

**SUPERVISORY COMMITTEE**



## **Opinion No 3/2014**

# **OLAF's Preliminary Draft Budget for 2015**

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## **Conclusions**

- (A) The Supervisory Committee supports the preliminary draft budget for 2015 with the provision that its recommendations be taken into consideration**
- (B) The efficient investigation of suspected fraud and illegal activities is vital to the public trust towards the European Union and Institutions of the Union. The OLAF budget should not be subject to stricter savings measures than other services of the Commission. Considerable synergy gains are attained by concentrating in OLAF the administrative anti-fraud investigations and investigation of illegal activities in the European Union Institutions, agencies and bodies.**
- (C) In the future, attention should also be paid to the indexation of the financial resources to inflation to ensure that OLAF has adequate ICT infrastructure and ICT capabilities which are vital for the cost-effective performance of the investigative function.**
- (D) A sufficient number of seconded national experts strengthen OLAF's capacity for application of Member States' law and development and sharing of Union-wide capacities in the fight against fraud. This should be taken into account in the establishment plan of OLAF.**
- (E) In order to enable OLAF to be a model organisation thriving for excellence and good governance, the transparency of the budget documentation and management plan can be improved by increasing the coherence and linkage between targets and indicators in the annual management plans and the budget documentation in order to highlight consequences of the budgeting to priorities and performance of the Office.**
- (F) Consultation of the Supervisory Committee on the preliminary draft budget before it is sent to the Directorate-General for budgets is a legal requirement for the Director-General of OLAF. The Supervisory Committee welcomes the consultation with it before bilateral negotiations with the DG Budget and recommends the Director-General to ensure in the future such effective consultation prior to presentation of the preliminary draft budget.**
- (G) A separate budget item under the OLAF Budget for both the Supervisory Committee and its Secretariat should be considered to fully inform about the costs of the SC function and to highlight in a transparent manner the inter-institutional character of the SC and its Secretariat. This should be considered while preparing the future changes in the EU legislation concerning the governance of OLAF.**
- (H) The structure of the SC Members' remuneration should be reformed to reflect the modern and efficient working practises of the Supervisory Committee.**

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## Introduction

(1) In accordance with Regulation (EU) No 883/2013<sup>1</sup> and Article 3 of Commission Decision 1999/352/EC, ECSC, Euratom<sup>2</sup>, the European Anti-Fraud Office (hereinafter OLAF) shall have full independence to exercise its investigative function in all institutions, bodies, offices and agencies established by or on the basis of the Treaty on the European Union, Treaty on the Functioning of the European Union and the Euratom Treaty. To do this and to ensure that OLAF is able to function in an efficient and effective manner and contribute in a best possible way to the Union's objectives of the fight against fraud defined in Article 325 of the Treaty on the Functioning of the European Union, the total appropriations for the Office, including for the Supervisory Committee and its secretariat, shall be entered under a specific budget line within the section of the general budget of the European Union relating to the Commission and shall be set out in detail in an Annex to that section.<sup>3</sup>

(2) In accordance with Article 15(1) and recital (37) of Regulation (EU) No 883/2013, the mission of the OLAF Supervisory Committee (SC) is to reinforce the independence of OLAF in the exercise of its investigative function by regular monitoring. With the adoption of Regulation (EU) No 883/2013 the role of the SC has been strengthened as the guardian of the independence of OLAF. Pursuant to the third subparagraph of Article 15(1) of Regulation (EU) No 883/2013 the SC shall send opinions to the Director-General of OLAF including, where appropriate, recommendations on, inter alia, the resources needed to carry out the investigative function of OLAF.

(3) For the purpose of reinforcing and strengthening the independence of OLAF and considering the powers conferred by the Commission on the SC and the legal requirement for the Director-General of OLAF to consult the SC before he sends to the Director-General for budgets a preliminary draft budget to be entered in the annex concerning OLAF to the Commission section of the general budget of the European Union<sup>4</sup>, the SC has considered OLAF's Preliminary Draft Budget (PDB) for 2015 and delivers the following Opinion.

