

	<i>Acknowledgements</i>	vii
	<i>Contents</i>	ix
	<i>Abbreviations</i>	xviii
	<i>Defined Terms</i>	xx
	Introduction	3
CHAPTER I	The Protection of the EU's Financial Interests	
I	The Origins	7
2	The Draft Treaty of 1976	7
3	The Creation of UCLAF	10
4	Case 68/88, <i>Commission v. Greece</i>	12
5	The Treaty of Maastricht	13
5.1	Article 209a TEC	13
5.2	Judicial Cooperation in Criminal Matters	14
6	The PFI-Convention	16
7	The PFI-Regulation	19
7.1	Scope and Contents	19
7.2	Purely Administrative or (Quasi-)Criminal Penalties?	22
8	The Treaty of Amsterdam	25
8.1	A Specific Legal Basis for PFI-Measures	25
8.2	Judicial Cooperation in Criminal Matters	27
8.3	Article 280(4) TEC and the Issue of an EC Competence in Criminal Matters	28
8.3.1	General Points	28
8.3.2	Earlier Discussions	28
8.3.3	Cases C-176/03 and C-440/05, <i>Commission v. Council</i>	30
8.3.4	EC Competence in Criminal Law Matters in the PFI-Context	31
8.3.5	The PFI-Convention Revisited	32
9	The Treaty of Nice	35
10	The Treaty of Lisbon	35
10.1	Article 325 TFEU (ex-Article 280 TEC)	35
10.2	Judicial Cooperation in Criminal Matters	35
10.3	The Role of Articles 83(2) TFEU and 325(4) TFEU as a Legal Basis for Adopting Criminal Law Measures in the PFI-Context	38
10.4	The PFI-Convention Revisited Again	41
II	Some Intermediate Concluding Remarks	42
CHAPTER II	The Creation of OLAF	
I	The Broader Context: The 1999 Political Crisis	47
2	The OLAF Specific Context	51
3	Some Intermediate Concluding Remarks	53

CHAPTER III	OLAF Legal Instruments	
I	Decision, Regulation and Interinstitutional Agreement	57
2	OLAF Manual	58
3	Some Intermediate Concluding Remarks	59
CHAPTER IV	OLAF's Competences	
I	Scope of OLAF's Investigative Competences	63
I.1	OLAF-Decision	63
I.2	OLAF-Regulation	63
2	External Investigations	65
2.1	Generally Applicable Rules	65
2.1.1	Conduct of Investigations	65
2.1.2	Confidentiality and Data Protection	68
2.1.3	Transparency and Access to Documents	69
2.2	Special Cases	70
2.2.1	Direct Management of EU Expenditure by the Commission	70
2.2.1.1	General Rule: No Separate Rules on OLAF's Investigative Competences where Direct Management of EU Expenditure is concerned	70
2.2.1.2	Possible Exception to the General Rule	73
2.2.2	Third Countries	74
2.3	Powers of Investigation	75
2.3.1	Council Reg. No 2185/96	75
2.3.1.1	General Points	75
2.3.1.2	Relationship to the PFI-Regulation	76
2.3.1.3	Relationship to the Sectoral Rules	78
2.3.1.4	Contents	79
2.3.2	Enforcement of Powers of Investigation	83
2.3.2.1	Absence of Means of Enforcement for OLAF/Duty of Assistance on the Member States	83
2.3.2.2	Extent of Member State Control over the Exercise by OLAF of its Powers of Investigation	84
2.3.3	Fundamental Right to Privacy Issues	88
2.3.3.1	Applicable Law	88
2.3.3.2	Right to Respect for One's Home	90
2.3.3.3	Right to Respect for One's Correspondence and Communications	90
3	Internal Investigations	92
3.1	A Multi-Level Legal Basis for Internal Investigations	92
3.2	Treaty of Lisbon: Reinforcement of the Legal Basis for Internal Investigations by OLAF?	96
3.3	Powers of Investigation	97
3.3.1	Substance	97
3.3.1.1	Access to Information and to Premises	97

