

# **Guidelines on Investigation Procedures for OLAF Staff**

**1 October 2013**

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These Guidelines on Investigation Procedures for OLAF Staff constitute the guidelines provided for in Article 17(8) and mentioned in Recital 18 of Regulation (EU, Euratom) No 883/2013. These guidelines are internal rules which shall be applied by all OLAF staff in order to ensure that OLAF investigations are carried out in a consistent and coherent way.

All investigative activities shall be carried out in full respect of EU Treaties, the Charter of Fundamental Rights of the EU, EU legislation and these Guidelines on Investigation Procedures for OLAF Staff.

All investigative activities shall be carried out in an objective and impartial manner ensuring procedural fairness, in accordance with the highest professional standards and in full respect of the rights of all persons involved.

## **CHAPTER I SELECTION**

### **Article 1. General**

1.1 During the selection phase, the Investigation Selection and Review Unit analyses information of possible investigative interest and provides an opinion to the Director-General on whether an investigation or coordination case should be opened or whether the case should be dismissed.

### **Article 2. Incoming Information**

2.1 Any information of possible investigative interest to OLAF received by a member of staff shall be forwarded to the Registry without delay. Where information does not relate to an existing investigation or coordination case, it shall be forwarded to the Registry no later than 5 working days following its receipt, or where the information is received during a mission, within 5 working days of return to the office.

2.2 Information received by staff orally should be recorded in a written note and forwarded to the Registry in accordance with these time limits.

### **Article 3. Other Information**

3.1 Where OLAF on its own initiative gathers information of possible investigative interest, it shall be forwarded to the Registry.

## **Article 4. Treatment of Information**

4.1 On receipt of information, the Registry allocates information containing an OF number to the relevant OLAF case. In all other cases, information of possible investigative interest is forwarded to the Investigation Selection and Review Unit.

4.2 The Investigation Selection and Review Unit identifies whether the information relates to an OLAF case and if so allocates the information to the appropriate OLAF case.

4.3 In respect of other information of possible investigative interest, the Investigation Selection and Review Unit creates new OLAF case numbers (OF numbers) and allocates the information to those cases.

## **Article 5. Selection Process**

5.1 The Investigation Selection and Review Unit shall, where necessary, contact the source and the EU institution, body, office or agency concerned in order to obtain clarification and further documentation concerning the initial information. It should also consult relevant sources available to OLAF. Where it is necessary to collect additional information to support the selection process, the Investigation Selection and Review Unit shall *inter alia*:

- a. Collect information in the framework of operational meetings
- b. Take statements from any person able to provide relevant information
- c. Carry out fact-finding missions in Member States
- d. Consult information in databases held by the EU institutions, bodies, offices or agencies

5.2 Where the source is a whistleblower, the Investigation Selection and Review Unit shall inform him within 60 days, of the time needed to take appropriate action.

5.3 The Investigation Selection and Review Unit shall provide an opinion on the opening or dismissal of a case to the Director-General. The opinion on the opening of an investigation or coordination case shall be based on whether the information falls within OLAF's competency to act, the information is sufficient to justify the opening of an investigation or coordination case and falls within the Investigative Policy Priorities (IPP) established by the Director-General.

5.4 In assessing whether OLAF is competent to act, consideration shall be given to relevant EU Regulations, Decisions, Interinstitutional Agreements and other legal instruments relating to the protection of the financial interests of the EU, and any other interest of the EU the protection of which falls under OLAF's mandate. In evaluating whether the information is sufficient to justify the opening of an investigation or coordination case, consideration shall be given to the reliability of the source and the credibility of the allegations. All information collected during the selection process shall be taken into account in justifying the opening of an investigation or coordination case.

## **Article 6. Decision of the Director-General**

6.1 After consideration of all relevant information and the opinion provided by the Investigation Selection and Review Unit, the Director-General decides whether to open an investigation or coordination case, or dismiss the case.

6.2 The Director-General assigns investigations or coordination cases to the responsible unit.

6.3 The Director-General may, where necessary, assign a case to an investigation unit other than the responsible one or to a special investigation team established for that purpose. Such measures should be taken where the nature of the case so requires or where resource needs exist.

