



Opinion No 5/2014

STATISTICS ON INVESTIGATIVE PERFORMANCE OF OLAF (part I)

OLAF external reporting on the duration of investigations

The Supervisory Committee (SC) has analysed the information provided to it by OLAF in 2014 & 2015 for the purpose of this opinion.

The SC established that the reporting on the duration of investigations by OLAF has not provided a comprehensive view on the investigative performance.

OLAF stated in its annual report that "investigations are being completed in less time". The SC concluded that this improvement is due to the introduction of new calculation methods.

Therefore, the SC recommended that OLAF should calculate the duration of investigations on the basis of cases closed during the reporting period. The SC furthermore underlined that OLAF should also report transparently on the duration of longest-lasting investigations.



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Introduction

1. The duration of investigations conducted by the European Anti-Fraud Office (OLAF) is a matter of common interest for both OLAF and its Supervisory Committee (SC). The SC, whose role is to reinforce OLAF's independence in the proper exercise of its competences by the regular monitoring of, *inter alia*, the duration of its investigations, welcomes the fact that OLAF has made the reduction of the duration of investigations one of its priorities, as it appears in the 2014¹ and 2015² OLAF Management Plan. The SC considers it very important that investigations are conducted continuously and over a period proportionate to their circumstances and complexity, and that OLAF reports comprehensively and accurately to the Institutions, the SC, all stakeholders and the public on their duration.
2. Reasonable duration of investigations is of particular interest to the European Union legislator in Regulation No 883/2013. Duration of investigations is seen there as related to the efficient use of resources and to the principle of proportionality. Duration of investigations has an impact on the effectiveness of OLAF's work since investigations are followed by administrative and/or judicial procedures in the EU Institutions and bodies (internal investigations) or in the Member States (external investigations and internal investigations to be followed by judicial procedures).
3. In the assessment of the right to a fair trial in reasonable time, in accordance with Article 47 of the EU Charter of Fundamental Rights and in accordance with the European Convention of Human Rights, the duration of the trial is calculated from the commencement of the first procedures and, hence, includes OLAF investigations.
4. Duration of procedures and investigations will also have time-barring effects in the laws of the Member States.
5. In addition, OLAF is required by Article 41 of the EU Charter of Fundamental Rights to exercise good administration and ensure that every person has his affairs handled impartially, fairly and within a reasonable time. Hence, duration of investigations is a requirement of fundamental rights and external reporting on the duration of investigations has the function to provide information on the systemic capacity of OLAF to ensure good administration (Article 41 of the Charter) and the right to fair trial in reasonable time (Article 47 of the Charter).
6. Calculation of the duration of investigation does not include coordination cases in which OLAF's role is to assist national authorities and thus it has limited influence on the duration of such cases. In particular, OLAF is not in a position to check the continuity of such investigations since they are conducted by national authorities.

¹ Reducing the duration of OLAF's investigations is also one of the objectives set out in the OLAF 2014 Management Plan, which foresees an average duration of investigations no longer than 20 months (see point 3.1, page 9).

² Reducing the duration of OLAF's investigations is also one of the objectives set out in the OLAF 2015 Management Plan, which foresees an average duration of investigations no longer than 19 months (see point 4.1.1, page 9-10).



