



The Director-General

Brussels

**NOTE FOR THE ATTENTION OF MR TUOMAS PÖYSTI,  
CHAIRMAN OF THE OLAF SUPERVISORY COMMITTEE  
AND MR JOHAN DENOLF, RAPPORTEUR**

Via the Secretariat of the Supervisory Committee

**Subject: SC Opinion No 5/2014  
Statistics on investigative performance of OLAF**

Dear Mr Pöysti, dear Mr Denolf,

By note of 1 April 2015, the Supervisory Committee (SC) sent OLAF its Opinion No 5/2014 *Statistics on investigative performance of OLAF (part I) - OLAF external reporting on the duration of investigations*, adopted in its plenary on 25 March 2015.

OLAF has not been given the opportunity to comment on the final Opinion before its adoption. With the attached addendum, OLAF would therefore like to provide its comments to the final version of the Opinion and reiterate its reply to the SC's recommendations.

OLAF wishes that its comments as presented in the addendum are published together with the SC Opinion and OLAF's previous comments of 18 March to the SC's draft working paper.

Yours sincerely,

29 AVR. 2015

  
Giovanni Kessler

Annex: Addendum to OLAF's comments of 18 March

Copy: B. Sanz Redrado, M. Hofmann, C. Arwidi, C. Scharf-Kroener, M. D'Ambrosio,  
M. Kaduczak

**OLAF COMMENTS ON THE SC OPINION 5/2014 STATISTICS ON INVESTIGATIVE PERFORMANCE OF OLAF (part I) - OLAF EXTERNAL REPORTING ON THE DURATION OF INVESTIGATIONS**  
**- ADDENDUM TO OLAF'S COMMENTS OF 18 MARCH -**

By note of 1 April 2015, the Supervisory Committee (SC) sent OLAF its Opinion No 5/2014 *Statistics on investigative performance of OLAF (part I) - OLAF external reporting on the duration of investigations*, adopted in its plenary on 25 March 2015. OLAF welcomes the SC Opinion and agrees with the SC on the importance of a comprehensive and accurate reporting on the duration of its investigations to external stakeholders and the public.

Before adopting its Opinion, the SC sent OLAF two draft working papers, on 6 and 12 March 2015. OLAF provided comments on 18 March 2015 to the SC's second draft working paper. As requested by OLAF, the SC attached OLAF's comments to the SC's Opinion as adopted.

OLAF has not been given the opportunity to comment on the final Opinion before its adoption, although it was modified compared to the two draft working papers. With this addendum, OLAF would therefore like to provide its comments to the final version of the Opinion and reiterate its reply to the SC's recommendations. OLAF wishes that its comments as presented in this addendum are published together with the SC Opinion and OLAF's previous comments of 18 March to the SC's draft working paper.

**1. OLAF provision of information to the SC on the duration of investigations**

In the summary on the cover page of both its draft working papers<sup>1</sup>, the SC mentioned that *"The SC has analyzed the information provided to it by OLAF in 2014 & 2015 for the purpose this opinion. The SC has **welcomed and concluded that this information was sufficient to properly and effectively monitor the reporting of OLAF on the duration of its investigations**"* (emphasis added).

However, on the cover page of its final Opinion<sup>2</sup>, the SC stated that *"The Supervisory Committee (SC) has analysed the information provided to it by OLAF in 2014 & 2015 for the purpose of this opinion. The SC established that the **reporting on the duration of investigations by OLAF has not provided a comprehensive view on the investigative performance**"* (emphasis added).

OLAF is surprised to note that the SC has changed its assessment of the information provided by OLAF and fails to understand the reasons, since the Opinion itself seems to conclude the contrary, *"with OLAF providing the necessary data for [the drafting of the Opinion]"* (footnote 4). As acknowledged by the SC, OLAF has provided the SC with *"detailed data [...] on the opening and closing of investigations in the period 2012-2014", "additional general and case-related information"* and comments to the SC's analysis (paragraphs 9-11).

<sup>1</sup> Ares(2015)1013256 of 6 March 2015 and Ares(2015)1104268 of 12 March 2015