## **Article 7. Information on dismissed cases**

7.1 The Investigation Selection and Review Unit may inform the source of the Director-General's decision to dismiss a case.

7.2 The Investigation Selection and Review Unit shall inform the EU institution, body, office, agency or national authority of the Director-General's decision to dismiss a case, where necessary.

## **CHAPTER II INVESTIGATION AND COORDINATION CASES**

### **Article 8. General**

8.1 The purpose of an investigation is to establish whether fraud, corruption or other illegal activity affecting the financial interests of the EU has occurred or whether there have been serious matters relating to the discharge of professional duties that constitute a dereliction of duties, liable to result in disciplinary or criminal proceedings, by Members, officials or other servants of the EU institutions, bodies, offices and agencies.

8.2 Where necessary, an investigation may concern both suspicions of fraud, corruption or other illegal activity affecting the financial interests of the EU as well as serious matters relating to the discharge of professional duties of Members, officials or other servants of the EU institutions, bodies, offices and agencies.

8.3 The purpose of a coordination case is to provide the Member States with assistance in the coordination of their investigations and other related activities for the protection of the EU financial interests.

8.4 Investigations shall be conducted continuously and without undue delay in order to enhance their efficiency and the effectiveness of Recommendations.

8.5 All information or evidence, whether inculpatory or exculpatory, gathered in the course of investigation or coordination cases, shall be collected and recorded in due and proper form. All evidence gathered should be relevant to the matter under investigation and collected for the purpose of the investigation.

8.6 All investigative actions must be conducted with full respect for the rights of persons involved including data protection and the procedural guarantees and rights applicable to OLAF investigations.

8.7 The confidentiality of the information collected shall be respected in the interests of those concerned and the integrity of the investigation. In particular, during the investigation the confidentiality of the identity of informants and whistleblowers shall be respected in so far as it would not be contrary to the interests of the investigation.

8.8 In the event that a potential conflict of interest arises at any time during a case the Director-General shall be informed immediately.

## **Article 9. Preliminary Actions**

9.1 The investigation unit shall conduct a preliminary examination of the information collected or obtained during the selection process in order to establish what investigative or coordination activities are required.

9.2 The investigation unit shall inform Members, officials or other servants of the EU institutions, bodies, offices and agencies at the earliest opportunity of their possible implication in an open investigation. This notification shall be deferred where it would be harmful to the investigation to provide such information.

9.3 The investigation unit shall inform the EU institution, body, office or agency concerned as soon as it becomes apparent that Members, officials or other servants may be involved in an investigation. Where an investigation concerns a Member, President or high ranking office holder of an EU institution, body, office or agency, the notification of the EU institution, body, office or agency concerned should be made at the appropriate level or, where necessary to ensure confidentiality, by alternative channels. In exceptional cases the Director-General may decide to defer the notification to the EU institution, body, office or agency concerned.

9.4 The investigation unit shall, where necessary, inform the responsible EU institution, body, office or agency concerned of the Director-General's decision to open an investigation or coordination case.

9.5 The investigation unit should, where necessary, inform the source of the Director-General's decision to open an investigation or a coordination case.

9.6 The investigation unit shall, where necessary, involve the relevant investigative or judicial authorities concerned in the investigation.

9.7 Where the evidence available does not indicate the existence of a fraud, corruption or other illegal activity affecting the financial or other interests of the EU and/or serious matters relating to the discharge of professional duties and no further investigation action is required, a Final Report shall be prepared to enable the Director-General to decide on the closure of the investigation.

## **Article 10. Coordination cases**

10.1 The investigation unit shall provide all necessary assistance to the administrative, police and judicial authorities of the Member States and cooperate with the national authorities in the coordination of their investigations and other related activities.

10.2 Within the framework of a coordination case, the investigation unit provides assistance and contributes to investigations carried out by competent national authorities. It facilitates the collection and exchange of evidence and ensures investigation synergy among the relevant competent authorities.

10.3 The investigation unit shall not conduct investigative activities in coordination cases. However, it shall provide all necessary assistance to the Member States in the conduct of their investigations by facilitating the:

- a. Collection of documents and information in any format which can be used as evidence
- b. Gathering of evidence in the framework of operational meetings
- c. Taking of statements from any person able to provide relevant information
- d. Taking of samples for scientific examination

10.4 Where it becomes necessary in the course of a coordination case for OLAF to convert the case into an investigation, the investigation unit shall submit a request for a decision on the reclassification of the case to the Investigation Selection and Review Unit. The Investigation Selection and Review Unit shall verify the proposed reclassification and provide an opinion to the Director-General, on the basis of which he makes a decision.



