

SUPERVISORY COMMITTEE



Opinion No 1/2015

OLAF's Preliminary Draft Budget for 2016

Brussels, 5 May 2015

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Conclusions

- (A) **The Supervisory Committee supports the preliminary draft budget for 2015 with the provision that its observations are taken into consideration and welcomes the significance attached in the preliminary draft budget for the OLAF's work.**
- (B) **In order to guarantee the independent functioning of the Supervisory Committee and the Secretariat of the Supervisory Committee, which is indispensable to the monitoring work of the Supervisory Committee, the Preliminary Draft Budget should contain separate budget items under the OLAF Budget for both the Supervisory Committee and its Secretariat. While waiting for the creation of the separate budget item for the Secretariat the preliminary draft budget and in the draft budget should contain documentation of the total resources available for the Supervisory Committee Secretariat and welcomes the willingness of the DG OLAF to include such explanatory documentation.**
- (C) **The Supervisory Committee recalls the significance of the efficient investigation of suspected fraud and illegal activities to the public trust towards the European Union. OLAF budget should not be subject to stricter savings measures than other services of the Commission.**
- (D) **Attention should also be paid to ensuring that OLAF has adequate resources for a well-functioning ICT infrastructure and ICT capabilities which are vital for cost-effective performance of the investigative function. PDB 2016, if realised as presented after the negotiations with DG Budget, will mean improvement in this respect.**
- (E) **A sufficient number of seconded national experts strengthen OLAF's capacity for application of Member States law and development and sharing of Union-wide capacities in the fight against fraud. This shall be ensured in the establishment plan of OLAF.**
- (F) **The Supervisory Committee welcomes informing the Committee of preliminary budget drafts before bilateral negotiations with the DG Budget and early consultation is in the process of becoming a good practice.**
- (G) **The Supervisory Committee notes that the budget related to the activities of the Members of the Supervisory Committee has not been revised in 10 years, despite that the Union legislator has created new legal requirements including a mandatory minimum number of meetings for the Supervisory Committee.**

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Introduction

(1) In accordance with Regulation (EU) No 883/2013¹ and Article 3 of Commission Decision 1999/352/EC, ECSC, Euratom², the European Anti-Fraud Office (hereinafter OLAF) shall have full independence to exercise its investigative function in all institutions, bodies, offices and agencies established by or on the basis of the Treaty on the European Union, Treaty on the Functioning of the European Union and the Euratom Treaty. To do this and to ensure that OLAF is able to function in an efficient and effective manner and contribute in a best possible way to the Union's objectives of the fight against fraud defined in Article 325 of the Treaty on the Functioning of the European Union, the total appropriations for the Office, including for the Supervisory Committee and its Secretariat, shall be entered under a specific budget line within the section of the general budget of the European Union relating to the Commission and shall be set out in detail in an Annex to that section.³

(2) In accordance with Article 15(1) and recital (37) of Regulation (EU) No 883/2013, the mission of the OLAF Supervisory Committee (SC) is to reinforce the independence of OLAF in the exercise of its investigative function by regular monitoring. With the adoption of Regulation (EU) No 883/2013 the role of the SC has been strengthened as the guardian of the independence of OLAF. Pursuant to the third subparagraph of Article 15(1) of Regulation (EU) No 883/2013 the Supervisory Committee shall address to the Director-General of OLAF opinions, including where appropriate, recommendations on, inter alia, the resources to needed to carry out the investigative function of OLAF.

(3) For the purpose of reinforcing and strengthening the independence of OLAF and considering the powers conferred by the Commission on the SC and the legal requirement for the Director-General of OLAF to consult the SC before he sends to the Director-General for budgets a preliminary draft budget to be entered in the annex concerning OLAF to the Commission section of the general budget of the European Union⁴, the SC has considered OLAF's Preliminary Draft Budget (PDB) for 2016 and delivers the following Opinion.

(4) The objective of the procedure in which the Supervisory Committee is consulted and in which the SC adopts an Opinion on OLAF's Preliminary Draft Budget is to give assurance that the Draft Budget duly takes into account the independence of the investigative function of OLAF and that OLAF is resourced to function effectively and efficiently as an inter-institutional service in stepping up the fight against fraud as foreseen by Article 325 of the Treaty on the Functioning of the European Union and in Regulation (EU) No 883/2013. The

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 See Art. 18 of Regulation (EU) No 883/2013.

