



## Opinion No 4/2014

### *Control of the duration of investigations conducted by the European Anti-fraud Office*

*While Regulation 888/2013 has reinforced the role of the Supervisory Committee in the monitoring of the duration of OLAF's investigations, paradoxically, on its own initiative, OLAF has provided information which has been significantly reduced in comparison with previous periods. Notwithstanding OLAF's formal compliance with its obligation to regularly report to the Supervisory Committee on investigations lasting more than 12 months, the Supervisory Committee has concluded that the information provided to it has been insufficient to enable it to properly and effectively monitor the duration of OLAF's investigations.*

*As a result, the Supervisory Committee recommended that OLAF significantly improve the information it provides and, in particular, enrich the content of the reports on investigations lasting more than 12 months, in accordance with the SC's recommendations and suggestions. The Supervisory Committee and OLAF have already begun to work together on this issue.*

*In as much as the Supervisory Committee has been informed, it notes that OLAF is primarily focused on the internal monitoring of the duration of investigations and has put in place a number of relevant tools and procedures, the use of which could still be optimized.*



**Table of contents**

**INTRODUCTION ..... 3**

*PURPOSE OF THE OPINION AND METHODOLOGY ..... 4*

**I INFORMATION PROVIDED TO THE SUPERVISORY COMMITTEE FOR MONITORING THE DURATION OF OLAF'S INVESTIGATIONS..... 5**

1 *A NEW LEGAL FRAMEWORK OF THE SUPERVISORY COMMITTEE'S MONITORING..... 5*

2 *IMPLEMENTATION OF THE NEW LEGAL FRAMEWORK ..... 6*

2.1 *Background information provided in the 12-month reports..... 6*

2.2 *Information on reasons for non-completion of investigations within 12 months..... 7*

2.3 *Information on remedial measures to speed up investigations ..... 9*

2.4 *Period covered by the 12-month reports ..... 10*

2.5 *Statistical data available in the OLAF Case Management System..... 11*

2.6 *Information on OLAF statistics on the duration of investigations..... 11*

3 *CONCLUSIONS AND RECOMMENDATIONS ..... 12*

**II OLAF'S INTERNAL TOOLS AND PROCEDURES FOR MANAGING THE DURATION OF INVESTIGATIONS ..... 15**

1 *OBSERVATIONS ..... 15*

1.1 *Internal control of the progress of investigations during their lifecycle..... 15*

1.2 *Measures to speed up investigations lasting more than 12 months ..... 16*

1.3 *Review of the duration of investigations at their final stage ..... 17*

2 *CONCLUSIONS AND RECOMMENDATIONS ..... 17*

**ANNEX 1 ANALYSIS AND FINDINGS ..... 19**

**ANNEX 2 WORK-FORMS: 9-MONTH AND 12-MONTH REPORTS ..... 38**



## 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 of the reduction of the duration of investigations one of its priorities, as it appears from the OLAF Report 2013<sup>1</sup> and the 2014 OLAF Management Plan<sup>2</sup>.
2. 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 SC on their duration, for several reasons.
3. Firstly, this is aimed at ensuring that the results and findings of the investigations conducted by OLAF are taken into account and appropriately followed up by the EU institutions, bodies, offices and agencies and by the Member States. The judicial, financial or disciplinary follow-up and the potential for prosecution and recovery may be compromised, in particular due to barring issues regarding the cases in question or due to the lack of efficient prosecution by national judicial authorities of facts which took place too far in the past.
4. In addition, the exercise by OLAF of its far-reaching powers of investigation is very likely to touch upon the fundamental rights of persons concerned, who have a right to have their "affairs" (i.e. investigations by OLAF concerning them) handled within a reasonable time, as foreseen by Article 41 of the EU Charter of Fundamental Rights. The time which elapses can make it more difficult, or even unlikely, for exculpatory evidence, in particular statements from witnesses for the defence, to be collected<sup>3</sup>.
5. Moreover, mastery of the length of investigations is also about the efficient use of human and financial resources allocated to OLAF.

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<sup>1</sup> The OLAF Report 2013 states that investigations have been completed in less time than in previous years, which reflects the priority given to improving the efficiency of investigations and to reducing their overall duration.

<sup>2</sup> 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).

<sup>3</sup> The EU judiciary confirmed the application of the reasonable-time requirement to OLAF investigations in the case T-48/05, *Franchet and Byk v Commission*. The General Court stated that "Regulation No 1073/1999 does not prescribe any specific and binding period for the completion of investigations by OLAF" and that "the obligation to conduct administrative procedures within a reasonable time is a general principle of Community law which is enforced by the Community Courts and which, moreover, is set forth, as an element of the right to good administration, in Article 41(1) of the Charter (judgment of 11 April 2006 in Case T-394/03 *Angeletti v Commission* (not published in the ECR), paragraph 162). Therefore the procedure before OLAF cannot be extended beyond a reasonable time, which must be assessed by reference to the circumstances of the case" (see paragraphs 272 to 274).



6. Finally, through its regular monitoring of the duration of OLAF's investigations and of the reasons for potential undue delays, the SC is seeking to reinforce OLAF's investigative independence by verifying that no external interference in the impartial conduct of investigations takes place and that delays do not prevent the intended results of an investigation (i.e. by running up against time bar).

### ***Purpose of the Opinion and methodology***

7. Regulation 883/2013 emphasises the role of the SC to monitor the duration of investigations and modifies OLAF's reporting obligations to the SC<sup>4</sup>.
8. The purpose of this Opinion is therefore threefold:
  - 1) to assess whether the information provided by OLAF to the SC is sufficient and adequate to enable it to carry out its monitoring role efficiently and to report reliably to the EU institutions,
  - 2) to verify whether the 12-month reports provide objective and verifiable reasons for delays and thus enable the SC to monitor the duration of investigations efficiently in order to exclude external interferences or biased decisions,
  - 3) to assess whether OLAF has put in place appropriate tools for managing the duration of investigations.
9. To this end, the SC examined:
  - i) the reports on cases lasting more than 12 months submitted in 2014 by the Director-General of OLAF (hereinafter, OLAF DG);
  - ii) the complete case-files of a randomly selected sample of 25 investigations lasting more than 12 months and closed in 2014;
  - iii) additional general and case-related information provided, upon the SC's request, by the OLAF DG.
10. The *rapporteur* appointed by the SC had two working meetings with OLAF staff<sup>5</sup>, with the purpose of obtaining a comprehensive overview of the way in which the duration of investigations is managed internally. The SC is grateful for this opportunity and for the valuable input provided by OLAF on these occasions.
11. The observations and conclusions drawn up by the SC, as well as the recommendations addressed to the OLAF DG are presented below. They are based on a thorough analysis of the information provided by OLAF, the results of which are to be found in Annex 1 to the Opinion. The SC's analysis of the information provided by OLAF, as well as the general orientation of the SC's possible recommendations were

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<sup>4</sup> Articles 15(1) and 7(8).

<sup>5</sup> A meeting was held on 6 February 2014 with the OLAF DG's Adviser and another one on 21 January 2015 with OLAF senior and middle management. During the latter meeting, the statistical results of the SC's analysis of the information provided by OLAF were discussed.



sent to the OLAF DG<sup>6</sup>. The comments he provided on 6 March 2015<sup>7</sup> were taken into account in the present Opinion.

## **I INFORMATION PROVIDED TO THE SUPERVISORY COMMITTEE FOR MONITORING THE DURATION OF OLAF'S INVESTIGATIONS**

### **1 A new legal framework of the Supervisory Committee's monitoring**

12. Regulation 883/2013, which entered into force on 1 October 2013, provides new monitoring tools for the SC: (i) the 12-month reports,<sup>8</sup> indicating the reasons why the investigations have not been completed within that period, replaced the 9-month reports foreseen by the former Regulation 1073/1999 and which, more importantly, are now followed up by further reports every 6 months until the closure of the investigation; (ii) the legal requirements as to their content have also slightly changed: the obligation for OLAF to indicate the expected time for completion of an investigation is replaced by an obligation to report on the remedial measures envisaged with a view to speeding it up.
13. The changes introduced by Regulation 883/2013, which has, to a certain extent, improved the legal framework of the SC's monitoring appear to correspond far better to the reality of OLAF's investigative activity. Indeed, the complexity of some of the on-going investigations may make it impossible or very difficult to provide an accurate or even estimated timetable after a 9-month period (as foreseen in the former Regulation 1073/1999), while at the same time it is more useful for the SC to be informed regarding the measures taken by management to speed up investigations rather than being given estimated dates for their completion, which in many cases were not respected.
14. The obligation for OLAF to report to the SC on reasons for non-completion of investigations and remedial measures taken every 6 months after the first 12 months of an investigation is an improvement when compared to Regulation 1073/1999: as such, the SC should be able to follow more closely and on a regular basis the complete life cycle of an investigation<sup>9</sup>. In addition, the Working Arrangements agreed in January 2014 with OLAF create a regular framework for reporting on investigations lasting more than 12 months. According to the Working Arrangements, the information to be provided by OLAF, on its own initiative, is to be communicated to the SC four times a year<sup>10</sup>.

<sup>6</sup> On 9 February 2015.

<sup>7</sup> Ref. Ares (2015)1013923.

<sup>8</sup> For the purpose of this Opinion, the "12-month reports" refer to the reports drawn up at the expiry of a 12-month period after an investigation has been opened and every 6 months thereafter.

<sup>9</sup> Under Regulation 1073/1999 and in the absence of any follow-up reports after the 9-month reports, it was almost impossible for the SC to draw conclusions with regard to the duration of an investigation after 9 months, since the average duration of investigations was more than 2 years.

<sup>10</sup> By the following dates: (i) 31 January, (ii) 30 April, (iii) 31 July, (iv) 31 October.



15. In theory, the Regulation and the Working Arrangements should create room for improvement of the monitoring tools at the SC's disposal, provided they are implemented in such a way as to enable the SC to effectively carry out its monitoring (of OLAF's investigations) and reporting (on their results to the EU institutions) tasks.
16. OLAF has formally complied with its regulatory obligation to regularly report to the SC on the investigations lasting more than 12 months, which represents significant progress compared to previous years<sup>11</sup>. The SC underlines that this represented an important workload for OLAF.

## **2 Implementation of the new legal framework**

17. The SC notes however that, while its role to monitor the duration of OLAF's investigations has been reinforced by the Regulation in order to enable it to better report to the EU institutions, the content of the information provided to the SC by OLAF, on its own initiative, during the reporting period 2014 has been paradoxically reduced in comparison with previous periods and therefore, in practice, the SC's role as monitor has been weakened.