<sup>2</sup> Ares(2015)1451013 of 1 April 2015

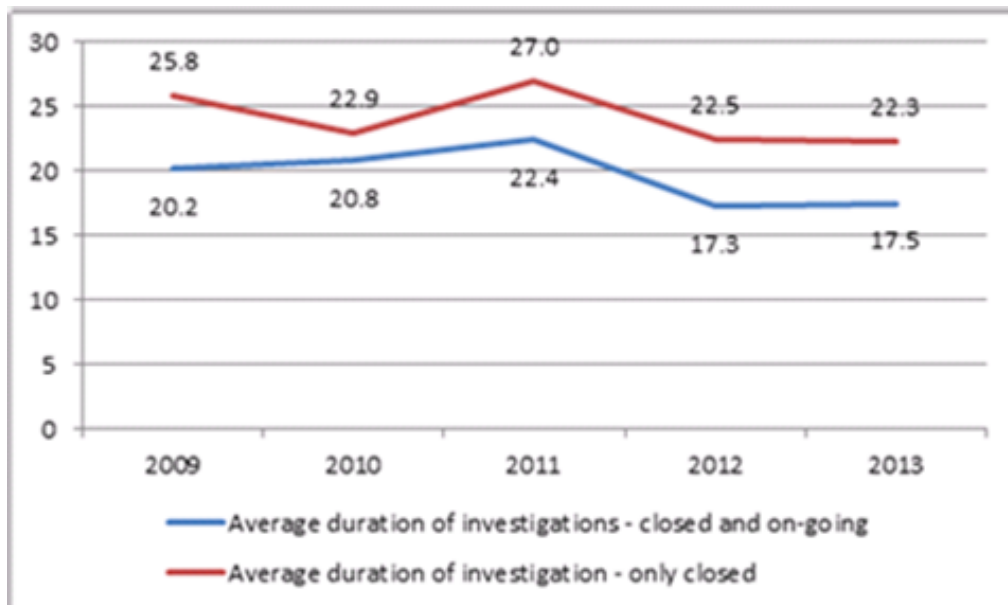
→ **OLAF welcomes the SC's initial assessment that the information provided by OLAF was "sufficient to properly and effectively monitor the reporting of OLAF on the duration of its investigations".**

## **2. Impact of the change of calculation method on the average duration of investigations**

On the cover page of the adopted Opinion (contrary to the draft working papers), the SC quotes OLAF's statement in its Annual Report 2013 that "*investigations are being completed in less time*" and the SC concludes that "*this improvement is due to the introduction of new calculation methods*".

OLAF would like to point out that this conclusion is factually wrong. The decrease of the average duration of OLAF's investigations is not due to a change in the calculation method. As can be seen from the chart below, which is also part of the SC Opinion (page 8), **the average duration decreases significantly with both calculation methods.** The (incorrect) conclusion on the cover page is hence contradicted by the content of the Opinion itself.

Furthermore, OLAF would like to reiterate that the method of calculation used after 2011 was used to calculate also the results of previous years. Thus, OLAF ensured the "*full comparability of the information presented*", which is what the SC calls for (paragraph 17).



**Chart 1:** Average duration of OLAF investigations between 2009 and 2013 (in months)

### 3. "Cleaning" of OLAF's statistics

In the main text of the Opinion and in its conclusions (paragraph 43), the SC states that the decrease in the average duration of investigations as reported by OLAF in 2012 and 2013 was due to **a combination of two factors**, notably the change in the method of calculation and the inclusion into the statistics of cases with "*atypically short duration*". As a matter of fact, in its re-calculations of OLAF's results (paragraph 27) the SC only arrives at an increase in the average duration by excluding investigations that were opened by a decision of the Director-General on 1 February 2012, referred to as investigations with "*atypically short duration*". Paragraph 34 further aims at increasing the average duration of OLAF's investigations, by excluding cases extracted from so-called umbrella cases.

OLAF would like to stress that it cannot engage in such an exercise of "*cleaning*" its statistics, neither from exceptionally short nor from exceptionally long investigations, as long as the cases are real and reported in OLAF's case management system. It should also be noted that also the statistics for all previous years would have to be cleaned to ensure full comparability, an exercise for which there is no established or logical basis.

→ **OLAF would appreciate if the SC acknowledged OLAF's achievements as regards the decrease in the average duration of investigations, rather than engaging in random or selective cleansing of OLAF's statistics of "atypically short investigations" to arrive at an average higher than the one calculated by OLAF.**

### 4. OLAF's replies to the SC's recommendations

OLAF would like to reiterate and clarify its replies to the recommendations made by the SC in its Opinion No 5/2014.

***In its recommendation no 1, the SC requires OLAF to report on the average duration of investigations closed within the reporting period.***

Starting with its 2014 Report, OLAF will report on three indicators on the duration of its investigations:

- the average duration of investigations closed and investigations still open at the end of the reporting period,
- the average duration of investigations closed in the reporting period only (as requested by the SC) and
- the percentage of investigations lasting more than 20 months.

OLAF hopes that the use of such a broad spectrum of indicators for the duration of its investigations will address the concerns of the SC on the use of indicators.

→ **OLAF considers that SC's recommendation no 1 will be implemented with its 2014 Annual Report.**

***In its recommendation no 2, the SC calls for any one-off administrative operations having an impact on the calculation of the average duration of investigations to be highlighted in OLAF's reporting.***

OLAF does not intend to "clean" its statistics from exceptionally short or long investigations, as long as these investigations are real, recorded in its case Management System and conducted according to the investigative procedures and instructions of the Office (as are all its investigations). OLAF will however continue to report transparently whenever a one-off administrative operation takes place, as it has done in the past when it reported in the 2012 and 2013 OLAF Reports on the opening in February 2012 of 225 investigation cases and 198 coordination cases.