## **Article 11. Investigation**

11.1 The investigation unit gathers evidence using *inter alia* the following means:

- a. Collecting documents and information in any format which can be used as evidence
- b. Gathering evidence in the framework of operational meetings
- c. Taking statements from any person able to provide relevant information
- d. Carrying out fact-finding missions in Member States
- e. Taking samples for scientific examination
- f. Conducting interviews with persons concerned or witnesses
- g. Carrying out inspections of premises
- h. Carrying out on-the-spot checks (Council Regulation (Euratom, EC) n° 2185/96)
- i. Carrying out digital forensic operations
- j. Carrying out investigative missions in third countries

11.2 Members of the investigation unit carry out the following investigative activities upon production of the Director-General's written act showing their identity and capacity, and the investigative activity they are authorised to carry out:

- a. Interviews with persons concerned and witnesses
- b. Inspections of premises
- c. On-the-spot checks
- d. Digital forensic operations
- e. Carrying out investigative missions in third countries

11.3 Where the investigation unit considers that precautionary administrative measures to protect the financial interests are needed, the EU institution, body, office or agency concerned shall be informed.

11.4 Where the investigation unit identifies the need for a flagging under the Early Warning System (EWS), it shall request the introduction of the flagging to the relevant OLAF policy unit.

11.5 The investigation unit shall prepare the necessary documentation to inform the Supervisory Committee on the duration of investigations, in accordance with Article 7(8) of Regulation (EU, Euratom) No 883/2013.

## **Article 12. Legality check during the investigation**

12.1 Where the investigation unit envisages conducting an investigative activity which requires the Director-General's authorisation in accordance with Article 11.2, the investigation unit shall submit a request to conduct the proposed investigative activity to the Investigation Selection and Review Unit.

12.2 The Investigation Selection and Review Unit shall verify the legality, necessity and proportionality of the proposed investigative activity and shall provide an opinion to the Director-General on the basis of which he makes a decision.

12.3 Where the investigation unit envisages conducting an investigative activity outside the existing scope of the investigation, it shall submit a request to extend the scope of the investigation to the Investigation Selection and Review Unit. The Investigation Selection and Review Unit shall verify the legality and necessity of the proposed extension of the scope and provide an opinion to the Director-General on the basis of which he makes a decision.

12.4 Where the investigation unit proposes to split or merge a case, it shall submit a request to the Investigation Selection and Review Unit. The Investigation Selection and Review Unit shall verify the legality and necessity of the proposed splitting or merging of the case and provide an opinion to the Director-General on the basis of which he makes a decision.

### **Article 13. Inspections of EU premises**

13.1 The investigation unit may carry out inspections of the premises of the EU institutions, bodies, offices or agencies at any time during an investigation.

13.2 The investigation unit shall inform the Secretary-General or equivalent authority of the EU institution, body, office or agency concerned whenever it intends to conduct an inspection of its premises. The investigation unit shall submit the proposed notification to the Investigation Selection and Review Unit together with its request for authorisation for the proposed inspection.

13.3 Prior to conducting an inspection of premises the investigation unit shall, where necessary, inform the head of security of the EU institution, body, office or agency concerned and request his assistance.

13.4 The investigation unit shall conduct the inspection in the presence of the Member, official or servant of the EU institution, body, office or agency concerned. Where necessary, the inspection may be made in the absence of the Member, official or other servant concerned; in such cases, another member of staff or a member of the security of the EU institution, body, office or agency concerned shall be present.

13.5 During an inspection of premises, members of the investigation unit may access any information held by the EU institution, body, office or agency concerned, including *inter alia* copies of electronic data, copies of private documents (including medical records) where they may be relevant to the investigation. Original documents should be taken where there is a danger that they might be tampered with or removed.

13.6 Members of the investigation unit may request information from Members, officials or other servants of the EU institution, body, office or agency concerned in the course of an inspection.

