

SUPERVISORY COMMITTEE

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Annual
Report

2019

July 2020



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Committee Member since 23 January 2017, Chair since 1 March 2017

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Foreword

The year 2019 started with a Secretariat in which many posts were vacant. By the end of the year the situation had changed. A new Head of the Secretariat had arrived in the autumn, and all other vacancies were filled with new arrivals. A new wind was blowing.

The appointment of the new Director General of OLAF in 2018 meant that a serious effort could be made to establish a firm and shared understanding of the functioning of the OLAF Supervisory Committee.

Discussions started in earnest but were not always easy. However, the atmosphere was constructive. Although an agreement on a number of outstanding issues has not yet been reached, the Committee hopes that by the next annual report these issues will have been resolved and new working arrangements will be in place in conformity with the legal framework in which OLAF and the Supervisory Committee operate.

The discussions with OLAF focused on the kind of access the Supervisory Committee should have to OLAF investigations lasting more than 12 months so that it can effectively perform its supervisory and monitoring tasks. The discussions were framed and conducted on the basis of the joint opinion handed down on this issue by the legal services of the Commission, Council and Parliament. As this joint opinion states, it is the Supervisory Committee that determines which information is needed to fulfill the mandate these three institutions have entrusted it with.

The Director General of OLAF was a welcome participant in almost all of the Supervisory Committee's monthly meetings.

The ongoing revision of Regulation 883/2013 and the creation of EPPO was a prominent point of discussion during those meetings.

As stated above, the nature and form of OLAF's reporting obligations for investigations lasting longer than 12 months have not yet been resolved. However, some progress has been made to bridge the different approaches and arrive at a mutually agreed outcome. On the reporting of procedural guarantees, a workable agreement was reached, which now has to be tested in time. At the end of 2019, the Supervisory Committee also finalised a special report on 'OLAF Dismissed Cases', which was published in early 2020.

A new multiannual budget for the European Union is in the process of being negotiated in very challenging times with an increase in funds for various purposes. It is all the more reason for OLAF and its Supervisory Committee to remain vigilant.

Foreword

In the light of the forthcoming adoption of a new OLAF regulation and the coming into operation of EPPO, the Supervisory Committee, assisted by its Secretariat, remains focused on fulfilling its primary objective of strengthening OLAF's independence.

Jan MULDER

Chairman of the Supervisory Committee of OLAF

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About Us

- (i) The Supervisory Committee of the European Anti-Fraud Office (OLAF)

About Us

1. The Supervisory Committee of the European Anti-Fraud Office (OLAF) is an independent body appointed by common accord of the European Parliament, the Council, and the European Commission¹.
2. The Supervisory Committee (‘the SC’ or ‘the Committee’) monitors the implementation of OLAF’s investigative function to reinforce its independence in the proper exercise of the powers conferred upon it by Regulation No 883/2013 (the OLAF Regulation). The Committee monitors in particular that the procedural guarantees of persons involved in investigations are observed.
3. The Committee is composed of five independent, outside experts, nominated for 5 years (‘the members’)². The members perform their role in complete independence and may neither seek nor take instructions from any government or any EU institution, body, office or agency. The Committee has therefore organised the conduct of its monitoring activities in such a way as to guarantee this independence, in particular with regard to the members’ status, its budget and the Secretariat.
4. The SC’s internal Rules of Procedure³ set out the rules governing its composition, operation and working methods (the procedures under which it carries out its monitoring role within the terms of the OLAF Regulation) and lay down the material conditions under which its work must be conducted. The Committee carries out its monitoring activity without interfering in the conduct of OLAF investigations in progress.
5. The SC reports to the appointing institutions and informs the public, civil society and relevant national authorities of its role and activities.

(ii) The Secretariat

6. The SC is supported in its work by a Secretariat, working on a permanent basis. In accordance with the OLAF Regulation, the Secretariat works

¹ Article 15.2 of 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, at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02013R0883-20170101>.

² To preserve the experience built up in the Committee, the Members are to be replaced on an alternating basis, in accordance with Regulation 883/2013.

³ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011Q1124%2801%29>.

under the Committee's direct authority and independently from the Commission. It plays a key role in facilitating and contributing to the performance of all tasks undertaken by the SC.

7. The Secretariat is made up of EU staff and legal and operational experts. Under the guidance and management of its Head, the Secretariat monitors OLAF activities from day-to-day and presents the results of its monitoring and supervision activities to the Members of the SC for consideration and approval. The Secretariat assists the Committee's Members in carrying out their duties efficiently, with a view to reinforcing OLAF's independence

Mission statement

Article 15(1) of Regulation (EU) No 883/2013:

The Supervisory Committee shall regularly monitor the implementation by the Office of its investigative function, in order to reinforce the Office's independence in the proper exercise of the competences conferred upon it by this Regulation.

The Supervisory Committee shall in particular monitor developments concerning the application of procedural guarantees and the duration of investigations in the light of the information supplied by the Director-General in accordance with Article 7(8).

8. The SC was established to strengthen and guarantee OLAF's independence through regular monitoring of its investigative function and to assist its Director-General in the discharge of his/her responsibilities. It is fully committed to this remit. The Committee also interprets its role of assisting OLAF's Director-General in a way that best enables OLAF to improve its effectiveness as a rigorous and impartial EU investigatory body, entirely independent from undue external pressure and interference. 2019 also marks OLAF's twentieth anniversary, which is an opportunity to reflect on how the Office has fulfilled its role and how it intends to go forward, in particular with the creation of the European Public Prosecutor's Office (EPPO), in the fight against fraud, corruption and criminal offences affecting the EU budget. The Committee is ready to support OLAF in its efforts to improve the quality of its work and to play a key role in the new European area of justice in which OLAF's assistance to, support for and cooperation with the EPPO will be of fundamental importance in protecting the EU's financial interests.

Mission statement

9. The Committee provides OLAF's Director-General and the institutions with detailed opinions and reports on OLAF's ongoing investigations without interfering in them. Regular monitoring of OLAF's investigations is the best way to guarantee its independence, and during the whole reporting period the SC was very much involved in establishing a solid working relationship with OLAF's Director-General in order to improve the quality of the information OLAF sent on a regular basis to the SC. This applies in particular to the reports on investigations running over 12 months, the individual complaints against OLAF's investigations, and OLAF's recommendations which were not followed by the relevant authorities. The SC also participates actively in the yearly inter-institutional exchange of views on OLAF's performance, consistently maintaining the view that OLAF's investigation policy priorities should be in line with the main areas of the EU budget expenditure.
10. The Supervisory Committee is accountable to the institutions which appointed its members, and its last annual activity report was discussed with the Commissioner for Budget and Human Resources, the Secretary General of the Commission, the Committee on Budgetary Control of the European Parliament (CONT) and the Council's Working Group against Fraud during the Finnish Presidency.
11. The Committee also welcomes the positive feedback from the European Parliament's CONT Committee in 2019 to its report on the proposed revision of the OLAF Regulation. The Committee will continue following closely the current inter-institutional discussions and negotiations between the Parliament, the Council and the Commission ('trialogue').
12. The Committee held 10 plenary meetings⁴ and continued the practice of inviting OLAF's Director-General and his staff to its meetings to discuss and be informed about any matter relevant for the Committee's and OLAF's work. The Committee looked forward to working constructively with OLAF and helping the Office improve its performance and efficiency. During the reporting period, Committee members were appointed as rapporteurs to work on and follow up on specific areas of the Committee's work plan. They worked in close cooperation with the Secretariat to draw up draft opinions and reports to be adopted by the Committee.

⁴ From January 2019 to December 2019.

Monitoring tasks of the Supervisory Committee:

(i) Monitoring OLAF's budget and resources

Article 6(2) of Commission Decision 1999/352/EC of 28 April 1999 establishing the European Anti-Fraud Office, as amended by 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.'

Article 15(1) third paragraph of Regulation (EU) No 883/2013:

The Supervisory Committee shall address to the Director-General opinions, including where appropriate, recommendations on, inter alia, the resources needed to carry out the investigative function of the Office [...]

Recital 37 of Regulation (EU) No 883/2013:

The Office should enjoy independence in the discharge of its functions. To reinforce that independence, the Office should be subject to regular monitoring of its investigative functions by a Supervisory Committee, composed of outside independent persons who are highly qualified in the Office's areas of activity. The Supervisory Committee should not interfere with the conduct of ongoing investigations. Its duties should also include assisting the Director-General in discharging his responsibilities.

13. 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 strategy for human resources should be among the Director-General's priorities.
14. The Committee acknowledged that, as in previous years, the Commission's draft budget was subject to saving measures and noted that the annual increase in the budget had been consistently reduced. Compared to the previous year, OLAF's budget increased by 1.41% compared to 3.42% the year before.

