



Activity Report of OLAF Supervisory Committee

December 2005 – May 2007

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FOREWORD BY THE CHAIRMAN TO THE SUPERVISORY COMMITTEE'S ACTIVITY REPORT

The newly constituted Supervisory Committee of OLAF took office as from December 2005 and this Report which I am pleased to submit covers our first 18 months in office.

OLAF is dedicated to fighting fraud, corruption and irregular behaviour to the prejudice of the European Community's financial interests. The Supervisory Committee wholeheartedly supports OLAF's efforts and is committed to working to safeguard OLAF's independence in relation to its investigatory functions by regular monitoring its casework, advising and offering constructive criticism where appropriate.

To this end, we have worked over the period that we have been in office to build up a comprehensive picture of the way OLAF approaches its investigatory functions. We have examined its organisational structure and considered whether it gives optimum scope for carrying out OLAF's work with efficiency and economy. We have delivered a number of hard-hitting opinions on the proposed reform of the relevant EU Regulations, OLAF's budgets, and OLAF cases still under investigation more than nine months after files were opened and on a variety of other issues.

While it has become evident to us that OLAF investigatory staff are for the most part dedicated and committed fraud specialists, aspects of OLAF's human resources policy have given us some cause for concern. Chiefly this has centred on the very high proportion of staff who are temporary agents. This issue has been raised by us on many occasions, with OLAF itself and with the Commission, with some success, in that a number of staff have recently been offered indefinite contracts. We have also looked at training of investigatory staff and will be working closely with OLAF to assist the Director General in improving internal and external fraud investigation training in the coming months. We would also like to see a sharpening of OLAF's leadership and management capabilities which will do a great deal to support flagging morale within the investigatory teams.

We look forward to carrying out constructive work in the future to help OLAF to improve its performance and efficiency. OLAF is already a world-respected investigatory body; with our help and advice as an independent Supervisory Committee we hope it will be able to move forward and achieve its goals.

I would particularly like to thank the Secretariat of the Supervisory Committee for its unstinting work over the period we have been in office.

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INTRODUCTION

The Supervisory Committee of the European Anti-fraud Office (OLAF) was established for the purpose of reinforcing OLAF's independence by the regular monitoring of its investigative function, whilst refraining from interfering with the conduct of investigations in progress.

The Supervisory Committee also assists the Director General of OLAF in the discharge of his responsibilities. In doing so, the Committee's aim is to support the work of OLAF and to ensure that its investigative work is carried out to the highest standards.

It discharges its role principally by the submission of reports to the Community institutions and by delivering opinions to the Director General; by challenging, questioning and making recommendations to OLAF for improvement, where it deems appropriate and necessary.

The independence of the Committee is a key factor in safeguarding OLAF's own independence. The Supervisory Committee was appointed by common accord of the European Parliament, the Council and the Commission and is composed of "five independent outside persons, who possess the necessary qualifications in their respective countries to occupy senior posts relating to OLAF's areas of activities"¹. They take no instructions from any government, institution, body, office or agency and are also careful to avoid any conflict of interest which might impair their independence: in particular, any family or financial interests.²

The Supervisory Committee is required to report to the institutions on its activities on a yearly basis. Having regard to the time taken during 2006 to establish the present Committee and its supporting Secretariat, it was felt that on this occasion an extended report would better reflect the full range of its activities and better meet the needs of the Community institutions. This activity report is intended to stress the crucial role that OLAF plays in the protection of the European Communities' financial interests.

I THE FORMATION OF THE PRESENT SUPERVISORY COMMITTEE AND ITS WORKING METHODS

I – 1. The formation of the present Supervisory Committee

The present Supervisory Committee was appointed with effect from 30 November 2005. At the first meeting in December 2005 in Brussels, Mrs Rosalind Wright was elected as the Chairman for a term of one year. In December 2006 she was re-elected for a second term.

Immediately after its appointment, the Committee set priorities for its activities; above all, it was imperative that the Committee and its Secretariat should have the appropriate tools to perform their duties. The first tasks undertaken by the Supervisory Committee included the appointment of a new Secretariat and its relocation to Brussels from

¹ Article 11.2 of Regulation (EC) No 1073/1999.

² Article 4 of the Rules of Procedure of the OLAF Supervisory Committee (OJ L 33, 2.2.2007) and Article 2 of Decision of the European Parliament, of the Council and of the Commission of 4 November 2005 appointing the members of the Supervisory Committee of the European Antifraud Office (OLAF) (OJ L 312/49, 29.11.2005).

Luxembourg, and the revision of the Supervisory Committee's own internal Rules of Procedure.

I – 1.1 The appointment of the Secretariat

At its first meeting in December 2005, the Supervisory Committee held discussions with the Director General of OLAF for the provision of a new Secretariat with particular reference to desirable competences and skills of its members prior to their appointment. The first members of the Secretariat were appointed and endorsed by the Supervisory Committee in January 2006.

When the present Supervisory Committee was appointed, the Secretariat was located in Luxembourg. Given the duty of the Supervisory Committee to perform regular monitoring of OLAF's investigations, requiring high standards of data protection, secure offices and access to the Case Management System (CMS), the Supervisory Committee decided to relocate the Secretariat offices from Luxembourg to the OLAF security zone in the premises in Brussels within OLAF's building previously occupied by the former Supervisory Committee. This would allow the Secretariat to carry out its functions efficiently, being thereby enabled to question and discuss with OLAF staff particular issues as they arise and would also facilitate every-day contact with other Committees and stakeholders. Location in Brussels also avoids the heavy costs of regular travel for the members of the Supervisory Committee and the Secretariat between Brussels and Luxembourg.

The archives of the former Supervisory Committee were moved at the same time from Luxembourg and kept secure in a separate archive and an inventory of the files was carried out.

I – 1.2 Rules of Procedure

Having regard to the views of the Director General of the Legal Service of the Commission in January 2006, and the conclusions and recommendations of the Court of Auditors' Special Report No 1/2005 concerning the management of the European Antifraud Office (OLAF),³ the Supervisory Committee decided to overhaul its Rules of Procedure to reflect the obligations imposed on it by Regulation (EC) No 1073/1999 whilst refraining from imposing obligations on third parties or giving the Supervisory Committee legislative powers. The Rules were redrafted and adopted by the Committee in August 2006.⁴

The object of the Rules of Procedure is to facilitate the organisation of the Committee's work. They include inter alia the principles governing the activities of the Supervisory Committee, the exercise of its powers, working methods and chairmanship, the procedures for adopting opinions and the role of the Secretariat.

I – 2. Working methods

³ OJ C 202, 18.8.2005.

⁴ OJ L 33, 2.2.2007.

I – 2.1 Meetings

During the reporting period the Supervisory Committee held sixteen plenary meetings in Brussels.⁵ The Committee's meetings are not open to the public and all documents on which they are based are confidential; however for the sake of transparency and to provide regular information to the institutions on the Supervisory Committee's work, the Committee decided to make its minutes available to OLAF, to the General Secretariats of the European Parliament, of the Council and of the Commission.

From the beginning of its mandate, the Committee decided to invite the Director General of OLAF, as well as other OLAF staff, regularly to their meetings in order to familiarise themselves with the functioning and working practices of OLAF and its internal decision-making process. Throughout the reporting period, the Director General of OLAF, the Investigations and Operations Executive Board, all Directors, a number of Heads of Unit and officials of Operational and Support Units have made individual presentations of their work to the Committee.

In line with this approach, the Supervisory Committee has regularly extended invitations to participate in its meetings to Committee stakeholders as well as to OLAF's partners.

I – 2.2 The Secretariat

The permanent Secretariat provided for the Supervisory Committee by OLAF is responsible for facilitating as well as contributing to the performance of all tasks assigned to the Committee with a view to reinforcing OLAF's independence. The Secretariat ensures the efficient performance of tasks assigned to the Supervisory Committee, in particular, in relation to monitoring OLAF's investigative function and supporting the work of the Supervisory Committee.⁶

The Secretariat constitutes an essential element in the Committee's performance of its duties: *"It shall in that respect assist the chairman in the preparations for and the conduct of meetings. It shall draw up a draft agenda for each meeting, draw up draft minutes of meetings, supply Committee members with information and documents relating to every sphere of their activities, assist, under the chairman's direction, in the drafting of texts, and assist Committee members, especially when they act as rapporteurs. For that purpose, members of the secretariat shall attend meetings as necessary with rapporteurs in order to carry out those tasks".*⁷

The allocation of an adequate number of personnel with the appropriate skills and competences to the Secretariat is essential in order for the Supervisory Committee to fulfill its legal mandate in full independence.

