



2023
ACTIVITY REPORT

Foreword

This is the second annual report of my activities as the Controller of procedural guarantees. The OLAF Regulation entrusts me with handling complaints by persons concerned about OLAF's compliance with procedural guarantees, as well as alleged infringements of the rules applicable to OLAF investigations. This includes potential breaches of procedural requirements and fundamental rights.



Until the creation 2 years ago of the post of Controller, people being investigated by OLAF had no possibility to complain about OLAF's handling of the investigation, other than by making a complaint to the European Ombudsman for maladministration or by trying to trigger the Commission's non-contractual liability under very strict conditions.

To remedy this shortcoming, amendments to the OLAF Regulation now give every person concerned, through the creation of a proper Complaints mechanism, the possibility to lodge a complaint with the Controller.

Through this newly created administrative remedy the Controller is gradually but steadily adjusting and aligning the principles of effective judicial protection with the principles of effective administrative protection. The Controller always takes into account the specific procedural guarantees that govern OLAF's activities, as well as the Charter of Fundamental Rights of the EU,

general legal principles and the jurisprudence of the EU courts¹ applicable to OLAF investigations.

For the Controller, it is important that the complaints mechanism not only becomes an effective remedy for persons concerned, but also increases the transparency of OLAF's activities. If having an efficient and effective anti-fraud body, capable of safeguarding the financial interests of the EU, is a 'must have' for the EU and for taxpayers, it is equally important that OLAF investigations into possible fraud are conducted in full compliance with fundamental rights and procedural guarantees.

That said, to better understand the role of the Controller, and the limitations of this new function, it is important to bear in mind that the Controller is not acting as a judge who assesses the legality of OLAF's decisions and acts. The Controller's mission is to find and propose solutions to the issues raised by complainants and, through proposals for solutions and,

¹ The Court of Justice of the European Union (CJEU) consists of two courts: the Court of Justice and the General Court.

ultimately, recommendations made to the Director-General of OLAF, to solve the issues at stake and improve, in a forward-looking manner, OLAF's administrative and investigative practices.

I hope that this report will help raise awareness of the kind of issues that are at the heart of the complaints made by those concerned, while at the same time increasing OLAF's accountability and people's trust in the systems that the EU has put in place to tackle fraud.

I am happy to report that we met all our objectives in 2023 despite the increased number of complaints received and the serious understaffing situation faced by the Secretariat of the Supervisory Committee. In that respect, I am grateful for the legal support that the Secretariat provided me.

In this report, you will find out more about our work and the results we achieved by operating the complaints mechanism.

I am convinced that the complaints mechanism has already become an essential safeguard for people under investigation, ensuring that OLAF's activities comply with the relevant procedural guarantees and rules on investigations.

Prof. Dr. Julia Laffranque

Controller of procedural guarantees

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1. The Controller's mission and mandate

The Controller of procedural guarantees is a function created by Regulation 2020/2023² amending Regulation 883/2013 (the OLAF Regulation) to protect the procedural guarantees and fundamental rights of people being investigated by the European Anti-Fraud Office (OLAF). **Dr Julia Laffranque** was appointed on 3 May 2022 as the first Controller, for a non-renewable term of 5 years. She is assisted by the Secretariat of the Supervisory Committee (the Secretariat).

The Controller carries out her tasks in **complete independence**. She does not 'take instructions from anyone in the performance of her duties' (Article 9.6 of the OLAF Regulation). Given that persons concerned³ cannot, in principle, seek judicial recourse against OLAF's acts or omissions during the course of an investigation, the possibility to complain to the Controller is of great importance. A complainant can turn to the Controller, within the strict deadlines set out in Article 9b of the OLAF Regulation, to seek an independent and thorough assessment of their complaint. Through the complaints mechanism, the Controller can **provide reassurance** that OLAF has acted in conformity with the rules set out in its legal framework.

According to Article 9.8 of the OLAF Regulation, the Controller;

'shall monitor the Office's compliance with procedural guarantees referred to in Article 9, as well as the rules applicable to investigations by the Office. The Controller shall be responsible for handling complaints referred to in Article 9b'.

In handling complaints submitted by **persons concerned** regarding OLAF's **compliance with procedural guarantees and the rules applicable to investigations**, the Controller does not seek to substitute her own assessment for that of OLAF on how to conduct an investigation or assess evidence, or on what conclusions to reach. Instead, her role, whenever she finds a breach of the procedural guarantees or the rules applicable to investigations, is to invite, as a first step, OLAF to take action to resolve the complaint (**proposal for a solution**). If no such solution can be found, as a second step the Controller will make a **recommendation** to OLAF on how to resolve the complaint. Pursuant to the Controller's implementing provisions⁴, the Controller

² [Regulation \(EU, Euratom\) 2020/2223](#) of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations, OJ L 437, 28.12.2020, p. 49.

