2014

ACTIVITY REPORT OF THE OLAF SUPERVISORY COMMITTEE

Members of the OLAF Supervisory Committee

(left to right)

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SUPERVISORY COMMITTEE

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MISSION STATEMENT

Article 15(1) of Regulation No 883/2013:

The Supervisory Committee shall regularly monitor the implementation by the Office of its investigative function, in order to reinforce the Office's independence in the proper exercise of the competences conferred upon it by this Regulation.
The Supervisory Committee shall in particular monitor developments concerning the application of procedural guarantees and the duration of investigations in the light of the information supplied by the Director-General in accordance with Article 7(8).

The mission of the Supervisory Committee (SC) of the European Anti-fraud Office (OLAF), as outlined by Regulation No 883/2013[1], is to reinforce OLAF's independence in the proper exercise of the competences conferred upon it[2]. To accomplish this mission, the EU legislator entrusted the SC with a threefold role:

- The SC is the **supervisory body** of OLAF and a guardian of OLAF's independence; it regularly monitors the implementation by OLAF of its investigative function and, in particular, developments concerning the application of procedural guarantees and the duration of investigations.

- The SC plays an **advisory role** with regard to the Director-General of OLAF, whom it assists in the discharge of his responsibilities:
  - by communicating to him the results of the SC's monitoring of the implementation of the OLAF investigative function, the application of procedural guarantees and the duration of investigations as well as, where necessary, making appropriate recommendations;
  - by addressing opinions to him, including, where appropriate, recommendations on, *inter alia,* the resources needed to carry out OLAF's investigative function, on the investigative priorities and on the duration of the investigation;
  - by submitting its observations (including, where appropriate, recommendations) on the guidelines on investigation procedures (and any modification thereto) adopted by the Director-General in accordance with Article 17(8) of the Regulation.

- The SC is a **dialogue partner** of the EU Institutions, to which it reports on its activities, at whose request it may issue opinions and with whom it exchanges views at a political level, thus providing the EU Institutions with unique expertise based on its monitoring experience.

[1] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, OJ L 248, 18.9.2013, p. 1.
[2] Article 15.

FOREWORD BY THE CHAIRMAN

As Chairman of the Supervisory Committee of the European Anti-Fraud Office, I have the pleasure to submit the Annual Activity Report of our Committee, in accordance with Article 15(9) of Regulation No 883/2013.

The European Anti-Fraud Office has a unique position as an inter-institutional service of the European Commission. The Office enjoys independence in its investigative function and the Supervisory Committee has a remit to ensure vital aspects of good administration and good governance related to the investigative activities of the Office. This contributes to the legitimacy and reliability of the Office in its investigative mission and, ultimately, to the trust towards the European Union as a community based on the rule of law.

This Activity Report provides an overview of the monitoring activities performed by the Supervisory Committee during 2014. Their results were presented in documents adopted by the Committee between February 2014 and March 2015. **Chapter 1** offers an account of the implementation and management of OLAF's investigative function whereas **Chapter 2** focuses on the cooperation with OLAF and stakeholders and, in particular, on the follow-up by OLAF to the Supervisory Committee's recommendations. **Chapter 3** gives an overview of the governance of the Supervisory Committee in the light of the broader notion of accountability.

In 2014 the Supervisory Committee's work has focused on the reporting on the duration of the investigations and on OLAF's independence. Another main issue during the reporting period is the supervisory framework of the Office concerning which the Supervisory Committee has sought to improve conditions for effective and independent, professionally performed supervision in accordance with the principles of good administration and good governance applicable in the European Union. The Supervisory Committee has devoted a significant amount of its efforts to improvement in its working relations and Working Arrangements with the Office. It is the Supervisory Committee's view that OLAF's independence comes together with a high level of accountability and therefore the core message of the Supervisory Committee is that the Institutions should improve the procedures ensuring the accountability of OLAF and its senior management in the performance of their duties.

Brussels, 25 March 2015

Tuomas PÖYSTI

Chairman of the Supervisory Committee

OVERVIEW

Monitoring activities

Analysis and assessment of:

- **658 reports on investigations lasting more than 12 months;**
- **92 opinions on final reports and recommendations;**
- **39 complaints and requests from individuals;**
- **2 requests for public access to the SC's documents;**
- **1 request for cooperation from a national judicial authority;**
- **94 OLAF case files.**

Opinions and reports

- **3 opinions in relation to the implementation and management of OLAF's investigative function:**
  - **Opinion No 3/2014: OLAF's Preliminary Draft Budget for 2015;**
  - **Opinion No 4/2014: Control of the Duration of Investigations conducted by the European Anti-fraud Office;**
  - **Opinion No 5/2014: OLAF External Reporting on the Duration of Investigations.**
- **3 special reports to the EU Institutions:**
  - **Report 1/2014: Safeguarding OLAF's Investigative Independence;**
  - **Report 2/2014: Implementation by OLAF of the Supervisory Committee's Recommendations;**
  - **Report 3/2014: Opening of Cases in OLAF in 2012.**
- **2013 Activity Report**

Position and policy papers

- **Decision on Transparency of the Supervisory Committee's Activities;**
- **Note on the Supervisory Committee's Analysis of the OLAF Draft IPPs for 2015.**

1 MONITORING

The third paragraph of Article 15(1) of Regulation No 883/2013:

The Supervisory Committee shall address to the Director-General opinions, including where appropriate, recommendations on, inter alia, the resources needed to carry out the investigative function of the Office, on the investigative priorities of the Office and on the duration of investigations. Those opinions may be delivered on its own initiative, at the request of the Director-General or at the request of an institution, body, office or agency, without however interfering with the conduct of investigations in progress.

1.1 IMPLEMENTATION OF OLAF INVESTIGATIVE FUNCTION

OLAF's policies for opening cases

Opening of cases in OLAF in 2012

1. The SC noted that at the time of the reorganisation of OLAF (1 February 2012), 423 cases were opened on the same day by a single decision of the Director-General of OLAF (OLAF DG). The SC examined to what extent this single decision was in line with the criteria established by the case-law of the European Court of Justice, which stated that a decision by the OLAF DG to open an investigation cannot be taken unless there are "sufficiently serious suspicions" relating to acts of fraud, corruption or other illegal activities detrimental to the financial interests of the EU.

2. The SC presented the results of its analysis in its **Report No 3/2014** on **Opening of cases in OLAF in 2012**[3] addressed to the European Parliament, the Council, the European Commission and the European Court of Auditors. On the basis of the analysis of the information provided by OLAF, including a sample of investigations, the SC concluded that (i) OLAF did not conduct any appropriate assessment of the incoming information for any of the cases analysed by the SC, (ii) for the vast majority of cases there was not even a trace of any assessment activity and (iii) the OLAF DG opened all the cases in question without establishing beforehand the existence of a sufficiently serious suspicion that there had been fraud, corruption or any other illegal activity affecting the financial interests of the Union – which is in contradiction with the legal requirement for opening an OLAF investigation, in force at that time.

3. At the request of the SC and before the Report was sent to the Institutions, OLAF provided its comments in which it did not agree with the SC's conclusions. The SC took note of OLAF's position and decided to forward the Report to the Institutions without any modifications.

Investigation Policy Priorities for 2015

4. Following the transmission of the draft OLAF Investigation Policy Priorities (IPPs) for 2015 by the OLAF DG, the SC analysed them in the light of its Opinion No 1/2014 on OLAF Investigation Policy Priorities[4]. The SC observed – in its **Note on the Investigation Policy Priorities for 2015** - that, to its knowledge at the time of adopting this note, OLAF did not take into account the three recommendations made in the Opinion No 1/2014: (i) the OLAF DG did not issue guidelines on application of the selection principles arising from Regulation No 883/2013 (efficient use of resources, proportionality, subsidiarity/added value) and, instead of reviewing the financial indicators to adapt them to the reality of spending programmes, he has abolished them completely; (ii) the draft IPPs 2015 appear to take into consideration several documents from stakeholders, but no dialogue with the stakeholders seems to have taken place with regard to financial indicators and to possible follow-up of the cases showing sufficient suspicion of fraud, but dismissed on the basis

[3] http://ec.europa.eu/anti_fraud/documents/reports-sup_comm/2014/report_opening_cases_2012_en.pdf
[4] http://ec.europa.eu/anti_fraud/documents/reports-sup_comm/2014/3_opinion_on_ipps_en.pdf.

of the IPPs or selection principles; (iii) the OLAF DG did not transmit to the SC an assessment of the application of the previous IPPs or a summary of the feedback provided by the stakeholders, despite a previous commitment to do so[5].

5. Consequently, the SC would point out that it is impossible to conclude whether the IPPs are correctly identified and whether their application has positive or negative consequences for the fight against fraud and corruption.

OLAF's investigative independence

Supervisory Committee's observations regarding OLAF's independence

6. The SC adopted, on 2 July 2014, its **Report No 1/2014** on **Safeguarding OLAF's independence**[6] addressed to the European Parliament, the Council, the European Commission and the European Court of Auditors. The report is focused on OLAF's investigative independence and on the SC's ability to reinforce it.

7. The SC expressed the view that the Commission's legislative proposal to create a *Controller of procedural guarantees* for OLAF contains provisions which would compromise the independence of the OLAF DG and the inter-institutional balance. The SC therefore called on the legislator to amend the legislative proposal, so that (i) the control of the respect of procedural guarantees in on-going, closed or dismissed cases is exercised within the SC and/or under its supervision and (ii) the legality check in OLAF, in particular concerning invasive investigative measures, is reinforced and formalized.

8. In addition, the SC expressed its concerns with regard to the lack of transparency of OLAF's participation in the Commission "Clearing House" meetings and its inherent risks with regard to OLAF's investigative independence. The SC also called for clarification of OLAF's role in the implementation of the Commission's antifraud policy in the cigarettes sector.

9. The SC expressed a number of concerns regarding its ability to reinforce OLAF's independence. The lack of clarity concerning the SC's role and mandate, in particular with regard to the monitoring of individual cases, and the SC's difficulties in obtaining access to case files effectively put in question the supervision of OLAF. **Lack of effective supervision combined with investigative independence may therefore lead to lack of accountability of OLAF.** Therefore, the SC called on the EU Institutions either to reinforce its competences, in particular through full access to OLAF case files, or to take other measures ensuring OLAF's accountability.

10. Moreover, the SC drew the Institutions' attention to the need to implement the requirements of Regulation No 883/2013 concerning the independent functioning of the SC Secretariat, which still remains under the exclusive administrative control of the OLAF DG.

Requests to the Supervisory Committee to defend OLAF's independence

11. Following the presentation of SC's **Report No 1/2014** in the European Parliament and the disclosure of the SC's **Opinion No 2/2012**, the OLAF DG took note of the disclosure and expressed hope that it will end all the speculation concerning the contents of this Opinion. Together with his two staff members, he then requested the SC to protect their independence and the independence of OLAF as a whole against what they considered to be "biased illegitimate attacks" and "undue political interference" by Members of the European Parliament and by the press.

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[5] In his note to the Chair of the Budgetary Control Committee of the European Parliament (Ref. Ares(2014)2878354 of 3 September 2014) the OLAF DG stated that "OLAF will carry out an assessment of the implementation of past IPPs, including 2012-2013, in view of the preparation of the 2015 IPPs. They will be sent to the SC beforehand, in time for them to react".

[6] http://ec.europa.eu/anti_fraud/documents/reports-sup_comm/2014/special_report_2014_supcom_en.pdf

12. In response, the SC pointed out that: (a) no other factual findings apart from those contained in the disclosed Opinion are endorsed by the SC; (b) OLAF, although independent in its investigative function, shall be accountable for its actions by law and the Director General of OLAF remains accountable for the management and performance of the duties of OLAF in accordance with Union law and the principles of good governance; (c) impartial and independent monitoring by the SC of the investigative function of OLAF and eventual criticisms by the SC as the guardian of OLAF's independence seek to improve the functioning of OLAF.

Application by OLAF of procedural guarantees

The second paragraph of Article 15(1) of Regulation No 883/2013:

The Supervisory Committee shall in particular monitor developments concerning the application of procedural guarantees (...).

Article 17(7) of Regulation No 883/2013:

The Director-General shall put in place an internal advisory and control procedure, including a legality check, relating, inter alia, to the respect of procedural guarantees and fundamental rights of the persons concerned (...).

13. Regulation No 883/2013 does not explicitly include a specific tool allowing the SC to monitor the application of procedural guarantees by OLAF. The SC's assessment in this area therefore remains based only on information obtained upon request and only in "duly justified situations", as foreseen by the Regulation. Complaints received from individuals may also be an indicator of systemic problems and therefore the SC may take them into account for information purposes in the framework of its monitoring activities. The SC competences in this area would require further clarification, providing necessary monitoring tools and active cooperation from OLAF.

Legality check and review in OLAF

14. OLAF's Investigation Selection and Review Unit (ISRU) plays a central role in the OLAF investigative activity: it deals with both the selection of information and with the review of cases. It is thus involved in the whole lifecycle of an investigation or coordination case, most of the decisions taken by the OLAF DG in the investigative area being based on its opinions. The activities of the ISRU have therefore a major and direct influence on the performance of the whole OLAF investigative function.

15. This unit also plays an essential role in ensuring the legality of OLAF's investigative activities and in verifying compliance with fundamental rights and procedural guarantees. Consequently the SC decided to continue the examination of the activities of the ISRU with a thorough assessment of the ISRU's review function[7]. To that end, the SC has requested and received access to a sample of 32 OLAF cases. In addition, the SC received copies of 244 case-related documents from a sampling of another 60 closed cases (i.e. requests from investigative units for authorizations to conduct specific investigative activities, opinions of the ISRU on the proposed investigative activity, decisions of the OLAF DG taken on the basis of the ISRU's opinions).

16. The SC's examination of the case files and case-related documents is currently on-going; the results will be published in a forthcoming opinion to be adopted later this year.

Complaints and requests addressed to the Supervisory Committee

17. During the reporting period, the SC received two complaints regarding the duration of on-going OLAF investigations, respect of procedural guarantees and/or allegations of conflict of interest of

[7] The results of the SC's assessment of the selection function of the ISRU were outlined in the SC's Opinion No 2/2014 on Case Selection in OLAF, presented in the previous Activity Report.

the investigator(s) in charge. In reply, the complainants were informed that, as long as OLAF investigations were in progress, the SC was not competent to interfere in any way with their conduct. They were also informed that, while the SC is competent to monitor them, a conclusive reply to a request for examination of the duration of investigations and/or of compliance with procedural guarantees, if any, could be delivered by the SC only after the investigations are closed. The SC informed the complainants with regard to the complaints procedure put in place within OLAF and asked to be informed of the outcome of the potential complaints addressed to OLAF. The SC has not yet received any information in this respect.

18. Two other complaints received from a whistle-blower and an informant concerned OLAF's decisions to dismiss cases following information received from those persons. In response, they were informed that the SC had no instruments to deal with complaints of this nature on an individual basis. They were also informed of the possibility of using the complaints procedure established by OLAF.

19. Moreover, the SC received copies of 32 complaints[8] or requests from individuals and from an EU institution, addressed to OLAF and/or other EU Institutions, which did not require any direct action from the SC. Three other letters sent to the SC by an NGO and by individual persons contained allegations of corruption/irregularities concerning EU funds or requested access to documents relating to an OLAF investigation and were therefore forwarded to OLAF for appropriate action.

20. During the SC's plenary meeting of 11-12 March 2014, the OLAF DG committed to report to the SC once a year on the number of complaints received, the timeliness of their processing and their classification as either justified or not. To date, the SC has not received any such information.

OLAF's competence to gather evidence by way of recording private telephone conversations

21. In its **Opinion No 2/2012** of December 2012, the SC questioned OLAF's competence to gather evidence by way of recording private telephone conversations which, having regard to the lack of legal basis, constituted an unjustified interference with the right to the respect for private life. The SC therefore recommended that OLAF, *inter alia*, carry out the relevant legal analysis.

22. OLAF transmitted its analysis (seemingly still incomplete) to the SC on 12 June 2014. The analysis is mainly based on a review of Member States' national laws and of the European Court of Human Rights' case law. In the SC's opinion, the analysis would appear to confirm OLAF's lack of competence to record private telephone conversations with the assistance of a public official without the consent of all participating parties and without any judicial authorisation. The SC has not as yet received any information on procedures initiated as a follow-up to these conclusions.

[8] 28 of these complaints were sent by the same person. The complainant was informed of the possibility of using OLAF's complaints procedure or lodging a complaint with the European Ombudsman, after which the correspondence with him was discontinued on the basis of Article 14(3) of the European Code of Good Administrative Behaviour.

Decisions to defer the information to institution, body, office or agency

Article 4(6) of Regulation No 883/2013:

Where internal investigations reveal that an official, other servant, member of an institution or body, head of office or agency, or staff member may be a person concerned, the institution, body, office or agency to which that person belongs shall be informed. (...)
In exceptional cases, the provision of such information may be deferred on the basis of a reasoned decision by the Director-General, which shall be transmitted to the Supervisory Committee after the closure of the investigation.

23. The OLAF DG is obliged to transmit to the SC, following the closure of an investigation, his reasoned decision to defer the information to an EU institution, body, office or agency to which the person concerned by an internal investigation belongs. The SC was informed by OLAF that, during the reporting period, there had been no such deferrals.

Duration of OLAF's investigations

Article 7(8) of Regulation No 883/2013:

If an investigation cannot be closed within 12 months after it has been opened, the Director-General shall, at the expiry of that 12-month period and every six months thereafter, report to the Supervisory Committee, indicating the reasons and the remedial measures envisaged with a view to speeding up the investigation.

24. The duration of investigations is at the core of the SC's mandate. On one hand, it is directly connected to the fundamental right of persons affected by the investigation to have their affairs handled in reasonable time, without unnecessary delays or unjustified periods of inactivity (the principle of proportionality). On the other hand, it is an important performance indicator of OLAF's efficiency. Therefore, in the years 2014-2016, the SC is focusing on different aspects of the duration of OLAF's investigations.
25. OLAF investigations are only the preparatory part of judicial, administrative or disciplinary procedures leading to a final decision or ruling. Therefore, the duration of OLAF investigations must be seen in the wider perspective of the whole procedure and, consequently, investigations should be conducted expeditiously and without any undue delay. The benchmark provided by the EU legislator is 12 months.
26. In 2014, OLAF transmitted to the SC 658 reports explaining the reasons why investigations lasted more than 12 months ("12-month reports") and the remedial measures envisaged to speed them up. Due to the lack of substantial content in many of the reports, the SC was unable to draw any substantial conclusions, i.e. whether the investigations were conducted continuously and without undue delays and whether their duration was proportionate to the circumstances and to the complexity of the cases.
27. While Regulation No 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 a significantly reduced amount of information in comparison with that provided to it over previous periods. Notwithstanding OLAF's formal compliance with its obligation to regularly report to the SC on investigations lasting more than 12 months, the SC has concluded, in its **Opinion No 4/2014** on **Control of the Duration of Investigations conducted by OLAF**, that the information provided to it has been insufficient to enable it to properly and effectively monitor the duration of OLAF's investigations.
28. As a result, the SC recommended that OLAF appreciably 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 SC and OLAF have already begun to work together on this issue. In as much as the SC has been informed, it has also noted

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.

Recommendations made by the OLAF Director-General

The third paragraph of Article 17(5) of Regulation No 883/2013:

The Director-General shall inform the Supervisory Committee periodically:
(a) of cases in which the recommendations made by the Director-General have not been followed (...).

29. As in the previous years, in spite of a clear obligation cited in Article 17(5) of Regulation No 883/2013, the OLAF DG did not report to the SC in 2014 on those OLAF recommendations which were not implemented. In 2012 and 2013 OLAF promised the SC an imminent introduction of appropriate monitoring tools in this respect. On 23 May 2014 OLAF transmitted to the SC the Guidelines on judicial, financial and financial monitoring, adopted with a view to ensuring consistent and timely follow-up of OLAF's recommendations. The SC took note of the adoption of these guidelines and intends to analyse this issue more thoroughly and at the source.

1.2 MANAGEMENT OF THE OLAF INVESTIGATIVE FUNCTION

Preliminary draft budget for 2015

30. In its **Opinion No 3/2014** on **OLAF's Preliminary Draft Budget for 2015,** the SC welcomed the priority given by OLAF to the fight against fraud and recommended to OLAF (i) to present more detailed information on the allocation of resources to priority areas, (ii) to develop a human resources strategy and to inform the SC regularly on the progress achieved in this area and (iii) to adopt internal rules ensuring the independent functioning of the SC Secretariat in accordance with the requirements of Regulation No 883/2013. The OLAF DG expressed his willingness to implement the SC's recommendations in the future.

OLAF Annual Reports - statistics and reporting tools

31. In relation to the monitoring of the duration of OLAF's investigations, the SC noticed certain discrepancies in OLAF's reporting and therefore decided to analyse the issue thoroughly. In its **Opinion No 5/2014** on **OLAF External Reporting on the Duration of Investigations**, the SC concluded that the reporting on the duration of investigations by OLAF has not provided a comprehensive view of its investigative performance. While OLAF reported in its annual report that "investigations are being completed in less time", the SC concluded that the improvement in the results of OLAF investigations is due to the introduction of new calculation methods. Therefore, the SC recommended that OLAF should calculate the duration of investigations on the basis of cases closed during the reporting period. The SC furthermore underlined that OLAF should also report transparently on the duration of the longest lasting investigations.

2 COOPERATION

2.1 COOPERATION WITH OLAF

32. There were regular contacts between the SC and the OLAF DG: during the plenary meetings of the SC and in bilateral meetings between the SC Chairman and the OLAF DG. In addition, the *rapporteurs* appointed by the SC to deal with specific monitoring tasks had several working meetings with OLAF staff.

Implementation by OLAF of the Supervisory Committee's recommendations

33. Having reached the first half of its five-year mandate, the SC presented to the European Parliament, the Council, the European Commission and the European Court of Auditors a midterm **Report No 2/2014** on the **Implementation by OLAF of the Supervisory Committee's Recommendations**, prepared on the basis of OLAF's self-assessment and the SC's own monitoring activities. For the first time, the SC evaluated the extent to which OLAF has implemented the SC's recommendations.

34. The SC noted with concern that 72% of its recommendations had not been implemented: with regard to 20 out of 50 recommendations, no satisfactory actions had been taken and implementation of 15 other recommendations could not be verified, since OLAF did not provide sufficiently substantial information. The OLAF DG expressed his disagreement with the SC's findings.

35. The SC decided to continue the exercise and to report regularly to the EU Institutions on the implementation of its recommendations by OLAF. The SC intends to provide OLAF with implementation guidelines, including prioritisation of recommendations and advice on possible methods of their implementation. The SC regrets that OLAF, in its 2015 Annual Management Plan, did not include any action plan for implementation of the SC's recommendations. It therefore remains unclear as to whether OLAF has any intention to implement the SC's recommendations.

Implementation of the Working Arrangements with OLAF

36. During the reporting period, the SC continued to have extensive and lengthy discussions with the OLAF DG on the subjects of SC access to case-related information and the implementation of the Working Arrangements signed on 14 January 2014.