Monitoring tasks of the Supervisory Committee

15. The Committee's view is that this reduction should not adversely affect the fight against fraud or irregular activities causing prejudice to the EU's financial interests. Moreover, the Communication from the Commission to the European Parliament, the European Council and the Council on Further strengthening the Rule of Law within the Union⁵, as well as the Green Deal envisaged by the Commission, adds more responsibilities to OLAF.
16. The Committee wishes to again emphasise that OLAF should not only be spared the most restrictive saving measures applied to other Commission Directorates-General but, as far as human resources are concerned, it should actually benefit from incentives enabling highly qualified staff specialised in investigations and assets recovery to be recruited. This is particularly important for OLAF's future working relationship with the EPPO.
17. During the reporting period, the Committee issued an opinion on OLAF's preliminary draft budget for 2020 and analysed the implementation of OLAF's budget approved for 2019. In examining OLAF's preliminary draft budget for 2020, the Committee focused particularly on:
 - the financial and operational impact of implementing OLAF's new case management system (the 'OCM'),
 - OLAF's human resources strategy;
 - the special report by the Court of Auditors on the Commission's anti-fraud strategy⁶; and
 - the budgetary impact on OLAF of the EPPO's creation.
18. The SC supports the European Court of Auditors' recommendations and the Commission's reply to the Court on strengthening OLAF's capabilities to update the Commission's anti-fraud strategy and prepare the risk assessment and analysis of the EU budget for 2021-2027⁷. To that end, as the SC stated in its Opinion on OLAF's draft budget for 2020, OLAF should be allocated the necessary human resources.

⁵ Brussels, 3 April 2019, COM(2019) 163 final.

⁶ https://www.eca.europa.eu/Lists/ECADocuments/SR19_01/SR_FRAUD_RISKS_EN.pdf.

⁷ https://www.eca.europa.eu/Lists/ECADocuments/SR19_01/SR_FRAUD_RISKS_EN.pdf.

Monitoring tasks of the Supervisory Committee

19. In addition to those tasks, in 2019 OLAF was asked by the Commission to provide input and concrete data to support implementation of the rule of law in the EU Member States and to reinforce the monitoring of its own recommendations addressed to national judicial authorities. These recommendations to Member States, EU institutions, bodies and agencies are mainly of a financial nature and aim to recover amounts unduly received by beneficiaries of EU programmes and actions and thus protect the EU budget and preserve the public's trust in the EU.
20. In its regular exchange of views with the Director-General during the monthly plenary meetings, the Committee also reiterated its concerns and serious doubts about OLAF's ongoing implementation of a new case management system ('OCM') and its budgetary implications. More particularly, the many long delays already incurred in the design and completion of the OCM and the repeated significant budget overruns have led the Supervisory Committee to believe that the management of the OCM project lacks the required transparency and sufficient oversight.
21. In that regard, the Committee acknowledges the adoption by the Commission's Internal Audit Service of its 'Final audit report on IT project management practices in OLAF' (June 2019). That report identified a number of significant weaknesses in the early stages of the OCM, including the lack of a clear and sustainable project governance structure as well as sufficient control from senior management and considerable uncertainty over the future estimates of the budget needed to implement OCM. It also identified clear problems with the OCM cost management.
22. 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.

(ii) Monitoring of cases

Article 15(1) third paragraph of Regulation (EU) No 883/2013:

The Supervisory Committee shall regularly monitor the implementation by the Office of its investigative function [...]

Article 4 of Commission Decision 1999/352/EC of 28 April 1999 establishing the European Anti-Fraud Office, as amended by Decision of 27 September 2013 2013/478/EU:

[...] [The Supervisory] Committee shall be responsible for the regular monitoring of the discharge by the Office of its investigative function.

Joint Opinion of the Legal Services of the European Parliament, Council and Commission of 5 September 2016:

The Joint Opinion underlines that Regulation (EU) No 883/2013 empowers the Supervisory Committee to receive information from the OLAF Director-General:

- *on cases in which information has been transmitted to national judicial authorities even when no investigation has been carried out by OLAF;*
- *on additional case-related information concerning all cases, including ongoing investigations and not only information on closed cases;*
- *as to the reporting obligations of the OLAF Director-General, Regulation (EU) No 883/2013 implies an active duty of information for OLAF. In that regard, the granting of purely passive electronic access to OLAF databases would not be sufficient to fulfil the OLAF Director-General's obligations as laid down in Regulation (EU) No 883/2013.*

23. In order to strengthen OLAF's independence and assist the Director-General in the discharge of his duties, the SC actively and regularly monitors the way in which OLAF conducts investigations. The Committee appointed rapporteurs to monitor certain sensitive internal investigations as well as other cases where OLAF's Director-General decided, after assessing incoming information, not to open an investigation ('dismissed cases').
24. In November 2018, OLAF granted the Committee's rapporteurs and the members of its Secretariat full access to 64 OLAF case files: 60 cases in which OLAF's Director-General took the decision not to open an investigation (referred to as 'dismissed cases') and 4 internal investigations conducted and closed by OLAF. During the course of 2019, the Supervisory Committee got access to a number of additional documents in relation to one of those 4 internal closed cases.
25. During the reporting period, the Committee held meetings and exchanged views with OLAF staff in order to get a better understanding of the way in which some of those investigations were conducted.
26. Between January and March 2019, the Committee rapporteurs held monthly meetings with OLAF's staff management, including the Directors of Directorate A ('Investigations I') and Directorate C ('Investigation Support'); the Heads of Units of Unit 0.1 ('Investigation, Selection and Review'), Unit A.1 (EU Staff), Unit C.3 ('Operational Analysis & Digital Forensics') and Unit C.4 ('Legal and advice unit').

Monitoring tasks of the Supervisory Committee

Selectors, reviewers, investigators, members of the legal advice and follow-up units also took part in those meetings.

27. In the plenary meeting of December 2019, the SC adopted its draft Opinion on cases that were not opened by OLAF's Director-General ('dismissed cases') and in January 2020 forwarded it to OLAF for comments. In February 2020, OLAF provided its comments and additional information. In March 2020 the Supervisory Committee published the Opinion⁸.
28. The Committee recalls that as an independent body, it is in an unrivalled position to carry out the monitoring and supervisory tasks assigned to it. When examining cases reported by OLAF, the Committee ensures that its work remains focused on: potential risks to the independent conduct of investigations; the observance of procedural guarantees and respect of fundamental rights; compliance with the general principles and rules of investigations; assessment of the quality of the files and the information contained in the OCM; and compliance with the rules set out in the Guidelines on Investigation Procedures for OLAF staff (GIPs).

(iii) Monitoring the duration of OLAF's investigation

Article 15(1) of Regulation (EU) No 883/2013:

The Supervisory Committee shall regularly monitor the implementation by the Office of its investigative function, in order to reinforce the Office independence in the proper exercise of the competences conferred upon it by this Regulation.

Article 15 (1) second paragraph of Regulation (EU) No 883/2013

The Supervisory Committee shall in particular monitor developments concerning the application of procedural guarantees and the duration of investigations in the light of the information supplied by the Director-General in accordance with Article 7(8).

Article 7(5) of Regulation (EU) No 883/2013

Investigations shall be conducted continuously over a period which must be proportionate to the circumstances and complexity of the case.

Article 7(8) Regulation (EU) No 883/2013

⁸ Opinion No 1/2020 - OLAF's dismissed cases concerning Members of EU Institutions. The non-confidential version of the Opinion is publicly available on: https://europa.eu/supervisory-committee-olaf/sites/default/files/opinion_no_1_2020_.pdf.pdf.

Monitoring tasks of the Supervisory Committee

If an investigation cannot be closed within 12 months after it has been opened the Director-General shall at the expiry of a 12 month period and every six months thereafter, report to the Supervisory Committee indicating the reasons and the remedial measures to speed up the investigation.

General remarks

29. Monitoring the duration of OLAF's investigations is one of the Committee's main duties to reinforce OLAF's independence.
30. The obligation to conduct administrative procedures within a reasonable time is a general principle of EU law and part of the right to good administration of Article 41(1) of the Charter of Fundamental Rights⁹. According to case law, where the duration of a procedure is not set by a provision of EU law, the reasonableness of the period of time taken is to be appraised in the light of all of the circumstances specific to each individual case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties to the case¹⁰.
31. It follows from this jurisprudence and from Article 7(5) of the OLAF Regulation¹¹ that the procedure before OLAF should be conducted continuously and cannot be extended beyond a reasonable time, which must be assessed by reference to the circumstances and complexity of each case¹².
32. The Committee considers it also crucial to emphasise its role, as clarified by the jurisprudence of the EU Courts¹³, and underline the scope of its monitoring activity in the specific context of investigations lasting more than 12 months.

⁹ Case T-447/11 - *Catinis v Commission*, 21 May 2014, paragraph 34 and the case law cited.

