



EUROPEAN ANTI-FRAUD OFFICE

The Director-General

Brussels

**NOTE FOR THE ATTENTION OF MR JOHAN DENOLF  
CHAIRMAN OF THE OLAF SUPERVISORY COMMITTEE**

**Via the Secretariat of the Supervisory Committee**

Subject: **Response to the Supervisory Committee's Opinion No 1/2014  
on "OLAF Investigation Policy Priorities"**


Dear Mr Denolf,

Thank you for transmitting the Supervisory Committee's Opinion No 1/2014 on "OLAF Investigation Policy Priorities".

Please find attached OLAF's response to the recommendations issued by the Supervisory Committee, as well as some comments on the report as such.

Yours sincerely,

06 MARS 2014

  
Giovanni KESSLER

Enclosures: 2

**OLAF'S RESPONSE TO THE SUPERVISORY COMMITTEE'S OPINION NO 1/2014 ON  
"OLAF INVESTIGATION POLICY PRIORITIES"**

**Recommendation No 1: guidelines on selection principles**

OLAF's Investigation Policy Priorities (IPPs) in 2012 and 2013 included the following selection principles: proportionality, efficient use of investigative resources and subsidiarity/added value.

As of 2014, and following the entry into force of Regulation 883/2013, the Director General of OLAF has decided, in line with art 17(5) of the Regulation, and taking also into account the provisions of art 5(1), that the IPPs no longer need to contain references to these **selection principles** considering that they are explicitly mentioned in this Regulation. OLAF appreciates the Supervisory Committee's support for this approach<sup>1</sup>.

In the IPPs for 2012 and 2013, the three general principles were accompanied by guidance for the Investigation Selection and Review Unit on how they should be applied in practice. The Director-General is willing to consider whether some additional guidance needs to be offered to the Investigation Selection and Review Unit, building on the guidance used in the past to support the implementation of the same principles. Such guidance would necessarily also reflect on the application of the subsidiarity principle in light of Regulation 883/2013.

As a clarification to what is stated in your Opinion<sup>2</sup>, priorities for investigation may be more relevant in the areas of shared management of EU funds and own resources considering that the application of the subsidiarity principle is of particular relevance in those areas where Member States have specific responsibilities. Therefore, more, but not all, of the priority areas defined in the IPPs refer to matters which fall within the responsibilities of Directorate B.

As far as **financial indicators** are concerned, I note from your Opinion that there has been, and to a certain extent still is, a persistent misunderstanding among some of our interlocutors on this matter. Since the adoption of the 2012 IPPs, such indicators have not been conceived, intended nor even referred to by OLAF as "thresholds" for selection.

Selectors in OLAF were well aware that such indicators had to be accessorially used to evaluate the seriousness of the risk of fraud so to assess whether (or not) to suggest opening an investigation. Such indicators have never been conceived or used by OLAF as an "exclusion criterion".

Furthermore, when the suspicions of irregularity or fraud are sufficiently serious but OLAF decides, in line with the IPPs, not to open an investigation into the matter, the Office systematically transfers the relevant information to the competent national authorities (or

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<sup>1</sup> Paragraph 17 of Opinion no 1/2014

<sup>2</sup> Paragraph 11

competent EU services) to ensure that appropriate further action will be taken to protect the financial interests of the EU.

Despite the explanations offered by the Office on several occasions and through several channels, the financial indicators have erroneously been perceived by some of our stakeholders as creating areas of impunity. OLAF would like to stress once again that there have never been any such areas of impunity.

As an example and with reference to what is stated in your Opinion<sup>3</sup>, some statistical figures concerning 2012 might better explain the actual situation.

The total percentage of cases opened between 1 February and 31 December 2012 in all sectors of activity where the financial impact was either unknown at the time of the opening or below the financial indicators set in the 2012 IPP was 78%, that is to say: a very large majority. Had the financial indicators been an exclusion criteria or a threshold, none of these cases would have been opened. As far as the European Regional Development Fund, the Cohesion Fund, the European Social Fund and the European Fisheries Fund are concerned, the percentage of cases during the same period, where the financial impact was either unknown at the time of the opening or below the financial indicators set in the 2012 IPP was 74%.