Purpose of the Opinion and methodology

7. In accordance with Article 15(1) of Regulation (EU) No 883/2013³ the SC is responsible for monitoring the duration of OLAF investigations. The SC does so on the basis of reports and statistical data provided by the OLAF Director-General (DG) as well as general statistics published by OLAF.
8. Therefore, the SC decided in its work plan 2014-2015 to carry out thorough analyses of the duration of investigations and assess to what extent the information on the average duration gives sufficient view of effectiveness in the management of investigative function of OLAF and OLAF's capacity to deal with its caseload. This led to the production of SC's Report No 3/2014 and two Opinions: "Control of the duration of investigations conducted by OLAF" and the present one. The purpose of this Opinion being to focus on the external reporting on the duration of investigations, in particular on the reporting of average duration of OLAF investigations as presented to the EU Institutions and to the public in OLAF annual reports. This Opinion is thus a part of the wider monitoring theme on the duration of investigations as well as of the SC's commitment to improve management controls in OLAF in order to ensure reasonable duration of investigations.
9. To that end, the SC examined:
 - a) OLAF Annual Reports 2009-2013;
 - b) Detailed data provided by OLAF on the opening and closing of investigations in the period 2012-2014;
 - c) Additional general and case-related information provided, upon the SC's request, by the DG.
10. The observations and conclusions drawn up by the SC, as well as the recommendations addressed to the DG, are based on a thorough analysis of the information provided by OLAF⁴. All the data used in this Opinion were provided by OLAF at the SC's request or are available in the public annual reports of OLAF.
11. The SC's analysis of the information provided by OLAF was sent to the DG, who provided comments on 18 March 2015. The SC took these comments into consideration which resulted in modifications and clarifications in the following parts: the summary on front-page, insertion of footnotes 13 and 16, insertion of OLAF chart on page 10, as well as modifications in paragraphs 25, 28, 30, 34, 41, 42 and in recommendation 1 on page 15.

³ 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), OJ L 248, 18.9.2013, p. 1

⁴ Some preliminary work was carried out by an external expert, a retired staff member of OLAF, who was officially authorised in this capacity by DG HR of the Commission. The actual drafting of this Opinion was carried out exclusively by the SC with OLAF providing the necessary data for this purpose.



OLAF METHOD FOR CALCULATION OF THE AVERAGE DURATION OF CASES

12. Since its Annual Report 2011, OLAF has changed the method to calculate and to present the average duration of cases:

OLAF Annual Reports **2006 – 2010:**

- presented the average duration of investigations and/or operational cases;
- this average was calculated on the basis of cases closed by the end of the reporting period⁵.

OLAF Annual Report **2011:**

- presented the average duration of investigations and coordination cases;
- this average was calculated on the basis of cases closed during 2011 and those still open at the end of 2011⁶.

OLAF Annual Report **2012:**

- presented the average duration of investigations and/or coordination cases;
- this average was calculated on the basis of cases closed during 2012 and those still open at the end of 2012⁷;
- this method was applied to re-calculate the average duration of investigations (without other types of cases) for the previous years (2008 to 2012).

OLAF Annual Report **2013:**

- presented the average duration of investigations only (without coordination cases);
- this average was calculated on the basis of investigation cases closed during 2013 and those still open at the end of 2013;
- this method was applied to re-calculate the average duration of investigations (without other types of cases) for the previous years (2009 to 2013).

⁵ See e.g. Chart 3, on p. 36 of the Annual Report 2010, which shows the average duration of investigative and operational cases completed in 2010, measured at the date of their closure.

⁶ See footnote 8 of Annual Report 2011.

⁷ See page 19 of Annual Report 2012.



OLAF REPORTING ON AVERAGE DURATION OF INVESTIGATIONS

13. OLAF Annual Reports 2012 and 2013 present the average duration of investigations, calculated on the basis of the new method applied since 2011, i.e. investigations closed and those still open at the end of the reporting periods 2008, 2009, 2010, 2011, 2012 and 2013.

