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Opinion No 1/2022

**OLAF's preliminary draft budget
for 2023**

November 2022

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SUPERVISORY COMMITTEE



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Introduction

1. Under Regulation (EU) No 883/2013¹ (the “OLAF Regulation”) and Article 3 of Commission Decision 1999/352/EC, ECSC, Euratom², the European Anti-Fraud Office (OLAF) has full independence to exercise its investigative function in all EU institutions, bodies, offices, and agencies established by or on the basis of the Treaty on the European Union (TEU), the Treaty on the Functioning of the European Union (TFEU) and the Euratom Treaty.
2. To ensure that OLAF can run efficiently and effectively and contribute in the best possible way to the EU’s objectives on fighting fraud (Article 325 of the TFEU), the total budgetary appropriations for OLAF are to be entered under a specific budget line within the section of the general budget of the EU relating to the Commission and set out in detail in an annex to that section³.
3. One of the Supervisory Committee’s objectives is to regularly monitor OLAF in order to strengthen its independence⁴. The Committee’s duties also include assisting the Director-General of OLAF in discharging his responsibilities. In that context, the Committee addresses opinions to the Director-General, and recommendations where appropriate, on matters such as the resources needed to carry out the investigative function of OLAF (Article 15.1 of the OLAF Regulation).
4. After consultation with OLAF, the OLAF Supervisory Committee adopts an opinion on OLAF’s preliminary draft budget (“PDB”) to give assurance to the EU institutions that the draft budget takes into account the independence of OLAF’s investigative function. The opinion further provides assurance that OLAF has adequate resources to provide an effective and efficient inter-institutional fraud fighting service. The Director-General of OLAF can then use this opinion with respect to the budgetary and the discharge authorities of the EU.

The powers of the Supervisory Committee

5. Providing an informed opinion on OLAF’s PDB is one of the Committee’s core tasks. The Committee’s practice is to discuss its opinion bilaterally with the OLAF Director-General before the hearings and negotiations with the Directorate-General for Budget.
6. An important feature of OLAF’s budget is its *interconnected* structure, in that OLAF can transfer resources among its different budget lines according to its needs, a power that

¹ Regulation (EU) 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 (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU) No 883/2013, as regards cooperation with the European Public Prosecutor’s Office and the effectiveness of the European Anti-Fraud Office investigations, *OJ L 437, 28.12.2020, p. 49*.

² 1999/352/EC, ECSC, Euratom: Commission Decision of 28 April 1999 establishing the European Anti-Fraud Office (OLAF), *OJ L 136, 31.5.1999, p. 20-22, amended by Commission Decision of 27 September 2013 amending Decision 1999/352/EC, ECSC, Euratom establishing the European Anti-Fraud Office, OJ L 257, 28.9.2013, p. 19-20*.

³ Article 18 of Regulation (EU) No 883/2013.

⁴ Article 15(1) and Recital 37 of Regulation (EU) No 883/2013.

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the Committee fully supports. In essence, OLAF can make “internal” budgetary transfers without requesting the permission of the EU budgetary authority. In that regard, the Committee receives information from OLAF on any part of the latter’s budget to enable it to monitor and supervise the efficient use of OLAF’s resources.

7. The Committee addresses its opinions to the EU institutions bodies and agencies. Any recommendations made are addressed to the Director-General of OLAF. In assessing how public funds are used for investigative activities, the Committee contributes to the duties of OLAF’s Director-General.

OLAF’s PDB 2023

8. OLAF’s budgetary independence is inextricably linked with and has a direct impact on its investigations and operations.
9. The preliminary draft budget of OLAF for the 2023 is 64,332,650 EUR. Compared to the budget of last year (61,623,650 EUR), it is increased by 4.40%.
10. The Committee notes that, as in previous years, the Commission’s draft budget was subject to saving measures. In that regard, the Committee reiterates its view is that this reduction should not adversely affect the fight against fraud or irregular activities causing prejudice to the EU’s financial interests.
11. The Committee is in particular concerned that, as far as OLAF’s human resources are concerned, significant cuts in OLAF’s staff may deprive OLAF from continuing hiring highly qualified and specialized staff in the field of investigations and assets recovery. In particular, as the Committee highlighted in its last years’ opinion on the PDB for 2022, it is important that OLAF has adequate human resources in its disposal in order to maintain a high level of performance. This is especially true with regard to the new tasks that OLAF has started to carry out in relation to a number of strategic initiatives for the European Commission, such as investigations and operational support to Member States concerning the Recovery and Resilience Facility (“RRF”), the ‘Rule of Law Conditionality Mechanism’, and to the operational cooperation with the EPPO.
12. For the purposes of this opinion, the Committee in examining OLAF’s PDB for 2023 focused particularly on OLAF’s human resources strategy, taking also into account the impact on such resources from the establishment of EPPO and the additional tasks carried out by OLAF as of the end of 2021.

OLAF’s human resources

13. As a preliminary point, the Committee finds that the situation of OLAF’s human resources continues to raise concerns.
14. In particular, on the basis of information provided by OLAF, and as already recalled in its previous Opinion on the PDB 2022, OLAF’s human resources have been seriously impacted by the creation of the EPPO. As Member States have agreed to a zero financial impact for the setting up of EPPO, it is OLAF which has to bear most of the adverse financial impact in terms of human resources. Thus, OLAF is expected to transfer to EPPO 16 additional posts before January 2023, the remainder of the 45 posts that OLAF had to contribute to the establishment of EPPO.

