



The Director-General

Brussels

**NOTE FOR THE ATTENTION OF MR TUOMAS PÖYSTI
CHAIRMAN OF THE OLAF SUPERVISORY COMMITTEE**

Via the Secretariat of the Supervisory Committee

Subject: Recommendations to OLAF and Procedure for the preparation and adoption of the Supervisory Committee's Opinions and Special Reports – SC notes of 13 January (Ares(2016)189329) and 27 January (Ares(2016)434647)

Dear Mr Pöysti,

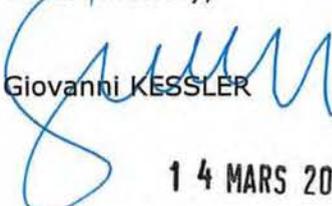
By note of 13 January, the Head of the Supervisory Committee (SC) Secretariat requested information from OLAF Director D on working methods followed by other control bodies regarding the handling of their recommendations made to OLAF.

By note of 27 January you transmitted to OLAF the procedural rules, adopted by the SC in the plenary meeting of 18 January, for the preparation and adoption of its Opinions and Special Reports. OLAF has prepared the current joint reply to the two notes as they are linked.

We have consulted various units in OLAF on the request of the Head of the SC Secretariat and have put together an analysis, enclosed (Annex 1), outlining the procedures followed by other control bodies when issuing and following up recommendations. As demonstrated by the analysis, relevant control bodies, such as the European Court of Auditors or Internal Audit Service, put OLAF in a position to clarify issues, answer questions and ultimately address recommendations on numerous occasions, including at an early stage long before the final reports are issued.

OLAF welcomes the SC procedure for the preparation and adoption of Opinions and Special Reports. This explains in general terms the steps to be followed by the SC when working on Opinions or Special Reports. However, it appears from the procedure that OLAF is given only one occasion to react on a SC draft Opinion. There are no provisions set for a dialogue between OLAF and the SC and no provisions for the issuing of recommendations, which are part of the SC Opinions, or for their follow-up and closing. Furthermore, it seems that OLAF is not given the possibility to comment on the final Opinion. Enclosed (Annex 2) you will also find OLAF's comments to the SC procedure for the preparation and adoption of the SC Opinions and Special Reports, containing also some conclusions drawn from the analysis presented in Annex 1.

Yours sincerely,


Giovanni KESSLER

14 MARS 2016



Encl.: 1. Procedures by other control bodies for the issuing and following up of recommendations to OLAF
2. OLAF's comments to the SC procedure for the preparation and adoption of Opinions and special reports

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Annex 1 - Procedures by other control bodies for the issuing and following up of recommendations to OLAF

The analysis below replies to the request, including the below questions, addressed by the SC Head of Secretariat to OLAF Director D of 13 January 2016 (Ares(2016)189329). The SC asked for information regarding the practices of external audit and control bodies, such as the European Ombudsman, the EDPS, the European Court of Auditors (ECA) and the Internal Audit Service (IAS), for issuing and following up on recommendations addressed to OLAF.

1 Are there any procedures agreed regarding OLAF's feedback on its implementation of the recommendations from those bodies?

All four control bodies overseeing OLAF monitor the implementation of their recommendations. The same procedures apply to OLAF as for other Institutions and monitoring is executed under procedures set pursuant to the control body's own internal rules (e.g. the European Ombudsman) or agreed with the Institutions (e.g. the IAS).

The audits of ECA generally cover several DGs and therefore OLAF is involved as part of the Commission. For the ECA recommendations, there is a Commission wide system for follow-up of recommendations. The RAD (Recommendations/Actions/Discharge) database managed by DG BUDG contains all the recommendations made by the ECA, along with the Commission's published official replies to these recommendations, and the expected implementation date where appropriate. DGs (including OLAF where relevant) can provide more detail if necessary and update information on the implementation of recommendations on a regular basis, however the exercise is in general done annually.

2 What has happened in those cases where OLAF did not accept a recommendation from an audit / control body – did any "conciliation" procedure take place?

Procedures carried out by control bodies aim at putting OLAF in a position to clarify issues, answer questions and ultimately address recommendations in a draft version at an early stage before final reports are issued. Conciliation or adversarial procedures intervene before control bodies formally issue their recommendations. These conciliation processes widely rely on a communication to OLAF of the initial draft report/opinion by the control body. If disagreements arise, the control body and OLAF engage into a constructive dialogue with a view to clarifying unresolved issues and reach a common agreement so as to avoid formal rejection by OLAF of a recommendation from a control body. In the rare cases when there is no agreement reached on a recommendation during the conciliation procedure, OLAF can state that it does not accept the recommendation in question.

