

The Director-General

Brussels

**NOTE FOR THE ATTENTION OF MS COLETTE DRINAN,
CHAIR OF THE OLAF SUPERVISORY COMMITTEE**

Via the Secretariat of the Supervisory Committee

**Subject: OLAF's comments on the adopted Supervisory Committee
Opinion on the preliminary draft budget of OLAF 2017**

Dear Ms Drinan,

Following the transmission of 13 December 2016 of the adopted Supervisory Committee's (SC) Opinion on the preliminary draft budget of OLAF 2017, please find attached OLAF's comments on the final adopted version.

We would appreciate if you published OLAF's comments on your website, in line with the usual practice.

Yours sincerely,

Giovanni KESSLER

Enclosure: OLAF's comments on the adopted SC Opinion on the preliminary draft budget of OLAF 2017

Cc: SC Members, M. Kaduczak
C. Scharf-Kroener, M. D'Ambrosio, B. Sanz Redrado, M. Hofmann,
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OLAF'S COMMENTS ON THE ADOPTED SUPERVISORY COMMITTEE OPINION ON THE PRELIMINARY DRAFT BUDGET OF OLAF 2017

- transmitted to OLAF by note Ares(2016)6937026 of 13 December 2016 -

Background:

On 11 February 2016, OLAF sent to the Supervisory Committee (SC) its 2017 budget proposal (Ares(2016)740330). On 2 March 2016, the SC sent a request (Ares(2016)1068456) for complementary information, to which OLAF replied on 16 March (Ares(2016)1327985), including a detailed overview of the technical adjustments made.

By note of 27 April (Ares(2016)2007098), OLAF informed the SC about the agreement with DG BUDG on OLAF's draft budget to be included in the Commission's draft budget for 2017.

On 4 May, the SC sent OLAF two notes. The first one (Ares(2016)2128472) was a reminder of SC's request of 2 March, to which OLAF had already replied on 16 March. The second request (Ares(2016)2132298) concerned the output of negotiations with DG BUDG on the draft budget 2017. OLAF replied to the SC's notes on 11 May (Ares(2016)2208523) and on 20 May (Ares(2016)2354554) respectively.

By note of 6 July (Ares(2016)3229601), the SC sent OLAF its draft Opinion on OLAF's preliminary draft budget 2017, to which OLAF replied on 28 July (Ares(2016)3983853).

On 24 August, the SC invited OLAF to a contradictory meeting, based on the SC preliminary draft and OLAF replies. The meeting took place on 5 September. As agreed in the SC plenary of 7 September, the SC requested OLAF clarifications and additional information by note of 12 September (Ares(2016)5163069). OLAF replied on 26 September (Ares(2016)5565219), providing further explanations and documentation as requested.

On 6 October, the SC sent OLAF its Final Draft Opinion on OLAF's preliminary draft budget for 2017 (Ares(2016)5785772). OLAF provided its comments on 26 October (Ares(2016)6136082).

On 13 December, the SC sent OLAF its Opinion No 1/2016 on OLAF's Preliminary Draft Budget for 2017 (Ares(2016)6937026), adopted on 11 November.

This document outlines OLAF's comments on the SC's adopted Opinion. References to headings refer to the SC Opinion as adopted on 11 November.

Conclusions

(A)

OLAF welcomes the SC's support for its draft budget 2017 and will fully take into consideration the SC's recommendations and observations.

(B)

As recognised by the SC in point (7) of the SC's Opinion ("*The Committee acknowledges the efforts of OLAF to maintain and increase the relative proportion of investigative staff to administrative staff.*"), OLAF has since 2012 made considerable efforts to concentrate its resources on its core business and to reduce the number of staff working in overhead functions, notably through a major re-organisation in 2012, several subsequent smaller re-organisations and a general shift in resources towards the investigative function of the Office. As a result, despite the number of establishment plan posts decreasing from 384 in 2012 to 363 on 30 June 2016, the number of investigators increased from 151 to 171 over the very same period.