(4) The objective of the procedure in which the SC is consulted and in which the SC adopts an Opinion on OLAF's Preliminary Draft Budget is to give assurance that the Draft Budget duly takes into account the independence of the investigative function of OLAF and that OLAF is resourced to function effectively and efficiently as an inter-institutional service in stepping up the fight against fraud as foreseen by Article 325 of the Treaty on the Functioning of the European Union and in Regulation (EU) No 883/2013. The SC would point out that in

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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. 1–22*.

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

<sup>3</sup> See Art. 18 of Regulation (EU) No 883/2013.

<sup>4</sup> Article 6 (2) of Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-fraud Office, as amended by Commission 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."

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accordance with generally accepted international principles and standards on the independence of investigations and investigative bodies a sufficient degree of financial autonomy and sufficient financial resources must be ensured.

(5) The SC Opinion on the OLAF Preliminary Draft Budget creates a documented forum of advice from the SC to the Director-General of OLAF and to the Budgetary Authority of the Union and other Institutions of the Union on the prerequisites for efficient allocation and use of resources to and within OLAF. The SC Opinion thereby contributes to the attainment of value for money, legal certainty in the European Union and to the efficient implementation of the Union's anti-fraud policy and strategy.

(6) The SC welcomes the fact that it was consulted prior to the bilateral consultations between OLAF and the European Commission Directorate General on Budgets (DG Budget). In accordance with the Regulation (EU) No 883/2013 and the Commission Decision, it is a legal requirement and also the purpose of the Union legislator that the SC can provide its assessment and advice before negotiations on the preliminary draft budget take place and also prior to the presentation of the preliminary figures albeit they may be and usually are subject to changes. Furthermore, the SC would like to remind the Director-General of OLAF to ensure that this sufficiently early consultation of the SC becomes an established good practice.

### **Resources**

(7) The SC notes that the general policy and guidelines established by the Commission concerning the preparation of the preliminary draft budgets for the Commission services leave a limited discretion to the Director-General for OLAF in the presentation of the preliminary draft budget taking into account the European Court decision on the salary adjustments, the objective for reduction of 5 % of the European Commission staff in 5 years starting from 2013 and the nominal freeze of non-salary related expenditure to the level of year 2014. While the SC generally recognises the value and need for productivity and improved efficiency in all Union institutions, the SC would point out the resource constraints facing OLAF with regard to the duration of investigations frequently exceeding the time limits targeted at the EU legislation and the OLAF caseload.

(8) According to the figures of the preliminary draft budget presented by the Director-General of OLAF concerning the outcome of the budget hearings with DG Budget, the overall budget of OLAF would be 57 778 000 euro while the budget in 2014 is 57 207 000 euro and the outturn for 2013 is 57 633 043,41. The most important expenditure in OLAF is that related to staff. OLAF's preliminary budget figures include 39 041 000 euro for permanent and temporary staff with a small increase compared to the budget for 2014. The preliminary amount for expenditure related to external staff, i.e. contract agents, interim staff and Seconded National Experts (SNE) is 2 652 000 euro compared to 2 612 000 in the budget for 2014. In the establishment plan it is foreseen that the total number of permanent and temporary staff would diminish from 381 in 2014 to 375 in 2015 (following a general reduction of 5 % of Commission staff over the period of 5 years from 2013). The draft establishment plan foresees a small reduction of temporary staff and an increase of permanent posts following the OLAF request for the conversion of temporary posts to permanent posts.

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In the draft establishment plan, 30 contract agents, 10 interim staff and 20 SNEs are foreseen. There is no major substantial change in this. The main reduction in the preliminary draft budget figures is the reduction of 400 000 euro from other management expenditure following 2013 outturn figures. The amount is transferred to the budget item reserved for investigations. These figures are subject to modification in the course the preparation of the Draft Budget to be presented by the European Commission.

(9) The SC would point out that national experts are important for the realisation of the objectives of OLAF. In the regular monitoring of OLAF investigations the SC has observed the need to strengthen the expertise of the law of the Member States in OLAF. Use of SNEs is one of the tools available for this purpose. In addition, SNEs provide a system for exchange and development of Union-wide human resources in the fight against fraud. The SC notes that the preliminary figures for external staff give decent possibilities to continue the use of national expertise albeit there is a general declining trend in the number of temporary staff members. The SC further recognises that the legal expertise on the Member States' law may not be dependent only on the seconded national experts. The SC also notes that the work shall mainly be conducted by permanent staff members who are subject to the rights, obligations and protection as defined in the Union staff regulations.

