



# 2018 Activity Report

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OLAF Supervisory Committee

June 2019

SUPERVISORY COMMITTEE





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**Committee Member since 23 January 2017, Chair since 1 March 2017**

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General Secretary of Internal Security System, Portugal.  
Public prosecutor.



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## FOREWORD BY THE CHAIRMAN OF THE OLAF SUPERVISORY COMMITTEE

The year 2018 was a year of major changes for OLAF; a new Director-General was appointed. In the appointment procedure the OLAF Supervisory Committee acted as an observer and ultimately gave its approval to the procedure followed. The Supervisory Committee looks forward to fruitful cooperation and it is fully committed to assisting OLAF in its crucial fight against fraud, corruption and irregular activities to the prejudice of the EU financial interests. The Supervisory Committee is grateful for the good cooperation with Mr Nick Ilett, the acting Director-General during a major part of the year.

There were also some significant changes in the Secretariat of the Supervisory Committee. The post of Head of the Secretariat is currently vacant. The functioning of the Secretariat was further not improved because of long absences of staff members. It appeared not possible to find temporary replacements. This all resulted in producing less than was intended at the beginning of the year.

The Supervisory Committee met monthly as required by Regulation (EU) No 883/2013 being a priority maintaining regular contacts with the EU institutions and OLAF's partners and stakeholders. In each meeting officials of OLAF, including the Director-General were also invited and exchanges of opinions took place on topical issues. The Supervisory Committee also took a keen interest in the establishment of the European Public Prosecutors Office (EPPO). The Committee was briefed on developments by OLAF at each meeting.

The Supervisory Committee paid much attention to the proposal of the European Commission to revise Regulation (EU) No 883/2013, the Regulation on which the functioning of OLAF is based. A number of suggestions were made on how OLAF performance could be improved in the expert eyes of the Supervisory Committee. More information about the improvements that the Supervisory Committee proposed can be read in this annual report.

The Supervisory Committee also concentrated on formalizing new agreements with OLAF on how it reports to the Committee on two issues required by the Regulation. These are: reporting on the respect of procedural guarantees and reporting to the Supervisory Committee when investigations last longer than 12 months. Time will lead to the analysis of those and will tell whether they are satisfactory.

Visits were paid to the European Court of Auditors to acquaint ourselves with its activities on fraud control. These visits were fruitful. We are exploring possibilities of coming to a closer cooperation and it might result in a representative of the Court's staff being temporarily posted in the Secretariat of the Supervisory Committee.

We hope that by the time we write the next annual report, the Secretariat will be fully staffed and that the ambition of the Supervisory Committee to publish a number of opinions that make it possible to come to better fraud control in the European Union will have proven realistic. As before the Supervisory Committee strives to come to fruitful cooperation with OLAF by being critical but constructive.

I would particularly thank to the Secretariat of the Supervisory Committee for its work over the period despite the adverse circumstances.

Jan MULDER

Chairman of the OLAF Supervisory Committee

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## **MISSION STATEMENT**

### **Article 15(1) of Regulation (EU) No 883/2013:**

*'The Supervisory Committee shall regularly monitor the implementation by the Office of its investigative function, in order to reinforce the Office's independence in the proper exercise of the competences conferred upon it by this Regulation.*

*The Supervisory Committee shall in particular monitor developments concerning the application of procedural guarantees and the duration of investigations in the light of the information supplied by the Director-General in accordance with Article 7(8).'*

1. The Supervisory Committee was established to strengthen and guarantee OLAF's independence through regular monitoring of its investigative function and to assist the Director-General in the discharge of his responsibilities. It is fully committed to this remit. The Committee also interprets its role of assisting OLAF's Director-General in a way that best enables OLAF to improve its effectiveness as a rigorous and impartial EU investigatory body, entirely independent from undue external pressure and interference. This year is also the twentieth anniversary of OLAF which is an opportunity to reflect on how the Office has fulfilled its role and how it intends to go forward, in particular with the establishment of the European Public Prosecutor's Office (EPPO) in the fight against fraud, corruption and criminal offences affecting the EU budget. The Committee is ready to support OLAF in its efforts to improve the quality of its work and to play a key role in the new European area of justice in which OLAF's assistance to, support for and cooperation with the EPPO will be of a fundamental importance for the protection of the EU's financial interests.
2. The Committee provides OLAF's Director-General and the institutions with opinions and reports on OLAF's investigations without interference in the conduct of ongoing investigations. Regular monitoring of OLAF's investigations is the best method in order to guarantee its independence and the Committee was very much involved during this period in establishing a solid working basis with OLAF's new Director-General and in the improvement of the quality of the information sent to it by OLAF on a regular basis; this applies particularly to the information contained in reports on investigations running over twelve months, information on individual complaints against OLAF's investigations, and the information on those of OLAF's recommendations which were not followed by the relevant authorities. The Committee participates actively in the yearly inter-institutional exchange of views on OLAF's performance, consistently maintaining its position of setting up investigation policy priorities in line with the main areas of the EU budget expenditure.
3. The Supervisory Committee is accountable to the institutions which appointed its members and its last year activity report was discussed with the Commissioner for Budget and Human Resources, Mr Oettinger; the Secretary General of the Commission, Mr Selmayr; the Committee on Budgetary Control of the European Parliament (CONT); the Council's working group against fraud during the Austrian Presidency; the Court of Auditors and the European Ombudsman. Being aware of the importance of the amendments to OLAF's Regulation (EU) No 883/2013 to accommodate OLAF's mandate to the needs of the EPPO, the Committee members deeply reflected on this matter and gave their input in a report sent to the institutions in November 2018, with specific suggestions for many legal provisions. The Committee is gratified by the positive feedback it received from the European Parliament's CONT Committee.

4. The Committee held 11 plenary meetings<sup>1</sup> and continued the practice of inviting the newly appointed Director-General of OLAF and his staff to its meetings, to discuss and be informed about any matter relevant for the Committee's and OLAF's work. The Committee looked forward to doing constructive work with OLAF and to helping the Office improve its performance and efficiency. During the reporting period the Committee appointed rapporteurs to work on and follow up specific areas of its work-plan. These rapporteurs worked in close cooperation with the Secretariat to draw up draft opinions and reports to be adopted by the Committee.

### ***THE LEGAL FRAMEWORK IN WHICH OLAF OPERATES: CONTRIBUTION TO THE REFLECTION ON THE REFORM OF OLAF***

5. The reform of the legal basis for OLAF, Regulation (EU) No 883/2013, was the subject of intense debate during the period covered by this report. The proposal for amending OLAF's Regulation as regards cooperation with the European Public Prosecutor's Office (EPPO) and the effectiveness of OLAF investigations culminated in approval for the European Parliament's legislative resolution of 16 April 2019<sup>2</sup>. Being well aware of the importance of this reform and following a request made by Parliament, the Committee sought to play an active and constructive role in the debate by appearing before the Parliament's CONT Committee and by putting forward written suggestions to the Commission, the Council and the Parliament about OLAF's future relations with the EPPO, access to information and OLAF's working relations with the Committee under the new Regulation<sup>3</sup>. The Committee's comments on specific provisions of the amending proposal were guided by the principles of impartial conduct of investigations, legal certainty, transparency and accountability, all of which OLAF must honour.
6. In line with the content of its Opinion No 2/2017 on the application of the OLAF's Regulation<sup>4</sup>, the Committee identified some key stages requiring clarification in the implementation of the investigatory function. The Committee stressed that regular monitoring of investigations must be preserved as the best method of guaranteeing OLAF's independence and that it needed to have access all information necessary to be able to fulfil its remit. The Committee is a unique independent body with a very strong mandate that needs appropriate means to exercise its authority. It is pleased that the Parliament's legislative resolution opened up the possibility for the Committee's Secretariat to be located in the most suitable place to assist the Committee effectively in its monitoring duty<sup>5</sup>.