It should be noted that not all non-investigative tasks that OLAF performs can be labelled as "*support*", as the SC does. The Commission Decision 1999/352 establishing OLAF (Art. 2) entrusts to the Office a wide range of tasks, such as providing the Commission with support in the fight against fraud, providing training to other institutions and bodies as well as to Member State authorities, preparing legislative and regulatory initiatives, and collecting and analysing information in relation to the fight against fraud.

The Office furthermore needs to keep resources in communication, IT, coordination and inter-institutional tasks, like all other DGs and services of the Commission. The central services of the Commission are not in a position to fulfil these tasks for OLAF, while guaranteeing OLAF's independence and proper functioning as a Commission service.

(C)

OLAF fully shares the SC's view regarding the added-value of national legal experts. OLAF strives to recruit staff with legal expertise to cover adequately all national legal systems. Whenever needed, OLAF relies on the reviewers in the Selection and Review Unit, the Legal Advice Unit, other in-house expertise and relevant legal documents, notably the country profiles available to OLAF investigative staff, containing relevant national legislation. Furthermore OLAF provides training to its staff and has launched EPSO competitions for investigators, as recognised by the SC.

Introduction

OLAF would like to clarify that according to the first paragraph of art. 15(1) of Regulation 883/2013, the role of the Committee is to "*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.*"

Article 6(2) of Commission Decision 1999/352/EC, ECSC, Euratom establishing the European Anti-fraud Office as amended by Commission Decision 2013/478/EU of 27 September 2013, states that "*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.*" In line with the Decision, OLAF transmits yearly to DG BUDG the preliminary draft budget. The Decision does not mention that OLAF should transmit to the Budgetary Authority the SC's Opinion on OLAF's preliminary draft budget.

OLAF's Human Resources

OLAF has made considerable efforts to increase the proportion of investigative staff and welcomes the SC's acknowledgment of its efforts. OLAF fully participates in Commission-wide efforts to increase synergies between its services, and takes own initiatives to ensure the efficient use of resources.

Concerning OLAF's resources allocated to non-investigative tasks, see OLAF's reply under conclusion (B).

OLAF's running costs

Concerning the added-value of national legal experts, see OLAF's reply under conclusion (C).

OLAF's ICT infrastructure

OLAF agrees that a well-organised and up-to-date ICT support and infrastructure are necessary conditions for cost-effective fraud investigations.

OLAF agrees with the SC that the setting up of OCM is a positive achievement.

The Office has informed the SC and its Secretariat about OCM at the very early stage of the project and later on at various occasions. As early as in December 2011 a member of the SC Secretariat (the acting Head) participated in the IT review which subsequently resulted in the OCM project. At that time, the acting Head of the SC Secretariat provided his input and position on the setting up of OCM. In 2012, OLAF provided the SC Secretariat with detailed, relevant information about the future OCM: the White Paper, the Option Matrix and the Road Map.

More importantly, by note Ares(2014)2366740 of 16 July 2014, the SC itself asked OLAF for extensive information on OCM and its state of play. The note contained a list of questions to which OLAF provided extensive replies in its note Ares(2014)2545577 of 31 July 2014. In that note, OLAF furthermore offered to present to the SC Members and its Secretariat an overview of the project during a plenary session. The SC has to date not replied to OLAF on this offer, nor asked for complementary information.

Furthermore, it should be noted that OCM and the changes that it brings to OLAF's IT systems have been mentioned by OLAF in a number of meetings with the SC Chairman and Secretariat in the context of the revision of the Working Arrangements between OLAF and the SC in 2015.

OCM was launched on 19 September 2016. At a later stage of the implementation, OLAF will start assessing the needs of the stakeholders concerning the OCM reporting module. The Committee will be consulted and will be given the opportunity to express its needs in terms of reporting, ahead of the implementation of this module. This will be done in view of the discussions on the OLAF-SC Working Arrangements which should be re-launched following the Joint Opinion of the three Legal Services of 12 September 2016 (Ares(2016)5170389). OLAF would like to re-iterate that it is ready to meet with the SC to progress on the matter, and would welcome an invitation from the Committee in this regard.