¹⁰ Case T-447/11 - *Catinis v Commission*, 21 May 2014, paragraph 34; Joined Cases C- 238/99 P, C- 244/99 P, C- 245/99 P, C- 247/99 P, C- 250/99 P to C- 252/99 P and C- 254/99 P *Limburgse Vinyl Maatschappij and Others v Commission* [2002] ECR I- 8375, paragraph 187.

¹¹ 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, 18/09/2013, p. 1–22.

¹² Article 7(5) Regulation 883/2013 and Case T-48/05, Case *Franchet and Byk v Commission*, 8 July 2008, paragraph 274.

¹³ *Franchet and Byk v Commission*, 8 July 2008, Case T-48/05, paragraphs 167 and 168.

Monitoring tasks of the Supervisory Committee

33. First, by regularly monitoring the duration of OLAF's investigations and the reasons for any undue delays, the SC is seeking to reinforce OLAF's investigative independence and impartiality by verifying that no external or internal interference in the impartial conduct of an investigation takes place, that equal treatment is ensured, and that the delays incurred are proportionate and justified by the complexity and/or circumstances of the case concerned.
34. Second, a lengthy investigation that cannot be justified by the circumstances and/or complexity of a given case may have serious, negative consequences on (i) the rights of defence of the persons concerned (who have a right to have investigations concerning them handled within a reasonable time as provided for by Article 41 of the EU Charter of Fundamental Rights), and (ii) the follow-up to the investigation (i.e. it becomes more difficult to collect evidence as time passes). Thus, by monitoring the duration of OLAF's investigations, the SC makes sure that the procedural rights guaranteed by Article 41 of the Charter of fundamental right are indeed respected.
35. In addition, the Committee's monitoring aims at ensuring that the results and findings of the investigations conducted by OLAF are taken into account and appropriately followed up by the EU institutions, bodies, offices and agencies and by the Member States concerned. The judicial, financial or disciplinary follow-up and the potential for prosecution and recovery may be irretrievably compromised, in particular due to time-barring issues (prescription under the applicable national laws) or the impossibility for the national judicial authorities to conduct a proper investigation for events which occurred a long time ago.
36. Finally, by monitoring the length of investigations, the SC verifies that the human and financial resources allocated to OLAF have been used efficiently which might have an impact on the adoption of OLAF's investigation policy priorities and its overall budget.
37. It is important to emphasise that this specific role, entrusted to the Committee by Article 7(8) of the OLAF Regulation, requires the Committee to carry out a case-by-case analysis of each inquiry which is older than 12 months in order to ensure that OLAF's investigations are conducted continuously and over a period proportionate to their circumstances and complexity. For the SC to fulfil that mandate, it needs to have direct and unfettered access, if not to the entire OLAF case file, at least to elements which are essential for understanding the case, identify the person(s) concerned, and follow the timeline of the investigative measures as well as the case management-related decisions taken by OLAF. In so doing, the Committee fully respects OLAF's independence in carrying out its investigations and does not interfere in the conduct of such investigations.

Access to case-related information

38. In its previous activity report, the SC noted that the content and quality of the reports submitted by OLAF on cases exceeding 12 months in 2019 did not include any information that would enable the Committee to monitor the duration of investigations in an effective way¹⁴. In particular, most reports did not contain any meaningful or substantive information in the description of the case to enable the Committee to assess whether the reasons OLAF relies on to justify the duration of the investigations are accurate and whether the remedial measures taken with a view to complete them are appropriate.
39. The SC wishes to recall that, as confirmed by the Joint Opinion of the three Legal Services (the Joint Opinion)¹⁵, it is up to the supervisory body (the SC) to decide, based on a necessity assessment, which information should be provided by the supervised body (OLAF) or which information is sufficient for the performance of its supervisory role. Only in this way can the SC's independence in assessing OLAF's investigations, and therefore OLAF's own independence, be ensured. As stressed by the said Joint Opinion, OLAF should facilitate the Committee's tasks and provide the information requested, unless such information is manifestly irrelevant or its transmission would necessarily constitute interference with the conduct of the investigation in progress¹⁶.
40. The approach followed by OLAF in the past, under the former OLAF Regulation¹⁷ and **up until 2013**, was to transmit **systematically** to the SC the 'assessment of initial information'¹⁸ and personal data for **each**

¹⁴ Annual Activity Report 2018 of the Supervisory Committee of OLAF, paragraphs 45 and ss.

¹⁵ Point 8 of the Joint Opinion of the Legal Services of the European Parliament, the Council and the Commission on three aspects of the relationship between OLAF and its Supervisory Committee, 12 September 2016. (Document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council – OJ L 145, 31/5/2001, p. 43).

¹⁶ Point 8 of the quoted Joint Opinion.

¹⁷ Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) - OJ L 136, 31/05/1999 p. 1.

¹⁸ In the *Assessment of Initial Information*, the evaluator presented the information gathered and made a recommendation to the Director-General of OLAF as to whether an investigation should be opened. At present that information is included in the *Opinion on opening Decision – Workform I*, OLAF vademecum of Case Selection.

inquiry lasting longer than ‘12 months’¹⁹ in order to enable the SC to carry out its supervisory mission under the OLAF Regulation. This approach was **unilaterally** discontinued by OLAF in 2013. In its previous annual activities reports²⁰ and opinions²¹, the SC expressed in clear terms its strong opposition to that new practice, which severely limited its ability to perform its supervisory mandate under the OLAF Regulation.

41. During the period of reference, OLAF’s Director-General and the Supervisory Committee engaged in a dialogue to find ways to restore the pre-2013 access to case-related information available and registered in OLAF’s case management system (OCM), a *sine qua non* condition for the Committee to be able to monitor effectively OLAF’s independence in conducting its external and internal investigations. The Committee welcomes the efforts by OLAF’s Director-General in the last months of 2019 to find an appropriate solution to this important issue. **At the same time, the Committee regrets that the ongoing discussion has lasted so long and hopes that a workable and mutually agreed solution can be found as soon as possible to restore the same meaningful form of access that the Committee enjoyed during its first 14 years of operation.**
42. In February 2019, the Committee sent OLAF’s Director-General two new ‘model reports’ based on a reporting template that OLAF itself had previously proposed. The first was designed for an investigation exceeding 12 months, while the second was intended as a reporting tool for investigations lasting 18 months or longer and was designed to check the impact of any remedial measures taken by OLAF to expedite the investigation.
43. These two model reports included the kind of information the Committee would consider the ‘minimum’ necessary to perform its

¹⁹ Under the former OLAF Regulation (Regulation 1073/1999), the reporting period provided for by Article 11(7) was ‘9 months’. Article. 7(8) of Regulation 883/2013 extended the reporting period to ‘12 months’.

²⁰ SC Annual Report 2018 paragraphs 45, 46 and 49, SC Annual Report 2017 paragraphs 24-29, SC Annual Report 2016 paragraphs 30-33, SC Annual Report 2015 paragraphs 30-33 and paragraphs 1-9, SC Annual Report 2014 paragraphs 26-28, SC Annual Report 2013 paragraphs 18-19, SC Annual Report 2012 paragraph 36.

²¹ SC Opinion No 2/2017 - Accompanying the Commission Evaluation report on the application of Regulation (EU) of the European Parliament and of the Council No 883/2013 (Article 19) paragraphs 30-31; SC Opinion No 4/2014 on Control of the Duration of Investigations conducted by OLAF paragraph 20.

Monitoring tasks of the Supervisory Committee

supervisory duties under Articles 7(8) and 15(1) of the OLAF Regulation, that is: (i) a detailed description of the reported case, including the estimated economic impact; (ii) the legislation allegedly breached; (iii) potential sanctions and time-barring considerations; (iv) operational activities undertaken and their results; (v) operational activities to be carried out; (vi) reasons for the non-completion of the case; and (vii) the remedial measures taken or envisaged to speed up the investigation.

44. In May 2019, OLAF forwarded to the SC a different proposed model report which was not considered satisfactory by the SC, because it did not contain the essential minimum information requested by the Committee. In July 2019, OLAF proposed a new revised version of the '12-month template' which aimed to address the Committee's serious concerns and reservations regarding the kind of information made available to the Committee.
45. The Supervisory Committee has analysed in depth the new revised reporting template proposed by OLAF²². Even though the new template could be considered an improvement compared to the previous one (used by OLAF from 2013 to March 2019), it still does not meet the SC's needs in terms of the quality and completeness of the information provided in it. In addition, and more critically, personal data are redacted from the templates/reports, making the assessment carried out by the SC almost impossible. **The SC addressed the results of its analysis and its proposed alternative solutions to OLAF's Director-General in November 2019.**
46. In parallel to the discussion on the quality of the information provided by OLAF to the SC, on 18 July 2019, OLAF's Director-General requested an Opinion from the Office of the European Data Protection Supervisor (EDPS), inquiring in essence whether, in performing his reporting duties under Article 7(8) of the OLAF Regulation, he would be in breach of the applicable data protection rules were he to disclose the name(s) of the person(s) concerned in an OLAF investigation lasting more than 1 year.
47. Following a request by the EDPS (22 August 2019), the Secretariat held two meetings with the EDPS (15 November 2019 and 2 December 2019) in which it discussed in detail the Committee's mandate and the type of information that is needed to fulfil its monitoring and supervisory tasks under the OLAF Regulation. The SC provided its written comments to

²² The Supervisory Committee shared with OLAF the results of its analysis by letter dated 27 November 2019 and proposed an alternative solution.

