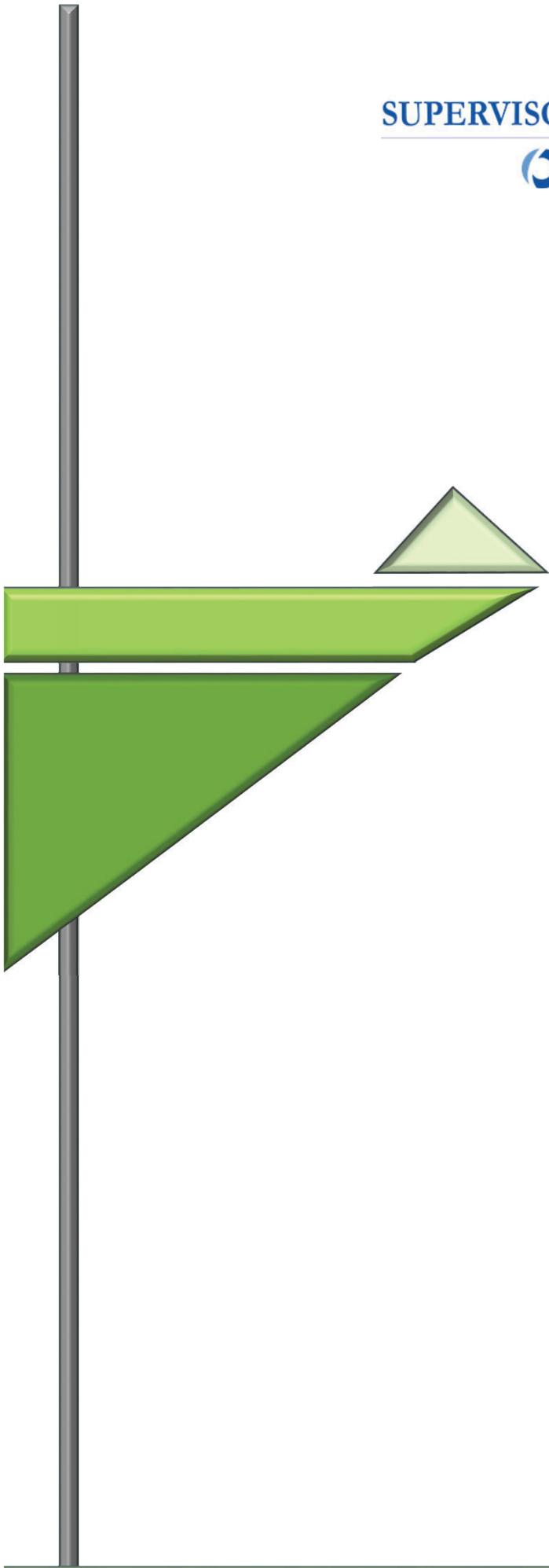


SUPERVISORY COMMITTEE



Annual  
Report  
**2021**

February 2022



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## Foreword

- The mandate of the members of the present Committee ended in 2021. Their final year was undoubtedly very productive and successful. It saw a satisfactory conclusion to the long, protracted and often difficult discussions engaged with OLAF over the last couple of years regarding the Committee's right of access to case-related information. The Committee thus concluded its five-year mandate confident that it has restored the kind of mutual trust and respect that was previously lacking in its relationship with OLAF.
- In fact, from the outset of its mandate, the Committee's members faced a very difficult situation. This was characterised by a lack of sincere cooperation on the part of OLAF, and OLAF's constant refusal to provide the Committee with meaningful access to information necessary for its members to perform their supervisory tasks. The prolonged conflictual context within which the Committee had to work during the first years of its mandate left a bitter taste. It was only after the appointment of a new Director-General of OLAF in August 2018, and the adoption of the amended OLAF Regulation, that the situation changed drastically. This Regulation strengthened the Committee's right to access all information and documents it considers necessary for the performance of its tasks. In fact, over the last 2 years, as relations with OLAF started improving, the Committee managed to adopt a series of opinions that contain thorough and detailed assessments of OLAF's investigative function. The new working arrangements agreed with OLAF in 2021 now provide the Committee and its Secretariat partial direct access to OLAF's case management system. Hopefully, this will allow the Committee to carry out its work without any unnecessary distractions and in a common spirit of mutual trust and sincere cooperation.
- The year 2021 was also a landmark year for the EU anti-fraud landscape. The new amended OLAF Regulation came into force in January, while the European Public Prosecutor's Office (EPPO) started its operations in June.
- The pandemic and its continuous effects on the working conditions for almost all EU institutions once again characterised 2021. That meant, among other things, that all Committee meetings, as well as meetings with stakeholders, were held online. However, whatever the constraints COVID-19 imposed on the Committee, its work continued regardless and there was no reduction in its determination to carry out its supervisory and monitoring tasks and fulfil its mandate. The Committee was able to perform its monitoring tasks with a high degree of efficiency and dedication. In 2021, a busy year indeed, the Committee addressed to the Director-General of OLAF five detailed opinions, including an Opinion on the new working arrangements between OLAF and the EPPO. The Committee was also consulted and provided observations on the first phase of the revision of OLAF's guidelines on investigation procedures (GIPs).

## Foreword

On behalf of all members, I would like to thank the Director-General of OLAF for his open and constructive cooperation. The members of the Secretariat, acting under the management of its Head and often under challenging circumstances, provided valuable support to the Committee. Finally, I would like to wish the new members of the Supervisory Committee a fruitful cooperation with OLAF and the EU institutions during their mandate.

Jan MULDER

Chair of the Supervisory Committee of OLAF

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## 1. The Committee in a nutshell

1. The Supervisory Committee of the European Anti-Fraud Office (OLAF) ('the Committee') is an independent body established by Regulation (EU, Euratom No 883/2013<sup>1</sup> (the 'OLAF Regulation') to reinforce and guarantee OLAF's independence by regularly monitoring the implementation of OLAF's investigative function.
2. The Committee is composed of five independent, outside experts ('the members'), appointed by common accord of the European Parliament, the Council and the European Commission for 5 years<sup>2</sup>. The members perform their role in complete independence and may neither seek nor take instructions from any government or any EU institution, body, office or agency. The Committee is supported in its work by a Secretariat, working on a permanent basis under the Committee's direct authority and independently from the Commission, OLAF or any other body. The Secretariat plays a key role in facilitating and contributing to the performance of the Committee's monitoring tasks.
3. Given the nature of OLAF investigations, no recourse before EU courts is possible against a decision of the Director-General of OLAF to open or close an inquiry. This makes the Committee de facto the only body that can supervise OLAF and scrutinise the way investigations are conducted. The Committee therefore enjoys a privileged position. On the one hand, it provides EU institutions with an insight into OLAF's functioning based on its monitoring role and, on the other, it provides an assurance that OLAF is acting within the limits of its legal remit and in compliance with applicable procedural guarantees.