From the beginning of its term of office, the shortage of staff in the Secretariat has been a matter of concern for the Committee which repeatedly informed OLAF of its needs with no concrete results until the end of June 2007, when OLAF finally provided the Committee with a complement of support staff. The Supervisory Committee has therefore worked for nearly eighteen months with a marked staff shortage which has inevitably impacted on the work plan outlined by the Committee for its mandate period.

This has led the Committee to recommend strongly that OLAF make provision in the 2008 Budget for eight Secretariat staff members, earmarking these posts specifically for

⁵ See Annex 1.

⁶ Article 12 of the Rules of Procedure of the OLAF Supervisory Committee (OJ L 33, 2.2.2007).

⁷ Ibid Article 12.4 (OJ L 33, 2.2.2007).

the Secretariat, as was done in the past. The Committee hopes that the institutions take note of this recommendation.

I – 2.3 *Rapporteurs*

The Supervisory Committee members have each taken on the task of *rapporteurs* in order to prepare for its discussions or proceedings as well as for the drafting of reports or opinions that were adopted by the Committee.⁸ The *rapporteurs* have also had bilateral meetings with the Director General of OLAF and other senior officials on the topics entrusted to their responsibility.

II MONITORING OF OLAF’S INVESTIGATIVE FUNCTION

II – 1. Regular monitoring at the Supervisory Committee’s initiative (article 11.1 of Regulation (EC) No 1073/1999)

The Supervisory Committee actively and regularly monitors the way in which investigations are carried out by OLAF in order to reinforce OLAF’s independence. The Supervisory Committee can independently select, on criteria predefined by the Committee,⁹ a number of cases from each sector and examine complete files as well as evaluation reports, final case reports, or any other individual document. Monitoring activity covers OLAF cases under investigation and cases under assessment as well as completed cases.

The Supervisory Committee deals with systemic aspects of OLAF’s investigative practice and also examines situations when OLAF’s independence could be at risk in the course of an investigation. Taking into consideration the lengthy duration of certain investigations, it was a priority for the Committee to examine old cases which were still active.

During the reporting period a number of discussions took place between the Supervisory Committee and the Director General of OLAF with a view to agreeing a working practice for access to case files, including ongoing investigations. OLAF raised concerns about giving the Supervisory Committee full access to on-going case files citing the issue of potential restrictions based on personal data protection rules in light of Regulation (EC) No 45/2001. A considerable amount of time was spent on this debate with the Director General of OLAF and the OLAF Data Protection Officer, the Supervisory Committee being fully aware of its responsibilities in the field of data protection as laid down in the Regulation (EC) No 1073/1999¹⁰.

OLAF allowed access by the members of the Secretariat to its electronic case management system (CMS) in April 2006, which allows them to view most of the documents of cases at the following stages: follow-up, follow-up completed, no follow-up, monitoring cases and closed cases. No electronic access was given to cases under investigation. At the end of the reporting period a working solution was finally reached

⁸ Ibid Article 8 (OJ L 33, 2.2.2007).

⁹ i.e. investigations in progress for more than nine months, seriousness of the alleged irregularity, financial impact, source of information etc.

¹⁰ Article 8.4.

with the Director General of OLAF, which has allowed the Committee full access for the purpose of examination of those cases requested.

In light of the above obstacles, the Committee has not been in a position to carry out its monitoring responsibility as fully as it would have wished. Several complete files were examined in 2006 and four more are currently under evaluation. It is the intention of the Supervisory Committee to deliver an opinion on these cases.

II – 2. Regular monitoring based on information sent to the Supervisory Committee by the Director General of OLAF (article 11.7 of Regulation (EC) No 1073/1999)

The Supervisory Committee felt that OLAF would benefit from more active follow up and reaction to the information sent regularly to it by the Director General of OLAF.¹¹ For that reason special attention has been paid to the monitoring role of the Committee in this respect.

The Director General of OLAF has forwarded to the Supervisory Committee monthly summaries of those cases where investigation had been in progress for more than nine months. Taking into consideration that 75 % of OLAF's investigations had been open for a longer period, it proved instructive to look closely at all cases currently on OLAF's books, on a month by month and sector by sector basis, and to examine the reasons for any egregious delays in the investigation process and expected time for completion. The Supervisory Committee examined all 150 reports of investigations of this type during the period January to December 2006 and issued an opinion containing clear and specific recommendations on 25th April, 2007.¹² From January to May 2007 65 reports were examined by the Committee and will be the subject matter of a separate opinion covering the period from January to December 2007.

During the reporting period the Director General forwarded to the Supervisory Committee reports on OLAF cases where information had been forwarded to the national judicial authorities of a Member State. The majority of these cases were presented by OLAF's magistrates from the Judicial and Legal Advice Unit in the meetings of the Supervisory Committee so that substantive and procedural aspects of investigations were discussed with the Committee.¹³

In this field the Committee focused its attention on four main areas: (i) due account of the time barring (prescription) periods of investigations sent by OLAF to the national judicial authorities, (ii) the apparent insufficient degree of involvement of the Magistrates Unit in the course of the investigations, (iii) the need for investigation reports to take into account the procedural requirements laid down in the national law of the Member State concerned and (iv) an assessment of the quality and usefulness of OLAF's investigation reports for the national judicial authorities. In the circumstance, the Committee took the initiative regularly to extend invitations to highest level judicial representatives from the Member States to future meetings. A first invitation was duly extended to the General State Prosecutor of Spain who accepted.

¹¹ Court of Auditors' Special Report No 1/2005 (OJ C 202, 18.8.2005.).

¹² See Annex 4.

¹³ Between December 2005 and May 2006 a total of 34 cases were reported under this scheme, of which 10 were open investigations.

The Director General is under an obligation to inform the Supervisory Committee of cases where the institution, body or agency concerned has failed to act on his recommendations. In the period of this report, no such cases were referred to the Committee. The Committee needs this information in order to be in a position to take prompt action.

The Committee also received regularly monthly statistics on OLAF operational activities which were subsequently reviewed by the Committee. The bare statistical information contained in these reports was of little practical use to the Committee and an opinion was delivered recommending that the Director General of OLAF set up clear performance indicators based not only on quantitative but also on qualitative parameters.¹⁴

In addition, the Committee received from OLAF the OLAF Annual Management Plan covering its operational activity for 2006. The Committee noted that, though laudable, the objectives set out in the plan were not specific, for most part not capable of measurement or realizable within stated timeframe.

Following a suggestion from the European Parliament,¹⁵ the Supervisory Committee has analysed a representative sample of the *prima facie non cases*¹⁶ covering all sectors, a large number of which is still the subject of an analysis.

III RELATIONS WITH OLAF, THE INSTITUTIONS AND OLAF PARTNERS AND STAKEHOLDERS

III – 1. Relations with OLAF

III – 1.1 OLAF's reorganisation

At the beginning of the reporting period the Director General explained to the Committee the changes envisaged in OLAF's structure and the future adoption of a new organisational chart, which took place in September 2006. The Supervisory Committee had previously recommended that he undertake an analysis of OLAF's strengths, weaknesses, opportunities and threats (SWOT) prior to the adoption of the new structure and as a point of reference for OLAF. This analysis by OLAF was submitted to the Committee as a draft only in March 2007.

The Committee had a number of concerns about the manner in which the reorganisation was carried out and its effect on OLAF's efficiency. The Committee was surprised and disappointed that OLAF did not see fit to carry out its own SWOT analysis before making the organisational changes, pointing to the risk of the effectiveness of the new structure being undermined and a consequential deleterious effect on the performance of its investigation powers. The Committee considered it sensible for the Directorate of Investigations and Operations to be split into two, as this emphasised OLAF's core investigatory function. However, permanent and close co-ordination between the two Directorates is necessary in order to implement properly the required investigation policy of OLAF.

¹⁴ See Annex 3.

