

OLAF's report on its implementation in 2022 of the Supervisory Committee recommendations

Summary:

This report includes the follow-up on the Supervisory Committee (SC) recommendations that in its last report¹ OLAF did not assess as implemented. Notably, the report covers the follow-up on the implementation of 25 recommendations and sub-recommendations from the following SC opinions:

- Opinion No 1/2019 "OLAF Preliminary Draft Budget for 2020"
- Opinion 1/2021 "OLAF's recommendations not followed by the relevant authorities"
- Opinion No 2/2021 "Working arrangements between OLAF and the EPPO"
- Opinion No 3/2021 "Supervision of OLAF internal investigations: Strategic conclusions and best practices"
- Opinion No 4/2021 "OLAF's Preliminary Draft Budget for 2022"
- Opinion no 5/2021 "Analysis of OLAF's investigations lasting more than 36 months in 2019".

OLAF considers 10 recommendations/sub-recommendations as implemented, 1 as partly implemented and 11 as ongoing. For 3 recommendations OLAF considers that implementation is not necessary for the foreseeable future.

The SC did not issue any new recommendations in 2022.

¹ Ares(2022)2521913

I. No	II. Document Reference	SC III. SC Position	IV. OLAF position²	V. OLAF assessment of the implementation
1.	<p>SC Opinion 1/2019</p> <p>OLAF Preliminary Draft Budget for 2020</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>The Committee recommends that OLAF's Director-General reinforce the Office's administrative, financial and investigative independence by requesting from the European Commission the redeployment of a fully-fledged human resources unit. This unit would be responsible, amongst other things, for all the missions currently handled by the AMC.5 for OLAF, but with the necessary independence from the Directorate-General for Human Resources and Security.</p>	<p><u>OLAF position February 2020</u></p> <p>OLAF is undertaking important steps to reinforce its HR capacities in the context of its ongoing reorganisation, notably by attaching the HR BC team directly to the Director-General.</p> <p>In addition, OLAF intends to request from DG HR reinforcement of the HR BC team, for the reasons raised by the SC, on the grounds of OLAF's partially independent status and a foreseen increase in the need for HR development and specific training of OLAF staff in the coming years in light of the arrival of the EPPO and the changing nature of OLAF's activities.</p> <p><u>OLAF position February 2021</u></p> <p>An important step towards reinforcing OLAF's HR capacities was done in the context of the reorganisation of the Office, when the HR.BC team was attached directly to the Director-General.</p> <p>In addition, OLAF intends to request from DG HR a reinforcement for the HR BC team, for the reasons raised by the SC, on the grounds of a) OLAF's partially independent status; b) a foreseen increase in the need for HR development, notably in terms of junior management development path, equal opportunities and retention policies; c) need for specific training of OLAF staff and managers; d) preparing the structures and staff for the arrival of the EPPO; e) complying with the Commission HR policies and f) organising specialised OLAF competitions (3 in 2021). In this regard, it should be noted that OLAF's activities will not decrease in the future, but will actually increase, notably because of new tasks involving assistance, coordination and cooperation with the EPPO. This</p>	Ongoing

² The column "OLAF position" includes the previous and current positions.

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			<p>will affect all horizontal HR tasks in OLAF.</p> <p>However, the request to reinforce the HRBC team has been put on hold given the Commission's policy concerning the number of staff given to each HRBC (depending on the staff of the department or service) and the lack of resources allocated by the Commission to OLAF. Specifically, OLAF is subject to exactly the same rules as any other Commission department or service, and is left with no margin of manoeuvre to increase its staff in the HRBC or elsewhere. The less resources OLAF receives, the less staff OLAF can allocate to the HRBC, investigative units, anti-fraud policy or investigation support units despite an increasingly growing number of tasks. Nevertheless, it remains an OLAF priority to reinforce the HRBC team, in order to ensure proper service to the Office.</p> <p>It should be noted that the staffing situation is critical as OLAF is requested to render posts in the exercise of synergies, for the Task Force Article 50 and for the surcharges granted last year for a limited period of time. In addition, the Office has to render 45 posts to the EPPO between 2019 and 2023 and will lose, in total, 14 quotas for recruiting external staff (SNEs, agency workers and Contractual Agents). At the same time, the workload of OLAF has not diminished proportionally to the staff cuts suffered and yet coming. On the contrary, the new forms of administrative irregularities, wrongdoings and other acts harmful for the EU interest increase every year, triggering the increase of services requests by the EU Institutions and Member States: complex trans-border modus operandi, irregularities affecting tendering procedures on health products (masks, respirators, vaccines, etc.), new digital commodities and financial instruments.</p> <p>OLAF continues to over-deliver its operational and political services to the IBOAs and Member States without failing its mission but the point of maximum stress in terms of human resources is being reached. OLAF will continue carrying out administrative investigations leading to recovery of funds as this is exclusively OLAF's remit and it concerns more than 98%</p>	