13.7 Members of the investigation unit who are engaged in carrying out the inspection shall draw up a report of the activities undertaken during the inspection and shall ask the participants to countersign the report. Where necessary, copies of the report shall be provided to the participants. However, where it is in the interests of the investigation, copies of the inspection report should be provided at a later stage.

## **Article 14. On-the-spot checks**

14.1 The national authority concerned shall be notified in good time of the on-the-spot check to be carried out and of the object, purpose and legal basis of the check. Where required by national legislation, the economic operator shall be notified of the on-the-spot check to be carried out.

14.2 The on-the-spot check should be conducted with the cooperation of the competent national authority. Officials of the national authorities may participate in the on-the-spot check or it may be carried out jointly between OLAF and the competent national authority.

14.3 Where necessary, experts who are not OLAF staff may assist the members of the investigation unit carrying out on-the-spot checks. Such experts shall provide certification of expertise and be included in the written act referred to in Article 11.2 authorising them to assist in the on-the-spot check.

14.4 Members of the investigation unit carrying out the on-the-spot check shall ensure that they access the economic operator's premises and relevant evidence under the same conditions as the national authority's inspectors and in compliance with national legislation.

14.5 Members of the investigation unit may take statements from economic operators in the course of an on-the-spot check.

14.6 Members of the investigation unit carrying out the on-the-spot check shall draw up a report of the activities undertaken during the on-the-spot check. The participating national inspectors and economic operator concerned shall be asked to countersign the report. The report should include any fact or suspicion that has come to light during the on-the-spot check. The report shall be drawn up in accordance with the applicable national rules of the Member State concerned. Copies of the on-the-spot check report shall be provided to the national authority and, where necessary, to the economic operator concerned.

14.7 On-the-spot checks may be conducted on economic operators other than those directly concerned where it is strictly necessary to have access to relevant evidence held by them.

14.8 On-the-spot checks may be conducted on economic operators in third countries and on the premises of international organisations on the basis of legal provisions in force.

14.9 In investigations concerning Members, officials or other servants of the EU institutions, bodies, offices or agencies, on-the-spot checks may be conducted on economic operators where it is necessary to have access to relevant evidence held by them.

**Article 15. Digital forensic operations within inspections or on-the-spot checks**

15.1 Digital forensic operations may be carried out within the framework of inspections or on-the-spot checks in accordance with the principles of necessity and proportionality. Digital forensic operations conducted within the framework of on-the-spot checks, shall be carried out in compliance with national legal provisions.

15.2 Digital forensic operations should be preceded by the preliminary identification of the digital media concerned. OLAF digital forensic experts shall accompany the investigation unit and conduct the digital forensic operation. The digital forensic experts shall draw up a report of the digital forensic operations that shall be annexed to the report of the inspection or on-the-spot check. The participants in the digital forensic operation shall be asked to countersign the digital forensic operation report.

15.3 The digital forensic examination and analysis of the data collected during the digital forensic operation shall be limited to extracting data necessary and relevant to the investigation concerned.

## **Article 16. Interviews**

16.1 The investigation unit may interview a person concerned or a witness at any time during an investigation.

16.2 When a witness is interviewed, an invitation to the interview shall be sent in accordance with the notice periods set out in Regulation (EU, Euratom) No 883/2013. The investigation unit shall inform him of his right not to incriminate himself. He shall also be informed that he may use an official EU language of his choice. If the witness is an official or other servant of the EU, the investigation unit may conduct the interview in an official EU language of which the witness has a thorough knowledge. Officials or other servants should also be informed that they have a duty to cooperate with the OLAF investigation.

16.3 The investigation unit shall allow the witness to approve the record of the interview or make observations.

16.4 If during the course of an interview it becomes apparent that a witness is in fact a person concerned, the interview shall be ended. He shall be informed that he will be treated as a person concerned, informed of his rights and upon request he shall be provided with a copy of his past statements.

16.5 Where the investigation unit intends to interview a person concerned, an invitation to the interview shall be sent in accordance with the notice periods set out in Regulation (EU, Euratom) No 883/2013. The investigation unit shall inform the person concerned of his right not to incriminate himself and of his right to be assisted by a person of his choice. He shall also be informed that he may use an official EU language of his choice. If the person concerned is an official or other servant of the EU, the investigation unit may conduct the interview in an official EU language of which the person concerned has a thorough knowledge. Officials or other servants should also be informed that they have a duty to cooperate with the OLAF investigation.

