



Opinion No 4/2024

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**OLAF's power to conduct internal investigations: the case of Members of EU institutions.**

**12 November 2024**

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## INTRODUCTION

1. In 1999, the Commission adopted Decision 1999/352 establishing the European Anti-Fraud Office ('OLAF') among its own services with responsibility for conducting administrative fraud investigations<sup>1</sup> to increase the resources available for combating fraud, while respecting the principle of each institution's internal organisational autonomy. Parliament and Council then adopted Regulation No 1073/1999 to regulate investigations conducted by OLAF<sup>2</sup>. Regulation No 883/2013 ('the OLAF Regulation')<sup>3</sup> was adopted, repealing the 1999 Regulation and significantly revising the legal framework applying to OLAF investigations.
2. Since 1999, OLAF has been the main pillar of the European Union's anti-fraud architecture. It conducts administrative investigations that may lead to financial, administrative, disciplinary and judicial recommendations<sup>4</sup>.
3. To fulfil its mandate, OLAF can carry out external (Article 3 of the Regulation) or internal investigations (Article 4 of the Regulation). Internal investigations are administrative investigations conducted within the EU institutions, bodies, offices and agencies ('IBOAs') for the purpose of detecting fraud, corruption and any other illegal activity affecting the financial interests of the European Union (EU)<sup>5</sup>. They may include serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other EU staff liable to result in disciplinary and/or criminal proceedings, or an equivalent failure on the part of members of IBOAs or their staff members not subject to the Staff Regulations to discharge their obligations.
4. Therefore, the internal investigations focus directly on European Union staff in the broadest sense without distinction by grade or function. They cover officials, temporary staff, seconded national experts, contract staff and other staff whose employment contracts

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<sup>1</sup> 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, as last amended by Commission Decision (EU) 2015/2418 of 18 December 2015, OJ L 333, 19.12.2015, p. 148.

<sup>2</sup> Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OJ L 136, 31.5.1999, p. 1.

<sup>3</sup> 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, as amended by Regulation 2020/2023, OJ L 423, 28.12.2020.

<sup>4</sup> The creation of the European Prosecutor's Office ('the EPPO') by Regulation 2017/1939 marked a fundamental development in the fight against crimes affecting the EU's budget, bringing alongside significant changes to the European's Union anti-fraud architecture, including the mandate of OLAF. It maintained OLAF as an administrative body conducting administrative investigations, leaving the EPPO to focus on criminal investigations about fraud, corruption or other criminal offences affecting the EU's financial interests, see Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31.10.2017, p. 1-71.

<sup>5</sup> According to the PIF Directive (Article 2(1)), the 'Union's financial interests' means all revenues, expenditure and assets covered by, acquired through, or due to: (i) the Union budget; and (ii) the budgets of the Union institutions, bodies, offices and agencies established pursuant to the Treaties or budgets directly or indirectly managed and monitored by them, Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, p. 29.

are governed by private law. They also focus on members of the institutions<sup>6</sup>, including those appointed by Member States or by other institutions, namely European Commissioners, Members of the European Parliament (“MEPs”), the European Ombudsman, judges and Advocates General of the Court of Justice of the European Union (ECJ), Members of the Board of Governors of the European Central Bank (ECB), Members of the European Court of Auditors (ECA), Members of the Economic and Social Committee (ESC) and Members of the Board of Governors of the European Investment Bank (EIB).