(10) The SC would emphasise that the public trust towards the European Union and Institutions of the Union depends heavily on the efficient investigation of suspected fraud and illegal activities. As a consequence, the OLAF budget should not be subject to stricter savings measures than other services of the Commission. The SC notes with satisfaction and considers that preliminary draft budget figures as presented by the Director-General of OLAF provide conditions to continue the fight against fraud as one of the main priorities of the European Union.

(11) The budget line concerning buildings and IT contains a small increase related to buildings and telecommunications. The SC reiterates its observation from its Opinion 1/2013 on the preliminary draft budget for 2014 that a well-organised and up-to-date ICT support and infrastructure are necessary conditions for a cost-effective fraud investigation function. OLAF's Case Management, ICT analytics and other information systems shall be kept up to date in order to enable OLAF to function efficiently. Therefore the SC insists that sufficient indexation of the financial resources be foreseen in the future to ensure adequate ICT infrastructure and ICT support and tools for investigations.

(12) The SC has regularly recommended to OLAF in its previous opinions on the budget to allocate more staff to OLAF's core business – investigations – by shifting them from the support units. The SC reiterates that OLAF should develop its reporting and present information on the allocation of resources to various activity and priority areas in its management plan and the documents underlying preliminary draft budget. The budget documentation could in the future be clearer on the impact of the preliminary draft budget on the core business of OLAF, investigations.

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### **Human resources strategy**

(13) The reorganisation of OLAF in 2012 resulted in significant shifts of staff and modifications in their job description or even a completely new allocation of tasks. In such circumstances the SC reiterates its earlier position that it is essential to have an appropriate human resources strategy built on the identified and real needs of the organisation and its priorities, with the aim of giving direction and maximising the use of existing resources and creating conditions for motivation of skilled experts. The SC draws particular attention to OLAF's ability to recruit and maintain high quality professionals for its investigative functions as a focal point of a cost-effective anti-fraud service at the Union level. Cost-effective investigative functions require also that there are adequate measures to maintain and develop the motivation of the staff in OLAF.

(14) The SC notes that measures have been initiated in OLAF to develop a human resources strategy and considers that OLAF should set an example in the development of such a strategy. A crucial element of the human resources strategy should be the continuous training, strengthening of the knowledge of the Member States' law and improvement of internal communication and sharing of knowledge. Another significant element in the human resources strategy is to address the issue of absenteeism among the personnel of OLAF and to mitigate its consequences for the investigative function.

### **The Supervisory Committee and its Secretariat**

#### **Expenditure concerning the mandate of the Supervisory Committee members**

(15) The SC notes that the amount of the expenditure related to the mandate of the SC Members is not changed in the 2015 preliminary draft budget compared to the budget of 2014 and of previous years. The SC notes that by keeping the expenditure related to its mandate constant over the years its relative size compared to the original budget and original intention of the legislative and budgetary authority has diminished to an extent which cannot be considered reasonable.

(16) The SC draws attention to the fact that with the widened responsibilities given by the Union legislator to the SC by Regulation (EU) No 883/2013, the performance of the duties of the SC requires considerable time from its Members who, by definition, do that on part-time basis. The remuneration of the SC members has remained at exactly the same level for several years and does not reflect the original intention of the Union legislator to link the remuneration to the level of the salary of Directors-General of the Commission services. More importantly, the structure of the remuneration is linked to the number of physical meetings and to presence in the meetings and it does not take into account the more efficient and modern working practices of the SC. Within the limits of the budget item there is room to reform the structure of the system of remuneration to better reflect and allow for the development of working practices and effective and efficient performance of the mission of the SC.

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### **Resources of the Secretariat of the Supervisory Committee**

(17) In accordance with Regulation (EU) 883/2013 the SC has a crucial role in the oversight of OLAF's investigative function and as a guardian of the independence of OLAF. The SC has also a specific inter-institutional character.

