



Opinion No 1 /2016

OLAF's Preliminary Draft Budget for 2017

Brussels, 11 November 2016

SUPERVISORY COMMITTEE



Conclusions

- A. The OLAF Supervisory Committee (hereinafter "*The Committee*") supports the preliminary draft budget ("APB") of OLAF for the year 2017 provided its recommendations and observations are fully taken into consideration for the OLAF APB for the year 2018, which it will review in its yearly opinion.
- B. It is the Committee's view that OLAF's resources should be concentrated on its core business i.e. investigating illegal activities, serious irregularities, fraud, breach of professional duties and other elements detrimental to the EU interests. Based on OLAF's comments, the Committee however agrees that for preserving the independence of OLAF some limited and justified support resources are maintained within OLAF.

As far as investigative staff is concerned, the Committee acknowledges the explanations provided that for the 171 staff working in the investigative field, "*In addition to staff whose job description is "investigator", this figure includes also other investigative staff, such as "case-handler-selector" or "intelligence analyst". Heads of sector and deputy heads of investigative units are also investigative staff, despite having different job titles*".

These explanations shall be included in the AAR submitted to the European Commission by DG OLAF.

- C. In-house legal experts contribute to strengthening OLAF's capacity for the correct application of national law and the development of EU-wide capacities in the fight against fraud. OLAF should therefore continue recruiting EU staff with certified legal qualifications in the related language. The Committee considers that it is not possible to compensate for the lack of internal national legal experts through internal training for non-lawyers or limited supporting documentation, such as the "Country mini-profiles" available on OLAF's intranet and reviewed by the Committee. In this regard, the Committee welcomes the EPSO on-going specialized competitions.

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Introduction

(1) In accordance with Regulation (EU) No 883/2013¹ and Article 3 of Commission Decision 1999/352/EC, ECSC, Euratom², 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 with a view to ensure that OLAF is able to function in an efficient and effective manner and to contribute in a best possible way to the Union's objectives for the fight against fraud as defined in Article 325 of the Treaty on the Functioning of the European Union, the total budgetary appropriations for the Office, 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, one of the missions of the Committee is to regularly monitor the Office, in order to reinforce its independence. With the adoption of Regulation (EU) No 883/2013 the monitoring role of the Committee has been strengthened and enlarged to the respect of procedural guarantees for the persons concerned by OLAF's investigations and witnesses. Recital (37) of Regulation 883/2013 also provides that the duties of the Committee shall "*also include assisting the Director-General in discharging his responsibilities*". Pursuant to the third subparagraph of Article 15(1) of Regulation (EU) No 883/2013 the Committee shall address to the Director-General of OLAF opinions, including where appropriate, recommendations on, inter alia, the resources needed to carry out the investigative function of OLAF.

(3) The objective of the procedure in which the Committee is consulted and in which it 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, within the legal framework provided by the Treaties and Regulation 883/2013.

(4) The Supervisory Committee's Opinion on Preliminary Draft Budget creates a documented forum of Supervisory Committee's advice to the Director-General of OLAF to be forwarded by him to the Budgetary and the Discharge Authorities of the Union on the prerequisites for

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.

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an efficient allocation and use of resources to and within OLAF. It contributes to the discharge of duties of the Director General, responsible for the design, negotiation and implementation of the Office's budget. The three appointing institutions are copied of the document produced.

The budgetary procedure within OLAF

(5) The Committee reminds that the fight against fraud to the detriment of the European Union's financial interests is central to the credibility of the European project. Therefore the OLAF budget should not be subject to further savings measures which would decrease the fight of the Union against fraud and financial crimes.

(6) Therefore, for the purpose of reinforcing and strengthening the independence of OLAF and considering the powers conferred by the Commission on the Committee and the legal requirement for the Director-General of OLAF to consult the Committee before he sends to the Director-General for budget a preliminary draft budget to be entered in the Annex concerning OLAF to the Commission section of the General Budget of the European Union⁴, and after due consideration to the OLAF explanatory notes received⁵, the Committee has considered OLAF's Preliminary Draft Budget for 2017 (APB 2017) notified to the Supervisory Committee by note of 11 February 2016 with reference Ares(2016)7403030, and delivers the following Opinion.

OLAF's Human Resources

(7) The Committee acknowledges the efforts of OLAF to maintain and increase the relative proportion of investigative staff to administrative staff. The Committee calls for an increased effort of OLAF in this direction, by reducing staff allocations notably in coordination, inter-institutional relations, press and communication and by increasing synergies with other Commission's departments in non-investigative functions. Indeed, the administrative autonomy of OLAF is only granted for and in relation to the investigative capacity of the Office and should not be understood as an impediment to organize synergies and streamlining on budgetary expenditure items such as communication, conference and non-investigation related IT-related expenditure. The Committee however agrees that for preserving the independence of OLAF some limited and justified support resources are maintained within OLAF.

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."