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15. This situation adds up to the overall effects of posts that OLAF lost due to staff cuts, redeployment levy, synergies, and efficiencies.
16. According to information made available to the Committee, since 2011 OLAF has rendered 74 official posts (from 384 to 310).
17. The creation of EPPO has not led to a reduction of OLAF's workload and investigative activities. On the contrary, OLAF does not only support the activities of EPPO, it is also the only body entrusted with carrying out administrative investigations for the expending departments in all EU institutions bodies and agencies, and in the last year has conducted a growing number of investigations in relation to inappropriate behaviour and harassment of managers of some EU bodies, offices and Agencies that do not have the adequate structure to address them. At the same time, OLAF is engaged in a number of new strategic initiatives for the European Commission, such as investigations and operational support to Member States concerning the RRF, the 'Rule of Law Conditionality Mechanism' and of new activities linked to the creation of the Controller of procedural guarantees.
18. In that respect, the Committee's position remains unchanged: OLAF should have adequate and stable human resources to be able to properly fulfil its mission. OLAF must remain independent in three main areas: administrative, financial, and investigative. Administrative independence and financial independence mean that OLAF's Director-General must have at its disposal the necessary human and financial resources to investigate fraud against the EU budget, corruption and serious misconduct within the European institutions, and develop a meaningful and deterrent anti-fraud policy for the European Commission.
19. For these reasons, the Committee supports OLAF's request for 16 additional full time equivalent posts (FTE - 10 temporary, 6 permanent) to be allocated as follows:
 - Recovery and Resilience Facility, 6 temporary FTE
 - Rule of Law, 2 permanent FTE
 - EPPO-related operational work, 4 temporary FTE
 - EPPO-related procedures, 2 permanent FTE
 - Harassment cases (Internal investigations), 1 permanent FTE
 - Review Function, 1 permanent FTE.
20. The Committee takes note of the fact that OLAF does not request a net increase of human resources, only to be able to work with the resources currently available while at the same time assuming the above-mentioned new tasks. Moreover, OLAF does not request any additional budget for external staff in 2023.
21. In particular, the Committee considers that the large amount of money that will be spent by Member States under the RRF, the centrepiece of "NextGenerationEU", will call for an increased focus by OLAF on timely prevention and early detection of cross border-fraudulent activities. The request for 6 temporary posts appears reasonable as it is also a reflection of the fact that RRF is used to finance reforms and investments in Member States from the start of the pandemic in February 2020 until 31 December 2026.
22. Likewise, the Committee recognises the importance of an effective implementation of the Rule of Law Conditionality Regulation 2020/2092 for the credibility of the EU in protecting a fundamental value of the EU and its financial interests. Under that

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Regulation, breaches of the principles of the rule of law affecting or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union could result from the lack of “effective and timely cooperation” with OLAF in its investigations in accordance with the principle of sincere cooperation. In the Committee’s view, by requesting two permanent posts only, OLAF may have underestimated the expected workload and challenges when dealing with this new task.

23. Regarding OLAF’s request for 4 temporary posts (2 for analysis/detection of fraud and 2 for forensics) for the purpose of carrying out complementary investigations to those of EPPO, and also provide support to the latter, the Committee notes that OLAF commits to reassess the need for such posts after three years of complementary/supporting activities. Given that, as OLAF states, its workload has not been reduced following the initial transfer of cases to EPPO, and the fact that these posts would be reassessed in three years’ time, the Committee finds that OLAF’s request for at least 2 *temporary* posts is reasonable.
24. The Committee also supports OLAF’s requests for two more permanent posts to manage EPPO-related procedures (one permanent post concerning OLAF’s new role acting as a liaison service for the Commission vis-à-vis the EPPO, and one permanent post to reinforce OLAF’s selection procedure regarding cases to be transferred to the EPPO).
25. Next, the Committee agrees with OLAF that following the creation of the new Review Team, which was dissociated from Unit 0.1, there is a need to reinforce the independence and effectiveness of its review function with at least one more additional permanent post.
26. With regard to OLAF’s request for one permanent post to investigate serious matters relating to the discharge of professional duties of staff members of EU Institutions, Bodies, Offices and Agencies, the Committee, having noticed an increase of OLAF investigations on this matter, would support the request of OLAF.
27. Next, the Committee notes that the Commission intends to apply an across-the-board reduction of 20% to expenditure for missions and meetings, as compared to the 2022 budget, in order to meet its objectives under the European Green Deal.
28. The Committee fully adheres to meeting the new climate and environmental challenges and adjusting EU policies and activities accordingly. Although the COVID-19 restrictions have meant that OLAF’s budget for missions decreased during the pandemic, the fact remains that OLAF missions in other countries are, to a large extent, an essential tool of its investigative activities and collection of evidence that cannot realistically be carried out remotely or online. Thus, the foreseen 20% cut in mission expenses risks having an adverse effect on the efficiency of OLAF investigations, especially with regard to carrying out customs-related investigations to third countries. For these reasons, the Committee’s view is that OLAF’s mission budget should be maintained at the same level of 2022.
29. As a concluding remark, the Committee would like to reiterate that it finds somehow counterproductive to assign, on the one hand, every year to OLAF new responsibilities and tasks and on the other hand, to implement each year a gradual reduction of its human and financial resources.

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Conclusions and Recommendations

The Committee:

- A. considers that OLAF's Preliminary Draft Budget for 2023 is in conformity with the resources needed to conduct investigations efficiently.
- B. fully supports OLAF's request for additional posts.
- C. agrees with OLAF that any further reduction by 20% of its budget for missions could jeopardise its ability to carry out its investigative function.