

**OPINION**

**on the evaluation and application of  
Regulation No 883/2013**

## Foreword

Article 9b(9) of the OLAF Regulation states that the Director-General of OLAF may seek the Controller's opinion on any matter relating to procedural guarantees or fundamental rights within the Controller's remit.

On this basis, on 15 September 2025, the Director-General of OLAF formally asked for my opinion on the application and impact of the provisions of the OLAF Regulation relating to procedural guarantees and fundamental rights that fall within the Controller's remit with a view to attaching it to OLAF'S submission to the European Parliament and the Council.

I welcomed the opportunity to be consulted on this important matter, which I regard as a testament to the constructive cooperation and mutual trust established between our offices since I took up my position as Controller. I trust that this open and structured exchange will make a meaningful contribution to the evaluation process and demonstrate our shared commitment to ensuring the effective application of the OLAF Regulation while fully respecting fundamental rights and procedural guarantees.

In this opinion, I will focus on the areas of the OLAF Regulation that refer to and concern specifically the fundamental rights and procedural guarantees, the complaints mechanism set up under Article 9b, the function and administrative status of the Controller under Article 9a and the relations between the Controller and the Director-General of OLAF, the Supervisory Committee and other stakeholders.

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Controller of procedural guarantees

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## I. On fundamental rights and procedural guarantees

Under Article 9a(8) of Regulation No 883/2013<sup>1</sup> (the ‘OLAF Regulation’), the Controller of procedural guarantees (the ‘Controller’) is entrusted with monitoring OLAF’s compliance with the procedural guarantees referred to in Article 9 of the OLAF Regulation and the wider body of rules governing OLAF investigations.

In fulfilling this function, the Controller acts as an independent mechanism ensuring that investigative activities are conducted in compliance with both the specific safeguards laid down in the OLAF Regulation and the overarching principles of EU primary law. The Controller’s mandate also includes oversight of potential infringements of procedural guarantees and fundamental rights of persons concerned protected under the Charter of Fundamental Rights of the European Union (the ‘Charter’)<sup>2</sup>.

The procedural guarantees afforded to persons concerned include:

- (i) the presumption of innocence;
- (ii) the privilege against self-incrimination;
- (iii) respect for the rights of defence;
- (iv) the right to an independent, impartial and fair investigation, conducted within a reasonable time; and
- (v) the right to be heard, in particular the right to comment on facts relating to the person concerned before conclusions referring to them by name are drawn up.

These guarantees must be interpreted and applied in the light of the general principles of legality and proportionality and with due regard to the fundamental rights safeguarded by the Charter, as interpreted by the EU courts. The Controller’s decisions are also guided by the case-law of the European Court of Human Rights on fundamental rights guaranteed both by the Charter and the European Convention on Human Rights<sup>3</sup>.

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<sup>1</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).

<sup>2</sup> See the Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391).

<sup>3</sup> Under Article 52(3) of the Charter, ‘[i]n so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention’. Additionally, Article 53 of the Charter provides that ‘[n]othing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by [...] international law and by international agreements to [...] all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms [...]’. Furthermore, when applying EU law, the States Parties to the European Convention on Human Rights remain bound by the obligations they voluntarily assumed when acceding to the Convention. See the judgment of the European Court of Human Rights, *Avotiņš v. Latvia* [GC], No 17502/07, § 101, 23 May 2016, available at: <https://hudoc.echr.coe.int/eng?i=001-163114>. These obligations must be assessed in the light of the presumption of equivalent protection established in the judgment of the European Court of Human Rights in *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], No 45036/98, ECHR 2005-VI, available at: <https://hudoc.echr.coe.int/eng?i=001-69564>.

It is of paramount importance for the EU citizens, the institutions, the EU legislators and OLAF that OLAF investigations are conducted in full compliance with the procedural guarantees applicable to persons concerned and the Charter. Adherence to the highest standards of transparency, equal treatment and fairness is essential to maintaining public trust in the integrity and accountability of OLAF's investigative function. The Controller's mandate makes a fundamental contribution to safeguarding these values and increasing confidence in the EU's system of administrative investigations.

Through the complaints mechanism, over the last four years<sup>4</sup>, the Controller has addressed a wide range of issues raised by complainants relating to OLAF's observance of their procedural guarantees and the rules applicable to OLAF investigations. This body of experience has provided the Controller with a keen understanding of how the current legal framework operates in practice, revealing both its shortcomings and the areas in which the protection of the fundamental rights and procedural guarantees could be further strengthened.

In particular, as discussed further below, the Controller has identified several aspects of the OLAF Regulation that would benefit from legislative refinement. Drawing on her unique operational insight into the day-to-day application of the Regulation's core provisions, the Controller will, in what follows, put forward targeted suggestions for improvement in those areas where practice has demonstrated that clearer, stronger or more effective safeguards are warranted.

## **1.1. Normative framework – Charter of Fundamental Rights of the EU**

The Charter establishes the fundamental principles and rights that guide the exercise of public authority within the EU. Under Article 51(1) of the Charter, its provisions apply to all institutions, bodies, offices and agencies of the European Union ('IBOAs'), which are required to respect fundamental rights, observe the principles of the Charter and promote its application in all their actions. As an EU body exercising powers conferred by the OLAF Regulation, OLAF conducts its investigations within the scope of EU law and must therefore carry out its activities in full compliance with the Charter. This entails a duty to ensure its investigative activities (such as gathering evidence, carrying out interviews, inspecting premises and conducting on-the-spot checks) are carried out with due regard to fundamental rights, including human dignity, impartiality, the rights of defence, the presumption of innocence, data protection and proportionality. Adherence to the Charter ensures OLAF's actions are not only effective in protecting the EU's financial interests, but also lawful, fair and consistent with the European Union's values.

The binding nature of these guarantees is further confirmed by the OLAF Regulation itself. In particular, recital 51 of the original OLAF Regulation explicitly stated that OLAF must conduct

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<sup>4</sup> For a detailed account of the Controller's activity over the last few years, see Activity Report of the Controller of Procedural Guarantees for 2022, PUB/2023/803 (OJ C 248, 13.7.2023, p. 1); Activity Report of the Controller of Procedural Guarantees for 2023, PUB/2024/863 (OJ C, C/2024/5673, 23.9.2024); Activity Report of the Controller of Procedural Guarantees for 2024, PUB/2025/865 (OJ C, C/2025/4511, 7.8.2025); the Controller's Opinion on the draft Guidelines on Investigation Procedures (GIPs) of 28 July 2025, available at: [4f655d63-4b02-40df-8b93-038c44f1bb2e\\_en](#); and the upcoming Activity Report of the Controller of Procedural Guarantees for 2025.

its investigations in compliance with the principles recognised in the Charter. This commitment was reiterated and reinforced by recital 16 of Regulation (EU, Euratom) 2020/2223<sup>5</sup>, which amended the OLAF Regulation. Although recitals do not have independent normative force, they play an important interpretative role, clarifying the legislators' intent and guiding the interpretation and application of the operative provisions of the Regulation. In this sense, the recitals unequivocally confirm that the Charter constitutes a central legal benchmark for assessing the lawfulness and fairness of OLAF's investigative practices.

However, despite these clear references in the recitals, the operative provisions of the OLAF Regulation do not consistently or explicitly reflect this commitment. In particular, **Article 9**, which sets out the procedural guarantees applicable to persons concerned by OLAF investigations, does not contain an express reference to the Charter or to the obligation to respect the fundamental rights enshrined in it. Similarly, **Article 9b**, which establishes a complaints mechanism, refers to the possibility for persons concerned to lodge a complaint on the grounds of an infringement of fundamental rights only in general and rather vague terms, without explicitly identifying the Charter as the applicable standard of protection<sup>6</sup>.

In practice, the Charter already guides the Controller's mandate, as the Controller's implementing provisions for the handling of complaints<sup>7</sup> ('implementing provisions') explicitly incorporate Charter rights, and the Controller systematically evaluates whether investigative measures comply with these rights when handling complaints.

Nevertheless, an explicit reference to the Charter in Articles 9 and 9b of the OLAF Regulation would significantly enhance legal certainty, both for persons concerned and for OLAF itself. Such a reference would clearly establish the Charter as the primary and binding framework for the protection of fundamental rights in OLAF's investigative activities, aligning the operative provisions of the OLAF Regulation with the principles already affirmed in its recitals. More broadly, it would reaffirm OLAF's institutional commitment to upholding fundamental rights and improve the credibility, transparency and legitimacy of its investigative function within the EU legal order.

**Proposal 1.** Articles 9 and 9b(1) of the OLAF Regulation should be amended to include an explicit reference to the Charter, clearly stating that OLAF investigations must be conducted in full compliance with the Charter and that persons concerned are entitled to lodge a complaint with the Controller on any breach by OLAF of the fundamental rights guaranteed by the Charter.

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<sup>5</sup> See Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 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).

<sup>6</sup> Article 9b(1) of the OLAF Regulation provides that '[a] person concerned shall be entitled to lodge a complaint with the Controller regarding the Office's compliance with the procedural guarantees referred to in Article 9, as well as on the grounds of an infringement of the rules applicable to investigations by the Office, in particular infringements of procedural requirements and fundamental rights'.

<sup>7</sup> See Decision of the Controller of procedural guarantees adopting implementing provisions for the handling of complaints 2022/C 494/07, PUB/2022/1609 (OJ C 494, 28.12.2022, p. 17).

## 1.2. Identification of persons concerned in the OLAF case management (OCM)

The status of person concerned in an OLAF investigation is a central element of the investigative process and a precondition for the effective exercise of the right of defence. Once attributed, this status confers on the individual or legal entity concerned a set of fundamental rights and procedural guarantees and, at the same time, imposes on OLAF specific obligations under the OLAF Regulation. Consequently, determining the precise moment at which a person formally acquires the status of person concerned has significant practical and legal implications.

A person may be identified as a person concerned at the outset of an investigation. In such cases, this identification is typically reflected in the opening decision of the Director-General of OLAF. The Controller has consistently taken the view that, whenever an opening decision expressly refers to an individual by name, that person should be considered, from that moment, a person concerned within the meaning of Article 2(5) of the OLAF Regulation<sup>8</sup>.

In this context, the Controller has previously emphasised that, in such circumstances, OLAF is required to register the status of the person concerned in the OCM without delay – namely concurrently with the adoption of the opening decision<sup>9</sup>. For the Controller, once a person has been explicitly identified in the opening decision, the encoding of that status in the OCM constitutes a purely internal and administrative step. As such, it should not entail any additional substantive assessment and must therefore be carried out promptly. Accordingly, the Controller considers that the explicit identification of a person by name in the opening decision automatically triggers OLAF's obligation to respect that person's procedural rights under the OLAF Regulation.

A person may also be identified as a person concerned at a later stage in an OLAF investigation, where new evidence comes to light. In such situations, the current regulatory framework does not require OLAF to formalise this change in status through a specific decision of the Director-General. This contrasts with other significant procedural developments during an investigation, such as the material extension of its initial scope or the splitting of a case, which are expressly subject to the adoption of formal decisions by the Director-General.

The Controller considers that the identification of an individual or legal entity as a person concerned during an investigation effectively extends the personal scope of that investigation. By conferring this status, OLAF brings additional persons within the reach of its inquiry, thereby subjecting their conduct to investigative scrutiny and triggering the full set of procedural rights and obligations attached to the status of person concerned under the OLAF Regulation.

In this context, the Controller's view is that, without a clear and timely formalisation of this status, individuals may not be fully aware that they have become persons concerned and are

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<sup>8</sup> See the Activity Report of the Controller of procedural guarantees for 2024, *op. cit.*, section 5.1.1.

<sup>9</sup> Article 37(2) of the new Guidelines on Investigation Procedures for OLAF Staff ("GIPs"), valid from 1 January 2026, available at: [https://anti-fraud.ec.europa.eu/document/download/e1994c22-7d58-4e61-8d34-0937a0be8f98\\_en?filename=gips-2026\\_en.pdf](https://anti-fraud.ec.europa.eu/document/download/e1994c22-7d58-4e61-8d34-0937a0be8f98_en?filename=gips-2026_en.pdf), provides that '[w]hen the opening decision names a person as a person concerned, the investigation unit shall register the person concerned in the case file as a person concerned within one month from the date of the opening decision.'

therefore entitled to specific procedural safeguards. Such uncertainty could undermine the principles of transparency, legal certainty and foreseeability that must underpin EU administrative action. Moreover, it could affect the legality of OLAF's investigative acts, as procedural guarantees can only be effectively exercised once the person concerned has been duly identified and informed of their status. The Controller therefore takes the view that the formal identification of a person concerned through an explicit decision of the Director-General is essential.

Finally, the Controller emphasises that the requirement for a clear, timely and formal identification of a person concerned by means of an explicit decision of the Director-General and its timely recording in the OCM should apply uniformly to both internal and external OLAF investigations. From the perspective of fundamental rights protection, there is no justification for distinguishing between these two categories of investigation in terms of the moment when an individual or legal entity acquires the status of person concerned and the corresponding procedural guarantees attached to it. In both contexts, the attribution of this status extends the personal scope of the investigation and should therefore consistently trigger the rights of defence and other safeguards under the OLAF Regulation.

**Proposal 2.** The OLAF Regulation should be amended to require that the identification of a person concerned, whether at the opening of an investigation or at any later stage, be formalised by means of an explicit decision of the Director-General. The precise moment at which a person acquires the status of person concerned should also be clearly and contextually recorded in the OCM, thereby ensuring legal certainty. These requirements should apply equally to both internal and external investigations.

### 1.3. Rights of persons concerned in internal and external investigations

The current OLAF Regulation draws a distinction between the rights of persons concerned in **internal**<sup>10</sup> and **external**<sup>11</sup> investigations, which results in differing levels of protection.

It is the Controller's opinion that the nature of an OLAF investigation (internal or external) should not, in principle, determine the scope or intensity of the fundamental rights and procedural guarantees afforded to persons concerned. The protection of fundamental rights flows from the status of an individual or legal entity as a person concerned, and not from the formal classification of the investigation as internal or external.