⁵ OLAF notes with references Ares(2016)1327985 of 16/03/2016, Ares(2016)2007098 of 27/04/2016, Ares(2016)2208523 of 11/05/2016, Ares(2016)2354554 of 20/05/2016,

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OLAF's running costs

(8) In this context, the Committee recalls that OLAF shall at multiple stages of its activities comply with national legal orders, not only at the early stage of the case selection process, but also during the investigations themselves, the review process and within the framework of the follow-up on the recommendations made by OLAF to national judicial authorities. Therefore, national legal experts from various Member States are particularly important for the performance of OLAF's missions in conformity with the Rule of law. The Committee hopes that, despite a negative context, OLAF will be able continue increasing its level of expertise for ensuring the necessary compliance of its investigations with national law. The Committee considers that it is not possible to compensate for the lack of internal national legal experts through internal training for non-lawyers or limited supporting documentation, such as the "Country mini-profiles" available on OLAF's intranet and reviewed by the Committee.

(9) The Supervisory Committee recalls that sound financial management enables the maximum financial resources possible to be applied for the benefit of the investigative function.

OLAF's ICT infrastructure

(10) The Supervisory Committee reiterates the observation from its Opinion 1/2013 on the preliminary draft budget for 2014 that a well-organized and up-to-date ICT support and infrastructure are necessary conditions for cost-effective fraud investigations.

(11) The Committee welcomes the achievement in setting up the new OLAF Case Management (OCM).

The Committee however regrets that it has not been actively involved in the development on the new system's architecture. In this regard, the Committee draws the attention of OLAF on the electronic access to the Supervisory Committee's Members as recognized in the Joint Opinion of the three Legal Services of 12 September 2016⁶, which implies that the specific needs for the implementation of the Members' legal duties should be determined by the Committee jointly with OLAF.

The Committee regrets that, to date, the only communication received from OLAF, at the Committee's requests, was limited to *ex-post* information notes, of which the last one is dated 31 July 2014, where OCM was launched on 19 September 2016.

Resources for the Secretariat of the Supervisory Committee

(12) In accordance with Regulation (EU) 883/2013 the Committee has a crucial role in the oversight of OLAF's operations. The Committee has a specific inter-institutional character

⁶ Ares(2016)5170389

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which is reflected in its inter-institutional appointment by the European Parliament, the Council of the EU and the European Commission and, hence, an obligation to report to these three Institutions. In addition, any EU Institution, Agency or body can request an opinion to the Committee based on Article 15, 3rd subparagraph of Regulation 883/2013. In this role, the Supervisory Committee is supported by a secretariat.

(13) The Committee welcomes the recent adoption by the Legislator of the amendment to Regulation 883/2013 for reinforcing the independence of the secretariat of the Supervisory Committee.

The final text of the revised regulation integrates the proposal of the European Court of Auditors, aiming at a reinforcement of the independence of the Supervisory Committee Secretariat, not only vis-à-vis OLAF, but also vis-à-vis the Commission, in the line also advocated by the European Parliament. The Legislator's intention is undoubtedly to reinforce the independence of the Supervisory Committee vis-à-vis its supervisee, in line with international audit standards.

Direct administrative and budgetary linkages to the Commission and a detachment from OLAF are the natural consequences of this revised Regulation. Other budgetary, administrative and practical arrangements should thus be organized inside the Commission's organizational set-up, in order to allow the Supervisory Committee and its Secretariat to perform their regulatory duties.

These arrangements need to take into account the very nature of the tasks performed by the Secretariat of the Supervisory Committee together with the necessity to guarantee, on a long-term basis, the independent functioning of the Committee.

Budgetary management – Frontloading

(14) During its examination of the APB 2017, the Committee noted an amount for rent expenses unexpectedly decreasing in the APB 2017 (€ 5 109 000) compared to the budgetary outturn 2015 (€ 5 702 112.76).

(15) This amount has been transferred twice, from salaries to building rents and from rents to evaluation costs for HERCULE III and Regulation 883/2013. The Supervisory Committee therefore maintains that successive budgetary transfers resulted in mixing expenses of a totally different nature (salaries, rental costs and evaluation costs).

It does not allow neither the Budgetary Authority nor the Discharge Authority to take fully informed decisions with regard to these expenses, which are incurred in relation to the implementation of OLAF's legal missions (evaluation of HERCULE III and of Regulation 883/2013), are not unforeseeable expenditure and, hence, should have been clearly earmarked within the preparation of the OLAF budget for the year 2016.

Nor does this practice allow for the Supervisory Committee to take informed views on the provision by OLAF of adequate budgetary resources to its investigative functions.



Recommendations of the Supervisory Committee to the Director General of OLAF

The Supervisory Committee recommends that the Director-General of OLAF:

(I) Keeps on increasing the number, qualification and training of staff allocated to its investigative function.

Keeps under review, without endangering OLAF's independence, the number of staff allocated to non-core functions notably by increasing synergies with other Commission's departments in non-investigative functions.

(II) Increases the number of EU staff with certified legal expertise in the national legal orders in the related language, with a view of reaching a complete coverage of all the EU national legal frameworks, starting in the selection and review functions given the need to ensure full respect of the Rule of Law. In addition OLAF should ensure specific monitoring and yearly reporting in the OLAF Annual Activity report in this regard.

(III) For the purpose of clarity , provides to the Budgetary Authority the detailed costs for the full evaluation process of Regulation 883/2013 and, as far as investigative staff is concerned, clearly reproduce in its Annual Activity Report and Annual Report for the year 2016 the explanations provided that for the 171 staff working in the investigative field, "*In addition to staff whose job description is "investigator", this figure includes also other investigative staff, such as "case-handler-selector" or "intelligence analyst". Heads of sector and deputy heads of investigative units are also investigative staff, despite having different job titles*".