¹⁵ 2005/2184/(INI), point 22.

¹⁶ OLAF Manual, page 99, *Prima Facie Non-Cases*: where information is received which clearly and unequivocally does not fall within the competence of OLAF.

The Committee was particularly concerned that the change of name and therefore an indication of a change in function of the Magistrates' Unit to "Judicial and Legal Advice" together with its detachment from the Director General would weaken its ability to support OLAF's independence by guaranteeing the legality of procedures in progress. Having a full complement of members of the judiciary or senior prosecutors from Member States within OLAF, also facilitates the uptake of investigations by national judicial authorities. The Committee noted with some anxiety that the Magistrates' Unit had lost a number of magistrates from Member States who had not been replaced. The lack of clear involvement of this Unit in evaluation and investigative work might also hamper the proper assessment of the procedural and evidence requirements to ensure successful prosecution of cases.

III – 1.2 OLAF Manual

The Supervisory Committee considered that the existing operational chapters of the OLAF Manual did not constitute a set of clear procedural rules for investigations. The rules are too diffuse and densely drafted to be of immediate practical use for OLAF investigators. The Committee was persuaded that the adoption of a clear, practical and useful guide for investigations, including strict deadlines within which separate stages of an investigation must be completed, would reinforce OLAF's independence in this field. The Committee recommended that a new manual for operations be prepared.

At the end of the reporting period, the Director General sent to the Committee a revised short version of the OLAF Manual which did not meet the expectations of the Committee, but he confirmed his commitment to drafting a revised Manual in accordance with the Committee's recommendations by the end of 2007.

III – 1.3 Visit to OLAF teams

Over two days in November 2006 the Chairman met members of staff of the OLAF Investigations and Operations Units to obtain their opinion on how OLAF's investigations were conducted and any problems which the teams had encountered in their every day work.

During her visit the Chairman met most of the team members of the eight Investigation and Operations Units in OLAF together with all the Heads of Unit. The items discussed included: (i) the limitations of the legal basis for OLAF's work in some sectors as well as its restricted legal capacity to represent its position; (ii) the heavy administrative workload for investigators; (iii) overwork, understaffing of the Units and the issue of temporary agent staff; (iv) the particular expertise necessary in the area of financial investigatory support; (v) the need for a short procedural OLAF Manual; (vi) the advisory role of the Magistrates' Unit; (vii) the question of OLAF's visibility within the institutions as well as the pressing need for strong management support and effective leadership. The memorandum on the visit was discussed with the Director General in March 2007.

III – 1.4 Jurisprudence of the European Courts

Over the reporting period, the Committee has closely followed the judgments of the European Courts concerning OLAF. In particular, Judgment T-309/03 was examined and discussed with OLAF's Director General. The Supervisory Committee expressed its concern and recommended to him that he re-examine OLAF's procedures and put in

place rigorous internal control mechanisms to avoid any conflict of interest that could jeopardise the independent conduct of investigations and OLAF's reputation in the future.

III – 2. Relations with the Community institutions and with OLAF's partners and stakeholders

The Supervisory Committee identified as a priority the maintaining of regular contacts with the Community institutions and OLAF's partners and stakeholders. Bearing in mind that OLAF has no powers to bring prosecutions or administrative or disciplinary proceedings, close co-operation between OLAF and the institutions and competent bodies, and as well as proper follow up of OLAF's recommendations remain essential for the successful outcome of OLAF's investigations. The Supervisory Committee was particularly conscious of the importance of improving the flow of information between the institutions and Member States authorities and OLAF by a more proactive implementation of the provisions relating to the duty to inform OLAF.¹⁷ The Supervisory Committee's role is also to assist OLAF to ensure that all parties obliged to co-operate with it actually do so and that the spirit of the Inter-institutional Agreement of 25 May 1999 is observed. Member States as well as institutions and competent bodies need clear signals to avoid acting in a way which might actively impede the work of OLAF.

In order to pursue these objectives as well as to obtain feedback about OLAF, the Supervisory Committee met twice with the Committee on Budgetary Control of the European Parliament (COCOBU) and with the Court of Auditors; with the Vice-President of the Commission, Mr Kallas; with the Secretary General of the Commission, Mrs Day; with the Director of the Investigation and Disciplinary Office of the Commission (IDOC), Mr Van Lier; with the President of the Council's Working Group on Fight Against Fraud during the German Presidency, Mr Wetz and with the President of Eurojust, Mr Kennedy.

From these discussions, the Supervisory Committee concluded that greater cooperation between the Commission Directorates General and OLAF was necessary; that OLAF and the institutions' communication policy on OLAF's investigations should be based on the twin premises of transparency and inter-institutional loyalty enabling a more coherent communication to the general public; that adequate mechanisms must be put in place in order to exclude *de minimis* cases from OLAF's remit, which should be limited to serious matters pursuant to a clear investigation policy (to be defined by OLAF); a policy of "zero tolerance" for fraud and corruption does not necessarily mean that OLAF has to take on board all cases where other mechanisms exist to deal with less serious matters. Finally, improvement is needed in the exchange of information between OLAF and Eurojust; the Supervisory Committee is ready to facilitate all relations between the two.

IV OPINIONS OF THE SUPERVISORY COMMITTEE

IV – 1. Opinion concerning the reform of the Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹⁸

From the beginning of its term of office, the Supervisory Committee closely followed developments in the area of the proposal to reform the Regulation (EC) No 1073/1999. The Committee welcomed the Commission's determination to support OLAF's work and

¹⁷ Article 7 of Regulation (EC) No 1077/1999.

¹⁸ See Annex 2.

to improve its operational efficiency. At the request of the Vice-President of the Commission, Mr Kallas, the Committee expressed its main concerns on the proposal for reform, a certain number of remarks focusing on the procedural rights of persons under investigations; the length of investigations, institutional aspects of the text and the role of the proposed Review Adviser were also examined.

Regarding independence issues relating to investigations, particular attention was paid to the envisaged inter-institutional antifraud committee composed of political representatives from the institutions which would replace the existing Supervisory Committee. The Committee considered that it would not be better placed to ensure OLAF's independence. On the contrary, taking into account OLAF's competence to conduct administrative investigations within the institutions, there could be the risk of its becoming a source of inter-institutional tensions. OLAF is already subject to institutional scrutiny.¹⁹

Likewise, the Committee questioned the independence of the envisaged Review Advisor appointed by the Director General as a quality controller and complaints advisor for OLAF's investigations. His role overlaps with the Supervisory Committee's monitoring competences and with the quality control functions already attributed to the senior managers of OLAF.

Particular mention was also made of the rights of persons under investigation requiring further protection *de lege ferenda*. The Supervisory Committee was of the view that the time allowed for investigation procedures should not be extended and finally it stated that the duration of the investigations could be shortened by the filling of vacant investigator posts together with tighter managerial control.

IV – 2 Opinion on Performance indicators for OLAF²⁰

The Supervisory Committee directed its attention to the results achieved by OLAF's investigations and actively encouraged OLAF to produce relevant performance indicators.

The Committee recommended to the Director General of OLAF that OLAF should establish specific performance indicators for their different fields of activity not only based on quantitative but also on qualitative parameters. As to the workload of the investigations which is directly linked to the area of investigation policy, the Committee also recommended the implementation of specific mechanisms for the measurement of the timelines of procedures. In addition, the Supervisory Committee recommended to the Director General that OLAF carry out a customer stakeholder survey to be based on reports from various partners. The survey would measure the level of achievements of objectives and targets in a regular and on-going manner. The Director General agreed to carry out such a survey, which is scheduled to start in September 2007.

IV – 3 Opinion on OLAF's Reports of Investigations that have been in progress for more than nine months²¹

The Supervisory Committee examined 150 reports of this type of investigation covering the period from January to December 2006 across all sectors of investigations and operations. The aim of the analysis was to check whether investigations were conducted

¹⁹ Article 12.3 of Regulation (EC) No 1073/1999.

²⁰ See Annex 3.

²¹ See Annex 4.

continuously over a period proportionate to the circumstances and the complexity of the case and to identify reasons for potential undue delays.

The Supervisory Committee acknowledged that while these reports contained relevant and useful information, essential information that would enable the Committee to fulfil properly its monitoring function was missing.