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<sup>10</sup> Internal investigations are investigations conducted by OLAF within European institutions, bodies, offices and agencies established by, or on the basis of, the EU Treaties to fight fraud, embezzlement, corruption and any other illegal activity affecting the financial interests of the EU. To that end, OLAF investigates (a) 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 criminal proceedings, as the case may be, or (b) 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 EU Staff Regulations. See Articles 1(4) and 4 of the OLAF Regulation.

<sup>11</sup> External investigations are investigations that OLAF conducts pursuant to Article 3 of the OLAF Regulation. OLAF's mandate covers all EU expenditure (i.e. structural funds, agricultural policy and rural development, direct expenditure and external aid) and a substantial part of the EU's revenue (mainly customs duties and agricultural duties).

As a rule, the level of protection afforded to persons concerned should be aligned and equalised to the greatest extent possible across both types of investigations. Any divergence in procedural safeguards should be limited to differences that are objectively justified by the specific operational characteristics of internal or external investigations and strictly necessary to ensure the effectiveness of investigative measures.

For instance, an objectively justified distinction exists with regard to the language regime applicable to internal and external investigations<sup>12</sup>. In external investigations, Article 3(8) of the OLAF Regulation provides that '[w]hen making statements during an on-the-spot check and inspection, the economic operator shall be provided with the possibility to use any of the official languages of the Member State where that economic operator is located'. Likewise, Article 9(5) of the OLAF Regulation ensures that '[a]ny person interviewed shall be entitled to use any of the official languages of the institutions of the Union'. However, this provision is qualified in the last sentence, which states that '[o]fficials or other servants of the Union may be required to use an official language of the institutions of the Union of which they have a thorough knowledge'.

This distinction reflects the different status of the persons concerned. In internal investigations, persons concerned are staff members of EU institutions, bodies, offices and agencies who, under Article 28(f) of the Staff Regulations<sup>13</sup>, are required to have a thorough knowledge of one of the languages of the EU and a satisfactory knowledge of another language of the EU to the extent necessary for the performance of their duties. It follows that OLAF can appropriately communicate and provide information to such persons in any of their working languages. By contrast, in external investigations, the persons concerned are EU citizens and/or legal entities who are not bound by the same linguistic requirements. In these cases, Article 41(4) of the Charter guarantees their right to write to the EU institutions in any of the EU's official languages and to receive a reply in the same language. Accordingly, OLAF is required to accommodate the language choice of persons concerned in external investigations. The differing treatment is therefore objectively justified, as it reflects the distinct legal and professional contexts of internal and external investigations and ensures both procedural fairness and administrative efficiency in OLAF investigations.

Another objectively justified distinction may arise from the fundamental rights and procedural guarantees applicable under the laws of the Member States, which play an important role in external investigations. External investigations usually involve on-the-spot checks in Member States. If the final case reports ('FCR') from such investigations contain findings against the person(s) concerned, they must indicate any administrative, financial and/or judicial action taken by the competent authorities of the Member States concerned<sup>14</sup>. Article 53 of the Charter clearly states that '[n]othing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, ... by the Member States' constitutions'. More importantly, Article 11(2) of the OLAF Regulation provides that, in drawing the FCR and recommendations, OLAF 'shall take

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<sup>12</sup> See the Activity Report of the Controller of Procedural Guarantees for 2023, *op. cit.*, section 4.4.5.

<sup>13</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, 14.6.1962, p. 1385).

<sup>14</sup> Article 11(1), second paragraph of the OLAF Regulation.

account of the national law of the Member States concerned'. That is why only FCRs 'drawn up on that basis shall constitute admissible evidence in administrative or judicial proceedings of the Member States in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative authorities'. As a result, if FCRs from external investigations are to have evidentiary value in any follow-up activities by competent Member States authorities, they must comply with the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors. This may involve complying with higher standards of fundamental rights protection laid down for administrative investigations in the constitutions of the Member States concerned.

An approach based on functional necessity rather than formal categorisation would enhance coherence, legal certainty and the overall consistency of fundamental rights protection within OLAF's investigative framework. The Controller has identified three particular instances where differentiation in core procedural safeguards afforded to persons concerned in internal and external investigations does not appear justified. As discussed further below, these differences in treatment relate to:

- (i) the right to be informed of one's status as a person concerned in an OLAF investigation;
- (ii) the right to be assisted by a person of choice and privilege against self-incrimination; and
- (iii) the right to be informed about the fundamental rights and procedural guarantees of persons concerned.

(i) **Right to be informed of one's status as a person concerned**

Under Article 9(3) of the OLAF Regulation, as soon as an investigation reveals that an EU staff member may be a person concerned in an OLAF investigation, that staff member must be informed of this, provided doing so does not prejudice the conduct of the investigation or any investigative proceedings falling within the remit of a national judicial authority.

However, the right to be informed of one's status as a person concerned is explicitly recognised only in the context of internal investigations. By contrast, the OLAF Regulation does not expressly grant the right to be informed to persons concerned in external investigations, leaving the precise moment and manner of notification less clearly defined.

In *LA International Cooperation Srl v Commission*<sup>15</sup>, the General Court confirmed its previous case-law in *Oikonomopoulos v Commission*<sup>16</sup>, ruling that the obligation to inform a person concerned in the context of an OLAF investigation, laid down in Article 9(3) of the OLAF Regulation, **also applies to external investigations**. According to that case-law, where it becomes apparent during an external investigation that an individual or legal entity may be concerned by it, that individual or entity should be informed of their status as a person concerned, provided such

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<sup>15</sup> See the judgment of 29 June 2022, *LA International Cooperation Srl v Commission*, T-609/20, EU:T:2022:407, paragraphs 22 and 23.

<sup>16</sup> See the judgment of 20 July 2016, *Oikonomopoulos v Commission*, T-483/13, EU:T:2016:421, paragraphs 229 and 230.

notification does not prejudice the conduct of the investigation or any investigative proceedings falling within the remit of a national judicial authority.

The right to be informed is an essential procedural guarantee, as it enables the person concerned to exercise other fundamental rights effectively, such as the right to be heard, the right to legal assistance and the privilege against self-incrimination. If they are not informed of their status, individuals and legal entities, including EU officials, cannot meaningfully defend their interests or challenge potential breaches of their procedural rights, including by lodging a complaint with the Controller.

In line with the General Court's case-law, the Controller considers that the OLAF Regulation should explicitly recognise the right of persons concerned in **external investigations** to be informed of their status as a person concerned *as soon as possible*. Such recognition would provide clarity and legal certainty, ensuring that all procedural safeguards under the Regulation are accessible regardless of the nature of the investigation. However, to preserve the effectiveness and integrity of OLAF's investigative activities, that right should be accompanied by a clear deferral mechanism, allowing OLAF to postpone notification where immediate disclosure could compromise the investigation, hinder evidence gathering or otherwise jeopardise subsequent enforcement or judicial proceedings.

**Proposal 3.** Article 9(3) of the OLAF Regulation should be amended in line with the existing case-law of the EU courts to expressly recognise the right of persons concerned, in both internal and external investigations, to be informed of their status as a person concerned *as soon as possible*. This amendment should not affect OLAF's ability to defer such notification where necessary (as already provided for under Article 9(3)).

#### (ii) Right to be assisted by a person of choice and to avoid self-incrimination

The fundamental rights to be assisted by a person of one's choice and to claim the privilege against self-incrimination are expressly recognised in Article 9(2) of the OLAF Regulation in respect of interviews with persons concerned conducted during internal and external investigations.

For external investigations, Article 3(8) of the OLAF Regulation extends these guarantees, granting 'economic operators'<sup>17</sup> the right to be assisted by a person of their choice and to avoid self-incrimination also during on-the-spot checks and inspections. The same article also specifies that '[t]he right to be assisted by a person of choice shall not prevent access by the Office to the premises of the economic operator and shall not unduly delay the start of the on-the-spot check and inspection'.

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<sup>17</sup> Under Article 2(5) of the OLAF Regulation, the term person concerned 'shall mean any **person or economic operator** suspected of having committed fraud, corruption or any other illegal activity affecting the financial interests of the Union and who is therefore subject to investigation by the Office'. Article 2(6) of the OLAF Regulation specifies that the term economic operator 'shall have the meaning applied to that term by Regulation (EC, Euratom) No 2988/95 and Regulation (Euratom, EC) No 2185/96'. Article 7 of Regulation (EC, Euratom) No 2988/95 states that '[c]ommunity administrative measures and penalties may be applied to the economic operators referred to in Article 1, namely the natural or legal persons and the other entities on which national law confers legal capacity who have committed the irregularity and to those who are under a duty to take responsibility for the irregularity or to ensure that it is not committed'.

By contrast, persons concerned in internal investigations are not currently afforded the same level of protection. Article 4 of the OLAF Regulation, which governs the conduct of inspections of premises within IBOAs, does not expressly provide for the right of persons concerned to be assisted by a person of their choice or to invoke the privilege against self-incrimination during such inspections.

This regulatory gap creates an unwarranted distinction between the procedural guarantees available in external and internal investigations, even though both types of investigative activity may involve comparable degrees of interference with the rights of the persons concerned. This also implies that OLAF is under no explicit legal obligation to inform persons concerned in internal investigations of their entitlement to these fundamental procedural safeguards, leaving them potentially unaware of their rights and limiting their ability to exercise them effectively.

The Controller has held in the past<sup>18</sup> that, although the OLAF Regulation does not provide for a formal right to legal assistance in the context of inspections of premises within IBOAs, it equally does not prohibit persons concerned from having access to a lawyer. Accordingly, in the Controller's view, OLAF cannot prevent a person concerned from seeking or receiving legal assistance, and the individual therefore retains the ability to consult a lawyer at any time during such inspections.

Nonetheless, the absence of an explicit right to be assisted by a person of one's choice during inspections of EU premises in the context of internal investigations generates uncertainty as to the scope and practical exercise of this right. In practice, this could lead to access to legal assistance being restricted or delayed, which would undermine the fairness and perceived legitimacy of the OLAF investigation. Furthermore, the lack of express recognition of this right during inspections at IBOA premises also weakens the protection of the privilege against self-incrimination, particularly where the person concerned is requested to provide explanations or clarifications.

In the absence of an objectively justified rationale, the distinction between internal and external investigations in terms of the right to legal assistance and the privilege against self-incrimination should be reconsidered. The operational particularities of internal investigations do not appear to justify a lower level of fundamental rights protection. However, in line with the safeguards already provided for in Article 3(8) of the OLAF Regulation, the exercise of this right should not prevent OLAF's access to premises or unduly delay the conduct of inspections<sup>19</sup>.

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<sup>18</sup> See the upcoming Activity Report of the Controller of Procedural Guarantees for 2025.

<sup>19</sup> See, by analogy, the judgment of 27 September 2012 *Koninklijke Wegenbouw Stevin v Commission*, T-357/06, ECLI:EU:T:2012:488, paragraphs 232-233, upheld on appeal by the Court of Justice in its judgment C-586/12. In this case, the General Court took a view that the presence of a lawyer 'is possible when the Commission carries out an investigation, but that the presence of an external or in-house lawyer cannot determine the legality of the investigation. When an undertaking so desires, and, in particular, when it does not have a lawyer at the investigation site, it can thus request the advice of a lawyer by telephone and ask that lawyer to go there as soon as possible. In order to ensure that the exercise of that right to legal assistance does not impair the proper conduct of the investigation, the persons charged with carrying out the investigation must be able to enter all the undertaking's premises immediately, to notify it of the inspection decision and to occupy the offices of their choice, without waiting until the undertaking has consulted its lawyer. The persons charged with carrying out the investigation must also be put in a position to control the undertaking's telephone and computer communications in order, in particular, to prevent the undertaking from contacting other undertakings which are also the subject of an

**Proposal 4.** Article 4 of the OLAF Regulation should be amended to expressly recognise the right of persons concerned in internal investigations to be assisted by a person of their choice during inspections of IBOA premises and to invoke the privilege against self-incrimination. This amendment would ensure that persons concerned in internal investigations enjoy the same procedural guarantees currently afforded to persons concerned in external investigations, thereby eliminating unwarranted distinctions, increasing fairness and ensuring the effective protection of fundamental rights throughout all OLAF investigative activities. However, the exercise of this right should not prevent OLAF's access to premises or unduly delay inspections, in line with the safeguards already provided for in Article 3(8) of the OLAF Regulation.

(iii) **Information on fundamental rights and procedural guarantees to be provided in writing**

The right to be informed of the fundamental rights and procedural guarantees afforded to persons concerned in OLAF investigations is a core element of the rights of defence and the right to good administration. Under the current legal framework, only Article 9(2) of the OLAF Regulation explicitly requires OLAF to provide written information on these rights to persons concerned when they are invited to participate in a formal interview. Outside this specific context, neither Article 3 nor Article 4 of the OLAF Regulation prescribes the form in which OLAF must communicate these rights to persons concerned. This lack of formal guidance creates a practical gap, potentially leading to inconsistencies in the information provided and uncertainty as to whether persons concerned have been fully informed of their rights under the OLAF Regulation.

Furthermore, there is a disparity in the OLAF Regulation between the safeguards applicable to external and internal investigations as regards the information provided to persons concerned. Article 3(7), second sentence of the OLAF Regulation expressly requires OLAF 'at the latest at the start of the on-the-spot check and inspection' to inform the person concerned 'of the procedure applicable to the on-the-spot check and inspection, including the applicable procedural safeguards'. By contrast, Article 4 of the OLAF Regulation contains no parallel obligation to ensure that persons concerned in internal investigations receive equivalent information at the earliest appropriate stage.

Through the complaints mechanism, the Controller has observed that OLAF typically informs persons concerned of their fundamental rights and procedural guarantees orally during inspections conducted on IBOA premises in the context of internal investigations. This approach relies on verbal communication and may vary depending on the staff involved and the circumstances of the inspection.

