

SUPERVISORY COMMITTEE

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Opinion No 2/2020

OLAF's preliminary draft budget
for 2021

Brussels, 22 July 2020

Table of contents

Introduction.....	2
The powers of the OLAF Supervisory Committee.....	3
The budgetary procedure within OLAF	4
OLAF's preliminary draft budget 2021	4
OLAF's human resources.....	6
Information communication and technology infrastructure in OLAF	8
Budgetary impact of the establishment of the European Public Prosecutor Office	10
Conclusions	10
2020 recommendations by the Supervisory Committee to OLAF's Director-General.....	10

Introduction

1. In accordance with Regulation (EU) No 883/2013¹ (the ‘OLAF Regulation’) and Article 3 of Commission Decision 1999/352/EC, ECSC, Euratom², 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.
2. To ensure that OLAF can run efficiently and effectively and contribute in the best possible way to the EU’s fight against fraud as defined 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 section³.
3. Under Article 15(1) and recital 37 of the OLAF Regulation, one of the Supervisory Committee’s objectives is to regularly monitor OLAF in order to strengthen its independence. In this respect, the monitoring role of the Supervisory Committee was strengthened and enlarged with the adoption of the OLAF Regulation to include monitoring developments concerning the procedural guarantees.
4. Recital 37 of that Regulation further provides that the Supervisory 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 Supervisory 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.

¹ 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*.

² 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*.

³ Article 18 of Regulation (EU) No 883/2013.

5. After consultation with OLAF, the Supervisory Committee 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. Thus, the Committee's opinion on OLAF's PDB contributes to the discharge of OLAF's Director-General as far as the design and implementation of OLAF's budget is concerned.

The powers of the OLAF Supervisory Committee

6. After due consideration of the information received from OLAF on its draft budget and an exchange of views, including OLAF's explanatory notes received on that budget, the Supervisory Committee delivers an Opinion.
7. The Supervisory Committee points out that it follows from the OLAF Regulation and the Commission Decision 1999/352/EC, ECSC, Euratom imply that:
 - a. the Committee is empowered to monitor OLAF's PDB and the resources (including, but not limited to, human resources) needed to carry out OLAF's investigative function; and
 - b. OLAF's overall budget should be seen and analysed in its entirety as OLAF can transfer resources among its different budget lines according to its needs, a power that other Directorates-General of the Commission lack. The Committee fully supports this kind of flexibility since it allows OLAF to make 'internal' transfers deemed necessary without having to request the permission of the EU Budgetary Authority. Were OLAF to do so, this could affect its independence as far as its investigations are concerned. For its part, the Committee is empowered to receive information on any part of OLAF's budget to be able to effectively monitor and supervise the efficient use of OLAF's resources.

8. The EU institutions, bodies, offices or agencies are provided with a copy of the Opinions delivered by the Supervisory Committee, including the Opinion on the PDB. Any recommendations made 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

OLAF's budget execution

9. Between 2015 and 2018, the implementation rate of OLAF's budget fluctuated between 98,47 and 93,86%:

2015	2016	2017	2018
99,85%	99,84%	93,86%	98,47%

10. In 2019, however, OLAF succeeded to implement 99,94% of its administrative budget which is the best result since 2015.
11. It should be noted, however, that there was a significant surplus on the salaries lines for permanent and temporary staff stemming from the rather high number of vacant posts throughout 2019, which amounted to €1Mio. OLAF informed the Supervisory Committee that this amount has been used to cover other projects on the basis of OLAF's power to re-allocate budgetary commitments between different budget items⁴.

⁴ Briefing note to the members of the SC by OLAF Unit 02 Unit 0.2 Budget, HR Business Correspondent, Strategic Planning and Security, p.5.

OLAF's preliminary draft budget 2021

12. The Supervisory Committee is aware that OLAF's budgetary independence has a direct impact on its investigations and operations. Therefore, it considers that an appropriate budget and a comprehensive human resources strategy should be among the Director-General's priorities.
13. The Committee notes that, just like in previous years, the rate of the annual increase in OLAF's budget has been very low, reflecting the Commission's efforts to introduce saving measures in the General Budget of the EU. In the OLAF PDB 2019, this increase rate was 1.01 % compared to the 2018 budget⁵; in 2020, 2.61% compared to the PDB for 2019⁶. In the current PDB 2021, the annual increase rate of OLAF's budget is 1.41%.
14. The Committee's view is that the Commission's budget saving measures should not adversely affect the fight against fraud. The Communication from the Commission to the European Parliament, the European Council and the Council on Further strengthening the Rule of Law within the Union⁷, as well as the Green Deal envisaged by the Commission, assign even more responsibilities to OLAF. The Committee wishes to emphasize again that, if OLAF is to fulfil its remit under Regulation 883/2013 and deal at the same time with new challenges, OLAF should not only be spared the most restrictive saving measures applied to other Commission Directorates-General, but rather benefit from budgetary incentives enabling it to recruit highly qualified and specialized staff in the field of investigations and assets recovery, as far as human resources are concerned. Moreover, ensuring that OLAF has adequate human resources at its disposal is a prerequisite for its future working relations with the European Public Prosecutor's Office (EPPO).
15. For this Opinion, the Supervisory Committee focussed on certain issues already scrutinized in its previous Opinions:
 - the financial and operational impact of implementing OLAF's new case management system, (the "OCM"),
 - OLAF's human resources strategy;