³ A person concerned is any natural person or economic operator suspected of having committed fraud, corruption or any other illegal activity affecting the financial interests of the EU and who is, therefore, subject to investigation by OLAF. Complaints submitted by persons other than persons concerned, including witnesses and informants, fall outside the Controller's mandate.

⁴ Decision of the Controller of procedural guarantees adopting implementing provisions for the handling of complaints 2022/C 494/07, OJ C 494, 28.12.2022, p. 17–23, available at: https://supervisory-committee-olaf.europa.eu/controller-procedural-guarantees/about-controller/legal-framework_en. The Controller's implementing provisions provide detailed rules for handling complaints, including rules on lodging a complaint, the exchange of information between the parties, the organisation of hearings, the different actions taken to solve the complaint, and the Controller's relations with OLAF and the Supervisory Committee. They also provide clarification on a number of issues not explicitly addressed by the OLAF Regulation, such as what happens in cases where there are parallel legal proceedings or when a complaint raises issues relating to the protection of personal data.

assesses complaints in an **adversarial procedure** but does not and cannot interfere with the conduct of the OLAF investigation under way (Article 9b.6 of the OLAF Regulation).

2023 has been a challenging year given the increasing number of complaints received and the complexity of the legal issues they raised. Although the Controller cannot refer in this report to individual cases being investigated by OLAF, and must ensure their confidentiality even after the cases have closed (Article 9.9 of the OLAF Regulation), this report provides a useful summary of the kind of issues that persons concerned have complained of. It also describes how these concerns have been dealt with, and explains how the complaints mechanism worked and the results it achieved.

2. First full year of the new complaints mechanism

Since the beginning of her activity in October 2022, the Controller has had the opportunity to deal with several interesting legal questions, progressively laying the ground for the emergence of a solid conceptual framework within which complaints can be assessed. Considering the number of complaints handled and the variety of the legal questions raised, 2023 was both a challenging and a successful year. Complaints were handled not only as swiftly as possible, but also as thoroughly and comprehensively as possible.

To better understand how the complaints mechanism functions, it is important to bear in mind that through this mechanism the Controller has a **privileged, direct access** to the OLAF case file of the relevant investigation. This form of access to the OLAF case file is of paramount importance for **reassuring complainants** that the Controller is able to look thoroughly into OLAF's investigative activities, even in cases where some of the relevant information may be confidential and cannot be disclosed to the complainant. In that regard, the Controller often performs a delicate balancing act between the confidentiality of the OLAF investigation, on the one hand, and the adversarial character of the complaints mechanism, on the other.

In the first few months of her activity (between October 2022 and December 2022) the Controller received 14 complaints, a significant number of which (13) were already pending before OLAF in anticipation of the appointment of the Controller. By the end of 2022, the Controller had closed 6 of these complaints, with the remaining 8 being decided in 2023.

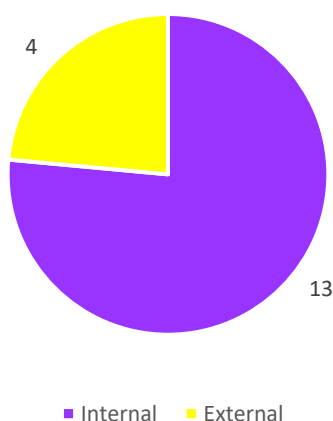
In 2023, 17 new complaints were submitted by natural and legal persons. In 2023, the Controller completed her assessment for 14 of them, and the remaining 3 were decided in early 2024. These last 3 complaints were submitted shortly before the end of the year and were all declared admissible.

3. Overview of complaints submitted in 2023

Most of the 17 complaints received by the Controller in 2023 were submitted by persons concerned in OLAF internal⁵ investigations (13), with 4 of them relating to an external investigation⁶ (Figure 1). Most of the complaints were submitted in English, with other languages (Spanish, French and Polish) also used (Figure 2). 14 complaints were submitted by individuals and 3 by legal entities. All 3 legal entities were represented by a lawyer, while this was the case in only 3 out of 14 complaints submitted by individual complainants (Figure 3).

Figure 1: Types of OLAF investigations complained about in 2023

Types of OLAF investigations complained against



⁵ Internal investigations are investigations conducted by OLAF within European institutions, bodies, offices and agencies established by, or on the basis of the EU Treaties for the purpose of fighting fraud, embezzlement, corruption and any other illegal activity affecting the financial interests of the EU. To that end, OLAF investigates serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the EU liable to result in disciplinary or, as the case may be, criminal proceedings; or an equivalent failure to discharge obligations by members of institutions and bodies, heads of offices and agencies or staff members of institutions, bodies, offices or agencies not subject to the Staff Regulations (Articles 1(4) and 4 of the OLAF Regulation)

⁶ External investigations are investigations that OLAF conducts pursuant to Article 3 of the OLAF Regulation. OLAF's mandate covers all EU expenditure (i.e. structural funds, agricultural policy and rural development, direct expenditure and external aid) and a substantial part but not all of the EU's revenue (mainly customs duties and agricultural duties).

