

OLAF's report on its implementation in 2021 of the Supervisory Committee recommendations

Summary:

This report includes:

- **Table 1:** Follow-up to two Supervisory Committee (SC) recommendations from SC Opinion No 1/2019 *on OLAF Preliminary Draft Budget for 2020*, assessed as ongoing/not yet applicable in last OLAF's report¹. Currently, the Office considers both recommendations as ongoing.
- **Table 2:** OLAF's report on the implementation by OLAF of 29 recommendations from five SC opinions² issued in 2021:
 - Opinion No 1/2021 *on OLAF's recommendations not followed by the relevant authorities*
 - Opinion No 2/2021 *on Working arrangements between OLAF and EPPO*
 - Opinion No 3/2021 *on Supervision of OLAF internal investigations: Strategic conclusions and best practices*
 - Opinion No 4/2021 *on OLAF's Preliminary Draft Budget for 2022*
 - Opinion No 5/2021 *on Analysis of OLAF's investigations lasting more than 36 months in 2019.*

¹ Ares(2021)1721046 of 09/03/2021

² https://ec.europa.eu/anti-fraud/about-us/olafs-relations-olaf-supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en#supervisory-committee-opinions-and-special-reports-and-olafs-responses

Table 1 - Follow-up to two recommendations assessed by OLAF as ongoing and not yet applicable in February 2021

I. No	II. Document Reference	SC III. SC Position	IV. OLAF position³	V. OLAF assessment of the implementation
1.	SC Opinion 1/2019 OLAF Preliminary Draft Budget for 2020	<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 will 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>	Ongoing

³ 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 exactly 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. 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 is being reached. OLAF will continue carrying out administrative investigations leading to recovery of funds as this is exclusively OLAF's remit and it concerns more than 98% of cases affecting EU expenditure. All those cases will remain in</p>	

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			<p>OLAF and will be handled solely by OLAF or by OLAF in coordination with the administrative authorities in the 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 parts of the Office (operational, support and political) cannot be reinforced.</p> <p><u>OLAF position March 2022</u></p> <p>OLAF requested from the Commission a reinforcement for the HR BC team in June 2021 by note Ares(2021)3662831, for the reasons raised by the SC, without having obtained a reply yet. In this regard, it should be noted that OLAF's activities have not decreased and that DG HR has absorbed all the resources provided by OLAF HR unit in 2018 to the Account Management Centres (AMC's). Indeed, following the reorganisation of DG HR, thousand posts are available to DG HR, which has set up a centralised model. It remains unclear what level of service DG HR will provide to OLAF in terms of resources and only a centralised system without any OLAF specificity has been put in place. OLAF will monitor the level of service and autonomy granted by DG HR and will inform accordingly the Supervisory Committee.</p> <p>It should be noted that the staffing situation is even more critical than in 2021 as OLAF is requested to render posts for the surcharges, for the central taxation, for the staff</p>	

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			<p>reintegrating the Commissions' headquarters after a period of leave on personal grounds, after a period in delegation and after a period in the representations. In addition, the Office has to render 16 posts to the EPPO in 2022.</p> <p>OLAF received no reinforcement for year 2022, thus not seeing any compensation for the long sick leave absences which were recorded at the time of the budgetary hearings in 2021 (17 long term sick absences or absences with more than 365 days of sickness in a 3 year period).</p> <p>Finally, OLAF specialised competitions will near completion in 2022 and posts will be needed to proceed with recruitments of the specialists that OLAF needs.</p> <p>The general needs for supplementary resources in OLAF were communicated to the Commission in January 2022 via the Reinforcement request in the framework of the preparation of 2022 allocation of Human Resources and will be subject of bilateral discussions with DG BUDG during the budgetary hearings scheduled on 3 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>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>Ongoing</p>

I. No	II. Document Reference	SC III. SC Position	IV. OLAF position³	V. OLAF assessment of the implementation
			<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 on, and approved, twelve such strategies.</p> <p><u>OLAF position March 2022</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 2021, following-up on the analysis of COVID-19 related fraud risks performed in 2020, OLAF completed an analysis on fraud risks related to spending in the health sector and provided a training to national authorities on the fraud risk framework applicable to the Recovery and Resilience Facility. Under the second objective – “coordination, cooperation and processes” - OLAF provides advice, notably, to Commission services on the development of anti-fraud strategies, based on specific fraud risk assessments.</p>	

I. No	II. SC Document Reference	III. SC Position	IV. OLAF position³	V. OLAF assessment of the implementation
			In 2021, OLAF provided advice on, and approved, fourteen such strategies.	