5. In February 2023, the Director-General of OLAF sent to the Chair of the Supervisory Committee correspondence exchanged between the President of the European Parliament and himself (March 2020 to September 2023) regarding the issue of OLAF’s powers of investigation of MEPs, for the purpose of informing the Committee on this topic.
6. According to the Director-General of OLAF, the correspondence in question showed that OLAF was encountering certain difficulties in investigating alleged cases of serious misconduct by MEPs that did not as such affect the financial interests of the EU, including difficulties in accessing MEPs’ offices and their IT equipment (laptops), among other issues. Although OLAF could investigate as persons concerned parliamentary assistants and other staff of Parliament, it was not in the position to carry out any investigative activity concerning a Member of Parliament without the authorisation of Parliament.<sup>7</sup>
7. For OLAF, this situation was not in line with the applicable rules. It contrasted sharply with OLAF’s powers to carry out internal investigations of members of other European institutions, including Members of the Commission (Commissioners), regarding alleged serious misconduct that did not affect the EU’s financial interests, including accessing their offices and their IT equipment.
8. Given that the Director-General of OLAF sought to have the Committee’s views on the issues raised in the above-mentioned correspondence with Parliament, the Committee decided that it would be useful to examine closer. It would also be useful to clarify the rules applicable to internal investigation by OLAF that involve members of EU institutions in general, and MEPs in particular, by issuing an opinion under Article 15 of the Regulation<sup>8</sup>.
9. The aim of the opinion is to clarify the applicable legal framework and gain a better understanding of the kind of legal and other obstacles encountered by OLAF when carrying out such investigations and the reasons for them. For the Committee, it is essential as a first step to clarify the issue of OLAF’s competence to investigate MEPs for matters that appear not to affect the financial interests of the EU. The Committee may as a second step examine in the future the connected issue of OLAF encountering difficulties in getting access to Parliament’s premises and conducting inspections for the purpose of investigating MEPs.

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<sup>6</sup> Under Article 2 of the OLAF Regulation the term ‘member of an institution’ means a member of the European Parliament, a member of the European Council, a representative of a Member State at ministerial level in the Council, a member of the Commission, a member of the Court of Justice of the European Union (CJEU), a member of the Governing Council of the European Central Bank or a member of the Court of Auditors, with respect to the obligations imposed by Union law in the context of the duties they perform in that capacity.

<sup>7</sup> OLAF informed the Committee that in the period 2020-2024, in nine closed investigations involving MEPs as the person concerned, there were cooperation issues with Parliament.

<sup>8</sup> Article 15 of the OLAF Regulation states that the Supervisory Committee may deliver opinions also upon request, among others, of the Director-General of OLAF.

10. The analysis set out in this opinion, although focused on the obstacles OLAF encountered when investigating Members of Parliament, should apply in principle to any OLAF internal investigation of any Member of any EU institution, not just the European Parliament.

## 1. LEGAL FRAMEWORK

11. The legal framework governing OLAF's powers to conduct external and internal investigations is essentially based on four main legal pillars.

12. The **first** pillar is the Commission Decision of 1999 which established OLAF<sup>9</sup> and mandated it to carry out external administrative investigations for the purpose of strengthening the fight against fraud, corruption and any other illegal activity adversely affecting the EU's financial interests, as well as any other act or activity by operators in breach of Union provisions (Article 2). The Decision, **which is still in force**, also entrusted OLAF to carry out **internal administrative** investigations by making a clear distinction between two kinds of investigations:

- '(a) to combat fraud, corruption and any other illegal activity adversely affecting the Union's financial interests,
- (b) to investigate serious facts linked to the performance of professional activities which may constitute a breach of obligations by officials and servants of the Communities likely to lead to disciplinary and, in appropriate cases, criminal proceedings or an **analogous breach of obligations by Members of the institutions and bodies**, heads of the bodies or members of staff of the institutions and bodies not subject to the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the Communities.'

13. The above-mentioned Decision clearly distinguished, on the one hand, OLAF investigations of fraud and other illegal activities that affect the EU's financial interests from investigations, on the other hand, of serious facts linked to the professional activities of EU officials and members of institutions that may lead to disciplinary or criminal proceedings. It did not make reference to the latter investigations into the protection of the financial interests of the EU.

14. The previous OLAF Regulation 1073/1999<sup>10</sup> reflected this clear distinction in Article 1(3).

15. The **second** pillar of the legal framework is the current OLAF Regulation. Article 1(4) of the Regulation provides that:

*'within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties ('institutions, bodies, offices and agencies'), [OLAF] shall conduct administrative investigations for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union. **To that end, it shall investigate serious matters relating to***

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<sup>9</sup> Decision 1999/352/EC, ECSC, Euratom, op.cit.

<sup>10</sup> Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), Official Journal L 136, 31/05/1999, p 1.

*the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or staff members of institutions, bodies, offices or agencies not subject to the Staff Regulations (hereinafter collectively referred to as ‘officials, other servants, members of institutions or bodies, heads of offices or agencies, or staff members’.*

16. Article 1(4) of the current OLAF Regulation is worded slightly differently to the previous OLAF Regulation. It does not reiterate the previous clear distinction between the two types of OLAF investigations, those related to the EU’s financial interests and those related to serious matters concerning dereliction of duties by EU officials and members of IBOAs.