16.6 Where a person concerned was previously interviewed as a witness, the investigation unit shall not use his past statements against him in any way.

16.7 The investigation unit shall allow the person concerned to approve the record of the interview or make observations, and shall give him a copy of the interview record. However, where it is in the interests of the investigation, the copy of the interview record may be provided at a later stage.

16.8 The investigation unit may decide in the interests of efficiency and proportionality, to conduct an interview by video conference.

## **Article 17. Investigative missions in third countries**

17.1 The investigation unit may conduct investigative missions in third countries when the evidence necessary to establish the existence of fraud, corruption or other illegal activity is not available in the Member States. Such investigative missions shall be conducted in accordance with all relevant legal provisions.

17.2 A mission in a third country may relate to fraud, corruption or other illegal activity in the following areas:

- a. Customs
- b. Traditional own resources
- c. Expenditure of EU funds
- d. Expenditure of EU funds through international organisations or financial institutions, or funds managed by an EU institution, body, office or agency

17.3 The investigative mission should be conducted with the agreement and cooperation of the competent authorities of the third country concerned.

17.4 Members of the investigation unit should, where necessary, take statements or conduct interviews with persons holding relevant information in the course of an investigative mission in a third country.

17.5 Members of the investigation unit who are engaged in carrying out the investigative mission shall draw up a report of the activities undertaken during the mission, a copy of which shall be provided to the participants.

17.6 Prior to investigative missions concerning customs or traditional own resources, the investigative unit should send an official communication to the Member States concerned informing them of the proposed investigative mission. Where necessary the Member States should be requested to provide information or data relating to the matter under investigation.

17.7 Investigative missions concerning customs or traditional own resources should include members of the investigative unit and officials of the Member States concerned. The needs of those Member States not participating in the investigative mission but having an interest in the matter under investigation, should also be addressed during the investigative mission.

## **Article 18. Opportunity to provide comments**

18.1 Once the investigation has been completed and prior to drawing conclusions referring by name to a person concerned, the investigation unit shall inform that person of facts concerning him and invite him to comment on those facts. These comments may be provided within the framework of an interview or in writing.

18.2 The invitation to the person concerned to comment shall be drawn up and sent in accordance with the conditions and notice periods set out in Regulation (EU, Euratom) No 883/2013.

18.3 Where it is necessary to preserve the confidentiality of the investigation or a national judicial proceeding, the right of the person concerned to comment on facts concerning him may be deferred. Where the person concerned is a Member, official or other servant of an EU institution, body, office or agency, the right to comment may be deferred in agreement with the Secretary-General or equivalent authority.



## **Article 19. Final Report and proposed Recommendations**

19.1 The Final Report shall be drawn up when all activities have been completed and should include all findings and conclusions established in the course of an investigation and coordination case.

19.2 Final Reports shall set out the investigative activities carried out and the evidence gathered in the course of the investigation or the coordination activities and results in the framework of a coordination case. A legal analysis of the facts established and, where possible, a determination of the amounts to be recovered or prevented from being unduly spent shall be included. Final Reports shall also analyse the evidence collected and provide conclusions in relation to the existence or otherwise of the fraud, corruption or other illegal activity affecting the financial or other interests of the EU, and/or serious matters relating to the discharge of professional duties. Conclusions shall be based on an impartial and objective assessment of the entirety of the evidence collected.

19.3 Final Reports shall also set out the actions taken to ensure the respect of procedural guarantees (including data protection) and the rights of persons concerned, and shall detail any comments made by the person concerned in relation to facts concerning him.

19.4 Final Reports shall be approved and signed by the investigator in charge, the Head of Unit and the Director of the relevant investigation directorate.

19.5 The investigation directorate proposes that the Director-General make Recommendations on the basis of the findings and conclusions of the investigation or, where necessary, of the coordination case.

19.6 Where the investigation establishes that a criminal offence may have occurred in a Member State, the investigation directorate shall propose that the Director-General make Recommendations for action to be taken by the judicial authorities of the Member States.