Figure 2: Languages of the complaints submitted in 2023

Languages of the complaints

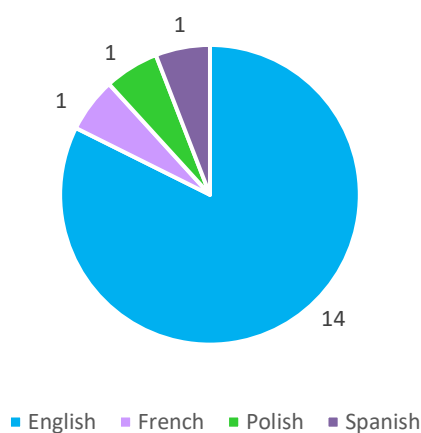
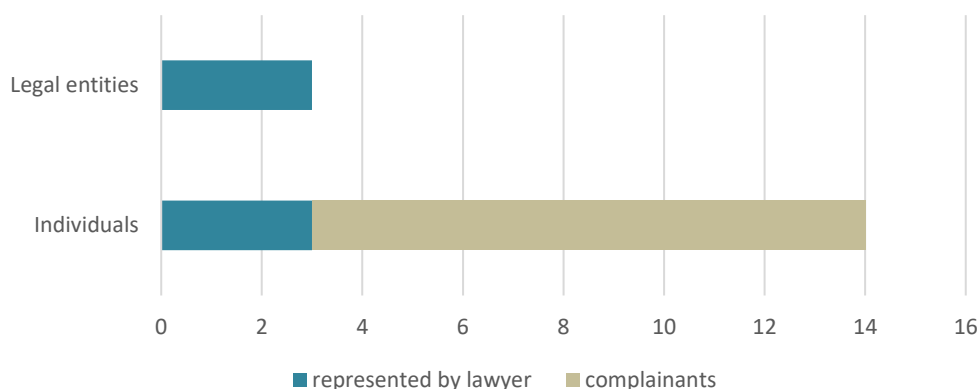


Figure 3: Who submitted complaints?



In most cases, the complainants invoked breaches of their procedural guarantees under Article 9 of the OLAF Regulation and their fundamental rights under the Charter of Fundamental Rights (Figure 4). These complaints concerned: (i) the right to be heard and the effective exercise of their right to submit observations on facts concerning them (Article 9 (4) of the OLAF Regulation); (ii) the right to be informed (Article 9 (3) of the OLAF Regulation); (iii) breaches of the principles of fairness, objectivity and impartiality in the conduct of investigations; (iv) the language regime of the investigations (Figure 5). Complainants also complained about the rules applicable to OLAF investigations⁷, in particular on-the-spot checks and digital forensic operations (Figure 6).

⁷ These include the rules set out in the OLAF Regulation as well as those contained in various texts, including the OLAF Regulation, the Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2–5), the Guidelines on investigations for OLAF staff (GIPs) and the Guidelines on Digital Forensic Procedures for OLAF Staff.

Figure 4: Subject matter of the complaints submitted in 2023

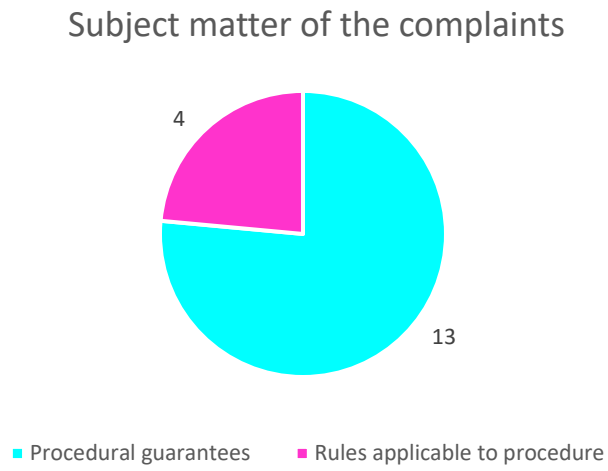


Figure 5: Analysis of the different allegations regarding procedural guarantees raised in 2023 (including admissible and inadmissible complaints)

