financing of the development of veterinary products
OF/2012/1134/B4	26.06.2014	order of investigation	investigation terminated on 21.02.2017	National Tax and Customs Administration (NAV) Central-Hungarian Regional Crime Directorate	budget fraud relating to subsidized acquisitions of machinery
OF/2011/0988/B4	05.06.2014	attached to the files of an ongoing investigation	indictment on 11.09.2015	National Tax and Customs Administration (NAV) Central-Hungarian Regional Crime Directorate	budget fraud committed by submitting false applications in the Single Area Payment Scheme
OF/2012/1136/B4	24.03.2014	order of investigation	investigation terminated on 17.02.2015	National Tax and Customs Administration (NAV) North Plain Regional Crime Directorate	budget fraud committed in relation to EU subsidies for urban drainage system management of the town Bodony
OF/2011/0708/B4	27.02.2014	order of investigation	ongoing investigation	National Tax and Customs Administration (NAV)	budget fraud relating to the modernization of playgrounds in

				Directorate General for Criminal Affairs Department of Central Investigations	166 local governments
OF/2011/0288/B4	30.09.2013	order of investigation	indictment on 29.09.2016	National Tax and Customs Administration (NAV) South Plain Crime Directorate Central Transdanubian Regional Crime Directorate	budget fraud committed in relation to application for EU subsidies for acquisitions of forestry machineries
OF/0809/2010/A1	07.12.2012	order of investigation	investigation terminated on 18.04.2014	Budapest 2nd District Police Department	fraud committed with respect to ineligible travel costs received from the European Food Safety Authority
OF/2009/0494	18.06.2012	order of investigation	indictment on 12.11.2014 first instance judgement on 29.04.2016, final judgement on 01.12.2016	National Tax and Customs Administration (NAV) Central- Hungarian Regional Crime Directorate	budget fraud committed with respect to EU subsidies for acquisitions of printing machinery

Information:

OLAF reference number	Date of information	Prosecutorial measure	Stage of the case	Investigating authority	subject matter of the case
OF/2015/0515/A2	19.02.2016	order of investigation	ongoing investigation	Budapest 5th District Police Department	forgery of official documents and money laundering committed in connection with an

					attempted fraud affecting the European Investment Bank
OF/2015/1251/01	04.12.2015	order of investigation	investigation terminated on 12.04.2017	National Tax and Customs Administration (NAV) South-Transdanubian Crime Directorate	budget fraud relating to subsidies granted to a poultry producer group
OF/2014/0680/B4	06.10.2015	attached to the files of an ongoing investigation	ongoing investigation	National Tax and Customs Administration (NAV) Directorate General for Criminal Affairs Department of Central Investigations	budget fraud relating to construction investments and public procurement consultancy services of local governments
OF/2009/0514/B4	23.12.2013	attached to the files of an ongoing investigation	indictment on 23.12.2015	Budapest Police Headquarters Anti-corruption and Economic Crimes Department	budget fraud committed against EU funds subsidizing the development of an animal welfare program

Finally, please accept, Madam, the assurance of my highest consideration of the work of the Budgetary Control Committee of the European Parliament.

I hope that the information above shall help the work of the Budgetary Control Committee.

Yours sincerely,




Dr. Péter Polt