



**Opinion No 1/2012**

**OLAF's Preliminary Draft Budget for 2013**

Brussels, 26 September 2012

# SUPERVISORY COMMITTEE



In accordance with Article 11 of the Regulation 1073/1999<sup>1</sup> the mission of the OLAF Supervisory Committee (SC) is to reinforce the independence of OLAF in the exercise of OLAF's investigative function. To do this and to ensure that OLAF is able to function in an efficient and effective manner, a specific budget article within the Commission budget was created for OLAF. In this context, and with a view to the powers conferred by the Commission on the SC<sup>2</sup>, the SC has considered OLAF's Preliminary Draft Budget (PDB) and delivers the following Opinion.

## I. Resources

### Allocation of resources to priority activities

The SC has regularly recommended to OLAF in its previous opinions on the budget to allocate more staff to OLAF's core business – investigations – by shifting them from the support units. The SC has also proposed to clarify the distinction between investigative and operational activities of OLAF.

Therefore the SC takes note of the reorganisation of OLAF put in place on 1 February 2012 which resulted in the following changes:

01/01/2011:	Officials and Temporary Agents	Percentage
Directorate A (investigations and operations):	77	(20%)
Directorate B (investigations and operations):	75	(20%)
Directorate C (operational support):	103	(27%)
Directorate D (administration and general affairs):	104	(27%)
General Director:	17	(4%)
SC:	8	(2%)
Total staff:	384	(100%)
Total investigation:	152	(40%)
Total investigation + <i>operational</i> support:	255	(67%)

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<sup>1</sup> 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, 31.5.1999, p. 1–7.

<sup>2</sup> Article 6 of the Commission Decision 1999/352/EC, ECSC, Euratom of 28<sup>th</sup> of April, 1999 establishing the European Anti-fraud Office, OJ L 136, 31.5.1999, p. 20–22.

# SUPERVISORY COMMITTEE



01/05/2012:	Officials and Temporary Agents	Percentage
Unit O.1 (investigation S&R):	25	(6.6%)
Directorate A (investigations I):	73	(19.2%)
Directorate B (investigations II):	83	(21.8%)
Directorate C (investigation support):	72	(19%)
Directorate D (policy):	67	(17.6%)
Directorate R (resources):	38	(10%)
Reserves (vacant posts for staff cut)	6	(1.6%)
General Director:	10	(2.6%)
SC:	6	(1.6%)
Total staff:	380	(100%)
Total investigation:	181	(47.6%)
Total investigation+ <i>investigation</i> support:	253	(66.6%)

It is too early to assess the reorganisation's benefits and the influence on efficiency of the Office, but the strategy of concentrating resources on investigations, separating investigative structures from policy structures and refocusing on essential investigative activities is a step in the right direction.

## Follow up of investigations

According to recent ECA's statistics<sup>3</sup>, in 2008 only 10% and in 2009 only 4% of OLAF investigations led to convictions by national judicial authorities. Even if it is factored in that there may be other methods of follow-up to investigations which require the input of other institutions and not necessarily that of Member States, the ultimate effectiveness of the work of the Office must be closely analysed as a crucial focal point.

In this context the Committee is concerned that the reorganisation of OLAF brought also the disappearance of the specialised follow-up unit, with follow-up responsibilities being transferred to investigators. The latter generally will not have the specific knowledge (legal, linguistic) and status to provide assistance to national authorities in the judicial follow-up or even to monitor it effectively. This may lead to disassociation between OLAF investigations (which are in fact a preparatory measure) and an actual sanction or remedy in judicial, administrative or disciplinary procedures.

Proper follow-ups ensure that the ultimate results of investigations are achieved. Without this OLAF can do laboriously great work without leading to appropriate outcomes.

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<sup>3</sup> Cf. ECA Special Report No 2/2011, Annex III, page 40, Table B.



## HR strategy

Reorganisation of the Office resulted in significant shifts of staff and modifications in their job description or even a completely new allocation of tasks. In such circumstances the SC reiterates the position of the previous Committee that it is essential to have an appropriate human resources strategy built on the identified and real needs of the organisation and its priorities, with the aim of giving direction and maximising the use of existing resources. A crucial element of that strategy should be the continuous training related to internal mobility and overall restructuring. It should address the optimum balance between administrators performing core investigative tasks and assistants that provide support services. The human resources strategy should also address working relations with DG Administration, recruitment, specialised training, in-house mobility and career development of both permanent and temporary staff, as well as succession planning. In the budget of 2013 there is an amount of €199.000 reserved for further training, retraining and information for staff. This is less than the outturn of 2011 (€213 168.88) and the same amount as the budget for 2012. This does not seem likely to be adequate after so many changes, surely requiring retraining, have been implemented in 2012.

## Temporary agents

Although substantial effort has already been made over the years, the SC must repeat from its previous opinions that the difficulty in putting in place a system of promotion (or reclassification) of temporary staff remains a concern. The SC finds it disappointing that no solution has yet been found to this problem, being an element of the general issue of motivation for the staff of OLAF.

It would be commendable to give a clear response to the temporary agents whether such a promotion is at all foreseen, so that they can take appropriate decisions concerning their career.

