

OLAF's report on its implementation in 2020 of the Supervisory Committee recommendations

Summary:

This report includes:

- **Table 1:** Follow-up on two Supervisory Committee (SC) recommendations assessed as ongoing/not yet applicable in February 2020¹, included in SC Opinion No 1/2019 *OLAF Preliminary Draft Budget for 2020*, received by OLAF in June 2019. Out of the two recommendations, the Office still considers one recommendation as ongoing and the other one as not yet applicable.
- **Table 2:** OLAF's report for 2020 on nine recommendations issued during the same year, included in SC Opinion 1/2020 on *OLAF's dismissed cases concerning Members of EU Institutions*, received by OLAF in April 2020, and SC Opinion No 2/2020 on *OLAF Preliminary Draft Budget for 2021*, received by OLAF in July 2020. OLAF considers all nine recommendations as implemented.

¹ OLAF's reporting for 2019 on its implementation of the Supervisory Committee recommendations, Ares(2020)1452773 of 9 March 2020.

Table 1 - Follow-up on two recommendations assessed by OLAF as ongoing and not yet applicable in February 2020

I. No	II. SC Document Reference	III. SC Position	IV. OLAF position²	V. OLAF assessment of the implementation
1.	<p>SC Opinion 1/2019</p> <p>OLAF Preliminary Draft Budget for 2020</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>The Committee recommends that OLAF's Director-General reinforce the Office's administrative, financial and investigative independence by requesting from the European Commission the redeployment of a fully-fledged human resources unit. This unit would be responsible, amongst other things, for all the missions currently handled by the AMC.5 for OLAF, but with the necessary independence from the Directorate-General for Human Resources and Security.</p>	<p><u>OLAF position February 2020</u></p> <p>OLAF is undertaking important steps to reinforce its HR capacities in the context of its ongoing reorganisation, notably by attaching the HR BC team directly to the Director-General.</p> <p>In addition, OLAF intends to request from DG HR reinforcement of the HR BC team, for the reasons raised by the SC, on the grounds of OLAF's partially independent status and a foreseen increase in the need for HR development and specific training of OLAF staff in the coming years in light of the arrival of the EPPO and the changing nature of OLAF's activities.</p> <p><u>OLAF position February 2021</u></p> <p>An important step towards reinforcing OLAF's HR capacities was done in the context of the reorganisation of the Office, when the HR.BC team was attached directly to the Director-General.</p> <p>In addition, OLAF intends to request from DG HR a reinforcement for the HR BC team, for the reasons raised by the SC, on the grounds of a) OLAF's partially independent status; b) a foreseen increase in the need for HR development, notably in terms of junior management development path, equal opportunities and retention policies; c) need for specific training of OLAF staff and managers; d) preparing the structures and staff for the arrival of the EPPO; e) complying with the Commission HR policies and f) organising specialised OLAF competitions (3 in 2021). In this regard, it should be noted that OLAF's activities will not decrease in the future, but can be expected to actually increase, notably because of new tasks involving assistance, coordination and cooperation with the EPPO. This will affect all horizontal HR tasks in OLAF.</p>	<p>Ongoing</p>

² The column "OLAF position" includes the previous and current positions.

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			<p>However, the request to reinforce the HRBC team has been put on hold given the Commission's policy concerning the number of staff given to each HRBC (depending on the staff of the department or service) and the lack of resources allocated by the Commission to OLAF. Specifically, OLAF is subject to the same rules as any other Commission department or service, and is left with no margin of manoeuvre to increase its staff in the HRBC or elsewhere, unless reinforced by a reallocation of existing internal staff. The less resources OLAF receives, the less staff OLAF can allocate to the HRBC, investigative units, anti-fraud policy or investigation support units despite an increasingly growing number of tasks. Nevertheless, it remains an OLAF priority to reinforce the HRBC team, in order to ensure proper service to the Office.</p> <p>It should be noted that the staffing situation is critical as OLAF is requested to render posts in the exercise of synergies, for the Task Force Article 50 and for the surcharges granted last year for a limited period of time. In addition, the Office has to render 45 posts to the EPPO between 2019 and 2023 and will lose, in total, 14 quotas for recruiting external staff (SNEs, agency workers and Contractual Agents). At the same time, the workload of OLAF has not diminished proportionally to the staff cuts suffered and yet coming. On the contrary, the new forms of administrative irregularities, wrongdoings and other acts harmful for the EU interest increase every year, triggering the increase of services requests by the EU Institutions and Member States: complex trans-border modus operandi, irregularities affecting tendering procedures on health products (masks, respirators, vaccines, etc.), new digital commodities and financial instruments.</p> <p>OLAF continues to over-deliver its operational and political services to the IBOAs and Member States without failing its mission but the point of maximum stress in terms of human resources has been reached. OLAF will continue carrying out administrative investigations leading to recovery of funds where it is exclusively OLAF's remit, handled solely by OLAF or by OLAF in coordination with the administrative authorities in the</p>	