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			<p>of cases affecting EU expenditure. All those cases will remain in OLAF and will be handled solely by OLAF or by OLAF in coordination with the administrative authorities in the Member States.</p> <p>The general needs for supplementary resources in OLAF were communicated to the Commission in December 2020 via the Reinforcement request in the framework of the preparation of 2021 allocation of Human Resources and the Request for an increase of administrative expenditure for external staff in the framework of draft budget 2022 of 15 February 2021 (Ares(2021)1260022), and will be subject of bilateral discussions with DG BUDG during the budgetary hearings scheduled on 4 March. OLAF's preliminary draft budget will be adapted in line with the outcome of these discussions and the SC will be informed accordingly. As explained above, without the allocation of supplementary resources, not only the HRBC but also other parts of the Office (operational, support and political) cannot be reinforced.</p> <p><u>OLAF position March 2022</u></p> <p>OLAF requested from the Commission a reinforcement for the HR BC team in June 2021 by note Ares(2021)3662831, for the reasons raised by the SC, without having obtained a reply yet. In this regard, it should be noted that OLAF's activities have not decreased and that DG HR has absorbed all the resources provided by OLAF HR unit in 2018 to the Account Management Centres (AMC's). Indeed, following the reorganisation of DG HR, thousand posts are available to DG HR, which has set up a centralised model. It remains unclear what level of service DG HR will provide to OLAF in terms of resources and only a centralised system without any OLAF specificity has been put in place. OLAF will monitor the level of service and autonomy granted by DG HR and will inform accordingly the Supervisory Committee.</p> <p>It should be noted that the staffing situation is even more critical than in 2021 as OLAF is requested to render posts for</p>	

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			<p>the surcharges, for the central taxation, for the staff reintegrating the Commissions' headquarters after a period of leave on personal grounds, after a period in delegation and after a period in the representations. In addition, the Office has to render 16 posts to the EPPO in 2022.</p> <p>OLAF received no reinforcement for year 2022, thus not seeing any compensation for the long sick leave absences which were recorded at the time of the budgetary hearings in 2021 (17 long term sick absences or absences with more than 365 days of sickness in a 3 year period).</p> <p>Finally, OLAF specialised competitions will produce the lists of laureates before the end of 2022, but there are no posts to proceed with recruitments of the specialists that OLAF needs. Absence of posts to recruit forensics, investigators and analysts in 2022, 2023 and 2024 would jeopardise OLAF operations and generate abnormal duration of investigations.</p> <p>The general needs for supplementary resources in OLAF were communicated to the Commission in January 2022 via the Reinforcement request in the framework of the preparation of 2022 allocation of Human Resources and will be subject of bilateral discussions with DG BUDG during the budgetary hearings scheduled on 3 March. OLAF's preliminary draft budget will be adapted in line with the outcome of these discussions and the SC will be informed accordingly. As explained above, without the allocation of supplementary resources, not only the HRBC but also other understaffed parts of the Office (operational, support and political) cannot be reinforced.</p> <p><u>OLAF position February 2023</u></p> <p>In June 2021 OLAF requested from Directorate-General Human Resources (DG HR) the return of three out of eight posts in its former HR unit for the reinforcement of OLAF HR team (note Ares(2021)3662831). However, OLAF has not received any reply yet.</p>	

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			<p>It should be noted that a new reorganization of DG HR (discontinuation of Account Management Centres/corporate structure) took place, centralizing all the posts that had previously been taken from HR units in the Commission departments and services. DG HR has lifted the limits on the number of staff that can compose the HRC teams, but OLAF's HRC team has not received a single post. DG HR disposes of 1,000 FTEs.</p> <p>OLAF's HR activities have in the meantime increased while at the same time numerous services formerly provided by DG HR have been discontinued. This is affecting all horizontal HR tasks in OLAF, particularly reporting, recruitment, talent management, career orientation and guidance, wellbeing, learning and development, ethics and equal opportunities. This also affects all OLAF's services since OLAF's HRC team cannot provide to them directly services such as creation and publication of posts, change of job descriptions, validation of recruitment procedures, managing working time, etc.</p> <p>OLAF received a temporary reinforcement for year 2023 (six FTEs) while it transferred 12 FTEs to the EPPO and two to DG HR, in addition to losing four contractual agents. In total, OLAF lost 18 posts while receiving six, thus having a net result of -12 posts in 2023. Finally, the posts received in 2023 are not permanent and will have to be returned after a variable period of time.</p> <p>It should be noted that the overall staffing situation is critical as OLAF has completed the rendering of posts to the EPPO, to synergies and efficiencies, and to DG HR. There is therefore no prospect of imminent staff increase in the HR team, despite the growing responsibilities.</p> <p>It should also be noted that OLAF does not benefit from the corporate IT, finance, audit, Data Protection Officer (DPO), logistics or buildings initiatives since OLAF manages its own IT, building, DPO, Internal Audit Control and finance. OLAF's Director General is also Appointing Authority (AIPN) and takes</p>	