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<sup>1</sup> Article 15(2) of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18/09/2013, p. 1–22) as amended by Regulation (EU, Euratom) 2016/2030 and Regulation (EU, Euratom) 2020/2223 (also available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02013R0883-20210117>).

<sup>2</sup> To preserve the experience built up in the Committee, members are to be replaced on an alternating basis, in accordance with Regulation (EU, Euratom) No 883/2013.

4. Under the OLAF Regulation, the Committee is entrusted with a threefold role: regular monitoring of the investigatory function of OLAF; assisting the Director-General of OLAF in discharging their responsibilities; and reporting to EU institutions.
5. More particularly, by regularly monitoring OLAF's investigations, the Committee seeks to ensure that:
  - (i) there is no external interference in OLAF's investigative function; and
  - (ii) all relevant decisions by the Director-General are adopted according to the principles of legality and impartiality and are in compliance with both the Charter of Fundamental Rights of the European Union<sup>3</sup> and the procedural guarantees.
6. In doing so, the Committee addresses to the Director-General of OLAF **opinions** and, where appropriate, **recommendations** on OLAF's investigative activities, the duration of its investigations, and the resources needed by OLAF to carry out its investigations. It also formulates **observations** on OLAF's draft guidelines on investigation procedures (GIPs). In issuing its opinions and recommendations, the Committee never interferes with the conduct of ongoing investigations.

## 2. A new reinforced legal framework

7. In 2021, the main legal texts on the powers and functioning of the Committee were revised, thus allowing the Committee to perform its tasks more efficiently. Along with the revision of the OLAF Regulation and the signing of new Working Arrangements between OLAF and the Supervisory Committee, which clarified, *inter alia*, the issue of the Committee's access to specific OLAF case-related information, the Committee also reviewed its own internal rules of procedure.

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<sup>3</sup> At [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf).

## 2.1. Improved access to case-related information

8. To properly carry out the monitoring tasks conferred upon it by the OLAF Regulation, the Committee must have access to **meaningful, comprehensive, adequate and timely information**.
9. The content and the quality of the information provided by the Director-General to the Committee, over the last few years, has been a constant point of discord and intensive protracted discussions between the Committee and OLAF. This was so, in particular, for the kind of information provided by OLAF on cases lasting more than 36 months. In its previous annual reports, the Committee repeatedly highlighted as an urgent issue its limited access to OLAF case-related information and the fact that the Committee was not in a position to properly fulfil its role<sup>4</sup>.

### 2.1.1 The revised Article 15 of the OLAF Regulation

10. The above situation was finally resolved by the adoption of the new amending OLAF Regulation (EU, Euratom) 2020/2223<sup>5</sup>. Article 15(1) of the Regulation now clearly provides that the Committee ***should be granted access to all OLAF information and documents it considers necessary for the performance of its monitoring and supervisory tasks***.
11. The Committee had repeatedly advocated in the past that **it is for the supervisory body to decide, based on a necessity assessment, which information should be provided by the body** under supervision, or which information is **sufficient** for the performance of its supervisory role. Without direct and unfettered access to information in the possession of OLAF, the Committee cannot carry out any kind of meaningful and serious supervision as initially envisaged by the OLAF Regulation.

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<sup>4</sup> See the following reports and opinions of the Supervisory Committee (SC) – SC Annual Report 2020, paragraphs 28 and 29; SC Annual Report 2019, paragraphs 38 to 51; SC Annual Report 2018, paragraphs 7, 45 to 49; SC Annual Report 2017, paragraphs 24-29; SC Annual Report 2016, paragraphs 30-33; SC Annual Report 2016, paragraphs 30-33; SC Annual Report 2015, paragraphs 30-33 and paragraphs 1-9; SC Annual Report 2014, paragraphs 26-28; SC Annual Report 2013, paragraphs 18-19; SC Annual Report 2012, paragraph 36; SC Opinion No 2/2017 – Accompanying the Commission Evaluation report on the application of Regulation (EU) of the European Parliament and of the Council No 883/2013 (Article 19) paragraphs 30-31; SC Opinion No 4/2014 on Control of the Duration of Investigations conducted by OLAF, paragraphs 18- 20 and 45-49.

<sup>5</sup> Regulation (EU, Euratom) 2020/2223.

### 2.1.2 *New working arrangements between the Supervisory Committee and OLAF*

12. To reflect and take stock of the important changes made by the newly amended OLAF Regulation, the Committee, represented by the Secretariat, and OLAF intensified their discussions in 2021. The aim was to adopt new working arrangements with a view to providing the Committee with partial direct access to case-related information available and registered in OLAF's case management system (OCM). The **new working arrangements** were finally agreed and signed on 21 October 2021<sup>6</sup>. They establish a system whereby OLAF will provide the Committee with full access to the case-related files of closed investigations, open investigations lasting longer than 12 months, and cases in which no investigation has been opened. The Committee will also have access to all dismissal decisions and related opinions to the Director-General provided by Unit 01 and to all opening decisions and related Unit 01 opinions in non-investigative files, also called coordination cases. A technical Annex that forms an integral part of the Working Arrangements sets out the modalities for the Committee and its Secretariat to access the OCM.
13. The Committee firmly believes that the new Working Arrangements will be instrumental in restoring mutual trust between OLAF and its Supervisory Committee, a trust that was absent in the previous years.