**→ OLAF considers that SC's recommendation no 2 has already been implemented.**

***In its recommendation no 3, the SC considers that in the light of fundamental rights and/or principles of sound administration, OLAF should, in its Annual Report, report more transparently on the duration of the longest lasting investigations.***

OLAF will report on the duration of the longest lasting investigations by adding as an indicator in its Annual Report (starting with the one for 2014) the percentage of investigations lasting more than 20 months. Furthermore, OLAF would like to underline that there is no link between statistical reporting and the respect of fundamental rights.

**→ OLAF considers that SC's recommendation no 3 will be implemented with its 2014 Annual Report.**

The Director-General

Brussels

**NOTE FOR THE ATTENTION OF MR TUOMAS PÖYSTI,  
CHAIRMAN OF THE OLAF SUPERVISORY COMMITTEE  
AND MR JOHAN DENOLF, RAPPORTEUR**

Via the Secretariat of the Supervisory Committee

**Subject: Working paper in preparation of the adoption of an SC Opinion –  
Statistics on investigative performance of OLAF**

Dear Mr Pöysti, dear Mr Denolf,

By note of 6 March 2015, the Secretary of the Supervisory Committee (SC) transmitted to OLAF a SC working paper on OLAF statistics, mentioning that “the rapporteur intends to finalise the draft Opinion on that basis by 18 March 2015” and that any additional comments by OLAF would be welcome prior to that date.

By note of 12 March 2015, the rapporteur sent OLAF a second version of the working paper with additional text, mentioning that this document would be finalised by 18 March and that any comments would be welcome before that date.

You will find attached OLAF's comments. As repeatedly requested by OLAF (the last time on 6 March 2015, in its reply to the SC analysis on the duration of OLAF investigations), OLAF would appreciate being given more achievable deadlines to reply to the SC documents. In this case, OLAF was initially given a deadline of 8 working days, and for the second version of the working paper, a deadline of only 3 working days, considering that you would like to receive OLAF's comments before 18 March. Such a way of working is not commensurate with the importance of the issues dealt with by the SC, and seems inadequate considering the time and efforts invested by the SC, its Secretariat, and OLAF staff.

OLAF would furthermore appreciate having its three replies published together with the documents that the SC refers to as a “tryptic” (the *Report on the opening of cases in 2012*, the *Opinion on the control of the duration of investigations conducted by OLAF* and the on-going *Opinion on statistics on investigative performance of OLAF, Part I*), as it was done so far for the SC *Report on the opening of cases in 2012*, and also having them included in the SC Activity Report 2014.

Yours sincerely,

[signed]

Giovanni Kessler

Copy: B. Sanz Redrado, M. Hofmann, C. Arwidi, C. Scharf-Kroener, M. D'Ambrosio,  
M. Kaduczak

## **OLAF COMMENTS ON THE SC WORKING PAPER IN PREPARATION OF THE ADOPTION OF AN OPINION ON STATISTICS ON THE INVESTIGATIVE PERFORMANCE OF OLAF**

### **1. Background**

OLAF is aware that the Supervisory Committee (SC) started looking into OLAF statistics in or prior to July 2014. By note of 15 January 2015, the SC informed OLAF that it was "*currently reviewing the evolution of the duration of investigations*". In the same note, OLAF was requested to provide excel lists containing the case number, date of opening and date of closure for all OLAF investigations completed between 2011 and 2014. OLAF provided the data requested on 27 January 2015.

In an email sent on 9 February by the SC Secretary, OLAF was requested to provide clarifications on a working document entitled "*Methods for calculation of the average duration of investigations*". OLAF provided a detailed reply in an email of 19 February 2015.

By note of 6 March 2015, the Secretary of the SC transmitted to OLAF a SC working paper on OLAF statistics, mentioning that "*the rapporteur intends to finalise the draft Opinion on that basis by 18 March 2015*" and that any additional comments would be welcome prior to that date. The working paper made reference to some points of OLAF's reply email of 19 February, while omitting others.

By note of 12 March 2015, the rapporteur sent OLAF a second version of the working paper with additional text, mentioning again that the document would be finalised by 18 March 2015 and that any comments would be welcome before that date.

OLAF hereby presents its comments to the second version of the SC working paper. Considering that OLAF has been provided only with a working paper, not with the final Opinion, and that it has been given eight working days to reply to the first version, and three working days to reply to the second version, OLAF would like to underline the preliminary status of its comments and reserves itself the possibility to provide further comments on the adopted SC Opinion. Nevertheless, OLAF wishes that its comments as presented in this note are published together with the SC Opinion.

### **2. OLAF's use of indicators in its reports**

The SC mentions that "*the reporting on the duration of investigations by OLAF was not consistent over the years and even misleading as to improvement of the results. Therefore, the SC recommended that OLAF should calculate the duration of investigations only on the basis of cases closed during the reporting period*". The SC notes that "*since its Annual Report 2011, OLAF has changed annually the method to calculate and to present the average duration of cases*" and recommends OLAF to "*assure the comparability of the information*" for a fair and reliable view of the reporting.

In paragraph 40 the SC mentions that the average duration gives only a "*rough estimate*" on the duration of investigations.