37. OLAF has provided insufficient information to enable the SC to properly and effectively monitor the investigative function, notwithstanding its formal compliance with its obligation to regularly report to the SC on investigations lasting more than 12 months. The last years' experience showed that the Working Arrangements have been implemented in such a manner as to result in a reduction of the scope of information provided to the SC, since the information provided by OLAF is limited to lists, statistics and summary reports, which contain very little or no substantial information on OLAF's cases. In addition, access to OLAF's case files was obtained only after several requests, since OLAF, on several occasions, questioned the justification provided by the SC and requested supplementary justification and/or explanations.

38. The SC would emphasise that the guarantee of OLAF's independence requires the detection of instances of potential undue influence on its investigations. This cannot be ascertained conclusively in the absence of proper access to investigative case files and comprehensive information on OLAF's cases.

39. As the SC pointed out in its **Report No 1/2014** on **Safeguarding OLAF's independence**[9], the difficulties in obtaining case-related information and access to case files have compromised the effectiveness of its supervisory role. **The core of the problem is not poor implementation of the Working Arrangements, but a fundamental difference of views between the SC and the**

[9] http://ec.europa.eu/anti_fraud/documents/reports-sup_comm/2014/special_report_2014_supcom_en.pdf. See points 25 to 30.

OLAF DG in the perception of the role of the SC. The OLAF DG advocated for the SC's main role to be to support his independence and to monitor statistical data on a very general level. The SC underlines its supervisory role as the only body which can ensure accountability of OLAF's investigative function. The OLAF DG's perspective means the SC acting on the basis of information that the OLAF DG decides to provide. The SC's perspective requires its independent access to information to ensure objective monitoring.

40. This basic disagreement has very negatively affected the last three years of the SC's activities. In view of a divergent interpretation of the law and of the intentions of the legislator, a common understanding between the SC and the current OLAF DG on those matters is far from being reached. **Therefore the SC considers the intervention of the Appointing Authorities has now become necessary in order to confirm the precise role of the SC.**

2.2 COOPERATION WITH STAKEHOLDERS

Meetings with EU Institutions

41. In April 2014, the SC representatives participated in the first exchange of views with EU Institutions related to OLAF's activities, as foreseen by Article 16 of Regulation No 883/2013. The meeting was focused on (i) OLAF's new investigative procedures, including procedural guarantees, (ii) OLAF's Investigation Policy Priorities, (iii) Working Arrangements between OLAF and the SC and (iv) the establishment of antifraud cooperation services (AFCOS) in the Member States.

42. Between April and July 2014, the SC presented its 2013 Activity Report to the EU Institutions and bodies.

43. In June 2014, the SC met Commissioner Šemeta, for discussions concerning the Commission's legislative proposal on the *Controller of procedural guarantees*, OLAF's participation in Clearing House meetings, the SC's access to OLAF case files and the implementation of the Working Arrangements with OLAF.

44. In July, September and November 2014, the European Parliament Committee on Budgetary Control (CONT Committee) invited the SC to exchange views on the SC's **Report No 1/2014** on **Safeguarding OLAF's Independence** and on the Commission's legislative proposal on the *Controller of Procedural Guarantees*. In addition, the SC Chairman met the Chair and Members of the CONT Committee, the President of the European Court of Auditors, the Commission Vice-President and the European Ombudsman, for introductory discussions concerning the SC's role, status and responsibilities under EU law.

Meetings with other stakeholders

45. In a plenary meeting, the SC met the Parliamentary Ombudsman of Finland and the Chairman of the Governing Board of the European Union Fundamental Rights Agency (FRA) to discuss the respect of procedural guarantees in investigations conducted at the EU level. An SC member visited the FRA to identify possible fields of cooperation between, on the one hand, OLAF and the FRA and, on the other, the SC and the FRA. As a result, the SC formally invited the OLAF DG to establish cooperation with the FRA, to submit OLAF procedures to a fundamental rights check by the Agency and to include the expertise of the FRA in the legislative processes under the responsibility of OLAF. The SC has requested an action plan from OLAF detailing where cooperation will be established and implemented.

46. In two of its plenary meetings the SC met, firstly, 30 magistrates from 15 EU Member States, to present its mandate and, at a subsequent meeting, high representatives from the French judiciary, in order to discuss their cooperation with EU bodies. Individual SC Members took part in four conferences and workshops on fighting fraud and corruption. The SC was represented by its Secretary at one further event.

3 GOVERNANCE

3.1 SUPERVISORY COMMITTEE

Working methods

47. In 2014, the SC held 10 plenary meetings in Brussels, Helsinki and Paris. The Chairman, the *rapporteurs* and members of the Secretariat also met regularly to work on particular issues as well as on the preparation of and follow-up to the plenary meetings.

48. For every major topic examined, the SC appointed a *rapporteur*. Such was the case notably for the SC reports addressed to the EU Institutions and the opinions addressed to the OLAF DG. The *rapporteurs* worked with the SC Secretariat to prepare draft reports, opinions, or papers to be discussed in the plenary meetings. Working meetings were also arranged between SC *rapporteurs* and OLAF senior and middle management and staff, in the framework of the preparation of the SC's opinions and reports.

49. The SC has applied the principle of consultation with OLAF, opinions and reports being sent to the OLAF DG for his comments prior to publication.

Budgetary independence

50. There is a separate budget line for the expenses of the SC Members in the OLAF budget. However, the expenditure related to the SC Secretariat is incorporated within different OLAF budget items. Regulation No 883/2013, which entered into force on 1 October 2013, introduced, for the first time, a separate reference to the SC and its Secretariat in Article 18 on the financing of OLAF. During the discussions on the 2014 budget, the European Parliament interpreted this provision as requiring the combined budget of the SC and its Secretariat to be specified in a separate line of the OLAF budget. This proposal concerning the 2014 budget was not opposed by the Council; however, in the last stage of the negotiations, it was dropped from the agenda by the Commission which chaired the discussions.

51. Under the circumstances described above, and considering that extracting the expenditure relating to the SC Secretariat from different items of the general OLAF budget and presenting it separately in the chapter on the SC expenses would show a clear picture of the total cost of the supervision of OLAF and in order to avoid the danger of a potential conflict of interest (in the current situation, the OLAF DG may freely increase or decrease expenditure related to the supervision of his own activities), on 25 February 2014, the SC addressed a letter to the Council in which it requested its support for the proposal to extract the expenditure related to the SC Secretariat from the general OLAF budget and to include it in the chapter on the SC expenses as a separate item.

52. The SC welcomes the fact that the OLAF DG made the commitment to include a justification for a separate budget line for the SC Secretariat in the Draft Budget 2015. In the interim, as a temporary solution, on 28 May 2014, the OLAF DG sent the SC a proposal for the implementation of the budget allocated to the SC and its Secretariat which clarifies the responsibilities of the Head of the SC Secretariat and his discretion in the implementation of the budget. At the same time, he underlined the fact that, as the responsible Appointing Authority and Authorising Officer by delegation, he would continue to consult the SC on the staff and budget decisions affecting the Secretariat. Unfortunately, the elements concerning the SC Secretariat are missing in the Preliminary Draft Budget 2016.

Communication policy and transparency

53. The SC is an independent inter-institutional body appointed directly by the European Parliament, the Council and the European Commission, which reports to the appointing Institutions as well as informs the public, the civil society and the relevant national authorities of its role and activities. For the purposes of transparency and of communication with the public and the stakeholders, and to reflect its independence, by its **Decision on Transparency of its Independent Activities** of 5 November 2014, the SC decided to establish its own dedicated website, located within the *europa.eu* website system, independent from and in parallel with the OLAF website.

3.2 SUPERVISORY COMMITTEE'S SECRETARIAT

54. The Secretariat of the SC consists of lawyers, former investigators and assistants who ensure the daily monitoring of OLAF investigative activities and assist the SC Members in the execution of their tasks. The Secretariat receives information provided to the SC and carries out its initial examination. The Secretariat is also responsible for preparing legal advice for the SC Members. In 2014, the Secretariat had eight posts, allocated to five administrators (four lawyers, including a member of management), two assistants and one contractual agent.

55. According to Regulation No 883/2013[10], the independent functioning of the SC Secretariat should be guaranteed by OLAF. The Secretariat must be able to assist the SC in implementing its monitoring functions in a loyal and efficient manner without being exposed to the risk of potential conflicts of interest as OLAF staff subordinate to the OLAF DG. The SC has consistently underlined, during the past few years, the importance of its independent and effective functioning which requires an independent and adequately staffed Secretariat.

56. However, it has to be noted that, while the SC Secretariat is functionally attached to the SC, it is administratively fully subordinated to the OLAF DG. As a result, the Secretariat of the supervisory body is under the (administrative) control of the supervised body[11]. The OLAF DG executes the Appointing Authority powers, including discretionary decisions on promotions and transfers. This situation leads to conflicts of interest and exposes the Secretariat staff to conflicting instructions, as it was the case e.g. with the disclosure of the SC's Opinion 2/2012.

57. The SC has identified four basic conditions ensuring the independent functioning of the Secretariat: (i) recruitment, appraisal and promotion of the Head of the Secretariat on the basis of the SC's decisions; (ii) reclassification of the Head of the Secretariat as a senior manager; (iii) recruitment, appraisal and promotion of the staff of the Secretariat by its Head; (iv) sub-delegation of the Secretariat's budget implementation to its Head. The relevant arrangements should be implemented as soon as possible, as required by Regulation No 883/2013.

[10] Recital 40.
[11] This issue was also raised by Transparency International (see http://www.transparencyinternational.eu/european-union-integrity-system-study/).

The Supervisory Committee of OLAF and its Secretariat

How to contact the Supervisory Committee

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ANNEXES

Opinion No 3/2014: OLAF's Preliminary Draft Budget for 2015

Opinion No 4/2014: Control of the Duration of Investigations conducted by the European Anti-fraud Office

Opinion No 5/2014: OLAF External Reporting on the Duration of Investigations

Report 1/2014: Safeguarding OLAF's Investigative Independence

Report 2/2014: Implementation by OLAF of the Supervisory Committee's Recommendations

Report 3/2014: Opening of Cases in OLAF in 2012

Note on the Supervisory Committee's Analysis of the OLAF Draft IPPs for 2015

Decision on Transparency of the Supervisory Committee's Activities

(OLAF's comments and replies to the SC's Opinions and Reports can be found on OLAF's website: http://ec.europa.eu/anti_fraud/about-us/reports/index_en.htm).

ANNEX 1

Opinion No 3/2014

OLAF's Preliminary Draft Budget for 2015

SUPERVISORY COMMITTEE

OLAF

Opinion No 3/2014

OLAF's Preliminary Draft Budget for 2015

SUPERVISORY COMMITTEE

OLAF

Conclusions

(A) **The Supervisory Committee supports the preliminary draft budget for 2015 with the provision that its recommendations be taken into consideration**

(B) **The efficient investigation of suspected fraud and illegal activities is vital to the public trust towards the European Union and Institutions of the Union. The OLAF budget should not be subject to stricter savings measures than other services of the Commission. Considerable synergy gains are attained by concentrating in OLAF the administrative anti-fraud investigations and investigation of illegal activities in the European Union Institutions, agencies and bodies.**

(C) **In the future, attention should also be paid to the indexation of the financial resources to inflation to ensure that OLAF has adequate ICT infrastructure and ICT capabilities which are vital for the cost-effective performance of the investigative function.**

(D) **A sufficient number of seconded national experts strengthen OLAF's capacity for application of Member States' law and development and sharing of Union-wide capacities in the fight against fraud. This should be taken into account in the establishment plan of OLAF.**

(E) **In order to enable OLAF to be a model organisation thriving for excellence and good governance, the transparency of the budget documentation and management plan can be improved by increasing the coherence and linkage between targets and indicators in the annual management plans and the budget documentation in order to highlight consequences of the budgeting to priorities and performance of the Office.**

(F) **Consultation of the Supervisory Committee on the preliminary draft budget before it is sent to the Directorate-General for budgets is a legal requirement for the Director-General of OLAF. The Supervisory Committee welcomes the consultation with it before bilateral negotiations with the DG Budget and recommends the Director-General to ensure in the future such effective consultation prior to presentation of the preliminary draft budget.**

(G) **A separate budget item under the OLAF Budget for both the Supervisory Committee and its Secretariat should be considered to fully inform about the costs of the SC function and to highlight in a transparent manner the inter-institutional character of the SC and its Secretariat. This should be considered while preparing the future changes in the EU legislation concerning the governance of OLAF.**

(H) **The structure of the SC Members' remuneration should be reformed to reflect the modern and efficient working practises of the Supervisory Committee.**

Introduction

(1) In accordance with Regulation (EU) No 883/2013[1] and Article 3 of Commission Decision 1999/352/EC, ECSC, Euratom[2], the European Anti-Fraud Office (hereinafter OLAF) shall have full independence to exercise its investigative function in all institutions, bodies, offices and agencies established by or on the basis of the Treaty on the European Union, Treaty on the Functioning of the European Union and the Euratom Treaty. To do this and to ensure that OLAF is able to function in an efficient and effective manner and contribute in a best possible way to the Union's objectives of the fight against fraud defined in Article 325 of the Treaty on the Functioning of the European Union, the total appropriations for the Office, including for the Supervisory Committee and its secretariat, shall be entered under a specific budget line within the section of the general budget of the European Union relating to the Commission and shall be set out in detail in an Annex to that section.[3]

(2) In accordance with Article 15(1) and recital (37) of Regulation (EU) No 883/2013, the mission of the OLAF Supervisory Committee (SC) is to reinforce the independence of OLAF in the exercise of its investigative function by regular monitoring. With the adoption of Regulation (EU) No 883/2013 the role of the SC has been strengthened as the guardian of the independence of OLAF. Pursuant to the third subparagraph of Article 15(1) of Regulation (EU) No 883/2013 the SC shall send opinions to the Director-General of OLAF including, where appropriate, recommendations on, inter alia, the resources needed to carry out the investigative function of OLAF.

(3) For the purpose of reinforcing and strengthening the independence of OLAF and considering the powers conferred by the Commission on the SC and the legal requirement for the Director-General of OLAF to consult the SC before he sends to the Director-General for budgets a preliminary draft budget to be entered in the annex concerning OLAF to the Commission section of the general budget of the European Union[4], the SC has considered OLAF's Preliminary Draft Budget (PDB) for 2015 and delivers the following Opinion.

(4) The objective of the procedure in which the SC is consulted and in which the SC adopts an Opinion on OLAF's Preliminary Draft Budget is to give assurance that the Draft Budget duly takes into account the independence of the investigative function of OLAF and that OLAF is resourced to function effectively and efficiently as an inter-institutional service in stepping up the fight against fraud as foreseen by Article 325 of the Treaty on the Functioning of the European Union and in Regulation (EU) No 883/2013. The SC would point out that in

[1] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, *OJ L 248, 18.9.2013, p. 1–22.*

[2] 1999/352/EC, ECSC, Euratom: Commission Decision of 28 April 1999 establishing the European Anti-Fraud Office (OLAF), *OJ L 136, 31.5.1999, p. 20–22, amended by Commission Decision of 27 September 2013 amending Decision 1999/352/EC, ECSC, Euratom establishing the European Anti-fraud Office, OJ L 257, 28.9.2013, p. 19–20.*

[3] See Art. 18 of Regulation (EU) No 883/2013.

[4] Article 6 (2) of Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-fraud Office, as amended by Commission Decision of 27 September 2013 2013/478/EU: "2. After consulting the Supervisory Committee, the Director-General shall send the Director-General for budgets a preliminary draft budget to be entered in the annex concerning the Office to the Commission section of the general budget of the European Union.''

accordance with generally accepted international principles and standards on the independence of investigations and investigative bodies a sufficient decree of financial autonomy and sufficient financial resources must be ensured.

(5) The SC Opinion on the OLAF Preliminary Draft Budget creates a documented forum of advice from the SC to the Director-General of OLAF and to the Budgetary Authority of the Union and other Institutions of the Union on the prerequisites for efficient allocation and use of resources to and within OLAF. The SC Opinion thereby contributes to the attainment of value for money, legal certainty in the European Union and to the efficient implementation of the Union's anti-fraud policy and strategy.

(6) The SC welcomes the fact that it was consulted prior to the bilateral consultations between OLAF and the European Commission Directorate General on Budgets (DG Budget). In accordance with the Regulation (EU) No 883/2013 and the Commission Decision, it is a legal requirement and also the purpose of the Union legislator that the SC can provide its assessment and advice before negotiations on the preliminary draft budget take place and also prior to the presentation of the preliminary figures albeit they may be and usually are subject to changes. Furthermore, the SC would like to remind the Director-General of OLAF to ensure that this sufficiently early consultation of the SC becomes an established good practice.

Resources

(7) The SC notes that the general policy and guidelines established by the Commission concerning the preparation of the preliminary draft budgets for the Commission services leave a limited discretion to the Director-General for OLAF in the presentation of the preliminary draft budget taking into account the European Court decision on the salary adjustments, the objective for reduction of 5 % of the European Commission staff in 5 years starting from 2013 and the nominal freeze of non-salary related expenditure to the level of year 2014. While the SC generally recognises the value and need for productivity and improved efficiency in all Union institutions, the SC would point out the resource constraints facing OLAF with regard to the duration of investigations frequently exceeding the time limits targeted at the EU legislation and the OLAF caseload.

(8) According to the figures of the preliminary draft budget presented by the Director-General of OLAF concerning the outcome of the budget hearings with DG Budget, the overall budget of OLAF would be 57 778 000 euro while the budget in 2014 is 57 207 000 euro and the outturn for 2013 is 57 633 043,41. The most important expenditure in OLAF is that related to staff. OLAF's preliminary budget figures include 39 041 000 euro for permanent and temporary staff with a small increase compared to the budget for 2014. The preliminary amount for expenditure related to external staff, i.e. contract agents, interim staff and Seconded National Experts (SNE) is 2 652 000 euro compared to 2 612 000 in the budget for 2014. In the establishment plan it is foreseen that the total number of permanent and temporary staff would diminish from 381 in 2014 to 375 in 2015 (following a general reduction of 5 % of Commission staff over the period of 5 years from 2013). The draft establishment plan foresees a small reduction of temporary staff and an increase of permanent posts following the OLAF request for the conversion of temporary posts to permanent posts.

In the draft establishment plan, 30 contract agents, 10 interim staff and 20 SNEs are foreseen. There is no major substantial change in this. The main reduction in the preliminary draft budget figures is the reduction of 400 000 euro from other management expenditure following 2013 outturn figures. The amount is transferred to the budget item reserved for investigations. These figures are subject to modification in the course the preparation of the Draft Budget to be presented by the European Commission.

(9) The SC would point out that national experts are important for the realisation of the objectives of OLAF. In the regular monitoring of OLAF investigations the SC has observed the need to strengthen the expertise of the law of the Member States in OLAF. Use of SNEs is one of the tools available for this purpose. In addition, SNEs provide a system for exchange and development of Union-wide human resources in the fight against fraud. The SC notes that the preliminary figures for external staff give decent possibilities to continue the use of national expertise albeit there is a general declining trend in the number of temporary staff members. The SC further recognises that the legal expertise on the Member States' law may not be dependent only on the seconded national experts. The SC also notes that the work shall mainly be conducted by permanent staff members who are subject to the rights, obligations and protection as defined in the Union staff regulations.

(10) The SC would emphasise that the public trust towards the European Union and Institutions of the Union depends heavily on the efficient investigation of suspected fraud and illegal activities. As a consequence, the OLAF budget should not be subject to stricter savings measures than other services of the Commission. The SC notes with satisfaction and considers that preliminary draft budget figures as presented by the Director-General of OLAF provide conditions to continue the fight against fraud as one of the main priorities of the European Union.

(11) The budget line concerning buildings and IT contains a small increase related to buildings and telecommunications. The SC reiterates its observation from its Opinion 1/2013 on the preliminary draft budget for 2014 that a well-organised and up-to-date ICT support and infrastructure are necessary conditions for a cost-effective fraud investigation function. OLAF's Case Management, ICT analytics and other information systems shall be kept up to date in order to enable OLAF to function efficiently. Therefore the SC insists that sufficient indexation of the financial resources be foreseen in the future to ensure adequate ICT infrastructure and ICT support and tools for investigations.

(12) The SC has regularly recommended to OLAF in its previous opinions on the budget to allocate more staff to OLAF's core business – investigations – by shifting them from the support units. The SC reiterates that OLAF should develop its reporting and present information on the allocation of resources to various activity and priority areas in its management plan and the documents underlying preliminary draft budget. The budget documentation could in the future be clearer on the impact of the preliminary draft budget on the core business of OLAF, investigations.

Human resources strategy

(13) The reorganisation of OLAF in 2012 resulted in significant shifts of staff and modifications in their job description or even a completely new allocation of tasks. In such circumstances the SC reiterates its earlier position that it is essential to have an appropriate human resources strategy built on the identified and real needs of the organisation and its priorities, with the aim of giving direction and maximising the use of existing resources and creating conditions for motivation of skilled experts. The SC draws particular attention to OLAF's ability to recruit and maintain high quality professionals for its investigative functions as a focal point of a cost-effective anti-fraud service at the Union level. Cost-effective investigative functions require also that there are adequate measures to maintain and develop the motivation of the staff in OLAF.

(14) The SC notes that measures have been initiated in OLAF to develop a human resources strategy and considers that OLAF should set an example in the development of such a strategy. A crucial element of the human resources strategy should be the continuous training, strengthening of the knowledge of the Member States' law and improvement of internal communication and sharing of knowledge. Another significant element in the human resources strategy is to address the issue of absenteeism among the personnel of OLAF and to mitigate its consequences for the investigative function.

The Supervisory Committee and its Secretariat

Expenditure concerning the mandate of the Supervisory Committee members

(15) The SC notes that the amount of the expenditure related to the mandate of the SC Members is not changed in the 2015 preliminary draft budget compared to the budget of 2014 and of previous years. The SC notes that by keeping the expenditure related to its mandate constant over the years its relative size compared to the original budget and original intention of the legislative and budgetary authority has diminished to an extent which cannot be considered reasonable.

(16) The SC draws attention to the fact that with the widened responsibilities given by the Union legislator to the SC by Regulation (EU) No 883/2013, the performance of the duties of the SC requires considerable time from its Members who, by definition, do that on part-time basis. The remuneration of the SC members has remained at exactly the same level for several years and does not reflect the original intention of the Union legislator to link the remuneration to the level of the salary of Directors-General of the Commission services. More importantly, the structure of the remuneration is linked to the number of physical meetings and to presence in the meetings and it does not take into account the more efficient and modern working practices of the SC. Within the limits of the budget item there is room to reform the structure of the system of remuneration to better reflect and allow for the development of working practices and effective and efficient performance of the mission of the SC.

Resources of the Secretariat of the Supervisory Committee

(17) In accordance with Regulation (EU) 883/2013 the SC has a crucial role in the oversight of OLAF's investigative function and as a guardian of the independence of OLAF. The SC has also a specific inter-institutional character.