Table 2 - OLAF's report on the implementation by OLAF of 29 recommendations from five SC opinions issued in 2021

I. No	II. SC Document Reference	III. SC Position	IV. OLAF position⁴	V. OLAF assessment of the implementation
1.	Opinion 1/2021 OLAF's recommendations not followed by the relevant authorities	<u>Original SC recommendation to OLAF</u> Recommendation 1 The Director-General of OLAF should reinforce the existing structure of his Office, including the new Task Force Monitoring, with experts in judicial, financial and disciplinary follow-up. To encourage competent authorities to cooperate and ensure OLAF's recommendations are followed, the Director General of OLAF should ensure that the above mentioned reinforced structure should be responsible for: a) providing the necessary legal or investigative assistance to the relevant authorities; c) maintaining regular contacts with the appropriate EU institutions and national authorities; d) closely monitoring the overall	<u>OLAF position May 2021</u> See OLAF's reply to SC Opinion 1/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en <u>OLAF position March 2022</u> Following the SC's advice to reinforce the existing structure of OLAF as regards the follow-up to OLAF recommendations, the previous Task Force Monitoring was transformed into the permanent Monitoring and Reporting Unit C.4 in June 2021. This recent organisational change emphasises OLAF's ambition to strengthen the coordination and monitoring of, and reporting on, the follow-up to OLAF's recommendations even further. The total number of FTEs assigned to the Unit is twelve; the Unit acts in cooperation with the investigation units, which remain in charge of case-related contacts with the recipients of their recommendations and of providing assistance to them. OLAF considers this the most efficient assignment of responsibilities, given the current limitation	Implemented as far as possible with the current level of resources

⁴ The column "OLAF position" includes the previous and current positions.

		implementation process for OLAF's recommendation by the competent authorities.	of its resources. The Monitoring and Reporting Unit coordinates the monitoring activities of the investigation units and is increasingly liaising with OLAF's stakeholders on horizontal issues and looking into their follow-up practices. This work currently focuses on financial and administrative recommendations, which are the subject of stocktaking exercises and technical exchanges with the recipient services.	
2.	Opinion 1/2021 OLAF's recommendations not followed by the relevant authorities	<u>Original SC recommendation to OLAF</u> Recommendation 2 The Director-General of OLAF should try to strengthen further the obligations on competent authorities to report to OLAF on their actions – especially to inform OLAF of the reasoning behind their decision and forward a copy of the decision itself. Through cooperation with these authorities, the Director-General should ensure that Article 11 of the OLAF Regulation becomes an effective tool for following up OLAF's recommendations.	<u>OLAF position May 2021</u> See OLAF's reply to SC Opinion 1/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en	Ongoing
3.	Opinion 1/2021 OLAF's recommendations not followed by the relevant authorities	<u>Original SC recommendation to OLAF</u> Recommendation 3 The Director-General of OLAF should improve the current system for reporting to the Committee, informing it of any decision not followed as soon as OLAF becomes aware of it. This should be made possible thanks to the new automatic reporting possibilities to be built into the OCM.	<u>OLAF position May 2021</u> See OLAF's reply to SC Opinion 1/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en <u>OLAF position March 2022</u> In the interest of providing the SC with the maximum information to conduct its tasks, in the context of the Working Arrangements, OLAF and the SC agreed that the SC will have direct access to all closed investigations (whether in monitoring or not), and thus receive direct access to key data on judicial and financial monitoring. In addition, as per Article 7.2 of the Working Arrangements,	Implemented

			<p>"Pursuant to Chapter II, OLAF will share with the SC any tool that gives targeted access to data on the follow-up of OLAF's recommendations as soon as such tool becomes operational".</p> <p>Since 9 November 2021, a dedicated OCM module was put in operation, allowing the Supervisory Committee and its Secretariat to access cases, documents and reports as per the provisions of the agreed working arrangements.</p>	
4.	<p>Opinion 1/2021</p> <p>OLAF's recommendations not followed by the relevant authorities</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>Recommendation 4</p> <p>When the investigation identifies a potential criminal offence, the Director-General of OLAF should ensure that the investigators and OLAF's review unit conduct a thorough analysis of the national procedural requirements for criminal proceedings. This analysis should, as a minimum, include consideration of (i) jurisdiction and territorial competence; (ii) the objective element of a crime committed (<i>actus reus</i>); (iii) the intention to commit a crime (means <i>rea</i>); and (iv) the statute of limitation.</p> <p>In particular, the Committee recommends that the Director-General:</p> <p>A - ensures this analysis is part of the work forms used by investigators when preparing the final case reports;</p> <p>B - promotes early cooperation with the judicial authorities in the Member States concerned and avoids the duplication of investigative activities;</p> <p>C - sends, where feasible, an interim report to the authorities in the Member</p>	<p><u>OLAF position May 2021</u></p> <p>See OLAF's reply to SC Opinion 1/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><u>OLAF position March 2022</u></p> <p>As regards sub-recommendation E, as pointed out in OLAF's reply, the scope of this recommendation is limited in the sense that Member States whose judicial authorities would systematically dismiss OLAF's recommendations are hard to identify. Going forward, OLAF's judicial recommendations will in principle concern only the Member States not participating in the EPPO, thus further narrowing the scope of the SC recommendation.</p> <p>Having said that, OLAF's new Monitoring and Reporting Unit, which succeeded the Task Force Monitoring in June 2021, provides coordination and support to the investigation units' monitoring activities vis-à-vis Member States. The Monitoring and Reporting Unit's analytical work currently focuses on the follow-up to OLAF's financial and administrative recommendations but will gradually extend to judicial recommendations as resources become available.</p>	<p>Sub-recommendation A: not applicable</p> <p>Sub-recommendation B: implemented</p> <p>Sub-recommendation C: not applicable</p> <p>Sub-recommendation D: implemented</p> <p>Sub-recommendation E: ongoing</p>