As is the case for all Commission services, OLAF sets up yearly its Management Plan with the purpose of, *inter alia*, setting targets and performance indicators for monitoring progress during the year and to provide a basis for reporting on results in the Annual Activity Report. Similarly, the key performance indicators relevant for its independent investigative function are published every year in the OLAF Annual Activity Report. Unlike other Commission services, OLAF also presents the results on its performance annually, in its own separate report. The OLAF Report is presented to stakeholders and the public, and the results contained herein are also publicly discussed with the Institutions, in line with principles of accountability.

## **2.1 OLAF key indicators**

Reducing the duration of OLAF's investigations has been one of the key objectives of the Office over the past years. The choice of indicators, and the subsequent presentation of statistics in the OLAF reports, is made with the purpose of giving an authentic picture of the activities and performances of the Office.

To monitor the duration of its investigations, OLAF used until 2011 as indicator "*the average duration of investigations closed*", calculated as an average of the duration of all investigations that had been finalised during the reporting year.

However, this indicator gave only a partial and limited image of the performance of the Office, since it only captured a part of the activity during the reporting year – the cases closed – while the rest of the work undertaken throughout the year on on-going cases was not captured. Therefore, an important part of the OLAF activity was missing from its statistics, such as the backlog of on-going old cases. Reporting only on the closed cases was thus giving a misleading picture of the work and performance of the Office during the reporting year, and might even have created an incentive to keep very old cases open, so as not to worsen statistics.

Following discussions among OLAF management and also with the Commissioner responsible for OLAF, it was decided to introduce an indicator giving a more authentic and comprehensive picture of the state of investigations in the Office, and better reflecting the efficiency of the Office. Such an indicator would encompass also the on-going investigations. Therefore, in 2011, OLAF started reporting on the "*average duration of cases closed during the reporting period and those still open at the end of the reporting period*", as transparently indicated in the OLAF Report of that year. The same indicator was also introduced in the OLAF Management Plan for 2012, and consequently reported on in the OLAF Annual Activity Report from 2012 onwards.

## **2.2 Comparability of data**

In paragraph 12 of its working paper (page 6), the SC states that "*OLAF has changed annually the method to calculate and to present the average duration of cases*". OLAF would like to point out that there was only one change in the calculation of the average duration of cases. For the reasons set out above, the new indicator "*average duration of cases closed during the reporting period and those still open at the end of the reporting period*" was introduced in 2011. The same methodology was used for reporting in the following years, so there were no annual changes as the SC suggests.

The new indicator was used to present results either for investigation or coordination cases considered together, or for investigations or coordination cases considered



separately. Starting with the 2013 Report, OLAF no longer reports on the average duration of coordination cases. This is due to the fact that OLAF's role is to assist the national authorities of the Member States in coordination cases, and therefore has limited influence on their duration<sup>1</sup>.

The OLAF Reports usually present data spanning over five years, which offers a clear overview and allows the reader to compare the data and visualise the relevant trends. With the introduction of the new indicator, OLAF has used the new methodology to recalculate the average duration of investigations for previous years, making the results for different years fully comparable.

OLAF has explained to the SC that the data is comparable, notably in its email of 19 February 2015, including a graph showing the average duration of investigations calculated according to both methodologies. The SC has used the OLAF graph in its working paper. It is therefore surprising that the SC points, under paragraph 17, to the necessity "*to assure the comparability of the information*".

### **2.3 Introduction of an additional indicator**

The SC considers in paragraph 46 that "*the average duration of investigations provides only a very limited view of the duration and development in the stock of investigations*". OLAF would like to point out that any statistics, by their nature, only give an overview, and never a full account of details.

To further enhance the reporting on the duration of OLAF's investigations, and in line with the SC's suggestion in paragraph 40 of its working paper, OLAF has decided to introduce a complementary indicator, which shows if investigations are being handled in reasonable time: "*the percentage of on-going investigations lasting more than 20 months*"<sup>2</sup>. This new indicator was introduced in the OLAF Management Plan 2014 and will be reflected in OLAF's future reporting.

On 5 February 2014, OLAF sent to the SC its Management Plan 2014, which included this new indicator. Furthermore, OLAF has reported for the first time on this indicator in its 2014 mid-term report, sent to the SC on 16 October 2014. OLAF notes that despite the fact that the SC received OLAF's reporting on this indicator, the SC does not mention it in its working paper, nor in any of its other analyses, but – on the contrary – suggests the introduction of the same or a similar indicator.

In view of the above elements, OLAF decided to include in the OLAF Report 2014 statistics on the average duration of investigations closed in 2014, in addition to the average duration of investigations closed or still open, and the percentage of on-going investigations lasting more than 20 months. OLAF hopes that the use of such a broad spectrum of indicators for the duration of its investigations will address the concerns of the SC on the use of indicators on the duration of investigations.

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<sup>1</sup> See also OLAF reply of 9 February 2015 to SC Report on opening of cases in OLAF in 2012.

<sup>2</sup> Page 9 OLAF Management Plan 2014.

