

## Opinion No 1/2025

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**OLAF's internal investigations of  
harassment within the EU  
institutions, bodies, offices  
and agencies (IBOAs)**

January 2025

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## **1. BACKGROUND**

1. On 12 April 2022<sup>1</sup>, the Director-General of OLAF informed the Supervisory Committee of certain difficulties OLAF was encountering in a number of cases related to internal investigations into harassment which could jeopardise his independence.
2. The OLAF Director-General therefore asked for the Supervisory Committee's opinion as to whether OLAF is well placed to investigate cases of harassment within the EU institutions, agencies and bodies ('IBOAs') and whether it can provide added value in that regard.
3. At its plenary meeting of 29 April 2022, the Committee decided to issue an opinion on this subject once OLAF had completed the reported cases of harassment which were all ongoing at that time.
4. The OLAF Director-General provided periodic updates on the status of the reported OLAF investigations<sup>2</sup>. On 2 February 2023<sup>3</sup>, at the request of the Supervisory Committee and for the purpose of this opinion, the OLAF Director-General provided the Committee with copies of the exchange of correspondence between OLAF and an EU institution<sup>4</sup> on the issue of OLAF's powers to investigate cases of harassment within that institution.
5. On 12 April 2024, the OLAF Director-General provided the Committee with a list of harassment cases which OLAF had dismissed (investigations not opened) over the last five years (2018-2023) as well as a list of OLAF investigations concerning harassment which were completed during that same period. An updated list was provided by OLAF in August 2024.
6. In line with Article 15(1), last indent, of Regulation No 883/2013 ('the OLAF Regulation')<sup>5</sup> and Articles 12 and 13 of the working arrangements between OLAF and the Supervisory Committee<sup>6</sup>, the Supervisory Committee had full access to the relevant

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<sup>1</sup> [Confidential].

<sup>2</sup> The OLAF Director-General provided updates at the Supervisory Committee plenaries of 19 July 2022, 11 January 2023, 19 April 2023 and 20 September 2023. In June 2023 and January 2024, the OLAF Director-General also informed the Supervisory Committee of the closure of four cases concerning harassment and provided information on the recommendations made.

<sup>3</sup> [Confidential].

<sup>4</sup> [Confidential].

<sup>5</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. The consolidated version of the Regulation is also available here: <https://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=CELEX:02013R0883-20210117>.

<sup>6</sup> Pursuant to the working arrangements between OLAF and the Supervisory Committee, signed on 21 October 2021, OLAF gives the Supervisory Committee direct access rights to its content management system (OCM) to enable the Supervisory Committee to perform its monitoring activity under Regulation 883/2013. Article 12 and 13 of the working arrangements sets out the principles of that access. Also available at: [https://supervisory-committee-olaf.europa.eu/document/download/6c5dd42e-3319-4b9d-9d5b-3b1ab11c1fdd\\_en?filename=OLAF%20SC%20WA%20signed.pdf.pdf](https://supervisory-committee-olaf.europa.eu/document/download/6c5dd42e-3319-4b9d-9d5b-3b1ab11c1fdd_en?filename=OLAF%20SC%20WA%20signed.pdf.pdf).

case files of 9 closed investigations and 20 dismissed cases concerning harassment dealt with by OLAF during the period from 2018 to 2023.

7. The Committee carried out an in-depth analysis of the above-mentioned cases to determine: (i) whether OLAF is well placed to conduct such investigations; and (ii) the ‘added value’ OLAF’s intervention provides. For that purpose, the Committee examined:
  - a) the complete case files of 9 closed OLAF investigations;
  - b) the opening decisions (and the accompanying opinions to the OLAF’s Director General) of 20 cases in relation to which OLAF decided not to open an investigation (dismissed cases).
8. In that regard, the Committee looked into a number of aspects, in particular: (i) the requirements for opening an investigation (‘sufficient suspicion’, ‘added value’ and ‘principle of subsidiarity’); (ii) the scope of the investigation; (iii) the different investigative activities carried out by OLAF; and (iv) the outcome of the investigations, including the effectiveness of OLAF’s activity.
9. The Committee also looked into whether the investigations were conducted in a thorough, fair, impartial and consistent manner, and the difficulties OLAF encountered.
10. The Committee thoroughly analysed all of the relevant information in light of the OLAF Regulation and the legal framework applicable to OLAF investigations. It also took account of OLAF agreements with third parties, the case-law of the EU Courts, the EU Charter of Fundamental Rights (‘the Charter’)<sup>7</sup>, and the administrative arrangements in place between OLAF and the relevant IBOAs at the time when the investigations were conducted.
11. Finally, the Committee and its Secretariat held a number of useful exchanges and meetings with OLAF staff to obtain a better understanding of how OLAF conducts such investigations.

## **2. PURPOSE OF THE OPINION**

12. The Supervisory Committee was established in order to strengthen and guarantee OLAF’s independence through regular monitoring of its investigative function and by assisting its Director-General in the discharge of their responsibilities<sup>8</sup>. To that end, the Supervisory Committee addresses opinions and recommendations to the OLAF’s Director-General. In particular, Article 15(1), third indent of the OLAF Regulation empowers the Committee to issue opinions to the Director-General at the latter’s request.

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<sup>7</sup> The Charter of Fundamental rights of the European Union, also available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A12012P%2FTXT>.

<sup>8</sup> According to Article 15(1) of the OLAF Regulation, the Supervisory Committee’s role is to ‘regularly monitor the implementation by OLAF of its investigative function, in order to reinforce OLAF’s independence in the proper exercise of the competences conferred upon it by the OLAF Regulation’.

13. The Committee is the only body entitled to monitor OLAF's investigative function. Its role is therefore to ensure that no undue pressure affects OLAF's independence in the opening, conducting and closing of an investigation, that the procedural guarantees of persons involved are respected and that investigations are conducted properly and within a reasonable timescale.
14. In this context, the Committee considers it crucial to respond to any request from the OLAF Director-General and to act in cases where the 'independence' of his decision-making is at risk or can potentially be affected by third parties. In performing its monitoring activities, the Committee does not interfere in the conduct of investigations in progress. It is for that reason that the Committee did not issue its opinion until the Director-General of OLAF had closed the reported cases.
15. The aim of this opinion is therefore to clarify OLAF's role and powers in investigating inappropriate behaviour and harassment within the IBOAs, and to assess the added value those investigations bring to the fight against harassment and other similar inappropriate behaviour by EU officials and members of IBOAs.

### **3. DEFINITION OF HARASSMENT**

#### ***3.1 Rights and obligations of EU officials and EU staff members***

16. Mutual respect for the dignity of others at all levels within the workplace is one of the key characteristics of any successful organisation and one of the rights of any worker protected by the Charter of Fundamental Rights<sup>9</sup>. In this regard, Article 31(1) of the Charter defines the environment in which every employee is entitled to work, and states that *'Every worker has the right to working conditions which respect his or her health, safety and dignity'*.
17. The Staff Regulations of Officials and the Conditions of Employment of Other Servants (CEOS) of the European Union ('the Staff Regulations')<sup>10</sup> set out the basic principles and a comprehensive set of ethical obligations governing relations between institutions and their staff. Articles 11-26 of the Staff Regulations define the rights and obligations of EU officials and staff members. According to those rules *'an official shall carry out his duties and conduct himself solely with the interests of the Communities in mind'*<sup>11</sup> and shall refrain from any action or behaviour – whether inside or outside the institution – which might reflect adversely upon that official's position<sup>12</sup>. The Staff Regulations also contain a specific obligation for staff to refrain from any form of ***psychological or sexual harassment*** (Article 12a).

