SUPERVISORY COMMITTEE

Opinion No 1/2019

OLAF preliminary draft budget for 2020

Brussels, 16 May 2019

Contents

The European Court of Auditors stated in its special report No 01/2019 'Fighting fraud in EU spending: action needed' that:

'Fraud is a hidden and complex phenomenon and protecting the European Union's financial interest against fraud requires comprehensive and systematic efforts. This is a key responsibility of the European Commission[1].**'**

The Supervisory Committee of the European Anti-Fraud Office finds that efficient spending by the European Anti-Fraud Office would bring about better results. As in its previous opinions, the Supervisory Committee points out that efficient investigations into fraud and illegal activities that harm the European Union's interests are central to ensuring public trust in the European Union and its institutions.

Introduction

1. In accordance with Regulation (EU) No 883/2013[2] and Article 3 of Commission Decision 1999/352/EC, ECSC, Euratom [3] , the European Anti-Fraud Office (OLAF) has full independence to exercise its investigative function in all EU institutions, bodies, offices and agencies established by or on the basis of the Treaty on the European Union (TEU), the Treaty on the Functioning of the European Union (TFEU) and the Euratom Treaty. Accordingly, to ensure that OLAF can run efficiently and effectively and contribute in the

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[1]   See European Court of Auditor's special report 01/2019 - Fighting fraud in EU spending: action needed.

[2]   Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, *OJ L 248, 18.9.2013, p. 1-22.*

[3]   1999/352/EC, ECSC, Euratom: Commission Decision of 28 April 1999 establishing the European Anti-Fraud Office (OLAF), *OJ L 136, 31.5.1999, p. 20-22, amended by Commission Decision of 27 September 2013 amending Decision 1999/352/EC, ECSC, Euratom establishing the European Anti-Fraud Office, OJ L 257, 28.9.2013, p. 19-20.*

best possible way to the EU's objectives on fighting fraud as provided for in Article 325 of the TFEU, the total budgetary appropriations for OLAF are to be entered under a specific budget line within the section of the general budget of the EU relating to the Commission and set out in detail in an annex to that section[4].

2. Under Article 15(1) and recital 37 of Regulation (EU) No 883/2013, one of the Supervisory Committee's objectives is to regularly monitor OLAF in order to strengthen its independence. In this respect, the Committee's monitoring role was strengthened and enlarged with the adoption of Regulation (EU) No 883/2013 to include monitoring developments concerning the procedural guarantees. Recital 37 of that Regulation further provides that the Committee's duties also include assisting the Director-General in discharging his responsibilities. Under the third subparagraph of Article 15(1) of the same Regulation, the Committee addresses opinions to the Director-General of OLAF, and recommendations where appropriate, on matters such as the resources needed to carry out the investigative function of OLAF.

3. The OLAF Supervisory Committee is consulted and adopts an opinion on OLAF's preliminary draft budget (PDB) to give assurance to the EU institutions that the draft budget takes into account the independence of OLAF's investigative function. The opinion further provides assurance that OLAF has adequate resources to provide an effective and efficient inter-institutional fraud fighting service.

4. The Committee's opinion on OLAF's PDB includes advice to OLAF's Director-General that it can forwarded to the budgetary and the discharge authorities of the EU. The opinion contributes to the discharge of duties of OLAF's Director-General, who is responsible for the design, negotiation and implementation of OLAF's budget.

The powers of the OLAF Supervisory Committee

5. The European Commission conferred powers on the OLAF Supervisory Committee to strengthen OLAF's financial independence, namely by monitoring OLAF's PDB. After due consideration of the presentation to the SC's rapporteur given by the Head of OLAF's Resources Unit to the Supervisory Committee and an exchange of opinions on OLAF's PDB and on the OLAF explanatory notes received on that budget, the Committee delivers this opinion.

6. The Committee believes that providing an informed opinion on OLAF's PDB is one of its core tasks and has the practice to discuss it bilaterally with the Office's Director-General before the hearings and negotiations with the Directorate-General for Budget.

7. The Committee points out that Regulation (EU) No 883/2013 and Commission Decision 1999/352/EC, imply that:

(a) the Committee is empowered to monitor OLAF's PDB and the resources needed to carry out OLAF's investigative function; and

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[4]   See Article 18 of Regulation (EU) No 883/2013.

(b)   OLAF's overall budget is inter-connected in that OLAF can transfer resources among its different budget lines according to its needs, a power that the Committee supports. This flexibility allows OLAF to make such transfers without requesting the permission of the EU Budgetary Authority. For its part, the Committee is empowered to receive information on any part of the budget to enable it to monitor and supervise the efficient use of OLAF's resources.

