

Implementation of OLAF Reports in the Member States and Their Impact on Customs Decisions

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How are OLAF reports implemented in the Member States and what is their impact on the customs decisions of Member States? The following briefing shows that despite the lack of binding effect, OLAF reports often have a significant impact on subsequent measures at a national level. In particular, these reports have a considerable influence over the protection of confidentiality under customs law.

Implementation in Criminal Proceedings

In Germany, the investigation reports that OLAF issues after concluding an external investigation are of considerable weight, because they can be used as evidence in criminal court proceedings. This is not the case in all Member States, but depends on the question whether [Regulation \(EU, EURATOM\) No. 883/2013](#), which concerns OLAF's investigative activities, is regarded as a sufficient legal basis to use OLAF reports in national judicial proceedings. In these Member States the competent national authorities need to carry out the preservation of evidence and other investigative measures themselves in order to be able to use such evidence in court.

OLAF reports are merely recommendations and opinions without any binding legal effect. Non-compliance with OLAF recommendations does not lead to any sanctions against Member States. However, this does not mean that these reports do not have any impact on the follow-up measures at a national level. Between 2012 and 2018, 36 % of all OLAF recommendations and [reports](#) led to the start of juridical procedures by competent national authorities. In 2018, for example, in Germany 21 % of the OLAF recommendations led to formal charges, in Greece 80 % and Italy 48 %.

Implementation in Post-Clearance Recovery Cases

OLAF reports also have a significant impact on the post-clearance recovery of duties on the export and import of goods. In case the report finds that insufficient duty has been paid, competent national authorities may require the outstanding duties to be paid in full. In Germany, the post-clearance recovery is carried out by the relevant main customs office.

Customs Significance in Cases of Error

In certain circumstances, the importer can claim a prohibition of post-clearance recovery. This is the case, among other examples, when an exporter makes false declarations to the competent customs authorities concerning the origin of the goods, or the customs authorities make a mistake when issuing the certificate of origin. Likewise, if the importer fails to verify the circumstances under which the certificate was issued, the importer can be prohibited from making such a claim. The importer can invoke the prohibition of post-clearance recovery on the grounds of the principle of legitimate expectation, but only if:

- the duties are not levied due to an error by the competent authority;
- the error committed could not reasonably be detected by a debtor who is acting in good faith, and;
- the importer has complied with all the legal provisions applicable to his customs declaration.

However, the existence of an OLAF report can mean it is no longer possible to invoke legitimate expectation. In [Case C-47/16](#), the European Court of Justice stated that an importer cannot invoke the prohibition of post-clearance recovery if an OLAF report contains relevant information relating to the transaction, in particular with regard to the relevant behaviour of the exporter or the products to be imported.

In order to mitigate the risk of post-clearance recovery, it is the responsibility of the importer to take precautions, such as obtaining evidence of the origin of the goods from the exporter concerned. Furthermore, when verifying certificates of origin, the importer should always be aware of OLAF reports that contain not only general descriptions but also specific references that can be relevant to the transaction. Otherwise, there is a risk that the importer cannot invoke the principle of legitimate expectation.

BLOMSTEIN advises you on all matters relating to OLAF investigations and compliance. [Roland M. Stein](#) and [Leonard von Rummel](#) will be pleased to assist you at any time.