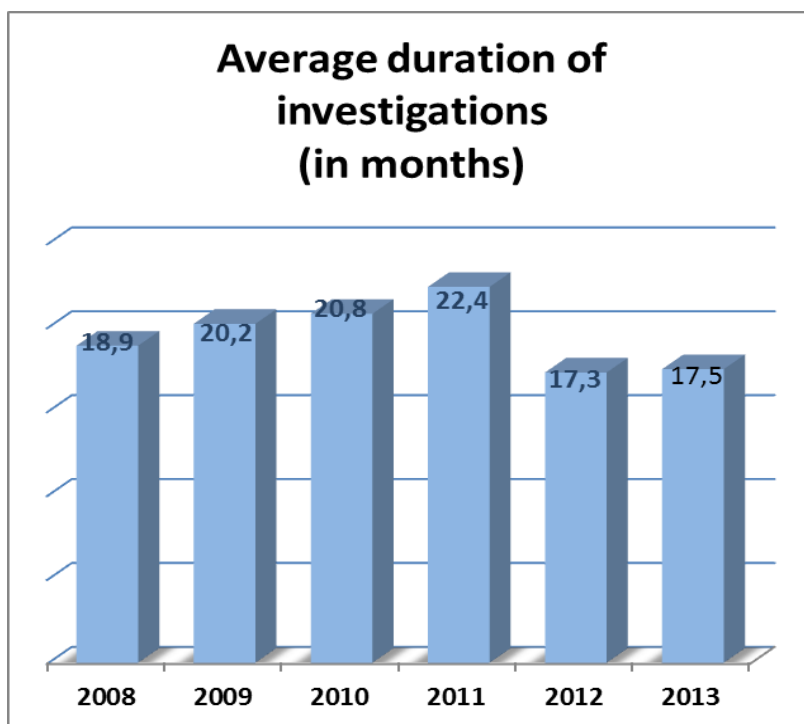


Chart 1 - Source: OLAF Reports 2012 and 2013

14. The Annual Report 2012 indicates that:

- "In 2012, the average duration of investigation and coordination cases was reduced significantly compared to previous years" and "The statistics on the average duration of the investigation or coordination phase reflect an improvement compared with previous years."⁸

15. The Annual Report 2013 indicates that:

- "Investigations are being completed in less time. The 2013 results confirm the trend of 2012, and mark a net improvement with respect to previous years. This reflects the priority given by OLAF to improving the efficiency of its investigations and to reducing the overall duration of its cases"⁹.

⁸ OLAF Annual Report 2012, p. 19 and 20.

⁹ OLAF Annual Report 2013, p. 17.



OLAF STATISTICAL METHODOLOGY AND ITS OBJECTIVES

16. In its 2011 Annual Report¹⁰ OLAF provided specific reasons for the change in the method of calculation. OLAF further explained to the SC that the objective was to ensure that long-lasting ongoing investigations are targeted for finalisation - to which the earlier method of reporting on the duration of investigations had not provided any incentives.
17. Whereas OLAF has the right to change calculation methods and reporting, in order to have a fair and reliable overview it would be necessary to ensure full comparability of the information presented.
18. The SC took note of OLAF's statement in its Annual Reports 2012 and 2013, that the statistics for those years reflect an improvement in the average duration of investigations compared to previous years.
19. From the SC's perspective, the objective of calculating an average duration of investigations should be to provide an indication on how long it takes, on average, for OLAF to complete its investigations.
20. This is the relevant indicator for assessing OLAF's systemic capacity to ensure compliance with Articles 41 and 47 of the EU Charter of Fundamental Rights.
21. Such an approach would be confirmed by OLAF in its Annual Report 2013 which uses the results of the calculation to compare in what time "investigations are being completed". For that purpose, however, only the data concerning the "completed investigations" should be used. Including the data which concern ongoing investigations distorts the results and does not allow for the comparison of the average duration of completed investigations between the years.
22. Therefore, OLAF's claim in its Annual Report 2013 that "investigations are being completed in less time" does not seem to be justified by data presented there.

AVERAGE DURATION OF COMPLETED INVESTIGATIONS ACCORDING TO OLAF

23. To assess whether that claim can be justified by more precise statistical data, the SC requested that OLAF provide the dates of opening and closure of the investigations completed by the end of 2011, 2012 and 2013¹¹. On that basis, the SC calculated the average duration of completed investigations¹² and received the following results: 27.4 months for 2011, 23.0 months for 2012 and 22.6 months for 2013.

¹⁰ Page 19, footnote 8: "To better reflect the efficiency of the Office, the duration of the investigative phase now includes the duration of cases closed during the reporting period and those still open at the end of the reporting period".

¹¹ SC's note Ref. Ares(2015)163792 of 15 January 2015.

¹² Applying the method used by OLAF until 2010, i.e. referring to investigations closed before the end of the reporting period.



24. Providing further explanations on the matter, on 19 February 2015 OLAF presented to the SC a chart (Chart 2, below), showing the difference between calculations including and excluding ongoing investigations. These OLAF results are slightly different from the SC's calculations presented in the previous paragraph (which were made on the basis of raw data provided by OLAF), but, for the sake of simplicity, the SC will be using OLAF's results.