		<p>State concerned 18 months before the statutory limitation period expires. This interim report would be equivalent to the final report and would not contain any recommendations; if OLAF believes that such a report cannot be sent before the statutory limitation expires, this should be justified in the case file;</p> <p>D - ensures that the case file contains an analysis of any potential statute of limitation, carried out as early as possible once the relevant facts have been ascertained (ideally at the moment a likely criminal offence is identified);</p> <p>E - intensifies cooperation and communication with those national authorities where OLAF's final case reports are systematically dismissed on procedural grounds or because the evidence gathered is considered insufficient. Where necessary, OLAF should make proposals for legislative changes to address these issues.</p>		
5.	<p>Opinion 1/2021</p> <p>OLAF's recommendations not followed by the relevant authorities</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>Recommendation 5</p> <p>The Director-General of OLAF should also provide information in OLAF's annual report about the real outcome of the financial recommendations and of the amounts of money actually recovered by the competent authority.</p> <p>The Director General of OLAF should also ensure, through timely cooperation with the IBOAs, that the financial recommendations issued are in line with the applicable legal and contractual</p>	<p><u>OLAF position May 2021</u></p> <p>See OLAF's reply to SC Opinion 1/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><u>OLAF position March 2022</u></p> <p>As regards the first part of SC's recommendation: Reflecting the outcome of a stocktaking exercise conducted by OLAF in cooperation with DG BUDG, OLAF will be in a position to publish figures on actual recovery following financial recommendations issued over a multiannual period. OLAF is planning to do so for the first time in its Annual Report 2021.</p>	<p>Partly implemented and ongoing</p>

		framework and comply with the principle of proportionality.	<p>As regards the second part of SC's recommendation: In parallel, OLAF is refining its analysis of financial follow-up in close cooperation with DG BUDG and the Commission's spending services with a view to improving both the drafting of financial recommendations by OLAF and their implementation by the recipient services. Findings of that analysis will feed into a revision of OLAF's Drafting Instructions and Monitoring Guidelines for financial recommendations.</p> <p>Further aspects regarding the second part of the recommendation are addressed in the "Guidance to Commission departments - Follow-up of recoveries as regards suspected fraud and other irregularities", issued by DG BUDG in close cooperation with OLAF in February 2022, Ares(2022)967651. The guidance intends to enhance the effectiveness of recovery processes related to expenditure under direct and indirect management by shortening recovery times and harmonising recovery practices. It is embedded in the Commission's corporate strategy for the enhanced management of accounts receivable.</p>	
6.	Opinion 1/2021 OLAF's recommendations not followed by the relevant authorities	<p><u>Original SC recommendation to OLAF</u></p> <p>Recommendation 6</p> <p>The Director-General of OLAF should inform the Committee of all the administrative recommendations which have not been followed by the authority concerned. The Director-General of OLAF should ensure that the new case management system will enable compliance with these recommendations to be monitored.</p>	<p><u>OLAF position May 2021</u></p> <p>See OLAF's reply to SC Opinion 1/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><u>OLAF position March 2022</u></p> <p>As regards the first part of SC's recommendation: The Monitoring and Reporting Unit is currently taking stock of administrative recommendations issued since 2016 and their follow-up. The analysis will be completed by mid-2022.</p> <p>In the future, administrative recommendations will be monitored on a regular basis. In that context, OLAF adopted new rules on how to draft and how to monitor</p>	<p>The implementation of the first part of the recommendation is ongoing</p> <p>The second part of the recommendation referring to OCM is not implemented</p>