(18) The SC is dependent in the discharge of its duties, assigned by the Union legislator, on its Secretariat. The SC underlines that the role of its Secretariat is primarily not to assist in the organisation and documentation of the SC meetings. The SC Secretariat performs in practice, to a large extent, the regular monitoring of the investigative function of OLAF. This results also from the fact that it is the SC Secretariat which has access to the OLAF Case Management System in accordance with the established Working Arrangements and the European Union data protection legislation de facto requires that the access to information by the SC is realised by the SC Secretariat. An adequately staffed Secretariat with high quality personnel is thus a vital condition for the SC in the discharge of its duties as stipulated by the Union legislator.

(19) The SC would point out that according to Article 15(8) of Regulation (EU) No 883/2013 the SC Secretariat shall be provided by OLAF, in close consultation with the SC.

(20) Pursuant to Article 18 of Regulation (EU) No 883/2013 the total appropriations for OLAF, including for the SC and its Secretariat, shall be entered under a specific budget line within the section of the general budget of the European Union relating to the Commission and shall be set out in detail in an Annex to that section. The expenditure related to the SC and its Secretariat shall thus be part of the OLAF budget. The implementation of this should take into account the requirements of transparency and independence of the SC with regard to OLAF, which requires also functional independence for the Secretariat in the performance of its duties related to the regular monitoring of OLAF's activities. According to the internationally accepted principles and standards on the independence of the supervisor against the supervisee, the resources of the supervisor shall not be dependent of the supervisee. More attention should be paid to this principle in the development of the governance of OLAF.

(21) This issue has been recently raised in the assessment of the European Union Integrity System performed by Transparency International (TI). The TI Report states that there exist justifiable concerns on the budgetary independence of the SC and that these concerns should be addressed. The TI Report recommends that the SC shall be provided by EU legislation with control over its own resources.[5]

(22) To be fully informative and representative of the total cost of oversight, the expenditure related to the SC Secretariat could be specified as a separate budget item under the OLAF budget. Expenses arising in the course of the execution of the Secretariat's functions – e.g. mission expenses – should be covered by this particular budget item in order to streamline

[5] Transparency International: The European Union Integrity System. Transparency International 2014, p.158 and 177.

administrative procedures and lessen the administrative burden on the competent OLAF staff, including the Director-General.

(23) The SC welcomes an agreement reached in the budgetary hearings according to which, for information purposes, a description of the establishment plan of the SC Secretariat as 7 posts and 1 contractual agent and an overall estimate of the expenses of the Secretariat (approximately 1.200 000 euro) would be included into the budget documentation of the Preliminary Draft Budget for 2015. The SC finds that this is a step in the right direction, increasing transparency, but this arrangement still falls short of providing the SC with effective control over its own resources. The delegation of the powers of the Appointing Authority and Authorisation Officer with respect to the SC Secretariat staff and budget to the Head of Secretariat would further strengthen the budgetary independence of the monitoring function exercised by the SC. A general agreement should be in place that no changes to the SC Secretariat staff and budget shall be made without consent of the SC.

(24) The SC maintains its position, as expressed in its previous opinions on the OLAF budget, on the minimum requirement of eight Secretariat staff, which is equivalent to the current needs of the SC. The SC has noted with satisfaction that the Director-General of OLAF allocated in 2013 the necessary additional posts to the SC Secretariat. The preliminary draft budget for 2015 creates conditions for ensuring a small but high quality SC Secretariat.

Recommendations to the Director-General of OLAF:

(I) OLAF should present more detailed information on the allocation of resources to priority areas

(II) OLAF should continue its work to develop an exemplary human resources strategy and inform the SC regularly on the progress

(III) The Director General of OLAF should delegate, as far as possible, the powers of the Appointing Office and Authorising Officer with respect to the staff and budget of the Supervisory Committee's Secretariat to the Head of the Secretariat

(IV) Changes to the staff and budget of the Supervisory Committee's Secretariat shall be subject to consent of the Supervisory Committee

(V) In accordance with Article 7(2) of the Commission Decision of 28 April 1999, this Opinion should be transmitted by OLAF to the Budgetary Authority.

Brussels, May 2014
For the Supervisory Committee
The Chairman

Johan DENOLF

ANNEX 2

Opinion No 4/2014

Control of the Duration of Investigations conducted by the European Anti-fraud Office

SUPERVISORY COMMITTEE

OLAF

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.

SUPERVISORY COMMITTEE

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INTRODUCTION

1. The duration of investigations conducted by the European Anti-fraud Office (OLAF) is a matter of common interest for both OLAF and its Supervisory Committee (SC). The SC, whose role is to reinforce OLAF's independence in the proper exercise of its competences by the regular monitoring of, *inter alia*, the duration of its investigations, welcomes the fact that OLAF has made of the reduction of the duration of investigations one of its priorities, as it appears from the OLAF Report 2013[1] and the 2014 OLAF Management Plan[2].

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[3].

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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[1] 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.

[2] 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).

[3] 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[4].

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[5], 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

[4] Articles 15(1) and 7(8).

[5] 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[6]. The comments he provided on 6 March 2015[7] 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,[8] 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[9]. 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[10].

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6 On 9 February 2015.

7 Ref. Ares (2015)1013923.

8 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.

9 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.

10 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[11]. 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***[12]), 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

[11] In the past, it was verified that the 9-month reports were not regularly sent or even not sent at all in some investigations.
[12] 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[13]. 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[14], 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).

[13] 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".

[14] 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[15]. 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[16].

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

[15] OLAF's reply of 6 March 2015, Ref. Ares (2015)1013923.

[16] 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[17], 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[18] - 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[19], 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

[17] 12 months, 12+6 months, 12+6+6 months etc.
[18] 658 reports received in 2014.
[19] 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[20]. 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[21] 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[22] 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[23]. In previous years it was calculated

[20] This would allow having a single document instead of new, different reports each time a 6-month period elapses.

[21] 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.

[22] Both in the 2013 OLAF Report and in the 2014 mid-term report.

[23] 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[24]. 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[25] and expects that the reports to be sent in 2015 will reflect a

[24] 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".

[25] 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.

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[26]. 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.

[26] 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).*

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[27].

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[28], 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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[27] 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.

[28] 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[29]. 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[30].

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:

(4) 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.

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

Brussels, 25 March 2015

For the Supervisory Committee

The Chairman

Tuomas PÖYSTI

[29] OLAF DG's Instructions concerning the continuous conduct of investigations, Ref. Ares(2014)23590, 17 July 2014.
[30] 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)
General data	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%**
Brief description of the investigation	Legal provisions allegedly breached	**87.95%**	**7.23%**
	Possible penalties / prescription issues	**85.54%**	**0.00%**
Investigative activities undertaken to date	Chronology of investigative activities undertaken	**71.08%**	**10.84%**
	Type of investigative activities undertaken	**100.00%**	**16.87%**
Investigative activities still to be carried out		**98.80%**	**95.18%**
		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[31]. 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).

[31] 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[32]. 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[33] of 12 months, while in many of them the reasons provided are factually unsubstantiated[34]. 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

[32] 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".

[33] 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.

[34] 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[35].

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[36].

[35] i.e. the complexity of the matter was mentioned in 226 out of 391 investigations, which represents a *ratio* of 57.80 %.

[36] 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%
	226		35		80		5		30		33		55		7		55	

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[37]. 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[38] 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

[37] 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.

[38] 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[39]. 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[40], 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[41] the reports mention to whom the lack of cooperation refers. These are mainly Member States' authorities[42] and third countries[43], while few instances of lack of co-operation concern EU institutions or Agencies[44], an individual/company[45], international entities[46] or several of those entities at the same time[47]. However, in a small number of investigations the reports do not mention exactly which was the EU institution, Member State or third country concerned[48].

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39 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.

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

41 78 out of 80 investigations.

42 37 out of 80 investigations.

43 18 out of 80 investigations.

44 10 out of 80 investigations.

45 8 out of 80 investigations.

46 1 out of 80 investigations.

47 4 out of 80 investigations.

48 13 out of 80 investigations.

86. In addition, the nature of the lack of co-operation claimed is in general clearly explained[49], 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[50] 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[51], to reallocation of staff within OLAF[52], to the departure from OLAF[53], the conflict of interest[54] or the death of the investigator in charge[55].

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49 72 out of 80 investigations.
50 i.e. complaints lodged against OLAF's investigations.
51 10 out of 30 investigations.
52 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[56]. In 11 of these investigations the explanations provided refer to the lack of investigators with required linguistic skills[57], 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[58], to older (backlog)[59], with higher financial impact[60] or more urgent/with a shorter deadline (without however explaining why)[61] 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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53 2 out of 30 investigations.
54 1 out of 30 investigations.
55 4 out of 30 investigations.
56 16 investigations.
57 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).
58 1 investigation.
59 11 investigations.
60 4 investigations.
61 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.

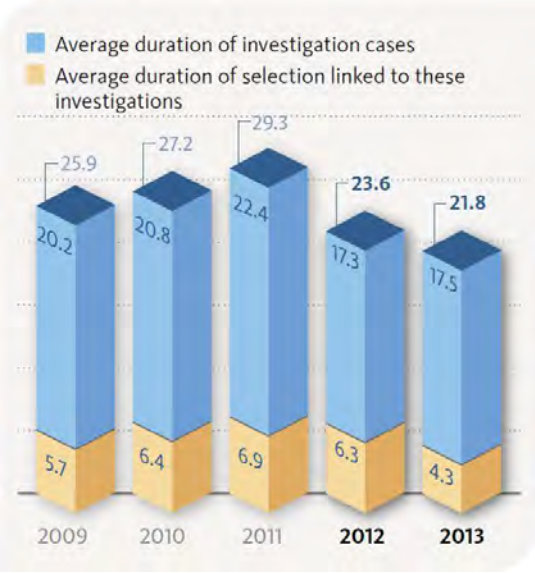
Statistical information available in the Case Management System

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"[62]. In

62 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[63] 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**[64].

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[65].

105. The estimated financial impact of the alleged fraud and/or irregularities was estimated by OLAF in **52,6 %**[66] 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 %**.

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63 Ref. Ares(2014)3426044 of 16 October 2014

64 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).

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

66 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.

Table: *Estimation of the financial interests at stake (287 investigations transmitted during the 1st 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[67] 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[68].

[67] 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.

[68] 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
A1 -EU Staff	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)
A2 - New Financial Instruments	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.
A3 - Centralised Expenditure	Investigative activities relating to centralized expenditure.
A4 - External Aid	Investigative activities relating to external aid.
B1 - Trade, Customs	Commercial customs fraud investigations
B2 - Tobacco & Counterfeit	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.
B3 - Agricultural and Structural Funds I	Investigative activities relating to the Cohesion Policy (Structural Funds), the Common Agricultural Policy (CAP), and pre-accession aid in relation to rural development. Geographical competence Member States: Bulgaria, Italy, Germany, Austria, Poland, France, the Netherlands, Belgium, Luxembourg, Estonia, Latvia, Lithuania, the United Kingdom and Ireland.
B4 - Agricultural and Structural Funds II	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). Geographical competence 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[69]	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 %
Total		134	391	100 %

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[70].

Tools for controlling the progress of investigations

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

[69] Source: Sysper 2 (end of December 2014).

[70] Note for the attention of Directors A and B, 11 July 2014.

[71] 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[72]. 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,[73] 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[74] 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[75], either as formal initial work-plans[76] or as regular (3-month) reports to the Head of

[72] OLAF's reply of 6 March 2015. However, such documents are not communicated to the SC.
[73] Sample of the 25 investigations to which access was granted in the CMS.
[74] 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.
[75] 8 investigations of Directorate A and 6 investigations of Directorate B.
[76] 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[77], while many other reports indicate, as remedial measures, the investigative steps still to be carried out, and often in general and vague terms[78]. Few of the reports provide expected timeframes for the foreseen activities or for the completion of investigations[79].

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[80] 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.

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

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

79 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

80 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[81] 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[82], or it decided to carry out its own administrative investigation without using the evidence unsuccessfully requested from a Member State[83].

Allocation (or reallocation) of resources

121. According to information provided by OLAF[84], 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[85] 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[86].

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81 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.

82 This situation was noted in 4 out of the 80 above mentioned investigations.

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

84 Letter of the OLAF DG of 17 July 2014.

85 Idem.

86 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[87]. 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[88], 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[89].

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[90] 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[91].

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[92] 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

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87 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.

88 Working meeting of 21 January 2015.

89 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.

90 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.

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

92 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[93]. 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[94] 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[95] 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[96]. In its reply[97], 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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93 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.

94 Sample of 25 investigations to which access was granted in the CMS.

95 Note for the attention of Directors A and B, 11 July 2014.

96 Ref. Ares(2014)3943817 – 26 November 2014.

97 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[98].

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[99] 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[100] while only a small number of opinions give more substantiated answers[101].

135. The SC noted periods of inactivity (going from 10 months up to 1 ½ year) in 10 out of the 25 investigations examined[102], 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.

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98 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.

99 OLAF's reply of 6 March 2015.

100 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".

101 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.

102 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.

SUPERVISORY COMMITTEE

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	[*Name, position*]
Legal Basis	[*Legal Base*]
Date of opening decision	[*Date of opening decision*]
Maximum amount involved	[*Maximum amount involved*]

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

	☐ significant resources were allocated the volume of the work means that more time is needed ☐ lack of resources ☐ lack of co-operation ☐by MS ☐by Commission Services ☐by other institution ☐by other individual/company ☐ other (please explain)

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.

SUPERVISORY COMMITTEE

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

OF No **[[szOFnumber]]**

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*]

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.

ANNEX 3

Opinion No 5/2014

OLAF External Reporting on the Duration of Investigations

SUPERVISORY COMMITTEE

OLAF

Opinion No 5/2014

STATISTICS ON INVESTIGATIVE PERFORMANCE OF OLAF (part I)

OLAF external reporting

on the duration of investigations

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

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

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

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

SUPERVISORY COMMITTEE

OLAF

Table of contents

Introduction

1. The duration of investigations conducted by the European Anti-Fraud Office (OLAF) is a matter of common interest for both OLAF and its Supervisory Committee (SC). The SC, whose role is to reinforce OLAF's independence in the proper exercise of its competences by the regular monitoring of, *inter alia*, the duration of its investigations, welcomes the fact that OLAF has made the reduction of the duration of investigations one of its priorities, as it appears in the 2014[1] and 2015[2] OLAF Management Plan. The SC considers it very important that investigations are conducted continuously and over a period proportionate to their circumstances and complexity, and that OLAF reports comprehensively and accurately to the Institutions, the SC, all stakeholders and the public on their duration.

2. Reasonable duration of investigations is of particular interest to the European Union legislator in Regulation No 883/2013. Duration of investigations is seen there as related to the efficient use of resources and to the principle of proportionality. Duration of investigations has an impact on the effectiveness of OLAF's work since investigations are followed by administrative and/or judicial procedures in the EU Institutions and bodies (internal investigations) or in the Member States (external investigations and internal investigations to be followed by judicial procedures).

3. In the assessment of the right to a fair trial in reasonable time, in accordance with Article 47 of the EU Charter of Fundamental Rights and in accordance with the European Convention of Human Rights, the duration of the trial is calculated from the commencement of the first procedures and, hence, includes OLAF investigations.

4. Duration of procedures and investigations will also have time-barring effects in the laws of the Member States.

5. In addition, OLAF is required by Article 41 of the EU Charter of Fundamental Rights to exercise good administration and ensure that every person has his affairs handled impartially, fairly and within a reasonable time. Hence, duration of investigations is a requirement of fundamental rights and external reporting on the duration of investigations has the function to provide information on the systemic capacity of OLAF to ensure good administration (Article 41 of the Charter) and the right to fair trial in reasonable time (Article 47 of the Charter).

6. Calculation of the duration of investigation does not include coordination cases in which OLAF's role is to assist national authorities and thus it has limited influence on the duration of such cases. In particular, OLAF is not in a position to check the continuity of such investigations since they are conducted by national authorities.

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

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

Purpose of the Opinion and methodology

7. In accordance with Article 15(1) of Regulation (EU) No 883/2013[3] the SC is responsible for monitoring the duration of OLAF investigations. The SC does so on the basis of reports and statistical data provided by the OLAF Director-General (DG) as well as general statistics published by OLAF.

8. Therefore, the SC decided in its work plan 2014-2015 to carry out thorough analyses of the duration of investigations and assess to what extent the information on the average duration gives sufficient view of effectiveness in the management of investigative function of OLAF and OLAF's capacity to deal with its caseload. This led to the production of SC's Report No 3/2014 and two Opinions: "Control of the duration of investigations conducted by OLAF" and the present one. The purpose of this Opinion being to focus on the external reporting on the duration of investigations, in particular on the reporting of average duration of OLAF investigations as presented to the EU Institutions and to the public in OLAF annual reports. This Opinion is thus a part of the wider monitoring theme on the duration of investigations as well as of the SC's commitment to improve management controls in OLAF in order to ensure reasonable duration of investigations.

9. To that end, the SC examined:

   a) OLAF Annual Reports 2009-2013;

   b) Detailed data provided by OLAF on the opening and closing of investigations in the period 2012-2014;

   c) Additional general and case-related information provided, upon the SC's request, by the DG.

10. The observations and conclusions drawn up by the SC, as well as the recommendations addressed to the DG, are based on a thorough analysis of the information provided by OLAF[4]. All the data used in this Opinion were provided by OLAF at the SC's request or are available in the public annual reports of OLAF.

11. The SC's analysis of the information provided by OLAF was sent to the DG, who provided comments on 18 March 2015. The SC took these comments into consideration which resulted in modifications and clarifications in the following parts: the summary on front-page, insertion of footnotes 13 and 16, insertion of OLAF chart on page 10, as well as modifications in paragraphs 25, 28, 30, 34, 41, 42 and in recommendation 1 on page 15.

[3] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OJ L 248, 18.9.2013, p. 1

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

OLAF METHOD FOR CALCULATION OF THE AVERAGE DURATION OF CASES

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

OLAF Annual Reports **2006 – 2010:**

- presented the average duration of investigations and/or operational cases;
- this average was calculated on the basis of cases closed by the end of the reporting period[5].

OLAF Annual Report **2011:**

- presented the average duration of investigations and coordination cases;
- this average was calculated on the basis of cases closed during 2011 and those still open at the end of 2011[6].

OLAF Annual Report **2012:**

- presented the average duration of investigations and/or coordination cases;
- this average was calculated on the basis of cases closed during 2012 and those still open at the end of 2012[7];
- this method was applied to re-calculate the average duration of investigations (without other types of cases) for the previous years (2008 to 2012).

OLAF Annual Report **2013:**

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

[5] See e.g. Chart 3, on p. 36 of the Annual Report 2010, which shows the average duration of investigative and operational cases completed in 2010, measured at the date of their closure.
[6] See footnote 8 of Annual Report 2011.
[7] See page 19 of Annual Report 2012.

OLAF REPORTING ON AVERAGE DURATION OF INVESTIGATIONS

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

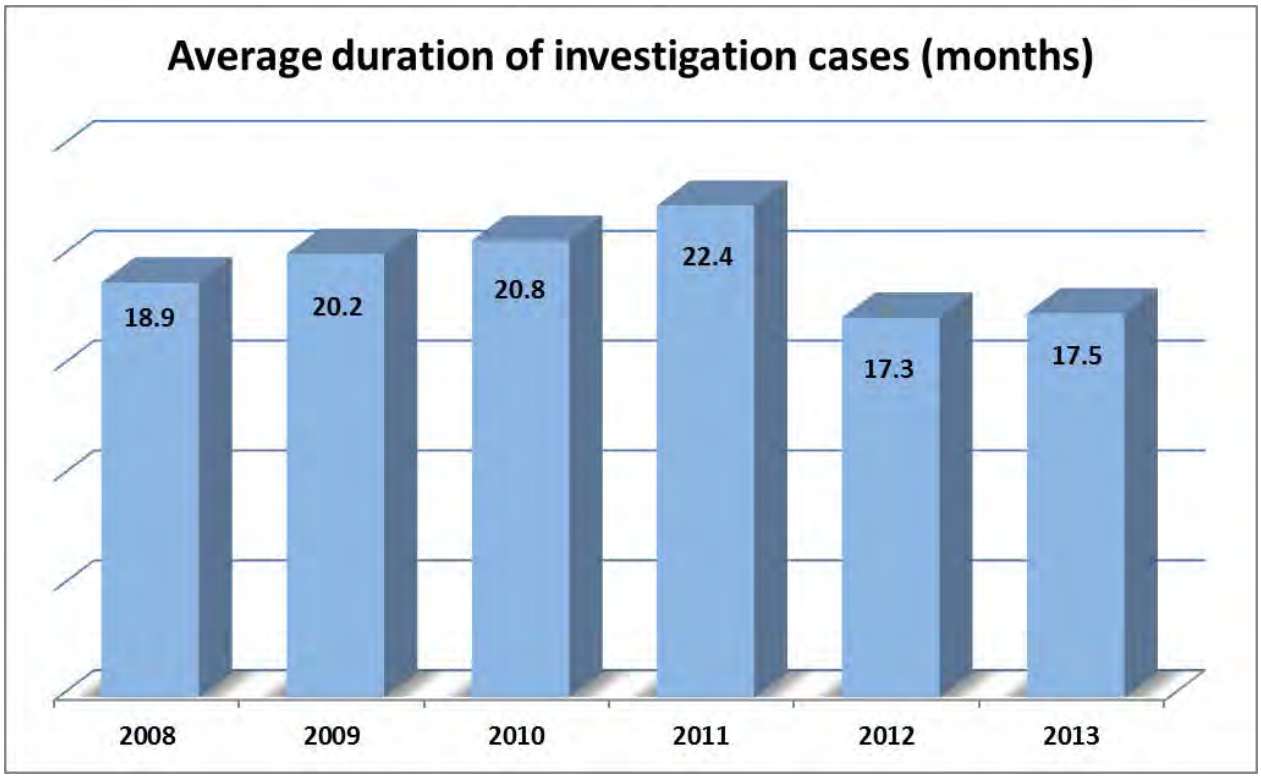

Chart 1 - Source: OLAF Reports 2012 and 2013

14. The Annual Report 2012 indicates that:

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

15. The Annual Report 2013 indicates that:

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

[8] OLAF Annual Report 2012, p. 19 and 20.
[9] OLAF Annual Report 2013, p. 17.

OLAF STATISTICAL METHODOLOGY AND ITS OBJECTIVES

16. In its 2011 Annual Report[10] OLAF provided specific reasons for the change in the method of calculation. OLAF further explained to the SC that the objective was to ensure that long-lasting ongoing investigations are targeted for finalisation - to which the earlier method of reporting on the duration of investigations had not provided any incentives.

17. Whereas OLAF has the right to change calculation methods and reporting, in order to have a fair and reliable overview it would be necessary to ensure full comparability of the information presented.

18. The SC took note of OLAF's statement in its Annual Reports 2012 and 2013, that the statistics for those years reflect an improvement in the average duration of investigations compared to previous years.

19. From the SC's perspective, the objective of calculating an average duration of investigations should be to provide an indication on how long it takes, on average, for OLAF to complete its investigations.

20. This is the relevant indicator for assessing OLAF's systemic capacity to ensure compliance with Articles 41 and 47 of the EU Charter of Fundamental Rights.