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			<p>Member States.</p> <p>The general needs for supplementary resources in OLAF were communicated to the Commission in December 2020 via the Reinforcement request in the framework of the preparation of 2021 allocation of Human Resources and the Request for an increase of administrative expenditure for external staff in the framework of draft budget 2022 of 15 February 2021 (Ares(2021)1260022), and will be subject of bilateral discussions with DG BUDG during the budgetary hearings scheduled on 4 March. OLAF's preliminary draft budget will be adapted in line with the outcome of these discussions and the SC will be informed accordingly. As explained above, without the allocation of supplementary resources, not only the HRBC but also other understaffed parts of the Office (operational, support and political) cannot be reinforced.</p>	
2.	<p>SC Opinion 1/2019</p> <p>OLAF Preliminary Draft Budget for 2020</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>The Committee recommends, once OLAF has received the required resources from the European Commission, that OLAF's Director-General ensure that a risk assessment is carried out focusing on OLAF's new tasks in terms of fraud prevention and risk analysis.</p>	<p><u>The OLAF position February 2020</u></p> <p>In 2019, the Commission assigned three posts to OLAF for the implementation of the new Commission Anti-Fraud Strategy. Any additional resources will only be made available following a decision of the new Commission and based on its future priorities.</p> <p><u>OLAF position February 2021</u></p> <p>Even without the additional resources requested for the implementation of the Commission Anti-Fraud Strategy (CAFS), OLAF considers it a priority to contribute to fraud risk management in the Commission in line with the two main objectives of the CAFS. Under the first objective – “data collection and analysis” - OLAF's strategic analysis function contributes with analysis of fraud risks and the identification of mitigating measures. Notably, in 2020, OLAF performed an analysis of COVID-19 related fraud risks which was discussed and circulated among Commission services. Other analyses were launched during the year, e.g. on fraud risks related to spending in the health sector. Under the second objective – “coordination, cooperation and processes” - OLAF provides advice, notably, to Commission services in the development of anti-fraud strategies, based on specific fraud risk assessments. In 2020, OLAF provided advice</p>	<p>Not yet applicable</p>

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			on, and approved, twelve such strategies.	

Table 2 - OLAF's report for 2020 on nine recommendations issued by the SC during the same year

<i>I. No</i>	<i>II. SC Document Reference</i>	<i>III. SC Position</i>	<i>IV. OLAF position</i>	<i>V. OLAF assessment of the implementation</i>
1.	<p>SC Opinion 2/2020</p> <p>OLAF Preliminary Draft Budget for 2021</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>The Supervisory Committee reiterates its recommendation of the previous years that the Director-General ask the European Commission's Internal Audit Service (IAS) to carry out a post-implementation evaluation of the OCM, focusing in particular on all the costs of the project (direct and indirect) since its inception, users' experiences and the efficiencies gained compared to the previous case management system (CMS). The purpose of that audit should also allow the Director-General to decide whether OLAF should ultimately replace the OCM by another solution already used by other similar investigative and enforcement EU authorities.</p>	<p><u>OLAF position February 2021</u></p> <p>The detailed project costs (direct and indirect, internal and external, past and planned) were communicated to the Committee on Budgetary Control (CONT) in December 2019. In February 2020, the Commission's Internal Audit Service (IAS) informed OLAF that the action plan resulting from the IAS Audit on Project Management (main focus being on OCM) was successfully concluded. This concerned the implementation of recommendations on governance, management of business requirements, testing, cost, planning, as well as risk and knowledge management. As per the IAS recommendation, the detailed project costs are now reported at least twice a year to the OCM Project Steering Committee and once a year to the EC IT Governance, i.e. the IT and Cybersecurity Board (ITCB). Costs are also included in OLAF's annual reporting in the EC IT project/systems repository, i.e. the GovIS2. In meetings on the OCM progress (June 2018, October 2019, December 2020), the ITCB noted that OCM was on the right track whilst recommending convergence to a corporate case management solution whenever possible.</p> <p>As regards the users' perspective, the results of the IT satisfaction survey 2019 have been analysed and action points for improvements made. The survey was posted on the OLAF Intranet in March 2020. In preparation of the 2021 survey, the follow up and completion of the above action points was presented to the OLAF management.</p> <p>In 2020, OLAF ran an internal study, gathering stakeholders from all sides (business, IT and security), on its future case management system and thoroughly assessed, among others, CASE@EC as a candidate system. The study was presented to the OCM Project Steering Committee on 1 July 2020, the</p>	Implemented