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			<p>final decisions for ethics, promotions, appeals and complaints and for other individual entitlements.</p> <p>The general needs for supplementary resources in OLAF were communicated to the Commission in January 2023 and will be subject of bilateral discussions with DG Budget during the budgetary hearings scheduled on 1 March. OLAF has requested an increase of 16 permanent posts and 20 external posts (14 seconded national experts and six contract agents). OLAF's preliminary draft budget will be adapted in line with the outcome of these discussions and the SC will be informed accordingly.</p> <p>Without the allocation of supplementary resources, the HRC but also other parts of the Office would use external staff resources to ensure business continuity (contractual agents and seconded national experts).</p>	
2.	<p>SC Opinion 1/2019</p> <p>OLAF Preliminary Draft Budget for 2020</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>The Committee recommends, once OLAF has received the required resources from the European Commission, that OLAF's Director-General ensure that a risk assessment is carried out focusing on OLAF's new tasks in terms of fraud prevention and risk analysis.</p>	<p><u>OLAF position February 2020</u></p> <p>In 2019, the Commission assigned three posts to OLAF for the implementation of the new Commission Anti-Fraud Strategy. Any additional resources will only be made available following a decision of the new Commission and based on its future priorities.</p> <p><u>OLAF position February 2021</u></p> <p>Even without the additional resources requested for the implementation of the Commission Anti-Fraud Strategy (CAFS), OLAF considers it a priority to contribute to fraud risk management in the Commission in line with the two main objectives of the CAFS. Under the first objective - "data collection and analysis" - OLAF's strategic analysis function contributes with analysis of fraud risks and the identification of mitigating measures. Notably, in 2020, OLAF performed an analysis of COVID-19 related fraud risks which was discussed and circulated among Commission services. Other analyses were launched during the year, e.g. on fraud risks related to spending in the health sector. Under the second objective -</p>	Implemented

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			<p>“coordination, cooperation and processes” - OLAF provides advice, notably, to Commission services in the development of anti-fraud strategies, based on specific fraud risk assessments. In 2020, OLAF provided advice on, and approved, twelve such strategies.</p> <p><u>OLAF position March 2022</u></p> <p>Even without the additional resources requested for the implementation of the Commission Anti-Fraud Strategy (CAFS), OLAF considers it a priority to contribute to fraud risk management in the Commission in line with the two main objectives of the CAFS. Under the first objective – “data collection and analysis” - OLAF’s strategic analysis function contributes with analysis of fraud risks and the identification of mitigating measures. Notably, in 2021, following-up on the analysis of COVID-19 related fraud risks performed in 2020, OLAF completed an analysis on fraud risks related to spending in the health sector and provided a training to national authorities on the fraud risk framework applicable to the Recovery and Resilience Facility. Under the second objective – “coordination, cooperation and processes” - OLAF provides advice, notably, to Commission services in the development of anti-fraud strategies, based on specific fraud risk assessments. In 2021, OLAF provided advice on, and approved, fourteen such strategies.</p> <p><u>OLAF position February 2023</u></p> <p>OLAF considers this recommendation as implemented. No new resources have been given but, as mentioned in OLAF’s previous replies, OLAF carries out tasks related to fraud prevention and risk analysis with existing resources. The need for more resources remains.</p>	

3.	<p>S Opinion 1/2021</p> <p>OLAF's recommendations not followed by the relevant authorities</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>Recommendation 2</p> <p>The Director-General of OLAF should try to strengthen further the obligations on competent authorities to report to OLAF on their actions – especially to inform OLAF of the reasoning behind their decision and forward a copy of the decision itself. Through cooperation with these authorities, the Director-General should ensure that Article 11 of the OLAF Regulation becomes an effective tool for following up OLAF's recommendations.</p>	<p><u>OLAF position May 2021</u></p> <p>See OLAF's reply to SC Opinion 1/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><u>OLAF position February 2023</u></p> <p>OLAF monitors the follow-up of its recommendations through annual monitoring exercises, covering the entire process of their implementation.</p> <p>OLAF invokes Member States' extended reporting obligations under the amended OLAF Regulation and asks for copies of the decisions taken at the national level to obtain more comprehensive information on reasons for the dismissal of judicial recommendations in a consistent manner. Where appropriate, OLAF may monitor national judicial proceedings beyond the indictment stage and ask for final decisions of national courts. These enhanced monitoring practices are enshrined in the revised guidelines on judicial monitoring adopted in June 2022. In addition, at the end of 2022, OLAF revised the templates that Member States' judicial authorities are expected to use when answering to OLAF's monitoring requests.</p> <p>As far as cooperation with Member State authorities is concerned, the rule of law requirements could apply in cases of serious deficiencies in cooperation. Regulation (EU, Euratom) 2020/2092 of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (the Conditionality Regulation) also aims at effective and timely cooperation between OLAF and competent authorities of Member States. The Conditionality Regulation establishes breaches of the rule of law, which shall concern, among other things, effective and timely cooperation with OLAF in its investigations pursuant to the applicable Union acts in accordance with the principle of sincere cooperation. The scope of this cooperation includes obligations for the Member State concerned, like ensuring appropriate and timely follow-up</p>	<p>Implemented</p>
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			<p>to OLAF final reports and recommendations upon completion of its investigations and reporting back to OLAF on the action taken.</p> <p>To contribute to the implementation of the Conditionality Regulation, OLAF has put in place procedures that ensure recording of any serious shortcomings in Member States' cooperation. In 2022, the Director-General addressed specific guidance in this respect to the investigation units, and a dedicated module in OLAF's case management system has been developed.</p> <p>With these procedural and organisational improvements, OLAF has created the preconditions for an effective monitoring of judicial recommendations within the given legal framework. The Office will continue to liaise with Member State authorities to optimise cooperation in practice.</p>	
4.	<p>Opinion 1/2021</p> <p>OLAF's recommendations not followed by the relevant authorities</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>Recommendation 4</p> <p>When the investigation identifies a potential criminal offence, the Director-General of OLAF should ensure that the investigators and OLAF's review unit conduct a thorough analysis of the national procedural requirements for criminal proceedings. This analysis should, as a minimum, include consideration of (i) jurisdiction and territorial competence; (ii) the objective element of a crime committed (actus reus); (iii) the intention to commit a crime (means rea); and (iv) the statute of limitation.</p> <p>In particular, the Committee recommends that the Director-General:</p> <p>E- intensifies cooperation and communication with those national authorities where OLAF's final case reports</p>	<p><u>OLAF position May 2021</u></p> <p>See OLAF's reply to SC Opinion 1/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><u>OLAF position March 2022</u></p> <p>As regards sub-recommendation E, as pointed out in OLAF's reply, the scope of this recommendation is limited in the sense that Member States whose judicial authorities would systematically dismiss OLAF's recommendations are hard to identify. Going forward, OLAF's judicial recommendations will in principle concern only the Member States not participating in the EPPO, thus further narrowing the scope of the SC recommendation.</p> <p>Having said that, OLAF's new Monitoring and Reporting Unit, which succeeded the Task Force Monitoring in June 2021, provides coordination and support to the investigation units' monitoring activities vis-à-vis Member States. The Monitoring and Reporting Unit's analytical</p>	Implemented