Monitoring tasks of the Supervisory Committee

the EDPS on 17 December 2019. On 5 February 2020, OLAF submitted additional information to the EDPS.

48. As stated on several occasions, the SC does not carry out standard, automated verifications, but a *detailed analysis for each specific inquiry, which is older than 12 months*. The identity of persons under investigation and that of the legal entities involved in OLAF's investigations should be disclosed in the '12-month report'. Knowing from the outset the identity of persons under investigation is an essential and indispensable element for the Members of the SC when assessing whether the reasons put forward by OLAF for not having completed a specific inquiry actually justify the duration of the investigation. Without this information, the SC is unable to fulfil its mandate.
49. The SC wishes to recall that its processing of data when monitoring is part of the legitimate exercise of its official authority, which is vested in it directly by the OLAF Regulation (Articles 7(8) and 15(1)). The lawfulness of such processing was first recognised by the EDPS in its opinion of 2007²³. In this regard, the Committee emphasises that it does not need to have access to the personal data of any person mentioned in an OLAF investigation but only to the names of the person(s) concerned. Thus, the Committee's position, as expressed in its exchanges and correspondence with the EDPS mentioned above, has always been that its processing of data in this context is adequate, relevant and non-excessive, allowing it to fulfil the specific mandate entrusted to it by the OLAF Regulation.
50. In March 2020, the EDPS replied to the request from OLAF's Director-General for an opinion, following the entry into force of the new EU data protection rules²⁴. In its Opinion, **the EDPS confirmed that the SC's processing of personal data was lawful and necessary**²⁵.

²³ EDPS Opinion on a notification for prior checking received from the DPO of OLAF on regular monitoring of the implementation of the investigative function (Case 2007/73).

²⁴ EDPS Opinion on 'Modalities of provision of personal data by the European Anti-Fraud Office (OLAF) to the OLAF Supervisory Committee' (EDPS ref. 2019-0720 - D 0793).

²⁵ Extract from EDPS Opinion 2020: ' (...) For the purpose of the Committee's monitoring, in plain language, it needs to know the reasons why OLAF has not finished its investigation yet and what are OLAF's plans to finish it. It also needs information to help it protect the investigative independence of OLAF. The information needed depends on the precise purposes of the Committee's monitoring activities.

Where e.g. an investigation is about politically exposed persons concerned and that slowed it down, it is our understanding that OLAF would include that information in the reporting form (including the names).

Monitoring tasks of the Supervisory Committee

51. The SC invited OLAF to implement without undue delay the EDPS's conclusions and give the Committee access to the identity of (physical) persons involved in investigations running longer than 12 months. The Committee also fully agrees with the EDPS that the identity of legal persons does not constitute 'personal data' under the applicable EU law, and therefore should also be disclosed.

Reports of investigations lasting more than 12 months received by the Supervisory Committee in 2019

52. In 2019, the Committee received 587 reports²⁶ from OLAF concerning 375 individual investigations lasting more than 12 months. Of these individual cases, 34.4% ran over 12 months, while 27.2% ran longer than 18 months. The Committee noted that 38.4% of all the cases reported for the purpose of Article 7(8) exceeded 24 months. Broken down, that gave: 16.5% of individual cases running over 24 months; 11.2% over 30 months; 4.5% over 36 months; 4.8% over 42 months; 0.8% over 48 months and 0.5% more than 48 months (Figure 1). The Committee noted that in 2019 there were 144 cases over 24 months that were still ongoing. The sectoral breakdown of investigations conducted by OLAF for more than 24 months is represented in Figure 2.

Checking the length of investigations could require access to the names of natural persons concerned in some cases. Similarly, for reporting on how procedural safeguards were ensured (information on investigation, hearing, comments etc.), the names could appear to be necessary.

Moreover, there are other parts of the Committee's tasks for which it can argue that it needs the names of the persons concerned by an investigation: one of its roles is to protect OLAF's investigative independence, which includes checking for links between investigators and persons concerned.

The Committee is entitled to obtain further information where it considers that this information is necessary for understanding and checking a specific case in accordance with Article 15(1), fifth subparagraph, of the OLAF Regulation. This could e.g. be the case when the Committee deems OLAF's explanations not sufficient or when it wants to double-check OLAF's account. Providing the names of the person concerned should allow the Committee to analyse whether or not additional information is necessary to perform its missions. This layered approach seems to be in line with the data minimisation principle (only collecting the information you need, Article 4(1)(c) of the Regulation). (...)

²⁶ Reports provided by OLAF to the Supervisory Committee in 2019.

Monitoring tasks of the Supervisory Committee

375 individual cases - 2019

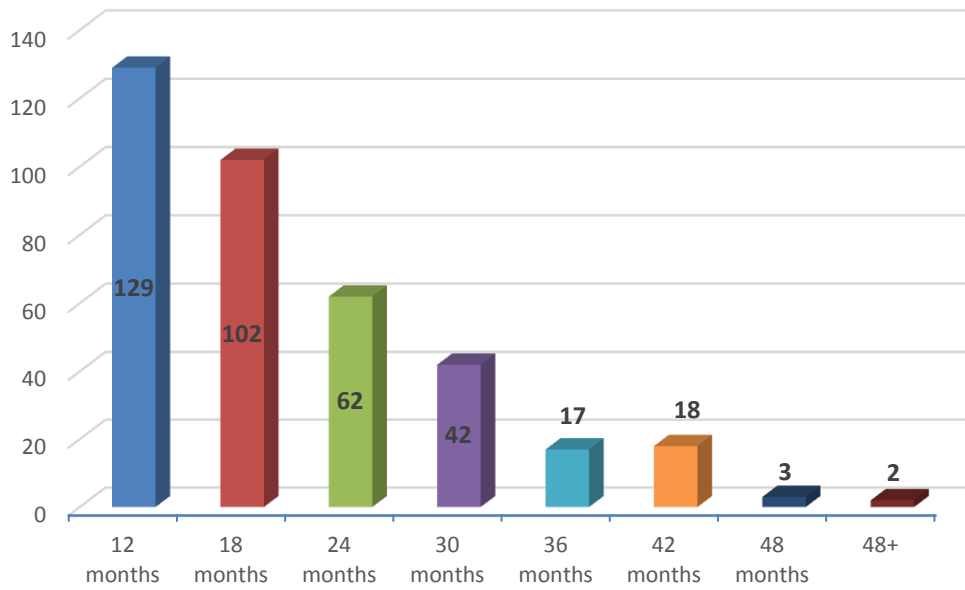


Figure 1

144 individual cases longer than 24 months & 2019

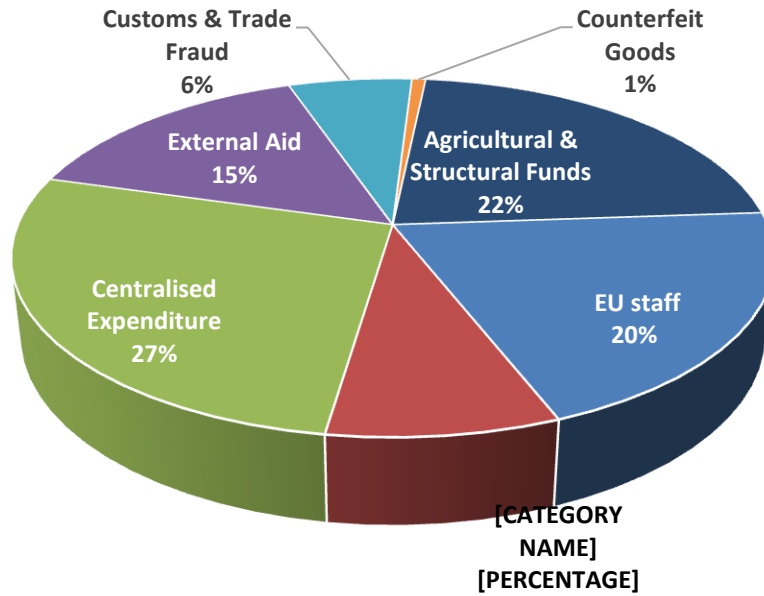


Figure 2

Monitoring tasks of the Supervisory Committee

53. In the first quarter of 2019, OLAF provided information to the SC using the older format for reporting that it used from 2013 until April 2019. The Committee has always pointed out that these reports lacked meaningful content and were of an incomplete nature.
54. For the second quarter of 2019, the reports provided to the SC were based on the reporting template proposed by OLAF in May 2019, while those covering the period July to December 2019 were based on the template proposed by OLAF in July 2019 (263 reports in total).