### **2.1 Background information provided in the 12-month reports**

18. A comprehensive assessment of the duration of investigations cannot be carried out in the absence of some contextual elements, given the significant diversity of irregularities and/or fraud that OLAF is investigating. Due to the significant reduction of background information provided by OLAF (*see Annex 1, points 66-71*<sup>12</sup>), the SC would therefore point out that the insufficiency or absence of relevant factual information in the 12-month reports makes it very difficult for it to assess the proportionality of the duration of investigations against the background of factual information specific to each of them. In addition, the reports do not contain time-barring considerations, whilst the SC has always paid special attention to this aspect and recommended that the former 9-month reports contain references to time-barring periods for cases under investigation, in order to enable the SC to assess the proportionate duration of the steps taken and proposed for conducting investigations.
19. The reports do not contain information about the financial interests at stake (*see Annex 1, points 104-107*). As OLAF has underlined, depending on the type of irregularity or fraud, this information is not always available to OLAF, especially at the initial stage of an investigation and/or may evolve during its lifecycle, the financial impact being only one criterion amongst others when it comes to deciding on investigation policy or on allocation of investigative resources. However, the SC would highlight that, on one hand, this kind of information, if not available in the first months of an investigation, may become available (even if it is only an estimation) once it has progressed, especially after a 12-month (or longer) period. On the other hand, while it may not be the only criterion for the allocation of investigative resources, the importance of the financial interests at stake is relevant for the

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<sup>11</sup> In the past, it was verified that the 9-month reports were not regularly sent or even not sent at all in some investigations.

<sup>12</sup> See also Annex 2.



application of the proportionality and efficient use of resources principles, and should therefore not be completely excluded from the information provided to the SC.

20. The SC regrets that OLAF discontinued the constructive approach used prior to the entering into force, on 1 October 2013, of Regulation 883/2013, a period during which OLAF did not consider that it should limit the information which it was bound to provide under the former Regulation 1073/1999<sup>13</sup>. The SC would have appreciated being consulted on the modifications of the work-form used for the 12-month reports, since, in the past, the content of the 9-month report work-form was agreed following consultation and dialogue with the SC<sup>14</sup>, in order to include relevant information allowing the SC to appreciate the circumstances of the investigations analysed and thus to allow it to make a proper assessment of their duration.

## 2.2 Information on reasons for non-completion of investigations within 12 months

### *A high degree of heterogeneity of the 12-month reports*

21. In the 12-month reports, OLAF has abandoned the list of pre-defined categories of reasons which previously existed in the 9-month reports. This has led to a high degree of heterogeneity of the reports drawn up by each investigator. Whilst a fairly significant number of them are unsubstantiated or factually insufficiently substantiated, others are unevenly completed by the investigative units. In a number of reports, instead of giving reasons for non-completion of investigations within 12 months, the reports merely mention that they are in the final stage. However, the SC would point out that the fact that investigations are on the process of completion at the time a report is due does not relieve OLAF of the regulatory obligation to explain, even retrospectively, reasons for delays.
22. The SC has carried out a laborious study in order to identify and categorize the reasons provided (*see Annex 1, points 73-77*). It identified the following categories and sub-categories of reasons provided by OLAF to explain why the duration of investigations was longer than 12 months:
- (a) complexity of the matter under investigation,
  - (b) external reasons/circumstances (lack of/slow cooperation with stakeholders, pending results of national investigations or audits, political instability/conflict situation in a third country),
  - (c) internal reasons/circumstances (lack of resources/workload, internal turnover of staff, higher operational priorities, change of the investigative strategy).

<sup>13</sup> Article 11(7) of Regulation 1073/1999: "Where an investigation has been in progress for more than nine months, the Director shall inform the Supervisory Committee of the reasons for which it has not yet been possible to wind up the investigation, and of the expected time for completion".

<sup>14</sup> As a result of the two Opinions on the 9-month reports, adopted by the SC in 2007 and 2009.



### *Complexity of the matter under investigation*

23. The complexity of the matter is the reason most frequently mentioned. The circumstances linked to this reason are substantiated, to varying degrees, in most of the reports. OLAF has provided the SC with useful and clear criteria for defining when a matter under investigation may be considered to be "complex" (*see Annex 1, points 78-80*). However, these criteria are less reflected in the 12-month reports, which may be a sign that the investigators need to have clear guidelines on their application and/or should be able to choose them, from a pre-defined non-exhaustive list, or to add new ones, as necessary.

### *External reasons*

24. The circumstances beyond OLAF's control and leading to the prolongation of the duration of investigations also appear to be unevenly explained (*see Annex 1, points 81-90*). In investigations reported to be delayed due to **lack of/slow cooperation from stakeholders**, many of the reports indicate the non-cooperative entity or the nature of the lack of co-operation, but far fewer indicate the actual impact (duration expressed in months) of the lack of/slow cooperation on the investigative activity. Furthermore, due to the absence of information on the investigative activities undertaken and their chronology, it is difficult for the SC to verify it.

25. Factual information related to investigations which were **pending results of national investigations or audits** or were delayed due to **political instability/conflict situation in a third country** is, in general, well explained. However, more detailed information would be welcome, in particular with regard to delays triggered and remedial measures foreseen with a view to speeding up the investigation.

### *Internal reasons*

26. The reasons linked to **internal turnover of staff** are substantiated and well explained in most of the investigations quoting it. Changes in the investigation team and the successive handover of the case to new investigator(s) in charge inevitably have an impact on the duration of investigations and may lead to several months' delay, since the new investigator needs time to familiarize him/herself with the case and sometimes he/she may also change the investigation strategy. The SC welcomes the explanation provided by OLAF in this respect and encourages it to clearly highlight and better substantiate the reasons for changes in the investigation team, in particular in cases of conflict of interest (*see Annex 1, points 91-92*).

27. The factual explanations in connection with a **lack of resources** situation or **workload** are unsubstantiated in most of the investigations where such reasons are mentioned by OLAF, or identified as such by the SC. The type of resources needed should be more specifically indicated and the reasons of the workload should be better substantiated, in order to allow the SC to better assess the relevance of remedial measures taken by the management team (*see Annex 1, points 93-95*).

28. Reasons related to **higher priority** granted to other investigations are mostly unsubstantiated and no explanations are given to allow any understanding. Since a





case's priority may vary over its life cycle, more information should be given as to why other investigations were given priority over the actual investigation (see *Annex 1, point 96*).

### *Use of the 12-month report as a management tool*

29. The SC was informed that OLAF does not use the reports for its own control of the duration of investigations<sup>15</sup>. To that end and to assess the investigation units' performance, OLAF uses other instruments (i.e. statistics extracted from its Case Management System (CMS) – which are, however, not communicated to the SC). Nevertheless, the SC would underline here that the control carried out by OLAF with regard to the accuracy and completeness of the information it provides in the 12-month reports is likely to be a key management tool to control the length of the progress and duration of investigations. In as much as the SC finds that a significant number of reports with unsubstantiated reasons (for delays) are countersigned by management, it would like to draw attention to the need for a reinforcement of the internal control of the duration of investigations, as already highlighted in previous recommendations of the SC<sup>16</sup>.
30. Besides being a tool for controlling the progress and the overall duration of each investigation, the use of the 12-month reports – provided that the information contained therein is better structured and more substantiated - would allow OLAF to conduct a systemic analysis with a view to identifying internal and external factors, more or less recurrent, which could prolong the duration of investigations and as a consequence to strengthen its possible devices to speed up investigations.

### **2.3 Information on remedial measures to speed up investigations**

31. The SC adheres to OLAF's position that the first 12-month period following the opening of an investigation, after which Regulation 883/2013 requires OLAF to indicate remedial measures to speed it up, does not necessarily correspond to the reality of OLAF's investigations. In many of them, their complexity and the need to carry out a number of investigative steps may indicate from the beginning that it is expected that certain investigations last more than 12 months and no particular remedial measures are needed when an investigation follows its normal course.
32. However, even during this period, it cannot be excluded that undue delays may occur, and, in these specific cases, remedial measures should be taken by OLAF and indicated in the 12-month reports.
33. The SC verified that a number of reports do not specify the remedial measures that have been taken during the investigations with a view to speeding up their completion, but only mention the fact that they were in the finalization stage. It is apparent from some of the reports that the investigative activities were conducted continuously and that no specific remedial measure was needed, however most of them do not provide

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<sup>15</sup> OLAF's reply of 6 March 2015, Ref. Ares (2015)1013923.

<sup>16</sup> See SC's Opinion No 2/2009 on *OLAF's Reports of Investigations that have been in progress for more than nine months*.



such information, which the SC finds worrying, in particular for investigations lasting for more than two years (*see Annex 1, points 115-131*).

34. Appropriate measures to remedy a specific obstacle and/or to speed up an investigation where delays have been caused by various reasons (internal or external) need to be taken by OLAF and indicated (such as, for example, measures sought to provide extra staffing for an investigation where lack of resources occurs in a specific team). The SC has also noted that OLAF was proactive in taking remedial measures to enhance cooperation with stakeholders during investigations in cases where slow/lack of cooperation was indicated.
35. The SC would point out that the fact that investigations are in the process of completion at the time when a first 12-month report is due does not relieve OLAF of the regulatory obligation to inform it on the remedial measures taken during the investigation. If no such measure was needed, OLAF should clearly indicate and explain this in the 12-month reports, in order to enable the SC to verify that no undue delays occur during investigations and thus to allow it to fulfil its role as required by the Regulation.
36. Since the entry into force of Regulation 883/2013, indicating the expected date for completion of investigations is no longer compulsory, it is therefore rarely indicated in the 12-month reports. The SC acknowledges that, in some cases, in particular those where the progress of investigations depends on cooperation with stakeholders, the expected date for completion is difficult to predict. The SC believes however that, whenever possible and, in particular, when this is foreseen in an investigation plan, properly developed and regularly updated, the expected dates or periods for carrying out investigative activities or for completion of investigations could also be indicated in the 12-month reports.

#### **2.4 Period covered by the 12-month reports**

37. The SC notes that the reports do not indicate the period they cover<sup>17</sup>, since they all provide information on "investigations open for more than 12 months" (*see Annex 1, point 72*). Apart from the confusion this creates with regard to the actual period covered by the report, this situation leads – given the important number of reports transmitted<sup>18</sup> – to time-consuming work for the SC which consists of identifying, for each investigation reported to it, all the previous reports, if any, be they former 9-month reports or 12-month reports. This situation may also be confusing for managers in charge of the control of the duration of those investigations where at least two different 9/12-month reports are registered in the CMS, should they use them as a management (and not only reporting) tool.
38. Subject to the outcome of future discussions concerning the evolution of methods of transmission of the reports<sup>19</sup>, the SC believes that, for efficiency and accuracy reasons, when information is provided firstly in a 12-month report, and then in one or more

<sup>17</sup> 12 months, 12+6 months, 12+6+6 months etc.

<sup>18</sup> 658 reports received in 2014.

<sup>19</sup> See paragraphs 47-49.



reports drawn up every 6 months thereafter, the latter reports should clearly make reference to and update the first 12-month report, during the whole lifecycle of an investigation. To ensure effective monitoring of the progress of investigations selected to be the subject of several additional reports, where these are the object of one or several 6-month extensions, the SC would suggest maintaining the initial report as well as including the updates from the new 6-month reports<sup>20</sup>. Whilst this method would save time in the preparation of reports, it would also allow for an easier tracking of the measures identified accelerating cross-referencing with the information featured in previous reports.