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<sup>1</sup> From July 2018 to June 2019.

<sup>2</sup> European Parliament legislative resolution of 16 April 2019 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations (COM(2018)0338 – C8-0214/2018 – 2018/0170(COD) [http://www.europarl.europa.eu/doceo/document/TA-8-2019-0383\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2019-0383_EN.html)

<sup>3</sup> Supervisory Committee's letter to the Chair of the CONT Committee of the European Parliament of 20 November 2018.

<sup>4</sup> See the Supervisory Committee's Opinion No 2/2017 accompanying the Commission Evaluation report on the application of Regulation (EU) of the European Parliament and of the Council No 883/2013 (Article 19).

<sup>5</sup> See article 15.8 "Supervisory Committee" from which the words "independently from the Office [OLAF]" have been deleted. "*Its Secretariat will be provided by the Commission and in close cooperation with the Supervisory Committee*".

7. The Committee is encouraged that the Parliament’s legislative resolution has kept many of the Committee’s suggestions including those on strengthening OLAF’s independence and the proper implementation of its investigatory function<sup>6</sup>. These include:
- (i) OLAF’s Director-General is to periodically inform the Committee about the cases in which he has decided not to open an investigation, indicating the reasons for that decision –in the interest of transparency and impartial assessment of allegations received by OLAF;
  - (ii) OLAF is to deliver detailed information in the reports it sends to the Committee on investigations running over a 12 months period –in the interest of reinforcing OLAF’s independence and respecting the right to good administration;
  - (iii) the Committee must have access to all the information and documents it considers necessary for the performance of its tasks –to ensure a sound monitoring system to strengthen OLAF’s independence;
  - (iv) it is OLAF’s duty to draft recommendations accompanying the investigation report drawn up under the Director-General’s authority on completion of investigations –in the interest of legal certainty, independence and impartial investigation findings; and
  - (v) the Commission is required to consult the Committee before imposing any disciplinary penalty on the Director-General or waiving his immunity –to safeguard the Director-General’s independence.
8. The Committee paid particular attention to the future relations between OLAF and the EPPO, as it is uniquely well placed to help in navigating difficulties that may arise on an ongoing basis between them in building their working relationship. The Committee welcomes the integration of some of their legal suggestions in this area in the Parliament’s legislative resolution, in particular:
- (i) OLAF is to inform the relevant Institutions, Bodies, Offices and Agencies (IBOAs) following a preliminary evaluation of allegations reported to them unless this would be detrimental to investigations<sup>7</sup>;
  - (ii) OLAF is to discontinue an ongoing investigation if the EPPO is conducting an investigation into the same facts and it shall refrain from performing certain acts or measures upon request by the EPPO<sup>8</sup>;
  - (iii) at the EPPO’s request, OLAF should apply higher standards as regards fundamental rights, procedural guarantees and data protection to protect the admissibility of evidence where OLAF performs supporting or complementary measures<sup>9</sup>; and

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<sup>6</sup> See European Parliament legislative resolution: Article 5 6 a (new) “opening of investigations”; Article 7-paragraph 8 and paragraph 8 a (new) “investigations procedure”; Article 15-paragraph 1-subparagraph 5 “Supervisory Committee”; Article 11-paragraph 1-subparagraph 2 “investigations report and action to be taken following investigations”; Article 17 paragraph 9-subparagraph 1 “Director-General”.

<sup>7</sup> See Article 12c-paragraph 5 “Reporting to the EPPO of any criminal conduct on which it could exercise its competence”

<sup>8</sup> See Article 12d- paragraph 1-subparagraph 1 “Non-duplication of investigations” and Article 12d paragraph 1a(new) based on a suggestion by the Supervisory Committee contained in its letter of 20 November 2018.

<sup>9</sup> See article 12e paragraph 2 “the Office support to the EPPO” the new structure and addendum is based on a suggestion by the Supervisory Committee contained in its letter of 20 November 2018 and 12e) paragraph 2a (new) includes suggestions by the Supervisory Committee contained in its letter of 20 November 2018.

- (iv) the Committee has a new responsibility: to deliver an opinion before working arrangements between OLAF and the EPPO are adopted<sup>10</sup>.

### **MONITORING OLAF's RESOURCES**

**Article 6(2) of Commission Decision 1999/352/EC of 28 April 1999 establishing the European Anti-Fraud Office, as amended by Decision of 27 September 2013 2013/478/EU:**

*'2. After consulting the Supervisory Committee, the Director-General shall send the Director-General for budgets a preliminary draft budget to be entered in the annex concerning the Office to the Commission section of the general budget of the European Union.'*

**Article 15(1) third paragraph of Regulation (EU) No 883/2013:**

*'The Supervisory Committee shall address to the Director-General opinions, including where appropriate, recommendations on, inter alia, the resources needed to carry out the investigative function of the Office [...]'*

9. The Supervisory Committee considers its remit to secure that OLAF's budget and human resources policy enables the Office to exercise its powers efficiently. The Committee is aware that OLAF's budgetary independence has a direct impact on investigations and operations. It therefore considers that an appropriate budget and a comprehensive human resources strategy should be among the new Director-General's first priorities.
10. The Committee acknowledged that the Commission's draft budget was subject to saving measures and it noted that the annual increase in the budget had been consistently reduced to a point where there was almost zero increase. It stated its views that this reduction should not have detrimental effects to the fight against fraud or irregular activities causing prejudice to the EU's financial interests. Rather, the Committee considers not only that OLAF should be spared the most restrictive saving measures applied to other Commission Directorates-General but it should actually benefit from incentives enabling highly qualified and specialized staff in the field of investigations and assets recovery to be recruited. This is particularly important with a view to OLAF's future working relations with the EPPO.
11. During the reporting period, the Supervisory Committee issued two opinions on OLAF's preliminary draft budget for 2019 and 2020<sup>11</sup> and analysed the implementation of OLAF's budget approved for 2018. It examined OLAF's preliminary drafts budgets for 2019 and 2020, focusing particularly on three items:
- (i) the financial and operational impact of implementing the OLAF Content Management System (OCM), the database system containing case-related information that replaced the previous Case Management System (CMS);
  - (ii) OLAF's human resources strategy, for which the Committee had high expectations; and
  - (iii) the budgetary impact for OLAF of the establishment of the EPPO.

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<sup>10</sup> See Article 12g paragraph 1 "Working arrangements and exchange with the EPPO".