By contrast, in external investigations, persons concerned are routinely provided with a standard written form summarising the procedure applicable to on-the-spot checks. While it ensures that

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investigation decision. Moreover, the time which the Commission is required to grant an undertaking to enable it to contact its lawyer before the Commission starts consulting the books and other records, taking copies, affixing seals on premises or documents or asking any representative or member of staff of the undertaking for oral explanations depends on the particular circumstances of each individual case and, in any event, can be only extremely limited and reduced to a strict minimum'.

information is delivered in a consistent and formally documented manner, the form only refers to the relevant provisions of the OLAF Regulation and does not provide detailed or comprehensive information on the specific procedural guarantees to which the person concerned is entitled. As a result, it may not fully explain the scope of those rights, leaving room for uncertainty about the precise protections available during the investigation.

In the Controller's view, the lack of a formal requirement to provide persons concerned with written information on their fundamental rights and procedural guarantees constitutes a gap in OLAF's procedural framework. To ensure transparency, legal certainty and the effective exercise of procedural rights, OLAF should provide persons concerned with **clear, written notification of their rights at the outset of an investigation, as soon as their status as a person concerned is established, or at the latest before OLAF carries out an inspection or on-the-spot check**. This would harmonise practice across internal and external investigations, reduce the risk of misunderstandings or disputes regarding rights, and increase the overall fairness and legitimacy of OLAF's investigative process.

**Proposal 5.** Articles 3, 4 and 9 of the OLAF Regulation should be amended to introduce a clear and explicit obligation for OLAF to provide persons concerned with **written information** on their fundamental rights and procedural guarantees. This written notification should be delivered **at the outset of an investigation**, as soon as an individual or legal entity is identified as a person concerned, or at the latest before OLAF carries out an inspection or on-the-spot check. In addition, before the start of an inspection or an on-the-spot check, the person concerned should be informed in writing of the procedure applicable to on-the-spot checks and inspections of IBOA premises.

#### **1.4. Right to be treated with fairness, dignity and courtesy throughout the investigative process, in line with the highest professional standards**

Article 41(1) of the Charter sets forth the right of every person to have his or her affairs handled impartially, fairly and within a reasonable time by IBOAs. This includes the obligation to treat individuals with respect and courtesy, ensuring that administrative procedures are conducted in a manner that safeguards human dignity and fosters trust in EU institutions. In the context of investigations and other interactions with EU bodies, this implies that officials must act professionally, objectively and respectfully towards all persons concerned.

The Controller notes that under the current legal framework only recital 12 of Regulation 883/2013 explicitly states that OLAF must conduct its investigations in 'full respect for human rights and fundamental freedoms, in particular the principle of fairness'. The operative provisions of the OLAF Regulation do not consistently or explicitly reflect this commitment, although Article 9(1) of the OLAF Regulation provides, in its second sentence, that 'investigations shall be **conducted objectively and impartially** and in accordance with the **principle of the presumption of innocence** and with the procedural guarantees set out in this Article'. In the Controller's view, this provision should be read as also requiring OLAF staff to act in line with the highest standards of professionalism, courtesy and respect. Similarly, the duty

to treat all persons concerned fairly and in a manner that safeguards their dignity throughout the investigative process should be regarded as implicit in Article 9(1) of the OLAF Regulation.

Furthermore, the Controller recalls that recital 2 of Regulation (EU, Euratom) No 1023/2013 amending the Staff Regulations<sup>20</sup> enshrines the principle of adherence to the highest professional standards for EU officials. The European Commission Code of Good Administrative Behaviour<sup>21</sup> also recognises that the public legitimately expects quality service and that this requires the Commission and its staff to be courteous, objective and impartial. It follows that OLAF staff members are required to perform their duties in strict compliance with their professional obligations, acting with objectivity and impartiality at all times. They must ensure procedural fairness throughout the investigative process, adhering to the highest standards of professionalism. Furthermore, they must fully respect and safeguard the fundamental rights of persons concerned throughout their work. This commitment underpins the integrity and legitimacy of OLAF's operations and serves to maintain trust in the investigative process. The Controller has therefore consistently recalled in her decisions the importance of OLAF staff performing their duties in strict compliance with the core requirements of objectivity, impartiality, professionalism, procedural fairness and respect for fundamental rights<sup>22</sup>.

The Controller has also underlined that persons concerned must be able to fully understand the content of any documents they are required to sign. They therefore have the right to request clarifications and explanations, which corresponds to OLAF's duty to communicate clearly and to uphold the highest professional standards in all interactions with persons concerned. These obligations, far from being mere formalities, are essential to ensuring the effective exercise of the right of defence and guaranteeing the fairness of investigative proceedings.

In the Controller's view, fairness, politeness and professionalism are not peripheral considerations but procedural guarantees that must be observed throughout the investigative process, particularly in interactions with persons concerned. Ensuring transparency and respect in such interactions not only protects individual rights but also reinforces the legitimacy and credibility of the investigation itself.

Accordingly, notwithstanding the existence of general principles and soft-law instruments governing the conduct of EU officials, the Controller considers that these core requirements of objectivity, impartiality, professionalism, procedural fairness and respect for fundamental rights should be expressly enshrined in the OLAF Regulation itself.

**Proposal 6.** Article 9(1) of the OLAF Regulation should be amended to state that investigations must be conducted not only objectively and impartially, but also (i) in accordance with the principle of fairness emanating from the right to good administration under Article 41(1) of the Charter, and (ii) in compliance with the highest professional standards.

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<sup>20</sup> See Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ L 287, 29.10.2013, p. 15).

<sup>21</sup> See Commission Decision (EU) 2024/3083 of 4 December 2024 establishing the Code of Good Administrative Behaviour for Staff of the European Commission in their relations with the public (OJ L, 2024/3083, 5.12.2024).

<sup>22</sup> See the upcoming Annual Activity Report of the Controller of Procedural Guarantees for 2025.

## 1.5. Right to be heard in OLAF proceedings

### (i) Opportunity to comment on the facts established

Under Article 9(4) of the OLAF Regulation, once it has completed an investigation and before drawing up conclusions referring to a person concerned by name, OLAF must give that person the **opportunity to comment on facts that concern them**. Article 9(4) further specifies how this opportunity is to be granted, i.e. by providing a summary of facts.

The opportunity to comment on OLAF's summary of facts gives effect to the right to be heard in the context of OLAF investigations and is an essential procedural guarantee for persons concerned. According to EU case-law, the right to be heard forms part of the rights of defence, and respect for those rights is a general principle of EU law<sup>23</sup>. The EU courts have held that this right enables persons concerned **to articulate their views effectively** during an administrative procedure and before any decision liable to adversely affect their interests is taken<sup>24</sup>. Moreover, the right to be heard pursues a dual objective. First, it enables the relevant authority to examine the case and establish the facts as precisely and correctly as possible. Second, it ensures that the person concerned is genuinely protected and is able to submit information relating to their personal circumstances and argue in their favour<sup>25</sup>.

For the Controller, it is of the utmost importance that persons concerned are in a position to exercise their right to comment on the facts concerning them in a **meaningful manner**. This means that **persons concerned should have the necessary information** that enables them to provide comments and defend themselves.

The Controller recalls that the OLAF Regulation does not provide for a right of access to the OLAF case file. According to EU case-law, this does not constitute an infringement of the rights of defence of a person concerned provided those rights are sufficiently safeguarded by the information they receive and by the opportunity to be heard<sup>26</sup>. Therefore, any alleged infringement of the rights of defence, which includes the right to be heard, must be examined in relation to the specific circumstances of each particular case<sup>27</sup>.

In practice, the Controller has observed that OLAF adopts a restrictive approach when providing access to information to persons concerned at the stage of the summary of facts. OLAF does not systematically disclose the underlying documents or evidentiary material on which the factual statements contained in the summary of facts are based, in accordance with the

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<sup>23</sup> See the judgment of 19 October 2022, *Sistem ecologica v Commission*, T-81/21, EU:T:2022:641, paragraph 103, the judgment of 14 June 2016, *Marchiani v Parliament*, C-566/14, EU:C:2016:437, paragraph 51, and the case-law cited there.

<sup>24</sup> See the judgment of 4 June 2020, *EEAS v De Loecker*, C-187/19 P, EU:C:2020:444, paragraph 68.

<sup>25</sup> See the judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, joined cases C-129/13 and C-130/13, EU:C:2014:2041, paragraph 38, and the judgment of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraphs 37 and 59.

<sup>26</sup> See the judgment of 20 July 2016, *Oikonomopoulos v Commission*, T-483/13, EU:T:2016:421, paragraphs 238 to 240 and the case-law cited.

<sup>27</sup> See the judgment of 28 October 2021, *Vialto Consulting Kft. v Commission*, C-650/19 P, EU:C:2021:879, paragraph 123, and the judgment of 19 October 2022, *Sistem ecologica v Commission*, T-81/21, EU:T:2022:641, paragraph 104.

case-law on the confidentiality of OLAF case files<sup>28</sup>. As a general rule, OLAF provides only documents that are expressly quoted or referred to in the summary of facts. OLAF discloses additional documents contained in the case file only if a specific and reasoned request is submitted by the person concerned and assessed by OLAF on a case-by-case basis.

While the Controller acknowledges that OLAF must safeguard the confidentiality of its investigations, including the protection of sources and witnesses, and the effectiveness of ongoing or related proceedings, this objective should be balanced against the need to **ensure the effective exercise of the right to be heard**. In the Controller's view, meaningful exercise of this right requires that persons concerned understand not only the factual allegations made against them, but also the evidentiary basis on which those allegations rest. Without access, at least in substance, to the evidentiary information underpinning the summary of facts, the ability of persons concerned to comment effectively, challenge the accuracy of the facts and present relevant counterarguments may, in certain circumstances, be limited.

Accordingly, the Controller considers that, as far as possible and **without undermining the confidentiality of the investigation**, OLAF should provide persons concerned with the documents on which the summary of facts is based or, at a minimum, with relevant extracts. Where full disclosure is not feasible, targeted redactions or summaries could be used to reconcile the protection of investigative interests with the requirements of the rights of defence<sup>29</sup>.

**Proposal 7.** The Controller calls upon the EU legislators to consider introducing clearer and more balanced rules in the OLAF Regulation on the information provided to persons concerned at the stage of the summary of facts, with a view to ensuring the effective exercise of the right to be heard. In particular, the Regulation should encourage OLAF, to the greatest extent possible and without undermining the confidentiality of investigations, to provide persons concerned with the information underlying the factual allegations set out in the summary of facts or at least with sufficiently detailed extracts. Where full disclosure of such information is not feasible, appropriate safeguards, such as targeted redactions or structured summaries, should be considered in order to reconcile the protection of investigative interests with the rights of defence.

(ii) [Opportunity to comment on the conclusions drawn by OLAF](#)

Under the current framework governing OLAF investigations, persons concerned are afforded the opportunity to comment solely on the facts established by OLAF, and not on the conclusions drawn from those facts, including their provisional legal classification. While the right to comment on the factual elements of a case constitutes an important procedural safeguard, limiting the scope of the right to be heard to factual matters alone risks diminishing its practical effectiveness. In many cases, not only the factual findings, but also their legal

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<sup>28</sup> See the judgment of 18 July 2013, *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 98 and 99, and the judgment of 30 November 2023, *Sistem ecologica v Commission*, EU:C:2023:940, paragraphs 153 and 156.

<sup>29</sup> This approach is currently followed by OLAF under the complaints mechanism, where it submits a confidential and a non-confidential version of its opinion. A similar approach is adopted by EU institutions when sharing confidential information with third parties.

characterisation and the conclusions drawn by OLAF, which may inform subsequent administrative, disciplinary, financial or judicial action have a decisive impact on the position of the person concerned.

To ensure the full effectiveness of the right to be heard, the Controller's view is that persons concerned should be given the opportunity to comment not only on the facts, but also on OLAF's provisional legal assessment and conclusions on their conduct. Allowing persons concerned to submit observations on the legal classification of the facts would enable them to raise relevant legal arguments and clarify the context of their actions. It would also allow them to identify potential errors or propose alternative interpretations of the established facts before OLAF finalises its conclusions. Such an approach would lead to more accurate and well-founded investigative outcomes, while enhancing the fairness, transparency and legitimacy of the investigative process.

In the Controller's view, extending the right to be heard to cover OLAF's provisional conclusions would not undermine the effectiveness of investigations. On the contrary, it would strengthen procedural guarantees by ensuring that OLAF's FCRs are adopted after a genuine adversarial process, in line with the fundamental rights of defence and the principle of good administration enshrined in EU law.

**Proposal 8.** The Controller calls upon the EU legislators to consider strengthening the procedural framework governing OLAF investigations by extending the right to be heard to allow persons concerned to submit observations not only on the facts established, but also on the provisional legal classification of those facts and the preliminary conclusions drawn by OLAF. This would enhance the practical effectiveness of the rights of defence, contribute to the accuracy of OLAF's final conclusions and increase compliance with the principles of good administration and fundamental rights protection.

## 1.6. **Right to be informed systematically of the exact date of closure of the investigation**

Under the current Article 11(7) of the OLAF Regulation, OLAF is required to inform the persons concerned of the closure of an investigation only where **no evidence has been found against them** on completion of the investigation. Through the complaints mechanism, the Controller has observed that OLAF applies a broad interpretation of that requirement and informs persons concerned of the closure of an investigation even where it has found evidence against them. This does not apply when it would prejudice subsequent action or breach confidentiality.

The Controller considers this approach a commendable example of good administrative practice. It enhances transparency and legal certainty for persons concerned, who are thereby informed of the outcome of the investigative phase and are not left in prolonged uncertainty as to their procedural situation. At the same time, OLAF appropriately balances this practice with the need to protect the effectiveness of any subsequent action and to respect confidentiality requirements, refraining from notification only where such considerations so require. In the Controller's view, this balanced approach strengthens trust in OLAF's investigative procedures, promotes

compliance with the principles of good administration and contributes to the overall fairness and legitimacy of OLAF's activities.

The Controller considers that formalising OLAF's current practice in Article 11(7) of the OLAF Regulation would strengthen the protection of the fundamental rights and procedural guarantees of persons concerned. Codifying this practice would enhance legal certainty by ensuring that persons concerned are systematically informed of the closure of an investigation and can exercise their rights effectively. This amendment would also facilitate timely access to the complaints mechanism, allowing persons concerned to comply with the time limits set out in Article 9b(2) of the OLAF Regulation.