21. Such an approach would be confirmed by OLAF in its Annual Report 2013 which uses the results of the calculation to compare in what time "investigations are being completed". For that purpose, however, only the data concerning the "completed investigations" should be used. Including the data which concern ongoing investigations distorts the results and does not allow for the comparison of the average duration of completed investigations between the years.

22. Therefore, OLAF's claim in its Annual Report 2013 that "investigations are being completed in less time" does not seem to be justified by data presented there.

AVERAGE DURATION OF COMPLETED INVESTIGATIONS ACCORDING TO OLAF

23. To assess whether that claim can be justified by more precise statistical data, the SC requested that OLAF provide the dates of opening and closure of the investigations completed by the end of 2011, 2012 and 2013[11]. On that basis, the SC calculated the average duration of completed investigations[12] and received the following results: 27.4 months for 2011, 23.0 months for 2012 and 22.6 months for 2013.

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

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

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

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

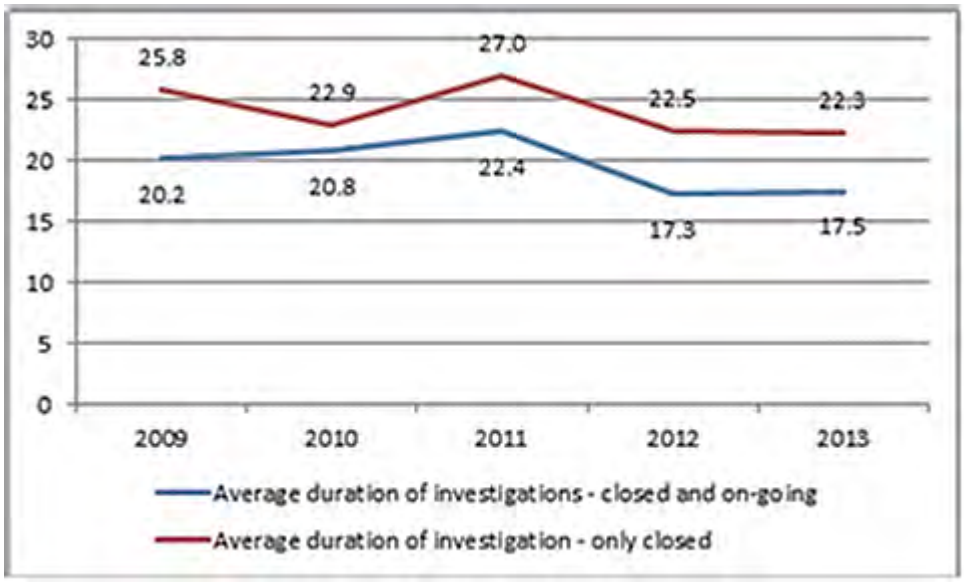

Chart 2 - Source: OLAF note of 19.02.2015

"DATA CLEANED" [13]

25. On 1 February 2012, 423 investigation and coordination cases were opened by a single decision of the DG, regardless of the stage of their assessement.[14] Their opening was carried out without respecting the relevant requirements and consequently should be considered as irregular[15]. Their atypically short duration (due to the fact that in many of these cases there were no or almost no investigative activities undertaken) distorted the calculation of average duration of regular investigations. Due to the irregular opening of those cases (and their "one-off", "organisational" character), they should be excluded from the calculation (it concerns 99 out of 268 investigations closed in 2012 and 63 out of 293 investigations in 2013).

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

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

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

26. Such exclusion was applied also by OLAF in its internal reporting. In the Report on OLAF Operational Activity for 2012, the data on duration of cases include: "**data cleaned** – without 423 cases opened on 1.02.2012".

27. Therefore, on the basis of data provided by OLAF and following the methods applied internally by OLAF, the SC calculated the average duration of the completed investigations excluding those opened irregularly on 1.02.2012. The results are presented in the tables below:

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

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

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

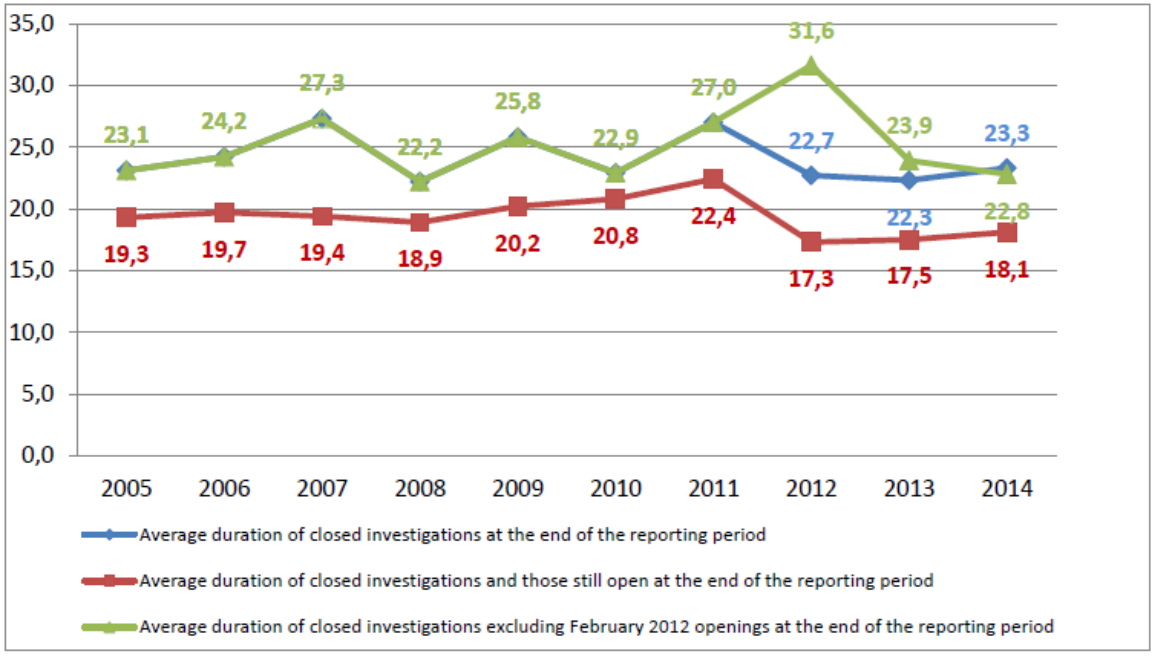

Chart 3 - Source: OLAF note of 18.03.2015

IMPACT OF OPENING OF 423 CASES ON THE INVESTIGATION "SUCCESS RATE"

29. The "success rate" has long been used by OLAF as a performance indicator, and is based on the annual percentage of completed cases which have resulted in recommendations for actions to be taken by the Member States or the EU Institutions.

30. The SC does not consider it an absolute indicator, because it is natural that some of the cases result in no recommendations, but their percentage used to be stable until 2010 and was below 50%. The distorting impact of the 423 cases opened on the same day and closed very often shortly afterwards, often without any investigative activities conducted, could be partially responsible for the sudden fall in the investigation "success rate" in 2012 and 2013, which dropped to 21.5% and 39,5% respectively.

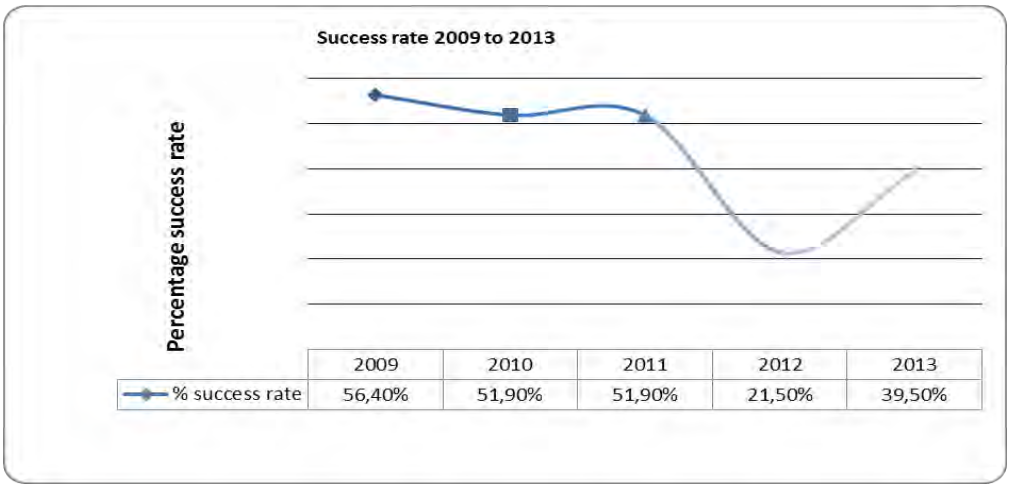

Chart 4 – "Success rate"

IMPACT OF OPENING AND CLOSING OF INVESTIGATIONS FOR "ADMINISTRATIVE CLARITY PURPOSES"

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

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

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

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

34. In 2013, 15 cases extracted from an "umbrella" case and involving no additional investigative activities were closed with the average duration of 4.1 months. Should those 15 cases be excluded from the calculation of the average duration for 2013 (because of the lack of any additional investigative activities), the general result would increase from 24.2 months to 25.7 months. Should other similar cases also be excluded, the final result for the average duration for 2013 could reach, according to a rough estimation, about 26.8 months.

35. In order to assess the full impact of such cases on the statistics, the SC would need full access to all the closed case files, which it currently does not enjoy. Therefore, the SC can only make a rough estimate of the average duration of regular investigations in OLAF in 2013 excluding some cases where no investigative activities were conducted (*see Chart 5*).

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

36. The average duration gives, at best, only a rough estimate of the duration of investigations. Average duration does not say anything about the duration of other categories of cases. It also says very little about the accumulated backlog of investigations. Additional indicators are therefore required in order to follow developments in the duration of investigations from the perspective of ensuring that investigations are handled in reasonable time.

37. The Council of Europe, under its European Commission for the Efficiency of Justice (CEPEJ), has developed a time management checklist to advise its Member States to develop management and control of the duration of proceedings as part of the requirements of a fair trial. This checklist may provide some advice for the assessment of the internal management controls in OLAF. For external reporting purposes, categorisation of cases and assessment of the trends in the overall length of proceedings and, at the investigation stage, the overall length of investigations is of particular interest. The CEPEJ has also issued recommendations on the regular monitoring of judicial timeframes. The monitoring should be performed in accordance with the European Union Guidelines for Monitoring of Judicial Timeframes – EUGMONT.

38. These Council of Europe Guidelines require, among other things, reporting of the following information:

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

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

- new proceedings (proceedings initiated within the monitored period, e.g. in the calendar year);

- resolved cases (proceedings finalized within the monitored period either through a decision on merits, a withdrawal of the case, a friendly settlement, etc…);

- total number of proceedings pending at the end of the monitored period.

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

39. In the SC's opinion, this also provides a point of departure for the development of external reporting on investigations in OLAF.

40. The SC notes that, on a systemic level, it is important to recognise categories or features of cases which, due to their complexity or for other reasons, may hinder the overall efficiency of OLAF and to identify their number and maximum duration.

41. For external reporting purposes it is important to show the duration category under which most of the cases fall. OLAF reporting follows also the indicators set in the Annual Management Plan. The SC notes that in the AMP 2014 OLAF introduced a new indicator describing if investigationsa are handled in reasonable time: "the percentage of investigations lasting more than 20 months. Reporting on this will improve the coprehensiveness of the statistics on investigative performance and icase load".

42. One additional indicator could be the duration of the majority of investigations (e.g. the mid- 75% or 90 %). The investigations of atypical duration may then require particular attention by OLAF management and also by the SC.

CONCLUSIONS

43. The average duration of investigations calculated on the basis of the method used by OLAF until 2010 shows that:

(1) the average duration of investigations closed in 2011, 2012 and 2013 increased in comparison to 2010 (excluding investigations opened in exceptional circumstances[18]);

(2) the declared decrease in the average duration of investigations, as reported in the OLAF Annual Reports 2012 and 2013[19], was due to (a) the change in the method of

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

[18] See SC's Report No 3/2014.

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

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

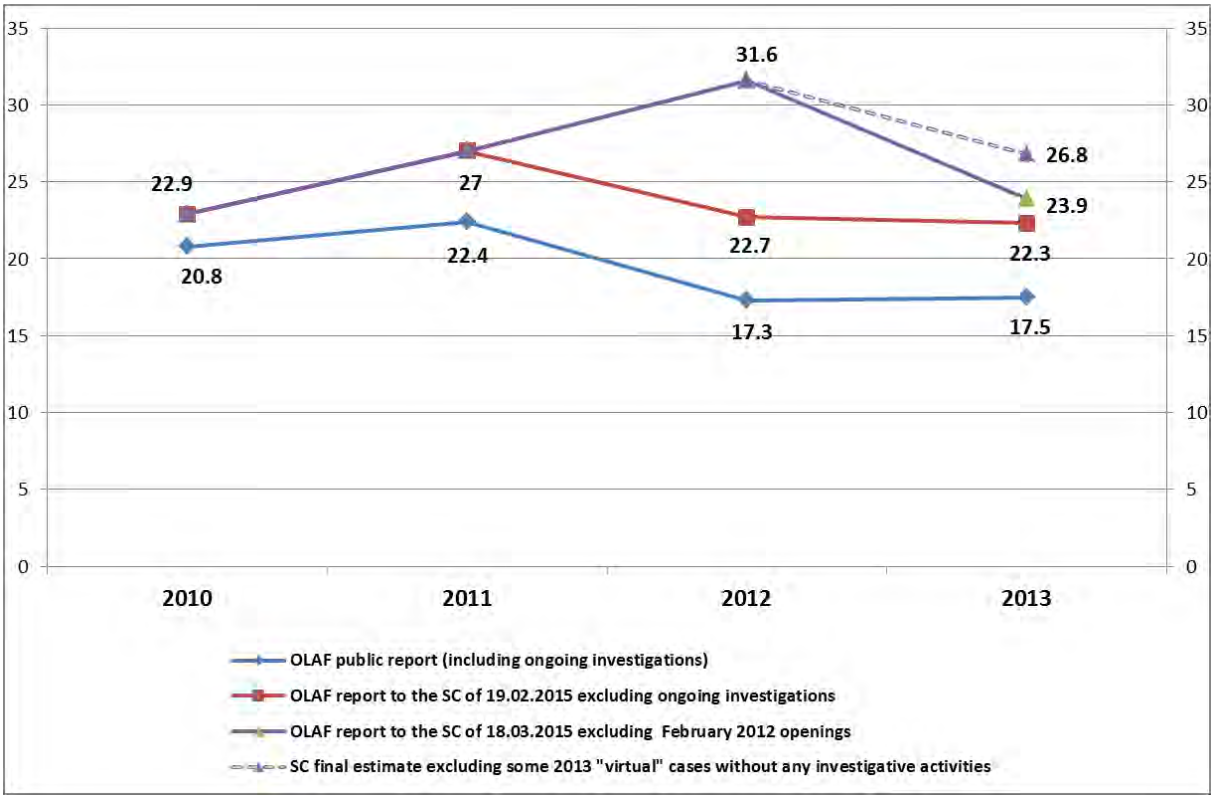

Chart 5 – Comparison of public reports, internal reports and data "cleaned"

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

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

RECOMMENDATIONS

(1) For the sake of transparency and comparability of the information in the statistics on average duration of investigations, OLAF should report on the average duration of investigations closed within the reporting period.

(2) Any one-off administrative operations having an impact on the calculation of the average duration of investigations should be highlighted, as a matter of transparency, in OLAF's reporting .

(3) In the light of fundamental rights and/or principles of sound administration, OLAF should, in its Annual Report, report more transparently on the duration of the longest lasting investigations.

ENDNOTES

44. The present Opinion on "OLAF external reporting on duration of investigations" was discussed in the SC's plenary meeting of 25 February 2015, with a view of adopting it in the SC's plenary meeting of 24-25 March 2015.

45. In his note[21] dated 27 February 2015, the OLAF DG, exercising his competences on the basis of Article 15(1), subparagraph 3 of Regulation (EU) No 883/2013, asked the SC "*to draft a fully-fledged Opinion on the collection of statistics on investigative performance in OLAF*".

46. That letter arrived too late in order for all the elements requested therein by the DG to be included in the present SC Opinion. In order to meet the DG's request, the SC will include in its workplan 2015-2016 a further analysis of the statistics on OLAF's investigative performance .

47. This Opinion represents, therefore, a part of the wider analysis of "duration of investigations" foreseen in the SC's 2014-2015 workplan and the first part of the response to the most recent request of the OLAF DG "*to draft an Opinion on the collection of statistics on investigative performance of OLAF*".

Brussels, 25 March 2015
For the Supervisory Committee
The Chairman

Tuomas PÖYSTI

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

ANNEX 4

Report No 1/2014

Safeguarding OLAF's Investigative Independence

SUPERVISORY COMMITTEE

OLAF

Safeguarding OLAF's investigative independence

Report from the Supervisory Committee of the European Anti-fraud Office (OLAF)

to

the European Parliament, the Council, the Commission and the Court of Auditors

(pursuant to Article 15(9) of Regulation No 883/2013)

Table of contents

1. Introduction

1. The Supervisory Committee (SC) of the European Anti-fraud Office (OLAF) monitors the implementation of OLAF's investigative function, in order to reinforce its independence in the proper exercise of the competences conferred upon it by Regulation No 883/2013[1].

2. OLAF underwent major reforms in 2012 and 2013, when its organisational structure changed, and a new Regulation governing its activities entered into force. More changes are foreseen: the establishment of the European Public Prosecutor's Office (EPPO) would modify OLAF's role[2], whilst the proposed amendment of Regulation 883/2013, with a view to establish a Controller of procedural guarantees for OLAF[3], would have an important impact on its functioning.

3. In the framework of its monitoring activities, the SC has analysed the likely impact of these changes on OLAF's investigative function and has identified a number of potential threats to OLAF's investigative independence and the SC's ability to reinforce it. The objective of this report is to present to the European Parliament, the Council, the Commission and the Court of Auditors, in accordance with Article 15(9) of Regulation 883/2013, the results of the SC's assessment and proposals for possible improvements.

2. OLAF's investigative independence

2.1 Legislative proposal regarding the Controller of procedural guarantees

4. On 11 June 2014, the Commission adopted a proposal to amend Regulation 883/2013, which foresees the creation of a *Controller of procedural guarantees*. He would review and provide recommendations on complaints lodged by persons concerned by OLAF investigations. He would also deliver a prior authorisation to OLAF, in cases where OLAF intends to inspect offices of members of EU institutions or to remove any documents or data from these offices.

5. This proposal follows the 2013 Commission Communication on *Improving OLAF's governance and reinforcing procedural safeguards*[4] accompanying the legislative proposal on the establishment of the EPPO. The SC expressed its views on this Communication both in its position paper on "*Reinforcing procedural safeguards in OLAF*"[5] and in its Opinion No 2/2013[6]. Nevertheless, the Commission did not include the SC in any preparatory work and its Secretariat did not participate in the Commission's

[1] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, OJ L 248, 18.9.2013, p. 1–22.
[2] Investigations into EU fraud or other crimes affecting the financial interests of the EU will be under the exclusive competence of the EPPO, while OLAF will remain responsible for administrative investigations in areas which do not fall within the latter's competence (i.e. irregularities affecting the EU's financial interests, and serious misconduct or crimes committed by EU staff without a financial impact).
[3] COM(2014)340 final, 11.06.2014.
[4] COM(2013)533 final, 17.07.2013.
[5] October 2013 (see the text of this paper in the SC Activity Report 2013, Annex 6).
[6] December 2013 (see the text of this Opinion in the SC Activity Report 2013, Annex 2).

Inter-service Consultation. Following a preliminary examination of the finalized draft proposal, on 28 May 2014 the SC expressed a negative position[7].

6. The SC considers that the impact assessment misrepresented the SC's analysis and that the proposal contains provisions which may compromise the independence of the Director-General of OLAF (OLAF DG**)** and the inter-institutional balance. The SC has identified the following elements leading to its negative position:

   - The foreseen powers of the Controller and, in particular, his competence as an external body to prevent the OLAF DG from undertaking certain investigative measures, appear to compromise the investigative independence of OLAF, while at the same time overlapping with the current tasks of OLAF's Investigation Selection and Review Unit (in charge of, *inter alia*, carrying out the prior legality control of OLAF's investigative measures, including inspection of offices and seizures of documents and data).

   - The attachment of the Controller to the Commission, while he would authorize certain investigative measures concerning Members of the Commission as well as Members of other Institutions, may affect the inter-institutional balance necessary for OLAF to conduct internal investigations within and on behalf of all the EU Institutions with mutual trust and equal treatment.

   - Having authorized certain investigative measures, the Controller would have to then control his own decision if he received a complaint against OLAF concerning those measures. It is a clear case of an institutionalized conflict of interest.

   - The competences of the Controller appear to overlap with the competences of the SC (e.g. in cases where procedural guarantees are not respected due to excessive duration of investigations or to a violation of the independence of OLAF), without any possibility of cooperation. This would lead to a conflict of competences and an uncoordinated duplication of work.

7. The SC regrets that its concerns regarding the independence of OLAF and the SC's own competences were not taken into account by the Commission at all. The SC therefore now calls on the legislator to consider the SC's analysis of the Commission's legislative proposal: **the procedural solutions foreseen in the text are generally recommendable, but a new body to implement them would be redundant – the review of procedural guarantees should continue to be carried out by the SC (or a Controller within the SC), with additional competences set out in the legislative proposal, while a prior authorization of intrusive investigative measures should remain with a legal review unit in OLAF (or a senior Review Advisor) with additional safeguards and subsequent control by the SC**.

[7] Letter addressed to the OLAF Director-General and to the Cabinets of the Commission, ref. Ares(2014)1756696 - 28/05/2014.

2.2 OLAF's participation in Clearing House meetings

8. A report recently launched by Transparency International (TI) on *The European Union Integrity System*[8] highlights that the informal practice of holding bi-monthly "Clearing House" meetings between the OLAF DG and the Secretariat General of the Commission, where closed discussions are held on on-going OLAF investigations, may arguably pose "*a question on the genuine level of the Office's independence"* from the Commission, especially given that the SC has received no reporting whatsoever on these meetings. The TI report also underlines the fact that the absence of any form of monitoring of what information is divulged and the ways in which the exchange might influence the outcome of an investigation may put "*the independence of the Office at greater risk"*. Finally, the report highlights the imbalance in OLAF's inter-institutional relationships due to the fact that such meetings take place only with the Commission and not with the other EU institutions.

9. The SC is very concerned by the lack of transparency of this practice and its inherent risks with regard to OLAF's investigative independence. The SC receives no information or reporting on these meetings and has the means neither to monitor the information provided by OLAF to the Commission, nor to ensure that this exchange of information does not influence the outcome of investigations.

10. While understanding that the aim of such meetings would be to enable the Commission to pre-empt media scrutiny of cases liable to attract public attention and be exposed[9], the SC believes that this practice, if maintained, should be clarified and formalized by the Commission and OLAF. Moreover, appropriate guarantees should be put in place to ensure more transparency (on a need-to-know basis), to avoid possible undue influence on on-going investigations, to protect personal data (in particular of whistle-blowers) and to maintain the inter-institutional balance.