The Committee's analysis of 263 reports of investigations lasting longer than 12 months

55. In reviewing the 263 reports of investigations lasting longer than 12 months, covering the period April-August 2019, the Committee also assessed the extent to which OLAF's newly proposed reporting templates provide sufficient and meaningful information enabling the Committee to monitor developments on the application of procedural guarantees and the duration of investigations in accordance with Article 7(8) of the OLAF Regulation.
56. The Committee focused its analysis on whether OLAF's report provided the following essential elements for the Committee's monitoring tasks, namely:
 - a detailed description of the case;
 - the estimated economic impact;
 - the legislation allegedly breached;
 - potential sanctions and time-barring considerations;
 - operational action undertaken to date and its results;
 - operational action still to be carried out; and
 - reasons for the case not having been completed, including resource allocation, the amount of operational work, cooperation issues and other matters.
57. The SC maintained its previous position that the quality of the information provided by OLAF in the new reporting templates still does not enable the Committee to monitor the duration of investigations in accordance with Article 7(8) of the OLAF Regulation and thus effectively carry out its supervisory role.

Monitoring tasks of the Supervisory Committee

58. In particular, in all the cases analysed the reports do not include sufficient relevant factual and/or contextual background information enabling the Committee to understand at least the essential facts of the case. In cases where the scope of an investigation was extended, the reports provide no reasons for doing so. More importantly, none of the reports identifies the legal and/or natural person(s) under investigation.
59. Nor is information on the ‘estimated economic impact’ and the ‘potential sanctions’ systematically provided in the reports; moreover, only in a handful of cases do the reports include information on the ‘legislation allegedly breached’, an important element for this exercise.
60. In most of the reports, the timeline/chronology of the investigation activities carried out is not explained, with dates being mentioned only in a handful of cases. No meaningful information on the results of the investigation steps taken is provided either, nor is the general or specific purpose of each activity systematically provided. Finally, only in a few exceptional cases can the reader identify the activities carried out in the last 6 months.
61. Insufficient or even no explanations are given as to why the investigations have not yet been completed²⁷. In some cases, there are no clear or sufficient explanations of the ‘*problem arising*’ which would justify the delay in question.
62. The reports for cases exceeding 18 months do not discuss how the previously mentioned remedial measures have been implemented (only in exceptional cases was this information provided), making it therefore impossible to assess the progress, if any, made since then.
63. In the light of these findings, and to avoid an inefficient use of OLAF’s human resources, the SC proposed a workable and effective solution involving **systematic and automatic access to specific OLAF documents already available in the OCM, OLAF’s case management system**. The Committee considers this will considerably reduce, if not eliminate, the additional work of OLAF’s investigators who have to draft for the benefit of the SC additional reports with the exact same information already in other case-related reports stored in the OCM. This form of direct access to specific and existing information should enable the Committee to obtain comprehensive and meaningful

²⁷ In only a very few cases has the investigator provided some additional, but still insufficient, information, using the category ‘other’.

Monitoring tasks of the Supervisory Committee

information on investigations exceeding 12 months, and thus fulfil its mandate under Article 7(8) of the OLAF Regulation. That said, the Committee will for the sake of completeness emphasise that any direct electronic form of access to the case-related information stored in the OCM does not do away with the obligation OLAF's Director-General has under the provision mentioned above in the OLAF Regulation to continue reporting to the SC the reasons why investigations have not been closed within 12 months after they were opened, and the remedial measures envisaged to speed up those investigations.

64. The Committee is optimistic that following the EDPS's recent Opinion revising its earlier Opinion of 2007, a final solution will be found in the course of 2020.

Monitoring developments concerning the application of procedural guarantees

The second paragraph of Article 15(1) of Regulation (EU) No 883/2013:

The Supervisory Committee shall in particular monitor developments concerning the application of procedural guarantees (...).

Article 17(7) of Regulation (EU) No 883/2013:

The Director-General shall put in place an internal advisory and control procedure, including a legality check, relating, inter alia, to the respect of procedural guarantees and fundamental rights of the persons concerned (...).

Article 9 of Regulation (EU) No 883/2013: Procedural Guarantees (not reported here due to its length)

Individual complaints reported by OLAF about its investigations

65. Article 9 of the OLAF Regulation lists the principles and the procedural guarantees that OLAF should apply when conducting an investigation. Article 15(1) second paragraph of the Regulation entrusts the SC with the

Monitoring developments concerning the application of procedural guarantees

specific task of ensuring that OLAF respects procedural guarantees in the exercise of its investigative functions. It is settled case law that OLAF must respect fundamental rights as laid down in EU law, in particular in the Charter of Fundamental Rights²⁸. The Committee pays particular attention each year to this aspect of its mandate, as it is of paramount importance to those targeted by an OLAF investigation.

66. Persons affected by an OLAF investigation can submit a complaint directly to the Director-General of OLAF. OLAF's procedure for dealing with such complaints is detailed and publicly available on OLAF's website²⁹. OLAF's Director-General has taken action to ensure that reports on individual complaints are sent at least twice a year to the SC. In September 2019, the SC received a report on complaints about procedural guarantees covering the first half of 2019 (January to June 2019). A new report covering the second half of 2019 was submitted to the SC in February 2020. The reports covered information on:
 - (i) procedural complaints received by OLAF under its own complaints procedure (six complaints in total³⁰);
 - (ii) complaints against OLAF submitted to the European Ombudsman (four complaints in total);
67. In 2019, OLAF did not receive any complaints based on Article 90a of the Staff Regulations.
68. The explanations provided in these two OLAF reports, although informative, were of a general nature. Alleged breaches of rights in OLAF's investigations were listed in a descriptive manner together with a brief summary of OLAF's reply to each allegation. The reports also indicated instances where the European Ombudsman took a decision, with a brief summary of her conclusions. Overall, the information initially provided by OLAF did not allow the SC to monitor the developments of procedural guarantees and fundamental rights.

²⁸ Judgement of the General Court of 3 May 2018 in case T-48/16, Sigma Orionis SA v European Commission, paragraphs 104 and 105 and further jurisprudence quoted in paragraph 100.

²⁹ https://ec.europa.eu/anti-fraud/olaf-and-you/complaints-olaf-investigations_en.

³⁰ OLAF also informed the SC about a seventh complaint submitted to it in December 2019. As that complaint was still being handled at the time, the SC did not carry out any analysis of it.

Monitoring developments concerning the application of procedural guarantees

69. To ensure that the fundamental rights of persons affected by OLAF's investigations were protected and that OLAF correctly applied the procedural guarantees, the Committee requested access to (i) the original complaints and (ii) OLAF's replies to them.
70. OLAF provided the SC with the requested information in February 2020. Following the analysis of these complaints and OLAF's replies, the SC requested further information on six of the complaints handled by OLAF. OLAF provided this information in April 2020.

Analysis of individual complaints handled by OLAF

71. In 4 of the 10 complaints against OLAF, the European Ombudsman had already issued a closing Decision of 'no maladministration'. Thus the Secretariat focused its attention on the six complaints directly handled by OLAF in 2019.
72. The main allegations raised in those complaints concerned:
 - 1) the right of the person concerned to be heard, and
 - 2) the right of the person concerned to have access to the investigation files and documents used against him.
73. Regarding (1), the Committee notes that in order to exercise effectively the right to be heard, the persons concerned must be informed of all the facts concerning them. Therefore, OLAF should provide a full account of the relevant facts and keep a full record of the comments made by the person concerned³¹. In all of the six complaints analysed, the complainant, i.e. the person concerned in an OLAF investigation, raised the following arguments:
 - a) either the facts presented by OLAF in the 'summary of facts' were incomplete/not clear/not accurate, thus depriving the person concerned from an opportunity to comment (Art. 9(4) of the OLAF Regulation);
or
 - b) the statements made by the person concerned (i.e. during on-the-spot checks) were not annexed to the report on on-the-spot checks, or

³¹ Case T-259/03 *Nikalaou v Commission*, paragraph 238.