Similarly, as the closure of an investigation marks the starting point of the one-month statutory period for lodging a complaint with the Controller under Article 9b(2) of the OLAF Regulation, clear communication of the **exact date of closure** is essential to ensure the full effectiveness of the procedural guarantees afforded to the person concerned (see **Proposal 16**).

This is particularly important in cases where the person concerned is notified on a date other than the date on which the investigation is formally closed. In the absence of an explicit indication of the closing date, the person concerned may assume that the two dates coincide, which could undermine the effective exercise of the right to lodge a complaint with the Controller within the prescribed time limit. In practice, this could result in complaints being declared inadmissible solely on procedural grounds, a regrettable outcome contrary to the spirit and purpose of the complaints mechanism, which is intended to provide an effective means of protecting procedural rights.

Therefore, Article 11(7) of the OLAF Regulation should specify that any communication informing the person concerned of the closure of an investigation must indicate the exact date on which the investigation was closed.

**Proposal 9.** Article 11(7) of the OLAF Regulation should be amended in order to:

- (i) extend the right to be informed of the closure of an investigation to all persons concerned, regardless of whether evidence has been found against them;
- (ii) provide for exceptions to this right when it would prejudice the effectiveness of subsequent action or breach confidentiality; and
- (iii) specify that any communication informing the person concerned of the closure of an investigation must expressly indicate the exact date on which the investigation was closed.

## 1.7. Right to receive a copy of the final case report (FCR)

Under the current OLAF Regulation, persons concerned are not, as a rule, entitled to receive a copy of the FCR of an OLAF investigation. In practice, the FCR is transmitted primarily to the IBOAs or national competent authorities to which the Director-General's recommendations for subsequent action are addressed.

As a result, individuals and legal entities who were persons concerned in OLAF investigations may remain unaware of OLAF's preliminary legal classification of the facts established, the conclusions of the investigation and the recommendations formulated, except insofar as these emerge from subsequent proceedings initiated by IBOAs or competent authorities of the Member States concerned. This framework reflects the legislator's intention to safeguard the confidentiality and effectiveness of OLAF investigations and their follow-up. Nevertheless, it gives rise to a significant asymmetry of information between OLAF and the persons concerned.

The OLAF Regulation does, however, provide for a limited exception to this general rule. Under Article 10(3)(b), where OLAF recommends judicial follow-up, the person concerned may request access to the FCR to the extent that it relates to them, subject to applicable confidentiality, data protection and whistleblower protection rules. Access is conditional upon the absence of an objection from the recipients of the FCR, whose explicit consent is required either within twelve months of receipt of the request or earlier if authorised by the competent authority. While this provision introduces an important safeguard, its application remains contingent on multiple conditions and does not guarantee timely or effective access to the FCR for persons concerned in all cases.

Accordingly, despite this exception, the current framework continues to leave persons concerned with limited insight into the outcome of OLAF investigations that directly affect them. This may hinder their ability to fully understand the basis for subsequent action, assess the impact of OLAF's findings on their legal position, or effectively exercise available remedies.

The Controller believes that, while safeguarding the effectiveness of follow-up action by competent authorities is essential, this objective must be balanced against the right of persons concerned to be informed of the outcome of an OLAF investigation that concerns them. Confidentiality requirements could be addressed on a case-by-case basis and, where necessary, persons concerned could be provided with a redacted or non-confidential version of the FCR. Establishing a general right for persons concerned to receive a copy of the FCR, subject to exceptions - such as where disclosure would jeopardise the effectiveness of follow-up measures or breach confidentiality obligations - would substantially strengthen their fundamental rights and procedural guarantees. In particular, such a measure would strengthen the right of defence by enabling individuals to understand the legal and factual basis on which the investigative conclusions were reached, thereby allowing them to identify potential inaccuracies and to respond effectively in any subsequent administrative, disciplinary or judicial proceedings.

<p><b>Proposal 10.</b> The Controller calls upon the EU legislators to consider amending the OLAF Regulation to provide for the right of persons concerned to receive a copy of the FCR on the conclusion of an investigation, unless disclosure would jeopardise the effectiveness of follow-up actions by competent authorities or breach confidentiality requirements.</p>
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## 1.8. Rights of other persons – Whistleblowers and victims of offences not affecting the European Union’s financial interests

The current OLAF Regulation contains a brief reference to whistleblower protection under Article 10(3a) and (3b). This reference to Directive (EU) 2019/1937<sup>30</sup> (‘Whistleblowing Directive’), which sets minimum standards for protecting whistleblowers across the EU is of key importance, but it should be further elaborated upon. The Court of Justice of the European Union (‘CJEU’) has clarified that the Whistleblowing Directive has an indirect binding effect in the context of relations between EU institutions and their officials and agents<sup>31</sup>. Consequently, when a report is received from a whistleblower within the meaning of the Whistleblowing Directive and when provisions such as Articles 22a, 22b and 22c of the Staff Regulations are implemented, the level of protection afforded to whistleblowers and informants must not be lower than that set by the Whistleblowing Directive. Explicitly integrating whistleblower and informant rights and procedural guarantees into the OLAF Regulation in line with the Whistleblowing Directive, combined with access to the complaint’s mechanism, would therefore strengthen OLAF’s commitment to transparency and accountability while ensuring that whistleblowers and informants are protected in accordance with EU law.

In addition, attention should be given to victims of misconduct not directly affecting the financial interests of the European Union, such as victims of sexual or psychological harassment. In the *Dalli* case, the CJEU held that OLAF has the authority to investigate allegations of serious misconduct and ethical breaches involving staff and members of IBOAs<sup>32</sup>. OLAF’s mandate therefore extends beyond the protection of the European Union’s financial interests. Providing such victims with access to the complaints mechanism and clarifying their rights and procedural status more generally would enhance their protection and ensure that OLAF investigations are carried out in line with the principles of good administration.

Regardless of the particularities stemming from the status of each of these categories of persons, the Controller believes that they should all, as a minimum, have the right to lodge a complaint with the Controller regarding breaches of their fundamental rights and procedural guarantees in the course of OLAF investigations. As this proposal would affect the personal scope of the complaints mechanism, it is further developed under **Proposal 13** below.

**Proposal 11.** The Controller calls upon the EU legislators to consider amending Article 9 of the OLAF Regulation to provide for the rights and procedural guarantees afforded to whistleblowers under the Whistleblowing Directive, to informants under Article 22a of the Staff Regulations, and to other sources of information and victims of misconduct falling within OLAF’s investigative mandate.

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<sup>30</sup> See Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, pp. 17-56).

<sup>31</sup> See the judgment of 11 September 2024, *TU v European Parliament*, T-793/22, EU:T:2024:614.

<sup>32</sup> See the judgment of 6 June 2019, *Dalli v Commission*, T-399/17, EU:T:2019:384, upheld by the judgment of 25 February 2021, *Dalli v Commission*, C-615/19P, EU:C:2021:133.

## 1.9. Rights of other persons – Other sources in OLAF investigations

Article 5(4), second subparagraph, of the OLAF Regulation provides that officials, other servants, members of an institution or body, heads of office or agency and staff members who, acting in accordance with Article 22a of the Staff Regulations, have provided information to OLAF relating to a suspected fraud or irregularity, have the **right to be informed** of the decision whether or not to open an OLAF investigation.

By contrast, persons reporting breaches of EU law under the Whistleblowing Directive and other sources providing information of potential investigative interest to OLAF have no express right to be informed of the opening of an OLAF investigation.

In practice, however, the Controller has observed that in most cases OLAF informs the source whether an investigation has been opened. The only exceptions arise when, following a case-by-case assessment, the investigation unit considers that such information could (a) prejudice the legitimate interests of the person concerned, (b) jeopardise the effectiveness of the investigation or subsequent action, or (c) breach confidentiality requirements.

The OLAF Regulation could usefully reflect this practice explicitly by affording the right to be informed of the decision whether or not to open an OLAF investigation not only to informants under Article 22a of the Staff Regulations, but also to whistleblowers under the Whistleblowing Directive and other sources of information.

When OLAF identifies a person concerned in the decision to open an investigation and subsequently adopts a decision to defer that person's right to be informed of their status (see Article 4(6) of the OLAF Regulation and **Proposal 3**), the right of defence of the person concerned and the principle of fairness demand that the same deferral should apply to the right of whistleblowers, informants and other sources of information to be informed of the opening of the investigation.

Article 5(4) of the OLAF Regulation should also address any confidentiality issues that may arise from informing whistleblowers, informants under Article 22a of the Staff Regulations and other sources of the opening of an investigation. In duly justified cases, where it is necessary to preserve the confidentiality of an investigation or an ongoing or future criminal investigation by the European Public Prosecutor's Office (the 'EPPO') or a national judicial authority, the OLAF Regulation should allow this right to be deferred or set out specific measures to be adopted in order meet confidentiality requirements.

**Proposal 12.** Article 5(4) of the OLAF Regulation should be amended to extend the right to be informed of the decision whether or not to open an OLAF investigation to whistleblowers under the Whistleblowing Directive and other sources providing information of potential investigative interest to OLAF. The resulting provision should allow for the deferral of such information in duly justified cases, including instances where the person concerned has not been informed of his or her status because of a deferral or where disclosure would undermine confidentiality requirements.

## **II. On the complaints mechanism**

As persons concerned cannot, in principle, seek judicial recourse against OLAF's acts or omissions during an investigation, the complaints mechanism is of great importance. A complainant can turn to the Controller for an independent and thorough assessment of their complaint, if the personal, material and temporal admissibility requirements set out in Article 9b(1) and (2) of the OLAF Regulation are met. When carrying out that assessment, the Controller does not and may not interfere with the conduct of the OLAF investigation.

When handling complaints on OLAF's compliance with procedural guarantees and the rules applicable to investigations, the Controller does not seek to substitute her own assessment for that of OLAF regarding how investigations are conducted, how the evidence is assessed or how the conclusions are reached. Instead, her role is to either: (a) provide reassurance that OLAF has acted in accordance with the rules set out in the applicable legislation where no breach is found, or (b) invite OLAF to take corrective action by making a proposal for a solution where a breach of the procedural guarantees or the rules applicable to investigations is identified. If no solution can be found, the Controller may, as a second step, issue a recommendation to OLAF on how the complaint should be resolved. Since the establishment of this function, the Controller has made three such proposals to the Director-General of OLAF, all of which were accepted and implemented in full. This illustrates both the practical effectiveness of the complaints mechanism and OLAF's commitment to addressing any shortcomings identified in compliance with procedural guarantees.

The Controller assesses complaints through an adversarial procedure, performing a delicate balancing exercise between the need to preserve the confidentiality of the OLAF investigation and the adversarial nature of the complaints mechanism.

Since the beginning of her mandate in October 2022, the Controller has been called upon to address a number of complex and significant legal questions. These have progressively contributed to the development of a coherent conceptual framework for the assessment of complaints. They have also enabled the Controller to identify potential areas for improvement in the complaints mechanism. These include the personal, material and temporal scope of the admissibility requirements; the absence of a review procedure; the question of whether complaints could or should have a suspensive effect; the handling of complaints that raise issues pending before the courts; and the legal consequences of a hypothetical decision by the Director-General of OLAF not to follow a recommendation issued by the Controller.

### **2.1. Admissibility – Personal scope**

In its current design, the personal scope of the complaints mechanism is confined to a limited category of individuals, as the right to lodge a complaint with the Controller is restricted to persons concerned in OLAF investigations. Article 9b(1) of the OLAF Regulation confers on the Controller the exclusive mandate to examine complaints submitted by 'persons concerned' regarding OLAF's compliance with procedural guarantees and the rules applicable to investigations, in particular procedural requirements and fundamental rights. As a result, a broader category of individuals who may be directly and materially affected by OLAF's

investigative activities and who may have a legitimate interest in the manner in which those investigations are conducted is excluded from access to the Controller.

Other persons involved in an OLAF investigation, such as informants, whistleblowers and witnesses, cannot submit their complaints to the Controller but must instead address them to the Director-General of OLAF. From the perspective of effective procedural protection, this differentiated treatment is not optimal, as it deprives those individuals of access to an independent and external assessment of their grievances, confining them instead to an internal administrative channel. In practice, this limitation may undermine the perceived impartiality and overall effectiveness of the complaints mechanism, particularly where the alleged shortcomings relate to compliance with procedural guarantees or the protection of fundamental rights.

Moreover, given that the Controller was specifically established as an independent body entrusted with safeguarding procedural guarantees in the context of OLAF investigations, it would appear both logical and coherent to give this function the exclusive responsibility for examining all complaints relating to such guarantees, irrespective of the complainant's status. Allowing complaints on procedural guarantees to be channelled to different recipients depending on whether they originate from a person concerned or from other persons involved in the investigation may fragment the protection system and dilute the very rationale behind the creation of the Controller. By contrast, entrusting the Controller with the examination of all complaints relating to procedural guarantees would ensure a uniform, independent and specialised assessment, thereby enhancing legal certainty, strengthening the effectiveness of procedural safeguard and reinforcing confidence in OLAF's investigative framework.

**Proposal 13.** The Controller calls upon the EU legislators to consider amending Article 9b(1) of the OLAF Regulation to extend the personal scope of the complaints mechanism to include not only persons concerned but also witnesses, whistleblowers within the meaning of the Whistleblowing Directive, informants under Article 22a of the Staff Regulations, other sources of information and victims of misconduct within OLAF's investigative remit.

## 2.2. Admissibility – Grounds for dismissal of complaints (material scope)

The Controller's handling of complaints is structured as a two-stage procedure. The first stage involves assessing the admissibility of the complaint to determine whether it falls within the personal, material and temporal scope of the complaints mechanism. Once the complaint is deemed admissible, the second stage consists of a substantive assessment of the arguments raised by the complainant.