<sup>11</sup> See Supervisory Committee's Opinions No 1/2018 and No 1/2019: OLAF Supervisory Committee's website: <http://europa.eu/supervisory-committee-olaf/opinions-and-reports>



(i) *The financial and operational impact of implementing the OCM*

12. OLAF Content Management (OCM) is a case and document management tool used in conducting OLAF's investigations and other activities to protect the EU's financial interests in accordance with Regulation (EU) No 883/2013. The OCM replaced the old Case Management System (CMS). The Supervisory Committee believes that the OCM should be used not only as a management reporting system, but also as a genuine operational and investigative tool.
13. The Committee was concerned at the amount of budget involved in implementing the OCM database system and at the impact this system had on OLAF's investigatory function and monitoring tools. The cost of ownership of the system over 2012-2018 was € 15.3 million. OLAF informed the Committee that it was expected that from 2021 most of costs to be charged would be maintenance costs, with limited development if there were any changes in the OLAF business processes or developing needs (e.g. EPPO). The planned total ownership cost of OCM for the upcoming period 2019-2021 is € 10.2 million. In previous opinions the Committee had stressed that well-organised and up-to-date information and communication technology (ICT) was a necessary support for cost-effective fraud investigation.
14. In its Opinion No 1/2018, the Committee recommended that the Commission's Internal Audit Service (IAS) carry out an audit of the problems encountered in implementing the OCM, including the annual costs incurred since 2012 in implementing the project. On 24 January 2019 the Committee's rapporteur responsible for monitoring OLAF resources requested from OLAF a complete report on the cost breakdown of the OCM project since its inception. This is expected in the near future.
15. In previous annual reports the Committee described its own experiences and those of OLAF staff with the OCM's shortcomings and highlighted its limited access to OLAF case-related information as an urgent issue<sup>12</sup>. It drew attention to problems with the migration of the documents from the previous system (CMS) and to the fact that the OCM database had no feature adapted to the Committee's needs for monitoring cases and systemic patterns in OLAF operational data. The Committee expressed concerns about the OCM's adaptation to OLAF's investigatory needs which could adversely affect OLAF investigators' day-to-day work. Lack of access and failures of the system adversely affected the Committee's supervision of the way OLAF implements its investigatory function.
16. The Committee welcomed OLAF's presentation to it, made at the Committee's request, on the origin of the OCM project and on new elements incorporated in the system to improve it. Although the system's functionalities and the exchange of information with OLAF improved after the appointment of the new Director-General, the Committee finds it necessary to implement an add-on module to enable it to easily obtain and use operational data for monitoring purposes. According to OLAF, an analysis of the Committee's needs was planned to start in April 2019, while reports and reminders to the Committee are expected to be included in the OCM release in December 2019. A Supervisory Committee dashboard is to be developed in another OCM release in 2020. Lack of access to OLAF's

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<sup>12</sup> See the Supervisory Committee's Activity report 2017, from point 24 to 29: OLAF Supervisory Committee's website: <http://europa.eu/supervisory-committee-olaf/opinions-and-reports>

cases where case-related information on the stages of the investigation is needed, was a serious obstacle for the Committee in the conduct of its duties.

17. With regard to the implementation of the OCM system, the Committee was informed that OLAF's Directors and Director-General had, in June 2012, endorsed the development of the enterprise content management with integrated functionalities, but could still be customised to meet OLAF's specific needs. This decision followed a study conducted by an internal OLAF taskforce set up in 2011, which considered various options for setting up a new case management system.
18. In addition, OLAF explained that the 2016 decision to launch OCM was taken mainly due to the shortcomings of the legacy system (CMS). However, OCM has suffered from various problems common in IT systems when first put in production. Only later was it proven that the decision to run the system should have been delayed until it had been more thoroughly tested, and the system was more stable from a technical point of view. According to OLAF, OCM's initial problems were comparable to those found in other IT systems of the same size. For instance, frequent change requests made by the users at a very early stage in production; it was difficult to find the right IT experts, given the specific technology used; users were reluctant to change their working habits and follow a strict workflow imposed by the system; and time was too-short for thorough pre-production testing.
19. OLAF conducts an annual IT satisfaction survey of its staff. In 2015 the CMS and THOR satisfaction scores were 51 % and 66 % respectively. The problems with running the new system and the OCM's stability and speed were reflected by this score, which dropped to about 6.58 % in 2016, but it improved in 2017 and 2018 when it reached to 14 %. The Committee takes a keen interest in these figures, which are important indicators.
20. At the request of the OLAF's Director-General, the OLAF Internal Audit Function (OLAF-IAF) closely evaluated and monitored the OCM project in 2015 and 2017. The Commission's Internal Audit Service (IAS) audited IT security in 2017. The Supervisory Committee had also recommended to the Director-General that IAS carry out an audit on the project. Not completed yet, once the draft conclusions are available, they will be sent to OLAF for comments. The most recent IAS audit of Project Management set out in the IAS audit plan is not yet finalised. The Committee asked OLAF to discuss the IAS findings as soon as they are available. The information which OLAF has transmitted to the Committee is detailed in the next three points.
21. The OLAF-IAF audit focused on the governance and organisation of the project, whereas the 2017 IAS audit focused on the IT Logical Security Controls. The 2017 IAS audit made four recommendations to OLAF's Director-General, all of which were accepted. OLAF addressed these recommendations through an action plan comprising 31 specific measures. IAS is reviewing the progress to assess to what extent these measures have been properly implemented.
22. In 2018 there was a pause in developing new functionalities and priority was given to fixing bugs, but there has been a new formal OCM Governance structure in place since December 2018. The workflow is the following: the Steering Committee (chaired by the Director-General) has already prioritised the OCM high-level requirements. On this basis, an OCM release planning has been agreed up to the end of -2019. The Business Implementation Group will decide how the high-level requirements will be developed in the system. The decision workflow is clearly defined, and it has shown to work in practice.

23. At the moment many of the modules purchased cannot be run within the system. Ongoing dialogue between the IT experts and users has resulted in so many suggestions for simplifications and improvements that the current experts working in the system cannot patch it up in a fast way. On the other hand, hiring other experts, non-employees of the Commission, would increase costs dramatically. Efforts are currently focused on improving performance and completing the development by the end of 2020.
24. The Committee has been particularly concerned about the extensive exchange of information online between OLAF and the EPPO that is envisaged and the impact this additional functionality will have on OCM's operational capacity. Even if the Committee was assured that the link between the OCM and the EPPO case management system (currently denominated "CMS" by the EPPO, and which should be ready by 2021) should not affect the OCM's performance, it has learned that there has so far been no detailed analysis of the type of interface to be used, while no decision has yet been taken on which CMS the EPPO will use. Concerns about the further challenges facing OCM system therefore could not be fully dispersed.
25. Although the OCM affects its day-to-day work, the Committee's capacity to evaluate system's performance is limited by the fact that Secretariat staff and some Committee members have access to the system as users for specific cases only. The Committee looks forward to analysing conclusions of the bodies conducting the audit and their evaluation of the system's costs, security and performance. It welcomes the Director-General's decision to take responsibility for the development and improvement of the system and of dialogue between OLAF and the Committee. This dialogue should result in the active inclusion of the Committee and its Secretariat in the IT tools that are required for their work, which is a necessary condition for the implementation of the Committee's mandate.

(ii) *OLAF's Human Resources Strategy*

26. The Supervisory Committee believes that in-house human resources and finance capabilities that are independent from the Commission contribute to the independence of OLAF. This is particularly important for recruitment, training and the capacity to react to new and complex fraud patterns, hence the Committee recommended in its Opinion No 1/2018 that OLAF's Director-General request the European Commission to set up a human resources unit within OLAF again to maintain its efficiency and independence in recruitment procedures.
27. The Committee has closely followed OLAF's human resources strategy and the annual management plan for 2019, a sound human resources policy and strategy being a key factor in successful investigations. It noted that there are practical difficulties in putting in place an effective staff policy that would enable OLAF to implement its core mission of independent investigation.
28. OLAF's Director-General is not completely independent as regards budgetary and administrative arrangements, being required to abide by the Commission's new centralised human resources policy. However, the Committee considers that OLAF should benefit from devolution in this key area and OLAF and the Commission administration should make every effort to agree on administrative arrangements that would enable OLAF to implement its own staff policy. It is essential that OLAF's Director-General keep his independent status in this field, as his inter-institutional and supranational duties require.