11. The monitoring of the "Clearing House" meetings could be carried out by the SC either on-the-spot (i.e. with the participation of an SC member as an observer in these meetings) or ex-post (i.e. monitoring by the SC of the cases discussed)[10]. In the absence of an agreement concerning the monitoring methods, the SC has called on OLAF to refrain from participation in the "Clearing House" meetings until a solution guaranteeing its independence is found.[11]

[8] http://www.transparencyinternational.eu/wp-content/uploads/2014/04/EU_Integrity_System_Report.pdf
[9] See p. 162 of the report.
[10] The SC's involvement, as an observer, either on-the-spot or ex-post, would offer all the required guarantees, since the SC Members are bound by the obligation of confidentiality and cannot intervene in on-going investigations, while at the same time they shall monitor developments concerning procedural guarantees and shall guarantee OLAF's independence.
[11] The SC decided to further assess this matter and, on 26 May 2014, sent a request for information to the OLAF DG, who replied on 27 June 2014 and provided the SC with general explanations on the meetings. He also stated that any request for information on the organisation of Clearing House meetings should be referred to the Secretariat-General of the Commission, since the Commission is the organiser of such meetings.

2.3 OLAF's activities related to the cigarettes sector

12. OLAF is responsible for coordinating and developing the Commission's policy related to the fight against illicit trade in tobacco products, covering in particular the relations with the cigarettes manufacturers with which the EU and the Member States have concluded international agreements. Under those legally binding and enforceable agreements with the world's 4 largest tobacco manufacturers, they agree, *inter alia*, to pay a collective total of $2.15 billion to the EU and countries participating in the agreement. OLAF manages the implementation of those agreements, but, at the same time, OLAF conducts investigations into the illicit trade in cigarettes and other tobacco products.

13. The SC is concerned that this mixture of tasks could create some confusion as to the roles that OLAF could play in the fight against fraud at the EU level in the cigarettes sector[12]. Therefore, the SC wonders if the implementation of the Commission's policy with regard to the cigarettes sector should continue to be carried out by OLAF and invites the institutions to give further consideration to this matter.

2.4 Recruitment procedures in OLAF

14. Unlike other Directors-General of the Commission, the OLAF DG exercises, with regard to OLAF staff, the powers of the appointing authority and of the authority empowered to conclude contracts of employment delegated to him (AIPN)[13]. However, the senior management is appointed by the Commission. Therefore, in order to ensure OLAF's independence vis-à-vis the Commission, it was agreed in the past that a member of the SC would participate in the recruitment procedure of OLAF senior managers.

15. Following OLAF's reorganisation, certain Heads of Unit were granted high-level responsibilities, which are comparable to those of senior managers[14]. Therefore, and also for reasons of general consistency, the SC is of the opinion that it should participate, at least as an observer, in the recruitment procedure of both senior and middle managers, in order to ensure the independence of the OLAF DG and to assist him in the discharge of his responsibilities as the AIPN. The SC's participation should be formalized.

[12] The SC decided to further assess this matter and, on 22 May 2014, sent a request for information to the OLAF DG, who replied on 6 June 2014. On 20 June 2014, the SC asked for access to a sample of cases. At the time of the adoption this report, such access had not been granted.

[13] Article 6(1) of the Commission Decision 1999/352/EC, ECSC, Euratom establishing OLAF, as amended by the Commission Decision 2013/478/EU of 27 September 2013.

[14] It is the case for the Head of the Investigation Selection and Review Unit, who reports directly to the OLAF DG. The unit provides opinions on the basis of which the OLAF DG takes decisions on the opening or dismissal of cases, on the main investigative activities, on the final report and on the recommendations and is thus involved in the whole lifecycle of OLAF cases. Also the Head of Human Resources and Budget Unit reports directly to the OLAF DG and plays a role more similar to that of a senior manager.

3. The Supervisory Committee's ability to reinforce OLAF's investigative independence

16. The SC is the only body entitled to monitor OLAF's investigative function. As such, it is the SC's role to ensure that no undue pressure affects OLAF's independence in the opening, conducting and closing of an investigation, that fundamental rights and procedural guarantees of persons involved are respected and that investigations are conducted properly.

17. To that end, the SC needs a clearly defined mandate and powers, as well as an independent structure to execute them. In order to carry out its monitoring function properly, the SC has identified a number of conditions that should be satisfied. These conditions include, in particular, proper access to case related information and the requirement that practical organisation of supervision must be decided by the supervising body (the SC), not by the supervised body (the DG or the staff of OLAF). Moreover, the independent functioning and proper staffing of both the SC and its Secretariat must be ensured, and the SC's control over its own budget, including the expenses of the Secretariat, must be guaranteed.

3.1 Supervisory Committee's role

18. Regulation 883/2013 clarified, to a certain extent, the SC's role and mandate[15], in particular the fact that the SC is no longer responsible for carrying out any *prior* control of OLAF's investigations. However, it seems that a longstanding confusion still persists as to the SC's role with regard to the monitoring of individual OLAF cases. On different occasions, both the Commission and the Council expressed the view that the SC should not interfere with individual cases and should limit its task to a general monitoring of OLAF's activity in order to identify systemic problems in its functioning[16]. Moreover, the SC's power to issue formal opinions on individual cases was challenged by the OLAF DG[17].

19. On the basis of its long-lasting monitoring experience, the SC must underline that monitoring of an investigative function cannot be properly carried out without the examination of individual cases. The SC has consistently carried out analyses of a significant number of individual case files as well as has issuing opinions on individual cases, either at the request of the OLAF DG[18] or on its own initiative[19].

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[15] The SC's role is to regularly monitor the implementation by OLAF of its investigative function, in order to reinforce its independence. The SC's tasks include, *i.a.*, monitoring developments concerning the application of procedural guarantees and the duration of investigations (Article 15 of Regulation 883/2013).

[16] See the Analysis of Impacts accompanying the document "Proposal for a Regulation of the European Parliament and of the Council Amending Regulation No 883/2013 as regards the establishment of a Controller of procedural guarantees", {COM(2014) 340 final}. The Commission claimed also that the SC " is not mandated (…) to examine the respect of fundamental rights in individual cases" (see Commission's Memo No 14/409 of 11 June 2014, " OLAF Reform and the new Controller of Procedural Guarantees: Questions and Answers", p. 3).

[17] Regarding SC's Opinion No 2/2012.

[18] On 15 April 2011 the OLAF DG requested an Opinion from the SC on the scope of OLAF's powers in conducting an internal investigation with regard to certain MEPs suspected of corruption (see SC's Opinion No 2/2011).

[19] Opinion No 2/2012.

20. The SC would also point out that Article 15 of Regulation 883/2013 clearly does not preclude it from examining or delivering opinions on individual cases, provided it does not interfere with the conduct of investigations *in progress*.

21. Only by thoroughly examining individual cases, is the SC in a position to identify risks of undue influence on the opening, conduct and closure of OLAF investigations which would be a threat to OLAF's investigative independence. Examination of complete files of individual cases or of their representative samples is indispensable for understanding and evaluating OLAF's investigation methods, for scrutinizing whether fundamental rights and procedural guarantees are respected in OLAF investigations and whether the cases are dealt with efficiently, effectively, in due time and according to the relevant rules and legal provisions. The monitoring of individual cases is also essential for drawing systemic or generic conclusions and identifying possible systemic deficiencies in the investigative function of OLAF.

22. Moreover, since the SC's duties include assisting the OLAF DG in discharging his responsibilities, the examination of individual case files allows for specific and general conclusions and recommendations to be drawn which may then be communicated to the OLAF DG and, where necessary, to the relevant EU institutions. It also makes possible the swift communication both of the results of the SC's work and any potential problems uncovered. As a consequence, it allows the OLAF DG to react promptly to risks and to take the appropriate measures to improve OLAF's investigative activities.

23. If, on the one hand, the SC access to individual case files were to be restricted (as is the current unjustified practice of OLAF[20]) and, on the other hand, a Controller of procedural guarantees were established as separate from the SC, then significant *lacunae* in the supervision of OLAF would be created. Such a Controller would not be competent to control cases where no complaints were lodged[21] or no prior authorisations were required. At the same time, the SC's monitoring of "developments" of the application of procedural guarantees and of the duration of investigations would become completely illusory without the possibility to verify the necessary information within an individual case file.

24. **Therefore, the SC calls on the EU institutions to clarify the SC's role and mandate, in particular with regard to the SC's monitoring of individual cases.**

[20] See point 3.2 of this report.

[21] Cf. Recommendation N° 3 in Annex 7 of the SC Activity Report for 2013 which refers to a situation where certain persons are not aware that their fundamental rights to protect personal data have been seemingly infringed.

3.2 Supervisory Committee's access to case-related information

25. On 14 January 2014, the SC and OLAF concluded *Working Arrangements* creating a structured framework for transmission of information on OLAF's investigative activity. Unfortunately, OLAF has implemented them in such a manner as to even further reduce the scope of information provided to the SC[22]. Moreover, as of 13 June 2014, OLAF has cut the SC Secretariat's access to the search engine in the OLAF Case Management System, limiting even access to statistical metadata.

26. Since concluding the Working Arrangements, which aimed to facilitate the transfer of information, the SC has **received no access** to any case files despite several justified requests and reminders. The OLAF DG has even questioned the SC's competence to review specific categories of cases. The SC considers this to be a violation not only of the Working Arrangements, but also of Regulation 883/2013[23].

27. Consequently, the SC is currently unable to carry out a proper supervision of OLAF's investigative function. The SC is effectively prevented from reinforcing OLAF's independence, from monitoring the respect for procedural guarantees, from monitoring the proper and efficient conduct of OLAF's investigations, from assisting the Director-General in the discharge of his functions and from providing the Institutions with the relevant reporting.

28. The SC would point out that its difficulties in obtaining access to case files have not only undermined the effectiveness of its supervisory role, but have also raised doubts of the civil society as to the practical existence of any oversight of OLAF's investigative activities[24].

29. OLAF's supervision would have to be considered as insufficient or even illusory, if the SC were reduced to carrying out its monitoring tasks exclusively on the basis of some statistical information. As a prerequisite, the guarantee of OLAF's independence requires the detection of instances of potential undue influence on its investigations. The SC cannot ascertain this conclusively in the absence of proper access to investigative case files[25]. Only the unrestricted and thorough examination of OLAF case files, with assistance and necessary explanations from OLAF investigators and managers, may allow the SC to properly fulfil its mission.

30. **Therefore, the SC is concerned about the functioning of the Working Arrangements with OLAF and calls on the EU Institutions to ensure that the SC is able to carry out its mission effectively with appropriate and sufficient competences, in particular, through full access to OLAF case files**.[26]

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[22] The information provided by OLAF is limited to lists, statistics and summary reports, which contain very little or no substantial information on OLAF's cases.
[23] Paragraph 5 of Article 15(1).
[24] Transparency International report, http://www.transparencyinternational.eu/wp-content/uploads/2014/04/EU_Integrity_System_Report.pdf p. 170.
[25] Id., p. 163.
[26] Id., second recommendation p. 158.

3.3 Replacement of Supervisory Committee's members

31. Under the current rules[27], the SC members are replaced, in the event of resignation, for the remainder of their term. In practice, this results in much shorter mandates for the replacement members (possibly even just a few months), despite the fact that they are selected from among highly qualified experts, in a complex procedure by common accord of the three Institutions and without the possibility of reappointment.

32. To avoid a waste of time and effort for the Institutions and the loss of high-level expertise in the SC, the Committee would propose that the EU legislator guarantee the full term of office also for the replacement SC members. The SC would point out that its current members began their respective mandates on different dates, meaning that these differences would naturally ensure the staggered renewal of the SC membership.

3.4 Independent functioning of the Supervisory Committee and of its Secretariat

33. The SC has an inter-institutional character, as a result of both the appointment procedure of the SC Members and the SC's mandate and tasks. In addition to the guarantees for independence of the SC itself, Regulation 883/2013 calls for OLAF to ensure also the independent functioning of the SC's Secretariat[28], on which the SC relies in the discharge of its duties.

34. The Transparency International Report on the *EU Integrity System* rightly underlined the potential risks of conflict of interest that might arise from the fact that the OLAF DG serves as the appointing authority for the staff of the SC Secretariat, authorises the Secretariat's expenses and may transfer unused funds from the annual budget of the SC back into the general OLAF budget, which could be ultimately "*a financial incentive for limiting the independence*" of the SC[29].

35. The SC addressed recommendations to the OLAF DG[30] with the purpose of ensuring the independent functioning of the SC Secretariat - as a precondition for the independence and effective functioning of the SC itself. The SC recognizes the progress made with regard to the number of staff and implementation of the SC Secretariat budget. The SC proposes that the current practice be formalized in the establishment plan and the independence of the Secretariat further reinforced in the area of appointment and especially promotion of the SC Secretariat staff which is still decided exclusively by the OLAF DG.

[27] Regulation 883/2013, Article 15(2).
[28] Recital 40.
[29] Page 163.
[30] Opinions 1/2012 and 1/2013.

4. Conclusions

36. On the basis of the considerations presented in this report, the Supervisory Committee of OLAF invites the EU Institutions to further reinforce the independence of OLAF and the effectiveness of its supervision through the following measures:

(A) Amendment and adoption of the legislative proposal on the *Controller of procedural guarantees*, so that the control of the respect of procedural guarantees in on-going, closed or dismissed cases be exercised within the Supervisory Committee and/or under its supervision;

(B) Amendment and adoption of the legislative proposal, so that the legality check in OLAF, in particular concerning the invasive investigative measures, is reinforced and formalized;

(C) Confirmation of the SC's mandate to monitor the proper conduct of individual OLAF cases;

(D) Confirmation of the SC's right of access to OLAF case files;

(E) Clarification of the relations between OLAF and the Commission, in particular with regard to the practice of the "Clearing House" meetings and of OLAF's role in the implementation of the Commission's antifraud policy in the cigarettes sector;

(F) Guaranteeing transparency of OLAF's human resources policy by formalizing the SC's participation in OLAF management selection panels;

(G) Rationalization of the replacement of the SC members by appointing the members from the reserve list for a full term of office;

(H) Ensuring the independent functioning of the SC Secretariat by formalizing the delegation of both budgetary and human resources powers.

Brussels, 2 July 2014
For the Supervisory Committee
The Chairman

Johan DENOLF

ANNEX 5

Report No 2/2014

Implementation by OLAF of the Supervisory Committee's Recommendations

SUPERVISORY COMMITTEE

OLAF

Implementation by OLAF

of the Supervisory Committee's recommendations

Report No 2/2014 from the Supervisory Committee
of the European Anti-fraud Office (OLAF)
to
the European Parliament, the Council, the Commission and the Court of Auditors

(pursuant to Article 15(9) of Regulation No 883/2013)

SUPERVISORY COMMITTEE

	Recommendation	Status of implementation
1	HR Strategy	Fully implemented
2		Fully implemented
3	Resources allocated to the ISRU	Could not be verified
4		Fully implemented
5		Could not be verified
6		Fully implemented
7		Not implemented
8		Fully implemented
9	Follow-up of investigations	Could not be verified
10		Could not be verified
11	Right to private life	Not implemented
12		Partially implemented
13	Data protection	Not implemented
14	Right to express views on all facts	Could not be verified
15	Checks of economic operators	Could not be verified
16	Extension of the scope of investigation	Could not be verified
17	DG's direct participation	Not implemented
18	Notification to institutions	Could not be verified
19	Conflict of interest	Could not be verified
20		Not implemented
21	Adoption of a complaints procedure	Partially implemented
22	Publication of a complaints procedure	Partially implemented
23	Guidelines on IPPs	Pending
24	Dialogue with stakeholders	Partially implemented
25	Application of the selection criteria by the ISRU	Not implemented
26		Not implemented
27		Not implemented
28		Not implemented
29		Not implemented
30		Could not be verified
31		Not implemented
32		Could not be verified
33		Not implemented
34		Not implemented
35	Transparency of the selection process	Could not be verified
36		Could not be verified
37		Could not be verified
38		Not implemented
39		Could not be verified
40	Internal evaluation of the ISRU	Not implemented
41	The SC Secretariat	Fully implemented
42		Partially implemented
43		Partially implemented
44		Fully implemented
45	Budgetary procedure	Fully implemented
46	Consultation with the SC	Not implemented
47	Reporting to the SC	Not implemented
48		Not implemented
49		Not implemented
50		Not implemented

SUPERVISORY COMMITTEE

OLAF

Table of Contents

SUPERVISORY COMMITTEE

I. Purpose of the report and methodology

1. The Supervisory Committee (SC) of the European Anti-fraud Office (OLAF) monitors the implementation of the Office's investigative function, in order to reinforce its independence in the proper exercise of the competences conferred upon it by Regulation No 883/2013[1].

2. The current SC was appointed on 23 January 2012 and, having reached the first half of its five-year mandate, hereby presents, pursuant to Article 15(9) of Regulation No 883/2013, a mid-term report on the implementation of its recommendations by OLAF. This report gives, for the first time, an overview of the extent to which OLAF has implemented the recommendations of the SC and thus represents a barometer of the impact of the SC's monitoring activities on OLAF's investigative function.

3. In the first half of its mandate, the SC issued 50 recommendations to OLAF contained in 6 Opinions[2]. The evaluation of their implementation status was based on OLAF's replies to the SC's Opinions[3] and on OLAF's self-assessment of the implementation of the SC's recommendations, as well as, where possible, on the results of the SC's own monitoring activities. The SC has used the following categories to assess the implementation status of its recommendations:

   (a) **Recommendation implemented fully:** OLAF has taken concrete and appropriate actions to implement the recommendations;

   (b) **Recommendation implemented partially:** OLAF has taken substantive action, but the SC considers that additional information and/or measures are required;

   (c) **Recommendation not yet implemented - *pending***: OLAF has informed the SC that it is reflecting on possible actions to be taken or that measures are foreseen to be taken (but has not provided the SC with any conclusive information on the implementation);

   (d) **Recommendation not implemented**: the SC has received a response, but OLAF did not agree to introduce the relevant measures or the actions taken are not satisfactory for the implementation of the recommendation;

   (e) **Implementation of a recommendation could not be verified**: OLAF has not provided the SC with a substantial reply and the SC has no sufficient information to assess the implementation of the recommendation.

[1] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, OJ L 248, 18.9.2013, p. 1–22.
[2] http://ec.europa.eu/anti_fraud/about-us/reports/supervisory_reports/index_en.htm
[3] http://ec.europa.eu/anti_fraud/about-us/reports/official_responses_from_olaf_en.htm

4. The global results of the SC's review are presented in the table at the beginning, while **Annexes 1 to 7** show the distribution of the recommendations by topic and provide (i) a summary of the SC's recommendations, (ii) the follow-up actions taken by OLAF and/or the replies provided to the SC and (iii) the issues which, in the SC's opinion, remain to be addressed and would deserve to be further considered by OLAF.

II. Recommendations concerning OLAF's investigative function

OLAF investigative resources

5. In a number of its Opinions[4], the SC assessed the use of investigative resources by OLAF. The SC made repeated recommendations concerning the HR strategy[5] which were finally implemented. OLAF has recently adopted an "HR Strategic plan 2014-2016"[6]. The SC welcomes it and will give it further consideration.

6. The recommendations concerning resources allocated to the Investigation Selection and Review Unit (ISRU)[7] have been implemented to a large extent. The ISRU is now organized in three sectors for selection and one sector for review, which allows, in the SC's opinion, a better implementation of the specialization principle, as the SC suggested, as well as a clearer separation of the selectors from the reviewers. The number of cases attributed for selection to the latter has been reduced. Finally, technical problems with OLAF's Fraud Notification System seem, according to OLAF, to be addressed. The SC welcomes these improvements.

7. The implementation of other SC recommendations (to increase the number of selectors, to ensure that they have appropriate expertise, to ensure an effective follow-up of investigations and to develop indicators describing the efficiency, quality and results of the follow-up of OLAF investigations) could not be assessed, since OLAF has not provided the SC with a substantial reply on these matters. Finally, internal guidelines for dealing with whistle-blowers have not been adopted. (see **Annex 1** for details)

Implementation of new OLAF investigation procedures

8. In October 2012, the SC was informed of a case - concerning, *inter alia*, a Member of the European Commission - requiring information to be transmitted to national judicial authorities. At that time, this case was - since the reorganisation of OLAF and the change of the investigative procedures on 1 February 2012- the first and only one to be opened, conducted and closed entirely under the new rules set out in the Instructions to Staff on Investigative Procedures. The

[4] Opinions 1/2012 and 1/2013 on *OLAF's Preliminary Draft Budget* (for 2013 and 2014) and Opinion 2/2014 on *Case selection in OLAF*.
[5] Opinions 1/2012 and 1/2013.
[6] Ref. Ares(2014)2828346 - 29/08/2014.
[7] Opinion 2/2014.

complexity of the investigation offered the SC the opportunity to assess the application of a significant number of those new internal OLAF rules[8].

9. As a result, the SC issued, in its **Opinion 2/2012**[9], a number of recommendations concerning fundamental rights (i.e. right to respect of private life and communications, right to protection of personal data, right to express views on all facts), legality checks (i.e. on-the-spot checks, extension of the scope of an investigation), impartiality rules, notification procedures.

10. The SC has reviewed the follow-up by OLAF to these recommendations (see **Annex 2**). The SC notes that the implementation of five recommendations could not be verified, since OLAF has not provided the SC with a substantial reply and/or satisfactory explanation or with any information on OLAF's follow-up to the SC's recommendations. As to the other recommendations, the SC disagrees with OLAF assessment and considers that four have not been implemented and one was partially implemented, for the reasons stated below.

11. Having identified at least two investigative measures which were applied apparently without any legal basis, the SC recommended to OLAF to indicate the legal basis prior to applying any measure potentially interfering with the fundamental rights to "private life" and "communications" of persons involved in an investigation and to make an analysis of its competence to gather evidence by way of recording private telephone conversations, namely to conduct an analysis on the legality of the recording, within OLAF's investigation, of a telephone conversation between a witness and a person concerned, agreed between the witness, one party to the conversation, and an investigator, the latter having assisted the witness in the preparation of this telephone conversation.

12. OLAF considers that it has implemented both recommendations. However, the SC has a different view and considers that the first one has not been implemented, since no valid legal basis for those measures has been indicated by OLAF, while the implementation of the second one appears to be only partially completed, since it appears from OLAF's reply that the legal analysis is not yet finalized[10].

13. It appears from the analysis conducted by OLAF that the Member States require a judicial authorization for such measures performed without the knowledge of one of the parties. Specifically, the Belgian law, which was referred to by OLAF in its response to SC Opinion 2/2012[11], does not allow public officials to conduct such recordings without a prior judicial authorization.

14. Moreover, the SC maintains its opinion that, independently of the national rules, such measure should be also in accordance with Article 7 of the Charter of Fundamental Rights of the EU

[8] Especially the procedures concerning the selection of cases, opening decision, special investigation team, extension of scope of the investigation, conduct of investigative activities related to internal and external aspects of an investigation, legality check during the investigation and final quality and legal review.
[9] Opinion 2/2012: Analysis of OLAF case OF/2012/0617.
[10] On 11/06/2014, following two reminders sent by the SC, OLAF provided the SC with the legal analysis "as it stands today".
[11] Letter of the OLAF Director-General of 8 February 2013.