## 2.5 Statistical data available in the OLAF Case Management System

39. The statistical data made available by OLAF in the CMS does not provide any information on the duration of investigations and is, as such, of little use for monitoring purposes (*see Annex 1, points 98-99*). Given the reduced information that OLAF provides on its own initiative, the SC is obliged to make frequent, separate requests for the additional information (including statistical information) it requires. As well as giving an unnecessary workload (both for OLAF<sup>21</sup> and the SC) and increasing the time the SC is then made to wait for OLAF's reply, these requests have to be repeated at regular intervals, since the statistical data contained in the CMS changes every day. By the time OLAF replies to the SC's request, the (statistical) information provided is already outdated.
40. Since December 2014, bi-lateral discussions have begun between OLAF and the SC with regard to the modification of the Working Arrangements, with the purpose of providing the SC with the statistical information it considers appropriate for monitoring purposes. The SC welcomes OLAF's willingness to continue to provide it with most of the search facilities in the CMS it enjoyed prior to June 2014. The discussions on various fields in the CMS to which the SC Secretariat would have access in the future are still on-going.

## 2.6 Information on OLAF statistics on the duration of investigations

41. The OLAF annual or mid-term reports, whilst being a general reporting tool for OLAF on its activities, provide specific information on the duration of its investigations and represent, therefore, a valuable monitoring tool for the SC also.
42. The statistics presented by OLAF in 2013 and 2014<sup>22</sup> regarding the average duration of investigations indicate an improvement with respect to previous years (*see Annex 1, points 100-103*). However, OLAF's method of calculation has changed since its 2011 Report, according to which the duration of the investigations during a reporting period includes the duration of cases closed during the reporting period and those still open at the end of the reporting period<sup>23</sup>. In previous years it was calculated

<sup>20</sup> This would allow having a single document instead of new, different reports each time a 6-month period elapses.

<sup>21</sup> The OLAF DG has several times expressed the view that there are many requests from the SC and that OLAF is obliged to dedicate important human and time resources in order to answer them.

<sup>22</sup> Both in the 2013 OLAF Report and in the 2014 mid-term report.

<sup>23</sup> OLAF Report 2011, footnote 8.



on the basis of cases closed (completed) before the end of the reporting period. The SC considers that the annual figures and statistics (before and after 2011) concerning the average duration of investigations cannot be strictly compared since they were calculated using two different methods.

43. The SC believes that, while taking into account investigations still open and not only those closed during a reporting period allows for inclusion, in the calculation, of the oldest investigations still open, this method may have a distorting effect, since it leads to the inclusion of the most recent investigations also, i.e. those opened shortly before the end of the reporting period. It is thus difficult to identify the weight of investigations lasting more than 12 months in the overall average duration of investigations during a reporting period.
44. Regardless of the method applied by OLAF to calculate the average duration of investigations, the SC considers that the information on the duration of investigations calculated on the basis of investigations completed and closed by the end of the reporting period is important and relevant both for OLAF's performance and for the SC's monitoring<sup>24</sup>. This is also a relevant indicator in the assessment of the implementation of the recommendations (especially judicial) issued by OLAF.

### **3 Conclusions and recommendations**

45. The SC wishes to underline that its ability to monitor the duration of OLAF's investigations and to report on results of its monitoring activity to the EU institutions - to which both the SC and OLAF are accountable - depends on being provided with sufficient, appropriate and reliable information on OLAF's investigations. Explanations of the reasons for delays and difficulties encountered by OLAF allows a more precise monitoring of the duration of investigations in order to exclude external interferences or biased decisions where objective and verifiable reasons are given for such delays.
46. The SC has concluded that the information provided to it by OLAF in 2014 has been reduced compared to previous years, was heterogeneous and not sufficiently informative and it did not enable the SC to properly and effectively monitor the duration of OLAF's investigations. Therefore, this information needs to be significantly improved and, in particular, the content of the 12-month reports needs to be enriched and better structured, while the various practices of the investigation units need to be harmonized.
47. The SC welcomes the fact that the OLAF DG reminded the management team that the reports provided to the SC should contain not only general, but also substantive case-related information<sup>25</sup> and expects that the reports to be sent in 2015 will reflect a

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<sup>24</sup> For further details, see the SC's Opinion No 5/2014 on *OLAF external reporting on the duration of investigations*, and in particular recommendation 1 which reads: "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 those investigations closed within the reporting period".

<sup>25</sup> OLAF DG's instructions concerning the continuous conduct of investigations, Ref. Ares(2014)23590 – 17 July 2014: "in providing this information to the Supervisory Committee, the investigative units are requested to explain why the investigation has not yet been closed. (...) these explanations must be specific and case-



substantial improvement as to their content. Discussions between the SC and OLAF on possible solutions for improving OLAF's reporting on investigations lasting more than 12 months are on-going since December 2014. A possibility currently under consideration is for OLAF to provide a report, accessible in electronic version in the CMS, containing, apart from a number of fields providing general information, two new fields "Reasons" and "Remedial measures".

48. On the basis of its examination of the reasons provided in the 12-month reports transmitted to it in 2014, the SC will propose that a number of categories and sub-categories be included in this list, subject to further discussions with OLAF and agreement between the two parties.
49. The SC would like a systemic solution to be found to the problems as outlined above and welcomes the willingness of the OLAF DG to re-open the debate with a view to taking into account the real needs of the SC for the purpose of its monitoring. The SC looks forward to reaching an agreement with the OLAF DG in the coming months.

#### **Recommendations:**

**OLAF should improve the information transmitted to the SC for the purpose of monitoring of the duration of investigations, in order to enable the SC to effectively and efficiently carry out its monitoring role and thereby comply with its obligation to report to the EU institutions. In doing so, OLAF should:**

**(1)** Enrich the content of the 12-month reports with recurrent factual case-related information, in order to enable the SC to understand the background and progress of investigations.

To implement this recommendation, the SC suggests that the reports contain information such as the legal basis for the opening of investigations, a short description of the investigation (allegation, category of source of information, type of fraud or irregularity, the area concerned, the EU institution, body, office, agency or the Member State concerned, legislation allegedly breached, estimation of the financial impact, if possible), main investigative activities carried out or to be carried out and their chronology, time barring issues.

**(2)** Better substantiate the factual information concerning reasons for investigations lasting more than 12 months.

To implement this recommendation, the SC suggests that OLAF include in the 12-month reports categories and sub-categories of non-exhaustive pre-defined reasons explaining the non-completion of investigations within 12 months, supplemented by specific case-related information. OLAF could also provide guidelines and/or training to the investigators.

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related. General justifications such as “lack of resources” or “complexity of the matter under investigation” must be accompanied by specific explanations relating to the case in question. For example: “the matter under investigation is complex given that various on-the-spot checks must be carried out in more than one Member State” or “lack of resources resulting from the absence of the investigator in charge due to medical reasons”.



**(3)** Better substantiate the information with regard to remedial measures to speed up investigations.

Taking into account the characteristics of some investigations, for which it is clear already at an early stage that they are likely to last more than 12 months, the SC suggests that OLAF adopt a pragmatic approach and indicate this probability in the first 12-month report.



## II OLAF'S INTERNAL TOOLS AND PROCEDURES FOR MANAGING THE DURATION OF INVESTIGATIONS

### 1 Observations

50. Ensuring that investigations are conducted continuously and over a period proportionate to the complexity and circumstances of the case is first and foremost the responsibility of the OLAF management team, which must regularly oversee their progress in order to ensure that investigations are conducted smoothly and without undue delays. The duration of OLAF's investigations is the object of a two-layered control within OLAF:

a) oversight by the management team (Heads of Sector, Heads of Unit, Directors, and ultimately the Director-General) of the progress of investigations - through the whole lifecycle of an investigation, and

b) verification by the Investigation Selection and Review Unit (ISRU) on the continuity of investigations - when an investigation has been completed. Their synergy should ensure that the duration of investigations is, on the one hand, compliant with the regulatory requirements and, on the other, appropriately managed in order to ensure compliance with these requirements.

51. OLAF has put in place a number of relevant tools for managing investigations and thus reinforced the internal control of their duration. The SC's examination of these measures showed however that their implementation could be further optimised.

#### 1.1 Internal control of the progress of investigations during their lifecycle

52. Regular meetings between investigators and their line managers, aimed at measuring the investigation progress, as well as investigation planning with time scheduling, are important tools for controlling the progress of an investigation. In its Opinion No 4/2010, the SC has already drawn attention to the benefit of implementing investigative planning for investigations<sup>26</sup>. At the same time, the SC highlighted the need for an investigation plan to be a dynamic document, to be reviewed regularly for updates prompted by developments in the investigation itself. The expected time for completion of investigations should be foreseeable as far as possible. In this respect, the establishment of internal time schedules (regularly updated depending on the progress of investigations) is an important internal monitoring tool.

<sup>26</sup> SC's Opinion No 4/2010 on *Investigation Planning* states that "A detailed investigation plan should be developed at the outset of each and every investigation thoroughly enough to allow for the forecast of a date for the final decision. (...) This plan should cover every investigative step envisaged and be associated with a preliminary timetable for each step. This planning should be in writing and systematically annexed to the case file, facilitating its review and consultation in the event that investigators are met with demands for postponements or other kinds of delays. The management at Unit level should examine investigation plans regularly to follow and where necessary guide development of cases" (see [http://ec.europa.eu/anti\\_fraud/documents/reports-sup\\_comm/scar\\_2009\\_2010\\_en.pdf](http://ec.europa.eu/anti_fraud/documents/reports-sup_comm/scar_2009_2010_en.pdf)).



53. The SC welcomes the putting in place by OLAF of this kind of tools (*see Annex 1, points 110-114*). However, the SC notes that they have been employed unevenly in those investigations examined. In some investigations where periods of inactivity were noted, the monitoring of their progress by the management team is not immediately clear from the case files.
54. The SC would like to point out, in particular, that time-barring considerations should be taken into account in the framework of investigative planning and particular attention should be given to such considerations by the investigators. The SC welcomes the country « mini-profiles » established by OLAF and acknowledges the considerable amount of work involved. The SC invites OLAF to extend these to include the complex rules governing prescription, particularly taking into account the fact that the laws of some countries provide for staggered starting points for prescription where the facts have been concealed and for which the calculation period for the time barring starts from the moment the offence was uncovered.