The Committee made specific recommendations to the Director General of OLAF to incorporate in future reports specific information that could be useful for both Supervisory Committee purposes and the internal OLAF management in charge of the conduct of investigations. This included when the facts under investigation took place; time barring (prescription) periods of acts under investigation; the legal description of the irregularity under investigation; potential sanctions or legal consequences of the acts under investigations and the expected time for completion together with a reasoned explanation. The Supervisory Committee also recommended the omission of “tactical hold” as a reason for not having concluded an investigation and expressed dismay at the lack of a clear investigation policy.

These recommendations were accepted by the Director General of OLAF. However action has yet to be taken by OLAF in relation to the Supervisory Committee’s recommendations that clearer investigatory procedures and better supervision of casework be instituted.

IV – 4 Opinions on OLAF’s Preliminary Draft Budget for the years 2007 and 2008²²

The Committee is aware that OLAF’s independence in budgetary and administrative matters has a direct impact on the investigations and operations field. The Supervisory Committee is to be consulted by the Director General on OLAF’s preliminary draft budget prior to it being sent to the Director General in charge of budgets.²³

During the reporting period, the Supervisory Committee issued two opinions on this matter. With regard to OLAF’s preliminary draft budget for 2008, the Committee recommended that OLAF request additional posts solely within the investigative function which must be strengthened in accordance with the new structural organisation. The Committee also recommended to the Director General of OLAF the earmarking of posts of the members of the Secretariat in order to fulfil its mandate in full independence. However, neither of these recommendations was in fact incorporated by the Director General into OLAF’s preliminary draft budget for 2008.

Regarding temporary agents, who represent approximately 20% of OLAF staff, the greater part of whom work in the area of investigations conduct and support, the Committee recommended permanent rather than temporary posts within OLAF to ensure the continuity, efficiency and independence of investigations. The lack of working stability in this sector affects the loyalty, motivation and commitment of the staff to OLAF.

The Committee addressed its concern regarding this matter to the Vice-President of the Commission, Mr Kallas, and welcomed the agreement reached in May 2007 between OLAF, the Directorate General for Administration of the Commission and the staff representatives anticipating a screening procedure to award an extension for an unlimited period of the temporary agents. However the Supervisory Committee has noted that OLAF does not operate independently from an administrative viewpoint, its human resources policy being enforced by the Directorate General for Administration. This is a

²² See Annex 5.

²³ Article 6 of the Commission Decision of 28 of April 1999 (OJ L 136/20, 31.5.1999).

matter of concern for the Committee since it has a direct impact on the investigative function of OLAF.

In the area of human resources the Committee also noted an urgent need for OLAF to invest more in management, which is fundamental for the investigation support function, key to OLAF's independence. The Supervisory Committee strongly recommends that OLAF adopt a firm human resources strategy in order to maximise the use of existing resources in the investigation area, to better manage its workload and to organise the investigative teams accordingly. The Chairman, having participated as an observer in OLAF training sessions, recommended that particular attention be paid by the Committee to the needs of investigators with regard to adequate and continuous training.

CONCLUSIONS AND RECOMMENDATIONS

- I. The Supervisory Committee's primary purpose is to reinforce OLAF's independence by the regular monitoring of its investigative function. The independence of the Committee is therefore a key factor in safeguarding OLAF's own independence.
- II. In carrying out its monitoring function, the Supervisory Committee has sought full access to OLAF case files on the electronic case management system (CMS). This access was not permitted in relation to cases under investigation during the period under report. This has proved a serious obstacle to the Committee's ability to carry out its remit.
- III. The Supervisory Committee has monitored a number of paper files and considered 215 reports of cases where the investigation has exceeded nine months. In these cases, the Committee has recommended radical changes to the information contained in the reports designed to give detailed reasons for egregious delays in investigations and to draw attention to potential time-barring (prescription) periods.
- IV. The lack of clear investigatory procedures and of structured supervision of investigations contributes to the delays referred to above. The Supervisory Committee recommends that OLAF adopt a clear investigation policy. The Committee strongly recommended a complete redrafting of the operational chapters of the OLAF's procedural Manual to provide a clear and useful working tool for investigators, including strict deadlines within which separate stages of an investigation must be completed.
- V. The Supervisory Committee has strongly recommended that OLAF establish rigorous internal control mechanisms to avoid all possible conflicts of interest which could endanger the independent conduct of its investigations.
- VI. OLAF staff morale has been deleteriously affected by the recent uncertainty of temporary contracts and the Supervisory Committee recommended that this issue be urgently resolved; by the end of the reporting period, this has been partially addressed.
- VII. In view of the pressing need that the Supervisory Committee identified for strong management support and effective leadership, the Committee strongly recommends improvement in management and leadership techniques to support effective teamwork and investigatory performance.
- VIII. The Supervisory Committee has developed contacts with Community institutions and with OLAF's partners and stakeholders and recommends that benefit would be derived from closer cooperation between the Commission and OLAF and in the improved exchange of information between OLAF and Eurojust.
- IX. The Supervisory Committee has followed closely the changes envisaged in OLAF's organizational restructuring and the proposals for radical amendment to Regulation (EC) No 1073/99 which governs OLAF's investigatory function. The Committee is anxious that organisational changes should not diminish the role of the Magistrates

Unit within OLAF who, with their specialised knowledge of the applicable law and procedures and local contacts, are able to facilitate the uptake of investigations by Member States. The Supervisory Committee was also anxious that proposed changes to the Regulation should not compromise OLAF's independence or the role played by the Committee itself.

- X. The Supervisory Committee strongly recommended that OLAF's investigative teams be strengthened by additional posts; that improvements be introduced to its training for investigators; and, to ensure the effective working of the Committee itself, adequate staffing be provided for the Supervisory Committee's Secretariat and that sufficient posts for the Secretariat be earmarked.

Calendar of Supervisory Committee Meetings

2005

Month	Meeting date
DECEMBER	Wednesday, 14

2006

Month	Meeting date
JANUARY	Wednesday, 25 – Thursday, 26
FEBRUARY	Tuesday, 21 – Wednesday, 22
MARCH	Monday, 20 – Tuesday, 21
APRIL	Tuesday, 25 – Wednesday, 26
MAY	Tuesday, 30
JUNE	Tuesday, 13 – Wednesday, 14
JULY	Monday, 3 – Tuesday, 4
SEPTEMBER	Monday, 25 – Tuesday, 26
OCTOBER	Tuesday, 17 – Wednesday, 18
NOVEMBER	Monday, 13 – Tuesday, 14
DECEMBER	Wednesday, 13 – Thursday, 14

2007

Month	Meeting date
JANUARY	Monday, 29 – Tuesday, 30
MARCH	Monday, 5 March
	Monday, 26 March – Tuesday, 27
APRIL	Tuesday, 24 April – Wednesday, 25

Opinion No. 2/2006

**concerning the reform of the Regulation (EC) No 1073/1999
concerning investigations conducted by the
European Anti-Fraud Office (OLAF)**

1. At its meetings of 21-22 February, 20-21 March and 25-26 April 2006 the OLAF Supervisory Committee (hereinafter “the Committee”) has discussed a proposal for a Regulation of the European Parliament and the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (“draft”). Ms D. Theato and Mr K. Györgyi were appointed rapporteurs.

The Committee expressly welcomes the Commission’s determination to support OLAF’s work and to improve its operational efficiency and effectiveness wherever possible.

The following remarks focus on the problem areas highlighted by the Committee:

- the procedural rights of persons under investigation;
- the length of investigations;
- and institutional aspects of the draft.

2. The procedural rights of persons under investigation

The draft rightly points out the need to clarify the guarantees applicable to investigations. Clarification is needed to provide legal certainty and is also in the interest of anyone under investigation. The Committee therefore welcomes new Article 7a. In particular, it makes it clear that investigations should aim to uncover evidence both for and against the person concerned.