## 2.2. Revised internal Rules of Procedure

14. The Committee's internal Rules of Procedure set out the rules governing its composition, operation and working methods (the procedures under which it carries out its monitoring role under the OLAF Regulation) and lay down the material conditions under which its work must be conducted. The Rules of Procedure aim to facilitate the organisation of the Committee's work. They include principles governing the activities of the Committee, the exercise of its powers, the chairmanship, the procedures for adopting opinions, access to OLAF's documents and the role of the Secretariat.
15. Based on the experience gained by the Committee over the last 4 years, and the amended OLAF Regulation, the Committee decided to overhaul its Rules of Procedure. The new Rules of Procedure comply with legal

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<sup>6</sup> The new working arrangements between OLAF and the Supervisory Committee of OLAF are available at <https://europa.eu/supervisory-committee-olaf/system/files/2021-10/OLAF%20SC%20WA%20signed.pdf.pdf>.

obligations under the new Data Protection Regulation<sup>7</sup> and reflect some of the provisions of the Working Arrangements between OLAF and the Supervisory Committee. They were adopted by the Committee in June 2021. They might be reviewed in the coming year to take account of the appointment of the Controller of procedural guarantees, given the Controller's reporting obligations to the Supervisory Committee.

### 3. A productive monitoring year

16. During the reporting year, the Committee addressed to the Director-General of OLAF five opinions<sup>8</sup> making several recommendations. The Committee was also consulted and made observations on the first phase of the ongoing revision of OLAF's guidelines on investigation procedures (GIPs)<sup>9</sup>. The Committee also continued monitoring the duration of OLAF's investigations and the application of procedural guarantees.

#### 3.1. OLAF's recommendations not followed by the relevant authorities - Opinion No 1/2021

17. The Committee devotes special attention in its annual activity reports to the follow-up of OLAF's investigations. In February 2021, the Committee adopted Opinion No 1/2021, in which it analysed thoroughly all

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<sup>7</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39 at <http://data.europa.eu/eli/reg/2018/1725/oj>.

<sup>8</sup> Opinion No 1/2021 on OLAF's recommendations not followed by the relevant authorities; Opinion No 2/2021 on Working arrangements between OLAF and EPPA; Opinion No 3/2021 on Supervision of Internal investigations: strategic conclusions and best practices; Opinion No 4/2021 OLAF's Preliminary Draft Budget for 2022; Opinion No 5/2021 on Analysis of OLAF investigations lasting more than 36 months in 2019.

<sup>9</sup> The Committee's preliminary comments on the first stage of the revision of GIPs were provided to the Director-General of OLAF by letter of 17 August 2021 (Ares(2021)5153587).

recommendations that OLAF issued between 1 March 2016 and 28 February 2018, but which the competent authorities did not follow<sup>10</sup>.

18. The Committee acknowledged that OLAF's recommendations, especially the financial and disciplinary ones, are usually followed by the receiving authorities and institutions. The Committee's main finding concerned judicial recommendations, where it identified three main weaknesses that could explain the low ratio of indictment<sup>11</sup> recorded in recent years.
- (i) OLAF's current monitoring procedures are unsatisfactory.
  - (ii) Upon receipt of OLAF's final reports, the relevant authorities rarely conduct further activities. Therefore, the quality of the reports, the evidence gathered, and the strength of the recommendations are fundamental for assessing the case at national level.
  - (iii) To assess criminal liability at national level, the evidence gathered by OLAF does not always meet the standards of proof expected by the recipient authorities.
19. The Committee recommended that OLAF should:
- review monitoring procedures by putting in place dedicated follow-up teams, thus relieving investigators of this task;
  - improve reporting to the Committee of recommendations that have not been followed;
  - ensure that files forwarded to judicial authorities:
    - a) clearly mention the evidence gathered and the considerations leading to the conclusion that a criminal offence may have been committed; and
    - b) include an analysis of national procedural requirements for criminal proceedings;

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<sup>10</sup> The full text of Opinion No 1/2021 can be found at [https://europa.eu/supervisory-committee-olaf/document/download/81b4db5b-51e0-4739-ab3f-c67859304f5e\\_en](https://europa.eu/supervisory-committee-olaf/document/download/81b4db5b-51e0-4739-ab3f-c67859304f5e_en).

<sup>11</sup> Figures from the last five OLAF annual reports (2013-2018), regarding recommendations to open a criminal investigation at national level, showed that the indictment rate had fallen from 53% to 36%.

## A productive monitoring year

- establish timely cooperation with judicial authorities;
  - report annually the amounts recovered following OLAF's financial recommendations;
  - guarantee that the financial recommendations are proportional; and
  - establish uniform standards to protect the fundamental rights and procedural guarantees of persons concerned, and strengthen the admissibility of evidence.
20. In its Opinion, the Committee acknowledged that the Director-General of OLAF had already taken steps to improve the follow-up of financial recommendations. The Committee also welcomed the establishment of the Monitoring Task Force, a dedicated team tasked with identifying both specific and systemic issues in the implementation of the EU budget, based on irregularities or fraud discovered by OLAF. The Task Force intends to extend its activities in relation to administrative and judicial recommendations. The Committee supports the need for additional resources to carry out this task effectively.

### 3.2. Working arrangements between OLAF and EPPO - Opinion No 2/2021

21. In view of their common goal of preserving the integrity of the Union budget, it is essential for OLAF and the EPPO to establish and maintain a close relationship based on the principle of sincere cooperation.
22. On 3 December 2020, the Director-General of OLAF sent to the Committee for its opinion the draft of the administrative working arrangements agreed between OLAF and the EPPO<sup>12</sup>. In its Opinion No 2/2021 delivered on 31 May 2021<sup>13</sup>, the Committee welcomed the working arrangements, 'in particular, with regards to the setting of binding time-limits, the regular exchange of information between the parties, the use of templates for the mutual reporting and transmission of potential cases, and the possibility to agree on intermediate reporting where OLAF

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<sup>12</sup> Article 12(g)(1) last sentence of the OLAF Regulation requires the Director-General of OLAF to formally notify the working arrangements to the Supervisory Committee prior to their adoption.

<sup>13</sup> Opinion No 2/2021 is available at: [https://europa.eu/supervisory-committee-olaf/document/download/2d90f9ac-6556-41c7-bb55-483ccd192d8d\\_en](https://europa.eu/supervisory-committee-olaf/document/download/2d90f9ac-6556-41c7-bb55-483ccd192d8d_en).

supports EPPO's investigations and in cases of complementary investigations carried out by OLAF.'