## 1.2 Measures to speed up investigations lasting more than 12 months

55. In the absence of sufficient factual information on the developments and progress of investigations, the SC had difficulties appreciating – in some of the 12-month reports - the consistency of the remedial measures taken in order to speed up investigations (indicated by OLAF) and aligning them with the reasons given for the non-completion of investigations within 12 months. However, in those reports where remedial measures were indicated and the information provided enabled the SC to understand the background of the investigations, such measures appear to have been appropriate to remedy the problems encountered by OLAF which lead to the prolongation of the duration of investigations (*see Annex 1, points 115-131*).
56. The SC's findings – based on the analysis of the 12-month reports – indicate that remedial measures appear to be particularly needed as far as the allocation of investigative resources and the management of cooperation with stakeholders is concerned. On the one hand, OLAF needs to pay attention to the optimal allocation of its investigative resources. On the other hand, whilst taking into account that, in many cases, the operational efficiency of the Office depends greatly on the cooperation of Member States or relevant EU institutions (whether it is for investigators to identify the competent authorities able to assist them to access relevant information, or to have access to premises where items to be used as evidence may be found), it is important that OLAF continues its proactive approach and enhances cooperation through appropriate means.
57. Concerning the allocation of investigative resources, the SC invites OLAF to give further consideration to the possibility of establishing workload indicators, aimed at better estimating the workload corresponding to each type of investigative activity (i.e. on the basis of a time management system, allowing for an estimation of an average duration of a specific type of investigative activity). Such indicators, even if theoretic (given the differences arising from each individual case) could be useful for deciding afterwards on the best allocation of resources, depending on the time needed to carry out that kind of activity, and for avoiding significant differences with regard to allocation of resources in similar cases.





58. The SC would thus emphasize that, aside from acting as a reporting tool for OLAF, the 12-month reports could also be used to control the progress of investigations. Their systematic use would allow OLAF to collect various detailed statistical information on the reasons impacting the duration of investigations and, on this basis, to develop strategies for speeding them up<sup>27</sup>.

### 1.3 Review of the duration of investigations at their final stage

59. As of 1 October 2013, the review of the Final report and the recommendations carried out by the ISRU upon completion of investigations includes checks on their continuity. The SC welcomes this new layer in the chain of control of the duration of investigations, aimed at detecting disproportionate duration of investigations or periods of inactivity. It should represent a supplementary guarantee that the duration of investigations is carefully scrutinized by OLAF itself, provided that these checks are properly carried out by the ISRU and that the possible comments that they might express lead - where necessary - to actions to be taken at the level of investigation units to avoid undue delays in future investigations.
60. The SC's examination of the ISRU's opinions showed, however, that the results of their assessment of the continuity of the investigations, apart from being unsubstantiated, are sometimes inconsistent with the case file (*see Annex 1, points 132-135* - the SC detected periods of inactivity which did not give rise to comments from the ISRU). The SC considers that the ISRU should substantiate the reason(s) for considering the duration of an investigation not proportionate to the complexity and circumstances of the case. As suggested by the OLAF DG<sup>28</sup>, their opinion might also contain an assessment of what concretely could be done in the future to avoid unjustified delays.
61. In addition, it is unclear, both from the case files examined, and from the existent set of procedures, if and how their comments (if any) are or should be taken into account by the OLAF DG and/or the management team for the future. The SC believes that this aspect should be further clarified by OLAF. The need to develop permanent and systemic analysis with regard to the duration of different types of investigations would benefit from close exchanges between the ISRU and the management team in charge of the monitoring of the duration of investigations.

## 2 Conclusions and recommendations

62. The OLAF management team (with middle and senior management on the front line and the OLAF DG having the ultimate authority) is responsible for taking appropriate action and for managing the investigations in such a way as to ensure that they are carried out continuously and over a period proportionate to the circumstances and complexity of the case. The SC has noted that OLAF has put in place and developed a number of tools and guidelines for managing the duration of investigations, which reflects the priority given to enhancing their control by the management team.

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<sup>27</sup> This might be in particular applicable if OLAF puts in place an electronic version of the 12-month report, regularly updated and easily verifiable in the CMS by the management team.

<sup>28</sup> See OLAF's reply of 6 March 2015, ref. Ares(2015)1013923.



63. Their implementation appears, however, to be neither systematic nor uniform and better harmonization of the different investigation units' practices would be needed. In addition, the SC's findings based on the analysis of the 12-month reports transmitted to it in 2014 indicate that OLAF needs to give further consideration to the allocation of its investigative resources to priority investigations, as well as to continue to develop strategies for enhancing cooperation with its stakeholders. Finally, the SC found that the checks on continuity of investigations carried out when they are completed need to be reinforced.
64. The SC appreciates the fact that the OLAF DG requested the managers of investigation units to continue close monitoring of the duration of investigations and, in particular, to take all appropriate measures to avoid the occurrence of unjustified periods of inactivity<sup>29</sup>. The SC was informed that most of the managerial measures foreseen to improve the duration of investigations started to be implemented as of 2013 and their full impact is expected to be reflected especially in those cases opened in 2013 and 2014<sup>30</sup>.
65. The SC welcomes the changes and the progress achieved until now and encourages OLAF to optimise the use of the tools it has put in place for managing the duration of its investigations, in accordance with the SC's recommendations below.

**Recommendations:**

**OLAF should optimise the use of tools it has put in place for managing the duration of investigations. In doing so, OLAF should:**

**(5)** Give further consideration to the remedial measures to speed up investigations lasting more than 12 months and, in particular, develop tools allowing it to monitor the allocation of investigative resources based on the estimated workload.

**(6)** Review and reinforce the process of verification of continuity of investigations carried out by the ISRU.

Adopted in Brussels, on 25 March 2015

For the Supervisory Committee

Tuomas PÖYSTI, Chairman

<sup>29</sup> OLAF DG's Instructions concerning the continuous conduct of investigations, Ref. Ares(2014)23590, 17 July 2014.

<sup>30</sup> OLAF's reply of 6 March 2015.

**Annex 1****ANALYSIS AND FINDINGS****1. INFORMATION PROVIDED TO THE SUPERVISORY COMMITTEE FOR MONITORING'S PURPOSES****Background information provided in the 12-month reports**

66. Since January 2014, the SC has received information on investigations lasting more than 12 months by way of a table listing their registration numbers, their opening date, the investigation unit and the stage (on-going or closed) at the date of transmission. OLAF has established a model work form (*see Annex 2*). The 12-month reports are drafted by the investigators and formally countersigned by the Director of each of the Investigations Directorates respectively. According to the Working Arrangements agreed with OLAF, the information to be provided by OLAF on its own initiative is to be communicated to the SC four times a year.
67. The SC has examined **658 reports** sent by OLAF (hereinafter, 12-month reports) which correspond to a total of **391 investigations** lasting more than 12 months reported to the SC in 2014.
68. The SC examined these reports with a view to determining to what extent they enable the SC to ascertain the reasons why investigations have lasted more than 12-months and thus identify possible systemic problems and, as a result, to recommend systemic remedies.
69. **The amount of factual information transmitted by OLAF on its own initiative was significantly reduced** in comparison with previous years. The work form, in its new format, no longer contains specific sections for providing factual information allowing the SC to understand the background of the investigation (e.g. the dates and the subject matter of the suspected fraud or irregularity, the legislation allegedly breached, possible penalties/prescription issues, the investigative activities still to be carried out and outlining the continuity of the investigations or possible periods of inactivity, the time when the facts were perpetrated).
70. None of the 12-month reports received in 2014 contain information on time-barring. In the past, the SC noted that **the time-barring considerations** were often missing from the 9-month reports. For example, out of 188 nine-month reports received in 2012, there was reference to the time barring aspect in 99 investigations (53%). Out of 186 nine-month reports received in 2013, there was reference to time-barring aspects in 110 investigations (59%).
71. The table below is based on the comparison of the content of the 12-month reports sent by OLAF in January 2014 (83 reports) and a similar sample of 9-month reports (83 reports).



**Table:** Factual information provided by OLAF (comparison between a sample of 9-month and 12-month reports)

Information provided by OLAF		9-month reports	12-months reports (January 2014 transmission)
<b>General data</b>	OF no / Title	100.00%	100.00%
	OLAF staff (investigators)	100.00%	0.00%
	Legal basis for opening of investigations	100.00%	0.00%
	Date of opening decision	100.00%	100.00%
	Maximum amount involved	100.00%	83.13%
<b>Brief description of the investigation</b>	Legal provisions allegedly breached	87.95%	7.23%
	Possible penalties / prescription issues	85.54%	0.00%
<b>Investigative activities undertaken to date</b>	Chronology of investigative activities undertaken	71.08%	10.84%
	Type of investigative activities undertaken	100.00%	16.87%
<b>Investigative activities still to be carried out</b>		<b>98.80%</b>	<b>95.18%</b>
		sample 83 reports	sample 83 reports

72. **A lack of distinction between different periods covered by the 12 month reports was noted.** All the reports received by the SC refer to "investigations open for more than 12 months", regardless of their actual duration<sup>31</sup>. In reality, this category covers reports drawn up upon the expiry of a 12-month period following the opening of investigations, as well as reports drawn up every 6 months thereafter or reports on investigations lasting more than 2 to 4 years and for which a 9-month report was drawn up in the past (on the basis of Regulation 1073/1999).

<sup>31</sup> The 12-month reports refer to investigations opened since 2009 (3 investigations), 2010 (13 investigations), 2011 (36 investigations), 2012 (179 investigations) and 2013 (160 investigations).



Date of quarterly transmission by OLAF in 2014	Number of reports drawn up at the expiry of a 12-month period after the opening of the investigation	Number of reports received after the first 12-month period
January 2014	83	0
April 2014	205	48
July 2014	50	70
October 2014	53	149
Number of investigations lasting more than 12 months	391	267
Number of 12-month reports		658

## Reasons provided for investigations lasting more than 12 months

### Categories of reasons explaining duration of investigations

73. The work form established by OLAF no longer contains, as was the case for the 9-month reports, predefined reasons for non-completion of investigations, to be marked by the investigators<sup>32</sup>. Its completion seems therefore to be left to the appreciation of each investigator. As a consequence, **a high degree of heterogeneity** has been noted with regard to the mandatory information to be provided by OLAF, the summary sections being unevenly completed by the investigative units: in **14.07% (55 out of 391)** of the investigations lasting more than 12 months, the reports do not specify the reasons why the investigation has not been completed within that period<sup>33</sup> of 12 months, while in many of them the reasons provided are factually unsubstantiated<sup>34</sup>. Moreover, in some reports the reasons why investigations have not been completed are clearly labelled (i.e. lack of resources, lack of cooperation, and complexity of the matter under investigation).
74. On the basis of a laborious analysis of the explanations provided in the 12-month reports, it was, therefore, the SC's first step to pinpoint a number of categories of reasons why investigations were still on-going.
75. The SC has verified that **57.80 % (226 out of 391)** investigations lasting more than 12 months were declared by OLAF to be delayed due to the complexity of the matter under investigation. In addition, **30.69 % (120 out of 391)** investigations lasting more than 12 months were declared to be delayed due to external reasons, where the carrying out and progress of OLAF's investigative activities depended on external

<sup>32</sup> In the 9-month reports, the predefined reasons were: 1) "significant resources were allocated, nevertheless, the volume of the operational/investigative work means that more time is needed"; 2) "lack of resources"; 3) "low priority combined with limited resources"; 4) "lack of co-operation: by MS; by Commission Services; by other institution; by individual/company" and 5) "other: see case".