		<p>are systematically dismissed on procedural grounds or because the evidence gathered is considered insufficient. Where necessary, OLAF should make proposals for legislative changes to address these issues.</p>	<p>work currently focusses on the follow-up to OLAF's financial and administrative recommendations but will gradually extend to judicial recommendations as resources become available.</p> <p><u>OLAF position February 2023</u></p> <p>OLAF is now supplementing the EPPO Crime Reports with a detailed annex containing a comprehensive assessment of the potential criminal offences against the financial interests of the EU identified by OLAF.</p> <p>OLAF has taken a series of procedural and organisational steps to tighten monitoring of the follow-up of its judicial recommendations, as outlined in OLAF's position regarding Recommendation 2. The scenario of systematic dismissals of OLAF Final Reports by national authorities falls under the instrument of the Conditionality Regulation. The Director-General's 2022 instructions and the related module in the case management system allow to track and address such cases appropriately. More generally, the Office continues to liaise with Member State authorities to optimise cooperation in practice.</p>	
5.	<p>Opinion 1/2021</p> <p>OLAF's recommendations not followed by the relevant authorities</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>Recommendation 5</p> <p>The Director-General of OLAF should also provide information in OLAF's annual report about the real outcome of the financial recommendations and of the amounts of money actually recovered by the competent authority.</p> <p>The Director General of OLAF should also ensure, through timely cooperation with the IBOAs, that the financial recommendations issued are in line with the applicable legal and contractual framework and comply with the principle of proportionality.</p>	<p><u>OLAF position May 2021</u></p> <p>See OLAF's reply to SC Opinion 1/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><u>OLAF position March 2022</u></p> <p>As regards the <u>first part</u> of SC's recommendation: Reflecting the outcome of a stocktaking exercise conducted by OLAF in cooperation with DG BUDG, OLAF will be in a position to publish figures on actual recovery following financial recommendations issued over a multiannual period. OLAF is planning to do so for the first time in its Annual Report 2021.</p> <p>As regards the <u>second part</u> of SC's recommendation:</p>	Partly implemented

			<p>In parallel, OLAF is refining its analysis of financial follow-up in close cooperation with DG BUDG and the Commission's spending services with a view to improving both the drafting of financial recommendations by OLAF and their implementation by the recipient services. Findings of that analysis will feed into a revision of OLAF's Drafting Instructions and Monitoring Guidelines for financial recommendations.</p> <p>Further aspects regarding the second part of the recommendation are addressed in the 'Guidance to Commission departments - Follow-up of recoveries as regards suspected fraud and other irregularities', issued by DG BUDG in close cooperation with OLAF in February 2022, Ares(2022)967651. The guidance intends to enhance the effectiveness of recovery processes related to expenditure under direct and indirect management by shortening recovery times and harmonising recovery practices. It is embedded in the Commission's corporate strategy for the enhanced management of accounts receivable.</p> <p><u>OLAF position February 2023</u></p> <p>As regards <u>the first part</u> of SC's recommendation:</p> <p>Since the stocktaking exercise on the follow-up to OLAF financial recommendations, presented to the Corporate Management Board in 2021, OLAF has been monitoring the follow-up to its financial recommendation until final recovery. OLAF has so far refrained from publishing these figures externally, following a discussion in the context of a Commission's Corporate Management Board meeting, where it was considered in the mandate of DG BUDG to communicate on recoveries.</p> <p>As regards <u>the second part</u> of SC's recommendation:</p> <p>Over the last years, OLAF has closely collaborated with both the Commission central services and the recipients of its financial recommendations on a better follow-up to its recommendations.</p>	
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6.	<p>Opinion 1/2021</p> <p>OLAF's recommendations not followed by the relevant authorities</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>Recommendation 6</p> <p>The Director-General of OLAF should inform the Committee of all the administrative recommendations which have not been followed by the authority concerned. The Director-General of OLAF should ensure that the new case management system will enable compliance with these recommendations to be monitored.</p>	<p><u>OLAF position May 2021</u></p> <p>See OLAF's reply to SC Opinion 1/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><u>OLAF position March 2022</u></p> <p>As regards <u>the first part</u> of SC's recommendation:</p> <p>The Monitoring and Reporting Unit is currently taking stock of administrative recommendations issued since 2016 and their follow-up. The analysis will be completed by mid-2022.</p> <p>In the future, administrative recommendations will be monitored on a regular basis. In that context, OLAF adopted new rules on how to draft and how to monitor administrative recommendations in January 2022.</p>	Ongoing