### **3. Opening of the 423 cases and their impact on the average duration and the "success rate"**

The SC mentions that according to its Report 3/2014, on *Opening of cases in OLAF in 2012*, OLAF's opening of the 423 cases in February 2012 was done "without respecting the relevant legal requirements and consequently should be considered as irregular". The SC calculates the average duration of cases for 2012 on the basis of the methodology used by OLAF before 2011 and furthermore excludes the 99 investigations closed in 2012, out of the 423 cases opened in February 2012. The SC thus obtains an average duration of investigations of 32 months for that year.

The SC also refers to a so-called "success rate" that "has long been used by OLAF as a performance indicator" and assesses that the "distorting impact of the 423 cases" could be responsible for the sudden fall in the investigation "success rate".

#### **3.1 Opening of the 423 cases**

The SC claims that the opening of the 423 cases was done "without respecting the relevant legal requirements". OLAF disagrees with the SC's assessment and cannot accept that these cases be referred to as "irregular" in the sense of "not in compliance with rules". This matter has been extensively explained in OLAF's reply of 9 February 2015 to the SC Report on *Opening of cases in OLAF in 2012*.

OLAF's reply notably explains in detail that the Decision to open the 423 cases was in line with the legal provisions applicable at the time of adoption and did not fall short of relevant case law. The opening of the 423 cases was not an isolated act but the result of a comprehensive process conducted in accordance with a specific managerial decision of the OLAF Director-General<sup>3</sup>. The Decision to open those cases deserving to be investigated solved the issue of the significant backlog, allowed for an efficient start of the reorganised OLAF and enhanced the protection of the rights of the persons concerned.

As already explained by OLAF<sup>4</sup>, the review and selection process of the 423 cases lasted on average eight months prior to February 2012, which indicates that the cases were duly considered and the matters under assessment were of a substantial nature, requiring further action by the Office. In its Report 3/2014, the SC did not propose any alternative solution to the opening of the 423 cases in February 2012.

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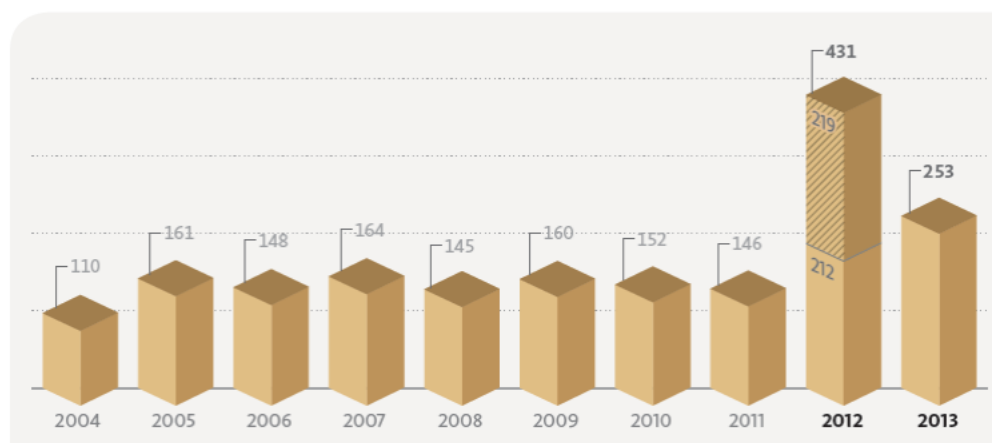
<sup>3</sup> See Part 3 – *Legal Analysis*, in OLAF's reply of 9 February 2015 to SC Report on Opening of cases in OLAF in 2012, page 6

<sup>4</sup> See Part 1 – *Background*, in OLAF's reply of 9 February 2015 to SC Report on Opening of cases in OLAF in 2012, page 2

### 3.2 Impact of the opening of the 423 cases on OLAF statistics

OLAF has transparently reported on the inclusion of the 423 cases in its statistics in OLAF Reports 2012 and 2013, as illustrated by the screenshot in Figure 1 below, extracted from the OLAF Report 2013. Out of the 423 cases, 219 were initially opened as investigations.<sup>5</sup>

Figure 10: Investigations opened<sup>(12)</sup>



<sup>(12)</sup> The figures for 2012 include 219 investigation cases, already previously under evaluation, opened as a result of the reorganisation of 01.02.2012.

### Figure 1: Screenshot from OLAF Report 2013

In its reply to the SC Report 3/2014, OLAF presented the impact of the opening of the 423 cases on two main OLAF performance indicators: (a) average duration of investigations and (b) percentage of investigations closed with recommendations. OLAF concluded the following on the impact of the opening of the 423 cases on its statistics:

- The performance indicator “*duration of investigations*” improved in 2012; however this was largely offset by a deterioration of this indicator in the following two years;
- The performance indicator “*ratio of investigations closed with recommendations*” was worsened in 2012 and the following years.

Therefore, any suspicion that OLAF would have opened the 423 cases to improve its reported performance is without factual basis.

The alternative to their opening by this simplified procedure would have been opening the 423 cases over several months, which would also have had an impact on the statistics.