### **Recommendations:**

- **An effective follow-up of investigations must be ensured.**
- **A human resources strategy based on a needs analysis of OLAF's current activities should be developed and focus given to training, career development, succession planning and appropriate balance between assistants providing support services and administrators performing core investigative tasks.**
- **Issue of temporary agents to be ultimately decided and communicated to them.**



## II. Budgetary procedure

The Commission Decision establishing OLAF is clear that the Supervisory Committee must be consulted on the preliminary draft budget (PDB) of OLAF *before* it is sent to the Director-General for Budgets<sup>4</sup>.

Up to now the Director General of OLAF has transmitted the PDB to the Committee after "technical" meetings/arrangements with the DG Budget. In this way substantial and meaningful consultation with the Committee could not take place and the transmission of the PDB to the Committee has become just a formality. The SC believes that to provide effectively an opinion on the PDB is one of its core tasks.

### Conclusion:

- **The Supervisory Committee must be effectively consulted about the *next* PDBs by means of a real and substantive exchange of opinions between the Director General and the Committee *before* the PDBs are sent to the Director-General for Budget in any form.**

## III. The Secretariat of the Supervisory Committee

### Budget line

To be fully informative and representative of the total cost of oversight the budget line for the SC should incorporate the total cost of operations, that is, all the SC Members' expenditure as well as that of its Secretariat which includes the salaries, training, travel, etc.

OLAF has the privilege of transferring its funds freely from one line item to the other according to exigencies. By incorporating the *total* cost of the Supervisory Committee's function in a separate budget line it is ensured that funds targeted for use by the SC are actually used for the supervisory function. However, unspent funds remaining unused could be redeployed to other headings within the OLAF Budget. Such redeployment should only be possible with prior notification of the SC and its approval.

The Head of the SC Secretariat should be sub-delegated as the authorising officer to manage the total fund allocation for the SC's operations under the control of the Committee. Having one budget line which incorporates all expenditure will facilitate the management and efficiencies of

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<sup>4</sup> Article 6(2) of Commission Decision 1999/352/EC, ECSC, Euratom: "After consulting the Surveillance Committee, the Director shall send the Director-General for Budgets a preliminary draft budget to be entered in the special heading for the Office in the annual general budget".



the oversight framework whilst at the same time any unused funds are passed on to other OLAF Budget lines by the Director General upon the approval of the SC.

A separate budget line has the benefit of transparency and reflects also the autonomy of the SC. At the same time, this separate budget line would inform the three Institutions appointing the SC about the resources specifically allocated to this supervisory function.

## Staff

The SC maintains its position, as expressed in its previous opinions on the OLAF budget, on the minimum requirement of eight Secretariat staff, which is equivalent to the current needs of the SC. This represents about 2% of OLAF staff<sup>5</sup> which the SC deems the minimum number required for it to carry out its monitoring function effectively.

The SC does not agree with the decision, taken by the Director General in September 2011 and effected on 1 February 2012 without consulting the SC, to reduce the headcount of its Secretariat by 25%.

Furthermore, the SC is of the opinion that with regard to the appointment of the Head of the Secretariat and other staff for its Secretariat, including internal transfers, it should be closely consulted with the Committee, as indicated in its Rules of Procedure<sup>6</sup>.

The SC acknowledges that the Commission staff rules and the appraisal and promotion system do not currently permit the SC Members to evaluate the performance of the staff of the Secretariat directly. However, the SC considers that even though the appraisal of the Head of Secretariat and promotion of all the staff are ultimately decided by the Director General of OLAF, he should make these decisions on the basis of the opinions of the Committee under whose direct authority the Secretariat works, as it is foreseen in the SC's Rules of Procedure<sup>7</sup>. This will ensure the continuous independence of the Secretariat in their day to day functions.

### Recommendations:

- **Separate budget line for both the SC and Secretariat should be foreseen.**
- **Eight staff members should be earmarked for the Secretariat.**
- **Appointments of the SC Secretariat staff should only be made following the approval of the SC, thus ensuring full independence of the SC Secretariat in the performance of its duties.**

<sup>5</sup> On 1 May 2012 there were 380 officials and 30 contractual agents in the Office.

<sup>6</sup> Article 11 (3): "In any case, the Head of the Secretariat shall inform the Supervisory Committee about the candidates for membership of the Secretariat. Once the applications are known, the Committee shall discuss in the plenary session whether they meet the Committee's working needs with a view to submitting a proposal for their appointment to OLAF's Director-General" (OJ L 308, 24.11.2011, p.114).

<sup>7</sup> Article 11 (5): "The Supervisory Committee shall periodically evaluate the work of the Head of the Secretariat and of the Secretariat members". (ib.)



- **Appraisal of the Head of Secretariat and promotion of all staff of the Secretariat should be decided by the DG on the basis of the SC's opinion.**

#### **IV. Conclusion**

The SC supports OLAF's budget proposal for 2013 with the provision that the above recommendations be taken into consideration.

In accordance with Article 7(2) of the Commission Decision of 28 April 1999, the Opinion should be transmitted to the Budgetary Authority by OLAF. Furthermore, the SC would like to be updated regularly on measures taken by OLAF towards implementation of the recommendations in this Opinion.