17. However, it is worth highlighting that Recital 6 of the OLAF Regulation clarifies that:

*The responsibility of the Office as set up by the Commission also extends beyond the protection of financial interests to include all activities relating to safeguarding Union interests against irregular conduct liable to result in administrative or criminal proceedings’.*

18. Article 4 of the OLAF Regulation lays down detailed implementing rules for the conduct of internal investigations.

19. In particular, Article 4(1) states that:

*‘investigations within the institutions, bodies, offices and agencies in the areas referred to in Article 1 shall be conducted in accordance with this Regulation and **with the decisions adopted by the relevant institution, body, office or agency**’.*

20. In that regard, Article 4(7) of the OLAF Regulation further specifies that:

*‘The decision to be adopted by each institution, body, office or agency as provided for in paragraph 1 shall include, in particular, a rule concerning a duty on the part of officials, other servants, members of institutions or bodies, heads of offices or agencies, or staff members to cooperate with and supply information to the Office, while ensuring the confidentiality of the internal investigation’.*

21. Article 1 of the OLAF Regulation states that its scope of application is without prejudice to:

- (a) **Protocol No 7 on the privileges and immunities of the European Union attached to the Treaty on European Union and to the Treaty on the Functioning of the European Union;***
- (b) **the Statute for Members of the European Parliament;***
- (c) the Staff Regulations.*

22. **The third** pillar of the legal framework applicable to OLAF’s internal investigations is Article 22a, paragraph 1 of the Staff Regulations, which states that:

- ‘1. Any official who, in the course of or in connection with the performance of his duties, becomes aware of facts which give rise to a presumption of the existence of possible illegal activity, including*

*fraud or corruption, detrimental to the interests of the Union, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Union, shall without delay inform either his immediate superior or his Director-General or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or the European Anti-Fraud Office (OLAF) direct<sup>6</sup>.*

23. Lastly, **the fourth pillar** is the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission, ‘concerning internal investigations by OLAF’<sup>11</sup>. Under that Agreement, the three signatory institutions agreed:

‘1 To adopt common rules consisting of the implementing measures required to ensure the smooth operation of the investigations carried out by the Office within their institution. These investigations shall serve the purpose of:

- fighting against fraud, corruption and any other illegal activity detrimental to the financial interests of the European Communities;
- bringing to light serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials or other servants of the Communities liable to result in disciplinary or, in appropriate cases, criminal proceedings or a failure to comply with the analogous obligations of the members, managers or members of staff not subject to the Staff Regulations.

*These investigations shall be carried out in full compliance with the relevant provisions of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, of the texts implementing them and the Staff Regulations’.*

## 2. ANALYSIS

24. Based on the above-mentioned correspondence between OLAF and Parliament and the exchanges of views that the Committee had with the Director-General of OLAF, it appeared that the difficulties and obstacles that OLAF had encountered in carrying out investigations of MEPs were not always down to a single clear reason but to a number of underlying considerations.

25. According to the Director-General of OLAF, in some cases, the view of Parliament – which could be also that of other IBOAs – was that, on the basis of the legal framework above, especially Article 1(4) of the OLAF Regulation, OLAF does not have the power to carry out investigations of members of EU institutions, including MEPs, for alleged misconducts that have no impact on the financial interests of the EU.

26. In other words, Parliament is of the view that OLAF lacks the necessary legal basis and thus should not investigate issues such as harassment, conflicts of interest or ethical breaches. In particular, in some cases concerning alleged harassment involving MEPs, Parliament appeared to consider that the entity best placed to investigate such allegations is not OLAF but Parliament itself, and that accordingly, OLAF should refrain from any

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<sup>11</sup> OJ 136/15, 31.5.1999.

parallel investigations. In that regard, Parliament cites its own Code of Conduct for MEPs, which sets out internal procedures to investigate breaches of the Code by MEPs.