(right to respect for everyone's "private life" and "communications"), which requires that this type of interference should have a legal basis. In the specific case analyzed by the SC, OLAF did not indicate any legal basis allowing it to perform this kind of action. Taking into account the results of the legal analysis provided by OLAF, the SC continues to question the legality of this measure conducted outside of any judicial control.

15. Two other recommendations which have not been implemented by OLAF concern the direct participation of the Director-General of OLAF (OLAF DG) in an investigation and the application of data protection rules.

16. The SC's recommendation that the OLAF DG should refrain from taking the risk of putting himself in a potential situation of conflict of interest that could jeopardize the review of OLAF's actions has not been implemented, since OLAF disagrees with the SC's interpretation of the notion of "conflict of interest". The SC maintains, however, its recommendation and it takes the view that the legitimacy of OLAF's investigations in the eyes of the public depends not only on avoiding real conflict of interest but also apparent conflict of interest[12].

17. Finally, OLAF considers that it has implemented the SC's recommendation to inform persons unrelated to the investigation that their personal data and telephone listings appear in the case file, because OLAF follows the European Data Protection Supervisor's general recommendations which allow not informing persons unrelated to an investigation that OLAF is processing their personal data.

18. The SC has a different opinion on the matter and understands that the practice of not informing EU citizens that their personal data are processed by OLAF concerns exclusively persons whose data happen to appear in documents dealt with by OLAF, but without the intention of acquiring them and without any attempts to process them for the purposes of an investigation. In this particular case, OLAF actively acquired personal data of certain EU citizens unrelated to the investigation and processed them for the purpose of the investigation. Therefore, the SC is of the opinion that OLAF is clearly obliged to inform them about their rights under Regulation No 45/2001, which has not yet been done.

19. Additionally, the OLAF DG questioned the SC's competence "*to issue recommendations to OLAF on actions taken in the framework of a specific investigation*"[13] and stated that the SC has acted "ultra vires" by issuing an opinion on an individual case[14]. The SC disagrees with these remarks for the reasons below.

20. At the time when the SC issued its Opinion, Regulation No 1073/1999 was still in force. Article 11 expressly empowered the SC to issue recommendations, on its own initiative, on the "*activities of the Office*" and therefore on any aspect of the OLAF investigative function, with the only restriction of not "*interfering with the conduct of investigation in progress*". Any other

[12] For a similar approach, see Decision of 1 February 2103 of the European Ombudsman closing his inquiry into complaint 1339/2012/FOR against the European Central Bank.
[13] Cf. letter of the OLAF DG of 5 March 2014.
[14] Cf. letter of the OLAF DG of 8 February 2013.

recommendations are within the SC powers and within its duties, including "*assisting the Office's [Director-General] in discharging his responsibilities*" (Recital 17), in particular when it comes to the respect of fundamental rights. Moreover, both the OLAF DG and the SC were equally responsible for ensuring respect of the rules concerning confidentiality and data protection (Article 8(4)). Regulation No 883/2013 has confirmed the SC's obligation to assist the OLAF DG in discharging his responsibilities (Recital 37), as well as its duty to monitor the implementation by the Office of its investigative function and the power to issue recommendations to the OLAF DG, with the only restriction of not "*interfering with the conduct of investigations in progress*" (Article 15).

21. At the time when the SC's Opinion was issued, the investigation was closed and therefore the recommendations made by the SC were not intended to recommend "*that OLAF should have taken different measures in that investigation*"[15] and did not have any effect on this specific investigation.

22. Furthermore, while agreeing, in principle, that dealing with systemic aspects of OLAF's investigative practice would require examination of those practices in a series of cases, the SC must also underline its role of ensuring OLAF's independence and respect of procedural guarantees in individual cases. The fact that the SC identifies irregularities in an individual case – and not in a series of cases – does not relieve it of its duty to react. In fact, the SC believes it is its duty to apply a zero-tolerance policy with regard to any violations of OLAF's independence or of respect of fundamental rights in its investigative activity.

Complaints procedure

23. The SC's **Opinion 2/2013**[16] concerned OLAF's procedure for dealing with complaints. The SC recommended that OLAF establish a formalized internal complaints procedure in order to deal with individual complaints concerning OLAF investigations and publish it on OLAF website. OLAF and the SC have different views with regard to the degree of the implementation of the SC's recommendations (see **Annex 3**).

24. On 20 January 2014, OLAF published on its website a description of the manner in which complaints related to OLAF's investigations and addressed to OLAF are treated. Initially, the OLAF DG considered that he had thus formalized an already existing internal complaints procedure by publishing the description on OLAF's website and that this did not require a written decision from him. Following a discussion with the SC, he adopted a "written confirmation" of the existence of the complaints procedure, without, however, publishing any formal decision on OLAF's website. Consequently, the SC still considers that the complaints procedure has not as yet been properly formalized, due to the lack of a formal decision, duly dated, signed and published, fixing the procedure and specifying the complainants' rights. Therefore, the SC considers that its recommendations have been only partially implemented.

[15] Cf. letter of the OLAF DG of 8 February 2013.
[16] Opinion No 2/2013 on *Establishing an internal OLAF procedure for complaints*, adopted in December 2013 and published in the SC 2013 Activity Report as annex 2.

Investigation Policy Priorities

25. The SC examined the Investigation Policy Priorities (IPPs) established in 2012, 2013 and 2014 by the OLAF DG. Following comments expressed by the SC in its 2012 Activity Report[17] and during technical meetings with the SC Chairman, the OLAF DG adopted an amended definition of the IPPs for 2014 and reviewed the policy on financial indicators. However, as a result, the OLAF DG completely excluded any financial indicators from the draft IPPs for 2014. Therefore, the SC issued, in its **Opinion 1/2014**[18], recommendations aiming to ensure that the unit responsible for case selection had appropriate and concrete guidance and that the adoption of the IPPs was based on feed-back from the stakeholders.

26. The SC notes that the implementation of the recommendation concerning the guidelines on the application of the selection principles is pending, while the other recommendation seems to be only partially implemented (see **Annex 4**).

27. OLAF informed the SC of a number of measures adopted in order to ensure regular consultations with Directorates-General of the Commission on matters related to fraud prevention and detection. However, financial indicators have been completely abandoned instead of being reviewed and therefore selectors still need further formal guidance on the application of the proportionality principle. Moreover, OLAF has not introduced any follow-up procedure for cases in which there is a "sufficient suspicion" of fraud, but which have been dismissed on the basis of subsidiarity, proportionality or investigation policy priorities.

Selection of cases

28. The SC assessed the efficiency, quality and transparency of the selection process in OLAF and issued, in its **Opinion 2/2014**, a number of recommendations with the objective of improving it. As an overall conclusion of its assessment, the SC issued a final recommendation that OLAF carry out an internal evaluation of the activities of the ISRU and requested that the OLAF DG inform the SC on the follow-up given to its recommendations.

29. OLAF provided the SC with a self-assessment of the implementation of the SC's recommendations, indicating that most of them are either implemented or not applicable. However, the review carried out by the SC indicates that many of the responses are not substantial or not relevant to the recommendations. As a consequence, the SC could not verify the implementation of some of the recommendations, while others appear not to have yet been implemented (see **Annex 5**). Taking into account all the above considerations, the SC will consider the possibility of again reviewing the implementation of these recommendations in a future report.

[17] The SC expressed the view that OLAF should reconsider high financial thresholds for opening of investigations.
[18] Opinion 1/2014 on *OLAF Investigation Policy Priorities*.

III. Recommendations concerning the Supervisory Committee

Independent functioning of the Supervisory Committee and of its Secretariat

30. The SC has an inter-institutional character, which derives from the SC's mandate and tasks, as well as from the appointment procedure of the SC Members. The SC, as an independent body, reports to the EU institutions and participates in the exchange of views with the institutions. In addition, Regulation No 883/2013 calls for OLAF to equally ensure the independent functioning of the SC's Secretariat[19] which the SC considers as a prerequisite for the independence and effective functioning of the SC itself.

31. Therefore the SC recommended that OLAF ensure adequate staffing of the SC Secretariat, the independent functioning of the SC Secretariat (in particular regarding the staff appointment, appraisal and promotion) and a separate budget line for the SC's Secretariat.[20] OLAF fully implemented two recommendations and partially implemented one recommendation (see **Annex 6**).

32. OLAF allocated to the SC Secretariat the number of staff requested by the SC, sub-delegated the implementation of a part of the budget of the Secretariat to its Head and presented to the SC an estimate of the SC Secretariat's budget. The SC welcomes this improvement, but notes that the OLAF DG has still not sub-delegated powers with regard to the Secretariat staff to its Head.

Consultation with and reporting to the Supervisory Committee

33. The SC recommended that OLAF consult the SC or report to it on matters falling within the mandate of the SC. In particular, the SC recommended that OLAF:

    - report regularly to the SC on complaints received and on the method of handling them[21];

    - provide the SC with an assessment of the results of the implementation of the IPPs for 2012 and 2013 together with a summary of the feedback provided by the stakeholders[22];

    - inform the SC whenever actions or omissions of EU or national authorities are likely to jeopardize OLAF's investigative independence and of the measures it intends to put in place in order to improve cooperation with stakeholders[23];

    - inform the SC on all dismissed cases in which information has been transmitted to judicial authorities of Member States, in accordance with Article 17(5) of Regulation No 883/2013[24];

    - consult the SC before OLAF's Preliminary Draft Budget is sent to the Directorate General for Budget[25].

[19] Recital 40.
[20] The recommendations were made in the SC's Opinion 1/2012 and were reiterated in the SC's Opinion 1/2013.
[21] Opinion 2/2013.
[22] Opinion 1/2014.
[23] Opinion 2/2014.
[24] Opinion 2/2014.

34. With the exception of the last of these recommendations, none of them have been implemented to date (see **Annex 7**). Either OLAF has just expressed its willingness to consult the SC in the future or acknowledged implementing difficulties or stated its disagreement.

IV. Conclusions

35. The implementation review shows that, out of 50 SC recommendations, OLAF has fully implemented only 8 recommendations (16 %) and partially implemented 6 recommendations (12 %).

    72% of the SC's recommendations seem not to have been implemented: for 20 recommendations no satisfactory actions have been taken, implementation of 1 recommendation is pending and implementation of 15 recommendations could not be verified, since OLAF has not provided any sufficiently substantial information.

36. **The SC is particularly concerned that not only are the majority of the SC's recommendations not implemented, but that OLAF does not even provide any relevant justification therefor.**

    The SC intends to monitor, on a regular basis, the implementation by OLAF of the SC's recommendations.

Brussels, 17 November 2014
For the Supervisory Committee
The Chairman

Johan DENOLF

[25] Opinions 1/2012 and 1/2013.

ANNEXES

Annex 1 Recommendations concerning OLAF investigative resources – Opinions 1/2012, 1/2013 and 2/2014

Subject	*Reference*	*SC recommendations to OLAF DG*	*OLAF self-assessment (5/03/2014 and 23/06/2014)*	*SC's assessment*
OLAF resources and HR strategy	*Opinion 1/2012*	**[nr 1]** OLAF to develop a human resources strategy based on a needs assessment, with focus on training, career development (also for temporary agents), succession planning and justified division of tasks among administrators and assistants.	**Partially implemented (on-going)** SC's recommendation on OLAF staff policy seems to go beyond its mandate to monitor OLAF's investigative function. However we can inform you that an OLAF Human Resources Strategic Plan is under development and will be finalised by mid-2014.	**[nr 1]** and **[nr 2] Implemented** On 29 August 2014, the OLAF DG forwarded to the SC the "OLAF HR Strategic Plan 2014-2016". With regard to Opinion 1/2012, the SC cannot agree that its recommendation "goes beyond its mandate". The SC's role was confirmed by Regulation No 883/2013, which specifies that the SC recommendations shall concern, among others, "the resources needed to carry out the investigative function of the Office" (Article 15(1) third paragraph). The SC welcomes the fact that OLAF did not reiterate this statement with regard to Opinion 1/2013.
	Opinion 1/2013	**[nr 2]** A human resources strategy based on a needs assessment of OLAF's current activities should be developed and focus given to training, career development, succession planning and appropriate balance between assistants providing support services and administrators performing core investigative tasks.	**Pending** The adoption of an OLAF HR strategic plan is foreseen shortly.	

Resources allocated to the ISRU	*Opinion 2/2014*	OLAF should ensure that the ISRU has at its disposal sufficient and adequate resources to carry out its selection tasks. In particular, OLAF should: **[nr 3]** Increase the number of selectors with investigative experience; **[nr 4]** Apply the principle of specialization of selectors more rigorously; **[nr 5]** Ensure that the selectors have the appropriate (legal, linguistic and sectorial) expertise and provide them with sufficient training; **[nr 6]** Improve the functioning of the FNS, in order to allow it to cope with the upload of documents of greater size. **[nr 7]** Adopt proper procedures for dealing with whistle-blowers.	**Implemented** **[nr 3]** the ISRU comprises selectors of various backgrounds – not only former OLAF investigators – covering a large area of expertise. The number of selectors was increased in June 2014. **[nr 4]** the selectors are specialised and organised under three sectors, according to three subject areas: "EU staff, direct expenditure, external aid and new financial instruments", "Customs, tobacco and counterfeiting" and "Structural funds and agricultural expenditure". **[nr 5]** the selectors have the appropriate expertise and regularly undergo training which is specifically adapted to their needs. **[nr 6]** OLAF addressed the problems with the FNS through a new contract for maintenance. A new release was delivered and implemented mid June 2014 and is working as planned. **[nr 7]** Proper procedures for dealing with whistle-blowers are in place. OLAF complies with the Staff Regulations and the Commission's Guidelines on Whistleblowing (SEC(2012)679final). OLAF will consider the need for additional internal guidelines.	**[nr 3]** and **[nr 5]** **Implementation of recommendation could not be verified** The SC has received no substantial reply: the number of selectors recently joining the unit is not indicated and OLAF did not indicate any remedial measures to the concerns expressed by the SC in its Opinion 2/2014. **[nr 4]** and **[nr 6]** **Implemented** **[nr 7]** **Not implemented** The SC is fully aware of the rules in the Staff Regulations and the Commission's Guidelines on Whistleblowing (SEC(2012)679final) of December 2012. The SC however considered that they could be supplemented by clear and detailed internal rules for dealing with whistle-blowing (Opinion 2/2014, paragraph 42). The European Ombudsman stated, with regard to the above mentioned Guidelines, that "the Commission has been the most advanced institution by adopting guidelines on whistleblowing, **but not yet internal rules**"(emphasis added)[26]. The SC maintains its recommendation.

[26] See European Ombudsman's Press release no. 16/2014**,** 28 July 2014, "What are EU institutions doing to protect whistle-blowers"? http://www.ombudsman.europa.eu/en/press/release.faces/en/54626/html.bookmark.

	Opinion 2/2014	**[nr 8]** OLAF should place the selectors in an organisational structure separate from the reviewers and maximally reduce the number of cases for selection allocated to reviewers. *OLAF could consider either decentralising the selection function to the investigative Directorates, or introducing a rotation system whereby investigators from each investigation unit are allocated, for a period of time, to the ISRU.*	**Implemented** OLAF has reduced the number of selection files allocated to reviewers. OLAF has carefully considered the SC recommendation and decided to keep the current organisational structure of the ISRU. The ISRU has been reinforced by recruiting staff from the investigative units.	**Implemented** Statistical information extracted from the CMS (prior to the SC's access to statistical data being cut by OLAF in June 2014) indicates a significant decrease in the number of cases for selection allocated to the reviewers in 2014. The SC takes note of the organisation of the ISRU into several sectors.
Follow-up of investigations	*Opinion 1/2012*	**[nr 9]** An effective follow-up of investigations must be ensured (incl. feedback on OLAF recommendations).	**Implemented** With the new OLAF organisation the follow-up is done more efficiently and effectively.	**Implementation of recommendation could not be verified** The SC has received no substantial reply. The SC notes that the OLAF DG issued, on 12 May 2014, Guidelines on judicial, disciplinary and financial monitoring. However, due to the lack of access to OLAF cases, the SC is not in a position to assess OLAF's monitoring activity.
	Opinion 1/2013	**[nr 10]** OLAF should continue to develop indicators describing the efficiency, quality and results of the follow-up of its investigations.	**Implemented**	**Implementation of recommendation could not be verified** The SC has received no substantial reply. ***(see also the recommendation above)***

Annex 2 Recommendations concerning OLAF case OF/2012/0617

Opinion No 2/2012

Subject	***SC recommendations***	***OLAF self-assessment (7/02/ 2013 and 5/03/ 2014)***	***SC's assessment***
Right to private life	**[nr 11]** OLAF to indicate the legal basis prior to applying any measure potentially interfering in the fundamental rights to "private life" and "communications" of persons involved in an investigation.	**Implemented** For every investigation activity undertaken by OLAF, the legal basis is specified on the investigation authorisation. OLAF is well aware of the requirements of Article 7 of the Charter of Fundamental Rights of the EU and Article 8 of the European Convention of Human Rights (ECHR) that everyone has the right to protection of his private and family life, and his correspondence/communications. As an investigative body, OLAF acknowledges the fact that its activities are «potentially interfering in the fundamental rights to "private life" and "communications" of persons involved in an investigation». However, such interference by OLAF in the context of its investigations is in accordance with law and necessary in a democratic society in the interests of the economic wellbeing of the EU, and for the prevention of disorder or crime, as required in Article 8(2) ECHR. Further, OLAF fully respects all data protection requirements in the performance of its investigative activities, in accordance with Regulation (EC) No 45/2001. In particular, before undertaking any investigative activity, OLAF evaluates necessity and proportionality.	**Not implemented** In Opinion 2/2012 transmitted to the DG on 17 December 2012 the SC identified at least two investigative measures which were applied without legal basis and in probable violation of Article 7 of the Charter of Fundamental Rights of the EU (the right to "private life" and "correspondence"). Until today, no valid legal basis for those measures has been indicated by OLAF. The SC does not agree with this OLAF position that the Office has some kind of a "blanket competence" to interfere in fundamental rights of the EU citizens. Every such possibility has to be carefully analysed and justified in advance on a case-by-case basis. ***(see also the recommendation below)***

Right to private life	**[nr 12]** OLAF did not analyse its competence to gather evidence by way of recording private telephone conversations which seems contrary to Article 7 of the EU Charter of Fundamental Rights. OLAF to make such a legal analysis.	**Implemented** Following the SC's recommendation, OLAF conducted a legal analysis of the situation in several Member States concerning the use of recording by public authorities of private telephone conversations.	**Partially implemented** The relevant legal analysis was promised by the OLAF DG in a note addressed to the SC on 8 February 2013. On 11 June 2014, following two reminders sent by the SC, OLAF provided the SC with the legal analysis "as it stands today". Thus it would appear from OLAF's reply that this legal analysis is still on-going.
Data protection	**[nr 13]** OLAF did not inform persons unrelated to the investigation that their personal data and telephone listings appear in the case file which seems contrary to requirements of Regulation 45/2001. OLAF to fulfil this legal obligation without delay.	**Implemented** OLAF: • considers that it is not the SC's mandate to issue recommendations to OLAF on action(s) to be taken in the framework of a specific investigation. • on data protection, follows the recommendations of the EDPS. • has complied with all its legal obligations towards "other persons unrelated to the investigation", as stipulated by the EDPS (as outlined in point 2.8 of its reply to SC's Opinion No. 2/2012).	**Not implemented** In 2012 OLAF actively sought data (including name, address, phone number, ID number) of certain persons unrelated to the investigation in question. OLAF requested and received, used and stored this personal data, but refused to inform the involved persons. Nevertheless, in his note of 5 March 2014, the OLAF DG claims that the SC recommendations were implemented, despite these persons still not having been informed, because OLAF is carrying out the EDPS' general recommendations which allow for not informing persons unrelated to an investigation that OLAF is processing their personal data. The SC understands that the practice of not informing EU citizens that their personal data are processed by OLAF concerns exclusively persons whose data happen to appear in documents dealt with by OLAF, but without the intention of acquiring them and without any attempts to process them for the purposes of an investigation. In this particular case, OLAF actively acquired personal

			data of certain EU citizens unrelated to the investigation and processed them for the purpose of the investigation. Therefore, the SC is of the opinion that OLAF is clearly obliged to inform them about their rights under Regulation No 45/2001, which has not yet been done.
Right to express views on all facts	**[nr 14]** OLAF to ensure that persons concerned are informed of each fact concerning them in a clear and accurate manner, with an expressly separate question asked for each particular allegation, so that they can express views on all the facts concerning them.	**Implemented** In accordance with Article 9(4) of Regulation No 883/2013 and with Article 18 of the Guidelines on Investigation Procedures (GIP), all persons concerned are provided with the facts concerning them and are invited to comment on those facts in writing or at an interview.	**Implementation of recommendation could not be verified** The SC has received no substantial reply. The SC described a case where it seems that the allegations were not presented in a sufficiently clear and accurate manner. OLAF has not provided any explanation in this respect. The SC also issued a very precise recommendation and is not aware of any steps taken by OLAF to implement it.
Checks of economic operators	**[nr 15]** OLAF to ensure a scrupulous legality check before applying Regulation 2185/96 (*on-the-spot checks of economic operators*) requiring justification in terms of the scale of fraud or seriousness of damage done to the EU financial interests ("*very limited evidence*" is not a valid justification)	**Implemented** In accordance with article 12 of GIP, OLAF performs a scrupulous legality, necessity and proportionality check before applying Regulation (EC) No 2185/96.	**Implementation of recommendation could not be verified** The SC has received no substantial reply. In its Opinion 2/2012 transmitted to the DG on 17 December 2012, the SC identified an on-the-spot check which could have violated the fundamental rights of the persons concerned. The SC has received no satisfactory explanation or any information on OLAF's follow-up to the SC recommendation.