Resources for the Secretariat of the Supervisory Committee

The new Regulation, adopted by the Council and the Parliament, was published on 23 November 2016. It entered into application as of 1 January 2017.

Budgetary, administrative and practical arrangements are now being put in place under the coordination of PMO.

In accordance with the Commission's statement in the European Parliament on 6 July 2016, the implementation will be guided by the aim of adding further guarantees to the independence of the Secretariat. The administrative attachment of the Secretariat to PMO will have no impact on its current staffing and budgetary means.

Budgetary management – Frontloading

The difference between the 2015 outturn (EUR 5.702.112,76) for budget item 21200 and PDB 2017 (EUR 5.109.000) is due to the fact that in 2015, apart from the rent, the frontloading and the infrastructure costs for OLAF staff working in the delegations were also covered.

OLAF respects budgetary transparency and applies the budgetary flexibility offered to the European Offices by virtue of art. 196(3) of the Financial Regulation. According to this article, the Director (in this case the DG) of each European Office has discretionary powers to perform transfers within the budget annex of his Office, which includes all the administrative budget sub-lines: "*The director of each European office shall take decisions on transfers within the Annex provided for in paragraph 1*". Nevertheless, OLAF will reconsider the use of frontloading.

Recommendations of the Supervisory Committee to the Director General of OLAF and OLAF's Action Plan

The Supervisory Committee recommends that the Director-General of OLAF:

(I) Keeps on increasing the number, qualification and training of staff allocated to its investigative function.

Keeps under review, without endangering OLAF's independence, the number of staff allocated to non-core functions notably by increasing synergies with other Commission's departments in non-investigative functions.

OLAF's position: implemented

See OLAF's replies under conclusion (B) and under heading *OLAF's Human Resources*.

(II) Increases the number of EU staff with certified legal expertise in the national legal orders in the related language, with a view of reaching a complete coverage of all the EU national legal frameworks, starting in the selection and review functions given the need to ensure full respect of the Rule of Law. In addition OLAF should ensure specific monitoring and yearly reporting in the OLAF Annual Activity report in this regard.

OLAF's position concerning the increase of the number of staff with certified legal expertise: ongoing

See OLAF's reply under conclusion (C).

Timeline: the EPSO competitions are expected to be finalised by the third quarter of 2017, with a view to start the recruitments later in the year.

OLAF's position concerning the reporting in the AAR on the expertise of staff: not applicable

Concerning the AAR, it should be noted that when drafting it OLAF must comply with the Standing Instructions issued by Commission services (SG and DG BUDG), which do not provide for reporting on the expertise of staff.

(III) For the purpose of clarity, provides to the Budgetary Authority the detailed costs for the full evaluation process of Regulation 883/2013 and, as far as investigative staff is concerned, clearly reproduce in its Annual Activity Report and Annual Report for the year 2016 the explanations provided that for the 171 staff working in the investigative field, "In addition to staff whose job description is "investigator", this figure includes also other investigative staff, such as "case-handler-selector" or "intelligence analyst". Heads of sector and deputy heads of investigative units are also investigative staff, despite having different job titles".

OLAF's position concerning the transmission to the Budgetary Authority of the costs for the evaluation of Regulation 883/2013: not applicable

The Budgetary Authority has not requested to be informed of the costs for the evaluation of Regulation 883/2013, but will receive such information upon request.

OLAF's position concerning the inclusion in the 2016 Annual Activity Report (AAR) and OLAF Report of the definition of "*investigative staff*": implemented (where applicable)

OLAF has considered the SC's recommendation to include information on the definition of investigative staff in the next AAR and OLAF report.

Concerning the AAR, as mentioned above, it should be noted that when drafting it, OLAF must comply with the Standing Instructions issued by Commission services (SG and DG BUDG). These instructions do not provide for the inclusion of definitions of staff categories.

As for the OLAF Report, it included in 2014 the number of investigators, together with an explanation similar to the one requested by the SC (see figure 30, page 34). Whenever OLAF includes in future OLAF Reports the number of investigators, it will be accompanied by an explanation as suggested by the SC.