### 3.3 OLAF “*success rate*”

Contrary to what the SC states, OLAF does not use as indicator the so called “*success rate*”. OLAF monitors the extent to which completed cases with recommendations result in judicial or other action. This is done with a view to assess the pertinence of OLAF’s work for the recipients of its reports. OLAF does not use “*success rate*” in this context

<sup>5</sup> An additional number of investigations were later opened from the 423 cases, leading to a total of 225 investigations to date, cf. OLAF’s reply of 9 February 2015 to SC Report on Opening of cases in OLAF in 2012.

and regards the term as inappropriate. In line with Article 9(1) of Regulation 883/2013, OLAF conducts investigations objectively and impartially, and in accordance with the principle of the presumption of innocence and with the procedural guarantees set out in the Regulation. It seeks evidence for and against the person concerned. In this sense, a "successful" investigation is one that is conducted in accordance with these principles, that has established the facts and the conclusions of which are based on a sound and thorough factual and legal analysis.

#### **4. Umbrella cases**

The SC claims that the OLAF cases "extracted" from umbrella cases are "virtual" cases of short duration and also suggests that there are no investigative activities in such cases.

The SC therefore proposes to exclude such cases from OLAF statistics on the duration of investigations.

Umbrella cases are needed when OLAF receives large and complex amounts of related incoming information, with the purpose to enable the Office to assess such information in a comprehensive and consistent way. Once the information becomes more specific, OLAF can split the umbrella case into individual cases, and continue the investigative activities. Cases are not "extracted" from the umbrella case, as suggested by the SC in its working paper, but split according to procedures put in place by the Director-General of OLAF.

As already explained by OLAF in its reply of 6 March 2015 to the SC draft analysis on the duration of OLAF investigations, the necessity of splitting an investigation or coordination case may result from factual, legal or other reasons and is scrutinised at different levels, within the investigative unit in charge and by the Investigation Selection and Review Unit which provides an opinion on the legality and necessity of the splitting. After the splitting of a case, a new OLAF case is opened and conducted. Such splitting can for example allow for the finalised investigation to be sent expeditiously to the national authorities and hereby avoid time-barring. Likewise, the older case continues its investigative course. The practice of umbrella cases is not recent and existed before the new investigative procedures were put in place in 2012. Furthermore, the number of the umbrella cases in OLAF is limited.

The SC mentions 24 cases "extracted" in 2012 and 27 cases "extracted" in 2013 from an umbrella case concerning the SAPARD programme in Romania. OLAF has looked into this particular matter and its analysis shows the following:

- out of the 24 investigations split in 2012, 17 have been closed to date and their average duration was 24 months. Seven investigations are still on-going due to their complexity and factors outside of OLAF's influence;
- out of the 27 investigations split in 2013, 25 have been closed to date and their average duration was 10 months. Two investigations are still on-going.

According to OLAF's own analysis, the 15 cases mentioned by the SC with an average duration of 4.1 months were indeed the shortest investigations among the 42 closed. It is somehow surprising to see that in its analysis, as included in the working paper, the SC has selected only the 15 shortest cases. OLAF considers such a choice highly misleading.

Furthermore, the SC's statements in the working paper (paragraphs 33 and 37 in respect to SAPARD Romania) that investigative activities were carried out only under the umbrella case are not correct. The cases created from the split were not "virtual" and they were subject to the standard OLAF investigation processes, in accordance with the investigative instructions in place.

Also a reference to a SAPARD case concerning Bulgaria opened in 2009 (paragraph 36), is incorrect. In fact, two SAPARD umbrella cases for Bulgaria were opened in 2006 and 2008, and both were closed in 2011. Out of 63 cases split from the umbrella cases, 29

were investigations. 28 of these investigations have been closed and one is still on-going. OLAF's preliminary analysis shows that the average duration of the closed investigations was 39 months.

Given the short time frame afforded to OLAF to provide comments on the working paper, OLAF has not been in a position to extract more detailed information on umbrella cases in general.

## **5. "Cleaning" of data and OLAF's actual results**

The SC states that the decrease of the average duration of investigations was due to "(a) the change of the method of calculation and (b) the exceptional opening of a large number of cases for organisational reasons - and not, as reported in the Annual Reports 2012 and 2013, to shortening the actual time in which the regular investigations were completed".

In an effort to "clean" OLAF's statistics, in addition to excluding the 162 investigations closed in 2012 and 2013 out of the 423 cases opened in February 2012, the SC makes an attempt to estimate the impact of cases split from umbrella cases, suggesting that these cases should not be included in OLAF statistics.

### **5.1 Inclusion of the 423 and umbrella cases in OLAF statistics**

The SC argues in its working paper (paragraph 25, page 10) that because of their "one-off", "organisational character", the 99 and 63 investigations closed in 2012 and 2013 respectively, out of the 423 cases opened on 1 February 2012, should have been excluded from the calculation of the average duration of "regular investigations".<sup>6</sup>

OLAF would like to point out that investigations recorded in its Case Management System, conducted in accordance with investigative procedures and instructions cannot simply be excluded from its statistics, because they have an "atypically short duration". Excluding the 423 cases would not give a complete and accurate presentation of OLAF's caseload and the average duration of the investigations. OLAF's investigative staff worked in 2012 and 2013 also on these cases, which in turn affected the performance in other cases. Any attempt at hiding them could have led to accusations against OLAF for trying to embellish its statistics.