8.   The Committee's opinion is addressed to the EU institutions. The recommendations, if any, are addressed to the Director-General of OLAF. In assessing how public funds are used for investigative activities, the Committee contributes to the duties of OLAF's Director-General.

The budgetary procedure within OLAF

Implementation of OLAF's 2018 budget

9.   The execution rate of the OLAF budget fluctuated between 2012 and 2018 within the range of 93% and 99.99% (in line with the objective of the OLAF Management Plan). The execution rate was 98.75% in 2018. The execution level of 2017 did not follow the normal patterns mainly because of the unused part of the budget allocated to staff expenditure caused by the high turnover rate (the number of staff members leaving OLAF was higher than the number of recruited staff). This situation has been brought back to normal and OLAF is currently recruiting enough staff to cover all the vacancies. In 2018, OLAF had more recruitments than departures.

OLAF's preliminary draft budget 2020

10.   Information to the Supervisory Committee on OLAF's PDB for 2020 has been a continuous and smooth flow since October 2018. Procedural, draft and consolidated documents have been made available to the rapporteur in due time. This constitutes a clear improvement in the transmission of information and dialogue with the OLAF Supervisory Committee.

11.   OLAF informed the Supervisory Committee that the overall amount of its PDB as estimated for 2020 had increased by 2.61% compared to the PDB for 2019. The Committee would like to avoid any detrimental effects on the fight against fraud causing prejudice to the EU financial interests. Therefore, it considers that OLAF should not only avoid the most restrictive saving measures applied to other Directorates-General of the European Commission, but should also benefit from incentives to recruit highly qualified staff.

12.   We acknowledge and support that in the Commission's reply to the special report of the European Court of Auditors, the Commission confirmed that 'OLAF's fundamental role and responsibility of fighting fraud in EU spending through administrative investigations will not change with the setting up of the EPPO.'

13.   According to OLAF and in line with the requirements of the European Commission, in 2020 the following posts will disappear from OLAF's establishment plan:

- four permanent posts and the credits equivalent to the costs of five non-permanent posts will be transferred to the European Public Prosecutor's Office (EPPO);

- one post obtained in the context of Brexit will be lost; and

- five posts will be given to the European Commission in the context of the synergies and efficiencies exercise.

14. The OLAF Supervisory Committee is of the opinion that this would clearly undermine OLAF's capacity to maintain high quality investigative activities. The Committee considers that OLAF should concentrate on its core operational tasks and get ready to implement the new tasks and responsibilities that it is going to receive.

15. Therefore, the OLAF Supervisory Committee supports the European Court of Auditors' recommendations, and the Commission's reply to them, on strengthening OLAF's capabilities to update the Commission's Anti-Fraud Strategy and to prepare the risk assessment and analysis of its finances for 2021-2027. These new tasks cannot be taken over unless new resources are allocated to OLAF. To that end, OLAF should be allocated 12 additional permanent posts in the near future.

OLAF's human resources

16. In its Opinion No1/2018 on OLAF's PDB for 2019, the OLAF Supervisory Committee recommended that OLAF's Director-General ask the European Commission to re-establish a human resources unit or to reinforce the business correspondent team within OLAF to preserve its efficiency and independence in recruitment procedures.

17. The Committee has not been informed of any such request or ongoing dialogue with the European Commission leading to OLAF gaining independence in terms of human resources. The OLAF staff team for human resources (business correspondent) has not been reinforced, nor has a specialised unit been established within OLAF. The Committee acknowledged that the human resources team in OLAF is composed of one administrator and two assistants. The team has very limited powers and depends fully on the Account Management Centre number 5 (AMC.5), a unit in the Account Management Centre, a directorate of the European Commission Directorate-General for Human Resources and Security. In contrast, other departments and services in the European Commission would still have either a reinforced human resources team or a fully-fledged human resources, finance and training unit (including middle managers).

18. It is still the Committee's opinion, already stated in 2018, that OLAF should be given in-house human resources and finance capabilities that are independent from the European Commission since they help boost OLAF's independence. OLAF must be independent in three main areas: administrative, financial and investigative (operations). Administrative independence, which includes independent human resources procedures under the management of OLAF's Director-General, is of particular importance for recruitment, career planning, advice, working time, leave, mobility, training and for the capacity to react to new and complex fraud patterns in full independence of the European Commission.