23. The Committee made a number of specific observations and suggestions to the parties to better clarify the following:
- (i) Practical terms of their collaboration regarding the mutual reporting and transmission of potential cases<sup>14</sup>.
  - (ii) Criteria and modalities of the reciprocal indirect access to their respective electronic case management systems<sup>15</sup>.
  - (iii) Use of technical tools, such as templates<sup>16</sup>. In this context, based on its own experience of previous prolonged and often unfruitful exchanges with OLAF on the content of the annual reports and the definition of what constitutes relevant and meaningful information, the Committee suggested that the content of such templates be carefully considered in advance in order to avoid unnecessary exchanges and additional requests for missing information or further clarification.
  - (iv) The wording of the working arrangements so as to avoid unnecessary confusion and uncertainty for OLAF support during investigations by the EPPO and OLAF's requests for assistance to the EPPO<sup>17</sup>.
  - (v) Specific arrangements to be agreed upon by the parties to enable OLAF to carry out internal investigations on the leadership and staff of the EPPO.
  - (vi) A system, to be agreed by the parties, of regular dialogue between the Director-General of OLAF and the European Chief Prosecutor, and for the parties to review the working arrangements once significant experience has been gained, at least 1 year after their entry into force<sup>18</sup>.
24. OLAF and the EPPO took on board most of the Committee's considerations and agreed to amend accordingly the relevant provisions<sup>19</sup>.

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<sup>14</sup> Section 5 of the EPPO-OLAF Working Arrangements.

<sup>15</sup> Article 4.6 of the EPPO-OLAF WA.

<sup>16</sup> Article 4.2 of the EPPO-OLAF WA.

<sup>17</sup> Articles 6(1) and 6(4) of the EPPO-OLAF WA.

<sup>18</sup> Article 12 of the EPPO-OLAF WA.

<sup>19</sup> Articles 4(2), 6(1)(1)(d), 6(4) and 14 of the EPPO/OLAF WA.

The final text of the working arrangements was signed on 5 July 2021. The Committee is pleased with the outcome of its consultation in what is an important component governing the relations between these two bodies.

### 3.3. Supervision of internal investigations: strategic conclusions and best practices - Opinion No 3/2021

25. In October 2021, the Committee adopted Opinion No 3/2021 on the supervision of internal investigations<sup>20</sup>. The Committee assessed the way OLAF conducted four internal investigations into serious allegations on the discharge of professional duties or serious misconduct by members and officials occupying senior positions in the EU institutions, bodies and agencies.
26. The Committee had access to the case files that were made available by OLAF and analysed in depth all relevant documents in light of the applicable OLAF legal framework. It made a comparative analysis of the four investigations, focusing on the main procedural stages of an investigation. It examined, in particular: (i) the requirement of sufficient suspicion to justify the opening of the investigations; (ii) their scope; (iii) the use of the investigation tools at OLAF's disposal; and (iv) the final investigative report and the legal review of the investigations.
27. The Committee found discrepancies across the four cases in relation to all the above stages. Subsequently, it drew conclusions and issued recommendations, the most relevant of which are summarised below:
  - (i) When assessing the 'sufficient suspicion' requirement for opening an investigation, OLAF should gather all necessary information from the EU institutions, especially in cases where the institutions had previously conducted inquiries on the same allegations. This is even more pertinent when assessing allegations made anonymously.
  - (ii) The operational analysis support unit should assist the selection process by analysing information coming from anonymous sources.

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<sup>20</sup> Taking into account the rules laid down in Commission Decision (EU, Euratom) 2015/443 and Commission Decision (EU, Euratom) 2015/444 and the Security Notice - Marking and handling of sensitive non-classified information C(2019) 1904 final-Brussels, 5.03.2019, the Committee decided not to publish its opinion in its entirety with a view to protect the privacy and integrity of the individuals concerned by the investigations. In the interests of transparency, the Committee published however a non-confidential version of its Opinion that contained its conclusions and recommendations to the Director-General of OLAF. The non-confidential version of the Opinion can be found at [here](#). This non-confidential version was also provided to EU institutions, in accordance with Article 15(1) of the OLAF Regulation.

- (iii) The guidelines on investigation procedures (GIPs) should include a definition of the notion of ‘sufficient suspicion’.
  - (iv) OLAF should inform the Committee when it opens sensitive cases where the reputation of the EU could be at stake.
  - (v) OLAF should put in place effective mechanisms to avoid situations in which it defines too broadly the scope of the investigation and/or it extends the scope of the investigation, without following the applicable procedure.
  - (vi) OLAF should entrust the legality check performed by Unit 01 - the same unit that prepares the opening opinions - to another entity in order to guarantee an independent legality check. In addition, the Director-General of OLAF should review the assignment of responsibilities to the various units and directorates to put in place an effective system of independent, impartial and objective controls for the legality check and review.
  - (vii) The Committee puts great emphasis on the need to draw a proper investigation work plan. In addition, in sensitive internal investigations, whenever OLAF uses its discretion to decide which investigative measures to take and when, it should record in the case file the reasons underpinning its decision.
  - (viii) The Committee found an overall lack of rigorous and systematic organisation of the case files in the four cases and asked OLAF to put in place provisions to remedy this situation. The Committee trusts that OLAF will address these concerns through its case management system and will put in place new relevant rules.
  - (ix) OLAF should consider establishing a dedicated service for the design of methods for investigating potential corruption involving lobbyists, the revolving-door issue, conflicts of interest, and breach of duty of integrity and transparency.
28. The Committee notes that the revised GIPs contain provisions that implement two of the above recommendations. In particular, the Committee welcomes: (i) the creation of the Review Team, to be placed under the direct responsibility of the Deputy Director-General; and (ii) the requirement for the investigation units to ‘outline an initial work plan’. The Committee expects that further internal guidelines will be issued to investigators on drafting and regularly updating a work plan. Overall, the Committee acknowledges OLAF’s effort to implement the Committee’s recommendations. That said, in order to alleviate its concerns, the Committee believes that strong and constant vigilance is needed to address the shortcomings and/or mistakes that the Committee identified in its Opinion regarding the responsibilities assigned to and executed by its staff. It is important that lessons are drawn from these investigations for the purpose of OLAF’s future staff management.