			<p>As regards <u>the second part</u> of SC's recommendation:</p> <p>Administrative recommendations will be monitored on a regular basis in the future. A dedicated module in OLAF's Content Management System is in the planning and scheduled for delivery by June 2022.</p> <p><u>OLAF position February 2023</u></p> <p>As regards <u>the first part</u> of SC's recommendation:</p> <p>In 2022, OLAF completed a stocktaking exercise on the follow-up of OLAF's administrative recommendations issued between 2016 and 2020 to analyse their level of implementation and reasons for a less successful implementation. The analysis established a number of lessons learnt which will be included in the Director-General's Instructions on drafting administrative recommendations.</p> <p>OLAF's first periodic (annual) monitoring exercise for administrative recommendations is currently ongoing. Once finalised, administrative recommendations will regularly be included in OLAF's report to the Supervisory Committee on recommendations not followed by the relevant authorities.</p> <p>As regards <u>the second part</u> of SC's recommendation:</p> <p>A dedicated module for the monitoring of administrative recommendations has been developed and will become operational after data migration of the existing recommendations and the completion of last adaptations.</p>	
7.	Opinion 2/2021 Working Arrangements between OLAF and EPPO	<p><u>Original SC recommendation to OLAF</u></p> <p>3.3 POINT 4.6 OF THE WA: ACCESS TO CASE MANAGEMENT SYSTEMS</p> <p>On this subject the SC would like to draw the attention of the parties on the following:</p>	<p><u>OLAF position July 2021</u></p> <p>See OLAF's reply to SC Opinion 2/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p>	Implementation considered not necessary for the foreseeable future

		<ul style="list-style-type: none"> - The criteria and modalities of the reciprocal indirect access could be further elaborated and clarified in the WA; - Given that the technical Annex to be agreed by the parties is an integral part of the WA, the SC should be consulted again once it is adopted. 	<p><u>OLAF position in March 2022</u></p> <p>After a delay to review how the current system works in practice, OLAF and EPPO will continue the technical discussions to refine the relevant aspects of the HNH system.</p> <p><u>OLAF position February 2023</u></p> <p>In 2020, the Commission published a Communication on the digitalisation of justice³, setting out a strategic vision on how to improve access to justice and the overall effectiveness of the justice systems across the EU. In this context, a technical taskforce bringing together the relevant EU anti-fraud bodies and offices, namely OLAF, EPPO, EUROJUST and EUROPOL, was created in 2021. The Task Force explored the technical specifications on the concept of the hit/no-hit system as established in EU legislation governing the relevant EU bodies involved, as the legislation itself does not provide enough details on how to practically set out this important interconnectivity. Before any conclusions were reached, DG JUST as lead service in this exercise, had to discontinue the work of the Task Force due to other priorities of the service. However, in line with the Commission’s vision to improve the interconnectivity of the relevant actors involved in the EU anti-fraud structure, DG JUST is preparing a legislative proposal in 2023, which will lay out possibilities to achieve this goal.</p> <p>Due to these recent legislative developments towards developing common interconnectivity between actors in the anti-fraud field (Europol, Eurojust, EPPO and potentially OLAF), there are no plans to develop a memorandum of understanding/technical annexes or features of hit not hit system for medium/long term.</p> <p>The EPPO and OLAF agreed to postpone any other bilateral technical discussions to connect their case</p>	
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³ https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/digitalisation-justice/communication-digitalisation-justice-european-union-and-proposal-e-codex-regulation_en

			management systems to avoid unnecessary reflections and costs surrounding this complex system, while hoping that in the future the legislative proposal put forward by the Commission and subsequent work will lead to an efficient and functional system in line with the strategic vision put forward in 2020.	
8.	Opinion 2/2021 Working Arrangements between OLAF and EPPO	<u>Original SC recommendation to OLAF</u> 3.4 SECTION 5: MUTUAL REPORTING AND TRANSMISSION OF POTENTIAL CASES The SC considers that this section should reflect better the different circumstances under which the two bodies may interact, and clarify the “modus operandi” of the two parties when a transfer of a case occurs.	<u>OLAF position July 2021</u> See OLAF’s reply to SC Opinion 2/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en <u>OLAF position March 2022</u> EPPO’s case management system has been operational since June and transfers are happening via SFTP (EPPO Box), which is a safe manner of transfer. For the moment, this is the preferred way. Operational data is transferred by email only where it is too large for the EPPO box, and then encrypted by 7-ZIP, as decided by the EPPO to being a safe transfer mechanism. Given that the systems continue to evolve (CMS releases and OCM releases) to accommodate transfers and other technical aspects, there is no need to include it in the WA. <u>OLAF position February 2023</u> OLAF maintains the position of March 2022.	Implementation considered not necessary for the foreseeable future
9.	Opinion 2/2021 Working Arrangements between OLAF and EPPO	<u>Original SC recommendation to OLAF</u> 3.5 PONT 6.1 OF THE WA: OLAF SUPPORT TO THE EPPO The Committee would invite the parties to: -	<u>OLAF position in July 2021</u> See OLAF’s reply to SC Opinion 2/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en <u>OLAF position March 2022</u>	Implementation considered not necessary for the foreseeable future