27. Finally, the issue of the immunity and independence of MEPs could also be a reason why OLAF has in some instances encountered obstacles in investigating MEPs, conducting inspections and getting access to their premises.
28. The Committee will therefore examine the core question as to whether OLAF has the power to investigate not only MEPs, but also members of IBOAs for serious offences related to the discharge of their professional duties that do not affect the financial interests of the EU (also known as non-PIF-related matters).<sup>12</sup> It will also examine the relevance of Parliament's Code of Conduct for MEPs and of the MEPs' Statute and their immunity for the purposes of OLAF's internal investigations.
29. Finally, for the sake of completeness, the opinion will also assess whether and to what extent the Interinstitutional Agreement of 1999 and the Decisions that each institution, body, office or agency of the EU has adopted under Article 4 of the OLAF Regulation (see paragraphs 15-16 above), concerning the terms and conditions for OLAF to conduct investigations of their staff or their members, could affect OLAF's power to conduct such investigations.<sup>13</sup>

#### **2.1 OLAF's powers to carry out internal investigations for non-PIF-related matters.**

30. In its correspondence with Parliament, OLAF has argued that all the above provisions that made up the applicable legal framework, ***read together***, make it clear that OLAF is not only responsible for protecting the EU's financial interests, but is also empowered to investigate serious facts linked to the performance of professional activities that may constitute a breach of obligations by officials and members of the EU institutions that are likely to lead to disciplinary or criminal proceedings.
31. In short, OLAF's position is that it has the power to conduct internal investigations of members of all IBOAs, including MEPs, for matters that go beyond the protection of the EU's financial interests.
32. The Committee's view is that OLAF is indeed empowered under the OLAF Regulation to investigate not only PIF-related matters, but also matters that go beyond the protection of the EU's financial interest and constitute, under Article 1(4) of the OLAF Regulation, ***'a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions'***.
33. As explained below, Court of Justice jurisprudence has recently upheld OLAF's position. The Court examined in detail the very arguments that Parliament recently appears to have raised in its correspondence with OLAF to call into question or restrict OLAF's power to investigate MEPs for non-PIF-related offences. The Court rejected the view that OLAF

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<sup>12</sup> Crimes against the financial interests of the European Union (PIF crimes, as defined in Directive (EU) 2017/1371) affect the Union's financial interests and also harm its reputation and credibility. PIF crimes include fraud related to the EU budget, large-scale VAT fraud affecting two or more Member States, corruption, misappropriation of assets committed by a public official, and money laundering involving property derived from these crimes.

<sup>13</sup> The Committee has also decided to issue a separate opinion on OLAF investigations of allegations of harassment by EU officials and members of IBOAs.



can only conduct internal investigations of EU officials and members of IBOAs if and when the EU's financial interests are at stake.

*The Court of Justice case law: the 'Dalli' case*

34. In a case brought by former Commissioner Dalli against the Commission in 2017, the Court explicitly examined the question of OLAF's power to carry out internal investigations that do not affect the EU's financial interests. The case concerned an action for compensation for the damage allegedly suffered by the former Commissioner as the result of the allegedly unlawful conduct on the part of OLAF in connection with the termination in 2012 of his office as a Member of the Commission (Case T-399/17)<sup>14</sup>.
35. To prove one of the conditions triggering the extra-contractual liability of the EU (illegality), the former Commissioner argued before the Court that OLAF's decision to open an investigation into his conduct was unlawful. The former Commissioner referred to Article 1(3) of Regulation 1073/1999 (the previous OLAF Regulation) and Article 5 of the OLAF GIPs. Article 1(3) of the previous OLAF Regulation is almost identical to Article 1(4) of the current OLAF Regulation.
36. According to the former Commissioner, OLAF had decided to open an investigation against him even though the EU's financial interests were not at stake. His position before the Court was that this was an unlawful conduct, in breach of the OLAF Regulation. His argument was that the use of the words '*to that end*' in Article 1(3) of the OLAF Regulation<sup>15</sup> (Article 1(4) of the current Regulation) meant that an internal investigation could only be opened with a view to protecting the EU's financial interests.
37. The Court rejected this interpretation. For the Court, it was clear from Article 2(1) of Commission Decision 1999/352/EC establishing OLAF (which is still applicable) that OLAF was responsible not only for '*conducting administrative investigations for the purpose of, firstly, fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union*', but also to investigate '*serious facts linked to the performance of professional activities which may constitute a breach of obligations by officials and servants of the Union likely to lead to disciplinary and, in appropriate cases, criminal proceedings*'<sup>16</sup>.
38. According to the Court, this was also laid down in recital 5 of the previous OLAF Regulation No 1073/1999 (now recital 6 of the current OLAF Regulation), according to which OLAF's responsibility ***extends beyond the protection of financial interests*** to

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<sup>14</sup> Judgement of 6 June 2019, *Dalli v Commission* T-399/17, ECLI:EU:T:2019:384, upheld by judgement of 25 February 2021, *Dalli v Commission*, C-615/19P, ECLI:EU:C:2021:133.