All OLAF investigations not concluded elsewhere are ultimately referred to an independent criminal court in a Member State, where they become the subject of official proceedings in accordance with national law and are covered by the usual procedural guarantees. However, the Committee is of the opinion that the rights of the person under investigation require further protection *de lege ferenda* than provided in the draft. In particular:

- The procedure must be fair and based on the assumption of innocence (Article 6 of the European Convention on Human Rights).
- According to the draft, the person concerned will be informed only of the conclusions and recommendations of the final report. However, these may not suffice to submit a complaint to the Review Adviser, as a complaint will challenge the way in which OLAF arrived at its final conclusions. It must be possible for the appellant to see how the decision was arrived at. And so, in order to enable appellants to exercise their right of defence, they must be guaranteed access to the entire report or to all items of evidence concerning them.

In exceptional circumstances the Director-General may withhold access to information concerning the person under investigation until it has been forwarded to the appropriate

authorities/bodies. How can the Review Adviser exercise control in such cases? Is there no review in such cases?

- To ensure that the investigation is fair, where there are grounds to believe that investigators might not act independently in the performance of their duties, they should not be allowed to take part.
- The person under investigation should have the right to submit evidence.

Strengthening the procedural rights of the person under investigation would also enhance the credibility of OLAF investigations and their findings.

3. The length of investigations

Article 6 of the current OLAF Regulation requires investigations to be conducted without interruption. Their duration must be proportionate to the circumstances and complexity of the case. Under Article 11(7) of the current OLAF Regulation, where an investigation has been in progress for more than nine months, the Director must inform the Supervisory Committee of the reasons why it has not been possible to bring the investigation to a conclusion.

Under a special procedure provided for in Article 6(7) of the draft Regulation, investigations that have not been concluded within twelve months may be extended for up to six months and then further extended under the same conditions.

The Committee believes this sends out the wrong signal. The current nine-month period is in itself dubious. While a number of reasons may cause certain investigations to take longer, the Committee is of the view that the time allowed for the procedures should not be extended and recommends instead that the draft should incorporate the principle of urgency. The Committee believes that it may be possible in a number of cases to shorten the duration of the investigations by, for example, filling some 70 posts currently vacant or by stepping up managerial control over the duration of the procedure.

4. Institutional aspects

- The Supervisory Committee is of the opinion that the necessary independence of OLAF investigations should be further strengthened in law. It proposes incorporating the following main priorities in the draft:

- OLAF should have the discretion to decide independently which investigations to embark on and how they are to be conducted.
 - OLAF should bear sole responsibility for the blueprint of its investigations.
 - OLAF should devise its own operational policy, including its anti-fraud and corruption prevention policy, albeit in close coordination with all competent European and national bodies.
 - Greater emphasis should be given to its mandate to combat fraud and corruption.
- Generally speaking, experience has shown that cooperation between OLAF and the Member States needs to be improved to ensure that the European Union's financial interests are protected effectively. Cooperation cannot be just a one-way street leading from OLAF to the Member States. There also needs to be an exchange of information between the Member States and, in particular, between the competent judicial authorities in the Member States and OLAF.

Special attention should be paid to OLAF's involvement in external investigations conducted by the authorities in the Member States.

- The Committee expressly welcomes the fact that, as a general principle, the draft retains the Supervisory Committee as an independent expert body that comprises representatives of the Parliament, Council and Commission only for the "structured dialogue with the institutions".

It should, however, be clear from the outset that the representatives of the three institutions in the structured dialogue have a mandate dictated by their institution and the independent persons have an open mandate. While the structural dialogue has many advantages, in particular with regard to relations between the institutions, it is likely to politicise to a certain extent OLAF's work. The standard political control of OLAF is already ensured by, for example, the budgetary discharge procedure without this structural dialogue.

In a structured dialogue between the institutions involving a single representative from the Council, Parliament and the Commission, the Supervisory Committee risks losing its independence on key matters that may even include the production of its activity report.

It is unclear what is meant by "in order to devise common guidelines".

Article 8 of the draft removes the Supervisory Committee's co-responsibility for data protection and professional confidentiality without any reason whatsoever being given.

Article 11 of the draft restricts the Supervisory Committee's rights to information. As a consequence of the amendment proposals contained in paragraphs 1 and 7, the Supervisory Committee will receive less factual information on investigations conducted by the Office than has hitherto been the case.

Article 12 of the draft raises questions regarding the inter-institutional nature of the powers of OLAF's Director-General. The Director-General has, until now, been appointed by agreement of the Council and Parliament. This gives the position a special legitimacy. In future the Commission will merely consult the Supervisory Committee within the framework of a structured dialogue and will then designate the Director-General. The Supervisory Committee sees this as greatly undermining the Director-General's legitimacy.

In view of the problems involved in renewing the mandate of OLAF's current Director-General on completion of his first term, however, the Committee welcomes the proposal that the seven-year term should not be renewable. This should strengthen the Director-General's independence and obviate the problem of undesirable interregnum periods. (The terms OLAF Director [*OLAF-Direktor*] and Director-General of the Office [*Generaldirektor des Amtes*] in the draft need to be harmonised.).

The current proposal regarding the Supervisory Committee's secretariat does not go as far as the Commission proposal of February 2004, which attached the secretariat to the Commission for administrative purposes. The draft attaches it to the Office, which may impinge on the independence of the Supervisory Committee itself.

The Committee understands why the draft introduces the position of Review Adviser. However, it questions whether the Review Adviser can act "in complete independence" if he is appointed and possibly reappointed by the Director-General and depends on him administratively, especially for performance appraisal and promotion.

The draft should also make it clear that the Supervisory Committee can act not only on the basis of statistical and analytical reports drafted by the Review Adviser. To be able to perform its primary task of regularly monitoring OLAF's investigations, the Committee must have access to cases and not just to the Review Adviser's statistics, analysis and observations. There should be a clear demarcation of duties, and the Committee's most important task, ensuring the Office's independence, must be safeguarded.

With all its references to other legislative instruments, Article 16 of the draft is by no means a shining example of clear legislation.

In general, the provisions contained in Regulation (Euratom, EC) No 2185/96 should be incorporated in the draft. This would consolidate all of OLAF's investigative powers in one legal instrument and thereby simplify and facilitate the application of the law.

5. These comments refer to the text that was submitted for inter-service consultation. Since then, the Supervisory Committee has received further oral information on 30 May, 14 June and 4 July 2006. It reserves the right to submit a supplementary opinion on the Commission's final written proposal.

Supplementary opinion
concerning the reform of the regulation (EC) N° 1073/1999
concerning investigations conducted by the European Anti-Fraud Office
(OLAF)

1. With its Opinion N° 2/2006 the OLAF Supervisory Committee has welcomed the Commission's determination to improve OLAF's operational efficiency and effectiveness and has made a certain number of remarks focusing on the procedural rights of persons under investigation, the length of investigations and institutional aspects of the draft.

These comments referred to the text that was submitted for the Commission's inter-service consultation. This complementary opinion refers to the final proposal which the Commission has in the meantime presented to the European Parliament and to the Council²⁴.

2. At its meeting dated 25/26 Sept. 2006 the Supervisory Committee has in particular examined the role of the Review Adviser. The Committee concluded that the creation of such a role would:

- add another monitoring step to those already in place despite the fact that there appears to be no evidence that those already in existence are inadequate;
- complicate and prolong procedures when both the European Parliament and the Council have requested that investigations should be as short as possible;
- question to what extent the mandate of the Review Advisor would dilute the OLAF Director General's responsibility;
- overlap to some extent with the role of the Supervisory Committee, create the risk of duplication and weaken in general the role of the Committee, whereas this

²⁴ COM (2006) 244 final

Committee alone has been appointed by common agreement between the European Parliament, the Council and Commission;

- give to the Review Advisor the dual role of quality controller and complaints advisor where he/she would be both reporting to and monitoring OLAF's Director General, these roles being totally contradictory. In the OLAF organization chart, adopted by the Commission as of 01/09/2006, the role of quality control is already attributed to two Advisors attached to the Directors of the two Directorates in charge of all investigations;
- Though the Commission proposal does not include any analysis of the financial impact, the Committee estimates this cost to be out of proportion with the very small number of cases presented up to the present day and thus incompatible with the principle of value for money.

Opinion No. 3/2006
of the Supervisory Committee

Performance indicators for OLAF

1. The Supervisory Committee (SC) has discussed at its meetings dated 21/22nd of February, 20/21st of March and 25/26th of April 2006 the topic of performance indicators and agreed with OLAF to contribute actively to the further development of these indicators.