			<p>administrative recommendations in January 2022.</p> <p>As regards the second part of SC's recommendation: Administrative recommendations will be monitored on a regular basis in the future. A dedicated module in OLAF's Content Management System is in the planning and scheduled for delivery by June 2022.</p>	
7.	<p>Opinion 2/2021</p> <p>Working Arrangements between OLAF and EPPO</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>The SC would suggest to OLAF and EPPO to clarify and specify at least the minimum kind of information they agree to exchange. If the intention is to exclude from this exchange certain categories of information this should also be made clear.</p> <p>The SC would invite OLAF and EPPO, once significant experience has been gained, and at least one year after the entry into force of these arrangements, to review them and make any necessary amendments.</p>	<p><u>OLAF position July 2021</u></p> <p>See OLAF's reply to SC Opinion 2/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><u>OLAF position March 2022</u></p> <p>There is no need from either side to narrow down the list, as it varies from case to case and a list could exclude some information type, which is not ideal. Instead of a definition of minimum content, what OLAF is in the process of defining with the EPPO is the best moment when to have a HNH from each institution.</p>	Implemented
8.	<p>Opinion 2/2021</p> <p>Working Arrangements between OLAF and EPPO</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>POINT 1.2 OF THE WA: SCOPE OF APPLICATION</p> <p>The SC is of the opinion that once the EPPO has complied with Article 110(1) of the EPPO Regulation, specific arrangements between the EPPO and OLAF concerning OLAF's competence to carry out internal investigations on the leadership and staff of the EPPO should be put in place to ensure the required transparency and administrative efficiency of OLAF investigations.</p>	<p><u>OLAF position July 2021</u></p> <p>See OLAF's reply to SC Opinion 2/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><u>OLAF position March 2022</u></p> <p>The EPPO has adhered to the Inter-institutional Agreement of 25 May 1999 by written decision.</p>	Implemented

9.	Opinion 2/2021 Working Arrangements between OLAF and EPPO	<p><u>Original SC recommendation to OLAF</u></p> <p>3.2 POINT 4.2 OF THE WA: THE USE OF "TEMPLATES"</p> <p>Given the important role of such templates, and based on its own reporting experience, the SC invites OLAF and EPPO to agree in advance on specific meaningful and "comprehensive" templates. The use of such templates should also be reviewed after a certain period of time.</p>	<p><u>OLAF position July 2021</u></p> <p>See OLAF's reply to SC Opinion 2/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p>	Implemented
10.	Opinion 2/2021 Working Arrangements between OLAF and EPPO	<p><u>Original SC recommendation to OLAF</u></p> <p>3.3 POINT 4.6 OF THE WA: ACCESS TO CASE MANAGEMENT SYSTEMS</p> <p>On this subject the SC would like to draw the attention of the parties on the following:</p> <ul style="list-style-type: none"> - The criteria and modalities of the reciprocal indirect access could be further elaborated and clarified in the WA; - Given that the technical Annex to be agreed by the parties is an integral part of the WA, the SC should be consulted again once it is adopted. 	<p><u>OLAF position July 2021</u></p> <p>See OLAF's reply to SC Opinion 2/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><u>OLAF position in March 2022</u></p> <p>After a delay to review how the current system works in practice, OLAF and EPPO will continue the technical discussions to refine the relevant aspects of the HNH system.</p>	Ongoing
11.	Opinion 2/2021 Working Arrangements between OLAF and EPPO	<p><u>Original SC recommendation to OLAF</u></p> <p>3.4 SECTION 5: MUTUAL REPORTING AND TRANSMISSION OF POTENTIAL CASES</p> <p>The SC considers that this section should reflect better the different circumstances under which the two bodies may interact,</p>	<p><u>OLAF position July 2021</u></p> <p>See OLAF's reply to SC Opinion 2/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p>	Not implemented

		and clarify the “modus operandi” of the two parties when a transfer of a case occurs.	<p><u>OLAF position March 2022</u></p> <p>EPPO’s case management system has been operational since June and transfers are happening via SFTP (EPPO Box), which is a safe manner of transfer. For the moment, this is the preferred way.</p> <p>Operational data is transferred by email only where it is too large for the EPPO Box, and then encrypted by 7-ZIP, as decided by the EPPO to be a safe transfer mechanism. Given that the systems continue to evolve (CMS releases and OCM releases) to accommodate transfers and other technical aspects, there is no need to include it in the WA.</p>	
12.	Opinion 2/2021 Working Arrangements between OLAF and EPPO	<p><u>Original SC recommendation to OLAF</u></p> <p>3.5 PONT 6.1 OF THE WA: OLAF SUPPORT TO THE EPPO</p> <p>The Committee would invite the parties to:</p> <ul style="list-style-type: none"> - ensure that the wording of point 6.1.1d) refers to OLAF “facilitating <i>the coordination of specific actions of the competent national administrative authorities and bodies of the Union</i>” in order to avoid unnecessary confusion and uncertainty as to the kind of support OLAF is expected to provide to the EPPO - also specify in point 6.1.4 that whenever OLAF is unable to decide “<i>promptly</i>” and without “<i>undue delay</i>” on an EPPO request for support, to inform immediately the EPPO, provide reasons for this delay, and indicate to EPPO a time-limit for its response. 	<p><u>OLAF position July 2021</u></p> <p>See OLAF’s reply to SC Opinion 2/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><u>OLAF position March 2022</u></p> <p>As regards point 6.1.4, OLAF has defined undue delay internally to the earliest possible time when a case may be considered to fall under the EPPO’s mandate, but discussions are ongoing with the EPPO to better understand this notion to ensure that a) OLAF complies with its reporting obligation and b) OLAF transfers valuable and usable information to the EPPO on cases and allegations, in timely manner but also “complete” as defined by the EPPO. The definitions of which information is required for an ECR to become valid differ between the EPPO and OLAF, based on the different mandates of both.</p>	<p>Point 6.1.1.d): implemented</p> <p>Point 6.1.4: ongoing</p>
13.	Opinion 2/2021	<u>Original SC recommendation to OLAF</u>	<u>OLAF position July 2021</u>	Implemented