29. The Committee stresses the importance of setting up a comprehensive, specialised and continuous training programme to improve investigators' knowledge and skills, especially as regards the financial implementation of the EU and national rules. The independence of OLAF's investigators is vital for OLAF's remit. The Committee once again emphasised that OLAF's human resources strategy should focus on its core operational tasks and reinforce its investigative capacity. It supported OLAF's request for six additional administrator posts to enable it to perform its main investigative function while also recognising the importance of fraud prevention and legislative activities.
30. The Committee is aware of the workforce assessment exercise to be launched by OLAF this year. Its purpose is to map out posts, tasks and outcomes, so as to define staff allocation in key investigative and policy areas. Targets and objectives would need to be defined, as would allocation of resources between Directorates (three of which deal with investigations while the other deals with policy areas). The Committee notes that OLAF's reactive investigation policy makes it difficult to estimate the future workload and resource allocation.
31. The Committee strongly recommends that a comprehensive human resources strategy be devised following an in-depth analysis of OLAF's priorities and working methods. This strategy should enable: (i) better allocation of resources within OLAF, enabling it to focus more on its main investigative tasks; (ii) better use of synergies within OLAF, especially through building on OLAF staff's varied skills and areas of expertise; (iii) appropriate administrative support for investigation activities; (iv) increased mobility within OLAF and the Commission; (v) better development of the training policy with a view of facilitating mobility without undermining the quality of the investigations.

*(iii) The budgetary impact on OLAF of the establishment of the EPPO*

32. The Supervisory Committee reiterated in its Opinion on OLAF's preliminary draft budget (PDB) No 1/2018<sup>13</sup> that the transfer of budgetary posts from OLAF to the European Public Prosecutor's Office (EPPO) should be considered carefully and managed in a way that protects OLAF's ability to continue to fulfil its remit, especially its investigative capacity. Given OLAF's current staffing level, it is difficult to see how it could face further reductions in its establishment plan unless there were a clear link between the transfer of a post and the transfer of functions.
33. The Committee examined OLAF's analysis of the impact of the EPPO on OLAF's human resources strategic plan and will closely follow up the consequences this has on OLAF's operations and working methods. As the Committee stated in the annual inter-institutional exchange of views, OLAF's investigatory capacity to act on EPPO's future requests for assistance must not be undermined by reducing its resources. It recommends that OLAF's Director-General conduct a budget impact assessment to measure the effect on OLAF's efficiency and operational capacities of transferring posts to the EPPO. It will take some time before the EPPO's structures and responsibilities have been fully established. The success of the EPPO in combating criminal offences affecting the EU's financial interest

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<sup>13</sup> See Supervisory Committee's Opinion No 1/2017 on the OLAF Preliminary Draft Budget 2018 and Opinion No 2/2017 accompanying the Commission Evaluation report on the application of Regulation (EU) of the European Parliament and of the Council No 883/2013 (Article 19) <http://europa.eu/supervisory-committee-olaf/opinions-and-reports>.

will also depend of OLAF's key assistance. It is essential that OLAF, with 20 years of experience in investigations, maintains the full complement of high quality staff to be able to meet the highest standards in cooperating with and assisting the EPPO.

### ***MONITORING AT THE SUPERVISORY COMMITTEE'S INITIATIVE: ACCESS TO INFORMATION FOR SUPERVISORY FUNCTIONS***

***Article 15(1) of Regulation (EU) No 883/2013:***

***Article 15(1) third paragraph of Regulation (EU) No 883/2013:***

*'The Supervisory Committee shall regularly monitor the implementation by the Office of its investigative function [...]*'

***Article 4 of Commission Decision of 28 April 1999 establishing the European Anti-Fraud Office:***

*'[...] [The Supervisory] Committee shall be responsible for the regular monitoring of the discharge by the Office of its investigative function.'*

***Joint Opinion of the Legal Services of the European Parliament, Council and Commission of 5 September 2016***

*The Joint Opinion underlines that Regulation (EU) No 883/2013 empowers the Supervisory Committee to receive information from the OLAF Director-General:*

- *on cases in which information has been transmitted to national judicial authorities even when no investigation has been carried out by OLAF;*
- *on additional case-related information concerning all cases, including ongoing investigations and not only information on closed cases;*
- *as to the reporting obligations of the OLAF Director-General, Regulation (EU) No 883/2013 implies an active duty of information for OLAF. In that regard, the granting of purely passive electronic access to OLAF databases would not be sufficient to fulfil the OLAF Director-General's obligations as laid down in Regulation (EU) No 883/2013.*

34. The Supervisory Committee actively and regularly monitors the way in which OLAF conducts investigations in order to strengthen OLAF's independence and to assist the Director-General in the discharge of his duties. It appointed rapporteurs to work both on sensitive internal investigations and on case-files where the Director-General decided, after assessing incoming information, not to open a case –the so-called “dismissed cases”.
35. In its previous activity report, the Committee underlined that it had limited access to OLAF's case-related information and that there was an urgent need to resolve this problem. A considerable amount of time was spent during the reporting period on extracting the relevant information from several electronic systems (OCM, THOR and CMS) where data were stored. The situation improved satisfactorily after the appointment of OLAF's new Director-General, Mr Itälä, in August 2018. A solution was finally found in November 2018, and the Committee's rapporteurs and the members of its Secretariat were given full access to the case-related information on 64 OLAF files monitored by the Committee during the reporting period: 60 cases in which the OLAF's Director-General took the decision not to open an investigation (referred to as the “dismissed cases”) and 4 internal investigations conducted and closed by OLAF. This access eventually enabled the Supervisory Committee to advance with its work and to make progress on organising an exchange of views with OLAF staff on the way in which the investigations were conducted.

36. Between January and March 2019, the Committee rapporteurs held monthly meetings with OLAF’s staff management, including the Directors of Directorate A (“Investigations I”) and Directorate C (“Investigation Support”); the Heads of Units of Unit 0.1 (“Investigation, Selection and Review”), Unit A.1 (EU Staff), Unit C.3 (“Operational Analysis & Digital Forensics”) and Unit C.4 (“Legal and advice unit”). Selectors, reviewers, investigators, analysts of the operational support units, members of the legal advice and follow up units also took part in the meetings. This series of meetings was wound up in March 2019, after which the Committee started drafting its opinions.
37. At the time of writing this report, the Supervisory Committee is finalising a number of opinions: on cases that were not opened by OLAF’s Director-General (“dismissed cases”), on internal investigations that were completed and sent to the national judicial authorities, and on internal investigations that were closed without follow up. The Committee as an independent body is in an unrivalled position to carry out this task. When examining the cases, it gave due consideration to, inter alia, the following elements: potential risks to the independent conduct of investigations; respect for procedural guarantees and fundamental rights; respect of the general principles and rules of investigations; legality check of investigations; an overall assessment of the quality of the files and the consistency of the information contained in the OCM and the activities undertaken; and compliance with the rules set out in the Guidelines on Investigation Procedures for OLAF staff (GIPs).