2. **Performance indicators** for the different fields of activity will allow OLAF to **focus more on results** and to **enhance** in general the **quality of the services** rendered in particular to the European institutions, judicial authorities of Member States and to the general public whilst protecting the Communities' financial interests and continuing its fight against fraud and other illegal activities detrimental to the Communities' financial interests.

3. OLAF has – as set out in the Director General's note for the attention of the SC dated 12th of April 2006 – already started work on the development of performance indicators.

The bulk of the existing indicators relates to OLAF's operational "activities and outputs" and are of a quantitative/statistical nature. These indicators do allow OLAF to measure numbers, such as the number of investigations or intelligence activities etc... The SC recognizes the utility of a solid statistical basis and of quantitative indicators and encourages OLAF to **pursue its work on the improvement of the reliability of statistical data.**

4. The SC notes that "reflection on quality indicators has started" (OLAF's note dated 12/04/2006).

In conformity with the internationally recognized methodology for performance measurement, the Supervisory Committee stresses the **necessity to measure OLAF's performance in the different fields of activity in the future through qualitative as well as quantitative parameters** which will allow the measurement of outcomes and results and not just activities or outputs.

5. Quality is usually measured by assessing how far an organisation has met its targets in terms of outputs, outcomes. This is usually measured by evaluating quantifiable aspects of the service. In setting quantitative targets, management decides what is important e.g. turn around time of services, the volume of complaints etc... (point 6). For investigatory work, where the outcome is the delivery of a completed dossier which establishes no further action is needed, or, alternatively, contains sufficient information to be taken forward by a prosecuting or disciplinary agency for further action, qualitative targets are less clear-cut and can best be measured by customer satisfaction surveys (point 7).

6. The SC notes in particular that OLAF is “under pressure to decrease the average duration of cases” (OLAF’s note dated 12/04/2006) and that the European Court of Auditors has recommended the establishment of a maximum duration for enquiries (Para 80 of the ECA report).

In the context of the duration of cases the SC would recommend the measurement of the **timeliness of procedures** whilst comparing individual cases against the standard time limits which management should fix.

Two generally accepted indicators in that respect are:

- the clearance rate
- and the backlog indicator.

Clearance rate: The clearance rate measures whether an organisation can keep up with its workload. It measures the number of completed cases in the reporting period divided by the number of cases opened in the same period.

Backlog indicator: The backlog indicators allow the organisation to measure on the basis of the standards which management sets for timeliness the age of the caseload on the background of this efficiency standard.

A good example in this context which OLAF could use *mutatis mutandis* as a model appears to be the Australian Federal Court which has decided earlier that:

- no more than 10 per cent of cases pending completion are to be more than 6 months old
- no cases pending completion are to be more than 24 months old.

7. It is generally accepted that **customers should be involved in standard setting and influence evaluation of quality and assessments of service delivery.**

In the SC’s view, OLAF **should regularly survey the satisfaction of European institutions and national authorities** and invite these “customers” to make proposals for any improvements which they might consider necessary.

The surveys could focus on

- the technical quality of work
- the relevance of the information provided
- and the timeliness of the information provided.

Opinion No. 1/2007

**OLAF's Reports of Investigations
that have been in progress for more than nine months**

Brussels, 25 April 2007

INTRODUCTION

The task of the Supervisory Committee

The Supervisory Committee of the European Antifraud Office (OLAF) reinforces OLAF's independence by regular monitoring of its investigative function. Within this task, the Committee also supervises the duration of OLAF's investigations in order to check that they are conducted continuously over a period proportionate to the circumstances and the complexity of the case²⁵.

Therefore, where an investigation has been in progress for more than nine months, the Director-General of OLAF is obliged to inform the Supervisory Committee of the reasons for which it was not possible to conclude it and of the expected time for completion.

From the beginning of its term of office in December 2005 the newly elected Supervisory Committee has received monthly summaries of the said investigations (henceforth "nine months reports"), which have been carefully examined as established in its own rules of procedure²⁶.

The aim of this examination is to analyse the information provided by the Director General in order to assess the duration of investigations and the reasons for potential undue delays. However, given that currently 75 % of the investigations opened by OLAF have been in progress for more than nine months²⁷, this exercise has now taken on a different perspective. Exceeding this period is not infrequent and, as a consequence, the nature of the "nine months reports" as a warning system to control the length of investigations appears to have changed and lost its impact.

When examining the "nine months reports" transmitted to the Committee two different aspects have been evaluated:

- The extent to which they contain adequate information to enable the Supervisory Committee to perform its monitoring function, particularly with regard to the potential existence of undue delays,
- The extent to which they can be used as a management tool by OLAF in order to bring the investigation to a successful conclusion within a proportionate period.

²⁵ Article 6.5 of Regulation (EC) No 1073/1999.

²⁶ OJ L 33, 2.2.2007 Article 13.3 of the Rules of Procedure of the OLAF Supervisory Committee.

²⁷ Statistics extracted from the Case Management System (CMS).

Methodology

Under the title “*Information to the OLAF SC, cases open for more than nine months*”, the Director General of OLAF has transmitted to the Supervisory Committee monthly summaries of investigations containing the following main elements²⁸:

- Legal basis;
- Description of the case;
- Date of opening of the case;
- Financial economic impact;
- Reasons for non completion of the case assigned to one (or more) of the following criteria: significant resources were allocated but even so the volume of investigative work means that more time is needed; tactical hold in investigation; lack of resources; low priority combined with limited resource allocation; lack of cooperation;
- Future steps;
- Expected time for completion.

On the basis of this information as provided by OLAF, the Supervisory Committee has endeavoured to identify the elements which would allow the Committee to assess whether investigations are being conducted continuously over a period proportionate to the circumstances and the complexity of the case as follows:

- The subject matter of the investigation, which is the legal description of the irregularity;
- Reference dates: the date or period on which the acts under investigation were executed, the date of receipt of the information by OLAF, and the duration of the “assessment stage” of the case prior to the opening decision;
- Potential sanctions or legal consequences of the acts under investigation: disciplinary, administrative, financial or criminal ones;
- Time barring periods of acts under investigation: both under national and community law regimes;
- The relevance of the reasons invoked for the non conclusion of the case;
- Justified expected time for completion.

OLAF’S REPORTS

For the purpose of delivering this opinion the Supervisory Committee has examined the “nine months reports” sent by OLAF covering the period from January to December 2006 which amounted to 150 investigations over all sectors, as follows: 19 internal investigations: European institutions, 9 internal/external investigations: EU bodies, 30 direct expenditure and external aid, 21 external aid, 27 agriculture, 19 customs and 25 structural measures.²⁹

²⁸ See annex 1.

²⁹ See annex 2. The total amount of active investigations per sector in December 2006: 62 internal investigations: European institutions, 24 internal/external investigations: EU bodies, 69 direct expenditure and external aid, 49 external aid, 65 agriculture, 83 customs and 52 structural measures.

Taking into consideration the specific nature of each sector and the different procedural rules applicable to each, the analysis was carried out using an approach by sector. However the aim is to reach global conclusions.

Internal investigations: European institutions

OLAF plays the lead role in these types of investigations and enjoys clear procedural competences³⁰.

It has been noted that the subject matter of the investigation which is the legal description of the irregularity has been mentioned only on very few occasions³¹. In those cases the legal descriptions used are, variously, “a conflict of interest (Article 14 of the Staff Regulations)”, “a breach of Article 22 of the Staff Regulations and Article 57.2 of the Financial Regulation” or “the leaking of confidential information, Article 86, 2 of the Staff Regulations” such description allowing the evaluation of the relevance of the investigative measures taken and the proportionate duration of investigations.

Special attention has been paid to the consideration given to the time barring periods of the acts under investigation. However, neither the date of execution of those acts³², nor the duration of the “assessment stage” made by OLAF prior to the decision to open an investigation is ever referred to although the date of receipt of the information by OLAF is sometimes mentioned. Reference is never made to potential sanctions or legal consequences of the acts under investigation.

The relevance of the reasons for the case not being concluded has been carefully examined; in general the reasons ticked in the model report do not often correspond to those explained in the reports afterwards. Particular attention has been paid to “tactical hold in investigation” as a reason frequently quoted. This reason is not clearly explained and justified; “operative reasons”, the complexity of the case or lack of response from other services have been given as justifications for a “tactical hold” approach frequently leading to long periods of inactivity³³. This sort of inactivity has also been detected in other investigations³⁴.