	Working Arrangements between OLAF and EPPO	<p>3.6 POINT 6.4 OF THE WA: "ASSISTANCE FROM THE EPPO TO OLAF"</p> <p>The SC will invite the parties to redraft point 6.4 in order to clarify the issue of the appropriate legal basis and ensure that OLAF's request for assistance is in line with the applicable rules.</p>	See OLAF's reply to SC Opinion 2/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en	
14.	Opinion 2/2021 Working Arrangements between OLAF and EPPO	<p><u>Original SC recommendation to OLAF</u></p> <p>3.7 POINT 12 OF THE WA: "EVALUATION OF COOPERATION"</p> <p>42. The WA foresee a periodic evaluation of the WA and a regular consultation between the OLAF DG and the European Chief Prosecutor on the application of the WA. This will further strengthen the effectiveness of the parties' cooperation and enable them to adapt their WA changing circumstances in the light of the experience gained. That said, the SC is of the opinion that this provision is of general nature and should be clarified further.</p> <p>43. The SC would suggest to the parties to consider setting specific deadlines for the evaluation of the WA (i.e. "yearly" or "every 2 years") and the regular consultation between the OLAF DG and the European Chief Prosecutor (i.e. "at least bi-annually").</p>	<p><u>OLAF position July 2021</u></p> <p>See OLAF's reply to SC Opinion 2/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p>	Implemented
15.	Opinion No 3/2021 Supervision of internal investigations	<p><u>Original SC recommendation to OLAF</u></p> <p>Main conclusions, best practices and equal treatment</p> <p>(ii) The Committee, in accordance with its mandate, carried out a comparative</p>	<p><u>OLAF position December 2021</u></p> <p>See OLAF's reply to SC Opinion 3/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p>	Ongoing

	<p>analysis of four specific OLAF investigations concerning alleged illegal activities, serious misconduct, and breach of obligations by members and officials occupying senior or leadership positions in the EU institutions, bodies and agencies. These cases shared several common traits including the high responsibilities of the people concerned by the investigations and the reputational damage that their actions [...] could cause to the trust of citizens in the EU.</p> <p>When dealing with such investigations, OLAF needs to act in a very diligent manner and abide strictly by the applicable rules and procedures in order to avoid any perception in the eyes of the public of biased or unequal treatment or even external interference.</p> <p>(iii) The analysis of the four cases raised questions about OLAF's compliance with the principle of independent, impartial, and thorough conduct of investigations. Had the hybrid status of OLAF adversely affected the independence of its investigative function? Was the requirement of a sufficient suspicion to open the investigations well founded? Was the fair and impartial conduct of investigations ever put at risk or compromised during the decision-making process? Was there a consistent approach to these four cases in the way OLAF made use of its powers of investigation? Given the sensitive nature of these cases, did OLAF carry out a thorough investigation in such a way as to dispel any doubt with regard to the impartiality and independence of its conduct?</p> <p>For the Committee, these are important questions that the Director-General of OLAF, OLAF managers and investigators</p>	<p><i>Paragraphs 19-21</i></p>	
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		<p>should always ask themselves when dealing with an investigation, and in particular, with investigations that can cause serious damage to the reputation of the EU.</p> <p>(iv) The EU legislator gave OLAF autonomous and well-defined powers. OLAF enjoys a wide discretion in the opening and the conduct of administrative internal investigations where it plays a leading role; however, the use of such a discretionary power cannot lead to the exercise of arbitrary powers. Having identified risks for the independent and impartial conduct of investigations due to both a lack of genuinely independent internal control procedures to guarantee the legality of the investigations in progress, and shortfalls in the implementation of clear investigation standards and guidelines, uniformly applied for all investigations, the Committee is now deeply concerned with regard to the resulting unequal treatment of the persons under investigation. Rigorous scrutiny of these issues is therefore required by OLAF.</p>		
16.	<p>Opinion No 3/2021</p> <p>Supervision of internal investigations</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>I - Independence of the investigations and the decision making process</p> <p>I.1 - Criteria for opening of an investigation, effectiveness and accountability: analysis of a “sufficient suspicion” in the selection stage</p> <p>(v) The Committee examined the rationale underpinning the decision of the Director-General of OLAF to open an investigation,</p>	<p><u>OLAF position December 2021</u></p> <p>See OLAF’s reply to SC Opinion 3/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><i>Paragraphs 22-31</i></p>	<p>Point (v): implemented</p> <p>Point (vii): ongoing and implemented on a case-by-case basis</p> <p>Point (viii): not yet implemented</p>