Extension of the scope of investi-gation	**[nr 16]** OLAF to ensure a legality check of extension of the scope of an investigation, to respect in particular the requirement of "sufficiently serious suspicion" with regard to the new aspects.	**Implemented** OLAF performs, in accordance with Article 12 of GIP, a legality check of the extension of the scope of an investigation, which includes the requirement of "sufficient suspicion" (Article 5(1) of Regulation No 883/2013) with regard to the new aspects.	**Implementation of recommendation could not be verified** The SC has received no substantial reply. In its Opinion 2/2012 transmitted to the DG on 17 December 2012, the SC identified an extension of the scope of an investigation which could have violated the regulatory requirements. The SC has received no satisfactory explanation or any information on OLAF's follow-up to the SC recommendation.
DG's direct partici-pation	**[nr 17]** DG not to participate personally in investigative activities (interviews, on-the-spot checks, etc.) to avoid situations of a potential conflict of interest, especially in review of OLAF actions.	**Not implemented** The notion of "Conflict of interests" is defined in Article 11a of the Staff Regulations as situations where an official deals with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence and, in particular, family and financial interests. Consequently, involvement of the Director-General in investigations in which he has no personal interest cannot give rise to a potential conflict of interest. The Supervisory Committee raised the issue of a potential conflict of interest, referring to complaints submitted by EU officials under Article 90a of the Staff Regulation, implying that complainants lose the Director General as an instance of independent and impartial review. However, Article 90a does not provide for an independent and impartial review of OLAF's activities. On the contrary, it provides the Director-General with the opportunity to review his own decisions and, where appropriate, correct any errors on the basis of the objections of the complainant. Decisions taken by the Director-	**Not implemented** The OLAF DG has refused to implement this recommendation. Regulation No 883/2013 introduced even more specific provisions in this respect in Article 7(1) and (2) [emphasis added]: *1. The Director-General shall direct the conduct of investigations on the basis, where appropriate, of written instructions. Investigations shall be conducted under his direction by the staff of the Office designated by him.* *2. The staff of the Office shall carry out their tasks on production of a written authorisation showing their identity and their capacity. The Director-General shall issue such authorisation indicating the subject matter and the purpose of the investigation, the legal bases for conducting the investigation and the investigative powers stemming from those bases.*

		General on those complaints are subsequently subject to judicial review. Furthermore, the interpretation given by the Supervisory Committee would mean that the Director-General would have to be excluded from deciding on *any* Article 90a complaint on the grounds of conflict of interest: Regulation 883/2013 attributes to the Director-General the function of investigation authority, not the function of independent and impartial arbiter. The Director-General "shall direct the conduct of investigations" and therefore is involved in all investigations (and may decide on the extent of his involvement in each case).	The SC maintains its recommendation.
Notification to institutions	**[nr 18]** OLAF to follow rigorously the legal requirements on notifications to the institutions concerned by the opening of an investigation. OLAF, in particular, to notify the President when a Member of an institution or body (incl. the SC) is involved in an investigation.	**Implemented** OLAF always informs the institutions and bodies concerned in accordance with the relevant provisions of the Memoranda of Understanding or the Administrative Arrangements signed between OLAF and the institution or body in question.	**Implementation of recommendation could not be verified** Due to the lack of access to OLAF cases and to OLAF's unsubstantiated reply, the SC is not in a position to assess the implementation of this recommendation.
Conflict of interest	**[nr 19]** OLAF to verify whether there was any potential conflict of interest between the duties of the national expert and his participation in investigation activities.	**Implemented** Possible conflicts of interests are considered prior to the appointment of any investigator for a given case. The rules concerning the seconded national experts (SNE) are set out in Commission Decision C(2008)6866. These rules require both the SNE and his employer to confirm that no conflicts of interest exist in the appointment of the SNE as a member of staff. In this case the	**[nr 19] Implementation of recommendation could not be verified** The SC was not in a position to verify the implementation of this recommendation, since OLAF has not provided any relevant documents allegedly implementing the recommendation.

	[nr 20] If such verification had been done, the Committee recommends including it into the case file.	SNE in question signed his "Statement on my honour" on 13 September 2011 and a separate declaration was signed on 19 September 2011 by his employer, the Swedish economic crime authority. Both of these documents are kept in the SNE's personal records in accordance with Article 6(5) of the Commission Decision. Leaving aside this general point, OLAF does not understand how the circumstance of a seconded Swedish prosecutor participating in this investigation could possibly constitute a conflict of interest. For reasons of confidentiality and data protection, all personnel matters are kept in personal files which are under the responsibility of the Human Resource unit of OLAF. There is no reason why these documents should appear in the investigation files. There are no additional obligations for OLAF to verify possible conflicts of interest of SNE involved in any given investigation. In addition, Article 6(5) of the Commission Decision places the obligation to inform the Director-General of any possible conflict arising during his appointment on the SNE directly. This obligation to inform of possible conflicts of interest applies to all staff. The Commission relies on the integrity and professionalism of its members of staff including its SNEs. Article 6(1) of Regulation (EC) No 2185/96 foresees that seconded national experts (SNEs) may assist in the checks and inspections, which is what occurred in the present case. The SNE was not in charge of any investigative activity in this investigation. OLAF complied with its obligation to obtain the relevant statements concerning conflicts of interest from both the SNE and his employer at the time of his secondment to OLAF. These documents have been kept correctly in OLAF's personnel files.	**[nr 20] Not implemented** The SC disagrees with OLAF's statement that there should be no mention included in the case file with regard to verifications concerning potential conflict of interest. The SC maintains its recommendation.

Annex 3 Recommendations concerning OLAF complaints procedure

- Opinion 2/2013

Subject	*SC recommendations to OLAF DG*	*OLAF self-assessment (23/06/ 2014)*	*SC's assessment*
Complaints procedure - adoption	**[nr 21]** The OLAF DG should set up an internal procedure for dealing with individual complaints concerning OLAF investigations.	**Implemented**	**Partially implemented** **(substantive action taken, but additional measures required)** OLAF and the SC have different views with regard to the degree of the implementation of the SC's recommendation. On 20 January 2014, OLAF published on its website a description of the manner in which complaints related to OLAF's investigations and addressed to OLAF are treated. The OLAF DG considered that he had formalized an already existing internal complaints procedure by publishing the description on OLAF's website and that this did not require a written decision from him (letter to the SC of 17 February 2014). Following a discussion with the SC, he adopted a "written confirmation" of the existence of the complaints procedure, without, however, publishing any formal decision on OLAF's website. Therefore, the SC does not consider the complaints procedure to be properly established and formalized as yet, due to the lack of a formal decision, duly dated, signed and published, fixing the procedure and specifying the complainants' rights.
Complaints procedure - publication	**[nr 22]** The OLAF DG should publish the procedure on OLAF's website after its adoption.	**Implemented**	**Partially implemented** OLAF has published on its website a description of the manner in which complaints in connection with OLAF's investigations and addressed to OLAF are treated. However, the SC considers that the complaints procedure has not as yet been properly formalized (see above).

Annex 4 Recommendations concerning OLAF Investigation Policy Priorities

- Opinion 1/2014

Subject	*SC recommendations to OLAF DG*	*OLAF self-assessment (23/06/2014)*	*SC's assessment*
Guidelines	**[nr 23]** The OLAF DG should issue guidelines on the application of the three selection principles established by the Regulation, including on the application of financial indicators as a proportionality criterion.	**Pending** OLAF is considering the need for additional guidance, building on the guidance used in the past to support the implementation of the same principles.	**Pending** The SC notes that, instead of reviewing the level of financial threshold (or indicators), OLAF abolished them completely, leaving selectors without any formal guidance on application of the proportionality principle in this respect. Moreover, OLAF has not introduced any internal follow-up procedure for cases in which there is a "sufficient suspicion" of fraud, but which have been dismissed on the basis of subsidiarity, proportionality or investigation policy priorities. However, the SC has noted, in the framework of its analysis of the ISRU's opinions on selection of cases, that the financial indicators, when they are used by the selectors, were not a determining factor when proposing to dismiss or open a case (see SC's Opinion 2/2014, paragraph 64).
Dialogue with stake-holders	**[nr 24]** The OLAF DG should enter into a constructive dialogue with the stakeholders on the determination and implementation of IPPs, in particular with regard to financial indicators and possible follow-up of dismissed cases.	**Implemented**	**Partially implemented (substantive action taken, but additional measures are required)** OLAF informed the SC of a number of measures adopted in order to ensure regular consultation with Directorates-General (DGs) of the Commission on matters related to fraud prevention and detection. For example, OLAF supported the DGs in devising their anti-fraud strategy and action plans; OLAF set up a Fraud Prevention and Detection Network with the DGs concerned, in the framework of which the IPPs for 2013 and 2014 were discussed and an OLAF "Guidance note for treatment of dismissed cases" was discussed and distributed to the relevant DGs. However, it does not appear from these measures that the financial indicators were discussed with the stakeholders, or established on the basis of input from them.

Annex 5 Recommendations concerning the selection of cases in OLAF

- Opinion 2/2014

Subject	*SC recommendations to OLAF DG*	*OLAF self-assessment (23/06/2014)*	*SC's assessment*
Application of the selection criteria by the ISRU	**OLAF should require the selectors:** **[nr 25]** to better explain illegal or irregular activities to which the allegations refer and the way in which they affect the financial interests of the EU; **[nr 26]** to systematically make reference to relevant legal instruments. *OLAF could consider compensating for the lack of sufficient legal expertise by the introduction of appropriate training and of procedures for consultations with OLAF's Legal Advice Unit.*	**Implemented** **[nr 25]** The analysis and definition of the alleged irregular and/or illegal acts together with a reference to the respective financial instrument or source of funding is made on a systematic basis in the opinions of the ISRU. **[nr 26]** The relevant legal basis for the opening or dismissal of cases is always mentioned in the Decision of the Director-General. The ISRU possesses sufficient capacity in terms of legal expertise. Reviewers are lawyers and magistrates and their legal expertise is also used for internal advice. Moreover, the OLAF's Legal Advice Unit and also the Legal Service of the Commission are consulted every time that the particularities of a case require it.	**Not implemented** The response received is not relevant to the recommendations. Moreover, one recommendation **[nr 26]** seems to be misunderstood, since it refers to the need to make reference to the relevant legal instruments relating to the protection of the financial interests of the EU (as required by Article 5.4 of the GIP) and not to the legal basis for the opening and dismissal of cases. During its review of the selection function of the ISRU, the SC did not have the opportunity to examine the decisions taken by the DG, since it has been provided only with the paper version of the opinions of the ISRU and had no access to OLAF case files. The SC maintains its recommendations.

	[nr 27] OLAF should establish a list of concrete and measurable indicators for assessing the reliability of the source, credibility of the allegations and sufficiency of suspicions.	**Implemented** According to article 5.4 of the GIP, in evaluating whether the information is sufficient to open an investigation or coordination case, consideration must be given to the reliability of the source and the credibility of the allegations. In that respect, already in January 2013, selectors were instructed by the ISRU Head of Unit to follow guidelines which take into account several relevant criteria (e.g. past experiences with the same source, distance of the source from information, position of the source with respect to the reported facts/events). It is not possible to impose "in abstracto" concrete and measurable indicators for assessing the credibility of the allegations and the sufficiency of suspicions which need to be assessed on the face of individual allegations and the analysis carried out.	**Not implemented** The SC has received no substantial reply: the SC has not been provided with a copy of the guidelines mentioned by OLAF. The SC's Opinion 2/2014 clearly reflects that, if they exist, they have not been fully applied. The SC maintains its recommendation.
	[nr 28] OLAF should clarify the application of the proportionality principle and provide the selectors with clearer guidelines. *In particular, OLAF should better assess the forecast of the manpower required and other foreseeable costs, weighted against the likelihood of financial recovery or prosecution, and deterrent value. Financial indicators, which are relevant for the assessment of the seriousness of the risk involved, should be used as an element of reference and as internal guidelines on the application of the proportionality principle.*	**Implemented** The ISRU assesses the manpower required and other foreseeable costs and weights them against the likelihood of financial recovery and/or prosecution and the deterrent value.	**Not implemented** The response received is not relevant to the recommendations. The SC's Opinion 2/2014 clearly reflects that the assessment carried out by the ISRU is incomplete. The SC maintains its recommendation.

	[nr 29] OLAF should clarify and more rigorously apply the indicators established in the IPPs for evaluating "efficient use of resources". *In particular: workload of investigation units, its impact on on-going investigations and availability of expertise. Better cooperation between ISRU and investigation units may be necessary.*	**Implemented** The ISRU assesses the manpower required and other foreseeable costs and weights them against the likelihood of financial recovery and/or prosecution. ISRU is informed monthly of the workload of each investigative unit and they discuss, whenever necessary, the possible impact of opening of a new investigation on on-going activities.	**Not implemented** The response received is not relevant to the recommendations. The SC's Opinion 2/2014 clearly reflects that the assessment carried out by the ISRU is incomplete. The SC maintains its recommendation.
	OLAF should pay special attention to cases it decides to dismiss on grounds of subsidiarity or added value. In particular: **[nr 30]** Verify that the recipient authority has the necessary powers to take over the dismissed cases; **[nr 31]** Establish a system of monitoring (prompt, systematic and clearly evidenced) and reporting on cases dismissed on grounds of subsidiarity/added value.	**[nr 30] Implemented** **[nr 31] Not applicable** OLAF has no legal basis to do so.	**[nr 30] Implementation of recommendation could not be verified** The SC has received no substantial reply. **[nr 31] Not implemented** The SC does not agree with the statement that OLAF needs a legal basis to establish a system of monitoring of and reporting on cases dismissed on grounds of subsidiarity/added value. Such system could be implemented only internally (within OLAF), in order to allow it to ensure a proper follow-up to its own cases. The SC maintains its recommendation.
	OLAF should improve the quality, clarity and consistency of the motivation of opinions on opening decision. In particular, by introducing into the work-form "Opinion on opening decision" a pre-determined list of: **[nr 32]** relevant legal instruments (to be used when assessing OLAF's competence to	**[nr 32] Implemented** **[nr 33] Not applicable** Concrete and measurable indicators for assessing the reliability of the source, credibility of the allegations and sufficiency of suspicions cannot be included in a pre-determined list (see also OLAF reply to recommendation	**[nr 32] Implementation of recommendation could not be verified** The SC has received neither a substantial reply, nor a copy of an amended work-form. **[nr 33] and [nr 34] Not implemented** The SC does not agree with OLAF's statement. A list such as that proposed by the SC does not necessarily

	act); **[nr 33]** concrete and measurable indicators for assessing the reliability of the source, credibility of the allegations and sufficiency of suspicions (to be used when evaluating the sufficiency of information); **[nr 34]** concrete and measurable indicators for assessing the IPPs.	[below]. **[nr 34] Not applicable** It is not possible to simplify in a pre-determined list concrete and measurable indicators for assessing the IPPs. A motivated assessment is needed.	need to be exhaustive, but rather give some guidance to the selectors. The SC maintains its recommendation.
Transparency of the selection process	**OLAF should improve the transparency of the selection process.** In particular: **[nr 35]** Give better feedback to the source of information on the action (not) taken by OLAF following the information provided by the source; **[nr 36]** Reinforce internal consultation and exchange of information between the ISRU and the investigation (support) units.	**Implemented** **[nr 35]** Although not always mentioned in the opinions, the source is as a general rule notified by the ISRU of the dismissal of the case (Art. 7.1 of the GIP), unless anonymous. Whether or not the dismissal should be communicated to the source is included in the newly revised selection opinion form, adopted in June 2014. **[nr 36]** There is close cooperation and exchange of information and experiences between investigative units and the ISRU. Internal consultation is carried out on a regular basis with the investigative units. Such cooperation is mainly targeted at achieving a better understanding of the investigative unit's resources and verifying potential links between new incoming information and existing cases. Other instances of cooperation between the ISRU and the investigative units are motivated by the need to make best use of language skills not elsewhere accessible. In the autumn of 2013, OLAF undertook a set of initiatives to improve internal consultation and to adequately report on it in its opinions.	**[nr 35] and [nr 36] Implementation of recommendations could not be verified** The SC has received no substantial reply. The SC was not informed of the revision of the selection opinion form and was not provided with a copy of it. OLAF did not inform the SC which concrete initiatives it has taken to improve the internal consultation.

	Conclusions of the selection opinions should clearly specify actions that OLAF should take following a decision to dismiss or open an investigation or coordination case: **[nr 37]** to inform the national or EU authorities better placed to act; **[nr 38]** to protect (or not) the identity of the source; **[nr 39]** to inform (or not) the source of information of OLAF's decisions.	**Implemented for the decision to <u>dismiss a case</u>:** **[nr 37]** In the newly revised selection opinion form whether or not the information is communicated to the national or EU authorities will be systematically included. **[nr 38]** Since the protection of the identity of the source is already foreseen by general rules, there is no need to repeat it in the opinion of an individual case. **[nr 39]** See reply to recommendation no 22.a)[27] <u>Concerning the decision to open an investigation</u>, the actions to take are not specified in the selection opinion; it is for the investigative units to adopt their investigative strategy, hence the further actions to take.	<u>Regarding the decisions to dismiss cases</u> **[nr 37]** and **[nr 39] Implementation of recommendation could not be verified** The SC has received no substantial reply. The SC was not informed of any revision of the selection opinion form and was not provided with a copy of it. **[nr 38] Not implemented** The SC believes that actions to take by the selectors should be specified in the opinion, in order to allow the management team to better verify compliance with the general rules. The SC maintains its recommendation. **<u>Concerning the decisions to open an investigation:</u>** The SC agrees with OLAF's point of view.
Internal evaluation of the ISRU	**[nr 40]** OLAF should carry out an internal evaluation of the activities of the ISRU. *Such evaluation could be carried out either by OLAF's internal auditor and/or by a special team designated by the Director-General, in close consultation with Directors A and B.*	**Pending** OLAF is awaiting the SC Opinion on the review function of the ISRU before considering carrying out an internal evaluation.	**Not implemented** The recommended internal evaluation concerns the selection function of the ISRU only. The SC is of the opinion that OLAF should carry out such an internal evaluation independently of the SC's assessment of the review function of the ISRU (which is currently on-going and no completion date can yet be indicated).

[27] Previous recommendation in this annex.

Annex 6 Recommendations concerning the independent functioning of the SC and of its Secretariat – Opinions 1/2012 and 1/2013

Subject	*Reference*	*SC recommendations*	*OLAF self-assessment (5/03/ 2014)*	*SC's assessment*
Staff numbers of the SC Secretariat	*Opinion 1/2012 and, repeated, Opinion 1/2013*	**[nr 41]** OLAF to ensure adequate staffing of the SC Secretariat (8 posts).	**Implemented** (since mid-June 2013)	**Implemented** The SC Secretariat numbers 8 members of staff as of January 2014.
Independent functioning of the SC Secretariat	*Opinion 1/2012*	**[nr 42]** OLAF to ensure independent functioning of the SC Secretariat as a precondition of the independence and effective functioning of the SC itself, in particular: staff to be appointed, evaluated and promoted on the basis of SC input.	**Implemented** Staff is appointed, evaluated and promoted according to Staff Regulations of officials and the Conditions of Employment of other servants of the European Union. As mentioned in the note ARES (2013)3180362, OLAF's Director-General will take into account the evaluation of the Members of the Committee to form his opinion on the performance of the work undertaken by the Secretariat staff.	**Partially implemented** **(substantive action taken, but additional measures required)** The OLAF DG still has not sub-delegated powers with regard to the Secretariat staff to the Head of the Secretariat. Article 6(1) of the Commission Decision 1999/352/EC establishing OLAF (as amended by Commission Decision 2013/478 /EU of 27 September 2013): the DG "shall exercise, with regard to the staff of the Office, the powers of the appointing authority and of the authority empowered to conclude contracts of employment delegated to him. **He shall be permitted to sub-delegate those powers**". (emphasis added)
	Opinion 1/2013	**[nr 43]** Appointment, appraisal and promotion of the SC Secretary and the Secretariat staff should be made following the SC input.	**Not applicable** Staff of the SC Secretariat is appointed, evaluated and promoted according to the Staff Regulations of officials and the Conditions of Employment of other servants of the European Union. In doing so, the OLAF DG takes into account the opinion of the Members of the SC.	

SC budget line	*Opinion 1/2012*	**[nr 44]** OLAF to indicate global SC Secretariat's expenses separately from other positions.	**Not Applicable** Changes in this respect are not within OLAF's competence, but have to be addressed to the budgetary authorities. Article 18 of Regulation No 883/2013 states: "The total appropriations for the Office, including for the Supervisory Committee and its secretariat, shall be entered under a specific budget line" (24.0107 in the MFF 2014-20). The Regulation does not specify a separate budget line for the Supervisory Committee and a separate establishment plan for the staff of its Secretariat. The expenses (salary, rent, mission costs, etc.) of the staff of the Secretariat are included in the same heading as other OLAF staff since they are part of OLAF's establishment plan. However, should you wish to have an overview of the resources related to your supervisory function, OLAF's Unit 0.2 can produce reports presenting overall expenditures related to the SC, including its Secretariat**.**	**Implemented** The recommendation from Opinion 1/2012 was not initially implemented, since OLAF considered that it cannot decide on separating the Secretariat's expenses from the expenses of the rest of the Office. However, taking into consideration the measures taken by OLAF after the SC reiterated its recommendation in its Opinion 1/2013, the SC considers that this recommendation was implemented.
	Opinion 1/2013	*[recommendation repeated]*	**Implemented** OLAF considered the proposal of the SC. The requested change in the budget structure is not within OLAF's competence. However, to clearly indicate the costs of the SC function, OLAF sent to the SC a breakdown of the SC and SC Secretariat budget. The amount attributed to the SC and its Secretariat (EUR 1 200 000) was indicated in the Draft Budget 2015 of the European Commission (Working Document DB2015 part VI). Furthermore, OLAF sent to the SC a proposal for the implementation of the budget allocated to the SC and its Secretariat which clarifies the responsibilities of the Head of the SC Secretariat and his discretion in the implementation of the budget.	

Annex 7 Recommendations concerning the consultation with and reporting to the SC – Opinions 1/2012, 1/2013, 2/2013, 1/2014 and 2/2014

Subject	*Reference*	*SC recommendations*	*OLAF self-assessment* **(5/03/2014 and 23/06/2014)**	*SC's assessment*
Consultation on budgetary procedure	*Opinion 1/2012 and Opinion 1/2013*	**[nr 45]** The OLAF DG should consult the SC on the preliminary draft budget before it is sent to the Director-General for Budget in any form.	**Implemented** (since 2013)	**Implemented**
Consultation on complaints procedure	*Opinion 2/2013*	**[nr 46]** The OLAF DG should consult with the SC on the details of the procedure before its adoption.	**Not applicable** OLAF received the SC recommendation on 30 January 2014, after the publication of the complaints procedure on its website on 20 January 2014.	**Not implemented** The SC's concerns and expectations were discussed with the OLAF DG during technical meetings with the SC Chairman on 18 December 2013. Moreover, the formal establishment of the procedure has not been completed yet.
Reporting on IPPs	*Opinion 1/2014*	**[nr 47]** The OLAF DG should provide the SC, by 6/03/2014, with an assessment of the implementation of 2012 and 2013 IPPs, with a summary of stakeholders' feedback; in future the documents should be attached to the new draft IPPs transmitted annually to the SC.	**Partially implemented** OLAF regularly assesses the usefulness of the IPPs, in consultation with different stakeholders. However, there is no document summarising the results of the evaluation/implementation. The Regulation does not require specific IPPs performance indicators. Furthermore, the results from the implementation of the IPPs for the previous year are not available at the time of finalising the new IPPs.	**Not implemented** The SC does not agree with OLAF's position and believes that an assessment of IPPs implementation is crucial. Nevertheless, the SC notes OLAF's willingness to provide the SC, in future, with statistics on the impact of the IPPs application has on the selection of cases, and to describe the IPPs implementation in the annual activity report.
Reporting on	*Opinion*	**[nr 48]** The OLAF DG should report regularly to the SC on	**Pending**	**Not implemented**

complaints	*2/2013*	complaints received by OLAF and on the way they have been handled.	OLAF is reflecting on how best to comply with OLAF's obligations in relation to the SC, in line with Regulation No 883/2013 and the Working Arrangements. OLAF is ready to transmit to the SC annual statistics on complaints received and decided upon. However, there is no obligation requiring OLAF to provide information concerning individual complaints, either in Regulation No 883/2013 or in the Working Arrangements recently signed. Moreover, OLAF might not be in the legal position to communicate information on individual complaints to the SC since, in some cases, the complaints to the EDPS and to the Ombudsman are qualified as "confidential". The same applies to procedures under Article 90a of the Staff Regulations. Furthermore, communicating information on individual complaints submitted during an investigation could lead to a situation falling within the notion of "interference with the conduct of investigations in progress" within the meaning of Article 15(1) of Regulation No 883/2013.	To date, the SC has no substantive information on complaints received and treated by OLAF, but only statistical information on the number of complaints concerning OLAF's investigative activity. The SC disagrees with OLAF's position and would underline that it wishes to receive information on how OLAF dealt with the complaints, and not specific case-related information in individual cases. The SC would also point out that the protection of procedural guarantees of persons involved in OLAF investigations is one of the SC's core tasks. Therefore, the SC maintains its recommendation.