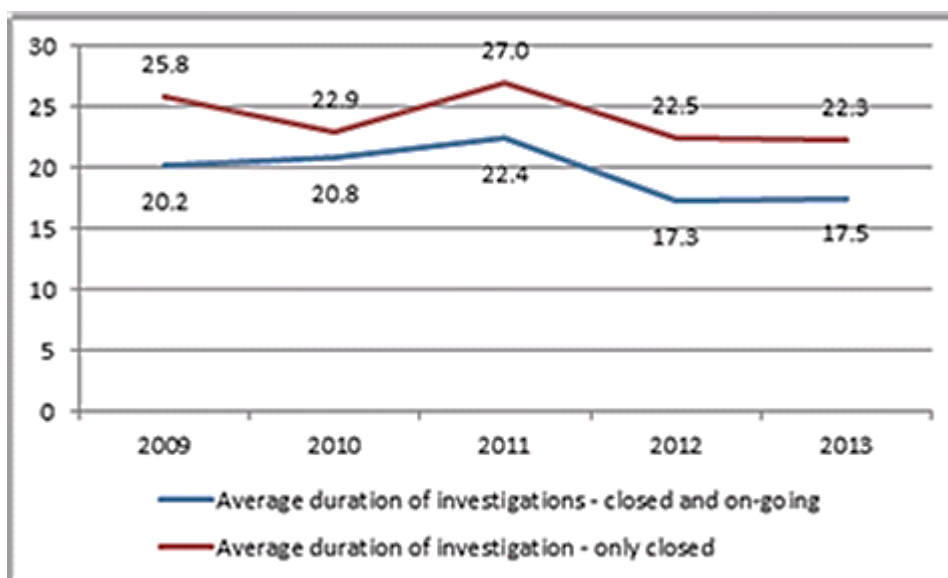


Chart 2 - Source: OLAF note of 19.02.2015

“DATA CLEANED”¹³

25. On 1 February 2012, 423 investigation and coordination cases were opened by a single decision of the DG, regardless of the stage of their assessment.¹⁴ Their opening was carried out without respecting the relevant requirements and consequently should be considered as irregular¹⁵. Their atypically short duration (due to the fact that in many of these cases there were no or almost no investigative activities undertaken) distorted the calculation of average duration of regular investigations. Due to the irregular opening of those cases (and their “one-off”, “organisational” character), they should be excluded from the calculation (it concerns 99 out of 268 investigations closed in 2012 and 63 out of 293 investigations in 2013).

¹³ The term “data cleaned” was used by OLAF in its internal reporting for 2012. In his reply of 18 March 2015, the DG states, however, that it is difficult for him to see on what basis it was done. He underlines also that he does not understand the logic of “cleaning” – the exercise conducted by OLAF when he was already its Director-General. (see page 8 of OLAF’s reply of 18 March 2015).

¹⁴ The DG explained that “the opening of a large number of investigation and coordination cases on 1 February 2012 was a one-off event necessary to allow a smooth implementation of the new organisational structure of the Office” (note to the SC of 12 June 2014, Ref. Ares(2014)1925567).

¹⁵ Cf. SC's Report No 3/2014 adopted on 20 January 2015.



26. Such exclusion was applied also by OLAF in its internal reporting. In the Report on OLAF Operational Activity for 2012, the data on duration of cases include: “**data cleaned** – without 423 cases opened on 1.02.2012”.
27. Therefore, on the basis of data provided by OLAF and following the methods applied internally by OLAF, the SC calculated the average duration of the completed investigations excluding those opened irregularly on 1.02.2012. The results are presented in the tables below:

<p>Average duration (in months) of 268 investigations closed by OLAF in 2012 (including 99 investigations opened on 01.02.2012)</p>	<p>Average duration (in months) of investigations closed by OLAF in 2012 (excluding 99 investigations opened on 01.02.2012)</p>
<p>23.0</p>	<p>32.0</p>

<p>Average duration (in months) of 293 investigations closed by OLAF in 2013 (including 63 investigations opened on 01.02.2012)</p>	<p>Average duration (in months) of investigations closed in 2013 (excluding 63 investigations opened on 01.02.2012)</p>
<p>22.6</p>	<p>24.2</p>

28. Providing further explanations on the matter, on 18 March 2015 OLAF presented to the SC a chart (Chart 3, below), showing additionally the difference between calculations including and excluding investigations opened in exceptional circumstances on 1 February 2012. These OLAF results are slightly different from the SC’s calculations presented in the previous paragraph (which were made on the basis of raw data provided by OLAF), but, for the sake of simplicity, the SC will be using the OLAF results.

