

Communication concerning the decision of the Curia of Hungary
in administrative case no. Kfv.I.35.420/2017

An OLAF report may be qualified as a piece of evidence approvable in administrative and court proceedings in the same way and under the same conditions as an administrative report (minutes) prepared under the national laws of a given country could be used in such proceedings.

Through his direct representative, the plaintiff initiated the release into free circulation of glass fibre nets, allegedly originating from Malaysia, as non-Community goods under normal procedures. In conformity with the plaintiff's applications, the customs authority released the goods into free circulation at a zero-rate customs duty. Based on a report of the European Anti-Fraud Office (OLAF), the tax authority carried out an *ex post* inspection and re-examined the customs procedures as a result of which it found that the goods had, in fact, originated from China and ordered the plaintiff to pay conventional and anti-dumping customs duties as well as value added taxes. The tax authority took into consideration not only the OLAF report, but also the case files of the *ex post* inspection, in particular the relevant documents of the customs procedures under review, the plaintiff's earlier declarations and the minutes of the hearings with him. The tax authority stated that the latter pieces of evidence could not demonstrably call into question the correctness of the findings of the OLAF report.

In his statement of claims submitted to the competent court, the plaintiff contested, among others, the qualification of the OLAF report as piece of evidence on the basis of an earlier Curia decision.

The court of first instance quashed the decisions of the first and second instance tax authorities. The court argued that the authorities had erred in finding that an OLAF report in itself could serve as sufficient evidence for the launch and carrying out of proceedings and for the delivery of a negative decision.

The Curia quashed the first instance judgement and ordered the court of first instance to reopen its proceedings. The Curia referred to Article 9 of Regulation no. 1073/1999/EC of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) which, in line with the Preamble, provides that the OLAF's reports shall – among others – specify the facts established and take into account the procedural requirements laid down in the national law of the Member State concerned. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall be of identical value to such reports.

In its decision, the Curia also referred to the judgements of the European Court of Justice in cases C-47/16 and C-407/16 in which the Court addressed the issue of the use of an OLAF report as evidence and precisely defined the national courts' obligation to examine. With regard to the above, the Curia stressed that the tax authorities had at their disposal i. the mission report which had given a detailed account of the OLAF's investigation and ii. the underlying pieces of evidence (declarations, minutes of hearings and consignment registers).

In view of all the above, the Curia concluded that the court of first instance had erred in reviewing the legality of the decisions of the tax authorities only on the basis of the usability of the OLAF report as evidence and in omitting to examine the very content of the report and the correctness of the underlying pieces of evidence.

Budapest, the 12th of April 2018

Administrative and Labour Department of the Curia of Hungary