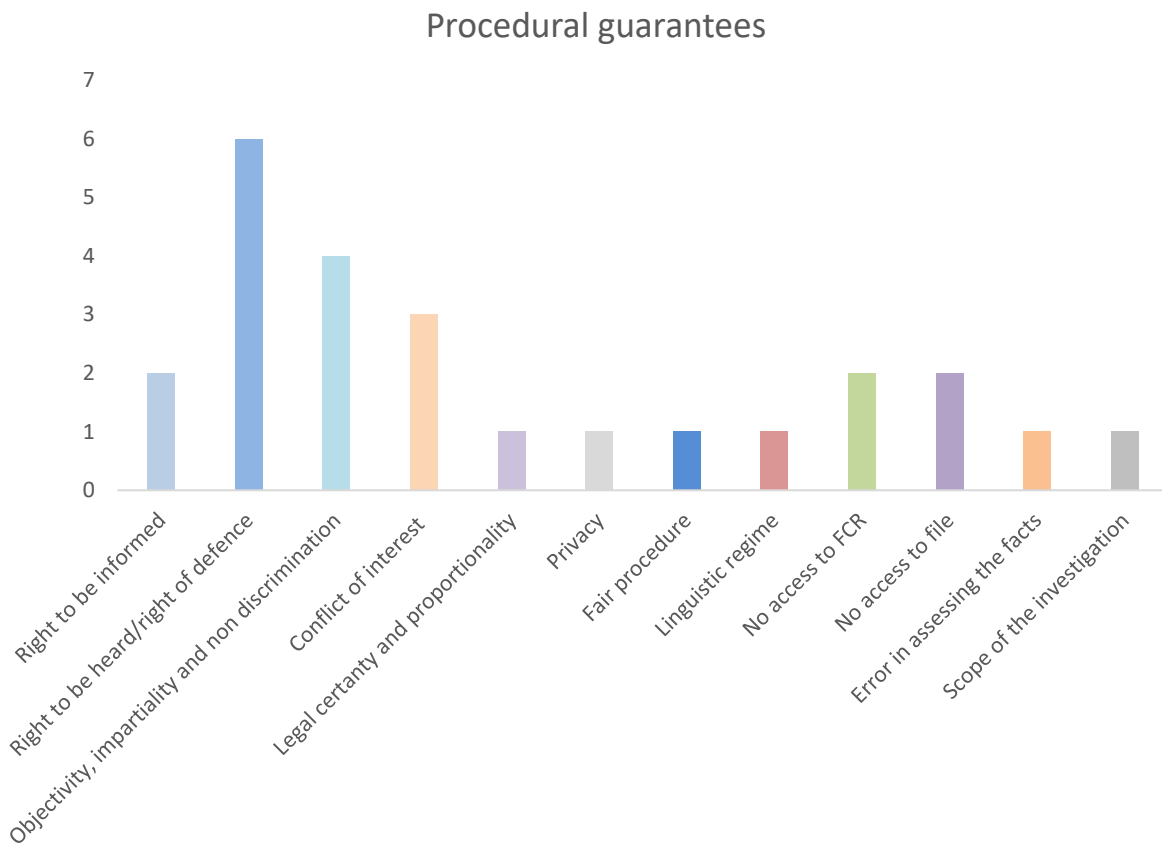
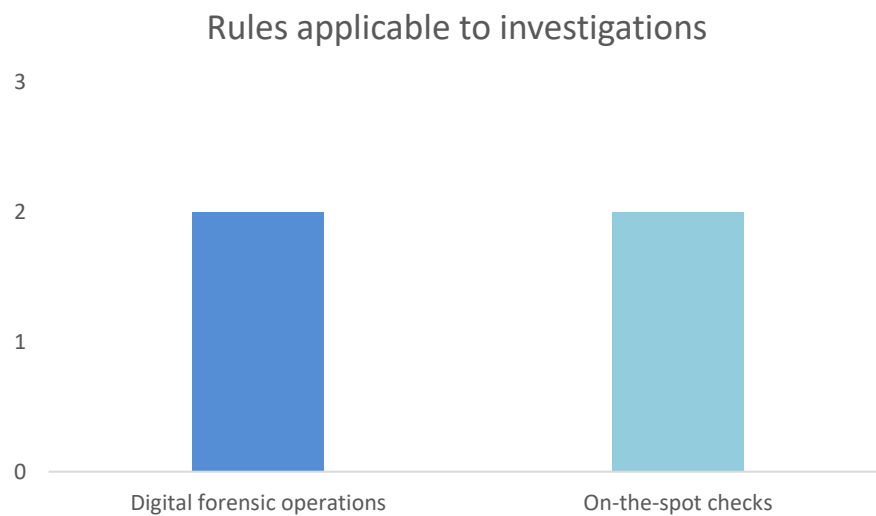


Figure 6: Analysis of allegations regarding the rules applicable to investigations



4. Cases dealt with by the complaints mechanism

The Controller deals with complaints in a **fair, independent, and impartial** manner. The procedure, in line with the OLAF Regulation and the Controller's implementing provisions, involves two stages: (i) assessment of the admissibility and, if a complaint is admissible; (ii) assessment of the substantive arguments raised by complainants - depending on the issues at stake, the Controller may invite OLAF to resolve the complaint (proposal for a solution) and, if necessary, issue a recommendation to OLAF.

4.1 Admissibility

Within **10 working days** of the date of receipt of a complaint the Controller must decide on its admissibility. The conditions for admissibility are set out in paragraphs 1 and 2 of Article 9b of the OLAF Regulation, and Article 5 of the implementing provisions. For a complaint to be admissible, it should be lodged within one month of the complainant becoming aware of the relevant facts that constitute an alleged infringement of the procedural guarantees or the rules on investigation, and in any event, no more than one month after the closure of the investigation.