Monitoring developments concerning the application of procedural guarantees

- c) the deadline to make comments on OLAF's finding was too short, or
 - d) OLAF should have allowed the person concerned to be heard by way of an oral hearing or interview.
74. The SC considered that in claims (a), (b), and (c), the SC could represent breaches of procedural guarantees in the conduct of OLAF investigations and thus decided to further consult the case files.
75. On the basis of an in-depth analysis, the SC concluded that the allegations mentioned above were unfounded and that OLAF had provided the person(s) concerned with a clear and complete 'summary of the facts' and with the possibility to effectively comment on those facts. OLAF also provided additional information and extended the deadline for replying whenever asked and corrected 'factual errors'. On one occasion, OLAF provided access to certain documents it considered necessary for understanding the issues at stake.
76. Finally, regarding the right to a hearing or an interview [claim (d)], the SC notes that Article 9(4) of the OLAF Regulation establishes the principle by which conclusions referring to a person by name may not be drawn without that person first having been able to express his/her views on all the facts that concern them. However, it is for OLAF to choose the means by which the person concerned is given the opportunity to comment. There is no right to have an 'oral meeting' or to be heard orally; instead what matters is that the person concerned was given the opportunity to express his or her views in writing. Furthermore, and for the sake of completeness, an interview conducted under Article 9(2) of the OLAF Regulation is not a right of the interviewee, but an investigative activity that OLAF performs. Therefore, it is for OLAF, not a person concerned, to decide in each case whether such a measure is necessary.
77. With regard to (2) and the right to have access to the case file, the SC refers to the jurisprudence of the EU Courts according to which a person concerned cannot usefully rely on either the principle of respect for the rights of the defence or Article 41 of the Charter (right of every person to have access to their file) in order to obtain access to OLAF's investigation files and/or final report. The EU Courts have consistently held that the effectiveness and confidentiality of the mission entrusted to OLAF and OLAF's independence could be undermined by access to these documents before a final decision adversely affecting the person concerned has been adopted. As OLAF's investigation reports and the decisions to transmit information to national judicial authorities have not been viewed as adversely affecting people, OLAF is under no obligation to grant access to its files before such a decision has been taken. The case law has restricted this right precisely because it is upheld in full in the

Monitoring developments concerning the application of procedural guarantees

later (judicial, disciplinary or financial) stages of the investigation before the competent national authorities.

78. In conclusion, the SC has not identified a breach of procedural guarantees in the cases analysed. Nevertheless, the Committee will continue to monitor closely all complaints received by OLAF.

Complaints received by the Supervisory Committee against OLAF

79. The Supervisory Committee's functional mailbox³² ('FMB') is the contact point for stakeholders and the public to inform the Committee about concerns and issues that fall under its remit.
80. The Committee often receives complaints either about ongoing OLAF investigations or alleged fraudulent activities that affect the financial interests of the EU. However, such complaints fall outside the remit of the SC which is neither an anti-fraud body or a board of appeal against OLAF decisions.
81. That said, the SC will forward any relevant information to OLAF and inform the sender accordingly. In 2019, the Committee received a relatively small number of complaints against OLAF decisions or ongoing investigations. In one case concerning alleged breaches of fundamental rights, the persons concerned had already filed a complaint with OLAF. Since the case was in the hands of the competent national judicial authority to which OLAF had forwarded its final report and was also subject to an inquiry by the European Ombudsman, the Supervisory Committee decided that there was no need to take any further action.

³² OLAF-FMB-supervisory-committee@ec.europa.eu.

Cases sent to national judicial authorities

Article 17(5)(b) of Regulation (EU) No 883/2013:

The Director-General shall keep the Supervisory Committee periodically informed of the Office's activities, the implementation of its investigative function and the action taken by way of follow-up to investigations.

The Director-General shall inform the Supervisory Committee periodically: (...)

(b) of cases in which information has been transmitted to judicial authorities of the Member States.

82. In 2019 OLAF provided the SC with a list of 49 cases sent to the national judicial authorities (NJA) of the Member States between 1 October 2018 and 30 September 2019³³. The list contains the case reference, the date of the transmission of the final case report to the NJA and the recipient of the recommendation. This bare statistical information is of little practical use to the SC.
83. As stated in the most recent activity report and in its Opinion No 2/2017³⁴, the Committee considers that OLAF should provide it with the final case report sent to the NJA. The OLAF case management tool (OCM) already provides direct access to this OLAF report. The Committee should have direct access to the final case reports in the OCM once they have been forwarded to the NJA.
84. The SC invites OLAF's Director-General to implement in the future this practice of granting to the SC access to the final case report.

³³ Note for the attention of Mr. Jan Mulder, Chairman of the OLAF Supervisory Committee of 25 November 2019.

³⁴ See Paragraph 32 on the Opinion accompanying the Commission Evaluation report on the application of Regulation (EU) No 883/2013 (Article 19) of the European Parliament and of the Council. https://europa.eu/supervisory-committee-olaf/sites/default/files/opinion_2_2017.pdf.

Cases where OLAF's recommendations were not followed by the relevant authorities

Article 17(5)(a) of Regulation (EU) No 883/2013:

The Director-General shall keep the Supervisory Committee periodically informed of the Office's activities, the implementation of its investigative function and the action taken by way of follow-up to investigations.

The Director-General shall inform the Supervisory Committee periodically: (...)

(a) of cases in which the recommendations made by the Director-General have not been followed;

85. The SC devotes special attention to the outcome of OLAF's investigations. The actions taken by the competent authorities (e.g. recovering money, starting prosecution, etc.) are an indicator for OLAF to assess its investigative function, but also for Member States and EU institutions to assess the level of protection of the EU's financial interests.
86. OLAF's investigation of fraud against the EU budget, corruption and serious misconduct within the European institutions requires significant human, material, and financial resources. If OLAF discovers that irregularities or fraud have taken place, the public expects OLAF's recommendations to be pursued, fraudsters to be indicted and convicted and the harm to the EU budget repaired.
87. According to figures in OLAF's last five annual activity reports, the indictment rate in OLAF's judicial recommendations has decreased over the years from 53% to 36%. Various stakeholders have repeatedly expressed their concern about a relatively low rate of prosecution, indictment and conviction following OLAF's transmission of final reports to the NJAs.
88. The SC shares the view often expressed that the rate of conviction cannot serve as a meaningful benchmark for measuring the effectiveness of (criminal) justice. The number of prosecutions and convictions that follow OLAF recommendations to the Member States should be compared with the number of the prosecutions and convictions that follow criminal reports by national administrative authorities. Moreover,

Cases where OLAF's recommendations were not followed by the relevant authorities

acquittals and dismissals are more frequent in complex cases of economic crime than in general ones, due to complex facts, multiple and sometimes unclear rules and other elements which make it difficult, if not impossible, to establish a person's intention to commit a crime (*mens rea*). In any case, those figures call for a careful reflection by OLAF and specific attention by the SC³⁵.

89. The SC acknowledges OLAF's efforts to better follow up on OLAF's financial recommendations. It welcomes the initiative OLAF took in December 2019 to set up a Monitoring Task Force to support OLAF's Director-General in discharging his duties to monitor OLAF's recommendations for the Commission and the European Parliament.³⁶ The SC supports this idea and shares the view that additional resources need to be provided so that this can be done in an effective way.
90. However, the SC notes that this Task Force seems at present to be focusing more on the financial recommendations than on the judicial recommendations. Although collecting and verifying statistics is part of the overall evaluation process, the Task Force should focus more on an impact evaluation to identify the reasons why OLAF's recommendations have so far not been followed. This would enable OLAF to provide any needed assistance to the recipients of the recommendations and to anticipate and address at an early stage the possible problems and issues preventing the recipients of its recommendations from implementing them.

OLAF's periodical information on cases where the competent authorities have not followed OLAF's recommendations

91. Under the OLAF Regulation³⁷, OLAF's Director-General has an obligation to inform the Committee periodically of cases in which OLAF's recommendations have not been followed.

³⁵ The SC is conducting an in-depth analysis of 43 cases in which OLAF's recommendations have not been followed up by the competent authorities.

³⁶ The Task Force was initially a pilot project and became a permanent part of OLAF's structure following OLAF's reorganisation in mid-2020.

³⁷ Third paragraph of Article 17(5)(a) of the OLAF Regulation.

Cases where OLAF's recommendations were not followed by the relevant authorities

92. To fulfil this obligation, once a year OLAF's Director-General provides the SC with a chart giving an overview of the follow-up to OLAF's recommendations. The basic information sent to the SC includes: the OLAF case number, the date on which the recommendation was issued, identification of the recipient, a short summary of the recommendation, the date of the reply received from the competent authorities informing OLAF that the recommendation would not be followed up, the reasons given by the authority concerned for not following up, and for some cases, additional comments by OLAF.
93. As requested by the SC in its most recent activity report³⁸, OLAF has adapted the time frame of the reporting system to the calendar year (January-December) which is more comprehensive and less vulnerable to errors.
94. OLAF had informed the SC that by April 2020, it would provide the figures requested. It was only in July 2020, that OLAF communicated to the SC the consolidated report on OLAF's judicial and disciplinary recommendations not followed covering the period January to December 2019. The Committee did not receive the missing information on OLAF's financial recommendations not followed by the time this Opinion was adopted.
95. Based on the information mentioned above, OLAF received replies on 42 cases for which the authorities concerned chose not to follow OLAF's judicial recommendations. The type and frequency of reasons given by the competent authorities for not following OLAF's recommendations could be grouped as follows:

| Number | Reason provided |
|--------|---|
| 22 | Lack of evidence /Insufficient evidence |
| 12 | No criminal offence |
| 4 | Time-barred |
| 3 | Low Priority |
| 2 | Lack of resources |
| 1 | Difficult to collect evidence |

³⁸ See the SC's 2018 Activity Report, paragraph 52.