For instance, in the case of the IAS, recommendations can be fully or only partially accepted or altogether rejected. Moreover, the criticality of the recommendation could be discussed in case of disagreement. The IAS addresses to OLAF its draft report. OLAF replies expressing its acceptance or rejection of the recommendations. If necessary

there can be further discussions with OLAF on the draft report to resolve any remaining differences, which will culminate in the IAS sending an advance copy of the final report which clearly sets out the changes made to the draft report. Where there remain unresolved differences, including non-acceptance of recommendations and/or non-acceptance of the IAS' ratings of those recommendations, OLAF is requested to formally communicate these in writing to the IAS. These comments will be annexed to the final report and summarised in the Executive Summary.

Likewise, recommendations by the ECA, just like the observations which form part of its audit reports, are subject to a conciliation procedure in several steps. The Commission services would first discuss matters under audit with the auditors in the course of their audit work; secondly ECA sends a statement of preliminary findings to the relevant Commission services providing an opportunity to check and verify the facts and comment on the conclusions drawn; thirdly, the Commission, including OLAF, receives the draft report (observations) of the ECA and is given sufficient time to prepare its replies, including motivated suggestions for changes in the ECA's text; and finally, an adversarial meeting takes place between the ECA and the relevant Commission services (normally chaired by DG BUDG on the Commission side) before the audit report is finalised. Normally, the ECA and the Commission services concerned would try to come to an agreement on a recommendation (e.g., via reformulation or sometimes withdrawal by the ECA) to avoid rejected recommendations in the ECA Report. The ECA always publishes the Commission replies together with its respective audit report.

3 Has it ever happened that a recommendation was re-formulated at OLAF's request?

OLAF has requested reformulation of the recommendations issued by the ECA and the IAS on various occasions. It appears as a normal validation process of an audit engagement. The auditee can, for instance, consider that a recommendation is not relevant or does not adequately address the issue at hand. For example, the Commission/OLAF achieved reformulation of ECA's recommendations regarding OLAF's areas of competence in ECA's Special report on Preferential Trade Arrangements (SR 2/2014 – recommendation 7) and in ECA's Special report on Public procurement by Member States (SR 10/2015 – Recommendation 1).

Relevant supporting documents:

European Court of Auditors:

- Financial Regulation Art. 162 (for ECAs Annual Report), Art. 163 (for ECA's Special Reports)
- [DG BUDG procedure](#)
- [ECAs Audit policies and Standards, Ch.3.10](#)
- [ECAs Performance Audit Manual, Ch.5.6](#)
- [ECA SR 1/2005](#)
- [ECA SR 2/2011](#)
- [SR 2/2014](#)
- [SR 10/2015](#)
- [RAD User Manual](#)

Internal Audit Service:

- [IAS Mutual expectations](#)

European Ombudsman:

- <http://www.ombudsman.europa.eu/cases/followup.faces/en/58401/html.bookmark>
- [Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties \(Statute\)](#)
- [Decision of the European Ombudsman adopting implementing provisions](#)
- [Reports on the follow-up](#)

EDPS:

- <https://secure.edps.europa.eu/EDPSWEB/edps/Supervision/Complaints>
- <https://secure.edps.europa.eu/EDPSWEB/edps/site/mySite/priorchecking> (OJ L 273, 15.10.2013: 2013/504/EU: Decision of the European Data Protection Supervisor of 17 December 2012 on the adoption of Rules of Procedure)
- http://ec.europa.eu/anti_fraud/olaf-and-you/data-protection/processing-operations/index_en.htm
- http://ec.europa.eu/anti_fraud/olaf-and-you/complaints-on-olaf-investigations/index_en.htm

Annex 2 - OLAF's comments to the SC procedure for the preparation and adoption of Opinions and special reports

The points from the SC procedure have been included in boxes, followed by OLAF's comments when relevant.

"1. The SC decides in plenary meetings to issue an "Opinion or Special Report" (hereafter OSR), designates one or more rapporteurs, or confirms the 'temporary rapporteur' designated by the Chairman for urgent matters, and a SC secretariat member adds it accordingly to the SC Annual Workplan and informs DG OLAF of this decision."

OLAF welcomes the approach of informing the OLAF Director-General at the moment when the SC decides to issue an Opinion or Special Report and designates a rapporteur/s. Indeed, OLAF would like to be informed of such a decision as soon as it is taken. This would allow for a constructive dialogue, clarification of the SC intentions and the available information in OLAF, from the very beginning. In practice, OLAF has only been informed of the SC's decision when the SC made its first request for information for the purpose of an Opinion or Special Report.

Other relevant control bodies, such as the European Court of Auditors, inform OLAF of their intention to perform an audit as soon as, or even before, the formal decision is taken. The European Court of Auditors tends to do preliminary studies or visits OLAF to check the feasibility and the possible scope of the audit and only afterwards it comes forward with a proposal to be adopted by the relevant ECA audit chamber. In the same context, OLAF would welcome receiving the SC annual work plan which would facilitate OLAF's planning of its resources. For example, the European Court of Auditors circulates its Annual Work Programme to the Commission.