Article 9b(3) of the OLAF Regulation governs the initial processing of complaints. It requires the Controller to inform the Director-General immediately upon receipt of a complaint and to determine, within ten working days, whether the conditions in paragraphs 1 and 2 are met. These paragraphs set out the personal, material, and temporal scope of the complaints mechanism, without providing further guidance on how the initial processing should be conducted. In practice, the Controller has specified the operational details of the initial processing of complaints in Article 5 of the implementing provisions.

Accordingly, a complaint will not be admissible if:

- (i) it is submitted by a person other than a person concerned;
- (ii) it does not concern an OLAF investigation;
- (iii) it does not concern alleged breach(es) of procedural guarantees and/or infringement(s) of the rules applicable to OLAF investigations; or
- (iv) it is submitted outside the time limits set out in Article 9b(2) of the OLAF Regulation, namely more than one month after the complainant became aware of the relevant facts that constitute an alleged infringement of the procedural guarantees or the rules on investigation, or more than one month after the investigation was closed.

In the course of handling complaints, the Controller has observed that certain admissibility criteria are not expressly anchored in the OLAF Regulation itself. For instance, complaints falling outside the Controller's remit, such as those within the exclusive responsibility of the European Data Protection Supervisor ('EDPS'), are not specifically addressed in the OLAF Regulation.

In practice, the Controller treats such complaints as inadmissible under Article 5(3) of the implementing provisions. While the Controller's mandate includes verifying OLAF's compliance with fundamental rights, responsibility for safeguarding privacy and data protection lies with the EDPS, the EU's independent supervisory authority in that field. Under Article 52 of Regulation (EU) 2018/1725<sup>33</sup>, the EDPS is responsible for monitoring and ensuring the application of that Regulation and any other EU act relating to the protection of the fundamental rights and freedoms of natural persons in connection with the processing of personal data by EU institutions and bodies. Given that the EU has created a specialised body to guarantee the fundamental right to the protection of personal data, it is appropriate that complaints on alleged breaches of data protection rules fall within the competence of the EDPS rather than that of the Controller.

Similarly, the OLAF Regulation does not provide for the possibility of dismissing complaints that are **manifestly without merit**. Such complaints may be either *manifestly unfounded* (consisting of clearly false allegations or frivolous claims) or *unsubstantiated* (where allegations are unsupported by clear evidence or are internally contradictory). To address this gap, Article 5(4) of the implementing provisions provides for an assessment, within the ten-day initial processing period, of whether a complaint is *manifestly without merit*.

However, in the absence of an explicit legal basis in the OLAF Regulation, the Controller has adopted a cautious and restrictive approach. As a result, even complaints that are clearly frivolous, manifestly false or wholly unsubstantiated currently undergo the full initial processing cycle of the complaints mechanism, culminating in a formal decision declaring them inadmissible. This practice consumes a disproportionate amount of time and resources and may delay the examination of meritorious complaints, highlighting the need for a clearer legal provision in the OLAF Regulation itself. The current approach also diverges from the practice of

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<sup>33</sup> See Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, (OJ L 295,, p. 39).

comparable EU oversight bodies, notably the European Ombudsman, which may dismiss manifestly unfounded complaints and close files without engaging the full procedural apparatus<sup>34</sup>.

From the perspective of good administration and resource efficiency, the OLAF Regulation should therefore expressly provide that the Controller may **dismiss**, without formally undergoing the initial admissibility assessment procedure: (i) **manifestly unfounded complaints**; (ii) **unsubstantiated complaints**; and (iii) **complaints falling outside the Controller's remit**, including those within the exclusive remit of the EDPS. Codifying these powers in the OLAF Regulation would enhance legal certainty for complainants, promote the efficient use of human and financial resources and ensure that the complaints mechanism functions effectively while safeguarding procedural fairness.

**Proposal 14.** Article 9b(3) of the OLAF Regulation should be amended in order to introduce a simplified procedure enabling the Controller to dismiss the following types of complaint directly:

- (i) manifestly unfounded complaints (i.e. complaints that are clearly frivolous or false or that lack any substantive basis), without requiring the full initial processing procedure;
- (ii) unsubstantiated complaints (i.e. complaints in which the allegations are not supported by clear evidence or are internally contradictory);
- (iii) complaints falling outside the Controller's mandate, including those falling within the exclusive competence of other EU bodies, such as the EDPS. Where a complaint falls outside the scope of the Controller's remit, the Controller may advise the complainant to address it to the relevant authority.

### 2.3. Abusive and/or repetitive complaints (material scope)

A further challenge in the operation of the complaints mechanism under Article 9b of the OLAF Regulation relates to the processing of abusive and/or repetitive complaints. While the Controller has not dealt with complaints containing abusive language, she has encountered cases in which complainants repeatedly raise the same allegations, despite these having already been addressed through a reasoned inadmissibility decision or a final decision on the merits. In addition, there have been cases where complainants submitted a large number of complaints on issues of marginal or no relevance to OLAF investigations. Such patterns of behaviour risk diverting the complaints mechanism from its intended purpose, which is safeguarding fundamental rights and procedural guarantees, while placing a disproportionate administrative burden on the Controller and the Secretariat of the Supervisory Committee.

The Controller notes that the OLAF Regulation does not contain an explicit provision allowing her to declare complaints abusive and/or repetitive. To address this gap, the Controller has set out an internal procedure in Article 5(4) of the implementing provisions and has developed an administrative practice aimed at mitigating potential misuse of the complaints mechanism. This

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<sup>34</sup> See Article 2(5) of the Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom (OJ L 253, 16.7.2021, p. 1).

involves registering the submission as a new complaint and issuing a formal inadmissibility decision accompanied by a first warning to the complainant, indicating that any further communications or complaints on the matter will be considered repetitive and will no longer be examined. In the same decision, the complainant is also informed that correspondence on the matter will be discontinued, in accordance with the European Commission's Code of Good Administrative Behaviour. Should the complainant persist in submitting additional communications or complaints regarding the same issue, these are treated as abusive.

While this system has allowed the Controller to operate within the existing legal framework, it remains procedurally cumbersome and resource intensive. Moreover, as noted above, in cases involving complaints that are manifestly unfounded or unsubstantiated, the process could potentially delay the examination of meritorious complaints and undermine the efficiency of the complaints mechanism.

In the Controller's view, Article 9b(3) of the OLAF Regulation should be amended to introduce a simplified procedure enabling the Controller to dismiss abusive and/or repetitive complaints directly, without undertaking a full initial admissibility assessment. This would allow the Controller to identify and exclude complaints that are clearly intended to harass, overwhelm or otherwise misuse the complaints mechanism, including those that are manifestly repetitive or that raise issues already addressed in a prior reasoned inadmissibility decision or a final decision on the merits.

By permitting such dismissals at an early stage, the amendment would streamline the handling of complaints, reduce unnecessary administrative burdens and ensure that the resources of the Controller and the Secretariat are focused on meritorious cases. The procedure would not require the issuance of a full formal decision for each abusive and/or repetitive complaint, thereby avoiding procedural delays while maintaining the overall integrity and fairness of the complaints mechanism. Codifying this ability in the OLAF Regulation would align the OLAF framework with that of comparable EU oversight bodies, such as the European Ombudsman, which has the authority to dismiss complaints that constitute an abuse of process<sup>35</sup>, and would enhance both the efficiency and the credibility of OLAF's oversight system.

**Proposal 15.** Article 9b(3) of the OLAF Regulation should be amended to introduce a simplified procedure enabling the Controller to dismiss abusive and/or repetitive complaints directly, without undertaking the full initial admissibility assessment.

#### **2.4. Admissibility – One-month limitation period after the closure of an investigation (temporal scope)**

Article 9b(2) of the OLAF Regulation establishes a dual limitation period for lodging complaints with the Controller. Under this provision, complaints must be submitted either (1) within **one month of the complainant becoming aware of the facts** constituting the alleged

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<sup>35</sup> See the European Ombudsman Decision of 14 September 2020 establishing guidelines on how to deal with abusive communications and complaints which amount to an abuse of process, available at: <https://link.europa.eu/Ft94jm>.

infringement; or (ii) within **one month following the closure of the investigation**, if the investigation has been closed.

For closed investigations, the OLAF Regulation introduces a stricter admissibility condition, which applies irrespective of when the complainant became aware of the relevant facts or the closure of the investigation itself.

The Controller acknowledges that this restrictive condition applicable to closed investigations serves a functional purpose, namely, to preserve both the effectiveness of any subsequent follow-up procedures at national or EU level and the practical utility of the Controller's own proposals for solutions or recommendations in the specific case. Indeed, the Controller's intervention would add little value in situations where an investigation has concluded and follow-up procedures are already pending before the competent national or EU authorities. In such cases, the Controller considers that persons concerned must pursue their grievances through the judicial or administrative remedies available before those authorities.

Despite its functional justification, the absolute one-month limitation period applicable to closed investigations may, in certain cases, raise concerns in terms of legal certainty and fairness. This is particularly problematic given that the OLAF Regulation does not currently require OLAF to inform persons concerned of the exact date on which an investigation with findings against them is closed. As a result, the one-month limitation period may begin to run without the knowledge of the person concerned, which in practice may deprive them of effective access to the complaints mechanism.

**The one-month limitation period can be considered reasonable only if all persons concerned are systematically informed of the precise date on which an OLAF investigation is closed** (see **Proposal 9**). Where such systematic notification is not possible (e.g. when the EPPO asks OLAF to defer this information), the OLAF Regulation should not leave the application of the temporal scope provision unclear. In such exceptional situations, two legally coherent alternatives could be considered: (i) the Regulation should provide that no complaint may be lodged with the Controller, or (ii) it should specify that the one-month limitation period starts when the person concerned becomes aware of the closure of the OLAF investigation.

Such clarification would align the temporal admissibility rules with the realities of investigative practice, enhance legal certainty for persons concerned and ensure the complaints mechanism remains effective and fair.

**Proposal 16.** Article 9b(2) of the OLAF Regulation should be amended to clarify how the one-month limitation period is calculated where an OLAF investigation has been closed. In particular, the Regulation should ensure that the one-month limitation period applicable to closed investigations operates in a manner consistent with the principles of legal certainty and effective access to the complaints mechanism.

To that end, the amendment should either:

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| <ul style="list-style-type: none"><li>(i) expressly provide that, in exceptional cases where persons concerned are not informed of the closure of an OLAF investigation no complaint may be lodged with the Controller;<br/>or</li><li>(ii) specify that, in such cases, the one-month limitation period begins when the person concerned becomes aware of the closure of the OLAF investigation. The Controller is of the view that this option would be more aligned with the protection of the rights of persons concerned.</li></ul> |
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## 2.5. Principle of complaint completeness (temporal scope)

As already mentioned, Article 9b(3) of the OLAF Regulation governs the initial processing of complaints, requiring the Controller to ‘inform the Director-General immediately upon receipt of a complaint’ and to ‘determine whether paragraphs 1 and 2 are complied with’ within 10 working days.

Under the current formulation of Article 9b(3), the ten-working-day period runs from the moment the complaint is received, even if it is incomplete or insufficiently substantiated. The OLAF Regulation does not provide for a ‘stop-the-clock’ mechanism that would allow the admissibility period to be suspended while the Controller requests additional information or supporting documents necessary to assess the complaint. In such situations, her practice has been to ask complainants to provide clarifications or additional supporting evidence within the same ten-working-day period. However, in the absence of any provision allowing the admissibility clock to be paused until the file is complete, the Controller remains legally obliged to adopt a decision by the statutory deadline, even if the requested information is provided only at the end of that period or not at all.

For these reasons, the Controller would consider helpful if, in those circumstances, the ten-working-day period for deciding on the admissibility of a complaint began to run only once the complaint file was complete (i.e. once the complainant had provided the requested clarifications and supporting evidence). Therefore, the Controller calls upon the EU legislators to consider introducing the concept of complaint completeness into the OLAF Regulation, should they deem it appropriate.

## 2.6. Admissibility – Review procedure

At present, there is no structured mechanism in place for complainants to challenge admissibility decisions that prevent their complaints from being examined on the merits. It is the Controller’s view that Article 9b(3) of the OLAF Regulation should be amended to expressly provide for such an internal review procedure allowing complainants to seek reconsideration of the Controller’s decisions declaring complaints inadmissible or dismissing them on the grounds that they are manifestly unfounded (see **Proposal 14**). Introducing such a review mechanism would enhance the transparency and procedural fairness of the complaints mechanism.

The internal review procedure could draw inspiration from the practice of the European Ombudsman in handling requests for review<sup>36</sup>. In this context, the scope of the review should be strictly limited to decisions declaring complaints inadmissible, dismissing them as manifestly unfounded or finding them to fall outside the Controller's mandate. It should expressly exclude re-examination of decisions on the merits of admissible complaints, including recommendations addressed to OLAF under Article 9b(5) of the OLAF Regulation. Such a clearly delimited review procedure would preserve the efficiency of the complaints mechanism while reinforcing the procedural safeguards for complainants. Requests for review should be submitted within 10 working days of notification of the Controller's decision on admissibility or dismissal, mirroring the time limit applicable to the admissibility assessment itself. This time limit would ensure procedural efficiency and prevent misuse of the complaints mechanism by discouraging delayed or repetitive challenges.

The detailed rules on the procedure for handling requests for review would be set out in the implementing provisions.

**Proposal 17.** Article 9b(3) of the OLAF Regulation should be amended to introduce an internal review procedure allowing complainants to request reconsideration of decisions declaring a complaint inadmissible, dismissing a complaint as manifestly unfounded, or finding that it falls outside the Controller's mandate. Requests for an internal review would have to be submitted within ten working days of notification of the Controller's decision. The scope of the review procedure should not extend to a re-examination of decisions on the merits of admissible complaints, including recommendations addressed to OLAF pursuant to Article 9b(5) of the OLAF Regulation.

## 2.7. Suspensive effect of complaints

Article 9b(1), last sentence, of the OLAF Regulation explicitly provides that 'the lodging of a complaint shall have no suspensive effect on the conduct of the investigation that is the subject of the complaint'. While this is intended to prevent the complaints mechanism being abused as a means of delaying or obstructing OLAF investigations, an absolute and unconditional prohibition of the suspensive effect of complaints may, in certain cases, raise concerns in terms of fundamental rights, procedural guarantees and effective administrative oversight.

