



Opinion No 1/2018

OLAF preliminary draft budget for 2019

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The President of the European Commission, Mr Jean-Claude Juncker stated in his speech to the plenary meeting of the European Parliament on the multiannual financial framework:

‘Le Budget que nous proposons, Monsieur le Président, est un budget où chaque euro dépensé apportera un résultat supérieur à celui d’une dépense purement nationale, en insistant sur la valeur ajoutée européenne de toute dépense¹.’

The Supervisory Committee of the European Anti-Fraud Office (‘the Committee’) finds that efficient spending by the European Anti-Fraud Office (OLAF) would bring about better results. As in previous opinions, the Committee points out that efficient investigations into fraud and illegal activities that harm the European Union’s (EU) interests are central to ensuring public trust in the EU and its institutions.

Introduction

1. In accordance with Regulation (EU) No 883/2013² and Article 3 of Commission Decision 1999/352/EC, ECSC, Euratom³, OLAF has 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 (TEU), the Treaty on the Functioning of the European Union (TFEU) and the Euratom Treaty. Accordingly, to ensure that OLAF can run

¹ Speech of the European Commission President Mr Juncker on 2 May 2018, only French official version available.

² 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.

³ 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.



efficiently and effectively and contribute in the best possible way to the EU's objectives to fight against fraud as provided for in Article 325 of the TFEU, the total budgetary appropriations for OLAF, are to be entered under a specific budget line within the section of the general budget of the EU relating to the Commission and set out in detail in an annex to that section⁴.

2. In accordance with Article 15(1) and recital (37) of Regulation (EU) No 883/2013, one of the Committee's objectives is to regularly monitor OLAF, in order to reinforce its independence. In this respect, the monitoring role of the Committee was strengthened and enlarged with the adoption of Regulation (EU) No 883/2013 to include monitoring of developments concerning the procedural guarantees. Recital (37) of that Regulation further provides that the duties of the Committee also include assisting the Director-General in discharging his responsibilities. Pursuant to the third subparagraph of Article 15(1) of the same Regulation the Committee addresses opinions to the Director-General of OLAF, including where appropriate, recommendations inter alia, on the resources needed to carry out the investigative function of OLAF.
3. The aim of the procedure in which the Committee is consulted and adopts an opinion on OLAF's preliminary draft budget (PDB) is to give assurance that the draft budget takes into account the independence of OLAF's investigative function. The procedure further seeks to assure that OLAF has adequate resources to provide an effective and efficient inter-institutional fraud fighting service as provided for in the legislation referred to in the points above.
4. The Committee's Opinion on OLAF's PDB creates a documented account of its advice to OLAF's Director-General that he can forward to the budgetary and the discharge authorities of the EU on the prerequisites for an efficient allocation and use of resources within OLAF. The opinion contributes to the discharge of duties of OLAF's Director-General who is responsible for the design, negotiation and implementation of OLAF's budget. The three appointing institutions are provided copies of the Committee's opinion on the OLAF's PDB.

The powers of the OLAF Supervisory Committee

5. The Committee believes that the fight against fraud detrimental to the EU's financial interests is central to the credibility of the European project. Therefore, the OLAF budget should not be subject to further saving measures which would decrease the level of protection of EU interests, particularly when facing serious irregularities and financial crimes.
6. Therefore, to reinforce and strengthen OLAF's independence, the European Commission conferred powers to the Committee, namely to monitor OLAF's PDB. After due consideration of OLAF's presentation by the Head of Unit Resources to the Supervisory Committee and exchange of opinions on the OLAF Preliminary Draft Budget and on the OLAF explanatory notes received on the said budget, the Committee delivers the present opinion.

⁴ See Art. 18 of Regulation (EU) No 883/2013.