	<p>and the justification to establish a "sufficient suspicion" (of serious wrongdoing), a requirement that acts as a safeguard against the risk that an opening decision may be perceived to have been biased, calling into question OLAF's independence.</p> <p>The "suspicion" was well founded and based on accurate information and positive indications for some of the cases. By contrast, the Committee noted that the assessment and justification of the "sufficient suspicion" requirement was not always accurate and complete in investigations opened in response to anonymous allegations, where OLAF had to obtain the documentation necessary to corroborate the allegations made from another EU institution [...]. OLAF should pay close attention to this matter.</p> <p>(vii) In conclusion, the Committee is concerned by the lack of a uniform approach in this field and considers that having established a framework of practical arrangements with the EU institutions, OLAF should put in place strict internal procedures for the handling of sensitive cases "by the book". Moreover, and as a matter of principle, the intelligence and operational analysis support Unit should participate in the selection process for the analysis of information coming from anonymous sources.</p> <p>(viii) The expected review of the guidelines on investigation procedures (GIPs), following the entry into force of the new OLAF Regulation (EU) 2020/2223, should address the above concerns by including the notion of "sufficient suspicion" (at present formally absent in</p>		
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		Article 5 of the GIPs) and ensuring that the Committee is informed of the opening of sensitive cases where the reputation of the EU could be at stake. In such cases, this practice will reinforce the perception of OLAF's independence and accountability especially when the decision to close an investigation with no recommendations is taken in less than 12 months, and thus lies outside the regular monitoring remit of the Committee.		
17.	Opinion No 3/2021 Supervision of internal investigations	<p><u>Original SC recommendation to OLAF</u></p> <p>I - Independence of the investigations and the decision making process</p> <p>I.2 - The scope of the investigation: legal certainty and impartial conduct of investigations</p> <p>(ix) The Director-General of OLAF should therefore ensure that effective mechanisms for regular legal supervision and managerial oversight are put in place as far as internal investigations concerning members and senior staff of the EU institutions bodies and agencies are concerned, including cases where there is a risk of a reputational damage for the EU.</p>	<p><u>OLAF position December 2021</u></p> <p>See OLAF's reply to SC Opinion 3/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><i>Paragraphs 33-35</i></p>	Partially implemented and ongoing
18.	Opinion No 3/2021 Supervision of internal investigations	<p><u>Original SC recommendation to OLAF</u></p> <p>I - Independence of the investigations and the decision-making process</p> <p>I.3 - Investigations opened at the OLAF Director-General's own initiative: working methods</p> <p>(xii) The Committee regrets the way OLAF</p>	<p><u>OLAF position December 2021</u></p> <p>See OLAF's reply to SC Opinion 3/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><i>Paragraphs 36 - 44</i></p>	Implemented

		<p>drew up the final report in [...] [CASE 1], as OLAF appears not to have thoroughly investigated all the allegations set out in the opening decision. The Committee strongly believes that the legality check performed by Unit 01 – the same unit that prepared the opening opinion and also reviewed the final case report and the closure decision - should have been entrusted to another entity within OLAF in order to guarantee a properly independent legality check. The Committee urges OLAF to seriously reassess the way such sensitive investigations are to be reviewed internally before a case is closed. For that reason, the Committee has made a specific recommendation below.</p>		
19.	<p>Opinion No 3/2021</p> <p>Supervision of internal investigations</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>II – Carrying out of the investigative function: exploiting OLAF’s powers of investigation and strengthening the effectiveness and legitimacy of the fight against serious misconduct and illegal activities</p> <p>II.1 - Thorough investigation and investigation planning: working methods</p> <p>(xiii) The Committee puts great emphasis on the need to draw a proper investigation work-plan and considers that when investigations lack a proper investigative action plan for each stage of an investigation, there is an increased danger that investigators may divert their activities away from the objectives set at the outset of the investigation, leading to a lack of accountability and thereby impugn the independence of the investigation itself.</p>	<p><u>OLAF position December 2021</u></p> <p>See OLAF’s reply to SC Opinion 3/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><i>Paragraphs 45-54</i></p>	<p>Point (xiii): implemented</p> <p>Point (xvi): partially implemented and ongoing</p>