3.3.1.2	Duty to cooperate with OLAF and Duty to supply Information	98
3.3.2	Enforcement of Powers of Investigation	100
3.3.3	Incidence of the Protocol on Privileges and Immunities	101
3.3.4	Fundamental Right to Privacy Issues	103
3.3.4.1	Applicable rules	103
3.3.4.2	Right to Respect for One's Home	104
3.3.4.3	Right to Respect for One's Correspondence and Communications	105
4	Forwarding of Information by OLAF to National Authorities	107
5	Administrative or (Quasi-)Criminal Investigative Competences?	109
6	Cooperation with ...	111
6.1	National Authorities	111
6.1.1	Search for an Overall Concept	111
6.1.2	Subsidiarity	111
6.1.3	Partnership	112
6.2	EU Institutions and Bodies	113
6.2.1	Overview	113
6.2.2	The ECA	113
6.2.3	Europol	114
7	Other OLAF Tasks	115
7.1	Overview	115
7.2	Importance of the Distinction between OLAF's Investigative Function and its other Tasks	117
8	Some Facts and Figures	118
8.1	General Points	118
8.2	Opening Decisions	118
8.3	Closing Decisions	121
8.4	Judicial Follow-Up	122
8.5	Financial Recovery	123
9	Some Intermediate Concluding Remarks	123
CHAPTER V	Rights of the Defence of Persons under Investigation by OLAF	
I	General Points	129
2	Right to be Heard and Right of Access to the File	129
2.1	Plurality of Relevant Sources	129
2.2	External Investigations	130
2.2.1	OLAF Manual	130
2.2.2	National Rules on the Rights of the Defence	131
2.2.3	The EU Fundamental Principle of the Rights of the Defence and the Charter of Fundamental Rights of the EU	131
2.2.3.1	General Case-Law on the EU Fundamental Principle of the Rights of the Defence	131

2.2.3.2	OLAF related Case-Law	132
2.2.3.3	The Double Meaning of the Notion of “Measure adversely affecting” a Person	132
2.2.3.4	The Fact that OLAF Investigative Acts result in Reports	133
2.2.3.5	The Fact that a Decision is taken subsequently by another Authority	134
2.2.3.6	The Consequences of being under Investigation ...	134
2.2.3.7	... <i>versus</i> the Effectiveness of the Investigation	136
2.2.3.8	The Charter of Fundamental Rights of the EU	137
2.2.3.9	The Right to be Heard under the Charter	137
2.2.3.10	The Right of Access to the File under the Charter	140
2.2.3.11	OLAF Revisited	142
2.2.3.12	Consequences of a Violation of the Rights of the Defence	145
2.3	Internal Investigations	146
2.3.1	Decision adopted by each EU Institution or Body	146
2.3.2	Other Sources	148
2.3.2.1	OLAF Manual	148
2.3.2.2	National Rules on the Rights of the Defence	148
2.3.2.3	The EU Fundamental Principle of the Rights of the Defence and the Charter of Fundamental Rights of the EU	149
3	The Right to be Informed	150
3.1	General Sources	150
3.2	OLAF Legal Instruments	151
3.3	Comparison with Competition Law	152
4	Other Article 6 ECHR related Rights of the Defence	154
4.1	Right to Assistance of a Legal Counsel	154
4.1.1	General Sources	154
4.1.2	OLAF Legal Instruments	156
4.2	The Presumption of Innocence	158
4.3	The Right not to incriminate oneself and the Right to remain silent	159
4.4	The Reasonable-Time Requirement	160
4.4.1	Overview	160
4.4.2	Consequences of a Violation of the Reasonable-Time Requirement	162
4.4.2.1	On the EU Level	162
4.4.2.2	On the National Level	164
4.5	Impartiality	165
5	Some Intermediate Concluding Remarks	166
CHAPTER VI	Organisation and Institutional Position of OLAF	
I	Director	171
2	Supervisory Committee	173
3	The Position of OLAF as a Commission Service	174
3.1	Hybrid Structure	174

3.2	Positive Effects	174
3.3	Questions ...	175
3.3.I	... in relation to Delegation: of Authority or of Powers?	175
3.3.I.1	General Points	175
3.3.I.2	Delegation of Authority?	175
3.3.I.3	Delegation of Powers?	176
3.3.I.4	Focal Point Supervision	178
3.3.2	... in relation to Judicial Review	179
3.3.3	... in relation to the Delimitation of Powers and Responsibilities	181
3.4	Possible Alternative Structures	182
3.4.I	General Points	182
3.4.2	OLAF as a Satellite Agency	183
3.4.3	OLAF as a part of the ECA	183
3.4.4	OLAF as a body mentioned in the Treaty	184
3.5	Challenges raised by an Independent OLAF	184
4	Some Intermediate Concluding Remarks	185
CHAPTER VII	Supervision of OLAF	
I	Relevance of the Issue	189
2	Tentative Criteria for Adequate Supervision	191
3	Existing Forms of (Non-Judicial) Supervision of OLAF	192
3.I	The Supervisory Committee	192
3.I.1	Independence of OLAF v. Supervision of OLAF: Balance in favour of the Former	192
3.I.2	Case-law	192
3.I.3	Expressions of Discomfort	193
3.I.4	Proposals for a Change of the Current Situation	194
3.2	Other Forms of (Non-Judicial) Supervision	195
3.2.1	The European Parliament, the Council and the Commission	195
3.2.2	The ECA	196
3.2.3	The European Ombudsman	197
3.2.4	The European Data Protection Supervisor	197
3.2.5	The President or Secretary-General of an EU Institution or Body	198
3.2.6	The Review Adviser	198
4	Some Intermediate Concluding Remarks	200
CHAPTER VIII	Judicial Review of OLAF Investigative Acts	
I	General Points	203
2	Direct Judicial Review	203
2.I	Action for Annulment	203
2.I.1	General Trend: Inadmissibility of an Action for Annulment against an OLAF Investigative Act	203