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<sup>9</sup> The Charter of Fundamental rights of the European Union, also available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A12012P%2FTXT>.

<sup>10</sup> Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14/06/1962, p. 1385), also available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501>.

<sup>11</sup> Article 11 of the Staff Regulations.

<sup>12</sup> Article 12 of the Staff Regulations.

18. It follows that all staff working in IBOAs, regardless of their status, must contribute to creating a culture of dignity and mutual respect at work, and should be protected against any attempt to undermine their dignity at work, particularly by harassment.

### **3.2 The notion of harassment**

19. Harassment can be psychological and/or sexual. Article 12a(3) of the Staff Regulation defines **psychological harassment** as *‘any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person’*.
20. Psychological harassment encompasses a spectrum of a) intentional, b) repetitive and c) persistent conduct that harms the person it is directed at. Such conduct may, for instance, include belittling, ridiculing someone or calling into question their professionalism, isolating someone, hostile or inappropriate comments or messages, stalking, threats, using vulgar or insulting language, undermining someone, as well as setting unrealistic working objectives, not giving to the person enough work or giving them work that does not meet their profile, if it takes place over time, is repetitive or systematic and fulfils also the other conditions of Article 12a of the Staff Regulations. It can include speech, written communication, a refusal to communicate (‘the silent treatment’), acts and gestures, and can also take place online.
21. According to case-law<sup>13</sup>, for improper conduct to count as psychological harassment, the following elements must be in place: (i) the conduct takes place **over a period of time, is repetitive or systematic**; (ii) the conduct involves physical conduct, spoken or written language, gestures or other acts that **are intentional** (i.e. not accidental), and (iii) the **conduct may undermine the personality, dignity, or physical or psychological integrity of the person it is directed at**. Finally, as the conduct in question must, according to Article 12a(3) of the Staff Regulations, be improper, it follows that classification as ‘harassment’ is conditional upon it being sufficient, **when viewed objectively, to be considered real, in the sense that an impartial and reasonable observer, of normal sensitivity and in the same situation, would consider it to be excessive and open to criticism**<sup>14</sup>.
22. Article 12a(4) of the Staff Regulations defines **sexual harassment** as *‘conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment.’* Any conduct (verbal, non-verbal or physical) of a sexual nature in the work sphere that is non-consensual can potentially constitute sexual harassment. It may, for instance, include making promises of reward in return for sexual favours, or threats and/or reprisals if these demands are rejected, making sexual or offensive comments or gestures, showing sexually suggestive visuals, inappropriate physical contact, or sending or showing inappropriate obscene content or making inappropriate jokes.

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<sup>13</sup> See judgment of 17 September 2014 in case *CQ v Parliament*, par. 76–79; judgment of 13 July 2018 in Case T-377/17 *SQ v EIB*, Par. 87-96; Judgment of 13 July 2018 in Cases T-275/17 *Michela Curto v Parliament*, par. 4-5 and 76-81; judgement of 21 December 2021 in case *DD v FRA*, par. 223-225.

<sup>14</sup> See judgment of 17 September 2014 in case *CQ v Parliament*, par. 78; judgment of 16 May 2012 in case *Skareby v Commission*, F 42/10, paragraph 65.

23. Sexual attention can become sexual harassment if it continues after the **person targeted has made it clear that the attention is unwanted and that they regard the conduct as offensive or creating an intimidating, hostile, offensive or disturbing work environment**. Unlike psychological harassment, which implies a pattern of repetition, **a single incident can be sufficient to constitute sexual harassment**.
24. Harassment (either psychological or sexual) is also defined in EU Directive 2002/73/EC<sup>15</sup>. Harassment is said to occur *‘where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment’*. Sexual harassment is *‘where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment’*. The Directive makes it clear that harassment is an illegal form of discrimination.
25. It follows from the above that psychological and sexual harassment fall within the broader spectrum of violence which, when it arises, constitutes a serious attack on a person’s dignity which can damage the victim’s psychological and physical health and ultimately the quality of the workplace itself. **Individuals are particularly vulnerable to harassment in situations where there is a significant power imbalance between the parties involved, i.e. in situations where the harassment is perpetrated by high-ranking personnel, such as members of IBOAs, senior managers, and staff in positions of authority in general.**
26. Harassment can also have a negative impact on the organisation, such as: (i) increased absenteeism and the associated higher workload for other team members; (ii) lower staff morale, motivation and performance; (iii) high staff turnover and the associated expenditure on recruitment; (iv) costs associated with putting in place redress mechanisms; (v) expenses in terms of health insurance and the financial compensation potentially paid by IBOAs to the victims. Finally, harassment can damage the organisational culture and reputation of the EU IBOA concerned.
27. Furthermore, psychological and sexual harassment perpetrated within the EU IBOAs **constitute a breach of Articles 11, 12 and 12a of the Staff Regulations and a serious dereliction of the obligations of any EU official or staff member.**
28. The Committee shares the view expressed by the European Ombudsman in her report on dignity at work in the EU institutions and agencies<sup>16</sup> that all personnel working in EU institutions and agencies, regardless of their status, should be protected against any attempt to undermine their dignity at work, in particular by harassment. This protection should extend to acts committed by all categories of staff, including members of institutions, seconded national experts, trainees and staff of external contractors.

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<sup>15</sup> Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, also available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32002L0073>.

<sup>16</sup> Report of the European Ombudsman on dignity at work in the EU institutions and agencies, SI/2/2018/AMF, 17 December 2018, also available at: [https://www.ombudsman.europa.eu/en/doc/inspection-report/en/107799#\\_ftn18](https://www.ombudsman.europa.eu/en/doc/inspection-report/en/107799#_ftn18)

29. In this context the Committee notes that all IBOAs have adopted anti-harassment policies which include both formal and informal procedures for dealing with allegations of harassment.

30. Moreover, Article 22a(1) of the Staff Regulations states that:

**‘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 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) directly’.**

31. Given that both OLAF and the IBOAs can investigate serious failures by EU staff to comply with their obligations as officials, the Committee considers it essential, as a first step, to clarify OLAF’s powers to investigate allegations of harassment. Secondly, it is also essential to provide an overview of the investigations already carried out by OLAF into such matters in order, as mentioned above, to assess the added value that OLAF’s investigations offer victims of harassment and the IBOAs concerned.

## **4. OLAF’S ROLE IN HARASSMENT CASES**

### **4.1 OLAF’s power to investigate cases of harassment**

32. OLAF has a unique mandate to carry out internal administrative investigations within the IBOAs for the purpose of fighting fraud, corruption, dereliction of duty and any other illegal activity affecting the EU’s financial interests. Pursuant to Article 1(4) of the OLAF Regulation<sup>17</sup>, OLAF investigates: (i) serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the EU liable to result in disciplinary or, as the case may be, criminal proceedings; or (ii) an equivalent failure to discharge obligations by 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.