### 3.4. OLAF's preliminary draft budget for 2022 - Opinion No 4/2021

29. Every year, the OLAF Supervisory Committee adopts an opinion on OLAF's preliminary draft budget (PDB) to give assurance to the EU institutions that the draft budget takes into account the independence of OLAF's investigative function. The opinion further provides assurance that OLAF has adequate resources to provide an effective and efficient interinstitutional service to combat fraud. The Director-General of OLAF can then use this opinion with respect to the budgetary and discharge authorities of the EU.
30. On 18 October 2021, the Committee issued Opinion No 4/2021 on OLAF's preliminary draft budget for 2022<sup>21</sup>. Its analysis focused particularly on: (i) OLAF's human resources strategy, taking also into account the impact from the establishment of the EPPO and the creation of the Recovery and Resilience Facility; and (ii) the financial and operational impact of implementing OLAF's case management system (OCM).
31. The Committee considered that OLAF's preliminary draft budget for 2022 was in conformity with the resources needed to conduct investigations efficiently. The Committee fully supported OLAF's request for additional posts. The Committee found it counterproductive, on the one hand, to assign every year to OLAF new responsibilities and tasks (the EPPO, Recovery and Resilience Facility) and, on the other, to implement each year a gradual reduction of its human and financial resources. The Committee also agreed with OLAF that another reduction by 20% of its budget for travel expenses could jeopardise its ability to carry out its investigative function.
32. Finally, the Committee noted that the development and adoption of the OCM has been a very costly project<sup>22</sup> that has so far failed to deliver, within the set timescale, a robust, and, most of all, user-friendly, flexible and efficient case management system.

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<sup>21</sup> Opinion No 4/2021 is available at [https://europa.eu/supervisory-committee-olaf/document/download/1ab13286-a2b7-411a-a748-96b6a90afcd1\\_en](https://europa.eu/supervisory-committee-olaf/document/download/1ab13286-a2b7-411a-a748-96b6a90afcd1_en).

<sup>22</sup> Since 2012, the budget for the OCM system development has reached almost EUR 29 million.

33. In recent years, the Committee has consistently expressed serious concerns about the escalating costs of the OCM<sup>23</sup>, which appeared to have been based on internal wrong assumptions and decisions<sup>24</sup> and conceived initially without taking into account the needs of supervision<sup>25</sup>. These concerns have been compounded by the mitigated so far user-satisfaction survey of OLAF's investigators, and the parallel ongoing development by a number of Commission Directorates-General of a new case management system, in which OLAF is also participating.
34. Thus, the Committee invited the Director-General of OLAF to carry out as soon as possible a detailed cost-based analysis of the pros and cons of maintaining the OCM or switching to the CASE@EC, the Commission's case management system. In this context, and given the fact that the EPPO has decided to adopt the CASE@EC, the Committee reiterated the view expressed in its Opinion on OLAF's PDB 2021, according to which, given that the EPPO and OLAF will be using different case management systems, additional budgetary resources may be required in the future to ensure the necessary interoperability and synergies between the two systems.

### 3.5. Monitoring of duration of OLAF's investigations

35. Article 7(8) of the OLAF Regulation requires the Committee to carry out a case-by-case analysis of each inquiry that is older than 12 months, to ensure that OLAF's investigations are conducted continuously and over a period proportionate to their circumstances and complexity.
36. First, by regularly monitoring the duration of OLAF's investigations and the reasons for any undue delays, the Committee is seeking to verify that no external or internal interference in the impartial conduct of an investigation takes place. Second, a lengthy investigation that cannot be justified may have serious negative consequences for: (i) the rights of

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<sup>23</sup> See Activity Report 2017, paragraph 23; Activity Report 2018, paragraph 13; Activity Report 2019, paragraph 20; Opinion on OLAF's PDB 2019, paragraph 27; Opinion on OLAF's PDB 2020, paragraph 29; and Opinion on OLAF's PDB 2021, paragraph 25. All the Opinions and Reports of the Committee can be found at [https://europa.eu/supervisory-committee-olaf/our-work/opinions-and-reports\\_en](https://europa.eu/supervisory-committee-olaf/our-work/opinions-and-reports_en).

<sup>24</sup> Already in June 2019, the Commission's Internal Audit Service in its *Final audit report on IT project management practices in OLAF* identified a number of significant weaknesses in the early stages of the OCM, including the lack of a clear and sustainable project governance structure and the lack of sufficient control from senior management. OLAF addressed these weaknesses as confirmed in 2020 by the Commission's Internal Audit Service (February 2020).

<sup>25</sup> See Supervisory Committee Activity Report 2017, paragraph 25.

defence of the persons concerned; and/or (ii) the follow-up to the investigation. Finally, by monitoring the length of investigations, the Committee verifies that the human and financial resources allocated to OLAF have been used efficiently.

37. The Committee has paid particular attention over the years to the issue of 'duration' of OLAF investigations, and has in recent years raised concerns about the lack of clear and detailed provisions in the GIPs related to managing the length of investigations. Such rules strengthen legal certainty; their absence can be detrimental to ensuring the transparency of OLAF procedures, especially vis-à-vis the 'persons concerned'.
38. In 2021, the Committee issued an Opinion examining 40 OLAF cases lasting more than 36 months. It also received, as every year, information on investigations lasting more than 12 months.

### 3.5.1 Analysis of OLAF investigations lasting more than 36 months - Opinion No 5/2021

39. In its activity report of 2019<sup>26</sup>, the Committee found that almost 40% of the individual cases reported in 2019 exceeded 24 months, 10% of which exceeded 36 months. To better understand how OLAF manages and controls the duration of its investigations, the Committee decided to conduct an in-depth analysis of 40 investigations lasting more than 36 months in 2019. The Committee was particularly satisfied to have been granted, for the first time, full access to the relevant case files.
40. In its Opinion<sup>27</sup>, the Committee identified certain shortcomings in OLAF's procedures that could have had an impact on the duration of the investigations. In particular, it noticed a high degree of variance in the investigative practice of OLAF and in the recording of activities in the case files. The Committee also found that OLAF does not have: (i) a formal, and well-defined internal procedure for monitoring the duration of its investigations; (ii) a work or investigation plan; or (iii) internal rules for the definition and assignment of 'operational priority'. The Committee considers that these weaknesses are mainly the result of OLAF not having in place specific and detailed provisions in the GIPs dealing with the issues of 'continuity and duration' of investigations.

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<sup>26</sup> Activity Report of the Supervisory Committee of OLAF - 2019, paragraphs 52 and following.

<sup>27</sup> The non-confidential version of Opinion No 5/2021 is available at: [https://europa.eu/supervisory-committee-olaf/document/download/25411b56-2cc1-4ba2-9c5c-b58e1e95c236\\_en](https://europa.eu/supervisory-committee-olaf/document/download/25411b56-2cc1-4ba2-9c5c-b58e1e95c236_en).