### **MONITORING THE DURATION OF OLAF’S INVESTIGATIONS**

***Article 15(1) of Regulation (EU) No 883/2013***

*The Supervisory shall regularly monitor the implementation by the Office of its investigative function, in order to reinforce the Office independence in the proper exercise of the competences conferred upon it by this Regulation.*

***Article 15 (1) second paragraph of Regulation (EU) No 883/2013***

*The Supervisory Committee shall in particular monitor developments concerning the application of procedural guarantees and the duration of investigations in the light of the information supplied by the Director-General in accordance with Article 7(8).*

***Article 7(5) of Regulation (EU) No 883/2013***

*Investigations shall be conducted continuously over a period which must be proportionate to the circumstances and complexity of the case.*

***Article 7(8) Regulation (EU) No 883/2013***

*If an investigation cannot be closed within 12 months after it has been opened the Director-General shall at the expiry of a 12 month period and every six months thereafter, report to the Supervisory Committee indicating the reasons and the remedial measures to speed up the investigation.*

### **General remarks**

38. Monitoring the duration of OLAF’s investigations is one of the Supervisory Committee’s main duties to reinforce OLAF’s independence. The Committee carries out this review to ensure that investigations are conducted continuously over a period proportionate to the circumstances and the complexity of the case and to exclude interferences in their impartial conduct.

39. The duration of OLAF's investigations is an important indicator used to assess the effectiveness of investigations and to monitor the compliance with procedural guarantees and the right to good administration, referred to in Article 41 of the Charter of Fundamental Rights of the EU. Monitoring of the duration of OLAF's investigations is also used to ensure:
- (i) that delays do not prevent the intended result of an investigation, for reasons including time barring;
  - (ii) that OLAF's investigations are to be follow-up by the relevant authorities; and
  - (iii) that OLAF is actually independent in carrying out its investigations, including efficient use of its human and financial resources.

The objective reasons for the duration of investigations may also have an impact on the adoption of OLAF's investigation policy priorities.

40. The Committee has observed that OLAF's annual management plans set a general goal for the average duration of investigations. In both 2018 and 2019, for instance, this was not to exceed 20 months<sup>14</sup>. However, the purpose of this indicator seems to play a role as a statistical tool. The Committee notes that OLAF's investigative procedure does not include any system requiring formal authorisation for the extended duration of an investigation from the opening decision. As a consequence, each investigation is, in principle, open for an indefinite period of time. The sole mechanism foreseen in Regulation (EU) No 883/2013 similar to a system for controlling the investigations' duration, is the obligation for OLAF's Director-General to report to the Supervisory Committee at the end of a 12 months period and every 6 months thereafter; which is based on OLAF's self-assessment of the reasons for non-completion of the case and remedial measures envisaged to speed up the investigation. The Committee observed that the statistical approach also prevailed in OLAF's system for reporting to it on the length of investigations.
41. The Committee considers that OLAF's investigators and managers should maintain firm control of the investigation life-cycle from its opening, in line with the requirements laid down in the OLAF's Regulation on the duration of an investigation conducted continuously over a period proportionate to the circumstances and the complexity of the case. The content and quality of OLAF's "12-months reports" and subsequent reports are crucial elements in enabling the Committee to monitor the progress of investigations at regular intervals. The statistical approach that prevails in OLAF's current reporting system on the length of investigations, with its emphasis on the number of months, rather than the quality of information provided, is not appropriate for the monitoring duties of the Committee established by law.

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<sup>14</sup> See Management Plans for 2018 and 2019 of European Anti-Fraud Office (OLAF), p. 5: a target for the percentage of ongoing investigations lasting more than 20 months for 2018 was indicated as less as 30 %.

## *The Committee's analysis of 484 reports for investigations lasting more than 12 months*

### *(i) Statistical analysis of reports received in 2018*

42. The Committee analysed 484 reports<sup>15</sup> of OLAF concerning 343 of investigations lasting more than 12 months (hereafter “12-months reports”) including investigation reports exceeding 18, 24, 30, 36, 42, 48, 54 and 60 months: over 18 months (243 reports), over 24 months (141 reports), over 30 months (68 reports), over 36 months (31 reports), over 42 months (11 reports), over 48 months (3 reports), over 54 months (2 reports), and over 60 months (1 report).

The Committee's aim was to examine the reports' content in accordance with the legal requirements set up in Articles 7(5) and 7(8) in relation with Article 15 (1) of Regulation (EU) No 883/2013. The Committee focused its analysis on assessing:

- (i) the number of “12-months reports” in which OLAF gave reasons why the investigations had not been completed, and the category of reasons that OLAF indicated for non-completion of investigations.
  - (ii) the number of “12-months reports” in which OLAF included remedial measures to speed up the investigations;
43. The Committee found out that in many instances, 49 %, OLAF indicated the “complexity of the matter” under investigation as the main reason for non-completion of the investigation. No substantive reasons for failure to complete an investigation amounted to 18 %. OLAF's reports included further reasons for non-completion of investigations<sup>16</sup>:
- (i) the priority given to other investigations (6 %);
  - (ii) involvement of a Member State in the case (4 %);
  - (iii) involvement of a third country (3,5 %);
  - (iv) a lack of OLAF resources (4 %).

Other reasons given were as follows:

- (v) a lack of cooperation by a Member State (3 %);
- (vi) a lack of cooperation by the EU institution (3 %);
- (vii) a lack of cooperation by a third country (2,5 %);
- (viii) an extension of the scope of the investigation (2 %);
- (ix) an internal OLAF reorganisation (1 %).

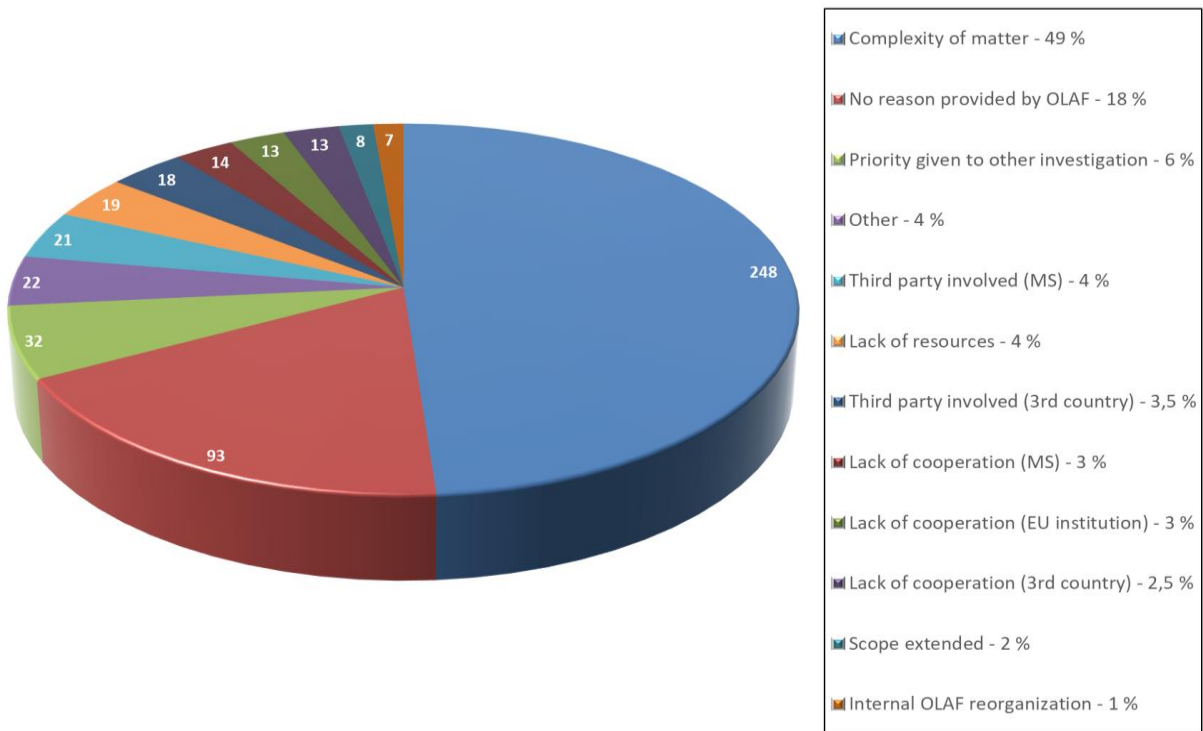
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<sup>15</sup> Reports provided by OLAF to the Supervisory Committee in 2018.