		<p>- also specify in point 6.1.4 that whenever OLAF is unable to decide “promptly” and without “undue delay” on an EPPO request for support, to inform immediately the EPPO, provide reasons for this delay, and indicate to EPPO a time-limit for its response.</p>	<p>As regards point 6.1.4, OLAF has defined undue delay internally to the earliest possible time when a case may be considered to fall under the EPPO’s mandate, but discussions are ongoing with the EPPO to better understand this notion to ensure that a) OLAF complies with our reporting obligation and b) OLAF transfers valuable and usable information to the EPPO on cases and allegations, in timely manner but also “complete” as defined by the EPPO. The definitions of which information is required for an ECR to become valid differ between the EPPO and OLAF, based on the different mandates of both.</p> <p><u>OLAF position February 2023</u></p> <p>After receiving a support request from the EPPO, OLAF:</p> <ul style="list-style-type: none"> - carries out selection activities to assess the case opening criteria, including OLAF's competence to act, the complexity of the requested activity, the availability of resources and the envisaged timeframe. - directly contacts the requesting European Prosecutor/European Delegated Prosecutor to clarify the scope of the requested activities or other elements. - The timeframe for the support activities and OLAF decisions is discussed directly with European Prosecutor/European Delegated Prosecutor or communicated via correspondence. - Any case related issues are discussed regularly (bi-weekly) in Clearing House meetings. <p>These practical steps address the need for prompt action that needs to be taken by OLAF without providing definitions in the working arrangement. It is not foreseen to revise these provisions to include additional definitions, but to refine the practical ways of cooperating in these matters.</p>	
10.	Opinion No 3/2021	<i>Original SC recommendation to OLAF</i>	<u>OLAF position December 2021</u>	Implemented

	Supervision of internal investigations	<p>Main conclusions, best practices and equal treatment</p> <p>(ii) The Committee, in accordance with its mandate, carried out a comparative analysis of four specific OLAF investigations concerning alleged illegal activities, serious misconduct, and breach of obligations by members and officials occupying senior or leadership positions in the EU institutions, bodies and agencies. These cases shared several common traits including the high responsibilities of the people concerned by the investigations and the reputational damage that their actions [...] could cause to the trust of citizens in the EU. When dealing with such investigations, OLAF needs to act in a very diligent manner and abide strictly by the applicable rules and procedures in order to avoid any perception in the eyes of the public of biased or unequal treatment or even external interference.</p> <p>(iii) The analysis of the four cases raised questions about OLAF's compliance with the principle of independent, impartial, and thorough conduct of investigations. Had the hybrid status of OLAF adversely affected the independence of its investigative function? Was the requirement of a sufficient suspicion to open the investigations well founded? Was the fair and impartial conduct of investigations ever put at risk or compromised during the decision-making process? Was there a consistent approach to these four cases in the way OLAF made use of its powers of investigation? Given the sensitive nature of these cases, did OLAF carry out a thorough investigation in such a way as to dispel any doubt with</p>	<p>See OLAF's reply to SC Opinion 3/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><i>OLAF position February 2023</i></p> <p>In carrying out its investigative work OLAF endeavours to apply and interpret in a consistent manner the rules and procedures governing the conduct of its investigations. regardless of the status of the persons concerned, while taking also into account the specificity of each case.</p> <p>OLAF has various mechanisms to ensure so, including a long approval workflow for all investigative documents, a check by the review team of the key investigative acts and involvement of the legal advice unit where necessary.</p> <p>OLAF is fully committed to continuously improve its investigative practices, based, among others, on the lessons learnt from the analysis of the four cases and on the SC's conclusions and recommendations.</p>	
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11.	Opinion No 3/2021 Supervision of internal investigations	<p><u>Original SC recommendation to OLAF</u></p> <p>I - Independence of the investigations and the decision making process</p> <p>I.1 - Criteria for opening of an investigation, effectiveness and accountability: analysis of a "sufficient suspicion" in the selection stage</p>	<p><u>OLAF position December 2021</u></p> <p>See OLAF's reply to SC Opinion 3/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p>Paragraphs 22-31</p>	Ongoing

		<p>(viii) The expected review of the guidelines on investigation procedures (GIPs), following the entry into force of the new OLAF Regulation (EU) 2020/2223, should address the above concerns by including the notion of “sufficient suspicion” (at present formally absent in Article 5 of the GIPs) and ensuring that the Committee is informed of the opening of sensitive cases where the reputation of the EU could be at stake. In such cases, this practice will reinforce the perception of OLAF’s independence and accountability especially when the decision to close an investigation with no recommendations is taken in less than 12 months, and thus lies outside the regular monitoring remit of the Committee.</p>	<p><u>OLAF position February 2023</u></p> <p>The revision of the GIPs is ongoing.</p>	
12.	Opinion No 3/2021 Supervision of internal investigations	<p><u>Original SC recommendation to OLAF</u></p> <p>I - Independence of the investigations and the decision making process</p> <p>I.2 - The scope of the investigation: legal certainty and impartial conduct of investigations</p> <p>(ix) The Director-General of OLAF should therefore ensure that effective mechanisms for regular legal supervision and managerial oversight are put in place as far as internal investigations concerning members and senior staff of the EU institutions bodies and agencies are concerned, including cases where there is a risk of a reputational damage for the EU.</p>	<p><u>OLAF position December 2021</u></p> <p>See OLAF’s reply to SC Opinion 3/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><u>OLAF position February 2023</u></p> <p>OLAF has in place mechanisms for legal and managerial supervision of its investigations, including internal investigations concerning members and senior staff of the EU IBOAs.</p> <p>Therefore, OLAF will continue implementing this recommendation through regular and adequate management of the cases.</p>	Implemented
13.	Opinion No 3/2021 Supervision of	<p><u>Original SC recommendation to OLAF</u></p> <p>II - Carrying out of the investigative function: exploiting OLAF’s powers of</p>	<p><u>OLAF position December 2021</u></p> <p>See OLAF’s reply to SC Opinion 3/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-</p>	Ongoing