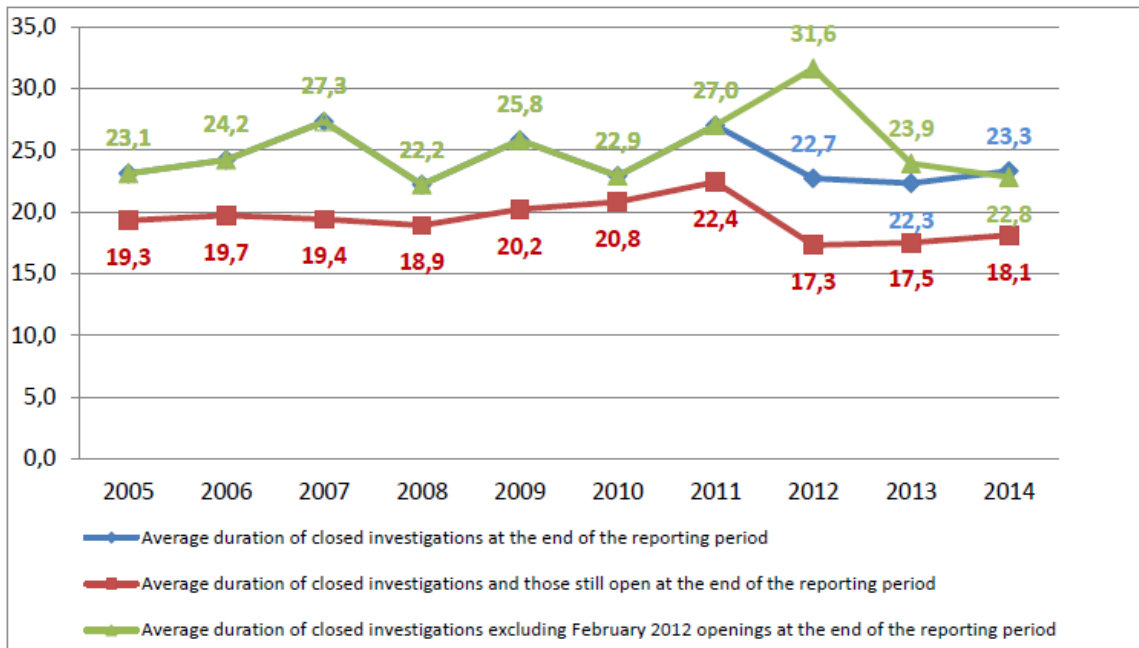


Chart 3 - Source: OLAF note of 18.03.2015

IMPACT OF OPENING OF 423 CASES ON THE INVESTIGATION “SUCCESS RATE”

29. The “success rate” has long been used by OLAF as a performance indicator, and is based on the annual percentage of completed cases which have resulted in recommendations for actions to be taken by the Member States or the EU Institutions.
30. The SC does not consider it an absolute indicator, because it is natural that some of the cases result in no recommendations, but their percentage used to be stable until 2010 and was below 50%. The distorting impact of the 423 cases opened on the same day and closed very often shortly afterwards, often without any investigative activities conducted, could be partially responsible for the sudden fall in the investigation “success rate” in 2012 and 2013, which dropped to 21.5% and 39,5% respectively.