<sup>33</sup> These reports either mention that the investigation was in the finalization stage, or they merely enumerate some of the investigative activities undertaken, without explaining why the investigation was not completed before the 12-month period.

<sup>34</sup> See the analysis of each specific reason.



factors such as the quality of cooperation with stakeholders (lack of or slow cooperation), were pending results of on-going national (criminal or administrative) investigations and external audits (which were conducted in parallel with OLAF's investigations), or were prevented by the difficult/unstable political situation in a third country. Finally, **31.97 % (125 out of 391)** investigations lasting more than 12 months were declared to be delayed due to internal reasons, where the carrying out and progress of OLAF's investigative activities depended on internal management factors, such as turnover of staff, lack of resources (including workload), internal management decisions to grant higher priority to other cases or to changes in the investigative strategy.

76. The table below shows the number of investigations in which a specific reason for their non-completion within a 12-month period was mentioned. It must be noted that a single 12-month report may contain one or more different reasons, which explains why the total number of investigations in the table is superior to the total number of 391 investigations lasting more than 12 months. The percentages of investigations mentioning a specific reason were calculated on the basis of the total number of investigations lasting more than 12 months, i.e. 391 investigations<sup>35</sup>.

**Table:** Classification of reasons for non-completion of investigations within 12 months (1)

Number and percentage* of investigations quoting a specific reason (out of 391 investigations lasting more than 12 months)								
COMPLEXITY OF THE MATTER	EXTERNAL REASONS			INTERNAL REASONS				NO REASON provided by OLAF
	Pending results of 3rd parties' audits and / or investigations	Lack of/slow cooperation	Political instability/ conflict situation in 3rd countries	Turnover of staff	Lack of resources / workload	Higher operational priorities	Change of investigative strategy	
226	35	80	5	30	33	55	7	55
57.80%	8.95%	20.46%	1.28%	7.67%	8.44%	14.07%	1.79%	14.07%

\*percentages not to be totalled

77. For each specific reason, the percentages of investigations mentioning it, per unit, were calculated on the basis of the total number of investigations quoting that specific reason<sup>36</sup>.

<sup>35</sup> i.e. the complexity of the matter was mentioned in 226 out of 391 investigations, which represents a ratio of 57.80 %.

<sup>36</sup> i.e. the complexity of the matter was mentioned in 226 investigations, out of which 11 investigations conducted by Unit A1, which represent a ratio of 4.87%.



**Table:** Classification of reasons for non-completion of investigations within 12 months (2)

Number and percentage of investigations quoting a specific reason per unit																		
COMPLEXITY OF THE MATTER	EXTERNAL REASONS								INTERNAL REASONS								NO REASON provided by OLAF	
	Pending results of 3rd parties' audits and / or investigations		Lack of/slow cooperation		Political instability/ conflict situation in 3rd countries		Turnover of staff		Lack of resources / workload		Higher operational priorities		Change of investigative strategy					
A1	11	4.87%	0	0.00%	8	10.00%	0	0.00%	11	36.67%	2	6.06%	7	12.73%	2	28.57%	5	9.09%
A2	12	5.31%	5	14.29%	3	3.75%	0	0.00%	8	26.67%	2	6.06%	5	9.09%	0	0.00%	2	3.64%
A3	25	11.06%	3	8.57%	3	3.75%	0	0.00%	2	6.67%	2	6.06%	8	14.55%	3	42.86%	1	1.82%
A4	30	13.27%	3	8.57%	10	12.50%	5	100.00%	4	13.33%	4	12.12%	9	16.36%	0	0.00%	1	1.82%
B1	25	11.06%	4	11.43%	26	32.50%	0	0.00%	1	3.33%	1	3.03%	1	1.82%	0	0.00%	5	9.09%
B2	7	3.10%	3	8.57%	4	5.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	14.29%	1	1.82%
B3	48	21.24%	5	14.29%	11	13.75%	0	0.00%	3	10.00%	18	54.55%	10	18.18%	0	0.00%	3	5.45%
B4	68	30.09%	12	34.29%	15	18.75%	0	0.00%	1	3.33%	4	12.12%	15	27.27%	1	14.29%	37	67.27%
	<b>226</b>		<b>35</b>		<b>80</b>		<b>5</b>		<b>30</b>		<b>33</b>		<b>55</b>		<b>7</b>		<b>55</b>	

## Analysis of reasons for non-completion of investigations within 12 months

### Complexity of the matter under investigation

78. This reason is mentioned in **57.80 % (226 out of 391)** of the investigations lasting more than 12 months reported to the SC in 2014. More than half of the investigations where this reason is quoted are in the Agricultural and Structural Funds Sector<sup>37</sup>. It is substantiated, to varying degrees, in **84.51% (191 out of 226)** of the investigations quoting it and unsubstantiated in the remaining **15.49% (35 out of 226)**.

79. It was explained to the SC<sup>38</sup> that the circumstances in which a case could be described as complex are determined on a case by case basis and vary according to the subject matter and type of the case. According to OLAF, complexity could typically occur when: documents are numerous and difficult to examine for reasons of format, number and accessibility of languages; inter-jurisdictional difficulties and other legal issues arise; there are a number of persons potentially concerned whose inter-relationship is difficult to clarify; there are a number of economic operators and countries concerned by the investigation; the pattern of transactions is complicated and time consuming to disentangle.

80. These criteria for defining the complexity of the matter are very useful. However, they appear to be less clear in the reports: in many cases they may only be deduced from

<sup>37</sup> 48 investigations of Unit B3 and 68 investigations of Unit B4, which represents **51.33 % (116 out of 226)** of the investigations quoting this reason.

<sup>38</sup> Letter from the OLAF DG to the SC of 17 July 2014, Ref. Ares (2014)2382193.



the explanations provided and/or are accompanied by rather vague explanations<sup>39</sup>. In addition, the number of investigators allocated to a specific investigation is not mentioned, making it difficult to appreciate whether an investigation which is considered "complex" by OLAF is dealt with by one or more investigators.

## External circumstances impacting the duration of investigations

### *Quality of cooperation with stakeholders (lack of/slow cooperation)*

81. This category refers to cases where OLAF was awaiting responses from stakeholders and/or the progress of the case depended on potential information from outside sources and the information or assistance requested by OLAF was not provided or was provided with significant delay, despite OLAF's repeated requests.
82. The lack of/slow co-operation was the underlying reason for delay in **20.46% (80 out of 391)** investigations lasting more than 12 months. This reason is substantiated in **70% (56 out of 80)** of the investigations quoting it and unsubstantiated in the remaining **30% (24 out of 80)**.
83. The lack of/slow cooperation is mainly invoked in relation to investigations in the Trade and customs and in the Agriculture and Structural funds sector<sup>40</sup>, which may result from the fact that in these areas OLAF is dependent to a large extent on co-operation with Member States' authorities.
84. A number of **33 investigations** are explicitly reported to be delayed due to a deliberate lack of or difficulties in co-operation with stakeholders, while the reports in the remaining **47 investigations** mention only delays in obtaining information or assistance requested by OLAF.
85. In most of the investigations<sup>41</sup> the reports mention to whom the lack of cooperation refers. These are mainly Member States' authorities<sup>42</sup> and third countries<sup>43</sup>, while few instances of lack of co-operation concern EU institutions or Agencies<sup>44</sup>, an individual/company<sup>45</sup>, international entities<sup>46</sup> or several of those entities at the same time<sup>47</sup>. However, in a small number of investigations the reports do not mention exactly which was the EU institution, Member State or third country concerned<sup>48</sup>.

<sup>39</sup> i.e. In many reports it is stated that the investigator(s) in charge had to analyse a "large number of documents" or a "vast amount of information" or "several projects", without specifying their number or the time needed for studying them. If there are legal issues, they are not substantiated. The number of persons concerned or Member States involved is not always specified either.

<sup>40</sup> In each sector, 32,5 % (26 out of 80) of the investigations quoting this reason.

<sup>41</sup> 78 out of 80 investigations.

<sup>42</sup> 37 out of 80 investigations.

<sup>43</sup> 18 out of 80 investigations.

<sup>44</sup> 10 out of 80 investigations.

<sup>45</sup> 8 out of 80 investigations.

<sup>46</sup> 1 out of 80 investigations.

<sup>47</sup> 4 out of 80 investigations.

<sup>48</sup> 13 out of 80 investigations.





86. In addition, the nature of the lack of co-operation claimed is in general clearly explained<sup>49</sup>, but is unevenly substantiated in the reports. It may involve lack of response from the stakeholders, interruption of investigative activities by actions against OLAF's investigative acts<sup>50</sup> or reluctance of some Member States' authorities.

87. On the other hand, information on the impact of the lack of/slow cooperation on the duration of the investigation (expressed in months of delay) is provided only in **13.75 % (11 out of 90)** of the investigations.

#### ***Pending results of 3rd parties' audits and/or investigations***

88. This category refers to cases where OLAF's investigative activities were pending results of on-going criminal or administrative national investigations or of audits conducted in parallel.

89. **8.95% (35 out of 391)** investigations lasting more than 12 months were declared by OLAF to be delayed for this reason. This reason is sufficiently substantiated in **97% (34 out of 35)** of the investigations quoting it and unsubstantiated in the remaining **3% (1 out of 35)**. Half (**17 out of 35**) of these investigations are in the Agriculture and Structural Funds sector.

#### ***Political instability/conflict situation in third countries***

90. This category refers to a very small number of cases where OLAF was prevented from conducting missions and/or investigative activities in third countries due to the political instability or conflict situation. Only **1.28% (5 out of 391)** investigations lasting more than 12 months were declared by OLAF to be delayed for this reason. This reason is sufficiently substantiated in all the investigations quoting it.

### **Internal circumstances impacting the duration of investigations**

#### ***Internal turnover of staff***

91. **7.67% (30 out of 391)** investigations lasting more than 12 months were declared by OLAF to be delayed for this reason. The units with the highest turnover rate are A1 (**36.67%** - 11 out of 30 investigations are reported to be delayed due to departure of the investigator(s) in charge) and A2 (**26.67%** - 8 out of 30 investigations are reported to be delayed mainly due to change of competences between units).

92. This reason is sufficiently substantiated and well explained in **70% (20 out of 30)** of the investigations quoting it and unsubstantiated in the remaining **30% (10 out of 30)**. The internal turnover of staff was due to transfer of competences between units<sup>51</sup>, to reallocation of staff within OLAF<sup>52</sup>, to the departure from OLAF<sup>53</sup>, the conflict of interest<sup>54</sup> or the death of the investigator in charge<sup>55</sup>.

<sup>49</sup> 72 out of 80 investigations.

<sup>50</sup> i.e. complaints lodged against OLAF's investigations.

<sup>51</sup> 10 out of 30 investigations.

<sup>52</sup> 2 out of 30 investigations.