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			<p>decision being than OCM should be completed and CASE@EC should be considered again, when it goes live and is proven mature and stable. The study results were also presented to the ITCB on 17 Dec 2020.</p> <p>It should be noted that the EPPO case management system will be based on the same technology as CASE@EC but will evolve as an independent system. The fact that it is different to OCM does not pose any restriction in implementing the appropriate interface for the exchange of information between OLAF and the EPPO.</p>	
2.	<p>SC Opinion 1/2020</p> <p>OLAF's dismissed cases concerning Members of EU institutions</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>Recommendation 1: As a matter of good administration, for cases where the information is provided by MS/IBOAs without an explicit request to open an investigation, OLAF should take appropriate procedural steps to handle those cases with priority. In particular, the Director-General of OLAF should:</p> <p>a) adopt internal checks to identify those cases where information is provided by MS/IBOAs;</p> <p>b) ensure that, at least, a holding reply is provided within 2 months to the MSs/IBOAs concerned;</p> <p>c) ensure that any extension beyond this two-month period is duly justified and proportionate to the circumstances and activities carried out.</p>	<p><u>OLAF position February 2021</u></p> <p>See OLAF's reply to SC Opinion 1/2020 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en.</p>	Implemented
3.	<p>SC Opinion 1/2020</p> <p>OLAF's dismissed cases concerning</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>Recommendation 2: For internal cases, and to maintain</p>	<p><u>OLAF position February 2021</u></p> <p>See OLAF's reply to SC Opinion 1/2020 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-</p>	Implemented

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	Members of EU institutions	<p>administrative consistency, when the information does not come from MS or IBOAs, OLAF should take appropriate procedural steps to ensure that the selection process is carried out in a timely manner. In particular, the Director-General of OLAF should:</p> <p>a) adopt internal checks to identify those cases (in the OCM) where the selection process has exceeded the two-month period;</p> <p>b) ensure that any extension beyond this two-month period is duly justified and proportionate to the circumstances and activities carried out.</p>	<p>committee/exchanges-between-olaf-and-its-supervisory-committee_en .</p>	
4.	<p>SC Opinion 1/2020</p> <p>OLAF's dismissed cases concerning Members of EU institutions</p>	<p>Original SC recommendation to OLAF</p> <p>Recommendation 3: As a general rule, OLAF should contact the source of information. This is to check whether the information comes from a reliable source, and to request any clarification or verification deemed necessary. The only reason OLAF should not contact the source is if doing so could undermine other future OLAF activities or is clearly unnecessary. In particular, the Director-General of OLAF should:</p> <p>a) mention in the case file (OCM) whether the source of information was contacted;</p> <p>b) contact the source when it is a public authority or a whistleblower;</p> <p>c) keep records of all communications (date, content, means of communication) and of the number of attempts to communicate with the source (twice, as a minimum).</p>	<p><u>OLAF position February 2021</u></p> <p>See OLAF's reply to SC Opinion 1/2020 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en .</p> <p>As regards the recommendation to establish a minimum number of attempts to communicate with the source, selectors have been instructed to try to contact for a second time sources who do not reply to OLAF's first request for information. This has been done in the framework of the Unit meetings, and the Head of Sectors verify that the instruction is actually implemented, unless clear indicators demonstrate that the additional effort would result in a waste of time, e.g. a Fraud Notification System (FNS) correspondent who did not open in the system the first message addressed to him/her, or when the necessary information was obtained elsewhere.</p>	<p>Implemented</p>