<sup>15</sup> Article 1(3) of the previous OLAF Regulation (Article 1(4) of the current OLAF Regulation) stated that:  
 Within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties (hereinafter 'the institutions, bodies, offices and agencies'), the Office shall conduct administrative investigations for the purpose of:

- fighting fraud, corruption and any other illegal activity affecting the financial interests of the European Community,
- investigating ***to that end*** serious matters relating to the discharge of professional duties such as to constitute a dereliction of the obligations of officials and other servants of the Communities liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or members of the staff of institutions, bodies, offices or agencies not subject to the Staff Regulations of officials and the Conditions of employment of other servants of the European Communities ('the Staff Regulations').

<sup>16</sup> See paragraph 62 of the judgment.

include all activities relating to safeguarding the EU's interests against irregular conduct liable to result in administrative or criminal proceedings.

39. The Court noted that, although Article 1(3) of the previous OLAF Regulation 1073/1999, [Article 1(4) of the current OLAF Regulation] reproduces, with a 'slight difference in terminology' ('**to that end**'), the wording of Article 2(1) of the Decision 1999/352 establishing OLAF, that difference in terminology was not material. Read in the light of the Commission Decision establishing OLAF and of recital 5 of Regulation 1073/1999 (recital 6 of the current OLAF Regulation), the use of the expression '**to that end**' did not refer to the protection of the EU's financial interests and therefore could not call into question OLAF's competence to investigate non-PIF-related offences. As the Court concluded, '**the absence of an impact on the financial interests of the Union does not affect the possibility for OLAF to open an investigation.**'<sup>17</sup>
40. For the Committee, the Court's judgment in the 'Dalli' case means that there can no longer be any doubt as to the correct interpretation of Article 1(4) of the OLAF Regulation and OLAF's powers to investigate serious matters relating to the discharge of professional duties by EU staff and members of institutions that do not affect the EU's financial interests.
41. Moreover, jurisprudence following the Dalli case also clarified that even non-PIF-related offences (such as conduct involving psychological harassment) can have financial repercussions. Therefore, OLAF is entitled to investigate such cases even if it considered that the misconduct in question had no financial impact.<sup>18</sup>
42. The Committee notes that Parliament's position as expressed in its correspondence with OLAF that the latter lacks competence under the OLAF Regulation to investigate non-PIF-related matters, including compliance of MEPs with Parliament's Code of Conduct<sup>19</sup>, may be about to change. Point 81 of its Resolution of May 2023, forming integral part of Parliament's decision of 10 May 2023 on the discharge for 2021 of the EU general budget, states that:

*"the fact that the European Anti-Fraud Office (OLAF) currently does not have, under any circumstances, access to Member's offices, computers and email accounts, even when investigating cases linked to Members based on a substantiated suspicion; underlines the need to have an adequate procedure for granting access to OLAF in cases of substantiated suspicions against individual Members; calls on the Bureau to set up such a procedure **as well as to recognise and ensure OLAF's competence to investigate possible breaches of the Code of Conduct by Members,**"*<sup>20</sup>

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<sup>17</sup> See paragraph 62 of the judgment.

<sup>18</sup> Judgment of 30 November 2022, *T-401/21, LN v Parliament*, ECLI:EU:T:2022:736.

<sup>19</sup> Code of Conduct for Members of the European Parliament, at [https://www.europarl.europa.eu/pdf/meps/Code\\_Of\\_Conduct\\_20231101\\_EN.pdf](https://www.europarl.europa.eu/pdf/meps/Code_Of_Conduct_20231101_EN.pdf)

The Code of Conduct entered into force on 1 January 2012 and was last revised in 2023. It sets out as its guiding principles that Members shall act solely in the public interest and conduct their work with disinterest, integrity, openness, diligence, honesty, accountability and respect for the European Parliament's dignity and reputation. The Code contains provisions on conflicts of interest and on setting up an Advisory Committee on the Conduct of Members.