	internal investigations	<p>investigation and strengthening the effectiveness and legitimacy of the fight against serious misconduct and illegal activities</p> <p>II.1 - Thorough investigation and investigation planning: working methods</p> <p>(xvi) As for the conduct of the investigations, the analysis of the Committee also revealed certain weaknesses in the investigation practices and methods followed. The Committee's view is that in sensitive internal investigations, whenever OLAF makes use of its discretion to decide which investigative measures need to be taken and at what time, OLAF should clearly record in the case file the reasons for doing so and conversely why it chooses not to take a specific investigative measure. In particular, key decisions such as: closing an investigation without even attempting to interview the person concerned; the failure to investigate [...], which are at the heart of the allegations under investigations; the failure to get the assistance from the competent national authorities; the late registration of documents in the case file that is, after the case is closed, all such steps, decisions and measures call for a proper justification in the interest of accountability, transparency and above all, the impartial conduct of an investigation.</p>	<p>committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p>Paragraphs 45-54</p> <p><u>OLAF position February 2023</u></p> <p>The revision of the GIPs is ongoing.</p>	
14.	Opinion No 3/2021 Supervision of internal investigations	<p><u>Original SC recommendation to OLAF</u></p> <p>IV Design of methods of preventing and combating fraud and corruption</p> <p>(xx) Lessons can be drawn from experiences during the case and actions to</p>	<p><u>OLAF position December 2021</u></p> <p>See OLAF's reply to SC Opinion 3/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p>	<p>Point (xx): implemented</p> <p>Point (xxi): ongoing</p>

		<p>be taken based on these experiences, such as improvements in OLAF's internal organization, in investigative techniques, in cooperation with national authorities and with the EU institutions. The Committee considers that a formal structure for the sharing of lessons learned as well as for good practice should be put in place.</p> <p>(xxi) Serious consideration should be given to the creation of a special service dedicated to the design of methods for investigation of potential corruption involving lobbyists, the revolving door issue, conflicts of interests, and the breach of the duty of integrity and transparency, all require special attention from OLAF. Having identified failures in the tools for access to information in these areas, urgent work with the Commission needs to be addressed in this field of common concern.</p>	<p><i>Paragraphs 61-62</i></p> <p><u>OLAF position February 2023</u></p> <p>(xx) OLAF has in place structures for sharing lessons learnt and good practices. For instance, OLAF regularly organises training sessions for investigators, focused on specific investigation-related topics, which provide investigators the opportunity to share their experiences and best-practices. In addition, in regular meetings at the level of the investigative Directorates, the investigation units discuss concrete situations arising from investigations, and the solutions thereto. Cases are also discussed in case specific meetings as well as in Monthly Operational Meetings.</p> <p>(xxi) OLAF is considering to appoint an internal coordinator for all ethic-related cases in unit A.1 and make it visible in the organigramme.</p> <p>OLAF is closely following the discussions concerning the set up an Independent EU Ethics Body, particularly in the fallout of the Qatar-gate. It should be noted that OLAF has recently been consulted on the Commission's draft proposal for an Independent Ethics Body, which is expected to be put forward in the coming weeks. The Office has also intensified efforts to raise awareness of IBOAs and general public of OLAF's mandate to investigate non-PIF matters, including ethics issues, and the obstacles faced when investigating those matters. The SC has been and will be regularly informed of any developments in this area.</p>	
15.	Opinion No 4/2021 OLAF's preliminary draft budget for 2022	<p><u>Original SC recommendation to OLAF</u></p> <p>The Committee invites the Director-General to carry out as soon as possible, now that the OCM is said to have been completed, a detailed cost-based analysis of the pros and cons of maintaining the OCM or switching to the CASE@EC case</p>	<p><u>OLAF position March 2022</u></p> <p>OLAF performed a study on the future of its Case Management System (OCM) during the first semester of 2020. Among the scenarios, it was a possible migration to CASE@EC for which OLAF coordinated closely with the CASE@EC leading DG EMPL, for a detailed functional and cost-based analysis. The current planning is to complete</p>	Implemented

