

**Presumed systemic corruption and lack of judicial action against it in
Hungary: when OLAF reports prove the opposite**

27th of May 2022

Executive summary:

- The number of cases investigated by OLAF and concluded by recommendations has decreased steadily in the recent years in Hungary.
- Hungarian national authorities have been acting upon OLAF's recommendations in a constantly increasing number of cases.
- Hungary's judicial decisions resulted in an increasing rate of indictments in recent years.

The subject of rule of law and an alleged democratic backsliding in Hungary has been a political instrument for the European Parliament.¹ In 2020, Guy Verhofstadt, the former Prime Minister of Belgium and a current Member of the European Parliament was referring to Hungary and Poland stating that these countries are not applying the rule of law, are now less of a democracy, and are in the hands of corrupt people. He continued by stating that “it's not only the question of the rule of law, it's also a question of corruption”, and in the case of Hungary, this would be “a responsibility of Mr. Orbán.”²

1. What is at stake?

In 2021, S&D MEPs co-signed a letter to the president of the Commission von der Leyen calling on her to reject the Hungarian government's Recovery and Resilience Plan (RRP). The MEPs consider that the selection and the territorial distribution of the measures included in the Plan could lead to favoritism, nepotism, fraud and corruption. As they argued, the rule of law is seriously undermined in Hungary and ever since the Fidesz party came to power, there has been an alarming regress in the independence of the judiciary, in the fight against corruption.³

¹ European Parliament, Committee on Civil Liberties, Justice and Home Affairs. Rapporteur: Rui Tavares: *Report on the situation of fundamental rights: standards and practices in Hungary*. A7-0229/2013, 24 June. 2013, Available at:

https://www.europarl.europa.eu/doceo/document/A-7-2013-0229_EN.html

² <https://www.euronews.com/my-europe/2020/11/26/viktor-orban-responsible-for-corruption-in-hungary-says-former-belgian-pm>

³ <https://www.socialistsanddemocrats.eu/newsroom/sds-and-other-meps-ec-president-von-der-leyen-dont-let-hungarian-recovery-and-resilience>

This paper will provide evidence showing that the Hungarian national judicial authorities have a strong working relationship with the European Anti-Fraud Office (OLAF) and that the national judicial authorities are successfully pursuing and punishing criminal cases related to EU funds.

In February 2022, the Office of the Prosecutor General of Hungary and European Anti-Fraud Office (OLAF) signed a cooperation arrangement, in which they commit to closer cooperation in order to protect EU funds from potential fraud. The arrangement allows for greater sharing of information between OLAF and the Hungarian Prosecutor General's Office on specific investigations, facilitates the coordination of investigative steps and synchronization of activities, and allows for more training opportunities and technical assistance.⁴ Practically, even though Hungary does not participate in the European Public Prosecutor's Office, it is clearly willing to cooperate with European institutions engaged in addressing corruption and fraudulent practices and protecting the EU's financial interests. Actually, among the non-participating countries, it is only Hungary that concluded a working arrangement of this kind with OLAF.

Yet, since this is a fairly recent development, it remains relevant to examine whether Hungarian authorities indeed obstructed or disregarded OLAF's requests for investigation, prosecution or sanctions related to the defense of the EU's financial interests. The main goal of this paper, therefore, is ***to examine the extent to which the Hungarian judicial authorities are willing to cooperate regarding OLAF's recommendations compared to other Member States, based on the agency's annual reports.***

2. OLAF's mission and competences

The European Anti-Fraud Office investigates cases relating to fraud, corruption and other offences affecting the EU financial interests. Once it concludes an investigation, it recommends action to EU institutions and/or national governments and, if the recommendations are put into action, OLAF monitors their implementation. Upon request, national judicial authorities must send information to OLAF on any action taken in order to enforce its judicial recommendations. Yet, as the OLAF Report 2020 puts it⁵: "*Member States' judicial authorities are independent and are under no obligation to follow OLAF's recommendations.*"⁶ Hence, once OLAF issues recommendations, national authorities have three options: take no action, dismiss the case or initiate legal proceedings.