Reporting on other matters falling within the SC's mandate	*Opinion 2/2014*	OLAF should improve its reporting to the SC. In particular: **[nr 49]** Inform the SC whenever actions or omissions of EU or national authorities are likely to jeopardize OLAF's investigative independence and of the measures foreseen to improve cooperation with these authorities; **[nr 50]** Inform the SC of all dismissed cases in which information has been transmitted to national judicial authorities, in accordance with Article 17(5) of Regulation No 883/2013.	**[nr 49] Implemented** Should actions or omissions of EU or national authorities jeopardize OLAF's investigative independence, OLAF will inform the SC according to article 4 of the Working Arrangements. **[nr 50] Not applicable** OLAF does not share the SC's interpretation of Regulation 883/2013 on this point. The information to the SC provided by the Director-General under Article 17(5)(b) of Regulation 883/2013 on "cases in which the information has been transmitted to judicial authorities of the Member States" takes into account the clarification offered by recital (45) of the Regulation, making reference to "cases in which information has been transmitted to the judicial authorities of the Member States […] by way of follow-up to an investigation conducted by the Office".	**[nr 49] Not implemented** To date, the SC has not received any relevant information from the OLAF DG, though the SC is aware of the existence of relevant situations. The SC maintains its recommendation. **[nr 50] Not implemented** The SC does not agree with OLAF's restrictive interpretation. The purpose of this reporting obligation by OLAF to the SC is, *inter alia*, protection of procedural guarantees. Obviously, it was not the intention of the legislators to exclude from that protection the persons who are not properly investigated by OLAF, nevertheless, the information on suspicions against them is transmitted to national judicial authorities. The SC maintains its recommendation.

ANNEX 6

Report No 2/2014

Opening of Cases in OLAF in 2012

SUPERVISORY COMMITTEE

OLAF

Opening of cases in OLAF in 2012

Report No 3/2014 from the Supervisory Committee
of the European Anti-fraud Office (OLAF)
to
the European Parliament, the Council, the Commission and the Court of Auditors

(pursuant to Article 15(9) of Regulation No 883/2013)

PART ONE

Introduction

1. The Supervisory Committee (SC) of the European Anti-fraud Office (OLAF) monitors the implementation of the Office's investigative function, in order to reinforce its independence and the proper exercise of the competences conferred upon it by Regulation No 883/2013[1]. The SC also assists the Director-General of OLAF (OLAF DG) in the discharge of his responsibilities to ensure that investigations are carried out to the highest standards.

2. In the framework of its 2012 monitoring activities, the SC noted that at the moment of the reorganisation of OLAF (1 February 2012) 423 cases[2] were opened on the same day and by a single decision of the OLAF DG.

3. At that time, the SC expressed its intention[3] to examine to what extent this single decision was in line with the criteria established by the case-law of the European Court of Justice, which stated that a decision by the OLAF DG to open an investigation cannot be taken unless there are "sufficiently serious suspicions" relating to acts of fraud, corruption or other illegal activities detrimental to the financial interests of the EU[4].

Supervisory Committee's requests for information and OLAF's replies

4. In 2013 and 2014, the SC tried to assess the cases in question, with particular focus on the justification for opening the investigations, on the investigative measures carried out, on their duration and on their results (i.e. recommendations issued by OLAF). As a consequence, the SC addressed several requests for information and for access to the case files to the OLAF DG :

   (a) **23 September 2013** – a request for general information, to which OLAF replied on 18 October 2013[5] and explained the rationale behind the opening of cases on the same day.

   (b) **18 December 2013** – a request for statistical data necessary for preparatory work, to which OLAF replied on 10 January 2014 and provided the SC with the number of on-going cases and of cases closed with or without recommendations by sector, type of recommendations and the amount recommended for recovery.

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[1] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, OJ L 248, 18.9.2013, p. 1–22.

[2] In the OLAF 2012 report, the total number of cases reported is 419. The difference comes from the existence of duplicate cases.

[3] See SC 2012 Activity Report, § 20.

[4] See judgments of 10 July 2003, *Commission of the European Communities v European Investment Bank*, case C- 15/00 and *Commission of the European Communities v European Central Bank*, case C-11/00, paragraphs 164, respectively 141.

[5] Ref. Ares(2013)3289248.

(c) **15 April 2014** – a request for access to a sample of cases - discussed on 12 May between the SC Chairman and the OLAF DG for which the latter requested additional clarifications.

(d) **26 May 2014** – the repeated request for access to a random sample of cases with detailed justifications from the SC, underlining the fact that the information previously provided by OLAF was not sufficient to review the legality of opening decisions.

In his reply of 12 June 2014, the OLAF DG rejected the SC's justifications for access to case files and demanded further explanation. He also claimed that the examination of 423 cases opened *en masse* was "*unrelated to the monitoring of systemic aspects of the Office's investigative function*" and that "*the link between the one-off opening of a large number of cases and OLAF's independence is not self-evident and therefore [he] would be grateful if [the SC] could clarify [its] request*". Finally, the OLAF DG underlined that reviewing the legality of each individual OLAF act, or examining the existence of "sufficiently serious suspicions" for the opening of individual cases "*does not fall within the prerogatives of the SC*".

5. The SC appreciates and recognises OLAF's efforts to deliver the general and statistical information requested by the SC, but wishes to underline that this information is largely insufficient for the purpose of its assessment. Therefore, the SC regrets that its requests for access to a sample of cases have not been satisfied and considers that the justification provided by the SC to the OLAF DG was sufficient.

Results of the cases

6. As a result of the lack of access even to a random sample of case files in question, the SC's assessment is based only on the limited information provided by OLAF, which could not be properly verified.

7. The SC paid special attention to the explanations provided by the OLAF DG, who informed the SC that, prior to the reorganisation of OLAF, the investigation units were instructed to review all on-going assessments (whether a case should be opened or not) and, as a result, they proposed the opening of 423 cases (225 investigations and 198 coordination cases). The decision to open this number of cases was taken by the OLAF DG without going through the normal procedure. This decision concerned only external cases and was a one-off measure to allow a smooth implementation of the new organisational structure of OLAF. The OLAF DG stated that the cases in question were not opened automatically, but on the basis of "thorough assessments"[6].

8. To prioritise their handling a special investigation team was established to deal exclusively with these cases. No information was provided to the SC concerning this measure (i.e. date of the decision to establish the special investigation team, criteria for appointing the investigators, results of their activity etc.).

9. The SC took note of the statistical information provided by OLAF. On 1 February 2012, OLAF opened the 423 cases in question, most of them in the sectors of agriculture and

[6] Letters of the OLAF DG of 18/12/2013 and 12/06/2014.

structural funds. This constituted more than a half of the total number of cases opened in OLAF in 2012 (718 cases)[7].

10. OLAF's annual reports indicate that in the years 2008-2011 the number of cases closed without recommendations was always slightly smaller than the number of the cases closed with recommendations (i.e. the cases closed without recommendations constituted normally less than a half of all closed cases).[8] According to the data received from OLAF, on 8 January 2014, out of 423 cases in question, there were 333 cases closed, 305 were closed without recommendations (i.e. over 90% of all the closed cases) and 28 were closed with recommendations. OLAF describes it as "the result of the exceptional number of cases opened due to the reorganisation"[9].

Supervisory Committee's assessment

11. The main purpose of the SC monitoring activity was to assess whether the opening of the cases in question complied with the legal requirement of establishing "sufficiently serious suspicions". The OLAF DG challenged the SC's competence to examine the fulfilment of this requirement.[10] For the SC, however, it is its basic responsibility to ensure that the OLAF DG exercises his prerogatives properly, in full independence and in accordance with the law.

12. The SC understands the OLAF DG's argument that the requirement to establish "sufficiently serious suspicion" applied formally only to investigations and not to coordination cases. The SC accepts also that a special procedure could have been useful for organisational reasons.

13. However, the SC believes that this does not relieve the OLAF DG from complying with the requirement of a measured and individual assessment of the necessity to open cases. Although it was specified only by the case-law and was introduced in the Regulation concerning investigations conducted by OLAF only in 2013, this requirement stems from the principle of proportionality enshrined in the EU law (no action of the Union may exceed what is necessary to achieve the objectives of the EU Treaties[11]) and was, as such, also applicable in 2012.

14. During the month of January 2012, OLAF staff completed 671 assessments awaiting evaluation[12] and proposed the opening of 423 cases. Thus, in one month, more assessments leading to the opening of cases were finalised than during the two previous years combined (2010-2011).

15. The SC takes note of the OLAF DG's statement that "*the average duration of these 423 cases was 8 months which indicates that the matters under assessment were of substantial and complex nature and required further action by the Office*"[13]. However, the SC notes that it is three times less than the average duration of other cases and the number of cases

[7] See the OLAF Report 2012, p. 3.
[8] Idem, p. 21.
[9] Idem, p. 22.
[10] Letter from the OLAF DG to the SC, Ref. Ares(2014)1925567 - 12/06/2014.
[11] Article 5 of the Treaty on the European Union.
[12] According to OLAF monthly reports on operational activities.
[13] Letter of the OLAF DG of 18/12/2013.

in question closed without any recommendations was, proportionally, unprecedentedly high.

16. These facts and statistics triggered the SC's concern that the cases were opened regardless of the status of their evaluation (since some of them remained in this phase for a few days, while others for several years[14]) and that there was no sufficient individual assessment - duly motivated and registered in each case file - of the initial information received by OLAF.

17. The SC is also concerned that the number of cases irregularly opened and swiftly closed without any results (or even without any investigative measures undertaken) could have seriously distorted OLAF's statistics in 2012 and in the following years.

18. For one year, since the SC began its examination of the issue, **OLAF failed to provide any satisfactory evidence that the opening of the cases in question had been carried out in accordance with the obligatory legal requirements**. Moreover, the SC regrets that, in the course of its monitoring activities, the OLAF DG questioned his supervisors' competence to assess whether the 423 cases were opened and conducted in accordance with the law.

Adopted on 5 November 2014

[14] The date of the initial registration of incoming information varied from 22.06.2007 to 25.01.2012 for cases opened *en masse* on 1 February 2012.

PART TWO

Introduction

19. On 5 November 2014, the text of Report 3/2014 (here presented as Part One) was adopted by the plenary of the OLAF Supervisory Committee, but at the same meeting the OLAF Director-General promised an immediate access to a sample of cases in question. On 12 November 2014, access to a sample of 41 cases and to limited statistical information concerning 423 cases open on 02/02/2012 was granted to the SC.

Methodology

20. The objective of the SC's analysis was to establish whether in opening of the 423 cases in question (constituting a majority of cases opened by OLAF in 2012) the OLAF DG had respected the requirements set forth in the applicable legislation[15], case law[16] and internal OLAF rules[17], in particular the requirement to conduct assessment of any received information and to establish, as a prerequisite of opening an investigation, a "*sufficiently serious suspicion*" that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union".

21. For that purpose, the SC searched in the files not only for documents identified as "assessment" or "evaluation", but also any other documents or traces of activities which could have indicated that the assessment had been conducted (in particular: description of the initial information, exchange of information with the sources, the handover notes, legal and review opinions, final case reports, opinions on a final case report).

Results of the Supervisory Committee's analysis

22. The SC noted that over 70% cases in question concerned agriculture and structural funds.

23. The SC did not find any documents identified as "assessment" or "evaluation" in the whole sample of case files. The SC discovered traces of activities which could have been possibly used for assessment of incoming information in only 17% cases (see the chart below).

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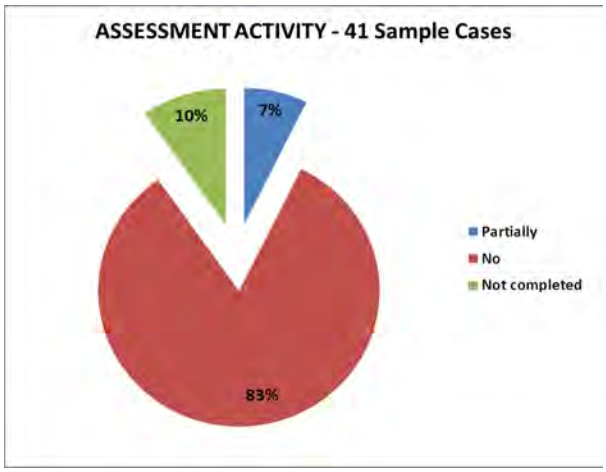
[15] Article 5 of Regulation 1073/1999.

[16] The European Court of Justice stated that a decision by the OLAF DG to open an investigation cannot be taken unless there are "sufficiently serious suspicions" relating to acts of fraud, corruption or other illegal activities detrimental to the financial interests of the EU" (See judgments of 10 July 2003, *Commission of the European Communities v European Investment Bank*, case C- 15/00 and *Commission of the European Communities v European Central Bank*, case C-11/00, paragraphs 164, respectively 141). However, it must be noted that since 1 October 2013 Regulation 883/2013 introduced the concept of 'sufficient suspicion' (Article 5(1) and the jurisprudence quoted above has effectively been overruled.

[17] OLAF Manual –Operational Procedures, point 3.2.2.



24. In only 6 cases out of the sample of 41 cases, the SC was able to find a clear estimation of the possible financial impact as conducted by OLAF.

25. In none of the cases in the sample did the SC find any document confirming that the "*sufficiently serious suspicion"* had been established before opening the case.

26. The SC noted that majority of the cases in question lasted rather shortly after the opening and often only few investigative activities were conducted. Out of 367 cases closed at the time of the statistical review by the SC, 253 cases closed as the first ones had the average duration of less than 12 months. (It had an impact on the average duration of cases as calculated in OLAF statistics for the given year and the following years).

27. The SC would underline that the requirements for opening an OLAF investigation have been introduced by the legislator and earlier by the European Court of Justice to provide a legal framework for the discretionary powers of the OLAF DG. They are, however, not only procedural rules – they are there also to safeguard the rights of the individuals and economic operators. Opening an OLAF investigation may in itself change their legal situation. For instance, under the rules applicable in 2012 for the Commission Early Warning System, the mere opening of an OLAF investigation against an economic operator could have been, as far as the SC is informed, a circumstance leading to the Commission's decision not to enter into a contract with that operator, without him being ever informed of the reason. An analysis of that issue would, however, go beyond the competence of the Supervisory Committee of OLAF.

Conclusions

28. On the basis of the sample of cases provided by OLAF, the SC established the following:

(i) OLAF did not conduct any appropriate assessment of the incoming information for none of the cases in question,

(ii) for the vast majority of cases there was not even a trace of any assessment activity;

(iii) **the OLAF Director-General opened all the cases in question without establishing beforehand the existence of a sufficiently serious suspicion that there had been fraud, corruption or any other illegal activity affecting the financial interests of the Union – which is in contradiction with the legal requirement for opening an OLAF investigation, in force at that time**.

Brussels, 20 January 2015
For the Supervisory Committee,
The Chairman
Tuomas PÖYSTI

At the request of the SC, on 9 February 2015 OLAF provided its comments to the Report. Those comments are attached in the Annex. The SC has taken note of them and decided to forward the Report to the Institutions without any modifications.

ANNEX

OLAF comments of 9 February 2015

on the Supervisory Committee Report No 3/2014

on opening of cases in OLAF in 2012

(OLAF's comments and replies to the SC's Opinions and Reports can be found on OLAF's website: http://ec.europa.eu/anti_fraud/about-us/reports/index_en.htm).

ANNEX 7

NOTE

on the SC's Analysis of the OLAF Draft IPPs for 2015

SUPERVISORY COMMITTEE

OLAF

Brussels, 22/12/2014 / (2015-OSC-0001)

Note on the SC's analysis of the OLAF draft IPPs for 2015

Introduction

On 8 December 2014, the OLAF Director General (DG) forwarded the draft OLAF IPPs for 2015 to the OLAF Supervisory Committee (SC), as foreseen in Article 17(5) of Regulation No 883/2013.

In the SC plenary meeting of 18 December 2014, the DG presented the IPPs stating that:

- The IPPs are applied for opening of investigations only after the legal criteria of proportionality and efficient use of resources are considered;
- Most of the cases are opened without considering the principles of proportionality and subsidiarity;
- in view of the OLAF DG, too much importance is given to the IPPs by the stakeholders;
- the new IPPs are an adaptation and continuation of last year's IPPs;
- The main consultation on IPPs was done in the Inter-institutional exchange of views of 8 April 2014 and in the meeting of the Fraud Prevention and Detection Network – an inter-service working group managed by OLAF (FPDNet), where main spending Directorates General of the Commission expressed their views; the opinion of the European Parliament was equally taken into account;
- A constructive dialogue was set with stakeholders, the SC may request this information in written and OLAF would reply;
- The OLAF DG did not understand how an evaluation of the implementation of IPPs could be conducted, as they are stable;
- OLAF received a lot of complaints in the fields of agriculture and structural funds and focused on common modus operandi instead of focusing on impact - consequently, the financial indicators disappeared.

Following that presentation, there took place a short exchange of views between the DG and the SC.

The SC agreed, as requested by the DG, to present its initial analysis very urgently, i.e. within the following 4 working days[1].

[1] taking into account the period of Christmas holidays

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Analysis

The point of reference of the SC's analysis was its Opinion 1/2014 of 6 February 2014 on the 2014 IPPs in which the SC issued the following recommendations to the OLAF DG:

(1) to issue guidelines on application of the three selection principles established by the Regulation, including on the application of financial indicators as a proportionality criterion;

(2) to enter into a constructive dialogue with the stakeholders on the determination and implementation of IPPs, in particular with regard to financial indicators and possible follow-up of dismissed cases;

(3) to provide the SC, by 6 March 2014, with an assessment of the results of the implementation of the IPPs for 2012 and 2013 together with a summary of the feedback provided by the stakeholders; in the following years those documents should be attached to the new draft IPPs transmitted annually to the SC.[2]

Ad (1)

The SC welcomes a clear distinction between the three main principles deriving from the Regulation (efficient use of resources, proportionality, subsidiarity/added value) which are constant and the IPPs which are to be determined each year by the DG within the context of the annual management plan[3].

However, from the document transmitted by OLAF, it seems that the DG has failed to issue guidelines on application of the selection principles.

Among other issues concerning their application, the SC indicated already[4] that the *added value* principle appears in the Regulation as a standalone principle concerning internal investigations, whereas the subsidiarity principle is referred to in the context of 'external investigations'. Both principles seem yet to be applied by the selectors as one single selection criterion, regardless of the type of case, and no clarification or guidelines have been provided to them.

The SC notes also that, instead of reviewing the financial indicators to adapt them to the reality of spending programmes, the DG has abolished them completely.

Ad (2)

The SC welcomes that the draft IPPs 2015 are more detailed and seem to take into consideration several documents from stakeholders.

However, from the document transmitted by OLAF and from the discussion with the DG during the SC plenary of 18 December 2014, it seems that no dialogue with the stakeholders took place with regard to financial indicators and to possible follow-up of the cases showing sufficient suspicion of fraud, but dismissed on the basis of the IPPs or selection principles.

[2] Point 27, Opinion 1/2014
[3] Cf. points 15-17
[4] Cf. point 23

It is particularly worrying in the view of concerns already expressed by some stakeholders.[5]

Ad (3)

The SC underlined the importance of the regular assessment of the results of the implementation of the IPPs.

Unfortunately, until today the SC has not received from OLAF such an assessment for the IPPs of 2012 and 2013 (due on 6 March 2014). The recent transmission of the draft IPPs for 2015 have been accompanied neither by such an assessment nor a summary of the feedback provided by the stakeholders, as required.

The SC is concerned that without any assessment of the impact of the IPPs it is impossible to conclude whether they are correctly identified and whether their application has positive or negative consequences for the fight against fraud and corruption.

Conclusions

- OLAF has taken into account several documents from its stakeholders to determine the IPPs for 2015.

- OLAF did not take into account the three recommendations on the IPPs issued by the SC in its Opinion 1/2014 but abolished the use of financial indicators altogether. The SC maintains that also this approach may lead to confusion and inconsistency in application of the IPPs, and create a risk of unaccountability of the IPPs' results.

- The SC will regularly, on annual basis, follow up on these issues.

Paris, 19 December 2014
For the Supervisory Committee
The Chairman

Tuomas PÖYSTI

[5] Cf. points 12-15 and 19-20

ANNEX 8

DECISION
on Transparency of the Supervisory Committee's Activities

DECISION OF THE OLAF SUPERVISORY COMMITTEE

of 5 November 2014

on transparency of its independent activities

The Supervisory Committee of the European Anti-Fraud Office,

Having regard to Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999[1], and in particular Article 15 thereof,

Acting in accordance with the procedure laid down in Article 11 of its Rules of Procedure,

Whereas:

(1) The Supervisory Committee of the European Anti-Fraud Office (hereinafter: Supervisory Committee) is an independent inter-institutional body appointed directly by the European Parliament, the Council, and the European Commission.

(2) The Supervisory Committee monitors the implementation of the European Anti-Fraud Office's investigative function to reinforce its independence in the proper exercise of the competences conferred upon it by Regulation No 883/2013. The Committee monitors in particular the respect for procedural guarantees of persons involved in investigations.

(3) The Supervisory Committee reports to the appointing Institutions as well as informs the public, the civil society and the relevant national authorities of its role and activities.

(4) For the purpose of transparency and of communication with the public and the stakeholders, the Supervisory Committee, as an independent body, should maintain its own dedicated website, located within the *europa.eu* websites system, independently from and in parallel to the European Anti-Fraud Office's website,

HAS DECIDED AS FOLLOWS:

[1] OJ L 248, 18.09. 2013, p. 2.

Article 1

The Supervisory Committee of the European Anti-Fraud Office (hereinafter: Supervisory Committee) shall have its own website established.

Article 2

1. The Secretary of the Supervisory Committee (hereinafter: Secretary) shall be responsible for the establishment, content and maintenance of the website, in accordance with instructions of the Committee.

2. The Secretary shall publish on the website the opinions and reports adopted by the Supervisory Committee as well as any other relevant documents, information and data, unless any of these are considered confidential.

3. The Secretary shall take the necessary administrative and financial measures to make the website operational as soon as possible.

Brussels, 5 November 2014
For the Supervisory Committee
The Chairman

Tuomas PÖYSTI