In 2023, the Controller assessed the admissibility of all pending complaints within the prescribed time limit. She declared 9 complaints admissible (of which one partially admissible) and 8 inadmissible (Figure 7). Of the 8 inadmissible complaints, 7 failed to respect the time limits set in Article 9b(2). The remaining complaint was submitted by a person who was not a person concerned (Figure 8).

Figure 7: Admissibility of complaints received in 2023

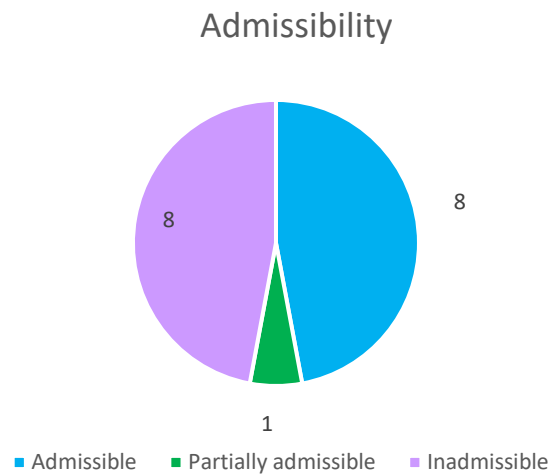
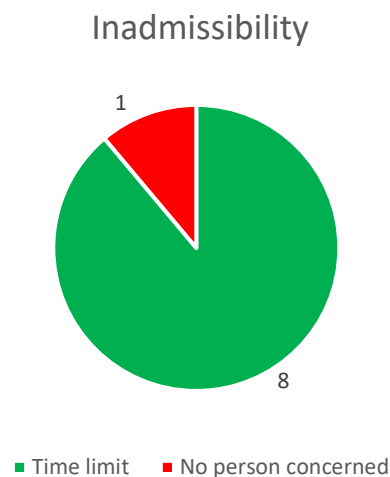


Figure 8: Grounds for inadmissibility of complaints received in 2023 (including partially admissible complaints)



In examining the admissibility of the complaints, the Controller follows an approach that seeks to respect both the wording and the aims of the relevant provisions of the OLAF Regulation.

In most cases, complaints were declared inadmissible because the complainant had been made aware of the alleged breach of procedural guarantees more than a month before the complaint was lodged.

In a few cases, the complaint was declared inadmissible because OLAF's investigation had been closed more than a month before the moment the complainant was made aware of that closure. Although this situation may be unsatisfactory as regard's the complainant's possibility to complain to the Controller, the fact remains that when it comes to closed investigations, the OLAF Regulation sets an additional stricter condition of admissibility: no more than one month after the closure of the investigation, regardless of the moment the complainant becomes aware of the relevant facts.

The Controller considers that this undoubtedly restrictive condition applicable to closed investigations exists to preserve not only the **effectiveness of any eventual follow-up procedure** at national or EU level, but also **the effectiveness of her own recommendations and suggestions for solutions** to the specific case at hand. In fact, the Controller would be prevented from proposing any useful solution for cases which have been closed by OLAF and for which there may be ongoing follow-up procedures before the relevant national or EU authorities. In such rare cases, the Controller considers that persons concerned can pursue their grievances before these authorities and thus make use of the available judicial or administrative remedies.

Admissibility will remain an important condition to an analysis of the complaints by the Controller. In all instances where complaints or allegations were found inadmissible, the Controller explained in detail to the complainant the reasons for her decision.

4.2 The adversarial procedure: proposal for a solution

As a matter of principle, the Controller endeavours to give, to the greatest extent possible, **full effect to the principle of adversarial proceedings**. Thus, both OLAF and the complainants are given the possibility to state their case and submit supporting documentation. They are also informed of each other's submissions and have the possibility to comment on them.

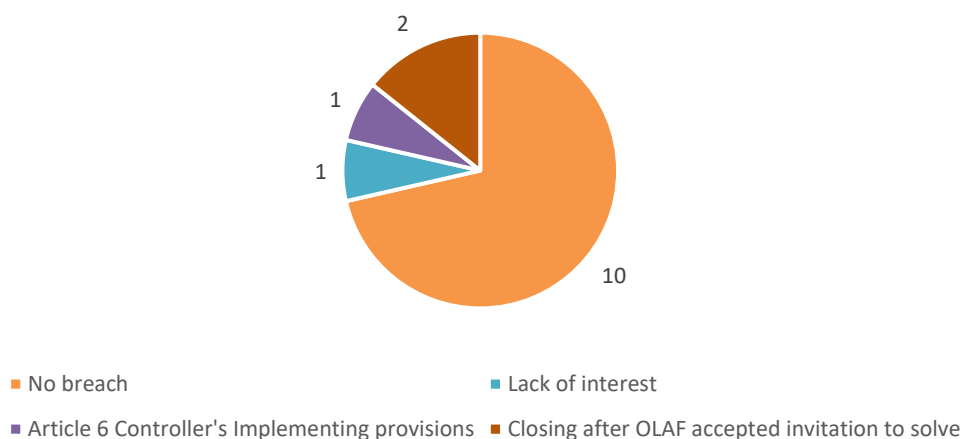
In one of the 9 admissible cases decided in 2023 the Controller invited OLAF to take action to solve the complaint pursuant to Article 9b(3) of the OLAF Regulation. In that case the complainant had raised concerns about some of the questions asked by OLAF during an interview, in particular whether those questions fell within the scope of the investigation. On the basis of the examination of the case file, to which the Controller had privileged access, the Controller concluded that the scope of the investigation as defined by OLAF was not as clear as it should have been. The Controller therefore invited OLAF to confirm to the complainant the scope of the investigation as understood by the Controller and to exclude the questions asked during the interview that appeared to fall outside the scope thus understood. OLAF provided a satisfactory reply to the Controller's invitation by confirming to the complainant the scope of the investigation as indeed understood by the Controller, and by excluding the questions that were outside this scope. Given the positive reply of OLAF to the invitation to resolve the complaint, the Controller closed the case. The complainant also agreed with the Controller's proposed solution.