41. The Committee made the following recommendations to OLAF:
- Establish an automatic flag system mechanism within the OCM to ensure that periods of inactivity of over 3 months are immediately visible to OLAF's management.
  - Ensure that obstacles that have or could have an impact on the duration of an investigation, as well as all decisions taken to that effect, are properly documented and registered in the case file of each investigation.
  - Establish in the GIPs clear internal procedures for the handling of the duration of an investigation. In particular, for cases over 24 months, OLAF should create a specific review procedure to enable the Director-General to decide how best to speed up the handling of such investigations, and, for cases running over 36 months, a special procedure.
  - Ensure that all opinions of the Review Team contain an evaluation of the duration of the investigations.
  - Ensure that a detailed investigation plan is drawn up for every opened investigation, and that it is regularly updated and annexed to the case file of each investigation.
  - Include clear rules in the GIPs on the assignment of an 'operational priority' to a case.
  - Ensure that critical decisions that substantially impact the duration of an investigation should always be taken at director's level and should be systematically recorded in the OCM.
  - Ensure that whenever an investigation team member leaves the Office he or she prepares a handover note tracking all the activities carried out and evidence already collected, setting out the activities and timetable that should be carried out by the next team member covering the case.

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42. The Committee considers that its recommendations should be taken into consideration in the ongoing revision of the GIPs<sup>28</sup>. Comprehensive and meaningful GIPs will also assist the future Controller of procedural guarantees<sup>29</sup> in the handling of complaints against OLAF for procedural irregularities.

### 3.5.2 Reports of investigations lasting over 12 months received by the Committee in 2021

43. If an investigation cannot be closed within 12 months of its opening, Article 7(8) of the OLAF Regulation<sup>30</sup> requires the Director-General of OLAF to formally report to the Committee at the expiry of a 12-month period and every six months thereafter. In these reports, OLAF sets out the reasons for the non-completion and, where appropriate<sup>31</sup>, the remedial measures to speed up the investigation as well as the expected timeframe for completion.
44. During 2021, the Committee received 761 reports from OLAF on 482 individual investigations lasting over 12 months. Of these individual cases, 29.25% lasted more than 12 months and 27.18% more than 18 months. 43.57% of all the cases reported exceeded 24 months (Figure 1). The sectoral breakdown of OLAF investigations is presented in Figure 2.

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<sup>28</sup> Following the entry into force of the amendment of the OLAF Regulation by Regulation (EU, Euratom) 2020/2223, OLAF has been undertaking a revision of the GIPs in two steps. The first phase focused mainly on transposing the provisions of the revised OLAF Regulation regarding the EPPO. This phase has been finalised and the new GIPs entered into force on 11 October 2021. OLAF is at the moment undertaking the second phase of the revision, a more comprehensive revision, which will include the issues currently addressed in other internal instructions and guidelines, the practices that will be established in the framework of OLAF's cooperation with the EPPO, the recommendations of OLAF stakeholders, and issues identified by OLAF staff over the years. The second phase is expected to be finalised in the course of 2022.

<sup>29</sup> Articles 9a and 9b of the OLAF Regulation creates the 'Controller of procedural guarantees' and the 'complaints mechanism' with the mandate of handling future complaints against OLAF lodged by a person concerned in an OLAF investigation.

<sup>30</sup> Article 7(8) of Regulation (EU, Euratom) No 883/2013 states: 'If an investigation cannot be closed within 12 months after it has been opened, the Director General shall, at the expiry of that 12-month period and every six months thereafter, report to the Supervisory Committee, indicating the reasons and, where appropriate, the remedial measures envisaged with a view to speeding up the investigation.'

<sup>31</sup> The wording 'where appropriate' was added to the text of Article 7(8) of the OLAF Regulation by the amending Regulation (EU, Euratom) 2020/2223.

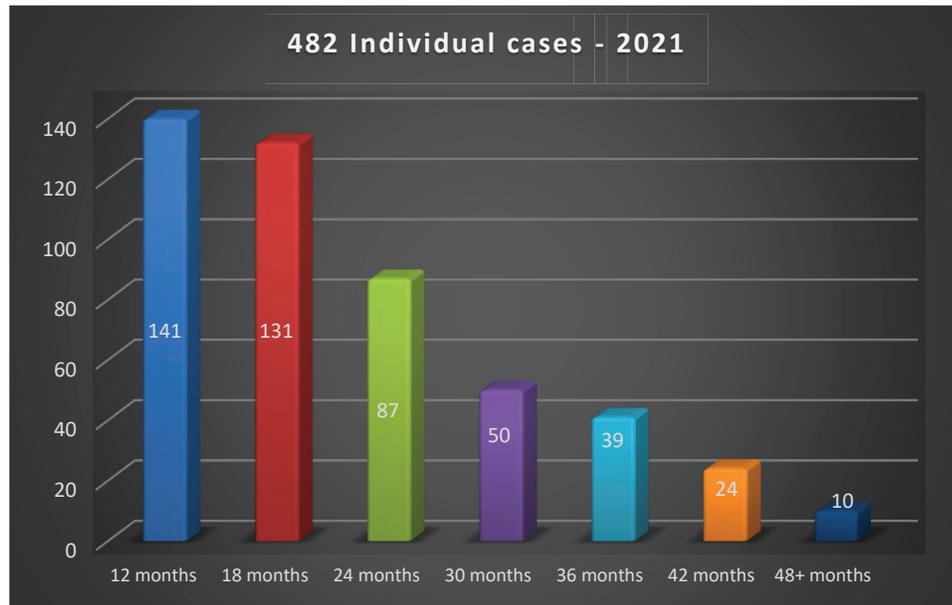


Figure 1



Figure 2

### 3.6. Revision of OLAF guidelines on investigation procedures (GIPs)

45. Following the revision of the OLAF Regulation, OLAF amended the existing GIPs to incorporate new provisions of the OLAF Regulation into new internal guidelines and to establish a clear and consistent framework

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for all investigation, support and coordination activities. OLAF explained to the Committee that this revision process will be carried out in two distinct phases.