7. The Committee believes that providing an informed opinion on OLAF's PDB is one of its core tasks and would invite the Director-General of OLAF to a thorough bilateral consultation before the hearings and negotiations with the Directorate-General for Budget take place. Whereas the Committee understands the time constraints and OLAF's lack of control on the annual budget procedure, it wishes to cooperate and deliver a constructive opinion on OLAF's PDB that could be taken into account by OLAF and by the Budgetary Authority.
8. The Committee is concerned about OLAF's sometimes restrictive interpretation of the Committee's powers and duties. It therefore points out that Regulation 883/2013 and Commission Decision 1999/352/EC, ECSC, Euratom imply that:
 - (A) the Committee is empowered to monitor OLAF's PDB and the resources needed to carry out OLAF's investigative function; and
 - (B) OLAF's overall budget is interconnected in that OLAF can transfer resources among its different budget lines according to its needs, a power that the Committee supports. This flexibility allows OLAF to make such transfers without requesting the permission of the EU Budgetary Authority. For its part, the Committee is empowered to receive information on any part of the budget to carry out its monitoring and supervision role over the efficient use of OLAF resources.
9. The Committee's opinion is addressed to the EU institutions. The recommendations, if any, are addressed to the Director-General of OLAF. In assessing how public funds are used for investigative activities, the Committee contributes to the discharge of the OLAF's Director-General duties.

The budgetary procedure within OLAF

Implementation of OLAF's 2017 budget

10. The OLAF Supervisory Committee acknowledges and welcomes that OLAF has provided more information on the implementation and the closing of the 2017 budget than it has in previous years. This has partially compensated for the lack of access of the Supervisory Committee Secretariat ('the Secretariat') to the European Commission's accounting system, to which it previously had access.
11. The execution rate of the budget has diminished substantially since 2014, reaching the rate of 93.8 % in 2017. This is mainly due to the unused part of the budget allocated to staff expenditure caused by the high turnover rate, (the number of staff members leaving OLAF is higher than the number of recruited staff).
12. OLAF's budget and staff resources are integral to the correct implementation of its investigative policy priorities (IPP). The Committee already expressed its concern by the fact that only 30% of the cases conducted by OLAF were in line with those IPP despite Directorate B concentrating both the largest number of investigators and the largest number of open cases. The Committee further believes that OLAF should make major changes in its approach to the IPP ensuring that they are set and applied properly. The key issue is to use criteria for setting IPP that give a realistic picture of OLAF's powers and resources.



OLAF's preliminary draft budget 2019

13. OLAF informed the Supervisory Committee that following the negotiations with the European Commission's Directorate-General for Budget, the overall amount of OLAF's budget as estimated for 2019 was reduced by EUR 520 000 compared to the OLAF PDB 2019 sent by OLAF to the Committee – an increase of 1.01 % compared to the 2018 budget. The Committee is aware of the saving measures needed to establish the European Commission's draft budget but also notes that the annual increase of the budget has been constantly reduced to reach almost a zero increase. The Committee would like to avoid any detrimental effects to the fight fraud causing prejudice to the EU financial interests. Therefore, it considers that OLAF should not only avoid the most restrictive saving measures applied to other Directorates-General of the European Commission but also benefit from incentives to recruit highly qualified staff.
14. The Committee takes note that the EU Directive on the fight against fraud to the EU financial interests by means of criminal law (EU/2017/1371) has clarified that VAT is part of the EU's financial interest and that OLAF will have to make additional efforts to fight VAT fraud. In addition, the Commission proposal to amend Regulation 883/2013⁵ aims to provide OLAF with the necessary tools to fulfil its mandate in the area of VAT.
15. Furthermore, the EU Regulation on mutual assistance in customs matters⁶ has, according to the resolution of the European Parliament, improved the current framework for detecting and investigating customs fraud. In particular, the Parliament urges the Commission to draw up and adopt special guidelines to help national authorities detect irregularities. Such a task may be led by OLAF, as the main responsible department in the Commission.
16. Therefore, the Committee supports OLAF's request for six additional administrator posts related to its investigative function. The Committee prefers that OLAF concentrates on its core operational tasks and allocates more resources to investigations while recognising the importance of fraud prevention and legislative activities.
17. In line with the previous considerations, the Committee considers that the budget used to conduct investigative activities out of the headquarters of OLAF need to be preserved and differentiated from non-investigative missions (e.g. policy, training, conferences and representation).