(18) The SC is dependent in the discharge of its duties, assigned by the Union legislator, on its Secretariat. The SC underlines that the role of its Secretariat is primarily not to assist in the organisation and documentation of the SC meetings. The SC Secretariat performs in practice, to a large extent, the regular monitoring of the investigative function of OLAF. This results also from the fact that it is the SC Secretariat which has access to the OLAF Case Management System in accordance with the established Working Arrangements and the European Union data protection legislation de facto requires that the access to information by the SC is realised by the SC Secretariat. An adequately staffed Secretariat with high quality personnel is thus a vital condition for the SC in the discharge of its duties as stipulated by the Union legislator.

(19) The SC would point out that according to Article 15(8) of Regulation (EU) No 883/2013 the SC Secretariat shall be provided by OLAF, in close consultation with the SC.

(20) Pursuant to Article 18 of Regulation (EU) No 883/2013 the total appropriations for OLAF, including for the SC and its Secretariat, shall be entered under a specific budget line within the section of the general budget of the European Union relating to the Commission and shall be set out in detail in an Annex to that section. The expenditure related to the SC and its Secretariat shall thus be part of the OLAF budget. The implementation of this should take into account the requirements of transparency and independence of the SC with regard to OLAF, which requires also functional independence for the Secretariat in the performance of its duties related to the regular monitoring of OLAF's activities. According to the internationally accepted principles and standards on the independence of the supervisor against the supervisee, the resources of the supervisor shall not be dependent of the supervisee. More attention should be paid to this principle in the development of the governance of OLAF.

(21) This issue has been recently raised in the assessment of the European Union Integrity System performed by Transparency International (TI). The TI Report states that there exist justifiable concerns on the budgetary independence of the SC and that these concerns should be addressed. The TI Report recommends that the SC shall be provided by EU legislation with control over its own resources.<sup>5</sup>

(22) To be fully informative and representative of the total cost of oversight, the expenditure related to the SC Secretariat could be specified as a separate budget item under the OLAF budget. Expenses arising in the course of the execution of the Secretariat's functions – e.g. mission expenses – should be covered by this particular budget item in order to streamline

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<sup>5</sup> Transparency International: The European Union Integrity System. Transparency International 2014, p.158 and 177.

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administrative procedures and lessen the administrative burden on the competent OLAF staff, including the Director-General.

(23) The SC welcomes an agreement reached in the budgetary hearings according to which, for information purposes, a description of the establishment plan of the SC Secretariat as 7 posts and 1 contractual agent and an overall estimate of the expenses of the Secretariat (approximately 1.200 000 euro) would be included into the budget documentation of the Preliminary Draft Budget for 2015. The SC finds that this is a step in the right direction, increasing transparency, but this arrangement still falls short of providing the SC with effective control over its own resources. The delegation of the powers of the Appointing Authority and Authorisation Officer with respect to the SC Secretariat staff and budget to the Head of Secretariat would further strengthen the budgetary independence of the monitoring function exercised by the SC. A general agreement should be in place that no changes to the SC Secretariat staff and budget shall be made without consent of the SC.

(24) The SC maintains its position, as expressed in its previous opinions on the OLAF budget, on the minimum requirement of eight Secretariat staff, which is equivalent to the current needs of the SC. The SC has noted with satisfaction that the Director-General of OLAF allocated in 2013 the necessary additional posts to the SC Secretariat. The preliminary draft budget for 2015 creates conditions for ensuring a small but high quality SC Secretariat.

### **Recommendations to the Director-General of OLAF:**

**(I) OLAF should present more detailed information on the allocation of resources to priority areas**

**(II) OLAF should continue its work to develop an exemplary human resources strategy and inform the SC regularly on the progress**

**(III) The Director General of OLAF should delegate, as far as possible, the powers of the Appointing Office and Authorising Officer with respect to the staff and budget of the Supervisory Committee's Secretariat to the Head of the Secretariat**

**(IV) Changes to the staff and budget of the Supervisory Committee's Secretariat shall be subject to consent of the Supervisory Committee**

**(V) In accordance with Article 7(2) of the Commission Decision of 28 April 1999, this Opinion should be transmitted by OLAF to the Budgetary Authority.**

Brussels, May 2014  
For the Supervisory Committee  
Johan DENOLF, Chairman