19. The delivery model put in place at Commission level is based on centralising the human resources units which were previously in each Directorate-General and service. The Account Management Centre is a new directorate which takes over human resources responsibilities. It is composed of eight units: six in Brussels, one in Luxembourg and one in Ispra. OLAF depends on AMC.5 for (i) organisation development; (ii) selection,

recruitment and performance (including assistance in AD selection panels); (iii) talent management, career management and guidance, learning and development; and (iv) health and wellbeing, working conditions and caring for people, time management, leave and flexible working arrangements.

20. The AMC's assistance in the selection procedures of investigative staff of OLAF could be perceived by the Committee and by external observers from the EU institutions or the public as detrimental to OLAF's independence from the European Commission. This is of particular importance for the selection of investigators, middle managers and senior managers.

21. The Committee acknowledged that in AMC.5 there were two staff at AST level working in OLAF human resources. One was responsible for time management, and the second for training coordination. No other members of AMC.5 staff would have any knowledge of OLAF's needs, core business or operational independence. OLAF is therefore treated as any other department or service in the European Commission, despite its Director-General being the Appointing Authority and Authority Invested with the Power to Conclude Contracts.

22. Since 2018, uncertainty as to the future location of the Office's headquarters and as to the number of posts to be transferred to the EPPO contribute to the lack of attractiveness. The Committee believes that having a well-defined human resources strategy will be key for OLAF to address this issue and is ready to provide the Director General with their assistance.

23. The Supervisory Committee supports OLAF's use of contract agents, temporary agents and national seconded experts while the problem of the high vacancy and turnover rate persists. However, OLAF should try where possible to recruit only officials and seconded national experts, avoiding the use of precarious and non-permanent contracts. The Supervisory Committee also supports these posts being financed with any unused credits allocated for recruiting officials while the problem of the vacancy turnover persists. The Committee confirms its finding in Opinion No 1/2016 on the OLAF PDB that in-house legal experts help strengthen OLAF's capacity to apply national law correctly and develop EU-wide capacities in the fight against fraud. OLAF should therefore continue to recruit EU staff with certified legal qualifications in the relevant language of the national procedures.

24. The Supervisory Committee is concerned that the Commission staff survey of 2018 with regard to OLAF showed a low rate positive opinion of OLAF staff in some working areas of the Office. In the Commission staff survey of 2018, the participation rate for OLAF was 56% (which is the average). OLAF's 2019 Annual Management Plan indicates that '*the results of the staff survey 2018 will be carefully analysed and compared with the* ones *of 2016. In 2016, the satisfaction rate regarding 'professional future' had been particularly low. The respondents to the staff survey pointed to a lack of mobility opportunities and of performance-driven career progression. In 2019, raising awareness activities on career development will be pursued.*' The OLAF Supervisory Committee will pay special attention to the results of this survey and will ensure proper follow up with OLAF's senior management.

Information communication and technology infrastructure in OLAF

25. The Supervisory Committee welcomes the new OLAF content management (OCM) governance structure, which was put in place in December 2018 to finalise the development of content management within a reasonable time-period.

26. The Committee acknowledges the leading role assumed by the new Director-General of OLAF and hopes that the content management system will be in place by the planned end-date of December 2020. The Committee is aware that development of the OCM has been a long process which started in 2011 when an OLAF internal task force was set up to pave the way for the new OCM. When the development has been finalised, a whole review of the process should be undertaken to ascertain all the responsibilities of the persons involved in the process.

27. The task force established in 2011 delivered a white paper, in which they indicated the development of a new OCM as the way forward. This proposal was endorsed by OLAF's Directors and the Director-General in June 2012.

28. The Committee reiterates the observation in its Opinion No 1/2018 on OLAF's 2019 PDB that well-organised and up-to-date information and communication technology (ICT) infrastructure and support are necessary for cost-effective fraud investigations. This ICT may be developed internally or shared with other EU institutions, bodies and or agencies involved in law enforcement.

29. However, the Committee regrets that it was not actively involved in the development of the new ICT infrastructure architecture for handling investigations (notably the OCM database of investigations).

30. The Committee considered the OCM database to be of fundamental importance, in particular given the considerable budget involved (more than €15 million until completion, including €3.8 million in Commission staff costs (both indirect and direct)) and its impact on OLAF's investigation function. It therefore recommended on three occasions that OLAF's Director-General should ask the European Commission's Internal Audit Service (IAS) to carry out a post-implementation evaluation of the OCM, incorporating users' experiences and other elements. In October 2017 OLAF replied that it would 'carefully consider the need for asking the IAS for such a post-implementation evaluation', and indicated in February 2018 that an audit of OLAF's IT project management practices (including OCM) would be carried out towards the end of 2018. This will be all the more important as the planned costs for the new OCM system are forecast at €11 million in ownership costs between 2019 and 2021, bringing the overall development and implementation costs to over €26 million.