⁵ Proposal for a regulation - COM(2018)338/974806 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor Office and the effectiveness of OLAF investigations.

⁶ Regulation (EU) 2015/1525 of the European Parliament and of the Council of 9 September 2015 amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.



OLAF's human resources

18. In its Opinion 1/2017 on OLAF's PDB for 2018, the Committee recommended that OLAF give special consideration to the following items: (i) measures that could be taken to reduce the average recruitment period; (ii) identifying possible staff retention measures based on information gathered through the exit interview process; (iii) detailed assessment of training needs; and (iv) measurement and benchmarking of key training statistical data. OLAF replied on 6 October 2017 that it will pay special attention to the topics highlighted when developing its human resources strategy for 2017-2019. OLAF further reported on February 2018 concerning the abovementioned recommendations.
19. Following the Committee's recommendations outlined in the previous point, OLAF indicated that a report to be drafted at the end of 2018 would identify areas for improvement to reduce the recruitment period and that it considered the implementation of the recommendations to be ongoing. However, regarding recommendation iii), OLAF informed the Committee that it is no longer responsible for training expenditure and reporting and that this recommendation is therefore no longer applicable. Furthermore, regarding recommendation iv) OLAF indicated that training paths for newly appointed investigators as well as for senior investigators already exist, in addition to internal training and general training for Commission staff.
20. It is the opinion of the Committee that in-house human resources and finance capabilities that are independent from the Commission contribute to the independence of OLAF. This is of particular importance for recruitment, training and the capacity to react to new and complex fraud patterns.
21. The Committee supports OLAF's use of contract agents, temporary agents and national seconded experts while the problem of the vacancy or high turnover rate persists. The Committee also supports these posts being financed with the unused credits allocated for recruiting officials. The Committee confirms its finding in Opinion 01/2016 on the OLAF PDB that in-house legal experts contribute to strengthening OLAF's capacity to apply national law correctly and develop EU-wide capacities in the fight against fraud. OLAF should therefore continue to recruit EU staff with certified legal qualifications in the related language.
22. As it was expressed in its Opinion 2/2017 Accompanying the Commission Evaluation report on the application of Regulation (EU) of the European Parliament and of the Council No 883/2013, the Committee greatly values the task implemented by OLAF investigators when travelling to the Member State and considers that they should have the maximum support and protection from OLAF and the EU institutions when facing difficulties in particular cases.

Information communication and technology infrastructure in OLAF

23. The Committee reiterates the observation in its Opinion 1/2017 on OLAF's 2018 PDB that well-organised and up-to-date information and communication technology (ICT) infrastructure and support are necessary for cost-effective fraud investigations.



24. However, the Committee regrets that it was not actively involved in the development of the new ICT infrastructure architecture. In this regard, the Committee draws OLAF's attention to the electronic access granted to the Committee's members, as recognised in the Joint Opinion of the three Legal Services of 12 September 2016, which implies that the specific needs for implementing the Committee's legal duties should be determined jointly by the Committee and OLAF.
25. In particular, given the budget involved and the impact on OLAF's investigation function, the Committee considered the 'OLAF Content Management' (OCM) database to be of fundamental importance and recommended that OLAF's Director-General should request the European Commission's Internal Audit Service (IAS) to carry out a post-implementation evaluation of the OCM, incorporating users' experiences and other elements. In October 2017 OLAF replied that it would 'carefully consider the need for requesting the IAS for such a post-implementation evaluation', and indicated in February 2018 that an audit on OLAF's IT project management practices (including OCM) would be carried out towards the end of 2018.
26. The Committee has made several requests for detailed information on resources invested to date for the development of the OCM ICT project as it is a key tool for OLAF's investigative function. In particular, the Committee wanted to know how much OLAF has spent per year (since 2012) to implement the project. To date, the Committee has only received partial information on the costs and the efficiency of OCM.
27. The Committee reiterates the need for an urgent audit of the OCM project by the IAS. This investigation should include the costs of the project since its inception, users' experiences of using the database and a list of the issues they encountered. After all, OLAF's capacity to provide adequate ICT support to their investigators is at stake.