It has equally been verified that the expected time for completion of investigations is given, however, without mention of any specific details justifying the time proposed. This does not usually depend on the conduct of investigative actions by OLAF, but on external factors.

Internal/external investigations: EU bodies

OLAF plays the lead role in these types of investigations³⁵.

It has been verified that the subject matter of the investigation, which is the legal description of the irregularity, is not always mentioned.

The date of the receipt of information by OLAF is often referred to. Nevertheless, neither the date of the execution of the acts under investigation nor the duration of the assessment period is mentioned. As a consequence, the potential sanctions are not cited and the time barring periods are not mentioned in the “nine months reports”.

³⁰ Article 4 of Regulation (EC) No 1073/1999.

³¹ See annex 2: cases number 25, 24 and 125.

³² See annex 2: only in case number 59 is there a reference to the period where acts under investigation could have been committed.

³³ See annex 2: cases number 20, 21, 22, 25, 59, and 101 inter alia.

³⁴ See annex 2: cases number 1, 2 and 101 inter alia.

³⁵ Article 3 of Regulation (EC) No 1073/1999.

The most common reasons quoted for the case not being concluded are “low priority combined with lack of resources” and “the volume of investigations”.

It should be noted that the expected time for completion is almost never mentioned.³⁶

Direct expenditure and external aid

OLAF has the lead role in this field where the rules for the conduct of investigations are also based “on the agreements in force with third countries”³⁷.

A systematic and detailed mention of the legal basis on which investigations are based has been observed. The subject matter of the investigations is clearly explained although the legal description of the irregularities concerned is not made. In this context the potential sanctions or legal consequences of the irregularities are only mentioned where they are of a criminal nature. In a few cases, reference is made to time barring periods³⁸.

As far as reference dates are concerned, notice of the date of receipt of information by OLAF is not always visible³⁹ in the reports. Similarly neither the duration of the “assessment stage” nor the date or period on which the acts under investigation were executed appear.

Of particular note is “the volume of investigative work” and “low priority combined with limited resource allocation” as well as “lack of resources” as being the reasons commonly used for not having concluded investigations.

The expected time for completion is always mentioned and further steps to be taken in the investigations are well explained.

External aid

As mentioned in the previous sector, OLAF has the lead role in this field⁴⁰. It has been noted that there is not always a legal reference to agreements with the third countries where investigations take place.

Long periods of “assessment stage” prior to the decision to open investigations have been observed.⁴¹ The dates of the receipt of information by OLAF are rightly mentioned. However, there is neither reference to the date of execution of the acts under investigation nor to the potential sanctions or legal consequences. There is no allusion to the time barring periods in the reports.

Particular attention has been paid to the reasons for investigations not having been concluded: reasons such as “tactical hold in investigation” and “the volume of investigative work” often correspond to OLAF waiting for the completion of audits carried out by external firms, without any active participation or close follow up by OLAF. The added value of OLAF’s work in this field is not clear from the content of the “nine months reports”.

The expected time for completion is always indicated and clear further steps in the investigations are often listed.

³⁶ See annex 2: only in cases number 77 and 87.

³⁷ Article 3 of Regulation (EC) No 1073/1999 and “agreements in force with third countries”

³⁸ See annex 2: cases number 31 and 92.

³⁹ See annex 2: cases number 64, 92, 93, and 106 inter alia.

⁴⁰ Article 3 of Regulation (EC) No 1073/1999 and “agreements in force with third countries”.

⁴¹ See annex 2: cases number 9, 27, 28, 29, and 120 inter alia.

Agriculture

OLAF has strong and well established legal powers to conduct investigations in this field.⁴² However, this sector also covers customs cases where agricultural products are involved and where OLAF plays primarily a co-ordination and assistance role. Most of the “nine month reports” transmitted to the Supervisory Committee belong to the latter category.

In the customs domain, the legal basis is usually well defined as is the legal description of the irregularity. However, there is neither reference to the legal consequences of irregularities nor to the expiry of the time barring periods to take actions against those who are evading payment of customs duties. Furthermore, the date of receipt of information by OLAF is seldom referred to and the duration of the evaluation period is not reported.

It has been checked that often in these types of cases, several Member States are involved and do not respond in due time to the request for assistance sent by OLAF. Although in many summaries the reason given for not having concluded the investigation is the “volume of investigative work”, this is often combined with “long delays in receiving a response from the Member States”. It is possible that as a result of this, the expected time for completion is not always mentioned⁴³ and, when it is, no clear justification is provided to explain the date specified.

In the pure agriculture investigations domain, it has been noted that the financial impact with regard to Community funding is sometimes not clearly identified in the “nine months reports”⁴⁴. This then has an impact on the legal description of the irregularity which is not mentioned nor is there mention made of the eventual administrative or criminal consequences. There is also a lack of clear reference to the dates or period when the acts under investigation were executed and to the time barring period.

Customs

OLAF plays a coordination and assistance role in this field and the duration of cases depends highly on the action of the Member States or third countries involved. This is the reason consistently cited in the “nine months reports” for the case not having been wound up.

It has been more difficult to determine to what extent the “nine month” period has been formulated for these types of cases, given that it is the Member States’ ultimate responsibility.

It has been noted that the legal basis is well explained and the summary of the case is detailed and valuable. However, there is neither reference to the dates on which the acts under investigation have taken place nor is mention made of time barring periods.

It was also observed that the expected time for completion mentioned in the “nine months reports” is also related to the steps to be taken by the Member States.

Structural Measures

⁴² Article 3 of Regulation (EC) No 1073/1999, Regulation (EC, Euratom) No 2988/95, Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 515/97 inter alia.

⁴³ See annex 2: cases number 32, 33, 34, 35, and 36 inter alia.

⁴⁴ See annex 2: cases number 12, 36, and 70.

OLAF enjoys a solid basis for conducting investigations in this field.⁴⁵ However, in many of the “nine month reports” transmitted, OLAF does not conduct an investigation but rather provides assistance to national judicial or administrative authorities.⁴⁶

The subject matter of the investigation which is the legal description of the irregularity is mentioned. However there is no clear overview of the Commission funding process specific to the Community budget for the case in question in the “nine months reports”.

The date of receipt of information by OLAF is mentioned and reference is made to the “assessment stage” in some cases, although the date of the execution of acts under investigation is never mentioned.

Potential sanctions or legal consequences of the acts under investigation are not specifically referred to and the time barring periods both under community law or national law regimes are never analysed notwithstanding the fact that in several investigations there are clear references to potential criminal offences⁴⁷.

“Lack of resources” or “volume of the investigative work” are often quoted as reasons for the case not being concluded, although some times they do not entirely correspond to those explained either in the reports afterwards or relate to specific tasks of the investigators in this field⁴⁸.

In the area of provision of assistance to the national judicial authorities, the reason cited is “the nature of the case (criminal assistance)”⁴⁹.

The expected time for completion is usually determined although without mention of any specific details.

CONCLUSIONS AND RECOMMENDATIONS

The information currently contained in the “nine months reports” sent to the Supervisory Committee is pertinent and useful. Elements such as the description of the case, the steps taken, the financial impact and future steps proposed remain essential to the understanding of the investigation under evaluation. However, on examination of the “nine months reports”, it has become clear that crucial elements necessary for the Supervisory Committee to perform its monitoring task with regard to the duration of investigations are missing. Moreover, the Supervisory Committee believes that incorporation of these elements into the “nine months reports” will be also helpful for improving the management of the investigation in progress at that stage of the case.

The monitoring function of the Supervisory Committee

- The current format of the “nine months report” does not contain all relevant information necessary in order for the Supervisory Committee to determine whether investigations are conducted continuously over a period proportionate to the circumstances and the complexity of the case.

⁴⁵ Article 3 of Regulation (EC) No 1073/1999, Regulation (EC, Euratom) No 2988/95, Regulation (Euratom, EC) No 2185/96.

⁴⁶ See annex 2: cases number 41, 42, 55, 57, 75, and 112 inter alia.

⁴⁷ See annex 2: case number 17.

⁴⁸ See annex 2: cases number 54 and 75.