⁴ Article 6 (2) of Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-fraud Office, as amended by Commission Decision of 27 September 2013 2013/478/EU: "2. After consulting the Supervisory Committee, the Director-General shall send the Director-General for budgets a preliminary draft budget to be entered in the annex concerning the Office to the Commission section of the general budget of the European Union."

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Supervisory Committee recalls that in accordance with generally accepted international principles and standards on the independence of investigations and investigative bodies a sufficient degree of financial autonomy and sufficient financial resources must be ensured.

(5) The SC Opinion on Preliminary Draft Budget creates a documented forum of Supervisory Committee's advice to the Director-General of OLAF and to the Budgetary Authority of the Union and other Institutions of the Union on the prerequisites for efficient allocation and use of resources to and within OLAF.

(6) The Supervisory Committee welcomes the fact that it was informed prior to the bilateral consultations between OLAF and the European Commission Directorate General on Budgets (DG Budget). In accordance with the Regulation (EU) No 883/2013 and the Commission Decision it is a legal requirement and also the purpose of the Union legislator that the SC can provide its assessment and advice before negotiations on the preliminary draft budget take place and also prior to the presentation of the preliminary figures albeit they may be and usually are subject to changes. The Supervisory Committee also recalls the Director-General of OLAF to ensure that this sufficiently early consultation of the SC becomes an established good practice.

Resources

(7) The Supervisory Committee notes that the general policy and guidelines established by the Commission concerning the preparation of the preliminary draft budgets for the Commission services leave a limited discretion to the Director-General for OLAF in the presentation of the preliminary draft budget taking into account the objective for reduction of 5 % of the European Commission staff in 5 years starting from 2013. While the Supervisory Committee generally recognises the value and need for productivity and efficiency improvements in all Union institutions, the Supervisory Committee recalls the resource constraints which OLAF faces with the caseload in OLAF.

(8) According to the figures of the preliminary draft budget presented by the Director-General of OLAF concerning the outcome of the budget hearings with DG Budget, the overall budget of OLAF would be 58 842 000 euro while the budget in 2015 is 57 746 000 euro and the outturn for 2013 is 55 695 715,65. This would represent an increase of 1,9 %.

Most important expenditure in OLAF is expenditure related to staff in which an overall increase of 3,13 % for permanent staff.

These figures are subject to modification in the course the preparation of the Draft Budget to be presented by the European Commission. The Supervisory Committee welcomes the relative importance attached to the fraud investigations in the PDB for 2016 as it stands after hearing with DG Budget.

(9) The Supervisory Committee recalls that national experts are important for the realisation of the objectives of the OLAF. In the regular monitoring of OLAF investigations the SC has observed the need to strengthen the expertise of the law of the Member States in OLAF. Use of SNEs is one of the tools available for this purpose. In addition, SNEs provide a system for

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exchange and development of Union-wide human resources in the fight against fraud. The SC notes that the preliminary figures for the external staff gives decent possibilities to continue the use of national expertise albeit there is a general declining trend in the number of temporary staff members. The Supervisory Committee further recognises that the legal expertise on the Member States law may not be dependent only on the seconded national experts. The Supervisory Committee also recalls that the work shall mainly be conducted by permanent staff members who are subject to the rights, obligations and protection defined in the Union staff regulations.

(10) The Supervisory Committee reminds of the significance of the efficient investigation of suspected fraud and illegal activities to the public trust towards the European Union and Institutions of the Union. Therefore the OLAF budget should not be subject to stricter savings measures than other services of the Commission. The SC notes with satisfaction and considers that preliminary draft budget figures as presented by the Director-General of OLAF give conditions to continue fight against fraud as one of the main priorities of the European Union.

(11) The SC reiterates its observation from the Opinion 1/2013 on the preliminary draft budget for 2014 that a well-organised and up-to-date ICT support and infrastructure are necessary conditions for a cost-effective fraud investigation function. OLAF's Case Management, ICT analytics and other information systems shall be kept up to date in order to enable OLAF to function efficiently. The 2016 PDB is, if realised as presented after hearing with DG Budget, a step into the right direction.

The Supervisory Committee and its Secretariat

Expenditure concerning the mandate of the Supervisory Committee members

(15) The Supervisory Committee notes that the amount of the expenditure related to the mandate of the SC Members is not changed in 2015 preliminary draft budget compared to the budget of 2014 and of previous 10 years. The Supervisory Committee notes that the Regulation No (EU) 883/2013 requires the Supervisory Committee to have at least 10 meetings a year.