In particular, the absence of any possibility of a suspensive effect may limit the practical effectiveness of the complaints mechanism in cases where the **alleged procedural irregularity could have irreversible effects if the investigation continues uninterrupted**. This may be the case, for example, where a complaint concerns serious shortcomings affecting the rights of defence, the legality of investigative measures, the presence of alleged conflicts of interest among members of the investigation team, or the protection of fundamental rights. In such situations, continuing the investigation while the complaint is being examined could render any subsequent finding of a breach largely theoretical, thereby weakening the remedial value of the Controller's

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<sup>36</sup> See the Decision of the European Ombudsman of 14 September 2020 concerning requests for review, available at: <https://link.europa.eu/87Q64m>.

intervention. It could also hinder any further action taken by OLAF in the course of the ongoing investigation.

Moreover, the systemic exclusion of any suspensive effect could constrain the Controller's ability to provide effective oversight and ensure meaningful protection of procedural guarantees during the investigative phase. While the Controller does not and should not interfere with the conduct of investigations, **the absence of any flexibility in the system may limit her ability to take effective and timely action in exceptional cases where interim measures could be necessary to prevent serious and irreparable harm.**

A more nuanced approach, allowing for an exceptional suspensive effect under clearly specified conditions, could strike a more appropriate balance between the need to safeguard the efficiency and continuity of OLAF investigations and the requirement to ensure effective protection of fundamental rights and procedural guarantees. In practice, the Controller has already developed an approach whereby, in particularly sensitive cases, she has requested that OLAF temporarily suspend its investigative activities while a complaint is being examined. Likewise, **there have been instances of OLAF investigations being suspended on the Office's own initiative upon receiving notification that a complaint has been lodged with the Controller.** However, this practice lacks a clear legal basis.

To reconcile the interests of efficiency and continuity of OLAF investigations with the need to protect fundamental rights and procedural guarantees effectively, the OLAF Regulation should be amended to allow, but not require, the suspension of OLAF investigations in duly justified cases. To prevent abusive or dilatory use of the complaints mechanism, the general rule should remain that lodging a complaints has no automatic suspensive effect. Article 9b(1), last sentence, of the OLAF Regulation should be amended to recognise the Controller's prerogative to recommend suspending an OLAF investigation where necessary to prevent serious harm, ensure procedural fairness or safeguard the integrity of the investigation.

The Regulation should also lay down a corresponding obligation on OLAF to give due consideration to any recommendation for suspension made by the Controller and, where justified, to implement it. In addition, the Regulation should expressly acknowledge the possibility for OLAF to suspend an investigation *ex officio* where circumstances so require. This approach would preserve the effectiveness of OLAF investigations while strengthening the practical impact of the complaints mechanism and reinforcing trust in its capacity to safeguard fundamental rights.

**Proposal 18.** Article 9b(1) of the OLAF Regulation should be amended to allow the Controller to request the suspension of an ongoing investigation in duly justified cases, with OLAF being required to give due consideration to such a request. The OLAF Regulation should also expressly recognise that OLAF may suspend an investigation on its own initiative while the Controller examines the complaint, informing the Controller accordingly.

## 2.8. Cases pending adjudication in legal proceedings

At present, the OLAF Regulation contains no express provision addressing the interplay between the complaints mechanism and judicial proceedings before national or EU courts.

Article 6 of the implementing provisions requires the Controller to close a case when he or she becomes aware that the facts which put forward in the complaint are, or have been, the subject of legal proceedings. However, this procedural safeguard is not currently reflected in Article 9b of the OLAF Regulation. This absence creates uncertainty for both complainants and the administration as to how complaints should be treated when the underlying matters are already subject to judicial proceedings.

As the complaints mechanism is intended to complement, rather than run in parallel with, actions brought before judicial authorities such as the General Court or the CJEU, the absence of an explicit provision in the OLAF Regulation risks the same matter being examined simultaneously by the Controller and a judicial authority. Such duplication could result in inconsistent factual assessments. Furthermore, this approach is consistent with the practice of comparable EU oversight bodies, notably the European Ombudsman<sup>37</sup>.

For these reasons, Article 9b of the OLAF Regulation should be amended to include a clear obligation for the Controller to close a case where the underlying matter is pending adjudication before the national or the EU courts. Incorporating this safeguard into the OLAF Regulation would enhance legal certainty, clarify the remedies available to persons concerned and prevent the duplication of proceedings.

**Proposal 19.** Article 9b of the OLAF Regulation should be amended in order to add a new provision requiring the Controller to close a case when he or she becomes aware that the facts which have been put forward in the complaint are, or have been, the subject of legal proceedings before judicial authorities.

## 2.9. Judicial review of decisions of the Director-General of OLAF not to follow a Controller recommendation

Article 9b of the OLAF Regulation provides for a complaints mechanism that enables the Controller to identify breaches of the procedural guarantees referred to in Article 9 or the rules applicable to OLAF investigations, including infringements of procedural requirements and fundamental rights. However, the mechanism is designed in such a way that it largely leaves the consequences of such findings to the discretion of the Director-General of OLAF, rather than attaching any legal effects to the Controller's determinations.

Under Article 9b(3) of the OLAF Regulation, when the Controller finds an infringement, he or she 'shall invite the Office to take action to resolve the complaint and inform the Controller accordingly'. To this end, the Controller may suggest specific actions to be taken<sup>38</sup>. Upon receiving OLAF's communication regarding the action taken or to be taken, the Controller must close the case if the solution provided is satisfactory<sup>39</sup>. Otherwise, if the Controller considers that the complaint can be resolved, Article 9b(5) of the OLAF Regulation provides that he or she 'shall issue a recommendation on how to resolve the complaint without delay and in any event

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<sup>37</sup> See Article 2(9) of the Statute of the European Ombudsman, *op. cit.*

<sup>38</sup> See Article 11(1), last sentence, of the Implementing Provisions.

<sup>39</sup> See Article 11(4) of the Implementing Provisions.

within two months of the Office informing the Controller of the action it has taken to resolve the complaint.’ This may include amending or repealing recommendations or reports, repeating investigative activities, or improving procedures in relation to the matters raised<sup>40</sup>.

Article 9b(7) of the OLAF Regulation sets out two possible scenarios. The first scenario, set out in the first sentence, reflects the general principle that ‘the Director-General shall take appropriate action as warranted by the recommendation’. In this case, after being informed of the action taken by OLAF to implement the recommendation, the Controller closes the case<sup>41</sup>. The second scenario arises when the Director-General decides not to follow the Controller’s recommendation. In this case, the second and third sentences of Article 9b(7) require the Director-General to communicate the main reasons for that decision to the complainant and the Controller (unless such communication would affect the ongoing investigation) and to record those reasons in a note attached to the final investigation report. Beyond that, the OLAF Regulation does not provide for any other substantive or procedural effect arising from the Director-General’s negative decision. However, the implementing provisions state that, after analysing this decision and any comments submitted by the complainant, the Controller must close the case, setting out definitive findings<sup>42</sup>.

To date, the Controller has issued only proposals for solutions under Article 9b(3), all of which have been accepted and implemented by OLAF. Therefore, no recommendations under Article 9b(5) of the OLAF Regulation have yet been issued. Although the scenario in which the Director-General decides not to follow a Controller’s recommendation has not materialised in practice, this possibility exists as a matter of law and cannot be dismissed as irrelevant. The mere existence of such a scenario reveals a potential structural weakness in the framework, as it allows for a situation in which a recommendation aimed at safeguarding fundamental rights could ultimately depend on the discretion of the very authority responsible for the investigation.

Under the current legal framework, even after the Controller, acting as an independent administrative oversight body, issues a recommendation following a finding that OLAF has breached procedural guarantees or the fundamental rights of a person concerned, the investigation may continue to its conclusion, without any obligation to remedy the breach. The final case report, adopted by OLAF after the Controller’s finding, would therefore be tainted by formally acknowledged defects, with the person concerned remaining affected by an investigation conducted in violation of the very safeguards that Article 9 and the related provisions of the OLAF Regulation aim to protect.

From the perspective of fundamental rights and procedural guarantees, it would be desirable for a decision of the Director-General not to follow a recommendation adopted after a finding of breach to be subject to judicial review by the CJEU. This would ensure that the Controller’s conclusions guarantee that unlawful investigative practices cannot persist without the possibility of independent judicial oversight. However, the Controller is well aware that such a solution is not legally feasible under the current structure of EU law, given the admissibility requirements

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<sup>40</sup> See Article 12(4) of the Implementing Provisions.

<sup>41</sup> See Article 13(1) of the Implementing Provisions.

<sup>42</sup> See Article 13(2)(b), last sentence, of the Implementing Provisions.

for actions for annulment<sup>43</sup> under Article 263 of the Treaty on the Functioning of the European Union (“TFEU”)<sup>44</sup> and actions for failure to act<sup>45</sup> under Article 265 of the TFEU.

This structural limitation highlights the need for legislative reflection. If the EU legislators were to undertake a far-reaching reform under which either (i) the Director-General of OLAF were obliged to follow the Controller’s recommendations, or (ii) OLAF’s final investigative conclusions were to produce binding legal effects for the persons concerned, it should follow, as a matter of principle, that a decision by the Director-General of OLAF not to follow a recommendation issued by the Controller after a finding of breach could be subject to judicial review. In this way, the Controller’s findings would operate as a meaningful safeguard for the fundamental rights and procedural guarantees of persons concerned by OLAF investigations.

### III. On the function of the Controller

As is often the case when significant institutional reforms are introduced, the creation of the function of the Controller by Regulation 2020/2223<sup>46</sup> was accompanied by certain conceptual ambiguities that persist to this day.

The most consequential of these ambiguities concerns the independence of the Controller and the Controller’s administrative status. Further clarification in the OLAF Regulation would also be beneficial regarding the dual role of the Secretariat, which currently provides legal and administrative support to both the Supervisory Committee of OLAF and the Controller. Lastly, the Controller has identified a substantive gap in the OLAF Regulation regarding the

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<sup>43</sup> According to settled case-law, only measures producing binding legal effects of such a kind as to affect the applicant’s interests by bringing about a distinct change in their legal position constitute acts against which an action for annulment may be brought under Article 263 of the TFEU. See, for instance, the Judgment of the Court of Justice of the European Communities of 11 November 1981, *IBM v Commission*, Case 60/81, ECR 2639, EU:C:1981:264, paragraph 9; and the Order of the Court of First Instance of the European Communities (First Chamber) of 13 July 2004, *Comunidad Autónoma de Andalucía v Commission*, T-29/03, ECR II-2923, EU:T:2004:235, paragraph 29. In relation to OLAF investigations specifically, the EU Courts have consistently held that OLAF’s FCRs are not challengeable acts for the purposes of Article 263 of the TFEU. See, for instance, the Judgment of the Civil Service Tribunal of the European Union (Appeal Chamber) of 20 May 2010, *Commission v Violetti and Others*, T-261/09 P, ECR-SC, EU:T:2010:215, paragraphs 46-48; the Judgment of the Court of First Instance (Fourth Chamber) of 4 October 2006, *Tillack v Commission*, T-193/04, EU:T:2006:292, paragraphs 66-70; the Judgment of the Court of First Instance (Fourth Chamber, Extended Composition) of 6 April 2006, *Camós Grau v Commission*, T-309/03, EU:T:2006:110, paragraphs 47-51; and the Order of the Court of First Instance of the European Communities (First Chamber) of 13 July 2004, *Comunidad Autónoma de Andalucía v Commission*, T-29/03, ECR II-2923, EU:T:2004:235, paragraphs 31-40. The findings set out in a FCR of OLAF do not automatically lead to the initiation of judicial or disciplinary proceedings, and the competent authorities remain free to determine what action, if any, should be taken on the basis of OLAF’s FCR. Accordingly, those authorities alone have the power to adopt decisions with binding legal effects adversely affecting the persons concerned.

<sup>44</sup> Consolidated version of the Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, p. 47).

<sup>45</sup> As regards actions for failure to act brought under Article 265 of the TFEU, their object is the unlawful failure of an IBOA to adopt an act having legal effects, if it was under a legal obligation to do so. Article 9b(7) of the OLAF Regulation does not oblige the Director-General of OLAF to follow a Controller’s recommendation. Instead, it merely requires the Director-General of OLAF to comply with it or give reasons as to why they have not. For an action for failure to act brought by an individual against OLAF, see the Order of the General Court (Eighth Chamber) of 22 June 2015, *In vivo VOO v Commission*, T 690/13, EU:T:2015:519, paragraphs 21-25.

<sup>46</sup> Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) 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).

Controller's ability to issue opinions to the Director-General of OLAF on his or her own initiative.

### 3.1. Administrative status of the Controller

Article 9a(2) of the OLAF Regulation currently provides that '[t]he Controller shall be administratively attached to the Supervisory Committee'. In practice, and in the interpretation consistently applied by the European Commission, the administrative status of the Controller has been understood as being administratively linked to the Secretariat of the Supervisory Committee. This reading was expressly confirmed in the Call for applications for the selection of the Controller of procedural guarantees in the context of investigations conducted by the European Anti-Fraud Office (OLAF)<sup>47</sup> which stated that '[t]he function of Controller is administratively attached to the OLAF Supervisory Committee, i.e. its Secretariat'.

Consequently, the current wording of Article 9a(2) is not consistent with the Controller's functional independence. Article 9a(6) of the OLAF Regulation explicitly provides that the Controller must perform their duties independently, including from the Supervisory Committee itself. Attaching the Controller administratively to the Secretariat, rather than to the Supervisory Committee, would better safeguard that independence in practice and prevent any perception that the Controller is subordinate to, or under the administrative authority of, the Supervisory Committee.

This would also be consistent with the institutional and functional reality of the Supervisory Committee. Its members are independent external experts who are not part of the European Commission's staff and do not constitute an administrative structure capable of hosting or managing personnel. Consequently, the Controller cannot be administratively attached to the Supervisory Committee itself. Any administrative placement must therefore be necessarily exercised through an existing administrative entity. In practice, this function can only be performed by the Secretariat of the Supervisory Committee, which is provided by the European Commission and constitutes the sole permanent administrative structure supporting the Committee's activities.