33. The case-law of the Court of Justice in the *Dalli* case<sup>18</sup> confirmed that OLAF’s responsibility extends beyond protecting the financial interests of the Union **to include all activities relating to the need to safeguard Community interests against irregular conduct liable to give rise to administrative or criminal proceedings.** As

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<sup>17</sup> Article 1(4) of the OLAF Regulation states: ‘*Within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties (“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 Union. To that end, it shall investigate serious matters relating to 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”).*’

<sup>18</sup> Judgment of 6 June 2019, *Dalli v Commission* T-399/17, ECLI:EU:T:2019:384, upheld by the judgment of 25 February 2021, *Dalli v Commission*, C-615/19P, ECLI:EU:C:2021:133.



the Court stressed, *‘the absence of an impact on the financial interest of the Union does not affect the competence of OLAF to open an investigation’*<sup>19</sup>. It follows that OLAF is 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>20</sup>.

34. The case-law arising from the *Dalli* case also clarified that even offences which do not affect the financial interests of the Union (‘non-PIF-related offences’) – such as conduct involving psychological harassment – can have financial repercussions, and OLAF is therefore entitled to investigate such cases even if it considered that the misconduct in question had no financial impact<sup>21</sup>. The Supervisory Committee reached the same conclusion in its opinion on ‘OLAF’s power to conduct internal investigations: the case of Members of EU institutions’<sup>22</sup>.
35. It is now beyond dispute that OLAF’s competence to investigate ‘non-PIF-related offences’ means that its **internal administrative investigations can also address allegations of serious misconduct and ethical breaches** involving staff and Members of IBOAs, **including allegations of psychological and sexual harassment (Articles 11, 12 and 12a of the Staff Regulations)**.

#### **4.2 Criteria for opening an OLAF investigation**

36. As regards OLAF’s power to investigate allegations of harassment, the Supervisory Committee began by looking at OLAF’s criteria for opening up such investigations.
37. According to Article 5 of the OLAF Regulation the *‘the Director-General may open an investigation **when there is a sufficient suspicion**, which may be based on information provided by any third party or on anonymous information, that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The decision to open the investigation may take into account the need for **efficient use of the Office’s resources** and for the **proportionality of the means employed**. With regard to internal investigations, **specific account shall be taken of the institution, body, office or agency best placed to conduct them**, based, in particular, on the nature of the facts, the actual or potential financial impact of the case, and the likelihood of any judicial follow-up.’*
38. In that regard, Chapter I of the *Guidelines on Investigation Procedures for OLAF Staff (GIPs)*<sup>23</sup> refers to the procedural steps OLAF must follow in deciding whether to open an investigation (the ‘selection phase’).

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<sup>19</sup> See paragraph 62 of the judgment *Dalli v Commission* T-399/17.

<sup>20</sup> See paragraph 62 of the judgment *Dalli v Commission* T-399/17.

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

<sup>22</sup> See Opinion No 4/2024 – OLAF 's power to conduct internal investigations: the case of Members of EU institutions, also available at [https://supervisory-committee-olaf.europa.eu/document/download/096b8633-17f2-49a0-9d04-480a92e9b624\\_en?filename=Opinion%20on%20OLAFs%20power%20-%20IBOAs.pdf](https://supervisory-committee-olaf.europa.eu/document/download/096b8633-17f2-49a0-9d04-480a92e9b624_en?filename=Opinion%20on%20OLAFs%20power%20-%20IBOAs.pdf).

<sup>23</sup> Articles 1 to 7 of the *Guidelines on Investigation Procedures for OLAF Staff (GIPs)*, also available at: [https://anti-fraud.ec.europa.eu/system/files/2021-10/gip\\_2021\\_en.pdf](https://anti-fraud.ec.europa.eu/system/files/2021-10/gip_2021_en.pdf).

39. The selection phase involves the following three steps:

- (i) evaluation of OLAF's *competence* to act;
- (ii) evaluation of the existence of *sufficient suspicion* for the opening of an OLAF investigation;
- (iii) evaluation of whether it is *appropriate* for OLAF to act.

40. On receiving new information regarding possible investigative interests, OLAF (the 'Operations and Investigations Selection Unit') will first carry out an analysis of its power to act. In this context, OLAF takes account of the OLAF Regulation and any other relevant legal instruments relating to the protection of financial interests and any other EU interest that OLAF is mandated to protect.

41. If OLAF is competent to act, it needs to examine whether there is ***sufficient suspicion*** to open an investigation. In doing so, it considers (i) the reliability of the source, (ii) the credibility of the allegations and (iii) the sufficiency of the information gathered.

42. Once sufficient suspicion has been established, OLAF considers whether it is appropriate for it to act. In this context, OLAF considers: a) the need for efficient use of its resources (i.e. the resources required, the workload of the investigative unit concerned and the complexity of the matter); b) the proportionality of the means employed (i.e. the human and other resources needed and the likelihood of achieving the expected results, time-barring considerations, whether the matter is highly sensitive and may damage the EU's reputation); c) in the case of internal investigations, the office best placed to conduct an investigation ('subsidiarity criteria'), i.e. ongoing investigations by another authority, whether there is a risk to the independent conduct of the investigation by another authority, whether there is an explicit request by an IBOA or Member State for OLAF to act; and d) the added value of OLAF's intervention.

43. Based on the opinion of the Operations and Investigations Selection Unit, the Director-General decides whether to open an investigation or dismiss the case pursuant to Article 5(1) of the OLAF Regulation.

44. If the Director-General decides not to open an investigation despite there being sufficient suspicion to justify opening one (i.e. in cases where another body is best placed to conduct the investigation), the Director-General sends any relevant information to, as appropriate, either: a) the institution, body, office or agency concerned so that appropriate action can be taken in accordance with the rules applicable to that institution, body, office or agency; or b) to the competent authorities of the Member State concerned for possible follow-up action<sup>24</sup>.

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<sup>24</sup> Article 5(5) and (6) of OLAF Regulation.

## **5. ANALYSIS OF OLAF CASES**

45. Through its direct access to OLAF's case management system (OCM), the Supervisory Committee accessed the case files and analysed a total of 29 cases concerning harassment allegations – 9 closed OLAF investigations and 20 dismissed cases.
46. Section 5.1 below provides an overview of the 20 cases where OLAF did not open an investigation (dismissed cases) and explains the reasons for those decisions (i.e. either there was insufficient suspicion for doing so or because OLAF was not the body best placed to act).
47. Sections 5.2 and 5.3 provide an overview of the 9 cases investigated by OLAF, the reasons for opening those investigations, any problems encountered by OLAF in the conduct of the investigations, and the results achieved. OLAF issued recommendations in 5 of these cases, while in the remaining 4 the evidence gathered could not prove the alleged facts.

### ***5.1 Dismissed cases***

48. The Committee accessed the case files of 20 cases concerning allegations of harassment dismissed by OLAF over the last five years (2018-2023). While one case relates to allegations of harassment in an EU institution<sup>25</sup>, the other 19 dismissed cases concern EU agencies<sup>26</sup>.
49. In 2 cases OLAF opened the selection procedure on its own initiative after gathering information of possible investigative interest<sup>27</sup>, while in the other cases it received information either from the IBOAs<sup>28</sup>, or from identified natural persons, normally the victims of the alleged harassment<sup>29</sup>. Finally, in two cases<sup>30</sup>, OLAF received information from an anonymous source.

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<sup>25</sup> Case No 16 [Confidential].

<sup>26</sup> [Confidential].