⁵ https://ec.europa.eu/anti-fraud/sites/antifraud/files/supcom_opinion_1_2018_en.pdf.

⁶ https://europa.eu/supervisory-committee-olaf/sites/default/files/sc_opinion_no_1_19_olaf_pdb.pdf.pdf

⁷ <https://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=CELEX:52019DC0163&from=EN>.

- the Special Report by the Court of Auditors⁸ on the Commission’s anti-fraud strategy;
 - and the budgetary impact for OLAF of the establishment of the EPPO.
16. As a preliminary point, the Supervisory Committee regrets that the flow of information from OLAF to the Supervisory Committee on OLAF’s PDB for 2021 has been not been as timely or smooth as in the previous year. However, the Committee accepts that this could, to a large extent, be due to the outbreak of the COVID-19 virus and its adverse impact on the administrative life of almost all of the EU services. The Committee invites the Director General of OLAF to ensure that in the coming year such information is transmitted to the Committee in a timely fashion.
 17. The Supervisory Committee acknowledges and supports that, in its 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.”*⁹
 18. The Supervisory Committee’s view remains unchanged, in that reducing OLAF’s resources is likely to undermine OLAF’s capacity to maintain high quality investigative activities.

OLAF’s human resources

19. As the Supervisory Committee pointed in 2018, OLAF should be given adequate human resources and finance capabilities that are independent from the European Commission. OLAF must remain and act independently in three main areas: administrative, financial and investigative. Administrative independence also includes an independent human resources policy and procedures which enables the Director-General, to design and implement an HR policy which at the end protects and strengthen OLAF’s investigations. In previous opinions, the

⁸ <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=48858>, Special report No 01/2019: Fighting fraud in EU spending: action needed.

⁹ Idem.

Committee invited OLAF to pursue this option and have its own HR unit. The Committee has not been informed of any such request or ongoing dialogue with the Commission. On the contrary, OLAF's re-organisation that entered into effect on 16 June 2020, has maintained OLAF's participation in the Commission's new HR service delivery pilot scheme whereby the former OLAF's HR Unit was split and taken over by OLAF's the HR Business Correspondent Team (HRBC) and the Commission's Account Management Centre (AMC5).

20. The above current HR structure of OLAF may be put to test in the near future as OLAF is expected to transfer 45 posts to EPPO (2018-2023), and at the same time find adequate human resources to assume, as the Court of Auditors has recommended and the Commission has accepted, a more central and reinforced role in updating the Commission Anti-Fraud Strategy and preparing the risk assessment and analysis in view of the 2021-2027 multiannual financial framework¹⁰.
21. To cope with its new tasks and future challenges ('Green Deal', 'Rule of Law', 'CAFS', 'Brexit' 'EPPO') OLAF has asked to get 20 new posts¹¹. In order to ensure that the investigative function of OLAF remains unaffected by the above measures, the Supervisory Committee fully supports OLAF's request for additional posts.
22. Finally, the Committee notes that the degree of uncertainty as to the future location of OLAF's headquarters and the final number of posts to be transferred to the EPPO has not yet been subsided. This uncertainty could have a detrimental effect on the attractiveness of pursuing a career in OLAF and sap the morale of OLAF's current staff. The Committee finds no reasons whatsoever to justify any relocation (partial or full) of OLAF. It also considers that if EPPO is to be reinforced with additional posts, such posts should not come exclusively from OLAF, but proportionally, from all Commission's services.

¹⁰ <https://op.europa.eu/webpub/eca/special-reports/fraud-1-2019/en/>.

¹¹ Note by the OLAF DG of 10 February 2020, Ares(2020)855552.