Regarding data collection, this paper relies on data from OLAF's annual reports. As prior to 2015 the agency used a slightly different methodology to present its findings,

⁴ https://ec.europa.eu/anti-fraud/media-corner/news/olaf-and-hungarian-prosecutor-sign-cooperation-arrangement-2022-02-11_en

⁵ European Anti-Fraud Office: *The OLAF Report 2020*. Luxembourg, 2021. Available at: https://ec.europa.eu/anti-fraud/system/files/2021-12/olaf_report_2020_en.pdf

⁶ European Anti-Fraud Office: *The OLAF Report 2020*. Luxembourg, 2021, p. 47.

for the sake of consistency, we used data from this very year only. Nonetheless, it is important to note that given the duration of the investigations, OLAF annual reports often refer to cases that were passed on to national authorities several years after the inquiries were initiated. Indeed, in cases passed on by OLAF to national authorities in a given year the irregular act might have been committed much earlier. For example, the 2016 Report mentions cases transmitted to national judicial authorities between 1 January 2008 and 31 December 2015. Hence, the alleged offenses could have been committed months or even years before 2008. This fact is crucial, since changes indicated in a given report do not necessarily reflect the changes in the number of cases from the year before. It may well be that ***an increase in the number of cases investigated by OLAF in a given year reflects an increase in irregular acts committed four to seven years earlier.***

This paper also includes data related to Sweden, Spain, France, Poland, Hungary, and Greece. Moreover, given their score in the Corruption Perception Index, Romania and Bulgaria are also covered⁷. The following sections focus on the number of cases which OLAF concluded with recommendations (3), the number of cases where national judicial authorities took action upon the recommendation of OLAF (4) and, finally, on the sanctions adopted by national courts against unlawful behaviours (5).

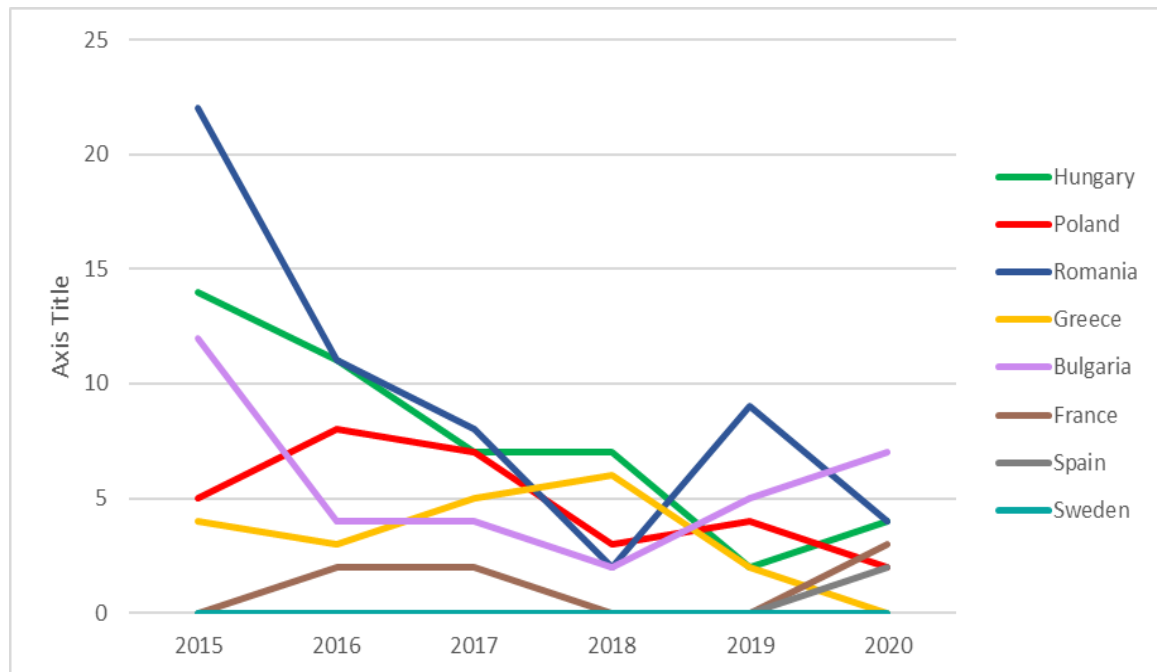
3. Number of cases concluded with OLAF's recommendations per country.

As displayed in Figure 1, the data provided by OLAF shows that in the case of Hungary, ***the number of cases investigated and concluded by OLAF's recommendations has decreased steadily in the past years. According to OLAF annual reports, in 2015 there were 14 cases concluded by recommendations, while in 2020 there were only 4 cases.***

Again, it is important to notice that the number of cases shown in one year do not necessarily refer to fraudulent cases committed one year before publishing the Report. In the case of Hungary, the initially extremely high number of cases indicated in the 2015 report includes cases the investigation of which started in 2008. Since then, the number of fraudulent cases investigated by OLAF decreased drastically, except last year, as in 2019 only 2 cases were closed with recommendations. An increase in the number of cases closed with recommendations in the case of France and Spain. An exception from the general trend can be seen in the case of Bulgaria, where after a consistent drop in cases, the past years show a renewed increase in the mismanagement of EU funds investigated by OLAF and transmitted to national authorities. For details, see Figure 1.