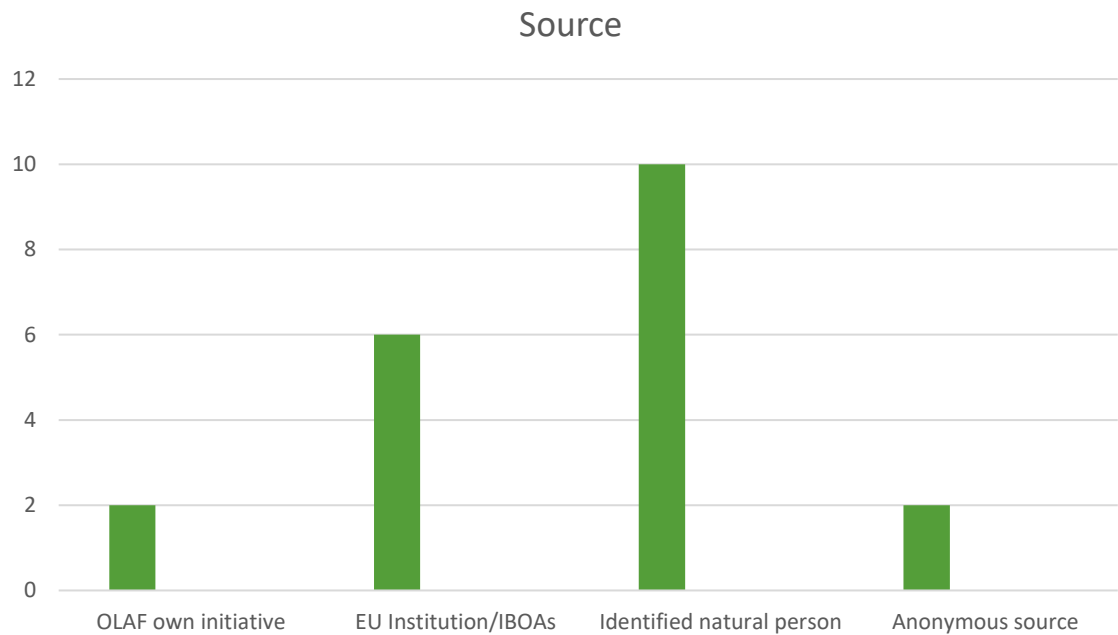
<sup>27</sup> Cases Nos 1 and 7. According to Article 5(2) of the OLAF Regulation, the Director-General can act 'on his/her own initiative'. Similarly, Article 3 of the GIPs refers to the possibility for OLAF to gather information of investigative interest on its own initiative.

<sup>28</sup> In 6 cases, namely Cases Nos 2, 3, 8, 17, 19 and 20.

<sup>29</sup> In 10 cases, namely Cases 4, 5, 6, 9, 10, 11, 12, 14, 15 and 16.

<sup>30</sup> Cases Nos 13 and 18.

FIGURE 1



50. Apart from one case<sup>31</sup> where OLAF only received a general question regarding its competence to investigate harassment cases, all of the other cases related to allegations of psychological harassment. In 2 cases the allegations also involved sexual harassment<sup>32</sup> and other inappropriate conduct<sup>33</sup>.
51. In most cases, OLAF did not find **sufficient suspicion**<sup>34</sup> to open an investigation, while in the remaining cases, **it considered that another institution was best placed to act on the allegations reported** (*subsidiary principle*)<sup>35</sup>. Figure 2 provides a breakdown of the reasons for dismissal.

<sup>31</sup> Case No 4.

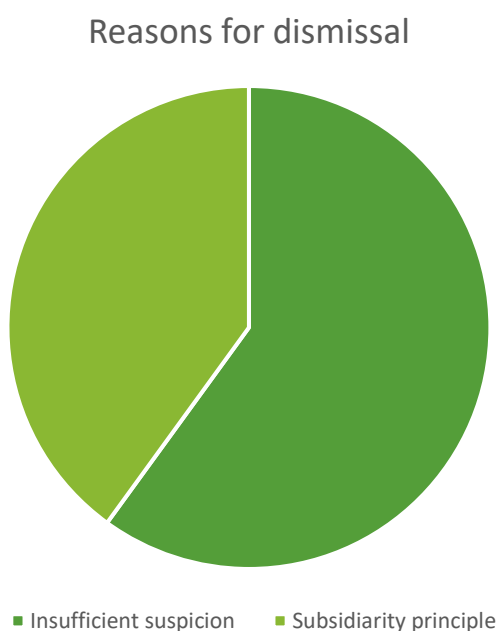
<sup>32</sup> Case No 1.

<sup>33</sup> Case No 17.

<sup>34</sup> 12 cases were closed because there was insufficient suspicion (Cases Nos 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15 and 18).

<sup>35</sup> A total of 8 cases were closed on the basis of the subsidiarity principle (Cases Nos 1, 2, 3, 8, 16, 17, 19 and 20).

FIGURE 2



52. In the 8 instances where OLAF considered the allegations of harassment to be credible but decided that it was not the office best placed to deal with them, the cases concerned alleged harassment committed by officials or other staff in lower grades or middle management positions (team leaders, senior specialists, head of sectors or heads of unit).
53. The Committee's analysis showed that, in reaching those decisions, OLAF also considered the position occupied by the presumed perpetrators of the alleged harassment within the IBOAs' organisational structure and whether the IBOA concerned could carry out an independent and objective enquiry into those allegations.
54. In summary, in application of the subsidiarity principle, OLAF decided not to open investigations for one of the following reasons:
- The IBOA concerned had already initiated and completed proceedings against the perpetrators of the alleged harassment and had already imposed sanctions on them. In this case, OLAF considered that the internal inquiry was conducted in a timely and independent fashion according to the best standards, and that the IBOA's management concerned reacted promptly to the inquiry's findings<sup>36</sup>.
  - The IBOA concerned had already started, or was about to carry out, the inquiry into the facts reported<sup>37</sup>. In these cases, OLAF considered that the IBOA concerned had the capacity and the necessary expertise and was able to carry out the inquiry in an efficient and independent way without the need for OLAF's intervention.

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<sup>36</sup> See Case No 1.

<sup>37</sup> See Cases Nos 2, 3, 8, 16, 17, 19, 20.

55. In all cases, OLAF considered that opening its own investigation would not be proportionate or be an efficient use of its resources, and nor would it provide any added value. In these cases, the Director-General sent the relevant information to the IBOA concerned so that appropriate action could be taken in accordance with Article 5(6) of the OLAF Regulation.