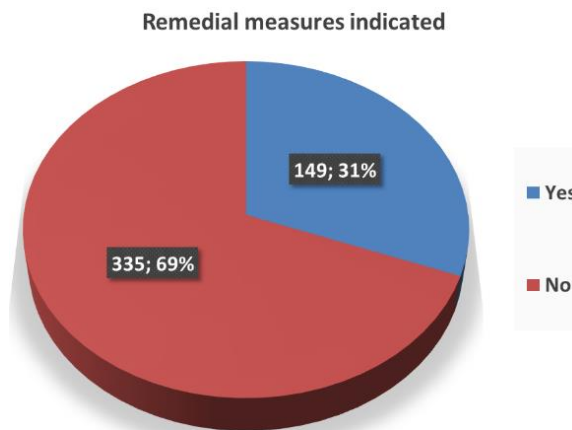
<sup>16</sup> In 4 % OLAF indicated the following reasons for non-completion (in addition to other reasons): a lack of cooperation by international organisations, reasons related to OLAF's investigation procedure, a lack of cooperation by an economic operator or a liquidator of a company, and time-consuming analysis.



484 reports - 508 reasons for non-completion



44. Remedial measures were indicated by OLAF in only 31 % of the reports.



(ii) Conclusions

45. The Supervisory Committee noted that the content and quality of the reports submitted by OLAF on cases exceeding 12 months in 2018 did not include any information suitable to monitor the duration of investigations in an effective way. In particular, although investigations have increased in length from 12 months to 18, 24, 30 months or more, most reports did not contain substantive information in the description of the case that would enable the Committee to assess whether the reasons that OLAF indicates to justify the duration of the investigations are accurate and whether the remedial measures to speed them up are appropriate.

46. On the basis of its comparative analysis, the Committee concludes that the quality of information provided by OLAF in accordance with Articles 7(8) and (5) in relation with Article 15 (1) of Regulation (EU) No 883/2013 did not improve in 2018 in comparison with previous years, and for the same case over time. It therefore confirms the observation it made in last year's activity reports: OLAF made no progress in 2018 to implement its Director-General's legal obligations under Article 7(8) of Regulation (EU) No 883/2013.

### *Final conclusions*

47. The Committee maintains its view that good-quality reports on investigations exceeding 12 months are useful and efficient tools enabling it to monitor the duration of investigations, and that excessive duration of investigations can adversely impact OLAF's independence. This is also a cause for concern as it puts at stake the fundamental rights of the persons affected by investigations, while statutory limitations (i.e. the risk of time-barring) jeopardise the judicial, administrative, disciplinary and/or financial authorities' taking further action. OLAF's independence should be paramount and equal treatment should be guaranteed. This is essential to the Committee.
48. During the second part of the reporting period, after the appointment of the new Director-General, the Committee worked with OLAF to set up a new reporting system that would enable the Committee to fulfil this monitoring remit. In February 2019, the Committee sent to OLAF's Director-General two new 'model reports' based on a template which OLAF itself had previously proposed. The first of these was designed for an investigation exceeding 12 months, while the second, intended for an investigation of 18 months or longer, was designed to check the impact of any remedial measures taken by OLAF to expedite the investigation.

The model reports included a list of categories of information, in particular: (i) detailed description of the case including the estimated economic impact, (ii) the legislation allegedly breached (iii) potential sanctions and time-barring considerations, (iv) operational activities undertaken and their results, (v) operational activities to be carried out; (vi) reasons for non-completion of the case; and (vii) remedial measures to speed up the investigation.

49. The Committee was surprised and deeply concerned by the reply of the Director-General of OLAF in May informing the Supervisory Committee of the adoption of a different model report which does not contain basic case information and prevented the Committee from fulfilling its remit. According to the Director-General it was not possible to make an estimation on the economic impact, the preliminary legal evaluation or to report on potential sanctions and time-barring considerations before the investigation is finalised. In the Committee's experience the analysis of such elements is compulsory for any investigatory body prior to the decision to open an investigation. The Committee requested the OLAF's Director-General to reconsider and ensure that the Committee receive the information necessary to fulfil its remit bearing in mind the reporting Committee's duties on OLAF's performance to all three appointing institutions.

The Committee is willing to assist OLAF's Director-General in his efforts to search an appropriate form of reporting to it on investigations lasting more than 12 months and appreciates his initiative for a constructive dialogue with OLAF's staff on this matter.

## ***CASES REQUIRING INFORMATION TO BE SENT TO THE NATIONAL JUDICIAL AUTHORITIES***

50. OLAF provides the Supervisory Committee with a list of cases sent to the National Judicial Authorities (NJA). This bare statistical information is of little practical use to the Committee, which considers that OLAF should send it the final report sent to the NJA as previously stated in its Opinion No 2/2017 accompanying the Commission Evaluation report on the application of Regulation (EU) of the European Parliament and of the Council No 883/2013 (Article 19). Discussions about how to solve the issue are in progress.

## ***CASES WHERE OLAF'S RECOMMENDATIONS WERE NOT FOLLOWED BY THE RELEVANT AUTHORITIES***

51. The Supervisory Committee has obtained from OLAF a report of 22 cases with a list of replies from the relevant authorities to OLAF's recommendations issued since 1 October 2013, and received by OLAF between 1 March 2017 and 28 February 2018. This reporting period followed up the previous one that ran from 1 March 2016 to 28 February 2017<sup>17</sup>.
52. The Committee has already expressed concerns about the time frame of the reporting system in its previous reports and opinions. The current system does not cover the conventional calendar year, does not show the number of pending cases or replies that were never received, and is vulnerable to errors<sup>18</sup>. It therefore considers the current reporting system non-comprehensive and recommends that OLAF find a better way to make an overview and to examine the impact of its investigations in general. Especially an electronic system that runs smoothly could solve this issue, making the reporting system more comprehensive and more accurate. Moreover, the option of entering cross-cutting requests should make a core part of any electronic information system dealing with management of cases (OCM).
53. The information on the follow-up of OLAF's recommendations was presented by OLAF to the Committee as a chart overview which covered the following items: the OLAF case number, the date on which the recommendation was issued, identification of the recipient, a short summary of the recommendation, the date of the reply stating that the recommendation would not be followed, the reasons given by the authority concerned and, in some cases, comments by OLAF providing further clarification.
54. On the basis of the above-mentioned information on the 22 cases, the Supervisory Committee found that the number of cases dismissed or not prosecuted owing to lack of evidence increased dramatically compared with the last reporting period. In 11 out of the 22 cases the national authorities either evaluated the evidence and facts in a different way or were unable to prove the facts on the basis of evidence received from OLAF and gathered in subsequent national investigations.

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<sup>17</sup> The Director-General shall inform the Supervisory Committee about cases in which his recommendations have not been followed (the obligation is set by the Article 17(5) of the Regulation No 883/2013).

<sup>18</sup> The report to the Supervisory Committee covered four cases falling into the previous reporting period which, by mistake, had not been included in the previous report. The total number of cases (22) includes these four.