31. OLAF claims that these costs are comparable with systems of a similar size and complexity. The Supervisory Committee has also been informed that the OCM project was closely evaluated and monitored under two consulting engagements performed by OLAF's Internal Audit Function (IAF) in 2015 and 2017 at the request of OLAF's Director-General. The IAF completed its audit on IT security in 2017. The most recent IAS audit on project management has not yet been finalised.

32. These consulting engagements focused on the governance and organisation of the project, whereas the 2017 IAS audit focused on logical security controls. OLAF accepted the IAS's recommendations from this audit. The IAS is currently reviewing the follow-up to these 31 recommendations.

33. OLAF informed the Committee that the 2016 decision to launch OCM was taken mainly due to the shortcomings of the legacy system. The OCM has suffered from a series of teething problems, common for IT systems when first put into production. It was proven only afterwards that the decision to go live, following the wish of management and end-users for the OCM to be available as soon as possible, should have been delayed until the system had been more thoroughly tested and was more stable from a technical point of view.

34. OLAF explained to the Committee that the initial problems with OCM were comparable to other IT systems of the same size. These included frequent change requests by the users at the very early stage in production, difficulty in finding the right IT experts due to the use of a specific technology, users' resistance to changing their working habits and following a strict workflow imposed by the system, and insufficient time to perform thorough pre-production testing.

35. In 2018 the development of new functionalities was paused and priority was given to fixing bugs. Efforts are now concentrated on improving performance and completing the development by the end of 2020.

36. OLAF informed the Committee that since December 2018 a new formal OCM governance structure has been in place. The flow is the following: the Steering Committee (chaired by the Director-General) has already prioritised the OCM high-level requirements. Based on this, an OCM release planning has been agreed until end-2019. The Business Implementation Group will decide how the high-level requirements will be developed in the system. The decision workflow is clearly defined and works in practice.

37. OLAF has planned to start the analysis of the Supervisory Committee's needs in April 2019. Reports and reminders to the Supervisory Committee are included in the release of December 2019. A Supervisory Committee dashboard will be developed in another release in 2020.

38. To date, the Supervisory Committee has received preliminary information on the IAS carrying out '*an audit on OLAF IT project management practices, which also includes OCM project related questions*.' The Supervisory Committee does not know whether such an audit covers the scope of its recommendation to the OLAF Director-General. The Committee reiterates the urgent need for the IAS to audit the OCM project. This audit should include (i) the documented analysis of the project's direct and indirect costs since its inception, (ii) the users' experiences of using the database, and (iii) a list of the issues encountered and having an impact on investigative activities.

39. The OLAF Supervisory Committee acknowledges that OLAF has provided more information on the OCM than in previous years. However, the Committee could monitor the OCM more effectively if it received detailed and accurate figures on the direct and indirect expenditure of the ICT project, including the calculation of staff costs which were not initially linked to the project.

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Budgetary impact of the establishment of the European Public Prosecutor Office

40. As stated in previous opinions (Opinions No 1/2017 on the OLAF PDB 2018, Opinion No 2/2017 on the evaluation of the OLAF Regulation and Opinion No 1/2018 on the OLAF PDB 2019), the Committee considers that the transfer of posts from OLAF to the EPPO should be considered carefully and managed in a way that preserves OLAF's ability to continue delivering on its current and new mandate (new responsibilities in fraud prevention and analysis capabilities).

41. The impact assessment of the posts to be transferred to the EPPO is still a priority for the OLAF Supervisory Committee. It supports the idea stated in the OLAF HR Strategic Plan that adapting to the new context created by the establishment of the EPPO would require more flexibility and a more solid method for allocating the resources according to OLAF's priorities and workload. A period of adaptation will be necessary whilst the mechanisms for cooperation between both entities are being established.