19.7 Where the investigation establishes that a disciplinary offence may have occurred, the investigation directorate shall propose that the Director-General make Recommendations for disciplinary measures to be taken by the relevant EU institution, body, office or agency.

19.8 Where the investigation establishes an amount to be recovered or prevented from being unduly spent, the investigation directorate shall propose that the Director-General make Recommendations for action to be taken by the relevant EU institution, body, office, agency or competent authority of the Member State.

19.9 Where the investigation establishes the need for a case-related administrative action to be taken, the investigation directorate shall propose that the Director-General make Recommendations for administrative measures to be taken by the relevant EU institution, body, office or agency.

19.10 Where the investigation unit identifies weaknesses in management or control systems or in the legal framework, the investigation directorate shall inform the relevant OLAF policy unit who should where necessary draft proposals for action to be taken by the relevant EU institution, body, office or agency. Any such proposal shall be submitted by the policy directorate to the Investigation Selection and Review Unit for an opinion on the basis of which the Director-General makes a decision.

## **CHAPTER III FINAL REVIEW AND CASE CLOSURE**

### **Article 20. General**

20.1 The Investigation Selection and Review Unit shall examine the Final Report together with the proposed Recommendations and case closure Decision in order to provide an opinion to the Director-General.

20.2 The purpose of the review is to ensure the legality, necessity and proportionality of the activities undertaken during investigation or coordination case and the respect of the rights of the persons concerned throughout the investigative procedure.

### **Article 21. Final review**

21.1 The investigation directorate shall submit the Final Report, proposed Recommendations and closure decision to the Investigation Selection and Review Unit for review, together with all necessary documentation including transmission notes and letters.

21.2 The Investigation Selection and Review Unit checks whether the investigation unit has complied with the legal requirements including the rights and procedural guarantees of the persons concerned, data protection requirements and reviews the legality, necessity and proportionality of the investigative activities undertaken. The Investigation Selection and Review Unit shall also check whether the proposed Recommendations and case closure decision are justified in line with the findings of the investigation or coordination case.

21.3 The Investigation Selection and Review Unit shall provide an opinion on the Final Report, proposed Recommendations and case closure decision, on the basis of which the Director-General makes a decision.

21.4 Prior to issuing a negative opinion on the Final Report, proposed Recommendations and/or case closure decision, the Investigation Selection and Review Unit shall provide the investigation directorate with an opportunity to reconsider the documents submitted.

## **Article 22. Case closure Decision and Recommendations**

22.1 An investigation or coordination case shall only be closed by decision of the Director-General.

22.2 On the basis of the findings of an investigation or, where necessary coordination case, the Director-General may make Recommendations for action to be taken by EU institutions, bodies, offices, agencies or by Member States.

22.3 The Director-General may request that the responsible EU institution, body, office, agency or competent authority report within a given timeframe on the actions taken to implement the Recommendations and the final outcome of any judicial, disciplinary or financial action.

22.4 Where necessary, the Director-General may provide information on the results of the OLAF investigation to international organisations or a third country authority.

## **Article 23. Information and Transmission requirements**

23.1 The investigation unit shall inform the person concerned within 10 working days of the Director-General's decision to close a case in which no evidence has been found against the person concerned. In all other cases, the investigation unit should inform the person concerned, where necessary, of the Director-General's decision to close the case.

23.2 The investigation unit should inform the source, where necessary, of the Director-General's decision to close the case.

23.3 Where the Director-General has closed an investigation or coordination case, the investigation unit shall transmit the Final Report together with Recommendations if any, to the responsible EU institution, body, office or agency concerned.

23.4 Where the Director-General has closed an investigation or a coordination case with Recommendations, the investigation unit shall transmit the Final Report and Recommendations, to the competent judicial or other national authority, or competent international organisation.

23.5 Where the Director-General has closed an investigation or a coordination case without Recommendations, the investigation unit shall, where necessary, transmit the Final Report to the competent judicial or other national authority, or competent international organisation.

23.6 The investigation unit shall prepare the necessary documents to inform the Supervisory Committee of transmissions of case-related information to the national judicial authorities of the Member States.

## **CHAPTER IV MONITORING AND ASSISTANCE**

### **Article 24. General**

24.1 During the monitoring phase the investigation unit shall, upon request, provide all necessary assistance to the competent authorities.