		<p>(xvi) As for the conduct of the investigations, the analysis of the Committee also revealed certain weaknesses in the investigation practices and methods followed. The Committee's view is that in sensitive internal investigations, whenever OLAF makes use of its discretion to decide which investigative measures need to be taken and at what time, OLAF should clearly record in the case file the reasons for doing so and conversely why it chooses not to take a specific investigative measure. In particular, key decisions such as: closing an investigation without even attempting to interview the person concerned; the failure to investigate [...], which are at the heart of the allegations under investigations; the failure to get the assistance from the competent national authorities; the late registration of documents in the case file that is, after the case is closed, all such steps, decisions and measures call for a proper justification in the interest of accountability, transparency and above all, the impartial conduct of an investigation.</p>		
20.	<p>Opinion No 3/2021</p> <p>Supervision of internal investigations</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>II – Carrying out of the investigative function</p> <p>II.2 Organisation of case files: transparency, accountability, confidentiality</p> <p>(xvii) The Committee reviewed OLAF's organisation of the case files in these four cases. The Committee found an overall lack of rigorous and systematic</p>	<p><u>OLAF position December 2021</u></p> <p>See OLAF's reply to SC Opinion 3/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><i>Paragraphs 55-57</i></p>	Implemented

		<p>organization in both the indexation and the filing of OLAF documents. This risks rendering the managerial oversight and overall monitoring of the relevant investigations if not ineffective, at least troublesome.</p> <p>The Committee trust that the new OCM and the rules to be put in place will address these concerns. It is imperative that the structure, filing rules and naming conventions to apply for the registration of documents that are part of an investigation file are clear, meaningful and consistently and uniformly applied by all investigators.</p>		
21.	<p>Opinion No 3/2021</p> <p>Supervision of internal investigations</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>III - Legality check and control procedures: independent conduct and closing of the investigation</p> <p>(xviii) A continuous and consistent legality check by specialized legal staff, part of the investigation team from the outset of the case is now a necessity.</p> <p>(xix) The decision-making system governing the various stages of the investigation should be more transparent involving the input from experts of other Units in planning the strategy and defining objectives in the investigation. The concentration within a single Unit of the control of all key activities at each stage of the investigation is not a balanced mechanism for the guarantee of appropriate legal control. The Committee strongly recommends that the Director-General of OLAF take the initiative to rebalance the assignment of responsibilities to the different units and</p>	<p><u>OLAF position December 2021</u></p> <p>See OLAF's reply to SC Opinion 3/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><i>Paragraphs 58-60</i></p>	<p>Point (xviii): not applicable</p> <p>Point (xix): implemented</p>

		Directorates so as to put in place an effective system of independent and objective controls for the legality check and review, a vital element in the proper conduct of investigations.		
22.	Opinion No 3/2021 Supervision of internal investigations	<p><u>Original SC recommendation to OLAF</u></p> <p>IV Design of methods of preventing and combating fraud and corruption</p> <p>(xx) Lessons can be drawn from experiences during the case and actions to be taken based on these experiences, such as improvements in OLAF's internal organization, in investigative techniques, in cooperation with national authorities and with the EU institutions. The Committee considers that a formal structure for the sharing of lessons learned as well as for good practice should be put in place.</p> <p>(xxi) Serious consideration should be given to the creation of a special service dedicated to the design of methods for investigation of potential corruption involving lobbyists, the revolving door issue, conflicts of interests, and the breach of the duty of integrity and transparency, all require special attention from OLAF. Having identified failures in the tools for access to information in these areas, urgent work with the Commission needs to be addressed in this field of common concern.</p>	<p><u>OLAF position December 2021</u></p> <p>See OLAF's reply to SC Opinion 3/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><i>Paragraphs 61-62</i></p>	<p>Point (xx): partially implemented and ongoing</p> <p>Point (xxi): not implemented</p>
23.	Opinion No 4/2021 OLAF's preliminary draft budget for 2022	<p><u>Original SC recommendation to OLAF</u></p> <p>The Committee invites the Director-General to carry out as soon as possible, now that the OCM is said to have been</p>	<p><u>OLAF position March 2022</u></p> <p>OLAF performed a study on the future of its Case Management System (OCM) during the first semester of 2020. Among the scenarios was a possible migration to</p>	<p>Partially implemented</p>