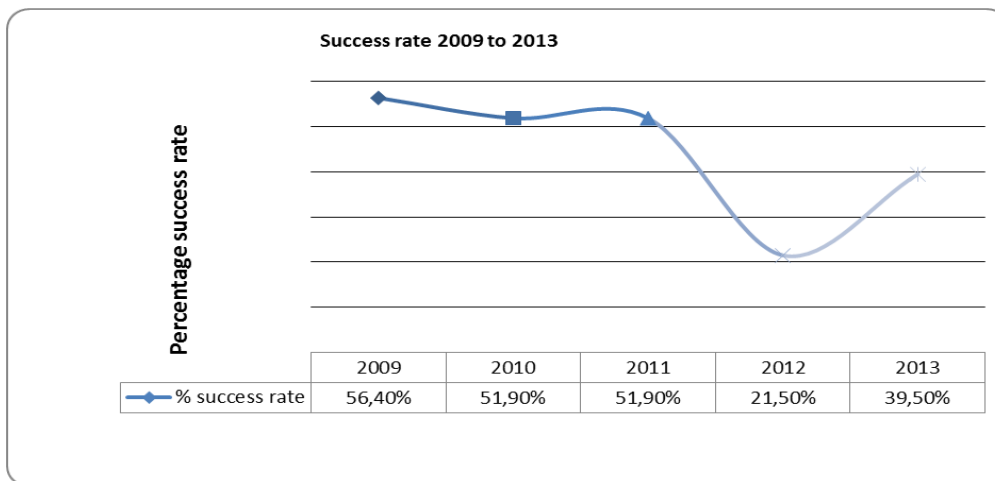


Chart 4 – “Success rate”

IMPACT OF OPENING AND CLOSING OF INVESTIGATIONS FOR “ADMINISTRATIVE CLARITY PURPOSES”

31. In addition to the investigations open in exceptional circumstances on 1 February 2012, which should be excluded from the calculation of the average duration, the SC believes that the same should be done with regard to other investigations which were open for "administrative clarity purposes" and in which no investigative activities were undertaken.

32. As an example, the SC identified – in the framework of its monitoring activities - that, on 3 October 2008, under a single "umbrella case", OLAF opened a wide-ranging investigation into alleged irregularities and possible fraud involving ca. 90 projects funded under the SAPARD programme in Romania. All investigative activities were carried out under that umbrella case. Final reports were drafted separately for individual projects. On 2 August 2012, 24 out of the remaining projects were "extracted"¹⁶ from the "umbrella" case and new individual cases were created for each project. On 8 March 2013, another 27 out of the remaining projects were again extracted from the "umbrella" case and new cases were created for each individual project. In the “extracted” cases to which the SC had access there were no traces of any investigative activities - all such activities were carried out under the “umbrella” case. OLAF justified these extractions as being for "administrative clarity purposes".

33. The "umbrella" case was closed on 11 April 2013, while the cases extracted were closed in 2013 and 2014, however, some remain on-going. The same procedure appears to have been applied to SAPARD cases concerning Bulgaria (opened in 2009).

¹⁶ The term is used by OLAF in internal notes. A formal procedure to "split" cases from umbrella cases was set up on 1 October 2013.



34. In 2013, 15 cases extracted from an “umbrella” case and involving no additional investigative activities were closed with the average duration of 4.1 months. Should those 15 cases be excluded from the calculation of the average duration for 2013 (because of the lack of any additional investigative activities), the general result would increase from 24.2 months to 25.7 months. Should other similar cases also be excluded, the final result for the average duration for 2013 could reach, according to a rough estimation, about 26.8 months.
35. In order to assess the full impact of such cases on the statistics, the SC would need full access to all the closed case files, which it currently does not enjoy. Therefore, the SC can only make a rough estimate of the average duration of regular investigations in OLAF in 2013 excluding some cases where no investigative activities were conducted (*see Chart 5*).

IMPACT OF LONG-LASTING INVESTIGATIONS: IS “AVERAGE DURATION” A GOOD INDICATOR?

36. The average duration gives, at best, only a rough estimate of the duration of investigations. Average duration does not say anything about the duration of other categories of cases. It also says very little about the accumulated backlog of investigations. Additional indicators are therefore required in order to follow developments in the duration of investigations from the perspective of ensuring that investigations are handled in reasonable time.
37. The Council of Europe, under its European Commission for the Efficiency of Justice (CEPEJ), has developed a time management checklist to advise its Member States to develop management and control of the duration of proceedings as part of the requirements of a fair trial. This checklist may provide some advice for the assessment of the internal management controls in OLAF. For external reporting purposes, categorisation of cases and assessment of the trends in the overall length of proceedings and, at the investigation stage, the overall length of investigations is of particular interest. The CEPEJ has also issued recommendations on the regular monitoring of judicial timeframes. The monitoring should be performed in accordance with the European Union Guidelines for Monitoring of Judicial Timeframes – EUGMONT.
38. These Council of Europe Guidelines require, among other things, reporting of the following information:

The data on judicial systems should be regularly updated, and be available at least on an annual level (start/end of the calendar year). The following data on the number of proceedings in the courts should be available:

- total number of proceedings pending at the beginning of the monitored period (e.g. calendar year);



- new proceedings (proceedings initiated within the monitored period, e.g. in the calendar year);
- resolved cases (proceedings finalized within the monitored period either through a decision on merits, a withdrawal of the case, a friendly settlement, etc...);
- total number of proceedings pending at the end of the monitored period.