Cases where OLAF's recommendations were not followed by the relevant authorities

| | |
|---|----------------------|
| 1 | Lack of jurisdiction |
| 1 | Other |

Table 1 Reasons provided by competent authorities not to follow OLAF's recommendations as reported by OLAF

96. The number of cases dismissed or not prosecuted due to lack of or insufficient evidence is constantly raising each year (22 cases in 2019 and 11 in the previous reporting period). The SC also notes that the number of cases dismissed by the national authorities because no criminal offence was found is rather high (12 cases). For the SC, even if in some cases OLAF carried out its investigation in coordination with the national prosecution services concerned, the fact remains that only an early and timely cooperation between OLAF and the national authorities concerned is likely to reduce the number of dismissed cases. OLAF and the national competent authorities should work hand-in hand from the moment the first suspicion of fraud arises.
97. Low priority, lack of resources and difficulties to collect evidence are also mentioned as reasons invoked by the national authorities not to follow OLAF's recommendations. Since the information provided by OLAF to the SC is limited and purely descriptive, the SC cannot assess the relevance and significance of such arguments. The SC reiterates that under the Treaty, it is a shared responsibility (Members States and European Union) to *counter fraud and any other illegal activities affecting the financial interests of the Union*³⁹.
98. The SC is currently working on an Opinion on OLAF's recommendations not followed by the recipient authorities that should provide an in-depth analysis of the issues raised in them.
99. The SC will invite OLAF's Director-General to inform the Committee as soon as he becomes aware that his recommendations have not been followed, instead of the current practice of informing the SC only once a year. This would allow the SC to continuously monitor in real time, which would definitely improve OLAF's investigative function. The new upcoming functionalities of OLAF's case management system (OCM)

³⁹ Article 325 TFEU.

Cases where OLAF's recommendations were not followed by the relevant authorities

should make this feasible without overloading OLAF's staff with extra reporting work. On that, the SC addressed a letter to OLAF in 2019⁴⁰.

The SC's analysis of 43 cases in which recommendations have not been followed by the competent authorities

100. In the last SC activity report⁴¹, the Committee expressed its interest in monitoring and analysing the results and impact of OLAF's work in a more in-depth and less statistical way.
101. In 2019, the SC began analysing all of OLAF's recommendations issued from 1 October 2013 to 13 December 2017 for which OLAF received replies between 1 March 2016 and 28 February 2018 from the authorities concerned informing OLAF that its recommendations had not been followed (43 cases in total). The SC plans to issue an Opinion in 2020 which will cover two main aspects: (i) how OLAF monitors its recommendations and cooperates with the relevant authorities, and (ii) how potential criminal liability is gathered and forwarded to the relevant authorities.

⁴⁰ Letter of 14 October 2019.

⁴¹ See the SC's 2018 Activity Report, paragraph 60.

Assessment of OLAF's investigation policy priorities and investigation guidelines

Article 17(5) of Regulation (EU) No 883/2013:

The Director-General shall each year determine, within the context of the annual management plan, the investigation policy priorities of the Office and shall, prior to their publication, forward them to the Supervisory Committee.

Article 5(1), second sentence:

The decision by the OLAF DG whether or not to open an investigation shall take into account the investigation policy priorities and the annual management plan of the Office (...).

Article 16 (2)(a), Exchange of views with the institutions:

The exchange of views may relate to: (a) the strategic priorities for the Office's investigation policies.

102. In examining OLAF's investigation policy priorities (IPPs) for 2019, the SC held several meetings with the Director-General on this topic and expressed its views in the course of the inter-institutional exchange of views in September 2019.
103. The Committee stressed the importance for OLAF to take initiatives in detecting and analysing risks in the fight against fraud on the basis of regular exchanges of information with other Commission Directorates-General. This would enable OLAF to implement a more proactive investigation policy and focus on the most serious and complex cases. OLAF's intelligence sector should also carry out risk assessments on a regular basis. The Committee urged OLAF to implement these changes as soon as possible in view of the creation of the European Public Prosecutor's Office (EPPO).
104. For its IPPs for 2019, OLAF maintained an approach very similar to the approach it took in previous years, focusing on the following areas:

- (i) cases involving transport and infrastructure network projects, in particular public procurement procedures;
 - (ii) cases concerning projects financed or co-financed by the European Structural and Investment Funds⁴², the European Agricultural Guarantee Fund and the Pre-Accession Funds, in which action by the Member States or candidate countries may be insufficient or cases which have cross-border elements;
 - (iii) cases indicating possible abuses of origin rules, tariff classification in both preferential and non-preferential trade regimes and valuation-related fraud, the aim being to evade payment of conventional customs duties, including tariff measures that are part of EU trade defence policy;
 - (iv) cases of smuggling of tobacco, alcohol, counterfeit medicines and other goods dangerous to health and security which could infringe intellectual property rights and cases of illegal manufacturing of tobacco;
 - (v) cases concerning humanitarian and development aid provided to migrants, refugees and internally displaced persons and cases concerning other support provided to these target groups.
105. OLAF's Director-General informed the Committee that OLAF's IPPs were decided on the basis of input from stakeholders, including contributions from the Commission Fraud Prevention and Detection Network, European Court of Auditors reports, European Parliament resolutions and Commission reports on the protection of the financial interests of the EU.
106. Based on the information it received from OLAF, the SC found that in total, 222 investigations and 44 coordination cases were opened in 2019. 117 investigations and coordination cases fell under the 2018 IPPs (this represents 43% of the investigations and coordination cases opened). As this information is very limited, it does not allow the Committee to assess the number of cases opened by sector or by Directorate. The SC notes that in the reporting of the implementation of the 2019 IPPs, and contrary to its previous practice, OLAF merged the percentages of the investigations and coordination cases opened. By comparison, in 2018 OLAF opened 218 investigations and 30

⁴² The European Social Fund, the European Regional Development Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund.

coordination cases. Of these, 68 investigations and 20 coordination cases fell under the 2018 IPPs (which represented 31% of the investigations opened and 67% of the coordination cases opened). The SC suggests that in future OLAF follow the same methodological approach as in the previous years and report the percentages per category of investigations opened.

107. The SC notes that in 2019 there has been an improvement in the rate of opened cases falling under OLAF's IPPs compared to 2018. However, the fact remains that the majority of the cases that OLAF opened in 2019, about 57% of OLAF's investigations and coordination cases, do not fall under its own IPPs. The Committee asked OLAF for more information on these investigations and the reasons for taking those decisions.
108. The Committee notes that OLAF paradoxically considers its own IPPs only as last and *residual criteria* for opening a case. Even if the IPPs cannot always be used as a sufficient ground to open an investigation, the fact remains that they do allow OLAF to prioritise its investigations and allocate resources accordingly and in transparent manner.
109. The Committee believes that radical changes are needed in OLAF's approach to its own IPPs to ensure that OLAF's investigations are efficient and effective and that resources are allocated efficiently and effectively.

Relations with OLAF, EU institutions, OLAF partners and stakeholders

110. Being the independent body in charge of OLAF's supervision requires an open and constructive communication with OLAF. OLAF's Director-General and his team participated in 8 of the SC's 10 plenary meetings. Bilateral meetings with OLAF's Director-General and working meetings between the Supervisory Committee rapporteurs and OLAF's management and staff also took place during the reporting period. The SC appreciates this informative and constructive dialogue and is looking forward to maintaining closer contacts with OLAF's operational teams.
111. In November 2019, the SC held a meeting with OLAF's staff. This was a good opportunity for the SC to address OLAF investigators and staff directly, introducing the Members of the SC and its Secretariat, presenting its work and addressing constructive questions by OLAF staff.

Relations with OLAF, EU institutions, OLAF partners and stakeholders

The SC appreciates OLAF's efforts to organise this event and encourages OLAF to continue doing so on a regular basis.