Although OLAF can agree that it could statistically be interesting to exclude these investigations from OLAF statistics in an attempt to clarify the impact that these case openings have had on OLAF's statistics<sup>7</sup>, it should be noted that such an exercise is purely hypothetical, since a large majority of these cases - if not all - would have had to be opened in any case in the days and weeks following 1 February 2012. The average duration of 32 months in 2012 and 24.2 months in 2013, as indicated in Chart 3 of the SC working paper (page 12) is therefore purely hypothetical.

As regards the cases split from the umbrella cases, as pointed out in section 4 above, although some of them were short in duration, other such cases were long. All of them were recorded in OLAF's Case Management System, conducted in line with OLAF's investigative procedures and guidelines, and a large number or most of cases originating

<sup>6</sup> OLAF does not calculate one average for "regular" investigations and another one for "irregular" ones, since it does not perform any investigations that could be described as "irregular".

<sup>7</sup> See part 4 - OLAF statistics in OLAF's reply of 9 February 2015 to SC Report on Opening of cases in OLAF in 2012, page 12

from umbrella cases do involve investigative activity. There is hence nothing “*virtual*” about them.

Furthermore, it is not clear how the SC has calculated its “*rough estimate*” of the average duration of investigations of 26.8 months, excluding “*other similar «virtual» cases*”. To understand the analysis of the SC, OLAF would need to know what these “other” cases referred to by the SC are.

## **5.2 OLAF’s view of “cleaning”**

In view of the above, it is difficult for OLAF to see on what basis it should exclude cases from its statistics. OLAF cannot randomly, nor even selectively, exclude cases from its Case Management System, nor from its statistics, just because they are exceptionally or “*atypically*” short or long for any particular reason.

OLAF does not understand the logic of “*cleaning*” the statistics for 2013 from the impact of cases resulting from an umbrella case on the basis of their short duration, as the SC has done. These cases were by no means “*virtual*”, as explained above. Furthermore, the opening of umbrella cases and the splitting of cases from such umbrella cases are not new processes in OLAF. For the exercise of “*cleaning*” to make sense, the SC would have to clean the results for all years, not only for 2013.

The SC uses in its working paper (paragraph 46, page 16) 2010 as year of reference to compare the “*cleaned*” statistics for 2013. OLAF does not understand this choice of year and suggests that 2011 would be the natural and closest year for comparison, if the exceptional year 2012 is excluded.<sup>8</sup>