However, the wording of Article 9a(2) of the OLAF Regulation may create ambiguity (or at least the perception of ambiguity) regarding the status and independence of the Controller in relation to the Supervisory Committee. To avoid such misinterpretation, the provision should be amended to clearly state that the Controller is administratively linked to the Secretariat.

**Proposal 20.** Article 9a(2) of the OLAF Regulation should be amended to state that the Controller is administratively linked to the Secretariat.

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<sup>47</sup> See the Call for applications for the selection of the Controller of procedural guarantees in the context of investigations conducted by the European Anti-Fraud Office (OLAF) – COM/2021/20062 (OJ C 279A, 13.7.2021, p. 1).

### 3.2. The Secretariat

The status and functions of the Secretariat should also be clarified to reflect its dual role in supporting both the Supervisory Committee and the Controller.

At present, the OLAF Regulation only refers to the Secretariat as the ‘Secretariat of the Supervisory Committee’, even though in practice the Secretariat provides administrative and, most importantly, legal support to both bodies. This discrepancy creates ambiguity regarding the Secretariat’s mandate, reporting lines and independence in matters falling under the Controller’s remit.

To ensure coherence in the OLAF Regulation and to safeguard the independence of the Secretariat, all relevant provisions should be revised to refer to the ‘Secretariat of the Controller and the Supervisory Committee’ instead of the current formulation.

Furthermore, Article 9a(2) of the OLAF Regulation should be amended to formalise the Controller’s involvement in the recruitment of Secretariat staff. While the Controller has been involved in practice, this involvement currently rests on institutional goodwill rather than on a legal requirement. Given the Secretariat’s dual role, it is essential that both the Supervisory Committee and the Controller participate in the recruitment process. Therefore, a provision mirroring Article 15(8) of the OLAF Regulation, under which the Supervisory Committee must be consulted, and its views be taken into account before the appointment of Secretariat staff, should be introduced for the Controller.

Article 15(8) of the OLAF Regulation, which states that ‘[t]he Secretariat shall act on the instructions of the Supervisory Committee and independently from the Commission’, should also be clarified. As a matter of logic, the scope of those instructions should be limited to matters falling within the Supervisory Committee’s remit. For matters falling within the Controller’s remit, the Secretariat should take instructions exclusively from the Controller. Explicitly stating this division of powers in Article 9a of the OLAF Regulation would prevent uncertainty and strengthen the operational independence of both bodies, while ensuring that the Secretariat is not placed in conflicting reporting lines.

Additionally, the current administrative attachment of the Secretariat to the Office for the Administration and Payment of Individual Entitlements, also known as the Paymaster Office (the ‘PMO’), should be reconsidered. Given that the Secretariat’s status and functions do not align with the PMO’s core mission, the Controller is of the opinion that a more appropriate and functionally consistent organisational location for the Secretariat which better aligns with its mandate while also guaranteeing its independence should be identified. In this regard, a more suitable placement could be found, for instance, within the Commission’s Secretariat-General or the Directorate-General for Justice and Consumers.

Finally, Article 9a(3) of the OLAF Regulation, which currently provides that ‘the Commission shall, from within its approved budget, allocate to the Supervisory Committee the personnel and financial means necessary for the Controller’, should be revised. Consistent with the understanding that the Controller is administratively attached to the Secretariat rather than directly to the Supervisory Committee, this provision should be amended to refer instead to the

allocation of personnel and financial means ‘to the Secretariat’, which supports the Controller in the performance of their duties. Similarly, the European Commission must ensure that the Secretariat has sufficient staff and resources to fulfil its dual role effectively. Although this matter concerns administrative management rather than legislative amendment, it should be emphasised here, as insufficient resources may directly undermine the independent functioning of both the Supervisory Committee and the Controller.

**Proposal 21.** All references in the OLAF Regulation to the ‘Secretariat of the Supervisory Committee’ or the ‘Secretariat’ should be amended to read ‘Secretariat of the Controller and the Supervisory Committee’.

**Proposal 22.** Article 9a(2) of the OLAF Regulation should be amended to provide that the Controller must be consulted and that his or her views must be taken into account before the appointment of any staff to the Secretariat.

**Proposal 23.** Article 9a of the OLAF Regulation should be amended to specify that the Secretariat must act only on the instructions of the Controller for matters falling within the Controller’s remit. A corresponding clarification should be included in Article 15(8) of the OLAF Regulation stating that the Secretariat must act under the instructions of the Supervisory Committee only for matters falling within the Committee’s remit.

**Proposal 24.** The Controller calls upon the EU legislators to consider attaching the Secretariat to an organizational location that better aligns with its functions and guarantees its independence.

**Proposal 25.** Article 9a(3) of the OLAF Regulation should be amended to specify that the Commission must allocate the personnel and financial means necessary for the Controller to the Secretariat rather than the Supervisory Committee.

#### **IV. On relations between the Controller and the Director-General of OLAF**

The Controller’s mandate is primarily exercised in relation to individual complaints submitted by persons concerned by OLAF investigations. Within that framework, the Controller engages with the Director-General through decisions adopted in specific cases. Those decisions are, by their nature, case-specific and focus on the assessment of alleged breaches of fundamental rights or procedural guarantees in individual investigations.

Over the years, however, the Controller has developed a consistent practice of including *obiter dicta* in their decisions. These observations go beyond the strict resolution of the individual complaint and are intended to strengthen the overall protection of the fundamental rights and procedural guarantees of persons concerned and to promote compliance with the rules applicable to OLAF investigations. Even in cases where no formal breach is identified, these *obiter dicta* serve an important function by highlighting shortcomings, interpretative uncertainties and areas where improvement may be warranted, either in the OLAF Regulation or in OLAF practices. Through this practice, the Controller has sought to address broader concerns and

provide constructive guidance to OLAF with a view to enhancing the quality and legality of its investigative activities.

However, as explained below, the Controller believes that including a legal basis in the OLAF Regulation for the Controller to issue opinions addressed to the Director-General of OLAF on her own initiative would add value and transparency to her decisions and *obiter dicta* and would contribute overall to the effective exercise of the Controller's mandate.

### **Controller's opinions addressed to the Director-General of OLAF**

The OLAF Regulation provides in Article 9b(9) that the Director-General of OLAF 'may request the opinion of the Controller on any matter related to procedural guarantees or fundamental rights that falls within the Controller's mandate'. In practice, however, this mechanism has been used only twice: for an opinion on the revised GIPs<sup>48</sup> and for the present opinion on the application and impact of the provisions of the OLAF Regulation. The current framework therefore provides for a mechanism that is exclusively triggered at the discretion of the Director-General of OLAF.

This structure does not adequately reflect the Controller's accumulated experience, nor does it recognise the public-interest value of addressing broader issues proactively. The fact that such views currently appear only indirectly, through *obiter dicta* in unpublished individual decisions, limits their visibility and their potential impact. Moreover, the absence of a clear legal basis for the Controller to express her views outside the context of individual complaints restricts the possibility of a structured and constructive dialogue with the Director-General of OLAF on cross-cutting issues relating to fundamental rights and procedural guarantees.

To remedy this situation and ensure the effective exercise of the Controller's mandate, the OLAF Regulation should be amended to explicitly empower the Controller to submit opinions to the Director-General of OLAF **on the Controller's own initiative**, on any matter relating to fundamental rights of procedural guarantees falling within her remit. This could be achieved by amending either Article 9a(8), which concerns the Controller's powers, or in Article 9b(9), which currently limits the issuance of opinions to those requested by the Director-General of OLAF. In either case, expressly recognising the Controller's right to issue own-initiative opinions would strengthen the preventive and systemic dimension of the Controller's role, without encroaching on OLAF's operational independence.

<p><b>Proposal 26.</b> Article 9a(8) and/or Article 9b(9) of the OLAF Regulation should be amended to confer on the Controller the power to issue opinions addressed to the Director-General of OLAF on his or her own initiative, on any matter relating to fundamental rights, procedural guarantees or rules applicable to OLAF investigations that falls within the Controller's remit.</p>
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<sup>48</sup> See the Controller's Opinion on the draft Guidelines on Investigation Procedures (GIPs), *op. cit.*

## V. On relations between the Controller and the Supervisory Committee

The Controller and the Supervisory Committee have complementary missions and pursue common objectives. However, they are distinct functions and bodies, each operating on an equal footing within the scope of their respective mandates. Nevertheless, the establishment of the Controller's function by Regulation 2020/2223<sup>49</sup> was accompanied by conceptual ambiguities as to the Controller's status in relation to the Supervisory Committee. To strengthen the Controller's independence and ensure the continued development of constructive working relations with the Supervisory Committee, based on mutual trust and sound cooperation, certain amendments to the OLAF Regulation are necessary.

### 5.1. Systemic issues

Article 9a(9), last sentence, of the OLAF Regulation provides that '[t]he Controller shall report to the Supervisory Committee on any systemic issue arising out of his or her recommendations'. This reporting mechanism warrants reconsideration for the reasons set out below.

In practice, the provision has never been applied, as the Controller has not reported on any systemic issue to the Supervisory Committee. This is primarily because the Controller has never issued a recommendation to the Director-General of OLAF. Instead, over the past four years, the Controller has submitted three proposals for solution to the Director-General under Article 9b(3), all of which were accepted and implemented by OLAF, thereby eliminating the need for formal recommendations.

Moreover, issuing a recommendation to the Director-General does not necessarily indicate the existence of a systemic issue. Rather, it reflects a procedural situation in which the Director-General decides not to follow the Controller's proposed solution in a specific case, which prompts the Controller to issue a recommendation under Article 9b(5) of the OLAF Regulation. Systemic issues, by contrast, may be identified much earlier, including during the admissibility assessment or during the examination of the merits of complaints, irrespective of whether a recommendation is ultimately issued. Therefore, limiting the reporting obligation to systemic issues 'arising out of recommendations' fails to capture the full range of systemic concerns identified through the Controller's case-handling activity and does not adequately reflect the reality of the Controller's mandate.

To ensure the practical effectiveness of this provision, the Controller considers that the OLAF Regulation should enable the Controller to report on systemic and general issues directly to the Director-General of OLAF by means of opinions (see **Proposal 25**). The Supervisory Committee would then be informed of the Controller's opinion.

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<sup>49</sup> See Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 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).

**Proposal 27.** Article 9a(9), last sentence, of the OLAF Regulation should be amended to require the Controller to inform the Supervisory Committee of any systemic issues reported to the Director-General of OLAF by means of an opinion.

## 5.2. Recommendations addressed to the Director-General of OLAF

Article 9b(5) of the OLAF Regulation currently states that ‘[b]efore issuing a recommendation the Controller shall consult the Supervisory Committee for its opinion’. This requirement appears neither practical nor substantively justified, given the nature of the Controller’s mandate and how the Supervisory Committee operates. The Controller’s role is to ensure the effective protection of the fundamental rights of persons concerned in ongoing cases, and the OLAF Regulation sets out a strict and time-sensitive procedure for that purpose. Where the Director-General of OLAF decides not to follow a proposed solution under Article 9b(3), the Controller must issue a recommendation within two months (Article 9b(5)). The obligation to consult the Supervisory Committee within this short timeframe is difficult to reconcile with the Committee’s working methods. The Committee is composed of external experts who meet on a monthly basis and cannot realistically be expected to provide input within the required timeframe in a manner consistent with the urgency inherent in the Controller’s mechanism.

Moreover, such mandatory consultation risks introducing procedural delays without offering corresponding added value. The Controller is independent and, under Article 9a(9) of the OLAF Regulation, is prohibited from discussing the specific circumstances of individual cases and is required to maintain strict confidentiality, including vis-à-vis the Supervisory Committee. As a result, the Supervisory Committee would not be in a position to assess the substance of the case or to provide a meaningful and informed opinion. In these circumstances, the requirement to consult the Supervisory Committee before issuing a recommendation does not appear logical, nor does it reflect the respective roles of the Controller and the Supervisory Committee. It also fails to demonstrate the practical relevance of the Supervisory Committee’s contribution to the handling of individual cases within the Controller’s remit.

Therefore, it is the Controller’s view that the provision should be amended to enable the Controller to simply *inform* the Supervisory Committee of any recommendation addressed to the Director-General of OLAF, without requiring that the Supervisory Committee to issue an opinion on the matter.

**Proposal 28.** Article 9b(5) of the OLAF Regulation should be amended to replace the obligation for the Controller to consult the Supervisory Committee for an opinion before issuing a recommendation under Article 9b(5) with an obligation for the Controller to *inform* the Supervisory Committee of any recommendation addressed to the Director-General of OLAF.

## 5.3. Implementing provisions of the Controller

Article 9b(11) of the OLAF Regulation provides that ‘[t]he Controller shall, after consulting the Supervisory Committee, adopt implementing provisions for the handling of complaints’. In

compliance with this provision, the Controller consulted the Supervisory Committee on 29 September 2022 before adopting the implementing provisions.

However, as handling complaints lies exclusively within the Controller's remit, consultation is neither necessary nor consistent with the Controller's independent role. An information requirement would ensure transparency and goodwill between the Controller and the Supervisory Committee without undermining the autonomy of the complaints mechanism. Consequently, Article 9b(11) of the OLAF Regulation should be amended so that, in future, the Controller is only required to *inform* the Supervisory Committee of any revisions to the Implementing Provisions.

**Proposal 29.** Article 9b(11) of the OLAF Regulation should be amended to clarify that the Controller must inform the Supervisory Committee of any revisions to the implementing provisions.

#### 5.4. Cooperation and regular exchanges of views with the Supervisory Committee

The Supervisory Committee reinforces and guarantees OLAF's independence by regularly monitoring the implementation of OLAF's investigative function, thereby acquiring a comprehensive overview of how OLAF exercises its powers. The Controller, by contrast, focuses on individual cases involving alleged breaches of fundamental rights, procedural guarantees and the rules applicable to OLAF investigations.