112. The SC values as priority the maintenance of good and regular relations with the EU institutions. In September 2019, the SC presented the conclusions from its 2018 Activity Report to the Commission, the European Parliament (the Committee on Budgetary Control), and to the Council (the Working Group for the Fight against Fraud). The Committee actively contributed to the exchange of views which took place in December 2019 with the institutions, as laid down in Article 16 of Regulation 883/2013.
113. During the reporting period, the SC had the opportunity to hold regular meetings with the former and current Commissioners responsible for OLAF and with the Secretary General of the Commission to obtain feedback on OLAF's performance and to be informed about ongoing discussions, including the amendment of the OLAF Regulation.
114. The SC has also paid attention to key OLAF partners and stakeholders. In March 2019, there was an exchange of views between the SC members and the EU Ombudsman. The Chairman and a Member of the SC met in September 2019 with representatives of the European Committee of the Regions (CoR) - Commission for Citizenship, Governance, Institutional and External Affairs (CIVEX). The main topic of the discussion was the rule of law⁴³. In November and December 2019, the SC held two meetings with the Office of the European Data Protection Supervisor (EDPS). The SC invited the Director of IDOC⁴⁴ in the plenary meeting of November 2019 to explain IDOC's role, function and the interface with OLAF. The SC wishes to continue these fruitful meetings in the future.
115. Finally the SC and its Secretariat also participated in the conference organised by OLAF on 'Protection of the Financial Interests in the EU'⁴⁵. The SC considers this conference a useful event, giving the SC the

⁴³ See the Communication from the Commission on 'Strengthening the Rule of Law within the Union - A blueprint for action' – 17 July 2019 – COM (2019) 343 final. (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0343&from=EN>) and the Opinion on that by the CoR - CDR 3730/2019 (<https://cor.europa.eu/en/our-work/Pages/OpinionTimeline.aspx?opId=CDR-3730-2019>).

⁴⁴ The Commission's Investigation and Disciplinary Office (IDOC) carries out (like OLAF) independent internal investigations/inquiries within the Commission.

⁴⁵ Conference held in June 2019.

opportunity to meet and exchange views with OLAF's partners and stakeholders from different Member States and to update the audience on ongoing and past work by the SC on procedural guarantees.

Revision of Regulation 883/2013

116. During the reporting year, the Committee followed very closely the follow-up to the Commission's proposal published in 2018 to amend the OLAF Regulation to amend the OLAF Regulation to establish close cooperation with the European Public Prosecutor's Office and ensure the effectiveness of OLAF investigations⁴⁶.
117. On 16 April 2019, the European Parliament adopted a legislative resolution for a position at first reading⁴⁷. The Committee notes with great satisfaction that its comments on specific provisions of the amending proposal⁴⁸ were taken on board by the Parliament.
118. The Council mandate⁴⁹ for negotiations with the European Parliament and the latter's decision to open interinstitutional negotiations after the first reading of the proposal⁵⁰ opened the way to the start of triologue negotiations⁵¹.
119. Aware of the importance of this reform, the SC sought to play an active and constructive role in the ongoing discussions. In that regard, the

⁴⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018PC0338>.

⁴⁷ European Parliament legislative resolution of 16 April 2019 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations (COM(2018)0338 – C8-0214/2018 – 2018/0170(COD)) http://www.europarl.europa.eu/doceo/document/TA-8-2019-0383_EN.html

⁴⁸ Supervisory Committee's letter to the Chair of the CONT Committee of the European Parliament of 20 November 2018.

⁴⁹ Council Mandate for negotiation with the European Parliament of 7 June 2019.

⁵⁰ The CONT Committee decision to enter into interinstitutional negotiations was approved on 8 October 2019 and announced in the European Parliament plenary of 9 October 2019.

⁵¹ The first triologue meeting took place on 5 November and the second meeting on 12 December 2019.

Committee would like to reiterate its comments on the proposal made at the end of 2018. The SC's comments were guided by the principles of the impartial conduct of investigations, legal certainty, transparency and accountability, all of which OLAF must honour.

120. More particularly, regarding the proposal to establish a Controller of procedural guarantees ('Controller') to strengthen the procedural guarantees of persons under investigation by OLAF, the SC strongly believes that the proposed office of the Controller should be placed within the SC's remit. In the SC's view, it makes sense that the body which today monitors and supervises OLAF's compliance with the procedural guarantees *ex post*, carries out the same function also *ex ante*.
121. In particular, the powers of the Controller⁵² to monitor OLAF's compliance with procedural guarantees would overlap in substance with the powers entrusted to date to the SC. This could not only lead to an unnecessary duplication of work but also create the risk that the two bodies issue diverging or even conflicting recommendations to OLAF's Director-General on essentially the same issues.
122. Moreover, the SC believes that before creating new bodies, consideration should first be given to using or strengthening existing bodies. Duplicating what is in essence an existing body (SC) creates unnecessary administrative complexity and inefficiencies.
123. The SC already has a well-functioning secretariat in place - which is also recognised as a fully independent body by the current OLAF Regulation - with significant experience in dealing and handling *ex post* complaints against OLAF.
124. Therefore for reasons of consistency, coherence, and administrative efficiency, in the sense of a rational and optimal use of existing resources and means, the Controller should be placed within the remit of the SC, thus maintaining the high standards of independence required of such a task, while reducing budgetary expenditure and making use of existing human resources.

⁵² The Controller would: (i) review complaints concerning violations of the procedural guarantees and issue non-binding recommendations to the Director-General of OLAF on these complaints; (ii) monitor compliance with the procedural guarantees applicable to OLAF investigations; (iii) ensure prompt handling of investigations to avoid undue delay; (iv) authorise inspections and certain procedural acts to be taken at the premises of EU institutions.

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SC working method

125. In 2019, the SC held 10 plenary meetings⁵³. The Chair, the rapporteurs and the members of the Secretariat also met regularly to work on particular issues. For every major issue examined, the Supervisory Committee appointed a rapporteur. The rapporteurs worked with the Secretariat to prepare draft reports, opinions or papers to be discussed in the plenary meetings. They also met with OLAF management and staff in preparing the Committee's opinions and reports. The Committee discussed with OLAF its opinions before they were adopted.

SC Secretariat's staff recruitment

126. In the course of the reporting period, the Secretariat filled two remaining vacant posts, and a new Head of Secretariat was appointed following an Article 29(2) selection procedure under the Staff Regulations. The new Head of the Secretariat took office in October 2019.

127. The Committee was involved in all of these recruitment processes. Officials assigned to the Secretariat must never seek or take instructions from any government or any institution, body, office or agency relating to the exercise of the Committee's monitoring functions. The Committee's involvement in recruitments to the Secretariat ensures and guarantees the independence of the selection process.

DPO

128. The new Regulation (EU) 2018/1725⁵⁴ provides that further implementing rules on the data protection officer (DPO) must be

⁵³ The dates of the SC meetings are available here: <https://europa.eu/supervisory-committee-olaf/activities/events>.

⁵⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data,

Supervisory Committee governance

adopted by each EU institution or body. OLAF and the SC shares the same DPO. The *decision of the Director General of OLAF adopting implementing rules concerning the DPO for OLAF and the Secretariat of the Supervisory Committee* was adopted in July 2019⁵⁵.

Location of the Secretariat

129. Following an amendment to the OLAF Regulation⁵⁶, the SC's Secretariat is provided by the Commission, independently from OLAF, and in close cooperation with the Committee. In February 2017, the Secretariat was administratively attached to the Office for the Payment of Individual Entitlements of the European Commission ('PMO'), although still located in a separate security zone within OLAF's premises.
130. Regarding the actual location of the Secretariat, the SC has expressed the view that a suitable place within OLAF's security zone, while under the SC's sole authority, would enable the Secretariat to perform more efficiently its tasks.
131. The Committee has informed OLAF, the European Commission, the European Parliament, the Council and the European Court of Auditors, that a more suitable place for its Secretariat must be found, the current reform of OLAF's Regulation being an opportunity to reconsider this matter.

Budgetary Matters

132. The Committee's budget for 2019 was €200,000, and the level of execution of the budget was 80.60%. The authorising officer by sub-delegation responsible for the expenditure is the Director of the PMO.

and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R1725>).

⁵⁵ https://ec.europa.eu/anti-fraud/sites/antifraud/files/dpo_implementing_rules_en.pdf.

⁵⁶ Regulation (EU) No 2016/2030 of the European Parliament and of the Council of 26 October 2016 amending Regulation (EU) No 883/2013, as regards the secretariat of the Supervisory Committee of the European Anti-Fraud Office (OLAF). The Regulation entered into force on 1 January 2017.

The SC website

133. For purposes of transparency and communication with the public and stakeholders, the Supervisory Committee, as an independent body, maintains its own dedicated website⁵⁷ within the europa.eu websites system, independently from and in parallel to OLAF's website. All opinions and reports adopted by the SC as well as any other relevant documents, information and data, unless confidential, are published on the Committee's dedicated website. The Secretariat is responsible for the website's content and maintenance, in accordance with the Committee's instructions.
134. The Committee launched its website in 2015⁵⁸. It is currently working to develop a more accessible and engaging website design which should be more user-friendly. The new website should be operational by the end of 2020.

⁵⁷ The SC website went online on 4 December 2015. <https://europa.eu/supervisory-committee-olaf/>.

⁵⁸ Decision of the Supervisory Committee on the transparency of its independent activities of 5 November 2014.