Resources for the Secretariat of the Supervisory Committee

28. In the past, the Committee's opinions on OLAF's PDB devoted several paragraphs to its Secretariat when it was integrated in OLAF's budget and it was necessary to comment on that budget line. However, in 2017, as a result of the modification of Regulation EU No 883/2013, the Secretariat of the Supervisory Committee was provided by the Commission independently from OLAF. To that end the Secretariat was administratively attached to the Office of Individual entitlements of the European Commission (PMO). The appropriations for the Supervisory Committee and its Secretariat entered into the section of the general budget of the EU relating to the Commission⁷. With hindsight, it can be said that the results of this change did not live up to the Committee's expectations and that in the medium term the move had adverse effects for its resources and functioning. The Committee has indicated to the European Commission that a more suitable place to locate the Secretariat (currently seriously understaffed) must be found

⁷ Regulation (EU, Euratom) 2016/2030 of 26 October 2016 amending Regulation (EU, Euratom) No 883/2013, as regards the Secretariat of the Supervisory Committee of the European Anti-Fraud Office (OLAF), modifications on article 15 "Supervisory Committee" and article 18 "Financing" and Administrative and budgetary decisions (QADB) taken at the Commission's 2201th meeting on 22.02.2017.



and all possible options will be explored in the near future including revisiting the option to make the Secretariat once again part of OLAF albeit under different conditions and subsequent budgetary consequences.

Budgetary impact of the establishment of the European Public Prosecutor Office

29. As stated in previous opinions (Opinions 01/2017 on the OLAF PDB 2018 and Opinion 02/2017 on the evaluation of the OLAF Regulation), the Committee considers that the transfer of posts from OLAF to the European Public Prosecutor's Office (EPPO) should be considered carefully and managed in a way that protects OLAF's ability to continue to deliver on its mandate, in particular its investigative capacity. Given OLAF's current staffing level, it is difficult to see how it could absorb further reductions in its establishment plan unless there is a clear link between the transfer of posts and the transfer of functions.

Conclusions

- A) The Committee considers that OLAF's preliminary draft budget for 2019 is in conformity with the resources needed to efficiently conduct investigations. A potential reserve of the Committee would focus on the lack of efficiency of OLAF's OCM database which should be balanced according to the outcome expected from this information communication and technology project having a major impact on the investigative function.
- B) The Committee is concerned about OLAF's restrictive interpretation of the Committee's powers and duties, which make it difficult for it to fulfil its mandate by issuing recommendations to the OLAF Director-General on the resources it needs to carry out its investigative role.
- C) The Committee considers that support to investigations is part of OLAF's core business and that in-house human resources and financial capabilities will contribute to OLAF's independence.
- D) The execution rate of OLAF's 2017 budget has decreased mainly because of the staff turnover rate and the difficulties to fill all vacancies.



Recommendations of the Supervisory Committee to the OLAF Director-General

30. The Committee recommends that the OLAF Director-General that OLAF should have a recruitment policy with a long term vision to increase the recruitment rate and retain staff once recruited.
31. The Committee recommends that the OLAF Director-General implements the Committee's previous recommendation to request an audit by the Internal Audit Service of the Commission of the OCM ICT project, and ensure that the investigation includes the costs of the project since its inception, users' experiences of using the database and a list of the issues they encountered.
32. The Committee recommends that the OLAF Director-General establishes a budget impact assessment to measure the impact that transferring posts to EPPO will have on OLAF's efficiency and operational capacities.
33. The Committee recommends that the OLAF Director-General requests the European Commission to re-establish a human resources unit within OLAF to preserve its efficiency and independence in recruitment procedures.