<sup>20</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0138\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0138_EN.html).

## 2.2 The Code of Conduct, the Statute and the immunity of Members of Parliament

43. In its correspondence with OLAF, Parliament has also expressed the view that OLAF's internal investigations of MEPs on issues that do not affect the EU's financial interests also raise serious questions with regard to (i) Parliament's own Code of Conduct, and (ii) the Statute<sup>21</sup> and/or the immunities of MEPs.

### (i) *The Code of Conduct*

44. In particular, in its correspondence with OLAF, Parliament considered that OLAF could not investigate alleged breaches by MEPs of the Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest. For Parliament, the Code of Conduct lacks a clear connection with the fight against illegal activities that affect the EU's financial interests and as a result, OLAF has no legal basis to conduct an internal investigation for breaches by MEPs of the Code of Conduct.

45. The Committee recalls that, as explained above, OLAF's competence to conduct internal investigations of members of IBOAs is not limited to illegal or irregular activities affecting only the EU's financial interests. OLAF is fully competent to investigate matters that go beyond the protection of financial interests and that include breaches of the Code of Conduct of any IBOA that relate to serious matters relating to the discharge by MEPs of their professional or ethical duties constituting a dereliction of their obligations and that are likely to result in disciplinary or criminal proceedings.

46. It is important to stress in this regard that the fact that an IBOA may have adopted internal rules, including a code of conduct for its members on ethical matters, does not and cannot preclude OLAF from exercising a competence conferred directly on it by the OLAF Regulation. These internal rules and codes of conduct are only binding on the IBOA concerned. They cannot be used as a basis for preventing OLAF from conducting an internal investigation in line with Article 1(4) of the OLAF Regulation.

47. In its above-mentioned correspondence with OLAF, Parliament nonetheless expressed serious doubts about OLAF conducting parallel internal investigations into harassment allegations against MEPs on the ground that such investigations risk calling into question Parliament's own internal procedures as set out in its Code of Conduct. According to Parliament, the principle of sincere cooperation limits the scope of OLAF's activities vis-à-vis Parliament.

48. In that regard, the Committee recalls that, under Article 13(2) TEU:

*'Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation.'*

49. According to the case law, Article 13(2) TEU *reflects the principle of institutional balance, characteristic of the institutional structure of the European Union, a principle which requires that each of the institutions must exercise its powers with due regard for the powers of the other institutions.*<sup>22</sup>

<sup>21</sup> Decision of the European Parliament of 28 September 2005, adopting the Statute for Members of the European Parliament, OJ 262/1, 7.10.2005, at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32005Q0684>.

<sup>22</sup> Judgment of 6 October 2015, Case C-73/14, *Council of the European Union v European Commission* ECLI:EU:C:2015:663.

50. In that respect, as far as OLAF is concerned, the Court has ruled that OLAF's duty of sincere cooperation cannot have the effect of altering the division of tasks and responsibilities prescribed for the implementation of the OLAF Regulation.<sup>23</sup> Since the power to conduct internal investigations is not a shared competence but is conferred by the OLAF Regulation on OLAF only, the principle of sincere cooperation among institutions cannot be relied upon by any institution, including Parliament, to prevent OLAF from exercising its power to investigate members of IBOAs. In fact, the principle of sincere cooperation is enshrined in Article 5(3) of the OLAF Regulation, according to which '*while the Office is conducting an internal investigation, the institutions, bodies, offices or agencies concerned shall not open a parallel investigation into the same facts, **unless agreed otherwise with the Office***'.

(ii) *The Statute and Protocol No 7*

51. In its correspondence with OLAF, Parliament also made reference to the MEPs' exercise of their democratically acquired parliamentary mandate and their accountability vis-à-vis the electorate. It is therefore useful, for the purpose of OLAF exercising its power to conduct internal investigations, to also examine and clarify the relevance (if any) of the Statute and of the Protocol No 7 on the privileges and immunities of the European Union. The Statute lays down the regulations and general conditions governing the performance of MEPs' duties and confers statutory protection on their freedom and independence.

52. In that regard, the Committee notes that Article 1 of the OLAF Regulation, stating that its scope of application is without prejudice to (a) Protocol No 7 on the privileges and immunities of the European Union, and (b) the Statute for Members of the European Parliament, does not restrict the power conferred on OLAF to investigate members of IBOAs for serious matters relating to the discharge of their professional activities. It only makes clear that such competence is to be exercised without restricting or adversely affecting MEPs' electorate mandate and their freedom to perform their role as elected representatives.