⁷ European Commission: *The Corruption Perception Index 2019: The EU is the best performer in the world.* 27 January 2020. Available at: https://ec.europa.eu/regional_policy/en/newsroom/news/2020/01/27-01-2020-the-corruption-perception-index-2019-the-eu-is-the-best-performer-in-the-world

Figure 1: Number of cases concluded by OLAF which were closed with recommendations. Sources: OLAF Annual Reports.



It is interesting to notice that the number of cases investigated by OLAF and concluded with recommendations has not been effective in every member state's case. For example, in the case of Greece, the number of fraudulent cases transmitted to national authorities increased between 2015 and 2018. Yet, there are no concerns related to an increasing corruption and lack of rule of law.

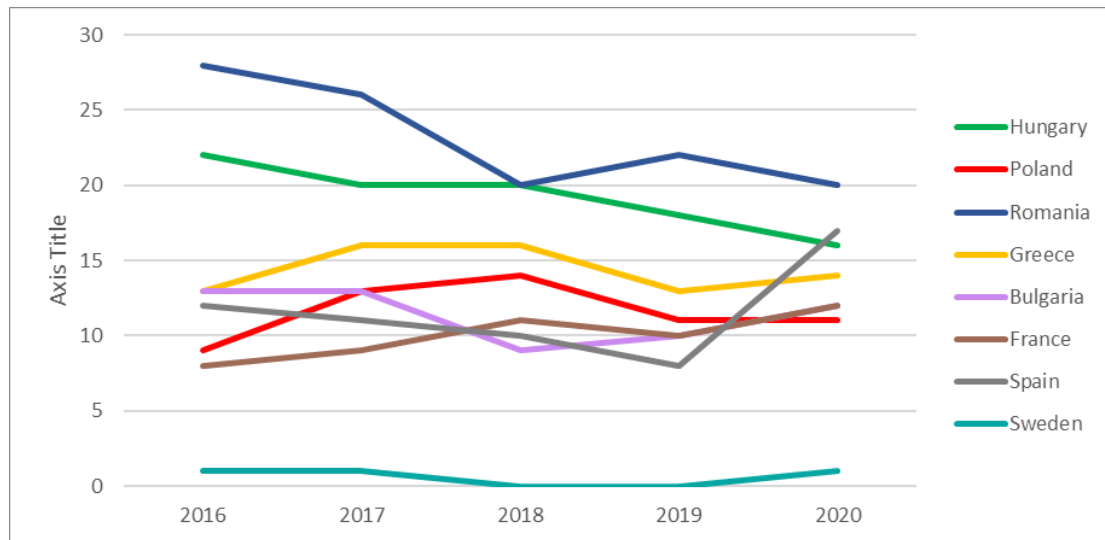
4. Cases where national judicial authorities took action following up on OLAF's inquiries.

Due to OLAF's limited investigation powers and practical means, it is not usually able to collect conclusive evidence for criminal offences. Thorough investigations are concluded by national judicial authorities, often, in lengthy procedures. The number of decisions taken by national judicial authorities is closely related to the independence, quality and efficiency of the judicial system. These criteria are all evaluated in the Rule of Law Reports.

A well-functioning judicial system can take decisions and report back on them to OLAF within 12 months. Therefore, it is worth examining the relevant OLAF data. As shown in Figure 2, among the countries under scrutiny, the number of cases where OLAF's recommendations were not followed by actions taken by national judicial authorities generally decreased. Hungary's judicial system has been on a constant improving trend with **the number of cases in which the authorities have not acted upon OLAF's recommendations being constantly decreasing**. The Annual Reports show that in 2016 there were 22 cases to be taken actions on, while in 2020 this

number decreased to 16. This would not be possible if the independence of the judicial system were restricted, as suggested by the above-mentioned members of the European Parliament.

Figure 2: Number of cases in which the judicial authorities did not take decisions. Sources: OLAF annual reports.