The data on the finalized proceedings can be split according to the outcome of the proceedings. At least, the cases that end in a decision on merits should be distinguishable from the cases that ended otherwise (withdrawal of the claim, settlement, rejection on formal grounds).¹⁷

39. In the SC's opinion, this also provides a point of departure for the development of external reporting on investigations in OLAF.
40. The SC notes that, on a systemic level, it is important to recognise categories or features of cases which, due to their complexity or for other reasons, may hinder the overall efficiency of OLAF and to identify their number and maximum duration.
41. For external reporting purposes it is important to show the duration category under which most of the cases fall. OLAF reporting follows also the indicators set in the Annual Management Plan. The SC notes that in the AMP 2014 OLAF introduced a new indicator describing if investigations are handled in reasonable time: "the percentage of investigations lasting more than 20 months. Reporting on this will improve the comprehensiveness of the statistics on investigative performance and case load".
42. One additional indicator could be the duration of the majority of investigations (e.g. the mid- 75% or 90 %). The investigations of atypical duration may then require particular attention by OLAF management and also by the SC.

CONCLUSIONS

43. The average duration of investigations calculated on the basis of the method used by OLAF until 2010 shows that:
 - (1) the average duration of investigations closed in 2011, 2012 and 2013 increased in comparison to 2010 (excluding investigations opened in exceptional circumstances¹⁸);
 - (2) the declared decrease in the average duration of investigations, as reported in the OLAF Annual Reports 2012 and 2013¹⁹, was due to (a) the change in the method of

¹⁷ Council of Europe: EUROPEAN UNIFORM GUIDELINES FOR MONITORING OF JUDICIAL TIMEFRAMES (EUGMONT), available at [https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2008\)8Rev&Language=lanEnglish&Ver=original&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2008)8Rev&Language=lanEnglish&Ver=original&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6)

¹⁸ See SC's Report No 3/2014.

¹⁹ "Investigations are being completed in less time" - OLAF Annual Report 2013, p. 17.



calculation and (b) the exceptional opening of a large number of cases for organisational reasons – and not, as reported in the Annual Reports 2012 and 2013, to a shortening of the actual time in which the regular investigations were completed.