24.2 During the monitoring phase, the investigation unit shall follow the progress of the implementation of Recommendations and record the outcome of actions taken by the competent authorities resulting from Recommendations.

### **Article 25. Assistance to competent authorities**

25.1 The investigation unit shall, on request, give all necessary assistance to the EU institutions, bodies, offices, agencies or Member States in relation to actions taken following Recommendations, including by providing:

- a. specific documents mentioned in the Final Report but not included in the transmission of the report
- b. any further information requested for implementation of Recommendations, where necessary
- c. the authorisation for OLAF staff to appear as witnesses in legal proceedings or assist in obtaining the authorisation for officials of other EU institutions, bodies, offices or agencies to appear as witnesses
- d. assistance in obtaining the waiver of the immunities under the Protocol on privileges and immunities in cases where competent national authorities have initiated criminal proceedings concerning acts of officials of EU institutions, bodies, offices or agencies , performed in their official capacity
- e. expert advice where requested by the Member States

25.2 Where a request for assistance concerns recovery of EU funds or actions preventing such funds from being unduly spent, the investigation unit represents OLAF in administrative procedures with the European Commission services (including contradictory procedures, clearance of accounts procedures, REM/REC applications and write-off requests).

25.3 Where a request for assistance concerns judicial or disciplinary actions resulting from Recommendations, the investigation unit assists in the waiving of immunities, provision of legal advice and translations.

## **Article 26. Monitoring the Implementation of Recommendations**

26.1 The investigation unit shall monitor the implementation of Recommendations of a judicial, disciplinary and financial nature made to EU institutions, bodies, offices, agencies and to Member States on an annual basis.

26.2 The investigation unit may request information from the EU institution, body, office, agency or Member State concerning actions taken in respect of Recommendations made.

26.3 The investigation unit may consult the information systems in which EU institutions, bodies, offices, agencies and Member States record actions taken in respect of Recommendations made.

26.4 The investigation unit shall monitor the need to maintain the deferral of information to data subjects and where necessary provide the required notifications.

## **Article 27. Recording of financial, judicial and disciplinary results**

27.1 The investigation unit shall record actions taken in respect of Recommendations made, their progress and any results thereof in OLAF's case management system.

27.2 The investigation unit shall, where necessary, inform the EU institutions, bodies, offices or agencies of the final outcome of national judicial proceedings and inform the responsible OLAF policy unit for the purposes of the EWS.

## **CHAPTER V ENTRY INTO FORCE**

### **Article 28.**

28.1 These Guidelines on Investigation Procedures for OLAF Staff replace the OLAF Instructions to Staff on Investigative Procedures which entered into force on 1 February 2012.

28.2 These Guidelines on Investigation Procedures for OLAF Staff enter into force on 01 October 2013.

Brussels,  
18 September 2013

Giovanni KESSLER  
Director-General  
OLAF

## GLOSSARY

### **Authorisation [Art 12]**

The authorisation is the permission granted by the Director-General to members of the investigation unit or other member of OLAF staff or expert to allow them to carry out or assist in the investigative activities listed in Article 11.2.

### **Authority [Work form]**

The authority is the written act by which the Director-General empowers the members of the investigation unit or other member of OLAF staff or expert to carry out or assist in the investigative activities listed in Article 11.2. The members of the investigation unit or other member of OLAF staff or expert shall produce the authority when carrying out or assisting in such investigative activities.

### **Amounts to be recovered [Art 19]**

The amount to be recovered is any EU expenditure identified during an investigation or coordination case as having been unduly spent which is to be retrieved from beneficiaries, national managing authorities or paying agencies (by direct recovery, offsetting, deduction, decommitment, programme closure, clearance of accounts, etc). The amount to be recovered is also the amount of traditional own resources identified during an investigation or coordination case as having been evaded and which is to be recovered from economic operators or charged to the Member States resulting from their negligence or lack of due diligence.

### **Amounts prevented from being unduly spent [Art 19]**

These amounts include any EU expenditure identified during investigation or coordination cases which were prevented from being unduly spent.