## ***5.2 Closed investigations following which OLAF issued recommendations***

56. The Supervisory Committee analysed the case files of 9 investigations carried out by OLAF. In 5 of those, OLAF was able to establish the existence of harassment and issue recommendations to the IBOA concerned (Cases A, B, D, H and I).
57. In Case A, OLAF investigated harassment and serious misbehaviour by senior members of an IBOA towards staff members working or having worked at that IBOA.
58. OLAF received information regarding harassment from several sources (5 in total) which were all considered reliable. The sources were cooperative and provided OLAF with information and clarifications to substantiate the relevant allegations. OLAF also considered the allegations of harassment and improper behaviour credible, and the information provided sufficient. During the selection phase, these allegations were confirmed by multiple sources.
59. Given the reliability of the sources, the credibility of the allegations and the sufficiency of the information, OLAF considered that there was 'sufficient suspicion' to open an investigation pursuant to Article 5(1) of the OLAF Regulation.
60. As regards the assessment of harassment allegations within an IBOA, OLAF normally leaves the verification of this kind of allegation, as well as cases involving the inappropriate behaviour described in Article 12 of the Staff Regulations, to the disciplinary or appointing authority of the IBOA concerned. An exception to this is if OLAF considers that (i) there is a serious risk to the EU's reputation, (ii) OLAF is best placed to conduct the investigation, and (iii) OLAF carrying out its own investigation provides added value.
61. In this case, OLAF considered that the IBOA had no real capacity to carry out an independent inquiry given the sensitivity of the case, the seniority of the person concerned and the risk of reputational damage to the IBOA concerned. Furthermore, given that the alleged harassment by a senior member of the IBOA was 'recurrent and over time', OLAF considered that an investigation carried out by an independent specialised body such as OLAF would have a strong deterrent effect and protect the EU's and the IBOA's image and reputation from further harm (i.e. added value). OLAF therefore concluded that it was the body best placed to deal with the harassment allegations in question.
62. As regards the activities carried out by OLAF during the investigation, in addition to the analysis of the initial information received, OLAF gathered additional information from the IBOA concerned, interviewed 25 witnesses and 3 persons concerned.
63. The Committee's analysis shows that the investigation was conducted continuously and diligently without any breaks, and that OLAF made every possible effort to speed up the investigation, which was concluded in 13 months. In this case, OLAF did not encounter any difficulties or lack of cooperation from the IBOA concerned. Two internal

administrative inquiries into allegations of harassment overlapping with the OLAF investigation were opened. However, following a request by OLAF, pursuant to Article 5(3) of the OLAF Regulation, that it discontinue any investigative activities in the context of those two internal inquiries, because of the risk that they interfere with OLAF's investigation, the IBOA in question immediately suspended the inquiries.

64. OLAF concluded that one of the persons concerned (a senior member of the IBOA) behaved inappropriately towards several staff members working or having worked as his/her subordinates. The offending conduct included aggressive and demeaning behaviour, shouting, threats of dismissal, and humiliating verbal and written language in private and in public.
65. In relation to one victim, OLAF classified the behaviour of the person concerned as psychological harassment, since it lasted over a long period (one year), was regular and systematic in nature, and involved spoken and written language that undermined the person's dignity and psychological integrity. In the case of a second victim, OLAF also classified the behaviour as psychological harassment even though it lasted a shorter period (3 months) and was more occasional, because it was intended to undermine the person's dignity and psychological integrity. In relation to other staff members OLAF classified the conduct as improper behaviour. Though that behaviour did not constitute harassment, it was still considered 'serious misconduct' (malicious criticism, blacklisting, silent treatment, social exclusion and isolation) as it created a toxic working environment that had an impact on the physical and mental health of the people that had to endure it. OLAF also established the existence of a 'behavioural pattern' on the part of the same person over years. OLAF found that the very significant power imbalance between the person concerned (in a hierarchical superior position) and the victims (his/her subordinates) resulted in the former believing that they could act with a form of impunity. With regard to the other two persons concerned, OLAF did not find sufficient evidence to classify their behaviour as inappropriate.
66. Since the behaviour in question was found to be incompatible with the EU Charter and with EU values demanding respect and protection of the health, safety and dignity of all EU staff, OLAF issued judiciary and disciplinary recommendations to the national prosecutor and to the IBOA concerned that they take appropriate measures in relation to the harassment, inappropriate behaviour and misconduct committed by the person concerned.
67. Case B concerned suspected serious misconduct and/or other irregularities committed by a senior staff member of an IBOA, in particular allegations of potential sexual and/or moral harassment towards staff members of that IBOA under his/her authority.
68. OLAF considered the source to be trustworthy. The source was an employee of the IBOA concerned that had direct knowledge of the facts reported and was cooperative, providing OLAF with valuable information. The whole set of facts reported pointed to the low ethical standards in the behaviour of the person concerned. Based on the information received and on further corroborating factors, OLAF considered that there was 'sufficient suspicion' to open an investigation.
69. OLAF also concluded that it was the body best placed to act on the harassment allegations. Given the high-ranking position of the member in question and the rather small size of the IBOA concerned, OLAF considered that there was a risk that an internal investigation conducted within the IBOA would not guarantee an adequate level

of independence and objectiveness in the investigative process. OLAF deemed that it had the required expertise to deal properly with the investigation. Given the high reputational risk to both the IBOA concerned and the EU, OLAF considered that carrying out an investigation would provide a deterrent effect by raising awareness and setting an example (*added value*).

70. As regards the activities carried out, OLAF gathered additional information from the IBOA and held several operational meetings with the IBOA's representatives. It also carried out missions to a Member State (3), interviewed 22 witnesses and issued several requests for information to staff members. In addition, it performed a forensic digital inspection, acquiring electronic data from the IBOA and from digital devices of the person concerned, and interviewed that person. The Committee's analysis shows that the case took three years (37 months) and OLAF did not encounter any difficulties or lack of cooperation from the IBOA concerned. Following an internal complaint from a staff member regarding alleged harassment, the IBOA opened an internal administrative inquiry and informed OLAF. As the matter was already covered by the scope of the OLAF investigation, OLAF asked, pursuant to Article 5(3) of the OLAF Regulation, the internal inquiry panel to suspend its proceedings and to send all of the documents and information gathered to OLAF. The inquiry was suspended immediately, and all of the information and documents were sent to OLAF.
71. The evidence gathered during the investigation revealed that the person concerned (a senior member of the IBOA) behaved inappropriately towards several staff members working at that IBOA as his/her subordinates. The offending behaviour included discrimination in the assignment of tasks, in particular the assignment of extra work to specific staff members, disregarding requests based on objective needs, demeaning remarks, criticising and undermining the competence of staff, patterns of unwanted attention towards certain staff members of the opposite sex, undue pressure and abuse of power.
72. In the case of one victim, OLAF classified the behaviour as psychological harassment, as the behaviour in question took place over a long period (two years), was regular and systematic in nature and undermined the victim's dignity and psychological integrity. With regard to other victims, OLAF classified the behaviour as sexual harassment, as the behaviour took the form of unwanted attention and over-friendliness. In reaching this conclusion, OLAF took account of the fact that the victims were in a precarious employment situation and were not in a position to refuse the attention of a high-ranking member of the IBOA who could easily influence their employment conditions.
73. The investigation also revealed that the same person abused his/her power on several occasions and his/her inadequate management style contributed to the creation of a toxic working environment which resulted in the deterioration of several staff members' state of health. In addition, OLAF found evidence of the person's behaviour being inappropriate vis-à-vis a number of other staff members as it went beyond the cultural differences that staff members face in a multicultural environment.
74. OLAF closed the case and issued a disciplinary recommendation to the IBOA concerned that it launches appropriate disciplinary proceedings against the staff member, for breach of Articles 11, 11a, 12 and 12a of the Staff Regulations.
75. In Case D, OLAF investigated potential harassment of staff by a high-ranking member and senior manager of an IBOA.