		management system.	<p>OCM development phase by July 2022 and enter a lower cost maintenance mode.</p> <p><u>OLAF position February 2023</u></p> <p>A functional fit-gap and financial analysis, completed in July 2020, showed that a potential replacement of OCM by CASE@EC would require three years of work and double-financing to keep the OCM operational while developing an OLAF-specific version of CASE@EC. OLAF therefore decided to complete the OCM project, which happened on 28 July 2022. Since then the system has been operating in a lower effort maintenance mode, integrating technical upgrades and implementing requested business changes.</p> <p>On 20 October 2022, the IT and Cybersecurity Board (ITCB) acknowledged that OCM was in full production mode, secure and stable, and “encouraged the reuse of CASE@EC by OLAF in the future, when OCM will be due for replacement.”</p> <p>In light of the above, OLAF will reassess the situation if and when OCM becomes technologically outdated, costly to evolve/maintain or incapable to fulfil business requirements.</p>	
16.	Opinion No 5/2021 Analysis of OLAF investigations lasting longer than 36 months in 2019	<p><u>Original SC recommendation to OLAF</u></p> <p>Recommendation 1</p> <p>The SC recommends that the Director-General of OLAF should:</p> <p>a) create an automatic flag system mechanism in the OCM to make periods of inactivity of over three months immediately visible in the OCM and to OLAF’s management;</p> <p>b) ensure that obstacles encountered by the case team that have or could have a</p>	<p><u>OLAF position March 2022</u></p> <p>See OLAF’s reply to SC Opinion 5/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><u>OLAF position February 2023</u></p> <p>a) A dedicated report (“Case Activity Record”) was released in OCM in July 2022, allowing OLAF’s management to identify cases having periods of inactivity longer than three months.</p> <p>b) Written traces of obstacles materially impacting the</p>	<p>Sub-recommendation a): implemented</p> <p>sub-recommendation b): implemented</p> <p>sub-recommendation c): ongoing</p>

		<p>substantial impact on the duration of an investigation, as well as all decisions taken to that effect by the case team or OLAF management are properly documented and registered in the case file of each investigation in the OCM;</p> <p>c) Set out in the GIPs clear internal procedures for the managing of the duration of an investigation. In particular, OLAF should establish, for cases over 24 months, a specific review procedure in order to allow the Director-General to decide how best to speed up the handling of such investigations, and also establish a special procedure for cases which are running over 36 months;</p>	<p>duration of investigations can be found in the files. These are the basis for the explanations provided in the monthly reports to the Supervisory Committee. In addition, the duration of each investigation is followed in the Monthly Operational Meetings.</p> <p>c) The revision of the GIPs is ongoing.</p>	
17.	<p>Opinion No 5/2021</p> <p>Analysis of OLAF investigations lasting longer than 36 months in 2019</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>Recommendation 2</p> <p>The SC therefore recommends that the Director-General of OLAF should ensure that all opinions issued by the Review Team contain an evaluation of the 'duration of the investigations'. All opinions should indicate the exact periods of inactivity identified and draw clear and substantiated conclusions as to whether the length of the investigation was proportionate to the circumstances and complexity of the case.</p>	<p><u>OLAF position March 2022</u></p> <p>See OLAF's reply to SC Opinion 5/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p> <p><u>OLAF position February 2023</u></p> <p>The opinions of the Review Team upon closure of the investigations include an evaluation of their duration. In particular, under point 1.5 of the review opinion, the Review Team assesses if there are indications that</p> <p>a) the investigation has not been conducted continuously and without undue delay and</p> <p>b) the length of the investigation has not been proportionate to the circumstances and complexity of the case.</p>	Implemented
18.	<p>Opinion No 5/2021</p> <p>Analysis of OLAF investigations lasting longer than 36 months in 2019</p>	<p><u>Original SC recommendation to OLAF</u></p> <p>Recommendation 3</p> <p>The SC recommends that the Director-General of OLAF adopt a consistent and</p>	<p><u>OLAF position March 2022</u></p> <p>See OLAF's reply to SC Opinion 5/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en</p>	Ongoing

		uniform approach to strategic case planning across all investigative units. In particular, OLAF should revise the GIPs to ensure that a detailed investigation plan is drawn up for every opened investigation, regularly updated and annexed to the case file of each investigation.	<u>OLAF position February 2023</u> The revision of the GIPs is ongoing.	
19.	Opinion No 5/2021 Analysis of OLAF investigations lasting longer than 36 months in 2019	<u>Original SC recommendation to OLAF</u> Recommendation 4 The Director-General of OLAF should amend the GIPs to include clear rules on the assigning operational priority to a case. In doing so, the GIPs should: a) establish clear objective criteria b) ensure that the decisions to grant priority to a case are recorded in the case file in the OCM c) automatically assign priority to investigations running for over 36 months, and take specific steps to speed up the investigations.	<u>OLAF position March 2022</u> See OLAF's reply to SC Opinion 5/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en <u>OLAF position February 2023</u> The revision of the GIPs is ongoing.	sub-recommendation a): ongoing sub-recommendation b): ongoing sub-recommendation c): ongoing
20.	Opinion No 5/2021 Analysis of OLAF investigations lasting longer than 36 months in 2019	<u>Original SC recommendation to OLAF</u> Recommendation 5 The Director-General of OLAF should ensure that: a) Critical decisions which substantially impact the duration of an investigation (i.e. whenever an exceptional extra time for the analysis of the data/evidence collected is necessary due to the circumstances of the case) should always be taken at Director level and should always be systematically recorded in the	<u>OLAF March 2022</u> See OLAF's reply to SC Opinion 5/2021 available at https://ec.europa.eu/anti-fraud/about-us/supervisory-committee/exchanges-between-olaf-and-its-supervisory-committee_en <u>OLAF position February 2023</u> The revision of the GIPs is ongoing.	Ongoing

		OCM. The procedure for doing so should be set out in the GIPs.		
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