		completed, a detailed cost-based analysis of the pros and cons of maintaining the OCM or switching to the CASE@EC case management system.	CASE@EC for which OLAF coordinated closely with the CASE@EC leading DG EMPL, for a detailed functional and cost-based analysis. The current planning is to complete OCM development phase by July 2022 and enter a lower cost maintenance mode.	
24.	Opinion No 5/2021 Analysis of OLAF investigations lasting longer than 36 months in 2019	<u>Original SC recommendation to OLAF</u> Recommendation 1 The SC recommends that the Director-General of OLAF should: a) create an automatic flag system mechanism in the OCM to make periods of inactivity of over three months immediately visible in the OCM and to OLAF's management; b) ensure that obstacles encountered by the case team that have or could have a substantial impact on the duration of an investigation, as well as all decisions taken to that effect by the case team or OLAF management are properly documented and registered in the case file of each investigation in the OCM; c) Set out in the GIPs clear internal procedures for the managing of the duration of an investigation. In particular, OLAF should establish, for cases over 24 months, a specific review procedure in order to allow the Director-General to decide how best to speed up the handling of such investigations, and also establish a special procedure for cases which are running over 36 months;	<u>OLAF position March 2022</u> See OLAF's reply to SC Opinion 5/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en	Sub-recommendation a): ongoing Sub-recommendation b): ongoing Sub-recommendation c): not implemented
25.	Opinion No 5/2021	<u>Original SC recommendation to OLAF</u>	<u>OLAF position March 2022</u>	Ongoing

	Analysis of OLAF investigations lasting longer than 36 months in 2019	<p>Recommendation 2</p> <p>The SC therefore recommends that the Director-General of OLAF should ensure that all opinions issued by the Review Team contain an evaluation of the 'duration of the investigations'. All opinions should indicate the exact periods of inactivity identified and draw clear and substantiated conclusions as to whether the length of the investigation was proportionate to the circumstances and complexity of the case.</p>	See OLAF's reply to SC Opinion 5/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en	
26.	Opinion No 5/2021 Analysis of OLAF investigations lasting longer than 36 months in 2019	<p><u>Original SC recommendation to OLAF</u></p> <p>Recommendation 3</p> <p>The SC recommends that the Director-General of OLAF adopt a consistent and uniform approach to strategic case planning across all investigative units. In particular, OLAF should revise the GIPs to ensure that a detailed investigation plan is drawn up for every opened investigation, regularly updated and annexed to the case file of each investigation.</p>	<p><u>OLAF position March 2022</u></p> <p>See OLAF's reply to SC Opinion 5/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p>	Partially implemented
27.	Opinion No 5/2021 Analysis of OLAF investigations lasting longer than 36 months in 2019	<p><u>Original SC recommendation to OLAF</u></p> <p>Recommendation 4</p> <p>The Director-General of OLAF should amend the GIPs to include clear rules on the assigning operational priority to a case. In doing so, the GIPs should:</p> <p>a) establish clear objective criteria</p> <p>b) ensure that the decisions to grant priority to a case are recorded in the case</p>	<p><u>OLAF position March 2022</u></p> <p>See OLAF's reply to SC Opinion 5/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p>	<p>Sub-recommendation a): not implemented</p> <p>Sub-recommendation b): not implemented</p> <p>Sub-recommendation c): not implemented</p>

		file in the OCM c) automatically assign priority to investigations running for over 36 months, and take specific steps to speed up the investigations.		implemented
28.	Opinion No 5/2021 Analysis of OLAF investigations lasting longer than 36 months in 2019	<u>Original SC recommendation to OLAF</u> Recommendation 5 The Director-General of OLAF should ensure that: a) Critical decisions which substantially impact the duration of an investigation (i.e. whenever an exceptional extra time for the analysis of the data/evidence collected is necessary due to the circumstances of the case) should always be taken at Director level and should always be systematically recorded in the OCM. The procedure for doing so should be set out in the GIPs. b) Rotation of staff does not affect the conduct of an ongoing investigation. In particular, DG OLAF should amend the GIPs to ensure that whenever a member of the team leaves the Office, they draft a written handover note tracking all the activities carried out and evidence already collected, and setting out the work pending and the timetable that the next case team member should follow.	<u>OLAF position March 2022</u> See OLAF's reply to SC Opinion 5/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en	Sub-recommendation a): not implemented Sub-recommendation b): implemented
29.	Opinion No 5/2021 Analysis of OLAF investigations lasting longer than	<u>Original SC recommendation to OLAF</u> Recommendation 6 The Director-General of OLAF should	<u>OLAF position March 2022</u> See OLAF's reply to SC Opinion 5/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-	Implemented

	36 months in 2019	amend the GIPs to ensure, as far it is reasonably possible, the person concerned is systematically informed of their status at the end of the investigation and in any case at the closure of the investigation.	committee en	
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