4.3 Closing decisions

By the end of 2023, the Controller had taken a final decision on 14 complaints: 8 complaints from 2022 and 6 complaints submitted in 2023 (Figure 9). The Controller found no breach of the complainants' procedural guarantees and rights in 10 complaints. As regards the remaining 4 complaints, in one instance the Controller closed the case because the complainant had brought the same issues before a court (Article 6 of the Controller's implementing provisions), while in 2 other complaints the Controller closed the case as OLAF had accepted her invitation to resolve the complaint. Finally, one complaint was closed for lack of interest. In that case, the

complainant was put into liquidation and the liquidator in charge of the insolvency procedure did not want the proceedings before the Controller to continue.

Figure 9: Final decisions taken in 2023



4.4 Overview of the Controller’s main findings

In 2023, the Controller dealt with a variety of arguments raised by complainants concerning their procedural guarantees. An overview of the main arguments raised and how they were assessed by the Controller is provided below.

1. Non-discrimination/equal treatment

The principle of non-discrimination was raised with the Controller in several complaints. In one case, the complainant argued that by inviting him to an interview while other persons concerned were invited to provide only written answers, OLAF had breached the principle of non-discrimination and had shown lack of objectivity. Given the independence enjoyed by the Director-General of OLAF in conducting an investigation (Articles 5, 7 and 17.3 of the OLAF Regulation), the Controller stated that OLAF enjoys a margin of discretion when deciding which investigative strategy to use and how it should be conducted, provided that it complies with the applicable procedural guarantees and the rules on investigations. OLAF, therefore, is free to decide whether to collect information through a formal interview, written information and/or by giving the person concerned the opportunity to comment. The Controller cannot substitute her assessment of OLAF’s choice of investigative strategy for that of OLAF, but must focus on checking that OLAF’s choices were not based on materially incorrect facts or an error of law, and were not vitiated by a manifest error of assessment or misuse of powers. To do otherwise could be seen as the Controller trying to interfere with the conduct of an OLAF investigation (Article 9.b.10 of the OLAF Regulation).

As far as compliance with the principle of non-discrimination and equal treatment is concerned, the Controller recalled that according to the case-law, the principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way, unless such treatment is objectively justified. In the case mentioned above,

if OLAF took a different approach to the investigation of other persons concerned from the approach taken for the complainant, this was due to the fact that the answers provided in writing by the other persons concerned were sufficiently comprehensive and, therefore, did not justify a formal interview. The differentiated approach followed by OLAF vis-à-vis the person concerned gave OLAF in this specific case the possibility to consider the particular circumstances of each person and, as a result, to ensure a fair and balanced investigation.

2. Lack of impartiality/ conflict of interest

Complainants also raised allegations about conflicts of interests or lack of impartiality in OLAF's investigations. The Controller stressed that a conflict of interest would render any decision-making process unfair, thus undermining the principle of legality in the conduct of OLAF investigations. The Controller analysed these aspects based on the well-established case law of the Court of Justice, which refers to the two main components of the concept of impartiality: subjective impartiality and objective impartiality.

According to this jurisprudence, subjective impartiality is presumed in the absence of evidence to the contrary⁸. For objective impartiality, it is not required that the staff member concerned had actual bias towards the alleged victim; it is sufficient that there exists a legitimate doubt that cannot be dispelled⁹. Likewise, on the issue of a conflict of interest of public officials, the Court of Justice has stated that an *actual or potential* conflict of interest arises when such an official has interests in their private capacity that could improperly influence the performance of their official duties and responsibilities. A *perceived or apparent* conflict of interest can be said to exist where it appears that a public official's private interests could improperly influence the performance of their duties. Based on these considerations the Controller found no breach of either principle in the cases in question.