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5.	SC Opinion 1/2020 OLAF's dismissed cases concerning Members of EU institutions	<u>Original SC recommendation to OLAF</u> Recommendation 4: OLAF should improve the effectiveness of the planned activities that aim to verify the validity of the allegations raised. In particular, the Director-General of OLAF should carry out all necessary activities provided for by the OLAF Regulation and OLAF's internal rules in a systematic and consistent way.	<u>OLAF position February 2021</u> See OLAF's reply to SC Opinion 1/2020 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en .	Implemented
6.	SC Opinion 1/2020 OLAF's dismissed cases concerning Members of EU institutions	<u>Original SC recommendation to OLAF</u> Recommendation 5: In order to strengthen internal consultation and the exchange of information between Unit 0.1 and the relevant investigation and support units, the OLAF Director-General should ensure that the case file (OCM) contains records of whether such consultations and exchanges have taken place or not.	<u>OLAF position February 2021</u> See OLAF's reply to SC Opinion 1/2020 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en .	Implemented
7.	SC Opinion 1/2020 OLAF's dismissed cases concerning Members of EU institutions	<u>Original SC recommendation to OLAF</u> Recommendation 6: OLAF should apply a consistent approach when sending information to Member States and IBOAs concerning dismissed cases involving members of the EU institutions. In particular, if OLAF is not in a position to conduct a proper investigation, the information collected and the opinion to dismiss the case should always be sent to the EU institution and MS concerned.	<u>OLAF position February 2021</u> See OLAF's reply to SC Opinion 1/2020 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en .	Implemented
8.	SC Opinion 1/2020 OLAF's dismissed	<u>Original SC recommendation to OLAF</u> Recommendation 7:	<u>OLAF position February 2021</u> See OLAF's reply to SC Opinion 1/2020 available at	Implemented

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	cases concerning Members of EU institutions	<p>To increase transparency and promote good administration, OLAF should clearly explain in its decision to dismiss a case whether it intends to inform – or send the dismissed case to – the relevant source.</p> <p>In particular, the Director-General of OLAF should:</p> <p>a) make the required amendments in its vademecum about the opinion on opening decision to ensure that justification is provided for: (i) why the source may or may not be notified; and (ii) why information should or should not be sent to EU institutions and national authorities.</p> <p>b) avoid situations where, at the end of the decision-making process, no one is informed about a dismissed case.</p>	<p>https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en .</p>	
9.	<p>SC Opinion 1/2020</p> <p>OLAF’s dismissed cases concerning Members of EU institutions</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>Recommendation 8: Regulation No 883/2013 should be amended to make it clear that the Director-General of OLAF should regularly inform the SC of his reasoned decision not to open an investigation.</p> <p>In the meantime, the Director-General of OLAF should regularly inform the SC of the Director-General’s decision not to open an investigation, and of those cases where neither the source nor the IBOA nor the Member State concerned has been forwarded the dismissal decision.</p>	<p><u>OLAF position February 2021</u></p> <p>In line with new Article 17(5)(c) of the amended Regulation 883/2013, the mutually agreed draft Working Arrangements between OLAF and the SC provide for OLAF’s periodic reporting to the SC on cases in which no investigation has been opened and on cases dismissed (Article 9). In addition, the Working Arrangements provide also for the full access of the SC to cases in which no investigation has been opened and access to all dismissal decisions and related Unit 0.1 opinions (Article 13(b)).</p> <p>OLAF never provides a copy of the dismissal decisions to external parties, even if they are IBOAs. However, IBOAs that were consulted during the selection phase are normally informed on the outcome of the case. This is reflected in the last box of the opinion, in the section concerning “actions following the decision to dismiss”. This is particularly important when certain actions are either required from, or suggested to, the Member States authorities and/or IBOAs</p>	Implemented

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			(e.g. when they are considered better placed to act). In such cases, a letter is sent to the above mentioned stakeholders. In line with new instructions of 1 January 2021, the Head of Unit C.1 is put in copy of such letters so that the Unit C.1 can ensure the follow-up to the case.	