53. Article 8 (Chapter III) of Protocol No 7, on the privileges and immunities of the European Union relating to 'Members of the European Parliament'<sup>24</sup>, states that:

*'Members of the European Parliament shall not be subject to any form of **inquiry**, detention or legal proceedings **in respect of opinions expressed or votes cast by them in the performance of their duties.***

54. Article 9 of Protocol No 7 provides that, during the sessions of the European Parliament, MEPs enjoy immunity from any measure of detention and from legal proceedings, but that immunity '*cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.*'

55. Rule 5 of the Rules of Procedure of the Parliament applicable to the ninth parliamentary term (2019-2024), entitled 'Privileges and immunities', also provides that:

*'2. In exercising its powers on privileges and immunities, Parliament shall act to uphold its integrity as a democratic legislative assembly and to ensure the independence of its Members in the performance of their duties. **Parliamentary immunity is not a Member's personal privilege but a guarantee of the independence of Parliament as a whole, and of its Members.***

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<sup>23</sup> Judgment of 5 September 2024, Case C-494/22, *P Commission v Czech Republic*, par.149, ECLI:EU:C:2024:684.

<sup>24</sup> OJ 2010 C 83, p. 266.

56. According to the case law, the privileges and immunities of the European Union recognised by Protocol No 7, and by extension the immunity of MEPs, are purely functional in character as much as they are intended to avoid any interference with the functioning and independence of the European Union. Consequently, those privileges and immunities are granted solely in the interests of the European Union. According to the Court, the purpose of that immunity is *‘to avoid any obstacle to the proper functioning of the institution to which they belong, and therefore to the exercise of the powers of that institution’*<sup>25</sup>. As the second sentence of Rule 5(2) of the Rules of Procedure of the Parliament states, that ***‘parliamentary immunity is not a Member’s personal privilege but a guarantee of the independence of Parliament as a whole, and of its Members’***.<sup>26</sup>
57. It follows that, to the extent that OLAF’s investigations of acts committed by MEPs do not impinge on ***‘the opinions expressed or votes cast by them in the performance of their duties’***, they are ‘without prejudice’ to the privileges and immunities of MEPS under Protocol 7 and/or their Statute.<sup>27</sup>
58. If one cannot exclude the risk that, when conducting an internal investigation, OLAF might perform an act that is prejudicial to MEPs’ immunity, then as the Court has observed *‘if that were to occur, any Member of the Parliament faced with such an act could, if he considered it damaging to him, avail himself of the judicial protection and the legal remedies provided for by the Treaty’*.<sup>28</sup>

### **2.3 The Interinstitutional Agreement of 1999, and the decisions adopted by the relevant institutions, bodies offices or agencies regarding OLAF’s internal investigations.**

59. In its correspondence with OLAF, Parliament has also argued that, since OLAF lacks the power under the OLAF Regulation to investigate non-PIF-related acts committed by MEPs, such investigations can be conducted solely on the basis of the Interinstitutional Agreement of 25 May 1999 between Parliament, the Council and the European Commission concerning internal investigations by OLAF.
60. The view expressed by Parliament is that under this Agreement, the signatory institutions have ***voluntarily*** decided, based on their administrative and institutional autonomy, to extend OLAF’s competences to matters other than the protection of the EU’s financial interests.
61. Since recital 6 of that Agreement states that OLAF investigations *‘should not affect the responsibilities of the institutions’*, Parliament considers that OLAF’s investigations of MEPs should be conducted in full compliance with Parliament’s Rules of Procedure and the internal procedural rules included therein concerning the enforcement of Parliament’s Code of Conduct applicable to MEPs. According to those rules, it is for instance the sole competence of the President of the Parliament, after consultation of the Advisory Committee on the Conduct of Members, to adopt final decisions as regards violation by MEPs of the Code of Conduct. Were OLAF to conduct parallel investigations into such

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<sup>25</sup> Order of 30 September 2011, *Gollnisch v Parliament*, T-346/11 R, not published, EU:T:2011:553, paragraph 23 and the case-law cited.