"2. The rapporteur(s) start(s), together with the SC Secretariat analysing the issue and take(s) all necessary actions including, inter alia, requests for access to case file, technical meetings, etc."

During the work on the Opinion or Special Report, the SC requires information from OLAF. The requests should follow the steps agreed in the Working Arrangements and should be in line with Regulation 883/2013. OLAF would welcome contacts between the SC Secretariat and OLAF staff to ensure that the SC requests for information can be followed up. As you are aware, OLAF Unit D3 Inter-institutional and external relations would be the initial point of contact. In general, the European Court of Auditors meets with OLAF and discusses the options before making formal requests for information.

"3. The rapporteur(s) keep(s) the SC informed about the state of play and progress of the OSR in plenary meeting until the SC decides that the draft OSR is to be sent to DG OLAF to, within a given timing of maximum 20 working days, provide his written comments to the rapporteur, via the SCS."

OLAF would welcome the consultation of the SC even before the finalisation of the draft Opinion or Special Report. Preliminary draft findings could be shared with OLAF, including the envisaged SC recommendations. Such an approach would allow for a better understanding of the work of both sides and would facilitate the implementation of the recommendations. This would also be in line with the procedure followed by control bodies such as the European Court of Auditors and the Internal Audit Service. Before formally issuing recommendations, these bodies engage in a conciliation procedure with OLAF, ensuring common understanding of recommendations as well as their subsequent follow-up and accuracy in the formulation of the recommendation.

As for the timing offered to OLAF to provide its comments, a minimum should also be established, taking into account that the SC Opinions and Special Reports require consultations across the Office. 15 working days appears to be an absolute minimum to allow OLAF to reply in a proper and complete manner.

"4. The rapporteur(s), together with the SCS analyse(s) the written comments of DG OLAF, and puts in the SC file the technical documents indicating which parts of the OSR have been modified as a result of taking into consideration the comments and information provided by DG OLAF."

"5. The draft OSR is now finalised by the rapporteur(s) with, inter alia:

- a. a summary of the OSR on its frontpage, including the URL on the SC website where the OLAF reply on the draft OSR can be found;*
- b. the written comments of OLAF on the final draft of the OSR;*
- c. in case of added value, technical documents in annex to the OSR;*
- d. if deemed necessary, an endnote on the written OLAF reply on the OSR."*

Under point 3 of the adopted SC procedure, OLAF would be allowed to provide its written comments on the **draft** Opinion or Special Report. However, point 5 above includes references to OLAF written comments on both the **draft** and the **final draft** Opinion or Special Report. OLAF welcomes the opportunity to provide comments on different occasions while the SC Opinion or Special Report is still in the draft stage. A similar approach is followed by the European Court of Auditors, and the Internal Audit Service, which give OLAF the opportunity to check and verify facts and comment on the conclusions drawn several times during the audit and before the final report is adopted.

"6. The rapporteur(s), together with the SCS present the final version of the OSR for adoption to the SC in SC plenary meeting. Before adoption, the SC members, in plenary meeting, have a comprehensive discussion on the final version of the OSR giving special attention to, inter alia, the drafting of the recommendations."

"7. The SC members in plenary adopt the OSR."

"8. The OSR is then forwarded to the OLAF DG and the Institutions and put on the SC website including there, as an annex, the OLAF reply prior to the adoption by the SC of the OSR and all other relevant documents."

OLAF would appreciate the opportunity to comment on the final Opinion or Special Report adopted in Plenary. The intention of the SC to publish the OLAF reply is welcomed, but OLAF would stress that it should be the reply to the final Opinion or Special Report, rather than the reply to the draft or final draft. Comments to draft versions may not be relevant or readable together with the final version of the Opinion or Special Report might. Similarly, the European Court of Auditors always publishes the official final replies to the reports and recommendations, while the Internal Audit Service annexes OLAF's comments to their final report.

As for *all other relevant documents* which could be annexed to the final Opinion or Special Report and published on the SC website, OLAF trusts that the SC would fulfill its obligations of treating confidential information with the required discretion.

"9. The OSR will also be added as an annex to the SC Annual Report, without the OLAF reply on the draft OSR."

OLAF would prefer that its comments be included with the Opinion annexed to the SC Annual Report. However should this not be possible, OLAF would welcome continuation of the practice to include the link to OLAF website containing OLAF comments and replies to the SC's Opinions and Special Reports.

"10. The recommendations issued in the OSR are added to the SC list of "Follow Up Recommendations" and handled from there on as to the procedure foreseen for the follow-up of SC Recommendations to OLAF, i.e. to be followed up twice a year (June/December)."

OLAF welcomes the SC intention to continue with the follow-up procedure. OLAF has noted that the SC failed to include recommendations from Opinion 3/2014 in the second follow-up exercise and therefore stresses that each recommendation issued by the SC should subsequently be included in the "Follow Up Recommendations" and as it first appeared in the Opinion. In line with standard practice of other control bodies, the follow up to Recommendations should be annual and not biannual.