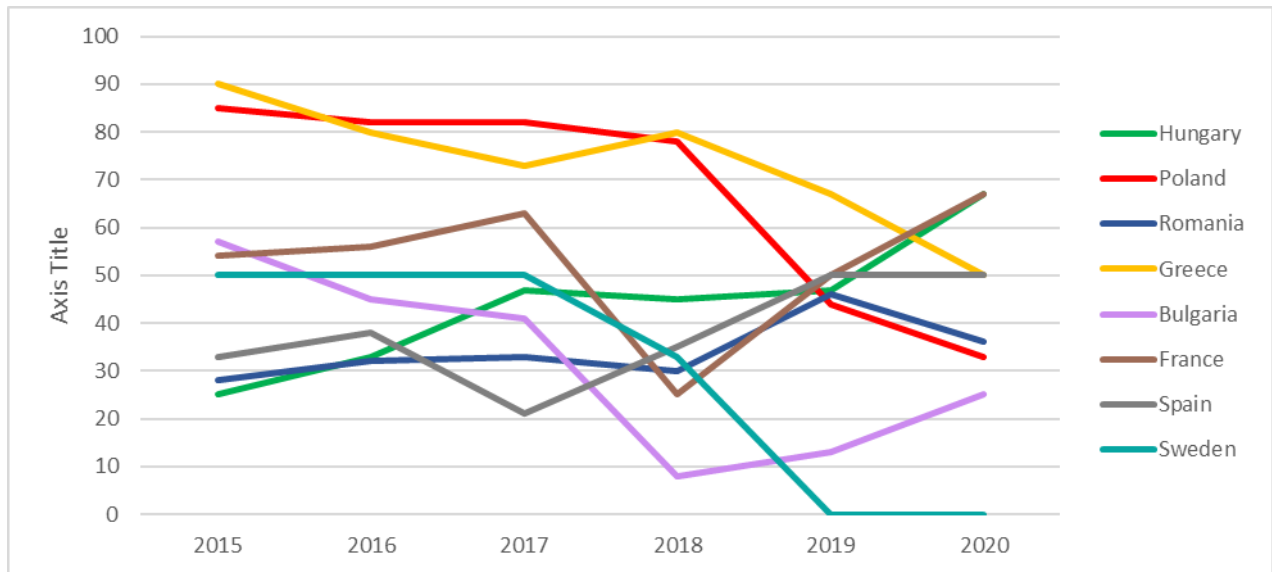


In the case of Bulgaria, Spain, and France we can see an increase in the number of cases which were initially investigated by OLAF and submitted to national authorities with legal recommendations, but the latter failed to take actions within one year. While this seems to be a case for limiting the availability and effectiveness of legal remedies through limiting the effective investigation, prosecution or sanctioning of breaches of law, it was not addressed by the European actors.

5. Sanctions adopted by national courts against unlawful behaviors

As mentioned earlier, national authorities have the possibility to initiate legal proceedings if OLAF finds substantial evidence in the first place. **Over the years, judicial decisions in Hungary led to an increasing rate of indictments. This rate was 25 percent in 2015, which reached 67 percent in 2020, more than in any other country analysed in this paper.** In other words, the national judicial system has constantly improved its capacity to find conclusive evidence for fraudulent irregularities and to take the necessary measures to punish the wrongdoings (Figure 3.).

Figure 3: Changes in indictment rates. Sources: OLAF annual reports.



If corruption was indeed systemic and paired with a justice system that lost its independence and capacity to prevent, correct or sanction arbitrary or unlawful decisions related to European funds, we would not be able to witness a rise in the number of cases where legal processes are initiated and corrective measures are taken.

Contrary to the Hungarian case, the indictment rates in Romania and Bulgaria are significantly lower, while the number of cases concluded with recommendations by OLAF has been generally the highest among the examined countries. Still, regarding the lack of independence of the justice system or the infringement on the principles of rule of law in Romania and Bulgaria do not seem to be a source of concern for neither the European Parliament nor the European Commission or some Brussels based media.

In the light of these findings, it is justified to question why Hungary attracts so much media and political attention regarding alleged corruption or rule of law concerns when its performance is way better than that of other countries that receive far less criticism.

Conclusions

- Based on the OLAF reports, we can see that in Hungary the number of OLAF cases concluded with recommendations has been decreasing in the past years. Claims of increasing corruption are nothing more than false accusations.
- National authorities have been doing their best to prevent any backsliding regarding fraudulent use of EU funds. Hungarian judicial authorities have been effective in finding incriminating evidence. Moreover, they have taken the

necessary measures to close the cases with an increasing rate of indictments. All these elements point to an independent judicial system, with a constantly improving quality and efficiency. Therefore, allegations regarding endangering the independence of the judiciary seem to be completely groundless.

- The European Parliament and the European Commission are most concerned about the mishandling of European funds and issues related to the principles of the rule of law in Hungary. Nevertheless, the OLAF annual reports indicate a more severe situation in several other member states which have not been addressed.

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