3. Inspections of premises and digital forensic operations

Inspections of premises and digital forensic operations are investigative activities which are considered 'intrusive in character' and, therefore, are subject to specific rules. Such activities can only be conducted upon prior authorisation of the Director-General of OLAF¹⁰. In one case, the person concerned argued that the inspection of their premises carried out by OLAF, together with a digital forensic operation, was in breach of the applicable rules and of the principles of necessity and proportionality.

According to the case-law of the EU Courts, an inspection of an institution's premises conducted by OLAF is unlawful if OLAF did not already have evidence giving rise to legitimate suspicions that there were unlawful activities falling within its competence. The aim of any such inspection must be to gather evidence relating to the suspected unlawful activities¹¹. Based on her

⁸ Judgment of 8 February 2018, *Institute for Direct Democracy in Europe v Parliament*, T-118/17, not published, EU:T:2018:76, paragraph 27 and the case-law cited.

⁹ Judgment of 20 October 2021, *Kerstens v Commission*, T-220/20, EU:T:2021:716, paragraph 42 and the case-law cited.

¹⁰ Article 15(2) of the GIPs.

¹¹ Case C-130/19, *Pinxten v ECA*, paragraph 151; See also, by analogy, Case C-37/13 P, *Nexans and Nexans France v Commission*, paragraph 37.

privileged access to OLAF's files, in the case in question the Controller found that the inspection proposed was a necessary means to gather evidence relating to suspected unlawful activities. OLAF had followed the procedure in place and thus both the necessity and proportionality of the inspection were justified.

In another case concerning an inspection at the complainant's premises, the complainant argued that not only were they not informed of OLAF's decision to inspect their office, but also by conducting an inspection in the absence of the complainant, OLAF did not comply with the principle of transparency and did not respect their procedural rights. In that regard, the Controller recalled that in the course of an internal investigation Article 4(2)(a) of the OLAF Regulation gives OLAF the right to '*immediate and unannounced access to any relevant information and data relating to the matter under investigation [...] held by the institutions, bodies, offices and agencies, and to their premises*'. The Regulation does not refer to the right of the person concerned to be informed of an inspection carried out by OLAF at their premises. Article 4(4) of the OLAF Regulation only imposes an obligation on OLAF to inform the '*institutions, bodies, offices and agencies*' when it conducts an inspection on their premises, consults documents or data, or requests information held by them.

In another complaint, the Controller had to assess whether data acquired by OLAF through a digital forensic operation involving the seizure of electronic devices (i.e., smartphones, laptops) should be excluded from the investigation file as they were allegedly protected by legal professional privilege. The Controller then recalled that the protection of legal professional privilege is a general legal principle and a fundamental right guaranteed by Articles 7, 47 and 48 of the Charter of Fundamental Rights¹². Legal professional privilege serves to protect communications between a client and a lawyer and is an essential aspect of the client's right of defence¹³. As previously confirmed by a ruling of the European Court of Human Rights, Article 8(1) of the European Convention on Human Rights protects the confidentiality of all correspondence between individuals and affords strengthened protection to exchanges between lawyers and their clients¹⁴, the protection of which covers not only the activity of defence, but also legal advice. Article 7 of the Charter of Fundamental Rights guarantees the secrecy of that legal consultation, as regards both its content and its existence. Any person who consults a lawyer can reasonably expect that their communication is private and confidential¹⁵. In this case, the Controller found that OLAF, in line with its Guidelines on Digital Forensic Procedures for OLAF Staff, had as a first step placed the acquired electronic devices in sealed boxes for a later indexation and search operation for the relevant data. Thus, at that stage of the investigation, no breach of legal professional privilege had taken place.

¹² Opinion of the Advocate General of 29 April 2010, *Akzo Nobel Chemicals and Akros Chemicals v Commission*, C-550/07 P, EU:C:2010:229, paragraph 47.

¹³ Judgment of 18 May 1982, *AM&S Europe v Commission*, 155/79, EU:C:1982:157, paragraphs 20 and 23.

¹⁴ See, to that effect, European Court of Human Rights (ECHR), judgment of 6 December 2012, *Michaud v. France*, CE:ECHR: 2012: 1206JUD001232311, §§ 117 and 118.

¹⁵ ECHR, judgment of 9 April 2019, *Altay v. Turkey (No 2)*, CE:ECHR: 2019: 0409 JUD 001123609, § 49.

For the Controller, the cautious investigative approach followed in that case by OLAF, together with the safeguards that exist for the subsequent stages of indexing and searching the acquired digital images on the devices in question, provided adequate guarantees that the alleged claims of legal privilege would be properly respected by OLAF.

4. The right of an EU official to be informed of being a person concerned, and the deferral of that right

The possibility of OLAF to defer the right to inform an official of the EU that they are a person concerned was examined in detail by the Controller in a case where the complainant took issue with the fact that they were informed of being a person concerned almost 3 years after the investigation was opened.

