



EUROPEAN COMMISSION

MEMO

Brussels, 11 June 2014

OLAF Reform and the new Controller of Procedural Guarantees: Questions and Answers

What qualifications will the new Controller of Procedural Rights need, and what will be the appointment procedure?

The Controller should in principle be a person eligible for judicial office, or equivalent, and able to perform his/her duties in complete independence and within the timeframes required. He/she will have a small staff to assist in the role. Looking at the number of complaints that have been launched in past years under the already existing mechanisms, this is expected to be a part-time position.

The Controller of Procedural Guarantees will be appointed through an inter-institutional procedure involving the Commission, Parliament and Council, on the basis of a short-list of suitable candidates drawn up by the Commission. He/she will be appointed for a non-renewable 5 year term. For administrative purposes only, the Controller will be attached to the Commission.

What are the current procedures for complaints against OLAF, and how will this change?

The new complaints procedure, via the Controller, will be an addition to the other channels of complaint that people already have recourse to in relation to OLAF's work. At the moment, complaints on any potential procedural issues can be addressed to the Ombudsman (e.g. access to documents, lack of timely response to questions) and concerns about possible data protection breaches can be referred to the European Data Protection Supervisor. Neither of these channels of complaint will be affected by today's proposal.

Complaints related to OLAF's investigative activities or possible breaches of fundamental rights can currently be addressed to the Director General of OLAF, and are reviewed by the Office's legal advice unit. These are the type of complaint that would be dealt with by the Controller in the future. They could include issues such as too short notice in a call for interview, insufficient impartiality by an investigator, or incomplete information on procedural guarantees given to a person concerned in an investigation.

Serious allegations of procedural guarantees' violation are dealt with by the Courts, and this will remain the case.

How many complaints have there been against OLAF? Is it proportionate to create a new position to manage a new complaints procedure?

Between 2011 and 2013, 25 complaints were lodged against OLAF, which is a small number compared to hundreds of on-going OLAF investigations in the same period (e.g. 484 investigation cases were on-going in 2013). Many of these complaints were directed to the Ombudsman, as they are related to procedural issues, such as access to documents. Four complaints were lodged directly with OLAF's Director-General, and these are the more likely type to fall under the remit of the new complaints procedure proposed today.

Given that there are not many complaints lodged against OLAF, the post of the Controller will be part-time. Nonetheless, it is considered that there is real added value in establishing this position. On the basis of discussions with all interested parties, including OLAF and the European Parliament, the Commission believes that the Controller of Procedural Guarantees will reassure people of the transparency, impartiality and independence of the review of any complaints received. Having a formal complaints structure also means that there is a quick and efficient procedure for dealing with any grievances, which could also potentially avert certain costly and timely referrals to Courts.

What is the current procedure for OLAF to inspect the offices of Members of EU institutions, and how will this change?

OLAF's investigators wishing to inspect the office of a Member of an EU institution, or to take documents or data from those offices, currently need to obtain the authorisation of OLAF's Director General before proceeding.

Today's proposal states that, in the future, OLAF's Director-General will first need to obtain prior authorisation from the Controller of Procedural guarantees before authorising the measure. The Controller will assess the legality of the investigative measures that OLAF wishes to employ, and consider whether the same objective could be achieved through less intrusive measures. He/she will reply to OLAF within 48 hours of the request for authorisation, and within 24 hours in particularly urgent cases.

Not only will this procedure ensure that the legality of the inspection has been double-checked, but it will also protect OLAF, if challenged, from criticisms about the proportionality of such inspections.

Why should there be an additional safeguard for Members¹ of the EU institutions compared to others investigated by OLAF?

The political mandate, particular responsibilities, independent status and mode of election or appointment of Members of EU institutions make it necessary to distinguish them from EU staff and other persons concerned by OLAF investigations. In the case of MEPs, for example, their statute provides for the freedom of the mandate and protection against prosecution or arrest on the territory of a Member State (much like the political or diplomatic immunity that exists at national level). The Controller of Procedural Rights will ensure that any OLAF investigative measures are fully in line with these special provisions for members, while also ensuring that OLAF can effectively carry out its work to protect EU financial interests and the reputation of EU institutions.

What will be the difference between the role of the Controller and that of the OLAF Supervisory Committee?

The role of the Supervisory Committee is to safeguard and reinforce OLAF's independence. It looks at systematic issues related to OLAF's work and makes recommendations to OLAF on that basis. For example, it can make recommendations on the resources needed to carry out the investigative function of the Office, on the investigative priorities of the Office, and on the duration of investigations.

However, the Supervisory Committee is not mandated to interfere in ongoing investigations or to examine the respect of fundamental rights in individual cases.

The Controller, on the other hand, will have the job of ensuring that procedural guarantees are safeguarded during OLAF's investigations. He/she will be able to look into individual cases to review whether procedural guarantees have been respected, and (in the case of members of the Institutions) whether certain investigative measures are required to pursue the case. He/she will have the clearly defined role centred on two tasks: managing the new complaints procedure and granting authorisation for more intrusive investigative measures related to members of the institutions.

However, the work of the Supervisory Committee and that of the Controller will not be completely unrelated. Therefore, the proposal provides that the Controller should report , periodically, to the Supervisory Committee on his activity. This will help the Supervisory Committee in its work to identify potential systemic issues in OLAF procedures.

What improvements have been brought about with the reform of OLAF so far?

Thanks to the fundamental reforms in 2012 and 2013, OLAF is more efficient, more accountable and effective than ever before in cracking down on EU fraud. This is reflected in the figures of its latest annual report, which show that more investigations were carried out in less time, and more recommendations for judicial / financial follow up were issued to the competent authorities (see [2013 OLAF report](#)). For example, OLAF opened 253 investigations and concluded 293 investigations in 2013 and issued recommendations for financial recoveries worth €403 million.

¹ A member of an EU institution means a member of the European Parliament (MEPs), a member of the European Council, a representative of a Member State at ministerial level in the Council, a member of the European Commission (Commissioner), a member of the Court of Justice, a member of the Governing Council of the European Central Bank, and a member of the Court of Auditors.

The reform has provided for internal legality checks throughout all of OLAF's investigations, and gave greater legal certainty by enshrining the procedural guarantees of those concerned by investigations in the OLAF legislation.

In addition, OLAF has benefitted from the provisions to ensure greater cooperation between the Office and EU institutions and other bodies. For example, the first inter-institutional dialogue, between OLAF, the Commission, the European Parliament and the Council, and with participants from the Supervisory Committee, took place in April this year. This dialogue allows a constructive exchange of views, at political level, between all parties on strategic matters, to ensure the best possible protection of the EU's financial interests.

Why build further on the reform of OLAF, if much of its investigative function is intended to be taken over by the European Public Prosecutor's Office in the future?

Today's proposal is part of the overall strategy to strengthen the EU's anti-fraud framework, and reflects the safeguards for procedural guarantees that are already set out for the proposed European Public Prosecutor's Office. The EPPO proposal is still being negotiated by Member States, and although discussions are advancing well, there is still some way to go before the final details of that Office are known. OLAF's functions after the EPPO is created will depend very much on the shape and scope of what is agreed in that negotiation process. Moreover, until the EPPO is agreed, established and fully functioning, OLAF remains the body responsible for investigating fraud in the EU. Today's proposal completes the reform process that will allow it to be as effective, efficient and accountable as possible in doing so.

See also [IP/14/654](#)