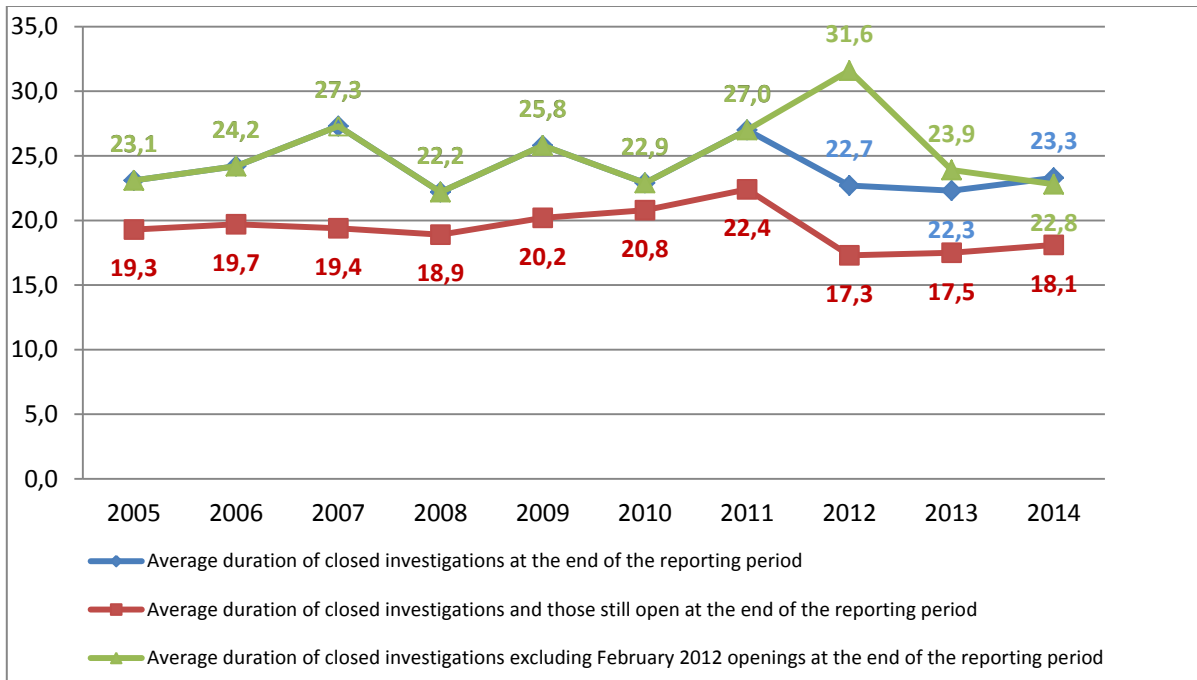
## **5.3 OLAF results**

To dispel any doubts and to rebut the claim of the SC that OLAF’s decrease in average duration of investigations is “*declared*” as opposed to real, and that this decrease was due to “*(a) the change of the method of calculation and (b) the exceptional opening of a large number of cases for organisational reasons – and not, as reported in the Annual Reports 2012 and 2013, to shortening the actual time in which the regular investigations were completed*”, OLAF has compared its statistics, going back to 2005, using three methods of calculation: (1) including only closed investigations (the method proposed by the SC for future OLAF reporting), (2) including both closed and on-going investigations at the end of the period (the indicator used in the OLAF Reports 2012 and 2013) and (3) including only closed investigations and excluding the February 2012 case openings (the method used by the SC in its working paper). The results of this comparison are illustrated in Figure 2 below<sup>9</sup>.

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<sup>8</sup> The statistics of 2012 were impacted by the opening of the 423 cases on 1 February, as recognised by OLAF in its reply of 9 February 2015 to SC Report on Opening of cases in OLAF in 2012, page 12.

<sup>9</sup> As pointed out by the SC, and as also highlighted by OLAF in its reply of 6 March 2015 to the SC draft analysis on the duration of OLAF investigations, there is a slight discrepancy between the calculations of the SC and those of OLAF, which OLAF assumes is due to the estimated length of a month. The SC calculates the average duration based on a 30 days month, while OLAF calculates it based on a 30.416 days month (365 days in a year/12 months).



**Figure 2: Average durations of OLAF investigations in months**

As it can be seen from Figure 2, over the last years the results obtained by using the two methods (blue and red lines) follow the same trend, independently of the method used. The hypothetical exclusion of the opening of cases in February 2012 (green line) has a considerable impact only in the year 2012.

Finally, as regards the duration of investigations, OLAF would like to point out that what counts in the end is the duration of the selection and investigation phase put together. The SC has not looked at this compound indicator, but focused its analysis on the investigative phase only. OLAF would like to stress that by looking at the selection phase and investigative phase together, OLAF's results are even better and the decrease more significant. OLAF would welcome a positive recognition of this by the SC in a forthcoming analysis on OLAF statistics.

## **6. Duration of investigations and fundamental rights**

OLAF agrees with the SC that, as pointed out in the working paper (paragraph 7, page 5), the requirement that investigations and procedures are handled within a reasonable time is as a matter of fundamental rights. This is one of the reasons, apart from considerations of managerial nature, for which OLAF is very attentive to the duration of investigations and makes considerable efforts to enhance it. These efforts are successful while there are also other factors to be taken into account. OLAF works under a new and still recent legal framework that has enhanced the procedural rights of persons concerned and witnesses. Ensuring the full respect of these rights implies additional tasks to be performed by the Office and hence increases the duration of investigations, other factors remaining unchanged. Moreover the number of incoming information of investigative interest, as well as the overall investigative activity of the Office, has increased significantly over recent years. This should be considered against

the background of general staff cuts that OLAF is undergoing like other Commission services.

It should be noted that the SC working paper tends to overstate the link between the publication of statistics on the duration of investigations and fundamental rights. It is well established that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the (individual) case. Whereas the publication of statistics on the duration of investigations is desirable to ensure transparency (and OLAF is very committed to this purpose), it is not as such a matter of fundamental rights.

In its working paper (paragraphs 41 and 42, page 14), the SC makes reference to checklists and other materials developed by the Council of Europe's European Commission for the Efficiency of Justice. OLAF takes note of the indications provided by the SC and will further examine the material from the Council of Europe. It should however be underlined that the work of the European Commission for the Efficiency of Justice of the Council of Europe is focused on national judicial authorities, not on investigative bodies such as OLAF. It is aimed at gathering (comparable) information on the duration of judicial proceedings in Council of Europe Member States.

## **7. Conclusions**

**Starting with its 2014 Report, OLAF will report on three indicators:**

- the average duration of investigations closed and still open at the end of 2014,**
- the average duration of investigations closed in 2014, and**
- the percentage of investigations lasting more than 20 months.**

**OLAF will continue to report transparently whenever a one-off administrative operation takes place, as it has done in the past when it reported on the opening of the 423 cases in its 2012 and 2013 OLAF Reports. OLAF does not intend however to "clean" its statistics from exceptionally short or long investigations, as long as these investigations are real, recorded in its Case Management System and conducted according to the investigative procedures and instructions of the Office (as are all its investigations).**

**OLAF would like to underline that there is no link between statistical reporting and the respect of fundamental rights.**