55. Although the information the Committee received was limited, it is possible to conclude that procedural differences between OLAF's administrative investigation and criminal proceedings were the main reason for the termination of the national proceedings. The national authorities often based their decisions not to prosecute or to dismiss the case on the impossibility of proving intent to commit a crime. The Committee considers that further work is essential to improve the chances of OLAF's recommendations being accepted. The Committee intends to devote more time to this subject in future and has adopted a decision to monitor this matter in its work-plan for 2019.
56. The Supervisory Committee remains convinced that the success of justice is not measurable in numbers of convictions. However, many obstacles could be overcome through better cooperation and consultation on the facts, admissibility of evidence and investigation tactics with the national police and judicial authorities. Especially as regards cases which the national authorities dismissed or decided not to investigate because the statute of limitations had expired (four of the 22 cases reported). The Committee finds no reasonable argument for not avoiding such procedural situation. Even though there may be cases in which, for instance, the legal qualification has changed, shortening the statutory limitation period so that it expired earlier, the Committee considers that the number of time-barred investigations (about 18 % of the reported 22 cases) is too high. Responsibility for this state of affairs rests both on OLAF and on the national authorities, which shall cooperate and take action from the earliest stages of the investigation. The Committee appreciates OLAF's initiative to hold a conference on cooperation between OLAF, judicial authorities and law enforcement services<sup>19</sup>; which will contribute to the exchange of views and, hopefully, will also make the currently changing institutional system for the protection of the EU's financial interests more effective.
57. Once the EPPO is fully operational, OLAF's position will be even more complicated. OLAF investigators will be required to pay close attention to evidence gathering in various new procedural situations. OLAF will keep investigations in the member states that are not taking part in the enhanced cooperation, but the EPPO may also request it to investigate in the same states and gather evidence for the purpose of a criminal investigation. The Committee is concerned about the new situation, the reactions of the EU member states that decided not to take part in the enhanced cooperation (on the EPPO) and the consequences which the new environment may bring, in the form of possibilities to challenge collected evidence in trials.
58. OLAF investigators will have to evaluate evidence and facts in a fast, focused and flexible way in order to establish whether a case belongs to OLAF or to the EPPO's jurisdiction and will have to keep instructions concerning the application of certain procedural guarantees given by the EPPO, which differ from one jurisdiction to another. OLAF, the EPPO and national authorities will have to create a system that runs smoothly to prevent time lapses caused by determining a jurisdiction and inadmissibility of evidence due to various procedural requirements of the member states' rules on criminal proceedings. The Supervisory Committee is focusing on OLAF's performance. However, the new legal challenges will require extremely good knowledge of national and international law, experience with changing jurisdiction during investigation, abilities to face forum-shopping

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<sup>19</sup> Conference on "The protection of the Financial Interests in the EU: Cooperation between OLAF, Judicial Authorities and Law Enforcement Service" held in Brussels on 20 – 21 June 2019.

objections and, especially, massive and flexible exchange of information between the EPPO, OLAF and national authorities.

59. The Committee has already indicated that it intends to examine this issue in more depth. To this end, it has requested access to a number of cases in which OLAF's recommendations were not followed by the national judicial authorities. The analysis will begin in the second half of 2019 and the resulting opinion will be based, apart from the examination of particular cases, on discussions with representatives of national authorities, with OLAF and possibly with representatives of the EPPO.
60. The Committee has expressed its interest in monitoring and analysing the results and impact of OLAF's work in a deeper and in a less statistical way. It would thus welcome automatically receiving any investigation reports transmitted to the authorities concerned and their responses. Conducting continuous analysis and seeking explanations both from the authorities concerned and from OLAF would enable the Committee to help OLAF improve its investigatory impact and secure admissibility of evidence.

### ***MONITORING DEVELOPMENTS CONCERNING THE APPLICATION OF PROCEDURAL GUARANTEES***

***The second paragraph of Article 15(1) of Regulation (EU) No 883/2013:***

*'The Supervisory Committee shall in particular monitor developments concerning the application of procedural guarantees (...).'*

***Article 17(7) of Regulation (EU) No 883/2013:***

*'The Director-General shall put in place an internal advisory and control procedure, including a legality check, relating, inter alia, to the respect of procedural guarantees and fundamental rights of the persons concerned (...).'*

61. The Regulation stipulating OLAF's activities specifically mentions that the Supervisory Committee has to ensure that there are sufficient procedural guarantees when OLAF investigates certain cases. It is for this reason that the Supervisory Committee has paid a great deal of attention to this aspect of its work in the past year.
62. OLAF's Director-General has taken action to ensure that reports on individual complaints are sent at least biannually to the Supervisory Committee. Such reports were considered informative and useful but not enough to perform monitoring activities over the developments of procedural guarantees and fundamental rights.
63. The number of complaints that OLAF receives is a cause of concern for the Supervisory Committee and they are given close attention. The Committee intends to exchange the information with the European Ombudsman's office and contacts have already been established. It will continue to give this subject its close attention.
64. At least every six months the item "procedural guarantees" will be on the agenda of the meetings held between the Supervisory Committee and OLAF's Director-General. The delay in responding to the complaints received will be investigated, the answers given analysed, and any follow-up by the person submitting the complaint will be discussed when so required.

65. All complaints registered by OLAF or complaints lodged before other bodies against OLAF which are known to OLAF's Director-General or his staff will automatically be shared with the Supervisory Committee. Cases triggering those complaints will be made available in full and oral explanations on the handling will be provided at the plenary meetings. OLAF will make all underlying correspondence available to the Committee.
66. This procedure, agreed between the Committee and OLAF's Director-General is expected to be an improvement on the previous procedure.

**ASSESSMENT OF OLAF'S INVESTIGATION POLICY PRIORITIES AND OF INVESTIGATION GUIDELINES**

***The first paragraph of Article 17(5) of Regulation (EU) No 883/2013 states that:***

*'The Director-General shall each year determine, within the context of the annual management plan, the investigation policy priorities of the Office and shall, prior to their publication, forward them to the Supervisory Committee.'*

***Article 5(1): 'the Decision by the OLAF DG whether or not to open an investigation shall take into account the investigation policy priorities and the annual management plan of the Office.'***

***Article 16 (2) Exchange of views with the institutions***

*'2. The exchange of views may relate to:*

*(a) the strategic priorities for the Office's investigation policies'.*

67. The Supervisory Committee examined OLAF's draft of the Investigation Policy Priorities (IPPs) for 2019 and observed that OLAF was maintaining the reactive investigation policy approach of previous years. It held several meetings with the new Director-General on this topic and expressed its views in the course of the inter-institutional exchange of views in September.
68. The Committee stressed the importance for OLAF to take initiatives in detecting and analysing risks in the fight against fraud on the basis of regular exchange of information with other Commission Directorates-General. This working practice would enable OLAF to implement a pro-active investigation policy and focus on the most serious and complex cases. OLAF's intelligence sector should also make risk assessments as a regular initiative. The Committee urged that these mechanisms be developed by OLAF as soon as possible in view of the establishment of the EPPO.
69. OLAF's IPPs for 2019 maintained an approach very similar to that taken in previous years, focusing on the following areas:
- (i) cases in relation to transport and infrastructure network projects, in particular public procurement procedures;
  - (ii) cases concerning projects financed or co-financed by the European Structural and Investment Funds<sup>20</sup>, the European Agricultural Guarantee Fund and the Pre-Accession

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<sup>20</sup> The European Social Fund, the European Regional Development Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund.