### *Lack of resources/workload of the investigator(s) in charge*

93. **8.44% (33 out of 391)** investigations lasting more than 12 months were declared by OLAF to be delayed for this reason. This reason is sufficiently substantiated in **45% (15 out of 33)** of the investigations quoting it and unsubstantiated in the remaining **55% (18 out of 33)**.
94. The *lack of resources* was the underlying reason for delay in **20 investigations** of which most of them were reported by Unit B3<sup>56</sup>. In 11 of these investigations the explanations provided refer to the lack of investigators with required linguistic skills<sup>57</sup>, in particular Polish investigators in Unit B3, while the reports in the remaining 9 investigations are unsubstantiated.
95. The *workload* of the investigator(s) in charge is the reason mentioned for delay in **13 investigations**, but it is substantiated only in 4 investigations, where the 12-month reports mention the number of cases allocated to the investigator in charge or to an investigation team (i.e. Unit B4 reports on two occasions a heavy workload of the team dealing with Structural funds cases in Hungary, which was in charge of 20 complex investigations for 4 investigators).

### *Higher operational priorities*

96. **14.07 % (55 out of 391)** investigations lasting more than 12 months were declared by OLAF to be delayed due to internal management decisions to assign higher priorities to other cases. The reasons underlying these decisions are, however, unsubstantiated in most of the investigations (**69%, i.e. 38 out of 55**) and, to a certain extent, substantiated in the remaining **31% (17 out of 55)** of the investigations, where priority was given to other linked investigations<sup>58</sup>, to older (backlog)<sup>59</sup>, with higher financial impact<sup>60</sup> or more urgent/with a shorter deadline (without however explaining why)<sup>61</sup> investigations.

### *Change of the investigative strategy*

97. A very small number of investigations were mentioned by OLAF to be delayed for this reason (**1.79%, i.e. 7 out of 391** of investigations lasting more than 12 months). This reason is sufficiently substantiated in all the investigations quoting it, the change of investigative strategy being due to legal issues arising during the investigation, to the merger with another investigation, to the arrival of new information, to difficulties

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<sup>53</sup> 2 out of 30 investigations.

<sup>54</sup> 1 out of 30 investigations.

<sup>55</sup> 4 out of 30 investigations.

<sup>56</sup> 16 investigations.

<sup>57</sup> Unit B3 reports a lack of Polish investigators (in 4 investigations) and of Slovenian, Latvian, Estonian and Croatian speaking investigators (in 1 investigation for each language). Unit A1 reports the lack of a Latvian investigator in 1 investigation, while unit A3 reports the lack of a Romanian investigator (in 1 investigation) and of a Spanish investigator (in 1 investigation).

<sup>58</sup> 1 investigation.

<sup>59</sup> 11 investigations.

<sup>60</sup> 4 investigations.

<sup>61</sup> 1 investigation.



on-the-spot or to reclassification of a coordination case into an investigation in order to better comply with a request for assistance from a national authority.

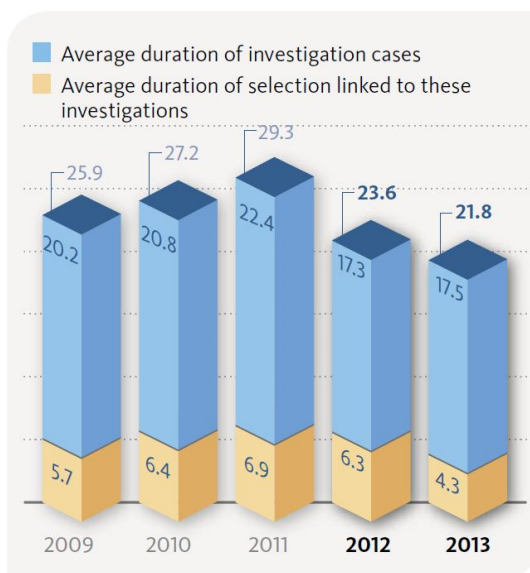
### Statistical information available in the Case Management System

98. In addition to the 12-month reports sent by OLAF, the SC Secretariat has access to statistical information in the OLAF Case Management System (CMS). However, the available statistical information does not provide any information on the duration of investigations, since it contains only the number (by way of a list) of investigations lasting more than 12-months, without pertinent information such as the opening dates or the distribution of investigations by unit and/or sector of activity. Search criteria are not available for the Secretariat, and therefore no extraction of relevant data is possible (i.e. selection of investigations lasting more than 12 months in a particular sector of activity or related to a certain period). The dates of closure of investigations are not available either.

99. Discussions concerning possible modifications to the Working Arrangements agreed in January 2014 are currently on-going, with the purpose of amending them so that they take into account the real needs of the SC for the purpose of its monitoring.

### OLAF reports and statistics on duration of investigations

100. The OLAF 2013 Report indicates that the average duration of investigations was lower than in previous years.



Source: OLAF Report 2013

101. OLAF has changed the method of calculation of the average duration of its investigations since its 2011 Annual Report. According to this earlier method, "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"<sup>62</sup>. In

<sup>62</sup>

OLAF Report 2011, footnote 8. Emphasis added.



previous years, the method for calculating the average duration of investigations was based on cases completed (closed) in the reporting period.

102. The OLAF mid-term report on the implementation of OLAF's investigative function<sup>63</sup> indicates that the average duration of investigations was, during the first-half of 2014, **16.8 months**, including both investigations closed during the first half of 2014 and those still open at the end of the same period.
103. For the whole year 2014 and on the basis of the previous method, the SC calculated that the average duration of investigations closed in 2014 is **23.6 months**, while OLAF's calculation results in an average duration of **23.3 months**<sup>64</sup>.

### Information on the financial interests at stake

104. The amount of financial interests at stake (estimated amount to be recovered or prevented from being unduly spent) is not indicated in the 12-month reports. The SC has requested additional information in this respect from OLAF with regard to the reports sent to the SC in the first semester of 2014. OLAF provided the requested information – extracted from the relevant fields in the CMS - on the basis of Article 11 of the Working Arrangements. Another similar request from the SC, concerning the second semester of 2014, is pending reply as of 24 November 2014<sup>65</sup>.
105. The estimated financial impact of the alleged fraud and/or irregularities was estimated by OLAF in **52,6 %**<sup>66</sup> of the investigations lasting more than 12 months reported to the SC during the first semester of 2014, and totals **2,185,349,507 €** of which **1,895,435,380 €** only in the Agricultural and Structural Funds sector (which represents **86 %** of the total amount estimated by OLAF).
106. The Agricultural and Structural Funds sector (Units B3-B4) is thus the sector with the highest financial interests at stake. OLAF has indicated the estimated financial impact in **66.4 %** of the investigations lasting more than 12 months in this sector. The financial impact was not indicated in **18.4 %** of these investigations and not determined yet in the remaining **15.1 %**.

<sup>63</sup> Ref. Ares(2014)3426044 of 16 October 2014

<sup>64</sup> The list of investigations (with opening and closure date) was provided by OLAF, upon the SC's request. OLAF has indicated that the average duration for 2014 was **23.3 months** and explained that this difference is due to the number of days in a month used for the calculation: the SC calculated the average duration based on a 30 day month, while OLAF calculated it on a 30.416 days month – 365 days in a year divided by 12 months (OLAF's reply of 6 March 2015).

<sup>65</sup> OLAF has indicated to the SC that the reply to this request implied an important workload.

<sup>66</sup> This figure was calculated on the basis of additional information in 287 investigations lasting more than 12 months for which OLAF has sent a report to the SC in the first semester of 2014.

SUPERVISORY COMMITTEE



**Table:** Estimation of the financial interests at stake (287 investigations transmitted during the 1<sup>st</sup> semester of 2014).

1st semester 2014 (Total – 287 investigations)	A1		A2		A3		A4		B1		B2		B3-B4		Total	
Amount (€)	39,516		75,345,990		66,866,565		95,051,740		47,610,316		0		1,900,435,380		2,185,349,507	
Indicated	3	14.3%	12	92.3%	13	76.5%	9	23.7%	12	32.4%	0	0.0%	101	66.4%	150	52.26%
Not indicated	12	57.1%	0	0.0%	2	11.8%	16	42.1%	20	54.1%	7	77.8%	28	18.4%	85	29.62%
Not yet determined	6	28.6%	1	7.7%	2	11.8%	13	34.2%	5	13.5%	2	22.2%	23	15.1%	52	18.12%

107. The SC notes that information on the financial interests at stake is not systematically included in the relevant field in the CMS and is therefore not available for the SC either. It appears, from discussions which took place between the SC and OLAF that this specific field will be removed from the CMS. OLAF has indicated that the financial impact was only one criterion amongst the others which was taken into account when allocating resources to specific investigations<sup>67</sup> and that it is for the competent authorities of the Member States or the institutions, bodies, offices or agencies to decide if recovery actions should be taken on the basis of the reports drawn up by OLAF and determine the final amount to be recovered. OLAF has underlined a number of difficulties in estimating, at an early stage of an investigation, the potential financial impact of the fraud and/or irregularities committed<sup>68</sup>.

<sup>67</sup> Other criteria taken into consideration by OLAF for prioritising its investigations and allocating resources are the detection of new *modus operandi* for committing fraud and/or irregularities, the detection of systemic failures of national administrations to control the use of EU funds, the involvement of criminal organisations in systemic fraud schemes etc.

<sup>68</sup> The estimation of the financial impact may be difficult, for example, with regard to large scale fraud related to EU funded projects or programmes involving various decisional levels (national level and EU level, i.e. spending services of the European Commission), which requires coordination between OLAF and the relevant authorities in order to establish the eligibility of expenses, the respective financial contribution of each authority and the amount at stake.



## Distribution of investigations lasting more than 12 months by sector/unit

Table: OLAF's investigation units' areas of competence

Unit	Area of competence
<b>A1 - EU Staff</b>	Investigation of fraud cases (including serious matters relating to the discharge of professional duties) within the institutions, bodies, office and agencies established by, or on the basis of Treaties (internal investigations)
<b>A2 - New Financial Instruments</b>	Financial investigations in the field of expenditure implemented by the European Commission by joint management with international organisations (i.e. EIB). New financial instruments, PRE-Accession countries, new neighbouring policies.
<b>A3 - Centralised Expenditure</b>	Investigative activities relating to centralized expenditure.
<b>A4 - External Aid</b>	Investigative activities relating to external aid.
<b>B1 - Trade, Customs</b>	Commercial customs fraud investigations
<b>B2 - Tobacco &amp; Counterfeit</b>	Investigations into the illicit trade in cigarettes and other tobacco products which has very serious implications for the EU Budget and the budgets of the Member States. The unit also conducts "high level" investigations into the import into the EU of counterfeit goods.
<b>B3 - Agricultural and Structural Funds I</b>	Investigative activities relating to the Cohesion Policy (Structural Funds), the Common Agricultural Policy (CAP), and pre-accession aid in relation to rural development.  <u>Geographical competence</u> Member States: Bulgaria, Italy, Germany, Austria, Poland, France, the Netherlands, Belgium, Luxembourg, Estonia, Latvia, Lithuania, the United Kingdom and Ireland.
<b>B4 - Agricultural and Structural Funds II</b>	Investigative activities relating to the Cohesion Policy (Structural Funds), the Common Agricultural Policy (CAP), and pre-accession aid in relation to rural development (IPARD and SAPARD).  <u>Geographical competence</u> Member States: Romania, Spain, Portugal, Greece, Cyprus, Slovak Republic, Czech Republic, Finland, Denmark, Sweden, Hungary and Lithuania. Candidate countries: Turkey, Albania, Kosovo and Iceland.