<sup>26</sup> Judgment of 27 April 2022, *Roos v Parliament*, Joined Cases T-710/21, T-722/21 and T-723/21, paragraph 132.

<sup>27</sup> See also Opinion 2/2011 of the Supervisory Committee on ‘Powers of OLAF for the independent conduct of internal investigations within the EU institutions’, [https://supervisory-committee-olaf.europa.eu/supervisory-committee-olaf/opinions-and-reports\\_en](https://supervisory-committee-olaf.europa.eu/supervisory-committee-olaf/opinions-and-reports_en).

<sup>28</sup> Judgment of 26 February 2002, Case T-17/00, *Willi Rothley v Parliament*, ECLI:EU:T:2002:39, paragraph 73.

matters then the authority of the President of Parliament and of the Advisory Committee would be called into question.

62. The Committee does not share this interpretation.
63. First, as mentioned above, the power of OLAF to conduct internal investigations of members of IBOAs for non-PIF-related matters stems directly from the OLAF Regulation itself, as the Court has ruled. This is not therefore a competence that the signatory institutions to the Interinstitutional Agreement of 1999 '**voluntarily**' decided to confer on OLAF. Moreover, if restrictions were to be imposed on OLAF's power to conduct internal investigations of members of IBOAs, this could only be done by the OLAF Regulation itself, and not by an institutional agreement, as an agreement is not a legislative act capable of repealing, amending or superseding the OLAF Regulation.
64. Second, by referring not only to the power of OLAF to conduct investigations of fraud, corruption and other illegal activities that are detrimental to the EU's financial interests but also to internal investigations relating to the discharge of professional duties by officials and members of IBOAs, the Interinstitutional Agreement of 1999 simply reiterated the clear distinction of those two types of investigations made in Commission Decision 1073/1999 of the same year establishing OLAF. This was not therefore a case of a voluntary agreement to extend the powers of OLAF to non-PIF-related matters.
65. Likewise, neither the internal rules of an institution, in this case Parliament's Rules of Procedure, or the code of conduct of an institution concerning its members, can restrict the scope of OLAF's competence to conduct an internal, even parallel, investigation in line with the provisions and procedural guarantees set out in the OLAF Regulation.
66. Finally, if it is true that '*investigations within the institutions, bodies, offices and agencies in the areas (...) shall be conducted in accordance with this Regulation and with the decisions adopted by the relevant institution, body, office or agency*' (Article 4.1 of the OLAF Regulation), this refers to the necessary implementing provisions that IBOAs must have in place by means of internal administrative decisions. These decisions lay down **practical** arrangements that OLAF must consider when it conducts investigative activities (inspection and collection of evidence on premises, exchange of information, interviews of staff and members, etc.) but cannot and do not affect the existence and exercise by OLAF of its investigative powers.

### 3. CONCLUSIONS

67. Following the Dalli judgment, it is now firmly established that the competence of OLAF to conduct internal investigations concerning serious matters relating to the discharge by members of IBOAs of their professional duties that do not affect the EU's financial interests stems directly from Article 1(4) of the OLAF Regulation. Thus, this is not an additional competence voluntarily conferred on OLAF by the IBOAs outside and beyond the scope of application of the OLAF Regulation.
68. For the Committee, it is important to bear in mind that Article 1(4) of the OLAF Regulation applies to any member of an IBOA without further distinction or limitation. In other words, it applies to all members of the Commission, Parliament, the Court of Justice, the Court of Auditors, the European Central Bank, the European Ombudsman and the European

Investment Bank, as long as their conduct constitutes, within the meaning of this provision, a serious dereliction of their obligations liable to result in disciplinary or criminal proceedings.

69. Although IBOAs are free within the scope of their institutional and administrative autonomy to adopt their own procedural rules and decisions concerning the terms and conditions under which OLAF carries out investigations, including adopting a code of conduct for their members, such rules and decisions cannot limit or even negate OLAF's competence to investigate in the first place their members for serious, non-PIF-related matters constituting a dereliction of their obligations.
70. The Committee considers that the forthcoming revision of the OLAF Regulation would be an opportune moment to fully align Article 1(4) of the OLAF Regulation to the Court's judgment in the Dalli case. This would provide greater clarity and remove doubts as to OLAF's competence to conduct internal investigations of members of IBOAs that do not affect the EU's financial interests.