Conclusions

A)	The OLAF Supervisory Committee considers that OLAF's PDB for 2020 is in conformity with the resources needed to conduct investigations efficiently. A potential reserve of the Committee would focus on the inefficiency of the OCM database which has a major impact on the investigative function of the Office and where the balance between costs incurred and product delivered has not been established.
B)	Taking into account the recommendations of the European Court of Auditors, which were accepted by the European Commission, the adverse effects of the transfer of OLAF staff to the EPPO and to ensure that OLAF's investigative function continues to be properly implemented, the OLAF Supervisory Committee supports OLAF's request for additional posts.
C)	The OLAF Supervisory Committee considers that in-house human resources and financial capabilities will contribute to OLAF's independence. OLAF must be able to independently recruit, train and retain staff. The European Commission, after conducting a pilot project on the centralisation of human resources and creating the Account Management Centres, has maintained reinforced teams or human resources and finance units in some of its departments and services. OLAF should be one of those departments with a middle and or senior manager dedicated to this task. In the short term, the number of staff handling human resources should be significantly increased to implement its tasks with the necessary independence from the European Commission AMCs in particular, and from the Directorate-General for Human Resources and Security in general. Not to do so would continue to undermine OLAF's administrative independence from the European Commission.
D)	The execution rate of OLAF's 2018 budget is normal and in line with the 2012-2016 period. According to the data provided by its Director-General, OLAF has succeeded in filling all vacancies.

Follow-up to the Recommendations made by the OLAF Supervisory Committee to the OLAF Director-General in the Opinion 1/2018 on OLAF's PDB 2019

42. The Committee recommended that OLAF should have a recruitment policy with a long-term vision to increase the recruitment rate and retain staff once recruited. The Committee has been informed by OLAF that a Human Resources Strategy was adopted in January 2019. According to OLAF's explanations at the end of February 2019, *'the OLAF Human Resources Strategic Plan adopted on 10 January 2019 put emphasis on the recruitment policy as recommended by the Supervisory Committee. To speed up recruitments the plan stressed in particular the need for managers to take steps as soon as a departure is known to identify potential candidates for replacement and prepare them for the position.'*

43. In view of the information received on 26 February 2019, the Committee considers the recommendation to have been implemented.

44. The Committee recommended that OLAF's Director-General ask the IAS to audit the OCM project, and ensure that the investigation includes the costs of the project since its inception, users' experiences of using the database and a list of the issues they encountered. The Committee was informed by OLAF at the end of February 2019 that, *'the Internal Audit Service is currently carrying out an audit on OLAF IT project management practices, including OCM. The user experiences of OCM will be evaluated annually as part of the user satisfaction survey on IT service.'*

45. The Committee considers that this audit is not related to the recommendations issued in 2017 and in 2018 as the scope does not include the audit subject recommended by the Committee. Therefore the Committee's recommendation has not been implemented and it would urge OLAF's Director-General to take immediate action.

46. The Committee recommended that OLAF's Director-General establish a budget impact assessment to measure the impact that transferring posts to the EPPO will have on OLAF's efficiency and operational capacities. The Committee was informed by OLAF at the end of February 2019 that the Director-General had included in OLAF's PDB for 2020 the financial impact of the posts to be transferred to the EPPO. OLAF is also devising a method to assess cases that would potentially fall within the EPPO's competence.

47. In view of the information received in February 2019, the Committee considers the recommendation to have been implemented.

48. The Committee recommended that OLAF's Director-General request the European Commission to re-establish a human resources unit within OLAF to preserve its efficiency and independence in recruitment procedures. The Committee was informed by OLAF at the end of February 2019 of the general policy of the European Commission and of the model applied by the Directorate-General for Human Resources and Security to centralise and concentrate the handling of human resource matters. The Committee has received no information on the steps taken by the Director-General to maintain or regain OLAF's administrative independence in terms of recruitment and handling human resource matters.

49. The Committee considers that OLAF's independence has three main aspects: operational, administrative and financial. The administrative independence of the Office is not ensured while the whole structure of recruitment, mobility, career, organisation, talent management, working time and evaluation is in the hands of the European Commission's Directorate-General for Human Resources and Security. Despite the information received at the end of February 2019, OLAF has taken no action to ensure its administrative independence from the European Commission. Therefore, the Committee considers the recommendation not implemented by OLAF's Director-General, and recommends that the Director-General take immediate action.

2019 recommendations of the Supervisory Committee to OLAF's Director-General

50. 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.

51. 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.

52. The Committee reiterates its recommendations of 2017 and 2018 and recommends that OLAF's Director-General plan an IAS audit *ex post* of the process leading to the OCM project since its inception. This audit should focus in particular on all the costs of the project (direct and indirect) since its inception, users' experiences of using the database, a list of the issues they encountered and the responsibilities of the different actors.