108. Nearly **half of the investigations lasting more than 12 months (49.6 %)** are **in the Agricultural and Structural Funds sector** (Units B3 and B4 taken together). The smallest percentage of investigations exceeding this period is in the Tobacco and Counterfeit sector (**3.5 %**), while for the other sectors this percentage varies from **7 %** to **12 %** for each sector.



**Table:** Distribution by unit/sector of investigations lasting more than 12 months reported to the SC in 2014

Unit	Sector	Number of investigators/unit <sup>69</sup>	Number and percentage of investigations lasting more than 12 months/unit	
A1	EU Staff	20	30	7.67 %
A2	New Financial Instruments	10	28	7.16 %
A3	Centralised Expenditure	13	32	8.18 %
A4	External Aid	14	46	11.76 %
B1	Trade, Customs	20	47	12.02 %
B2	Tobacco & Counterfeit	13	14	3.58 %
B3	Agricultural and Structural Funds I	24	68	17.39 %
B4	Agricultural and Structural Funds II	20	126	32.23 %
<b>Total</b>		<b>134</b>	<b>391</b>	<b>100 %</b>

## 2. OLAF'S TOOLS AND PROCEDURES FOR MANAGING THE DURATION OF INVESTIGATIONS

109. The replies provided by OLAF to the SC's request for information and the working meeting between the rapporteur and OLAF staff were both very useful for the SC to understand the way in which the overseeing of the duration of investigations is carried out within OLAF, in particular the internal procedures used for regulating the progress of investigations and avoiding undue periods of inactivity. The SC noted that the OLAF DG reminded the management team of the need to ensure that investigations are conducted continuously and without undue delay and, to this end, communicated to the team a number of instructions concerning the continuous conduct of investigations<sup>70</sup>.

### Tools for controlling the progress of investigations

110. The progress of investigations can be checked in the CMS<sup>71</sup>, which contains the whole life cycle of an investigation. The CMS also contains a flag system

<sup>69</sup> Source: Sysper 2 (end of December 2014).

<sup>70</sup> Note for the attention of Directors A and B, 11 July 2014.

<sup>71</sup> The CMS (Case Management System) contains the case-related documents of OLAF's investigations and coordination cases and it may be consulted by managers in real time. It is thus the main tool for overseeing the progress of investigations.



indicating the time for investigators to draft 12-month reports as well as the reports every 6 months thereafter.

111. It was reported to the SC that **regular meetings** take place between investigators and their line managers, in order to discuss the progress of investigations, the future investigative strategy and possible measures to speed them up. The OLAF DG informed the SC that comprehensive statistics are produced and distributed to the OLAF senior management, including the duration of cases and the workload of investigators. Once a year, statistics on the overall performance of OLAF's investigative function are discussed at a meeting bringing together all the investigative Heads of Unit<sup>72</sup>. In addition, regular meetings also take place at different management levels (Head of Operations/Sector, Head of Unit, Director's meetings), where the performance of different units and Directorates are discussed and managers are reminded of the importance of conducting investigations without undue periods of inactivity. However, only in a small number of the investigations examined by the SC,<sup>73</sup> are the records of these meetings registered in the case file and are thus not traceable in the CMS.

112. It was also explained to the SC that **investigation planning and time scheduling** are used to a great extent by the investigation units. Directorates A and B have different approaches as to the use of investigation planning, since the investigations they respectively carry out are different in nature :

- Directorate A conducted an internal review in late spring 2014 with regard to OLAF's regulatory obligation to conduct investigations continuously over a period proportionate to the circumstances and complexity of the case. An investigation work plan template was adopted and the investigation units use work plans which can be adjusted during investigations, as and when necessary.

- In Directorate B, since the investigation units follow an established structure and order of the investigative steps<sup>74</sup> and the mission reports reflect as appropriate the next investigative steps, a separate formal work plan document is not needed for each investigation. Training programmes addressing, *inter alia*, the issue of investigation work plans were organised for both Directorates.

113. The implementation of investigation planning with time scheduling was not systematic in the sample of 25 cases to which full access to the CMS was granted. Work plans were found in 14 out of 25 investigations examined, most in Directorate A<sup>75</sup>, either as formal initial work-plans<sup>76</sup> or as regular (3-month) reports to the Head of

<sup>72</sup> OLAF's reply of 6 March 2015. However, such documents are not communicated to the SC.

<sup>73</sup> Sample of the 25 investigations to which access was granted in the CMS.

<sup>74</sup> Involving contacts with Commission services and authorities in Member States, examination of documentation and the conduct of "on the spot" checks led by OLAF investigators with country and subject-specific expertise.

<sup>75</sup> 8 investigations of Directorate A and 6 investigations of Directorate B.

<sup>76</sup> They usually indicate the preliminary actions to be carried out and the investigative strategy, focused on the most promising allegations, the investigative activities planned, their purpose/justification, the timeline and the staff needed to deal with the case.





Unit indicating the investigative steps carried out and those still to be carried out, as well as their timeline. Some of them were updated in the course of investigations.

114. **Time-barring considerations** are usually included in final reports on investigations, but not in the investigation work plans. OLAF's Legal Advice Unit has produced a set of country « mini-profiles » (for all the Member States) listing the relevant national criminal provisions concerned by OLAF investigations with the corresponding periods of limitations. In addition, investigators can always address further specific questions to the Legal unit.

### Measures to speed up investigations

115. In a certain number of the 12-months reports, in particular in some of the long-lasting investigations, the section "remedial measures" taken to speed up the completion of investigations after the 12-month period indicates merely that the investigation was in a final stage<sup>77</sup>, while many other reports indicate, as remedial measures, the investigative steps still to be carried out, and often in general and vague terms<sup>78</sup>. Few of the reports provide expected timeframes for the foreseen activities or for the completion of investigations<sup>79</sup>.
116. Instead of specifying the remedial measures that have been taken to speed up the investigation through its whole life-cycle, some of the 12-month reports mention only the current state of the case, i.e. the fact that the final report was submitted to the management for approval.
117. It was explained to the SC that most of OLAF investigations last more than 12 months, due to their complexity and to the fact that OLAF's actions frequently depend on cooperation with stakeholders. As a consequence, remedial measures are not necessarily needed immediately after the first 12-month period in those investigations where the investigative activities are conducted continuously and which follow their normal course.

### Management of cooperation with stakeholders during investigations

118. OLAF has explained<sup>80</sup> that, in situations where the EU institutions or Member States do not (sufficiently) cooperate (i.e. lack of or late replies to OLAF's requests), it may send reminders, exchange letters or hold bilateral discussions/meetings with representatives of the authorities concerned, intervene (at management level) to urge the OLAF correspondents in Commission services or Member States' authorities to answer OLAF's requests for information or documents.

<sup>77</sup> This is the case in particular in the longest investigation reported to the SC (52 months).

<sup>78</sup> Such as: "collecting evidence", "several investigative activities are foreseen", "follow-up of the analysis of documents", "OLAF is closely monitoring the situation".

<sup>79</sup> For example, concerning the reports where the reason provided by OLAF was the complexity of the matter under investigation, only Unit B3 has indicated, in a certain number of reports, the date foreseen for the investigative activities to be carried out or even for the completion of investigations

<sup>80</sup> Letter of the OLAF DG of 17 July 2014.



119. The SC noted that the lack of/slow cooperation with stakeholders combined with the need to await results of national (criminal/administrative) investigations or of external audits is the second most quoted reason for explaining non-completion of investigations within 12 months. It is reported mostly by Units B1, B3 and B4 taken together.
120. The SC has verified that this type of measure was generally taken in those investigations where the reason reported for their non-completion within 12 months was the quality of cooperation with stakeholders and where actions appear to be planned in this respect: in almost all of the investigations OLAF was proactive and sent reminders, organized meetings with stakeholders, escalated its requests to another and higher level or informed the Member State's authority (in particular, the AFCOS), adapted its investigative strategy and found new ways to gather evidence<sup>81</sup> or to compensate for the lack of information. In another very small number of cases OLAF decided to close the investigations or not to carry out a foreseen investigative activity due to the insufficient cooperation and lack of information from authorities of third countries<sup>82</sup>, or it decided to carry out its own administrative investigation without using the evidence unsuccessfully requested from a Member State<sup>83</sup>.

#### **Allocation (or reallocation) of resources**

121. According to information provided by OLAF<sup>84</sup>, the (re)allocation of resources is determined by the priority and complexity of the cases and in accordance with the situation in the units concerned (i.e. availability of investigators with specific language and technical skills). Sometimes, the facts of a given investigation may determine the urgency of the matter (for example, when time-barring issues may arise). The OLAF DG recently reminded the managers of the investigative units<sup>85</sup> of the importance of a proper allocation of resources to investigations, in order to ensure that these are conducted effectively and efficiently.
122. In most of the investigations which were reported to be delayed due to the lack of resources/workload, the section "remedial measures" in the 12-month reports indicates the fact that the investigation was in the final stage or it mentions the investigative activities still to be carried out. In 11 out of 33 investigations delayed for this reason the remedial measures are clearly explained and consist of adding to the investigation team and/or recruiting investigators with the necessary linguistic skills or in not assigning new investigations to the investigator in charge, while other measures indicated are of a more general character<sup>86</sup>.

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<sup>81</sup> Such measures were clearly indicated in 36 out of 80 investigations reported to be delayed due to the quality of cooperation with stakeholders. In 32 other investigations, the section "remedial measures" in the 12-month reports indicate that they were in the final stage or mention the investigative activities still to be carried out.

<sup>82</sup> This situation was noted in 4 out of the 80 above mentioned investigations.

<sup>83</sup> This situation was noted in 1 out of the 80 above mentioned investigations (10 months delay awaiting the reply from the Member State).

<sup>84</sup> Letter of the OLAF DG of 17 July 2014.

<sup>85</sup> Idem.

<sup>86</sup> Some reports indicate merely that "the matter is under close supervision by both the Head of Sector and the Head of Unit" or "More priority will be given to the case in order to speed up the investigation".