Information communication and technology infrastructure in OLAF

23. The Supervisory Committee is aware that the development of OLAF's new case management system (OCM) has been a long process, started in 2011 and expected to be completed by the end of 2020. The Committee reiterates the view expressed in its Opinion 1/2018 on OLAF's 2019 PDB, that a well-organised and up-to-date information and communication technology (ICT) infrastructure (and support) is an essential tool for cost-effective fraud investigations.
24. The Supervisory Committee regrets that it has not been actively involved in the development of the OCM database concerning investigations. Although OLAF has provided the Committee with more information on the ongoing development of the OCM than in previous years, the fact remains that the Committee could monitor the resources allocated to the OCM more effectively if it received detailed and accurate figures on the direct and indirect expenditure of this project, including the calculation of staff costs not initially linked to its development.
25. For the Committee, the OCM project is of fundamental importance for OLAF's operations given the considerable financial resources devoted so far to its design and implementation, and its impact on OLAF's day to day management of investigations. For this reason, the Committee upholds its previous recommendations that the Director-General should ask the Commission's Internal Audit Service (IAS) to carry out a post-implementation evaluation of the OCM, incorporating users' experiences and other elements.
26. This will be even more important as the planned costs for the OCM was forecast to reach €11 million in ownership costs between 2019 and 2021, bringing the overall development and implementation costs since inception to over €26 million. The Supervisory Committee understands that OLAF's efforts are now focused on completing the development of the OCM by the end of 2020.
27. The many and long delays already occurred in the development and completion of the OCM and the constant and significant budget overruns lead the Supervisory Committee to conclude that the management of the OCM project lacks the required transparency and sufficient oversight. In that regard, the Commission's Internal Audit Service "*Final audit report on IT project management practices in OLAF*" (June 2019), identified a number of significant weaknesses in the early stages of the OCM, including a lack of a clear and sustainable project governance structure as well as sufficient control from senior management, considerable uncertainty as to the future

estimates of the budget needed to implement OCM. The report also identified clear problems with the OCM cost management including the fact that estimates of initial costs were regularly revised upwards.

28. Moreover, according to the Internal Audit Service report, risks identified by OLAF's Internal Audit Function, and feedback from user satisfaction surveys have not either been adequately addressed in the project action plan for the OCM.
29. The Committee acknowledges that the Director-General has now committed to implement the recommendations of the Commission's Internal Audit Service and to ensure that the OCM project is completed by the end of 2020. The Committee also notes that in February 2020, the Commission's Internal Audit Service concluded that OLAF had, by the end of December 2019, implemented all the necessary actions to comply with the said audit. That said, the Committee does not exclude that another internal audit may be required should OLAF fail by the end of 2020 to complete the OCM project.
30. Furthermore, the Supervisory Committee sees an additional risk from EPPO and OLAF having at the end each a different case management solution. The executive summary of the Information Technology and Cyber Security Board of 24 October 2019¹² states that *"the members welcomed the future reuse of the CASE@EC solution by the European Public Prosecutor's Office. They also recommended to OLAF to consider the reuse of CASE@EC as a preferred solution in their study on the evolution of their case management solution"*.
31. The Supervisory Committee suggests that at the end of this process, the OLAF DG carefully analyses and initiates a post-implementation audit to check if the OCM meets the users' expectations and if it ensures seamless interaction with the case management solution chosen by EPPO. Subsequently, the OLAF DG should decide on the implementation of the OCM without prejudice to any previous considerations.

¹² Ares (2019)6693193.

Budgetary impact of the establishment of the European Public Prosecutor Office

32. As stated in its previous opinions¹³ 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 responsibilities (i.e., 'Rule of Law', 'Green Deal', CAFS, Brexit, EPPO).
33. The impact assessment of the posts (45) to be transferred to the EPPO still a priority for the OLAF Supervisory Committee. The Committee 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 and Recommendations

- A. The Supervisory Committee considers that OLAF's Preliminary Draft Budget for 2021 is in conformity with the resources needed to conduct investigations efficiently.
- B. The Supervisory Committee reiterates its concerns about the way the OCM project has been implemented so far. The Committee would like to see the project finally completed by the end of 2020. The Committee reserves the right to look in the near future into the actual added value of this project.
- C. The Supervisory Committee reiterates its recommendation of the previous years that the Director-General ask the European Commission's Internal Audit Service (IAS) to carry out a post-implementation evaluation of the OCM, focusing in particular on all the costs of the project (direct and

¹³ Opinions 01/2017 on the OLAF PDB 2018, Opinion 02/2017 on the evaluation of the OLAF Regulation, Opinion 01/2018 on the OLAF PDB 2019, and Opinion 1/2019 on the OLAF PDB 2020.

indirect) since its inception, users' experiences and the efficiencies gained compared to the previous case management system (CMS). The purpose of that audit should also allow the Director-General to decide whether OLAF should ultimately replace the OCM by another solution already used by other similar investigative and enforcement EU authorities.

- D. Taking into account the recommendations of the European Court of Auditors, which were accepted by the European Commission, and the adverse effects of the transfer of OLAF staff to the EPPO, the Supervisory Committee supports OLAF's request for additional posts, in particular to strengthen OLAF's expertise on national judiciary matters and to ensure that OLAF's investigative function continues to be properly implemented.