76. The investigation was opened following a decision by the Director-General to split a previous case against the same persons. In the original case, OLAF received information from anonymous sources relating, among other matters, to allegations of staff harassment and intimidation. OLAF could not assess the reliability of the source. However, activities during the selection phase revealed that OLAF had received similar related information on several occasions during the last year, suggesting there had potentially been repetitive misconduct within the higher ranks of the IBOA concerned. OLAF also took account of the seriousness of the allegations and the positions held by the persons accused, as well as the high reputational risk to both the IBOA concerned and the EU. Given the positions of the persons allegedly involved, OLAF considered itself to be the body best placed to conduct an independent and objective investigation.
77. As regards the activities carried out, OLAF gathered information from the IBOA concerned, performed inspections on the premises of the two persons in question, including digital forensic operations, interviewed multiple witnesses (22) and gathered evidence via several requests for information from staff members. The Committee's analysis shows that the case, which lasted just over one year (16 months), was conducted continuously and diligently. OLAF did not encounter any difficulties or lack of cooperation from the IBOAs concerned.
78. With regard to the first person concerned, OLAF found that during his/her tenure as a senior manager, that person behaved inappropriately on certain occasions towards several staff members of the IBOA (more than 10 and less than 20). OLAF also established that his/her management style was authoritarian, manipulative, aggressive, demeaning, bullying and abusive, in breach of Article 12 of the Staff Regulations and the relevant provisions of the IBOA's Code of Conduct.
79. In the case of a high-ranking member of the IBOA concerned, the evidence gathered during the investigation revealed that he/she behaved inappropriately on certain occasions towards several members of staff (less than 5). Furthermore, he/she took insufficient action to stop inappropriate behaviour towards staff members on the part of others. The investigation also revealed that he/she pursued a management style based on excessive micro-management and centralisation of the decision-making process, as well as mistrust towards staff and abuse of power. This had a negative impact on the general work atmosphere in the IBOA and the welfare of individual staff members, in breach of Article 12 of the Staff Regulations and the IBOA's Code of Conduct.
80. OLAF closed the investigation with a recommendation to the IBOA concerned to initiate appropriate disciplinary proceedings against the two senior management staff members.
81. Case H concerned potential misconduct, including practices amounting to harassment and improper behaviour, by two senior staff members of an IBOA towards other staff members.
82. In this case OLAF received information from several anonymous sources relating to allegations of staff harassment and improper behaviour, including detailed information and other elements that enabled OLAF to consider the allegations credible. Given the seriousness of the matters reported and the position held by the person concerned and his/her team within the IBOA, OLAF considered itself to be the body best placed to act. OLAF initially opened the investigation only on matters relating to allegations other than harassment, believing that it could not act on harassment because there were

insufficient factors to justify investigating it. However, after the investigation had been opened OLAF received additional information on the harassment matter which it considered relevant and sufficient. Given the potential negative impact on the EU's reputation and the high-ranking positions held by the person concerned, the OLAF Director-General decided to extend the scope of the investigation to include possible harassment and improper behaviour.

83. As regards the activities carried out, OLAF gathered information from the IBOA and acquired forensic data. It also interviewed 21 witnesses and 2 persons concerned and issued two requests for information from staff members. The Committee's analysis shows that the investigation into the harassment allegations, which lasted a total of two and a half years (30 months), was conducted continuously and diligently. OLAF did not encounter any difficulties or lack of cooperation from the IBOA concerned.
84. Based on the evidence gathered, OLAF established that one of the persons concerned misbehaved and abused his/her power by using inappropriate verbal language, showing a lack of respect towards colleagues in public and taking decisions without an appropriate legal basis or which appeared to be legally risky (such as removing colleagues from a specific post). OLAF considered those decisions to be precipitous, inappropriate and lacking in objectivity, in breach of Article 12 of the Staff Regulations (inappropriate behaviour)<sup>38</sup>. OLAF therefore issued a recommendation to the IBOA concerned to initiate appropriate disciplinary procedures against that person.
85. In Case I, OLAF opened an investigation to examine possible alleged psychological harassment and/or inappropriate behaviour by a senior staff member of an IBOA and related misconduct or irregularities by other senior members towards a staff member.
86. In the context of a different investigation, OLAF received initial information from a staff member of an EU institution regarding internal problems and a toxic working environment and conditions within the IBOA concerned. OLAF considered the information to be 'new information of investigative interest', within the meaning of Article 3(2) of the GIPs, which could justify opening a separate investigation. At the same time, OLAF received information on the same subject from another source and information from the IBOA concerned regarding an alleged illegal activity detrimental to the interests of the Union (ongoing alleged psychological harassment of staff members). The IBOA concerned asked for OLAF's support in conducting a preliminary assessment of the matter. Thus, OLAF transferred the information gathered and received to the unit in charge of the initial assessment of information of investigative interest and asked the IBOA concerned to refrain from carrying out any preliminary investigative activities pending the outcome of the selection phase.
87. OLAF considered that there was 'sufficient suspicion' to open an investigation for the following reasons: a) OLAF had received information regarding harassment from several independent sources, all considered reliable; and b) OLAF considered the harassment allegations to be credible as they were detailed and backed by supporting elements.
88. Given the credibility of the allegations and the seriousness of the harassment claims reported, together with the continuous and repetitive nature of the possible

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<sup>38</sup> Article 12 of the Staff Regulations states 'Any staff member shall refrain from actions which might adversely reflect upon his/her position.'

wrongdoings, OLAF also considered that an investigation would be proportionate to the seriousness of the facts reported. OLAF took account of the small size of the IBOA concerned and considered that, although that IBOA could theoretically carry out further inquiries, in this specific case an OLAF investigation would: a) ensure objectivity and impartiality in the assessment of the allegations; and b) be appropriate given the potential negative impact the harassment allegations could have on the reputation of the IBOA in question. Furthermore, OLAF considered itself to be the body best placed to act on the matter.

89. As regards the activities carried out, OLAF gathered information from the IBOA concerned, carried out three missions to the latter's premises, and interviewed 20 witnesses and all 3 persons concerned. The Committee's analysis shows that the investigation lasted just over two years (26 months) and was conducted continuously and diligently. OLAF did not encounter any difficulties or lack of cooperation from the IBOA concerned.
90. The investigation established that the management style of one of the persons concerned did not contribute to the development of well-being in the work environment. In addition, the evidence gathered showed that his/her communication style was tactless, rude, passive-aggressive and disrespectful of colleagues' expertise. As regards a second person concerned, OLAF found that his/her decisions did not take into consideration the well-being of staff members, fostering a difficult working environment which resulted in frustration and confusion among them. OLAF also found that not only were tensions and divisions within the unit concerned not addressed, but they were exacerbated by a lack of formal processes and unclear communications regarding the roles and responsibilities assigned. OLAF concluded that such behaviour could be classified as misconduct and abuse of power, and a breach of Article 12 of the Staff Regulations. Consequently, OLAF issued recommendations to the IBOA in question that it initiate appropriate disciplinary proceedings against the two persons concerned.

### ***5.3 Investigations closed without OLAF issuing recommendations***

91. OLAF closed 4 investigations without issuing any findings or recommendations (Cases C, E, F, G). The Committee's analysis revealed that in 2 cases (Cases C and E) the evidence gathered during the investigation did not confirm the allegations reported. In the other 2 cases, OLAF encountered difficulties in the form of a lack of cooperation and failure to disclose information on the part of the IBOAs concerned. While in one investigation (Case G), the behaviour of the IBOA did not affect OLAF's conclusions, in the other case (Case F) OLAF closed the investigation because of a lack of information provided by the institution concerned, which systematically refused to cooperate with it.
92. Case C concerned allegations of inappropriate behaviour by two high-ranking staff members of an IBOA towards a staff member (their subordinate).
93. OLAF considered that there was sufficient suspicion as the source was cooperative and the information provided was consistent and detailed. Given the position held by the persons concerned within the IBOA, the seriousness of the allegations and their potential negative impact on the reputation of the institution in question, OLAF also considered that it was best placed to act and guarantee an objective and impartial assessment of the allegations. During the investigation, however, OLAF could not

obtain concrete evidence to prove the alleged misconduct and closed the case without findings.