123. The SC noted that more than half of the investigations lasting more than 12 months are in the Agricultural and Structural Funds sector, which is also the sector with the highest number of investigations declared to be delayed due to the complexity of the matter under investigation and to the lack of resources and workload. Units B3 and B4 have approximately the same number of investigators as Units A1 and B1, but significantly more investigations<sup>87</sup>. Unit B4 has fewer investigators than Unit B3, while it reports double the number of investigations not completed within 12 months. However, the lack of investigators with specific linguistic skills was mostly reported by Unit B3. At the same time, this is the sector with the highest financial interests at stake.
124. The issue of the evaluation of the workload of investigation units was discussed with the OLAF management team<sup>88</sup>, which explained that OLAF takes into consideration the number of investigators of a specific investigation unit as it appears in the CMS (the database used by OLAF for the management of investigations) and not in Sysper 2 (a Commission database for personnel). In response, the SC would point out that its considerations mentioned above with regard to workload are based on OLAF's own method of estimating the capacity of the investigation units, i.e. on the basis of the total number of on-going investigations of a specific unit weighed against the total number of investigators, as indicated in Sysper 2<sup>89</sup>.
125. It was also explained to the SC that measures have been taken to strengthen the investigation function of Directorate B, such as the recruitment of investigators in Unit B3<sup>90</sup> and the transfer, as of 1 January 2015, of cases concerning the European Social Funds from Directorate B to Directorate A. The SC has discussed with OLAF the issue of workload indicators for recurrent types of investigative activities. OLAF has indicated that this is an on-going matter under consideration by OLAF, as a result of recommendations made by the European Court of Auditors<sup>91</sup>.

### Procedures for splitting investigations

126. There are sometimes situations where, in order to complete an investigation within a reasonable timeframe, OLAF may split the matters under investigation into different cases. With regard to the criteria for splitting cases, it was explained to the SC<sup>92</sup> that the need to split up an investigation or coordination case might be the result of factual, legal or other reasons and that the splitting of cases might be justified, for example, by the need to transmit OLAF's findings as soon as possible to a competent authority (for reasons of prescription), or that during the investigation it was revealed

<sup>87</sup> Unit B3 counts 24 investigators and Units B4, A1, B1 count 20 investigators each (Source: Sysper 2, December 2014), while the number of investigations lasting more than 12 months reported by each of those units is respectively 68 (17.39%), 126 (32.23%), 30 (7.67%) and 47 (12.02%) out of 391.

<sup>88</sup> Working meeting of 21 January 2015.

<sup>89</sup> The SC has noted, in the framework of its monitoring activities which resulted in its Opinion No 2/2014 on *Case Selection in OLAF*, that this was the method used by the selectors during the selection process to estimate the workload of a specific investigation unit.

<sup>90</sup> The OLAF DG informed the SC that the lack of specific linguistic skills in Unit B3 has since been reduced by the recruitment *inter alia* of Polish and Croatian speakers - OLAF's reply of 6 March 2015.

<sup>91</sup> Special Report No 2/2011 - Follow-up of Special Report No 1/2005 concerning the management of the European Anti-Fraud Office.

<sup>92</sup> Letter of the OLAF DG of 17 July 2014.



that the unrelated nature of the facts justified a separate investigation without requiring the immediate closure of either of the cases. OLAF has no statistical data on the matter available.

127. Splitting the matters under investigation was explicitly indicated to be a remedial measure in one of the investigations lasting more than 12 months reported to the SC<sup>93</sup>. Conversely, in another investigation, it was noted that the fact of merging a new or different investigation into an existing one enhances the complexity of the case and consequently prolongs its duration.

128. It appears also from the investigations examined by the SC<sup>94</sup> that, in complex investigations concerning SAPARD funds and involving a large and specific number of companies and EU funded projects, OLAF decided to close the "umbrella" cases opened in 2008 and 2009 with regard to a number of companies, and to open, in 2012 and 2013, new investigations and coordination cases into the remaining companies and projects for which further investigative activities were necessary.

129. The OLAF DG sent a note<sup>95</sup> to the management team on the procedures for splitting and merging of investigations and coordination cases. Furthermore, he provided additional information and guidelines on the procedures to be followed by the investigative units, with a view to completing investigations in reasonable time and allowing a related EU institution or a Member State to initiate recoveries or to take judicial action in due time, without waiting for the completion of the remainder of the investigation.

### **Measures to speed up completion of investigations once a person concerned has been interviewed**

130. The SC questioned OLAF regarding the way in which the need to conduct an expeditious investigation once a person who has acquired the status of "person concerned" is interviewed is taken into account by OLAF and what kind of measures - if any - can be taken to that end<sup>96</sup>. In its reply<sup>97</sup>, OLAF indicated that it makes a distinction between the "interview" and the "opportunity to comment" of the persons concerned. The first can take place at any point in the investigation, depending on the investigative strategy, without any particular reason to speed up or to close the investigation immediately after the interview, while the latter is the last step before the final report is drafted and concludes the investigation. As a consequence, investigators are aware of the need to close the file as soon as possible after having received the comments of the person concerned and management ensures that this is done swiftly, as part of daily management.

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<sup>93</sup> The investigation concerned several companies from different Member States involved in the same fraud scheme. It was proposed, as a remedial measure, to close the investigation into one company since the investigative activities concerning it had been completed, to split the case and open a new investigation with regard to another company, for which further investigative activities were deemed necessary.

<sup>94</sup> Sample of 25 investigations to which access was granted in the CMS.

<sup>95</sup> Note for the attention of Directors A and B, 11 July 2014.

<sup>96</sup> Ref. Ares(2014)3943817 – 26 November 2014.

<sup>97</sup> Ref. Ares(2015)226166 – 20 January 2015.



131. The SC has verified these practices in the cases it has examined and noted that, with two exceptions, the investigations were closed shortly (up to 6 months) after the persons concerned were interviewed and/or provided comments in writing. Two investigations were closed respectively, one and one and half a years after the persons concerned were given the opportunity to comment in writing, periods during which there was no investigative activity<sup>98</sup>.

### Checks on continuity of investigations at the end of the investigation

132. The Guidelines on Investigation Procedures (GIP) adopted by the OLAF DG as of 1 October 2013 include details of an internal control procedure which covers, *inter alia*, checks on the continuity of investigations by the ISRU, in the framework of their review of Final reports and recommendations. The results of their checks are expressed as answers to two questions: i) whether there are any indications that the investigation has not been conducted continuously and without undue delay and ii) whether there are any indications that the length of the investigation has not been proportionate to the circumstances and complexity of the case.
133. OLAF has indicated to the SC<sup>99</sup> that the control by the ISRU leads to exchanges with the investigation units when significant delays or time gaps in the conduct of investigations are found, in order to identify specific reasons for this.
134. The SC examined the ISRU's opinions and noted that, in more than half of them, the answers to these questions are unsubstantiated<sup>100</sup> while only a small number of opinions give more substantiated answers<sup>101</sup>.
135. The SC noted periods of inactivity (going from 10 months up to 1 ½ year) in 10 out of the 25 investigations examined<sup>102</sup>, of which only two gave rise to comments in the ISRU's opinions: both opinions mention the periods of inactivity and only one estimates that "there does not appear to have been such investigative activity as to justify the length of time taken". In addition to omitting to mention periods of inactivity, none of the ISRU's opinions in the cases examined explains *in concreto* why it was considered that the duration of the investigation was proportionate to the complexity and circumstances of the case.

<sup>98</sup> The opinions of the Investigation Selection and Review Unit on the Final report and recommendations in these two investigations highlight the periods of inactivity and one of them mentions that there was no such investigative activity as to justify the length of time taken to close the investigation.

<sup>99</sup> OLAF's reply of 6 March 2015.

<sup>100</sup> Sample of 25 investigations to which access was granted in the CMS. In 15 out of 25 opinions the answer given to the two questions (most of the time one single answer to the two questions) is "no" or "no (such indications)" and 3 out of 25 opinions mention that "(the investigation was) conducted continuously".

<sup>101</sup> 3 out of 25 opinions note that "the investigative activities in this case were conducted on a regular basis and appear proportionate to the needs of the case", 2 out of 25 opinions note that there are no indications despite objective changes of the investigator in charge, the new investigator having finalized promptly the investigative activities and 2 other opinions mention inactivity periods.

<sup>102</sup> 4 of them are investigations concerning SAPARD funds, extracted from "umbrella" cases opened by OLAF in 2008 and 2009 and opened as new investigations in 2012 or 2013. All the investigative activities have been carried out under the "umbrella" cases and the remaining activities to be carried out in the new investigations were to give the opportunity to comment to the persons concerned and to draft the final reports. Their duration varies between 16 and 25 months.



**Annex 2**

**Work-forms: 9-month and 12-month reports**

23. Information to the OLAF Supervisory Committee: 9 months report (ISIP 11.9)

**European Anti-Fraud Office**

[[szDirectorateShortname]] [[szDirectoratename]]

Director

Brussels

*[Initials]*

*OLAF Investigations*

**INFORMATION TO THE OLAF SUPERVISORY COMMITTEE  
INVESTIGATION OPEN FOR MORE THAN 9 MONTHS**

OF No    [[szOFnumber]]

Title    [[szShortLabel]]

In accordance with Article 11 paragraph 7 of Regulation 1073/99 this is to inform you that it has not yet been possible to wind up the investigation within the time expected for completion for the reasons set out below.

OLAF Staff	<i>[Name, position]</i>
Legal Basis	<i>[Legal Base]</i>
Date of opening decision	<i>[Date of opening decision]</i>
Maximum amount involved	<i>[Maximum amount involved]</i>

**1. Description of the investigation**

Date initial information received

Allegations (and dates when acts under investigation took place)

Duration of selection process

Aim of the investigation

Legislation allegedly breached



Potential sanctions (indications to the extent the sanctions are identifiable) and any time barring considerations

**2. Investigative activities undertaken to date and results**

**3. Investigative activities still to be carried out**

**4. Reasons why the investigation has not been completed**

	<input type="checkbox"/> significant resources were allocated the volume of the work means that more time is needed <input type="checkbox"/> lack of resources <input type="checkbox"/> lack of co-operation <input type="checkbox"/> by MS <input type="checkbox"/> by Commission Services <input type="checkbox"/> by other institution <input type="checkbox"/> by other individual/company <input type="checkbox"/> other (please explain)
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**5. Date of expected completion**

[Name NAME]

**Statement concerning the transfer of personal data**

The transfer of personal data to you falls within Article 7 of Regulation (EC) 45/2001 on the protection of personal data by the EU institutions. Accordingly, as the controller of the personal data hereby transmitted, you are responsible for ensuring that they are used only for the purpose for which they are transmitted. Processing in a way incompatible with that purpose, such as transferring it to another recipient where this is not necessary or legally required on important public interest grounds, is contrary to the conditions upon which this data has been transferred to you. Moreover, according to article 4(2) of Regulation 45/2001, you are required as the Controller of the personal data concerned to ensure that all obligations of the Controller are complied with.



## INFORMATION TO THE OLAF SUPERVISORY COMMITTEE INVESTIGATION OPEN FOR MORE THAN 12 MONTHS

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OF No    [[szOFnumber]]

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In accordance with Article 7 paragraph 8 of Regulation (EU, Euratom) No 883/2013, this is to inform you that it has not been possible to close the investigation within 12 months after it has been opened for the reasons set out below.

Date of opening decision	
Reasons why the investigation has not been completed	
Remedial measures envisaged with a view to speed up the investigation	

[Name NAME]

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SUPERVISORY COMMITTEE