⁴⁹ See annex 2: cases number 41, 55, 57 and 112.

The format of the summary of the “nine months reports” should change so as to incorporate supplementary elements which would allow an efficient evaluation of the progress of investigations. These elements should include: the legal description of the irregularity, the date or period on which the acts under investigation were executed, the duration of the “assessment stage” prior to taking the decision to open the case, the potential sanctions or legal consequences of the acts under investigation and time-barring periods for the acts under investigation.

- The lack of reference to time-barring periods in the “nine months reports” does not allow the Supervisory Committee to assess the proportionate duration of the steps taken and proposed for conducting investigations.

Time barring periods should be specifically highlighted and analysed in the summaries of the “nine months reports”.

- The information contained in the “nine months reports” in some sectors is not sufficient to have a clear picture of the aim of the investigations, the reasons for delays and their legal consequences. In particular, a reason such as “tactical hold in investigation” where an investigation has not been concluded is neither well justified nor explained in most cases.

Furthermore, frequent use of a reason such as “low priority combined with lack of resources” could suppose a lack of a clear investigation policy.

The term “tactical hold in investigation” used in the “nine months reports” should either be strictly defined or omitted. The use of this reason for not having concluded an investigation should be prudent and precise.

Reflection on the implications of a reason such as “low priority combined with lack of resources” is also recommended.

- The expected time for completion of investigations is not accurately reflected in the “nine months reports”. It is not mentioned in one third of the cases and when mentioned, it is never respected.

An indication as well as a reasoned explanation with regard to the expected time of completion is necessary. Future investigative steps should be better outlined.

The management of OLAF’s investigations

- The “nine months reports” transmitted to the Supervisory Committee is not longer a warning system with regard to the length of investigations but rather a reporting exercise carried out at this stage of the case. A vast majority of OLAF’s investigations have been in progress for a longer period. In many cases long periods of inactivity are detected. The Supervisory Committee believes that the current “nine months report” does not constitute a management tool for OLAF aiming to re-examine the strategy of the investigation and to clarify its targets. That 75% of investigations have been open for over nine months is a strong indicator of the need of urgent managerial action to be taken.

The implementation of a management control system which would efficiently prevent stagnation of investigations is recommended. Regular close scrutiny by the heads of Unit of the continuous progress of the investigation should then be appropriate.

FUTURE ACTION

Continued examination of the “nine months reports” received from the Director General for the period 2007 will be carried out by the Supervisory Committee. Further scrutiny will be made of the reasons for the non completion of investigations within the specified time period and particular attention will be given to the cooperation from the Member States. The development of a clear investigation policy and an improved case management system will also be followed closely by the Committee.

It should be noted that OLAF’s quick reaction to improve the content of the “nine months reports” following a meeting between themselves and the Supervisory Committee⁵⁰ leads the Committee to anticipate an equally swift response to the above mentioned recommendations. Incorporating the suggested changes as outlined would lay the ground for all future examinations of the “nine months reports” by the Supervisory Committee.

⁵⁰ See Note I/01068 05.02.07

Opinion No. 1/2006

OLAF's Preliminary Draft Budget for 2007

Brussels, 28 April 2006

The OLAF Supervisory Committee has discussed in its meetings dated 20/21 of March and 25/26 of April 2006 "OLAF's Preliminary Draft Budget for the European Anti-Fraud Office for 2007" and adopted the following opinion:

Opinion:

OLAF's preliminary draft budget 2007 is essentially a continuation of OLAF's budget for 2006 with certain minor additional requests in order to cope with the enlargements (EUR 10, Bulgaria and Rumania).

In the area of human resources the Committee notes the high portion of temporary agents in comparison with the Commission's average and the high number of vacant posts which OLAF intends to reduce with the recruitment of temporary agents from the reserve list of the ongoing selection and from EPSO reserve lists for permanent officials. The recruitment of new officials will require additional efforts in training.

Stability and continuity of staffing is needed in the employment of temporary agents and OLAF envisages an overall balance in a certain number of services, among them communication.

The Supervisory Committee requires that the allocation of posts for the secretariat of the OLAF Supervisory Committee be reestablished according to the former level of the preceding budget.

OLAF is making efforts to satisfy all the needs of the Supervisory Committee and its secretariat in terms of human and financial resources to enable the Supervisory Committee to fulfil its legal mandate in full independence.

OLAF's Director General has given the Supervisory Committee a firm and binding commitment to put at its disposal all the human and financial resources the Supervisory Committee requires in order to comply with its legal mandate and its working program.

Under these circumstances the Supervisory Committee supports OLAF's budget proposal.

Opinion No. 2/2007

OLAF's Preliminary Draft Budget for 2008

Brussels, 25 April 2007

The OLAF Supervisory Committee (SC) has discussed in its meetings of the 24th and 25th April, 2007 "OLAF's Preliminary Draft Budget for the European Anti-Fraud Office for 2008" and adopted the following opinion:

a. Human resources management and investigation work

As regards the question of temporary agents, the SC welcomes the agreement recently reached with DG Admin and the staff representatives anticipating a screening procedure to be conducted to award an extension for an unlimited period of the temporary agents recruited before 1 February 2006. The agreement has been pivotal in ensuring continuity and maintenance of OLAF in-house expertise and it is expected to improve the commitment of staff to OLAF objectives and the effectiveness of OLAF as a whole.

In order to fully benefit from the positive outcome of the agreement, the SC's view is that a robust strategy in human resources management is now urgently needed. OLAF should ensure that human resources management (and training) are fully adapted to the needs of the organisation, and that the allocation of resources between Units reflects the priority needs. Generally, human resources management should be seen as the key investigation support function to strengthening the efficiency and effectiveness of the investigation work. Developing and maintaining a skilled, diverse and capable investigative staff is the only way to improve the efficiency and quality of OLAF services and must be considered to be the principal source of advantage for OLAF overall strategy.

Consequently, the SC believes that having a well-defined human resources strategy will help the Office to maximise the use of existing resources in the investigation area to better manage the future workload and to organise the investigative teams accordingly. This includes as a minimum, an advance planning of short- and medium term priority needs (based on strategic analysis), overview of the existing resources and capabilities as well as identification of the areas where improvement is needed. An important area in this respect is the provision of adequate and continuous training for investigators, which is a key factor in increasing motivation and job satisfaction.

<p>Recommendation: OLAF to prepare a human resources strategy to address short- and medium-term human resources matters (needs assessment, recruitment, training, mobility and career development). A robust approach to human resources management will improve the operational effectiveness.</p>
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b. Allocation of resources in the support of investigation work

OLAF is requesting 9 additional AD posts, of which two would be allocated to operational Units and the remaining to different administrative and policy tasks. The SC supports the allocation of resources to strengthen OLAF's investigatory function but questions the need, without further evidence of pressing need, for further resources to supplement administrative and policy areas which are not directly concerned in

investigation activities, particularly since many OLAF investigation teams are currently understaffed in relation to the size of their workload.

Secondly, the SC is aware that OLAF has not been able to fill the number of posts requested from the budgetary authorities in previous years, and that there are currently a large number of posts unoccupied. As a priority, OLAF management should undertake measures to fill those vacant posts before any additional posts are requested.

In the recent structural reorganisation, OLAF accorded clear priority to investigation work. If there is a pressing need for OLAF to supplement its resources in certain areas of non-operational work, management should, as an alternative, consider measures such as transfers, though not, of course, from operational areas, to deploy resources in these areas.

Recommendation: As a priority new posts should be allocated to OLAF operational work and non-operational posts should be filled by internal transfers. This would reinforce the Office's activities on its investigative function.

c. Secretariat staff

OLAF's Director General has given the SC a firm and binding commitment to put at its disposal all the human and financial resources the SC requires in order to comply with its legal mandate and its work programme. The SC would like OLAF to make a provision in the 2008 Budget for eight Secretariat staff using the footnote method to earmark these posts specifically for the Secretariat as was done in the past. This would enable the SC to fulfil its legal mandate in full independence.

Recommendation: OLAF to add a footnote to the establishment plan concerning the earmarking the eight staff members of the Secretariat

d. Conclusion

The SC supports OLAF's budget proposal for 2008 with the proviso that the above recommendations be taken into consideration.