2.1.2	Tentative Exception to the General Trend	206
2.1.3	Some Further Reflections	208
2.1.3.1	Comparison with Competition Law	208
2.1.3.2	Fundamental Rights	210
2.1.3.3	Protocol on Privileges and Immunities	214
2.1.4	Preceding Administrative Procedure	215
2.1.5	The Action for Annulment and the Issue of Adequate Supervision	216
2.2	Action for Damages	217
2.2.1	General Points	217
2.2.2	Preceding Administrative Procedure	218
2.2.3	The Action for Damages and the Issue of Adequate Supervision	220
2.3	Interim Relief	220
2.3.1	General Points	220
2.3.2	Interim Relief in the Framework of Actions for Annulment	221
2.3.3	Interim Relief in the Framework of Actions for Damages	222
2.3.4	Interim Relief and the Issue of Adequate Supervision	225
3	Indirect Judicial Review	225
3.1	General Points	225
3.2	Indirect Judicial Review by an EU Court	225
3.3	Indirect Judicial Review by a National Court	226
3.3.1	The Preliminary Ruling Procedure: Cooperation between National Courts and the ECJ	226
3.3.2	Interpretation of an OLAF(-related) Act	227
3.3.3	Validity of an OLAF(-related) Act	227
3.3.4	Indirect Judicial Review by a National Court and the Issue of Adequate Supervision	229
4	The Fundamental Right to an Effective Remedy	230
5	Some Intermediate Concluding Remarks	230
CHAPTER IX	A Look Forward to a European Public Prosecutor's Office	
I	General Points	237
2	Brief Historical Overview	238
2.1	The <i>Corpus Juris</i>	238
2.2	The Committee of Independent Experts	239
2.3	The Commission's Proposal for the Treaty of Nice	240
2.4	The Commission's Green Paper	240
2.5	The Treaty establishing a Constitution for Europe	241
2.6	The Treaty of Lisbon	242
2.7	The Stockholm Programme	243
3	The Step to an EPPO: Eurojust	243
3.1	The Creation of Eurojust	243
3.2	Treaty Provision and Legal Instruments	245
3.2.1	Article 85 TFEU	245

3.2.2	The Eurojust-Decision	245
3.2.2.1	Overview	245
3.2.2.2	Possible effects of the Eurojust-Decision in the National Legal Order: Obligation of Conforming Interpretation?	245
3.3	Competences	247
3.3.1	Overview	247
3.3.2	Absence of Power to Investigate	248
3.3.3	Legal Effect on Member States	248
3.4	Organisation	249
3.5	Supervision	250
3.6	Judicial Review	251
3.6.1	National Courts	251
3.6.2	EU Courts	252
3.7	Relationship with OLAF	253
3.7.1	Cooperation between Eurojust and OLAF	253
3.7.2	OLAF Investigative Competence in Relation to Eurojust	254
4	Relevance of OLAF for an EPPO	256
4.1	General Points	256
4.2	Legal Instruments defining the Investigative Competences of an EPPO	256
4.3	Investigative Competences of an EPPO	257
4.3.1	Extent	257
4.3.2	Enforcement	259
4.4	Rights of the Defence of Persons under Investigation by an EPPO	259
4.5	Organisation of an EPPO	261
4.5.1	Decentralised Structure	261
4.5.2	Legal Personality?	261
4.5.3	An EPPO and the Relationship between the EU and the Member States	262
4.6	Supervision of an EPPO	263
4.7	Judicial Review of (Investigative) Measures of an EPPO	263
4.7.1	Uncontested Principle	263
4.7.2	Possible Competent Court(s)	264
4.7.2.1	Special (chamber of an) EU Court?	264
4.7.2.2	National Court?	265
4.7.2.3	Judicial Review under the Current EU Courts' System?	267
4.7.3	Some Hypothetical Examples	268
4.7.3.1	House Search	268
4.7.3.2	Committal for Trial	270
5	Relevance of an EPPO for OLAF	270
5.1	General Points	270
5.2	An EPPO as a Supervisor of OLAF	271
5.3	An EPPO Absorbing OLAF	271
6	Some Intermediate Concluding Remarks	273

	Conclusion	
I	OLAF's Characteristics	277
2	A Short-Term Approach	279
3	A Long-Term Approach	279
	<i>Table of Cases</i>	282
	<i>Bibliography</i>	290
	<i>Index</i>	300
	<i>Nederlandstalige samenvatting</i>	305