### **Case [Art 1]**

A case is the framework within which information of possible investigative interest is treated by OLAF; including the selection and investigation of such information, and the monitoring of implementation of Recommendations concerning such information. All cases treated by OLAF are allocated an OLAF case number (OF number).

### **Conflict of interest [Art 8]**

Art 11a Staff Regulations of officials of the European Communities.

### **Dismissed case [Art 5/7]**

A dismissed case is a case in which the Director-General has made a decision that the information of possible investigative interest does not meet the criteria for the opening of an investigation or coordination case.

### **Evidence [Art 8-11/14/17/14/23]**

Evidence is anything that is relevant to the facts under investigation. Evidence is collected during an investigation in order to establish facts and can be inculpatory or exculpatory. Evidence includes *inter alia* information, documents, reports, records, statements, images, digital forensic and scientific analysis.

### **Extension of the scope of a case [Art 12]**

An extension of the scope of a case is a decision by the Director-General authorising investigation activities to be undertaken which fall outside the opening decision of the investigation or coordination case.

**Fact-finding mission [Art 5/11]**

Fact-finding missions are missions conducted by OLAF in the Member States, in order to collect information or evidence, which do not require the involvement of the competent authorities of the Member States or the investigative powers of OLAF.

**Flagging[Art 11]**

Commission Decision on the Early Warning System for the use of authorising officers of the Commission and the executive agencies.

**Informant [Art 8]**

An informant is a natural person who provides information of possible investigative interest to OLAF.

**Information of possible investigative interest [Art 1]**

Information of possible investigative interest is all information received by OLAF or information gathered on OLAF's own initiative, that could be considered for the opening of an investigation or coordination case and which shall be submitted to the selection procedure for analysis.

**Interviews[Art 16]**

An interview is a formal dialogue with a person concerned or a witness in order to obtain evidence relevant to an investigation and which is always duly recorded.

**Investigative Policy Priorities (IPP) [Art 5]**

Investigative Policy Priorities (IPP) are adopted on an annual basis by the Director-General within the context of the Annual Management Plan and set out the policy criteria for the opening of investigations or coordination cases.

**Legal provisions [Art 17]**

Legal provisions refer to the applicable legal rules or arrangements under which OLAF carries out its investigative activities. Legal provisions cover all relevant EU Treaties and legislation including Regulations, Decisions, Interinstitutional Agreements and Agreements entered into with third countries including those which containing provisions on cooperation and mutual administrative assistance. Legal provisions also include relevant administrative arrangements entered into with competent authorities in third countries, international organisations or contracting parties; as well as those with the competent authorities of the Member States, EU institutions, bodies, offices or agencies.

**Opinion [Art 5/12/20/21]**

An opinion is an advice on case-related matters provided by the Investigation Selection and Review Unit to the Director-General.

**On-the-spot check [Art 11/14/15]**

Council Regulation (Euratom, EC) No 2185/96.

**Recommendation [Art 19-27]**

Recommendations are proposals made by the Director-General for action to be taken by relevant EU institutions, bodies, offices, agencies or competent authority of Member States, on the basis of the findings of the OLAF investigation or coordination case.



**Registry [Art 2]**

The Registry is part of the Investigation Workflow Management Unit. The Registry allocates reference numbers to all documents handled by OLAF including OLAF case numbers (OF numbers), it is also responsible for the scanning and document management process.

**Source of the information [Art 5/7/9/23]**

A source provides information of possible investigative interest to OLAF. A source may be an EU institution, body, office, agency, Member State, third country or international organisation. A source may also be a whistleblower or an informant. A source may provide information anonymously.

**Statement [Art 5/10/11/14/17]**

A statement is a written record of evidence relevant to an investigation provided by a person within the framework of an OLAF case.

**Whistleblower [Art 5/8]**

A whistleblower is an EU official who provides information to OLAF on any facts which give rise to a presumption of the existence of possible illegal activity or serious misconduct relating to the discharge of professional duties as provided for in Article 22a of the Staff Regulations of officials of the European Communities.

**Witness [Art 11/16]**

A witness is natural person who provides evidence relevant to an investigation.

**Written act [Art 11/14]**

A written act is an official instrument of the Director-General authorising and mandating the carrying out of investigative activities set out in Article 11.2 of the Guidelines on Investigation Procedures for OLAF Staff.