94. In Case E, OLAF opened an investigation into alleged serious misconduct, abuse of power, psychological and sexual harassment by a staff Member of an IBOA. The investigation was opened after OLAF received information from another service.
95. In this case, OLAF considered the information received to be sufficient to open an investigation. In particular, OLAF considered the initial source to be reliable, the allegations in question to be supported by matching and consistent witness statements from former staff members of different services of the IBOA, and the information available to OLAF to be sufficient to open an internal investigation. OLAF considered that the alleged inappropriate behaviour of an EU senior civil servant was 'serious' and that there was potential reputational damage to the EU institutions. OLAF also considered itself to be the body best placed to investigate the alleged misconduct.
96. During the investigation, however, OLAF could not obtain concrete evidence to prove the alleged misconduct and closed the case without findings. Though the allegations reported contained a number of elements that could be considered credible indications of a pattern of sexual harassment on the part of the person concerned, OLAF concluded that they could not be corroborated as the only evidence collected consisted of unilateral statements, all of which were denied by the person concerned.
97. Case F concerned, among other matters, alleged harassment committed by a member of an EU institution against their assistant and other staff members. It was reported that the person in question displayed unprofessional, abusive and intimidating behaviour, including the use of aggressive language and threats against colleagues (his/her subordinates) over a period of two years.
98. The source was one of the victims of the alleged inappropriate behaviour, who had previously submitted a request for assistance to the institution concerned under Article 24 of the Staff Regulations.
99. OLAF found there was 'sufficient suspicion' to open an investigation. The source was reliable (he/she had described the allegations in detail and provided supporting elements to justify those allegations) and the allegations were credible as they were well substantiated.
100. In evaluating whether it was appropriate to act, OLAF considered that, although an investigation of the harassment allegations would, in light of the practical arrangements between OLAF and the EU institution concerned, in principle constitute a 'low priority', the facts reported were serious enough to justify an OLAF investigation. For OLAF, the matter was highly sensitive, and the repetitive nature of the alleged misconduct, together with the position held by the person concerned (a member of the institution), could seriously damage the EU's reputation. OLAF therefore decided to open an investigation.
101. The Committee noted that in this case OLAF encountered several difficulties due to a lack of cooperation from the institution concerned, or at the very least an unwillingness to provide OLAF with the information requested.
102. As regards the harassment part of the investigation, the institution concerned had opened a parallel internal investigation. OLAF repeatedly requested information on the

status of the institution's internal investigation and to be kept updated and provided with any relevant documentation<sup>39</sup>. The institution's regular answer was that it had only taken precautionary measures to protect the source of the information. OLAF was later informed that the institution had opened an internal procedure against the member concerned in relation to the harassment allegations, but that no further investigative measures had been taken in this context (such as hearings with the person concerned or witnesses)<sup>40</sup>.

103. When OLAF was informed by witnesses that the institution concerned had taken investigative measures such as the hearing of witnesses, it contacted the institution and requested confirmation of the status of the internal procedure<sup>41</sup> and to be provided with any documents the institution had collected in the context of its own internal procedure. The institution refused OLAF's requests on the grounds that the internal committee analysing complaints is independent and its proceedings confidential, and that the President of the institution is only informed of the outcome of the committee's work at the end of the process<sup>42</sup>.
104. This reply prompted the Director-General of OLAF to send a formal request<sup>43</sup> to the President of the institution in question requesting access to all information/documentation held by the internal committee in relation to the harassment case against the member concerned. The President refused to provide OLAF with the information requested on the grounds that OLAF does not have the power to investigate matters which have no impact on the financial interests of the EU<sup>44</sup>, and thus OLAF should not investigate issues such as harassment or ethical breaches by members of the institution concerned. That competence could only be exercised by the institution concerned and any parallel investigation by OLAF would undermine and compromise the President's authority.
105. Two months after this exchange<sup>45</sup>, OLAF was informed by witnesses that, on the basis of the conclusions of the above-mentioned internal committee, the President of the institution had decided to impose penalties (budgetary reduction and downgrading of functions) on the member concerned as a result of his/her behaviour towards several of his/her assistants. The conduct was classified as abusive as it undermined the personality, dignity and psychological integrity of the victims, and as psychological harassment within the meaning of Article 12a(3) of the Staff Regulations.
106. Given the aforementioned lack of cooperation by the institution concerned and the developments in its parallel internal procedure, OLAF decided not to proceed to further investigate the harassment allegations. OLAF took note that the issue was assessed internally by the institution and that sanctions had already been imposed in response to the harassment allegations. It therefore closed the case without drawing any conclusions on the harassment allegations.

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<sup>39</sup> [Confidential].

<sup>40</sup> [Confidential].

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<sup>44</sup> [Confidential].

<sup>45</sup> [Confidential].

107. Nevertheless, given the lack of cooperation and the difficulties OLAF encountered in this investigation, the Director-General addressed an administrative recommendation to the President of the institution concerned that all necessary administrative steps be taken to:
- i) ensure that, in the future, OLAF is provided with any documentation held by the institution that it requests, particularly regarding cases of harassment concerning its members;
  - ii) not open a parallel investigation into issues being examined by an OLAF investigation, and to suspend any such ongoing investigative activities, unless otherwise agreed with OLAF pursuant to Article 5(3) of the OLAF Regulation.
108. OLAF explained to the Supervisory Committee that, to date, the institution in question has not provided any feedback regarding the implementation of these recommendations<sup>46</sup>.
109. The Committee also notes that the various obstacles encountered by OLAF investigators were properly documented and registered in the OCM. It was therefore easy for the Committee to follow the progress of the investigation. The Committee also found that OLAF was diligent and proactive and, despite the challenges faced, sought to find alternative solutions to those challenges. The OLAF case team regularly discussed developments with the hierarchy and consulted the legal unit on several occasions to ensure that there was a solid legal basis for the actions planned. The Committee considers that the lack of information and cooperation from the institution concerned caused OLAF's activity to stall, rendering it meaningless and ineffective.
110. Case G concerned an investigation into alleged retaliation measures adopted by a group of members of an institution against a staff member.
111. OLAF considered the information provided to be sufficient and the allegations credible. The sources submitted detailed information and a number of supporting documents relating to the facts reported. OLAF also considered that it was best placed to act given the seriousness and nature of the harassment allegations (a group strategy towards a single person) and the potential negative impact on the reputation of the EU institutions.
112. However, OLAF's investigation did not establish that there had been any retaliation measures against the staff member. OLAF therefore closed the case without recommendations.
113. The Committee notes that, in this case too, OLAF encountered difficulties in obtaining documents and information from the institution concerned. While this lack of cooperation did not have any impact on the conclusions reached, as OLAF gathered sufficient information via other investigative activities, the fact remains that OLAF's activities were restricted by the institution's repeated and systematic refusal to recognise OLAF's the power to deal with the case at hand, and to provide the information it requested.