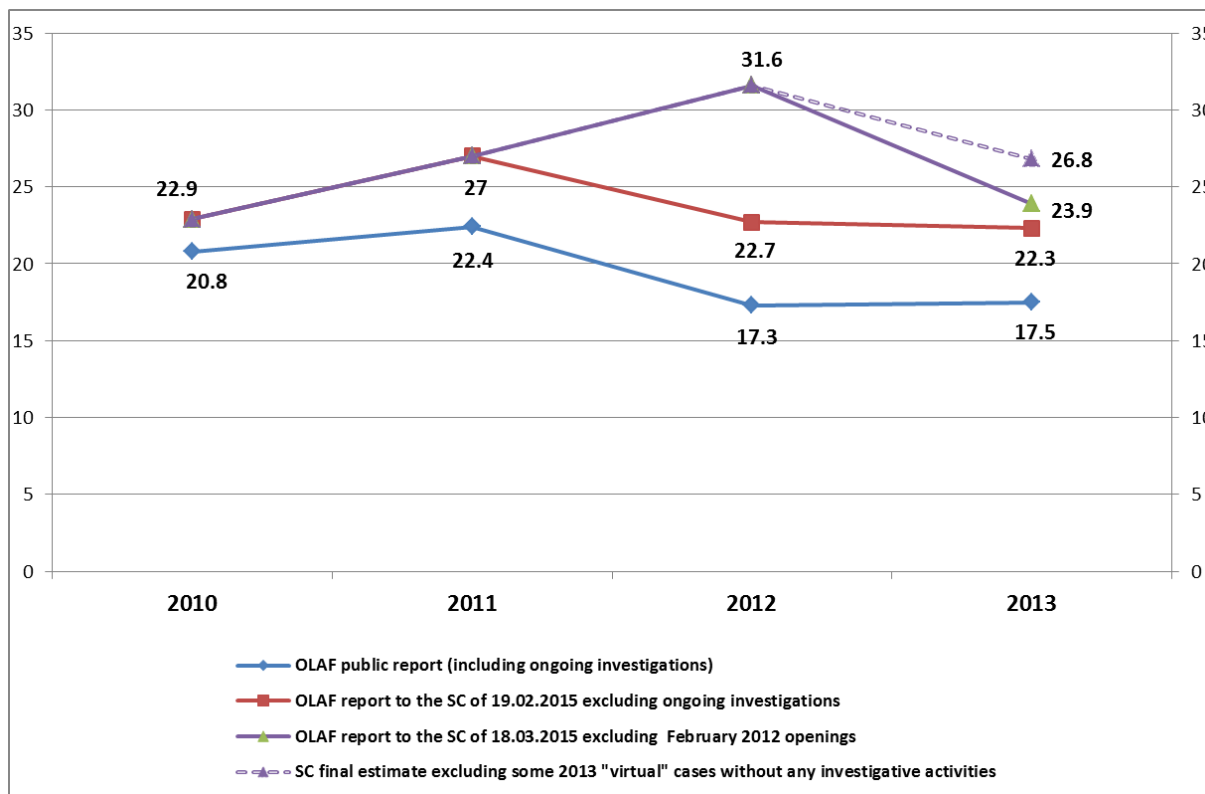


Chart 5 – Comparison of public reports, internal reports and data “cleaned”

(3) The average duration of investigations provides only a very limited view of duration and development of OLAF investigations. The SC welcomes that OLAF decided to include in its future reports the statistics on the average duration of investigations closed in 2014 in addition to the average duration of investigations closed or still open, as well as the percentage of ongoing investigations lasting more than 20 months.²⁰

²⁰ Cf. OLAF reply of 18.03.2015, p.10, point 7 *Conclusions*.



RECOMMENDATIONS

- (1) For the sake of transparency and comparability of the information in the statistics on average duration of investigations, OLAF should report on the average duration of investigations closed within the reporting period.**
- (2) Any one-off administrative operations having an impact on the calculation of the average duration of investigations should be highlighted, as a matter of transparency, in OLAF's reporting .**
- (3) In the light of fundamental rights and/or principles of sound administration, OLAF should, in its Annual Report, report more transparently on the duration of the longest lasting investigations.**

ENDNOTES

44. The present Opinion on “OLAF external reporting on duration of investigations” was discussed in the SC's plenary meeting of 25 February 2015, with a view of adopting it in the SC's plenary meeting of 24-25 March 2015.
45. In his note²¹ dated 27 February 2015, the OLAF DG, exercising his competences on the basis of Article 15(1), subparagraph 3 of Regulation (EU) No 883/2013, asked the SC “*to draft a fully-fledged Opinion on the collection of statistics on investigative performance in OLAF*”.
46. That letter arrived too late in order for all the elements requested therein by the DG to be included in the present SC Opinion. In order to meet the DG's request, the SC will include in its workplan 2015-2016 a further analysis of the statistics on OLAF's investigative performance .
47. This Opinion represents, therefore, a part of the wider analysis of “duration of investigations” foreseen in the SC's 2014-2015 workplan and the first part of the response to the most recent request of the OLAF DG “*to draft an Opinion on the collection of statistics on investigative performance of OLAF*”.

Brussels, 25 March 2015

For the Supervisory Committee

Chairman

²¹ Note of the OLAF DG to the SC Chairman, Ref. ARES(2015)869938 – 27 February 2015.

SUPERVISORY COMMITTEE



ANNEX

**OLAF COMMENTS ON THE SC WORKING PAPER IN PREPARATION
OF THE ADOPTION OF AN OPINION ON STATISTICS ON THE
INVESTIGATIVE PERFORMANCE OF OLAF**