Funds, in which action by the Member States or candidate countries may be insufficient or which have cross-border elements;

- (iii) cases indicating possible abuses of origin rules, tariff classification in both preferential and non-preferential trade regimes and valuation-related fraud, in order to evade payment of conventional customs duties, including tariff measures that are part of the EU trade defence policy;
- (iv) cases of smuggling of tobacco, alcohol, counterfeit medicines and other goods dangerous to health and security which could be suspected of infringing on intellectual property rights into the EU; illegal manufacturing of tobacco;
- (v) cases concerning humanitarian and development aid provided to migrants, refugees and internally displaced persons; and other support provided to these target groups.

70. OLAF's Director-General informed the Committee that its IPPs were set up using input from stakeholders, including contributions from the Commission Fraud Prevention and Detection Network, the European Court of Auditors reports, European Parliament resolutions and Commission reports on the protection of financial interests.

71. However, OLAF gave an overview to the Committee on the implementation of the investigation policy priorities for 2018, adopted with a very similar approach. In total, 219 investigations and 30 coordination cases were opened in 2018, based on information received by OLAF. Of these, 56 investigations and 19 coordination cases fell under the 2018 IPPs (this represents 25.6 % of investigations opened and 63 % of coordination cases opened). As this information is very limited, it does not allow the Committee to assess the number of cases opened per sector and directorate. OLAF has not yet explained to the Committee why the percentage of cases conducted in line with the IPPs (25 %) is so low.

72. As a result, about 75 % of OLAF investigations do not fall under its own IPPs, which is a higher rate than the previous year one. The Committee asked OLAF for more information on the investigations accounting for this 75 % and on the reasons for taking those decisions. The Committee questions OLAF's approach, which does not allow the Office to prioritise investigations.

73. The Committee concludes that radical changes are needed in OLAF's approach to its own investigation policy priorities, to ensure the efficiency and effectiveness of OLAF's investigations and the allocation of resources, which are essential if the Office is to operate effectively.

## ***RELATIONS WITH OLAF, THE EU INSTITUTIONS, OLAF PARTNERS AND STAKEHOLDERS***

### ***Meetings with EU institutions, bodies and other agencies***

74. Being an inter-institutional body, the Supervisory Committee identified as a priority maintaining regular contacts with the EU institutions and OLAF partners and stakeholders. It was particularly conscious of the importance of improving flow of information between the institutions. In order to pursue these objectives and to obtain feedback about OLAF's performance the Committee met on a regular basis with the Commissioner responsible for OLAF and the Secretary General of the Commission, the Budgetary Control Committee (CONT) of the European Parliament and the Council working group against fraud in the

Council. The Committee paid a visit to the European Court of Auditors and invited the European Ombudsman to its plenary meeting. Those meetings were the occasion for valuable exchanges and the development of a constructive relationship. During the reporting period the Committee invited regularly OLAF's Director-General and managers to its plenary meetings. The Committee is looking forward maintaining closer connection with OLAF's investigation and operational teams.

75. The Committee actively contributed to the exchange of views with the institutions, as laid down in Article 16 of Regulation (EU) No 883/2013 in particular in the areas of the IPPs, the duration of the investigations, the respect for fundamental rights and procedural guarantees, the future relations between OLAF and the EPPO and the management of OLAF's resources in view of the establishment of the EPPO.

### ***OLAF SUPERVISORY COMMITTEE GOVERNANCE***

#### ***The Secretariat of the Supervisory Committee, working methods and budgetary matters***

76. The Secretariat plays a key role in facilitating and contributing to the performance of all tasks undertaken by the Supervisory Committee and ensuring that it is able to fulfil its legal mandate in full independence. In conformity with Regulation (EU) No 883/2013, the Secretariat works under the Committee's direct authority and independently from the Commission. The allocation of an adequate number of personnel with the appropriate skills and competences is essential for the Committee's performance of its remit.
77. The Secretariat of the Supervisory Committee consists of EU staff, lawyers and assistants who monitor OLAF activities from day-to-day and help Committee members carry out their duties efficiently, with the aim of reinforcing OLAF's independence.
78. Following an amendment to Regulation (EU) No 883/2013<sup>21</sup>, the Supervisory Committee's Secretariat is provided by the Commission, independently from OLAF and in close cooperation with the Committee. In February 2017 the Secretariat was administratively attached to the Office for the Payment of Individual Entitlements of the European Commission (PMO) and it does not appear to be linked to the Supervisory Committee in the organisational chart. Now, more two years after the move to the PMO, it can be seen that this change had an adverse impact on the way the Secretariat operates.
79. With regard to the location of the Secretariat outside of the OLAF security zone the Committee also expressed its concerns and reiterated its position that a suitable place within OLAF's Security zone would best enable the Secretariat to perform efficiently its remit.
80. The Secretariat was severely understaffed from February 2017 and the situation did not improve during the reporting period. This staff shortage was a matter of deep concern to the Committee. Inevitably, it affected its work plan, leading the Committee to discuss this issue

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<sup>21</sup> Regulation (EU) No 2016/2030 of the European Parliament and of the Council of 26 October 2016 amending Regulation (EU) No 883/2013, as regards the secretariat of the Supervisory Committee of the European Anti-Fraud Office (OLAF). The Regulation entered into force on 1 January 2017.



seriously on several occasions with the Commissioner for Budget and Human Resources, Mr Oettinger, and the Director-General for Human Resources and Security, Ms Souka.

81. At the end of 2018 the Committee's Secretariat recruited a new administrator who took office in April 2019, to-day another post remains vacant and is to be filled as soon as possible. It also asked the Commission to publish the post of the Head of the Secretariat which had fallen vacant in November 2018. The post was advertised at senior managerial level and the selection process is under way. The Commission needs the Committee's consent to appoint Secretariat members. It is essential for it to be involved in the recruitment process to guarantee that the selection of Secretariat members is genuinely independent. Officials assigned to the Secretariat must never seek or take instructions from any government or any institution, body, office or agency relating to the exercise of the Committee's monitoring functions.
82. The Committee has informed OLAF, the European Commission, the European Parliament, the Council and the European Court of Auditors, that a more suitable place for its Secretariat must be found, the reform of OLAF's Regulation being an opportunity to reconsider this matter. The Committee is encouraged by the Parliament's proposal to modify the current provision of the Secretariat in the Regulation (EU) No 883/2013<sup>22</sup>. This change will enable the three appointing EU Institutions and the Committee to consider all possible options for the best place to attach and locate its Secretariat, including the original option to integrate it again to OLAF under the Committee's authority and with similar ongoing provisions for its independent functioning.
83. In 2018, the Supervisory Committee held 11 plenary meetings. The Chair, the rapporteurs and the members of the Committee's Secretariat also met regularly to work on particular issues. For every major issue examined, the Supervisory Committee appointed a rapporteur. The rapporteurs worked with their Secretariat to prepare draft reports, opinions or papers to be discussed in the plenary meetings. They also met with OLAF management and staff as part of the preparation of the Supervisory Committee's opinions and reports. The Committee discussed with OLAF its opinions before they were adopted.
84. The Committee's budget for the year covered by this report was € 200 000, and the level of execution of the budget was 93.4 %. The authorising officer by sub-delegation responsible for the expenditure is the Director of the PMO.
85. To ensure maximum transparency of its work, the Supervisory Committee publishes documents of public interest on its inter-institutional website (<http://europa.eu/supervisory-committee-olaf/>).

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<sup>22</sup> See footnote 5 of the current activity report; European Parliament legislative resolution of 16 April 2019: article 15.8 "Supervisory Committee" where the words "independently from the Office [OLAF]" have been deleted.