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<sup>46</sup> [Confidential]

## **6. CONCLUSIONS**

114. The Committee notes that Articles 1 and 31(1) of the Charter provide, respectively, that human dignity is inviolable and must be respected and protected, and that every worker has the right to working conditions which respect his or her health, safety and dignity. The Staff Regulations also clarify that all officials must refrain from any form of psychological or sexual harassment.
115. Acts of psychological or sexual harassment, within the meaning of the applicable rules and case-law, constitute serious failings by officials or members of IBOAs to uphold the fundamental principles of safety and dignity in the workplace. The victims of such acts can suffer detrimental and irreparable harm.
116. As regards the handling of complaints submitted to OLAF concerning alleged harassment by EU officials, the Committee recalls that, following the *Dalli* judgment, it is now firmly established that OLAF has the competence to conduct internal investigations concerning serious matters relating to the discharge by staff and members of IBOAs of their professional duties that do not affect the EU's financial interests and that this competence stems directly from Article 1(4) of the OLAF Regulation. This is not an additional competence voluntarily conferred on OLAF by the IBOAs outside and beyond the scope of application of the OLAF Regulation<sup>47</sup>. OLAF is therefore competent to conduct internal investigations involving harassment as defined by the case-law, even where there is no impact on the EU's financial interests.
117. The Committee notes that since all IBOAs now have in place specific anti-harassment policies, which include both formal and informal procedures for dealing with allegations of harassment, OLAF would normally refrain from opening an investigation into such matters provided that a number of conditions are met.
118. More particularly, OLAF will not necessarily intervene in cases where a) the allegations refer to harassment committed by officials and other servants or by those in middle management positions, and b) the IBOA concerned has the capacity and necessary expertise and is able to carry out its own internal inquiry in an efficient and independent way without the need for OLAF's intervention.
119. The Committee welcomes OLAF's approach of refraining from opening an investigation if it would not be proportionate, would not constitute an efficient use of its resources, or would not provide any added value.
120. That said, the Committee considers it of paramount importance, given the serious risk to the image and reputation of the EU, that OLAF examines carefully whether the IBOA concerned is indeed in a position to investigate and deal with allegations of harassment in a truly independent and impartial manner and whether OLAF opening an internal investigation into such allegations would provide clear added value.

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<sup>47</sup> The Supervisory Committee has already expressed its view on this topic in its Opinion No 4/2024 'OLAF's power to conduct internal investigation: the case of Members of the EU institutions'.

121. The Committee's analysis shows that OLAF considers it appropriate and necessary to open its own investigations when the allegations of harassment are made against high-ranking and senior management officials and members of IBOAs. In such cases, being by definition very sensitive and potentially damaging for the IBOAs' reputation and image, only OLAF can guarantee the required degree of independence in the conduct of such investigations.
122. In that regard, the Committee notes that victims are particularly vulnerable to harassment in situations where there is a significant power imbalance between the parties involved, i.e. in situations where the harassment is perpetrated by high-ranking personnel, such as members of institutions or executive directors of an EU body or agency. Moreover, for investigations to be effective, investigators do not just need to be impartial and fair, but they must also be perceived as such by everyone involved in the investigation. Given the high-ranking position within the IBOA concerned and the high level of responsibilities attributed to some EU senior staff or members of IBOAs, an internal investigation by the IBOA concerned may not be adequately objective, independent and impartial. In some cases, IBOAs might not even have the necessary resources to appoint a specialised internal team responsible for conducting an administrative investigation. Finally, allegations of harassment perpetrated by high-ranking officials and members of IBOAs that are investigated by their own institution, body or agency could potentially cause serious damage to the image and reputation of the IBOA in question.
123. The Committee also notes that, although in most of the cases analysed the IBOAs were cooperative and did not interfere in the conduct of OLAF's investigation, in two cases the IBOAs displayed a clear lack of cooperation, calling into question OLAF's power to carry out such internal investigations. This resulted in further delays to OLAF's investigative activity and had a negative impact on the efficacy of its action.
124. The Committee recalls that, when the Director-General opens an investigation into matters that fall within OLAF's competence, the IBOA's obligation to cooperate with OLAF and to abstain from parallel investigations is unconditional.
125. This stems directly and unequivocally from 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'*. Similarly Articles 4(2), 8(2) and 8(3) of the OLAF Regulation provide that *'[t]he institutions, bodies, offices and agencies (...) shall, at the request of the Office or on their own initiative, transmit without delay to the Office any document or information they hold which relates to an ongoing investigation by the Office'<sup>48</sup>* and *'(...) shall transmit without delay to the Office, at the request of the Office or on their own initiative, any other information, documents or data considered pertinent which they hold, (...)'<sup>49</sup>*.
126. It is therefore the Committee's view that, where an IBOA does not respond positively to OLAF's requests not to conduct a parallel investigation on matters already being investigated by OLAF, or refuses to send information relevant to OLAF's investigation, that IBOA is in fact failing to act in accordance with the OLAF Regulation and the

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<sup>48</sup> Article 8(2) of the OLAF Regulation.

<sup>49</sup> Article 8(3) of the OLAF Regulation.



principle of sincere cooperation<sup>50</sup>. That behaviour has a negative impact on the efficacy and consistency of OLAF's work and ultimately interferes with OLAF's autonomy and independence in carrying out the investigations under its mandate.

127. In conclusion, the Committee finds that OLAF's approach in handling complaints of harassment is in line with the applicable rules and OLAF's mandate. Moreover, the Committee considers that in cases of harassment by senior/high-ranking officials, an OLAF investigation provides real added value in terms of independence and impartiality in the conduct of such investigations.
128. That said, the Committee notes that when it comes to harassment investigations, it is important to complete those investigations within the shortest possible timeframe, given the precarious, uncertain and/or distressing situation victims of alleged harassment may find themselves in. Furthermore, while OLAF must always ensure the required degree of confidentiality and protection of the person's procedural guarantees, this should be balanced with the need for OLAF to keep the alleged victim(s) informed at least of the investigation's expected timescale.
129. As it stated in its recent Opinion No 4/2024<sup>51</sup>, the Committee considers that the forthcoming revision of the OLAF Regulation would be an appropriate moment to bring Article 1(4) of the OLAF Regulation fully into line with the Court's judgment in the *Dalli* case. This would provide greater clarity and clear up any doubts as to OLAF's competence to conduct internal investigations on harassment, such as those examined in this Opinion. It would also reinforce the IBOAs' obligations and responsibilities to fully cooperate with OLAF and to act in a manner that respects OLAF's competences and powers.

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<sup>50</sup> See also SC Opinion No 4/2024 on OLAF's power to conduct internal investigation, par. 47-50.

<sup>51</sup> See also SC Opinion No 4/2024 on OLAF's power to conduct internal investigation, par. 70.

## **ANNEX I – LIST OF ABBREVIATIONS**

D-G.....	Director-General
GIPs.....	Guidelines on Investigation Procedures for OLAF’s staff
IBOAs.....	EU institutions, bodies, offices or agencies
OLAF.....	European Anti-fraud Office
OCM .....	OLAF Content Management System
SC .....	OLAF Supervisory Committee

**ANNEX II – LIST OF DISMISSED CASES**

[CONFIDENTIAL]

**ANNEX III – LIST OF CLOSED CASES**

[CONFIDENTIAL]