Furthermore, and with reference to what is stated in the Supervisory Committee's Opinion<sup>4</sup>, OLAF has carried out some further checks<sup>5</sup>. In 2013, 182 selection cases were opened in the agriculture sector. Out of them, 96 were dismissed<sup>6</sup> but none of them on the basis of the mere application of the "financial indicators". Furthermore, among these 96 cases, only 6 opinions mention the financial impact but only as a component of the "proportionality criterion". Finally, the information drafted for the transmission of the 6 cases above never mentioned the "financial indicator" as a reason for the dismissal.

Following from the above, and considering that in most cases when a decision to open an investigation needs to be taken, it is very difficult, if not impossible, to precisely assess the potential financial impact of the case, and given the limited weight of the indicator in the overall assessment, the Director General has decided not to include financial indicators in the IPPs for 2014. Nevertheless, OLAF intends to monitor whether not having explicit financial indicators available in the selection process leads to the opening of too many cases for the Office to handle. If so, the Director General will give consideration to their possible reintroduction<sup>7</sup>.

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<sup>4</sup> Paragraph12

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<sup>5</sup> The check took into consideration the 2013 information of possible investigative interest only and it is focused on the Agriculture Sector only, encompassing all the following subsectors: EAFRD, EAGF, EAGGF – Guarantee, IPARD and SAPARD.

<sup>6</sup> As of 30/01/2014

<sup>7</sup> Paragraph 21

## **Recommendation No 2: dialogue with stakeholders**

As you rightly point out in your Opinion<sup>8</sup>, the IPPs “are based on 9 key documents issued by stakeholders”. In my view this shows clearly how OLAF takes into account the concerns and the feedback received by its stakeholders.

It is OLAF's established practice to consult regularly with Directorates-General of the Commission on matters related to fraud prevention and detection. Following the adoption of the Commission Communication on Anti-Fraud Strategy (2011), which was based on extensive inter-service consultations, OLAF has supported DGs in devising their anti-fraud strategy and action plan, covering the whole expenditure cycle. Moreover, OLAF set up a Fraud Prevention and Detection Network (FPDNet) with the DGs concerned. The IPPs were discussed during FPDNet meetings on 29 January 2013 and 28 January 2014. FPDNet meetings equally provide a forum to discuss issues linked to how information transmitted by OLAF to DGs should be handled. It is also in the framework of the FPDNet that OLAF has discussed and distributed to the relevant DGs the “Guidance note for treatment of dismissed cases”. This note, which is attached, was conceived to clarify the background of dismissal notifications in relation to OLAF's investigative policy and to explain to DGs which actions they could envisage following the receipt of such notifications<sup>9</sup>.

It is OLAF's opinion that the above constituted appropriate consultation and guidance to Commission services.

As a corollary to the above, I would also point out that, at least in the areas of shared management and own resources, the national management authorities or audit services would follow-up on cases not investigated by OLAF, rather than the Directorates-General of the Commission. The rationale is that those national authorities do have the necessary competences and are better positioned than OLAF to ensure the appropriate follow-up.<sup>10</sup>

While this is already being done to a certain extent, OLAF is exploring internally the possibility of linking more systematically the preparation of the IPPs with a risk assessment exercise. To this end, OLAF could perform an analysis of its (recent) operational experience and undertake a desk review of key documents from stakeholders (including the European Parliament, European Court of Auditors and Commission / Directorates-General) complemented by even more specific consultations with other DGs.

## **Recommendation No 3: assessment of implementation**

Based on Article 17(5) of Regulation 883/2013, the investigation policy priorities of the Office shall be determined within the context of the annual management plan and they shall be forwarded to the Supervisory Committee prior to their publication.

While I can understand the rationale of this Recommendation, the request formulated goes beyond the scope of the Regulation which does not require or impose the setting of specific performance indicators on the implementation of the priorities. To add a practical but fundamental point, the results from the implementation of the IPPs for the year of

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<sup>8</sup> Paragraph 11

<sup>9</sup> Ares(2013)622043 - 10/04/2013

<sup>10</sup> Paragraph 24

reference could not possibly be available at the time of submitting the proposal for the new IPPs, especially if such assessment is expected to encompass the feedback provided by the stakeholders as the Opinion seems to suggest in its second Recommendation. To this extent, this Recommendation is in our view difficult to implement. Nevertheless, in the future OLAF is willing to provide the Supervisory Committee with statistics on the impact that the application of the IPPs has on the selection of cases.

Finally, and in a view to meet your request, OLAF could imagine that in coming years the implementation of the IPPs is reflected, to the extent possible, in OLAF's Annual Activity Report. Indeed, this is the instrument used to report on the achievements of the objectives outlined in the management plan.