Despite these distinct mandates, there are notable points of intersection between their respective activities. In particular, this is evidenced by the second subparagraph of Article 15(1) of the OLAF Regulation, which tasks the Supervisory Committee with monitoring developments relating to the application of procedural guarantees and the duration of investigations which are issues that also recur in complaints lodged with the Controller. Both bodies would therefore benefit from a structured exchange of experiences.

The OLAF Regulation could accordingly provide for a structured and periodic exchange of views between the Controller and the Supervisory Committee, for example on an annual basis. Such an exchange would enable each body, within the limits of their respective mandates and confidentiality obligations, to inform the other of relevant developments relating to procedural guarantees, the duration of investigations, and other cross-cutting issues arising from their respective activities. By facilitating mutual awareness and dialogue, this mechanism would allow potential systemic concerns affecting OLAF's investigative function to be identified at an early stage, while fully preserving the independence and distinct roles of each body.

**Proposal 30.** Articles 9a and 15 of the OLAF Regulation should be amended to provide for a periodic exchange of views between the Controller and the Supervisory Committee.

## VI. On relations with other stakeholders

The Controller considers it important to maintain regular contact with the EU institutions and other stakeholders to obtain feedback on the role of the Controller and, ultimately, to improve the protection of procedural guarantees and the fundamental rights of persons concerned in OLAF investigations.

Visibility is another important aspect of the Controller's mandate. Although individual final decisions cannot be made public, general reflections and insights can be shared. The Controller currently presents her annual report to the European Parliament's Committee on Budgetary Control (the 'CONT Committee') and to the Council's Working Party on Combating Fraud (the 'GAF'). Nevertheless, there is room to raise awareness of the Controller's activities. Outreach activities have included meetings with OLAF investigators and legal advisers to explain the complaints mechanism and gather feedback, thereby reinforcing the practical implementation of the Regulation.

### Exchange of views with the institutions

Article 16 of the OLAF Regulation governs the annual exchange of views between the Director-General of OLAF and the institutions. Article 16(1) provides that '[t]he European Parliament, the Council and the Commission shall once a year meet the Director-General for an exchange of views at political level to discuss the Office's policy relating to methods of preventing and combating fraud, corruption or any other illegal activity affecting the financial interests of the Union'.

To raise awareness of the types of allegations made under the complaints mechanism and to provide greater visibility of how OLAF deals with procedural guarantees and the fundamental rights of persons concerned, Article 16 of the OLAF Regulation should expressly provide for the Controller's participation in the exchange of views with the institutions. Comparable provisions already exist for the Supervisory Committee (who 'shall participate'), the European Chief Prosecutor (who 'shall be invited to attend') and Representatives of the Court of Auditors, the EPPO, Eurojust and Europol (who 'may be invited to attend on an ad hoc basis').

**Proposal 31.** Article 16(1) of the OLAF Regulation should be amended to expressly provide for the Controller's participation in the annual exchange of views between the Director-General of OLAF and the institutions, either by stipulating that the Controller *shall participate* or, at a minimum, that the Controller *shall be invited to participate*, in order to contribute, within the scope of his or her mandate, to discussions on procedural guarantees and the protection of fundamental rights in OLAF investigations.

## Annex. The Controller's proposals

### 1. On fundamental rights and procedural guarantees

**Proposal 1.** Articles 9 and 9b(1) of the OLAF Regulation should be amended to include an explicit reference to the Charter, clearly stating that OLAF investigations must be conducted in full compliance with the Charter and that persons concerned are entitled to lodge a complaint with the Controller on any breach by OLAF of the fundamental rights guaranteed by the Charter.

**Proposal 2.** The OLAF Regulation should be amended to require that the identification of a person concerned, whether at the opening of an investigation or at any later stage, be formalised by means of an explicit decision of the Director-General. The precise moment at which a person acquires the status of person concerned should also be clearly and contextually recorded in the OCM, thereby ensuring legal certainty. These requirements should apply equally to both internal and external investigations.

**Proposal 3.** Article 9(3) of the OLAF Regulation should be amended in line with the existing case-law of the EU courts to expressly recognise the right of persons concerned, in both internal and external investigations, to be informed of their status as a person concerned *as soon as possible*. This amendment should not affect OLAF's ability to defer such notification where necessary (as already provided for under Article 9(3)).

**Proposal 4.** Article 4 of the OLAF Regulation should be amended to expressly recognise the right of persons concerned in internal investigations to be assisted by a person of their choice during inspections of IBOA premises and to invoke the privilege against self-incrimination. This amendment would ensure that persons concerned in internal investigations enjoy the same procedural guarantees currently afforded to persons concerned in external investigations, thereby eliminating unwarranted distinctions, increasing fairness and ensuring the effective protection of fundamental rights throughout all OLAF investigative activities. However, the exercise of this right should not prevent OLAF's access to premises or unduly delay inspections, in line with the safeguards already provided for in Article 3(8) of the OLAF Regulation.

**Proposal 5.** Articles 3, 4 and 9 of the OLAF Regulation should be amended to introduce a clear and explicit obligation for OLAF to provide persons concerned with written information on their fundamental rights and procedural guarantees. This written notification should be delivered at the outset of an investigation, as soon as an individual or legal entity is identified as a person concerned, or at the latest before OLAF carries out an inspection or on-the-spot check. In addition, before the start of an inspection or an on-the-spot check, the person concerned should be informed in writing of the procedure applicable to on-the-spot checks and inspections of IBOA premises.

**Proposal 6.** Article 9(1) of the OLAF Regulation should be amended to state that investigations must be conducted not only objectively and impartially, but also (i) in accordance with the principle of fairness emanating from the right to good administration under Article 41(1) of the Charter, and (ii) in compliance with the highest professional standards.

**Proposal 7.** The Controller calls upon the EU legislators to consider introducing clearer and more balanced rules in the OLAF Regulation on the information provided to persons concerned at the stage of the summary of facts, with a view to ensuring the effective exercise of the right to be heard. In particular, the Regulation should encourage OLAF, to the greatest extent possible and without undermining the confidentiality of investigations, to provide persons concerned with the information underlying the factual allegations set out in the summary of facts or at least with sufficiently detailed extracts. Where full disclosure of such information is not feasible, appropriate safeguards, such as targeted redactions or structured summaries, should be considered in order to reconcile the protection of investigative interests with the rights of defence.

**Proposal 8.** The Controller calls upon the EU legislators to consider strengthening the procedural framework governing OLAF investigations by extending the right to be heard to allow persons concerned to submit observations not only on the facts established, but also on the provisional legal classification of those facts and the preliminary conclusions drawn by OLAF. This would enhance the practical effectiveness of the rights of defence, contribute to the accuracy of OLAF's final conclusions and increase compliance with the principles of good administration and fundamental rights protection.

**Proposal 9.** Article 11(7) of the OLAF Regulation should be amended in order to:

- (i) extend the right to be informed of the closure of an investigation to all persons concerned, regardless of whether evidence has been found against them;
- (ii) provide for exceptions to this right when it would prejudice the effectiveness of subsequent action or breach confidentiality; and
- (iii) specify that any communication informing the person concerned of the closure of an investigation must expressly indicate the exact date on which the investigation was closed.

**Proposal 10.** The Controller calls upon the EU legislators to consider amending the OLAF Regulation to provide for the right of persons concerned to receive a copy of the FCR on the conclusion of an investigation, unless disclosure would jeopardise the effectiveness of follow-up actions by competent authorities or breach confidentiality requirements.

**Proposal 11.** The Controller calls upon the EU legislators to consider amending Article 9 of the OLAF Regulation to provide for the rights and procedural guarantees afforded to whistleblowers under the Whistleblowing Directive, to informants under Article 22a of the Staff Regulations, and to other sources of information and victims of misconduct falling within OLAF's investigative mandate.

**Proposal 12.** Article 5(4) of the OLAF Regulation should be amended to extend the right to be informed of the decision whether or not to open an OLAF investigation to whistleblowers under the Whistleblowing Directive and other sources providing information of potential investigative interest to OLAF. The resulting provision should allow for the deferral of such information in duly justified cases, including instances where the person concerned has not been informed of

his or her status because of a deferral or where disclosure would undermine confidentiality requirements.

## 2. On the complaints mechanism

**Proposal 13.** The Controller calls upon the EU legislators to consider amending Article 9b(1) of the OLAF Regulation to extend the personal scope of the complaints mechanism to include not only persons concerned but also witnesses, whistleblowers within the meaning of the Whistleblowing Directive, informants under Article 22a of the Staff Regulations, other sources of information and victims of misconduct within OLAF's investigative remit.

**Proposal 14.** Article 9b(3) of the OLAF Regulation should be amended in order to introduce a simplified procedure enabling the Controller to dismiss the following types of complaint directly:

- (i) manifestly unfounded complaints (i.e. complaints that are clearly frivolous or false or that lack any substantive basis), without requiring the full initial processing procedure;
- (ii) unsubstantiated complaints (i.e. complaints in which the allegations are not supported by clear evidence or are internally contradictory);
- (iii) complaints falling outside the Controller's mandate, including those falling within the exclusive competence of other EU bodies, such as the EDPS. Where a complaint falls outside the scope of the Controller's remit, the Controller may advise the complainant to address it to the relevant authority.

**Proposal 15.** Article 9b(3) of the OLAF Regulation should be amended to introduce a simplified procedure enabling the Controller to dismiss abusive and/or repetitive complaints directly, without undertaking the full initial admissibility assessment.

**Proposal 16.** Article 9b(2) of the OLAF Regulation should be amended to clarify how the one-month limitation period is calculated where an OLAF investigation has been closed. In particular, the Regulation should ensure that the one-month limitation period applicable to closed investigations operates in a manner consistent with the principles of legal certainty and effective access to the complaints mechanism.

To that end, the amendment should either:

- (i) expressly provide that, in exceptional cases where persons concerned are not informed of the closure of an OLAF investigation no complaint may be lodged with the Controller;  
or
- (ii) specify that, in such cases, the one-month limitation period begins when the person concerned becomes aware of the closure of the OLAF investigation. The Controller is of the view that this option would be more aligned with the protection of the rights of persons concerned.

**Proposal 17.** Article 9b(3) of the OLAF Regulation should be amended to introduce an internal review procedure allowing complainants to request reconsideration of decisions declaring a complaint inadmissible, dismissing a complaint as manifestly unfounded, or finding that it falls

outside the Controller's mandate. Requests for an internal review would have to be submitted within ten working days of notification of the Controller's decision. The scope of the review procedure should not extend to a re-examination of decisions on the merits of admissible complaints, including recommendations addressed to OLAF pursuant to Article 9b(5) of the OLAF Regulation.

**Proposal 18.** Article 9b(1) of the OLAF Regulation should be amended to allow the Controller to request the suspension of an ongoing investigation in duly justified cases, with OLAF being required to give due consideration to such a request. The OLAF Regulation should also expressly recognise that OLAF may suspend an investigation on its own initiative while the Controller examines the complaint, informing the Controller accordingly.

**Proposal 19.** Article 9b of the OLAF Regulation should be amended in order to add a new provision requiring the Controller to close a case when he or she becomes aware that the facts which have been put forward in the complaint are, or have been, the subject of legal proceedings before judicial authorities.

### **3. On the function of the Controller**

**Proposal 20.** Article 9a(2) of the OLAF Regulation should be amended to state that the Controller is administratively linked to the Secretariat.

**Proposal 21.** All references in the OLAF Regulation to the 'Secretariat of the Supervisory Committee' or the 'Secretariat' should be amended to read 'Secretariat of the Controller and the Supervisory Committee'.

**Proposal 22.** Article 9a(2) of the OLAF Regulation should be amended to provide that the Controller must be consulted and that his or her views must be taken into account before the appointment of any staff to the Secretariat.

**Proposal 23.** Article 9a of the OLAF Regulation should be amended to specify that the Secretariat must act only on the instructions of the Controller for matters falling within the Controller's remit. A corresponding clarification should be included in Article 15(8) of the OLAF Regulation stating that the Secretariat must act under the instructions of the Supervisory Committee only for matters falling within the Committee's remit.

**Proposal 24.** The Controller calls upon the EU legislators to consider attaching the Secretariat to an organizational location that better aligns with its functions and guarantees its independence.

**Proposal 25.** Article 9a(3) of the OLAF Regulation should be amended to specify that the Commission must allocate the personnel and financial means necessary for the Controller to the Secretariat rather than the Supervisory Committee.

#### 4. On relations between the Controller and the Director-General of OLAF

**Proposal 26.** Article 9a(8) and/or Article 9b(9) of the OLAF Regulation should be amended to confer on the Controller the power to issue opinions addressed to the Director-General of OLAF on his or her own initiative, on any matter relating to fundamental rights, procedural guarantees or rules applicable to OLAF investigations that falls within the Controller's remit.

#### 5. On relations between the Controller and the Supervisory Committee

**Proposal 27.** Article 9a(9), last sentence, of the OLAF Regulation should be amended to require the Controller to inform the Supervisory Committee of any systemic issues reported to the Director-General of OLAF by means of an opinion.

**Proposal 28.** Article 9b(5) of the OLAF Regulation should be amended to replace the obligation for the Controller to consult the Supervisory Committee for an opinion before issuing a recommendation under Article 9b(5) with an obligation for the Controller to *inform* the Supervisory Committee of any recommendation addressed to the Director-General of OLAF.

**Proposal 29.** Article 9b(11) of the OLAF Regulation should be amended to clarify that the Controller must inform the Supervisory Committee of any revisions to the implementing provisions.

**Proposal 30.** Articles 9a and 15 of the OLAF Regulation should be amended to provide for a periodic exchange of views between the Controller and the Supervisory Committee.

#### 6. On relations with other stakeholders

**Proposal 31.** Article 16(1) of the OLAF Regulation should be amended to expressly provide for the Controller's participation in the annual exchange of views between the Director-General of OLAF and the institutions, either by stipulating that the Controller *shall participate* or, at a minimum, that the Controller *shall be invited to participate*, in order to contribute, within the scope of his or her mandate, to discussions on procedural guarantees and the protection of fundamental rights in OLAF investigations.