46. During the first phase, the revision will be limited to what is strictly necessary to align the GIPs with Regulation (EU, Euratom) 2020/2223 and the operational start of the EPPO. The second phase will entail a more comprehensive revision. This will include aspects currently addressed in other internal OLAF instructions and guidelines, the practices that will be established as part of OLAF's cooperation with the EPPO, the recommendations of OLAF stakeholders, and issues identified by OLAF staff over the years.
47. According to the OLAF Regulation<sup>32</sup>, before the Director-General of OLAF adopts any amendments to the GIPs, the Supervisory Committee has to submit its observations.
48. On 28 May 2021, OLAF forwarded to the Committee a draft of the revised GIPs covering the first phase. The draft was discussed with OLAF staff and the Secretariat in a technical meeting on 6 June 2021 and in the plenary meeting of 22 June 2021. The Committee provided its observations to the Director-General of OLAF on 17 August 2021. The new GIPs entered into force on 11 October 2021.
49. In its observations, the Committee recalled that it has already recommended to OLAF to undertake a full revision of the GIPs (Opinion No 2 /2017 on the evaluation of OLAF Regulation). It has already made a number of specific recommendations in that respect regarding both the organisation of OLAF and its investigative practices (Opinion No 3/2021 on best practices in internal investigations). It thus welcomed OLAF's decision to proceed with the revision of the GIPs. For the Committee, it is imperative that the future text of the GIPs, following the revision's second phase, is based on an in-depth, comprehensive review of all other existing internal OLAF guidelines and instructions. Some of these, if not all of them, will need to be incorporated into the GIPs. This is important as the GIPs are the only guidelines, instructions or manual that the OLAF Regulation requires OLAF to make public<sup>33</sup>. This ensures the required degree of transparency and legal certainty vis-à-vis the persons under

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<sup>32</sup> Article 17(8) last sentence of the OLAF Regulation.

<sup>33</sup> Article 17(8) last sentence of the OLAF Regulation lays down that the guidelines are to be 'published for information purposes on the Office's website in the official languages of the institutions of the Union'.

investigation. Comprehensive and meaningful GIPs will also assist the future Controller of procedural guarantees<sup>34</sup> in the handling of complaints against OLAF for procedural irregularities.

50. For that reason, the Committee reserved its right to provide a comprehensive opinion on the GIPs at the end of the second phase of their revision.
51. OLAF informed the Committee and EU institutions that it has started the second phase of revising the GIPs. The second phase is expected to be finalised in the course of 2022. The Committee is eager to see the final version of the GIPs and expects that the recommendations put forward by the Committee in its recent opinions will be taken into consideration by the Director-General of OLAF.

### 3.7. Application of procedural guarantees

52. Article 9 of the OLAF Regulation lists the principles that OLAF should apply when conducting an investigation, and the procedural guarantees that the persons involved in an OLAF investigation are to enjoy.
53. The Regulation entrusts the Committee with the task of monitoring developments on the application of these procedural guarantees. The Committee fulfils this role through various actions: it monitors how OLAF deals with procedural complaints; it assesses how OLAF observes procedural rights in its investigations; it identifies systemic or structural issues; and it provides opinions on matters relating to the application of procedural guarantees. It is important to stress that the Committee is not empowered to **handle** individual complaints against OLAF, nor is it an appeal body that can review OLAF's decisions<sup>35</sup>.
54. In 2021, the Committee also devoted part of its work to monitoring OLAF's compliance with the procedural guarantees.

*(i) The Committee was consulted on a solution regarding the new complaints mechanism set up by OLAF*

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<sup>34</sup> Article 9a and 9b of the OLAF Regulation provides for 'the Controller of procedural guarantees' and the 'complaints mechanism' with the mandate of handling future complaints against OLAF lodged by a person concerned in an OLAF investigation.

<sup>35</sup> The Committee often receives complaints either about ongoing OLAF investigations or alleged fraudulent activities that affect the financial interests of the EU. The Committee's practice is to forward any relevant information to OLAF and inform the sender accordingly.

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55. Until the entry into force of the amended OLAF Regulation, individuals or legal entities affected by an OLAF investigation had the possibility to submit a complaint to the Director-General of OLAF. OLAF handled the complaint in line with its established procedure. The amended OLAF Regulation established the function of the Controller of procedural guarantees (the ‘Controller’), who is responsible for handling complaints lodged by persons concerned in OLAF’s investigations<sup>36</sup>.
56. However, even after the entry into force of the new Regulation and pending the appointment by the Commission of the Controller, OLAF continued to receive complaints, including from persons concerned. In early 2021, OLAF consulted the Committee<sup>37</sup> on a temporary solution for the implementation of the complaints mechanism during the transition period between the entry into force of the Regulation and the appointment of the Controller. OLAF informed the Committee that it intended to give complainants the choice to either: (i) wait until the Controller’s appointment to have their complaint handled by the Controller; or (ii) have their complaint handled by OLAF under the existing OLAF procedure. In the latter case, complainants would waive their right for their complaint to be dealt with under the new rules.
57. The Committee considered this solution to be appropriate and asked OLAF to keep the Committee informed of OLAF’s handling of all complaints dealt with under these two options. OLAF provided the requested information.
  - (ii) *The Committee assessed how OLAF implemented procedural guarantees in specific investigations*
58. In preparing its Opinion No 3/2021 regarding internal investigations and Opinion No 5/2021 on the duration of investigations, the Committee had access to case files and assessed thoroughly how OLAF applied the procedural guarantees in the investigations under scrutiny. In its Opinion No 3/2021, the Committee paid particular attention to the independence of the review function, OLAF’s internal control mechanism for ensuring respect of procedural guarantees. It issued a corresponding recommendation that was implemented by OLAF.

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<sup>36</sup> Articles 9a and 9b of the OLAF Regulation.

<sup>37</sup> Letter from the Director-General of OLAF to the Chair of the Supervisory Committee of 18.3.2021 (Ref. Ares(2021)1954695).

59. In its Opinion No 5/2021, the Committee decided to focus its analysis on OLAF's compliance with the 'right of an official to be informed' of the opening of an OLAF investigation and the 'right of the person concerned to comment on facts concerning him before OLAF drafts its conclusions'<sup>38</sup> and in particular on OLAF's use of the exceptions to defer such rights, as provided for in the legislation.
60. The analysis showed that, as far as the procedure for deferring the provision of information on the opening of the investigation is concerned, OLAF complied with the applicable procedural requirements and guarantees. In addition, since 2019, it has put in place a much more rigorous review system that is now systematically applied in all deferral cases. Regarding the deferral of the opportunity to comment, the Committee considered that the system put in place by OLAF provides sufficient guarantees to protect the fundamental rights of the persons under investigation and to avoid any arbitrary treatment.