Resources of the Secretariat of the Supervisory Committee

(17) In accordance with Regulation (EU) 883/2013 the Supervisory Committee has a crucial role in the oversight of OLAF's investigative function and as a guardian of the independence of OLAF. The Supervisory Committee has also a specific inter-institutional character.

(18) The Supervisory Committee is dependent in the discharge of its duties assigned by the Union legislator on its Secretariat. The SC underlines that the role of its Secretariat is primarily not to assist in the organisation and documentation of the SC meetings. The Supervisory Committee's Secretariat performs in practice, to a large extent, the regular monitoring of the investigative function of OLAF. This results also from the fact that it is the Supervisory Committee's Secretariat which has access to the OLAF Case Management System in accordance with the established Working Arrangements and the European Union data protection legislation de facto requires that the access to information by the Supervisory

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Committee is realised by the Supervisory Committee's Secretariat. Adequately staffed Secretariat with high quality personnel is thus a vital condition for the Supervisory Committee to discharge its duties as stipulated by the Union legislator.

(19) The Supervisory Committee recalls that according to Article 15(8) of Regulation (EU) No 883/2013 the SC Secretariat shall be provided by the OLAF, in close consultation with the Supervisory Committee.

(20) Pursuant to Article 18 of Regulation (EU) No 883/2013 the total appropriations for OLAF, including for the Supervisory Committee and its Secretariat, shall be entered under a specific budget line within the section of the general budget of the European Union relating to the Commission and shall be set out in detail in an Annex to that section. The expenditure related to the Supervisory Committee and its Secretariat shall thus be part of the OLAF budget. The implementation of this should take into account requirements of transparency and independence of the Supervisory Committee with regards to OLAF, which requires also functional independence for the Secretariat in performing the duties related to the regular monitoring of OLAF activities. According to the internationally accepted principles and standards on the independence of the supervisor against the supervisee, the resources of the supervisor shall not be dependent of the supervisee.

(21) This issue has been recently raised in the assessment of the European Union Integrity System performed by the Transparency International (TI). The TI Report states that there exist justifiable concerns on the budgetary independence of the Supervisory Committee and these concerns should be addressed. The TI Report recommends that the Supervisory Committee shall be provided by EU legislation with control over its own resources.⁵

(22) To be fully informative and representative of the total cost of oversight, the expenditure related to the SC Secretariat could be specified as a separate budget item under OLAF budget. Expenses arisen in the course of executing the Secretariat's functions – e.g. mission expenses – should be covered by this particular budget item in order to streamline administrative procedures and lessen the administrative burden on the competent OLAF staff, including the Director-General.

(23) The Supervisory Committee welcomed in 2014 an agreement reached in the budgetary hearings according to which, for information purposes, a description of the establishment plan of the Supervisory Committee's Secretariat as 7 posts and 1 contractual agent and an overall estimate of the expenses of the Secretariat (approximately 1.200 000 euro) would be included into the budget documentation of the Preliminary Draft Budget for 2015. The Supervisory Committee found that this is a step in the right direction, increasing transparency. When the Head of the Secretariat of the Supervisory Committee is delegated the tasks of Authorising Officer and the Authorisation Officer functions related to the expenditure of the Head of the Secretariat is exercised in close consultation with the Committee, the arrangements comes close to sufficient financial autonomy of the supervisor within the framework established by the Article 18 of Regulation (EU) No 883/2013. A general agreement should be in place that

⁵ Transparency International: The European Union Integrity System. Transparency International 2014, p 158 and 177.

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no changes to the Secretariat staff and budget shall be made without consent of the Supervisory Committee.

(24) The Supervisory Committee finds it necessary to ensure that the description in the establishment of the total resources should be included to the preliminary draft budget of 2016. The Supervisory Committee welcomes the intention of the DG OLAF to include such information to the draft budget documentation send by OLAF to the DG Budget.

Recommendations to the Director-General of OLAF:

(I) Director General of OLAF shall contribute to that in the establishment plan for 2016 the total resources for the Supervisory Committee Secretariat is presented as was the case in 2015 and that the Director General of OLAF continues to delegate, as far as possible, the powers of the Appointing Office and Authorising Officer with respect to the staff and budget of the Supervisory Committee's Secretariat to the Head of the Secretariat. The Supervisory Committee welcomes the intention to continue this arrangement.

(II) Changes to the staff and budget of the Supervisory Committee's Secretariat shall be subject to consent of the Supervisory Committee.