For the Controller, the right to be informed is an important procedural guarantee for the official concerned and is intrinsically linked to the right of defence. Article 9(3) of the OLAF Regulation requires OLAF to rapidly inform an official of an EU institution that they may be personally implicated in an irregularity, so long as this does not prejudice the conduct of the investigation. The deferral of the obligation to inform is therefore an exceptional measure taken to protect the conduct of the investigation whenever OLAF identifies a specific risk. Once the grounds for deferring the obligation to inform no longer apply, at the earliest opportunity OLAF must provide the person concerned with information about the opening of the investigation, and information on the deferral and the grounds it was based upon.

Through her privileged access to OLAF's files¹⁶, the Controller found that in the case at hand that OLAF had decided to defer informing the complainant that they were a person concerned because their becoming aware of the investigation risked jeopardising OLAF's investigation. The Controller was able to establish that as soon as the reasons for the deferral ceased to exist, OLAF promptly informed the complainant about the deferral and the reasons for doing so, in compliance with the applicable rules.

5. Linguistic regime

The Controller was also asked to assess whether a person concerned who was an EU official¹⁷ had the right to ask that OLAF conduct the investigation in their mother tongue and provide free of charge a translation of the investigation file in that language on the grounds that this was essential for their effective legal representation. The Controller, based on the case-law of the EU Courts, did not find that OLAF's refusal to provide the requested translations free of charge was a breach of the complainant's procedural rights.

¹⁶ Article 8(1) and (2) of the Decision of the Controller of procedural guarantees adopting implementing provisions for the handling of complaints.

¹⁷ The definition of an EU official is provided in Article 1a of Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 45, 14/06/1962, p. 1385–1386. Also available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01962R0031-20240101>.

In the Controller's view, in an internal investigation a person concerned is always free to choose their own lawyer. This choice, however, does not and cannot bind OLAF as regards the language of communication with the complainant. As laid down in the case-law¹⁸ of the EU Courts applicable to EU staff¹⁹, the right to use the language of one's choice is not an absolute right since the EU institutions need to operate smoothly. The Controller also recalled that the obligation of an EU institution under the Code of Good Administrative Behaviour and the Charter of Fundamental Rights (Article 41(1)) to correspond with citizens in their language of choice only applies to the relations between EU institutions and citizens, not with those who are EU officials²⁰.

5. Relations with stakeholders

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

On 27 June 2023, the Controller presented her annual report for 2022 to the **European Parliament's Committee for Budgetary Control**. She presented the report to the **EU Council's Working Party on Combating Fraud** on 25 September 2023 and had an exchange of views with its members on her role and on the protection of the procedural guarantees of those under investigation by OLAF.

On 21 September, the Controller attended the plenary meeting of the Supervisory Committee where she presented the annual report for 2022 and held an exchange of views with the members of the Committee.

On 8 December 2023, the Controller met the **Deputy Secretary-General of the European Commission** and discussed how the complaints mechanism has worked so far. For the Controller, it is imperative to reinforce the Secretariat with additional human resources to be able to continue to provide high-quality legal support to the Controller and deal with a gradually increasing number of complaints in an efficient and timely manner.



Finally, the Controller also maintained regular exchanges and fruitful working relations with **the Director-General of OLAF**, based on mutual trust and good cooperation.

¹⁸ Judgment of 21 October 2009, *V v Commission*, Case F-33/08, ECLI:EU:F:2009:141, paragraphs 170-171.

¹⁹ EU staff includes EU officials and other servants engaged under contract by the EU (such as temporary staff, contract staff, local staff, special advisers or accredited parliamentary assistants).

²⁰ See also Article 9(5) of the OLAF Regulation.

In April 2023, the Director-General of OLAF informed the Controller about OLAF's process to revise its Guidelines on Investigation Procedures for OLAF Staff. Then, on 28 November 2023, based on Article 9b(9) of the OLAF Regulation²¹, the Director-General of OLAF asked for the Controllers' opinion on the draft revised text of the guidelines, given the many references and provisions therein to the procedural guarantees and fundamental rights that fall under the Controller's mandate. The Controller provided her opinion in 2024.



6. Administrative and legal support

With a view to an efficient use of resources, the OLAF Regulation entrusted to the Secretariat of the Supervisory Committee the tasks of providing legal and administrative support to the Controller.

This choice is further justified by the complementarity of the missions and the common goals pursued by the Controller and the Supervisory Committee. The Secretariat ensures continuity, continuous communication, and smooth cooperation with both the complainants and OLAF.

A dedicated team of highly qualified staff in the Secretariat, acting under the direction of its Head, provided valuable advice and assistance to the Controller while respecting professional secrecy and confidentiality.

²¹ According to this provision, the Director-General of OLAF '*may request the opinion of the Controller on any matter related to procedural guarantees or fundamental rights that falls within the Controller's mandate*'.

7. Contacting the Controller

By email:

OLAF-FMB-Controller-Procedural-Guarantees@ec.europa.eu

By post:

Controller of Procedural Guarantees / Secretariat of the Supervisory Committee of OLAF
Rue Joseph II, 30
B-1049 Brussels, Belgium

Online:

https://supervisory-committee-olaf.europa.eu/controller-procedural-guarantees_en