*(iii) The Committee assessed the individual complaints submitted to OLAF*
61. As every year, the Committee received biannual reports and relevant documents on individual complaints handled by OLAF<sup>39</sup>. In 2021, OLAF received in total four complaints by persons concerned regarding the application of procedural guarantees, three of which concerned the same internal investigation. All but one of the complainants wished that their complaint be handled by the Controller. In the only complaint handled by OLAF in 2021, the person concerned argued that: (i) OLAF did not inform him on time that he was a person concerned; and (ii) the investigation was not concluded within a reasonable period of time. The Committee takes note of OLAF's reply to the complainant that there was no breach of the applicable rules. However, since there are pending complaints to be handled by the Controller regarding similar issues in the same investigation, the Committee will not comment further.
62. The Committee is looking forward to cooperating with the Controller with the view to strengthening the application of procedural guarantees and fundamental rights.

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<sup>38</sup> Article 9(3) and (4) of the OLAF Regulation.

<sup>39</sup> Under Article 6 of the new OLAF/Supervisory Committee Working Arrangements, for each complaint dealt with by OLAF, OLAF will provide automatic access to the original complaint together with the reply provided by OLAF, including all other relevant documents.

## 4. Cooperation

### 4.1. Cooperation with OLAF

63. During 2021, the Committee consolidated its fruitful cooperation with OLAF. In addition to the conclusion of discussions regarding the Committee's right of access to case-related information and the signature of the new Working Arrangements, the Committee maintained an open and meaningful dialogue with OLAF.
64. The Committee continued the practice of inviting the Director-General of OLAF and his staff to its regular monthly meetings to discuss, and be informed about, any matter relevant for the Committee's and OLAF's work. The members of the Committee and the Secretariat also held formal and informal meetings with OLAF management and staff in the context of preparing the Committee's opinions and reports.
65. The Committee received from OLAF the following reports in line with the OLAF Regulation provisions and established working practices: (i) reports on investigations lasting over 12 months; (ii) reports on OLAF recommendations issued since 1 October 2013 but not followed up, for which OLAF received replies from the authorities concerned between 1 January 2020 and 31 December 2020; (iii) reports on complaints regarding procedural guarantees; (iv) reports on cases where information has been transmitted to national judicial authorities; and (v) reports on deferrals under Article 4(6) of the OLAF Regulation.

### 4.2. Relations with stakeholders

66. The Committee is accountable to the EU institutions that appointed its members and at the same time is a dialogue partner of the EU institutions. The Committee reports to the EU institutions on its activities, may issue

opinions at their request, produces reports on investigative matters and exchanges views with them at a political level<sup>40</sup>.

67. The Committee considers it important to maintain regular contact with EU institutions and OLAF's partners and stakeholders in order to improve the flow of information and obtain feedback about OLAF's performance. The Committee and its Secretariat were regularly in contact with the Secretary-General of the Commission, the European Parliament Committee on Budgetary Control (CONT) and the Council Working Groups on Combating Fraud (GAF) and on Judicial Cooperation in Criminal Matters (COPEN). The current pandemic did not allow the Committee to hold physical meetings with stakeholders and as a result all meetings were held online. In December 2021<sup>41</sup>, the Committee also participated in the annual interinstitutional exchange of views on OLAF's performance, where it expressed its views on OLAF's role in the Recovery and Resilience Facility and the practical experience of relations between OLAF and the EPPO.
68. The Committee further assisted the Commission in selection procedures for appointing senior officials in OLAF. Members of the Committee also participated in meetings of the Commission's Consultative Committee on Appointments of senior managers.

## 5. Administration and resources

### 5.1. Supervisory Committee working methods

69. In 2021, the Committee held 12 plenary meetings, either hybrid or entirely online<sup>42</sup>. For every major issue examined, the Committee appointed a rapporteur. The rapporteurs worked with the Secretariat to prepare draft

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<sup>40</sup> Article 15(1) of Regulation (EU) No 883/2013: 'The Supervisory Committee shall address to the Director-General opinions, including where appropriate, recommendations on, inter alia, the resources needed to carry out the investigative function of the Office, on the investigative priorities of the Office and on the duration of investigations. Those opinions may be delivered on its own initiative, at the request of the Director-General or at **the request of an institution, body, office or agency**, without however interfering with the conduct of investigations in progress. [...]

[...] The institutions, bodies, offices or agencies shall be provided with a copy of opinions delivered pursuant to the third subparagraph'.

<sup>41</sup> The interinstitutional exchange of views took place on 2 December 2021.

<sup>42</sup> From January to December 2021.

reports, opinions or papers to be discussed in the plenary meetings. The Chair, the rapporteurs and members of the Secretariat also met regularly to work on particular issues.

### 5.2. The Secretariat

70. During 2021, the Secretariat continued to support Committee members in carrying out their duties efficiently, helping to increase OLAF's independence. The Secretariat, like the rest of the Commission, continued during 2021 to operate to a large extent in an online environment. It carried out the work programme as agreed between its Head and the Supervisory Committee<sup>43</sup>.
71. The Secretariat continues to be administratively attached, since March 2016, to the European Commission's Office for the Payment and Administration of Individual Entitlements (PMO), although located in a separate security zone within OLAF's premises. The Supervisory Committee has on many occasions expressed its doubts as to whether the 'hybrid' attachment of its Secretariat to the PMO is the most appropriate location.
72. The Committee reiterates its view that, given the daily interactions of the Secretariat with OLAF staff for the purposes of the Committee's ongoing monitoring tasks, a suitable place within OLAF's security zone would enable the Secretariat to work more efficiently.
73. Finding a proper location for the Secretariat is even more important following the establishment of a Controller of procedural guarantees. Under the Regulation, the new Controller will be administratively attached to the Supervisory Committee, with the Secretariat providing the Controller with all necessary legal and administrative support.

### 5.3. Budget matters

74. The Committee's budget for 2021 was EUR 200 000. Holding Committee meetings online due to COVID-19 meant that the actual amount disbursed by the end of 2021 was only EUR 74 577.28.
75. The authorising officer by sub-delegation responsible for expenditure is the Director of the PMO.

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<sup>43</sup> At present, the Secretariat, managed by its head, is composed of seven staff members.